

## HOUSE BILL No. 2378

By Committee on Insurance and Financial Institutions

2-2

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9 AN ACT amending the Kansas automobile injury reparations act; con-  
10 cerning failure to maintain financial security; amending K.S.A. 2006  
11 Supp. 40-3104 and repealing the existing section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2006 Supp. 40-3104 is hereby amended to read as  
15 follows: 40-3104. (a) Every owner shall provide motor vehicle liability  
16 insurance coverage in accordance with the provisions of this act for every  
17 motor vehicle owned by such person, unless such motor vehicle: (1) Is  
18 included under an approved self-insurance plan as provided in subsection  
19 (f); (2) is used as a driver training motor vehicle, as defined in K.S.A. 72-  
20 5015, and amendments thereto, in an approved driver training course by  
21 a school district or an accredited nonpublic school under an agreement  
22 with a motor vehicle dealer, and such motor vehicle liability insurance  
23 coverage is provided by the school district or accredited nonpublic school;  
24 (3) is included under a qualified plan of self-insurance approved by an  
25 agency of the state in which such motor vehicle is registered and the form  
26 prescribed in subsection (b) of K.S.A. 40-3106, and amendments thereto,  
27 has been filed; or (4) is expressly exempted from the provisions of this  
28 act.

29 (b) An owner of an uninsured motor vehicle shall not permit the  
30 operation thereof upon a highway or upon property open to use by the  
31 public, unless such motor vehicle is expressly exempted from the provi-  
32 sions of this act.

33 (c) No person shall knowingly drive an uninsured motor vehicle upon  
34 a highway or upon property open to use by the public, unless such motor  
35 vehicle is expressly exempted from the provisions of this act.

36 (d) Any person operating a motor vehicle upon a highway or upon  
37 property open to use by the public shall display, upon demand, evidence  
38 of financial security to a law enforcement officer. The law enforcement  
39 officer shall issue a citation to any person who fails to display evidence of  
40 financial security upon such demand. The law enforcement officer shall  
41 attach a copy of the insurance verification form prescribed by the secre-  
42 tary of revenue to the copy of the citation forwarded to the court.

43 No citation shall be issued to any person for failure to provide proof of

1 financial security when evidence of financial security meeting the stan-  
2 dards of subsection (e) is displayed upon demand of a law enforcement  
3 officer. Whenever the authenticity of such evidence is questionable, the  
4 law enforcement officer may initiate the preparation of the insurance  
5 verification form prescribed by the secretary of revenue by recording  
6 information from the evidence of financial security displayed. The officer  
7 shall immediately forward the form to the department of revenue, and  
8 the department shall proceed with verification in the manner prescribed  
9 in the following paragraph. Upon return of a form indicating that insur-  
10 ance was not in force on the date indicated on the form, the department  
11 shall immediately forward a copy of the form to the law enforcement  
12 officer initiating preparation of the form.

13 (e) Unless the insurance company subsequently submits an insurance  
14 verification form indicating that insurance was not in force, no person  
15 charged with violating subsections (b), (c) or (d) shall be convicted if such  
16 person produces in court, within 10 days of the date of arrest or of issu-  
17 ance of the citation, evidence of financial security for the motor vehicle  
18 operated, which was valid at the time of arrest or of issuance of the ci-  
19 tation. For the purpose of this subsection, evidence of financial security  
20 shall be provided by a policy of motor vehicle liability insurance, an iden-  
21 tification card or certificate of insurance issued to the policyholder by the  
22 insurer which provides the name of the insurer, the policy number and  
23 the effective and expiration dates of the policy, or a certificate of self-  
24 insurance signed by the commissioner of insurance. Upon the production  
25 in court of evidence of financial security, the court shall record the in-  
26 formation displayed thereon on the insurance verification form prescribed  
27 by the secretary of revenue, immediately forward such form to the de-  
28 partment of revenue, and stay any further proceedings on the matter  
29 pending a request from the prosecuting attorney that the matter be set  
30 for trial. Upon receipt of such form the department shall mail the form  
31 to the named insurance company for verification that insurance was in  
32 force on the date indicated on the form. It shall be the duty of insurance  
33 companies to notify the department within 30 calendar days of the receipt  
34 of such forms of any insurance that was not in force on the date specified.  
35 Upon return of any form to the department indicating that insurance was  
36 not in force on such date, the department shall immediately forward a  
37 copy of such form to the office of the prosecuting attorney or the city  
38 clerk of the municipality in which such prosecution is pending when the  
39 prosecuting attorney is not ascertainable. Receipt of any completed form  
40 indicating that insurance was not in effect on the date specified shall be  
41 prima facie evidence of failure to provide proof of financial security and  
42 violation of this section. A request that the matter be set for trial shall be  
43 made immediately following the receipt by the prosecuting attorney of a

1 copy of the form from the department of revenue indicating that insur-  
2 ance was not in force. Any charge of violating subsection (b), (c) or (d)  
3 shall be dismissed if no request for a trial setting has been made within  
4 60 days of the date evidence of financial security was produced in court.

5 (f) Any person in whose name more than 25 motor vehicles are reg-  
6 istered in Kansas may qualify as a self-insurer by obtaining a certificate  
7 of self-insurance from the commissioner of insurance. The certificate of  
8 self-insurance issued by the commissioner shall cover such owned vehi-  
9 cles and those vehicles, registered in Kansas, leased to such person if the  
10 lease agreement requires that motor vehicle liability insurance on the  
11 vehicles be provided by the lessee. Upon application of any such person,  
12 the commissioner of insurance may issue a certificate of self-insurance,  
13 if the commissioner is satisfied that such person is possessed and will  
14 continue to be possessed of ability to pay any liability imposed by law  
15 against such person arising out of the ownership, operation, maintenance  
16 or use of any motor vehicle described in this subsection. A self-insurer  
17 shall provide liability coverage subject to the provisions of subsection (e)  
18 of K.S.A. 40-3107, and amendments thereto, arising out of the ownership,  
19 operation, maintenance or use of a self-insured motor vehicle in those  
20 instances where the lessee or the rental driver, if not the lessee, does not  
21 have a motor vehicle liability insurance policy or insurance coverage pur-  
22 suant to a motor vehicle liability insurance policy or certificate of insur-  
23 ance or such insurance policy for such leased or rented vehicle. Such  
24 liability coverage shall be provided to any person operating a self-insured  
25 motor vehicle with the expressed or implied consent of the self-insurer.

26 Upon notice and a hearing in accordance with the provisions of the  
27 Kansas administrative procedure act, the commissioner of insurance may  
28 cancel a certificate of self-insurance upon reasonable grounds. Failure to  
29 provide liability coverage or personal injury protection benefits required  
30 by K.S.A. 40-3107 and 40-3109, and amendments thereto, or pay any  
31 liability imposed by law arising out of the ownership, operation, mainte-  
32 nance or use of a motor vehicle registered in such self-insurer's name, or  
33 to otherwise comply with the requirements of this subsection shall con-  
34 stitute reasonable grounds for the cancellation of a certificate of self-  
35 insurance. Reasonable grounds shall not exist unless such objectionable  
36 activity occurs with such frequency as to indicate a general business  
37 practice.

38 Self-insureds shall investigate claims in a reasonably prompt manner,  
39 handle such claims in a reasonable manner based on available information  
40 and effectuate prompt, fair and equitable settlement of claims in which  
41 liability has become reasonably clear.

42 As used in this subsection, "liability imposed by law" means the stated  
43 limits of liability as provided under subsection (e) of K.S.A. 40-3107, and

1 amendments thereto.

2 Nothing in this subsection shall preclude a self-insurer from pursuing  
3 all rights of subrogation against another person or persons.

4 (g) (1) Any person violating any provision of this section shall be  
5 guilty of a class B misdemeanor and shall be subject to a fine of not less  
6 than \$300 nor more than \$1,000 or confinement in the county jail for a  
7 term of not more than six months, or both such fine and confinement.

8 (2) Any person convicted of violating any provision of this section  
9 within three years of any such prior conviction shall be guilty of a class A  
10 misdemeanor and shall be subject to a fine of not less than \$800 nor more  
11 than \$2,500.

12 (h) In addition to any other penalties provided by this act for failure  
13 to have or maintain financial security in effect, the director, upon receipt  
14 of a report required by K.S.A. 8-1607 or 8-1611, and amendments  
15 thereto, or a denial of such insurance by the insurance company listed on  
16 the form prescribed by the secretary of revenue pursuant to subsection  
17 (d) of this section, shall, upon notice and hearing as provided by K.S.A.  
18 40-3118, and amendments thereto:

19 (1) Suspend:

20 (A) The license of each driver in any manner involved in the accident;

21 (B) the license of the owner of each motor vehicle involved in such  
22 accident, unless the vehicle was stolen at the time of the accident, proof  
23 of which must be established by the owner of the motor vehicle. Theft  
24 by a member of the vehicle owner's immediate family under the age of  
25 18 years shall not constitute a stolen vehicle for the purposes of this  
26 section;

27 (C) if the driver is a nonresident, the privilege of operating a motor  
28 vehicle within this state; or

29 (D) if such owner is a nonresident, the privilege of such owner to  
30 operate or permit the operation within this state of any motor vehicle  
31 owned by such owner; and

32 (2) revoke the registration of all vehicles owned by the owner of each  
33 motor vehicle involved in such accident.

34 (i) The suspension or revocation requirements in subsection (h) shall  
35 not apply:

36 (1) To the driver or owner if the owner had in effect at the time of  
37 the accident an automobile liability policy as required by K.S.A. 40-3107,  
38 and amendments thereto, with respect to the vehicle involved in the  
39 accident;

40 (2) to the driver, if not the owner of the vehicle involved in the ac-  
41 cident, if there was in effect at the time of the accident an automobile  
42 liability policy with respect to such driver's driving of vehicles not owned  
43 by such driver;

1 (3) to any self-insurer as defined by subsection (u) of K.S.A. 40-3103,  
2 and amendments thereto;

3 (4) to the driver or owner of any vehicle involved in the accident  
4 which was exempt from the provisions of this act pursuant to K.S.A. 40-  
5 3105, and amendments thereto;

6 (5) to the owner of a vehicle described in subsection (a)(2).

7 (j) (1) For the purposes of provisions (1) and (2) of subsection (i) of  
8 this section, the director may require verification by an owner's or driver's  
9 insurance company or agent thereof that there was in effect at the time  
10 of the accident an automobile liability policy as required in this act.

11 (2) Subject to the provisions of subsection (k), any suspension or rev-  
12 ocation effected hereunder shall remain in effect until such person:

13 (A) Has filed satisfactory proof of financial security with the director  
14 as required by subsection (d) of K.S.A. 40-3118, and amendments thereto;

15 (B) has paid the reinstatement fee herein prescribed; and

16 (C) (i) has been released from liability;

17 (ii) is a party to an action to determine liability pursuant to which the  
18 court temporarily stays such suspension pending final disposition of such  
19 action;

20 (iii) has entered into an agreement for the payment of damages; or

21 (iv) has been finally adjudicated not to be liable in respect to such  
22 accident and evidence of any such fact has been filed with the director.

23 (3) The reinstatement fee shall be \$100 except that if the registration  
24 of a motor vehicle of any owner is revoked within one year following a  
25 prior revocation of the registration of a motor vehicle of such owner under  
26 the provisions of this act such fee shall be \$300.

27 (k) (1) Whenever any person whose license has been suspended or  
28 revoked pursuant to this section is involved in an accident and has entered  
29 into an agreement with any driver, or such driver's insurer, who has been  
30 damaged or whose vehicle has been damaged to pay for such damage and  
31 such person defaults on payments under such agreement, the driver or  
32 the driver's insurer, as appropriate, shall notify the director within 60 days  
33 of the date of default.

34 (2) Upon receipt of the notice of default, the director shall immedi-  
35 ately suspend such person's license and registration. If such person is a  
36 nonresident, the director shall immediately suspend such nonresident's  
37 privilege to operate a motor vehicle in this state.

38 (3) Except as provided in paragraph (4), such person's driver's li-  
39 cense, registration and nonresident's operating privilege shall remain so  
40 suspended and shall not be renewed, nor shall any such license or reg-  
41 istration be thereafter issued in the name of such person, including any  
42 such person not previously licensed, unless and until:

43 (A) The director receives notice payments under the agreement re-

1 referred to in paragraph (1) have been resumed and that payments under  
2 such agreement are no longer in default;

3 (B) such person has filed satisfactory proof of financial responsibility  
4 with the director as required by subsection (d) of K.S.A. 40-3118, and  
5 amendments thereto; and

6 (C) the reinstatement fee required by subsection (j) has been paid.

7 (4) Upon due notice to the director that the conditions of paragraph  
8 (3) have been fulfilled, such person may obtain from the director an order  
9 restoring such person's driver's license, registration and nonresident's op-  
10 erating privilege to operate a motor vehicle in this state conditioned upon  
11 such person's continued compliance with the agreement referred to in  
12 paragraph (1).

13 (5) In the event such person fails to make any further payment under  
14 the agreement referred to in paragraph (1) when such payment is due,  
15 the director, upon receipt of notice of such default, shall immediately  
16 suspend the license, registration or nonresident's operating privilege of  
17 such person until all payments have been made under the agreement  
18 referred to in paragraph (1). No suspension of such person's license, reg-  
19 istration or nonresident's privilege to operate a motor vehicle in this state  
20 shall be reinstated pursuant to paragraph (4).

21 *(l) The owner of a motor vehicle shall not recover for any property*  
22 *damage to such owner's motor vehicle, if the owner has failed to have or*  
23 *maintain financial security on such motor vehicle and is involved in an*  
24 *accident with a motor vehicle which has in effect financial security, even*  
25 *if such accident was the fault of the driver of the motor vehicle having*  
26 *financial security in effect.*

27 ~~(m)~~ (m) The provisions of this section shall not apply to motor carriers  
28 of property or passengers regulated by the corporation commission of the  
29 state of Kansas.

30 ~~(n)~~ (n) The provisions of subsection (d) shall not apply to vehicle  
31 dealers, as defined in K.S.A. 8-2401, and amendments thereto, for vehi-  
32 cles being offered for sale by such dealers.

33 Sec. 2. K.S.A. 2006 Supp. 40-3104 is hereby repealed.

34 Sec. 3. This act shall take effect and be in force from and after its  
35 publication in the statute book.