

1 AN ACT in relation to workers' compensation.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Workers' Compensation Act is amended by
5 changing Section 4 as follows:

6 (820 ILCS 305/4) (from Ch. 48, par. 138.4)

7 Sec. 4. (a) Any employer, including but not limited to
8 general contractors and their subcontractors, who shall come
9 within the provisions of Section 3 of this Act, and any other
10 employer who shall elect to provide and pay the compensation
11 provided for in this Act shall:

12 (1) File with the Commission annually an
13 application for approval as a self-insurer which shall
14 include a current financial statement, and annually,
15 thereafter, an application for renewal of self-insurance,
16 which shall include a current financial statement. Said
17 application and financial statement shall be signed and
18 sworn to by the president or vice president and secretary
19 or assistant secretary of the employer if it be a
20 corporation, or by all of the partners, if it be a
21 copartnership, or by the owner if it be neither a
22 copartnership nor a corporation. All initial applications
23 and all applications for renewal of self-insurance must
24 be submitted at least 60 days prior to the requested
25 effective date of self-insurance. An employer may elect
26 to provide and pay compensation as provided for in this
27 Act as a member of a group workers' compensation pool
28 under Article V 3/4 of the Illinois Insurance Code. If
29 an employer becomes a member of a group workers'
30 compensation pool, the employer shall not be relieved of
31 any obligations imposed by this Act.

1 If the sworn application and financial statement of
2 any such employer does not satisfy the Commission of the
3 financial ability of the employer who has filed it, the
4 Commission shall require such employer to,

5 (2) Furnish security, indemnity or a bond
6 guaranteeing the payment by the employer of the
7 compensation provided for in this Act, provided that any
8 such employer whose application and financial statement
9 shall not have satisfied the commission of his or her
10 financial ability and who shall have secured his
11 liability in part by excess liability insurance shall be
12 required to furnish to the Commission security, indemnity
13 or bond guaranteeing his or her payment up to the
14 effective limits of the excess coverage, or

15 (3) Insure his entire liability to pay such
16 compensation in some insurance carrier authorized,
17 licensed, or permitted to do such insurance business in
18 this State. Every policy of an insurance carrier,
19 insuring the payment of compensation under this Act shall
20 cover all the employees and the entire compensation
21 liability of the insured: Provided, however, that any
22 employer may insure his or her compensation liability
23 with 2 or more insurance carriers or may insure a part
24 and qualify under subsection 1, 2, or 4 for the remainder
25 of his or her liability to pay such compensation, subject
26 to the following two provisions:

27 Firstly, the entire compensation liability of
28 the employer to employees working at or from one
29 location shall be insured in one such insurance
30 carrier or shall be self-insured, and

31 Secondly, the employer shall submit evidence
32 satisfactorily to the Commission that his or her
33 entire liability for the compensation provided for
34 in this Act will be secured. Any provisions in any

1 policy, or in any endorsement attached thereto,
2 attempting to limit or modify in any way, the
3 liability of the insurance carriers issuing the same
4 except as otherwise provided herein shall be wholly
5 void.

6 Nothing herein contained shall apply to policies of
7 excess liability carriage secured by employers who have
8 been approved by the Commission as self-insurers, or

9 (4) Make some other provision, satisfactory to the
10 Commission, for the securing of the payment of
11 compensation provided for in this Act, and

12 (5) Upon becoming subject to this Act and
13 thereafter as often as the Commission may in writing
14 demand, file with the Commission in form prescribed by it
15 evidence of his or her compliance with the provision of
16 this Section.

17 (a-1) Regardless of its state of domicile or its
18 principal place of business, an employer shall make payments
19 to its insurance carrier or group self-insurance fund, where
20 applicable, based upon the premium rates of the situs where
21 the work or project is located in Illinois if:

22 (A) the employer is engaged primarily in the
23 building and construction industry; and

24 (B) subdivision (a)(3) of this Section applies to
25 the employer or the employer is a member of a group
26 self-insurance plan as defined in subsection (1) of
27 Section 4a.

28 The Industrial Commission shall impose a penalty upon an
29 employer for violation of this subsection (a-1) if:

30 (i) the employer is given an opportunity at a
31 hearing to present evidence of its compliance with this
32 subsection (a-1); and

33 (ii) after the hearing, the Commission finds that
34 the employer failed to make payments upon the premium

1 rates of the situs where the work or project is located
2 in Illinois.

3 The penalty shall not exceed \$1,000 for each day of work
4 for which the employer failed to make payments upon the
5 premium rates of the situs where the work or project is
6 located in Illinois, but the total penalty shall not exceed
7 \$50,000 for each project or each contract under which the
8 work was performed.

9 Any penalty under this subsection (a-1) must be imposed
10 not later than one year after the expiration of the
11 applicable limitation period specified in subsection (d) of
12 Section 6 of this Act. Penalties imposed under this
13 subsection (a-1) shall be deposited into the Industrial
14 Commission Operations Fund, a special fund that is created
15 in the State treasury. Subject to appropriation, moneys in
16 the Fund shall be used solely for the operations of the
17 Industrial Commission.

18 (b) The sworn application and financial statement, or
19 security, indemnity or bond, or amount of insurance, or other
20 provisions, filed, furnished, carried, or made by the
21 employer, as the case may be, shall be subject to the
22 approval of the Commission.

23 Deposits under escrow agreements shall be cash,
24 negotiable United States government bonds or negotiable
25 general obligation bonds of the State of Illinois. Such cash
26 or bonds shall be deposited in escrow with any State or
27 National Bank or Trust Company having trust authority in the
28 State of Illinois.

29 Upon the approval of the sworn application and financial
30 statement, security, indemnity or bond or amount of
31 insurance, filed, furnished or carried, as the case may be,
32 the Commission shall send to the employer written notice of
33 its approval thereof. The certificate of compliance by the
34 employer with the provisions of subparagraphs (2) and (3) of

1 paragraph (a) of this Section shall be delivered by the
2 insurance carrier to the Industrial Commission within five
3 days after the effective date of the policy so certified.
4 The insurance so certified shall cover all compensation
5 liability occurring during the time that the insurance is in
6 effect and no further certificate need be filed in case such
7 insurance is renewed, extended or otherwise continued by such
8 carrier. The insurance so certified shall not be cancelled
9 or in the event that such insurance is not renewed, extended
10 or otherwise continued, such insurance shall not be
11 terminated until at least 10 days after receipt by the
12 Industrial Commission of notice of the cancellation or
13 termination of said insurance; provided, however, that if the
14 employer has secured insurance from another insurance
15 carrier, or has otherwise secured the payment of compensation
16 in accordance with this Section, and such insurance or other
17 security becomes effective prior to the expiration of the 10
18 days, cancellation or termination may, at the option of the
19 insurance carrier indicated in such notice, be effective as
20 of the effective date of such other insurance or security.

21 (c) Whenever the Commission shall find that any
22 corporation, company, association, aggregation of
23 individuals, reciprocal or interinsurers exchange, or other
24 insurer effecting workers' compensation insurance in this
25 State shall be insolvent, financially unsound, or unable to
26 fully meet all payments and liabilities assumed or to be
27 assumed for compensation insurance in this State, or shall
28 practice a policy of delay or unfairness toward employees in
29 the adjustment, settlement, or payment of benefits due such
30 employees, the Commission may after reasonable notice and
31 hearing order and direct that such corporation, company,
32 association, aggregation of individuals, reciprocal or
33 interinsurers exchange, or insurer, shall from and after a
34 date fixed in such order discontinue the writing of any such

1 workers' compensation insurance in this State. Subject to
2 such modification of the order as the Commission may later
3 make on review of the order, as herein provided, it shall
4 thereupon be unlawful for any such corporation, company,
5 association, aggregation of individuals, reciprocal or
6 interinsurers exchange, or insurer to effect any workers'
7 compensation insurance in this State. A copy of the order
8 shall be served upon the Director of Insurance by registered
9 mail. Whenever the Commission finds that any service or
10 adjustment company used or employed by a self-insured
11 employer or by an insurance carrier to process, adjust,
12 investigate, compromise or otherwise handle claims under this
13 Act, has practiced or is practicing a policy of delay or
14 unfairness toward employees in the adjustment, settlement or
15 payment of benefits due such employees, the Commission may
16 after reasonable notice and hearing order and direct that
17 such service or adjustment company shall from and after a
18 date fixed in such order be prohibited from processing,
19 adjusting, investigating, compromising or otherwise handling
20 claims under this Act.

21 Whenever the Commission finds that any self-insured
22 employer has practiced or is practicing delay or unfairness
23 toward employees in the adjustment, settlement or payment of
24 benefits due such employees, the Commission may, after
25 reasonable notice and hearing, order and direct that after a
26 date fixed in the order such self-insured employer shall be
27 disqualified to operate as a self-insurer and shall be
28 required to insure his entire liability to pay compensation
29 in some insurance carrier authorized, licensed and permitted
30 to do such insurance business in this State, as provided in
31 subparagraph 3 of paragraph (a) of this Section.

32 All orders made by the Commission under this Section
33 shall be subject to review by the courts, said review to be
34 taken in the same manner and within the same time as provided

1 by Section 19 of this Act for review of awards and decisions
2 of the Commission, upon the party seeking the review filing
3 with the clerk of the court to which said review is taken a
4 bond in an amount to be fixed and approved by the court to
5 which the review is taken, conditioned upon the payment of
6 all compensation awarded against the person taking said
7 review pending a decision thereof and further conditioned
8 upon such other obligations as the court may impose. Upon
9 the review the Circuit Court shall have power to review all
10 questions of fact as well as of law. The penalty hereinafter
11 provided for in this paragraph shall not attach and shall not
12 begin to run until the final determination of the order of
13 the Commission.

14 (d) Upon a finding by the Commission, after reasonable
15 notice and hearing, of the knowing and wilful failure of an
16 employer to comply with any of the provisions of paragraph
17 (a) of this Section or the failure or refusal of an employer,
18 service or adjustment company, or an insurance carrier to
19 comply with any order of the Industrial Commission pursuant
20 to paragraph (c) of this Section disqualifying him or her to
21 operate as a self insurer and requiring him or her to insure
22 his or her liability, the Commission may assess a civil
23 penalty of up to \$500 per day for each day of such failure or
24 refusal after the effective date of this amendatory Act of
25 1989. The minimum penalty under this Section shall be the sum
26 of \$10,000. Each day of such failure or refusal shall
27 constitute a separate offense. The Commission may assess the
28 civil penalty personally and individually against the
29 corporate officers and directors of a corporate employer, the
30 partners of an employer partnership, and the members of an
31 employer limited liability company, after a finding of a
32 knowing and willful refusal or failure of the employer to
33 comply with this Section. The liability for such personal
34 and individual assessment is joint and several. All

1 penalties collected under this Section shall be deposited in
2 the Industrial Commission Operations Fund.

3 Upon the failure or refusal of any employer, service or
4 adjustment company or insurance carrier to comply with the
5 provisions of this Section and with the orders of the
6 Commission under this Section, or the order of the court on
7 review after final adjudication, the Commission may bring a
8 civil action to recover the amount of the penalty in Cook
9 County or in Sangamon County in which litigation the
10 Commission shall be represented by the Attorney General. The
11 Commission shall send notice of its finding of non-compliance
12 and assessment of the civil penalty to the Attorney General.
13 It shall be the duty of the Attorney General within 30 days
14 after receipt of the notice, to institute prosecutions and
15 promptly prosecute all reported violations of this Section.

16 (e) This Act shall not affect or disturb the continuance
17 of any existing insurance, mutual aid, benefit, or relief
18 association or department, whether maintained in whole or in
19 part by the employer or whether maintained by the employees,
20 the payment of benefits of such association or department
21 being guaranteed by the employer or by some person, firm or
22 corporation for him or her: Provided, the employer
23 contributes to such association or department an amount not
24 less than the full compensation herein provided, exclusive of
25 the cost of the maintenance of such association or department
26 and without any expense to the employee. This Act shall not
27 prevent the organization and maintaining under the insurance
28 laws of this State of any benefit or insurance company for
29 the purpose of insuring against the compensation provided for
30 in this Act, the expense of which is maintained by the
31 employer. This Act shall not prevent the organization or
32 maintaining under the insurance laws of this State of any
33 voluntary mutual aid, benefit or relief association among
34 employees for the payment of additional accident or sick

1 benefits.

2 (f) No existing insurance, mutual aid, benefit or relief
3 association or department shall, by reason of anything herein
4 contained, be authorized to discontinue its operation without
5 first discharging its obligations to any and all persons
6 carrying insurance in the same or entitled to relief or
7 benefits therein.

8 (g) Any contract, oral, written or implied, of
9 employment providing for relief benefit, or insurance or any
10 other device whereby the employee is required to pay any
11 premium or premiums for insurance against the compensation
12 provided for in this Act shall be null and void. Any
13 employer withholding from the wages of any employee any
14 amount for the purpose of paying any such premium shall be
15 guilty of a Class B misdemeanor.

16 In the event the employer does not pay the compensation
17 for which he or she is liable, then an insurance company,
18 association or insurer which may have insured such employer
19 against such liability shall become primarily liable to pay
20 to the employee, his or her personal representative or
21 beneficiary the compensation required by the provisions of
22 this Act to be paid by such employer. The insurance carrier
23 may be made a party to the proceedings in which the employer
24 is a party and an award may be entered jointly against the
25 employer and the insurance carrier.

26 (h) It shall be unlawful for any employer, insurance
27 company or service or adjustment company to interfere with,
28 restrain or coerce an employee in any manner whatsoever in
29 the exercise of the rights or remedies granted to him or her
30 by this Act or to discriminate, attempt to discriminate, or
31 threaten to discriminate against an employee in any way
32 because of his or her exercise of the rights or remedies
33 granted to him or her by this Act.

34 It shall be unlawful for any employer, individually or

1 through any insurance company or service or adjustment
2 company, to discharge or to threaten to discharge, or to
3 refuse to rehire or recall to active service in a suitable
4 capacity an employee because of the exercise of his or her
5 rights or remedies granted to him or her by this Act.

6 (i) If an employer elects to obtain a life insurance
7 policy on his employees, he may also elect to apply such
8 benefits in satisfaction of all or a portion of the death
9 benefits payable under this Act, in which case, the
10 employer's compensation premium shall be reduced accordingly.

11 (j) Within 45 days of receipt of an initial application
12 or application to renew self-insurance privileges the
13 Self-Insurers Advisory Board shall review and submit for
14 approval by the Chairman of the Commission recommendations of
15 disposition of all initial applications to self-insure and
16 all applications to renew self-insurance privileges filed by
17 private self-insurers pursuant to the provisions of this
18 Section and Section 4a-9 of this Act. Each private
19 self-insurer shall submit with its initial and renewal
20 applications the application fee required by Section 4a-4 of
21 this Act.

22 The Chairman of the Commission shall promptly act upon
23 all initial applications and applications for renewal in full
24 accordance with the recommendations of the Board or, should
25 the Chairman disagree with any recommendation of disposition
26 of the Self-Insurer's Advisory Board, he shall within 30 days
27 of receipt of such recommendation provide to the Board in
28 writing the reasons supporting his decision. The Chairman
29 shall also promptly notify the employer of his decision
30 within 15 days of receipt of the recommendation of the Board.

31 If an employer is denied a renewal of self-insurance
32 privileges pursuant to application it shall retain said
33 privilege for 120 days after receipt of a notice of
34 cancellation of the privilege from the Chairman of the

1 Commission.

2 All orders made by the Chairman under this Section shall
3 be subject to review by the courts, such review to be taken
4 in the same manner and within the same time as provided by
5 subsection (f) of Section 19 of this Act for review of awards
6 and decisions of the Commission, upon the party seeking the
7 review filing with the clerk of the court to which such
8 review is taken a bond in an amount to be fixed and approved
9 by the court to which the review is taken, conditioned upon
10 the payment of all compensation awarded against the person
11 taking such review pending a decision thereof and further
12 conditioned upon such other obligations as the court may
13 impose. Upon the review the Circuit Court shall have power
14 to review all questions of fact as well as of law.

15 (Source: P.A. 90-109, eff. 1-1-98; 91-375, eff. 1-1-00;
16 91-757, eff. 1-1-01.)

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.