

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

1 liability for the assessed penalty shall be against the named
2 employer first, and if the named employer fails or refuses to
3 pay the penalty to the Commission within 30 days after the
4 final order of the Commission, then the named corporate
5 officers, directors, partners, or members who have been found
6 to have knowingly and willfully refused or failed to comply
7 with this Section shall be liable for the unpaid penalty or
8 any unpaid portion of the penalty. All penalties collected
9 under this Section shall be deposited in the Industrial
10 Commission Operations Fund.

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

24 (e) This Act shall not affect or disturb the continuance
25 of any existing insurance, mutual aid, benefit, or relief
26 association or department, whether maintained in whole or in
27 part by the employer or whether maintained by the employees,
28 the payment of benefits of such association or department
29 being guaranteed by the employer or by some person, firm or
30 corporation for him or her: Provided, the employer
31 contributes to such association or department an amount not
32 less than the full compensation herein provided, exclusive of
33 the cost of the maintenance of such association or department
34 and without any expense to the employee. This Act shall not

1 prevent the organization and maintaining under the insurance
2 laws of this State of any benefit or insurance company for
3 the purpose of insuring against the compensation provided for
4 in this Act, the expense of which is maintained by the
5 employer. This Act shall not prevent the organization or
6 maintaining under the insurance laws of this State of any
7 voluntary mutual aid, benefit or relief association among
8 employees for the payment of additional accident or sick
9 benefits.

10 (f) No existing insurance, mutual aid, benefit or relief
11 association or department shall, by reason of anything herein
12 contained, be authorized to discontinue its operation without
13 first discharging its obligations to any and all persons
14 carrying insurance in the same or entitled to relief or
15 benefits therein.

16 (g) Any contract, oral, written or implied, of
17 employment providing for relief benefit, or insurance or any
18 other device whereby the employee is required to pay any
19 premium or premiums for insurance against the compensation
20 provided for in this Act shall be null and void. Any
21 employer withholding from the wages of any employee any
22 amount for the purpose of paying any such premium shall be
23 guilty of a Class B misdemeanor.

24 In the event the employer does not pay the compensation
25 for which he or she is liable, then an insurance company,
26 association or insurer which may have insured such employer
27 against such liability shall become primarily liable to pay
28 to the employee, his or her personal representative or
29 beneficiary the compensation required by the provisions of
30 this Act to be paid by such employer. The insurance carrier
31 may be made a party to the proceedings in which the employer
32 is a party and an award may be entered jointly against the
33 employer and the insurance carrier.

34 (h) It shall be unlawful for any employer, insurance

1 company or service or adjustment company to interfere with,
2 restrain or coerce an employee in any manner whatsoever in
3 the exercise of the rights or remedies granted to him or her
4 by this Act or to discriminate, attempt to discriminate, or
5 threaten to discriminate against an employee in any way
6 because of his or her exercise of the rights or remedies
7 granted to him or her by this Act.

8 It shall be unlawful for any employer, individually or
9 through any insurance company or service or adjustment
10 company, to discharge or to threaten to discharge, or to
11 refuse to rehire or recall to active service in a suitable
12 capacity an employee because of the exercise of his or her
13 rights or remedies granted to him or her by this Act.

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

19 (j) Within 45 days of receipt of an initial application
20 or application to renew self-insurance privileges the
21 Self-Insurers Advisory Board shall review and submit for
22 approval by the Chairman of the Commission recommendations of
23 disposition of all initial applications to self-insure and
24 all applications to renew self-insurance privileges filed by
25 private self-insurers pursuant to the provisions of this
26 Section and Section 4a-9 of this Act. Each private
27 self-insurer shall submit with its initial and renewal
28 applications the application fee required by Section 4a-4 of
29 this Act.

30 The Chairman of the Commission shall promptly act upon
31 all initial applications and applications for renewal in full
32 accordance with the recommendations of the Board or, should
33 the Chairman disagree with any recommendation of disposition
34 of the Self-Insurer's Advisory Board, he shall within 30 days

1 of receipt of such recommendation provide to the Board in
2 writing the reasons supporting his decision. The Chairman
3 shall also promptly notify the employer of his decision
4 within 15 days of receipt of the recommendation of the Board.

5 If an employer is denied a renewal of self-insurance
6 privileges pursuant to application it shall retain said
7 privilege for 120 days after receipt of a notice of
8 cancellation of the privilege from the Chairman of the
9 Commission.

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

23 (Source: P.A. 90-109, eff. 1-1-98; 91-375, eff. 1-1-00;
24 91-757, eff. 1-1-01.)

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.