

HOUSE BILL No. 2090

By Representative Bethell
(By request)

1-20

11 AN ACT amending the Kansas automobile injury reparations act; con-
12 cerning certain penalties; amending K.S.A. 40-3104 and repealing the
13 existing section.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

38 (d) Any person operating a motor vehicle upon a highway or upon
39 property open to use by the public shall display, upon demand, evidence
40 of financial security to a law enforcement officer. The law enforcement
41 officer shall issue a citation to ~~any person who~~ *the owner of the motor*
42 *vehicle if the owner or if any other person operating the motor vehicle*
43 fails to display evidence of financial security upon such demand. The law

1 enforcement officer shall attach a copy of the insurance verification form
2 prescribed by the secretary of revenue to the copy of the citation for-
3 forwarded to the court. *The law enforcement officer shall mail a citation to*
4 *such owner, unless the owner was issued a citation at the time the demand*
5 *for evidence of financial security was made by such law enforcement*
6 *officer.*

7 No citation shall be issued to ~~any person~~ *the owner* for failure to provide
8 proof of financial security when evidence of financial security meeting
9 the standards of subsection (e) is displayed upon demand of a law en-
10 forcement officer. Whenever the authenticity of such evidence is ques-
11 tionable, the law enforcement officer may initiate the preparation of the
12 insurance verification form prescribed by the secretary of revenue by
13 recording information from the evidence of financial security displayed.
14 The officer shall immediately forward the form to the department of
15 revenue, and the department shall proceed with verification in the man-
16 ner prescribed in the following paragraph. Upon return of a form indi-
17 cating that insurance was not in force on the date indicated on the form,
18 the department shall immediately forward a copy of the form to the law
19 enforcement officer initiating preparation of the form.

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

1 copy of such form to the office of the prosecuting attorney or the city
2 clerk of the municipality in which such prosecution is pending when the
3 prosecuting attorney is not ascertainable. Receipt of any completed form
4 indicating that insurance was not in effect on the date specified shall be
5 prima facie evidence of failure to provide proof of financial security and
6 violation of this section. A request that the matter be set for trial shall be
7 made immediately following the receipt by the prosecuting attorney of a
8 copy of the form from the department of revenue indicating that insur-
9 ance was not in force. Any charge of violating subsection (b), (c) or (d)
10 shall be dismissed if no request for a trial setting has been made within
11 60 days of the date evidence of financial security was produced in court.

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

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

1 practice.

2 Self-insureds shall investigate claims in a reasonably prompt manner,
3 handle such claims in a reasonable manner based on available information
4 and effectuate prompt, fair and equitable settlement of claims in which
5 liability has become reasonably clear.

6 As used in this subsection, “liability imposed by law” means the stated
7 limits of liability as provided under subsection (e) of K.S.A. 40-3107, and
8 amendments thereto.

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

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

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

19 (h) In addition to any other penalties provided by this act for failure
20 to have or maintain financial security in effect, the director, upon receipt
21 of a report required by K.S.A. 8-1607 or 8-1611, and amendments
22 thereto, or a denial of such insurance by the insurance company listed on
23 the form prescribed by the secretary of revenue pursuant to subsection
24 (d) of this section, shall, upon notice and hearing as provided by K.S.A.
25 40-3118, and amendments thereto:

26 (1) Suspend:

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

28 (B) the license of the owner of each motor vehicle involved in such
29 accident, unless the vehicle was stolen at the time of the accident, proof
30 of which must be established by the owner of the motor vehicle. Theft
31 by a member of the vehicle owner’s immediate family under the age of
32 18 years shall not constitute a stolen vehicle for the purposes of this
33 section;

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

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

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

41 (i) The suspension or revocation requirements in subsection (h) shall
42 not apply:

43 (1) To the driver or owner if the owner had in effect at the time of

1 the accident an automobile liability policy as required by K.S.A. 40-3107,
2 and amendments thereto, with respect to the vehicle involved in the
3 accident;

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

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

10 (4) to the driver or owner of any vehicle involved in the accident
11 which was exempt from the provisions of this act pursuant to K.S.A. 40-
12 3105, and amendments thereto;

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

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

18 Any suspension or revocation effected hereunder shall remain in effect
19 until satisfactory proof of financial security has been filed with the director
20 as required by subsection (d) of K.S.A. 40-3118, and amendments thereto,
21 and such person has been released from liability or is a party to an action
22 to determine liability pursuant to which the court temporarily stays such
23 suspension pending final disposition of such action, has entered into an
24 agreement for the payment of damages, or has been finally adjudicated
25 not to be liable in respect to such accident and evidence of any such fact
26 has been filed with the director and has paid the reinstatement fee herein
27 prescribed. Such reinstatement fee shall be \$100 except that if the reg-
28 istration of a motor vehicle of any owner is revoked within one year fol-
29 lowing a prior revocation of the registration of a motor vehicle of such
30 owner under the provisions of this act such fee shall be \$300.

31 (k) The provisions of this section shall not apply to motor carriers of
32 property or passengers regulated by the corporation commission of the
33 state of Kansas.

34 (l) The provisions of subsection (d) shall not apply to vehicle dealers,
35 as defined in K.S.A. 8-2401, and amendments thereto, for vehicles being
36 offered for sale by such dealers.

37 Sec. 2. K.S.A. 40-3104 is hereby repealed.

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