

Substitute for SENATE BILL No. 322

By Committee on Financial Institutions and Insurance

3-7

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

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

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

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

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

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

1 No citation shall be issued to any person for failure to provide proof of
2 financial security when evidence of financial security meeting the stan-
3 dards of subsection (e) is displayed upon demand of a law enforcement
4 officer. Whenever the authenticity of such evidence is questionable, the
5 law enforcement officer may initiate the preparation of the insurance
6 verification form prescribed by the secretary of revenue by recording
7 information from the evidence of financial security displayed. The officer
8 shall immediately forward the form to the department of revenue, and
9 the department shall proceed with verification in the manner prescribed
10 in the following paragraph. Upon return of a form indicating that insur-
11 ance was not in force on the date indicated on the form, the department
12 shall immediately forward a copy of the form to the law enforcement
13 officer initiating preparation of the form.

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

1 made immediately following the receipt by the prosecuting attorney of a
2 copy of the form from the department of revenue indicating that insur-
3 ance was not in force. Any charge of violating subsection (b), (c) or (d)
4 shall be dismissed if no request for a trial setting has been made within
5 60 days of the date evidence of financial security was produced in court.

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

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

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

43 As used in this subsection, "liability imposed by law" means the stated

1 limits of liability as provided under subsection (e) of K.S.A. 40-3107, and
2 amendments thereto.

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

5 (g) (1) ~~Any person violating~~ *Upon a first conviction of a violation of*
6 *any provision of this section, a person shall be guilty of a class B misde-*
7 *meanor and shall be subject to a fine of not less than \$300 nor more than*
8 *\$1,000 or confinement in the county jail for a term of not more than six*
9 *months, or both such fine and confinement.*

10 (2) ~~Any person convicted of violating~~ *On a second [or subsequent]*
11 *conviction of a violation of any provision of this section within three years*
12 *of any such prior conviction within five years of any such prior conviction,*
13 *a person shall be guilty of a class A misdemeanor and shall be subject to*
14 *a fine of fined not less than \$800 nor more than \$2,500.*

15 (3) ~~On a third or subsequent conviction of a violation of any provision~~
16 ~~of this section, a person shall be guilty of a nonperson felony and sentenced~~
17 ~~to not less than 90 days nor more than one year's imprisonment and fined~~
18 ~~not less than \$1,500 nor more than \$2,500. The person convicted shall~~
19 ~~not be eligible for release on probation, suspension or reduction of sen-~~
20 ~~tence or parole until the person has served at least 90 days' imprisonment.~~
21 ~~The 90 days' imprisonment mandated by this subsection may be served~~
22 ~~in a work release program only after such person has served 48 conse-~~
23 ~~cutive hours' imprisonment, provided such work release program required~~
24 ~~such person to return to confinement at the end of each day in the work~~
25 ~~release program. The court may place the person convicted under a house~~
26 ~~arrest program pursuant to K.S.A. 21-4603b, and amendments thereto,~~
27 ~~to serve the remainder of the minimum sentence only after such person~~
28 ~~has served 48 consecutive hours' imprisonment.~~

29 (h) In addition to any other penalties provided by this act for failure
30 to have or maintain financial security in effect, the director, upon receipt
31 of a report required by K.S.A. 8-1607 or 8-1611, and amendments
32 thereto, or a denial of such insurance by the insurance company listed on
33 the form prescribed by the secretary of revenue pursuant to subsection
34 (d) of this section, shall, upon notice and hearing as provided by K.S.A.
35 40-3118, and amendments thereto:

36 (1) Suspend:

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

38 (B) the license of the owner of each motor vehicle involved in such
39 accident, unless the vehicle was stolen at the time of the accident, proof
40 of which must be established by the owner of the motor vehicle. Theft
41 by a member of the vehicle owner's immediate family under the age of
42 18 years shall not constitute a stolen vehicle for the purposes of this
43 section;

- 1 (C) if the driver is a nonresident, the privilege of operating a motor
2 vehicle within this state; or
- 3 (D) if such owner is a nonresident, the privilege of such owner to
4 operate or permit the operation within this state of any motor vehicle
5 owned by such owner; and
- 6 (2) revoke the registration of all vehicles owned by the owner of each
7 motor vehicle involved in such accident.
- 8 (i) The suspension or revocation requirements in subsection (h) shall
9 not apply:
- 10 (1) To the driver or owner if the owner had in effect at the time of
11 the accident an automobile liability policy as required by K.S.A. 40-3107,
12 and amendments thereto, with respect to the vehicle involved in the
13 accident;
- 14 (2) to the driver, if not the owner of the vehicle involved in the ac-
15 cident, if there was in effect at the time of the accident an automobile
16 liability policy with respect to such driver's driving of vehicles not owned
17 by such driver;
- 18 (3) to any self-insurer as defined by subsection (u) of K.S.A. 40-3103,
19 and amendments thereto;
- 20 (4) to the driver or owner of any vehicle involved in the accident
21 which was exempt from the provisions of this act pursuant to K.S.A. 40-
22 3105, and amendments thereto;
- 23 (5) to the owner of a vehicle described in subsection (a)(2).
- 24 (j) (1) For the purposes of provisions (1) and (2) of subsection (i) of
25 this section, the director may require verification by an owner's or driver's
26 insurance company or agent thereof that there was in effect at the time
27 of the accident an automobile liability policy as required in this act.
- 28 ~~Any suspension or revocation effected hereunder shall remain in effect~~
29 ~~until satisfactory proof of financial security has been filed with the director~~
30 ~~as required by subsection (d) of K.S.A. 40-3118, and amendments thereto,~~
31 ~~and such person has been released from liability or is a party to an action~~
32 ~~to determine liability pursuant to which the court temporarily stays such~~
33 ~~suspension pending final disposition of such action, has entered into an~~
34 ~~agreement for the payment of damages, or has been finally adjudicated~~
35 ~~not to be liable in respect to such accident and evidence of any such fact~~
36 ~~has been filed with the director and has paid the reinstatement fee herein~~
37 ~~prescribed. Such reinstatement fee shall be \$100 except that if the reg-~~
38 ~~istration of a motor vehicle of any owner is revoked within one year fol-~~
39 ~~lowing a prior revocation of the registration of a motor vehicle of such~~
40 ~~owner under the provisions of this act such fee shall be \$300.~~
- 41 ~~—(k) The provisions of this section shall not apply to motor carriers of~~
42 ~~property or passengers regulated by the corporation commission of the~~
43 ~~state of Kansas.~~

- 1 ~~(1) The provisions of subsection (d) shall not apply to vehicle dealers,~~
2 ~~as defined in K.S.A. 8-2401, and amendments thereto, for vehicles being~~
3 ~~offered for sale by such dealers.~~
- 4 (2) *Subject to the provisions of subsection (k), any suspension or rev-*
5 *ocation effected hereunder shall remain in effect until such person:*
- 6 (A) *Has filed satisfactory proof of financial security with the director*
7 *as required by subsection (d) of K.S.A. 40-3118 and amendments thereto;*
8 (B) *has paid the reinstatement fee herein prescribed; and*
9 (C) (i) *has been released from liability;*
10 (ii) *is a party to an action to determine liability pursuant to which*
11 *the court temporarily stays such suspension pending final disposition of*
12 *such action;*
13 (iii) *has entered into an agreement for the payment of damages; or*
14 (iv) *has been finally adjudicated not to be liable in respect to such*
15 *accident and evidence of any such fact has been filed with the director.*
- 16 (3) *The reinstatement fee shall be \$100 except that if the registration*
17 *of a motor vehicle of any owner is revoked within one year following a*
18 *prior revocation of the registration of a motor vehicle of such owner under*
19 *the provisions of this act such fee shall be \$300.*
- 20 (k) (1) *Whenever any person whose license has been suspended or*
21 *revoked pursuant to this section is involved in an accident and has entered*
22 *into an agreement with any driver, or such driver's insurer, who has been*
23 *damaged or whose vehicle has been damaged to pay for such damage and*
24 *such person defaults on payments under such agreement, the driver or*
25 *the driver's insurer, as appropriate, shall notify the director within 60*
26 *days of the date of default.*
- 27 (2) *Upon receipt of the notice of default, the director shall immedi-*
28 *ately suspend such person's license and registration. If such person is a*
29 *nonresident, the director shall immediately suspend such person's non-*
30 *resident's privilege to operate a motor vehicle in this state.*
- 31 (3) *Except as provided in paragraph (4), such person's driver's li-*
32 *cence, registration and nonresident's operating privilege shall remain so*
33 *suspended and shall not be renewed, nor shall any such license or regis-*
34 *tration be thereafter issued in the name of such person, including any*
35 *such person not previously licensed, unless and until:*
- 36 (A) *The director receives notice payments under the agreement re-*
37 *ferred to in paragraph (1) have been resumed and that payments under*
38 *such agreement are no longer in default;*
39 (B) *such person has filed satisfactory proof of financial responsibility*
40 *with the director as required by subsection(d) of K.S.A. 40-3118 and*
41 *amendments thereto; and*
42 (C) *the reinstatement fee required by subsection (j) has been paid.*
43 (4) *Upon due notice to the director that the conditions of paragraph*

1 (3) *have been fulfilled, such person may obtain from the director an order*
2 *restoring such person's driver's license, registration and nonresident's op-*
3 *erating privilege to operate a motor vehicle in this state conditioned upon*
4 *such person's continued compliance with the agreement referred to in*
5 *paragraph (1).*

6 (5) *In the event such person fails to make any further payment under*
7 *the agreement referred to in paragraph (1) when such payment is due,*
8 *the director, upon receipt of notice of such default, shall immediately*
9 *suspend the license, registration or nonresident's operating privilege of*
10 *such person until all payments have been made under the agreement re-*
11 *ferred to in paragraph (1). No suspension of such person's license, regis-*
12 *tration or nonresident's privilege to operate a motor vehicle in this state*
13 *shall be reinstated pursuant to paragraph (4).*

14 (l) *The provisions of this section shall not apply to motor carriers of*
15 *property or passengers regulated by the corporation commission of the*
16 *state of Kansas.*

17 (m) *The provisions of subsection (d) shall not apply to vehicle dealers,*
18 *as defined in K.S.A. 8-2401, and amendments thereto, for vehicles being*
19 *offered for sale by such dealers.*

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

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