

## HOUSE BILL No. 2328

By Committee on Commerce, Labor and Economic Development

2-9

---

1 AN ACT concerning workers compensation; relating to accident  
2 prevention programs; amending K.S.A. 2016 Supp. 44-5,104 and  
3 repealing the existing section.  
4

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

6 Section 1. K.S.A. 2016 Supp. 44-5,104 is hereby amended to read as  
7 follows: 44-5,104. (a) *Except if declined by the covered employer*, each  
8 insurance company or group-funded self-insurance plan providing workers  
9 compensation insurance coverage in Kansas shall maintain and shall  
10 provide accident prevention programs ~~upon request of~~ to the covered  
11 employer as a prerequisite for authority to provide such insurance or  
12 coverage. The accident prevention programs shall be adequate to furnish  
13 accident prevention services required by the nature of the operations of the  
14 policyholders or other covered entities and the accident prevention  
15 services shall include surveys, recommendations, training programs,  
16 consultations, analyses of accident causes, industrial hygiene and  
17 industrial health services to implement the program of accident prevention  
18 services. The accident prevention programs shall be staffed with field  
19 safety representatives. Each field safety representative shall be a person  
20 who is: (1) A college graduate who has a bachelor's degree in science,  
21 industrial hygiene, safety or loss control, or engineering; (2) a registered  
22 professional engineer; (3) a certified safety professional, who has attained  
23 the designation from the board of certified safety professionals; (4) a  
24 certified industrial hygienist, who has attained the designation from the  
25 American board of industrial hygiene; (5) an individual with five years of  
26 experience in occupational safety and health; (6) a person who is working  
27 under direct supervision of a person who meets the qualification  
28 requirements of this section; (7) a person who has attained the designation  
29 of associate in loss control management or associate in risk management  
30 from the insurance institute of America, who has attained the designation  
31 of occupational safety and health technologist from the board of certified  
32 safety professionals, or who has attained any other comparable designation  
33 or certification by a recognized organization as determined by the  
34 secretary of labor; or (8) an individual who has completed a certified  
35 training program in accident prevention services approved by the secretary  
36 of labor. The insurance company or group-funded self-insurance plan may

1 employ qualified personnel, retain qualified independent contractors,  
2 contract with the policyholder to provide qualified accident prevention  
3 personnel and services, or use a combination of such methods to fulfill the  
4 obligations imposed by this section. Accident prevention personnel shall  
5 have the qualifications required for field safety representatives.

6 (b) The secretary of labor may conduct such inspections as the  
7 secretary deems necessary to determine the adequacy of the accident  
8 prevention services required by subsection (a) for each insurance company  
9 and group-funded self-insurance plan providing workers compensation  
10 insurance coverage in Kansas, including, but not limited to, random  
11 inspections and those based upon employer complaints. Documented  
12 employer complaints shall be appropriately investigated and the results  
13 shall be reported to the commissioner of insurance. The secretary shall not  
14 be required by this section to inspect each insurance company or group-  
15 funded self-insurance plan.

16 (c) A notice that accident prevention services are available to the  
17 policyholder from the insurance company shall appear in no less than ten-  
18 point boldface type on the front page of each workers compensation  
19 insurance policy delivered or issued for delivery in this state.

20 (d) At least once each year, each insurance company or group-funded  
21 self-insurance plan providing workers compensation insurance in Kansas  
22 shall submit to the director of workers compensation detailed information  
23 on the type of accident prevention programs offered to the policyholders  
24 by the insurance company or to the covered entities by the group-funded  
25 self-insurance plan, as the case may be. The information shall include:

26 (1) The amount of money spent by the insurance company or group-  
27 funded self-insured plan on accident prevention services;

28 (2) the names, number and qualifications of field safety  
29 representatives employed;

30 (3) the number of site inspections performed;

31 (4) any accident prevention services made available under a  
32 contractual arrangement;

33 (5) a specification and listing of the premium size of the risks to  
34 which accident prevention services were actually provided;

35 (6) evidence of the effectiveness of and accomplishments in accident  
36 prevention; and

37 (7) any additional information required by the director of workers  
38 compensation.

39 (e) If the insurance company or group-funded self-insurance plan  
40 does not maintain or provide the accident prevention services required by  
41 this section, the director of workers compensation shall notify the  
42 commissioner of insurance. Upon receiving such notification, the  
43 commissioner of insurance shall presume the insurance company or group-

1 funded self-insurance plan knew or reasonably should have known of the  
2 violation and shall assess the penalty prescribed therefore pursuant to  
3 K.S.A. 40-2,125, and amendments thereto. The secretary shall send the  
4 information and results obtained pursuant to subsection (d) to the  
5 insurance commissioner who shall widely disseminate information about  
6 the program.

7 (f) The secretary of labor shall employ the personnel necessary to  
8 enforce the provisions of this section and shall employ sufficient safety  
9 inspectors to perform inspections at job sites or other work places and may  
10 audit accident prevention programs of each insurance company or group-  
11 funded self-insurance plan which is subject to this section to determine the  
12 adequacy of the accident prevention services provided. The safety  
13 inspectors shall have the qualifications required for field safety  
14 representatives by subsection (a).

15 (g) The insurance company or group-funded self-insurance plan, and  
16 any agent, servant, or employee thereof, shall have no liability with respect  
17 to any accident based on the allegation that such accident was caused or  
18 could have been prevented by a program, inspection or other activity or by  
19 a service undertaken or not undertaken by the insurance company or  
20 group-funded self-insurance plan for the prevention of accidents in  
21 connection with operations of the employer. This immunity shall not affect  
22 the liability of the insurance company or group-funded self-insurance plan  
23 for compensation or as otherwise provided in this act.

24 Sec. 2. K.S.A. 2016 Supp. 44-5,104 is hereby repealed.

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