

HB3717



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB3717

Introduced 2/24/2005, by Rep. Lee A. Daniels

SYNOPSIS AS INTRODUCED:

820 ILCS 305/4

from Ch. 48, par. 138.4

Amends the Workers' Compensation Act. Makes a technical change to a Section concerning self-insurance.

LRB094 09986 WGH 40244 b

A BILL FOR

1 AN ACT concerning employment.

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 ~~the~~ provisions of Section 3 of this Act, and any
10 other employer who shall elect to provide and pay the
11 compensation provided for in this Act shall:

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

31 If the sworn application and financial statement of any
32 such employer does not satisfy the Commission of the

1 financial ability of the employer who has filed it, the
2 Commission shall require such employer to,

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

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

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

29 Secondly, the employer shall submit evidence
30 satisfactorily to the Commission that his or her entire
31 liability for the compensation provided for in this Act
32 will be secured. Any provisions in any policy, or in
33 any endorsement attached thereto, attempting to limit
34 or modify in any way, the liability of the insurance
35 carriers issuing the same except as otherwise provided
36 herein shall be wholly void.

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

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

7 (5) Upon becoming subject to this Act and thereafter as
8 often as the Commission may in writing demand, file with
9 the Commission in form prescribed by it evidence of his or
10 her compliance with the provision of this Section.

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

16 (A) the employer is engaged primarily in the building
17 and construction industry; and

18 (B) subdivision (a)(3) of this Section applies to the
19 employer or the employer is a member of a group
20 self-insurance plan as defined in subsection (1) of Section
21 4a.

22 The Illinois Workers' Compensation Commission shall impose
23 a penalty upon an employer for violation of this subsection
24 (a-1) if:

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

28 (ii) after the hearing, the Commission finds that the
29 employer failed to make payments upon the premium rates of
30 the situs where the work or project is located in Illinois.

31 The penalty shall not exceed \$1,000 for each day of work
32 for which the employer failed to make payments upon the premium
33 rates of the situs where the work or project is located in
34 Illinois, but the total penalty shall not exceed \$50,000 for
35 each project or each contract under which the work was
36 performed.

1 Any penalty under this subsection (a-1) must be imposed not
2 later than one year after the expiration of the applicable
3 limitation period specified in subsection (d) of Section 6 of
4 this Act. Penalties imposed under this subsection (a-1) shall
5 be deposited into the Illinois Workers' Compensation
6 Commission Operations Fund, a special fund that is created in
7 the State treasury. Subject to appropriation, moneys in the
8 Fund shall be used solely for the operations of the Illinois
9 Workers' Compensation Commission.

10 (b) The sworn application and financial statement, or
11 security, indemnity or bond, or amount of insurance, or other
12 provisions, filed, furnished, carried, or made by the employer,
13 as the case may be, shall be subject to the approval of the
14 Commission.

15 Deposits under escrow agreements shall be cash, negotiable
16 United States government bonds or negotiable general
17 obligation bonds of the State of Illinois. Such cash or bonds
18 shall be deposited in escrow with any State or National Bank or
19 Trust Company having trust authority in the State of Illinois.

20 Upon the approval of the sworn application and financial
21 statement, security, indemnity or bond or amount of insurance,
22 filed, furnished or carried, as the case may be, the Commission
23 shall send to the employer written notice of its approval
24 thereof. The certificate of compliance by the employer with the
25 provisions of subparagraphs (2) and (3) of paragraph (a) of
26 this Section shall be delivered by the insurance carrier to the
27 Illinois Workers' Compensation Commission within five days
28 after the effective date of the policy so certified. The
29 insurance so certified shall cover all compensation liability
30 occurring during the time that the insurance is in effect and
31 no further certificate need be filed in case such insurance is
32 renewed, extended or otherwise continued by such carrier. The
33 insurance so certified shall not be cancelled or in the event
34 that such insurance is not renewed, extended or otherwise
35 continued, such insurance shall not be terminated until at
36 least 10 days after receipt by the Illinois Workers'

1 Compensation Commission of notice of the cancellation or
2 termination of said insurance; provided, however, that if the
3 employer has secured insurance from another insurance carrier,
4 or has otherwise secured the payment of compensation in
5 accordance with this Section, and such insurance or other
6 security becomes effective prior to the expiration of the 10
7 days, cancellation or termination may, at the option of the
8 insurance carrier indicated in such notice, be effective as of
9 the effective date of such other insurance or security.

10 (c) Whenever the Commission shall find that any
11 corporation, company, association, aggregation of individuals,
12 reciprocal or interinsurers exchange, or other insurer
13 effecting workers' compensation insurance in this State shall
14 be insolvent, financially unsound, or unable to fully meet all
15 payments and liabilities assumed or to be assumed for
16 compensation insurance in this State, or shall practice a
17 policy of delay or unfairness toward employees in the
18 adjustment, settlement, or payment of benefits due such
19 employees, the Commission may after reasonable notice and
20 hearing order and direct that such corporation, company,
21 association, aggregation of individuals, reciprocal or
22 interinsurers exchange, or insurer, shall from and after a date
23 fixed in such order discontinue the writing of any such
24 workers' compensation insurance in this State. Subject to such
25 modification of the order as the Commission may later make on
26 review of the order, as herein provided, it shall thereupon be
27 unlawful for any such corporation, company, association,
28 aggregation of individuals, reciprocal or interinsurers
29 exchange, or insurer to effect any workers' compensation
30 insurance in this State. A copy of the order shall be served
31 upon the Director of Insurance by registered mail. Whenever the
32 Commission finds that any service or adjustment company used or
33 employed by a self-insured employer or by an insurance carrier
34 to process, adjust, investigate, compromise or otherwise
35 handle claims under this Act, has practiced or is practicing a
36 policy of delay or unfairness toward employees in the

1 adjustment, settlement or payment of benefits due such
2 employees, the Commission may after reasonable notice and
3 hearing order and direct that such service or adjustment
4 company shall from and after a date fixed in such order be
5 prohibited from processing, adjusting, investigating,
6 compromising or otherwise handling claims under this Act.

7 Whenever the Commission finds that any self-insured
8 employer has practiced or is practicing delay or unfairness
9 toward employees in the adjustment, settlement or payment of
10 benefits due such employees, the Commission may, after
11 reasonable notice and hearing, order and direct that after a
12 date fixed in the order such self-insured employer shall be
13 disqualified to operate as a self-insurer and shall be required
14 to insure his entire liability to pay compensation in some
15 insurance carrier authorized, licensed and permitted to do such
16 insurance business in this State, as provided in subparagraph 3
17 of paragraph (a) of this Section.

18 All orders made by the Commission under this Section shall
19 be subject to review by the courts, said review to be taken in
20 the same manner and within the same time as provided by Section
21 19 of this Act for review of awards and decisions of the
22 Commission, upon the party seeking the review filing with the
23 clerk of the court to which said review is taken a bond in an
24 amount to be fixed and approved by the court to which the
25 review is taken, conditioned upon the payment of all
26 compensation awarded against the person taking said review
27 pending a decision thereof and further conditioned upon such
28 other obligations as the court may impose. Upon the review the
29 Circuit Court shall have power to review all questions of fact
30 as well as of law. The penalty hereinafter provided for in this
31 paragraph shall not attach and shall not begin to run until the
32 final determination of the order of the Commission.

33 (d) Upon a finding by the Commission, after reasonable
34 notice and hearing, of the knowing and wilful failure or
35 refusal of an employer to comply with any of the provisions of
36 paragraph (a) of this Section or the failure or refusal of an

1 employer, service or adjustment company, or an insurance
2 carrier to comply with any order of the Illinois Workers'
3 Compensation Commission pursuant to paragraph (c) of this
4 Section disqualifying him or her to operate as a self insurer
5 and requiring him or her to insure his or her liability, the
6 Commission may assess a civil penalty of up to \$500 per day for
7 each day of such failure or refusal after the effective date of
8 this amendatory Act of 1989. The minimum penalty under this
9 Section shall be the sum of \$10,000. Each day of such failure
10 or refusal shall constitute a separate offense. The Commission
11 may assess the civil penalty personally and individually
12 against the corporate officers and directors of a corporate
13 employer, the partners of an employer partnership, and the
14 members of an employer limited liability company, after a
15 finding of a knowing and willful refusal or failure of each
16 such named corporate officer, director, partner, or member to
17 comply with this Section. The liability for the assessed
18 penalty shall be against the named employer first, and if the
19 named employer fails or refuses to pay the penalty to the
20 Commission within 30 days after the final order of the
21 Commission, then the named corporate officers, directors,
22 partners, or members who have been found to have knowingly and
23 willfully refused or failed to comply with this Section shall
24 be liable for the unpaid penalty or any unpaid portion of the
25 penalty. All penalties collected under this Section shall be
26 deposited in the Illinois Workers' Compensation Commission
27 Operations Fund.

28 Upon the failure or refusal of any employer, service or
29 adjustment company or insurance carrier to comply with the
30 provisions of this Section and with the orders of the
31 Commission under this Section, or the order of the court on
32 review after final adjudication, the Commission may bring a
33 civil action to recover the amount of the penalty in Cook
34 County or in Sangamon County in which litigation the Commission
35 shall be represented by the Attorney General. The Commission
36 shall send notice of its finding of non-compliance and

1 assessment of the civil penalty to the Attorney General. It
2 shall be the duty of the Attorney General within 30 days after
3 receipt of the notice, to institute prosecutions and promptly
4 prosecute all reported violations of this Section.

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

24 (f) No existing insurance, mutual aid, benefit or relief
25 association or department shall, by reason of anything herein
26 contained, be authorized to discontinue its operation without
27 first discharging its obligations to any and all persons
28 carrying insurance in the same or entitled to relief or
29 benefits therein.

30 (g) Any contract, oral, written or implied, of employment
31 providing for relief benefit, or insurance or any other device
32 whereby the employee is required to pay any premium or premiums
33 for insurance against the compensation provided for in this Act
34 shall be null and void. Any employer withholding from the wages
35 of any employee any amount for the purpose of paying any such
36 premium shall be guilty of a Class B misdemeanor.

1 In the event the employer does not pay the compensation for
2 which he or she is liable, then an insurance company,
3 association or insurer which may have insured such employer
4 against such liability shall become primarily liable to pay to
5 the employee, his or her personal representative or beneficiary
6 the compensation required by the provisions of this Act to be
7 paid by such employer. The insurance carrier may be made a
8 party to the proceedings in which the employer is a party and
9 an award may be entered jointly against the employer and the
10 insurance carrier.

11 (h) It shall be unlawful for any employer, insurance
12 company or service or adjustment company to interfere with,
13 restrain or coerce an employee in any manner whatsoever in the
14 exercise of the rights or remedies granted to him or her by
15 this Act or to discriminate, attempt to discriminate, or
16 threaten to discriminate against an employee in any way because
17 of his or her exercise of the rights or remedies granted to him
18 or her by this Act.

19 It shall be unlawful for any employer, individually or
20 through any insurance company or service or adjustment company,
21 to discharge or to threaten to discharge, or to refuse to
22 rehire or recall to active service in a suitable capacity an
23 employee because of the exercise of his or her rights or
24 remedies granted to him or her by this Act.

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

30 (j) Within 45 days of receipt of an initial application or
31 application to renew self-insurance privileges the
32 Self-Insurers Advisory Board shall review and submit for
33 approval by the Chairman of the Commission recommendations of
34 disposition of all initial applications to self-insure and all
35 applications to renew self-insurance privileges filed by
36 private self-insurers pursuant to the provisions of this

1 Section and Section 4a-9 of this Act. Each private self-insurer
2 shall submit with its initial and renewal applications the
3 application fee required by Section 4a-4 of this Act.

4 The Chairman of the Commission shall promptly act upon all
5 initial applications and applications for renewal in full
6 accordance with the recommendations of the Board or, should the
7 Chairman disagree with any recommendation of disposition of the
8 Self-Insurer's Advisory Board, he shall within 30 days of
9 receipt of such recommendation provide to the Board in writing
10 the reasons supporting his decision. The Chairman shall also
11 promptly notify the employer of his decision within 15 days of
12 receipt of the recommendation of the Board.

13 If an employer is denied a renewal of self-insurance
14 privileges pursuant to application it shall retain said
15 privilege for 120 days after receipt of a notice of
16 cancellation of the privilege from the Chairman of the
17 Commission.

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

31 (Source: P.A. 92-324, eff. 8-9-01; 93-721, eff. 1-1-05.)