

HOUSE BILL No. 2230

By Representative Rhiley

2-11

1 AN ACT concerning insurance; relating to the Kansas automobile injury
2 reparations act; pertaining to the owner's failure to maintain financial
3 security; requiring law enforcement to impound the vehicles of certain
4 uninsured owners; amending K.S.A. 2018 Supp. 40-3104 and repealing
5 the existing section.
6

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

8 Section 1. K.S.A. 2018 Supp. 40-3104 is hereby amended to read as
9 follows: 40-3104. (a) Every owner shall provide motor vehicle liability
10 insurance coverage in accordance with the provisions of this act for every
11 motor vehicle owned by such person, unless such motor vehicle: (1) Is
12 included under an approved self-insurance plan as provided in subsection
13 (f); (2) is used as a driver training motor vehicle, as defined in K.S.A. 72-
14 4005, and amendments thereto, in an approved driver training course by a
15 school district or an accredited nonpublic school under an agreement with
16 a motor vehicle dealer, and such motor vehicle liability insurance coverage
17 is provided by the school district or accredited nonpublic school; (3) is
18 included under a qualified plan of self-insurance approved by an agency of
19 the state in which such motor vehicle is registered and the form prescribed
20 in ~~subsection (b) of K.S.A. 40-3106(b)~~, and amendments thereto, has been
21 filed; or (4) is expressly exempted from the provisions of this act.

22 (b) An owner of an uninsured motor vehicle shall not permit the
23 operation thereof upon a highway or upon property open to use by the
24 public, unless such motor vehicle is expressly exempted from the
25 provisions of this act.

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

29 (d) (1) Any person operating a motor vehicle upon a highway or upon
30 property open to use by the public shall display, upon demand, evidence of
31 financial security to a law enforcement officer. Such evidence of financial
32 security ~~which~~ *that* meets the requirements of subsection (e) may be
33 displayed on a cellular phone or any other type of portable electronic
34 device. The law enforcement officer to whom such evidence of financial
35 security is displayed shall view only such evidence of financial
36 responsibility. Such law enforcement officer shall be prohibited from

1 viewing any other content or information stored on such cellular phone or
2 other type of portable electronic device. The law enforcement officer shall
3 issue a citation to any person who fails to display evidence of financial
4 security upon such demand. The law enforcement officer shall transmit a
5 copy of the insurance verification form prescribed by the secretary of
6 revenue with the copy of the citation transmitted to the court.

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

20 (3) *A law enforcement officer shall impound the vehicle of any person
21 who is unable to provide proof of financial security meeting the
22 requirements of subsection (e) and who has previously been issued a
23 citation for failure to provide proof of financial security upon demand.
24 Such vehicle shall remain impounded until the owner provides evidence of
25 financial security meeting the requirements of subsection (e). The owner
26 shall not be charged a fee for up to the first 15 days of such vehicle's
27 impoundment, or for the cost of towing, storage or any other fees relating
28 to the first 15 days of the impoundment of such vehicle.*

29 (e) Unless the insurance company subsequently submits an insurance
30 verification form indicating that insurance was not in force, no person
31 charged with violating subsection (b), (c) or (d) shall be convicted if such
32 person produces in court, within 10 days of the date of arrest or of issuance
33 of the citation, evidence of financial security for the motor vehicle
34 operated, which was valid at the time of arrest or of issuance of the
35 citation. Such evidence of financial security may be produced by
36 displaying such information on a cellular phone or any other type of
37 portable electronic device. Any person to whom such evidence of financial
38 security is displayed on a cellular phone or any other type of portable
39 electronic device shall be prohibited from viewing any other content or
40 information stored on such cellular phone or other type of portable
41 electronic device. For the purpose of this subsection, evidence of financial
42 security shall be provided by a policy of motor vehicle liability insurance,
43 an identification card or certificate of insurance issued to the policyholder

1 by the insurer which provides the name of the insurer, the policy number,
2 make and year of the vehicle and the effective and expiration dates of the
3 policy, or a certificate of self-insurance signed by the commissioner of
4 insurance. Upon the production in court of evidence of financial security,
5 the court shall record the information displayed thereon on the insurance
6 verification form prescribed by the secretary of revenue, immediately
7 forward such form to the department of revenue, and stay any further
8 proceedings on the matter pending a request from the prosecuting attorney
9 that the matter be set for trial. Upon receipt of such form the department
10 shall mail the form to the named insurance company for verification that
11 insurance was in force on the date indicated on the form. It shall be the
12 duty of insurance companies to notify the department within 30 calendar
13 days of the receipt of such forms of any insurance that was not in force on
14 the date specified. Upon return of any form to the department indicating
15 that insurance was not in force on such date, the department shall
16 immediately forward a copy of such form to the office of the prosecuting
17 attorney or the city clerk of the municipality in which such prosecution is
18 pending when the prosecuting attorney is not ascertainable. Receipt of any
19 completed form indicating that insurance was not in effect on the date
20 specified shall be prima facie evidence of failure to provide proof of
21 financial security and violation of this section. A request that the matter be
22 set for trial shall be made immediately following the receipt by the
23 prosecuting attorney of a copy of the form from the department of revenue
24 indicating that insurance was not in force. Any charge of violating
25 subsection (b), (c) or (d) shall be dismissed if no request for a trial setting
26 has been made within 60 days of the date evidence of financial security
27 was produced in court.

28 (f) Any person in whose name more than 25 motor vehicles are
29 registered in Kansas may qualify as a self-insurer by obtaining a certificate
30 of self-insurance from the commissioner of insurance. The certificate of
31 self-insurance issued by the commissioner shall cover such owned vehicles
32 and those vehicles, registered in Kansas, leased to such person if the lease
33 agreement requires that motor vehicle liability insurance on the vehicles be
34 provided by the lessee. Upon application of any such person, the
35 commissioner of insurance may issue a certificate of self-insurance, if the
36 commissioner is satisfied that such person is possessed and will continue
37 to be possessed of ability to pay any liability imposed by law against such
38 person arising out of the ownership, operation, maintenance or use of any
39 motor vehicle described in this subsection. A self-insurer shall provide
40 liability coverage subject to the provisions of ~~subsection (e)~~ of K.S.A. 40-
41 3107(e), and amendments thereto, arising out of the ownership, operation,
42 maintenance or use of a self-insured motor vehicle in those instances
43 where the lessee or the rental driver, if not the lessee, does not have a

1 motor vehicle liability insurance policy or insurance coverage pursuant to
2 a motor vehicle liability insurance policy or certificate of insurance or such
3 insurance policy for such leased or rented vehicle. Such liability coverage
4 shall be provided to any person operating a self-insured motor vehicle with
5 the expressed or implied consent of the self-insurer.

6 Upon notice and a hearing in accordance with the provisions of the
7 Kansas administrative procedure act, the commissioner of insurance may
8 cancel a certificate of self-insurance upon reasonable grounds. Failure to
9 provide liability coverage or personal injury protection benefits required
10 by K.S.A. 40-3107 and 40-3109, and amendments thereto, or pay any
11 liability imposed by law arising out of the ownership, operation,
12 maintenance or use of a motor vehicle registered in such self-insurer's
13 name, or to otherwise comply with the requirements of this subsection
14 shall constitute reasonable grounds for the cancellation of a certificate of
15 self-insurance. Reasonable grounds shall not exist unless such
16 objectionable activity occurs with such frequency as to indicate a general
17 business practice.

18 Self-insureds shall investigate claims in a reasonably prompt manner,
19 handle such claims in a reasonable manner based on available information
20 and effectuate prompt, fair and equitable settlement of claims in which
21 liability has become reasonably clear.

22 As used in this subsection, "liability imposed by law" means the stated
23 limits of liability as provided under ~~subsection (e)~~ of K.S.A. 40-3107(e),
24 and amendments thereto.

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

27 (g) (1) Any person violating any provision, *except the provisions of*
28 *subsection (d)*, of this section shall be guilty of a class B misdemeanor and
29 shall be subject to a fine of not less than \$300 nor more than \$1,000 or
30 confinement in the county jail for a term of not more than six months, or
31 both such fine and confinement.

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

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

43 (1) Suspend:

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

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

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

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

13 (2) revoke the registration of all vehicles owned by the owner of each
14 motor vehicle involved in such accident *and impound any vehicle the*
15 *owner of which was unable to provide evidence of financial security*
16 *meeting the requirements of subsection (e). Any such vehicle shall remain*
17 *impounded until the owner provides evidence of financial security meeting*
18 *the requirements of subsection (e). The owner shall not be charged a fee*
19 *for up to the first 15 days of such vehicle's impoundment, or for the cost of*
20 *towing, storage or any other fees relating to the first 15 days of the*
21 *impoundment of such vehicle.*

22 (i) The suspension or revocation requirements in subsection (h) shall
23 not apply:

24 (1) To the driver or owner if the owner had in effect at the time of the
25 accident an automobile liability policy as required by K.S.A. 40-3107, and
26 amendments thereto, with respect to the vehicle involved in the accident;

27 (2) to the driver, if not the owner of the vehicle involved in the
28 accident, if there was in effect at the time of the accident an automobile
29 liability policy with respect to such driver's driving of vehicles not owned
30 by such driver;

31 (3) to any self-insurer as defined by ~~subsection (u) of~~ K.S.A. 40-
32 3103, and amendments thereto;

33 (4) to the driver or owner of any vehicle involved in the accident
34 which was exempt from the provisions of this act pursuant to K.S.A. 40-
35 3105, and amendments thereto;

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

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

42 (2) Subject to the provisions of subsection (k), any suspension or
43 revocation effected hereunder shall remain in effect until such person:

1 (A) Has filed satisfactory proof of financial security with the director
2 as required by ~~subsection (d)~~ of K.S.A. 40-3118(d), and amendments
3 thereto;

4 (B) has paid the reinstatement fee herein prescribed; and

5 (C) (i) has been released from liability;

6 (ii) is a party to an action to determine liability pursuant to which the
7 court temporarily stays such suspension pending final disposition of such
8 action;

9 (iii) has entered into an agreement for the payment of damages; or

10 (iv) has been finally adjudicated not to be liable in respect to such
11 accident and evidence of any such fact has been filed with the director.

12 (3) The reinstatement fee shall be \$100 except that if the registration
13 of a motor vehicle of any owner is revoked within one year following a
14 prior revocation of the registration of a motor vehicle of such owner under
15 the provisions of this act such fee shall be \$300.

16 (k) (1) Whenever any person whose license has been suspended or
17 revoked pursuant to this section is involved in an accident and has entered
18 into an agreement with any driver, or such driver's insurer, who has been
19 damaged or whose vehicle has been damaged to pay for such damage and
20 such person defaults on payments under such agreement, the driver or the
21 driver's insurer, as appropriate, shall notify the director within 60 days of
22 the date of default.

23 (2) Upon receipt of the notice of default, the director shall
24 immediately suspend such person's license and registration. If such person
25 is a nonresident, the director shall immediately suspend such nonresident's
26 privilege to operate a motor vehicle in this state.

27 (3) Except as provided in paragraph (4), such person's driver's
28 license, registration and nonresident's operating privilege shall remain so
29 suspended and shall not be renewed, nor shall any such license or
30 registration be thereafter issued in the name of such person, including any
31 such person not previously licensed, unless and until:

32 (A) The director receives notice payments under the agreement
33 referred to in paragraph (1) have been resumed and that payments under
34 such agreement are no longer in default;

35 (B) such person has filed satisfactory proof of financial responsibility
36 with the director as required by ~~subsection (d)~~ of K.S.A. 40-3118(d), and
37 amendments thereto; and

38 (C) the reinstatement fee required by subsection (j) has been paid.

39 (4) Upon due notice to the director that the conditions of paragraph
40 (3) have been fulfilled, such person may obtain from the director an order
41 restoring such person's driver's license, registration and nonresident's
42 operating privilege to operate a motor vehicle in this state conditioned
43 upon such person's continued compliance with the agreement referred to in

1 paragraph (1).

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

10 (l) The provisions of this section shall not apply to motor carriers of
11 property or passengers regulated by the corporation commission of the
12 state of Kansas.

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

16 Sec. 2. K.S.A. 2018 Supp. 40-3104 is hereby repealed.

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