



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 02/09/04, by Jay C. Hoffman

**SYNOPSIS AS INTRODUCED:**

820 ILCS 305/4	from Ch. 48, par. 138.4
820 ILCS 310/4	from Ch. 48, par. 172.39

Amends the Workers' Compensation Act and the Workers' Occupational Diseases Act. In provisions setting forth civil penalties for failing or refusing to comply with specified requirements relating to insurance or self-insurance, deletes language requiring that the failure or refusal be knowing and willful. Effective immediately.

LRB093 19311 WGH 45047 b

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 provisions of Section 3 of this Act, and any other  
10 employer who shall elect to provide and pay the compensation  
11 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 Industrial Commission shall impose a penalty upon an  
23          employer for violation of this subsection (a-1) if:

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

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

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

36          Any penalty under this subsection (a-1) must be imposed not

1 later than one year after the expiration of the applicable  
2 limitation period specified in subsection (d) of Section 6 of  
3 this Act. Penalties imposed under this subsection (a-1) shall  
4 be deposited into the Industrial Commission Operations Fund, a  
5 special fund that is created in the State treasury. Subject to  
6 appropriation, moneys in the Fund shall be used solely for the  
7 operations of the Industrial Commission.

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

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

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

1 or has otherwise secured the payment of compensation in  
2 accordance with this Section, and such insurance or other  
3 security becomes effective prior to the expiration of the 10  
4 days, cancellation or termination may, at the option of the  
5 insurance carrier indicated in such notice, be effective as of  
6 the effective date of such other insurance or security.

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

1 company shall from and after a date fixed in such order be  
2 prohibited from processing, adjusting, investigating,  
3 compromising or otherwise handling claims under this Act.

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

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

30 (d) Upon a finding by the Commission, after reasonable  
31 notice and hearing, of the ~~knowing and wilful~~ failure or  
32 refusal of an employer to comply with any of the provisions of  
33 paragraph (a) of this Section or the failure or refusal of an  
34 employer, service or adjustment company, or an insurance  
35 carrier to comply with any order of the Industrial Commission  
36 pursuant to paragraph (c) of this Section disqualifying him or

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

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



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

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

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

33 In the event the employer does not pay the compensation for  
34 which he or she is liable, then an insurance company,  
35 association or insurer which may have insured such employer  
36 against such liability shall become primarily liable to pay to

1 the employee, his or her personal representative or beneficiary  
2 the compensation required by the provisions of this Act to be  
3 paid by such employer. The insurance carrier may be made a  
4 party to the proceedings in which the employer is a party and  
5 an award may be entered jointly against the employer and the  
6 insurance carrier.

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

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

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

26 (j) Within 45 days of receipt of an initial application or  
27 application to renew self-insurance privileges the  
28 Self-Insurers Advisory Board shall review and submit for  
29 approval by the Chairman of the Commission recommendations of  
30 disposition of all initial applications to self-insure and all  
31 applications to renew self-insurance privileges filed by  
32 private self-insurers pursuant to the provisions of this  
33 Section and Section 4a-9 of this Act. Each private self-insurer  
34 shall submit with its initial and renewal applications the  
35 application fee required by Section 4a-4 of this Act.

36 The Chairman of the Commission shall promptly act upon all

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

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

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

27 (Source: P.A. 91-375, eff. 1-1-00; 91-757, eff. 1-1-01; 92-324,  
28 eff. 8-9-01.)

29 Section 10. The Workers' Occupational Diseases Act is  
30 amended by changing Section 4 as follows:

31 (820 ILCS 310/4) (from Ch. 48, par. 172.39)

32 Sec. 4. (a) Any employer, including but not limited to  
33 general contractors and their subcontractors, required by the  
34 terms of this Act or by election to pay the compensation

1 provided for in this Act shall:

2 (1) File with the Commission an application for  
3 approval as a self-insurer which shall include a current  
4 financial statement. The application and financial  
5 statement shall be signed and sworn to by the president or  
6 vice-president and secretary or assistant secretary of the  
7 employer if it be a corporation, or by all of the partners  
8 if it be a copartnership, or by the owner if it be neither  
9 a copartnership nor a corporation. An employer may elect to  
10 provide and pay compensation as provided for in this Act as  
11 a member of a group workers' compensation pool under  
12 Article V 3/4 of the Illinois Insurance Code. If an  
13 employer becomes a member of a group workers' compensation  
14 pool, the employer shall not be relieved of any obligations  
15 imposed by this Act.

16 If the sworn application and financial statement of any  
17 such employer does not satisfy the Commission of the  
18 financial ability of the employer who has filed it, the  
19 Commission shall require such employer to:

20 (2) Furnish security, indemnity or a bond guaranteeing  
21 the payment by the employer of the compensation provided  
22 for in this Act, provided that any such employer who shall  
23 have secured his or her liability in part by excess  
24 liability coverage shall be required to furnish to the  
25 Commission security, indemnity or bond guaranteeing his or  
26 her payment up to the amount of the effective limits of the  
27 excess coverage in accordance with the provisions of this  
28 paragraph, or

29 (3) Insure his or her entire liability to pay such  
30 compensation in some insurance carrier authorized,  
31 licensed or permitted to do such insurance business in this  
32 State. All policies of such insurance carriers insuring the  
33 payment of compensation under this Act shall cover all the  
34 employees and all such employer's compensation liability  
35 in all cases in which the last day of the last exposure to  
36 the occupational disease involved is within the effective

1 period of the policy, anything to the contrary in the  
2 policy notwithstanding. Provided, however, that any  
3 employer may insure his or her compensation liability under  
4 this Act with 2 or more insurance carriers or may insure a  
5 part and qualify under Subsection 1, 2, or 4 for the  
6 remainder of his liability to pay such compensation,  
7 subject to the following two provisions:

8 Firstly, the entire liability of the employer to  
9 employees working at or from one location shall be  
10 insured in one such insurance carrier or shall be  
11 self-insured.

12 Secondly, the employer shall submit evidence  
13 satisfactory to the Commission that his or her entire  
14 liability for the compensation provided for in this Act  
15 will be secured.

16 Any provision in a policy or in any endorsement  
17 attached thereto attempting to limit or modify in any way  
18 the liability of the insurance carrier issuing the same,  
19 except as otherwise provided herein, shall be wholly void.

20 The insurance or security in force to cover  
21 compensation liability under this Act shall be separate and  
22 distinct from the insurance or security under the "Workers'  
23 Compensation Act" and any insurance contract covering  
24 liability under either Act need not cover any liability  
25 under the other. Nothing herein contained shall apply to  
26 policies of excess liability carriage secured by employers  
27 who have been approved by the Commission as self-insurers,  
28 or

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

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

36 (a-1) Regardless of its state of domicile or its principal

1 place of business, an employer shall make payments to its  
2 insurance carrier or group self-insurance fund, where  
3 applicable, based upon the premium rates of the situs where the  
4 work or project is located in Illinois if:

5 (A) the employer is engaged primarily in the building  
6 and construction industry; and

7 (B) subdivision (a) (3) of this Section applies to the  
8 employer or the employer is a member of a group  
9 self-insurance plan as defined in subsection (1) of Section  
10 4a.

11 The Industrial Commission shall impose a penalty upon an  
12 employer for violation of this subsection (a-1) if:

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

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

19 The penalty shall not exceed \$1,000 for each day of work  
20 for which the employer failed to make payments upon the premium  
21 rates of the situs where the work or project is located in  
22 Illinois, but the total penalty shall not exceed \$50,000 for  
23 each project or each contract under which the work was  
24 performed.

25 Any penalty under this subsection (a-1) must be imposed not  
26 later than one year after the expiration of the applicable  
27 limitation period specified in subsection (c) of Section 6 of  
28 this Act. Penalties imposed under this subsection (a-1) shall  
29 be deposited into the Industrial Commission Operations Fund  
30 created under Section 4 of the Workers' Compensation Act.

31 (b) The sworn application and financial statement, or  
32 security, indemnity or bond, or amount of insurance, or other  
33 provisions, filed, furnished, carried, or made by the employer,  
34 as the case may be, shall be subject to the approval of the  
35 Commission.

36 Deposits under escrow agreements shall be cash, negotiable

1 United States government bonds or negotiable general  
2 obligation bonds of the State of Illinois. Such cash or bonds  
3 shall be deposited in escrow with any State or National Bank or  
4 Trust Company having trust authority in the State of Illinois.

5 Upon the approval of the sworn application and financial  
6 statement, security, indemnity or bond or amount of insurance,  
7 filed, furnished, or carried, as the case may be, the  
8 Commission shall send to the employer written notice of its  
9 approval thereof. Said certificate of compliance by the  
10 employer with the provisions of subparagraphs (2) and (3) of  
11 paragraph (a) of this Section shall be delivered by the  
12 insurance carrier to the Industrial Commission within 5 days  
13 after the effective date of the policy so certified. The  
14 insurance so certified shall cover all compensation liability  
15 occurring during the time that the insurance is in effect and  
16 no further certificate need be filed in case such insurance is  
17 renewed, extended or otherwise continued by such carrier. The  
18 insurance so certified shall not be cancelled or in the event  
19 that such insurance is not renewed, extended or otherwise  
20 continued, such insurance shall not be terminated until at  
21 least 10 days after receipt by the Industrial Commission of  
22 notice of the cancellation or termination of said insurance;  
23 provided, however, that if the employer has secured insurance  
24 from another insurance carrier, or has otherwise secured the  
25 payment of compensation in accordance with this Section, and  
26 such insurance or other security becomes effective prior to the  
27 expiration of said 10 days, cancellation or termination may, at  
28 the option of the insurance carrier indicated in such notice,  
29 be effective as of the effective date of such other insurance  
30 or security.

31 (c) Whenever the Commission shall find that any  
32 corporation, company, association, aggregation of individuals,  
33 reciprocal or interinsurers exchange, or other insurer  
34 effecting workers' occupational disease compensation insurance  
35 in this State shall be insolvent, financially unsound, or  
36 unable to fully meet all payments and liabilities assumed or to

1 be assumed for compensation insurance in this State, or shall  
2 practice a policy of delay or unfairness toward employees in  
3 the adjustment, settlement, or payment of benefits due such  
4 employees, the Commission may after reasonable notice and  
5 hearing order and direct that such corporation, company,  
6 association, aggregation of individuals, reciprocal or  
7 interinsurers exchange, or insurer, shall from and after a date  
8 fixed in such order discontinue the writing of any such  
9 workers' occupational disease compensation insurance in this  
10 State. It shall thereupon be unlawful for any such corporation,  
11 company, association, aggregation of individuals, reciprocal  
12 or interinsurers exchange, or insurer to effect any workers'  
13 occupational disease compensation insurance in this State. A  
14 copy of the order shall be served upon the Director of  
15 Insurance by registered mail. Whenever the Commission finds  
16 that any service or adjustment company used or employed by a  
17 self-insured employer or by an insurance carrier to process,  
18 adjust, investigate, compromise or otherwise handle claims  
19 under this Act, has practiced or is practicing a policy of  
20 delay or unfairness toward employees in the adjustment,  
21 settlement or payment of benefits due such employees, the  
22 Commission may after reasonable notice and hearing order and  
23 direct that such service or adjustment company shall from and  
24 after a date fixed in such order be prohibited from processing,  
25 adjusting, investigating, compromising or otherwise handling  
26 claims under this Act.

27 Whenever the Commission finds that any self-insured  
28 employer has practiced or is practicing delay or unfairness  
29 toward employees in the adjustment, settlement or payment of  
30 benefits due such employees, the Commission may after  
31 reasonable notice and hearing order and direct that after a  
32 date fixed in the order such self-insured employer shall be  
33 disqualified to operate as a self-insurer and shall be required  
34 to insure his entire liability to pay compensation in some  
35 insurance carrier authorized, licensed and permitted to do such  
36 insurance business in this State as provided in subparagraph



1 (3) of paragraph (a) of this Section.

2 All orders made by the Commission under this Section shall  
3 be subject to review by the courts, the review to be taken in  
4 the same manner and within the same time as provided by Section  
5 19 of this Act for review of awards and decisions of the  
6 Commission, upon the party seeking the review filing with the  
7 clerk of the court to which said review is taken a bond in an  
8 amount to be fixed and approved by the court to which said  
9 review is taken, conditioned upon the payment of all  
10 compensation awarded against the person taking the review  
11 pending a decision thereof and further conditioned upon such  
12 other obligations as the court may impose. Upon the review the  
13 Circuit Court shall have power to review all questions of fact  
14 as well as of law. The penalty hereinafter provided for in this  
15 paragraph shall not attach and shall not begin to run until the  
16 final determination of the order of the Commission.

17 (d) Upon a finding by the Commission, after reasonable  
18 notice and hearing, of the ~~knowing and wilful~~ failure of an  
19 employer to comply with any of the provisions of paragraph (a)  
20 of this Section or the failure or refusal of an employer,  
21 service or adjustment company, or insurance carrier to comply  
22 with any order of the Industrial Commission pursuant to  
23 paragraph (c) of this Section the Commission may assess a civil  
24 penalty of up to \$500 per day for each day of such failure or  
25 refusal after the effective date of this amendatory Act of  
26 1989. Each day of such failure or refusal shall constitute a  
27 separate offense.

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 orders of the Commission under  
31 this Section, or the order of the court on review after final  
32 adjudication, the Commission may bring a civil action to  
33 recover the amount of the penalty in Cook County or in Sangamon  
34 County in which litigation the Commission shall be represented  
35 by the Attorney General. The Commission shall send notice of  
36 its finding of non-compliance and assessment of the civil

1 penalty to the Attorney General. It shall be the duty of the  
2 Attorney General within 30 days after receipt of the notice, to  
3 institute prosecutions and promptly prosecute all reported  
4 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 personal representative or beneficiary the  
6           compensation required by the provisions of this Act to be paid  
7           by such employer. The insurance carrier may be made a party to  
8           the proceedings in which the employer is a party and an award  
9           may be entered jointly against the employer and the insurance  
10          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 exercise of the rights or remedies granted to him by  
18          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 premium for  
29          coverage for benefits under this Act shall be reduced  
30          accordingly.

31          (Source: P.A. 90-109, eff. 1-1-98; 91-375, eff. 1-1-00; 91-757,  
32          eff. 1-1-01.)

33          Section 99. Effective date. This Act takes effect upon  
34          becoming law.