



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1993

Introduced 2/26/2021, by Sen. Antonio Muñoz

SYNOPSIS AS INTRODUCED:

20 ILCS 1405/1405-40 new
820 ILCS 305/4
820 ILCS 305/25.5
820 ILCS 305/29.2

from Ch. 48, par. 138.4

Amends the Department of Insurance Law of the Civil Administrative Code of Illinois by transferring all powers, duties, rights, responsibilities, personnel, books, records, papers, documents, property (real and personal), contracts, causes of action, and pending business of the Insurance Compliance Division within the Illinois Workers' Compensation Commission to the Department of Insurance. Provides that, when reports or notices are to be made or given or papers or documents furnished or served by any person to or upon the Insurance Compliance Division, they shall be made, given, furnished, or served in the same manner to or upon the Department of Insurance. Provides that the amendatory Act does not affect any act done, ratified, or canceled, any right occurring or established, or any action or proceeding had or commenced in an administrative, civil, or criminal cause by the Insurance Compliance Division before the amendatory Act takes effect. Makes other changes. Amends the Workers' Compensation Act. Replaces references to the Insurance Compliance Division with references to the Department of Insurance. In provisions concerning Department of Insurance oversight, changes the date before which insurers licensed to write workers compensation coverage in the State must record and report specified information concerning claims from March 1 to June 1 of each year. Deletes a provision stating that the fraud and insurance non-compliance unit shall procure and implement a system using advanced analytics for the detection and prevention of fraud, waste, and abuse. Effective July 1, 2021.

LRB102 16865 BMS 22271 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Department of Insurance Law of the Civil
5 Administrative Code of Illinois is amended by adding Section
6 1405-40 as follows:

7 (20 ILCS 1405/1405-40 new)

8 Sec. 1405-40. Transfer of functions.

9 (a) On the effective date of this amendatory Act of the
10 102nd General Assembly, all powers, duties, rights, and
11 responsibilities of the Insurance Compliance Division within
12 the Illinois Workers' Compensation Commission are transferred
13 to the Department of Insurance. The personnel of the Insurance
14 Compliance Division are transferred to the Department of
15 Insurance. The status and rights of such personnel under the
16 Personnel Code are not affected by the transfer. The rights of
17 the employees and the State of Illinois and its agencies under
18 the Personnel Code and applicable collective bargaining
19 agreements or under any pension, retirement, or annuity plan
20 are not affected by this amendatory Act of the 102nd General
21 Assembly. All books, records, papers, documents, property
22 (real and personal), contracts, causes of action, and pending
23 business pertaining to the powers, duties, rights, and

1 responsibilities transferred by this amendatory Act of the
2 102nd General Assembly from the Insurance Compliance Division
3 to the Department of Insurance, including, but not limited to,
4 material in electronic or magnetic format and necessary
5 computer hardware and software, are transferred to the
6 Department of Insurance. The powers, duties, rights, and
7 responsibilities relating to the Insurance Compliance Division
8 transferred by this amendatory Act of the 102nd General
9 Assembly are vested in the Department of Insurance.

10 (b) Whenever reports or notices are required to be made or
11 given or papers or documents furnished or served by any person
12 to or upon the Insurance Compliance Division in connection
13 with any of the powers, duties, rights, and responsibilities
14 transferred by this amendatory Act of the 102nd General
15 Assembly, the Department of Insurance shall make, give,
16 furnish, or serve them.

17 (c) This amendatory Act of the 102nd General Assembly does
18 not affect any act done, ratified, or canceled, any right
19 occurring or established, or any action or proceeding had or
20 commenced in an administrative, civil, or criminal cause by
21 the Insurance Compliance Division before the effective date of
22 this amendatory Act of the 102nd General Assembly. Such
23 actions or proceedings may be prosecuted and continued by the
24 Department of Insurance.

25 (d) Any rules that relate to its powers, duties, rights,
26 and responsibilities of the Insurance Compliance Division and

1 are in force on the effective date of this amendatory Act of
2 the 102nd General Assembly become the rules of the Department
3 of Insurance. This amendatory Act of the 102nd General
4 Assembly does not affect the legality of any such rules.

5 (e) Any proposed rules filed with the Secretary of State
6 by the Illinois Workers' Compensation Commission that are
7 pending in the rulemaking process on the effective date of
8 this amendatory Act of the 102nd General Assembly and pertain
9 to the transferred powers, duties, rights, and
10 responsibilities are deemed to have been filed by the
11 Department of Insurance. As soon as practicable, the
12 Department of Insurance shall revise and clarify the rules
13 transferred to it under this amendatory Act of the 102nd
14 General Assembly to reflect the reorganization of powers,
15 duties, rights, and responsibilities affected by this
16 amendatory Act of the 102nd General Assembly, using the
17 procedures for recodification of rules available under the
18 Illinois Administrative Procedure Act, except that existing
19 title, part, and section numbering for the affected rules may
20 be retained. The Department of Insurance may propose and adopt
21 under the Illinois Administrative Procedure Act other rules of
22 the Illinois Workers' Compensation Commission pertaining to
23 this amendatory Act of the 102nd General Assembly that are
24 administered by the Department of Insurance.

25 Section 10. The Workers' Compensation Act is amended by

1 changing Sections 4, 25.5, and 29.2 as follows:

2 (820 ILCS 305/4) (from Ch. 48, par. 138.4)

3 (Text of Section from P.A. 101-40)

4 Sec. 4. (a) Any employer, including but not limited to
5 general contractors and their subcontractors, who shall come
6 within the provisions of Section 3 of this Act, and any other
7 employer who shall elect to provide and pay the compensation
8 provided for in this Act shall:

9 (1) File with the Commission annually an application
10 for approval as a self-insurer which shall include a
11 current financial statement, and annually, thereafter, an
12 application for renewal of self-insurance, which shall
13 include a current financial statement. Said application
14 and financial statement shall be signed and sworn to by
15 the president or vice president and secretary or assistant
16 secretary of the employer if it be a corporation, or by all
17 of the partners, if it be a copartnership, or by the owner
18 if it be neither a copartnership nor a corporation. All
19 initial applications and all applications for renewal of
20 self-insurance must be submitted at least 60 days prior to
21 the requested effective date of self-insurance. An
22 employer may elect to provide and pay compensation as
23 provided for in this Act as a member of a group workers'
24 compensation pool under Article V 3/4 of the Illinois
25 Insurance Code. If an employer becomes a member of a group

1 workers' compensation pool, the employer shall not be
2 relieved of any obligations imposed by this Act.

3 If the sworn application and financial statement of
4 any such employer does not satisfy the Commission of the
5 financial ability of the employer who has filed it, the
6 Commission shall require such employer to,

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

17 (3) Insure his entire liability to pay such
18 compensation in some insurance carrier authorized,
19 licensed, or permitted to do such insurance business in
20 this State. Every policy of an insurance carrier, insuring
21 the payment of compensation under this Act shall cover all
22 the employees and the entire compensation liability of the
23 insured: Provided, however, that any employer may insure
24 his or her compensation liability with 2 or more insurance
25 carriers or may insure a part and qualify under subsection
26 1, 2, or 4 for the remainder of his or her liability to pay

1 such compensation, subject to the following two
2 provisions:

3 Firstly, the entire compensation liability of the
4 employer to employees working at or from one location
5 shall be insured in one such insurance carrier or
6 shall be self-insured, and

7 Secondly, the employer shall submit evidence
8 satisfactorily to the Commission that his or her
9 entire liability for the compensation provided for in
10 this Act will be secured. Any provisions in any
11 policy, or in any endorsement attached thereto,
12 attempting to limit or modify in any way, the
13 liability of the insurance carriers issuing the same
14 except as otherwise provided herein shall be wholly
15 void.

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

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

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

26 (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
4 the 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
10 Section 4a.

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

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

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

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

1 Any penalty under this subsection (a-1) must be imposed
2 not 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, the salaries and benefits of
10 the Self-Insurers Advisory Board employees, the operating
11 costs of the Self-Insurers Advisory Board, and by the
12 Department of Insurance for the purposes authorized in
13 subsection (c) of Section 25.5 of this Act.

14 (a-2) Every Employee Leasing Company (ELC), as defined in
15 Section 15 of the Employee Leasing Company Act, shall at a
16 minimum provide the following information to the Commission or
17 any entity designated by the Commission regarding each
18 workers' compensation insurance policy issued to the ELC:

19 (1) Any client company of the ELC listed as an
20 additional named insured.

21 (2) Any informational schedule attached to the master
22 policy that identifies any individual client company's
23 name, FEIN, and job location.

24 (3) Any certificate of insurance coverage document
25 issued to a client company specifying its rights and
26 obligations under the master policy that establishes both

1 the identity and status of the client, as well as the dates
2 of inception and termination of coverage, if applicable.

3 (b) The sworn application and financial statement, or
4 security, indemnity or bond, or amount of insurance, or other
5 provisions, filed, furnished, carried, or made by the
6 employer, as the case may be, shall be subject to the approval
7 of the Commission.

8 Deposits under escrow agreements shall be cash, negotiable
9 United States government bonds or negotiable general
10 obligation bonds of the State of Illinois. Such cash or bonds
11 shall be deposited in escrow with any State or National Bank or
12 Trust Company having trust authority in the State of Illinois.

13 Upon the approval of the sworn application and financial
14 statement, security, indemnity or bond or amount of insurance,
15 filed, furnished or carried, as the case may be, the
16 Commission shall send to the employer written notice of its
17 approval thereof. The certificate of compliance by the
18 employer with the provisions of subparagraphs (2) and (3) of
19 paragraph (a) of this Section shall be delivered by the
20 insurance carrier to the Illinois Workers' Compensation
21 Commission within five days after the effective date of the
22 policy so certified. The insurance so certified shall cover
23 all compensation liability occurring during the time that the
24 insurance is in effect and no further certificate need be
25 filed in case such insurance is renewed, extended or otherwise
26 continued by such carrier. The insurance so certified shall

1 not be cancelled or in the event that such insurance is not
2 renewed, extended or otherwise continued, such insurance shall
3 not be terminated until at least 10 days after receipt by the
4 Illinois Workers' Compensation Commission of notice of the
5 cancellation or termination of said insurance; provided,
6 however, that if the employer has secured insurance from
7 another insurance carrier, or has otherwise secured the
8 payment of compensation in accordance with this Section, and
9 such insurance or other security becomes effective prior to
10 the expiration of the 10 days, cancellation or termination
11 may, at the option of the insurance carrier indicated in such
12 notice, be effective as of the effective date of such other
13 insurance or security.

14 (c) Whenever the Commission shall find that any
15 corporation, company, association, aggregation of individuals,
16 reciprocal or interinsurers exchange, or other insurer
17 effecting workers' compensation insurance in this State shall
18 be insolvent, financially unsound, or unable to fully meet all
19 payments and liabilities assumed or to be assumed for
20 compensation insurance in this State, or shall practice a
21 policy of delay or unfairness toward employees in the
22 adjustment, settlement, or payment of benefits due such
23 employees, the Commission may after reasonable notice and
24 hearing order and direct that such corporation, company,
25 association, aggregation of individuals, reciprocal or
26 interinsurers exchange, or insurer, shall from and after a

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

21 Whenever the Commission finds that any self-insured
22 employer has practiced or is practicing delay or unfairness
23 toward employees in the adjustment, settlement or payment of
24 benefits due such employees, the Commission may, after
25 reasonable notice and hearing, order and direct that after a
26 date fixed in the order such self-insured employer shall be

1 disqualified to operate as a self-insurer and shall be
2 required to insure his entire liability to pay compensation in
3 some insurance carrier authorized, licensed and permitted to
4 do such insurance business in this State, as provided in
5 subparagraph 3 of paragraph (a) of this Section.

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

21 (d) Whenever a Commissioner, with due process and after a
22 hearing, determines an employer has knowingly failed to
23 provide coverage as required by paragraph (a) of this Section,
24 the failure shall be deemed an immediate serious danger to
25 public health, safety, and welfare sufficient to justify
26 service by the Commission of a work-stop order on such

1 employer, requiring the cessation of all business operations
2 of such employer at the place of employment or job site. If a
3 business is declared to be extra hazardous, as defined in
4 Section 3, a Commissioner may issue an emergency work-stop
5 order on such an employer ex parte, prior to holding a hearing,
6 requiring the cessation of all business operations of such
7 employer at the place of employment or job site while awaiting
8 the ruling of the Commission. Whenever a Commissioner issues
9 an emergency work-stop order, the Commission shall issue a
10 notice of emergency work-stop hearing to be posted at the
11 employer's places of employment and job sites. Any law
12 enforcement agency in the State shall, at the request of the
13 Commission, render any assistance necessary to carry out the
14 provisions of this Section, including, but not limited to,
15 preventing any employee of such employer from remaining at a
16 place of employment or job site after a work-stop order has
17 taken effect. Any work-stop order shall be lifted upon proof
18 of insurance as required by this Act. Any orders under this
19 Section are appealable under Section 19(f) to the Circuit
20 Court.

21 Any individual employer, corporate officer or director of
22 a corporate employer, partner of an employer partnership, or
23 member of an employer limited liability company who knowingly
24 fails to provide coverage as required by paragraph (a) of this
25 Section is guilty of a Class 4 felony. This provision shall not
26 apply to any corporate officer or director of any

1 publicly-owned corporation. Each day's violation constitutes a
2 separate offense. The State's Attorney of the county in which
3 the violation occurred, or the Attorney General, shall bring
4 such actions in the name of the People of the State of
5 Illinois, or may, in addition to other remedies provided in
6 this Section, bring an action for an injunction to restrain
7 the violation or to enjoin the operation of any such employer.

8 Any individual employer, corporate officer or director of
9 a corporate employer, partner of an employer partnership, or
10 member of an employer limited liability company who
11 negligently fails to provide coverage as required by paragraph
12 (a) of this Section is guilty of a Class A misdemeanor. This
13 provision shall not apply to any corporate officer or director
14 of any publicly-owned corporation. Each day's violation
15 constitutes a separate offense. The State's Attorney of the
16 county in which the violation occurred, or the Attorney
17 General, shall bring such actions in the name of the People of
18 the State of Illinois.

19 The criminal penalties in this subsection (d) shall not
20 apply where there exists a good faith dispute as to the
21 existence of an employment relationship. Evidence of good
22 faith shall include, but not be limited to, compliance with
23 the definition of employee as used by the Internal Revenue
24 Service.

25 All investigative actions must be acted upon within 90
26 days of the issuance of the complaint. Employers who are

1 subject to and who knowingly fail to comply with this Section
2 shall not be entitled to the benefits of this Act during the
3 period of noncompliance, but shall be liable in an action
4 under any other applicable law of this State. In the action,
5 such employer shall not avail himself or herself of the
6 defenses of assumption of risk or negligence or that the
7 injury was due to a co-employee. In the action, proof of the
8 injury shall constitute prima facie evidence of negligence on
9 the part of such employer and the burden shall be on such
10 employer to show freedom of negligence resulting in the
11 injury. The employer shall not join any other defendant in any
12 such civil action. Nothing in this amendatory Act of the 94th
13 General Assembly shall affect the employee's rights under
14 subdivision (a)3 of Section 1 of this Act. Any employer or
15 carrier who makes payments under subdivision (a)3 of Section 1
16 of this Act shall have a right of reimbursement from the
17 proceeds of any recovery under this Section.

18 An employee of an uninsured employer, or the employee's
19 dependents in case death ensued, may, instead of proceeding
20 against the employer in a civil action in court, file an
21 application for adjustment of claim with the Commission in
22 accordance with the provisions of this Act and the Commission
23 shall hear and determine the application for adjustment of
24 claim in the manner in which other claims are heard and
25 determined before the Commission.

26 All proceedings under this subsection (d) shall be

1 reported on an annual basis to the Workers' Compensation
2 Advisory Board.

3 An investigator with the Department of Insurance ~~Illinois~~
4 ~~Workers' Compensation Commission Insurance Compliance Division~~
5 may issue a citation to any employer that is not in compliance
6 with its obligation to have workers' compensation insurance
7 under this Act. The amount of the fine shall be based on the
8 period of time the employer was in non-compliance, but shall
9 be no less than \$500, and shall not exceed \$10,000. An employer
10 that has been issued a citation shall pay the fine to the
11 Department of Insurance ~~Commission~~ and provide to the
12 Department of Insurance ~~Commission~~ proof that it obtained the
13 required workers' compensation insurance within 10 days after
14 the citation was issued. This Section does not affect any
15 other obligations this Act imposes on employers.

16 Upon a finding by the Commission, after reasonable notice
17 and hearing, of the knowing and willful failure or refusal of
18 an employer to comply with any of the provisions of paragraph
19 (a) of this Section, the failure or refusal of an employer,
20 service or adjustment company, or an insurance carrier to
21 comply with any order of the Illinois Workers' Compensation
22 Commission pursuant to paragraph (c) of this Section
23 disqualifying him or her to operate as a self insurer and
24 requiring him or her to insure his or her liability, or the
25 knowing and willful failure of an employer to comply with a
26 citation issued by an investigator with the Department of

1 ~~Insurance Illinois Workers' Compensation Commission Insurance~~
2 ~~Compliance Division~~, the Commission may assess a civil penalty
3 of up to \$500 per day for each day of such failure or refusal
4 after the effective date of this amendatory Act of 1989. The
5 minimum penalty under this Section shall be the sum of
6 \$10,000. Each day of such failure or refusal shall constitute
7 a separate offense. The Commission may assess the civil
8 penalty personally and individually against the corporate
9 officers and directors of a corporate employer, the partners
10 of an employer partnership, and the members of an employer
11 limited liability company, after a finding of a knowing and
12 willful refusal or failure of each such named corporate
13 officer, director, partner, or member to comply with this
14 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
20 to comply with this Section shall be liable for the unpaid
21 penalty or any unpaid portion of the penalty. Upon
22 investigation by the Department of Insurance ~~insurance~~
23 ~~non-compliance unit of the Commission~~, the Attorney General
24 shall have the authority to prosecute all proceedings to
25 enforce the civil and administrative provisions of this
26 Section before the Commission. The Commission and the

1 Department of Insurance shall promulgate procedural rules for
2 enforcing this Section relating to their respective duties
3 prescribed herein.

4 If an employer is found to be in non-compliance with any
5 provisions of paragraph (a) of this Section more than once,
6 all minimum penalties will double. Therefore, upon the failure
7 or refusal of an employer, service or adjustment company, or
8 insurance carrier to comply with any order of the Commission
9 pursuant to paragraph (c) of this Section disqualifying him or
10 her to operate as a self-insurer and requiring him or her to
11 insure his or her liability, or the knowing and willful
12 failure of an employer to comply with a citation issued by an
13 investigator with the Department of Insurance ~~Illinois~~
14 ~~Workers' Compensation Commission Insurance Compliance~~
15 ~~Division~~, the Commission may assess a civil penalty of up to
16 \$1,000 per day for each day of such failure or refusal after
17 the effective date of this amendatory Act of the 101st General
18 Assembly. The minimum penalty under this Section shall be the
19 sum of \$20,000. In addition, employers with 2 or more
20 violations of any provisions of paragraph (a) of this Section
21 may not self-insure for one year or until all penalties are
22 paid.

23 Upon the failure or refusal of any employer, service or
24 adjustment company or insurance carrier to comply with the
25 provisions of this Section and with the orders of the
26 Commission under this Section, or the order of the court on

1 review after final adjudication, the Commission may bring a
2 civil action to recover the amount of the penalty in Cook
3 County or in Sangamon County in which litigation the
4 Commission shall be represented by the Attorney General. The
5 Commission shall send notice of its finding of non-compliance
6 and assessment of the civil penalty to the Attorney General.
7 It shall be the duty of the Attorney General within 30 days
8 after receipt of the notice, to institute prosecutions and
9 promptly prosecute all reported violations of this Section.

10 Any individual employer, corporate officer or director of
11 a corporate employer, partner of an employer partnership, or
12 member of an employer limited liability company who, with the
13 intent to avoid payment of compensation under this Act to an
14 injured employee or the employee's dependents, knowingly
15 transfers, sells, encumbers, assigns, or in any manner
16 disposes of, conceals, secretes, or destroys any property
17 belonging to the employer, officer, director, partner, or
18 member is guilty of a Class 4 felony.

19 Penalties and fines collected pursuant to this paragraph
20 (d) shall be deposited upon receipt into a special fund which
21 shall be designated the Injured Workers' Benefit Fund, of
22 which the State Treasurer is ex-officio custodian, such
23 special fund to be held and disbursed in accordance with this
24 paragraph (d) for the purposes hereinafter stated in this
25 paragraph (d), upon the final order of the Commission. The
26 Injured Workers' Benefit Fund shall be deposited the same as

1 are State funds and any interest accruing thereon shall be
2 added thereto every 6 months. The Injured Workers' Benefit
3 Fund is subject to audit the same as State funds and accounts
4 and is protected by the general bond given by the State
5 Treasurer. The Injured Workers' Benefit Fund is considered
6 always appropriated for the purposes of disbursements as
7 provided in this paragraph, and shall be paid out and
8 disbursed as herein provided and shall not at any time be
9 appropriated or diverted to any other use or purpose. Moneys
10 in the Injured Workers' Benefit Fund shall be used only for
11 payment of workers' compensation benefits for injured
12 employees when the employer has failed to provide coverage as
13 determined under this paragraph (d) and has failed to pay the
14 benefits due to the injured employee. The Commission shall
15 have the right to obtain reimbursement from the employer for
16 compensation obligations paid by the Injured Workers' Benefit
17 Fund. Any such amounts obtained shall be deposited by the
18 Commission into the Injured Workers' Benefit Fund. If an
19 injured employee or his or her personal representative
20 receives payment from the Injured Workers' Benefit Fund, the
21 State of Illinois has the same rights under paragraph (b) of
22 Section 5 that the employer who failed to pay the benefits due
23 to the injured employee would have had if the employer had paid
24 those benefits, and any moneys recovered by the State as a
25 result of the State's exercise of its rights under paragraph
26 (b) of Section 5 shall be deposited into the Injured Workers'

1 Benefit Fund. The custodian of the Injured Workers' Benefit
2 Fund shall be joined with the employer as a party respondent in
3 the application for adjustment of claim. After July 1, 2006,
4 the Commission shall make disbursements from the Fund once
5 each year to each eligible claimant. An eligible claimant is
6 an injured worker who has within the previous fiscal year
7 obtained a final award for benefits from the Commission
8 against the employer and the Injured Workers' Benefit Fund and
9 has notified the Commission within 90 days of receipt of such
10 award. Within a reasonable time after the end of each fiscal
11 year, the Commission shall make a disbursement to each
12 eligible claimant. At the time of disbursement, if there are
13 insufficient moneys in the Fund to pay all claims, each
14 eligible claimant shall receive a pro-rata share, as
15 determined by the Commission, of the available moneys in the
16 Fund for that year. Payment from the Injured Workers' Benefit
17 Fund to an eligible claimant pursuant to this provision shall
18 discharge the obligations of the Injured Workers' Benefit Fund
19 regarding the award entered by the Commission.

20 (e) This Act shall not affect or disturb the continuance
21 of any existing insurance, mutual aid, benefit, or relief
22 association or department, whether maintained in whole or in
23 part by the employer or whether maintained by the employees,
24 the payment of benefits of such association or department
25 being guaranteed by the employer or by some person, firm or
26 corporation for him or her: Provided, the employer contributes

1 to such association or department an amount not less than the
2 full compensation herein provided, exclusive of the cost of
3 the maintenance of such association or department and without
4 any expense to the employee. This Act shall not prevent the
5 organization and maintaining under the insurance laws of this
6 State of any benefit or insurance company for the purpose of
7 insuring against the compensation provided for in this Act,
8 the expense of which is maintained by the employer. This Act
9 shall not prevent the organization or maintaining under the
10 insurance laws of this State of any voluntary mutual aid,
11 benefit or relief association among employees for the payment
12 of additional accident or sick benefits.

13 (f) No existing insurance, mutual aid, benefit or relief
14 association or department shall, by reason of anything herein
15 contained, be authorized to discontinue its operation without
16 first discharging its obligations to any and all persons
17 carrying insurance in the same or entitled to relief or
18 benefits therein.

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

1 In the event the employer does not pay the compensation
2 for 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
6 beneficiary the compensation required by the provisions of
7 this Act to be paid by such employer. The insurance carrier may
8 be made a party to the proceedings in which the employer is a
9 party and an award may be entered jointly against the employer
10 and the 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
17 because of his or her exercise of the rights or remedies
18 granted to him or her by this Act.

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

25 (i) If an employer elects to obtain a life insurance
26 policy on his employees, he may also elect to apply such

1 benefits in satisfaction of all or a portion of the death
2 benefits payable under this Act, in which case, the employer's
3 compensation premium shall be reduced accordingly.

4 (j) Within 45 days of receipt of an initial application or
5 application to renew self-insurance privileges the
6 Self-Insurers Advisory Board shall review and submit for
7 approval by the Chairman of the Commission recommendations of
8 disposition of all initial applications to self-insure and all
9 applications to renew self-insurance privileges filed by
10 private self-insurers pursuant to the provisions of this
11 Section and Section 4a-9 of this Act. Each private
12 self-insurer shall submit with its initial and renewal
13 applications the application fee required by Section 4a-4 of
14 this Act.

15 The Chairman of the Commission shall promptly act upon all
16 initial applications and applications for renewal in full
17 accordance with the recommendations of the Board or, should
18 the Chairman disagree with any recommendation of disposition
19 of the Self-Insurer's Advisory Board, he shall within 30 days
20 of receipt of such recommendation provide to the Board in
21 writing the reasons supporting his decision. The Chairman
22 shall also promptly notify the employer of his decision within
23 15 days of receipt of the recommendation of the Board.

24 If an employer is denied a renewal of self-insurance
25 privileges pursuant to application it shall retain said
26 privilege for 120 days after receipt of a notice of

1 cancellation of the privilege from the Chairman of the
2 Commission.

3 All orders made by the Chairman under this Section shall
4 be subject to review by the courts, such review to be taken in
5 the same manner and within the same time as provided by
6 subsection (f) of Section 19 of this Act for review of awards
7 and decisions of the Commission, upon the party seeking the
8 review filing with the clerk of the court to which such review
9 is taken a bond in an amount to be fixed and approved by the
10 court to which the review is taken, conditioned upon the
11 payment of all compensation awarded against the person taking
12 such review pending a decision thereof and further conditioned
13 upon such other obligations as the court may impose. Upon the
14 review the Circuit Court shall have power to review all
15 questions of fact as well as of law.

16 (Source: P.A. 101-40, eff. 1-1-20.)

17 (Text of Section from P.A. 101-384)

18 Sec. 4. (a) Any employer, including but not limited to
19 general contractors and their subcontractors, who shall come
20 within the provisions of Section 3 of this Act, and any other
21 employer who shall elect to provide and pay the compensation
22 provided for in this Act shall:

23 (1) File with the Commission annually an application
24 for approval as a self-insurer which shall include a
25 current financial statement, and annually, thereafter, an

1 application for renewal of self-insurance, which shall
2 include a current financial statement. Said application
3 and financial statement shall be signed and sworn to by
4 the president or vice president and secretary or assistant
5 secretary of the employer if it be a corporation, or by all
6 of the partners, if it be a copartnership, or by the owner
7 if it be neither a copartnership nor a corporation. All
8 initial applications and all applications for renewal of
9 self-insurance must be submitted at least 60 days prior to
10 the requested effective date of self-insurance. An
11 employer may elect to provide and pay compensation as
12 provided for in this Act as a member of a group workers'
13 compensation pool under Article V 3/4 of the Illinois
14 Insurance Code. If an employer becomes a member of a group
15 workers' compensation pool, the employer shall not be
16 relieved of any obligations imposed by this Act.

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

21 (2) Furnish security, indemnity or a bond guaranteeing
22 the payment by the employer of the compensation provided
23 for in this Act, provided that any such employer whose
24 application and financial statement shall not have
25 satisfied the commission of his or her financial ability
26 and who shall have secured his liability in part by excess

1 liability insurance shall be required to furnish to the
2 Commission security, indemnity or bond guaranteeing his or
3 her payment up to the effective limits of the excess
4 coverage, or

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

17 Firstly, the entire compensation liability of the
18 employer to employees working at or from one location
19 shall be insured in one such insurance carrier or
20 shall be self-insured, and

21 Secondly, the employer shall submit evidence
22 satisfactorily to the Commission that his or her
23 entire liability for the compensation provided for in
24 this Act will be secured. Any provisions in any
25 policy, or in any endorsement attached thereto,
26 attempting to limit or modify in any way, the

1 liability of the insurance carriers issuing the same
2 except as otherwise provided herein shall be wholly
3 void.

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

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

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

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

19 (A) the employer is engaged primarily in the building
20 and construction industry; and

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

25 The Illinois Workers' Compensation Commission shall impose
26 a penalty upon an employer for violation of this subsection

1 (a-1) if:

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

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

9 The penalty shall not exceed \$1,000 for each day of work
10 for which the employer failed to make payments upon the
11 premium rates of the situs where the work or project is located
12 in Illinois, but the total penalty shall not exceed \$50,000
13 for each project or each contract under which the work was
14 performed.

15 Any penalty under this subsection (a-1) must be imposed
16 not later than one year after the expiration of the applicable
17 limitation period specified in subsection (d) of Section 6 of
18 this Act. Penalties imposed under this subsection (a-1) shall
19 be deposited into the Illinois Workers' Compensation
20 Commission Operations Fund, a special fund that is created in
21 the State treasury. Subject to appropriation, moneys in the
22 Fund shall be used solely for the operations of the Illinois
23 Workers' Compensation Commission and by the Department of
24 Insurance for the purposes authorized in subsection (c) of
25 Section 25.5 of this Act.

26 (a-2) Every Employee Leasing Company (ELC), as defined in

1 Section 15 of the Employee Leasing Company Act, shall at a
2 minimum provide the following information to the Commission or
3 any entity designated by the Commission regarding each
4 workers' compensation insurance policy issued to the ELC:

5 (1) Any client company of the ELC listed as an
6 additional named insured.

7 (2) Any informational schedule attached to the master
8 policy that identifies any individual client company's
9 name, FEIN, and job location.

10 (3) Any certificate of insurance coverage document
11 issued to a client company specifying its rights and
12 obligations under the master policy that establishes both
13 the identity and status of the client, as well as the dates
14 of inception and termination of coverage, if applicable.

15 (b) The sworn application and financial statement, or
16 security, indemnity or bond, or amount of insurance, or other
17 provisions, filed, furnished, carried, or made by the
18 employer, as the case may be, shall be subject to the approval
19 of the Commission.

20 Deposits under escrow agreements shall be cash, negotiable
21 United States government bonds or negotiable general
22 obligation bonds of the State of Illinois. Such cash or bonds
23 shall be deposited in escrow with any State or National Bank or
24 Trust Company having trust authority in the State of Illinois.

25 Upon the approval of the sworn application and financial
26 statement, security, indemnity or bond or amount of insurance,

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

26 (c) Whenever the Commission shall find that any

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

1 the 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
14 required to insure his entire liability to pay compensation in
15 some insurance carrier authorized, licensed and permitted to
16 do such insurance business in this State, as provided in
17 subparagraph 3 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

1 pending a decision thereof and further conditioned upon such
2 other obligations as the court may impose. Upon the review the
3 Circuit Court shall have power to review all questions of fact
4 as well as of law. The penalty hereinafter provided for in this
5 paragraph shall not attach and shall not begin to run until the
6 final determination of the order of the Commission.

7 (d) Whenever a panel of 3 Commissioners comprised of one
8 member of the employing class, one representative of a labor
9 organization recognized under the National Labor Relations Act
10 or an attorney who has represented labor organizations or has
11 represented employees in workers' compensation cases, and one
12 member not identified with either the employing class or a
13 labor organization, with due process and after a hearing,
14 determines an employer has knowingly failed to provide
15 coverage as required by paragraph (a) of this Section, the
16 failure shall be deemed an immediate serious danger to public
17 health, safety, and welfare sufficient to justify service by
18 the Commission of a work-stop order on such employer,
19 requiring the cessation of all business operations of such
20 employer at the place of employment or job site. Any law
21 enforcement agency in the State shall, at the request of the
22 Commission, render any assistance necessary to carry out the
23 provisions of this Section, including, but not limited to,
24 preventing any employee of such employer from remaining at a
25 place of employment or job site after a work-stop order has
26 taken effect. Any work-stop order shall be lifted upon proof

1 of insurance as required by this Act. Any orders under this
2 Section are appealable under Section 19(f) to the Circuit
3 Court.

4 Any individual employer, corporate officer or director of
5 a corporate employer, partner of an employer partnership, or
6 member of an employer limited liability company who knowingly
7 fails to provide coverage as required by paragraph (a) of this
8 Section is guilty of a Class 4 felony. This provision shall not
9 apply to any corporate officer or director of any
10 publicly-owned corporation. Each day's violation constitutes a
11 separate offense. The State's Attorney of the county in which
12 the violation occurred, or the Attorney General, shall bring
13 such actions in the name of the People of the State of
14 Illinois, or may, in addition to other remedies provided in
15 this Section, bring an action for an injunction to restrain
16 the violation or to enjoin the operation of any such employer.

17 Any individual employer, corporate officer or director of
18 a corporate employer, partner of an employer partnership, or
19 member of an employer limited liability company who
20 negligently fails to provide coverage as required by paragraph
21 (a) of this Section is guilty of a Class A misdemeanor. This
22 provision shall not apply to any corporate officer or director
23 of any publicly-owned corporation. Each day's violation
24 constitutes a separate offense. The State's Attorney of the
25 county in which the violation occurred, or the Attorney
26 General, shall bring such actions in the name of the People of

1 the State of Illinois.

2 The criminal penalties in this subsection (d) shall not
3 apply where there exists a good faith dispute as to the
4 existence of an employment relationship. Evidence of good
5 faith shall include, but not be limited to, compliance with
6 the definition of employee as used by the Internal Revenue
7 Service.

8 Employers who are subject to and who knowingly fail to
9 comply with this Section shall not be entitled to the benefits
10 of this Act during the period of noncompliance, but shall be
11 liable in an action under any other applicable law of this
12 State. In the action, such employer shall not avail himself or
13 herself of the defenses of assumption of risk or negligence or
14 that the injury was due to a co-employee. In the action, proof
15 of the injury shall constitute prima facie evidence of
16 negligence on the part of such employer and the burden shall be
17 on such employer to show freedom of negligence resulting in
18 the injury. The employer shall not join any other defendant in
19 any such civil action. Nothing in this amendatory Act of the
20 94th General Assembly shall affect the employee's rights under
21 subdivision (a)3 of Section 1 of this Act. Any employer or
22 carrier who makes payments under subdivision (a)3 of Section 1
23 of this Act shall have a right of reimbursement from the
24 proceeds of any recovery under this Section.

25 An employee of an uninsured employer, or the employee's
26 dependents in case death ensued, may, instead of proceeding

1 against the employer in a civil action in court, file an
2 application for adjustment of claim with the Commission in
3 accordance with the provisions of this Act and the Commission
4 shall hear and determine the application for adjustment of
5 claim in the manner in which other claims are heard and
6 determined before the Commission.

7 All proceedings under this subsection (d) shall be
8 reported on an annual basis to the Workers' Compensation
9 Advisory Board.

10 An investigator with the Department of Insurance ~~Illinois~~
11 ~~Workers' Compensation Commission Insurance Compliance Division~~
12 may issue a citation to any employer that is not in compliance
13 with its obligation to have workers' compensation insurance
14 under this Act. The amount of the fine shall be based on the
15 period of time the employer was in non-compliance, but shall
16 be no less than \$500, and shall not exceed \$2,500. An employer
17 that has been issued a citation shall pay the fine to the
18 Department of Insurance ~~Commission~~ and provide to the
19 Department of Insurance ~~Commission~~ proof that it obtained the
20 required workers' compensation insurance within 10 days after
21 the citation was issued. This Section does not affect any
22 other obligations this Act imposes on employers.

23 Upon a finding by the Commission, after reasonable notice
24 and hearing, of the knowing and wilful failure or refusal of an
25 employer to comply with any of the provisions of paragraph (a)
26 of this Section, the failure or refusal of an employer,

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

1 to comply with this Section shall be liable for the unpaid
2 penalty or any unpaid portion of the penalty. Upon
3 investigation by the Department of Insurance ~~insurance~~
4 ~~non-compliance unit of the Commission~~, the Attorney General
5 shall have the authority to prosecute all proceedings to
6 enforce the civil and administrative provisions of this
7 Section before the Commission. The Commission and the
8 Department of Insurance shall promulgate procedural rules for
9 enforcing this Section relating to their respective duties
10 prescribed herein.

11 Upon the failure or refusal of any employer, service or
12 adjustment company or insurance carrier to comply with the
13 provisions of this Section and with the orders of the
14 Commission under this Section, or the order of the court on
15 review after final adjudication, the Commission may bring a
16 civil action to recover the amount of the penalty in Cook
17 County or in Sangamon County in which litigation the
18 Commission shall be represented by the Attorney General. The
19 Commission shall send notice of its finding of non-compliance
20 and assessment of the civil penalty to the Attorney General.
21 It shall be the duty of the Attorney General within 30 days
22 after receipt of the notice, to institute prosecutions and
23 promptly prosecute all reported violations of this Section.

24 Any individual employer, corporate officer or director of
25 a corporate employer, partner of an employer partnership, or
26 member of an employer limited liability company who, with the

1 intent to avoid payment of compensation under this Act to an
2 injured employee or the employee's dependents, knowingly
3 transfers, sells, encumbers, assigns, or in any manner
4 disposes of, conceals, secretes, or destroys any property
5 belonging to the employer, officer, director, partner, or
6 member is guilty of a Class 4 felony.

7 Penalties and fines collected pursuant to this paragraph
8 (d) shall be deposited upon receipt into a special fund which
9 shall be designated the Injured Workers' Benefit Fund, of
10 which the State Treasurer is ex-officio custodian, such
11 special fund to be held and disbursed in accordance with this
12 paragraph (d) for the purposes hereinafter stated in this
13 paragraph (d), upon the final order of the Commission. The
14 Injured Workers' Benefit Fund shall be deposited the same as
15 are State funds and any interest accruing thereon shall be
16 added thereto every 6 months. The Injured Workers' Benefit
17 Fund is subject to audit the same as State funds and accounts
18 and is protected by the general bond given by the State
19 Treasurer. The Injured Workers' Benefit Fund is considered
20 always appropriated for the purposes of disbursements as
21 provided in this paragraph, and shall be paid out and
22 disbursed as herein provided and shall not at any time be
23 appropriated or diverted to any other use or purpose. Moneys
24 in the Injured Workers' Benefit Fund shall be used only for
25 payment of workers' compensation benefits for injured
26 employees when the employer has failed to provide coverage as

1 determined under this paragraph (d) and has failed to pay the
2 benefits due to the injured employee. The Commission shall
3 have the right to obtain reimbursement from the employer for
4 compensation obligations paid by the Injured Workers' Benefit
5 Fund. Any such amounts obtained shall be deposited by the
6 Commission into the Injured Workers' Benefit Fund. If an
7 injured employee or his or her personal representative
8 receives payment from the Injured Workers' Benefit Fund, the
9 State of Illinois has the same rights under paragraph (b) of
10 Section 5 that the employer who failed to pay the benefits due
11 to the injured employee would have had if the employer had paid
12 those benefits, and any moneys recovered by the State as a
13 result of the State's exercise of its rights under paragraph
14 (b) of Section 5 shall be deposited into the Injured Workers'
15 Benefit Fund. The custodian of the Injured Workers' Benefit
16 Fund shall be joined with the employer as a party respondent in
17 the application for adjustment of claim. After July 1, 2006,
18 the Commission shall make disbursements from the Fund once
19 each year to each eligible claimant. An eligible claimant is
20 an injured worker who has within the previous fiscal year
21 obtained a final award for benefits from the Commission
22 against the employer and the Injured Workers' Benefit Fund and
23 has notified the Commission within 90 days of receipt of such
24 award. Within a reasonable time after the end of each fiscal
25 year, the Commission shall make a disbursement to each
26 eligible claimant. At the time of disbursement, if there are

1 insufficient moneys in the Fund to pay all claims, each
2 eligible claimant shall receive a pro-rata share, as
3 determined by the Commission, of the available moneys in the
4 Fund for that year. Payment from the Injured Workers' Benefit
5 Fund to an eligible claimant pursuant to this provision shall
6 discharge the obligations of the Injured Workers' Benefit Fund
7 regarding the award entered by the Commission.

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

1 (f) No existing insurance, mutual aid, benefit or relief
2 association or department shall, by reason of anything herein
3 contained, be authorized to discontinue its operation without
4 first discharging its obligations to any and all persons
5 carrying insurance in the same or entitled to relief or
6 benefits therein.

7 (g) Any contract, oral, written or implied, of employment
8 providing for relief benefit, or insurance or any other device
9 whereby the employee is required to pay any premium or
10 premiums for insurance against the compensation provided for
11 in this Act shall be null and void. Any employer withholding
12 from the wages of any employee any amount for the purpose of
13 paying any such premium shall be guilty of a Class B
14 misdemeanor.

15 In the event the employer does not pay the compensation
16 for which he or she is liable, then an insurance company,
17 association or insurer which may have insured such employer
18 against such liability shall become primarily liable to pay to
19 the employee, his or her personal representative or
20 beneficiary the compensation required by the provisions of
21 this Act to be paid by such employer. The insurance carrier may
22 be made a party to the proceedings in which the employer is a
23 party and an award may be entered jointly against the employer
24 and the insurance carrier.

25 (h) It shall be unlawful for any employer, insurance
26 company or service or adjustment company to interfere with,

1 restrain or coerce an employee in any manner whatsoever in the
2 exercise of the rights or remedies granted to him or her by
3 this Act or to discriminate, attempt to discriminate, or
4 threaten to discriminate against an employee in any way
5 because of his or her exercise of the rights or remedies
6 granted to him or her by this Act.

7 It shall be unlawful for any employer, individually or
8 through any insurance company or service or adjustment
9 company, to discharge or to threaten to discharge, or to
10 refuse to rehire or recall to active service in a suitable
11 capacity an employee because of the exercise of his or her
12 rights or remedies granted to him or her by this Act.

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

18 (j) Within 45 days of receipt of an initial application or
19 application to renew self-insurance privileges the
20 Self-Insurers Advisory Board shall review and submit for
21 approval by the Chairman of the Commission recommendations of
22 disposition of all initial applications to self-insure and all
23 applications to renew self-insurance privileges filed by
24 private self-insurers pursuant to the provisions of this
25 Section and Section 4a-9 of this Act. Each private
26 self-insurer shall submit with its initial and renewal

1 applications the application fee required by Section 4a-4 of
2 this Act.

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

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

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

1 upon such other obligations as the court may impose. Upon the
2 review the Circuit Court shall have power to review all
3 questions of fact as well as of law.

4 (Source: P.A. 101-384, eff. 1-1-20.)

5 (820 ILCS 305/25.5)

6 Sec. 25.5. Unlawful acts; penalties.

7 (a) It is unlawful for any person, company, corporation,
8 insurance carrier, healthcare provider, or other entity to:

9 (1) Intentionally present or cause to be presented any
10 false or fraudulent claim for the payment of any workers'
11 compensation benefit.

12 (2) Intentionally make or cause to be made any false
13 or fraudulent material statement or material
14 representation for the purpose of obtaining or denying any
15 workers' compensation benefit.

16 (3) Intentionally make or cause to be made any false
17 or fraudulent statements with regard to entitlement to
18 workers' compensation benefits with the intent to prevent
19 an injured worker from making a legitimate claim for any
20 workers' compensation benefits.

21 (4) Intentionally prepare or provide an invalid,
22 false, or counterfeit certificate of insurance as proof of
23 workers' compensation insurance.

24 (5) Intentionally make or cause to be made any false
25 or fraudulent material statement or material

1 representation for the purpose of obtaining workers'
2 compensation insurance at less than the proper amount ~~rate~~
3 for that insurance.

4 (6) Intentionally make or cause to be made any false
5 or fraudulent material statement or material
6 representation on an initial or renewal self-insurance
7 application or accompanying financial statement for the
8 purpose of obtaining self-insurance status or reducing the
9 amount of security that may be required to be furnished
10 pursuant to Section 4 of this Act.

11 (7) Intentionally make or cause to be made any false
12 or fraudulent material statement to the Department of
13 Insurance's fraud and insurance non-compliance unit in the
14 course of an investigation of fraud or insurance
15 non-compliance.

16 (8) Intentionally assist, abet, solicit, or conspire
17 with any person, company, or other entity to commit any of
18 the acts in paragraph (1), (2), (3), (4), (5), (6), or (7)
19 of this subsection (a).

20 (9) Intentionally present a bill or statement for the
21 payment for medical services that were not provided.

22 For the purposes of paragraphs (2), (3), (5), (6), (7),
23 and (9), the term "statement" includes any writing, notice,
24 proof of injury, bill for services, hospital or doctor records
25 and reports, or X-ray and test results.

26 (b) Sentences for violations of subsection (a) are as

1 follows:

2 (1) A violation in which the value of the property
3 obtained or attempted to be obtained is \$300 or less is a
4 Class A misdemeanor.

5 (2) A violation in which the value of the property
6 obtained or attempted to be obtained is more than \$300 but
7 not more than \$10,000 is a Class 3 felony.

8 (3) A violation in which the value of the property
9 obtained or attempted to be obtained is more than \$10,000
10 but not more than \$100,000 is a Class 2 felony.

11 (4) A violation in which the value of the property
12 obtained or attempted to be obtained is more than \$100,000
13 is a Class 1 felony.

14 (5) A person convicted under this Section shall be
15 ordered to pay monetary restitution to the insurance
16 company or self-insured entity or any other person for any
17 financial loss sustained as a result of a violation of
18 this Section, including any court costs and attorney fees.
19 An order of restitution also includes expenses incurred
20 and paid by the State of Illinois or an insurance company
21 or self-insured entity in connection with any medical
22 evaluation or treatment services.

23 For the purposes of this Section, where the exact value of
24 property obtained or attempted to be obtained is either not
25 alleged or is not specifically set by the terms of a policy of
26 insurance, the value of the property shall be the fair market

1 replacement value of the property claimed to be lost, the
2 reasonable costs of reimbursing a vendor or other claimant for
3 services to be rendered, or both. Notwithstanding the
4 foregoing, an insurance company, self-insured entity, or any
5 other person suffering financial loss sustained as a result of
6 violation of this Section may seek restitution, including
7 court costs and attorney's fees in a civil action in a court of
8 competent jurisdiction.

9 (c) The Department of Insurance shall establish a fraud
10 and insurance non-compliance unit responsible for
11 investigating incidences of fraud and insurance non-compliance
12 pursuant to this Section. The size of the staff of the unit
13 shall be subject to appropriation by the General Assembly. It
14 shall be the duty of the fraud and insurance non-compliance
15 unit to determine the identity of insurance carriers,
16 employers, employees, or other persons or entities who have
17 violated the fraud and insurance non-compliance provisions of
18 this Section. The fraud and insurance non-compliance unit
19 shall report violations of the fraud and insurance
20 non-compliance provisions of this Section to the Special
21 Prosecutions Bureau of the Criminal Division of the Office of
22 the Attorney General or to the State's Attorney of the county
23 in which the offense allegedly occurred, either of whom has
24 the authority to prosecute violations under this Section.

25 With respect to the subject of any investigation being
26 conducted, the fraud and insurance non-compliance unit shall

1 have the general power of subpoena of the Department of
2 Insurance, including the authority to issue a subpoena to a
3 medical provider, pursuant to Section 8-802 of the Code of
4 Civil Procedure.

5 (d) Any person may report allegations of insurance
6 non-compliance and fraud pursuant to this Section to the
7 Department of Insurance's fraud and insurance non-compliance
8 unit whose duty it shall be to investigate the report. The unit
9 shall notify the Commission of reports of insurance
10 non-compliance. Any person reporting an allegation of
11 insurance non-compliance or fraud against either an employee
12 or employer under this Section must identify himself. Except
13 as provided in this subsection and in subsection (e), all
14 reports shall remain confidential except to refer an
15 investigation to the Attorney General or State's Attorney for
16 prosecution or if the fraud and insurance non-compliance
17 unit's investigation reveals that the conduct reported may be
18 in violation of other laws or regulations of the State of
19 Illinois, the unit may report such conduct to the appropriate
20 governmental agency charged with administering such laws and
21 regulations. Any person who intentionally makes a false report
22 under this Section to the fraud and insurance non-compliance
23 unit is guilty of a Class A misdemeanor.

24 (e) In order for the fraud and insurance non-compliance
25 unit to investigate a report of fraud related to an employee's
26 claim, (i) the employee must have filed with the Commission an

1 Application for Adjustment of Claim and the employee must have
2 either received or attempted to receive benefits under this
3 Act that are related to the reported fraud or (ii) the employee
4 must have made a written demand for the payment of benefits
5 that are related to the reported fraud. There shall be no
6 immunity, under this Act or otherwise, for any person who
7 files a false report or who files a report without good and
8 just cause. Confidentiality of medical information shall be
9 strictly maintained. Investigations that are not referred for
10 prosecution shall be destroyed upon the expiration of the
11 statute of limitations for the acts under investigation and
12 shall not be disclosed except that the person making the
13 report shall be notified that the investigation is being
14 closed. It is unlawful for any employer, insurance carrier,
15 service adjustment company, third party administrator,
16 self-insured, or similar entity to file or threaten to file a
17 report of fraud against an employee because of the exercise by
18 the employee of the rights and remedies granted to the
19 employee by this Act.

20 (e-5) (Blank). ~~The fraud and insurance non-compliance unit~~
21 ~~shall procure and implement a system utilizing advanced~~
22 ~~analytics inclusive of predictive modeling, data mining,~~
23 ~~social network analysis, and scoring algorithms for the~~
24 ~~detection and prevention of fraud, waste, and abuse on or~~
25 ~~before January 1, 2012. The fraud and insurance non-compliance~~
26 ~~unit shall procure this system using a request for proposals~~

1 ~~process governed by the Illinois Procurement Code and rules~~
2 ~~adopted under that Code. The fraud and insurance~~
3 ~~non-compliance unit shall provide a report to the President of~~
4 ~~the Senate, Speaker of the House of Representatives, Minority~~
5 ~~Leader of the House of Representatives, Minority Leader of the~~
6 ~~Senate, Governor, Chairman of the Commission, and Director of~~
7 ~~Insurance on or before July 1, 2012 and annually thereafter~~
8 ~~detailing its activities and providing recommendations~~
9 ~~regarding opportunities for additional fraud waste and abuse~~
10 ~~detection and prevention.~~

11 (f) Any person convicted of fraud related to workers'
12 compensation pursuant to this Section shall be subject to the
13 penalties prescribed in the Criminal Code of 2012 and shall be
14 ineligible to receive or retain any compensation, disability,
15 or medical benefits as defined in this Act if the
16 compensation, disability, or medical benefits were owed or
17 received as a result of fraud for which the recipient of the
18 compensation, disability, or medical benefit was convicted.
19 This subsection applies to accidental injuries or diseases
20 that occur on or after the effective date of this amendatory
21 Act of the 94th General Assembly.

22 (g) Civil liability. Any person convicted of fraud who
23 knowingly obtains, attempts to obtain, or causes to be
24 obtained any benefits under this Act by the making of a false
25 claim or who knowingly misrepresents any material fact shall
26 be civilly liable to the payor of benefits or the insurer or

1 the payor's or insurer's subrogee or assignee in an amount
2 equal to 3 times the value of the benefits or insurance
3 coverage wrongfully obtained or twice the value of the
4 benefits or insurance coverage attempted to be obtained, plus
5 reasonable attorney's fees and expenses incurred by the payor
6 or the payor's subrogee or assignee who successfully brings a
7 claim under this subsection. This subsection applies to
8 accidental injuries or diseases that occur on or after the
9 effective date of this amendatory Act of the 94th General
10 Assembly.

11 (h) The fraud and insurance non-compliance unit shall
12 submit a written report on an annual basis to the Chairman of
13 the Commission, the Workers' Compensation Advisory Board, the
14 General Assembly, the Governor, and the Attorney General by
15 January 1 and July 1 of each year. This report shall include,
16 at the minimum, the following information:

17 (1) The number of allegations of insurance
18 non-compliance and fraud reported to the fraud and
19 insurance non-compliance unit.

20 (2) The source of the reported allegations
21 (individual, employer, or other).

22 (3) The number of allegations investigated by the
23 fraud and insurance non-compliance unit.

24 (4) The number of criminal referrals made in
25 accordance with this Section and the entity to which the
26 referral was made.

1 (5) All proceedings under this Section.

2 (6) Recommendations regarding opportunities for
3 additional fraud detection.

4 (Source: P.A. 97-18, eff. 6-28-11; 97-1150, eff. 1-25-13.)

5 (820 ILCS 305/29.2)

6 Sec. 29.2. Insurance oversight.

7 (a) The Department of Insurance shall annually submit to
8 the Governor, the Chairman of the Commission, the President of
9 the Senate, the Speaker of the House of Representatives, the
10 Minority Leader of the Senate, and the Minority Leader of the
11 House of Representatives a written report that details the
12 state of the workers' compensation insurance market in
13 Illinois. The report shall be completed by April 1 of each
14 year, beginning in 2012, or later if necessary data or
15 analyses are only available to the Department at a later date.
16 The report shall be posted on the Department of Insurance's
17 Internet website. Information to be included in the report
18 shall be for the preceding calendar year. The report shall
19 include, at a minimum, the following:

20 (1) Gross premiums collected by workers' compensation
21 carriers in Illinois and the national rank of Illinois
22 based on premium volume.

23 (2) The number of insurance companies actively engaged
24 in Illinois in the workers' compensation insurance market,
25 including both holding companies and subsidiaries or

1 affiliates, and the national rank of Illinois based on
2 number of competing insurers.

3 (3) The total number of insured participants in the
4 Illinois workers' compensation assigned risk insurance
5 pool, and the size of the assigned risk pool as a
6 proportion of the total Illinois workers' compensation
7 insurance market.

8 (4) The advisory organization premium rate for
9 workers' compensation insurance in Illinois for the
10 previous year.

11 (5) The advisory organization prescribed assigned risk
12 pool premium rate.

13 (6) The total amount of indemnity payments made by
14 workers' compensation insurers in Illinois.

15 (7) The total amount of medical payments made by
16 workers' compensation insurers in Illinois, and the
17 national rank of Illinois based on average cost of medical
18 claims per injured worker.

19 (8) The gross profitability of workers' compensation
20 insurers in Illinois, and the national rank of Illinois
21 based on profitability of workers' compensation insurers.

22 (9) The loss ratio of workers' compensation insurers
23 in Illinois and the national rank of Illinois based on the
24 loss ratio of workers' compensation insurers. For purposes
25 of this loss ratio calculation, the denominator shall
26 include all premiums and other fees collected by workers'

1 compensation insurers and the numerator shall include the
2 total amount paid by the insurer for care or compensation
3 to injured workers.

4 (10) The growth of total paid indemnity benefits by
5 temporary total disability, scheduled and non-scheduled
6 permanent partial disability, and total disability.

7 (11) The number of injured workers receiving wage loss
8 differential awards and the average wage loss differential
9 award payout.

10 (12) Illinois' rank, relative to other states, for:

11 (i) the maximum and minimum temporary total
12 disability benefit level;

13 (ii) the maximum and minimum scheduled and
14 non-scheduled permanent partial disability benefit
15 level;

16 (iii) the maximum and minimum total disability
17 benefit level; and

18 (iv) the maximum and minimum death benefit level.

19 (13) The aggregate growth of medical benefit payout by
20 non-hospital providers and hospitals.

21 (14) The aggregate growth of medical utilization for
22 the top 10 most common injuries to specific body parts by
23 non-hospital providers and hospitals.

24 (15) The percentage of injured workers filing claims
25 at the Commission that are represented by an attorney.

26 (16) The total amount paid by injured workers for

1 attorney representation.

2 (b) The Director of Insurance shall promulgate rules
3 requiring each insurer licensed to write workers' compensation
4 coverage in the State to record and report the following
5 information on an aggregate basis to the Department of
6 Insurance before June 1 ~~March 1~~ of each year, relating to
7 claims in the State opened within the prior calendar year:

8 (1) The number of claims opened.

9 (2) The number of reported medical only claims.

10 (3) The number of contested claims.

11 (4) The number of claims for which the employee has
12 attorney representation.

13 (5) The number of claims with lost time and the number
14 of claims for which temporary total disability was paid.

15 (6) The number of claim adjusters employed to adjust
16 workers' compensation claims.

17 (7) The number of claims for which temporary total
18 disability was not paid within 14 days from the first full
19 day off, regardless of reason.

20 (8) The number of medical bills paid 60 days or later
21 from date of service and the average days paid on those
22 paid after 60 days for the previous calendar year.

23 (9) The number of claims in which in-house defense
24 counsel participated, and the total amount spent on
25 in-house legal services.

26 (10) The number of claims in which outside defense

1 counsel participated, and the total amount paid to outside
2 defense counsel.

3 (11) The total amount billed to employers for bill
4 review.

5 (12) The total amount billed to employers for fee
6 schedule savings.

7 (13) The total amount charged to employers for any and
8 all managed care fees.

9 (14) The number of claims involving in-house medical
10 nurse case management, and the total amount spent on
11 in-house medical nurse case management.

12 (15) The number of claims involving outside medical
13 nurse case management, and the total amount paid for
14 outside medical nurse case management.

15 (16) The total amount paid for Independent Medical
16 exams.

17 (17) The total amount spent on in-house Utilization
18 Review for the previous calendar year.

19 (18) The total amount paid for outside Utilization
20 Review for the previous calendar year.

21 The Department shall make the submitted information
22 publicly available on the Department's Internet website or
23 such other media as appropriate in a form useful for
24 consumers.

25 (Source: P.A. 97-18, eff. 6-28-11.)

26 Section 99. Effective date. This Act takes effect July 1,

SB1993

- 59 -

LRB102 16865 BMS 22271 b

1 2021.