



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. Provides that a person who knowingly provides false information on an initial or renewal self-insurance application or accompanying financial statement is guilty of a business offense for which a fine not to exceed \$50,000 may be imposed. Effective immediately.

LRB093 19310 WGH 45046 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. A person
31 who knowingly provides false information on an initial or
32 renewal self-insurance application or accompanying

1 financial statement is guilty of a business offense for
2 which a fine not to exceed \$50,000 may be imposed.

3 If the sworn application and financial statement of any
4 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
27 such compensation, subject to the following two
28 provisions:

29 Firstly, the entire compensation liability of the
30 employer to employees working at or from one location
31 shall be insured in one such insurance carrier or shall
32 be self-insured, and

33 Secondly, the employer shall submit evidence
34 satisfactorily to the Commission that his or her entire
35 liability for the compensation provided for in this Act
36 will be secured. Any provisions in any policy, or in

1 any endorsement attached thereto, attempting to limit
2 or modify in any way, the liability of the insurance
3 carriers issuing the same except as otherwise provided
4 herein shall be wholly void.

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

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

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

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

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

22 (B) subdivision (a) (3) of this Section applies to the
23 employer or the employer is a member of a group
24 self-insurance plan as defined in subsection (1) of Section
25 4a.

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

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

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

34 The penalty shall not exceed \$1,000 for each day of work
35 for which the employer failed to make payments upon the premium
36 rates of the situs where the work or project is located in

1 Illinois, but the total penalty shall not exceed \$50,000 for
2 each project or each contract under which the work was
3 performed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (820 ILCS 310/4) (from Ch. 48, par. 172.39)

2 Sec. 4. (a) Any employer, including but not limited to
3 general contractors and their subcontractors, required by the
4 terms of this Act or by election to pay the compensation
5 provided for in this Act shall:

6 (1) File with the Commission an application for
7 approval as a self-insurer which shall include a current
8 financial statement. The application and financial
9 statement shall be signed and sworn to by the president or
10 vice-president and secretary or assistant secretary of the
11 employer if it be a corporation, or by all of the partners
12 if it be a copartnership, or by the owner if it be neither
13 a copartnership nor a corporation. An employer may elect to
14 provide and pay compensation as provided for in this Act as
15 a member of a group workers' compensation pool under
16 Article V 3/4 of the Illinois Insurance Code. If an
17 employer becomes a member of a group workers' compensation
18 pool, the employer shall not be relieved of any obligations
19 imposed by this Act. A person who knowingly provides false
20 information on an initial or renewal self-insurance
21 application or accompanying financial statement is guilty
22 of a business offense for which a fine not to exceed
23 \$50,000 may be imposed.

24 If the sworn application and financial statement of any
25 such employer does not satisfy the Commission of the
26 financial ability of the employer who has filed it, the
27 Commission shall require such employer to:

28 (2) Furnish security, indemnity or a bond guaranteeing
29 the payment by the employer of the compensation provided
30 for in this Act, provided that any such employer who shall
31 have secured his or her liability in part by excess
32 liability coverage shall be required to furnish to the
33 Commission security, indemnity or bond guaranteeing his or
34 her payment up to the amount of the effective limits of the
35 excess coverage in accordance with the provisions of this
36 paragraph, or

1 (3) Insure his or her entire liability to pay such
2 compensation in some insurance carrier authorized,
3 licensed or permitted to do such insurance business in this
4 State. All policies of such insurance carriers insuring the
5 payment of compensation under this Act shall cover all the
6 employees and all such employer's compensation liability
7 in all cases in which the last day of the last exposure to
8 the occupational disease involved is within the effective
9 period of the policy, anything to the contrary in the
10 policy notwithstanding. Provided, however, that any
11 employer may insure his or her compensation liability under
12 this Act with 2 or more insurance carriers or may insure a
13 part and qualify under Subsection 1, 2, or 4 for the
14 remainder of his liability to pay such compensation,
15 subject to the following two provisions:

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

20 Secondly, the employer shall submit evidence
21 satisfactory to the Commission that his or her entire
22 liability for the compensation provided for in this Act
23 will be secured.

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

28 The insurance or security in force to cover
29 compensation liability under this Act shall be separate and
30 distinct from the insurance or security under the "Workers'
31 Compensation Act" and any insurance contract covering
32 liability under either Act need not cover any liability
33 under the other. Nothing herein contained shall apply to
34 policies of excess liability carriage secured by employers
35 who have been approved by the Commission as self-insurers,
36 or

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

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

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

13 (A) the employer is engaged primarily in the building
14 and construction industry; and

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

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

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

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

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

33 Any penalty under this subsection (a-1) must be imposed not
34 later than one year after the expiration of the applicable
35 limitation period specified in subsection (c) of Section 6 of
36 this Act. Penalties imposed under this subsection (a-1) shall

1 be deposited into the Industrial Commission Operations Fund
2 created under Section 4 of the Workers' Compensation Act.

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 employer,
6 as the case may be, shall be subject to the approval of the
7 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. Said 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 Industrial Commission within 5 days
21 after the effective date of the policy so certified. The
22 insurance so certified shall cover all compensation liability
23 occurring during the time that the insurance is in effect and
24 no further certificate need be filed in case such insurance is
25 renewed, extended or otherwise continued by such carrier. The
26 insurance so certified shall not be cancelled or in the event
27 that such insurance is not renewed, extended or otherwise
28 continued, such insurance shall not be terminated until at
29 least 10 days after receipt by the Industrial Commission of
30 notice of the cancellation or termination of said insurance;
31 provided, however, that if the employer has secured insurance
32 from another insurance carrier, or has otherwise secured the
33 payment of compensation in accordance with this Section, and
34 such insurance or other security becomes effective prior to the
35 expiration of said 10 days, cancellation or termination may, at
36 the option of the insurance carrier indicated in such notice,

1 be effective as of the effective date of such other insurance
2 or security.

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

35 Whenever the Commission finds that any self-insured
36 employer has practiced or is practicing delay or unfairness

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

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

25 (d) Upon a finding by the Commission, after reasonable
26 notice and hearing, of the knowing and wilful failure of an
27 employer to comply with any of the provisions of paragraph (a)
28 of this Section or the failure or refusal of an employer,
29 service or adjustment company, or insurance carrier to comply
30 with any order of the Industrial Commission pursuant to
31 paragraph (c) of this Section the Commission may assess a civil
32 penalty of up to \$500 per day for each day of such failure or
33 refusal after the effective date of this amendatory Act of
34 1989. Each day of such failure or refusal shall constitute a
35 separate offense.

36 Upon the failure or refusal of any employer, service or

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

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

32 (f) No existing insurance, mutual aid, benefit or relief
33 association or department shall, by reason of anything herein
34 contained, be authorized to discontinue its operation without
35 first discharging its obligations to any and all persons
36 carrying insurance in the same or entitled to relief or

1 benefits therein.

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

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

19 (h) It shall be unlawful for any employer, insurance
20 company or service or adjustment company to interfere with,
21 restrain or coerce an employee in any manner whatsoever in the
22 exercise of the rights or remedies granted to him or her by
23 this Act or to discriminate, attempt to discriminate, or
24 threaten to discriminate against an employee in any way because
25 of his exercise of the rights or remedies granted to him by
26 this Act.

27 It shall be unlawful for any employer, individually or
28 through any insurance company or service or adjustment company,
29 to discharge or to threaten to discharge, or to refuse to
30 rehire or recall to active service in a suitable capacity an
31 employee because of the exercise of his or her rights or
32 remedies granted to him or her by this Act.

33 (i) If an employer elects to obtain a life insurance policy
34 on his employees, he may also elect to apply such benefits in
35 satisfaction of all or a portion of the death benefits payable
36 under this Act, in which case, the employer's premium for

1 coverage for benefits under this Act shall be reduced
2 accordingly.

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

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.