

ENROLLED HOUSE  
BILL NO. 2354

By: Kinnamon, Dunlap,  
Phillips, Hefner,  
Williams, Sullivan and  
Smith (Bill) of the  
House

and

Haney of the Senate

An Act relating to workers' compensation insurance; authorizing workers' compensation equivalent insurance products; stating duties of the Insurance Commissioner and the State Board for Property and Casualty Rates; providing criteria for the approval of such products; stating legislative intent; imposing requirements on certain insurers; providing for certain rules; amending 85 O.S. 1991, Section 61, as last amended by Section 12, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1993, Section 61), which relates to ways of securing compensation to employees; modifying ways of securing compensation; modifying requirements for proof of financial ability; amending 85 O.S. 1991, Section 177, as amended by Section 23, Chapter 245, O.S.L. 1993 (85 O.S. Supp. 1993, Section 177), which relates to the Workers' Compensation Administration Fund; subjecting workers' compensation equivalent insurance products to certain tax; amending 36 O.S. 1991, Section 2003, which relates to the Oklahoma Property and Casualty Insurance Guaranty Association Act; modifying the application of the Oklahoma Property and Casualty Insurance Guaranty Association Act; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 65 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any provision of the Oklahoma Statutes to the contrary, an employer may secure workers' compensation to his employees through an approved workers' compensation equivalent insurance product authorized by this section.

B. All workers' compensation equivalent insurance products shall be subject to the approval of the Insurance Commissioner and the State Board for Property and Casualty Rates and shall comply with Articles 9 and 36 of Title 36 of the Oklahoma Statutes and Title 85 of the Oklahoma Statutes. No workers' compensation equivalent insurance product shall be approved unless the following requirements are complied with:

1. The product is issued by an insurance carrier admitted to do business in the state that has a surplus in regard to policyholders of at least Fifty Million Dollars (\$50,000,000.00);

2. The benefits provided for injured employees under the product at least equal the benefits required by Title 85 of the Oklahoma Statutes;

3. Contributions from employees are prohibited as provided in Section 46 of Title 85 of the Oklahoma Statutes;

4. The contract contains all provisions required of a standard policy of workers' compensation insurance issued in this state, including a workers' compensation benefits policy and an employer liability policy, neither of which policies may be canceled independently of the other. All coverage parts and policy contracts must comply with Titles 36 and 85 of the Oklahoma Statutes;

5. The company providing a workers' compensation equivalent insurance product is required to file statistical data with a designated statistical agency pursuant to Section 934 of Title 36 of the Oklahoma Statutes;

6. The product complies with such other standards consistent with this section as may be prescribed by rules promulgated by the Insurance Commissioner in consultation with the State Board for Property and Casualty Rates;

7. The product is a separate policy of insurance from and administered separately from any other insurance offered by the employer and is separate from any employee benefit plan or policy of the employer which employee benefit plan or policy is governed by the provisions of the Employee Retirement Income Security Act, 29 U.S.C., Section 1001 et seq;

8. The employer certifies in writing to the Workers' Compensation Court that the policy is obtained solely to comply with the workers' compensation laws of Oklahoma; and

9. The product is covered by a guaranty fund which provides payment to the claimant in the full amount of a covered claim for benefits under a workers' compensation insurance coverage.

C. It is the intent of the Legislature that any workers' compensation equivalent insurance product which is approved by the Insurance Commissioner and the State Board for Property and Casualty Rates pursuant to this section shall preserve an employer's immunity from civil action in district court resulting from an injury which is compensable under Title 85 of the Oklahoma Statutes.

D. On the annual effective date of the approved workers' compensation equivalent insurance product, the insurer shall submit to the State Board for Property and Casualty Rates a current Oklahoma Rate Exhibit (Form A-2) and a current Oklahoma/Countrywide 5-Year Experience and Expense Exhibit.

E. The Insurance Commissioner, in consultation with the State Board for Property and Casualty Rates, shall promulgate such rules as may be necessary to implement the provisions of this section.

SECTION 2. AMENDATORY 85 O.S. 1991, Section 61, as last amended by Section 12, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1993, Section 61), is amended to read as follows:

Section 61. A. An employer shall secure compensation to his employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation with any stock corporation, mutual association, or other concerns authorized to transact the business of workers' compensation insurance in this state, or by exchanging contracts of indemnity or interinsurance, pursuant to reasonable rules prescribed by the Administrator providing for and securing the payment of the compensation provided for in the Workers' Compensation Act. When an

insurer issues a policy to provide workers' compensation benefits pursuant to the provisions of the Workers' Compensation Act, the insurer shall file, or cause to be filed, with the Administrator a notice in such form and detail as the Administrator may prescribe by rule. The notice shall contain the name, address, and principal occupation of the employer, the number, effective date, and expiration date of the policy, and such other information as may be required by the Administrator. The notice shall be filed by the insurer within thirty (30) days after the effective date of the policy. Any insurer who fails to file the notice required by this subsection shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars (\$1,000.00);

2. By obtaining and keeping in force guaranty insurance with any company authorized to do guaranty business in this state. Each company that issues such guaranty insurance shall file a copy of the contract with the Administrator within thirty (30) days after the effective date of the contract. Any company that fails to file a copy of the contract as required by this subsection shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars (\$1,000.00);

~~3. Subject to the approval of the Administrator, by entering into or continuing an agreement with his employees to provide a scheme of compensation, benefits, or insurance in lieu of the compensation and insurance provided for in the Workers' Compensation Act. The scheme shall not provide less than the benefits secured by the Workers' Compensation Act nor vary the compensation period for disabilities or the provisions of the Workers' Compensation Act with respect to periodic payments or the percentage that those payments shall bear to weekly wages, except that the sums required may be increased. The Administrator shall approve a scheme that provides for contributions by workers, only when it confers benefits commensurate with such contributions and in addition to those required by the Workers' Compensation Act~~ By obtaining and keeping in force a workers' compensation equivalent insurance product approved by the Insurance Commissioner and the State Board for Property and Casualty Rates pursuant to Section 1 of this act; or

4. By furnishing satisfactory proof to the Administrator of the employer's financial ability to pay such compensation. The Administrator, pursuant to rules adopted by the Court or the Administrator for an individual self-insured or a group self-insurance association, shall require an employer that has:

- a. less than one hundred ~~(100)~~ employees or less than One Million Dollars (\$1,000,000.00) in net assets to:
  - (1) deposit with the Administrator securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the Administrator which shall be at least an average of the yearly claims for the last three (3) years; or
  - (2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of the Workers' Compensation Act.
- b. one hundred ~~(100)~~ or more employees and One Million Dollars (\$1,000,000.00) or more in net assets to:
  - (1) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount determined by the Administrator which shall be at

- least an average of the yearly claims for the last three (3) years; or
- (2) ~~secure excess insurance~~ provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of the Workers' Compensation Act.

The Administrator may waive the requirements of this paragraph in an amount which is commensurate with the ability of the individual self-insured or group self-insurance association to pay the benefits required by the provisions of the Workers' Compensation Act. Irrevocable letters of credit required by this paragraph shall contain such terms as may be prescribed by the Administrator and shall be issued for the benefit of the Workers' Compensation Court by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

B. An employer, upon application to become a member of a group self-insurance association, shall file with the Administrator of the Workers' Compensation Court a notice, in such form as prescribed by the Administrator of the Court, acknowledging that the employer, by entering into a group self-insurance association, accepts joint and several liability. Such notice shall be submitted to the Workers' Compensation Court with the application for membership.

C. An employer who fails to comply with the provisions of this section shall be subject to the penalty provided for in Section 12 of this title.

D. Any employer that knowingly provides false information to the Administrator for purposes of becoming self-insured or a group self-insurance association shall be subject to the perjury laws of this state.

E. The provisions of this title shall not be construed to limit or restrict the ability of political subdivisions of this state or employers subject to the provisions of the Workers' Compensation Act from joining together to form group self-insurance associations pursuant to law or rules promulgated by the Court or the Administrator.

SECTION 3. AMENDATORY 85 O.S. 1991, Section 177, as amended by Section 23, Chapter 245, O.S.L. 1993 (85 O.S. Supp. 1993, Section 177), is amended to read as follows:

Section 177. A. There is hereby established with the State Treasurer a Workers' Compensation Administration Fund to be used for the costs of administering the Workers' Compensation Act and for other purposes pursuant to legislative appropriation.

No money on deposit with the State Treasurer to the credit of the Workers' Compensation Administration Fund shall be expended except pursuant to legislative appropriation.

B. For the purpose of providing funds for the Workers' Compensation Administration Fund, each mutual or interinsurance association, stock company, the State Insurance Fund or other insurance carrier writing workers' compensation insurance in this state or providing a workers' compensation equivalent insurance product as provided in Section 1 of this act shall pay to the Oklahoma Tax Commission a tax at a rate of one percent (1%) of all gross direct premiums written during each quarter of the calendar year for workers' compensation insurance on risks located in this state after deducting from such gross direct premiums, return premiums, unabsorbed portions of any deposit premiums, policy dividends, safety refunds, savings and other similar returns paid or credited to policyholders. Such payments to the Tax Commission shall be made not later than the fifteenth day of the month

following the close of each quarter of the calendar year in which such gross direct premium is collected or collectible. Contributions made by insurance carriers and the State Insurance Fund, under the provisions of this section, to the Workers' Compensation Administration Fund shall be considered losses for the purpose of computing workers' compensation rates.

C. When an employer is authorized to become a self-insurer, the Administrator as directed by the Court shall so notify the Oklahoma Tax Commission, giving the effective date of such authorization. The Oklahoma Tax Commission shall then assess and collect from the employers carrying their own risk a tax at the rate of two percent (2%) of the total compensation for permanent total disability awards, permanent partial disability awards and death benefits paid out during each quarter of the calendar year by the employers. Such tax shall be payable by the employers and collected by the Oklahoma Tax Commission according to the provisions of this section regarding payment and collection of the tax created in subsections B, D, E and F of this section.

D. It shall be the duty of the Oklahoma Tax Commission to collect the payments provided for herein. The Oklahoma Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section. The Oklahoma Tax Commission may also enforce payments by proceeding in accordance with the provisions of Section 42 of ~~Title 85 of the Oklahoma Statutes~~ this title.

E. The Oklahoma Tax Commission shall pay monthly to the State Treasurer to the credit of the Workers' Compensation Administration Fund all monies collected under the provisions of this section.

F. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made to the Workers' Compensation Administration Fund.

SECTION 4. AMENDATORY 36 O.S. 1991, Section 2003, is amended to read as follows:

Section 2003. The Oklahoma Property and Casualty Insurance Guaranty Association Act shall apply to workers' compensation equivalent insurance products approved pursuant to Section 1 of this act and to all kinds of direct insurance, except life, accident, health, ocean marine insurance, surety and title, as defined in Sections 702, 703, 705, 708 and 709 of ~~Title 36 of the Oklahoma Statutes~~ this title, mortgage or financial guaranty insurance or other forms of insurance offering protection against investment risks, credit insurance, insurance of warranties or service contracts, annuities, vendors single interest insurance, collateral protection insurance, and any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of investment risk.

SECTION 5. This act shall become effective September 1, 1994.

Passed the House of Representatives the 31st day of March, 1994.

Speaker of the House of  
Representatives

Passed the Senate the 30th day of March, 1994.

President of the Senate