

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2354

By: Kinnamon

AS INTRODUCED

An Act relating to workers' compensation insurance;  
authorizing a pilot project for a workers'  
compensation equivalent insurance product;  
specifying duties of the Insurance Commissioner and  
the State Board for Property and Casualty Rates;  
specifying certain approval criteria; stating  
legislative intent; imposing requirements on  
certain insurers; providing an expiration date;  
imposing a tax on certain policies of coverage;  
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; providing for  
taxation of certain policies of coverage; 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, a workers' compensation equivalent insurance product

pilot project is authorized under the provisions of this section and shall comply with Articles 9 and 36 of Title 36 of the Oklahoma Statutes and Title 85 of the Oklahoma Statutes. The Insurance Commissioner of the State of Oklahoma and the State Board for Property and Casualty Rates shall adopt rules to enable employers to provide the employees with workers' compensation benefits through a workers' compensation equivalent insurance product. The Insurance Commissioner and the State Board for Property and Casualty Rates shall review all pilot project proposals and shall approve a proposal only if it confers benefits upon injured employees which are equivalent to the benefits set forth in Title 85 of the Oklahoma Statutes and 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 policy. Unless otherwise approved, the pilot project's maximum capacity for all participating companies shall not exceed Fifty Million Dollars (\$50,000,000.00) in annual written premiums. Furthermore, the maximum capacity for each participating company may not exceed Twenty-five Million Dollars (\$25,000,000.00) in annual written premiums. No such workers' compensation equivalent insurance product shall be approved unless it complies with the following requirements:

1. The product shall be issued by an insurance carrier admitted to do business in the state having a surplus in regard to policyholders of at least Seventy-five Million Dollars (\$75,000,000.00);

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

3. No contributions may be required from employees as provided in Section 46 of Title 85 of the Oklahoma Statutes;

4. The contract must contain 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, and one of these policies may not be canceled independently of the other policy. All coverage parts and policy contracts must comply with Titles 36 and 85 of the Oklahoma Statutes;

5. Any company participating in the workers' compensation equivalent insurance product pilot program shall be required to file statistical data to a designated statistical agency pursuant to Section 934 of Title 36 of the Oklahoma Statutes;

6. Such other standards as are necessary to ensure the compliance of such workers' compensation equivalent insurance product with the provisions of this section as are jointly promulgated by rule of the State Board for Property and Casualty Rates and the Insurance Commissioner;

7. The product shall be a separate policy of insurance from and administered separately from any other insurance offered by the employer and 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 Insurance Commissioner that the policy is obtained solely to comply with the Oklahoma workers' compensation laws; 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.

B. Such workers' compensation equivalent insurance product may be terminated by the Insurance Commissioner on reasonable notice and hearing to the interested parties if it shall appear that the system is not fairly administered or if its operation shall disclose defects threatening its solvency or if for any substantial reason it fails to accomplish the purpose of this section and is not in compliance with the provisions of this section.

C. It is the specific intent of the 2nd Session of the 44th Oklahoma Legislature that any workers' compensation equivalent insurance product which is approved by the State Board for Property and Casualty Rates and the Insurance Commissioner pursuant to this section shall preserve an employer's immunity from civil action 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 option provided by this section shall expire July 1, 1998, and all policies issued pursuant hereto must have expiration dates of no later than said date.

F. Any policies of coverage issued pursuant to this section shall be subject to the tax provided for in Section 177 of Title 85 of the Oklahoma Statutes.

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; 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.

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.

F. Any policies of coverage issued pursuant to this section shall be subject to the tax provided for in Section 177 of this title.

SECTION 3. This act shall become effective September 1, 1994.

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