

ENGROSSED HOUSE
BILL NO. 2906

By: Kinnamon

(workers' compensation - amending 85 O.S., Sections 2b,
131a and 134 - Workers' Compensation Act - amending 36
O.S., Section 309.3 - amending 74 O.S., Section 840-2.14
-

effective date)

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 2b, as amended by Section 14, Chapter 328, O.S.L. 1995 (85 O.S. Supp. 1995, Section 2b), is amended to read as follows:

Section 2b. A. All public entities of this state, their agencies and instrumentalities, authorities and public trusts of which they are beneficiaries shall provide workers' compensation to their employees and elected officials engaged in either governmental or proprietary functions in accordance with this section. Such provision of compensation shall be paid for out of the funds of such public entities.

1. The state and all its institutions of higher education, departments, instrumentalities, institutions and public trusts of which they are beneficiaries shall insure against their liability for workers' compensation with the State Insurance Fund ~~and shall not insure with any other insurance carrier unless the State Insurance Fund refuses to accept the risk when the application for insurance is made, or unless specifically authorized by law.~~

~~The state and all its institutions of higher education, departments, instrumentalities, institutions and public trusts of which they are beneficiaries may self-insure under rules and regulations promulgated by the State Insurance Fund. Such self-insurance may only be obtained through the State Insurance Fund. The state and all its institutions of higher education, departments, instrumentalities, institutions, and public trusts so electing to self-insure shall pay premiums quoted by the State Insurance Fund. The State Insurance Fund shall collect said premiums, pay all claims and provide for excess insurance. All dividends or profits accumulating from such self-insurance program shall be refunded to the participants on a formula devised by the State Insurance Fund, or, if it can be demonstrated each year that such policy will result in a lower cost than one with the State Insurance Fund, through any combination of the following may:~~

- ~~a. self-insure and make any appropriation of funds to cover their risks, or~~
- ~~b. insure with other insurance carriers licensed in the State of Oklahoma.~~

2. All counties, cities and towns, their instrumentalities and public trusts of which they are beneficiaries shall insure against their liability for workers' compensation with the State Insurance Fund; or through any combination of the following may:

- a. self-insure and make any appropriation of funds to cover their risk,
- b. secure reinsurance or excess insurance over and above a self-insurance retention in any manner authorized by subsections B and C of Section 167 of Title 51 of the Oklahoma Statutes,
- c. secure compensation for their employees in the manner provided in the ~~Political Subdivision~~ Governmental

Tort Claims Act, subsection C of Section 167 of Title 51 of the Oklahoma Statutes, or

- d. insure with other insurance carriers licensed in the State of Oklahoma.

As used in this section, "city" or "town" includes any public trust or authority of which the city or town is beneficiary.

3. Boards of education, their instrumentalities and public trusts of which they are beneficiaries shall insure against their liability for workers' compensation with the State Insurance Fund; or through any combination of the following may:

- a. self-insure and make any appropriation of funds to cover their risk,
- b. secure reinsurance or excess insurance over and above a self-insured retention in any manner authorized by subsection B of Section 168 of Title 51 of the Oklahoma Statutes, or
- c. insure with other insurance carriers licensed in the State of Oklahoma.

B. In addition to any other provision of this section, city, county, city-county and public trust hospitals may insure with other insurance carriers licensed in this state if it can be demonstrated to the governing body of said hospital prior to the inception date of a workers' compensation policy each year that such policy will result in a lower cost than one with the State Insurance Fund.

C. For purposes of the Workers' Compensation Act, all contracts of employment for state, county, municipal and state funded educational entities and public trusts will be considered to have been entered into in this state regardless of where the work is performed.

D. Where a person who is employed by the state, a municipality or a county, or by any political subdivisions thereof, and who, while off-duty from said employment, is employed by a private

employer, the private employer alone shall be liable for compensation under the Workers' Compensation Act for any injury of the person or his death arising out of and in the course of employment which occurs during the hours of his actual employment by the private employer. The provisions of Section 11 of this title shall be applicable to private employers specified in this subsection. The provisions of this subsection shall not relieve the state, a municipality or a county, or any political subdivision thereof, from providing disability benefits to which a person may be entitled pursuant to a pension or retirement plan. Provided, further, the provisions of this subsection shall not preclude an employee or group of employees so employed from providing separate compensation coverage for off-duty employment by a private employer.

SECTION 2. AMENDATORY 85 O.S. 1991, Section 131a, is amended to read as follows:

Section 131a. A. There is hereby created a Board to be known as the "Board of Managers of the State Insurance Fund", which Board shall have supervision over the administration and operation of the State Insurance Fund, and shall be composed of nine (9) members as follows:

1. The Director of State Finance or a designee;
2. The Lieutenant Governor or a designee;
3. The State Auditor and Inspector or a designee;
4. The Director of Central Purchasing of the ~~Office of Public Affairs~~ Department of Central Services;
5. One member appointed by the Governor;
6. Two members appointed by the Speaker of the House of Representatives, one of whom shall be representative of employers; and
7. Two members appointed by the President Pro Tempore of the Senate, one of whom shall be representative of employees.

The appointed members of the Board shall serve at the pleasure of the appointing authority.

B. The members of the Board shall elect annually from their number a Chairman and a Secretary. The Secretary shall keep true and complete records of all proceedings of the Board. Said Board shall meet ~~monthly~~ quarterly, and at all other times when a meeting is called by the Chairman, and at such meetings the Board may consider the condition of the State Insurance Fund and quarterly shall make a detailed examination into the condition of its reserves and investments and at each meeting may examine all other matters relating to the administration of such fund. The time and place of the regular meetings and the manner in which special meetings may be called shall be set forth in the bylaws of the said Fund. Except as otherwise provided in this act or in the bylaws, all actions shall be taken by the affirmative vote of a majority of the Board members present at a meeting, except that no investment policy and no amendment of bylaws shall be valid unless authorized or ratified by the affirmative vote of at least four Board members.

C. Appointed members of the Board shall be reimbursed for expenses as provided in the State Travel Reimbursement Act. Said reimbursement, not to exceed thirty (30) days in any calendar year, shall be paid only when the Board is transacting official business. Any reimbursement in excess of thirty (30) days shall be approved by a majority of the Board. The Board shall have access to all records and books of account and shall have power to require the presence or appearance of any officer or employee of the State Insurance Fund. All information obtained by the members of the Board shall be confidential unless disclosed by order of the Board.

D. No person or organization in a position to influence official action of members of the Board of Managers of the State Insurance Fund, the Commissioner, and the employees of the State Insurance Fund shall furnish presents, gratuities, transportation,

lodging, educational seminars, conferences, meetings, or similar functions to the Board of Managers of the State Insurance Fund, the Commissioner, and the employees of the State Insurance Fund other than as provided by ~~the Oklahoma Campaign Compliance and Ethical Standards Act~~ law and the rules of the Ethics Commission.

SECTION 3. AMENDATORY 85 O.S. 1991, Section 134, as amended by Section 40, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1995, Section 134), is amended to read as follows:

Section 134. A. In conducting the business and affairs of the State Insurance Fund, the Commissioner of the said fund, or other officer to whom such power and authority may be delegated by the Commissioner, as provided by Section 133 of this title, shall have full power and authority:

1. To enter into contracts of insurance, insuring employers against liability for compensation, and insuring to employees and other persons entitled thereto compensation as provided by the Workers' Compensation Act, Section 1 et seq. of this title;

2. To decline to insure any risk in which the minimum requirements of the law with regard to construction, equipment and operation are not observed, or which is beyond the safe carrying of the State Insurance Fund, but shall not have power or authority, except as otherwise provided in this act to refuse to insure any compensation risk tendered with the premium therefor;

3. To enter into contracts of insurance insuring persons, firms and corporations against loss, expense or liability by reason of bodily injury, death by accident, occupational disability, or occupational disease suffered by employees for which the insured may be liable or have assumed liability;

4. To reinsure any risk or any part ~~thereof~~ of any risk of the State Insurance Fund;

5. To inspect and audit, or cause to be inspected and audited the pay rolls of employers applying for insurance against liability for compensation;

6. To contract with physicians, surgeons and hospitals for medical and surgical treatment and the care and nursing of injured persons entitled to benefits from said fund;

7. To meet the reasonable expenses of conducting the business of the State Insurance Fund;

8. To produce a reasonable surplus to cover catastrophe hazard; and

9. To administer a program in compliance with Section 924.3 of Title 36 of the Oklahoma Statutes, whereby employers may appeal rating classification decisions which are disputed. The State Insurance Fund shall notify employers of the availability of the program.

B. The State Insurance Fund must be funded through actuarially sound rates and premiums charged to its policyholders.

C. The State Insurance Fund shall establish and use rates and rating plans to assure that it is self-funding while those rates are in effect.

D. No later than September 1 of each year, the State Insurance Fund shall obtain an independent actuarial certification of the results of its operations for prior years.

E. Any premium or assessments collected by the State Insurance Fund in excess of the amount necessary to fund its projected ultimate incurred losses and expenses and not paid to policyholders insured under the State Insurance Fund in conjunction with dividend programs shall be retained by the State Insurance Fund.

F. State Insurance Fund losses are the sole and exclusive responsibility of the State Insurance Fund, and payment for such losses must be funded in accordance with this section and must not come, directly or indirectly, from insurers or any guaranty

association for such insurers, except for reinsurance purchased by the State Insurance Fund.

SECTION 4. AMENDATORY 36 O.S. 1991, Section 309.3, is amended to read as follows:

Section 309.3 A. Upon determining that an examination should be conducted, the Insurance Commissioner or ~~his~~ a designee ~~shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination, pursuant to the competitive bidding requirements of the Central Purchasing Act, shall requisition the services of one or more examiners to perform the examination.~~ In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The Commissioner may also employ such other guidelines or procedures as the Commissioner may deem appropriate. The Commissioner shall rotate the actuaries used to perform examinations on a company.

B. Every company or person from whom information is sought, its officers, directors and agents shall provide to the examiners appointed under subsection A of this section timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person shall facilitate such examination and aid in such examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the Commissioner's jurisdiction. Any such

proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to Section 619 of ~~Title 36 of the Oklahoma Statutes~~ this title.

C. The Commissioner or any of his examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the Commissioner may petition a court of competent jurisdiction, and upon proper showing, the Court may enter any order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

D. When making an examination under Sections ~~1 through 7 of this act~~ 309.1 through 309.7 of this title, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination.

E. Nothing contained in Sections ~~1 through 7 of this act~~ 309.1 through 309.7 of this title shall be construed to limit the Commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

F. Nothing contained in Sections ~~1 through 7 of this act~~ 309.1 through 309.7 of this title shall be construed to limit the Commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance

of any legal or regulatory action which the Commissioner may deem appropriate.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 840.22A, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 14, Chapter 283, O.S.L. 1994 (74 O.S. Supp. 1995, Section 840-2.14), is amended to read as follows:

Section 840-2.14 A. The intent of the Legislature is to increase individual agency skill and accountability in managing the costs associated with personnel and in applying controls that will enhance the ability of the State of Oklahoma to manage the overall costs of human resources as efficiently as possible, while continuing to maintain fairness to employees.

B. All agencies, boards, and commissions shall report all reallocation decisions for both classified and unclassified positions and all adjustments to pay grades or salary assignments for classes in the unclassified service to the Office of Personnel Management on a quarterly basis. The Office of Personnel Management shall submit the quarterly reports to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives, along with an analysis of statewide reallocation decisions.

C. All agencies, boards, and commissions shall report to the Office of Personnel Management on a quarterly basis all transactions in both the classified and unclassified service involving the establishment of new positions that have not been authorized specifically by legislative action. The Office of Personnel Management shall forward the quarterly reports to the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives, accompanied by an analysis of agency decisions concerning such positions.

D. As a further control on human resource costs, the Governor may declare a financial emergency or implement a freeze in hiring,

by declaring this section to be in effect, provided, however, the University Hospitals Authority, including all hospitals or other institutions operated by the University Hospitals Authority, shall not be subject to the provisions of this subsection. The State Insurance Fund shall not be subject to the provisions of this subsection. During such periods, no audits of classified positions or reallocation of unclassified positions shall be initiated or conducted at the request of an agency except at the direction of the Governor. The provisions of the Oklahoma Personnel Act relating to agency-requested audits may be suspended during such periods to the extent that they are in conflict with this section. Provided, an audit at the request of an employee who files a classification grievance shall be conducted during such periods in accordance with the provisions of Section ~~840.22~~ 840-4.3 of this title.

E. The Office of Personnel Management shall establish due dates and specify the format for reports required by this section. Agencies that do not respond by the due dates shall be identified in a special section of the quarterly analysis reports forwarded to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives.

F. The provisions of this section shall not be construed to suspend the responsibility of any agency to ensure that the duties and responsibilities assigned to an employee are consistent with the current classification of the employee.

SECTION 6. This act shall become effective November 1, 1996.

Passed the House of Representatives the 6th day of March, 1996.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1996.

President

of the Senate