STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1061 By: Key

AS INTRODUCED

An Act relating to workers' compensation; amending 20 O.S. 1991, Section 30.2, which relates to divisions of the Court of Appeals; creating the Workers' Compensation Appellate Division; amending 36 O.S. 1991, Sections 901, as amended by Section 1, Chapter 331, O.S.L. 1994, 902.2, as last amended by Section 3, Chapter 129, O.S.L. 1994, 903, as amended by Section 4, Chapter 129, O.S.L. 1994, 924.2, as last amended by Section 5, Chapter 129, O.S.L. 1994, and 929 (36 O.S. Supp. 1994, Sections 901, 902.2, 903 and 924.2), which relate to the Oklahoma Insurance Rating Act; excepting workers' compensation insurance from the Oklahoma Insurance Rating Act; amending Section 27, Chapter 349, O.S.L. 1993, as amended by Section 16 of Enrolled House Bill No. 1002 of the 2nd Extraordinary Session of the 44th Oklahoma Legislature, which relates to the Workers' Compensation Fraud Unit; requiring investigation of certain claims for compensation; regulating certain conduct of attorneys and nonlawyers; providing penalty; repealing Section 22, Chapter 349, O.S.L. 1993 (36 O.S. Supp. 1994, Section 901.5) and 36 O.S. 1991, Section 924.3, which relate to the Oklahoma

Insurance Rating Act; providing for codification; and declaring an emergency.

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

SECTION 2. AMENDATORY 20 O.S. 1991, Section 30.2, is amended to read as follows:

Section 30.2 A. The Court of Appeals ~~shall~~, upon the ~~member~~ members being elected or appointed and qualified, shall consist of four ~~(4)~~ permanent divisions. Two divisions shall sit in Tulsa County and two divisions shall sit in Oklahoma County.

B. Each division shall consist of three ~~(3)~~ Judges, at least two of whom shall concur in any decision and each division shall select a presiding Judge who shall act in that capacity without additional compensation. The assignment of Judges to the divisions shall be effected by the Supreme Court. Judges may be transferred from one division to another.

C. One of the divisions that sits in Oklahoma County shall be the Workers' Compensation Appellate Division. All cases appealed to the Supreme Court from the Workers' Compensation Court, if assigned by the Supreme Court, shall be assigned to the Workers' Compensation Appellate Division.

SECTION 3. AMENDATORY 36 O.S. 1991, Section 901, as amended by Section 1, Chapter 331, O.S.L. 1994 (36 O.S. Supp. 1994, Section 901), is amended to read as follows:

Section 901. A. This article applies to every insurer including every stock or mutual insurer, reciprocal or interinsurance exchange or Lloyd's association authorized by any provisions of the laws of this state to transact any of the kinds of insurance covered by this article except:

1. Life insurance;

2. Accident and health insurance;

3. Reinsurance, other than joint reinsurance, to the extent stated in this act;

4. Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

5. Insurance of hulls of aircraft, including their accessories and equipment, or against liability arising out of the ownership, maintenance or use of aircraft;

6. Insurers exempted under Section 110 of this title;

7. Title insurance; ~~and~~

8. Insurance of bail bonds; and

9. Workers' compensation insurance.

B. This article shall be administered by the State Board for Property and Casualty Rates.

SECTION 4. AMENDATORY 36 O.S. 1991, Section 902.2, as last amended by Section 3, Chapter 129, O.S.L. 1994 (36 O.S. Supp. 1994, Section 902.2), is amended to read as follows:

Section 902.2 A. The Board when reviewing a filing shall give due consideration to the following when, in its discretion, it determines that such factor or factors are applicable:

1. Past loss experience within and outside this state;

2. Prospective loss experience within and outside this state;

3. Physical hazards insured;

4. Safety and loss prevention programs;

5. Underwriting practices and judgment;

6. Catastrophe hazards;

7. Reasonable underwriting profit and contingencies;

8. Dividends, savings or unabsorbed premium deposits allowed or returned to policyholders;

9. Past expenses within and outside this state;

10. Prospective expenses within and outside this state;

11. Existence of classification rates for a given risk;

12. Investment income within and outside this state;

13. Rarity or peculiarity of the risks within and outside this state;

14. ~~In the case of workers' compensation rates, differences in the hazard levels of different geographical regions of the state based on Court of Criminal Appeals judicial districts;~~

~~15.~~ All other relevant factors within and outside this state;

~~16.~~ 15. In the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business in this state for not less than the previous five (5) years; and

~~17.~~ 16. Whether existing rates continue to meet the standards of this article.

B. The Board shall determine the weight to be accorded each of the factors contained in subsection A of this section.

C. Past or prospective expenses within or outside this state pursuant to paragraphs 9 and 10 of subsection A of this section shall not include prohibited expenses for advertising or prohibited expenses for membership in organizations.

1. For the purpose of this subsection:

a. "prohibited expenses for advertising" means the cost of advertising in any media the purpose of which is to influence legislation or to advocate support for or opposition to a candidate for public office;

b. "prohibited expenses for advertising" shall not mean:

(1) any communication to customers and the public of information regarding an insurer's insurance products,

(2) any communication to customers and the public of safety, safety education or loss prevention information,

(3) periodic publications or reports to stockholders or members required by the certificate or bylaws of the insurer,

(4) any communication with customers and the public which provides instruction in the use of the insurer's products and services, or

(5) any communication with customers and the public for giving notice or information required by law or otherwise necessary;

c. "prohibited expenses for membership" means the cost of membership in any organization which conducts substantial efforts, including but not limited to prohibited expenses for advertising, the purpose of which is to influence legislation or to advocate support for or opposition to a candidate for public office; and

d. "prohibited expenses for membership" shall not mean the cost of membership in rating organizations or other organizations the primary purpose of which is to provide statistical information on losses.

2. The Board shall promulgate rules and regulations for the implementation of this subsection.

SECTION 5. AMENDATORY 36 O.S. 1991, Section 903, as amended by Section 4, Chapter 129, O.S.L. 1994 (36 O.S. Supp. 1994, Section 903), is amended to read as follows:

Section 903. A. 1. Except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every insurer governed by the provisions of this act shall file with the Board, either directly or through a licensed rating organization of which it is a member or subscriber, all rates and rating plans and classifications, class rates, rating schedules, loss cost and all other supplementary rate information

and every modification of any of the foregoing, which it uses or proposes to use in this state except as otherwise provided in this section.

2. The Board shall send a notification of filing of rates to any person who annually requests, in writing, to be notified of filings pursuant to regulation of the Board.

3. The Attorney General shall be notified within ten (10) days, in writing, of each:

a. filing of rates, whether for prior approval or for immediate use, and

b. certification of completion of a filing.

4. The Attorney General shall be notified at least ten (10) days in advance, in writing, of each:

a. meeting of the Board, and

b. hearing conducted by the Board.

B. Rates, rating plans, classifications, schedules, loss cost and other information shall be deemed approved thirty (30) calendar days following certification of completion of the filing as provided in this act unless, within the thirty (30) calendar-day period:

1. The Board by majority vote, approves, disapproves or approves with modification, the filing at one of its scheduled meetings or hearings;

2. The Board orders a formal hearing on the filing; or

3. The Board or the Commissioner, if a quorum of the Board is not available at the next regularly scheduled meeting, extends this period for one additional thirty (30) calendar-day period.

C. Nothing in this act shall be construed to require any filing for approval of rates, rating plans, classifications, schedules, loss cost and other information approved by the Board prior to the effective date of this act.

D. Any formal hearing ordered by the Board shall be completed and a written order on the filing issued by the Board within ninety

(90) calendar days from the date of the order setting the formal hearing, or the filing shall be deemed approved at the expiration of the ninety-day period.

E. 1. Rate filings on homeowner's insurance shall become effective when filed, or upon a future date specified in such filing, and shall remain effective unless the Board reviews and disapproves the filing because such rate is not in compliance with the standards set out in this act. Provided, if a rate filing is disapproved because it is excessive or unfairly discriminatory, the Board may order return of premium to the policyholders; plus interest thereon at an annual rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified by the State Treasurer on the first regular business day in January of each year, plus four percentage points.

2. For purposes of this subsection, homeowner's insurance shall mean:

a. insurance which combines, on an individual basis, property and liability insurance required to protect an individual's investment in his home or contents thereof, commonly called homeowner's or renter's insurance and specifically including insurance on a farm dwelling and attached or detached garage and their contents,

b. dwelling fire insurance, or

c. individual fire insurance on dwelling contents.

3. Any such rate shall remain in effect as provided in subsection F of this section.

F. Filed rates, whether made by an insurer or by a rating organization, and whether or not prior approval is required under the flex rating, file and use or automatic rate reduction system, shall be effective for a period of not more than four (4) years from the effective date of the insurer's or rating organization's rate

filing unless otherwise changed by the Board, or unless superceded by a subsequent filing approved pursuant to the procedures set out herein. At the end of the four-year period, the rates expire, and for an insurer to continue to write the insurance coverage to which the expired rates applied, a new rate filing is required. All rates in effect on or before September 1, 1991, shall expire September 1, 1995.

G. Rates or risks which are not by general custom of the business, or because of rarity or peculiar characteristics, written according to normal classification or rating procedure and which cannot be practicably filed before they are used, may be used before being filed. The Board may make such examination as it may deem advisable to ascertain whether any such rates meet the requirements of this act.

H. Whenever it shall be made to appear to the Board, either from its own information or from complaint of any party alleging to be aggrieved thereby, that there are reasonable grounds to believe that the rates on any or on all risks or classes of risks or kinds of insurance within the scope of this article are not in accordance with the terms of this act, it shall be the duty of the Board to investigate and determine whether or not any or all of such rates meet the requirements of this act.

I. When investigating rates to determine whether or not they comply with the provisions of this act, the previously approved filing shall not be changed, altered, amended, or held in abeyance until after completion of the investigation and an opportunity for hearing in accordance with the provisions of this article. Following such hearing, the Board shall enter its order in accordance with the provisions of this act. The effective date of such order shall not be less than thirty (30) days nor more than sixty (60) days after the date of the order unless the Board determines that, in the public interest, a shorter or longer period

is appropriate; provided, the filer has adequate time to implement such rate change. Any such order shall apply prospectively only and shall not affect premiums collected on new or renewal policies issued prior to the effective date of this order.

J. Under such rules and regulations as it shall adopt, the Board may, by written order, suspend or modify the requirements of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The Board may make such examination as it may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in this act. ~~This subsection shall not apply to workers' compensation filings.~~

K. Any filing with respect to fidelity, surety or guaranty bonds shall, however, be deemed approved from the date of filing and shall thereafter be subject to the provisions of subsection F of this section.

L. If the Board finds that a filing does not meet the requirements of this act, it shall send to the insurer or rating organization which made such filing, written notice of disapproval of such filing, specifying therein in what respects it finds that such filing fails to meet the requirements of this act and stating that such filing shall not become effective to the extent disapproved.

M. If within thirty (30) days after a rate has become effective for homeowner's insurance the Board finds that such filing does not meet the requirements of this act, it shall send to the rating organization or insurer which made such filing, a written notice of disapproval of such filing, specifying therein in what respect it finds that such filing fails to meet the requirements of this act and stating when, within a reasonable period thereafter, such filing

shall be deemed no longer effective. Any such notice shall apply prospectively only and shall not affect premiums collected on new or renewal policies issued prior to the effective date of this notice. If a rate filing is disapproved because it is excessive or unfairly discriminatory the Board may order return of premium to the policyholder; plus interest thereon at an annual rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified by the State Treasurer on the first regular business day in January of each year, plus four percentage points.

SECTION 6. AMENDATORY 36 O.S. 1991, Section 924.2, as last amended by Section 5, Chapter 129, O.S.L. 1994 (36 O.S. Supp. 1994, Section 924.2), is amended to read as follows:

Section 924.2 A. Any rate, schedule of rates or rating plan for all workers' compensation insurance ~~submitted to or filed with the State Board for Property and Casualty Rates, or fixed by the Board of Managers of the State Insurance Fund, and premiums~~, by whatever name, ~~for workers' compensation for self-insureds except for group self-insured associations~~ shall provide for an appropriate reduction in premium charges, by whatever name, for those eligible insured employers who have successfully participated in the occupational safety and health consultation, education and training program administered by the Commissioner of the Department of Labor pursuant to Section 414 of Title 40 of the Oklahoma Statutes.

B. All insurance companies writing workers' compensation insurance in this state, including the State Insurance Fund, and all self-insureds providing workers' compensation insurance except for group self-insured associations, shall allow an appropriate reduction in premium charges to all eligible employers who qualify for the reduction pursuant to the provisions of this section.

C. Eligible employers shall be those employers:

1. Who are insured by an insurance company writing workers' compensation insurance in this state;

2. Who are self-insured; or

3. Who are insured by the State Insurance Fund.

D. In order to qualify for the reduction in workers' compensation insurance premium, an employer shall successfully participate annually in the occupational safety and health consultation, education and training program administered by the Department of Labor. Successful participation shall be defined as:

1. Undergoing a safety and health hazard survey of the workplace, including an evaluation of the employer's safety and health program and onsite interviews with employees by the Department's consultant;

2. Correcting all hazards identified during the onsite visit within a reasonable period of time as established by the Department;

3. Establishing an effective workplace safety and health program and implementing program provisions within a reasonable period of time as established by the Department. The program shall include:

a. demonstration of management commitment to worker safety and health,

b. procedures for identifying and controlling workplace hazards,

c. development and communication of safety plans, rules and work procedures, and

d. training for supervisors and employees in safe and healthful work practices;

4. Reducing by one-third (1/3) or more the extent to which the lost workday case rate, as measured by the Department of Labor, was above the national average for the industry at the time the employer elected to participate in the occupational safety and health consultation, education and training program, or maintaining a rate at or below the national average for the industry; and

5. Documenting a reduction in workers' compensation claims for the preceding year by showing one of the following:

a. a ten percent (10%) reduction in the dollar amount of claims,

b. a ten percent (10%) reduction in the severity of claims, or

c. no reported claims,

as a result of attending the occupational safety and health consultation, education and training program administered by the Department of Labor.

E. 1. Upon successful participation in the occupational safety and health consultation, education and training program as defined in subsection D of this section, an employer shall be issued a certificate by the Commissioner of the Department of Labor which shall be the basis of qualification for the reduction in workers' compensation insurance premium, by whatever name. The certificate shall qualify the employer for a premium reduction for a one-year period.

2. Upon issuance of a certificate to an employer, the Commissioner of the Department of Labor shall mail a copy of the certificate to the employer's insurer. Any insurer required by this section to allow an appropriate reduction in premium charges to a qualified employer which willfully fails to allow such reduction after receiving a copy of the certificate shall be subject, after notice and hearing, to an administrative fine, imposed by the Insurance Commissioner, which shall be not less than Ten Thousand Dollars ($10,000.00) or three times the amount of the premium reduction, whichever is greater. The Insurance Commissioner shall promulgate rules necessary to carry out the provisions of this paragraph.

F. The Insurance Commissioner, the Administrator of the Workers' Compensation Court and the State Insurance Fund

Commissioner shall maintain records documenting reductions in workers' compensation insurance premiums granted pursuant to this section and shall make an annual report of such reductions to the President Pro Tempore of the Senate and the Speaker of the House of Representatives by May 1 of each year. Insurers shall report such premium reductions in their annual statement.

G. The State Insurance Fund shall instruct its actuary to continually review the insurance premium credit program, developed and implemented pursuant to Section 142a of Title 85 of the Oklahoma Statutes, to determine if the program is detrimental to the financial stability of the Fund. If the actuary determines that the program contributes detrimentally to the financial stability of the Fund, the actuary shall immediately recommend to the State Insurance Fund Commissioner that the safety premium reduction cease for a one-year period.

SECTION 7. AMENDATORY 36 O.S. 1991, Section 929, is amended to read as follows:

Section 929. A. Except with regard to homeowner's insurance, every member of, or subscriber to, a licensed rating organization may adhere to the filings made on its behalf by such organization, except that any such member or subscriber may deviate from such filings as authorized herein if it has filed with the rating organization and with the Board, the deviation to be applied and information necessary to justify the deviation, provided such deviation, other than direct deviations as are authorized by this act, is approved by the Board. If approved, the deviation shall remain in force until such approval is withdrawn by the insurer with the approval of the Board when required. The Board shall approve any such deviation requiring Board action unless it finds that the deviation to be applied would not be uniform in its application or would be inconsistent with the provisions of this act, but unless it approves the deviation within thirty (30) days it shall, within a

reasonable time, grant a hearing to the applicant at the applicant's request.

B. Nothing in this act shall prevent an insurer~~, except a workers' compensation insurer,~~ from reducing and immediately using a rate, which is reduced by no more than fifteen percent (15%) of the last formally approved rate, without filing a rate application with the Board. However, the insurer shall file notice of a rate decrease with the Board which shall approve or disapprove such rate reduction within thirty (30) calendar days of receipt of such notice. The insurer may increase such rate to the originally approved rate at any time, but shall, ten (10) days prior to making such increase, notify the Board of its intention. Such deviation shall become effective upon the date that notice is received by the Board.

SECTION 8. AMENDATORY Section 27, Chapter 349, O.S.L. 1993, as amended by Section 16 of Enrolled House Bill No. 1002 of the 2nd Extraordinary Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 18m-1. A. There is hereby created within the Office of the Attorney General a Workers' Compensation Fraud Unit.

B. The Workers' Compensation Fraud Unit, upon inquiry or complaint, shall determine the extent, if any, to which any violation has occurred of any statute or administrative rule of this state pertaining to workers' compensation fraud and may initiate any necessary investigation, civil action, criminal action, referral to the Insurance Commissioner or Insurance Department, referral to the Administrator of the Workers' Compensation Court, referral to a district attorney or referral to any appropriate official of this or any other state or of the federal government.

C. In the absence of fraud, bad faith, reckless disregard for the truth, or actual malice, no person, insurer, or agent of an insurer shall be liable for damages in a civil action or subject to

criminal prosecution for communication, publication, or any other action taken to supply information about suspected workers' compensation fraud to the Workers' Compensation Fraud Unit or any other agency involved in the investigation or prosecution of suspected workers' compensation fraud.

D. The Attorney General and the Office of the Attorney General, the Insurance Commissioner and the Insurance Department, the Administrator of the Workers' Compensation Court, every district attorney and every law enforcement agency shall cooperate and coordinate efforts for the investigation and prosecution of suspected workers' compensation fraud.

E. If a claimant has had two or more claims for compensation denied within any two-year period, the Administrator of the Workers' Compensation Court shall automatically notify the Workers' Compensation Fraud Unit which shall investigate to determine if fraud exists in connection with the last denied claim or any prior claims within the two-year period and proceed in accordance with this section.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 221 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. An attorney who represents a claimant before the Workers' Compensation Court may not lend money to the claimant during the pendency of the workers' compensation claim.

B. The attorney may assist the claimant in obtaining financial assistance from another source if the attorney is not personally liable for the credit extended to the claimant.

C. The attorney may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the claimant remains ultimately liable for such expenses.

D. An attorney may not pay a finder's fee or provide other recompense to a nonlawyer for the purposes of locating clients to represent at the Workers' Compensation Court.

E. It shall be unlawful for any nonlawyer to receive a finder's fee for locating clients for an attorney to represent at the Workers' Compensation Court.

F. Any person who violates a provision of this section, upon conviction, shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding one (1) year or by a fine not exceeding Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

SECTION 10. REPEALER Section 22, Chapter 349, O.S.L. 1993, (36 O.S. Supp. 1994, Section 901.5) and 36 O.S. 1991, Section 924.3 are hereby repealed.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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