

SHORT TITLE: Workers' compensation; providing for a certified alternate equivalent coverage program; effective date.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 1308

By: Snyder

AS INTRODUCED

An Act relating to workers' compensation; amending 36 O.S. 1991, Section 707, which relates to casualty insurance; modifying definition; authorizing method for securing workers' compensation; stating certain requirements; providing for certain immunity; requiring submission of certain information; requiring promulgation of certain rules; stating legislative intent; requiring certain employer notice of enrollment; amending 85 O.S. 1991, Sections 2.1 and 61, as last amended by Section 2, Chapter 22, O.S.L. 1994 (85 O.S. Supp. 1995, Section 61), which relate to employees excluded from requirement for coverage and ways of securing workers' compensation; excluding certain employees covered under certain alternate program; providing for certification of certain alternate program; providing certain recourse for certain persons against employer; declaring certain remedies to be exclusive; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 1991, Section 707, is amended to read as follows:

Section 707. "Casualty insurance" includes vehicle insurance as defined in Section 706 of this title and accident and health insurance as defined in Section 703~~7~~ of this ~~article~~ title, and in addition includes:

1. Liability insurance, which is insurance against legal liability for the death, injury, or disability of any human being, or for damage to property; and provision of medical, hospital, surgical, disability benefits to injured persons and funeral and

death benefits to dependents, beneficiaries or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance-;

2. Worker's compensation, certified alternate equivalent coverage program, and employers' liability insurance, which is insurance of the obligations accepted by, imposed upon, or assumed by employers for death, ~~disablement~~ dismemberment, or injury of employees-;

3. Burglary and theft insurance, which is insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal, or concealment, or from any attempt at any of the foregoing, including supplemental coverages for medical, hospital, surgical, and funeral benefits sustained by the named insured or other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to monies, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause-;

4. Personal property floater insurance, which is insurance upon personal effects against loss or damage from any cause-;

5. Glass insurance, which is insurance against loss or damage to glass, including its lettering, ornamentation, and fittings-;

6. Boiler and machinery insurance, which is insurance against any liability and loss or damage to property or interest resulting from accidents to or explosion of boilers, pipes, pressure containers, machinery, or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured-;

7. Leakage and fire extinguishing equipment insurance, which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water pipes and containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus-;

8. Credit insurance, which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured-;

9. Malpractice insurance, which is insurance against legal liability of the insured, and against loss, damage, or expense incidental to a claim of such liability, and including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional services-;

10. Entertainments insurance, which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals-; and

11. Miscellaneous insurance, which is insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this article, if such insurance is not disapproved by the Insurance Commissioner as being contrary to law or public policy.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4601 of Title 36, 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 employees through a certified alternate equivalent coverage program.

B. All certified alternate equivalent coverage programs 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 certified alternate equivalent coverage program 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. Except as otherwise provided, 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 medical benefits portion shall not require the employer to pay any deductible or copayment;

6. The disability income portion provides coverage from the first day of the injury and allows the employer to pay benefits to the employee directly for up to seven (7) days;

7. The company providing a certified alternate equivalent coverage program is required to file statistical data with a designated statistical agency pursuant to Section 934 of Title 36 of the Oklahoma Statutes;

8. 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;

9. 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.;

10. The employer certifies in writing to the Insurance Commissioner that the policy complies with the workers' compensation laws of Oklahoma; and

11. 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 certified alternate equivalent coverage program 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 certified alternate equivalent coverage program 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.

F. The employer shall provide the employee with written notice of enrollment in a certified alternate equivalent coverage program when a contract of employment is made or within thirty (30) days of installation of the program.

SECTION 3. AMENDATORY 85 O.S. 1991, Section 2.1, is amended to read as follows:

Section 2.1 Commencing January 1, 1979, compensation provided for in the Workers' Compensation Act shall be payable to an employee for injuries arising out of and in the course of his employment. The Workers' Compensation Act shall not apply to the following employees:

1. Any person who is employed as a domestic servant or as a casual worker in and about a private home or household, which private home or household had a gross annual payroll in the preceding calendar year of less than Ten Thousand Dollars (\$10,000.00) for such workers;

2. Any person for whom an employer is liable under any Act of Congress for providing compensation to employees for injuries, disease or death arising out of and in the course of employment including, but not limited to, the Federal Employees' Compensation Act, the Federal Employers' Liability Act, the Longshoremen's and

Harbor Workers' Act and the Jones Act, to the extent his employees are subject to such acts-i

3. Any person who is employed in agriculture or horticulture by an employer who had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars (\$100,000.00) cash wages for agricultural or horticultural workers-i

4. Any person who is a licensed real estate sales associate or broker, paid on a commission basis;and

5. Any person for whom an employer has in force a certified alternate equivalent coverage program as allowed under Section 61 of this title.

SECTION 4. AMENDATORY 85 O.S. 1991, Section 61, as last amended by Section 2, Chapter 22, O.S.L. 1994 (85 O.S. Supp. 1995, 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. 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 ~~4~~ 65 of this ~~act~~ title; ~~or~~

4. By providing a certified alternate equivalent coverage program. The program shall not provide less than the disability compensation, accidental death and dismemberment, and medical 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 issue a certificate of compliance for a program whenever there is a current insurance certificate provided by the employer indicating adequate insurance coverage, or by furnishing satisfactory proof to the Administrator of the employer's financial ability to pay the

compensation as required in paragraph 5 of this section. If an employer has failed to secure the payment of compensation for an injured employee, as provided for in the certified alternate equivalent coverage program, an injured employee, or the employee's legal representative, if death results from the injury, may maintain an action in the courts for damages on account of the injury, and in the action the defendant may not plead or prove as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of employment, or that the injury was due to the contributory negligence of the employee; provided, the remedies set out in the certified alternate equivalent coverage program for the injured worker, or the spouse, personal representative, parents, dependants, or any other person having an insurable interest in the injured worker, shall be exclusive and in place of all other liability of the employer and any of his or her employees, at common law or otherwise, for the injury, loss of services, or death of an employee; or

5. 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 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, or
- b. one hundred 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) 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 5. This act shall become effective November 1, 1996.

45-2-1856

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