

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1673

By: Deutschendorf

AS INTRODUCED

An Act relating to workers' compensation; amending 85 O.S. 1991, Section 26, as amended by Section 30, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, Section 84, as amended by Section 35, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 and Section 14, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1996, Sections 26, 61.2 and 84), which relate to the Workers' Compensation Act; modifying notification of settlement requirements; permitting employers to participate in claims for compensation; specifying rights of employers participating in claims of compensation; adding grounds for revocation of authority to self-insure upon failure to implement workplace safety plans; amending Section 11, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (36 O.S. Supp. 1996, Section 6701), which relates to workers' compensation providers; adding a penalty for failure to implement workplace safety plans; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 26, as amended by Section 30, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1996, Section 26), is amended to read as follows:

Section 26. A. The Administrator shall provide printed notice forms to be used by the injured employee. Notice of injury filed by the employee with the Administrator shall be verified subject to the laws of perjury of this state and shall be styled: In re: Claim of the \_\_\_\_\_ (the name of the employee) and shall include in addition to any other requirements the following information:

1. The name and social security number of the employee;
2. The name of the employer;
3. The judicial district of the county of residence of the employee at the time of the injury;
4. The address of the principal place of business of the employer;
5. The judicial district of the county where the injury occurred; and
6. The judicial district of the county where the injured employee wants the claim docketed.

B. Any time after the expiration of the first three (3) days of disability on the part of the injured employee, a claim for compensation may be presented to the Administrator. If the employer and the injured employee shall reach a final agreement as to the facts with relation to an injury, and the resulting disability for which compensation is claimed under the Workers' Compensation Act, a memorandum of such agreement, in form as prescribed by the Administrator, signed by both the employer and employee, and approved by the Court shall be filed by the employer with the Administrator. In the absence of fraud this agreement shall be deemed binding upon the parties thereto. Such agreement shall be approved by the Court only when the terms conform to the provisions

of the Workers' Compensation Act. The Court shall have full power and authority to determine all questions in relation to payment of claims for compensation under the provisions of the Workers' Compensation Act. The Court shall make, or cause to be made, such investigation as it deems necessary, and upon application of either party shall order a hearing, and as soon as practicable, after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny an award determining such claim for compensation, and file the same in the office of the Administrator, together with the statement of its conclusion of fact and rulings of law. Upon a hearing pursuant to this section either party may present evidence and be represented by counsel. The decision of the Court shall be final as to all questions of fact, and except as provided in Section 3.6 of this title, as to all questions of law.

C. ~~A good faith effort shall be made on the part of any~~ An insurance carrier, the State Insurance Fund, or group self-insured plan ~~to~~ shall notify an insured employer of the possibility of, and/or terms of, any settlement of a workers' compensation case pursuant to this section. Written comments or objections to settlements shall be filed with the Workers' Compensation Court and periodically shared with the management of the applicable insurer. A written notice shall be made to all policyholders of their right ~~to a good faith effort by their insurer to notify them~~ notification by their insurer of any proposed settlement, if the policyholder so chooses.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.1 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Every employer subject to the provisions of the Workers' Compensation Act shall be permitted to participate in any claim for

compensation or benefits commenced by a claimant, wherein the employer is named as a party, or joined as a party, as follows:

1. An employer, including a representative of any corporate entity, or a representative of a self-insured employer shall have the right to be present in person and by counsel at all hearings before the Court.

2. The employer shall have the right to present relevant evidence relating to claims at all hearings before the Court, subject to the evidentiary and procedural requirements set forth in the rules of the Worker's Compensation Court, and provisions of the Workers' Compensation Act, and other applicable laws.

3. Any employer which has reason to believe that a person has engaged in or is engaging in an act or practice that violates any workers' compensation fraud statute shall immediately notify the Workers' Compensation Fraud Unit of the Office of the Attorney General, subject to the provisions of subsection C of Section 18m-1 of Title 74 of the Oklahoma Statutes and other applicable laws.

4. The employer shall have the right to contest the compensability of any claim, even if the insurance carrier, State Insurance Fund, or a self-insurance association admits liability, subject to any existing contract between an employer and its carrier, the State Insurance Fund, or a self-insurance association, and subject to Section 30 of this title, the Rules of the Workers' Compensation Court, and other applicable law.

5. The employer shall have the right to receive notice of any hearing relating to the resolution of a claim from its insurance carrier, the State Insurance Fund or a self-insurance association of which it is a member, subject to subsection C of Section 26 of this title, the Rules of the Workers' Compensation Court, and any other applicable law.

6. The employer shall have the right to report to the appropriate regulatory authority the failure of an insurance

carrier, the State Insurance Fund, or a self-insurance association to provide workplace safety services in accordance with Section 61.2 of this title and Section 6701 of Title 36 of the Oklahoma Statutes.

B. The rights enumerated in this section shall not be construed to conflict with any applicable law. The rights enumerated in this section shall be considered as supplementing all other rights any employer may have contained in the Workers' Compensation Act, the Rules of the Workers' Compensation Court, the Rules of the Administrator, and any other applicable law.

SECTION 3. AMENDATORY Section 14, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1996, Section 61.2), is amended to read as follows:

Section 61.2 A. All self-insured employers and group self-insurance association plans shall be required to develop and implement workplace safety plans by January 1, 1996, and shall notify the Administrator of the Workers' Compensation Court, in writing, upon implementation of the plan. All private employers who become self-insured after the effective date of this act and group self-insurance association plans approved by the Administrator of the Workers' Compensation Court after the effective date of this act shall implement a workplace safety plan within six (6) months of becoming self-insured and shall notify the Administrator of the Workers' Compensation Court, in writing, upon implementation of the plan.

B. Failure on the part of a self-insured employer or a group self-insurance association to implement the requirements of subsection A of this section shall constitute grounds for revocation by the Administrator of the Workers' Compensation Court of the employer's self-insurance permit or approval of the association's self-insurance application.

SECTION 4. AMENDATORY 85 O.S. 1991, Section 84, as amended by Section 35, Chapter 1, 2nd Extraordinary Session, O.S.L.

1994 (85 O.S. Supp. 1996, Section 84), is amended to read as follows:

Section 84. A. The power and jurisdiction of the Court over each case shall be continuing and it may, from time to time, make such modifications or changes with respect to former findings or orders relating thereto if, in its opinion, it may be justified, including the right to require physical examinations as provided for in Section 25 of this title, and subject to the same penalties for refusal; provided, that upon petition filed by the employer or insurance carrier, and the injured employee, or other person entitled to compensation under the Workers' Compensation Act, the Court shall have jurisdiction to consider the proposition of whether or not a final settlement may be had between the parties presenting such petition. The Court is authorized and empowered to have a full hearing on the petition, and to take testimony of physicians and others relating to the permanency or probable permanency of the injury, and to take such other testimony relevant to the subject matter of such petition as the Court may require. The Court shall have authority to consider such petition and to dismiss the same without a hearing if in its judgment the same shall not be set for a hearing; the expenses of such hearing or investigation, including necessary medical examinations, shall be paid by the employer or insurance carrier, and such expenses may be included in the final award. If the Court decides it is for the best interest of both parties to said petition that a final award be made, a decision shall be rendered accordingly and the Court may make an award that shall be final as to the rights of all parties to said petition and thereafter the Court shall have no jurisdiction over any claim for the injury or any results arising from same. If the Court shall decide the case should not be finally settled at the time of the hearing, the petition shall be dismissed without prejudice to either party, and the Court shall have the same jurisdiction over the

matter as if said petition had not been filed. The same rights of appeal shall exist from the decision rendered under such petition as if provided for appeals in other cases before the Court; provided there shall be no appeal allowed from an order of the Court dismissing such petition as provided in this section.

B. ~~A good faith effort shall be made on the part of any~~ Any insurance carrier, the State Insurance Fund, or group self-insured plan ~~to~~ shall notify an insured employer of the possibility of, and/or terms of, any settlement of a workers' compensation case pursuant to this section. Written comments or objections to settlements shall be filed with the Workers' Compensation Court and periodically shared with the management of the applicable insurer. A written notice shall be made to all policyholders of their right ~~to a good faith effort by their insurer to notify them~~ notification by their insurer of any proposed settlement, if the policyholder so chooses.

SECTION 5. AMENDATORY Section 11, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (36 O.S. Supp. 1996, Section 6701), is amended to read as follows:

Section 6701. A. 1. By January 1, 1996, each insurance company that provides workers' compensation insurance or an equivalent insurance product in this state shall maintain or provide workplace safety services for its policyholders as a condition for approval by the Insurance Commissioner to write such insurance. Such services shall be adequate to implement workplace safety plans as required by the nature of its policyholders' operations and shall include but not be limited to surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services.

2. The State Insurance Fund shall maintain or provide workplace safety services for its policyholders. Such safety services shall be adequate to implement workplace safety plans as required by the

nature of its policyholders' operations and shall include but not be limited to surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services.

B. Notice that workplace safety services are available to the policyholder from the insurance company and the State Insurance Fund must appear in no less than ten (10) point bold type on the front of each workers' compensation insurance or equivalent insurance policy delivered or issued for delivery in this state.

C. Failure on the part of an insurance carrier to implement the requirements of paragraph 1 of subsection A of this section shall constitute grounds for revocation by the Insurance Commissioner of the insurance carrier's certificate of authority to write workers' compensation insurance or the Insurance Commissioner's approval of the workers' compensation equivalent insurance product.

SECTION 6. This act shall become effective November 1, 1997.

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