

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1889

By: Pope (Tim)

COMMITTEE SUBSTITUTE

(Workers' compensation - amending 85 O.S. 1991, Section 11, as last amended by Section 5, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, Section 11) - exceptions to employer liability for compensation - amending 85 O.S. 1991, Section 63.1, as last amended by Section 13, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, Section 63.1) - penalties for failure to secure workers' compensation insurance - amending 85 O.S. 1991, Section 173, as last amended by Section 10, Chapter 248, O.S.L. 2000 (85 O.S. Supp. 2000, Section 173) - premium assessments - amending 40 O.S. 1991, Section 403, as last amended by Section 1, Chapter 163, O.S.L. 1994 (40 O.S. Supp. 2000, Section 403) - employer's duties and responsibilities - amending Section 20, Chapter 349, O.S.L. 1993, as last amended by Section 2, Chapter 404, O.S.L. 1999 (40 O.S. Supp. 2000, Section 415.1) - certification of non-coverage - codification - effective date -

emergency)

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 11, as last amended by Section 5, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, Section 11), is amended to read as follows:

Section 11. A. Every employer subject to the provisions of the Workers' Compensation Act shall pay, or provide as required by the Workers' Compensation Act, compensation according to the schedules of the Workers' Compensation Act for the disability or death of an employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of employment, without regard to fault as a cause of such injury, and in the event of disability only, except as follows:

1. An injury occasioned by the willful intention of the injured employee to bring about injury to himself or herself or to another;

2. An injury resulting directly from the willful failure of the injured employee to use a guard or protection against accident furnished for use pursuant to any statute or by order of the Commissioner of Labor;

3. An injury ~~resulting directly from the use or abuse of~~ to an employee who tests positive for alcohol, illegal drugs or chemicals, or the abuse of prescription drugs; ~~provided, this paragraph shall only apply when the use or abuse rendered the employee incapable of acting in the manner in which an ordinarily prudent and cautious person, in full possession of his or her faculties, and using reasonable care, would have acted at the time of the injury. For the purposes of this paragraph, post-accident alcohol or drug testing results shall be admissible as evidence,~~ following a workplace accident; and

4. Except for innocent victims, an injury caused by a prank, horseplay, or similar willful or intentional behavior.

B. Liability of any person, firm, or corporation having an interest in the subject matter, employers and contracting employers, general or intermediate, for compensation ~~under~~ pursuant to the Workers' Compensation Act, when other than the immediate employer of the injured employee, shall be as follows:

1. The independent contractor shall, at all times, be liable for compensation due to ~~his~~ the direct employees of the independent contractor, or the employees of any subcontractor of such independent contractor, and the principal employer shall also be liable in the manner hereinafter specified for compensation due all direct employees, employees of the independent contractors, subcontractors, or other employees engaged in the general employer's business; provided, however, if an independent contractor relies in good faith on proof of a valid workers' compensation insurance

policy issued to a subcontractor of the independent contractor or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the subcontractor with the Commissioner of Labor under Section 415.1 of Title 40 of the Oklahoma Statutes, then the independent contractor shall not be liable for injuries of any employees of the subcontractor. Provided further, such independent contractor shall not be liable for injuries of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act.

2. The person entitled to such compensation shall have the right to recover the same directly from ~~his~~ the immediate employer of such person, the independent contractor or intermediate contractor, and such claims may be presented against all such persons in one proceeding. If it appears in such proceeding that the principal employer has failed to require a compliance with the Workers' Compensation Act of this state, by the independent contractor, then such employee may proceed against such principal employer without regard to liability of any independent, intermediate or other contractor; provided, however, if a principal employer relies in good faith on proof of a valid workers' compensation insurance policy issued to an independent contractor of the employer or to a subcontractor of the independent contractor or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the independent contractor or subcontractor with the Commissioner of Labor under Section 415.1 of Title 40 of the Oklahoma Statutes, then the principal employer shall not be liable for injuries of any employees of the independent contractor or subcontractor. Provided further, such principal employer shall not be liable for injuries of any independent contractor of the employer or of any subcontractor of the

independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act. Provided, however, in any proceeding where compensation is awarded against the principal employer under the provisions hereof, such award shall not preclude the principal employer from recovering the same, and all expense in connection with said proceeding from any independent contractor, intermediate contractor or subcontractor whose duty it was to provide security for the payment of such compensation, and such recovery may be had by supplemental proceedings in the cause before the Court or by an independent action in any court of competent jurisdiction to enforce liability of contracts.

3. Where work is performed on a single family residential dwelling or its premises occupied by the owner, or for a farmer whose cash payroll for wages, excluding supplies, materials and equipment, for the preceding calendar year did not exceed One Hundred Thousand Dollars (\$100,000.00), such owner or farmer shall not be liable for compensation under the Workers' Compensation Act. Such owner or farmer shall not be liable to the employee of any independent contractor or subcontractor, where applicable, or the farmer's own employee.

4. Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, provided, however, that in the case of silicosis or asbestosis, the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO₂) dust on each of at least sixty (60) days

or more, and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer.

SECTION 2. AMENDATORY 85 O.S. 1991, Section 63.1, as last amended by Section 13, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, Section 63.1), is amended to read as follows:

Section 63.1 A. In addition to any other penalty prescribed by law, any employer who fails to secure compensation required by Section 61 of this title shall be liable for a civil penalty, to be assessed by the Commissioner of Labor or designee, of not more than Two Hundred Fifty Dollars (\$250.00) per employee for a first offense, unless the employer secures workers' compensation insurance within thirty (30) days after receiving notice of the violation. If the employer secures workers' compensation insurance within thirty (30) days after receiving notice of the violation, the employer shall be liable for a civil penalty of not more than Seventy-five Dollars (\$75.00) per employee. An employer shall be liable for a civil penalty of not more than One Thousand Dollars (\$1,000.00) per employee for a second or subsequent offense. Provided, the maximum civil penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for all related series of violations. All civil penalties collected shall be deposited in the ~~"Workers' Compensation Enforcement Revolving Fund"~~ created by this section and shall be used to enforce the provisions of the ~~Workers' Compensation Act~~ General Revenue Fund of the State Treasury.

B. After an employer is cited for two offenses of failing to obtain workers' compensation insurance and fails to obtain coverage within thirty (30) days of the second citation, the Commissioner of Labor shall issue cease and desist orders, in accordance with the Department of Labor administrative rules and procedures, against an employer until the violating employer shall obtain workers' compensation insurance for its employees. The Commissioner of Labor shall have the authority to require the cessation of activities of

an employer whose employees are not covered by workers' compensation insurance until the violating employer shall obtain workers' compensation insurance for its employees; provided that an employer who has made application for workers' compensation coverage with either the State Insurance Fund or a private insurance carrier, and who, through no fault of the employer, has not received notice that such coverage has commenced, shall not be made to cease operations, as provided for in this section, until a determination has been made concerning his application for workers' compensation coverage. Any order to cease and desist issued by the Commissioner may be enforced in district court. The district court may issue the Commissioner an injunction without bond, for the purposes of enforcing this section.

C. The Commissioner of Labor or designee shall assess and collect any civil penalty incurred under subsection A of this section and, in the Commissioner's discretion, may remit, mitigate or negotiate said penalty. In determining the amount of the penalty to be assessed, or the amount agreed upon in any negotiation, consideration shall be given to the appropriateness of such penalty in light of the life of the business of the employer charged, the gravity of the violation, and the extent to which the employer charged has complied with the provisions of Section 61 of this title or has otherwise attempted to remedy the consequences of the said violation. Individual proceedings shall be conducted pursuant to the provisions of Section 63.2 of this title.

~~D. There is hereby created in the State Treasury a revolving fund for the Department of Labor to be designated the "Workers' Compensation Enforcement Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies collected by the Department pursuant to the provisions of this section. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for~~

~~approval and payment.~~ All funds collected pursuant to this section shall be deposited in the General Revenue Fund of the State Treasury.

E. No hospital or health provider shall charge more for a workers' compensation claim than for the same service not involving workers' compensation.

SECTION 3. AMENDATORY 85 O.S. 1991, Section 173, as last amended by Section 10, Chapter 248, O.S.L. 2000 (85 O.S. Supp. 2000, Section 173), is amended to read as follows:

Section 173. There is hereby created, for the purposes herein declared, a Multiple Injury Trust Fund, formerly known as the Special Indemnity Fund, to be derived from the following sources:

A. 1. Beginning July 1, 2000, and until such time as the Board of Managers of the State Insurance Fund, pursuant to an independent actuarial audit, has certified that there are sufficient funds to satisfy all outstanding obligations of the Multiple Injury Trust Fund, each mutual or interinsurance association, stock company, the State Insurance Fund, or other insurance carrier writing workers' compensation insurance in this state shall pay to the Oklahoma Tax Commission a sum equal to two percent (2%) of the total gross direct premiums written for workers' compensation on risks located in this state. The Oklahoma Tax Commission shall assess and collect from employers carrying their own risk, including group self-insurance associations, a temporary assessment at the rate of four percent (4%) of the total compensation for permanent total disability awards, permanent partial disability awards and death benefits paid out during each quarter of the calendar year by the employers and group self-insurance associations.

2. All monies received from premium and loss assessments shall be paid to the Multiple Injury Trust Fund. Insurance carriers shall pay the temporary premium assessments to the Oklahoma Tax Commission at the same time and in the same manner as premium taxes are paid.

Self-insurers and group self-insurance associations shall pay the temporary loss assessment on the fifteenth day of the month following the close of each quarter of the calendar year. The State Insurance Fund shall pay the temporary premium assessment not later than the fifteenth day of the month following the close of each quarter of the calendar year. Assessments against insurance carriers and the State Insurance Fund, shall not be considered in determining whether any rate is excessive. Insurance carriers and the State Insurance Fund shall not separately state the amount of the assessment on any invoice or billing statement.

B. The Multiple Injury Trust Fund is hereby authorized to receive and expend monies appropriated by the Legislature.

C. It shall be the duty of the Oklahoma Tax Commission to collect the payments provided for herein. The Oklahoma Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section. The Oklahoma Tax Commission may also enforce payments by proceeding in accordance with the provisions of Section 42 of this title.

D. The Oklahoma Tax Commission shall on or before the first day of April of each year find and determine the amount of money held as of March 1 of that year by the State Treasurer for the benefit of the Multiple Injury Trust Fund and shall on or before the first day of October of each year find and determine the amount of money held as of September 1 of that year by the State Treasurer for the benefit of the Multiple Injury Trust Fund. Promptly after making each determination, the Oklahoma Tax Commission shall advise the State Insurance Fund and the Administrator in writing of its findings and determination in the foregoing particulars.

E. Eighty percent (80%) of all sums held by the State Treasurer to the credit of the Multiple Injury Trust Fund may by order of the Commissioner of the State Insurance Fund, with the approval of the Board of Managers of the State Insurance Fund, be invested in or

loaned on the pledge of any of the securities in which a state bank may invest the monies deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in said institutions. "Insured" as used in this section shall mean insurance as provided by an agency of the federal government. All such securities or evidence of indebtedness shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, who shall collect the principal and interest when due, and pay the same into the Multiple Injury Trust Fund. The State Treasurer shall pay by vouchers drawn on the Multiple Injury Trust Fund for the making of such investments, when signed by the Commissioner and approved by the Board of Managers of the State Insurance Fund, upon delivery of such securities or evidence of indebtedness to the State Treasurer. The Commissioner may, upon like approval of the Board of Managers of the State Insurance Fund, sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for the Multiple Injury Trust Fund.

F. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made to the Multiple Injury Trust Fund. Refunds shall be paid from and out of the Multiple Injury Trust Fund.

G. The Oklahoma Tax Commission shall pay, monthly, to the State Treasurer all monies collected under the provisions of this section to be credited as follows: By the tenth day of each month, the Workers' Compensation Court Administrator shall provide to the Oklahoma Tax Commission the amount of all awards made by the Court, or any payments in lieu thereof, for compensable injuries for permanent total disability or permanent partial disability which employers or insurance carriers made during the previous month. An amount equal to eight-tenths of one percent (.8%) of the amount of

these awards and payments in lieu thereof shall be deducted from the temporary assessment collected pursuant to this section during the previous month divided and paid to the following agencies: fifty percent (50%) to the Oklahoma Department of Labor, twenty-five percent (25%) to the Office of the Attorney General and twenty-five percent (25%) to the ~~State~~ Oklahoma Department of ~~Vocational~~ Career and ~~Technical~~ Technology Education. The remaining amount of monies collected by the Oklahoma Tax Commission under the provisions of this section shall be paid to the Multiple Injury Trust Fund. Monies received by the Department of Labor under this section shall be ~~used for safety consultation and the regulation of the safety of public employees through the Occupational Safety and Health Act of 1970~~ deposited to the credit of the General Revenue Fund of the State Treasury. Monies received by the Office of the Attorney General shall be deposited to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund created pursuant to Section 19.2 of Title 74 of the Oklahoma Statutes. Monies received by the State Department of Vocational and Technical Education shall supplement other funding to the Department for purposes of implementing the provisions of subsection B of Section 414 of Title 40 of the Oklahoma Statutes. The State Treasurer shall pay out of the Multiple Injury Trust Fund only upon the order and direction of the Court of this state acting under the provisions hereof.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 403.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. An incentive program is hereby created, to be known as the "Workplace Safety Improvement Incentive Program", the purpose of which shall be to recognize all employers with twenty-five or more employees which implement programs in compliance with the provisions of Section 403 of Title 40 of the Oklahoma Statutes and which develop additional innovative programs which result in savings of

workers' compensation costs, or a reduction in the number or severity of workplace injuries and illnesses. The incentive shall only be available to state agencies which successfully reduce workers' compensation costs and generate safety savings from their actions.

B. There is hereby appropriated to the Department of Labor from any monies not otherwise appropriated from the General Revenue Fund of the State Treasury for the fiscal year ending June 30, 2002, an amount not to exceed Fifty Thousand dollars (\$50,000.00), as may be necessary to administer the Workplace Safety Improvement Incentive Program. The funds for the Workplace Safety Improvement Incentive Program Remaining funds not distributed at the end of each fiscal year shall revert to the General Revenue Fund of the State Treasury.

C. The incentive dollars awarded shall only be used for either or both of the following: Incentive Bonus Pay for agency personnel in recognition of their performance in reducing workers' compensation costs and for providing additional safety training and or equipment which will help foster additional reductions of worker compensation costs.

D. Dollars awarded as salary bonuses are one-time payments and shall not become part of base pay for employees. Awards in the form of pay bonuses may, at the option of the agency, be distributed in lump sum or distributed over twelve (12) months in the regular pay of the employees.

E. Any equipment or training paid for with the incentive funds shall be restricted to equipment and training from which the agency may reasonably be expected to receive a benefit by reduction in: injuries, illnesses, lost work days, workers' compensation insurance costs, medical expenses, hazard reductions, and reduced risks. Incentive funds may not be used to pay for vehicles, construction, maintenance, remodeling or other items that would or should be programmed for regular replacement under sound fiscal management.

Enforcement of this section shall be the responsibility of the Public Employee Occupational Safety and Health (PEOSH) Division of the Department of Labor.

F. An agency in violation of this section shall not be eligible for any future incentive award, or at the option of the Legislature have its appropriations reduced by the amount of the incentive award received during the prior year.

G. This incentive program shall be applicable to all state agencies and any agencies or organizations over which the State of Oklahoma exercises dominion and control, whether supported by tax revenue, federal funds or self-generated income. The State of Oklahoma encourages all levels of public agencies to implement similar incentive programs to stimulate improvements in reducing the costs of workers' compensation and improving the work environment for all public employees.

H. The Oklahoma Department of Labor shall promulgate rules necessary to administer the Workplace Safety Improvement Incentive Program, consistent with the provisions of this section.

SECTION 5. AMENDATORY 40 O.S. 1991, Section 403, as last amended by Section 1, Chapter 163, O.S.L. 1994 (40 O.S. Supp. 2000, Section 403), is amended to read as follows:

Section 403. A. Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, commensurate with the Occupational Safety and Health Act of 1970.

B. No person shall discharge, discriminate or take adverse personnel action against any employee because such employee has filed any complaint, or instituted or caused to be instituted any proceeding under or related to this act, or has testified or is about to testify in any such proceeding, or because of the exercise

by such employee on behalf of himself or herself or others of any right affected by this act.

C. Within forty-eight (48) hours after the occurrence of an employment accident which is fatal to one or more employees or which results in hospitalization of five or more employees, the employer of any employees so injured or killed shall report the accident in writing to the Oklahoma City office of the Oklahoma Department of Labor, in a manner prescribed by the Department. The Commissioner of Labor may require such additional reports as he deems necessary, including the official death certificate from the Oklahoma State Department of Health.

D. No rule or standard promulgated under this act shall, or shall be deemed to, establish legal standards of conduct or legal duties, the violation of which standards or duties would constitute negligence or gross negligence in any civil proceeding.

E. Every employer having twenty-five (25) or more full- or part-time employees shall:

1. Designate an employee who shall coordinate all safety programs of the employer;

2. Provide safety classes to each type or class of employee no less than quarterly, except that public schools shall only be required to provide safety classes or instruction to their employees during the school year. Provided further, public school employees who are certified personnel and are in compliance with federal OSHA occupational safety and health standards shall be exempt from such safety classes or instruction and shall not be included in the computation of the number of employees set forth in subsection E of this section for determining the requirement of such safety classes or instruction; ~~and~~

3. Cooperate with the Department of Labor including allowing any announced inspection of the premises for the purpose of determining compliance with this subsection; and

4. Develop a risk evaluation program to review and evaluate all work activities and responsibilities to:

- a. determine exposures to hazardous materials,
- b. establish procedures to identify hazards or other threats to employees' health and safety, and
- c. develop safety-training programs relevant to the employees' risk from exposures.

The provisions of this subsection shall not apply to any hospital which is subject to the rules of the U.S. Department of Health and Human Services, Health Care Financing Administration (HCFA), as set forth in 42 CFR Parts 405, 412, 416, 417, 440, 441, 456, 482 and 489; Medicare and Medicaid Programs; Conditions of Participation for Hospitals, Final Regulations.

SECTION 6. AMENDATORY Section 20, Chapter 349, O.S.L. 1993, as last amended by Section 2, Chapter 404, O.S.L. 1999 (40 O.S. Supp. 2000, Section 415.1), is amended to read as follows:

Section 415.1 A. Any person who is not required to be covered under a workers' compensation insurance policy or other plan for the payment of workers' compensation may apply to the Commissioner of Labor for a "Certificate of Non-Coverage Under the Workers' Compensation Act". Applications shall be made on forms prescribed by the Commissioner and shall be accompanied by a nonrefundable application fee in an amount to be set by the Commissioner by rule not to exceed Ten Dollars (\$10.00) for a one-year certificate or Twenty Dollars (\$20.00) for a two-year certificate.

B. The Commissioner of Labor shall issue a certificate to any individual whom the Commissioner finds, after reasonable inquiry, to be exempt from the definition of employee under Section 3 of Title 85 of the Oklahoma Statutes. Issuance of the certificate by the Commissioner shall establish a rebuttable presumption that the filer is not an employee for purposes of the Workers' Compensation Act.

C. The Commissioner of Labor shall develop necessary procedures for determining eligibility for the certificates.

D. Except as otherwise provided in Section 11 of Title 85 of the Oklahoma Statutes, the filing of a certificate shall not affect the rights or coverage of any employee of the individual filing the certificate.

E. 1. Knowingly providing false information to the Department of Labor for the purpose of obtaining a "Certificate of Non-Coverage Under the Workers' Compensation Act" shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00).

2. Application forms for such certificates shall conspicuously state on the front thereof in at least ten-point bold-faced print that it is a crime to falsify information on the form.

3. The Commissioner of Labor shall immediately notify the Workers' Compensation Fraud Unit in the Office of the Attorney General of any violations or suspected violations of this section. The Commissioner shall cooperate with the Fraud Unit in any investigation involving certificates issued pursuant to this section.

F. ~~Application fees collected pursuant to this section shall be deposited in the State Treasury to the credit of the Workers' Compensation Enforcement Revolving Fund~~ There is hereby created in the State Treasury a revolving fund pursuant to the provisions of 85 O.S. Supp 2000, Section 63.1 for the Department of Labor to be designated the "Workers' Compensation Enforcement Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations. The fund shall consist of all monies collected by the Department of Labor pursuant to the provisions of this section, and as otherwise provided by law.

SECTION 7. This act shall become effective July 1, 2001.

SECTION 8. 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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