

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1256

By: Moore

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5
6 AS INTRODUCED

7 An Act relating to workers' compensation for state
8 agencies; requiring the Risk Management Administrator
9 to obtain workers' compensation insurance coverage
10 for state agencies; amending 74 O.S. 2011, Sections
11 85.58A and 85.58K, as amended by Sections 782 and
12 787, Chapter 304, O.S.L. 2012 (74 O.S. Supp. 2012,
13 Sections 85.58A and 85.58K), which relate to the
14 comprehensive risk management program; removing
15 certain exception; establishing the Workers'
16 Compensation Insurance Account; amending 85 O.S.
17 2011, Section 313, which relates to governmental
18 entities required to provide workers' compensation
19 coverage; providing for coverage for state entities
20 through the Risk Management Administrator; providing
21 for codification; providing an effective date; and
22 declaring an emergency.

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

24 SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 85.58Q of Title 74, unless there
is created a duplication in numbering, reads as follows:

The Risk Management Administrator, pursuant to this section and
Section 85.58A of Title 74 of the Oklahoma Statutes, shall obtain
workers' compensation insurance coverage for all state agencies,

1 whether or not subject to The Oklahoma Central Purchasing Act. The
2 insurance shall be obtained as required by Section 313 of Title 85
3 of the Oklahoma Statutes.

4 SECTION 2. AMENDATORY 74 O.S. 2011, Section 85.58A, as
5 amended by Section 782, Chapter 304, O.S.L. 2012 (74 O.S. Supp.
6 2012, Section 85.58A), is amended to read as follows:

7 Section 85.58A A. The Office of Management and Enterprise
8 Services shall establish for all state agencies, whether or not
9 subject to The Oklahoma Central Purchasing Act, and other entities
10 as provided by law a comprehensive professional risk management
11 program which shall:

12 1. Identify and evaluate risks of loss and exposures to loss to
13 officers, employees and properties;

14 2. Minimize risks through loss-prevention and loss-control
15 programs;

16 3. Transfer risks, if economically advantageous to the state,
17 by acquiring commercial insurance, contractual pass through of
18 liability, or by other means;

19 4. Consolidate and administer risk management plans and
20 programs including self-insurance programs, except ~~Workers'~~
21 ~~Compensation Insurance and State Employees Group Insurance;~~

22 5. Determine feasibility of and, if feasible, establish self-
23 insurance programs, considering whether a program may be self-
24 supporting to remain financially and actuarially sound;

1 6. Provide a system to allocate insurance and program costs to
2 determine payment for insurance coverage and program expenses
3 provided by the Office of Management and Enterprise Services;

4 7. When requested by a state retirement system, CompSource
5 Oklahoma or the State and Education Employees Group Insurance Board,
6 assist in obtaining insurance authorized by law. If requested by
7 the Oklahoma State Regents for Higher Education, assist trust funds
8 for which the State Regents serve as trustees in obtaining insurance
9 authorized by law;

10 8. Assist state agencies and officers, employees, and members
11 thereof, charged with licensing authority, in obtaining insurance
12 for liability for judgments, based on the licensing authority,
13 rendered by any court pursuant to federal law;

14 9. When requested by a public trust established pursuant to
15 Title 60 of the Oklahoma Statutes of which the State of Oklahoma is
16 the beneficiary, obtain, provide or assist the public trust in
17 obtaining insurance authorized by law or trust indenture covering
18 any board member, trustee, official, officer, employee or volunteer
19 for errors and omissions or liability risks arising from the
20 performance of official duties pursuant to law or trust indenture;
21 and

22 10. When requested by the Oklahoma State Regents for Higher
23 Education, for the purpose of insuring real property required
24 pursuant to Section 4018 of Title 70 of the Oklahoma Statutes, of

1 which the Oklahoma State Regents for Higher Education is the
2 beneficiary, obtain, provide or assist the Oklahoma State Regents
3 for Higher Education in obtaining insurance for the real property
4 pursuant to the provisions of this section.

5 B. The Director of the Office of Management and Enterprise
6 Services may hire or contract for the services of a Risk Management
7 Administrator to supervise the Comprehensive Professional Risk
8 Management Program established pursuant to this section. If
9 appointed by the Director as a state employee, the Risk Management
10 Administrator shall be in the unclassified service.

11 C. The Risk Management Administrator shall evaluate insurance
12 coverage needs and in force for state agencies, whether or not
13 subject to The Oklahoma Central Purchasing Act, and other entities
14 as provided by law. All entities shall submit to the Risk
15 Management Administrator all information which the Risk Management
16 Administrator deems necessary to perform this duty.

17 D. The Risk Management Administrator in conjunction with the
18 State Purchasing Director under the authority of the Director of the
19 Office of Management and Enterprise Services may negotiate insurance
20 coverage and insurance-related services, including, but not limited
21 to, insurance brokerage and consulting services. The State
22 Purchasing Director shall ensure open processes for solicitation and
23 qualification of insurance coverage and services providers. The
24 State Purchasing Director shall award contracts for insurance

1 coverage and services to the provider or providers which offer the
2 best and final terms and conditions. The State Purchasing Director
3 may authorize the Risk Management Administrator to bind for
4 insurance coverage with providers.

5 E. The school districts of this state may request the Risk
6 Management Administrator to advise for the purchase of insurance
7 coverage for the school districts.

8 F. A state agency, whether or not subject to The Oklahoma
9 Central Purchasing Act, that contemplates purchase of property and
10 casualty insurance, shall provide details of the proposed purchase
11 to the Risk Management Administrator for approval or disapproval
12 prior to the purchase.

13 G. The Director of the Office of Management and Enterprise
14 Services shall promulgate rules to effect the provisions of the
15 comprehensive professional risk management program.

16 H. 1. a. Any community action agency established pursuant to
17 Sections 5035 through 5040 of this title may
18 participate in the comprehensive professional risk
19 management program established pursuant to this
20 section for risks incurred as a result of operating a
21 Head Start program or providing transportation
22 services to the public. The Risk Management
23 Administrator shall obtain or provide for insurance
24 coverage for such community action agencies or bonding

1 for employees of such community action agencies. Any
2 liability insurance coverage obtained or provided
3 shall include expenses for administrative and legal
4 services obtained or provided by the Risk Management
5 Administrator.

6 b. The Risk Management Administrator shall determine
7 criteria for participation in the risk management
8 program by such community action agencies. In
9 addition, the Risk Management Administrator may
10 require each such community action agency to:

11 (1) provide adequate qualified personnel and suitable
12 facilities and equipment for operating a Head
13 Start program or providing transportation
14 services to the public, and

15 (2) comply with such standards as are necessary for
16 the protection of the clients it serves.

17 2. To receive coverage pursuant to this section, a community
18 action agency shall make payments for any insurance coverage and
19 shall otherwise comply with the provisions of this section and rules
20 promulgated by the Office pursuant to the provisions of this
21 section.

22 3. Requests for the insurance coverage provided pursuant to the
23 provisions of this subsection shall be submitted in writing to the
24 Risk Management Administrator by the community action agencies.

1 I. The Risk Management Administrator may provide or obtain for
2 any state agency, public trust with the state as a beneficiary and a
3 director, officer, employee or member thereof, insurance for
4 liability for loss, including judgments, awards, settlements, costs
5 and legal expenses, resulting from violations of rights or
6 privileges secured by the Constitution or laws of the United States
7 of America which occur while a director, officer, employee or member
8 is acting within the scope of service to the State of Oklahoma. The
9 insurance shall be for coverage in excess of the limits on liability
10 established by The Governmental Tort Claims Act but shall not limit
11 or waive any immunities now or hereafter available to the State of
12 Oklahoma or any state agency, any public trust with the state as a
13 beneficiary, or any director, officer, employee or member thereof,
14 including, but not limited to, any immunities under the Eleventh
15 Amendment to the Constitution of the United States, state sovereign
16 immunity, and any absolute or qualified immunity held by any
17 director, officer, employee or member.

18 SECTION 3. AMENDATORY 74 O.S. 2011, Section 85.58K, as
19 amended by Section 787, Chapter 304, O.S.L. 2012 (74 O.S. Supp.
20 2012, Section 85.58K), is amended to read as follows:

21 Section 85.58K A. There is hereby created in the State
22 Treasury a revolving fund for the Office of Management and
23 Enterprise Services, to be designated the "Risk Management Revolving
24 Fund". The fund shall be a continuing fund, not subject to fiscal

1 year limitations, and shall consist of any monies transferred
2 thereto by act of the Legislature and any monies which may be
3 deposited thereto by the Office of Management and Enterprise
4 Services as provided for by law. All interest earned by the State
5 Treasurer on monies deposited in the Risk Management Revolving Fund
6 shall be deposited to the Risk Management Revolving Fund.

7 B. Within the Risk Management Revolving Fund, there is hereby
8 created the Property and Casualty Account, the Motor Vehicle
9 Liability Account, the Workers' Compensation Insurance Account, and
10 the General Tort Liability Account. The Director of the Office of
11 Management and Enterprise Services is authorized to establish such
12 additional accounts within the Risk Management Revolving Fund deemed
13 necessary. The monies in each account shall be maintained
14 actuarially separate to ensure that premiums or fees paid for
15 specific insurance coverage are adequate to pay the expenses and
16 claims for that coverage.

17 C. All monies accruing to the credit of said fund are hereby
18 appropriated and may be budgeted and expended by the Office of
19 Management and Enterprise Services for the purposes of the
20 Comprehensive Professional Risk Management Program provided for in
21 Section 85.58A of this title, including but not limited to the
22 salaries and administrative expenses of the Risk Management
23 Administrator and support staff and expenses the Department incurs
24 to support program operations. Expenditures from said fund shall be

1 made upon warrants issued by the State Treasurer against claims
2 filed as prescribed by law with the Director of the Office of
3 Management and Enterprise Services for approval and payment.

4 SECTION 4. AMENDATORY 85 O.S. 2011, Section 313, is
5 amended to read as follows:

6 Section 313. A. 1. All public entities of this state, their
7 agencies and instrumentalities, authorities, and public trusts of
8 which they are beneficiaries shall provide workers' compensation to
9 their employees and elected officials engaged in either governmental
10 or proprietary functions in accordance with this section.

11 Compensation or indemnification for compensation shall be paid out
12 of the ~~funds of the public entities~~ Risk Management Revolving Fund.

13 2. Except as otherwise provided, the state and all its
14 institutions of higher education, departments, instrumentalities,
15 institutions, and public trusts of which it or they are
16 beneficiaries shall insure against liability for workers'
17 compensation ~~with the State Insurance Fund~~ through the Risk
18 Management Administrator. The Risk Management Administrator shall
19 obtain the insurance from CompSource Oklahoma and shall not insure
20 with any other insurance carrier unless:

21 a. ~~the State Insurance Fund~~ CompSource Oklahoma refuses
22 to accept the risk when the application for insurance
23 is made,

24 b. specifically authorized by law, or

1 c. the ~~state entity~~ Risk Management Administrator can
2 obtain workers' compensation insurance coverage at the
3 same cost or at a lower cost from another insurance
4 carrier licensed in this state. ~~Effective November 1,~~
5 ~~1999, and for the next two fiscal years thereafter,~~
6 ~~not to exceed fifteen (15) state entities each fiscal~~
7 ~~year may obtain workers' compensation insurance~~
8 ~~coverage pursuant to this subparagraph from an insurer~~
9 ~~other than the State Insurance Fund. Beginning with~~
10 ~~the third fiscal year thereafter, all state entities~~
11 ~~may obtain workers' compensation insurance coverage~~
12 ~~pursuant to this subparagraph.~~

13 3. ~~The state, all state institutions of higher education except~~
14 ~~comprehensive universities, and all state departments,~~
15 ~~instrumentalities, institutions, and public trusts of which the~~
16 ~~state is a beneficiary, may self-insure under rules promulgated by~~
17 ~~the State Insurance Fund. Self-insurance administration may only be~~
18 ~~obtained through the State Insurance Fund. The state, all state~~
19 ~~institutions of higher education except comprehensive universities,~~
20 ~~and all state departments, instrumentalities, institutions, and~~
21 ~~public trusts so electing to self-insure shall pay premiums set by~~
22 ~~the State Insurance Fund. The State Insurance Fund shall collect~~
23 ~~premiums, pay claims and provide for excess insurance. All~~
24 ~~dividends or profits accumulating from a self-insurance program~~

1 ~~shall be refunded to the participants on a formula devised by the~~
2 ~~State Insurance Fund.~~

3 B. All counties, cities and towns, their instrumentalities and
4 public trusts of which they are beneficiaries shall insure against
5 their liability for workers' compensation with ~~the State Insurance~~
6 ~~Fund~~ CompSource Oklahoma or, through any combination of the
7 following, may:

8 1. Self-insure and make any appropriation of funds to cover
9 their risk;

10 2. Secure reinsurance or excess insurance over and above a
11 self-insurance retention in any manner authorized by subsections B
12 and C of Section 167 of Title 51 of the Oklahoma Statutes;

13 3. Secure compensation for their employees in the manner
14 provided in ~~the Political Subdivision~~ The Governmental Tort Claims
15 Act; subsection C of Section 167 of Title 51 of the Oklahoma
16 Statutes; or

17 4. Insure with other insurance carriers licensed in the State
18 of Oklahoma.

19 C. Boards of education, their instrumentalities and public
20 trusts of which they are beneficiaries shall insure against their
21 liability for workers' compensation with ~~the State Insurance Fund~~
22 CompSource Oklahoma or, through any combination of the following,
23 may:

24

1 1. Self-insure and make any appropriation of funds to cover
2 their risk;

3 2. Secure reinsurance or excess insurance over and above a
4 self-insured retention in any manner authorized by subsection B of
5 Section 168 of Title 51 of the Oklahoma Statutes; or

6 3. Insure with other insurance carriers licensed in the State
7 of Oklahoma.

8 D. Comprehensive universities shall insure against their
9 liability for workers' compensation ~~with the State Insurance Fund~~
10 through the Risk Management Administrator. The Risk Management
11 Administrator shall obtain the insurance from CompSource Oklahoma;
12 or if it can be demonstrated to ~~the Board of Regents of the~~
13 ~~comprehensive university~~ the Risk Management Administrator prior to
14 the inception date of a workers' compensation policy that the policy
15 will result in a lower cost than one with ~~the State Insurance Fund~~
16 CompSource Oklahoma or, through any combination of the following,
17 may:

18 1. Self-insure ~~and make any appropriation of funds to cover~~
19 ~~their risk;~~ or

20 2. Insure with other insurance carriers licensed in the State
21 of Oklahoma.

22 E. In addition to any other provision of this section, city,
23 county, city-county, and public trust hospitals may insure with
24 other insurance carriers licensed in this state if it can be

1 demonstrated to the governing body of the hospital prior to the
2 inception date of a workers' compensation policy each year that the
3 policy will result in a lower cost than one with ~~the State Insurance~~
4 ~~Fund~~ CompSource Oklahoma.

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

10 G. ~~Where~~ If a person who is employed by the state, a
11 municipality, a county, or by any political subdivisions thereof,
12 and who, while off-duty from the employment, is employed by a
13 private employer, the private employer alone shall be liable for
14 compensation under the Workers' Compensation ~~Act~~ Code for any injury
15 or death of the person arising out of and in the course of
16 employment which occurs during the hours of actual employment by the
17 private employer. The provisions of ~~this act~~ the Workers'
18 Compensation Code shall be applicable to private employers specified
19 in this subsection. The provisions of this subsection shall not
20 relieve the state, a municipality or a county, or any political
21 subdivision thereof, from providing disability benefits to which a
22 person may be entitled pursuant to a pension or retirement plan. The
23 provisions of this subsection shall not preclude an employee or
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1 group of employees so employed from providing separate compensation
2 coverage for off-duty employment by a private employer.

3 SECTION 5. This act shall become effective July 1, 2013.

4 SECTION 6. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

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