

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1518

By: Stipe

AS INTRODUCED

An Act relating to workers' compensation; amending Section 2, Chapter 420, O.S.L. 1999, 85 O.S. 1991, Sections 2b, as last amended by Section 3, Chapter 420, O.S.L. 1999, 138, as last amended by Section 2, Chapter 26, O.S.L. 1995, and 173, as last amended by Section 9, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 1999, Sections 2b, 138, and 173), which relate to the State Insurance Fund, coverage for public employees, and the Multiple Injury Trust Fund; requiring certain amounts payable to certain state agencies to be credited to the Multiple Injury Trust Fund until specified obligations are met; deleting requirement for deposit in the State Treasury; deleting authority for certain state agencies to obtain coverage for workers' compensation from certain sources; expanding investment authority of the State Insurance Fund; imposing additional assessment on certain insurers and self-insurers and limiting amount thereof; authorizing the Multiple Injury Trust Fund to enter into certain obligations with the State Insurance Fund; repealing Section 1, Chapter 420, O.S.L. 1999, which relates to the surplus of the State Insurance Fund; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 420, O.S.L. 1999, is amended to read as follows:

Section 2. ~~Any~~ Until satisfaction of all agreements pursuant to subsection K of Section 173 of Title 85 of the Oklahoma Statutes, any dividend, rebate, refund, or other distribution to policyholders payable by the State Insurance Fund to a state agency ~~pursuant to Section 1 of this act shall be deposited in the State Treasury to the credit of~~ credited to the Multiple Injury Trust Fund. All monies accruing to the credit of the Fund pursuant to this section are hereby appropriated and may be budgeted and expended by the Multiple Injury Trust Fund for any lawful obligation of the Fund.

SECTION 2. AMENDATORY 85 O.S. 1991, Section 2b, as last amended by Section 3, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 1999, Section 2b), is amended to read as follows:

Section 2b. A. 1. All public entities of this state, their agencies and instrumentalities, authorities, and public trusts of which they are beneficiaries shall provide workers' compensation to their employees and elected officials engaged in either governmental or proprietary functions in accordance with this section.

Compensation or indemnification for compensation shall be paid out of the funds of the public entities.

2. Except as otherwise provided, the state and all its institutions of higher education, departments, instrumentalities, institutions, and public trusts of which it or they are beneficiaries shall insure against liability for workers' compensation with the State Insurance Fund and shall not insure with any other insurance carrier unless:

- a. the State Insurance Fund refuses to accept the risk when the application for insurance is made; or
- b. specifically authorized by law; ~~or~~
- ~~c. the state entity can obtain workers' compensation insurance coverage at the same cost or at a lower cost from another insurance carrier licensed in this state. For the first fiscal year beginning subsequent to the satisfaction of any agreement entered into pursuant to subsection K of Section 173 of this title and the next three fiscal years thereafter, not to exceed fifteen (15) state entities each fiscal year may leave the State Insurance Fund and obtain workers' compensation insurance coverage pursuant to this subparagraph. Beginning with the fourth fiscal year thereafter, all state entities may obtain workers' compensation insurance coverage pursuant to this subparagraph.~~

3. The state, all state institutions of higher education except comprehensive universities, and all state departments, instrumentalities, institutions, and public trusts of which the state is a beneficiary, may self-insure under rules promulgated by the State Insurance Fund. Self-insurance administration may only be obtained through the State Insurance Fund. The state, all state institutions of higher education except comprehensive universities, and all state departments, instrumentalities, institutions, and public trusts so electing to self-insure shall pay premiums set by the State Insurance Fund. The State Insurance Fund shall collect premiums, pay claims and provide for excess insurance. All dividends or profits accumulating from a self-insurance program shall be refunded to the participants on a formula devised by the State Insurance Fund.

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

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

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

3. Secure compensation for their employees in the manner provided in the Political Subdivision Tort Claims Act; subsection C of Section 167 of Title 51 of the Oklahoma Statutes, or

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

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

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

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

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

D. Comprehensive universities shall insure against their liability for workers' compensation with the State Insurance Fund; or if it can be demonstrated to the Board of Regents of the comprehensive university prior to the inception date of a workers' compensation policy that the policy will result in a lower cost than one with the State Insurance Fund or, through any combination of the following, may:

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

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

E. In addition to any other provision of this section, city, county, city-county, and public trust hospitals may insure with other insurance carriers licensed in this state if it can be demonstrated to the governing body of the hospital prior to the inception date of a workers' compensation policy each year that the policy will result in a lower cost than one with the State Insurance Fund.

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

G. Where a person who is employed by the state, a municipality, a county, or by any political subdivisions thereof, and who, while

off-duty from the employment, is employed by a private employer, the private employer alone shall be liable for compensation under the Workers' Compensation Act for any injury or death of the person arising out of and in the course of employment which occurs during the hours of actual employment by the private employer. The provisions of Section 11 of this title shall be applicable to private employers specified in this subsection. The provisions of this subsection shall not relieve the state, a municipality or a county, or any political subdivision thereof, from providing disability benefits to which a person may be entitled pursuant to a pension or retirement plan. The provisions of this subsection shall not preclude an employee or group of employees so employed from providing separate compensation coverage for off-duty employment by a private employer.

SECTION 3. AMENDATORY 85 O.S. 1991, Section 138, as last amended by Section 2, Chapter 26, O.S.L. 1995 (85 O.S. Supp. 1999, Section 138), is amended to read as follows:

Section 138. A. The Board of Managers shall discharge their duties with respect to the State Insurance Fund solely in the interest of the Fund and:

1. For the exclusive purpose of:

- a. providing benefit to the Fund, and
- b. defraying reasonable expenses of administering the State Insurance Fund;

2. With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

3. By diversifying the investments of the State Insurance Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

4. In accordance with the laws, documents and instruments governing the State Insurance Fund.

B. ~~The~~ 1. Except as otherwise provided in paragraph 2 of this subsection, monies of the State Insurance Fund shall be invested only in assets eligible for the investment of funds of a domestic property and casualty insurance company as provided for in the Oklahoma Insurance Code, Title 36 of the Oklahoma Statutes. The term admitted assets shall mean the amount of the monies of the State Insurance Fund and the provisions relating to limitation of investments as a percentage of surplus as regards policyholders shall be inapplicable with respect to investment of the monies of the State Insurance Fund.

2. The monies of the State Insurance Fund may be invested in the following:

- a. certificates of indebtedness or such other enforceable evidences of obligation as may be utilized in the rights-of-way acquisitions by the Oklahoma Department of Transportation. ~~The monies of the State Insurance Fund may also be invested in,~~
- b. bonds secured by first mortgages, pass-through securities and insured participation certificates representing interests in first mortgages or insured mortgage pass-through certificates on one- to four-family residences located within this state, and
- c. bonds, loans, or such other enforceable evidences of obligation as may be utilized in fulfilling any payment obligations of the Multiple Injury Trust Fund.

C. 1. The Commissioner, with the approval of the Board of Managers, is authorized to acquire any real estate deemed necessary for the immediate and reasonably anticipated future administrative office space needs of the State Insurance Fund. The Commissioner, with the approval of the Board of Managers, may sell, lease, rent or

sublet any real estate holdings of the State Insurance Fund. Any revenues of such transactions shall accrue to the surplus or reserve fund of the State Insurance Fund.

2. In any lease, rental, sublease or other agreement for the use or occupation of real estate holdings of the State Insurance Fund, no state agency may enter into an agreement which has a gross effective rental rate which is greater than the gross effective rental rate for which they can continue to occupy the premises which is currently rented at the time the agency proposes to move. For a period of two (2) years after the first use or occupation by the state agency, subsequent agreements, whether new agreements or continuations of a prior agreement, shall not contain a gross effective rental rate which is greater than that of the original agreement.

D. The Board of Managers may procure insurance indemnifying the members of the State Insurance Fund from personal loss or accountability from liability resulting from a member's action or inaction as a member of the Board of Managers.

E. The Board of Managers may establish an investment committee. The investment committee shall be composed of not more than three (3) members of the Board of Managers appointed by the ~~chairman~~ chair of the Board of Managers. The committee shall make recommendations to the full Board on all matters related to the choice of custodians and managers of the assets of the State Insurance Fund, on the establishment of investment and fund management guidelines, and in planning future investment policy. The committee shall have no authority to act on behalf of the Board of Managers or the Fund in any circumstances whatsoever. No recommendation of the committee shall have effect as an action of the Board of Managers nor take effect without the approval of the Board of Managers as provided by law.

F. The Board of Managers shall retain qualified investment managers to provide for the investment of the monies of the State Insurance Fund. The investment managers shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Board of Managers. Subject to the overall investment guidelines set by the Board of Managers, the investment managers shall have full discretion in the management of those monies of the State Insurance Fund allocated to the investment managers. The Board of Managers shall manage those monies not specifically allocated to the investment managers. The monies of the State Insurance Fund allocated to the investment managers shall be actively managed by the investment managers, which may include selling investments and realizing losses if such action is considered advantageous to longer term return maximization. Because of the total return objective, no distinction shall be made for management and performance evaluation purposes between realized and unrealized capital gains and losses.

G. Funds and revenues for investment by the investment managers or the Board of Managers shall be placed with a custodian selected by the Board of Managers. The custodian shall be a bank or trust company offering master custodial services. The custodian shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Board of Managers. In compliance with the investment policy guidelines of the Board of Managers, the custodian bank or trust company shall be contractually responsible for ensuring that all monies of the State Insurance Fund are invested in income-producing investment vehicles at all times. If a custodian bank or trust company has not received direction from the investment managers of the State Insurance Fund as to the investment of the monies of the State Insurance Fund in specific investment vehicles, the custodian bank or trust company shall be contractually responsible to the Board of Managers for investing the monies in

appropriately collateralized short-term interest-bearing investment vehicles.

H. Prior to August 1 of each year, the Board of Managers shall develop and approve a written investment plan for the State Insurance Fund.

I. The State Insurance Fund Commissioner shall compile a quarterly financial report of all the funds of the State Insurance Fund. The report shall be compiled and filed pursuant to uniform reporting standards prescribed by the State Insurance Commissioner for domestic property and casualty insurance companies. The report shall include several relevant measures of investment value, including acquisition cost and current fair market value with appropriate summaries of total holdings and returns. The report shall contain combined and individual rate of returns of the investment managers by category of investment, over periods of time. The report shall contain a list of all investments made by the State Insurance Fund and a list of any commissions, fees or payments made for services regarding such investments for that reporting period. The report shall be distributed to the Governor, the Legislative Service Bureau and the Cash Management and Investment Oversight Commission.

SECTION 4. AMENDATORY 85 O.S. 1991, Section 173, as last amended by Section 9, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 1999, 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. Each mutual or interinsurance association, stock company, the State Insurance Fund, or other insurance carrier writing workers' compensation insurance in this state, and each self-insurer, shall pay to the Oklahoma Tax Commission a sum equal to four percent (4%) of the total compensation for permanent total

disability or permanent partial disability paid out or payable during each quarter-year period of the calendar year. Each mutual or interinsurance association, stock company, the State Insurance Fund, or other insurance carrier writing workers' compensation insurance in this state, and each self-insurer, shall pay to the Oklahoma Tax Commission a fee as determined annually by the Multiple Injury Trust Fund for the administration of their awards pursuant to Section 172 of this title not to exceed two percent (2%) of the total compensation for permanent total disability or permanent partial disability paid out or payable during each quarter-year period of the calendar year. Payments to the Oklahoma Tax Commission shall be made not later than the fifteenth day of the month following the close of the quarter-year in which compensation is paid or becomes payable. Contributions made by insurance carriers and the State Insurance Fund, under the provisions of the Workers' Compensation Act, to the Multiple Injury Trust Fund shall be considered losses for the purpose of computing workers' compensation rates.

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

C. Where an award has been made by the Workers' Compensation Court, or any payments in lieu thereof, for compensable injury for a permanent total disability or a permanent partial disability, the employer or insurance carrier shall pay to such employee ninety-six percent (96%) of the same and the remaining four percent (4%) thereof shall be paid by the employer or insurance carrier to the Oklahoma Tax Commission. Payments to the Oklahoma Tax Commission shall be made not later than the fifteenth day of the month following the close of each quarter of the calendar year in which compensation is paid or became payable.

D. The payments provided for in the foregoing subsections A and C, which aggregate eight percent (8%) of the awards for permanent

disability, shall, in the event the award becomes final, accrue and be payable regardless of whether or not the award made to a claimant is paid.

E. In making and entering awards for compensation for permanent total disability or permanent partial disability, the Court shall determine and fix the amounts that shall be paid to the Oklahoma Tax Commission under subsections A and C of this section. The total amount of the deduction so determined and fixed shall have the same force and effect as an award of the Court for compensation and all provisions relating to the collection of awards of the Court shall apply to such judgments.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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: ninety percent (90%) to the Multiple Injury Trust Fund, five percent (5%) to the Oklahoma Department of Labor, two and one-half percent (2.5%) to the Office of the Attorney General and two and one-half percent (2.5%) to the State Department of Vocational and Technical Education. 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. 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.

K. The Multiple Injury Trust Fund may enter into loan agreements or other similar enforceable evidences of obligation with the State Insurance Fund for the purpose of fulfilling any of its payment obligations upon terms acceptable to the parties.

SECTION 5. REPEALER Section 1, Chapter 420, O.S.L. 1999, is hereby repealed.

SECTION 6. 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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