

ENGROSSED HOUSE
BILL NO. 2752

By: Askins and Piatt of the
House

and

Henry of the Senate

An Act relating to workers' compensation assessments; amending 36 O.S. 2001, Section 1501, which relates to admitted assets; defining certain rebate as an admitted asset; creating new sections of law relating to a rebate; providing for a rebate to certain parties under certain circumstances; setting forth circumstances and procedures for rebate; creating the Workers' Compensation Assessment Rebate Fund and providing funding for the same; amending 85 O.S. 2001, Section 173, which relates to the Multiple Injury Trust Fund; eliminating certain assessment; modifying method of determining and procedure for payment of certain assessment; modifying procedure for determining certain outstanding obligations of the Multiple Injury Trust Fund; allowing a portion of assessments to be charged to certain parties; prohibiting a portion of assessments to be charged to certain parties; providing for credit against future assessment obligations equal to certain assessment payments; requiring refund of assessments under certain circumstances; modifying continuing obligations of certain parties to pay assessment; providing penalties for failure to comply with assessment provisions; requiring promulgation of rules by certain entities; repealing 68 O.S. 2001, Section 2357.44, which relates to certain tax credit; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 1501, is amended to read as follows:

Section 1501. In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:

1. Cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company.

2. Investments, securities, properties and loans acquired or held in accordance with this Code, and in connection therewith the following items:

(a) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

(b) Declared and unpaid dividends on stock and shares, unless such amount has otherwise been allowed as an asset.

(c) Interest due or accrued upon a collateral loan in an amount not to exceed one (1) year's interest thereon.

(d) Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the Insurance Commissioner a collectible asset.

(e) Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of eighteen (18) months be allowed as an asset.

(f) Rent due or accrued on real property if such rent is not in arrears for more than three (3) months, and rent more than three (3) months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral.

(g) The unaccrued portion of taxes paid prior to the due date on real property.

3. Premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy.

4. The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer.

5. Premiums in the course of collection, other than for life insurance, not more than three (3) months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or by any of its instrumentalities.

6. Installment premiums other than life insurance premiums to the extent of the unearned premium reserves carried thereon.

7. Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon.

8. The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under Section 711 of Article 7 (Kinds of Insurance; Reinsurance; Limits of Risk).

9. Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty.

10. Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the Insurance Commissioner available for the payment of losses and claims and at values to be determined by him.

11. All assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the national association of insurance commissioners for the kinds of insurance to be reported upon therein.

12. Rebates determined and accrued pursuant to Section 2 of this act.

13. Other assets, not inconsistent with the provisions of this section, deemed by the Insurance Commissioner to be available for

the payment of losses and claims, at values to be determined by the Commissioner.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6101 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. All parties required to pay an assessment pursuant to Section 173 of Title 85 of the Oklahoma Statutes shall be entitled to receive a rebate equal to two-thirds (2/3) of the amount of the assessment actually paid, subject to application to and approval of the same by the Oklahoma Tax Commission. This rebate shall only apply to assessments due after January 15, 2002. This rebate shall not be considered in determining tax liability of an insurer pursuant to Section 629 of Title 36 of the Oklahoma Statutes.

B. Beginning January 1, 2003, the Oklahoma Tax Commission shall accept applications for rebates from all eligible parties for assessments paid pertaining to the previous calendar year. Failure to apply for a rebate on or before May 31 of each year shall result in forfeiture of the rebate. No rebates shall be paid until after July 1 of each year.

C. The Oklahoma Tax Commission may promulgate rules as necessary to effectuate the provisions of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6102 of Title 68, unless there is created a duplication in numbering, reads as follows:

There is hereby created within the State Treasury a special fund for the Oklahoma Tax Commission to be designated the "Workers' Compensation Assessment Rebate Fund". The Oklahoma Tax Commission is hereby authorized and directed to withhold a portion of the taxes levied and collected pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for deposit into the fund. The amount deposited shall be appropriate to pay the rebates provided for in Section 2 of this act. All of the amounts deposited in such fund shall be used

and expended by the Oklahoma Tax Commission solely for the purpose of payment of rebates authorized by Section 2 of this act. The liability of the State of Oklahoma to make the rebate payments under Section 2 of this act shall be limited to the balance contained in the fund created by this section.

SECTION 4. AMENDATORY 85 O.S. 2001, 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. Until December 31, 2001, each mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state shall be assessed and 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. Until December 31, 2001, 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.~~

~~CompSource Oklahoma 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 CompSource Oklahoma, shall not be considered in determining whether any rate is excessive. Insurance carriers and CompSource Oklahoma shall not separately state the amount of the assessment on any invoice or billing statement.~~

B. 1. a. As soon as practicable after January 1 of each year and until such time as the Board of Managers of CompSource Oklahoma, pursuant to an independent actuarial audit, has certified that there are sufficient funds to satisfy all outstanding obligations of the Multiple Injury Trust Fund, the Workers' Compensation Court Administrator shall ~~assess~~ establish an assessment rate applicable to each mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state, ~~and~~ each employer carrying its own risk, ~~including~~ and each group self-insurance association, ~~separately~~ for amounts for purposes of computing the assessment authorized by this section necessary to pay the annual obligations of the Multiple Injury Trust Fund determined on or before ~~November 1~~ December 31 of each year by the Board of Managers of CompSource Oklahoma to be outstanding for the next calendar year, and to pay the allocations provided for in subsection ~~H~~ I of this section. The rate shall be equal for all parties required to pay the assessment.

b. Until such time as the Board of Managers of CompSource Oklahoma, pursuant to an independent actuarial audit, has certified that there are sufficient funds to satisfy all outstanding obligations of the Multiple Injury Trust Fund, the Oklahoma Tax Commission shall

assess and collect from any uninsured employer a temporary assessment at the rate of five percent (5%) 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.

2. The assessments ~~provided for in this subsection~~ shall be paid to the Oklahoma Tax Commission. Insurance carriers ~~shall pay the assessment at the same time and in the same manner as premium taxes are paid.~~ Self-insurers, self-insurers, group self-insurance associations and CompSource Oklahoma shall pay the assessment in four equal installments not later than the fifteenth day of the month following the close of each quarter of the calendar year of the assessment. Assessments shall be determined based upon gross direct written premiums, normal premiums or actual paid losses of the paying party, as applicable, during the calendar quarter for which the assessment is due. Uninsured employers shall pay the assessment not later than the fifteenth day of the month following the close of each quarter of the calendar year of the assessment. For purposes of this section, "uninsured employer" means an employer required by law to carry workers' compensation insurance but who has failed or neglected to do so. ~~Assessments against insurance carriers and CompSource Oklahoma~~ Only one-third (1/3) of assessments against insurance carriers and CompSource Oklahoma may be charged to policyholders and shall not be considered in determining whether any rate is excessive. The remaining two-thirds (2/3) of assessments against insurance carriers and CompSource Oklahoma may not be included in any rate, premium, charge, fee, assessment or other amount to be collected from a policyholder. Insurance carriers and CompSource Oklahoma shall not separately state the amount of the assessment on any invoice or billing assessment.

3. a. ~~The assessment of each mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state shall be in the proportion that the gross direct written premiums of the insurer for the year period from October 1 to September 30 preceding the assessment~~ The assessment authorized in this section shall be determined using a rate equal to the proportion that the sum of the outstanding obligations of the Multiple Injury Trust Fund as determined pursuant to paragraph 1 of this subsection and the allocations provided for in subsection I of this section bear to the combined gross direct written premiums of all such insurers; all actual paid losses of all individual self-insureds; and the normal premium of all group self-insurance associations, for the year period from ~~October 1 to September 30~~ January 1 to December 31 preceding the assessment. ~~For purposes of this section "normal premium" means a standard premium less any discounts~~ Notwithstanding any law to the contrary, the rate for the first two calendar quarters of 2002 shall equal six percent (6%).
- b. ~~The assessment of each individual employer that covers its own risk shall be in the proportion that the total actual paid losses of the self-insured for the year period from October 1 to September 30 preceding the assessment bear to the combined gross direct written premiums of all mutual or interinsurance associations, stock companies, CompSource Oklahoma, and other insurance carriers writing workers' compensation in this state; all actual paid losses of all individual~~

~~self-insureds; and the normal premium of all group self-insurance associations, for the year period from October 1 to September 30 preceding the assessment. No employer or insurer shall be liable for payment of the January 15, 2002, assessment. Payments made pursuant to the January 15, 2002, assessment shall be credited to any assessment obligation of the payor pursuant to this section. Any payment made pursuant to the January 15, 2002, assessment by a payor having no assessment obligation pursuant to this section during the 2002 calendar year shall be refunded in its entirety to the payor upon application by the payor in the same time and manner as provided for the payment of rebates in Section 2 of this act.~~

c. ~~The assessment of each group self-insurance association shall be in the proportion that its normal premium for the year period from October 1 to September 30 preceding the assessment bears to the combined gross direct written premiums of all mutual or interinsurance associations, stock companies, CompSource Oklahoma and other insurance carriers writing workers' compensation in this state; all actual paid losses of all individual self-insureds; and the normal premium of all group self-insurance associations, for the year period from October 1 to September 30 preceding the assessment.~~

d. For purposes of this subsection:

(1) "actual paid losses" means all medical and indemnity payments, including temporary disability, permanent disability, and death benefits, and excluding loss adjustment expenses and reserves, and

(2) "normal premium" means a standard premium less any discounts.

4. By ~~November 1~~ April 15 of each year, the Insurance Commissioner, Board of Managers of CompSource Oklahoma and each individual and group self-insured shall provide the Administrator with such information as the Administrator may determine is necessary to effectuate the purposes of this section.

5. Each mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state, and each employer carrying its own risk, including each group self-insurance association, shall be notified by the Administrator in writing of the rate for the assessment on or before ~~January 15~~ May 1 of each year in which an assessment a rate is made determined. The rate determined by the Administrator shall be in effect for four calendar quarters beginning July 1 following determination by the Administrator.

6. a. No mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state, may be assessed in any year an amount greater than six percent (6%) of the gross direct written premiums of that insurer ~~for the year period from October 1 to September 30 preceding the assessment.~~
- b. No employer carrying its own risk may be assessed in any year an amount greater than six percent (6%) of the total actual paid losses of that individual self-insured ~~for the year period from October 1 to September 30 preceding the assessment.~~
- c. No group self-insurance association may be assessed in any year an amount greater than six percent (6%) of the normal premium of that group self-insurance

~~association for the year period from October 1 to
September 30 preceding the assessment.~~

- d. If the maximum assessment does not provide in any one year an amount sufficient to make all necessary payments for obligations of the Multiple Injury Trust Fund and for the allocations provided for in subsection ~~H~~ I of this section, the unpaid portion shall be paid as soon thereafter as funds become available.

~~7. An employer which has ceased to be a self-insurer, or a workers' compensation insurer which has ceased to write workers' compensation insurance in this state shall continue to be liable for any assessments of the employer or insurer as provided in this section based on premium or actual paid losses, as applicable, for the previous year period from October 1 to September 30.~~

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

~~D.~~ 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. Any mutual or interinsurance association, stock company, or other insurance company, which is subject to regulation by the Insurance Commissioner, or CompSource Oklahoma, failing to make payments required herein promptly and correctly, and failing to report payment of the same to the Insurance Commission within ten (10) days of payment shall be subject to administrative penalties as allowed by law, including but not limited to, a fine in the amount of Five Hundred Dollars (\$500.00) or an amount equal to one percent

(1%) of the unpaid amount, whichever is greater, to be paid to the Insurance Commissioner.

E. Any employer carrying its own risk, or group self-insurance association failing to make payments required herein promptly and correctly, and failing to report payment of the same to the Administrator within ten (10) days of payment shall be subject to administrative penalties as allowed by law, including but not limited to a fine in the amount of Five Hundred Dollars (\$500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater, to be paid to the Administrator.

~~F.~~ F. On or before the first day of April of each year, the State Treasurer shall advise the Court Administrator, the Board of Managers of CompSource Oklahoma and the Oklahoma Tax Commission of the amount of money held as of March 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund. On or before the first day of November of each year, the State Treasurer shall advise the Court Administrator, the Board of Managers of CompSource Oklahoma and the Oklahoma Tax Commission of the amount of money held as of October 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund.

~~F.~~ G. 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 CompSource Oklahoma, with the approval of the Board of Managers of CompSource Oklahoma, 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 CompSource Oklahoma, 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 CompSource Oklahoma, sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for the Multiple Injury Trust Fund.

~~G.~~ H. 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.

~~H.~~ I. Beginning January 1, 2002, the Oklahoma Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Multiple Injury Trust Fund all monies collected pursuant to the provisions of this section, less the annual sum of One Million Seven Hundred Thousand Dollars (\$1,700,000.00), of which Eight Hundred Fifty Thousand Dollars (\$850,000.00) shall be payable by the Oklahoma Tax Commission to the State Treasurer in equal monthly installments to the credit of the Department of Labor, Four Hundred Twenty-five Thousand Dollars (\$425,000.00) shall be payable in equal monthly installments to the credit of the Office of the Attorney General, and Four Hundred Twenty-five Thousand Dollars (\$425,000.00) shall be payable in equal monthly installments to the credit of the Oklahoma Department of Career and Technology 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 Oklahoma Department of Career and Technology 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.

~~I.~~ J. The Administrator of the Workers' Compensation Court ~~may~~ shall promulgate rules as the Administrator deems necessary to effectuate the provisions of this section and Section 174 of this title.

K. The Insurance Commissioner shall promulgate rules relating to insurers as defined in Title 36 of the Oklahoma Statutes, as the Insurance Commissioner deems necessary to effectuate the provisions of this section.

SECTION 5. REPEALER 68 O.S. 2001, Section 2357.44, 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.

Passed the House of Representatives the 5th day of March, 2002.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2002.

Presiding Officer of the Senate