STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1889 By: Pope (Tim)

AS INTRODUCED

An Act relating to the Department of Labor; 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), which relates to penalties for failure to secure workers' compensation insurance; modifying deposit of penalties; eliminating certain revolving fund; 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), which relates to premium assessments; modifying certain payments of assessments to certain agencies; making an appropriation to the Department of Labor; creating an incentive program; providing guidelines, standards and funding for an incentive program; directing promulgation of rules; providing penalties; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. 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 2. 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~~ four-tenths of one percent ~~(.8%)~~ (.4%) 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%)~~ fifty percent (50%) to the Office of the Attorney General and ~~twenty-five percent (25%)~~ fifty percent (50%) to the State Department of Vocational and Technical 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.~~ 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 3. 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, the sum of One Million Seven Hundred Thousand Dollars ($1,700,000.00) or so much thereof as may be necessary to perform the duties imposed upon the Department of Labor by law.

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. 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, an incentive program is hereby created, to be known as the "Workplace Safety Improvement Incentive Program". The incentive is only available to state agencies which have successfully reduced workers' compensation costs and generated safety savings from their actions.

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

C. The funds for the Workplace Safety Improvement Incentive Program will be appropriated on an annual basis, with such incentive

being calculated on data beginning with FY-01 for FY-02 distribution, and continue in future years. Remaining funds not distributed at the end of each fiscal year shall revert to the General Revenue Fund of the State Treasury.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

SECTION 5. This act shall become effective July 1, 2001.

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.

48-1-6173 SK 6/12/15