ENGROSSED HOUSE
BILL NO. 2434

By: Askins of the House

and

Laster of the Senate

(insurance - amending 36 O.S., Sections 2003, 2004 and 2007 - Property and Casualty Insurance Guaranty Association Act - promulgation of rules - amending 85 O.S., Section 131 - CompSource Oklahoma - tax - codification)

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 2003, is amended to read as follows:

Section 2003. The Oklahoma Property and Casualty Insurance Guaranty Association Act shall apply to workers' compensation equivalent insurance products approved pursuant to Section ~~1~~ 65 of ~~this act~~ Title 85 of the Oklahoma Statutes and to all kinds of direct insurance, except life, accident, health, ocean marine insurance, surety and title, as defined in Sections 702, 703, 705, 708 and 709 of this title, mortgage or financial guaranty insurance or other forms of insurance offering protection against investment risks, credit insurance, insurance of warranties or service contracts, annuities, vendors single interest insurance, collateral protection insurance, and any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of investment risk.

SECTION 2. AMENDATORY 36 O.S. 2001, Section 2004, is amended to read as follows:

Section 2004. As used in the Oklahoma Property and Casualty Insurance Guaranty Association Act:

1. "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer;

2. "Association" means the Oklahoma Property and Casualty Insurance Guaranty Association;

3. "Claimant" means any insured making a first-party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant;

4. "Commissioner" means the Commissioner of Insurance;

5. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact;

6. "Covered claim" means an unpaid claim of an insured or third party liability claimant, including one of unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this act applies issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this act and (a) the claimant or insured

is a resident of this state at the time of the insured event, provided that for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event; or (b) the property from which the claim arises is permanently located in this state. "Covered claim" shall not include any amount awarded as punitive or exemplary damages; sought as a return of premium under any retrospective rating plan; or due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise; provided, that a claim for any such amount, asserted against a person insured under a policy issued by an insurer which has become an insolvent insurer, which, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool or underwriting association, would be a "covered claim" may be filed directly with the receiver of the insolvent insurer, but in no event may any such claim be asserted in any legal action against the insured of such insolvent insurer. "Covered claim" shall not include any first-party or third-party claim by or against an insured whose net worth on December 31 of the year preceding the date the insurer becomes an insolvent insurer exceeds Twenty-five Million Dollars ($25,000,000.00); provided that the net worth of the insured shall be deemed to include the aggregate net worth of the insured and all of its affiliates as calculated on a consolidated basis on December 31 of the year preceding the date the insurer becomes an insolvent insurer. "Covered claim" shall include third-party claims against the insured where the insured has applied for or consented to the appointment of a receiver, trustee, or liquidator for all or a substantial part of the assets of the insured, filed a voluntary petition in bankruptcy, filed a petition or answer seeking a reorganization or arrangement with creditors or pursuant to any insolvency law, or if an order, judgment, or decree is entered by a court of competent jurisdiction, on the application

of a creditor, adjudicating the insured as bankrupt or insolvent or approving a petition seeking reorganization of the insured or all or a substantial part of the assets of the insured, regardless of the net worth of the insured on December 31 of the year preceding the date the insurer becomes an insolvent insurer. "Covered claim" shall not include supplementary payment obligations including, but not limited to, adjustment fees and expenses, attorneys' fees and expenses, court costs, interest and bond premiums incurred prior to the determination that an insurer is an insolvent insurer under this act. "Covered claim" shall also mean the claim of an agent for amounts of unearned premiums advanced or paid by such agent on behalf of a policyholder, however, payment of such covered claims for unearned premiums advanced after the effective date of this section shall be made jointly to such agent and policyholder unless an unconditional written assignment has been executed by the policyholder to the agent;

7. "Director" means any one of the directors of the Association created herein;

8. "Insolvent insurer" means an insurer licensed by the Commissioner to transact insurance in this state either at the time the policy was issued or when the insured event occurred and determined to be insolvent and ordered liquidated by a court of competent jurisdiction;

9. "Member insurer" means any person who (a) writes any kind of insurance to which this act applies, including the exchange of reciprocal or interinsurance contracts and (b) is licensed by the Commissioner to transact insurance in this state, except those insurers enumerated in Section 110 of ~~Title 36 of the Oklahoma Statutes~~ this title;

10. "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this act applies, less return premiums thereon and dividends paid or credited

to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers; and

11. "Person" means an individual, company, insurer, association, organization, society, reciprocal or interinsurance, exchange partnership, syndicate, business trust, corporation, Lloyds association, voluntary association or entity and association, group or department of underwriters.

SECTION 3. AMENDATORY 36 O.S. 2001, Section 2007, is amended to read as follows:

Section 2007. A. The Association shall:

1. Be obligated to pay the covered claims existing prior to the determination of insolvency if the claims arise within thirty (30) days after the determination of insolvency, or before the policy expiration date if less than thirty (30) days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within thirty (30) days of the determination. Such obligation shall be satisfied by paying to the claimant an amount as follows:

a. the full amount of a covered claim for benefits under a workers' compensation insurance coverage,

b. an amount not exceeding Ten Thousand Dollars ($10,000.00) per policy for a covered claim for the return of unearned premium, and

c. an amount not exceeding One Hundred Fifty Thousand Dollars ($150,000.00) per claimant for all other covered claims<u>, but in no event shall the payment of all covered claims, derivative or otherwise, exceed Five Hundred Thousand Dollars ($500,000.00)</u>.

In no event shall the Association be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises or

in excess of the limits of the Association's obligation existing on the date on which the order of liquidation is filed with the court clerk;

2. Be deemed the insurer to the extent of the obligations on covered claims and to that extent shall have all rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent;

3. Allocate claims paid and expenses incurred among the three accounts set out in Section 2005 of this title separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the Association under this section subsequent to a member insurer becoming an insolvent insurer, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under Section 2013 of this title, and other expenses authorized by the Oklahoma Property and Casualty Insurance Guaranty Association Act, Sections 2001 et seq. of this title. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bear to the net direct written premiums of all participating insurers for the calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified in writing of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than ~~two percent (2%)~~ three percent (3%) of the net direct written premiums of that member or one percent (1%) of that member insurer's surplus as regards policyholders for the calendar year preceding the assessment on the kinds of insurance in the account, whichever is less~~.~~;

4. If the maximum assessment, together with the other assets of the Association, does not provide in any one (1) year in any account an amount sufficient to make all necessary payments from

that account, the ~~funds available~~ Association may ~~be prorated and the unpaid portion shall be paid as soon thereafter as funds become available~~ assess member insurers for the other accounts an amount not to exceed one percent (1%) of the net direct written premiums of that member for the calendar year preceding the assessment on the kinds of insurance in the other accounts. The Association shall pay claims in any order which it deems reasonable, including the payment of claims as the claims are received from the claimants or in groups or categories of claims. The Association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. During the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payments will not reduce capital or surplus below required minimums. Such payments may be refunded to those companies receiving larger assessments by virtue of such deferment, or, at the election of any such company credited against future assessments. Each member insurer serving as a servicing facility may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such covered claims by such member insurer if they are chargeable to the account for which the assessment is made;

~~4.~~ 5. Investigate claims brought against the Association and adjust, compromise, settle and pay covered claims to the extent of the obligation of the Association and deny all other claims and may review settlements, releases and judgments on covered claims to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested;

~~5.~~ 6. Notify such persons as the Commissioner directs as provided for in Section 2009 of this title;

~~6.~~ 7. Handle claims through employees or through one or more insurers or other persons incorporated and resident in the State of Oklahoma designated as servicing facilities. Designation of a servicing facility is subject to approval of the Commissioner, but such designation may be declined by a member insurer;

~~7.~~ 8. Reimburse each servicing facility for obligations of the Association paid by the facility and for reasonable expenses incurred by the facility while handling claims on behalf of the Association and pay the other expenses of the Association authorized by the Oklahoma Property and Casualty Insurance Guaranty Association Act; and

~~8.~~ 9. Have standing to appear before any court of this state which has jurisdiction over an impaired or insolvent insurer for whom the Association is or may become obligated pursuant to the provisions of the Oklahoma Property and Casualty Insurance Guaranty Association Act. Such standing shall extend to all matters germane to the powers and duties of the Association including, but not limited to, proposals for rehabilitation, acquisition, merger, reinsuring, or guaranteeing the covered policies of the impaired or insolvent insurer, and the determination of covered policies and contractual obligations of the impaired or insolvent insurer.

B. The Association may:

1. Employ or retain such persons as are necessary to handle claims and perform other duties of the Association;

2. Borrow funds necessary to effect the purposes of the Oklahoma Property and Casualty Insurance Guaranty Association Act in accordance with the plan of operation;

3. Sue or be sued;

4. Negotiate and become a party to such contracts as are necessary to carry out the purpose of the Oklahoma Property and Casualty Insurance Guaranty Association Act;

5. Refund to member insurers in proportion to the contribution of each member insurer that amount by which the assets of the Association exceed its liabilities, if at the end of any calendar year the board of directors finds that the assets of the Association exceed the liabilities as estimated by the board of directors for the coming year;

6. Lend monies to an insurer declared to be impaired by the Commissioner. The Association, with approval of the Commissioner, shall approve the amount, length and terms of the loan. "Impaired Insurer" for purposes of this paragraph shall mean an insurer potentially unable to fulfill its contractual obligations, but shall not mean an insolvent insurer;

7. Perform such other acts as are necessary or proper to effectuate the purpose of the Oklahoma Property and Casualty Insurance Guaranty Association Act; and

8. Intervene as a party in interest in any supervision, conservation, liquidation, rehabilitation, impairment or receivership in which policyholders interests and interests of the Association may be or are affected.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6103 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 “CompSource Premium Tax Fund”. The Oklahoma Tax Commission is hereby authorized and directed to withhold the taxes levied and collected pursuant to Section 131 of Title 85 of the Oklahoma Statutes for deposit into the fund. The amount deposited shall be appropriate to pay the tax credits provided for in Section 5 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 funding tax credits authorized by Section 5 of this act. The liability of the State of Oklahoma to provide tax credits under Section 5 of this act shall be limited to the balance contained in the fund created by this section. Following application of all tax credits pursuant to Section 5 of this act, the funds in the CompSource Premium Tax Fund shall be transferred to the General Revenue Fund. The Oklahoma Tax Commission shall promulgate emergency and permanent rules as necessary to effectuate the purpose of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6104 of Title 68, unless there is created a duplication in numbering, reads as follows:

For tax years beginning after December 31, 2004, there shall be allowed a credit against the tax imposed by paragraph 2 of subsection A of Section 624 of Title 36 of the Oklahoma Statutes for taxpayers required to pay an assessment pursuant to Section 2007 of Title 36 of the Oklahoma Statutes. The tax credit shall be in an amount equal to the amount of the assessment, subject to the availability of funds in the CompSource Premium Tax Fund. The Oklahoma Tax Commission shall determine eligibility for the credit and the amount of the credit an individual taxpayer may receive, subject to the provisions of this section. If the amount of credits applied for exceed the amount of funds in the CompSource Premium Tax Fund, the amount of the credit shall be prorated and the uncredited portion shall be credited as soon thereafter as funds become available.

SECTION 6. AMENDATORY 85 O.S. 2001, Section 131, as amended by Section 6, Chapter 50, O.S.L. 2002 (85 O.S. Supp. 2003, Section 131), is amended to read as follows:

Section 131. There is hereby created and established a fund to be known as “CompSource Oklahoma”, to be administered by a President

and Chief Executive Officer, without liability on the part of the state beyond the amount of said fund, for the purpose of insuring employers against liability for compensation under Sections 131 through 151 of this title, and for assuring for the persons entitled thereto compensation provided by the workers' compensation law, and for the further purpose of insuring persons, firms and corporations against loss, expense or liability by reason of bodily injury, death by accident, occupational disability, or occupational disease suffered by employees, for which the insured may be liable or have assumed liability. Said fund may further provide insurance for employers against liability incurred as the result of injuries sustained by employees engaged in employment subject to the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C., Section 901 et seq., or employees engaged in employment subject to Title IV of the Federal Coal Mine Health and Safety Act of 1969 as amended by the Black Lung Benefits Act of 1972, as enacted or as may be amended by the Congress of the United States.

(a) CompSource Oklahoma shall be a revolving fund and shall consist of all premiums received and paid into said fund for insurance issued, all property and securities acquired by and through the use of monies belonging to the fund and all interest earned upon monies belonging to the fund and deposited or invested as herein provided.

(b) Said fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of expenses in the manner provided in Sections 131 through 151 of this title.

(c) Said fund shall be fairly competitive with other insurance carriers and it is the intent of the Legislature that said fund shall become neither more nor less than self-supporting.

(d) CompSource Oklahoma shall ~~report to the Insurance Commissioner no later than the last day of February of each year the amount of premium taxes and fees for which it would be liable if it~~

~~were operating as a private carrier~~, annually, on or before February 1, report under oath of the President and Chief Executive Officer to the Oklahoma Tax Commission, the total amount of direct written premiums, membership, application, policy and/or registration fees charged during the preceding calendar year, or since the last return of such direct written premiums, membership, application, policy and/or registration fees collected by CompSource from insurance of every kind upon persons or on the lives of persons resident in this state, or upon real and personal property located within this state, and/or upon any other risks insured within this state. CompSource Oklahoma shall at the same time pay to the Oklahoma Tax Commission an annual tax on all of the direct written premiums after all returned premiums are deducted, and on all membership, application, policy and/or registration fees, installment and/or finance fees or charges collected thereby, for the privileges of having written, continued and/or serviced insurance on lives, property and/or other risks in this state and of having made and serviced investments therein during the previous calendar year except premiums or fees paid by any county, city, town or school district funds or by their duly constituted authorities performing a public service organized pursuant to Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, or Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes, at a rate of two and twenty-five one-hundredths percent (2.25%). Provided, no deduction shall be made from premiums for dividends paid to policyholders. If CompSource fails to remit such taxes in a timely manner, it shall remain liable therefor together with interest thereon at an annual rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified by the State Treasurer on the first regular business day in January of each year, plus four percentage points.

(e) The official name of the fund which is known as "The State Insurance Fund" shall be designated in all future references as

"CompSource Oklahoma". Any references in the Oklahoma Statutes to The State Insurance Fund shall be deemed references to CompSource Oklahoma.

Passed the House of Representatives the 23rd day of February, 2004.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2004.

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Presiding Officer of the Senate