

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1667

By: Calvey, Coody and
Wesselhoft of the House

and

Barrington and Pruitt of
the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 2001, Sections 312.1, as last amended by Section 54, Chapter 368, O.S.L. 2004 and 625.1 (36 O.S. Supp. 2004, Section 312.1), which relate to insurance premium taxes; modifying provisions for apportionment of insurance premium tax revenues; providing for amount to be apportioned to the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System and the Oklahoma Law Enforcement Retirement System; providing for apportionment of amounts prior to apportionment of other revenues; modifying requirements governing use of certain insurance premium tax credits; requiring deduction of certain credits from insurance premium tax liability before other available credits; authorizing certain entities to enter into agreements related to insurance; providing agreements not to be deemed as having certain effect; defining terms; authorizing refund of certain insurance premium taxes; prohibiting refunds prior to certain date; providing for certain treatment of credit amounts; providing for codification; and providing effective dates.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 312.1, as last amended by Section 54, Chapter 368, O.S.L. 2004 (36 O.S. Supp. 2004, Section 312.1), is amended to read as follows:

Section 312.1 A. For the fiscal year ending June 30, 2004, the Insurance Commissioner shall report and disburse one hundred percent (100%) of the fees and taxes collected under Section 624 of this

title to the State Treasurer to be deposited to the credit of the Education Reform Revolving Fund created pursuant to Section 41.29b of Title 62 of the Oklahoma Statutes. The Insurance Commissioner shall keep an accurate record of all such funds and make an itemized statement and furnish same to the State Auditor and Inspector, as to all other departments of this state. The report shall be accompanied by an affidavit of the Insurance Commissioner or the Chief Clerk of such office certifying to the correctness thereof.

B. For the fiscal year beginning July 1, 2006, and for each fiscal year thereafter, the Insurance Commissioner shall apportion an amount of the taxes and fees received from Section 624 of this title, which shall be at least One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) each year, but which shall also be computed on an annual basis by the Commissioner as the amount of insurance premium tax revenue loss attributable to the provisions of subsection H of Section 625.1 of this title and increased if necessary to reflect the annual computation, and which shall be apportioned before any other amounts, to the following pension systems and in the following amounts:

1. Sixty-five percent (65%) to the Oklahoma Firefighters Pension and Retirement Fund in the manner provided for in Sections 49-119, 49-120 and 49-123 of Title 11 of the Oklahoma Statutes;

2. Twenty-six percent (26%) to the Oklahoma Police Pension and Retirement System pursuant to the provisions of Sections 50-101 through 50-136 of Title 11 of the Oklahoma Statutes; and

3. Nine percent (9%) to the Law Enforcement Retirement Fund.

C. After the apportionment required by subsection B of this section, for the fiscal years beginning July 1, 2004, and ending June 30, 2009, the Insurance Commissioner shall report and disburse all of the fees and taxes collected under Section 624 of this title and Section 61 of this act, and the same are hereby apportioned as follows:

1. Forty-one and seven-tenths percent (41.7%) of the taxes collected on premiums shall be allocated and disbursed for the Oklahoma Firefighters Pension and Retirement Fund, in the manner provided for in Sections 49-119, 49-120 and 49-123 of Title 11 of the Oklahoma Statutes;

2. Seventeen percent (17%) of the taxes collected on premiums shall be allocated and disbursed to the Oklahoma Police Pension and Retirement System pursuant to the provisions of Sections 50-101 through 50-136 of Title 11 of the Oklahoma Statutes;

3. Six and one-tenth percent (6.1%) of the taxes collected on premiums shall be allocated and disbursed to the Law Enforcement Retirement Fund; and

4. All the balance and remainder of the taxes and fees provided in Section 624 of this title shall be paid to the State Treasurer to the credit of the General Revenue Fund of the state to provide revenue for general functions of state government. The Insurance Commissioner shall keep an accurate record of all such funds and make an itemized statement and furnish same to the State Auditor and Inspector, as to all other departments of this state. The report shall be accompanied by an affidavit of the Insurance Commissioner or the Chief Clerk of such office certifying to the correctness thereof.

~~C.~~ D. After the apportionment required by subsection B of this section, for the fiscal year ending June 30, 2010, and for each fiscal year thereafter the Insurance Commissioner shall report and disburse all of the fees and taxes collected under Section 624 of this title and Section ~~61~~ 2204 of this ~~act~~ title, and the same are hereby apportioned as follows:

1. Thirty-four percent (34%) of the taxes collected on premiums shall be allocated and disbursed for the Oklahoma Firefighters Pension and Retirement Fund, in the manner provided for in Sections 49-119, 49-120 and 49-123 of Title 11 of the Oklahoma Statutes;

2. Fourteen percent (14%) of the taxes collected on premiums shall be allocated and disbursed to the Oklahoma Police Pension and Retirement System pursuant to the provisions of Sections 50-101 through 50-136 of Title 11 of the Oklahoma Statutes;

3. Five percent (5%) of the taxes collected on premiums shall be allocated and disbursed to the Law Enforcement Retirement Fund; and

4. All the balance and remainder of the taxes and fees provided in Section 624 of this title shall be paid to the State Treasurer to the credit of the General Revenue Fund of the state to provide revenue for general functions of state government. The Insurance Commissioner shall keep an accurate record of all such funds and make an itemized statement and furnish same to the State Auditor and Inspector, as to all other departments of this state. The report shall be accompanied by an affidavit of the Insurance Commissioner or the Chief Clerk of such office certifying to the correctness thereof.

~~D.~~ E. The disbursements provided for in subsections A, B ~~and~~ C and D of this section shall be made monthly. The Insurance Commissioner shall report annually to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the State Auditor and Inspector, the amounts collected and disbursed pursuant to this section.

SECTION 2. AMENDATORY 36 O.S. 2001, Section 625.1, is amended to read as follows:

Section 625.1 A. A foreign or alien insurer which is subject to the tax imposed by Section 624 of this title shall be entitled to a credit against said tax actually paid to and placed in the General Revenue Fund of the state, not including any of said tax monies placed in pension funds and not including any of said tax monies placed in escrow, if, during the year for which the tax is being assessed, the insurer or its affiliate maintained a regional home

office in this state in a building owned or leased by the insurer. To receive a credit against the tax imposed for the year in which the regional home office was established, said office must have been maintained continuously from on or before August 1 of that year through the last day of the calendar year. For succeeding years, an insurer or its affiliate shall have maintained the regional home office continuously from the first day of the calendar year for which the tax is imposed through the last day of that calendar year. The credit shall be equal to the following percentages of the amount due after the credits authorized by Sections 624.1 and 625 of this title have been deducted:

1. Fifteen percent (15%), if there are more than two hundred full-time, year-round Oklahoma employees, but less than three hundred full-time, year-round Oklahoma employees;

2. Twenty-five percent (25%), if there are more than three hundred full-time, year-round Oklahoma employees, but less than four hundred full-time, year-round Oklahoma employees;

3. Thirty-five percent (35%), if there are more than four hundred full-time, year-round Oklahoma employees, but less than five hundred full-time, year-round Oklahoma employees; or

4. Fifty percent (50%), if there are five hundred or more full-time, year-round Oklahoma employees.

B. A domestic insurer with four hundred or more full-time, year-round Oklahoma employees which is subject to the tax imposed by Section 624 of this title shall be entitled to a credit against said tax actually paid to and placed in the General Revenue Fund of the state, not including any of said tax monies placed in pension funds and not including any of said tax monies placed in escrow, if, during the year previous to the year for which the tax is being assessed, the insurer or its affiliate maintained a regional home office in this state in a building owned or leased by the insurer and during the year for which the tax is being assessed, the insurer

establishes its home office in this state in a building owned or leased by the insurer. To receive a credit against the tax imposed for the year in which the home office was established, said office must have been maintained continuously from on or before August 1 of that year through the last day of the calendar year. For succeeding years, an insurer shall have maintained the home office continuously from the first day of the calendar year for which the tax is imposed through the last day of that calendar year. Insurers who take action before August 1, 2000, to establish their home office in this state shall be entitled to a credit against the tax imposed on or after January 1, 2001, which shall be in addition to the credit the insurer is entitled to for that year. The credit shall be equal to the following percentages of the amount due after the credits authorized by Sections 624.1 and 625 of this title have been deducted:

1. Thirty-five percent (35%), if there are more than four hundred full-time, year-round Oklahoma employees, but less than five hundred full-time, year-round Oklahoma employees; or

2. Fifty percent (50%), if there are five hundred or more full-time, year-round Oklahoma employees.

C. A domestic insurer which is subject to the tax imposed by Section 624 of this title shall be entitled to a credit against said tax actually paid to and placed in the General Revenue Fund of the state, not including any of said tax monies placed in pension funds and not including any of said tax monies placed in escrow, if, during the year for which the tax is being assessed, the insurer maintained a regional home office in at least five (5) or more counties in this state in buildings owned or leased by the insurer. To receive a credit against the tax imposed for the year in which the regional home offices were established, said offices must have been maintained continuously from on or before August 1 of that year through the last day of the calendar year. For succeeding years, an

insurer shall have maintained the regional home offices continuously from the first day of the calendar year for which the tax is imposed through the last day of that calendar year. The credit shall be equal to the percentage of the amount due after the credits authorized by Sections 624.1 and 625 of this title have been deducted as established in subsection A of this section.

D. Proof that an insurer qualifies for the credit authorized by this section shall be on forms prescribed by the Insurance Commissioner and shall be submitted to the Commissioner annually with the report which is filed pursuant to Section 624 of the Insurance Code.

E. The credit provided for in subsections A, B and C of this section shall be based on the total number of Oklahoma employees in the regional or home office when a group of insurers which are under common management and control maintain a regional home office or home office in this state in a building owned or leased by the group of insurers. The credit provided for in subsections A, B and C of this section may be allocated among the insurance company and the insurance company affiliates at the discretion of the insurance company on a per-insurance-company basis.

F. As used in this section:

1. "Regional home office" means an office transacting insurance, as defined in Section 105 of this title, and performing insurance company operations, which is defined as one or more or any combination of the following functions and services performed in connection with the development, sale, and administration of products giving rise to receipts subject to a premium tax on domestic and foreign insurance companies, or domestic or foreign health care insurance corporations: actuarial, medical, legal, investments, accounting, auditing, underwriting, policy issuance, information, policyholder services, premium collection, claims, advertising and publications, public relations, human resources,

marketing, sales office staff, training of sales and service personnel, and clerical, managerial, and other support for any such functions or services;

2. "Common management and control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an insurer, whether through the ownership of voting securities, by contract, or otherwise, unless the power is executed by a person acting in an official capacity, performing duties imposed and exercising authority granted because of the person's position as an officer or employee of the insurer. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing twenty-five percent (25%) or more of the voting securities of the insurer;

3. "Oklahoma employees" means persons who are employed in Oklahoma after January 1, 2000, and who are common law employees of an insurance company or its affiliate. Oklahoma employees do not include independent contractors or any persons to the extent that the compensation of that person is based on commissions;

4. "Insurance company" means any entity subject to a premium tax on domestic and foreign insurance companies, or domestic or foreign health care insurance corporations, including the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney. A reciprocal and its attorney-in-fact shall be a single entity; and

5. "Home office" means the executive offices of an insurance company which is domiciled in this state.

G. Each insurer or insurance group requesting a credit under this section shall certify by affidavit, approved as to form by the Commissioner, that the insurer has met all of the qualifications required by this section and is authorized to a credit against the premium tax which actually shall be paid to, and placed in the

General Revenue Fund of the state, exclusive of any amounts of the tax which shall be credited to pension funds pursuant to law and exclusive of any amounts which shall be placed into escrow. The Commissioner may do an examination for the sole purpose of certifying that all requirements of this section are being met by the insurer requesting to obtain any credits against premium tax.

H. For the fiscal year beginning July 1, 2006, and for each fiscal year thereafter, and notwithstanding any other provisions of Title 36 of the Oklahoma Statutes or any other provision of law governing the order in which the credit authorized by this section is to be deducted from the liability of the company claiming such credit to the contrary, the credit authorized by this section shall be deducted from the insurance premium tax liability of the company claiming such credit prior to the deduction of any other credits that may be claimed against such liability.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4520 of Title 36, unless there is created a duplication in numbering, reads as follows:

Two or more school districts or public agencies, by interlocal agreement made pursuant to the Interlocal Cooperation Act, may provide insurance for any purpose by any one or more of the methods specified in this section. The pooling of self-insured reserves, claims or losses among governments as authorized in this section shall not be construed to be transacting insurance nor otherwise be subject to the provisions of the laws of this state regulating insurance or insurance companies, no matter the amount of premium individually or in total. Two or more school districts may also be insured under a master policy or contract of insurance. Premium costs may be set individually for each school district or apportioned among participating school districts as provided by the master policy or contract.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 624.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Economically targeted credits" means any credit against the insurance premium tax other than the home office credits;

2. "Home office credits" means the credits against insurance premium tax authorized pursuant to Section 625.1 of Title 36 of the Oklahoma Statutes;

3. "Insurance premium tax" means those levies imposed pursuant to Sections 624 and 628 of Title 36 of the Oklahoma Statutes; and

4. "Insurance premium tax liabilities" means the total liability of any insurance company created by the insurance premium tax.

B. Any taxpayer adversely affected by a requirement of the Oklahoma Insurance Department for deducting home office credits after the deduction of economically targeted credits in computation of the taxpayer's insurance premium tax liabilities for the period July 2003, through June 2005, shall be granted a refund, pursuant to the provisions of Section 624.2 of Title 36 of the Oklahoma Statutes, for the difference between the insurance premium tax liability as it would have been computed had the home office credit been deducted prior to economically targeted credits and the insurance premium tax liability as it was actually computed for such periods.

C. The provisions of this section shall be deemed sufficient grounds for the granting of a refund claim pursuant to subsection C of Section 624.2 of Title 36 of the Oklahoma Statutes.

D. No refund otherwise payable pursuant to the provisions of this section shall be paid to a claimant prior to July 1, 2007.

E. Any and all premium tax credits to be utilized or recovered in a subsequent year are fully admitted as an asset to the insurer owning or generating said credits.

SECTION 5. Sections 1 and 2 of this act shall become effective July 1, 2006.

SECTION 6. Section 3 of this act shall become effective November 1, 2005.

SECTION 7. Section 4 of this act shall become effective July 1, 2007.

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