

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 2169

By: McCullough

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5  
6 AS INTRODUCED

7 An Act relating to workers' compensation; ordering a  
8 legislative referendum pursuant to the Oklahoma  
9 Constitution; ordering a special election; requiring  
10 payment of taxes to Workers' Compensation Commission;  
11 providing for imposition of tax on certain insurance  
12 premium amounts; providing for imposition of tax on  
13 certain self-insured employers; providing for  
14 imposition of tax on public employers; requiring  
15 computation by Workers' Compensation Commission  
16 regarding fund surplus; providing for determination  
17 of tax rates for certain period; imposing limit on  
18 maximum rate of tax; prescribing procedures;  
19 providing penalties for certain noncompliance;  
20 providing for codification; providing an effective  
21 date; providing enactment contingent upon provisions  
22 of Enrolled House Bill No. \_\_\_\_\_ of the 1st Session  
23 of the 52nd Oklahoma Legislature becoming effective  
24 as law; providing ballot title; and directing filing.

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

19 SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma  
20 Constitution, there is hereby ordered the following legislative  
21 referendum which shall be filed with the Secretary of State and  
22 addressed to the Governor of the state, who shall submit the same to  
23 the people for their approval or rejection at the Special Election,  
24 to be held on November 10, 2009.

1           SECTION 2.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 331 of Title 85, unless there is  
3 created a duplication in numbering, reads as follows:

4           A. In addition to the premium taxes collected from carriers,  
5 the carriers shall pay annually to the Workers' Compensation  
6 Commission a tax, at the rate to be determined as provided in  
7 Section 5 of this act, but not to exceed three percent (3%), on all  
8 written manual premiums resulting from the writing of workers'  
9 compensation insurance on risks within the state.

10          B. "Written manual premium" means premium produced in a given  
11 year by the manual rates in effect during the experience period and  
12 shall exclude the premium produced by the expense constant.  
13 Furthermore, "written manual premium", for the purposes of this act,  
14 means premium before any allowable deviated discounts, any  
15 experience rating modification, any premium discount, any  
16 reinsurance or deductible arrangement as common with fronting  
17 carriers, any dividend consideration, or other trade discount.

18          C. 1. This tax shall be collected by the Commission from the  
19 carriers at the same time and in the same manner as insurance  
20 premium taxes and deposited into the funds created in Enrolled House  
21 Bill No. \_\_\_\_\_ of the 1st Session of the 52nd Oklahoma Legislature.

22          2. The deposit into the funds created in Enrolled House Bill  
23 No. \_\_\_\_\_ of the 1st Session of the 52nd Oklahoma Legislature shall  
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1 be in the same proportions that deposits were made into the three  
2 funds as set forth in Section 5 of this act.

3 D. 1. Assessments upon which premium taxes are based shall be  
4 made on forms prescribed by the Commission and shall be paid to the  
5 Commission.

6 2. Absent a waiver obtained from the Commission for good cause,  
7 the failure of the licensed carrier to pay the assessment when due  
8 shall be referred to the Insurance Commissioner for appropriate  
9 administrative action against the Oklahoma certificate of authority  
10 of the delinquent insurer.

11 E. Premium tax payments shall be made by check payable to the  
12 Commission.

13 SECTION 3. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 332 of Title 85, unless there is  
15 created a duplication in numbering, reads as follows:

16 A. It shall be the duty of the Workers' Compensation Commission  
17 to collect a tax from every self-insured employer at a rate to be  
18 determined as provided by Section 5 of this act, but not to exceed  
19 three percent (3%) of the written manual premium, which would have  
20 to be paid under Section 2 of this act by a carrier if the self-  
21 insured employer were insured by a carrier.

22 B. If the tax provided for under this section is not paid  
23 within thirty (30) days of the date provided in Section 5 of this  
24 act, there shall be assessed a penalty for each thirty (30) days the

1 amount so assessed remains unpaid which is equal to ten percent  
2 (10%) of the unpaid amounts and which shall be collected at the same  
3 time as a part of the tax assessed.

4 SECTION 4. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 333 of Title 85, unless there is  
6 created a duplication in numbering, reads as follows:

7 A. 1. It shall be the duty of the Workers' Compensation  
8 Commission to collect a tax from every public employer providing  
9 workers' compensation coverage to its employees at a rate to be  
10 determined as provided by Section 5 of this act, but not to exceed  
11 three percent (3%) of the written manual premium which an insurance  
12 carrier would have to pay under Section 2 of this act if the public  
13 employer were insured by a carrier.

14 2. a. The Commission shall tabulate and collect the tax to  
15 be collected from entities whose workers' compensation  
16 claims are administered by the Public Employee Claims  
17 Division.

18 b. In tabulating the manual premium, a public employer  
19 whose workers' compensation claims are administered by  
20 the Division shall use the average compensation rate  
21 for this state as promulgated by the National Council  
22 on Compensation Insurance for the tax year in  
23 question.

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1           3. The tax collected shall be deposited in and paid to the  
2 Commission from the Workers' Compensation Revolving Fund and  
3 miscellaneous revolving funds.

4           B. 1. In the event that any public employer whose workers'  
5 compensation claims are administered by the Division fails to  
6 cooperate in furnishing information upon which the tax will be  
7 computed or fails to pay the tax within thirty (30) days of the date  
8 provided in Section 5 of this act, the Commission shall notify the  
9 Director of the Public Employee Claims Division of the failure, and  
10 the Commission shall decertify the public employer from  
11 participation in the state's workers' compensation program.

12           2. In the event of decertification, the public employer shall  
13 obtain its employer's workers' compensation liability coverage from  
14 the private market and shall not be entitled to participate in the  
15 state's workers' compensation program for a period of one (1) year  
16 thereafter.

17           C. The procedure for decertification shall be the same as for  
18 the revocation or termination of the self-insurer privilege.

19           SECTION 5.           NEW LAW           A new section of law to be codified  
20 in the Oklahoma Statutes as Section 334 of Title 85, unless there is  
21 created a duplication in numbering, reads as follows:

22           A. 1. The Workers' Compensation Commission, on or before  
23 December 31 of each year, shall determine the surplus, if any, in  
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1 the Workers' Compensation Fund, together with the additional amounts  
2 necessary to properly administer this act for the ensuing year.

3 2. The Commission shall determine the rate of taxation for  
4 collections for that year on or before March 1 of the following  
5 year.

6 B. 1. The Commission, on or before December 31 of each year,  
7 shall determine the surplus, if any, in the Second Injury Trust  
8 Fund, together with the additional amounts necessary to properly  
9 administer this act for the ensuing year.

10 2. The Commission shall determine the rate of taxation for  
11 collections for that year on or before March 1 of the following  
12 year.

13 C. 1. The Commission, on or before December 31 of each year,  
14 shall determine the surplus, if any, in the Death and Permanent  
15 Total Disability Trust Fund, together with the additional amounts  
16 necessary to properly administer this act for the ensuing year.

17 2. The Commission shall determine the rate of taxation for  
18 collections for that year on or before March 1 of the following  
19 year.

20 D. The total rate of taxation for all three funds when added  
21 together shall not exceed three percent (3%).

22 E. 1. The Commission shall notify each insurance carrier of  
23 the rate of taxation applicable to each fund for the preceding year,  
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1 and taxes shall be computed and paid pursuant to the provisions of  
2 Section 2 of this act on or before April 1 of the following year.

3 2. The Commission shall notify each self-insured employer  
4 subject to the tax of the rate of taxation applicable to each fund  
5 for the preceding year, and taxes shall be computed by the  
6 Commission and paid to each fund by the self-insurer through  
7 payments made directly to the Commission on or before April 1 of the  
8 following year.

9 3. The Commission shall notify each public employer subject to  
10 this tax of the rate of taxation applicable to each fund for the  
11 preceding year, and taxes shall be computed by the Commission and  
12 paid to each respective fund through payments made directly to the  
13 Commission by the public employer on or before April 1 of the  
14 following year.

15 F. The Commission shall have the authority to promulgate rules  
16 or regulations for administration of the assessment and tax  
17 collection process, including, but not limited to, rules and  
18 regulations applicable to the funds established in Enrolled House  
19 Bill No. \_\_\_\_\_ of the 1st Session of the 52nd Oklahoma Legislature.

20 G. No later than March 30 each year, the Commission shall  
21 provide the Insurance Commissioner a complete listing of workers'  
22 compensation premium tax collections for the preceding calendar  
23 year, including the monetary amount of workers' compensation premium  
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1 tax paid, by year, by name of workers' compensation carrier, and by  
2 National Association of Insurance Commissioners identity number.

3 SECTION 6. The provisions of this act shall not become  
4 effective as law unless Enrolled House Bill No. \_\_\_\_\_ of the 1st  
5 Session of the 52nd Oklahoma Legislature becomes effective as law.

6 SECTION 7. Upon approval by the people, this act shall become  
7 effective December 1, 2009.

8 SECTION 8. The Ballot Title for the proposed enactments as set  
9 forth in SECTIONS 1 through 7 of this act shall be in the following  
10 form:

11 BALLOT TITLE

12 Legislative Referendum No. \_\_\_\_\_ State Question No. \_\_\_\_\_

13 THE GIST OF THE PROPOSITION IS AS FOLLOWS:

14 This measure would enact new laws for the State of Oklahoma.  
15 These new laws relate to workers' compensation. The new laws  
16 would provide for taxes. The taxes would be levied on workers'  
17 compensation insurance premiums. The rate of tax would not  
18 exceed three percent (3%). The taxes would be deposited into a  
19 special fund used to pay for the cost of operating the state  
20 workers' compensation system. The new laws imposing the taxes  
21 would not become effective unless a bill changing the workers'  
22 compensation laws also becomes the law.

23 SHALL THE PROPOSAL BE APPROVED?

24 FOR THE PROPOSAL - YES \_\_\_\_\_

1       AGAINST THE PROPOSAL – NO \_\_\_\_\_

2       SECTION 9. The Chief Clerk of the House of Representatives,  
3 immediately after the passage of this act, shall prepare and file  
4 one copy thereof, including the Ballot Title set forth in SECTION 8  
5 hereof, with the Secretary of State and one copy with the Attorney  
6 General.

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8       52-1-5767       MAH       01/13/09