

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 702

By: Aldridge

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5  
6 AS INTRODUCED

7 An Act relating to dissolution of CompSource  
8 Oklahoma; stating purpose of act; defining terms;  
9 abolishing CompSource Oklahoma; requiring adoption of  
10 certain plan; requiring submission of certain copies;  
11 requiring certain plan to include specified  
12 information; requiring provision of specified  
13 materials and data; establishing duties of certain  
14 executive and board; stating requirements for certain  
15 purchaser; authorizing enforcement of certain rights;  
16 stating effect on certain actions; requiring  
17 purchaser to discharge certain duties; establishing  
18 requirements for the provision of certain insurance;  
19 requiring payment of certain taxes and fees;  
20 requiring membership in certain association;  
21 clarifying certain immunity; requiring defense of  
22 certain actions; stating priority of certain act;  
23 providing for certain jurisdiction; requiring  
24 approval of certain court; establishing procedures  
for certain approval; providing for payment;  
providing for noncodification; and declaring an  
emergency.

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

SECTION 1. NEW LAW A new section of law not to be  
codified in the Oklahoma Statutes reads as follows:

The purpose of this act is to provide a means to:

1 1. Abolish and dissolve CompSource Oklahoma and sell its assets  
2 and liabilities to benefit all citizens of this State;

3 2. Ensure the enforcement of CompSource's rights and  
4 performance of CompSource's obligations as the rights and  
5 obligations existed immediately before the effective date of the  
6 abolition and dissolution without impairment or limitation of the  
7 rights or obligations, except as expressly provided by this act; and

8 3. Establish a residual market mechanism and plan of rate  
9 stabilization to ensure the availability of workers' compensation  
10 insurance to all Oklahoma employers at reasonably competitive rates.

11 SECTION 2. NEW LAW A new section of law not to be  
12 codified in the Oklahoma Statutes reads as follows:

13 As used in this act:

14 1. "Board of Managers" means the existing governing board of  
15 CompSource Oklahoma, prior to dissolution;

16 2. "Closing date" means the effective date and time of the  
17 closing of the transactions contemplated by a Plan of Sale and is  
18 the effective date of the dissolution;

19 3. "Commissioner" means the Insurance Commissioner of the State  
20 of Oklahoma;

21 4. "CompSource Executive" means the president and chief  
22 executive officer of CompSource Oklahoma;

23 5. "CompSource Oklahoma" means the Oklahoma workers'  
24 compensation insurance facility that was established pursuant to

1 Section 131 et seq. of Title 85 of the Oklahoma Statutes as the  
2 "insurer of last resort" for the State of Oklahoma's employers;

3 6. "Dissolution" means the abolition of CompSource and the  
4 orderly sale of its assets and liabilities, the succession to its  
5 rights, and assumption of its obligations and all processes related  
6 to such purposes;

7 7. "Insurer" means a stock company or mutual company,  
8 authorized to write workers' compensation insurance in this state  
9 pursuant to Title 36 of the Oklahoma Statutes; and

10 8. "Plan of Sale" means a plan to sell the assets of CompSource  
11 Oklahoma including but not limited to provision for assumption of  
12 liabilities and succession to rights.

13 SECTION 3. NEW LAW A new section of law not to be  
14 codified in the Oklahoma Statutes reads as follows:

15 CompSource Oklahoma shall be abolished and dissolved effective  
16 at the closing date.

17 SECTION 4. NEW LAW A new section of law not to be  
18 codified in the Oklahoma Statutes reads as follows:

19 On or before July 31, 2011, the Insurance Commissioner shall  
20 adopt a Plan of Sale.

21 SECTION 5. NEW LAW A new section of law not to be  
22 codified in the Oklahoma Statutes reads as follows:

23 A. The Insurance Commissioner shall immediately submit copies  
24 of the Plan of Sale to the Governor, the President Pro Tempore of

1 the Senate and the Speaker of the House of Representatives. The  
2 Commissioner shall, within not less than twenty (20) days nor more  
3 than thirty-five (35) days following such submission of copies of  
4 the Plan of Sale, commence and complete the Plan of Sale in such  
5 manner so that the closing date is not later than December 31, 2011;  
6 provided, however, the closing date may be extended but shall not in  
7 any event be later than June 30, 2012.

8 B. The Plan of Sale must consider and make provision for the  
9 following:

10 1. Assumption and performance of all of the contractual and  
11 statutory obligations of CompSource Oklahoma including but not  
12 limited to:

- 13 a. payment of all benefits derived from and performance  
14 and discharge of all duties and obligations arising  
15 from contracts of insurance or reinsurance to which  
16 CompSource is or has been a party and performance of  
17 all other duties and obligations of CompSource whether  
18 arising from contract, tort, or by operation of law,
- 19 b. establishment of an assigned risk plan as a residual  
20 market mechanism that will protect the interests of  
21 all employers in this state, including a plan of rate  
22 stabilization to ensure the availability of workers'  
23 compensation insurance to all employers, and

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- 1 c. establishing a plan to stabilize the premium rates of  
2 all small business policyholders as of the closing of  
3 the Plan of Sale by including a provision that for a  
4 period of five (5) years following the closing of the  
5 Plan of Sale, there shall be no premium rate increase  
6 for small business policyholders except base rate  
7 increases, if any, for specific employee  
8 classification codes promulgated by the National  
9 Council on Compensation Insurance (NCCI). For  
10 purposes of this act, "small business policyholders"  
11 are defined as CompSource Oklahoma policyholders as of  
12 the closing of the Plan of Sale whose total workers'  
13 compensation insurance premiums for the policy in  
14 effect on that date and the two preceding policy  
15 periods did not exceed Twenty Five Thousand Dollars  
16 (\$25,000.00) for any such policy period,
- 17 d. consideration of the impact of dissolution and the  
18 most appropriate method to accommodate current  
19 CompSource Oklahoma employees, and
- 20 e. obtaining a competitive price for the assets and  
21 liabilities of CompSource, taking into account the  
22 current financial condition of CompSource, the value  
23 of similar assets, the relative burden of the  
24 assumption of CompSource obligations, the method or

1 methods of sale, and any other matters or issues the  
2 Commissioner deems relevant to the issue of obtaining  
3 the best price and the best net return from the assets  
4 to be sold.

5 C. The Commissioner shall retain one of the five (5) largest  
6 reinsurance brokerage firms, ranked according to gross revenues for  
7 the most recent year for which gross revenue ratings are made by  
8 Business Insurance publications, to serve as an advisor. The firm  
9 shall provide an opinion to be submitted with the copy of the Plan  
10 of Sale to the Governor, the President Pro-Tem of the Senate, the  
11 Speaker of the House of Representatives and the Supreme Court  
12 stating that the Plan of Sale is reasonable from a financial  
13 perspective and prior to the closing date shall provide an opinion  
14 that the purchase price is fair from a financial point of view. The  
15 Plan of Sale must include the following provisions:

16 1. The assets and liabilities must be sold to a single  
17 purchaser who meets the requirements and qualifications specified in  
18 subsection A of Section 6 of this act and who must also assume all  
19 CompSource liabilities and obligations;

20 2. The entire purchase price must be for cash paid by  
21 electronic transfer to the State Treasurer at closing; and

22 3. The purchaser must sign an acknowledgment of and an  
23 agreement to be bound by this act.

1 D. The CompSource Executive and the Board of Managers shall  
2 provide or make available to the Commissioner, to prospective  
3 purchasers, or to any other person or entity the Commissioner may  
4 designate, all materials, data, information, or documents the  
5 Commissioner, in the Commissioner's sole discretion, deems  
6 necessary, helpful or expedient to the preparation of, submission of  
7 or execution of the Plan of Sale, notwithstanding any claim of  
8 privilege, proprietary interest or any other right; provided  
9 however, nothing contained herein shall be deemed to contravene any  
10 state or federal statute or administrative regulation establishing a  
11 right to individual privacy in favor of any injured worker or any  
12 other person whose medical records may be protected by such state  
13 and federal statute or regulation.

14 E. In addition to providing the data, information or documents  
15 described in subsection C of this section, the CompSource Executive  
16 and the Board of Managers shall, when directed by the Commissioner,  
17 make available to prospective purchasers of assets and liabilities,  
18 in the manner and terms as directed by the Commissioner, all  
19 material, data, information or documents requested to be made  
20 available by such prospective purchasers. Such direction by the  
21 Commissioner shall be in writing, shall name the prospective  
22 purchaser and shall state the date or dates upon which such  
23 materials, data, information, or documents shall be made available.  
24 The Commissioner shall issue the directive within five (5) days of a

1 request by a prospective purchaser if the prospective purchaser  
2 meets the requirements of Section 6 of this act and acknowledges  
3 that it will be bound by the provisions of Section 6 of this act if  
4 it becomes the purchaser.

5 SECTION 6. NEW LAW A new section of law not to be  
6 codified in the Oklahoma Statutes reads as follows:

7 A. The purchaser shall be an Oklahoma corporation organized and  
8 authorized by the Insurance Commissioner pursuant to Article 21 of  
9 the Oklahoma Insurance Code to transact property and casualty  
10 insurance business in this state, subject to the requirements of  
11 this act. On the closing date:

12 1. The purchaser is deemed to be continuing the business of  
13 CompSource Oklahoma; and

14 2. Except as otherwise provided by this act, the purchaser is  
15 vested with all property of CompSource Oklahoma.

16 B. The purchaser may enforce all contract and statutory rights  
17 of CompSource Oklahoma under any servicing company arrangements, and  
18 the purchase may not be construed as an assignment of CompSource's  
19 rights or obligations under those agreements nor a breach of any  
20 provision in any contract limiting the assignment of any such  
21 contract, nor shall it be deemed a change of control for such  
22 purposes.

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1 C. Each debt, claim, and cause of action of CompSource  
2 Oklahoma, and all property rights, privileges, franchises, and other  
3 interests of the facility become the property of the purchaser.

4 D. The rights of all policyholders and creditors and the  
5 standing of all claims against CompSource Oklahoma shall be  
6 preserved unimpaired and become the obligation of the purchaser.

7 E. Except as otherwise provided by this act, each debt,  
8 liability and duty of CompSource Oklahoma becomes a debt, liability  
9 or duty of the purchaser and may be enforced against the purchaser  
10 as if it were incurred or contracted by the purchaser.

11 F. A cause of action or similar proceeding in which CompSource  
12 Oklahoma was a party that is pending on the effective date of the  
13 sale:

14 1. Is not affected by the sale;

15 2. May be continued to be prosecuted by or against the  
16 purchaser; and

17 3. Continues to be governed by and conducted under 85 O.S.  
18 Section 131 et seq. of the Oklahoma Statutes and the applicable  
19 bylaws, rules and regulations of CompSource Oklahoma.

20 G. The purchaser may not without the prior consent of the  
21 Commissioner amend its bylaws, rules or regulations in a manner that  
22 would reasonably be likely to have a material adverse effect on  
23 injured workers, employers or other insureds under policies issued  
24 pursuant to Article 7 of Title 85 of the Oklahoma Statutes.

1 H. The purchaser shall discharge all of the duties and be  
2 charged with the same obligations as, and shall succeed to all the  
3 rights of CompSource with respect to volunteer fire departments as  
4 provided in Section 132a of Title 85 of the Oklahoma Statutes.

5 I. The purchaser shall discharge all of the duties and be  
6 charged with the same obligations as, and shall succeed to all the  
7 rights of CompSource with respect to the Multiple Injury Trust Fund  
8 as provided in Section 175 of Title 85 of the Oklahoma Statutes.

9 SECTION 7. NEW LAW A new section of law not to be  
10 codified in the Oklahoma Statutes reads as follows:

11 A. Effective on the closing of the Plan of Sale the purchaser  
12 shall provide for the delivery in this state of workers'  
13 compensation insurance and for the transaction of workers'  
14 compensation insurance business to the same extent as any other  
15 insurance carrier transacting workers' compensation insurance  
16 business in this state;

17 B. The purchaser shall be subject to all of the requirements of  
18 the Oklahoma Insurance Code of similar commercial carriers licensed  
19 and authorized to write workers' compensation insurance in the state  
20 of Oklahoma, except that the purchaser shall serve as the insurer of  
21 last resort for workers' compensation pursuant to the regulations  
22 and requirements of the Insurance Commissioner; provided however,  
23 the Commissioner may, by administrative order, provide that all or  
24 any portion of any class or classes of employer risks be provided

1 workers' compensation insurance through a risk pool, including but  
2 not limited to a risk pool organized and administered by the  
3 National Council of Compensation Insurance, Inc.

4 C. The purchaser shall pay premium taxes, established pursuant  
5 to Section 624 of Title 36 of the Oklahoma Statutes in the same  
6 manner as a domestic insurance carrier authorized by the Insurance  
7 Commissioner to write workers' compensation insurance in this state.

8 D. The purchaser shall pay fees or any payments due in lieu of  
9 taxes in the same manner as other domestic insurance carriers  
10 authorized and admitted by the Commissioner to engage in the  
11 business of insurance in this state under a certificate of authority  
12 that includes authorization to write workers' compensation  
13 insurance.

14 E. The purchaser shall be a member of and is protected by the  
15 Oklahoma Property and Casualty Insurance Guaranty Association. The  
16 purchaser is subject to assessment under the Oklahoma Property and  
17 Casualty Insurance Guaranty Act.

18 F. Notwithstanding any other provision of this section, the  
19 purchaser is liable only for assessments by the Oklahoma Property  
20 and Casualty Insurance Guaranty Association with respect to an  
21 insolvency of a company for a claim with a date of injury that  
22 occurs after the closing date.

23 SECTION 8. NEW LAW A new section of law not to be  
24 codified in the Oklahoma Statutes reads as follows:

1       The immunity provisions of paragraph 6 of Section 133 of Title  
2 85 of the Oklahoma Statutes continue to apply to each act or  
3 omission that occurs before, on or at the closing date and that is  
4 performed by the persons or entities covered by those provisions,  
5 including an act or omission related to the powers and duties  
6 contained in this act.

7       SECTION 9.       NEW LAW       A new section of law not to be  
8 codified in the Oklahoma Statutes reads as follows:

9       If any person or entity institutes or continues an action  
10 against CompSource Oklahoma, or the Board of Managers, CompSource  
11 Executive, staff, agents, servants, or employees of CompSource  
12 Oklahoma, whether or not serving in that capacity on the closing  
13 date, in connection with or arising from either the facility's  
14 operations or the transactions contemplated by the Plan of Sale, the  
15 purchaser shall defend, and hold harmless that person or entity from  
16 liability for any act or omission of that person or entity in  
17 connection with or arising from the good faith performance of, the  
18 powers and duties exercised under Section 131 et seq. of Title 85 of  
19 the Oklahoma Statutes.

20       SECTION 10.       NEW LAW       A new section of law not to be  
21 codified in the Oklahoma Statutes reads as follows:

22       If a conflict exists between this act and any other statute  
23 relating to CompSource Oklahoma, this act controls.

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1           SECTION 11.           NEW LAW           A new section of law not to be  
2 codified in the Oklahoma Statutes reads as follows:

3           The Supreme Court shall have original and exclusive jurisdiction  
4 of any action to enforce or interpret any provision of this act.  
5 The Insurance Commissioner shall, within five (5) days following  
6 delivery of copies of the Plan of Sale to the Governor, President  
7 Pro Tempore of the Senate and Speaker of the House of  
8 Representatives, file a copy of the Plan of Sale and an application  
9 with the Supreme Court for approval of the Plan of Sale and  
10 exclusive, original jurisdiction is hereby conferred upon the  
11 Supreme Court to hear and determine the application. It shall be  
12 the duty of the Court to give such application precedence over other  
13 business of the Court and to consider and pass upon the application  
14 as speedily as possible. Notice of the hearing on the application  
15 shall be published by the Commissioner in a newspaper of general  
16 circulation in this state that on a date certain to be stated in  
17 such notice, the Commissioner will formally present the application  
18 to the Court for consideration and approval. Such notice shall  
19 inform all persons interested that they may file protest against the  
20 Plan of Sale and be present at the hearing to contest the legality  
21 thereof. Such notice shall be published one time not less than ten  
22 (10) days prior to the date designated in the notice for the  
23 hearing. The hearing may be adjourned from time to time in the  
24 discretion of the Court. If the Court shall be satisfied that the

1 Plan of Sale meets the requirements of Section 5 of this act, the  
2 Court shall render its written opinion approving the Plan of Sale.  
3 The decision of the Court shall be a judicial determination of the  
4 validity of this act and the Plan of Sale and shall be conclusive  
5 and incontestable.

6 SECTION 12. NEW LAW A new section of law not to be  
7 codified in the Oklahoma Statutes reads as follows:

8 A. The cash consideration from the sale shall be paid by wire  
9 transfer to the account designated for such purpose by the State  
10 Treasurer.

11 B. Such cash consideration shall be applied first to the  
12 reasonable and necessary expenses incurred by the Insurance  
13 Commissioner in preparing the Plan of Sale and executing the Plan of  
14 Sale, including but not limited to the retaining and hiring  
15 accountants, actuaries, attorneys, or consultants, the cost of  
16 printing, copying, or other expenses. Following the closing date,  
17 the Commissioner shall submit a request for reimbursement or payment  
18 to the State Treasurer. Such request shall be approved and payment  
19 made within thirty (30) days of submission unless the State  
20 Treasurer finds and notifies the Commissioner in writing that all or  
21 a portion of the expenses are unreasonable; such notification must  
22 specify with particularity the reason or reasons why any such  
23 expenses are deemed by the State Treasurer to be unreasonable.

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1           If some, but not all of such expenses are admitted to be  
2 reasonable, then those expenses deemed to be reasonable shall be  
3 paid immediately.

4           SECTION 13. It being immediately necessary for the preservation  
5 of the public peace, health and safety, an emergency is hereby  
6 declared to exist, by reason whereof this act shall take effect and  
7 be in full force from and after its passage and approval.

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