

1 ENGROSSED SENATE
2 BILL NO. 1948

By: Bingman of the Senate

and

Echols of the House

3
4
5
6 An Act relating to Self-insurance Guaranty Fund;
7 amending Sections 28, 96, 97, 98, 99, 100 and 167,
8 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2013,
9 Sections 28, 96, 97, 98, 99, 100 and 124), which
10 relate to Self-insurance Guaranty Fund; modifying
11 name of certain fund; providing certain exceptions;
12 updating statutory reference; modifying appointment
13 procedures for certain Board; specifying length of
14 term for certain appointments; updating language;
15 modifying sources of certain funds; authorizing
16 certain enforcement proceedings; updating references;
17 updating references to certain Boards for certain
18 purposes; and declaring an emergency.

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

20 SECTION 1. AMENDATORY Section 28, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2013, Section 28), is amended to read as
22 follows:

23 Section 28. A. There are established within the Office of the
24 State Treasurer three separate funds:

- 25 1. The "Workers' Compensation Fund";
- 26 2. The "Multiple Injury Trust Fund"; and
- 27 3. The "~~Self-Insured~~ Self-insurance Guaranty Fund".

1 B. ~~No~~ Except as provided in Section 97 of this title, no money
2 shall be appropriated from these funds for any purpose except for
3 the use and benefit, or at the direction, of the Oklahoma Workers'
4 Compensation Commission.

5 C. ~~All~~ Except as provided in Section 96 of this title, all
6 funds established under this section shall be administered,
7 disbursed, and invested under the direction of the Commission and
8 the State Treasurer.

9 D. All incomes derived through investment of the Workers'
10 Compensation Fund and the Multiple Injury Trust Fund shall be
11 credited as investment income to the fund that participated in the
12 investment.

13 E. No monies deposited to these funds shall be subject to any
14 deduction, tax, levy, or any other type of assessment.

15 F. If the balance in the Multiple Injury Trust Fund becomes
16 insufficient to fully compensate those employees to whom it is
17 obligated, payment shall be suspended until such time as the
18 Multiple Injury Trust Fund is capable of meeting its obligations,
19 paying all arrearages, and restoring normal benefit payments.

20 G. On the effective maturity dates of each investment, the
21 investment shall be transferred to the State Treasurer for deposit
22 into the Multiple Injury Trust Fund created in this section.

23 H. The Workers' Compensation Fund shall be used to fund the
24 activities of the Commission in administering ~~this act~~ the

1 Administrative Workers' Compensation Act and for any other purposes
2 related to ~~this act~~ the Administrative Workers' Compensation Act
3 that the Commission deems appropriate, subject to the provisions of
4 Section ~~165~~ 122 of this ~~act~~ title.

5 I. Unless provided otherwise in ~~this act~~ the Administrative
6 Workers' Compensation Act, all fines and penalties assessed under
7 ~~this act~~ the Administrative Workers' Compensation Act shall be
8 deposited into the Workers' Compensation Fund.

9 SECTION 2. AMENDATORY Section 96, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2013, Section 96), is amended to read as
11 follows:

12 Section 96. A. The Self-insurance Guaranty Fund shall be
13 administered, supervised and protected by the Self-insurance
14 Guaranty Fund Board. All self-insurers under ~~this act~~ the
15 Administrative Workers' Compensation Act shall participate in the
16 fund as a condition of authority to self-insure in this state,
17 except public employers that self-insure pursuant to Section 107 of
18 this title.

19 B. 1. The Self-insurance Guaranty Fund Board shall consist of
20 ~~the commissioners and two additional~~ five (5) members to be
21 appointed ~~by the Governor~~.

22 2. ~~The term of office for the two Governor appointees shall be~~
23 ~~three (3) years, with the term of the initial appointees expiring on~~
24 ~~November 1, 2014~~ as follows:

1 a. the Governor shall appoint two members, one of whom
2 shall represent an approved group self-insurance
3 association authorized to self-insure pursuant to
4 Section 38 or Section 102 of this title,

5 b. the President Pro Tempore of the Senate shall appoint
6 one member who shall be an attorney licensed in this
7 state who is engaged in the primary practice of
8 workers' compensation law,

9 c. the Speaker of the House of Representatives shall
10 appoint one member who represents a private self-
11 insurer, and

12 d. the Chair of the Oklahoma Workers' Compensation
13 Commission shall appoint one member who shall be a
14 licensed claims adjuster affiliated with either a
15 private self-insurer or an approved group self-
16 insurance association.

17 2. Members of the Workers' Compensation Self-insurance Guaranty
18 Fund Board serving on January 31, 2014, shall constitute the initial
19 appointees to the Self-insurance Guaranty Fund Board created
20 pursuant to this section, with terms extended an additional two (2)
21 years beyond their original, respective expiration dates.

22 3. In the event of a vacancy, the appointing authority for the
23 position shall appoint a qualified successor to serve as the
24

1 appointee for the unexpired term of the member so replaced. The
2 term of office for the appointees shall be as follows:

- 3 a. the term of office for three positions, one each
4 appointed by the Governor, President Pro Tempore of
5 the Senate and Speaker of the House of
6 Representatives, shall expire on November 1, 2016, and
7 b. the term of office for two positions, one each
8 appointed by the Governor and the Chair of the
9 Commission, shall expire on November 1, 2015.

10 Thereafter, successor members shall be appointed for a three-
11 year term. Members may serve successive terms. Any person
12 appointed to fill a vacancy shall be appointed for the unexpired
13 portion of the term in the same manner as the original appointment.

14 ~~3.~~ 4. The chair and vice-chair of the Board shall be elected by
15 the Board from among its members.

16 ~~4.~~ 5. Members of the Board shall not receive compensation for
17 serving on the Board but shall be reimbursed from monies in the fund
18 for their necessary travel expenses incurred in the performance of
19 their duties in accordance with the State Travel Reimbursement Act.

20 C. Meetings of the Board shall be held at least quarterly. The
21 presence of a majority of the members constitutes a quorum. No
22 action shall be taken by the Board without the affirmative vote of
23 at least a majority of the members.

1 D. The Office of the Attorney General shall provide legal
2 counsel to assist the Board in the performance of its duties.

3 E. No member or personnel of the Self-insurance Guaranty Fund
4 Board, the Workers' Compensation commissioners or any employee of
5 the Workers' Compensation Commission shall be liable in a civil
6 proceeding for any act performed in good faith in the execution of
7 that person's powers or duties pursuant to Sections ~~97~~ 96 through
8 ~~101~~ 100 of the Administrative Workers' Compensation Act.

9 SECTION 3. AMENDATORY Section 97, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2013, Section 97), is amended to read as
11 follows:

12 Section 97. The Self-insurance Guaranty Fund shall be for the
13 purpose of continuation of workers' compensation benefits due and
14 unpaid or interrupted due to the inability of a self-insurer to meet
15 its compensation obligations because its financial resources,
16 security deposit, guaranty agreements, surety agreements and excess
17 insurance are either inadequate or not immediately accessible for
18 the payment of benefits. Monies in the fund, including interest,
19 are not subject to appropriation and shall be expended to compensate
20 employees for eligible benefits for a compensable injury under ~~this~~
21 ~~act~~ the Administrative Workers' Compensation Act, pay outstanding
22 workers' compensation obligations of the impaired self-insurer, and
23 for all claims for related administrative fees, operating costs of
24 the Self-insurance Guaranty Fund Board, attorney fees, and other

1 costs reasonably incurred by the Board in the performance of its
2 duties. Expenditures from the fund shall be made on warrants issued
3 by the State Treasurer against claims as prescribed by law. The
4 fund shall be subject to audit in the same manner as state funds and
5 accounts, the cost for which shall be paid for from the fund. ~~The~~
6 ~~Self-insurance Guaranty Fund Board shall be responsible for all~~
7 ~~liabilities and obligations of the entities that ceased existence.~~

8 SECTION 4. AMENDATORY Section 98, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2013, Section 98), is amended to read as
10 follows:

11 Section 98. The Self-insurance Guaranty Fund shall be derived
12 from the following sources:

13 1. Any unexpended funds, including interest thereon, held by
14 the State Treasurer in the ~~Individual Self-Insured Guaranty Fund or~~
15 ~~Group Self-Insurance Association~~ Workers' Compensation Self-
16 insurance Guaranty Fund transferred to the Self-insurance Guaranty
17 Fund as provided in Section 124 of this title;

18 2. Until the Self-insurance Guaranty Fund contains Two Million
19 Dollars (\$2,000,000.00) or in the event the amount in the fund falls
20 below One Million Dollars (\$1,000,000.00), an assessment against
21 each private self-insurer and group self-insurance association based
22 on an assessment rate to be determined by the commissioners, not
23 exceeding one percent (1%) of actual paid losses of the self-insurer
24 during the preceding calendar year, payable to the Tax Commission

1 for deposit to the fund. The assessment against private self-
2 insurers shall be determined using a rate equal to the proportion
3 that the deficiency in the fund attributable to private self-
4 insurers bears to the actual paid losses of all private self-
5 insurers for the year period of January 1 through December 31
6 preceding the assessment. The assessment against group self-
7 insurance associations shall be determined using a rate equal to the
8 proportion that the deficiency in excess of the surplus of the Group
9 Self-Insurance Association Guaranty Fund at the date of the transfer
10 attributable to group self-insurance associations bears to the
11 actual paid losses of all group self-insurance associations
12 cumulatively for any calendar year preceding the assessment. Each
13 self-insurer shall provide the Workers' Compensation Commission with
14 such information as the Commission may determine is necessary to
15 effectuate the purposes of this paragraph. For purposes of this
16 paragraph, "actual paid losses" means all medical and indemnity
17 payments, including temporary disability, permanent disability, and
18 death benefits, and excluding loss adjustment expenses and reserves.

19 a. The assessment shall be paid within thirty (30)
20 calendar days after the date the commissioners notify
21 the self-insurer of the assessment.

22 b. A private employer or group self-insurance association
23 which ceases to be a self-insurer shall remain liable
24 for any and all assessments of the self-insurer as

1 provided in this paragraph based on actual paid losses
2 for the calendar year period preceding the assessment.

3 c. Failure of a self-insurer to pay, or timely pay, an
4 assessment required by this paragraph, or to report
5 payment of the same to the Commission within ten (10)
6 days of payment, shall be grounds for revocation by
7 the Commission of the self-insurer's permit to self-
8 insure in this state, after notice and hearing. A
9 former self-insurer failing to make payments required
10 by this paragraph promptly and correctly, or failing
11 to report payment of the same to the Commission within
12 ten (10) days of payment, shall be subject to
13 administrative penalties as allowed by law, including
14 but not limited to, a fine in the amount of Five
15 Hundred Dollars (\$500.00) or an amount equal to one
16 percent (1%) of the unpaid amount, whichever is
17 greater, to be paid and deposited to the credit of the
18 Workers' Compensation Fund created in Section 28 of
19 this ~~act~~ title. It shall be the duty of the Tax
20 Commission to collect the assessment provided for in
21 this paragraph. The Tax Commission is authorized to
22 bring an action for recovery of any delinquent or
23 unpaid assessments, and may enforce payment of the
24

1 assessment by proceeding in accordance with Section 79
2 of this title.

3 d. An impaired self-insurer shall be exempt from
4 assessments beginning on the date of the Commission's
5 designation until the Commission determines the self-
6 insurer is no longer impaired.

7 e. The Tax Commission shall determine the fund balance as
8 of March 1 and September 1 of each year, and when
9 otherwise requested by the Workers' Compensation
10 Commission, and shall advise the Workers' Compensation
11 Commission in writing within thirty (30) days of each
12 such determination; and

13 3. Any interest accruing on monies paid into the fund.

14 SECTION 5. AMENDATORY Section 99, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2013, Section 99), is amended to read as
16 follows:

17 Section 99. On determination by the Commission that a self-
18 insurer has become an impaired self-insurer, the Commission shall
19 secure release of the security required by Section 38 of this ~~act~~
20 title and advise the Self-insurance Guaranty Fund Board of the
21 impairment. Claims administration, including processing,
22 investigating and paying valid claims against an impaired self-
23 insurer under ~~this act~~ the Administrative Workers' Compensation Act,
24 may include payment by the surety that issued the surety bond or be

1 under a contract between the Commission and an insurance carrier,
2 appropriate state governmental entity or an approved service
3 organization, as approved by the Commission.

4 SECTION 6. AMENDATORY Section 100, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2013, Section 100), is amended to read as
6 follows:

7 Section 100. A. The Self-insurance Guaranty Fund Board shall
8 be a party in interest in all proceedings involving compensation
9 claims against an impaired self-insurer whose compensation claims
10 have been paid or assumed by the Commission and shall have all
11 rights of subrogation of the impaired self-insurer. In such
12 proceedings, the Board may assume and exercise all rights and
13 defenses of the impaired self-insurer, including, but not limited
14 to, the right to:

- 15 1. Appear, defend and appeal claims;
- 16 2. Receive notice of, investigate, adjust, compromise, settle
17 and pay claims; and
- 18 3. Investigate, handle and contest claims.

19 B. The Board may:

- 20 1. Retain such persons as are necessary to handle claims and
21 perform other duties of the Board;
- 22 2. Sue or be sued;

23

24

1 3. Negotiate and become a party to such contracts as are
2 necessary to carry out the purposes of ~~this act~~ the Administrative
3 Workers' Compensation Act; and

4 4. Exercise any other powers necessary to perform its duties
5 under ~~this act~~ the Administrative Workers' Compensation Act as
6 prescribed by the ~~Commission~~ Board.

7 SECTION 7. AMENDATORY Section 167, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2013, Section 124), is amended to read as
9 follows:

10 Section 124. A. 1. All unexpended funds, assets, property,
11 records, personnel and any outstanding financial obligations and
12 encumbrances of the Workers' Compensation Court before ~~the effective~~
13 ~~date of this section~~ February 1, 2014, are hereby transferred to the
14 Workers' Compensation Commission. The personnel transferred shall
15 retain leave, sick and annual time earned and any retirement and
16 longevity benefits which have accrued during their employment with
17 the state. The salaries of employees who are transferred shall not
18 be reduced as a direct and immediate result of the transfer. There
19 shall be no reduction-in-force as a result of the transfer.

20 2. Any unexpended funds, including interest thereon, held by
21 the State Treasurer in an interest-bearing division special account
22 maintained by the Workers' Compensation Court before ~~the effective~~
23 ~~date of this act~~ February 1, 2014, from which a self-insured
24 employer's workers' compensation obligations are paid following

1 nonpayment by the self-insured employer for any reason, including
2 insolvency, shall be transferred to the Workers' Compensation
3 Commission. Such funds shall be expended by the Commission only for
4 the purpose of paying workers' compensation obligations of the self-
5 insured employer, and costs related to the administration of such
6 obligations, to the extent of the availability of such funds.

7 B. 1. All unexpended funds, assets, property, and records and
8 any outstanding financial obligations and encumbrances of the
9 ~~Individual Self-Insured~~ Workers' Compensation Self-insurance
10 Guaranty Fund Board before ~~the effective date of this act~~ February
11 1, 2014, are hereby transferred to the ~~Individual Self-Insured~~ Self-
12 insurance Guaranty Fund Board created in ~~this act~~ the Administrative
13 Workers' Compensation Act.

14 2. Any unexpended funds, including interest thereon, held by
15 the State Treasurer in the ~~Individual Self-Insured~~ Workers'
16 Compensation Self-insurance Guaranty Fund before ~~the effective date~~
17 ~~of this act~~ February 1, 2014, shall be transferred to the ~~Individual~~
18 ~~Self-Insured~~ Self-insurance Guaranty Fund Board created by ~~this act~~
19 the Administrative Workers' Compensation Act. Such funds shall be
20 expended by the Board only as authorized in ~~this act~~ the
21 Administrative Workers' Compensation Act.

22 3. Any claim existing or action or proceeding pending by,
23 against or before the Workers' Compensation Self-insurance Guaranty
24 Fund Board when the Board ceased existence may be continued as if

1 the Self-insurance Guaranty Fund Board was not created, or the Self-
2 insurance Guaranty Fund Board may be substituted in the matter. The
3 Self-insurance Guaranty Fund Board shall be responsible and liable
4 for all liabilities and obligations of the Workers' Compensation
5 Self-insurance Guaranty Fund Board.

6 C. ~~1. All unexpended funds, assets, property, and records and~~
7 ~~any outstanding financial obligations and encumbrances of the Group~~
8 ~~Self-Insurance Association Board before the effective date of this~~
9 ~~act are hereby transferred to the Group Self-Insurance Association~~
10 ~~Guaranty Fund Board created in this act.~~

11 ~~2. Any unexpended funds, including interest thereon, held by~~
12 ~~the State Treasurer in the Group Self-Insurance Association Guaranty~~
13 ~~Fund before the effective date of this act, shall be transferred to~~
14 ~~the Group Self-Insurance Association Guaranty Fund Board created by~~
15 ~~this act. Such funds shall be expended by the Board only as~~
16 ~~authorized in this act.~~

17 ~~D.~~ All property and records of the Physician Advisory Committee
18 before ~~the effective date of this act~~ February 1, 2014, are hereby
19 transferred to the Physician Advisory Committee created in ~~this act~~
20 the Administrative Workers' Compensation Act.

21 ~~E.~~ D. All property and records of the Advisory Council on
22 Workers' Compensation before ~~the effective date of this act~~ February
23 1, 2014, are hereby transferred to the Advisory Council on Workers'
24

1 Compensation created in ~~this act~~ the Administrative Workers'
2 Compensation Act.

3 ~~F. E.~~ E. All unexpended funds, assets, property, records,
4 personnel and any outstanding financial obligations and encumbrances
5 of the Multiple Injury Trust Fund before ~~the effective date of this~~
6 ~~act~~ February 1, 2014, are hereby transferred to the Multiple Injury
7 Trust Fund created in ~~this act~~ the Administrative Workers'
8 Compensation Act. The personnel transferred shall retain leave,
9 sick and annual time earned and any retirement and longevity
10 benefits which have accrued during their employment with the state.
11 The salaries of employees who are transferred shall not be reduced
12 as a direct and immediate result of the transfer. There shall be no
13 reduction-in-force as a result of the transfer.

14 ~~G. F.~~ F. The Director of the Office of Management and Enterprise
15 Services is hereby directed to coordinate the transfer of funds,
16 allotments, purchase orders, outstanding financial obligations or
17 encumbrances provided for in subsections A and ~~F~~ E of this section,
18 and the transfer of funds, outstanding financial obligations or
19 encumbrances provided for in ~~subsections~~ subsection B ~~and C~~ of this
20 section.

21 SECTION 8. It being immediately necessary for the preservation
22 of the public peace, health and safety, an emergency is hereby
23 declared to exist, by reason whereof this act shall take effect and
24 be in full force from and after its passage and approval.

1 Passed the Senate the 11th day of March, 2014.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2014.

7
8 _____
9 Presiding Officer of the House
10 of Representatives