

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1532

By: Crain

4  
5  
6 AS INTRODUCED

7 An Act relating to the Self-insurance Guaranty Fund  
8 Board; amending Sections 22 and 38, Chapter 208,  
9 O.S.L. 2014, Section 98, as amended by Section 4,  
10 Chapter 169, O.S.L. 2014, Chapter 208, O.S.L. 2014,  
11 and 99, as amended by Section 5, Chapter 169, O.S.L.  
12 2014, Chapter 208, O.S.L. 2014 (85A O.S. Supp. 2015,  
13 Sections 22, 38, 98 and 99), which relate to  
14 administration, securing compensation, transferred  
15 funds and impaired self-insurers; modifying powers of  
16 the Workers' Compensation Commission; updating  
17 statutory reference; removing requirement for  
18 adoption of certain rules; transferring certain  
19 duties from Workers' Compensation Commission to Self-  
20 insurance Guaranty Fund Board; modifying requirements  
21 for sources for the Self-insurance Guaranty Fund;  
22 increasing certain assessment rate; modifying  
23 requirements for releasing security and administering  
24 obligations of impaired self-insurers; and providing  
an effective date.

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

SECTION 1. AMENDATORY Section 22, Chapter 208, O.S.L.  
2013 (85A O.S. Supp. 2015, Section 22), is amended to read as  
follows:

1 Section 22. A. 1. For the purpose of administering the  
2 provisions of this act, the Workers' Compensation Commission is  
3 authorized:

4 a. to make rules necessary for the administration and  
5 operation of the Commission,

6 b. to appoint and fix the compensation of temporary  
7 technical assistants, medical and legal advisers,  
8 clerical assistants and other officers and employees,  
9 and

10 c. to make such expenditures, including those for  
11 personal service, rent, books, periodicals, office  
12 equipment, and supplies, and for printing and binding  
13 as may be necessary.

14 2. a. Before the adoption, prescription, amendment,  
15 modification, or repeal of any rule, regulation, or  
16 form, the Commission shall give at least thirty (30)  
17 days' notice of its intended action.

18 b. The notice shall include a statement of the terms or  
19 substance of the intended action or description of the  
20 subjects and issues involved, and the time, place, and  
21 manner in which interested persons may present their  
22 views thereon.  
23  
24

1           c.    The notice shall be mailed to any person specified by  
2                    law or who shall have requested advance notice of  
3                    rule-making proceedings.

4           3.    The Commission shall afford all interested persons a  
5 reasonable opportunity to submit written data, views, or arguments,  
6 and, if the Commission in its discretion shall so direct, oral  
7 testimony or argument.

8           4.    Each rule, regulation, or form adopted by the Commission  
9 shall be effective twenty (20) days after adoption unless a later  
10 date is specified by law or in the rule itself.

11           5.    All expenditures of the Commission in the administration of  
12 this act shall be allowed and paid from the Workers' Compensation  
13 Fund on the presentation of itemized vouchers approved by the  
14 Commission.

15           B.    1.   The Commission may appoint as many persons as may be  
16 necessary to be administrative law judges and in addition may  
17 appoint such examiners, investigators, medical examiners, clerks,  
18 and other employees as it deems necessary to effectuate the  
19 provisions of this act.

20           2.    Employees appointed under this subsection shall receive an  
21 annual salary to be fixed by the Commission.

22           C.    Additionally, the Commission shall have the following powers  
23 and duties:

24           1.    To hear and approve compromise settlements;

1           2. To review and approve own-risk applications and group self-  
2 insurance association applications;

3           3. To monitor own-risk, self-insurer and group self-insurance  
4 programs, in accordance with the rules of the Commission;

5           ~~4. To contract with an appropriate state governmental entity,  
6 insurance carrier or approved service organization to process,  
7 investigate and pay valid claims against an impaired self-insurer  
8 which fails, due to insolvency or otherwise, to pay its workers'  
9 compensation obligations, charges for which shall be paid from the  
10 proceeds of security posted with the Commission as provided in  
11 Section 38 of this act;~~

12           ~~5.~~ 5. To establish a toll-free telephone number in order to  
13 provide information and answer questions about the Commission;

14           ~~6.~~ 5. To hear and determine claims concerning disputed medical  
15 bills;

16           ~~7.~~ 6. To promulgate necessary rules for administering this act  
17 and develop uniform forms and procedures for use by administrative  
18 law judges. Such rules shall be reviewable by the Legislature;

19           ~~8.~~ 7. To invest funds on behalf of the Multiple Injury Trust  
20 Fund;

21           ~~9.~~ 8. To appoint a Commission Mediator to conduct informal  
22 sessions to attempt to resolve assigned disputes; and

23           ~~10.~~ 9. Such other duties and responsibilities authorized by  
24 law.

1 D. It shall be the duty of an administrative law judge, under  
2 the rules adopted by the Commission, to hear and determine claims  
3 for compensation and to conduct hearings and investigations and to  
4 make such judgments, decisions, and determinations as may be  
5 required by any rule or judgment of the Commission.

6 SECTION 2. AMENDATORY Section 38, Chapter 208, O.S.L.  
7 2013 (85A O.S. Supp. 2015, Section 38), is amended to read as  
8 follows:

9 Section 38. A. An employer shall secure compensation to  
10 employees under ~~this act~~ the Administrative Workers' Compensation  
11 Act in one of the following ways:

12 1. By insuring and keeping insured the payment of compensation  
13 with any stock corporation, mutual association, or other concerns  
14 authorized to transact the business of workers' compensation  
15 insurance in this state. When an insurer issues a policy to provide  
16 workers' compensation benefits under the provisions of this act, it  
17 shall file a notice with the Commission containing the name,  
18 address, and principal occupation of the employer, the number,  
19 effective date, and expiration date of the policy, and such other  
20 information as may be required by the Commission. The notice shall  
21 be filed by the insurer within thirty (30) days after the effective  
22 date of the policy. Any insurer who does not file the notice  
23 required by this paragraph shall be subject to a fine by the  
24 Commission of not more than One Thousand Dollars (\$1,000.00);

1           2. By obtaining and keeping in force guaranty insurance with  
2 any company authorized to do guaranty business in this state. Each  
3 company that issues workers' compensation guaranty insurance shall  
4 file a copy of the contract with the Commission within thirty (30)  
5 days after the effective date of the contract. Any company that  
6 does not file a copy of the contract as required by this paragraph  
7 shall be subject to a fine by the Commission of not more than One  
8 Thousand Dollars (\$1,000.00);

9           3. By furnishing satisfactory proof to the Commission of the  
10 employer's financial ability to pay the compensation. The  
11 Commission, ~~under rules adopted by the Insurance Department,~~ shall  
12 require any employer that has:

13           a. less than one hundred employees or less than One  
14 Million Dollars (\$1,000,000.00) in net assets to:

15           (1) deposit with the Commission securities, an  
16 irrevocable letter of credit or a surety bond  
17 payable to the state, in an amount determined by  
18 the Commission which shall be at least an average  
19 of the yearly claims for the last three (3)  
20 years, or

21           (2) provide proof of excess coverage with such terms  
22 and conditions as is commensurate with their  
23 ability to pay the benefits required by the  
24 provisions of this act, and

1           b.    one hundred or more employees and One Million Dollars  
2               (\$1,000,000.00) or more in net assets to:

3               (1)   secure a surety bond payable to the state, or an  
4               irrevocable letter of credit, in an amount  
5               determined by the Commission which shall be at  
6               least an average of the yearly claims for the  
7               last three (3) years, or

8               (2)   provide proof of excess coverage with terms and  
9               conditions that are commensurate with their  
10              ability to pay the benefits required by the  
11              provisions of this act;

12           4.   By forming a group self-insurance association consisting of  
13           two or more employers which shall have a common interest and which  
14           shall have entered into an agreement to pool their liabilities under  
15           the Administrative Workers' Compensation Act. Such agreement shall  
16           be subject to rules of the Commission. Any employer, upon  
17           application to become a member of a group self-insurance  
18           association, shall file with the Commission a notice, in such form  
19           as prescribed by the Commission, acknowledging that the employer  
20           accepts joint and several liability. Upon approval by the  
21           Commission of such application for membership, said member shall be  
22           a qualified self-insured employer; or

23           5.   By any other security as may be approved by the Commission  
24           and the Insurance Department.

1 B. The Commission may waive the requirements of this section in  
2 an amount which is commensurate with the ability of the employer to  
3 pay the benefits required by the provisions of this act.

4 Irrevocable letters of credit required by this subsection shall  
5 contain such terms as may be prescribed by the Commission and shall  
6 be issued for the benefit of the state by a financial institution  
7 whose deposits are insured by the Federal Deposit Insurance  
8 Corporation.

9 C. An employer who does not fulfill the requirements of this  
10 section is not relieved of the obligation to pay compensation under  
11 ~~this act~~ the Administrative Workers' Compensation Act. The security  
12 required under this section, including any interest, shall be  
13 maintained by the ~~Commission~~ Self-insurance Guaranty Fund Board as  
14 provided in Section 99 of this act ~~title~~ until each claim for  
15 benefits is paid, settled, or lapses under this act, and costs of  
16 administration of such claims are paid.

17 D. Failure on the part of any employer to secure the payment of  
18 compensation provided in ~~this act~~ the Administrative Workers'  
19 Compensation Act shall have the effect of enabling the ~~Commission~~  
20 Self-insurance Guaranty Fund Board to assert the rights of an  
21 injured employee against the employer.

22 E. Any employer that knowingly provides false information to  
23 the Commission for purposes of securing or maintaining a self-  
24

1 insurance permit shall be guilty of a felony and subject to a  
2 maximum fine of Ten Thousand Dollars (\$10,000.00).

3 SECTION 3. AMENDATORY Section 98, Chapter 208, O.S.L.  
4 2013, as amended by Section 4, Chapter 169, O.S.L. 2014 (85A O.S.  
5 Supp. 2015, Section 98), is amended to read as follows:

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

8 1. Any unexpended funds, including interest thereon, held by  
9 the State Treasurer in the Workers' Compensation Self-insurance  
10 Guaranty Fund transferred to the Self-insurance Guaranty Fund as  
11 provided in Section 124 of this title;

12 2. ~~Until~~ In the event the Self-insurance Guaranty Fund ~~contains~~  
13 ~~Two Million Dollars (\$2,000,000.00) or in the event the amount in~~  
14 ~~the fund falls below One Million Dollars (\$1,000,000.00)~~ Seven  
15 Hundred Fifty Thousand Dollars (\$750,000.00), the Commission shall  
16 make an assessment against each private self-insurer and group self-  
17 insurance association based on an assessment rate to be determined  
18 by the commissioners, not exceeding ~~one percent (1%)~~ two percent  
19 (2%) per annum of actual paid losses of the self-insurer during the  
20 preceding calendar year, payable to the Tax Commission for deposit  
21 to the fund. The assessment against private self-insurers shall be  
22 determined using a rate equal to the proportion that the deficiency  
23 in the fund attributable to private self-insurers bears to the  
24 actual paid losses of all private self-insurers for the year period

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

- 15 a. The assessment shall be paid within thirty (30)  
16 calendar days after the date the commissioners notify  
17 the self-insurer of the assessment.
- 18 b. A private employer or group self-insurance association  
19 which ceases to be a self-insurer shall remain liable  
20 for any and all assessments of the self-insurer as  
21 provided in this paragraph based on actual paid losses  
22 for the calendar year period preceding the assessment.
- 23 c. Failure of a self-insurer to pay, or timely pay, an  
24 assessment required by this paragraph, or to report

1 payment of the same to the Commission within ten (10)  
2 days of payment, shall be grounds for revocation by  
3 the Commission of the self-insurer's permit to self-  
4 insure in this state, after notice and hearing. A  
5 former self-insurer failing to make payments required  
6 by this paragraph promptly and correctly, or failing  
7 to report payment of the same to the Commission within  
8 ten (10) days of payment, shall be subject to  
9 administrative penalties as allowed by law, including  
10 but not limited to, a fine in the amount of Five  
11 Hundred Dollars (\$500.00) or an amount equal to one  
12 percent (1%) of the unpaid amount, whichever is  
13 greater, to be paid and deposited to the credit of the  
14 Workers' Compensation Fund created in Section 28 of  
15 this title. It shall be the duty of the Tax  
16 Commission to collect the assessment provided for in  
17 this paragraph. The Tax Commission is authorized to  
18 bring an action for recovery of any delinquent or  
19 unpaid assessments, and may enforce payment of the  
20 assessment by proceeding in accordance with Section 79  
21 of this title.

- 22 d. An impaired self-insurer shall be exempt from  
23 assessments beginning on the date of the Commission's  
24

1 designation until the Commission determines the self-  
2 insurer is no longer impaired.

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

9 3. Any funds, including interest thereon, transferred to the  
10 Self-insurance Guaranty Fund as provided in Section 99 of this  
11 title; and

12 4. Any interest accruing on monies paid into the fund.

13 SECTION 4. AMENDATORY Section 99, Chapter 208, O.S.L.  
14 2013, as amended by Section 5, Chapter 169, O.S.L. 2014 (85A O.S.  
15 Supp. 2015, Section 99), is amended to read as follows:

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

1 ~~appropriate state governmental entity or an approved service~~  
2 ~~organization, as approved by the Commission and transfer the~~  
3 ~~proceeds of the security to the Self-insurance Guaranty Fund Board~~  
4 ~~to be maintained in a segregated account for administering workers'~~  
5 ~~compensation obligations of the impaired self-insurer. The Self-~~  
6 ~~insurance Guaranty Fund Board shall be the fiduciary of the account.~~

7 B. Proceeds from the released security shall be used for  
8 administering the workers' compensation obligations of the impaired  
9 self-insurer. Claims administration includes, but is not limited  
10 to, processing, investigating and paying claims; actuarial studies;  
11 attorney fees incurred for filing a proof of claim in the bankruptcy  
12 of the impaired self-insurer; and a pro rata portion of the staff  
13 expenses of the Self-insurance Guaranty Fund Board.

14 C. Except as otherwise provided by law or by agreement of the  
15 parties, excess proceeds from the security remaining after each  
16 claim for benefits of an impaired self-insurer has been paid,  
17 settled or lapsed under the Administrative Workers' Compensation  
18 Act, and costs of administration of such claims have been paid, as  
19 determined by the Self-insurance Guaranty Fund Board, shall be  
20 transferred to the Self-insurance Guaranty Fund by the Commission or  
21 Board, as appropriate.

22 SECTION 5. This act shall become effective November 1, 2016.

23  
24 55-2-2010 TEK 2/18/2016 6:59:11 PM