

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1572

By: Echols

AS INTRODUCED

An Act relating to workers' compensation; amending Sections 22 and 38, Chapter 208, O.S.L. 2013 and Sections 98 and 99, Chapter 208, O.S.L. 2013, as amended by Sections 4 and 5, Chapter 169, O.S.L. 2014 (85A O.S. Supp. 2016, Sections 22, 38, 98 and 99), which relate to the Administrative Workers' Compensation Act; modifying powers and duties of the Workers' Compensation Commission; removing requirement for certain Insurance Department rules; transferring authority to maintain certain security and assert certain rights from the Workers' Compensation Commission to the Self-insurance Guaranty Board; modifying funding sources for the Self-insurance Guaranty Fund; modifying procedure if self-insurer becomes impaired; requiring transfer of security proceeds; directing use of proceeds; providing for excess proceeds; 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. 2016, 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.

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.~~ 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. 2016, 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~~ the
17 Administrative Workers' Compensation Act, it shall file a notice
18 with the Workers' Compensation Commission containing the name,
19 address, and principal occupation of the employer, the number,
20 effective date, and expiration date of the policy, and such other
21 information as may be required by the Commission. The notice shall
22 be filed by the insurer within thirty (30) days after the effective
23 date of the policy. Any insurer who does not file the notice
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1 required by this paragraph shall be subject to a fine by the
2 Commission of not more than One Thousand Dollars (\$1,000.00);

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

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

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

- 17 (1) deposit with the Commission securities, an
18 irrevocable letter of credit or a surety bond
19 payable to the state, in an amount determined by
20 the Commission which shall be at least an average
21 of the yearly claims for the last three (3)
22 years, or
23 (2) provide proof of excess coverage with such terms
24 and conditions as is commensurate with their

1 ability to pay the benefits required by the
2 provisions of this act, and

3 b. one hundred or more employees and One Million Dollars
4 (\$1,000,000.00) or more in net assets to:

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

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

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

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

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

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

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

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

1 E. Any employer that knowingly provides false information to
2 the Commission for purposes of securing or maintaining a self-
3 insurance permit shall be guilty of a felony and subject to a
4 maximum fine of Ten Thousand Dollars (\$10,000.00).

5 SECTION 3. AMENDATORY Section 98, Chapter 208, O.S.L.
6 2013, as amended by Section 4, Chapter 169, O.S.L. 2014 (85A O.S.
7 Supp. 2016, Section 98), is amended to read as follows:

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

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

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

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

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

21 b. A private employer or group self-insurance association
22 which ceases to be a self-insurer shall remain liable
23 for any and all assessments of the self-insurer as
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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 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
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assessment by proceeding in accordance with Section 79 of this title.

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

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

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

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

SECTION 4. AMENDATORY Section 99, Chapter 208, O.S.L. 2013, as amended by Section 5, Chapter 169, O.S.L. 2014 (85A O.S. Supp. 2016, Section 99), is amended to read as follows:

Section 99. A. On determination by the Workers' Compensation Commission that a self-insurer has become an impaired self-insurer, the Commission shall promptly secure release of the security required by Section 38 of this title ~~and~~, advise the Self-insurance Guaranty Fund Board of the impairment. ~~Claims administration,~~

1 ~~including processing, investigating and paying valid claims against~~
2 ~~an impaired self-insurer under the Administrative Workers'~~
3 ~~Compensation Act, may include payment by the surety that issued the~~
4 ~~surety bond or be under a contract between the Commission and an~~
5 ~~insurance carrier, appropriate state governmental entity or an~~
6 ~~approved service organization, as approved by the Commission, and~~
7 transfer the proceeds of the security to the Self-insurance Guaranty
8 Fund Board to be maintained in a segregated account for
9 administering workers' compensation obligations of the impaired
10 self-insurer. The Self-insurance Guaranty Fund Board shall be the
11 fiduciary of the account.

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

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

1 transferred to the Self-insurance Guaranty Fund by the Commission or
2 Board, as appropriate.

3 SECTION 5. This act shall become effective November 1, 2017.
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