STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1237 By: Daniels

AS INTRODUCED

An Act relating to duties of Workers' Compensation Commission; amending Section 31, Chapter 208, O.S.L. 2013, as last amended by Section 60, Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2019, Section 31), which relates to the Multiple Injury Trust Fund; removing requirement for Commission administration of Fund; removing authority for allocation of certain funds for administration; updating statutory references; repealing Section 24, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2019, Section 24), which relates to biennial administration report; and providing an effective date.

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

SECTION 1. AMENDATORY Section 31, Chapter 208, O.S.L. 2013, as last amended by Section 60, Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2019, Section 31), is amended to read as follows:

Section 31. A. The Multiple Injury Trust Fund shall be derived from the following additional sources:

1. As soon as practicable after January 1 of each year, the commissioners of the Workers' Compensation Commission shall establish an assessment rate applicable to each mutual or interinsurance association, stock company~~,~~ or other insurance

carrier writing workers' compensation insurance in this state, each employer carrying its own risk~~,~~ and each group self-insurance association, for amounts for purposes of computing the assessment authorized by this section necessary to pay the annual obligations of the Multiple Injury Trust Fund determined on or before December 31 of each year by the Multiple Injury Trust Fund (MITF) Director, provided for in subsection ~~Q~~ P of this section, to be outstanding for the next calendar year. The rate shall be equal for all parties required to pay the assessment. The Board of Directors for CompSource Mutual Insurance Company shall have the power to disapprove the rate established by the MITF Director until the Multiple Injury Trust Fund repays in full the amount due on any loan from CompSource Mutual Insurance Company or its predecessor CompSource Oklahoma. If the MITF Director and CompSource Mutual Insurance Company have not agreed on the assessment rate within thirty (30) days, the Workers' Compensation Commission shall set an assessment rate sufficient to cover all foreseeable obligations of the Multiple Injury Trust Fund, including interest and principal owed by the fund on any loan;

2. The assessments shall be paid to the Oklahoma Tax Commission. Insurance carriers, self-insurers, and group self-insurance associations shall pay the assessment in four equal installments not later than the fifteenth day of the month following the close of each quarter of the calendar year of the assessment.

Assessments shall be determined based upon gross direct written premiums, normal premiums or actual paid losses of the paying party, as applicable, during the calendar quarter for which the assessment is due. Assessments are expressly conditioned and contingent upon preservation of the rebate equal to two-thirds (2/3) of the amount of the assessment actually paid pursuant to Sections 6101 and 6102 of Title 68 of the Oklahoma Statutes. Uninsured employers shall pay the assessment not later than the fifteenth day of the month following the close of each quarter of the calendar year of the assessment. For purposes of this section, "uninsured employer" means an employer required by law to carry workers' compensation insurance but who has failed or neglected to do so.

a. The assessment authorized in this section shall be determined using a rate equal to the proportion that the sum of the outstanding obligations of the Multiple Injury Trust Fund as determined pursuant to paragraph 1 of this subsection bears to the combined gross direct written premiums of all such insurers; all actual paid losses of all individual self-insureds; and the normal premium of all group self-insurance associations, for the year period from January 1 to December 31 preceding the assessment.

b. For purposes of this subsection:

(1) "actual paid losses" means all medical and indemnity payments, including temporary disability, permanent disability~~,~~ and death benefits, and excluding loss adjustment expenses and reserves, and

(2) "normal premium" means a standard premium less any discounts;

3. By April 15 of each year, the Insurance Commissioner, the MITF Director and each individual and group self-insured shall provide the Workers' Compensation Commission with such information as the Commission may determine is necessary to effectuate the purposes of this section;

4. Each mutual or interinsurance association, stock company~~,~~ or other insurance carrier writing workers' compensation insurance in this state, and each employer carrying its own risk, including each group self-insurance association, shall be notified by the Workers' Compensation Commission in writing of the rate for the assessment on or before May 1 of each year in which a rate is determined. The rate determined by the Commission shall be in effect for four calendar quarters beginning July 1 following determination by the Commission. The Commission may amend its previously determined rate on or after July 1, 2019. Parties affected by the amended rate shall be notified by the Commission in writing as is reasonable.

The amended rate shall be in effect beginning October 1, 2019, for the remainder of fiscal year 2020;

5. a. No mutual or interinsurance association, stock company~~,~~ or other insurance carrier writing workers' compensation insurance in this state may be assessed in any year an amount greater than seven percent (7%) of the gross direct written premiums of that insurer. The authorization for a maximum seven-percent assessment shall exist for a period of three (3) years, then revert back to six percent (6%) thereafter.

b. No employer carrying its own risk may be assessed in any year an amount greater than seven percent (7%) of the total actual paid losses of that individual self-insured. The authorization for a maximum seven-percent assessment shall exist for a period of three (3) years, then revert back to six percent (6%) thereafter.

c. No group self-insurance association may be assessed in any year an amount greater than seven percent (7%) of the normal premium of that group self-insurance association. The authorization for a maximum seven-percent assessment shall exist for a period of three

(3) years, then revert back to six percent (6%) thereafter;

6. The Oklahoma Tax Commission shall assess and collect from any uninsured employer a temporary assessment at the rate of five percent (5%) of the total compensation for permanent total disability awards, permanent partial disability awards and death benefits paid out during each quarter of the calendar year by employers. The assessment shall be paid in four equal installments not later than the fifteenth day of the month following the close of the calendar year of the assessments. For the purpose of this paragraph, "uninsured employer" means an employer required by law to secure its workers' compensation obligations but who has failed or neglected to do so;

7. For injuries occurring on or after July 1, 2019, the Oklahoma Tax Commission shall assess and collect from claimants a temporary assessment as follows:

a. if an award has been made by the Workers' Compensation Court of Existing Claims or the Workers' Compensation Commission for permanent partial disability or permanent total disability, or if a Compromise Settlement or Joint Petition has been approved, the employer or insurance carrier shall pay to such employee the amount of the award less the assessment. The assessment shall be paid to the Oklahoma Tax

Commission no later than the fifteenth day of the month following the close of each quarter of the calendar year in which compensation is paid or became payable, and

b. in making and entering awards for compensation for permanent total disability or permanent partial disability, three percent (3%) of the total award or settlement shall be paid to the Tax Commission no later than the fifteenth day of the month following the close of each quarter of the calendar year in which compensation is paid or became payable. The total amount of the deduction so determined and fixed shall have the same force and effect as an award for compensation, and all provisions relating to the collection of awards shall apply to such judgments; and

8. If the revenue in any one (1) year is insufficient to make all necessary payments for obligations of the Multiple Injury Trust Fund and for the allocations provided for in subsection J of this section, the unpaid portion shall be paid as soon thereafter as funds become available.

B. The Multiple Injury Trust Fund is hereby authorized to receive and expend monies appropriated by the Legislature.

C. It shall be the duty of the Tax Commission to collect the payments provided for in ~~this act~~ the Administrative Workers' Compensation Act. The Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section.

D. Any mutual or interinsurance association, stock company~~,~~ or other insurance company, which is subject to regulation by the Insurance Commissioner, failing to make payments required in ~~this act~~ the Administrative Workers' Compensation Act promptly and correctly, and failing to report payment of the same to the Insurance Commissioner within ten (10) days of payment shall be subject to administrative penalties as allowed by law, including but not limited to a fine in the amount of Five Hundred Dollars ($500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater, to be paid to the Insurance Commissioner.

E. Any employer carrying its own risk, or group self-insurance association failing to make payments required in ~~this act~~ the Administrative Workers' Compensation Act promptly and correctly, and failing to report payment of the same to the Commission within ten (10) days of payment shall be subject to administrative penalties as allowed by law, including but not limited to a fine in the amount of Five Hundred Dollars ($500.00) or an amount equal to one percent

(1%) of the unpaid amount, whichever is greater, to be paid to the Commission.

F. 1. On or before the first day of April of each year, the State Treasurer shall advise the Commission, the MITF Director and the Tax Commission of the amount of money held as of March 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund. On or before the first day of November of each year, the State Treasurer shall advise the Commission, the MITF Director and the Tax Commission of the amount of money held as of October 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund.

2. Until such time as the Multiple Injury Trust Fund fully satisfies any loan obligation payable to CompSource Mutual Insurance Company or its predecessor CompSource Oklahoma, the State Treasurer shall:

a. advise the Chief Executive Officer of CompSource Mutual Insurance Company on or before the first day of April of the money held as of March 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund, and

b. advise the Chief Executive Officer of CompSource Mutual Insurance Company on or before the first day of November of the money held as of October 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund.

G. Eighty percent (80%) of all sums held by the State Treasurer to the credit of the Multiple Injury Trust Fund may by order of the MITF Director be invested in or loaned on the pledge of any of the securities in which a state bank may invest the monies deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in the institutions. As used in this section, "insured" means insurance as provided by an agency of the federal government. All such securities or evidence of indebtedness shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, who shall collect the principal and interest when due, and pay the same into the Multiple Injury Trust Fund. The State Treasurer shall pay by vouchers drawn on the Multiple Injury Trust Fund for the making of such investments, when signed by the MITF Director, upon delivery of such securities or evidence of indebtedness to the State Treasurer. The MITF Director may sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for the Multiple Injury Trust Fund.

H. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made to the Multiple Injury Trust Fund. Refunds shall be paid from and out of the Multiple Injury Trust Fund.

I. Beginning July 1, 2019, One Million Dollars ($1,000,000.00) of the funds in the Multiple Injury Trust Fund shall be transferred annually on July 1 to the Oklahoma Department of Labor Revolving Fund exclusively for the operation and administration of the Oklahoma Occupational Health and Safety Standards Act and for other necessary expenses of the Department of Labor.

J. Except for the monies provided for in subsection I of this section, the Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Multiple Injury Trust Fund all monies collected pursuant to the provisions of this section. The State Treasurer shall pay out of the Multiple Injury Trust Fund only upon the order and direction of the Workers' Compensation Commission acting under the provisions hereof.

K. The Commission shall promulgate rules as the Commission deems necessary to effectuate the provisions of this section.

L. The Insurance Commissioner shall promulgate rules relating to insurers as defined in Title 36 of the Oklahoma Statutes, as the Insurance Commissioner deems necessary to effectuate the provisions of this section.

M. The MITF Director shall have authority to fulfill all payment obligations of the Multiple Injury Trust Fund.

N. The Multiple Injury Trust Fund may enter into an agreement with any reinsurer licensed to sell reinsurance by the Insurance Commissioner pursuant to a competitive process administered by the Director of Central Purchasing in the Office of Management and Enterprise Services.

O. Any dividend, rebate~~,~~ or other distribution, payable by CompSource Mutual Insurance Company or any other workers' compensation insurance carrier, to a state agency policyholder shall be paid to the State Treasurer, and shall be credited as follows:

1. In the event of failure of the Multiple Injury Trust Fund to meet all lawful obligations, the monies shall be credited to the Multiple Injury Trust Fund and shall be used by the Multiple Injury Trust Fund to meet all lawful obligations of the Multiple Injury Trust Fund; and

2. Otherwise, all future dividends made by any workers' compensation insurance carrier, on behalf of state agencies, shall be deposited to the credit of the General Revenue Fund of the State Treasury.

P. ~~The Workers' Compensation Commission shall be charged with the administration and protection of the Multiple Injury Trust Fund.~~

~~Q.~~ The person serving as the Administrator of the Multiple Injury Trust Fund on the date of passage and approval of ~~this act~~ the Administrative Workers' Compensation Act shall serve as the initial MITF Director, provided such person is serving as the

Administrator of the Multiple Injury Trust Fund on ~~the effective date of this act~~ February 1, 2014. The MITF Director shall be appointed by and serve at the pleasure of the Governor.

~~R.~~ Q. Any party interested shall have a right to bring a proceeding in the Supreme Court to review an award of the Workers' Compensation Commission affecting such Multiple Injury Trust Fund, in the same manner as is provided by law with reference to other awards by the Commission.

~~S. The State Treasurer shall allocate to the Commission out of the Multiple Injury Trust Fund sufficient funds for administration expenses thereof in amounts to be fixed and approved by the Director for the Multiple Injury Trust Fund, unless rejected by the Workers' Compensation Commission.~~

~~T.~~ R. On or after July 1, 2019, accrued and unpaid compensation from the Multiple Injury Trust Fund shall bear simple interest only at the percentage rate applicable under Section 727.1 of Title 12 of the Oklahoma Statutes from the day an award is made by the Workers' Compensation Court of Existing Claims or the Workers' Compensation Commission.

SECTION 2. REPEALER Section 24, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2019, Section 24), is hereby repealed.

SECTION 3. This act shall become effective November 1, 2020.

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