An Act

ENROLLED HOUSE
BILL NO. 2238

By: Sears and Casey of the House

and

Jolley and Treat of the Senate

An Act relating to workers' compensation; amending Section 28, Chapter 208, O.S.L. 2013, as amended by Section 1, Chapter 169, O.S.L. 2014, Section 31, Chapter 208, O.S.L. 2013, and Section 165, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Sections 28, 31 and 122), which relate to the Administrative Workers' Compensation Act; eliminating certain fund; providing for deposit of fines and penalties; transferring certain monies; creating the Workers' Compensation Commission Revolving Fund; providing for source of funding; providing purpose; providing for budgeting and expenditures; eliminating certain restrictions on insurance rates; eliminating certain payments excluded from the Multiple Injury Trust Fund; stating permissible uses of the Workers' Compensation Commission Revolving Fund; expanding purpose of certain assessments; providing for allocation of certain monies collected; creating the Workers' Compensation Administrative Fund; providing source of funding; providing purpose; providing for budgeting and expenditures; providing for codification; providing an effective date; and declaring an emergency.

SUBJECT: Workers' compensation

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

SECTION 1. AMENDATORY Section 28, Chapter 208, O.S.L. 2013, as amended by Section 1, Chapter 169, O.S.L. 2014 (85A O.S. Supp. 2014, Section 28), is amended to read as follows:

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

1. ~~The "Workers' Compensation Fund";~~

~~2.~~ The "Multiple Injury Trust Fund"; and

~~3.~~ 2. The "Self-insurance Guaranty Fund".

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

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

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

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

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

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

H. ~~The Workers' Compensation Fund shall be used to fund the activities of the Commission in administering the Administrative Workers' Compensation Act and for any other purposes related to the~~

~~Administrative Workers' Compensation Act that the Commission deems appropriate, subject to the provisions of Section 122 of this title.~~

~~I.~~ Unless provided otherwise in the Administrative Workers' Compensation Act, all fines and penalties assessed under the Administrative Workers' Compensation Act shall be deposited into the Workers' Compensation Commission Revolving Fund. Any monies remaining in the Workers' Compensation Fund on June 30, 2015, shall be transferred to the Workers' Compensation Commission Revolving Fund.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28.1 of Title 85A, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Workers' Compensation Commission to be designated the "Workers' Compensation Commission Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Workers' Compensation Commission from the revenues apportioned pursuant to Section 122 of Title 85A of the Oklahoma Statutes and such other sources as may be provided by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Workers' Compensation Commission for the purpose of funding the operations of the Commission and administering the Administrative Workers' Compensation Act and for any other purposes related to the Administrative Workers' Compensation Act that the Commission deems appropriate. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

SECTION 3. AMENDATORY Section 31, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, 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, CompSource Oklahoma, 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 MITF Director, provided for in subsection P of this section, to be outstanding for the next calendar year, and to pay the allocations provided for in subsection I of this section. The rate shall be equal for all parties required to pay the assessment. If CompSource begins operating as a mutual insurance company, 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 have not agreed on the assessment rate within thirty (30) days, the 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. The rate in effect on the effective date of this act shall remain effective through June 30, 2014;

2. 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 the employers;

3. The assessments shall be paid to the Tax Commission. Insurance carriers, self-insurers, group self-insurance associations and CompSource Oklahoma 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. 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. ~~Only one-third (1/3) of assessments against insurance carriers and CompSource Oklahoma may be charged to policyholders and shall not be considered in determining whether any rate is excessive. The remaining two-thirds (2/3) of assessments~~

~~against insurance carriers and CompSource Oklahoma may not be included in any rate, premium, charge, fee, assessment or other amount to be collected from a policyholder. Insurance carriers and CompSource Oklahoma shall not separately state the amount of the assessment on any invoice or billing assessment.~~

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 and the allocations provided for in subsection I of this section bear 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;

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

5. Each mutual or interinsurance association, stock company, CompSource Oklahoma, 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 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; and

6. a. No mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state may be assessed in any year an amount greater than six percent (6%) of the gross direct written premiums of that insurer.

b. No employer carrying its own risk may be assessed in any year an amount greater than six percent (6%) of the total actual paid losses of that individual self-insured.

c. No group self-insurance association may be assessed in any year an amount greater than six percent (6%) of the normal premium of that group self-insurance association.

d. If the maximum assessment does not provide in any one year an amount sufficient to make all necessary payments for obligations of the Multiple Injury Trust Fund and for the allocations provided for in subsection I 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 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, or CompSource Oklahoma, failing to make payments required in this act promptly and correctly, and failing to report payment of the same to the Insurance 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 Insurance Commissioner.

E. Any employer carrying its own risk, or group self-insurance association failing to make payments required in this 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 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 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. 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~~, less the annual sum of Two Million Five Hundred Fifty Thousand Dollars ($2,550,000.00), of which One Million Two Hundred Seventy-five Thousand Dollars ($1,275,000.00) shall be payable by the Tax Commission to the State Treasurer in equal monthly installments to the credit of the Department of Labor, Six Hundred Thirty-seven Thousand Five Hundred Dollars ($637,500.00) shall be payable in equal monthly installments to the credit of the Office of the Attorney General, and Six Hundred Thirty-seven Thousand Five Hundred Dollars ($637,500.00) shall be payable in equal monthly installments to the credit of the Oklahoma Department of Career and Technology Education. Monies received by the Department of Labor under this section shall be used for safety consultation and the regulation of the safety of public employees through the Occupational Safety and Health Act of 1970. Monies received by the Office of the Attorney General shall be deposited to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund created pursuant to Section 19.2 of Title 74 of the Oklahoma Statutes. Monies received by the Oklahoma Department of Career and Technology Education shall supplement other funding to the Department for purposes of implementing the provisions of subsection B of Section 414 of Title 40 of the Oklahoma Statutes~~. 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.

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

K. 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.

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

M. 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.

N. Any dividend, rebate, or other distribution, payable by CompSource Oklahoma 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 CompSource Oklahoma or 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.

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

P. The person serving as the Administrator of the Multiple Injury Trust Fund on the date of passage and approval of this 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. The MITF Director shall be appointed by and serve at the pleasure of the Governor.

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

R. 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 Administrator for the Multiple Injury Trust Fund, unless rejected by the Commission.

SECTION 4. AMENDATORY Section 165, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 122), is amended to read as follows:

Section 122. A. The Workers' Compensation Commission Revolving Fund established by Section ~~28~~ 2 of this act shall be used for the costs of administering this act and for other purposes ~~pursuant to legislative appropriation~~ as authorized by law.

B. For the purpose of providing funds for the Workers' Compensation Commission Revolving Fund, ~~each~~ for the Workers' Compensation Administrative Fund created in Section 5 of this act, for the Multiple Injury Trust Fund created in Section 28 of this title, and to fund other provisions within this title, the following tax rates shall apply:

1. Each mutual or interinsurance association, stock company, CompSource Oklahoma or other insurance carrier writing workers' compensation insurance in this state shall pay to the Oklahoma Tax Commission an assessment at a rate of one percent (1%) of all gross direct premiums written during each quarter of the calendar year for workers' compensation insurance on risks located in this state after deducting from such gross direct premiums, return premiums, unabsorbed portions of any deposit premiums, policy dividends, safety refunds, savings and other similar returns paid or credited to policyholders. Such payments to the Tax Commission shall be made not later than the fifteenth day of the month following the close of each quarter of the calendar year in which such gross direct premium is collected or collectible. Contributions made by insurance carriers and CompSource Oklahoma, under the provisions of this section, shall be considered for the purpose of computing workers' compensation rates~~.~~; and

~~C.~~ 2. When an employer is authorized to become a self-insurer, the Commission shall so notify the Tax Commission, giving the effective date of such authorization. The Tax Commission shall then assess and collect from the employers carrying their own risk an assessment at the rate of two percent (2%) 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 the employers. Such assessment shall be payable by

the employers and collected by the Tax Commission according to the provisions of this section regarding payment and collection of the assessment created in paragraph 1 of this subsection ~~C of this section~~.

~~D.~~ C. It shall be the duty of the Tax Commission to collect the payments provided for in this ~~act~~ title. The Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section. The Tax Commission may also enforce payments by proceeding in accordance with the provisions of Section 98 of this ~~act~~ title.

~~E.~~ D. The Tax Commission shall pay monthly to the State Treasurer to the credit of the ~~General Revenue~~ Multiple Injury Trust Fund all monies collected under the provisions of this section less the annual amounts which shall be apportioned by the Oklahoma Tax Commission as follows:

1. Five Million Dollars ($5,000,000.00) shall be payable in equal monthly installments to the credit of the Workers' Compensation Commission Revolving Fund established in Section 2 of this act for the fiscal year ending June 30, 2016, and Three Million Dollars ($3,000,000.00) for the fiscal year ending June 30, 2017, and for all subsequent years to be used to implement the provisions of this title; and

2. Four Million Dollars ($4,000,000.00) shall be payable in equal monthly installments to the credit of the Workers' Compensation Administrative Fund established in Section 5 of this act for the fiscal year ending June 30, 2016, Three Million Five Hundred Thousand Dollars ($3,500,000.00) for the fiscal year ending June 30, 2017, Three Million Five Hundred Thousand Dollars ($3,500,000.00) for the fiscal year ending June 30, 2018, Three Million Dollars ($3,000,000.00) for the fiscal year ending June 30, 2019, and Two Million Five Hundred Thousand Dollars ($2,500,000.00) for the fiscal year ending June 30, 2020. Monies deposited in the Workers' Compensation Administrative Fund shall be used by the Workers' Compensation Court of Existing Claims to implement provisions provided for in this title.

~~F.~~ E. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made pursuant to this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 401.1 of Title 85A, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Workers' Compensation Court of Existing Claims to be designated the "Workers' Compensation Administrative Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Workers' Compensation Court of Existing Claims from revenues apportioned pursuant to Section 122 of Title 85A of the Oklahoma Statutes. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Workers' Compensation Court of Existing Claims for the purpose of funding the operations of the Court, for administering the provisions of Titles 85 and 85A of the Oklahoma Statutes, and for any other purpose related to the Administrative Workers' Compensation Act that the Court deems appropriate. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

SECTION 6. This act shall become effective July 1, 2015.

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

Passed the House of Representatives the 20th day of May, 2015.

Presiding Officer of the House
of Representatives

Passed the Senate the 22nd day of May, 2015.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 22nd day of May, 2015, at 3:25 o'clock P M.

By: Audrey Lockwell

Approved by the Governor of the State of Oklahoma this 1st day of June, 2015, at 3:30 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 1st day of June, 2015, at 4:13 o'clock P. M.

By: C. L. Benge