

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 2238

By: Sears and Casey of the
House

6 and

7 Jolley and Treat of the
8 Senate

9
10 COMMITTEE SUBSTITUTE

11 An Act relating to workers' compensation; amending
12 Section 28, Chapter 208, O.S.L. 2013, as amended by
13 Section 1, Chapter 169, O.S.L. 2014, Section 31,
14 Chapter 208, O.S.L. 2013, and Section 165, Chapter
15 208, O.S.L. 2013 (85A O.S. Supp. 2014, Sections 28,
16 31 and 122), which relate to the Administrative
17 Workers' Compensation Act; eliminating certain fund;
18 providing for deposit of fines and penalties;
19 transferring certain monies; creating the Workers'
20 Compensation Commission Revolving Fund; providing for
21 source of funding; providing purpose; providing for
22 budgeting and expenditures; eliminating certain
23 restrictions on insurance rates; eliminating certain
24 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.

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

2 SECTION 1. AMENDATORY Section 28, Chapter 208, O.S.L.
3 2013, as amended by Section 1, Chapter 169, O.S.L. 2014 (85A O.S.
4 Supp. 2014, Section 28), is amended to read as follows:

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

- 7 1. ~~The "Workers' Compensation Fund";~~
8 ~~2.~~ The "Multiple Injury Trust Fund"; and
9 ~~3.~~ 2. The "Self-insurance Guaranty Fund".

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

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

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

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

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

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

9 ~~H. The Workers' Compensation Fund shall be used to fund the~~
10 ~~activities of the Commission in administering the Administrative~~
11 ~~Workers' Compensation Act and for any other purposes related to the~~
12 ~~Administrative Workers' Compensation Act that the Commission deems~~
13 ~~appropriate, subject to the provisions of Section 122 of this title.~~

14 ~~±.~~ Unless provided otherwise in the Administrative Workers'
15 Compensation Act, all fines and penalties assessed under the
16 Administrative Workers' Compensation Act shall be deposited into the
17 Workers' Compensation Commission Revolving Fund. Any monies
18 remaining in the Workers' Compensation Fund on June 30, 2015, shall
19 be transferred to the Workers' Compensation Commission Revolving
20 Fund.

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

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

18 SECTION 3. AMENDATORY Section 31, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2014, Section 31), is amended to read as
20 follows:

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

23 1. As soon as practicable after January 1 of each year, the
24 commissioners of the Workers' Compensation Commission shall

1 establish an assessment rate applicable to each mutual or
2 interinsurance association, stock company, CompSource Oklahoma, or
3 other insurance carrier writing workers' compensation insurance in
4 this state, each employer carrying its own risk, and each group
5 self-insurance association, for amounts for purposes of computing
6 the assessment authorized by this section necessary to pay the
7 annual obligations of the Multiple Injury Trust Fund determined on
8 or before December 31 of each year by the MITF Director, provided
9 for in subsection P of this section, to be outstanding for the next
10 calendar year, and to pay the allocations provided for in subsection
11 I of this section. The rate shall be equal for all parties required
12 to pay the assessment. If CompSource begins operating as a mutual
13 insurance company, the Board of Directors for CompSource Mutual
14 Insurance Company shall have the power to disapprove the rate
15 established by the MITF Director until the Multiple Injury Trust
16 Fund repays in full the amount due on any loan from CompSource
17 Mutual Insurance Company or its predecessor CompSource Oklahoma. If
18 the MITF Director and CompSource have not agreed on the assessment
19 rate within thirty (30) days, the Commission shall set an assessment
20 rate sufficient to cover all foreseeable obligations of the Multiple
21 Injury Trust Fund, including interest and principal owed by the Fund
22 on any loan. The rate in effect on the effective date of this act
23 shall remain effective through June 30, 2014;

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1 2. The Oklahoma Tax Commission shall assess and collect from
2 any uninsured employer a temporary assessment at the rate of five
3 percent (5%) of the total compensation for permanent total
4 disability awards, permanent partial disability awards, and death
5 benefits paid out during each quarter of the calendar year by the
6 employers;

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

12 Assessments shall be determined based upon gross direct written
13 premiums, normal premiums or actual paid losses of the paying party,
14 as applicable, during the calendar quarter for which the assessment
15 is due. Uninsured employers shall pay the assessment not later than
16 the fifteenth day of the month following the close of each quarter
17 of the calendar year of the assessment. For purposes of this
18 section, "uninsured employer" means an employer required by law to
19 carry workers' compensation insurance but who has failed or
20 neglected to do so. ~~Only one-third (1/3) of assessments against~~
21 ~~insurance carriers and CompSource Oklahoma may be charged to~~
22 ~~policyholders and shall not be considered in determining whether any~~
23 ~~rate is excessive. The remaining two-thirds (2/3) of assessments~~
24 ~~against insurance carriers and CompSource Oklahoma may not be~~

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

5 a. The assessment authorized in this section shall be
6 determined using a rate equal to the proportion that
7 the sum of the outstanding obligations of the Multiple
8 Injury Trust Fund as determined pursuant to paragraph
9 1 of this subsection and the allocations provided for
10 in subsection I of this section bear to the combined
11 gross direct written premiums of all such insurers;
12 all actual paid losses of all individual self-
13 insureds; and the normal premium of all group self-
14 insurance associations, for the year period from
15 January 1 to December 31 preceding the assessment.

16 b. For purposes of this subsection:

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

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

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

5 5. Each mutual or interinsurance association, stock company,
6 CompSource Oklahoma, or other insurance carrier writing workers'
7 compensation insurance in this state, and each employer carrying its
8 own risk, including each group self-insurance association, shall be
9 notified by the Commission in writing of the rate for the assessment
10 on or before May 1 of each year in which a rate is determined. The
11 rate determined by the Commission shall be in effect for four
12 calendar quarters beginning July 1 following determination by the
13 Commission; and

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

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

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

5 d. If the maximum assessment does not provide in any one
6 year an amount sufficient to make all necessary
7 payments for obligations of the Multiple Injury Trust
8 Fund and for the allocations provided for in
9 subsection I of this section, the unpaid portion shall
10 be paid as soon thereafter as funds become available.

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

13 C. It shall be the duty of the Tax Commission to collect the
14 payments provided for in this act. The Tax Commission is hereby
15 authorized to bring an action for the recovery of any delinquent or
16 unpaid payments required in this section.

17 D. Any mutual or interinsurance association, stock company, or
18 other insurance company, which is subject to regulation by the
19 Insurance Commissioner, or CompSource Oklahoma, failing to make
20 payments required in this act promptly and correctly, and failing to
21 report payment of the same to the Insurance Commission within ten
22 (10) days of payment shall be subject to administrative penalties as
23 allowed by law, including but not limited to a fine in the amount of
24 Five Hundred Dollars (\$500.00) or an amount equal to one percent

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

3 E. Any employer carrying its own risk, or group self-insurance
4 association failing to make payments required in this act promptly
5 and correctly, and failing to report payment of the same to the
6 Commission within ten (10) days of payment shall be subject to
7 administrative penalties as allowed by law, including but not
8 limited to a fine in the amount of Five Hundred Dollars (\$500.00) or
9 an amount equal to one percent (1%) of the unpaid amount, whichever
10 is greater, to be paid to the Commission.

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

20 2. Until such time as the Multiple Injury Trust Fund fully
21 satisfies any loan obligation payable to CompSource Mutual Insurance
22 Company or its predecessor CompSource Oklahoma, the State Treasurer
23 shall:
24

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

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

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

1 indebtedness to the State Treasurer. The MITF Director may sell any
2 of such securities, the proceeds thereof to be paid over to the
3 State Treasurer for the Multiple Injury Trust Fund.

4 H. The refund provisions of Sections 227 through 229 of Title
5 68 of the Oklahoma Statutes shall be applicable to any payments made
6 to the Multiple Injury Trust Fund. Refunds shall be paid from and
7 out of the Multiple Injury Trust Fund.

8 I. The Tax Commission shall pay, monthly, to the State
9 Treasurer to the credit of the Multiple Injury Trust Fund all monies
10 collected pursuant to the provisions of this section, ~~less the~~
11 ~~annual sum of Two Million Five Hundred Fifty Thousand Dollars~~
12 ~~(\$2,550,000.00), of which One Million Two Hundred Seventy-five~~
13 ~~Thousand Dollars (\$1,275,000.00) shall be payable by the Tax~~
14 ~~Commission to the State Treasurer in equal monthly installments to~~
15 ~~the credit of the Department of Labor, Six Hundred Thirty-seven~~
16 ~~Thousand Five Hundred Dollars (\$637,500.00) shall be payable in~~
17 ~~equal monthly installments to the credit of the Office of the~~
18 ~~Attorney General, and Six Hundred Thirty-seven Thousand Five Hundred~~
19 ~~Dollars (\$637,500.00) shall be payable in equal monthly installments~~
20 ~~to the credit of the Oklahoma Department of Career and Technology~~
21 ~~Education. Monies received by the Department of Labor under this~~
22 ~~section shall be used for safety consultation and the regulation of~~
23 ~~the safety of public employees through the Occupational Safety and~~
24 ~~Health Act of 1970. Monies received by the Office of the Attorney~~

1 ~~General shall be deposited to the credit of the Attorney General's~~
2 ~~Workers' Compensation Fraud Unit Revolving Fund created pursuant to~~
3 ~~Section 19.2 of Title 74 of the Oklahoma Statutes. Monies received~~
4 ~~by the Oklahoma Department of Career and Technology Education shall~~
5 ~~supplement other funding to the Department for purposes of~~
6 ~~implementing the provisions of subsection B of Section 414 of Title~~
7 ~~40 of the Oklahoma Statutes.~~ The State Treasurer shall pay out of
8 the Multiple Injury Trust Fund only upon the order and direction of
9 the Workers' Compensation Commission acting under the provisions
10 hereof.

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

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

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

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

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1 N. Any dividend, rebate, or other distribution, payable by
2 CompSource Oklahoma or any other workers' compensation insurance
3 carrier, to a state agency policyholder shall be paid to the State
4 Treasurer, and shall be credited as follows:

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

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

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

16 P. The person serving as the Administrator of the Multiple
17 Injury Trust Fund on the date of passage and approval of this act
18 shall serve as the initial MITF Director, provided such person is
19 serving as the Administrator of the Multiple Injury Trust Fund on
20 the effective date of this act. The MITF Director shall be
21 appointed by and serve at the pleasure of the Governor.

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

3 R. The State Treasurer shall allocate to the Commission out of
4 the Multiple Injury Trust Fund sufficient funds for administration
5 expenses thereof in amounts to be fixed and approved by the
6 Administrator for the Multiple Injury Trust Fund, unless rejected by
7 the Commission.

8 SECTION 4. AMENDATORY Section 165, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2014, Section 122), is amended to read as
10 follows:

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

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

21 1. Each mutual or interinsurance association, stock company,
22 CompSource Oklahoma or other insurance carrier writing workers'
23 compensation insurance in this state shall pay to the Oklahoma Tax
24 Commission an assessment at a rate of one percent (1%) of all gross

1 direct premiums written during each quarter of the calendar year for
2 workers' compensation insurance on risks located in this state after
3 deducting from such gross direct premiums, return premiums,
4 unabsorbed portions of any deposit premiums, policy dividends,
5 safety refunds, savings and other similar returns paid or credited
6 to policyholders. Such payments to the Tax Commission shall be made
7 not later than the fifteenth day of the month following the close of
8 each quarter of the calendar year in which such gross direct premium
9 is collected or collectible. Contributions made by insurance
10 carriers and CompSource Oklahoma, under the provisions of this
11 section, shall be considered for the purpose of computing workers'
12 compensation rates-; and

13 ~~€.~~ 2. When an employer is authorized to become a self-insurer,
14 the Commission shall so notify the Tax Commission, giving the
15 effective date of such authorization. The Tax Commission shall then
16 assess and collect from the employers carrying their own risk an
17 assessment at the rate of two percent (2%) of the total compensation
18 for permanent total disability awards, permanent partial disability
19 awards and death benefits paid out during each quarter of the
20 calendar year by the employers. Such assessment shall be payable by
21 the employers and collected by the Tax Commission according to the
22 provisions of this section regarding payment and collection of the
23 assessment created in paragraph 1 of this subsection ~~€ of this~~
24 ~~section.~~

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

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

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

19 2. Four Million Dollars (\$4,000,000.00) shall be payable in
20 equal monthly installments to the credit of the Workers'
21 Compensation Administrative Fund established in Section 5 of this
22 act for the fiscal year ending June 30, 2016, Three Million Five
23 Hundred Thousand Dollars (\$3,500,000.00) for the fiscal year ending
24 June 30, 2017, Three Million Five Hundred Thousand Dollars

1 (\$3,500,000.00) for the fiscal year ending June 30, 2018, Three
2 Million Dollars (\$3,000,000.00) for the fiscal year ending June 30,
3 2019, and Two Million Five Hundred Thousand Dollars (\$2,500,000.00)
4 for the fiscal year ending June 30, 2020. Monies deposited in the
5 Workers' Compensation Administrative Fund shall be used by the
6 Workers' Compensation Court of Existing Claims to implement
7 provisions provided for in this title.

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

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

14 There is hereby created in the State Treasury a revolving fund
15 for the Workers' Compensation Court of Existing Claims to be
16 designated the "Workers' Compensation Administrative Fund". The
17 fund shall be a continuing fund, not subject to fiscal year
18 limitations, and shall consist of all monies received by the
19 Workers' Compensation Court of Existing Claims from revenues
20 apportioned pursuant to Section 122 of Title 85A of the Oklahoma
21 Statutes. All monies accruing to the credit of said fund are hereby
22 appropriated and may be budgeted and expended by the Workers'
23 Compensation Court of Existing Claims for the purpose of funding the
24 operations of the Court, for administering the provisions of Titles

1 85 and 85A of the Oklahoma Statutes, and for any other purpose
2 related to the Administrative Workers' Compensation Act that the
3 Court deems appropriate. Expenditures from said fund shall be made
4 upon warrants issued by the State Treasurer against claims filed as
5 prescribed by law with the Director of the Office of Management and
6 Enterprise Services for approval and payment.

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

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

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