

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 739

By: Sykes

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5
6 AS INTRODUCED

7 An Act relating to workers' compensation; amending
8 Sections 38, Chapter 208, O.S.L. 2013, 98 and 99,
9 Chapter 208, O.S.L. 2013, as amended by Sections 4
10 and 5, Chapter 169, O.S.L. 2014 (85A O.S. Supp. 2016,
11 Sections 38, 98 and 99), which relate to securing
12 compensation and the Self-insured Guaranty Fund;
13 modifying procedures for certain notification;
14 requiring Self-insured Guaranty Fund Board to
15 maintain certain security; modifying sources for the
16 Self-insurance Guaranty Fund; modifying threshold for
17 certain assessment; modifying assessment rate;
18 providing for transfer of certain security; stating
19 purpose; providing for transfer of excess proceeds;
20 and providing an effective date.

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

22 SECTION 1. AMENDATORY Section 38, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2016, Section 38), is amended to read as
24 follows:

Section 38. A. An employer shall secure compensation to
employees under this ~~act~~ title in one of the following ways:

1. By insuring and keeping insured the payment of compensation
with any stock corporation, mutual association, or other concerns
authorized to transact the business of workers' compensation

1 insurance in this state. When an insurer issues a policy to provide
2 workers' compensation benefits under the provisions of this act
3 title, it shall file a notice with the Workers' Compensation
4 Commission containing the name, address, and principal occupation of
5 the employer, the number, effective date, and expiration date of the
6 policy, and such other information as may be required by the
7 Commission. The notice shall be filed by the insurer within thirty
8 (30) days after the effective date of the policy. Any insurer who
9 does not file the notice required by this paragraph shall be subject
10 to a fine by the Commission of not more than One Thousand Dollars
11 (\$1,000.00);

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

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

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

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

9 (2) provide proof of excess coverage with such terms
10 and conditions as is commensurate with their
11 ability to pay the benefits required by the
12 provisions of this act, and

13 b. one hundred or more employees and One Million Dollars
14 (\$1,000,000.00) or more in net assets to:

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

20 (2) provide proof of excess coverage with terms and
21 conditions that are commensurate with their
22 ability to pay the benefits required by the
23 provisions of this act;
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1 4. By forming a group self-insurance association consisting of
2 two or more employers which shall have a common interest and which
3 shall have entered into an agreement to pool their liabilities under
4 the Administrative Workers' Compensation Act. Such agreement shall
5 be subject to rules of the Commission. Any employer, upon
6 application to become a member of a group self-insurance
7 association, shall file with the Commission a notice, in such form
8 as prescribed by the Commission, acknowledging that the employer
9 accepts joint and several liability. Upon approval by the
10 Commission of such application for membership, said member shall be
11 a qualified self-insured employer; or

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

14 B. The Commission may waive the requirements of this section in
15 an amount which is commensurate with the ability of the employer to
16 pay the benefits required by the provisions of this act.
17 Irrevocable letters of credit required by this subsection shall
18 contain such terms as may be prescribed by the Commission and shall
19 be issued for the benefit of the state by a financial institution
20 whose deposits are insured by the Federal Deposit Insurance
21 Corporation.

22 C. An employer who does not fulfill the requirements of this
23 section is not relieved of the obligation to pay compensation under
24 this act. The security required under this section, including any

1 interest, shall be maintained by the ~~Commission~~ Self-insured
2 Guaranty Fund Board as provided in Section 99 of this ~~act~~ title
3 until each claim for benefits is paid, settled, or lapses under this
4 ~~act~~ title, and costs of administration of such claims are paid.

5 D. Failure on the part of any employer to secure the payment of
6 compensation provided in this act shall have the effect of enabling
7 the Commission to assert the rights of an injured employee against
8 the employer.

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

13 SECTION 2. AMENDATORY Section 98, Chapter 208, O.S.L.
14 2013, as amended by Section 4, Chapter 169, O.S.L. 2014 (85A O.S.
15 Supp. 2016, Section 98), is amended to read as follows:

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

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

22 2. ~~Until~~ In the event the Self-insurance Guaranty Fund ~~contains~~
23 ~~Two Million Dollars (\$2,000,000.00) or in the event the amount in~~
24 ~~the fund falls below One Million Dollars (\$1,000,000.00)~~ Eight

1 Hundred Thousand Dollars (\$800,000.00), an assessment levied by the
2 Commission against each private self-insurer and group self-
3 insurance association based on an assessment rate to be determined
4 by the commissioners, not exceeding ~~one percent (1%)~~ two percent
5 (2%) per annum of actual paid losses of the self-insurer during the
6 preceding calendar year, payable to the Tax Commission for deposit
7 to the fund. The assessment against private self-insurers shall be
8 determined using a rate equal to the proportion that the deficiency
9 in the fund attributable to private self-insurers bears to the
10 actual paid losses of all private self-insurers for the year period
11 of January 1 through December 31 preceding the assessment. The
12 assessment against group self-insurance associations shall be
13 determined using a rate equal to the proportion that the deficiency
14 in excess of the surplus of the Group Self-Insurance Association
15 Guaranty Fund at the date of the transfer attributable to group
16 self-insurance associations bears to the actual paid losses of all
17 group self-insurance associations cumulatively for any calendar year
18 preceding the assessment. Each self-insurer shall provide the
19 Workers' Compensation Commission with such information as the
20 Commission may determine is necessary to effectuate the purposes of
21 this paragraph. For purposes of this paragraph, "actual paid
22 losses" means all medical and indemnity payments, including
23 temporary disability, permanent disability, and death benefits, and
24 excluding loss adjustment expenses and reserves.

- 1 a. The assessment shall be paid within thirty (30)
2 calendar days after the date the commissioners notify
3 the self-insurer of the assessment.
- 4 b. A private employer or group self-insurance association
5 which ceases to be a self-insurer shall remain liable
6 for any and all assessments of the self-insurer as
7 provided in this paragraph based on actual paid losses
8 for the calendar year period preceding the assessment.
- 9 c. Failure of a self-insurer to pay, or timely pay, an
10 assessment required by this paragraph, or to report
11 payment of the same to the Commission within ten (10)
12 days of payment, shall be grounds for revocation by
13 the Commission of the self-insurer's permit to self-
14 insure in this state, after notice and hearing. A
15 former self-insurer failing to make payments required
16 by this paragraph promptly and correctly, or failing
17 to report payment of the same to the Commission within
18 ten (10) days of payment, shall be subject to
19 administrative penalties as allowed by law, including
20 but not limited to, a fine in the amount of Five
21 Hundred Dollars (\$500.00) or an amount equal to one
22 percent (1%) of the unpaid amount, whichever is
23 greater, to be paid and deposited to the credit of the
24 Workers' Compensation Fund created in Section 28 of

1 this title. It shall be the duty of the Tax
2 Commission to collect the assessment provided for in
3 this paragraph. The Tax Commission is authorized to
4 bring an action for recovery of any delinquent or
5 unpaid assessments, and may enforce payment of the
6 assessment by proceeding in accordance with Section 79
7 of this title.

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

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

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

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

22 SECTION 3. AMENDATORY Section 99, Chapter 208, O.S.L.
23 2013, as amended by Section 5, Chapter 169, O.S.L. 2014 (85A O.S.
24 Supp. 2016, Section 99), is amended to read as follows:

1 Section 99. A. On determination by the Workers' Compensation
2 Commission that a self-insurer has become an impaired self-insurer,
3 the Commission shall promptly secure release of the security
4 required by Section 38 of this title and, advise the Self-insurance
5 Guaranty Fund Board of the impairment. ~~Claims administration,~~
6 ~~including processing, investigating and paying valid claims against~~
7 ~~an impaired self-insurer under the Administrative Workers'~~
8 ~~Compensation Act, may include payment by the surety that issued the~~
9 ~~surety bond or be under a contract between the Commission and an~~
10 ~~insurance carrier, appropriate state governmental entity or an~~
11 ~~approved service organization, as approved by the Commission and~~
12 transfer the proceeds of the security to the Self-insurance Guaranty
13 Fund Board to be maintained in a segregated interest-bearing
14 division special agency account for administering workers'
15 compensation obligations of the impaired self-insurer. The Self-
16 insurance Guaranty Fund Board shall be the fiduciary of the account.

17 B. Proceeds from the released security, including interest
18 thereon, shall be used by the Board to administer the workers'
19 compensation obligations of the impaired self-insurer. Claims
20 administration includes, but is not limited to, processing,
21 investigating and paying claims; actuarial studies; attorney fees
22 incurred for filing a proof of claim in the bankruptcy of the
23 impaired self-insurer; and a pro rata portion of the staff expenses
24 of the Self-insurance Guaranty Fund Board.

1 C. Any unexpended funds, including interest thereon, held by
2 the State Treasurer in an interest-bearing account maintained by the
3 Commission before the effective date of this act from which an
4 impaired self-insurer's workers' compensation obligations are paid,
5 shall be transferred to the Board. Such funds shall be expended by
6 the Board only for the purpose of administering the workers'
7 compensation obligations of the impaired self-insurer and as
8 otherwise authorized in subsection D of this section.

9 D. Except as otherwise provided by law or by agreement of the
10 parties, excess proceeds from the security remaining after each
11 claim for benefits of an impaired self-insurer has been paid,
12 settled or lapsed under the Administrative Workers' Compensation
13 Act, and costs of administration of such claims have been paid, as
14 determined by the Self-insurance Guaranty Fund Board, shall be
15 transferred to the Self-insurance Guaranty Fund by the Board.

16 SECTION 4. This act shall become effective November 1, 2017.

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