

## Committee Substitute for Senate Bill No. 2532

An act relating to workers' compensation; clarifying the legislative intent that the terms "net premiums written" and "net premiums collected" as used in ch. 440, F.S., include ceded reinsurance premiums in accord with original intent; amending s. 440.49, F.S., relating to the assessment for the Special Disability Trust Fund; amending s. 440.51, F.S., relating to the assessment for the Workers' Compensation Administration Trust Fund and to expenses of administration; prescribing effect of deductions with respect to retaliatory taxes; reducing the assessment rate for calendar year 2001; creating a Task Force on Workers' Compensation Administration to study the way in which the workers' compensation system is funded and administered; amending s. 440.50, F.S.; revising the purpose of the Workers' Compensation Administration Trust Fund; amending s. 440.51, F.S.; defining the terms "plan" and "fixed administrative expenses" for purposes of administering the workers' administration program; providing for transfer of funds to the workers' compensation joint underwriting plan, subject to appropriation; amending s. 627.311, F.S.; providing for funding a deficit in the workers' compensation joint underwriting plan through policyholder surplus; amending s. 440.38, F.S.; revising certain requirements relating to self-insurers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Legislative intent.—It is the intent of the Legislature to clarify that the terms "net premiums written" and "net premiums collected" as used in chapter 440, Florida Statutes, have meant and continue to mean premiums arising from workers' compensation policies issued by an insurer in this state as the primary insurance carrier without deduction for ceded reinsurance premiums transferred to an insurance company for reinsurance purchased or any premium expense attributable to purchasing reinsurance.

Section 2. Paragraph (b) of subsection (9) of section 440.49, Florida Statutes, is amended to read:

440.49 Limitation of liability for subsequent injury through Special Disability Trust Fund.—

(9) SPECIAL DISABILITY TRUST FUND.—

(b)1. The Special Disability Trust Fund shall be maintained by annual assessments upon the insurance companies writing compensation insurance in the state, the commercial self-insurers under ss. 624.462 and 624.4621, the assessable mutuals under s. 628.601, and the self-insurers under this chapter, which assessments shall become due and be paid quarterly at the same time and in addition to the assessments provided in s. 440.51. The division shall estimate annually in advance the amount necessary for the administration of this subsection and the maintenance of this fund and shall make such assessment in the manner hereinafter provided.

2. The annual assessment shall be calculated to produce during the ensuing fiscal year an amount which, when combined with that part of the balance in the fund on June 30 of the current fiscal year which is in excess of \$100,000, is equal to the average of:

- a. The sum of disbursements from the fund during the immediate past 3 calendar years, and
- b. Two times the disbursements of the most recent calendar year.

Such amount shall be prorated among the insurance companies writing compensation insurance in the state and the self-insurers. Provided however, for those carriers that have excluded ceded reinsurance premiums from their assessments on or before January 1, 2000, no assessments on ceded reinsurance premiums shall be paid by those carriers until such time as the division advises each of those carriers of the impact that the inclusion of ceded reinsurance premiums has on their assessment. The division may not recover any past underpayments of assessments levied against any carrier that on or before January 1, 2000, excluded ceded reinsurance premiums from their assessment prior to the point that the division advises of the appropriate assessment that should have been paid.

3. The net premiums written by the companies for workers' compensation in this state and the net premium written applicable to the self-insurers in this state are the basis for computing the amount to be assessed as a percentage of net premiums. Such payments shall be made by each carrier insurance company and self-insurer to the division for the Special Disability Trust Fund in accordance with such regulations as the division prescribes.

4. The Treasurer is authorized to receive and credit to such Special Disability Trust Fund any sum or sums that may at any time be contributed to the state by the United States under any Act of Congress, or otherwise, to which the state may be or become entitled by reason of any payments made out of such fund.

Section 3. Subsections (1), (2), (3), and (5) of section 440.51, Florida Statutes, are amended to read:

440.51 Expenses of administration.—

(1) The division shall estimate annually in advance the amounts necessary for the administration of this chapter, in the following manner.

(a) ~~The division shall, by July 1 of as soon as practicable after July 1 in each year, notify carriers and self-insurers of the assessment rate, which shall be based on determine the anticipated expenses expense of the administration of this chapter for the next calendar preceding fiscal year. Such assessment rate shall take effect January 1 of the next calendar year and shall be included in workers' compensation rate filings approved by the Department of Insurance which become effective on or after January 1 of the next calendar year. Assessments shall become due and be paid quarterly. The expense of administration for such preceding fiscal year shall be used as the basis for determining the amount to be assessed against each carrier~~

in order to provide for the expenses of the administration of this chapter for the current fiscal year.

(b) The total expenses of administration shall be prorated among the carriers insurance companies writing compensation insurance in the state and self-insurers. The net premiums collected by carriers the companies and the amount of premiums calculated by the division for self-insured employers a self-insurer would have to pay if insured are the basis for computing the amount to be assessed. When reporting deductible policy premium for purposes of computing assessments levied after July 1, 2001, full policy premium value must be reported prior to application of deductible discounts or credits. This amount may be assessed as a specific amount or as a percentage of net premiums payable as the division may direct, provided such amount so assessed shall not exceed ~~2.75~~ 4 percent, beginning January 1, 2001, except during the interim period from July 1, 2000, through December 31, 2000, such assessments shall not exceed 4 percent of such net premiums. The carriers insurance companies may elect to make the payments required under ~~s. 440.15(1)(f)~~ s. 440.15(1)(e) rather than having these payments made by the division. In that event, such payments will be credited to the carriers insurance companies, and the amount due by the carrier insurance company under this section will be reduced accordingly.

(2) The division shall provide by regulation for the collection of the amounts assessed against each carrier. Such amounts shall be paid within 30 days from the date that notice is served upon such carrier. If such amounts are not paid within such period, there may be assessed for each 30 days the amount so assessed remains unpaid, a civil penalty equal to 10 percent of the amount so unpaid, which shall be collected at the same time and a part of the amount assessed. For those carriers who excluded ceded reinsurance premiums from their assessments prior to January 1, 2000, the division shall not recover any past underpayments of assessments related to ceded reinsurance premiums prior to January 1, 2001, against such carriers.

(3) If any carrier fails to pay the amounts assessed against him or her under the provisions of this section within 60 days from the time such notice is served upon him or her, the Department of Insurance upon being advised by the division may suspend or revoke the authorization to insure compensation in accordance with the procedure in s. 440.38(3)(a). The division may permit a carrier to remit any underpayment of assessments for assessments levied after January 1, 2001.

(5) Any amount so assessed against and paid by an insurance carrier, self-insurer authorized pursuant to s. 440.57, or commercial self-insurance fund authorized under ss. 624.460-624.488 shall be allowed as a deduction against the amount of any other tax levied by the state upon the premiums, assessments, or deposits for workers' compensation insurance on contracts or policies of said insurance carrier, self-insurer, or commercial self-insurance fund. Any insurance carrier claiming such a deduction against the amount of any such tax shall not be required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such deduction. Because deductions under this paragraph are available to insurance carriers, s. 624.5091 does not limit such deductions in any manner.

Section 4. (1) Effective upon this act becoming a law, there is created the Task Force on Workers' Compensation Administration for the purpose of examining the way in which the workers' compensation system is funded and administered. The Task Force shall consist of seven members appointed as follows: three members appointed by the Governor, one of whom shall serve as chair; two members appointed by the President of the Senate, and two members appointed by the Speaker of the House of Representatives. Appointments shall be made no later than July 1, 2000.

(2) The Task Force shall submit recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 15, 2001 concerning:

(a) Whether the administration of the workers' compensation system should be funded through assessments, general revenue, or some other source, and to what extent.

(b) How the funds should be used to accomplish the goal of administering the workers' compensation system in the most cost-effective manner.

(c) What services, functions, or entities, including the Workers' Compensation Oversight Board, should be funded as part of the administration of the workers' compensation system.

(d) What services and functions, including workplace safety, if any, should be housed within the Division of Workers' Compensation.

(e) What cost savings could be achieved in the administration of the workers' compensation system, including the operations of the Division of Workers' Compensation.

(f) What organizational changes affecting the administration of the workers' compensation system, if any, should be made to make it more efficient.

(3) To assist the task force in its work, the Executive Office of the Governor shall contract for the completion of a budgetary and operational analysis of the Division of Workers' Compensation, detailing the staffing of the division, receipt and expenditure of revenues, reliability of financial records and reports, and the efficiency of internal controls and procedures. The Executive Office of the Governor shall arrange for the study to be completed and transmitted to the task force by September 1, 2000.

(4) The sum of \$250,000 is appropriated from the Workers' Compensation Administration Trust Fund to the Executive Office of the Governor for the purpose of funding the study required in subsection (3).

Section 5. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 6. Paragraph (a) of subsection (1) of section 440.50, Florida Statutes, is amended to read:

440.50 Workers' Compensation Administration Trust Fund.—

(1)(a) There is established in the State Treasury a special fund to be known as the "Workers' Compensation Administration Trust Fund" for the purpose of providing for the payment of all expenses in respect to the administration of this chapter, including the vocational rehabilitation of injured employees as provided in s. 440.49 and the payments due under s. 440.15(1)(f), the funding of the fixed administrative expenses of the plan, and the funding of the Bureau of Workers' Compensation Fraud within the Department of Insurance. Such fund shall be administered by the division.

Section 7. Subsections (13) and (14) are added to section 440.51, Florida Statutes, to read:

440.51 Expenses of administration.—

(13) As used in s. 440.50 and this section, the term:

(a) "Plan" means the workers' compensation joint underwriting plan provided for in s. 627.311(4).

(b) "Fixed administrative expenses" means the expenses of the plan, not to exceed \$750,000, which are directly related to the plan's administration but which do not vary in direct relationship to the amount of premium written by the plan and which do not include loss adjustment premiums.

(14) Before July 1 in each year, the plan shall notify the division of the amount of the plan's gross written premiums for the preceding calendar year. Whenever the plan's gross written premiums reported to the division are less than \$30 million, the division shall transfer to the plan, subject to appropriation by the Legislature, an amount not to exceed the plan's fixed administrative expenses for the preceding calendar year.

Section 8. Paragraph (g) of subsection (4) of section 627.311, Florida Statutes, is amended to read:

627.311 Joint underwriters and joint reinsurers.—

(4)

(g) Whenever a deficit exists, the plan shall, within 90 days, provide the department with a program to eliminate the deficit within a reasonable time. The deficit may be funded ~~both~~ through increased premiums charged to insureds of the plan for subsequent years, through the use of policyholder surplus attributable to any year, and through assessments on insureds in the plan if the plan uses assessable policies.

Section 9. Paragraph (b) of subsection (1) of section 440.38, Florida Statutes, is amended to read:

440.38 Security for compensation; insurance carriers and self-insurers.—

(1) Every employer shall secure the payment of compensation under this chapter:

(b) By furnishing satisfactory proof to the division of ~~its her or his~~ financial ability to pay such compensation individually and on behalf of its subsidiary and affiliated companies with employees in this state and receiving an authorization from the division to pay such compensation directly in accordance with the following provisions:

1. The division may, as a condition to such authorization, require such employer to deposit in a depository designated by the division either an indemnity bond or securities, at the option of the employer, of a kind and in an amount determined by the division and subject to such conditions as the division may prescribe, which shall include authorization to the division in the case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this chapter. In addition, the division shall require, as a condition to authorization to self-insure, proof that the employer has provided for competent personnel with whom to deliver benefits and to provide a safe working environment. Further, the division shall require such employer to carry reinsurance at levels that will ensure the actuarial soundness of such employer in accordance with rules promulgated by the division. The division may by rule require that, in the event of an individual self-insurer's insolvency, such indemnity bonds, securities, and reinsurance policies shall be payable to the Florida Self-Insurers Guaranty Association, Incorporated, created pursuant to s. 440.385. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer and shall be classed as a carrier of her or his own insurance.

2. If the employer fails to maintain the foregoing requirements, the division shall revoke the employer's authority to self-insure, unless the employer provides to the division the certified opinion of an independent actuary who is a member of the American Society of Actuaries as to the actuarial present value of the employer's determined and estimated future compensation payments based on cash reserves, using a 4-percent discount rate, and a qualifying security deposit equal to 1.5 times the value so certified. The employer shall thereafter annually provide such a certified opinion until such time as the employer meets the requirements of subparagraph 1. The qualifying security deposit shall be adjusted at the time of each such annual report. Upon the failure of the employer to timely provide such opinion or to timely provide a security deposit in an amount equal to 1.5 times the value certified in the latest opinion, the division shall then revoke such employer's authorization to self-insure, and such failure shall be deemed to constitute an immediate serious danger to the public health, safety, or welfare sufficient to justify the summary suspension of the employer's authorization to self-insure pursuant to s. 120.68.

3. Upon the suspension or revocation of the employer's authorization to self-insure, the employer shall provide to the division and to the Florida Self-Insurers Guaranty Association, Incorporated, created pursuant to s. 440.385 the certified opinion of an independent actuary who is a member of the

American Society of Actuaries of the actuarial present value of the determined and estimated future compensation payments of the employer for claims incurred while the member exercised the privilege of self-insurance, using a discount rate of 4 percent. The employer shall provide such an opinion at 6-month intervals thereafter until such time as the latest opinion shows no remaining value of claims. With each such opinion, the employer shall deposit with the division a qualifying security deposit in an amount equal to the value certified by the actuary. The association has a cause of action against an employer, and against any successor of the employer, who fails to timely provide such opinion or who fails to timely maintain the required security deposit with the division. The association shall recover a judgment in the amount of the actuarial present value of the determined and estimated future compensation payments of the employer for claims incurred while the employer exercised the privilege of self-insurance, together with attorney's fees. For purposes of this section, the successor of an employer means any person, business entity, or group of persons or business entities, which holds or acquires legal or beneficial title to the majority of the assets or the majority of the shares of the employer.

4. A qualifying security deposit shall consist, at the option of the employer, of:

a. Surety bonds, in a form and containing such terms as prescribed by the division, issued by a corporation surety authorized to transact surety business by the Department of Insurance, and whose policyholders' and financial ratings, as reported in A.M. Best's Insurance Reports, Property-Liability, are not less than "A" and "V", respectively.

b. Certificates of deposit with financial institutions, the deposits of which are insured through the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

c. Irrevocable letters of credit in favor of the division issued by financial institutions described in sub-subparagraph b.

d. Direct obligations of the United States Treasury backed by the full faith and credit of the United States.

e. Securities issued by this state and backed by the full faith and credit of this state.

5. The qualifying security deposit shall be held by the division, or by a depository authorized by the division, exclusively for the benefit of workers' compensation claimants. The security shall not be subject to assignment, execution, attachment, or any legal process whatsoever, except as necessary to guarantee the payment of compensation under this chapter. No surety bond may be terminated, and no other qualifying security may be allowed to lapse, without 90 days' prior notice to the division and deposit by the self-insuring employer of other qualifying security of equal value within 10 business days after such notice. Failure to provide such notice or failure to timely provide qualifying replacement security after such notice shall constitute grounds for the division to call or sue upon the surety bond, or to act with respect to other pledged security in any manner necessary to preserve

its value for the purposes intended by this section, including the exercise of rights under a letter of credit, the sale of any security at then prevailing market rates, or the withdrawal of any funds represented by any certificate of deposit forming part of the qualifying security deposit;

Section 10. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2000.

Approved by the Governor May 25, 2000.

Filed in Office Secretary of State May 25, 2000.