

By: Cole

H.B. No. 4389

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the funding mechanism for the regulation of workers'
3 compensation and workers' compensation insurance; authorizing
4 surcharges.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The heading to Title 3, Insurance Code, is
7 amended to read as follows:

8 TITLE 3. DEPARTMENT FUNDS, FEES, SURCHARGES, AND TAXES

9 SECTION 2. The heading to Subtitle C, Title 3, Insurance
10 Code, is amended to read as follows:

11 SUBTITLE C. INSURANCE MAINTENANCE TAXES AND SURCHARGES

12 SECTION 3. Section 251.001(a), Insurance Code, is amended
13 to read as follows:

14 (a) The commissioner shall annually determine the rate of
15 assessment of each maintenance tax or aggregate workers'
16 compensation surcharge imposed under this subtitle.

17 SECTION 4. The heading to Section 251.004, Insurance Code,
18 is amended to read as follows:

19 Sec. 251.004. DEPOSIT OF MAINTENANCE TAXES AND SURCHARGES.

20 SECTION 5. Section 251.004(a), Insurance Code, is amended
21 to read as follows:

22 (a) Except as provided by Subsection (b), maintenance taxes
23 collected under this subtitle and aggregate surcharges collected
24 under Chapter 255 shall be deposited in the general revenue fund and

1 reallocated to the Texas Department of Insurance operating account.

2 SECTION 6. Chapter 255, Insurance Code, is amended to read
3 as follows:

4 CHAPTER 255. WORKERS' COMPENSATION INSURANCE

5 Sec. 255.001. SURCHARGE [~~MAINTENANCE TAX~~] IMPOSED. (a) A
6 surcharge [~~maintenance tax~~] is imposed on each authorized insurer
7 with gross premiums subject to the surcharge [~~taxation~~] under
8 Section 255.003, including a:

- 9 (1) stock insurance company;
10 (2) mutual insurance company;
11 (3) reciprocal or interinsurance exchange; and
12 (4) Lloyd's plan.

13 (b) The surcharge [~~tax~~] required by this chapter is in
14 addition to [~~other~~] taxes imposed that are not in conflict with this
15 chapter.

16 (c) The aggregate surcharge required by this chapter
17 includes an amount necessary for funding the regulation of workers'
18 compensation as described by this chapter and Chapter 403, Labor
19 Code.

20 Sec. 255.002. MAXIMUM RATE; ANNUAL ADJUSTMENT. (a) The
21 aggregate rate of assessment for surcharges set by the commissioner
22 may not exceed 2.7 [~~0.6~~] percent of the gross premiums subject to
23 the aggregate surcharge [~~taxation~~] under Section 255.003 and
24 Chapters 403 and 405, Labor Code.

25 (b) The commissioner shall annually adjust the rate of
26 assessment of the surcharge [~~maintenance tax~~] so that the surcharge
27 [~~tax~~] imposed that year, together with any unexpended funds

1 produced by the surcharge [~~tax~~], produces the amount the
2 commissioner determines is necessary to pay the expenses during the
3 succeeding year of regulating workers' compensation insurance.

4 Sec. 255.003. PREMIUMS SUBJECT TO SURCHARGE [~~TAXATION~~].

5 (a) An insurer shall pay the surcharge [~~maintenance taxes~~] under
6 this chapter on the correctly reported gross workers' compensation
7 insurance premiums from writing workers' compensation insurance in
8 this state, including the modified annual premium of a policyholder
9 that purchases an optional deductible plan under Subchapter E,
10 Chapter 2053.

11 (b) The rate of assessment for a surcharge shall be applied
12 to the modified annual premium before application of a deductible
13 premium credit.

14 Sec. 255.004. SURCHARGE [~~MAINTENANCE TAX~~] DUE DATES. (a)
15 The insurer shall pay the surcharge [~~maintenance tax~~] annually or
16 semiannually.

17 (b) The comptroller may require semiannual payment only
18 from an insurer whose surcharge [~~maintenance tax~~] liability under
19 this chapter for the previous tax year was at least \$2,000.

20 Sec. 255.005. RECOVERY OF SURCHARGE. An insurer may
21 recover a surcharge under this chapter by:

22 (1) reflecting the surcharge as an expense in a rate
23 filing required under this code; or

24 (2) charging the insurer's policyholders.

25 SECTION 7. Section 403.001(a), Labor Code, is amended to
26 read as follows:

27 (a) Except as provided by Sections 403.006, 403.007, and

1 403.008, or as otherwise provided by law, money collected under
2 this subtitle, including aggregate surcharges and advance deposits
3 for purchase of services, shall be deposited in the general revenue
4 fund of the state treasury to the credit of the Texas Department of
5 Insurance operating account.

6 SECTION 8. Section 403.002, Labor Code, is amended to read
7 as follows:

8 Sec. 403.002. SURCHARGES [~~MAINTENANCE TAXES~~]. (a) Each
9 insurance carrier, other than a governmental entity, shall pay an
10 annual surcharge [~~maintenance tax~~] to pay the costs of
11 administering this subtitle and to support the prosecution of
12 workers' compensation insurance fraud in this state.

13 (b) The assessment may not exceed the aggregate [~~an~~] amount
14 provided by Section 255.002, Insurance Code, [~~equal to two percent~~]
15 of the correctly reported gross workers' compensation insurance
16 premiums, including the modified annual premium of a policyholder
17 that purchases an optional deductible plan under Subchapter E,
18 Chapter 2053 [~~Article 5.55C~~], Insurance Code. The rate of
19 assessment shall be applied to the modified annual premium before
20 application of a deductible premium credit.

21 (c) A workers' compensation insurance company is assessed
22 [~~taxed~~] at the aggregate rate established under Section 403.003 and
23 Section 255.002, Insurance Code. The surcharge [~~tax~~] shall be
24 collected in the manner provided for collection of other surcharges
25 [~~taxes~~] on gross premiums from a workers' compensation insurance
26 company as provided in Chapter 255, Insurance Code.

27 (d) Each certified self-insurer shall pay a fee and

1 maintenance taxes as provided by Subchapter F, Chapter 407.

2 SECTION 9. The heading to Section 403.003, Labor Code, is
3 amended to read as follows:

4 Sec. 403.003. RATE OF SURCHARGE [~~ASSESSMENT~~].

5 SECTION 10. Section 403.003(a), Labor Code, is amended to
6 read as follows:

7 (a) The commissioner of insurance shall set and certify to
8 the comptroller the aggregate rate of [~~maintenance tax~~] assessment
9 provided by Section 255.002, Insurance Code, taking into account:

10 (1) any expenditure projected as necessary for the
11 division and the office of injured employee counsel to:

12 (A) administer this subtitle during the fiscal
13 year for which the rate of assessment is set; and

14 (B) reimburse the general revenue fund as
15 provided by Section 201.052, Insurance Code;

16 (2) projected employee benefits paid from general
17 revenues;

18 (3) a surplus or deficit produced by the surcharge
19 [~~tax~~] in the preceding year;

20 (4) revenue recovered from other sources, including
21 reappropriated receipts, grants, payments, fees, gifts, and
22 penalties recovered under this subtitle; and

23 (5) expenditures projected as necessary to support the
24 prosecution of workers' compensation insurance fraud.

25 SECTION 11. Section 403.004, Labor Code, is amended to read
26 as follows:

27 Sec. 403.004. COLLECTION OF SURCHARGE [~~TAX~~] AFTER

1 WITHDRAWAL FROM BUSINESS. The commissioner or the commissioner of
2 insurance immediately shall proceed to collect surcharges [~~taxes~~]
3 due under this chapter from an insurance carrier that withdraws
4 from business in this state, using legal process as necessary.

5 SECTION 12. Section 403.005, Labor Code, is amended to read
6 as follows:

7 Sec. 403.005. SURCHARGE [~~TAX~~] RATE. The commissioner of
8 insurance shall annually adjust the rate of assessment of the
9 surcharge [~~maintenance tax~~] imposed under Section 403.003 so that
10 the surcharge [~~tax~~] imposed that year, together with any unexpended
11 funds produced by the surcharge [~~tax~~], produces the amount the
12 commissioner of insurance determines is necessary to pay the
13 expenses of administering this subtitle.

14 SECTION 13. Chapter 403, Labor Code, is amended by adding
15 Section 403.0055 to read as follows:

16 Sec. 403.0055. RECOVERY OF SURCHARGE. An insurer may
17 recover a surcharge under this chapter by:

18 (1) reflecting the surcharge as an expense in a rate
19 filing required under the Insurance Code; or

20 (2) charging the insurer's policyholders.

21 SECTION 14. The heading to Section 405.003, Labor Code, is
22 amended to read as follows:

23 Sec. 405.003. FUNDING; SURCHARGE AND RECOVERY OF SURCHARGE
24 BY INSURERS [~~MAINTENANCE TAX~~].

25 SECTION 15. Section 405.003, Labor Code, is amended by
26 amending Subsections (a), (b), (c), and (d) and adding Subsection
27 (g) to read as follows:

1 (a) The group's duties under this chapter are funded through
2 the assessment of a surcharge [~~maintenance tax~~] collected annually
3 from all insurance carriers, and self-insurance groups that hold
4 certificates of approval under Chapter 407A, except governmental
5 entities.

6 (b) The department shall set the rate of the surcharge
7 [~~maintenance tax~~] based on the expenditures authorized and the
8 receipts anticipated in legislative appropriations. The surcharge
9 [~~tax~~] rate for insurance companies is included in the aggregate
10 rate provided by Section 255.002, Insurance Code, and is based on
11 [~~may not exceed one-tenth of one percent of~~] the correctly reported
12 gross workers' compensation insurance premiums. The surcharge
13 [~~tax~~] rate for certified self-insurers is included in the aggregate
14 rate provided by Section 255.002, Insurance Code, and is based on
15 [~~may not exceed one-tenth of one percent of~~] the total tax base of
16 all certified self-insurers, as computed under Section 407.103(b).
17 The surcharge [~~tax~~] rate for self-insurance groups described by
18 Subsection (a) is included in the aggregate rate provided by
19 Section 255.002, Insurance Code, and is based on [~~may not exceed~~
20 ~~one-tenth of one percent of~~] the group's gross premium for the
21 group's retention, excluding premium collected by the group for
22 excess insurance.

23 (c) The surcharge [~~tax~~] imposed under Subsection (a) is in
24 addition to all [~~other~~] taxes imposed on those insurance carriers
25 for workers' compensation purposes.

26 (d) The surcharge [~~tax~~] on insurance companies and on
27 self-insurance groups described by Subsection (a) shall be

1 assessed, collected, and paid in the same manner and at the same
2 time as the surcharge [~~maintenance tax~~] established for the support
3 of the department under Chapter 255, Insurance Code. The surcharge
4 [~~tax~~] on certified self-insurers shall be assessed, collected, and
5 paid in the same manner and at the same time as the self-insurer
6 maintenance tax collected under Section 407.104.

7 (g) An insurer may recover a surcharge under this section
8 by:

9 (1) reflecting the surcharge as an expense in a rate
10 filing required under the Insurance Code; or

11 (2) charging the insurer's policyholders.

12 SECTION 16. The changes in law made by this Act relating to
13 surcharges on gross workers' compensation premiums apply only to
14 the gross annual premiums reported for an annual period beginning
15 on or after the effective date of this Act. Maintenance taxes
16 imposed on gross annual workers' compensation premiums before the
17 effective date of this Act are governed by the law as it existed
18 before the effective date of this Act, and the former law is
19 continued in effect for that purpose.

20 SECTION 17. This Act takes effect January 1, 2024.