

By: Sheets

H.B. No. 3205

A BILL TO BE ENTITLED

AN ACT

relating to repealing the maintenance tax and creating an overhead assessment for certain insurers participating in the workers' compensation system; imposing an assessment.

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

SECTION 1. Title 3, Insurance Code, is amended by adding Subtitle F to read as follows:

SUBTITLE F. OVERHEAD ASSESSMENTS

CHAPTER 291. WORKERS' COMPENSATION INSURANCE OVERHEAD ASSESSMENT

Sec. 291.001. OVERHEAD ASSESSMENT IMPOSED. (a) An overhead assessment is imposed on each authorized insurer with gross premiums subject to assessment under Section 291.003, including a:

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

(b) The overhead assessment required by this chapter is in addition to other taxes imposed that are not in conflict with this chapter.

Sec. 291.002. MAXIMUM RATE; ANNUAL ADJUSTMENT. (a) The rate of assessment set by the commissioner may not exceed 0.6 percent of the gross premiums subject to the overhead assessment under Section 291.003.

1 (b) The commissioner shall annually adjust the rate of
2 assessment of the overhead assessment so that the assessment
3 imposed that year, together with any unexpended funds produced by
4 the assessment, produces the amount the commissioner determines is
5 necessary to pay the expenses during the succeeding year of
6 regulating workers' compensation insurance.

7 Sec. 291.003. PREMIUMS SUBJECT TO OVERHEAD ASSESSMENT. (a)
8 An insurer shall pay an overhead assessment under this chapter on
9 the correctly reported gross workers' compensation insurance
10 premiums from writing workers' compensation insurance in this
11 state, including the modified annual premium of a policyholder that
12 purchases an optional deductible plan under Subchapter E, Chapter
13 2053.

14 (b) The rate of assessment shall be applied to the modified
15 annual premium before application of a deductible premium credit.

16 Sec. 291.004. OVERHEAD ASSESSMENT DUE DATES. (a) The
17 insurer shall pay the overhead assessment annually or semiannually.

18 (b) The comptroller may require semiannual payment only
19 from an insurer whose overhead assessment liability under this
20 chapter for the previous tax year was at least \$2,000.

21 (b-1) For the initial overhead assessment imposed on or
22 after January 1, 2016, the comptroller may require semiannual
23 payment under Subsection (b) from an insurer whose maintenance tax
24 liability for the previous tax year under former Chapter 255 was at
25 least \$2,000. This subsection expires September 1, 2017.

26 Sec. 291.005. APPLICABILITY OF OTHER LAW. The requirements
27 of Chapter 251 apply to overhead assessments imposed under this

1 chapter.

2 Sec. 291.006. RECOVERY OF OVERHEAD ASSESSMENT. An insurer
3 may recover an overhead assessment paid by the insurer under this
4 chapter by:

5 (1) reflecting the overhead assessment as an expense
6 in a rate filing required under this code; or

7 (2) charging the insurer's policyholders.

8 SECTION 2. Section 402.076(b), Labor Code, is amended to
9 read as follows:

10 (b) The operations of the division under this section are
11 funded through the overhead assessment [~~maintenance tax assessed~~]
12 under Section 403.002.

13 SECTION 3. The heading to Section 403.002, Labor Code, is
14 amended to read as follows:

15 Sec. 403.002. OVERHEAD ASSESSMENT [~~MAINTENANCE TAXES~~].

16 SECTION 4. Sections 403.002(a), (b), and (c), Labor Code,
17 are amended to read as follows:

18 (a) Each insurance carrier, other than a governmental
19 entity, shall pay an annual overhead assessment [~~maintenance tax~~]
20 to pay the costs of administering this subtitle and to support the
21 prosecution of workers' compensation insurance fraud in this state.

22 (b) The overhead assessment may not exceed an amount equal
23 to two percent of the correctly reported gross workers'
24 compensation insurance premiums, including the modified annual
25 premium of a policyholder that purchases an optional deductible
26 plan under Subchapter E, Chapter 2053 [~~Article 5.55C~~], Insurance
27 Code. The rate of the overhead assessment shall be applied to the

1 modified annual premium before application of a deductible premium
2 credit.

3 (c) A workers' compensation insurance company is assessed
4 [~~taxed~~] at the rate established under Section 403.003. The
5 overhead assessment [~~tax~~] shall be collected in the manner provided
6 for collection of other assessments [~~taxes~~] on gross premiums from
7 a workers' compensation insurance company as provided in Chapter
8 291 [~~255~~], Insurance Code.

9 SECTION 5. Section 403.003, Labor Code, is amended by
10 amending Subsection (a) and adding Subsection (a-1) to read as
11 follows:

12 (a) The commissioner of insurance shall set and certify to
13 the comptroller the rate of the overhead [~~maintenance tax~~]
14 assessment taking into account:

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

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

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

21 (2) projected employee benefits paid from general
22 revenues;

23 (3) a surplus or deficit produced by the overhead
24 assessment [~~tax~~] in the preceding year;

25 (4) revenue recovered from other sources, including
26 reappropriated receipts, grants, payments, fees, gifts, and
27 penalties recovered under this subtitle; and

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

3 (a-1) For the initial overhead assessment imposed on or
4 after January 1, 2016, the commissioner of insurance shall take
5 into account under Subsection (a)(3) a surplus or deficit produced
6 by the maintenance tax under former Chapter 255, Insurance Code, in
7 the preceding year. This subsection expires September 1, 2017.

8 SECTION 6. Section 403.004, Labor Code, is amended to read
9 as follows:

10 Sec. 403.004. COLLECTION OF OVERHEAD ASSESSMENT [~~TAX~~] AFTER
11 WITHDRAWAL FROM BUSINESS. The commissioner or the commissioner of
12 insurance immediately shall proceed to collect overhead
13 assessments [~~taxes~~] due under this chapter from an insurance
14 carrier that withdraws from business in this state, using legal
15 process as necessary.

16 SECTION 7. Chapter 403, Labor Code, is amended by adding
17 Section 403.0041 to read as follows:

18 Sec. 403.0041. COLLECTION OF MAINTENANCE TAXES AFTER
19 WITHDRAWAL FROM BUSINESS. The commissioner or the commissioner of
20 insurance immediately shall proceed to collect prior maintenance
21 taxes due under former Chapter 255, Insurance Code, from an
22 insurance carrier that withdraws from business in this state, using
23 legal process as necessary.

24 SECTION 8. Section 403.005, Labor Code, is amended to read
25 as follows:

26 Sec. 403.005. OVERHEAD ASSESSMENT [~~TAX~~] RATE. The
27 commissioner of insurance shall annually adjust the rate of the

1 overhead assessment [~~of the maintenance tax~~] imposed under Section
2 403.003 so that the overhead assessment [~~tax~~] imposed that year,
3 together with any unexpended funds produced by the overhead
4 assessment [~~tax~~], produces the amount the commissioner of insurance
5 determines is necessary to pay the expenses of administering this
6 subtitle.

7 SECTION 9. Section 403.007(e), Labor Code, is amended to
8 read as follows:

9 (e) If the commissioner determines that the funding under
10 Subsection (a) is not adequate to meet the expected obligations of
11 the subsequent injury fund established under Section 403.006, the
12 fund shall be supplemented by the collection of an overhead
13 assessment [~~a maintenance tax~~] paid by insurance carriers, other
14 than a governmental entity, as provided by Sections 403.002 and
15 403.003. The rate of assessment must be adequate to provide 120
16 percent of the projected unfunded liabilities of the fund for the
17 next biennium as certified by an independent actuary or financial
18 advisor.

19 SECTION 10. Chapter 403, Labor Code, is amended by adding
20 Section 403.009 to read as follows:

21 Sec. 403.009. RECOVERY OF OVERHEAD ASSESSMENT. An insurer
22 may recover an overhead assessment paid by the insurer under this
23 chapter by:

24 (1) reflecting the overhead assessment as an expense
25 in a rate filing; or

26 (2) charging the insurer's policyholders.

27 SECTION 11. The heading to Section 405.003, Labor Code, is

1 amended to read as follows:

2 Sec. 405.003. FUNDING; MAINTENANCE TAX; OVERHEAD
3 ASSESSMENT.

4 SECTION 12. Sections 405.003(a), (b), (c), and (d), Labor
5 Code, are amended to read as follows:

6 (a) The group's duties under this chapter are funded through
7 the imposition of an overhead assessment and ~~[of]~~ a maintenance
8 tax, as applicable, collected annually from all insurance carriers,
9 and self-insurance groups that hold certificates of approval under
10 Chapter 407A, except governmental entities.

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

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

26 (d) The overhead assessment and tax, as applicable, on
27 insurance companies and on self-insurance groups described by

1 Subsection (a) shall be assessed, collected, and paid in the same
2 manner and at the same time as the overhead assessment [~~maintenance~~
3 ~~tax~~] established for the support of the department under Chapter
4 291 [~~255~~], Insurance Code. The tax on certified self-insurers
5 shall be assessed, collected, and paid in the same manner and at the
6 same time as the self-insurer maintenance tax collected under
7 Section 407.104.

8 SECTION 13. Chapter 405, Labor Code, is amended by adding
9 Section 405.0031 to read as follows:

10 Sec. 405.0031. RECOVERY OF OVERHEAD ASSESSMENT. An insurer
11 may recover an overhead assessment paid by the insurer under this
12 chapter by:

13 (1) reflecting the overhead assessment as an expense
14 in a rate filing; or

15 (2) charging the insurer's policyholders.

16 SECTION 14. Sections 407.103(c) and (d), Labor Code, are
17 amended to read as follows:

18 (c) The tax liability of a certified self-insurer under this
19 section is the tax base computed under Subsection (b) multiplied by
20 the overhead assessment rate for [~~assessed~~] workers' compensation
21 insurance companies under Sections 403.002 and 403.003.

22 (d) In setting the rate of the overhead [~~maintenance tax~~]
23 assessment for insurance companies, the commissioner of insurance
24 may not consider revenue or expenditures related to the operation
25 of the self-insurer program under this chapter.

26 SECTION 15. Sections 407A.301(b), (c), and (e), Labor Code,
27 are amended to read as follows:

1 (b) The tax liability of a group under Subsections (a)(1)
2 and (2) is based on gross premium for the group's retention
3 multiplied by the overhead assessment rate for ~~[assessed]~~ insurance
4 carriers under Sections 403.002 and 403.003.

5 (c) The tax liability of a group under Subsection (a)(3) is
6 based on gross premium for the group's retention multiplied by the
7 overhead assessment rate for ~~[assessed]~~ insurance carriers under
8 Section 405.003.

9 (e) The tax under this section shall be collected by the
10 comptroller as provided by Section 201.051 and in the manner of the
11 collection of an overhead assessment under Chapter 291 ~~[255]~~,
12 Insurance Code.

13 SECTION 16. Sections 407A.302(a) and (c), Labor Code, are
14 amended to read as follows:

15 (a) Subject to Subsection (b), each group shall pay the
16 maintenance tax at the rate and in the manner prescribed ~~[imposed]~~
17 under Chapter 291 ~~[255]~~, Insurance Code, for the administrative
18 costs incurred by the department in implementing this chapter.

19 (c) The maintenance tax assessed under this section ~~[is~~
20 ~~subject to Chapter 255, Insurance Code, and]~~ shall be collected by
21 the comptroller in the manner provided for an overhead assessment
22 by Chapter 291, Insurance Code ~~[that chapter]~~.

23 SECTION 17. Chapter 255, Insurance Code, is repealed.

24 SECTION 18. This Act takes effect January 1, 2016.