

By: Hagenbuch

S.B. No. 1455

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 201.001(a), Insurance Code, is amended
13 to read as follows:

14 (a) The Texas Department of Insurance operating account is
15 an account in the general revenue fund. The account includes the
16 following:

17 (1) taxes, surcharges, and fees received by the
18 commissioner or comptroller that are required by this code or other
19 law to be deposited to the credit of the account; and

20 (2) money or credits received by the department or
21 commissioner from sales, reimbursements, and fees authorized by law
22 other than this code, including money or credits received from:

23 (A) charges for providing copies of public
24 information under Chapter 552, Government Code;

1 (B) the disposition of surplus or salvage
2 property under Subchapters C and D, Chapter 2175, Government Code;

3 (C) the sale of publications and other printed
4 material under Section 2052.301, Government Code;

5 (D) miscellaneous transactions and sources under
6 Section 403.011 or 403.012, Government Code;

7 (E) charges for postage spent to serve legal
8 process under Section 17.025, Civil Practice and Remedies Code;

9 (F) the comptroller involving warrants for which
10 payment is barred under Chapter 404, Government Code;

11 (G) sales or reimbursements authorized by the
12 General Appropriations Act; and

13 (H) the sale of property purchased with money
14 from the account or a predecessor fund or account.

15 SECTION 4. Section 251.001(a), Insurance Code, is amended
16 to read as follows:

17 (a) The commissioner shall annually determine the rate of
18 assessment of each maintenance tax or workers' compensation
19 surcharge imposed under this subtitle.

20 SECTION 5. Section 251.002, Insurance Code, is amended to
21 read as follows:

22 Sec. 251.002. DUTY TO ADVISE COMPTROLLER OF RATE. The
23 commissioner shall advise the comptroller of the applicable rate of
24 assessment of a maintenance tax or workers' compensation surcharge
25 not later than the 45th day before the due date of the tax or
26 surcharge report for the period for which that tax or surcharge is
27 due.

1 SECTION 6. Section 251.003, Insurance Code, is amended to
2 read as follows:

3 Sec. 251.003. EFFECT OF LATE ADVISEMENT OF
4 RATE. (a) Except as provided by Subsection (b), if the
5 commissioner does not advise the comptroller of the applicable rate
6 of assessment of a maintenance tax or workers' compensation
7 surcharge by the date required by Section 251.002, the rate of
8 assessment is the rate applied in the previous tax or surcharge
9 period.

10 (b) If the commissioner advises the comptroller of the
11 applicable rate of assessment of a maintenance tax or workers'
12 compensation surcharge after the tax or surcharge has been
13 assessed, the comptroller shall:

14 (1) advise each taxpayer or surcharge payer in writing
15 of the amount of any additional taxes or surcharges due; or

16 (2) refund any excess taxes or surcharges paid.

17 SECTION 7. 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 8. 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 surcharges collected under
24 Chapter 255 shall be deposited in the general revenue fund and
25 reallocated to the Texas Department of Insurance operating account.

26 SECTION 9. Chapter 255, Insurance Code, is amended to read
27 as follows:

CHAPTER 255. WORKERS' COMPENSATION INSURANCE

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

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

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

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

(b) The commissioner shall annually adjust the rate of assessment of the surcharge [~~maintenance tax~~] so that the surcharge [~~tax~~] imposed that year, together with any unexpended funds produced by the surcharge [~~tax~~], produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

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

(a) An insurer shall pay the surcharge [~~maintenance taxes~~] under this chapter on the correctly reported gross workers' compensation

1 insurance premiums from writing workers' compensation insurance in
2 this state, including the modified annual premium of a policyholder
3 that purchases an optional deductible plan under Subchapter E,
4 Chapter 2053.

5 (b) The rate of assessment for a surcharge shall be applied
6 to the modified annual premium before application of a deductible
7 premium credit.

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

11 (b) The comptroller may require semiannual payment only
12 from an insurer whose surcharge [~~maintenance tax~~] liability under
13 this chapter for the previous surcharge [~~tax~~] year was at least
14 \$2,000.

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

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

19 (2) charging the insurer's policyholders.

20 SECTION 10. Section 402.076(b), Labor Code, is amended to
21 read as follows:

22 (b) The operations of the division under this section are
23 funded through the surcharge [~~maintenance tax~~] assessed under
24 Section 403.002.

25 SECTION 11. 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 surcharges and advance deposits for
3 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 12. 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 rate of assessment is applied to [~~may not exceed an~~
14 ~~amount equal to two percent of~~] the correctly reported gross
15 workers' compensation insurance premiums, including the modified
16 annual premium of a policyholder that purchases an optional
17 deductible plan under Subchapter E, Chapter 2053 [~~Article 5.55C~~],
18 Insurance Code. The rate of assessment shall be applied to the
19 modified annual premium before application of a deductible premium
20 credit.

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

1 (d) Each certified self-insurer shall pay a fee and
2 surcharge [~~maintenance taxes~~] as provided by Subchapter F, Chapter
3 407.

4 SECTION 13. The heading to Section 403.003, Labor Code, is
5 amended to read as follows:

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

7 SECTION 14. Section 403.003(a), Labor Code, is amended to
8 read as follows:

9 (a) The commissioner of insurance shall set and certify to
10 the comptroller the rate of the surcharge, [~~maintenance tax~~
11 ~~assessment~~] taking into account:

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

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

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

18 (2) projected employee benefits paid from general
19 revenues;

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

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

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

27 SECTION 15. Section 403.004, Labor Code, is amended to read

1 as follows:

2 Sec. 403.004. COLLECTION OF SURCHARGE [~~TAX~~] AFTER
3 WITHDRAWAL FROM BUSINESS. The commissioner or the commissioner of
4 insurance immediately shall proceed to collect surcharges [~~taxes~~]
5 due under this chapter from an insurance carrier that withdraws
6 from business in this state, using legal process as necessary.

7 SECTION 16. Section 403.005, Labor Code, is amended to read
8 as follows:

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

16 SECTION 17. Chapter 403, Labor Code, is amended by adding
17 Section 403.0055 to read as follows:

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

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

22 (2) charging the insurer's policyholders.

23 SECTION 18. Section 403.007(e), Labor Code, is amended to
24 read as follows:

25 (e) If the commissioner determines that the funding under
26 Subsection (a) is not adequate to meet the expected obligations of
27 the subsequent injury fund established under Section 403.006, the

1 fund shall be supplemented by the collection of a surcharge
2 [~~maintenance tax~~] paid by insurance carriers, other than a
3 governmental entity, as provided by Sections 403.002 and 403.003.
4 The rate of assessment must be adequate to provide 120 percent of
5 the projected unfunded liabilities of the fund for the next
6 biennium as certified by an independent actuary or financial
7 advisor.

8 SECTION 19. The heading to Section 405.003, Labor Code, is
9 amended to read as follows:

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

12 SECTION 20. Section 405.003, Labor Code, is amended by
13 amending Subsections (a), (b), (c), and (d) and adding Subsection
14 (g) to read as follows:

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

20 (b) The department shall set the rate of the surcharge
21 [~~maintenance tax~~] based on the expenditures authorized and the
22 receipts anticipated in legislative appropriations. The surcharge
23 [~~tax~~] rate for insurance companies may not exceed the limitation in
24 Section 255.002(a), Insurance Code. The surcharge rate is applied
25 to [~~may not exceed one-tenth of one percent of~~] the correctly
26 reported gross workers' compensation insurance premiums. The
27 surcharge [~~tax~~] rate for certified self-insurers may not exceed the

1 limitation in Section 255.002(a), Insurance Code. The surcharge
 2 rate is applied to [~~may not exceed one-tenth of one percent of~~] the
 3 total surcharge [~~tax~~] base of all certified self-insurers, as
 4 computed under Section 407.103(b). The surcharge [~~tax~~] rate for
 5 self-insurance groups described by Subsection (a) may not exceed
 6 the limitation in Section 255.002(a), Insurance Code. The
 7 surcharge rate is applied to [~~may not exceed one-tenth of one~~
 8 ~~percent of~~] the group's gross premium for the group's retention,
 9 excluding premium collected by the group for excess insurance.

10 (c) The surcharge [~~tax~~] imposed under Subsection (a) is in
 11 addition to all [~~other~~] taxes or other surcharges imposed on those
 12 insurance carriers for workers' compensation purposes.

13 (d) The surcharge [~~tax~~] on insurance companies and on
 14 self-insurance groups described by Subsection (a) shall be
 15 assessed, collected, and paid in the same manner and at the same
 16 time as the surcharge [~~maintenance tax~~] established for the support
 17 of the department under Chapter 255, Insurance Code. The surcharge
 18 [~~tax~~] on certified self-insurers shall be assessed, collected, and
 19 paid in the same manner and at the same time as the self-insurer
 20 surcharge [~~maintenance tax~~] collected under Section 407.104.

21 (g) An insurer may recover a surcharge under this section
 22 by:

- 23 (1) reflecting the surcharge as an expense in a rate
 24 filing required under the Insurance Code; or
 25 (2) charging the insurer's policyholders.

26 SECTION 21. Section 407.103, Labor Code, is amended to read
 27 as follows:

1 Sec. 407.103. SELF-INSURER SURCHARGE [~~MAINTENANCE TAX~~];
 2 EFFECT ON GENERAL SURCHARGE [~~MAINTENANCE TAX~~]. (a) Each certified
 3 self-insurer shall pay a self-insurer surchage [~~maintenance tax~~]
 4 for the administration of the division and the office of injured
 5 employee counsel and to support the prosecution of workers'
 6 compensation insurance fraud in this state. Not more than two
 7 percent of the total surchage [~~tax~~] base of all certified
 8 self-insurers, as computed under Subsection (b), may be assessed
 9 for a surchage [~~maintenance tax~~] under this section.

10 (b) To determine the surchage [~~tax~~] base of a certified
 11 self-insurer for purposes of this chapter, the department shall
 12 multiply the amount of the certified self-insurer's liabilities for
 13 workers' compensation claims incurred in the previous year,
 14 including claims incurred but not reported, plus the amount of
 15 expense incurred by the certified self-insurer in the previous year
 16 for administration of self-insurance, including legal costs, by
 17 1.02.

18 (c) The surchage [~~tax~~] liability of a certified
 19 self-insurer under this section is the surchage [~~tax~~] base
 20 computed under Subsection (b) multiplied by the rate assessed
 21 workers' compensation insurance companies under Sections [403.002](#)
 22 and [403.003](#), as limited by Section [255.002](#)(a), Insurance Code.

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

27 SECTION 22. Section [407.104](#), Labor Code, is amended to read

1 as follows:

2 Sec. 407.104. COLLECTION OF SURCHARGES [~~TAXES~~] AND FEES;
3 ADMINISTRATIVE VIOLATION. (a) The regulatory fee imposed by
4 Section 407.102 and the surcharge [~~taxes~~] imposed by Section
5 407.103 are due on the 60th day after the issuance of a certificate
6 of authority to self-insure and on the 60th day after each annual
7 renewal date.

8 (b) The department shall compute the fee and surcharge
9 [~~taxes~~] of a certified self-insurer and notify the certified
10 self-insurer of the amounts due. The surcharge [~~taxes~~] and fees
11 shall be remitted to the division.

12 (c) The regulatory fee imposed under Section 407.102 shall
13 be deposited in the Texas Department of Insurance operating account
14 to the credit of the division. The self-insurer surcharge imposed
15 under Section 407.103 [~~maintenance tax~~] shall be deposited in the
16 Texas Department of Insurance operating account to the credit of
17 the division.

18 (d) A certified self-insurer commits an administrative
19 violation if the self-insurer does not pay the surcharge [~~taxes~~]
20 and fee imposed under Sections 407.102 and 407.103 in a timely
21 manner.

22 (e) If the certificate of authority to self-insure of a
23 certified self-insurer is terminated, the commissioner or the
24 commissioner of insurance shall proceed immediately to collect
25 surcharges [~~taxes~~] due under this subtitle, using legal process as
26 necessary.

27 SECTION 23. Section 407A.252(b), Labor Code, is amended to

1 read as follows:

2 (b) The commissioner has full access to the records,
3 officers, agents, and employees of a group as necessary to complete
4 an examination under this section. The commissioner may recover the
5 expenses of the examination under Sections 401.151 and 401.152
6 [~~Article 1.16~~], Insurance Code, to the extent the surcharge
7 [~~maintenance tax~~] under Section 407A.302 does not cover those
8 expenses.

9 SECTION 24. The heading to Subchapter G, Chapter 407A,
10 Labor Code, is amended to read as follows:

11 SUBCHAPTER G. TAXES, SURCHARGES [~~FEES~~], AND ASSESSMENTS

12 SECTION 25. Section 407A.301, Labor Code, is amended to
13 read as follows:

14 Sec. 407A.301. SURCHARGE [~~MAINTENANCE TAX~~] FOR DIVISION AND
15 RESEARCH FUNCTIONS OF DEPARTMENT. (a) Each group shall pay a
16 self-insurance group surcharge [~~maintenance tax~~] under this
17 section for:

18 (1) the administration of the division of workers'
19 compensation of the department;

20 (2) the prosecution of workers' compensation insurance
21 fraud in this state;

22 (3) the research functions of the department under
23 Chapter 405; and

24 (4) the administration of the office of injured
25 employee counsel under Chapter 404.

26 (b) The surcharge [~~tax~~] liability of a group under
27 Subsections (a)(1) and (2) is based on gross premium for that [~~the~~]

1 group's retention multiplied by the rate assessed insurance
2 carriers under Sections 403.002 and 403.003, as limited by Section
3 255.002(a), Insurance Code.

4 (c) The surcharge [~~tax~~] liability of a group under
5 Subsection (a)(3) is based on gross premium for the group's
6 retention multiplied by the rate assessed insurance carriers under
7 Section 405.003, as limited by Section 255.002(a), Insurance Code.

8 (d) The surcharge [~~tax~~] under this section does not apply to
9 premium collected by the group for excess insurance.

10 (e) The surcharge [~~tax~~] under this section shall be
11 collected by the comptroller as provided by Section 201.051 and
12 Chapter 255, Insurance Code.

13 SECTION 26. Section 407A.302, Labor Code, is amended to
14 read as follows:

15 Sec. 407A.302. SURCHARGE [~~MAINTENANCE TAX~~] FOR DEPARTMENT.

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

20 (b) The surcharge owed by [~~tax liability of~~] a group under
21 this section is based on gross premium for the group's retention and
22 does not include premium collected by the group for excess
23 insurance.

24 (c) The surcharge owed [~~maintenance tax assessed~~] under
25 this section is subject to Chapter 255, Insurance Code, and shall be
26 collected by the comptroller in the manner provided by that
27 chapter.

1 SECTION 27. Section 407A.303, Labor Code, is amended to
2 read as follows:

3 Sec. 407A.303. COLLECTION AND PAYMENT OF SURCHARGES
4 [~~TAXES~~]. (a) The group shall remit the surcharges [~~taxes~~] for
5 deposit in the Texas Department of Insurance operating account to
6 the credit of the division.

7 (b) A group commits an administrative violation if the group
8 does not pay the surcharges [~~taxes~~] imposed under Sections 407A.301
9 and 407A.302 in a timely manner.

10 (c) If the certificate of approval of a group is terminated,
11 the commissioner or the commissioner of insurance shall immediately
12 notify the comptroller to collect surcharges [~~taxes~~] as directed
13 under Sections 407A.301 and 407A.302.

14 SECTION 28. The changes in law made by this Act relating to
15 surcharges on gross workers' compensation premiums or certified
16 self-insurers' liabilities and expenses apply only to the gross
17 annual premiums reported or liabilities and expenses incurred for
18 an annual period beginning on or after the effective date of this
19 Act. Maintenance taxes imposed on gross annual workers'
20 compensation premiums or liabilities and expenses before the
21 effective date of this Act are governed by the law as it existed
22 before the effective date of this Act, and the former law is
23 continued in effect for that purpose.

24 SECTION 29. This Act takes effect January 1, 2026.