

1-1 By: Cole (Senate Sponsor - Zaffirini) H.B. No. 4389
 1-2 (In the Senate - Received from the House May 8, 2023;
 1-3 May 10, 2023, read first time and referred to Committee on Business
 1-4 & Commerce; May 22, 2023, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 9, Nays 2;
 1-6 May 22, 2023, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15		X		
1-16	X			
1-17		X		
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR H.B. No. 4389 By: Zaffirini

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to the funding mechanism for the regulation of workers'
 1-24 compensation and workers' compensation insurance; authorizing
 1-25 surcharges.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 SECTION 1. The heading to Title 3, Insurance Code, is
 1-28 amended to read as follows:

1-29 TITLE 3. DEPARTMENT FUNDS, FEES, SURCHARGES, AND TAXES

1-30 SECTION 2. The heading to Subtitle C, Title 3, Insurance
 1-31 Code, is amended to read as follows:

1-32 SUBTITLE C. INSURANCE MAINTENANCE TAXES AND SURCHARGES

1-33 SECTION 3. Section 251.001(a), Insurance Code, is amended
 1-34 to read as follows:

1-35 (a) The commissioner shall annually determine the rate of
 1-36 assessment of each maintenance tax or workers' compensation
 1-37 surcharge imposed under this subtitle.

1-38 SECTION 4. The heading to Section 251.004, Insurance Code,
 1-39 is amended to read as follows:

1-40 Sec. 251.004. DEPOSIT OF MAINTENANCE TAXES AND SURCHARGES.

1-41 SECTION 5. Section 251.004(a), Insurance Code, is amended
 1-42 to read as follows:

1-43 (a) Except as provided by Subsection (b), maintenance taxes
 1-44 collected under this subtitle and surcharges collected under
 1-45 Chapter 255 shall be deposited in the general revenue fund and
 1-46 reallocated to the Texas Department of Insurance operating account.

1-47 SECTION 6. Chapter 255, Insurance Code, is amended to read
 1-48 as follows:

1-49 CHAPTER 255. WORKERS' COMPENSATION INSURANCE

1-50 Sec. 255.001. SURCHARGE [~~MAINTENANCE TAX~~] IMPOSED. (a) A
 1-51 surcharge [~~maintenance tax~~] is imposed on each authorized insurer
 1-52 with gross premiums subject to the surcharge [~~taxation~~] under
 1-53 Section 255.003, including a:

- 1-54 (1) stock insurance company;
- 1-55 (2) mutual insurance company;
- 1-56 (3) reciprocal or interinsurance exchange; and
- 1-57 (4) Lloyd's plan.

1-58 (b) The surcharge [~~tax~~] required by this chapter is in
 1-59 addition to [~~other~~] taxes or other surcharges imposed that are not
 1-60 in conflict with this chapter.

2-1 Sec. 255.002. MAXIMUM RATE; ANNUAL ADJUSTMENT. (a) The
 2-2 sum of the rates [~~rate~~] of assessment for the surcharge imposed by
 2-3 this chapter and the surcharges imposed by Chapters 403 and 405,
 2-4 Labor Code, set by the commissioner, may not exceed 2.7 [~~0.6~~
 2-5 percent of the gross premiums subject to surcharges [~~taxation under~~
 2-6 Section 255.003].

2-7 (b) The commissioner shall annually adjust the rate of
 2-8 assessment of the surcharge [~~maintenance tax~~] so that the surcharge
 2-9 [~~tax~~] imposed that year, together with any unexpended funds
 2-10 produced by the surcharge [~~tax~~], produces the amount the
 2-11 commissioner determines is necessary to pay the expenses during the
 2-12 succeeding year of regulating workers' compensation insurance.

2-13 Sec. 255.003. PREMIUMS SUBJECT TO SURCHARGE [~~TAXATION~~].
 2-14 (a) An insurer shall pay the surcharge [~~maintenance taxes~~] under
 2-15 this chapter on the correctly reported gross workers' compensation
 2-16 insurance premiums from writing workers' compensation insurance in
 2-17 this state, including the modified annual premium of a policyholder
 2-18 that purchases an optional deductible plan under Subchapter E,
 2-19 Chapter 2053.

2-20 (b) The rate of assessment for a surcharge shall be applied
 2-21 to the modified annual premium before application of a deductible
 2-22 premium credit.

2-23 Sec. 255.004. SURCHARGE [~~MAINTENANCE TAX~~] DUE DATES. (a)
 2-24 The insurer shall pay the surcharge [~~maintenance tax~~] annually or
 2-25 semiannually.

2-26 (b) The comptroller may require semiannual payment only
 2-27 from an insurer whose surcharge [~~maintenance tax~~] liability under
 2-28 this chapter for the previous tax year was at least \$2,000.

2-29 Sec. 255.005. RECOVERY OF SURCHARGE. An insurer may
 2-30 recover a surcharge under this chapter by:

2-31 (1) reflecting the surcharge as an expense in a rate
 2-32 filing required under this code; or

2-33 (2) charging the insurer's policyholders.

2-34 SECTION 7. Section 403.001(a), Labor Code, is amended to
 2-35 read as follows:

2-36 (a) Except as provided by Sections 403.006, 403.007, and
 2-37 403.008, or as otherwise provided by law, money collected under
 2-38 this subtitle, including surcharges and advance deposits for
 2-39 purchase of services, shall be deposited in the general revenue
 2-40 fund of the state treasury to the credit of the Texas Department of
 2-41 Insurance operating account.

2-42 SECTION 8. Section 403.002, Labor Code, is amended to read
 2-43 as follows:

2-44 Sec. 403.002. SURCHARGES [~~MAINTENANCE TAXES~~]. (a) Each
 2-45 insurance carrier, other than a governmental entity, shall pay an
 2-46 annual surcharge [~~maintenance tax~~] to pay the costs of
 2-47 administering this subtitle and to support the prosecution of
 2-48 workers' compensation insurance fraud in this state.

2-49 (b) The rate of assessment is applied to [~~may not exceed an~~
 2-50 amount equal to two percent of] the correctly reported gross
 2-51 workers' compensation insurance premiums, including the modified
 2-52 annual premium of a policyholder that purchases an optional
 2-53 deductible plan under Subchapter E, Chapter 2053 [~~Article 5.55C]~~,
 2-54 Insurance Code. The rate of assessment shall be applied to the
 2-55 modified annual premium before application of a deductible premium
 2-56 credit.

2-57 (c) A workers' compensation insurance company is assessed
 2-58 [~~taxed~~] at the rate established under Section 403.003 and as
 2-59 limited by Section 255.002(a), Insurance Code. The surcharge [~~tax~~]
 2-60 shall be collected in the manner provided for collection of other
 2-61 surcharges [~~taxes~~] on gross premiums from a workers' compensation
 2-62 insurance company as provided in Chapter 255, Insurance Code.

2-63 (d) Each certified self-insurer shall pay a fee and
 2-64 maintenance taxes as provided by Subchapter F, Chapter 407.

2-65 SECTION 9. The heading to Section 403.003, Labor Code, is
 2-66 amended to read as follows:

2-67 Sec. 403.003. RATE OF SURCHARGE [~~ASSESSMENT~~].

2-68 SECTION 10. Section 403.003(a), Labor Code, is amended to
 2-69 read as follows:

3-1 (a) The commissioner of insurance shall set and certify to
 3-2 the comptroller the rate of the surcharge, [~~maintenance tax~~
 3-3 ~~assessment~~] taking into account:

3-4 (1) any expenditure projected as necessary for the
 3-5 division and the office of injured employee counsel to:

3-6 (A) administer this subtitle during the fiscal
 3-7 year for which the rate of assessment is set; and

3-8 (B) reimburse the general revenue fund as
 3-9 provided by Section 201.052, Insurance Code;

3-10 (2) projected employee benefits paid from general
 3-11 revenues;

3-12 (3) a surplus or deficit produced by the surcharge
 3-13 [~~tax~~] in the preceding year;

3-14 (4) revenue recovered from other sources, including
 3-15 reappropriated receipts, grants, payments, fees, gifts, and
 3-16 penalties recovered under this subtitle; and

3-17 (5) expenditures projected as necessary to support the
 3-18 prosecution of workers' compensation insurance fraud.

3-19 SECTION 11. Section 403.004, Labor Code, is amended to read
 3-20 as follows:

3-21 Sec. 403.004. COLLECTION OF SURCHARGE [~~TAX~~] AFTER
 3-22 WITHDRAWAL FROM BUSINESS. The commissioner or the commissioner of
 3-23 insurance immediately shall proceed to collect surcharges [~~taxes~~]
 3-24 due under this chapter from an insurance carrier that withdraws
 3-25 from business in this state, using legal process as necessary.

3-26 SECTION 12. Section 403.005, Labor Code, is amended to read
 3-27 as follows:

3-28 Sec. 403.005. SURCHARGE [~~TAX~~] RATE. The commissioner of
 3-29 insurance shall annually adjust the rate of assessment of the
 3-30 surcharge [~~maintenance tax~~] imposed under Section 403.003 so that
 3-31 the surcharge [~~tax~~] imposed that year, together with any unexpended
 3-32 funds produced by the surcharge [~~tax~~], produces the amount the
 3-33 commissioner of insurance determines is necessary to pay the
 3-34 expenses of administering this subtitle.

3-35 SECTION 13. Chapter 403, Labor Code, is amended by adding
 3-36 Section 403.0055 to read as follows:

3-37 Sec. 403.0055. RECOVERY OF SURCHARGE. An insurer may
 3-38 recover a surcharge under this chapter by:

3-39 (1) reflecting the surcharge as an expense in a rate
 3-40 filing required under the Insurance Code; or

3-41 (2) charging the insurer's policyholders.

3-42 SECTION 14. The heading to Section 405.003, Labor Code, is
 3-43 amended to read as follows:

3-44 Sec. 405.003. FUNDING; SURCHARGE AND RECOVERY OF SURCHARGE
 3-45 BY INSURERS [~~MAINTENANCE TAX~~].

3-46 SECTION 15. Section 405.003, Labor Code, is amended by
 3-47 amending Subsections (a), (b), (c), and (d) and adding Subsection
 3-48 (g) to read as follows:

3-49 (a) The group's duties under this chapter are funded through
 3-50 the assessment of a surcharge [~~maintenance tax~~] collected annually
 3-51 from all insurance carriers, and self-insurance groups that hold
 3-52 certificates of approval under Chapter 407A, except governmental
 3-53 entities.

3-54 (b) The department shall set the rate of the surcharge
 3-55 [~~maintenance tax~~] based on the expenditures authorized and the
 3-56 receipts anticipated in legislative appropriations. The surcharge
 3-57 [~~tax~~] rate for insurance companies may not exceed the limitation in
 3-58 Section 255.002(a), Insurance Code. The surcharge rate is applied
 3-59 to [~~may not exceed one-tenth of one percent of~~] the correctly
 3-60 reported gross workers' compensation insurance premiums. The
 3-61 surcharge [~~tax~~] rate for certified self-insurers may not exceed the
 3-62 limitation in Section 255.002(a), Insurance Code. The surcharge
 3-63 rate is applied to [~~may not exceed one-tenth of one percent of~~] the
 3-64 total tax base of all certified self-insurers, as computed under
 3-65 Section 407.103(b). The surcharge [~~tax~~] rate for self-insurance
 3-66 groups described by Subsection (a) may not exceed the limitation in
 3-67 Section 255.002(a), Insurance Code. The surcharge rate is applied
 3-68 to [~~may not exceed one-tenth of one percent of~~] the group's gross
 3-69 premium for the group's retention, excluding premium collected by

4-1 the group for excess insurance.
4-2 (c) The surcharge [~~tax~~] imposed under Subsection (a) is in
4-3 addition to all [~~other~~] taxes or other surcharges imposed on those
4-4 insurance carriers for workers' compensation purposes.

4-5 (d) The surcharge [~~tax~~] on insurance companies and on
4-6 self-insurance groups described by Subsection (a) shall be
4-7 assessed, collected, and paid in the same manner and at the same
4-8 time as the surcharge [~~maintenance tax~~] established for the support
4-9 of the department under Chapter 255, Insurance Code. The surcharge
4-10 [~~tax~~] on certified self-insurers shall be assessed, collected, and
4-11 paid in the same manner and at the same time as the self-insurer
4-12 maintenance tax collected under Section 407.104.

4-13 (g) An insurer may recover a surcharge under this section
4-14 by:

4-15 (1) reflecting the surcharge as an expense in a rate
4-16 filing required under the Insurance Code; or

4-17 (2) charging the insurer's policyholders.

4-18 SECTION 16. The changes in law made by this Act relating to
4-19 surcharges on gross workers' compensation premiums apply only to
4-20 the gross annual premiums reported for an annual period beginning
4-21 on or after the effective date of this Act. Maintenance taxes
4-22 imposed on gross annual workers' compensation premiums before the
4-23 effective date of this Act are governed by the law as it existed
4-24 before the effective date of this Act, and the former law is
4-25 continued in effect for that purpose.

4-26 SECTION 17. This Act takes effect January 1, 2024.

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