

1 ENGROSSED HOUSE  
2 BILL NO. 1921

By: Kannady of the House

3 and

4 Sykes of the Senate

5  
6 [ workers' compensation - clarifying language -  
7 effective date ]  
8  
9

10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.  
12 2013 (85A O.S. Supp. 2016, Section 2), is amended to read as  
13 follows:

14 Section 2. As used in the Administrative Workers' Compensation  
15 Act:

16 1. "Actually dependent" means a surviving spouse, a child or  
17 any other person who receives one-half (1/2) or more of his or her  
18 support from the employee;

19 2. "Carrier" means any stock company, mutual company, or  
20 reciprocal or interinsurance exchange authorized to write or carry  
21 on the business of workers' compensation insurance in this state.  
22 Whenever required by the context, the term "carrier" shall be deemed  
23 to include duly qualified self-insureds or self-insured groups;

24

1           3. "Case management" means the ongoing coordination, by a case  
2 manager, of health care services provided to an injured or disabled  
3 worker, including but not limited to systematically monitoring the  
4 treatment rendered and the medical progress of the injured or  
5 disabled worker; ensuring that any treatment plan follows all  
6 appropriate treatment protocols, utilization controls and practice  
7 parameters; assessing whether alternative health care services are  
8 appropriate and delivered in a cost-effective manner based upon  
9 acceptable medical standards; and ensuring that the injured or  
10 disabled worker is following the prescribed health care plan;

11           4. "Case manager" means a person who is a registered nurse with  
12 a current, active unencumbered license from the Oklahoma Board of  
13 Nursing, or possesses one or more of the following certifications  
14 which indicate the individual has a minimum number of years of case  
15 management experience, has passed a national competency test and  
16 regularly obtains continuing education hours to maintain  
17 certification:

- 18           a. Certified Disability Management Specialist (CDMS),
- 19           b. Certified Case Manager (CCM),
- 20           c. Certified Rehabilitation Registered Nurse (CRRN),
- 21           d. Case Manager - Certified (CMC),
- 22           e. Certified Occupational Health Nurse (COHN), or
- 23           f. Certified Occupational Health Nurse Specialist (COHN-  
24           S);

1           5. "Certified workplace medical plan" means an organization of  
2 health care providers or any other entity, certified by the State  
3 Commissioner of Health, that is authorized to enter into a  
4 contractual agreement with an employer, group self-insurance  
5 association plan, an employer's workers' compensation insurance  
6 carrier, third-party administrator or an insured to provide medical  
7 care under the Administrative Workers' Compensation Act. Certified  
8 plans shall only include plans which provide medical services and  
9 payment for services on a fee-for-service basis to medical  
10 providers;

11           6. "Child" means a natural or adopted son or daughter of the  
12 employee under eighteen (18) years of age; or a natural or adopted  
13 son or daughter of an employee eighteen (18) years of age or over  
14 who is physically or mentally incapable of self-support; or any  
15 natural or adopted son or daughter of an employee eighteen (18)  
16 years of age or over who is actually dependent; or any natural or  
17 adopted son or daughter of an employee between eighteen (18) and  
18 twenty-three (23) years of age who is enrolled as a full-time  
19 student in any accredited educational institution. The term "child"  
20 includes a posthumous child, a child legally adopted or one for whom  
21 adoption proceedings are pending at the time of death, an actually  
22 dependent stepchild or an actually dependent acknowledged child born  
23 out of wedlock;

24

1 7. "Claimant" means a person who claims benefits for an injury  
2 or occupational disease pursuant to the provisions of the  
3 Administrative Workers' Compensation Act;

4 8. "Commission" means the Workers' Compensation Commission;

5 9. a. "Compensable injury" means damage or harm to the  
6 physical structure of the body, or prosthetic  
7 appliances, including eyeglasses, contact lenses, or  
8 hearing aids, caused solely as the result of either an  
9 accident, cumulative trauma or occupational disease  
10 arising out of the course and scope of employment. An  
11 "accident" means an event involving factors external  
12 to the employee that:

13 (1) was unintended, unanticipated, unforeseen,  
14 unplanned and unexpected,

15 (2) occurred at a specifically identifiable time and  
16 place,

17 (3) occurred by chance or from unknown causes, ~~and~~ or

18 (4) was independent of sickness, mental incapacity,  
19 bodily infirmity or any other cause.

20 b. "Compensable injury" does not include:

21 (1) injury to any active participant in assaults or  
22 combats which, although they may occur in the  
23 workplace, are the result of non-employment-  
24 related hostility or animus of one, both, or all

1 of the combatants and which assault or combat  
2 amounts to a deviation from customary duties;  
3 provided, however, injuries caused by horseplay  
4 shall not be considered to be compensable  
5 injuries, except for innocent victims,

6 (2) injury incurred while engaging in or performing  
7 or as the result of engaging in or performing any  
8 recreational or social activities for the  
9 employee's personal pleasure,

10 (3) injury which was inflicted on the employee at a  
11 time when employment services were not being  
12 performed or before the employee was hired or  
13 after the employment relationship was terminated,

14 (4) injury where the accident was caused by the use  
15 of alcohol, illegal drugs, or prescription drugs  
16 used in contravention of physician's orders. If,  
17 within twenty-four (24) hours of being injured or  
18 reporting an injury, an employee tests positive  
19 for intoxication, an illegal controlled  
20 substance, or a legal controlled substance used  
21 in contravention to a treating physician's  
22 orders, or refuses to undergo the drug and  
23 alcohol testing, there shall be a rebuttable  
24 presumption that the injury was caused by the use

1 of alcohol, illegal drugs, or prescription drugs  
2 used in contravention of physician's orders.  
3 This presumption may only be overcome if the  
4 employee proves by clear and convincing evidence  
5 that his or her state of intoxication had no  
6 causal relationship to the injury,

- 7 (5) any strain, degeneration, damage or harm to, or  
8 disease or condition of, the eye or  
9 musculoskeletal structure or other body part  
10 resulting from the natural results of aging,  
11 osteoarthritis, arthritis, or degenerative  
12 process including, but not limited to,  
13 degenerative joint disease, degenerative disc  
14 disease, degenerative  
15 spondylosis/spondylolisthesis and spinal  
16 stenosis, or  
17 (6) any preexisting condition except when the  
18 treating physician clearly confirms an  
19 identifiable and significant aggravation incurred  
20 in the course and scope of employment.

21 c. The definition of "compensable injury" shall not be  
22 construed to limit or abrogate the right to recover  
23 for mental injuries as described in Section 13 of this  
24 ~~act~~ title, heart or lung injury or illness as

1 described in Section 14 of this ~~act~~ title, or  
2 occupational diseases as described in Section 65 of  
3 this ~~act~~ title.

4 d. A compensable injury shall be established by medical  
5 evidence supported by objective findings as defined in  
6 paragraph ~~30~~ 31 of this section.

7 e. The injured employee shall prove by a preponderance of  
8 the evidence that he or she has suffered a compensable  
9 injury.

10 f. Benefits shall not be payable for a condition which  
11 results from a non-work-related independent  
12 intervening cause following a compensable injury which  
13 causes or prolongs disability, aggravation, or  
14 requires treatment. A non-work-related independent  
15 intervening cause does not require negligence or  
16 recklessness on the part of a claimant.

17 g. An employee who suffers a compensable injury shall be  
18 entitled to receive compensation as prescribed in this  
19 act. Notwithstanding other provisions of law, if it  
20 is determined that a compensable injury did not occur,  
21 the employee shall not be entitled to compensation  
22 under this act;

23 10. "Compensation" means the money allowance payable to the  
24 employee or to his or her dependents and includes the medical

1 services and supplies provided for in Section 50 of this ~~act~~ title  
2 and funeral expenses;

3 11. "Consequential injury" means injury or harm to a part of  
4 the body that is a direct result of the injury or medical treatment  
5 to the part of the body originally injured in the claim. The  
6 Commission shall not make a finding of a consequential injury unless  
7 it is established by objective medical evidence that medical  
8 treatment for such part of the body is required;

9 12. "Continuing medical maintenance" means medical treatment  
10 that is reasonable and necessary to maintain claimant's condition  
11 resulting from the compensable injury or illness after reaching  
12 maximum medical improvement. Continuing medical maintenance shall  
13 not include diagnostic tests, surgery, injections, counseling,  
14 physical therapy, or pain management devices or equipment unless the  
15 Commission finds it is in the best interest of the employee.  
16 Continuing medical maintenance shall not be awarded in excess of two  
17 (2) years beyond the date permanent partial disability or permanent  
18 total disability is awarded unless, after hearing, the Commission  
19 determines there is clear and convincing evidence that such  
20 treatment is reasonable and necessary and should continue;

21 13. "Course and scope of employment" means an activity of any  
22 kind or character for which the employee was hired and that relates  
23 to and derives from the work, business, trade or profession of an  
24 employer, and is performed by an employee in the furtherance of the



1 affairs or business of an employer. The term includes activities  
2 conducted on the premises of an employer or at other locations  
3 designated by an employer and travel by an employee in furtherance  
4 of the affairs of an employer that is specifically directed by the  
5 employer. This term does not include:

- 6 a. an employee's transportation to and from his or her  
7 place of employment,
- 8 b. travel by an employee in furtherance of the affairs of  
9 an employer if the travel is also in furtherance of  
10 personal or private affairs of the employee,
- 11 c. any injury occurring in a parking lot or other common  
12 area adjacent to an employer's place of business  
13 before the employee clocks in or otherwise begins work  
14 for the employer or after the employee clocks out or  
15 otherwise stops work for the employer, unless the  
16 employer owns or maintains control of such area, or
- 17 d. any injury occurring while an employee is on a work  
18 break, unless the injury occurs while the employee is  
19 on a work break inside the employer's facility or in  
20 an area owned by or controlled by the employer and the  
21 work break is authorized by the employee's supervisor;

22 14. "Cumulative trauma" means an injury to an employee that is  
23 caused by the combined effect of repetitive physical activities  
24 extending over a period of time in the course and scope of

1 employment. Cumulative trauma shall not mean fatigue, soreness or  
2 general aches and pain that may have been caused, aggravated,  
3 exacerbated or accelerated by the employee's course and scope of  
4 employment. Cumulative trauma shall have resulted directly and  
5 independently of all other causes ~~and the employee shall have~~  
6 ~~completed at least one hundred eighty (180) days of continuous~~  
7 ~~active employment with the employer;~~

8 15. "Death" means only death resulting from compensable injury  
9 as defined in paragraph 9 of this section;

10 16. "Disability" means ~~incapacity because of compensable injury~~  
11 ~~to earn, in the same or any other employment, substantially the same~~  
12 ~~amount of wages the employee was receiving at the time of the~~  
13 ~~compensable injury~~ the loss of use or function of a part of the body  
14 which must be proved by objective medical evidence;

15 17. "Drive-away operations" includes every person engaged in  
16 the business of transporting and delivering new or used vehicles by  
17 driving, either singly or by towbar, saddle-mount or full-mount  
18 method, or any combination thereof, with or without towing a  
19 privately owned vehicle;

20 18. a. "Employee" means any person, including a minor, in the  
21 service of an employer under any contract of hire or  
22 apprenticeship, written or oral, expressed or implied,  
23 but excluding one whose employment is casual and not  
24 in the course of the trade, business, profession, or

1 occupation of his or her employer and excluding one  
2 who is required to perform work for a municipality or  
3 county or the state or federal government on having  
4 been convicted of a criminal offense or while  
5 incarcerated. "Employee" shall also include a member  
6 of the Oklahoma National Guard while in the  
7 performance of duties only while in response to state  
8 orders and any authorized voluntary or uncompensated  
9 worker, rendering services as a firefighter, peace  
10 officer or emergency management worker. Travel by a  
11 policeman, fireman, or a member of a first aid or  
12 rescue squad, in responding to and returning from an  
13 emergency, shall be deemed to be in the course of  
14 employment.

15 b. The term "employee" shall not include:

16 (1) any person for whom an employer is liable under  
17 any Act of Congress for providing compensation to  
18 employees for injuries, disease or death arising  
19 out of and in the course of employment including,  
20 but not limited to, the Federal Employees'  
21 Compensation Act, the Federal Employers'  
22 Liability Act, the Longshore and Harbor Workers'  
23 Compensation Act and the Jones Act, to the extent  
24 his or her employees are subject to such acts,

- 1 (2) any person who is employed in agriculture or  
2 horticulture by an employer who had a gross  
3 annual payroll in the preceding calendar year of  
4 less than One Hundred Thousand Dollars  
5 (\$100,000.00) wages for agricultural or  
6 horticultural workers, or any person who is  
7 employed in agriculture or horticulture who is  
8 not engaged in operation of motorized machines,
- 9 (3) any person who is a licensed real estate sales  
10 associate or broker, paid on a commission basis,
- 11 (4) any person who is providing services in a medical  
12 care or social services program, or who is a  
13 participant in a work or training program,  
14 administered by the Department of Human Services,  
15 unless the Department is required by federal law  
16 or regulations to provide workers' compensation  
17 for such person. This division shall not be  
18 construed to include nursing homes,
- 19 (5) any person employed by an employer with five or  
20 fewer total employees, ~~all of whom~~ who are  
21 related within the second degree by blood or  
22 marriage to the employer, or are dependents  
23 living in the household of the employer if the  
24 employer is a natural person or a general or

1                   limited partnership, ~~or an incorporator~~ any  
2                   shareholder owning fifty percent (50%) or more of  
3                   the stock of a corporation formed under the laws  
4                   of this state or another state if the corporation  
5                   is the employer, or a member or manager of a  
6                   limited liability company formed under the laws  
7                   of this state or another state if the limited  
8                   liability company is the employer,

9                   (6) any person employed by an employer which is a  
10                   youth sports league which qualifies for exemption  
11                   from federal income taxation pursuant to federal  
12                   law,

13                   (7) sole proprietors, members of a partnership,  
14                   individuals who are party to a franchise  
15                   agreement as set out by the Federal Trade  
16                   Commission franchise disclosure rule, 16 CFR  
17                   436.1 through 436.11, members of a limited  
18                   liability company who own at least ten percent  
19                   (10%) of the capital of the limited liability  
20                   company or any stockholder-employees of a  
21                   corporation who own ten percent (10%) or more  
22                   stock in the corporation, unless they elect to be  
23                   covered by a policy of insurance covering  
24

1 benefits under the Administrative Workers'  
2 Compensation Act,

3 (8) any person providing or performing voluntary  
4 service who receives no wages for the services  
5 other than meals, drug or alcohol rehabilitative  
6 therapy, transportation, lodging or reimbursement  
7 for incidental expenses except for volunteers  
8 specifically provided for in subparagraph a of  
9 this paragraph,

10 (9) a person, commonly referred to as an owner-  
11 operator, who owns or leases a truck-tractor or  
12 truck for hire, if the owner-operator actually  
13 operates the truck-tractor or truck and if the  
14 person contracting with the owner-operator is not  
15 the lessor of the truck-tractor or truck.

16 Provided, however, an owner-operator shall not be  
17 precluded from workers' compensation coverage  
18 under the Administrative Workers' Compensation  
19 Act if the owner-operator elects to participate  
20 as a sole proprietor,

21 (10) a person referred to as a drive-away owner-  
22 operator who privately owns and utilizes a tow  
23 vehicle in drive-away operations and operates  
24 independently for hire, if the drive-away owner-

1 operator actually utilizes the tow vehicle and if  
2 the person contracting with the drive-away owner-  
3 operator is not the lessor of the tow vehicle.  
4 Provided, however, a drive-away owner-operator  
5 shall not be precluded from workers' compensation  
6 coverage under the Administrative Workers'  
7 Compensation Act if the drive-away owner-operator  
8 elects to participate as a sole proprietor, and

9 (11) any person who is employed as a domestic servant  
10 or as a casual worker in and about a private home  
11 or household, which private home or household had  
12 a gross annual payroll in the preceding calendar  
13 year of less than Fifty Thousand Dollars  
14 (\$50,000.00) for such workers;

15 19. "Employer" means a person, partnership, association,  
16 limited liability company, corporation, and the legal  
17 representatives of a deceased employer, or the receiver or trustee  
18 of a person, partnership, association, corporation, or limited  
19 liability company, departments, instrumentalities and institutions  
20 of this state and divisions thereof, counties and divisions thereof,  
21 public trusts, boards of education and incorporated cities or towns  
22 and divisions thereof, employing a person included within the term  
23 "employee" as defined in this section. Employer may also mean the  
24 employer's workers' compensation insurance carrier, if applicable.

1 Except as provided otherwise, this act applies to all public and  
2 private entities and institutions. Employer shall not include a  
3 qualified employer with an employee benefit plan as provided under  
4 the Oklahoma Employee Injury Benefit Act in Sections ~~107~~ 200 through  
5 ~~120~~ 213 of this ~~act~~ title;

6 20. "Employment" includes work or labor in a trade, business,  
7 occupation or activity carried on by an employer or any authorized  
8 voluntary or uncompensated worker rendering services as a  
9 firefighter, peace officer or emergency management worker;

10 21. "Evidence-based" means expert-based, literature-supported  
11 and outcomes validated by well-designed randomized trials when such  
12 information is available and which uses the best available evidence  
13 to support medical decision making;

14 22. "Gainful employment" means the capacity to perform  
15 employment for wages for a period of time that is not part-time,  
16 occasional or sporadic;

17 23. "Impaired self-insurer" means a private self-insurer or  
18 group self-insurance association that fails to pay its workers'  
19 compensation obligations, or is financially unable to do so and is  
20 the subject of any proceeding under the Federal Bankruptcy Reform  
21 Act of 1978, and any subsequent amendments or is the subject of any  
22 proceeding in which a receiver, custodian, liquidator,  
23 rehabilitator, trustee or similar officer has been appointed by a  
24



1 court of competent jurisdiction to act in lieu of or on behalf of  
2 the self-insurer;

3 24. "Incapacity" means inadequate strength or ability to  
4 perform a work-related task;

5 25. "Insurance Commissioner" means the Insurance Commissioner  
6 of the State of Oklahoma;

7 26. "Insurance Department" means the Insurance Department of  
8 the State of Oklahoma;

9 27. "Major cause" means more than fifty percent (50%) of the  
10 resulting injury, disease or illness. A finding of major cause  
11 shall be established by a preponderance of the evidence. A finding  
12 that the workplace was not a major cause of the injury, disease or  
13 illness shall not adversely affect the exclusive remedy provisions  
14 of this act and shall not create a separate cause of action outside  
15 this act;

16 28. "Maximum medical improvement" means that no further  
17 material improvement would reasonably be expected from medical  
18 treatment or the passage of time;

19 29. "Medical services" means those services specified in  
20 Section 50 of this ~~act~~ title;

21 30. "Misconduct" shall include the following:

- 22 a. unexplained absenteeism or tardiness,
- 23 b. willful or wanton indifference to or neglect of the  
24 duties required,

- c. willful or wanton breach of any duty required by the employer,
- d. the mismanagement of a position of employment by action or inaction,
- e. actions or omissions that place in jeopardy the health, life, or property of self or others,
- f. dishonesty,
- g. wrongdoing,
- h. violation of a law, or
- i. a violation of a policy or rule adopted to ensure orderly work or the safety of self or others;

31. a. (1) "Objective findings" are those findings which cannot come under the voluntary control of the patient.

(2) (a) When determining permanent disability, a physician, any other medical provider, an administrative law judge, the Commission or the courts shall not consider complaints of pain.

(b) For the purpose of making permanent disability ratings to the spine, physicians shall use criteria established by the most current edition of the American Medical

1 ~~Association~~ Association's "Guides to the  
2 Evaluation of Permanent Impairment".

3 (3) (a) Objective evidence necessary to prove  
4 permanent disability in occupational hearing  
5 loss cases may be established by medically  
6 recognized and accepted clinical diagnostic  
7 methodologies, including, but not limited  
8 to, audiological tests that measure air and  
9 bone conduction thresholds and speech  
10 discrimination ability.

11 (b) Any difference in the baseline hearing  
12 levels shall be confirmed by subsequent  
13 testing; provided, however, such test shall  
14 be given within four (4) weeks of the  
15 initial baseline hearing level test but not  
16 before five (5) days after being adjusted  
17 for presbycusis.

18 b. Medical opinions addressing compensability and  
19 permanent disability shall be stated within a  
20 reasonable degree of medical certainty;

21 32. "Official Disability Guidelines" or "ODG" means the current  
22 edition of the Official Disability Guidelines and the ODG Treatment  
23 in Workers' Comp as published by the Work Loss Data Institute;

1 33. "Permanent disability" means the extent, expressed as a  
2 percentage, of the loss of a portion of the total physiological  
3 capabilities of the human body as established by competent medical  
4 evidence and based on the current edition of the American Medical  
5 ~~Association guides~~ Association's "Guides to the evaluation  
6 Evaluation of ~~impairment~~ Permanent Impairment", if the impairment is  
7 contained therein. Loss of earning capacity directly related to the  
8 permanent loss of use of a part of the body shall be considered when  
9 determining permanent disability, but shall not constitute a  
10 separate remedy under the Administrative Workers' Compensation Act;

11 34. "Permanent partial disability" means a permanent disability  
12 or loss of use of a part of the body after maximum medical  
13 improvement has been reached ~~which prevents the injured employee,~~  
14 ~~who has been released to return to work by the treating physician,~~  
15 ~~from returning to his or her pre-injury or equivalent job.~~ All  
16 evaluations of permanent partial disability must be supported by  
17 objective findings;

18 35. "Permanent total disability" means, based on objective  
19 findings, incapacity, based upon accidental injury or occupational  
20 disease, to earn wages in any employment for which the employee may  
21 become physically suited and reasonably fitted by education,  
22 training, experience or vocational rehabilitation provided under  
23 this act. Loss of both hands, both feet, both legs, or both eyes,  
24 or any two thereof, shall constitute permanent total disability;

1 36. "Preexisting condition" means any illness, injury, disease,  
2 or other physical or mental condition, whether or not work-related,  
3 for which medical advice, diagnosis, care or treatment was  
4 recommended or received preceding the date of injury;

5 37. "~~Pre-injury~~ Preinjury or equivalent job" means the job that  
6 the claimant was working for the employer at the time the injury  
7 occurred or any other employment offered by the claimant's employer  
8 that pays at least one hundred percent (100%) of the employee's  
9 average weekly wage;

10 38. "Private self-insurer" means a private employer that has  
11 been authorized to self-insure its workers' compensation obligations  
12 pursuant to this act, but does not include group self-insurance  
13 associations authorized by this act, or any public employer that  
14 self-insures pursuant to this act;

15 39. "Prosthetic" means an artificial device used to replace a  
16 part or joint of the body that is lost or injured in an accident or  
17 illness covered by this act;

18 40. "Scheduled member" or "member" means hands, fingers, arms,  
19 legs, feet, toes, and eyes. In addition, for purposes of the  
20 Multiple Injury Trust Fund only, "scheduled member" means hearing  
21 impairment;

22 41. "Scientifically based" involves the application of  
23 rigorous, systematic, and objective procedures to obtain reliable  
24 and valid knowledge relevant to medical testing, diagnoses and

1 treatment; is adequate to justify the general conclusions drawn; and  
2 has been accepted by a peer-review journal or approved by a panel of  
3 independent experts through a comparably rigorous, objective, and  
4 scientific review;

5 42. "State average weekly wage" means the state average weekly  
6 wage determined by the Oklahoma Employment Security Commission in  
7 the preceding calendar year. If such determination is not  
8 available, the Commission shall determine the wage annually after  
9 reasonable investigation;

10 43. "Subcontractor" means a person, firm, corporation or other  
11 legal entity hired by the general or prime contractor to perform a  
12 specific task for the completion of a work-related activity;

13 44. "Surgery" does not include an injection, or the forcing of  
14 fluids beneath the skin, for treatment or diagnosis;

15 45. "Surviving spouse" means the employee's spouse by reason of  
16 a legal marriage recognized by the State of Oklahoma or under the  
17 requirements of a common law marriage in this state, as determined  
18 by the Workers' Compensation Commission;

19 46. "Temporary partial disability" means an injured employee  
20 who is temporarily unable to perform his or her job, but may perform  
21 alternative work offered by the employer;

22 47. "Time of accident" or "date of accident" means the time or  
23 date of the occurrence of the accidental incident from which  
24 compensable injury, disability, or death results; and

1 48. "Wages" means money compensation received for employment at  
2 the time of the accident, including the reasonable value of board,  
3 rent, housing, lodging, or similar advantage received from the  
4 employer and includes the amount of tips required to be reported by  
5 the employer under Section 6053 of the Internal Revenue Code and the  
6 regulations promulgated pursuant thereto or the amount of actual  
7 tips reported, whichever amount is greater.

8 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.  
9 2013 (85A O.S. Supp. 2016, Section 3), is amended to read as  
10 follows:

11 Section 3. A. Every employer ~~and every employee, unless~~  
12 ~~otherwise specifically provided in this act, shall be~~ subject and  
13 bound to the provisions of the Administrative Workers' Compensation  
14 Act shall pay or provide benefits according to the provisions of  
15 this act for the accidental injury or death of an employee arising  
16 out of and in the course of his or her employment, without regard to  
17 fault for such injury, if the employee's contract of employment was  
18 made or if the injury occurred within this state. If an employee  
19 makes claim for an injury in another jurisdiction and a final  
20 adjudication is entered in the case, the employee is precluded from  
21 his or her right of action under the Administrative Workers'  
22 Compensation Act of this state. If the employee brings an action in  
23 this state prior to a final adjudication in another jurisdiction,  
24 any receipt of benefits in the other jurisdiction shall not bar the

1 action in this state; provided, however, in no event shall the  
2 Workers' Compensation Commission grant benefits that duplicate those  
3 paid by the employer or insurance carrier in the other jurisdiction.  
4 ~~However, nothing~~ Nothing in this act shall be construed to conflict  
5 with any valid Act of Congress governing the liability of employers  
6 for injuries received by their employees.

7 B. The State of Oklahoma accepts the provisions of the Acts of  
8 Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C.,  
9 Section 290, and hereby extends the territorial jurisdiction of the  
10 Administrative Workers' Compensation Act to all lands and premises  
11 within the exterior boundaries of this state which the Government of  
12 the United States of America owns or holds by deed or act of  
13 cession, and to all purchases, projects, buildings, constructions,  
14 improvements and property within the exterior boundaries of this  
15 state belonging to the Government of the United States of America,  
16 in the same way and to the same extent as if the premises were under  
17 the exclusive jurisdiction of this state, subject only to the  
18 limitations placed thereon by the Acts of Congress.

19 C. This act shall apply only to claims for injuries and death  
20 based on accidents which occur on or after ~~the effective date of~~  
21 ~~this act~~ February 1, 2014.

22 ~~C. D.~~ D. The Workers' Compensation Code in effect before ~~the~~  
23 ~~effective date of this act~~ February 1, 2014, shall govern all rights  
24



1 in respect to claims for injuries and death based on accidents  
2 occurring before ~~the effective date of this act~~ February 1, 2014.

3 SECTION 3. AMENDATORY Section 5, Chapter 208, O.S.L.  
4 2013 (85A O.S. Supp. 2016, Section 5), is amended to read as  
5 follows:

6 Section 5. A. The rights and remedies granted to an employee  
7 subject to the provisions of the Administrative Workers'  
8 Compensation Act shall be exclusive of all other rights and remedies  
9 of the employee, his legal representative, dependents, next of kin,  
10 or anyone else claiming rights to recovery on behalf of the employee  
11 against the employer, or any principal, officer, director, employee,  
12 stockholder, partner, or prime contractor of the employer on account  
13 of injury, illness, or death. Negligent acts of a co-employee may  
14 not be imputed to the employer. No role, capacity, or persona of  
15 any employer, principal, officer, director, employee, or stockholder  
16 other than that existing in the role of employer of the employee  
17 shall be relevant for consideration for purposes of this act, and  
18 the remedies and rights provided by this act shall be exclusive  
19 regardless of the multiple roles, capacities, or personas the  
20 employer may be deemed to have. ~~For the purpose of extending the~~  
21 ~~immunity of this section, any operator or owner of an oil or gas~~  
22 ~~well or other operation for exploring for, drilling for, or~~  
23 ~~producing oil or gas shall be deemed to be an intermediate or~~  
24 ~~principal employer for services performed at a drill site or~~

1 ~~location with respect to injured or deceased workers whose immediate~~  
2 ~~employer was hired by such operator or owner at the time of the~~  
3 ~~injury or death.~~

4 B. Exclusive remedy shall not apply if:

5 1. An employer fails to secure the payment of compensation due  
6 to the employee as required by this act. An injured employee, or  
7 his or her legal representative in case death results from the  
8 injury, may, at his or her option, elect to claim compensation under  
9 this act or to maintain a legal action in court for damages on  
10 account of the injury or death; or

11 2. The injury was caused by an intentional tort committed by  
12 the employer. An intentional tort shall exist only when the  
13 employee is injured as a result of willful, deliberate, specific  
14 intent of the employer to cause such injury. Allegations or proof  
15 that the employer had knowledge that the injury was substantially  
16 certain to result from the employer's conduct shall not constitute  
17 an intentional tort. The employee shall plead facts that show it is  
18 at least as likely as it is not that the employer acted with the  
19 purpose of injuring the employee. The issue of whether an act is an  
20 intentional tort shall be a question of law.

21 C. The immunity from civil liability described in subsection A  
22 of this section shall apply regardless of whether the injured  
23 employee is denied compensation or deemed ineligible to receive  
24 compensation under this act.

1 D. If an employer has failed to secure the payment of  
2 compensation for his or her injured employee as provided for in this  
3 act, an injured employee, or his or her legal representative if  
4 death results from the injury, may maintain an action in the  
5 district court for damages on account of such injury.

6 E. The immunity created by the provisions of this section shall  
7 not extend to action against another employer, or its employees, on  
8 the same job as the injured or deceased worker where such other  
9 employer does not stand in the position of an intermediate or  
10 principal employer to the immediate employer of the injured or  
11 deceased worker.

12 F. The immunity created by the provisions of this section shall  
13 not extend to action against another employer, or its employees, on  
14 the same job as the injured or deceased worker even though such  
15 other employer may be considered as standing in the position of a  
16 special master of a loaned servant where such special master neither  
17 is the immediate employer of the injured or deceased worker nor  
18 stands in the position of an intermediate or principal employer to  
19 the immediate employer of the injured or deceased worker.

20 G. This section shall not be construed to abrogate the loaned  
21 servant doctrine in any respect other than that described in  
22 subsection F of this section. Nothing in this act shall be  
23 construed to relieve the employer from any other penalty provided  
24

1 for in this act for failure to secure the payment of compensation  
2 under this act.

3 H. For the purpose of extending the immunity of this section,  
4 any architect, professional engineer, or land surveyor shall be  
5 deemed an intermediate or principal employer for services performed  
6 at or on the site of a construction project, but this immunity shall  
7 not extend to the negligent preparation of design plans and  
8 specifications.

9 I. If the employer has failed to secure the payment of  
10 compensation as provided in this act or in the case of an  
11 intentional tort, the injured employee or his or her legal  
12 representative may maintain an action either before the Commission  
13 or in the district court, but not both.

14 SECTION 4. AMENDATORY Section 6, Chapter 208, O.S.L.  
15 2013, as amended by Section 1, Chapter 390, O.S.L. 2015 (85A O.S.  
16 Supp. 2016, Section 6), is amended to read as follows:

17 Section 6.

18 A. 1. a. Any person or entity who makes any material false  
19 statement or representation, who willfully and  
20 knowingly omits or conceals any material information,  
21 or who employs any device, scheme, or artifice, or who  
22 aids and abets any person for the purpose of:

23 (1) obtaining any benefit or payment,

24 (2) increasing any claim for benefit or payment, or

1 (3) obtaining workers' compensation coverage under  
2 this act,  
3 shall be guilty of a felony punishable pursuant to  
4 Section 1663 of Title 21 of the Oklahoma Statutes.

5 b. A material false statement or representation includes,  
6 but is not limited to, attempting to obtain treatment  
7 or compensation for body parts that were not injured  
8 in the course and scope of employment.

9 c. Fifty percent (50%) of any criminal fine imposed and  
10 collected under this section shall be paid and  
11 allocated in accordance with applicable law to the  
12 Workers' Compensation Commission Revolving Fund  
13 administered by the Workers' Compensation Commission.

14 2. Any person or entity with whom any person identified in  
15 division (1) of subparagraph a of paragraph 1 of this subsection has  
16 conspired to achieve the proscribed ends shall, by reason of such  
17 conspiracy, be guilty as a principal of a felony.

18 B. A copy of division (1) of subparagraph a of paragraph 1 of  
19 subsection A of this section shall be included on all forms  
20 prescribed by the Commission for the use of injured employees  
21 claiming benefits and for the use of employers in responding to  
22 employees' claims under this act.

23 C. ~~Where~~ If the Commission or the Attorney General finds that a  
24 violation of division (1) of subparagraph a of paragraph 1 of

1 subsection A of this section has been committed, or that any other  
2 criminal violations in furtherance of this act were committed, the  
3 chair of the Commission or the Attorney General shall refer the  
4 matter for appropriate action to the prosecuting attorney having  
5 criminal jurisdiction over the matter.

6 D. 1. a. There shall be established within the Office of the  
7 Attorney General a Workers' Compensation Fraud  
8 Investigation Unit, funded by the Commission. The  
9 Attorney General shall appoint a Director of the  
10 Workers' Compensation Fraud Investigation Unit, who  
11 may also serve as the director of any other designated  
12 insurance fraud investigation division within the  
13 Attorney General's office.

14 b. (1) The Unit shall investigate workers' compensation  
15 fraud, any additional criminal violations that  
16 may be related to workers' compensation fraud,  
17 and any other insurance fraud matters as may be  
18 assigned at the discretion of the Attorney  
19 General.

20 (2) The Attorney General shall designate the  
21 personnel assigned to the Unit, who, on meeting  
22 the qualifications established by the Oklahoma  
23 Council on Law Enforcement Education and  
24 Training, shall have the powers of specialized

1 law enforcement officers of the State of Oklahoma  
2 for the purpose of conducting investigations  
3 under this subparagraph. Personnel hired as  
4 specialized law enforcement officers shall have a  
5 minimum of three (3) years of certified law  
6 enforcement experience or its equivalent in  
7 national or military law enforcement experience  
8 as approved by the Oklahoma Council on Law  
9 Enforcement Education and Training.

10 2. The Attorney General and his or her deputies and assistants  
11 and the Director of the Workers' Compensation Fraud Investigation  
12 Unit and his or her deputies and assistants shall be vested with the  
13 power of enforcing the requirements of this section.

14 3. It shall be the duty of the Unit to assist the Attorney  
15 General in the performance of his or her duties. The Unit shall  
16 determine the identity of employees in this state who have violated  
17 division (1) of subparagraph a of paragraph 1 of subsection A of  
18 this section and report the violation to the Office of the Attorney  
19 General and the Commission. The Attorney General shall report the  
20 violation to the prosecuting attorney having jurisdiction over the  
21 matter.

22 4. a. In the course of any investigation being conducted by  
23 the Unit, the Attorney General and his or her deputies  
24 and assistants and the Director and his or her

1 deputies and assistants shall have the power of  
2 subpoena and may:

- 3 (1) subpoena witnesses,
- 4 (2) administer oaths or affirmations and examine any  
5 individual under oath, and
- 6 (3) require and compel the production of records,  
7 books, papers, contracts, and other documents.

8 b. The issuance of subpoenas for witnesses shall be  
9 served in the same manner as if issued by a district  
10 court.

11 c. (1) Upon application by the commissioner or the  
12 Director of the Unit, the district court located  
13 in the county where a subpoena was served may  
14 issue an order compelling an individual to comply  
15 with the subpoena to testify.

16 (2) Any failure to obey the order of the court may be  
17 punished as contempt.

18 d. If any person has refused in connection with an  
19 investigation by the Director to be examined under  
20 oath concerning his or her affairs, then the Director  
21 is authorized to conduct and enforce by all  
22 appropriate and available means any examination under  
23 oath in any state or territory of the United States in  
24 which any officer, director, or manager may then



1           presently be to the full extent permitted by the laws  
2           of the state or territory.

3           e.    In addition to the punishments described in paragraph  
4           1 of subsection A of this section, any person  
5           providing false testimony under oath or affirmation in  
6           this state as to any matter material to any  
7           investigation or hearing conducted under this  
8           subparagraph, or any workers' compensation hearing,  
9           shall upon conviction be guilty of perjury.

10          5.   Fees and mileage of the officers serving the subpoenas and  
11 of the witnesses in answer to subpoenas shall be as provided by law.

12          6.   a.   Every carrier or employer who has reason to suspect  
13           that a violation of division (1) of subparagraph a of  
14           paragraph 1 of subsection A of this section has  
15           occurred shall be required to report all pertinent  
16           matters to the unit.

17          b.   No carrier or employer who makes a report for a  
18           suspected violation of division (1) of subparagraph a  
19           of paragraph 1 of subsection A of this section by an  
20           employee shall be liable to the employee unless the  
21           carrier or employer knowingly and intentionally  
22           included false information in the report.

23          c.   (1) Any carrier or employer who willfully and  
24           knowingly fails to report a violation under

1 division (1) of subparagraph a of paragraph 1 of  
2 subsection A of this section shall be guilty of a  
3 misdemeanor and on conviction shall be punished  
4 by a fine not to exceed One Thousand Dollars  
5 (\$1,000.00).

6 (2) Fifty percent (50%) of any criminal fine imposed  
7 and collected under this subparagraph shall be  
8 paid and allocated in accordance with applicable  
9 law to the fund administered by the Commission.

10 d. Any employee may report suspected violations of  
11 division (1) of subparagraph a of paragraph 1 of  
12 subsection A of this section. No employee who makes a  
13 report shall be liable to the employee whose suspected  
14 violations have been reported.

15 E. 1. For the purpose of imposing criminal sanctions or a fine  
16 for violation of the duties of this act, the prosecuting attorney  
17 shall have the right and discretion to proceed against any person or  
18 organization responsible for such violations, both corporate and  
19 individual liability being intended by this act.

20 2. The prosecuting attorney of the district to whom a suspected  
21 violation of subsection A of this section, or any other criminal  
22 violations that may be related thereto, have been referred shall,  
23 for the purpose of assisting him or her in such prosecutions, have  
24 the authority to appoint as special deputy prosecuting attorneys

1 licensed attorneys-at-law in the employment of the Unit or any other  
2 designated insurance fraud investigation division within the  
3 Attorney General's office. Such special deputy prosecuting  
4 attorneys shall, for the purpose of the prosecutions to which they  
5 are assigned, be responsible to and report to the prosecuting  
6 attorney.

7 F. Notwithstanding any other provision of law, investigatory  
8 files as maintained by the Attorney General's office and by the Unit  
9 shall be deemed confidential and privileged. The files may be made  
10 open to the public once the investigation is closed by the Director  
11 of the Workers' Compensation Fraud Investigation Unit with the  
12 consent of the Attorney General.

13 G. The Attorney General, with the cooperation and assistance of  
14 the Commission, is authorized to establish rules as may be necessary  
15 to carry out the provisions of this section.

16 H. Nothing in this section shall be deemed to create a civil  
17 cause of action.

18 I. The Commission shall include a statement on all forms for  
19 notices and instructions to employees, employers, carriers and  
20 third-party administrators that any person who commits workers'  
21 compensation fraud, upon conviction, shall be guilty of a felony  
22 punishable by imprisonment, a fine or both.

23 J. If an injured employee is charged with workers' compensation  
24 fraud, any pending workers' compensation proceeding, including

1 benefits, shall be stayed after the preliminary hearing is concluded  
2 and the claimant is bound over and shall remain stayed until the  
3 final disposition of the criminal case. All notice requirements  
4 shall continue during the stay.

5 K. If the Attorney General's Office is in compliance with the  
6 discovery provisions of Section 258 of Title 22 of the Oklahoma  
7 Statutes, medical records created for the purpose of treatment and  
8 medical opinions obtained during the investigation shall be  
9 admissible at the preliminary hearing without the appearance of the  
10 medical professional creating such records or opinions. However,  
11 when material evidence dispositive to the issues of whether there  
12 was probable cause the crime was committed and whether the defendant  
13 committed the crime, was not included in a report or opinion  
14 admitted at preliminary hearing, but might be presented at a  
15 pretrial hearing by a medical professional who created such report  
16 or opinion, the judge may, upon the motion of either party, order  
17 the appearance of the medical professional creating such report or  
18 opinion. Questions of fact regarding the conduct of the defendant  
19 that conflict with the findings of the medical professional  
20 evaluating the defendant shall not constitute material evidence. In  
21 the event of such motion, notice shall be given to the Attorney  
22 General's Workers Compensation Fraud and Investigation and  
23 Prosecution Unit. A hearing shall be held and, if the motion is  
24

1 granted, the evidence shall not be presented fewer than five (5)  
2 days later.

3 L. Any person or entity who, in good faith and exercising due  
4 care, reports suspected workers' compensation fraud or insurance  
5 fraud, or who allows access to medical records or other information  
6 pertaining to suspected workers' compensation or insurance fraud, by  
7 persons authorized to investigate a report concerning the workers'  
8 compensation and insurance fraud, shall have immunity from any civil  
9 or criminal liability for such report or access. Any such person or  
10 entity shall have the same immunity with respect to participation in  
11 any judicial proceeding resulting from such reports. For purposes  
12 of any civil or criminal proceeding, there shall be a presumption of  
13 good faith of any person making a report, providing medical records  
14 or providing information pertaining to a workers' compensation or  
15 insurance fraud investigation by the Attorney General, and  
16 participating in a judicial proceeding resulting from a subpoena or  
17 a report.

18 SECTION 5. AMENDATORY Section 7, Chapter 208, O.S.L.  
19 2013 (85A O.S. Supp. 2016, Section 7), is amended to read as  
20 follows:

21 Section 7. A. An employer may not discriminate or retaliate  
22 against an employee when the employee has in good faith:

23 1. Filed a claim under this act;  
24

1        2. Retained a lawyer for representation regarding a claim under  
2 this act;

3        3. Instituted or caused to be instituted any proceeding under  
4 the provisions of this act; or

5        4. Testified or is about to testify in any proceeding under the  
6 provisions of this act.

7        B. The ~~Commission~~ district courts shall have exclusive  
8 jurisdiction to hear and decide claims based on ~~subsection A~~ of this  
9 section.

10       C. ~~If the Commission determines that the defendant violated~~  
11 ~~subsection A of this section, the Commission may award the employee~~  
12 ~~back pay up to a maximum of One Hundred Thousand Dollars~~  
13 ~~(\$100,000.00). Interim earnings or amounts earnable with reasonable~~  
14 ~~diligence by the person discriminated against shall reduce the back~~  
15 ~~pay otherwise allowable.~~

16       D. ~~The prevailing party shall be entitled to recover costs and~~  
17 ~~a reasonable attorney fee.~~

18       E. No employer may discharge an employee during a period of  
19 temporary total disability for the sole reason of being absent from  
20 work or for the purpose of avoiding payment of temporary total  
21 disability benefits to the injured employee.

22       F. D. Notwithstanding any other provision of this section, an  
23 employer shall not be required to rehire or retain an employee who,  
24 after temporary total disability has been exhausted, is determined

1 by a physician to be physically unable to perform his or her  
2 assigned duties, or whose position is no longer available.

3 ~~G. E.~~ This section shall not be construed as establishing an  
4 exception to the employment at will doctrine.

5 ~~H. The remedies provided for in this section shall be exclusive~~  
6 ~~with respect to any claim arising out of the conduct described in~~  
7 ~~subsection A of this section.~~

8 SECTION 6. AMENDATORY Section 11, Chapter 208, O.S.L.  
9 2013 (85A O.S. Supp. 2016, Section 11), is amended to read as  
10 follows:

11 Section 11. Compensation to alien nonresidents of the United  
12 States or Canada shall be the same in amount as provided for  
13 residents, except that alien nonresident dependents in any foreign  
14 country shall be limited to the surviving spouse or children who  
15 shall have been supported by the employee either wholly or in part  
16 for a period of at least one (1) year before the date of the injury  
17 or, if there is no surviving spouse or children, to the surviving  
18 father or mother whom the employee has supported, either wholly or  
19 in part, for the period of one (1) year before the date of the  
20 injury.

21 SECTION 7. AMENDATORY Section 16, Chapter 208, O.S.L.  
22 2013 (85A O.S. Supp. 2016, Section 16), is amended to read as  
23 follows:

24

1 Section 16. A. The Official Disability Guidelines - Treatment  
2 in Workers Compensation (ODG), published by the Work Loss Data  
3 Institute, is to be recognized as ~~the primary standard of a~~  
4 reference, at the time of treatment, in determining the frequency  
5 and extent of services presumed to be medically necessary and  
6 appropriate for compensable injuries under this act, or in resolving  
7 such matters in the event a dispute arises. The medical treatment  
8 guidelines are not requirements, nor are they mandates or standards;  
9 they provide advice by identifying the care most likely to benefit  
10 injured workers. The guidelines shall be evidence-based,  
11 scientifically valid, outcome-focused, and designed to reduce  
12 excessive or inappropriate medical care while safeguarding necessary  
13 medical care.

14 B. Physicians providing care to an employee shall prescribe for  
15 the employee any necessary prescription drugs and over-the-counter  
16 alternatives to prescription medicine as clinically appropriate and  
17 as recommended under the Official Disability Guidelines.  
18 Prescriptions and nonprescription drugs that are not preferred,  
19 exceed or are not addressed by ODG require preauthorization and the  
20 preauthorization request shall include the prescribing doctor's drug  
21 regimen plan of care and the anticipated dosage or range of dosages.

22 SECTION 8. AMENDATORY Section 18, Chapter 208, O.S.L.  
23 2013 (85A O.S. Supp. 2016, Section 18), is amended to read as  
24 follows:



1 Section 18. A. No hospital, physician, or other health care  
2 provider shall bill or attempt to collect any fee or any portion of  
3 a fee for services rendered to an employee due to a work-related  
4 injury or report to any credit-reporting agency any failure of the  
5 employee to make the payment, when a claim for compensation has been  
6 filed under this act and the hospital, physician, or health care  
7 provider has received actual notice given in writing by the employee  
8 or the employee's representative. Actual notice shall be deemed  
9 received by the hospital, physician, or health care provider five  
10 (5) days after mailing by certified mail or sending by facsimile,  
11 electronic mail or other electronic means with receipt of  
12 confirmation by the employee or his or her representative to the  
13 hospital, physician, or health care provider.

14 B. The notice shall include:

- 15 1. The name of the employer;
- 16 2. The name of the insurer, if known;
- 17 3. The name of the employee receiving the services;
- 18 4. The general nature of the injury, if known; and
- 19 5. Where a claim has been filed, the claim number, if known.

20 C. When an injury or bill is found to be noncompensable under  
21 this act, the hospital, physician, or other health care provider  
22 shall be entitled to pursue the employee for any unpaid portion of  
23 the fee or other charges for authorized services provided to the  
24 employee. Any applicable statute of limitations for an action for

1 the fees or other charges shall be tolled from the time notice is  
2 given to the hospital, physician, or other health care provider  
3 until a determination of noncompensability in regard to the injury  
4 which is the basis of the services is made, or if there is an  
5 appeal, until a final determination of noncompensability is rendered  
6 and all appeal deadlines have passed.

7 D. This section shall not avoid, modify, or amend any other  
8 section or subsection of this act.

9 E. An order by the Commission under this section shall stay all  
10 proceedings for collection.

11 SECTION 9. AMENDATORY Section 19, Chapter 208, O.S.L.  
12 2013, as amended by Section 4, H.J.R. No. 1096, p. 1747, O.S.L. 2014  
13 (85A O.S. Supp. 2016, Section 19), is amended to read as follows:

14 Section 19. A. There is hereby created the Oklahoma Workers'  
15 Compensation Commission, an executive agency of the State of  
16 Oklahoma, which shall have the exclusive responsibility and duty to  
17 carry out the provisions of this act, except as otherwise provided.

18 B. The Commission shall consist of three (3) full-time  
19 commissioners, each of whom must have been involved in the workers'  
20 compensation field for at least three (3) years, appointed by the  
21 Governor: one of whom is chosen from a slate of three selected by  
22 the Speaker of the House of Representatives, with all three  
23 confirmed by the Senate. The term of each appointee shall be six  
24 (6) years to administer the provisions of this act. The Governor

1 may request a subsequent slate of nominees from the Speaker of the  
2 House of Representatives if a suitable nominee is not found. Any or  
3 all of the commissioners may be reappointed for additional six-year  
4 terms upon reconfirmation by the Senate. However, the initial  
5 commissioners shall serve staggered terms of two (2), four (4), and  
6 six (6) years, respectively, as determined by the Governor. If the  
7 Legislature is not in session at the time of appointment, the  
8 appointment shall be subject to confirmation by the Senate upon  
9 convening of the next regular session of the Legislature.  
10 Membership on the Commission shall be a full-time position and no  
11 commissioner shall have any other employment, unless authorized or  
12 excused by law. Each commissioner shall receive a salary equal to  
13 that paid to a district judge of this state; provided however, the  
14 commissioners shall not receive any increase in salary as a result  
15 of the provisions of Section 1 of ~~this resolution~~ House Joint  
16 Resolution No. 1096 of the Second Session of the 54th Oklahoma  
17 Legislature.

18 C. The Commission shall have the authority to adopt reasonable  
19 rules within its respective areas of responsibility including the  
20 rules of procedure for administrative hearings, after notice and  
21 public hearing, for effecting the purposes of this act, in  
22 accordance with the Oklahoma Administrative Procedures Act. All  
23 rules, upon adoption, shall be published and be made available to  
24

1 the public and, if not inconsistent with the law, shall be binding  
2 in the administration of this act.

3 D. The principal office of the Commission shall be situated in  
4 the City of Oklahoma City in quarters assigned by the Office of  
5 Management and Enterprise Services. The Commission shall maintain  
6 and keep open, during reasonable business hours, the office in  
7 Oklahoma City, for the transaction of business, at which office its  
8 official records and papers shall be kept. The Commission or any  
9 commissioner may hold hearings in any city of this state.

10 E. The Governor shall appoint one of the commissioners to be  
11 chair of the Commission. In addition to other duties, the chair of  
12 the Commission shall have the following powers and duties:

13 1. To organize, direct and develop the administrative work of  
14 the administrative law judges, including but not limited to  
15 docketing, clerical, technical and financial work and establishment  
16 of hours of operation;

17 2. To employ administrative staff for the Commission, within  
18 budgetary limitation; and

19 3. Such other duties and responsibilities authorized by law or  
20 as the Commission may prescribe.

21 F. All appeals or disputes arising from actions of the  
22 Commission shall be governed by provisions of this act and the  
23 Commission shall not be subject to the provisions of the Oklahoma  
24 Administrative Procedures Act, except as provided in this act.

1       G. ~~When any commissioner of the Commission is disqualified for~~  
2 ~~any reason to hear and participate in the determination of any~~  
3 ~~matter pending before the Commission, the Governor shall appoint a~~  
4 ~~qualified person to hear and participate in the decision on the~~  
5 ~~particular matter. The special commissioner so appointed shall have~~  
6 ~~all authority and responsibility with respect to the particular~~  
7 ~~matter before the Commission as if the person were a regular~~  
8 ~~commissioner of the Commission but shall have no authority or~~  
9 ~~responsibility with respect to any other matter before the~~  
10 ~~Commission. A person appointed as a special commissioner of the~~  
11 ~~Commission under the provisions of this subsection shall be entitled~~  
12 ~~to receive a per diem equal to the annual salary of the~~  
13 ~~commissioners prorated for the number of days he or she serves in~~  
14 ~~the capacity of a special commissioner of the Commission.~~  
15 ~~Furthermore, when a vacancy on the Commission occurs or is certain~~  
16 ~~to occur, the position shall be filled pursuant to the provisions of~~  
17 ~~this section. The power of the Commission to decide issues of fact~~  
18 ~~shall not include the power to determine the constitutionality of~~  
19 ~~the provisions of this title or the constitutionality of application~~  
20 ~~of the provisions of this title.~~

21       SECTION 10.       AMENDATORY       Section 20, Chapter 208, O.S.L.  
22 2013 (85A O.S. Supp. 2016, Section 20), is amended to read as  
23 follows:  
24

1 Section 20. A. In addition to its other duties and powers, the  
2 Workers' Compensation Commission is given and granted full power and  
3 authority:

4 1. To appoint administrative law judges to hear all claims for  
5 compensation, including claims based on injuries which occurred  
6 outside this state for which compensation is payable under this act.  
7 An administrative law judge shall have been licensed to practice law  
8 in this state for a period of not less than three (3) years and  
9 shall have not less than three (3) years of workers' compensation  
10 experience prior to appointment;

11 2. To remand any case to an administrative law judge for the  
12 purpose of taking additional evidence;

13 3. To assess penalties;

14 4. To prescribe rules governing the representation of  
15 employees, employers, and carriers in respect to claims before the  
16 Commission;

17 5. To make available all records in connection with all cases  
18 of personal injury to the Oklahoma Department of Labor. The  
19 Commissioner of Labor may propose rules for the prevention of  
20 injuries and transmit the rules to the Commission. The Commission  
21 may recommend proposed rules for prevention of injuries to the  
22 Commissioner of Labor; and

23 6. To have and exercise all other powers and duties conferred  
24 or imposed by this act.

1 B. 1. In addition to the other powers and duties granted to  
2 the Commission in this section and otherwise provided by law, the  
3 Commission is authorized to establish and impose reasonable  
4 administrative fees to recover the cost of preparation of various  
5 informative materials distributed by the Commission.

6 2. The administrative fees shall be established by regulation  
7 of the Commission.

8 3. Funds derived from administrative fees shall be deposited  
9 into the Workers' Compensation Commission Revolving Fund to be used  
10 to defray expenses incurred in preparation and distribution of  
11 materials.

12 SECTION 11. AMENDATORY Section 21, Chapter 208, O.S.L.  
13 2013 (85A O.S. Supp. 2016, Section 21), is amended to read as  
14 follows:

15 Section 21. A. Commissioners shall be considered officers and  
16 shall take the oath prescribed by the Oklahoma Constitution and the  
17 laws of this state.

18 B. 1. A majority of the Workers' Compensation Commission shall  
19 constitute a quorum for the transaction of business, and vacancies  
20 shall not impair the right of the remaining commissioners to  
21 exercise all the powers of the full Commission, so long as a  
22 majority remains.

23 2. Any investigation, inquiry, or hearing which the Commission  
24 is authorized to hold or undertake may be held or undertaken by or

1 before any one commissioner of the Commission, or appointee acting  
2 for him or her, under authorization of the Commission.

3 C. The Commission shall have a seal for authentication of its  
4 judgments, awards, and proceedings, on which shall be inscribed the  
5 words: "Workers' Compensation Commission, State of Oklahoma".

6 D. Except with respect to the Commission's authority to hear  
7 appeals of decisions from administrative law judges other than as  
8 provided pursuant to subsection B of Section 78 of this title, any  
9 reference in this act to the Commission's ability to hear and decide  
10 the rights of interested parties under this act shall not prevent it  
11 from delegating that responsibility to an administrative law judge.

12 SECTION 12. AMENDATORY Section 22, Chapter 208, O.S.L.  
13 2013 (85A O.S. Supp. 2016, Section 22), is amended to read as  
14 follows:

15 Section 22. A. 1. For the purpose of administering the  
16 provisions of this act, the Workers' Compensation Commission is  
17 authorized:

- 18 a. to make rules necessary for the administration and  
19 operation of the Commission,  
20 b. to appoint and fix the compensation of temporary  
21 technical assistants, medical and legal advisers,  
22 clerical assistants and other officers and employees,  
23 and  
24



1 c. to make such expenditures, including those for  
2 personal service, rent, books, periodicals, office  
3 equipment, and supplies, and for printing and binding  
4 as may be necessary.

5 2. a. ~~Before~~ The Commission shall vote on any substantive  
6 change to any form and the effective date of such  
7 substantive change.

8 b. The Commission shall comply with the provisions of the  
9 Administrative Procedures Act applicable to the filing  
10 and publication requirements for rules before the  
11 adoption, prescription, amendment, modification, or  
12 repeal of any rule, ~~regulation, or form,~~ the  
13 Commission shall give at least thirty (30) days'  
14 notice of its intended action.

15 ~~b. The notice shall include a statement of the terms or~~  
16 ~~substance of the intended action or description of the~~  
17 ~~subjects and issues involved, and the time, place, and~~  
18 ~~manner in which interested persons may present their~~  
19 ~~views thereon.~~

20 ~~c. The notice shall be mailed to any person specified by~~  
21 ~~law or who shall have requested advance notice of~~  
22 ~~rule-making proceedings.~~

23 ~~3. The Commission shall afford all interested persons a~~  
24 ~~reasonable opportunity to submit written data, views, or arguments,~~

1 ~~and, if the Commission in its discretion shall so direct, oral~~  
2 ~~testimony or argument.~~

3 ~~4. Each rule, regulation, or form adopted by the Commission~~  
4 ~~shall be effective twenty (20) days after adoption unless a later~~  
5 ~~date is specified by law or in the rule itself.~~

6 ~~5. All expenditures of the Commission in the administration of~~  
7 ~~this act shall be allowed and paid from the Workers' Compensation~~  
8 ~~Fund on the presentation of itemized vouchers approved by the~~  
9 ~~Commission.~~

10 B. 1. The Commission may appoint as many persons as may be  
11 necessary to be administrative law judges and in addition may  
12 appoint such examiners, investigators, medical examiners, clerks,  
13 and other employees as it deems necessary to effectuate the  
14 provisions of this act.

15 2. Employees appointed under this subsection shall receive an  
16 annual salary to be fixed by the Commission.

17 C. Additionally, the Commission shall have the following powers  
18 and duties:

19 1. To hear and approve compromise settlements;

20 2. To review and approve own-risk applications and group self-  
21 insurance association applications;

22 3. To monitor own-risk, self-insurer and group self-insurance  
23 programs, in accordance with the rules of the Commission;

24

1       4. ~~To contract with an appropriate state governmental entity,~~  
2 ~~insurance carrier or approved service organization to process,~~  
3 ~~investigate and pay valid claims against an impaired self-insurer~~  
4 ~~which fails, due to insolvency or otherwise, to pay its workers'~~  
5 ~~compensation obligations, charges for which shall be paid from the~~  
6 ~~proceeds of security posted with the Commission as provided in~~  
7 ~~Section 38 of this act;~~

8       ~~5.~~ To establish a toll-free telephone number in order to  
9 provide information and answer questions about the Commission;

10       ~~6.~~ 5. To hear and determine claims concerning disputed medical  
11 bills;

12       ~~7.~~ 6. To promulgate necessary rules for administering this ~~act~~  
13 title and develop uniform forms and procedures for use by  
14 administrative law judges. Such rules shall be reviewable by the  
15 Legislature;

16       ~~8.~~ 7. To invest funds on behalf of the Multiple Injury Trust  
17 Fund;

18       ~~9.~~ 8. To appoint a Commission Mediator to conduct informal  
19 sessions to attempt to resolve assigned disputes;

20       9. To establish a petty cash fund in an amount not to exceed  
21 Five Hundred Dollars (\$500.00) to be used to make change for persons  
22 purchasing printed or electronic materials from the Commission,  
23 paying fees and fines, and transacting other business with the  
24 Commission. The fund shall be established and replenished from any

1 monies available to the Commission for operating expenses and shall  
2 be administered pursuant to Section 195 of Title 62 of the Oklahoma  
3 Statutes; and

4 10. Such other duties and responsibilities authorized by law.

5 D. It shall be the duty of an administrative law judge, under  
6 the rules adopted by the Commission, to hear and determine claims  
7 for compensation and to conduct hearings and investigations and to  
8 make such judgments, decisions, and determinations as may be  
9 required by any rule or judgment of the Commission.

10 SECTION 13. AMENDATORY Section 27, Chapter 208, O.S.L.  
11 2013 (85A O.S. Supp. 2016, Section 27), is amended to read as  
12 follows:

13 Section 27. A. The Workers' Compensation Commission shall be  
14 vested with jurisdiction over all claims filed pursuant to the  
15 Administrative Workers' Compensation Act. All claims so filed shall  
16 be heard by the administrative law judge sitting without a jury.  
17 The Commission shall have full power and authority to determine all  
18 questions in relation to claims for compensation under the  
19 provisions of the Administrative Workers' Compensation Act. The  
20 Commission, upon application of either party, shall order a hearing.  
21 Upon a hearing, either party may present evidence and be represented  
22 by counsel. Except as provided in this act, the decision of the  
23 administrative law judge shall be final as to all questions of fact  
24 and law. The decision of the administrative law judge shall be

1 issued within thirty (30) days following the submission of the case  
2 by the parties. The power and jurisdiction of the Commission over  
3 each case shall be continuing and it may, from time to time, make  
4 such modifications or changes with respect to former findings or  
5 orders relating thereto if, in its opinion, it may be justified.

6 B. In addition to the duties set forth in this section, the  
7 administrative law judges shall have the following duties and  
8 powers:

9 1. To hear and determine claims for compensation, to conduct  
10 hearings and investigations, and to make such judgments, decisions,  
11 and determinations as may be required by any rule or judgment of the  
12 Commission;

13 2. To hear and determine challenges to an agreement to  
14 arbitrate under the Workers' Compensation Arbitration Act;

15 3. ~~To assume duties within the Workers' Compensation Court of~~  
16 ~~Existing Claims as assigned by the Commission; and~~

17 4. To have and exercise all other powers and duties conferred  
18 or imposed by the Commission or this ~~act~~ title.

19 SECTION 14. AMENDATORY Section 29, Chapter 208, O.S.L.  
20 2013 (85A O.S. Supp. 2016, Section 29), is amended to read as  
21 follows:

22 Section 29. A. Each carrier writing compensation insurance in  
23 this state shall pay to the Workers' Compensation Commission ~~at the~~  
24 ~~time of securing a license to transact business in this state an~~

1 annual fee of One Thousand Dollars (\$1,000.00) for the privilege of  
2 ~~qualifying with the Commission for the writing of compensation~~  
3 ~~insurance.~~

4 B. Each self-insurer shall pay to the Commission an annual fee  
5 of One Thousand Dollars (\$1,000.00) at the time it is approved to  
6 ~~self-insure the obligations under this act.~~

7 C. The Commission may assess third-party administrators,  
8 pharmacy benefit managers and marketing firms an annual fee of One  
9 Thousand Dollars (\$1,000.00).

10 D. Fees required pursuant to this section shall be deposited  
11 into the Workers' Compensation Commission Revolving Fund.

12 SECTION 15. AMENDATORY Section 30, Chapter 208, O.S.L.  
13 2013 (85A O.S. Supp. 2016, Section 30), is amended to read as  
14 follows:

15 Section 30. A. For the purposes of Sections 31 through 35 of  
16 this ~~act~~ title, the term "physically impaired person" means a person  
17 who, as a result of accident, disease, birth, military action, or  
18 any other cause, has suffered:

19 1. The loss of the sight of one eye;

20 2. The loss by amputation of the whole or a part of a member of  
21 the body; or

22 3. ~~The loss of use or partial loss of use of a member such as~~  
23 ~~is obvious and apparent from observation or examination by a person~~  
24 ~~who is not skilled in the medical profession; or~~

1       4. Any previous adjudications of compensable permanent partial  
2 disability adjudged and determined by the Workers' Compensation  
3 Court, the Workers' Compensation Court of Existing Claims, or the  
4 Workers' Compensation Commission ~~or any disability resulting from~~  
5 ~~separately adjudicated injuries and adjudicated occupational~~  
6 ~~diseases even though arising at the same time. Provided, that any~~  
7 ~~adjudication of preexisting disability to a part of the body shall~~  
8 ~~not be combinable for purposes of the Multiple Injury Trust Fund~~  
9 ~~unless that part of the body was deemed to have been injured in the~~  
10 ~~claim being adjudicated.~~

11       B. This section shall apply to all adjudications of Multiple  
12 Injury Trust Fund claims heard by the Commission on or after ~~the~~  
13 ~~effective date of this act~~ February 1, 2014.

14       SECTION 16.       AMENDATORY       Section 31, Chapter 208, O.S.L.  
15 2013, as amended by Section 3, Chapter 344, O.S.L. 2015 (85A O.S.  
16 Supp. 2016, Section 31), is amended to read as follows:

17       Section 31.   A. The Multiple Injury Trust Fund shall be derived  
18 from the following additional sources:

19       1. As soon as practicable after January 1 of each year, the  
20 commissioners of the Workers' Compensation Commission shall  
21 establish an assessment rate applicable to each mutual or  
22 interinsurance association, stock company, ~~CompSource Oklahoma,~~ or  
23 other insurance carrier writing workers' compensation insurance in  
24 this state, each employer carrying its own risk, and each group

1 self-insurance association, for amounts for purposes of computing  
2 the assessment authorized by this section necessary to pay the  
3 annual obligations of the Multiple Injury Trust Fund determined on  
4 or before December 31 of each year by the MITF Director, provided  
5 for in subsection P of this section, to be outstanding for the next  
6 calendar year, and to pay the allocations provided for in subsection  
7 I of this section. The rate shall be equal for all parties required  
8 to pay the assessment. ~~If CompSource begins operating as a mutual~~  
9 ~~insurance company, the~~ The Board of Directors for CompSource Mutual  
10 Insurance Company shall have the power to disapprove the rate  
11 established by the MITF Director until the Multiple Injury Trust  
12 Fund repays in full the amount due on any loan from CompSource  
13 Mutual Insurance Company or its predecessor CompSource Oklahoma. If  
14 the MITF Director and CompSource Mutual Insurance Company have not  
15 agreed on the assessment rate within thirty (30) days, the  
16 Commission shall set an assessment rate sufficient to cover all  
17 foreseeable obligations of the Multiple Injury Trust Fund, including  
18 interest and principal owed by the Fund on any loan. ~~The rate in~~  
19 ~~effect on the effective date of this act shall remain effective~~  
20 ~~through June 30, 2014;~~

21 2. The Oklahoma Tax Commission shall assess and collect from  
22 any uninsured employer a temporary assessment at the rate of five  
23 percent (5%) of the total compensation for permanent total  
24 disability awards, permanent partial disability awards, and death



1 benefits paid out during each quarter of the calendar year by the  
2 employers;

3 3. The assessments shall be paid to the Tax Commission.  
4 Insurance carriers, self-insurers, and group self-insurance  
5 associations ~~and CompSource Oklahoma~~ shall pay the assessment in  
6 four equal installments not later than the fifteenth day of the  
7 month following the close of each quarter of the calendar year of  
8 the assessment. Assessments shall be determined based upon gross  
9 direct written premiums, normal premiums or actual paid losses of  
10 the paying party, as applicable, during the calendar quarter for  
11 which the assessment is due. Uninsured employers shall pay the  
12 assessment not later than the fifteenth day of the month following  
13 the close of each quarter of the calendar year of the assessment.  
14 For purposes of this section, "uninsured employer" means an employer  
15 required by law to carry workers' compensation insurance but who has  
16 failed or neglected to do so.

17 a. The assessment authorized in this section shall be  
18 determined using a rate equal to the proportion that  
19 the sum of the outstanding obligations of the Multiple  
20 Injury Trust Fund as determined pursuant to paragraph  
21 1 of this subsection and the allocations provided for  
22 in subsection I of this section bear to the combined  
23 gross direct written premiums of all such insurers;  
24 all actual paid losses of all individual self-

1 insureds; and the normal premium of all group self-  
2 insurance associations, for the year period from  
3 January 1 to December 31 preceding the assessment.

4 b. For purposes of this subsection:

5 (1) "actual paid losses" means all medical and  
6 indemnity payments, including temporary  
7 disability, permanent disability, and death  
8 benefits, and excluding loss adjustment expenses  
9 and reserves, and

10 (2) "normal premium" means a standard premium less  
11 any discounts;

12 4. By April 15 of each year, the Insurance Commissioner, the  
13 MITF Director and each individual and group self-insured shall  
14 provide the Workers' Compensation Commission with such information  
15 as the Commission may determine is necessary to effectuate the  
16 purposes of this section;

17 5. Each mutual or interinsurance association, stock company,  
18 ~~CompSource Oklahoma,~~ or other insurance carrier writing workers'  
19 compensation insurance in this state, and each employer carrying its  
20 own risk, including each group self-insurance association, shall be  
21 notified by the Commission in writing of the rate for the assessment  
22 on or before May 1 of each year in which a rate is determined. The  
23 rate determined by the Commission shall be in effect for four  
24

1 calendar quarters beginning July 1 following determination by the  
2 Commission; and

3 6. a. No mutual or interinsurance association, stock  
4 company, ~~CompSource Oklahoma~~, or other insurance  
5 carrier writing workers' compensation insurance in  
6 this state may be assessed in any year an amount  
7 greater than six percent (6%) of the gross direct  
8 written premiums of that insurer.

9 b. No employer carrying its own risk may be assessed in  
10 any year an amount greater than six percent (6%) of  
11 the total actual paid losses of that individual self-  
12 insured.

13 c. No group self-insurance association may be assessed in  
14 any year an amount greater than six percent (6%) of  
15 the normal premium of that group self-insurance  
16 association.

17 d. If the ~~maximum~~ assessment does not provide in any one  
18 year an amount sufficient to make all necessary  
19 payments for obligations of the Multiple Injury Trust  
20 Fund and for the allocations provided for in  
21 subsection I of this section, the unpaid portion shall  
22 be paid as soon thereafter as funds become available,  
23 and a temporary surcharge, not to exceed ten percent  
24 (10%), shall be immediately assessed by the Workers'

1           Compensation Commission sufficient to cover all  
2           foreseeable obligations of the Multiple Injury Trust  
3           Fund as follows:

- 4           (1) if an award has been made by the Workers'  
5           Compensation Court of Existing Claims or the  
6           Workers' Compensation Commission, or award or  
7           payments in lieu thereof, for permanent partial  
8           disability, the employer or insurance carrier  
9           shall deduct from the claimant's award the amount  
10           of the surcharge in effect on the date of the  
11           award. The temporary surcharge deduction shall  
12           be paid to the Oklahoma Tax Commission no later  
13           than the fifteenth day of the month following the  
14           close of each quarter of the calendar year in  
15           which compensation is paid or became payable,  
16           (2) the payments provided for in division (1) of this  
17           subparagraph shall be payable at the time the  
18           award becomes final, regardless of whether or not  
19           the award made to the claimant is paid,  
20           (3) in making and entering awards for compensation  
21           for permanent total disability or permanent  
22           partial disability, the Workers' Compensation  
23           Commission and the Workers' Compensation Court of  
24           Existing Claims shall determine and fix the

1 amounts that shall be paid to the Tax Commission  
2 under this subparagraph. The total amount of  
3 deduction so determined and fixed shall have the  
4 same force and effect as an award for  
5 compensation and all provisions relating to the  
6 collection of such awards shall apply to such  
7 judgments, and

8 (4) the temporary surcharge shall remain in effect  
9 until such time as the Commission is notified by  
10 the Multiple Injury Trust Fund that the  
11 assessment under subparagraph a of this paragraph  
12 is sufficient to cover its foreseeable  
13 obligations.

14 B. The Multiple Injury Trust Fund is hereby authorized to  
15 receive and expend monies appropriated by the Legislature.

16 C. It shall be the duty of the Tax Commission to collect the  
17 payments provided for in this act. The Tax Commission is hereby  
18 authorized to bring an action for the recovery of any delinquent or  
19 unpaid payments required in this section.

20 D. Any mutual or interinsurance association, stock company, or  
21 other insurance company, which is subject to regulation by the  
22 Insurance Commissioner, ~~or CompSource Oklahoma,~~ failing to make  
23 payments required in this act promptly and correctly, and failing to  
24 report payment of the same to the Insurance ~~Commission~~ Commissioner

1 within ten (10) days of payment shall be subject to administrative  
2 penalties as allowed by law, including but not limited to a fine in  
3 the amount of Five Hundred Dollars (\$500.00) or an amount equal to  
4 one percent (1%) of the unpaid amount, whichever is greater, to be  
5 paid to the Insurance Commissioner.

6 E. Any employer carrying its own risk, or group self-insurance  
7 association failing to make payments required in this act promptly  
8 and correctly, and failing to report payment of the same to the  
9 Commission within ten (10) days of payment shall be subject to  
10 administrative penalties as allowed by law, including but not  
11 limited to a fine in the amount of Five Hundred Dollars (\$500.00) or  
12 an amount equal to one percent (1%) of the unpaid amount, whichever  
13 is greater, to be paid to the Commission.

14 F. 1. On or before the first day of April of each year, the  
15 State Treasurer shall advise the Commission, the MITF Director and  
16 the Tax Commission of the amount of money held as of March 1 of that  
17 year by the State Treasurer to the credit of the Multiple Injury  
18 Trust Fund. On or before the first day of November of each year,  
19 the State Treasurer shall advise the Commission, the MITF Director  
20 and the Tax Commission of the amount of money held as of October 1  
21 of that year by the State Treasurer to the credit of the Multiple  
22 Injury Trust Fund.

23 2. Until such time as the Multiple Injury Trust Fund fully  
24 satisfies any loan obligation payable to CompSource Mutual Insurance

1 Company or its predecessor CompSource Oklahoma, the State Treasurer  
2 shall:

- 3 a. advise the Chief Executive Officer of CompSource  
4 Mutual Insurance Company on or before the first day of  
5 April of the money held as of March 1 of that year by  
6 the State Treasurer to the credit of the Multiple  
7 Injury Trust Fund, and
- 8 b. advise the Chief Executive Officer of CompSource  
9 Mutual Insurance Company on or before the first day of  
10 November of the money held as of October 1 of that  
11 year by the State Treasurer to the credit of the  
12 Multiple Injury Trust Fund.

13 G. Eighty percent (80%) of all sums held by the State Treasurer  
14 to the credit of the Multiple Injury Trust Fund may by order of the  
15 MITF Director be invested in or loaned on the pledge of any of the  
16 securities in which a state bank may invest the monies deposited  
17 therein by the State Treasurer<sup>7</sup>, or may be deposited in state or  
18 national banks or trust companies upon insured time deposit bearing  
19 interest at a rate no less than currently being paid upon insured  
20 savings accounts in the institutions. As used in this section,  
21 "insured" means insurance as provided by an agency of the federal  
22 government. All such securities or evidence of indebtedness shall  
23 be placed in the hands of the State Treasurer, who shall be the  
24 custodian thereof, who shall collect the principal and interest when

1 due, and pay the same into the Multiple Injury Trust Fund. The  
2 State Treasurer shall pay by vouchers drawn on the Multiple Injury  
3 Trust Fund for the making of such investments, when signed by the  
4 MITF Director, upon delivery of such securities or evidence of  
5 indebtedness to the State Treasurer. The MITF Director may sell any  
6 of such securities, the proceeds thereof to be paid over to the  
7 State Treasurer for the Multiple Injury Trust Fund.

8 H. The refund provisions of Sections 227 through 229 of Title  
9 68 of the Oklahoma Statutes shall be applicable to any payments made  
10 to the Multiple Injury Trust Fund. Refunds shall be paid from and  
11 out of the Multiple Injury Trust Fund.

12 I. The Tax Commission shall pay, monthly, to the State  
13 Treasurer to the credit of the Multiple Injury Trust Fund all monies  
14 collected pursuant to the provisions of this section. One Million  
15 Two Hundred Seventy-five Thousand Dollars (\$1,275,000.00). The  
16 State Treasurer shall pay out of the Multiple Injury Trust Fund only  
17 upon the order and direction of the Workers' Compensation Commission  
18 acting under the provisions hereof.

19 J. The Commission shall promulgate rules as the Commission  
20 deems necessary to effectuate the provisions of this section.

21 K. The Insurance Commissioner shall promulgate rules relating  
22 to insurers as defined in Title 36 of the Oklahoma Statutes, as the  
23 Insurance Commissioner deems necessary to effectuate the provisions  
24 of this section.



1 L. The MITF Director shall have authority to fulfill all  
2 payment obligations of the Multiple Injury Trust Fund.

3 M. The Multiple Injury Trust Fund may enter into an agreement  
4 with any reinsurer licensed to sell reinsurance by the Insurance  
5 Commissioner pursuant to a competitive process administered by the  
6 Director of Central Purchasing in the Office of Management and  
7 Enterprise Services.

8 N. Any dividend, rebate, or other distribution, payable by  
9 ~~CompSource Oklahoma~~ Mutual Insurance Company or any other workers'  
10 compensation insurance carrier, to a state agency policyholder shall  
11 be paid to the State Treasurer, and shall be credited as follows:

12 1. In the event of failure of the Multiple Injury Trust Fund to  
13 meet all lawful obligations, the monies shall be credited to the  
14 Multiple Injury Trust Fund and shall be used by the Multiple Injury  
15 Trust Fund to meet all lawful obligations of the Multiple Injury  
16 Trust Fund; and

17 2. Otherwise, all future dividends made by ~~CompSource Oklahoma~~  
18 ~~or~~ any workers' compensation insurance carrier, on behalf of state  
19 agencies, shall be deposited to the credit of the General Revenue  
20 Fund of the State Treasury.

21 O. The Workers' Compensation Commission shall be charged with  
22 the administration and protection of the Multiple Injury Trust Fund.

23 P. The person serving as the Administrator of the Multiple  
24 Injury Trust Fund on the date of passage and approval of this act

1 shall serve as the initial MITF Director, provided such person is  
2 serving as the Administrator of the Multiple Injury Trust Fund on  
3 the effective date of this act. The MITF Director shall be  
4 appointed by and serve at the pleasure of the Governor.

5 Q. Any party interested shall have a right to bring a  
6 proceeding in the Supreme Court to review an award of the Commission  
7 affecting such Multiple Injury Trust Fund, in the same manner as is  
8 provided by law with reference to other awards by the Commission.

9 R. The State Treasurer shall allocate to the Commission out of  
10 the Multiple Injury Trust Fund sufficient funds for administration  
11 expenses thereof in amounts to be fixed and approved by the  
12 ~~Administrator~~ Director for the Multiple Injury Trust Fund, unless  
13 rejected by the Commission.

14 SECTION 17. AMENDATORY Section 32, Chapter 208, O.S.L.  
15 2013 (85A O.S. Supp. 2016, Section 32), is amended to read as  
16 follows:

17 Section 32. A. ~~For actions in which the subsequent injury~~  
18 ~~occurred on or after November 1, 2005, if~~ Except as otherwise  
19 provided in this section, an employee who is a "physically impaired  
20 person" and who receives an accidental personal injury compensable  
21 under the Administrative Workers' Compensation Act which results in  
22 additional permanent disability so that the degree of disability  
23 caused by the combination of both disabilities results in disability  
24 materially greater than that which would have resulted from the

1 subsequent injury alone may proceed against the Multiple Injury  
2 Trust Fund for permanent total disability. Only disability due to  
3 an injury to the body as a whole at a subsequent employer shall be  
4 combinable with a prior body disability, except that disability to a  
5 member may be combined with disability to the body as a whole. If  
6 such combined disabilities constitute permanent total disability, as  
7 defined in Section 2 of this ~~act~~ title, the employee shall receive  
8 full compensation as provided by law for the disability resulting  
9 directly and specifically from the subsequent injury. In addition,  
10 the employee shall receive compensation for permanent total  
11 disability if the combination of injuries renders the employee  
12 permanently and totally disabled. The employer shall be liable only  
13 for the degree of percent of disability which would have resulted  
14 from the subsequent injury if there had been no preexisting  
15 impairment. The compensation rate for permanent total disability  
16 awards from the Multiple Injury Trust Fund shall be the compensation  
17 rate for permanent partial disability paid by the employer in the  
18 last combinable compensable injury.

19 B. Permanent total disability awards from the Multiple Injury  
20 Trust Fund shall be payable in periodic installments for a period of  
21 ~~fifteen (15)~~ ten (10) years or until the employee reaches sixty-five  
22 (65) years of age, whichever period is longer.

23 C. Permanent total disability awards from the Multiple Injury  
24 Trust Fund shall accrue from the file date of the order of the

1 Workers' Compensation Commission finding the claimant to be  
2 permanently and totally disabled.

3 D. Before a physically impaired person can proceed against the  
4 Multiple Injury Trust Fund, the previously adjudicated compensable  
5 permanent partial disability adjudged and determined by the Workers'  
6 Compensation Court, Court of Existing Claims or Workers'  
7 Compensation Commission and the permanent partial disability from  
8 the last injury must exceed sixty percent (60%) to the body as a  
9 whole. However, amputations of a scheduled member qualifying as  
10 previous impairment under Section 30 of this title shall be  
11 considered in lieu of previously adjudicated compensable permanent  
12 partial disability adjudged and determined by the Workers'  
13 Compensation Commission.

14 E. Awards under this section shall abate upon the death, from  
15 any cause, of the employee.

16 ~~E.~~ F. Reopening any prior claim other than the last claim  
17 against the employer shall not give a claimant the right to  
18 additional Multiple Injury Trust Fund benefits.

19 ~~F.~~ G. The Multiple Injury Trust Fund shall have authority to  
20 compromise a claim for less than the indicated amount of permanent  
21 total disability. An order entered ~~after the effective date of this~~  
22 ~~act may~~ shall be paid in periodic installments beginning on the date  
23 of the award, ~~or may be~~ unless commuted to a lump-sum payment or  
24 payments, by agreement of the claimant and the Multiple Injury Trust

1 Fund. All offers made by the Multiple Injury Trust Fund pursuant to  
2 this section shall be conveyed by the claimant's attorney to the  
3 claimant within five (5) days of receipt of the offer.

4 ~~G. An attorney for a claimant against the Multiple Injury Trust~~  
5 ~~Fund shall be entitled to a fee equal to twenty percent (20%) of~~  
6 ~~permanent disability benefits awarded. For awards entered after the~~  
7 ~~effective date of this act, the attorney fee shall be paid in~~  
8 ~~periodic installments by the attorney receiving every fifth check.~~  
9 ~~All benefits awarded to the attorney shall be vested.~~

10 H. If an order is entered finding an employee to be permanently  
11 totally disabled as a result of combined disability, and such order  
12 is compromised, the employee is thereafter prohibited from making an  
13 additional claim against the Multiple Injury Trust Fund.

14 I. Fees for legal services rendered by an attorney representing  
15 a claimant against the Multiple Injury Trust Fund shall not exceed  
16 twenty percent (20%) of the award and shall be paid periodically at  
17 the rate of every fifth check until the attorney fee is satisfied.  
18 Attorney fees in Multiple Injury Trust Fund cases shall be based  
19 upon a maximum of four hundred (400) weeks of compensation. The  
20 right to any such attorney fee shall be vested at the time an award  
21 becomes final.

22 J. In the event a claimant receiving benefits for permanent and  
23 total disability from the Multiple Injury Trust Fund dies as a  
24 result of his or her injury before the award has been fully paid,

1 payments shall continue to the surviving spouse for five (5) years  
2 or upon remarriage, whichever occurs first. In no event shall  
3 payments to the surviving spouse extend beyond the period of  
4 benefits awarded to the claimant.

5 SECTION 18. AMENDATORY Section 33, Chapter 208, O.S.L.  
6 2013 (85A O.S. Supp. 2016, Section 33), is amended to read as  
7 follows:

8 Section 33. A. The right to claim compensation for benefits  
9 from the Multiple Injury Trust Fund shall be forever barred unless a  
10 Notice of Claim, on a form prescribed by the Workers' Compensation  
11 Commission, shall be filed with the Commission within ~~two (2) years~~  
12 one (1) year of the date of the last order for permanent partial  
13 disability from the latest claim against the last employer.

14 B. When a claim for benefits from the Multiple Injury Trust  
15 Fund is filed, unless claimant shall in good faith request a hearing  
16 and final determination thereon within ~~three (3)~~ two (2) years of  
17 the filing thereof, the same shall be barred.

18 C. An attorney who represents a respondent or insurance carrier  
19 in a claim against the last employer shall not represent the  
20 employee in a subsequent claim against the Multiple Injury Trust  
21 Fund.

22 SECTION 19. AMENDATORY Section 34, Chapter 208, O.S.L.  
23 2013 (85A O.S. Supp. 2016, Section 34), is amended to read as  
24 follows:

1 Section 34. A. The MITF Director shall be charged with the  
2 administration and protection of the Multiple Injury Trust Fund and  
3 shall be notified by the Workers' Compensation Commission of all  
4 proceedings which may affect such fund.

5 B. The MITF Director shall have authority to conduct all  
6 business affairs relating to administration of the Multiple Injury  
7 Trust Fund, including but not limited to appointment of assistants,  
8 accountants, attorneys and other employees as may be necessary.

9 C. The MITF Director shall have standing and the authority to  
10 appear in any case before the Commission in which the Commission is  
11 considering an award from the Multiple Injury Trust Fund.

12 ~~E.~~ D. Any party interested shall have a right to bring a  
13 proceeding in the Supreme Court to review an award of the Commission  
14 affecting such Multiple Injury Trust Fund, in the same manner as is  
15 now provided by law with reference to other awards by the  
16 Commission.

17 ~~D. The State Treasurer shall allocate to the MITF Director~~  
18 ~~sufficient funds for administration expenses thereof in amounts to~~  
19 ~~be fixed and approved by the Administrator for the Multiple Injury~~  
20 ~~Trust Fund, unless rejected by the Governor and Attorney General.~~

21 SECTION 20. AMENDATORY Section 36, Chapter 208, O.S.L.  
22 2013 (85A O.S. Supp. 2016, Section 36), is amended to read as  
23 follows:  
24

1 Section 36. A. If ~~a subcontractor~~ an individual or business  
2 entity fails to secure compensation required by this ~~act~~ title, the  
3 ~~prime contractor~~ party for whom work is being performed shall be  
4 liable for compensation to the employees of the ~~subcontractor~~  
5 individual or business entity unless there is an intermediate  
6 ~~subcontractor~~ individual or business entity who has workers'  
7 compensation coverage.

8 B. 1. Any ~~contractor or the contractor's~~ party for whom work  
9 is being performed or the party's insurance carrier who shall become  
10 liable for the payment of compensation on account of injury to or  
11 death of an employee of ~~his or her subcontractor~~ an individual or  
12 business entity may recover from the ~~subcontractor~~ individual or  
13 business entity the amount of the compensation paid or for which  
14 liability is incurred.

15 2. The claim for the recovery shall constitute a lien against  
16 any monies due or to become due to the ~~subcontractor~~ individual or  
17 business entity from the ~~prime contractor~~ party for whom work is  
18 being performed.

19 3. A claim for recovery shall not affect the right of the  
20 injured employee or the dependents of the deceased employee to  
21 recover compensation due from the ~~prime contractor~~ party for whom  
22 work is being performed or his or her insurance carrier.

23 C. 1. a. ~~When a sole proprietorship or partnership fails to~~  
24 ~~elect to cover the sole proprietor or partners under~~



1 ~~this act, the prime contractor is not liable under~~  
2 ~~this act for injuries sustained by the sole proprietor~~  
3 ~~or partners if the sole proprietor or partners are not~~  
4 ~~employees of the prime contractor.~~

5 b. ~~(1) A sole proprietor or the partners of a~~  
6 ~~partnership who do not elect to be covered by~~  
7 ~~this act and be deemed employees thereunder and~~  
8 ~~who deliver to the prime contractor a current~~  
9 ~~certification of noncoverage issued by the~~  
10 ~~Commission shall be conclusively presumed not to~~  
11 ~~be covered by the law or to be employees of the~~  
12 ~~prime contractor during the term of his or her~~  
13 ~~certification or any renewals thereof.~~

14 ~~(2) A certificate of noncoverage may not be presented~~  
15 ~~to a subcontractor who does not have workers'~~  
16 ~~compensation coverage.~~

17 ~~(3) This provision shall not affect the rights or~~  
18 ~~coverage of any employees of the sole proprietor~~  
19 ~~or of the partnership.~~

20 ~~2. The prime contractor's insurance carrier shall not be liable~~  
21 ~~for injuries to the sole proprietor or partners described in this~~  
22 ~~section who have provided a current certification of noncoverage,~~  
23 ~~and the carrier shall not include compensation paid by the prime~~  
24

1 ~~contractor to the sole proprietor or partners described above in~~  
2 ~~computing the insurance premium for the prime contractor.~~

3       3.    a.   ~~Any prime contractor who after being presented with a~~  
4           ~~current certification of noncoverage by a sole~~  
5           ~~proprietor or partnership compels the sole proprietor~~  
6           ~~or partnership to pay or contribute to workers'~~  
7           ~~compensation coverage of that sole proprietor or~~  
8           ~~partnership shall be guilty of a misdemeanor.~~

9           b.   ~~Any prime contractor who compels a sole proprietor or~~  
10          ~~partnership to obtain a certification of noncoverage~~  
11          ~~when the sole proprietor or partnership does not~~  
12          ~~desire to do so shall be guilty of a misdemeanor.~~

13          c.   ~~Any applicant who makes a false statement when~~  
14          ~~applying for a certification of noncoverage or any~~  
15          ~~renewals thereof shall be guilty of a felony.~~

16        D.   1.   ~~A certification of noncoverage issued by the Commission~~  
17        ~~shall be valid for two (2) years after the effective date stated~~  
18        ~~thereon. Both the effective date and the expiration date shall be~~  
19        ~~listed on the face of the certificate by the Commission. The~~  
20        ~~certificate shall expire at midnight two (2) years from its issue~~  
21        ~~date, as noted on the face of the certificate.~~

22        2.   ~~The Commission may assess a fee not to exceed Fifty Dollars~~  
23        ~~(\$50.00) with each application for a certification of noncoverage or~~  
24        ~~any renewals thereof.~~

1       ~~3. Any certification of noncoverage issued by the Commission~~  
2 ~~shall contain the social security number and notarized signature of~~  
3 ~~the applicant. The notarization shall be in a form and manner~~  
4 ~~prescribed by the Commission.~~

5       ~~4. The Commission may prescribe by rule forms and procedures~~  
6 ~~for issuing or renewing a certification of noncoverage.~~

7       ~~E. If work is performed by an independent contractor on a~~  
8 ~~single-family residential dwelling occupied by the owner, or the~~  
9 ~~premises of such dwelling, or for a farmer whose cash payroll for~~  
10 ~~wages, excluding supplies, materials and equipment, for the~~  
11 ~~preceding calendar year did not exceed One Hundred Thousand Dollars~~  
12 ~~(\$100,000.00), such owner or farmer shall not be liable for~~  
13 ~~compensation under this act for injuries to the independent~~  
14 ~~contractor or his or her employees~~ Any individual or business entity  
15 that is not required to be covered under a workers' compensation  
16 insurance policy or other plan for the payment of workers'  
17 compensation may execute an Affidavit of Exempt Status under the  
18 Administrative Workers' Compensation Act. The affidavit shall be a  
19 form prescribed by the Workers' Compensation Commission and shall be  
20 available on the Commission's website. The Commission may assess a  
21 fee not to exceed Fifty Dollars (\$50.00) for each affidavit  
22 executed.

23       D. Execution of the affidavit shall establish a rebuttable  
24 presumption that the executor or executor's agent is not an employee

1 for purposes of the Administrative Workers' Compensation Act and  
2 that an individual or company possessing the affidavit is in  
3 compliance and shall not be responsible for workers' compensation  
4 claims made by the executor.

5 E. The execution of an affidavit shall not affect the rights or  
6 coverage of any employee of the individual executing the affidavit.

7 F. 1. Knowingly providing false information on a notarized  
8 Affidavit of Exempt Status under the Administrative Workers'  
9 Compensation Act shall constitute a misdemeanor punishable by a fine  
10 not to exceed One Thousand Dollars (\$1,000.00).

11 2. Affidavits shall conspicuously state on the front thereof in  
12 at least ten-point, boldface print that it is a crime to falsify  
13 information on the form.

14 3. The Commission shall immediately notify the Workers'  
15 Compensation Fraud Investigation Unit in the Office of the Attorney  
16 General of any violations or suspected violations of this section.  
17 The Commission shall cooperate with the Unit in any investigation  
18 involving affidavits executed pursuant to this section.

19 G. Fees collected pursuant to subsection C of this section  
20 shall be deposited in the State Treasury to the credit of the  
21 Workers' Compensation Commission Revolving Fund.

22 H. If any employer relies in good faith on proof of a valid  
23 workers' compensation insurance policy issued to a contractor of any  
24 tier or on proof of an Affidavit of Exempt Status under this

1 section, the employer shall not be liable for injuries of any  
2 employees of the contractor.

3 SECTION 21. AMENDATORY Section 38, Chapter 208, O.S.L.  
4 2013 (85A O.S. Supp. 2016, Section 38), is amended to read as  
5 follows:

6 Section 38. A. An employer shall secure compensation to  
7 employees under ~~this act~~ the Administrative Workers' Compensation  
8 Act in one of the following ways:

9 1. By insuring and keeping insured the payment of compensation  
10 with any stock corporation, mutual association, or other concerns  
11 authorized to transact the business of workers' compensation  
12 insurance in this state. When an insurer issues a policy to provide  
13 workers' compensation benefits under the provisions of ~~this act~~ the  
14 Administrative Workers' Compensation Act, it shall file a notice  
15 with the Workers' Compensation Commission containing the name,  
16 address, and principal occupation of the employer, the number,  
17 effective date, and expiration date of the policy, and such other  
18 information as may be required by the Commission. The notice shall  
19 be filed by the insurer within thirty (30) days after the effective  
20 date of the policy. Any insurer who does not file the notice  
21 required by this paragraph shall be subject to a fine by the  
22 Commission of not more than One Thousand Dollars (\$1,000.00);

23 2. By obtaining and keeping in force guaranty insurance with  
24 any company authorized to do guaranty business in this state. Each

1 company that issues workers' compensation guaranty insurance shall  
2 file a copy of the contract with the Commission within thirty (30)  
3 days after the effective date of the contract. Any company that  
4 does not file a copy of the contract as required by this paragraph  
5 shall be subject to a fine by the Commission of not more than One  
6 Thousand Dollars (\$1,000.00);

7 3. By furnishing satisfactory proof to the Commission of the  
8 employer's financial ability to pay the compensation. The  
9 Commission, ~~under rules adopted by the Insurance Department,~~ shall  
10 require any employer that has:

11 a. less than one hundred employees or less than One  
12 Million Dollars (\$1,000,000.00) in net assets to:

13 (1) deposit with the Commission securities, an  
14 irrevocable letter of credit or a surety bond  
15 payable to the state, in an amount determined by  
16 the Commission which shall be at least an average  
17 of the yearly claims for the last three (3)  
18 years, or

19 (2) provide proof of excess coverage with such terms  
20 and conditions as is commensurate with their  
21 ability to pay the benefits required by the  
22 provisions of this act, and

23 b. one hundred or more employees and One Million Dollars  
24 (\$1,000,000.00) or more in net assets to:

- 1 (1) secure a surety bond payable to the state, or an  
2 irrevocable letter of credit, in an amount  
3 determined by the Commission which shall be at  
4 least an average of the yearly claims for the  
5 last three (3) years, or  
6 (2) provide proof of excess coverage with terms and  
7 conditions that are commensurate with their  
8 ability to pay the benefits required by the  
9 provisions of this act;

10 4. By forming a group self-insurance association consisting of  
11 two or more employers which shall have a common interest and which  
12 shall have entered into an agreement to pool their liabilities under  
13 the Administrative Workers' Compensation Act. Such agreement shall  
14 be subject to rules of the Commission. Any employer, upon  
15 application to become a member of a group self-insurance  
16 association, shall file with the Commission a notice, in such form  
17 as prescribed by the Commission, acknowledging that the employer  
18 accepts joint and several liability. Upon approval by the  
19 Commission of such application for membership, said member shall be  
20 a qualified self-insured employer; or

21 5. By any other security as may be approved by the Commission  
22 and the Insurance Department.

23 B. The Commission may waive the requirements of this section in  
24 an amount which is commensurate with the ability of the employer to

1 pay the benefits required by the provisions of this act.  
2 Irrevocable letters of credit required by this subsection shall  
3 contain such terms as may be prescribed by the Commission and shall  
4 be issued for the benefit of the state by a financial institution  
5 whose deposits are insured by the Federal Deposit Insurance  
6 Corporation.

7 C. An employer who does not fulfill the requirements of this  
8 section is not relieved of the obligation to pay compensation under  
9 ~~this act~~ the Administrative Workers' Compensation Act. The security  
10 required under this section, including any interest, shall be  
11 maintained by the ~~Commission~~ Self-insurance Guaranty Fund Board as  
12 provided in Section 99 of this act title until each claim for  
13 benefits is paid, settled, or lapses under ~~this act~~ the  
14 Administrative Workers' Compensation Act, and costs of  
15 administration of such claims are paid.

16 D. Failure on the part of any employer to secure the payment of  
17 compensation provided in ~~this act~~ the Administrative Workers'  
18 Compensation Act shall have the effect of enabling the ~~Commission~~  
19 Self-insurance Guaranty Fund Board to assert the rights of an  
20 injured employee against the employer.

21 E. Any employer that knowingly provides false information to  
22 the Commission for purposes of securing or maintaining a self-  
23 insurance permit shall be guilty of a felony and subject to a  
24 maximum fine of Ten Thousand Dollars (\$10,000.00).



1 SECTION 22. AMENDATORY Section 40, Chapter 208, O.S.L.  
2 2013 (85A O.S. Supp. 2016, Section 40), is amended to read as  
3 follows:

4 Section 40. A. 1. Any employer who fails to secure  
5 compensation required under this act, upon conviction, shall be  
6 guilty of a misdemeanor and subject to a fine of up to Ten Thousand  
7 Dollars (\$10,000.00) to be deposited in the Workers' Compensation  
8 Commission Revolving Fund.

9 2. This subsection shall not affect any other liability of the  
10 employer under this act.

11 B. 1. Whenever the Workers' Compensation Commission has reason  
12 to believe that any employer required to secure the payment of  
13 compensation under this act has failed to do so, the Commission  
14 shall serve on the employer a proposed judgment declaring the  
15 employer to be in violation of this act and containing the amount,  
16 if any, of the civil penalty to be assessed against the employer  
17 under paragraph 5 of this subsection.

18 2. a. An employer may contest a proposed judgment of the  
19 Commission issued under paragraph 1 of this subsection  
20 by filing with the Commission, within twenty (20) days  
21 of receipt of the proposed judgment, a written request  
22 for a hearing.

23 b. The request for a hearing does not need to be in any  
24 particular form but shall specify the grounds on which

1 the person contests the proposed judgment, the  
2 proposed assessment, or both.

3 c. If a written request for hearing is not filed with the  
4 Commission within the time specified in subparagraph a  
5 of this paragraph, the proposed judgment, the proposed  
6 penalty, or both, shall be a final judgment of the  
7 Commission and shall not be subject to further review  
8 by any court, except if the employer shows good cause  
9 why it did not timely contest the judgment or penalty.

10 d. A proposed judgment by the Commission under this  
11 section shall be prima facie correct, and the burden  
12 is on the employer to prove that the proposed judgment  
13 is incorrect.

14 3. a. If the employer alleges that a carrier has contracted  
15 to provide it workers' compensation insurance coverage  
16 for the period in question, the employer shall include  
17 the allegation in its request for hearing and shall  
18 name the carrier.

19 b. The Commission shall promptly notify the carrier of  
20 the employer's allegation and of the date of hearing.

21 c. The carrier shall promptly, and no later than five (5)  
22 days before the hearing, respond in writing to the  
23 employer's allegation by providing evidence of  
24

1 coverage for the period in question or by  
2 affirmatively denying the employer's allegation.

3 4. Hearings under this section shall be procedurally conducted  
4 as provided in Sections 69 through 78 of this ~~act~~ title.

5 5. The Commission may assess a fine against an employer who  
6 fails to secure the payment of compensation in an amount up to One  
7 Thousand Dollars (\$1,000.00) per day of violation payable to the  
8 Workers' Compensation Commission Revolving Fund.

9 6. If an employer fails to secure the payment of compensation  
10 or pay any civil penalty assessed against the employer after a  
11 judgment issued under this section has become final by operation of  
12 law or on appeal, the Commission may petition the Oklahoma County  
13 District Court or the district court of the county where the  
14 employer's principal place of business is located for an order  
15 enjoining the employer from engaging in further employment until  
16 such time as the employer secures the payment of compensation or  
17 makes full payment of all civil penalties.

18 SECTION 23. AMENDATORY Section 43, Chapter 208, O.S.L.  
19 2013 (85A O.S. Supp. 2016, Section 43), is amended to read as  
20 follows:

21 Section 43. A. Liability Unaffected.

22 1. a. The making of a claim for compensation against any  
23 employer or carrier for the injury or death of an  
24 employee shall not affect the right of the employee,

1 or his or her dependents, to make a claim or maintain  
2 an action in court against any third party for the  
3 injury.

4 b. The employer or the employer's carrier shall be  
5 entitled to reasonable notice and opportunity to join  
6 in the action.

7 c. If the employer or employer's carrier join in the  
8 action against a third party for injury or death, they  
9 shall be entitled to a first lien on two-thirds (2/3)  
10 of the net proceeds recovered in the action that  
11 remain after the payment of the reasonable costs of  
12 collection, for the payment to them of the amount paid  
13 and to be paid by them as compensation to the injured  
14 employee or his or her dependents. The Workers'  
15 Compensation Commission shall have jurisdiction to  
16 decide disputes as to the determination of the net  
17 proceeds as provided for in this section.

18 2. The commencement of an action by an employee or his or her  
19 dependents against a third party for damages by reason of an injury  
20 to which this act is applicable, or the adjustment of any claim,  
21 shall not affect the rights of the injured employee or his or her  
22 dependents to recover compensation, but any amount recovered by the  
23 injured employee or his or her dependents from a third party shall  
24 be applied as follows:

- 1 a. reasonable fees and costs of collection shall be  
2 deducted,  
3 b. the employer or carrier, as applicable, shall receive  
4 two-thirds (2/3) of the remainder of the recovery or  
5 the amount of the workers' compensation lien,  
6 whichever is less, and  
7 c. the remainder of the recovery shall go to the injured  
8 employee or his or her dependents.

9 B. Subrogation.

10 1. An employer or carrier liable for compensation under this  
11 act for the injury or death of an employee shall have the right to  
12 maintain an action in tort against any third party responsible for  
13 the injury or death. However, the employer or the carrier shall  
14 notify the claimant in writing that the claimant has the right to  
15 hire a private attorney to pursue any benefits to which the claimant  
16 is entitled in addition to the subrogation interest against any  
17 third party responsible for the injury or death.

18 2. After reasonable notice and opportunity to be represented in  
19 the action has been given to the injured employee, the liability of  
20 the third party to the compensation beneficiary shall be determined  
21 in the action, as well as the third party's liability to the  
22 employer and carrier.

23 3. If the employer recovers against the third party, by suit or  
24 otherwise, the injured employee shall be entitled to any amount

1 recovered in excess of the amount that the employer and carrier have  
2 paid or are liable for in compensation, after deducting reasonable  
3 costs of collection.

4 4. An employer or carrier who is liable for compensation under  
5 this act on account of injury or death of an employee shall be  
6 entitled to maintain a third-party action against the employer's  
7 uninsured motorist coverage or underinsured motorist coverage.

8 SECTION 24. AMENDATORY Section 45, Chapter 208, O.S.L.  
9 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.  
10 Supp. 2016, Section 45), is amended to read as follows:

11 Section 45. A. Temporary Total Disability.

12 1. If the injured employee is temporarily unable to perform his  
13 or her job or any alternative work offered by the employer, he or  
14 she shall be entitled to receive compensation equal to seventy  
15 percent (70%) of the injured employee's average weekly wage, but not  
16 to exceed ~~seventy percent (70%) of~~ the state average weekly wage, as  
17 determined pursuant to paragraph 42 of Section 2 of this title for  
18 one hundred four (104) weeks. Provided, there shall be no payment  
19 for the first three (3) days of the initial period of temporary  
20 total disability. If an administrative law judge finds that a  
21 consequential injury has occurred and that additional time is needed  
22 to reach maximum medical improvement, temporary total disability may  
23 continue for a period of not more than an additional fifty-two (52)  
24 weeks. Such finding shall be based upon a showing of medical

1 necessity by clear and convincing evidence. An employer shall have  
2 the right to recover any overpayment of temporary total disability  
3 from a subsequent permanent partial disability award.

4 2. When the injured employee is released from active medical  
5 treatment by the treating physician for all body parts found by the  
6 Commission to be injured, or in the event that the employee, without  
7 a valid excuse, misses three consecutive medical treatment  
8 appointments, fails to comply with medical orders of the treating  
9 physician, or otherwise abandons medical care, the employer shall be  
10 entitled to terminate temporary total disability by notifying the  
11 employee, or if represented, his or her counsel. If, however, an  
12 objection to the termination is filed by the employee within ten  
13 (10) days of termination, the Commission shall set the matter within  
14 twenty (20) days for a determination if temporary total disability  
15 compensation shall be reinstated. The temporary total disability  
16 shall remain terminated ~~unless the employee proves the existence of~~  
17 ~~a valid excuse for his or her failure to comply~~ until such time as  
18 the employee complies with medical orders of the treating physician  
19 or his or her abandonment of medical care. The administrative law  
20 judge may appoint an independent medical examiner to determine if  
21 further medical treatment is reasonable and necessary. The  
22 independent medical examiner shall not provide treatment to the  
23 injured worker, unless agreed upon by the parties.

24 B. Temporary Partial Disability.

1           1. If the injured employee is temporarily unable to perform his  
2 or her job, but may perform alternative work offered by the  
3 employer, he or she shall be entitled to receive compensation equal  
4 to ~~the greater of~~ seventy percent (70%) of the difference between  
5 the injured employee's average weekly wage before the injury and his  
6 or her weekly wage for performing alternative work after the injury,  
7 but only if his or her weekly wage for performing the alternative  
8 work is less than the temporary total disability rate. The injured  
9 employee's actual earnings plus temporary partial disability shall  
10 not exceed the temporary total disability rate.

11           2. Compensation under this subsection may not exceed fifty-two  
12 (52) weeks.

13           3. If the employee refuses to perform the alternative work  
14 offered by the employer, he or she shall not be entitled to benefits  
15 under subsection A of this section or under this section.

16           C. Permanent Partial Disability.

17           1. A permanent partial disability award or combination of  
18 awards granted an injured worker may not exceed a permanent partial  
19 disability rating of one hundred percent (100%) to any body part or  
20 to the body as a whole. The determination of permanent partial  
21 disability shall be the responsibility of the Commission through its  
22 administrative law judges. Any claim by an employee for  
23 compensation for permanent partial disability must be supported by  
24 competent medical testimony of a medical doctor, osteopathic



1 physician, or chiropractor, and shall be supported by objective  
2 medical findings, as defined in this act. The opinion of the  
3 physician shall include employee's percentage of permanent partial  
4 disability and whether or not the disability is job-related and  
5 caused by the accidental injury or occupational disease. A  
6 physician's opinion of the nature and extent of permanent partial  
7 disability to parts of the body other than scheduled members must be  
8 based solely on criteria established by the current edition of the  
9 American Medical Association's "Guides to the Evaluation of  
10 Permanent Impairment". A copy of any written evaluation shall be  
11 sent to both parties within seven (7) days of issuance. Medical  
12 opinions addressing compensability and permanent disability must be  
13 stated within a reasonable degree of medical certainty. Any party  
14 may submit the report of an evaluating physician.

15 2. Permanent partial disability shall not be allowed to a part  
16 of the body for which no medical treatment has been received. A  
17 determination of permanent partial disability made by the Commission  
18 or administrative law judge which is not supported by objective  
19 medical findings provided by a treating physician who is a medical  
20 doctor, doctor of osteopathy, chiropractor or a qualified  
21 independent medical examiner shall be considered an abuse of  
22 discretion.

23 3. The examining physician shall not deviate from the Guides  
24 except as may be specifically provided for in the Guides.

1           4. In cases of permanent partial disability, the compensation  
2 shall be seventy percent (70%) of the employee's average weekly  
3 wage, not to exceed ~~Three Hundred Twenty-three Dollars (\$323.00) per~~  
4 week fifty percent (50%) of the state average weekly wage, as  
5 determined pursuant to paragraph 42 of Section 2 of this title, for  
6 a term not to exceed a total of three hundred fifty (350) weeks for  
7 the body as a whole.

8           5. ~~Except pursuant to settlement agreements entered into by the~~  
9 ~~employer and employee, payment of a permanent partial disability~~  
10 ~~award shall be deferred and held in reserve by the employer or~~  
11 ~~insurance company if the employee has reached maximum medical~~  
12 ~~improvement and has been released to return to work by his or her~~  
13 ~~treating physician, and then returns to his pre-injury or equivalent~~  
14 ~~job for a term of weeks determined by dividing the total dollar~~  
15 ~~value of the award by seventy percent (70%) of the employee's~~  
16 ~~average weekly wage.~~

17           a. ~~The amount of the permanent partial disability award~~  
18           ~~shall be reduced by seventy percent (70%) of the~~  
19           ~~employee's average weekly wage for each week he works~~  
20           ~~in his pre-injury or equivalent job.~~

21           b. ~~If, for any reason other than misconduct as defined in~~  
22           ~~Section 2 of this act, the employer terminates the~~  
23           ~~employee or the position offered is not the pre-injury~~  
24           ~~or equivalent job, the remaining permanent partial~~

1 ~~disability award shall be paid in a lump sum. If the~~  
2 ~~employee is discharged for misconduct, the employer~~  
3 ~~shall have the burden to prove that the employee~~  
4 ~~engaged in misconduct.~~

5 e. ~~If the employee refuses an offer to return to his pre-~~  
6 ~~injury or equivalent job, the permanent partial~~  
7 ~~disability award shall continue to be deferred and~~  
8 ~~shall be reduced by seventy percent (70%) of the~~  
9 ~~employee's average weekly wage for each week he~~  
10 ~~refuses to return to his pre-injury or equivalent job.~~

11 d. ~~Attorney fees for permanent partial disability awards,~~  
12 ~~as approved by the Commission, shall be calculated~~  
13 ~~based upon the total permanent partial disability~~  
14 ~~award and paid in full at the time of the deferral.~~

15 e. Assessments pursuant to Sections 31, 98, ~~112~~ 205 and  
16 ~~165~~ 122 of this ~~act~~ title shall be calculated based  
17 upon the amount of the permanent partial disability  
18 award and shall be paid at the time of the deferral.

19 6. Previous Disability: The fact that an employee has suffered  
20 previous disability or received compensation therefor shall not  
21 preclude the employee from compensation for a later accidental  
22 personal injury or occupational disease. In the event there exists  
23 a previous permanent partial disability, including a previous non-  
24 work-related injury or condition which produced permanent partial

1 disability and the same is aggravated or accelerated by an  
2 accidental personal injury or occupational disease, compensation for  
3 permanent partial disability shall be only for such amount as was  
4 caused by such accidental personal injury or occupational disease  
5 and no additional compensation shall be allowed for the preexisting  
6 disability or impairment. Any such reduction shall not apply to  
7 temporary total disability, nor shall it apply to compensation for  
8 medical treatment.

9 a. If workers' compensation benefits have previously been  
10 awarded through settlement or judicial or  
11 administrative determination in Oklahoma, the  
12 percentage basis of the prior settlement or award  
13 shall conclusively establish the amount of permanent  
14 partial disability determined to be preexisting. If  
15 workers' compensation benefits have not previously  
16 been awarded through settlement or judicial or  
17 administrative determination in Oklahoma, the amount  
18 of preexisting permanent partial disability shall be  
19 established by competent evidence.

20 b. In all cases, the applicable reduction shall be  
21 calculated as follows:

22 (1) if the preexisting impairment is the result of  
23 injury sustained while working for the employer  
24 against whom workers' compensation benefits are

1 currently being sought, any award of compensation  
2 shall be reduced by the current dollar value  
3 attributable under the Administrative Workers'  
4 Compensation Act to the percentage of permanent  
5 partial disability determined to be preexisting.  
6 The current dollar value shall be calculated by  
7 multiplying the percentage of preexisting  
8 permanent partial disability by the compensation  
9 rate in effect on the date of the accident or  
10 injury against which the reduction will be  
11 applied, and

12 (2) in all other cases, the employer against whom  
13 benefits are currently being sought shall be  
14 entitled to a credit for the percentage of  
15 preexisting permanent partial disability.

16 7. No payments on any permanent partial disability order shall  
17 begin until payments on any preexisting permanent partial disability  
18 orders have been completed.

19 8. The whole body shall represent a maximum of three hundred  
20 fifty (350) weeks.

21 9. The permanent partial disability rate of compensation for  
22 amputation or permanent total loss of use of a scheduled member  
23 specified in Section 46 of this ~~act~~ title shall be seventy percent  
24 (70%) of the employee's average weekly wage, not to exceed ~~Three~~

1 ~~Hundred Twenty-three Dollars (\$323.00)~~ fifty percent (50%) of the  
2 state average weekly wage, as determined pursuant to paragraph 42 of  
3 Section 2 of this title, multiplied by the number of weeks set forth  
4 for the member in Section 46 of this ~~act~~ title, regardless of  
5 whether the injured employee is able to return to his or her ~~pre-~~  
6 ~~injury~~ preinjury or equivalent job.

7 10. An injured employee who is eligible for permanent partial  
8 disability under this subsection shall be entitled to receive  
9 vocational rehabilitation services provided by a technology center  
10 or public secondary school offering vocational-technical education  
11 courses, or a member institution of The Oklahoma State System of  
12 Higher Education, which shall include retraining and job placement  
13 to restore the employee to gainful employment. Vocational  
14 rehabilitation services or training shall not extend for a period of  
15 more than fifty-two (52) weeks.

16 D. Permanent Total Disability.

17 1. In case of total disability adjudged to be permanent,  
18 seventy percent (70%) of the employee's average weekly wages, but  
19 not in excess of the state's average weekly wage, as determined  
20 pursuant to paragraph 42 of Section 2 of this title, shall be paid  
21 to the employee during the continuance of the disability until such  
22 time as the employee reaches the age of maximum Social Security  
23 retirement benefits or for a period of fifteen (15) years, whichever  
24 is longer. In the event the claimant dies of causes unrelated to

1 the injury or illness, benefits shall cease on the date of death.  
2 Provided, however, any person entitled to revive the action shall  
3 receive a one-time lump-sum payment equal to twenty-six (26) weeks  
4 of weekly benefits for permanent total disability awarded the  
5 claimant. If more than one person is entitled to revive the claim,  
6 the lump-sum payment shall be evenly divided between or among such  
7 persons. In the event the Commission awards both permanent partial  
8 disability and permanent total disability benefits, the permanent  
9 total disability award shall not be due until the permanent partial  
10 disability award is paid in full. If otherwise qualified according  
11 to the provisions of this act, permanent total disability benefits  
12 may be awarded to an employee who has exhausted the maximum period  
13 of temporary total disability even though the employee has not  
14 reached maximum medical improvement.

15 2. The Commission shall annually review the status of any  
16 employee receiving benefits for permanent total disability against  
17 the last employer. The Commission shall require the employee to  
18 annually file an affidavit under penalty of perjury stating that he  
19 or she is not and has not been gainfully employed and is not capable  
20 of gainful employment. Failure to file such affidavit shall result  
21 in suspension of benefits; provided, however, reinstatement of  
22 benefits may occur after proper hearing before the Commission.

23  
24

1 E. 1. The Workers' Compensation Commission shall hire or  
2 contract for a Vocational Rehabilitation Director to oversee the  
3 vocational rehabilitation program of the Commission.

4 2. The Vocational Rehabilitation Director shall help injured  
5 workers return to the work force. If the injured employee is unable  
6 to return to his or her ~~pre-injury~~ preinjury or equivalent position  
7 due to permanent restrictions as determined by the treating  
8 physician, upon the request of either party, the Vocational  
9 Rehabilitation Director shall determine if it is appropriate for a  
10 claimant to receive vocational rehabilitation training or services,  
11 and will oversee such training. If appropriate, the Vocational  
12 Rehabilitation Director shall issue administrative orders,  
13 including, but not limited to, an order for a vocational  
14 rehabilitation evaluation for any injured employee unable to work  
15 for at least ninety (90) days. In addition, the Vocational  
16 Rehabilitation Director may assign injured workers to vocational  
17 rehabilitation counselors for coordination of recommended services.  
18 The cost of the services shall be paid by the employer. All  
19 administrative orders are subject to appeal to the full Commission.

20 3. There shall be a presumption in favor of ordering vocational  
21 rehabilitation services or training for an eligible injured employee  
22 under the following circumstances:  
23  
24



- 1 a. if the employee's occupation is truck driver or  
2 laborer and the medical condition is traumatic brain  
3 injury, stroke or uncontrolled vertigo,
- 4 b. if the employee's occupation is truck driver or  
5 laborer performing high-risk tasks and the medical  
6 condition is seizures,
- 7 c. if the employee's occupation is manual laborer and the  
8 medical condition is bilateral wrist fusions,
- 9 d. if the employee's occupation is assembly-line worker  
10 and the medical condition is radial head fracture with  
11 surgical excision,
- 12 e. if the employee's occupation is heavy laborer and the  
13 medical condition is myocardial infarction with  
14 congestive heart failure,
- 15 f. if the employee's occupation is heavy manual laborer  
16 and the medical condition is multilevel neck or back  
17 fusions greater than two levels,
- 18 g. if the employee's occupation is laborer performing  
19 overhead work and the medical condition is massive  
20 rotator cuff tears, with or without surgery,
- 21 h. if the employee's occupation is heavy laborer and the  
22 medical condition is recurrent inguinal hernia  
23 following unsuccessful surgical repair,
- 24

- 1 i. if the employee's occupation is heavy manual laborer  
2 and the medical condition is total knee replacement or  
3 total hip replacement,
- 4 j. if the employee's occupation is roofer and the medical  
5 condition is calcaneal fracture, medically or  
6 surgically treated,
- 7 k. if the employee's occupation is laborer of any kind  
8 and the medical condition is total shoulder  
9 replacement,
- 10 l. if the employee's occupation is laborer and the  
11 medical condition is amputation of a hand, arm, leg,  
12 or foot,
- 13 m. if the employee's occupation is laborer and the  
14 medical condition is tibial plateau fracture, pilon  
15 fracture,
- 16 n. if the employee's occupation is laborer and the  
17 medical condition is ankle fusion or knee fusion,
- 18 o. if the employee's occupation is driver or heavy  
19 equipment operator and the medical condition is  
20 unilateral industrial blindness, or
- 21 p. if the employee's occupation is laborer and the  
22 medical condition is 3-, 4-, or 5-level positive  
23 discogram of the cervical spine or lumbar spine,  
24 medically treated.

1           4. Upon the request of either party, or by order of an  
2 administrative law judge, the Vocational Rehabilitation Director  
3 shall assist the Workers' Compensation Commission in determining if  
4 it is appropriate for a claimant to receive vocational  
5 rehabilitation training or services. If appropriate, the  
6 administrative law judge shall refer the employee to a qualified  
7 expert for evaluation of the practicability of, need for and kind of  
8 rehabilitation services or training necessary and appropriate in  
9 order to restore the employee to gainful employment. The cost of  
10 the evaluation shall be paid by the employer. Following the  
11 evaluation, if the employee refuses the services or training ordered  
12 by the administrative law judge, or fails to complete in good faith  
13 the vocational rehabilitation training ordered by the administrative  
14 law judge, then the cost of the evaluation and services or training  
15 rendered may, in the discretion of the administrative law judge, be  
16 deducted from any award of benefits to the employee which remains  
17 unpaid by the employer. Upon receipt of such report, and after  
18 affording all parties an opportunity to be heard, the administrative  
19 law judge shall order that any rehabilitation services or training,  
20 recommended in the report, or such other rehabilitation services or  
21 training as the administrative law judge may deem necessary,  
22 provided the employee elects to receive such services, shall be  
23 provided at the expense of the employer. Except as otherwise  
24 provided in this subsection, refusal to accept rehabilitation

1 services by the employee shall in no way diminish any benefits  
2 allowable to an employee.

3 5. The administrative law judge may order vocational  
4 rehabilitation before the injured employee reaches maximum medical  
5 improvement, if the treating physician believes that it is likely  
6 that the employee's injury will prevent the employee from returning  
7 to his or her former employment. In granting early benefits for  
8 vocational rehabilitation, the Commission shall consider temporary  
9 restrictions and the likelihood that such rehabilitation will return  
10 the employee to gainful employment earlier than if such benefits are  
11 granted after the permanent partial disability hearing in the claim.

12 6. Vocational rehabilitation services or training shall not  
13 extend for a period of more than fifty-two (52) weeks. A request  
14 for vocational rehabilitation services or training shall be filed  
15 with the Commission by an interested party not later than sixty (60)  
16 days from the date of receiving permanent restrictions that prevent  
17 the injured employee from returning to his or her ~~pre-injury~~  
18 preinjury or equivalent position.

19 7. If rehabilitation requires residence at or near the facility  
20 or institution which is away from the employee's customary  
21 residence, reasonable cost of the employee's board, lodging, travel,  
22 tuition, books and necessary equipment in training shall be paid for  
23 by the insurer in addition to weekly compensation benefits to which  
24

1 the employee is otherwise entitled under the Administrative Workers'  
2 Compensation Act.

3 8. During the period when an employee is actively and in good  
4 faith being evaluated or participating in a retraining or job  
5 placement program for purposes of evaluating permanent total  
6 disability status, the employee shall be entitled to receive  
7 benefits at the same rate as the employee's temporary total  
8 disability benefits for an additional fifty-two (52) weeks. All  
9 tuition related to vocational rehabilitation services shall be paid  
10 by the employer or the employer's insurer on a periodic basis  
11 directly to the facility providing the vocational rehabilitation  
12 services or training to the employee. ~~The employer or employer's~~  
13 ~~insurer may deduct the amount paid for tuition from compensation~~  
14 ~~awarded to the employee.~~

15 F. Disfigurement.

16 1. If an injured employee incurs serious and permanent  
17 disfigurement to any part of the body, the Commission may award  
18 compensation to the injured employee in an amount not to exceed  
19 Fifty Thousand Dollars (\$50,000.00).

20 2. No award for disfigurement shall be entered until twelve  
21 (12) months after the injury.

22 3. An injured employee shall not be entitled to compensation  
23 under this subsection if he or she receives an award for permanent  
24 partial disability to the same part of the body.

1 G. Benefits for a single-event injury shall be determined by  
2 the law in effect at the time of injury. Benefits for a cumulative  
3 trauma injury or occupational disease or illness shall be determined  
4 by the law in effect at the time the employee knew or reasonably  
5 should have known that the injury, occupational disease or illness  
6 was related to work activity. Benefits for death shall be  
7 determined by the law in effect at the time of death.

8 SECTION 25. AMENDATORY Section 46, Chapter 208, O.S.L.  
9 2013 (85A O.S. Supp. 2016, Section 46), is amended to read as  
10 follows:

11 Section 46. A. An injured employee who is entitled to receive  
12 permanent partial disability compensation under Section 45 of this  
13 ~~act~~ title shall receive compensation for each part of the body in  
14 accordance with the number of weeks for the scheduled loss set forth  
15 below.

16 1. Arm amputated at the elbow, or between the elbow and  
17 shoulder, two hundred seventy-five (275) weeks;

18 2. Arm amputated between the elbow and wrist, two hundred  
19 twenty (220) weeks;

20 3. Leg amputated at the knee, or between the knee and the hip,  
21 two hundred seventy-five (275) weeks;

22 4. Leg amputated between the knee and the ankle, two hundred  
23 twenty (220) weeks;

24 5. Hand amputated, two hundred twenty (220) weeks;

- 1 6. Thumb amputated, sixty-six (66) weeks;
  - 2 7. First finger amputated, thirty-nine (39) weeks;
  - 3 8. Second finger amputated, thirty-three (33) weeks;
  - 4 9. Third finger amputated, twenty-two (22) weeks;
  - 5 10. Fourth finger amputated, seventeen (17) weeks;
  - 6 11. Foot amputated, two hundred twenty (220) weeks;
  - 7 12. Great toe amputated, thirty-three (33) weeks;
  - 8 13. Toe other than great toe amputated, eleven (11) weeks;
  - 9 14. Eye enucleated, in which there was useful vision, two  
10 hundred seventy-five (275) weeks;
  - 11 15. Loss of hearing of one ear, one hundred ten (110) weeks;
  - 12 16. Loss of hearing of both ears, three hundred thirty (330)  
13 weeks; and
  - 14 17. Loss of one testicle, fifty-three (53) weeks; loss of both  
15 testicles, one hundred fifty-eight (158) weeks.
- 16 B. The permanent partial disability rate of compensation for  
17 amputation or permanent total loss of use of a scheduled member  
18 specified in this section shall be seventy percent (70%) of the  
19 employee's average weekly wage, not to exceed ~~Three Hundred Twenty-~~  
20 ~~three Dollars (\$323.00)~~ fifty percent (50%) of the state average  
21 weekly wage, as determined pursuant to paragraph 42 of Section 2 of  
22 this title, multiplied by the number of weeks as set forth in this  
23 section, regardless of whether or not the injured employee is able  
24 to return to his or her ~~pre-injury~~ preinjury job.

1 C. Other cases: In cases in which the Commission finds an  
2 injury to a part of the body not specifically covered by the  
3 foregoing provisions of this section, the employee may be entitled  
4 to compensation for permanent partial disability. The compensation  
5 ordered paid shall be seventy percent (70%) of the employee's  
6 average weekly wage, not to exceed ~~Three Hundred Twenty-three~~  
7 ~~Dollars (\$323.00)~~ fifty percent (50%) of the state average weekly  
8 wage, as determined pursuant to paragraph 42 of Section 2 of this  
9 title, for the number of weeks which the partial disability of the  
10 employee bears to three hundred fifty (350) weeks.

11 D. 1. Compensation for amputation of the first phalange of a  
12 digit shall be one-half (1/2) of the compensation for the amputation  
13 of the entire digit.

14 2. Compensation for amputation of more than one phalange of a  
15 digit shall be the same as for amputation of the entire digit.

16 E. 1. Compensation for the permanent loss of eighty percent  
17 (80%) or more of the vision of an eye shall be the same as for the  
18 loss of an eye.

19 2. In all cases of permanent loss of vision, the use of  
20 corrective lenses may be taken into consideration in evaluating the  
21 extent of loss of vision.

22 F. Compensation for amputation or loss of use of two or more  
23 digits or one or more phalanges of two or more digits of a hand or a  
24 foot may be proportioned to the total loss of use of the hand or the



1 foot occasioned thereby but shall not exceed the compensation for  
2 total loss of a hand or a foot.

3 G. Compensation for permanent total loss of use of a member  
4 shall be the same as for amputation of the member.

5 H. The sum of all permanent partial disability awards,  
6 excluding awards against the Multiple Injury Trust Fund, shall not  
7 exceed three hundred fifty (350) weeks.

8 SECTION 26. AMENDATORY Section 50, Chapter 208, O.S.L.  
9 2013 (85A O.S. Supp. 2016, Section 50), is amended to read as  
10 follows:

11 Section 50. A. The employer shall promptly provide an injured  
12 employee with medical, surgical, hospital, optometric, podiatric,  
13 and nursing services, along any with medicine, crutches, ambulatory  
14 devices, artificial limbs, eyeglasses, contact lenses, hearing aids,  
15 and other apparatus as may be reasonably necessary in connection  
16 with the injury received by the employee. The employer shall have  
17 the right to choose the treating physician.

18 B. If the employer fails or neglects to provide medical  
19 treatment within five (5) days after actual knowledge is received of  
20 an injury, the injured employee may select a physician to provide  
21 medical treatment at the expense of the employer; provided, however,  
22 that the injured employee, or another in the employee's behalf, may  
23 obtain emergency treatment at the expense of the employer where such  
24 emergency treatment is not provided by the employer.

1 C. Diagnostic tests shall not be repeated sooner than six (6)  
2 months from the date of the test unless agreed to by the parties or  
3 ordered by the Workers' Compensation Commission for good cause  
4 shown.

5 D. Unless recommended by the treating doctor at the time  
6 claimant reaches maximum medical improvement or by an independent  
7 medical examiner, continuing medical maintenance shall not be  
8 awarded by the Commission. The employer or insurance carrier shall  
9 not be responsible for continuing medical maintenance or pain  
10 management treatment that is outside the parameters established by  
11 the Physician Advisory Committee or ODG. The employer or insurance  
12 carrier shall not be responsible for continuing medical maintenance  
13 or pain management treatment not previously ordered by the  
14 Commission or approved in advance by the employer or insurance  
15 carrier.

16 E. An employee claiming or entitled to benefits under this act,  
17 shall, if ordered by the Commission or requested by the employer or  
18 insurance carrier, submit himself or herself for medical  
19 examination. If an employee refuses to submit himself or herself to  
20 examination, his or her right to prosecute any proceeding under this  
21 act shall be suspended, and no compensation shall be payable for the  
22 period of such refusal.

23 F. For compensable injuries resulting in the use of a medical  
24 device, ongoing service for the medical device shall be provided in

1 situations including, but not limited to, medical device battery  
2 replacement, ongoing medication refills related to the medical  
3 device, medical device repair, or medical device replacement.

4 G. The employer shall reimburse the employee for the actual  
5 mileage in excess of twenty (20) miles round-trip to and from the  
6 employee's home to the location of a medical service provider for  
7 all reasonable and necessary treatment, for an evaluation of an  
8 independent medical examiner and for any evaluation made at the  
9 request of the employer or insurance carrier. The rate of  
10 reimbursement for such travel expense shall be the official  
11 reimbursement rate as established by the State Travel Reimbursement  
12 Act. In no event shall the reimbursement of travel for medical  
13 treatment or evaluation exceed six hundred (600) miles round trip.

14 H. Fee Schedule.

15 1. The Commission shall conduct a review of the Fee Schedule  
16 every two (2) years. The Fee Schedule shall establish the maximum  
17 rates that medical providers shall be reimbursed for medical care  
18 provided to injured employees, including, but not limited to,  
19 charges by physicians, dentists, counselors, hospitals, ambulatory  
20 and outpatient facilities, clinical laboratory services, diagnostic  
21 testing services, and ambulance services, and charges for durable  
22 medical equipment, prosthetics, orthotics, and supplies. The most  
23 current Fee Schedule established by the Administrator of the  
24 Workers' Compensation Court prior to the effective date of this

1 section shall remain in effect, unless or until the Legislature  
2 approves the Commission's proposed Fee Schedule.

3       2. Reimbursement for medical care shall be prescribed and  
4 limited by the Fee Schedule as adopted by the Commission, after  
5 notice and public hearing, and after approval by the Legislature by  
6 joint resolution. The director of the Employees Group Insurance  
7 Division of the Office of Management and Enterprise Services shall  
8 provide the Commission such information as may be relevant for the  
9 development of the Fee Schedule. The Commission shall develop the  
10 Fee Schedule in a manner in which quality of medical care is assured  
11 and maintained for injured employees. The Commission shall give due  
12 consideration to additional requirements for physicians treating an  
13 injured worker under this act, including, but not limited to,  
14 communication with claims representatives, case managers, attorneys,  
15 and representatives of employers, and the additional time required  
16 to complete forms for the Commission, insurance carriers, and  
17 employers.

18       3. In making adjustments to the Fee Schedule, the Commission  
19 shall use, as a benchmark, the reimbursement rate for each Current  
20 Procedural Terminology (CPT) code provided for in the fee schedule  
21 published by the Centers for Medicare and Medicaid Services of the  
22 U.S. Department of Health and Human Services for use in Oklahoma  
23 (Medicare Fee Schedule) on the effective date of this section,  
24 workers' compensation fee schedules employed by neighboring states,

1 the latest edition of "Relative Values for Physicians" (RVP), usual,  
2 customary and reasonable medical payments to workers' compensation  
3 health care providers in the same trade area for comparable  
4 treatment of a person with similar injuries, and all other data the  
5 Commission deems relevant. For services not valued by CMS, the  
6 Commission shall establish values based on the usual, customary and  
7 reasonable medical payments to health care providers in the same  
8 trade area for comparable treatment of a person with similar  
9 injuries.

10 a. No reimbursement shall be allowed for any magnetic  
11 resonance imaging (MRI) unless the MRI is provided by  
12 an entity that meets Medicare requirements for the  
13 payment of MRI services or is accredited by the  
14 American College of Radiology, the Intersocietal  
15 Accreditation Commission or the Joint Commission on  
16 Accreditation of Healthcare Organizations. For all  
17 other radiology procedures, the reimbursement rate  
18 shall be the lesser of the reimbursement rate allowed  
19 by the 2010 Oklahoma Fee Schedule and two hundred  
20 seven percent (207%) of the Medicare Fee Schedule.

21 b. For reimbursement of medical services for Evaluation  
22 and Management of injured employees as defined in the  
23 Fee Schedule adopted by the Commission, the  
24

1 reimbursement rate shall not be less than one hundred  
2 fifty percent (150%) of the Medicare Fee Schedule.

3 c. Any entity providing durable medical equipment,  
4 prosthetics, orthotics or supplies shall be accredited  
5 by a CMS-approved accreditation organization. If a  
6 physician provides durable medical equipment,  
7 prosthetics, orthotics, prescription drugs, or  
8 supplies to a patient ancillary to the patient's  
9 visit, reimbursement shall be no more than ~~ten~~ forty  
10 percent ~~(10%)~~ (40%) above cost, less any discounts,  
11 rebates or other reduction in price received by the  
12 physician.

13 d. The Commission shall develop a reasonable stop-loss  
14 provision of the Fee Schedule to provide for adequate  
15 reimbursement for treatment for major burns, severe  
16 head and neurological injuries, ~~multiple-system~~  
17 ~~injuries,~~ and other catastrophic injuries requiring  
18 extended periods of intensive care. Payment under the  
19 stop-loss provision shall not exceed seventy percent  
20 (70%) of total audited charges less the cost of  
21 surgical hardware. Charges which shall be subject to  
22 audit include errors and omissions, capital  
23 expenditures, unbundled services and line item review,  
24

1                   as appropriate and medically necessary, and shall be  
2                   reimbursed at a rate no more than the Fee Schedule.

3           4. The right to recover charges for every type of medical care  
4 for injuries arising out of and in the course of covered employment  
5 as defined in this act shall lie solely with the Commission. When a  
6 medical care provider has brought a claim to the Commission to  
7 obtain payment for services, a party who prevails in full on the  
8 claim shall be entitled to reasonable attorney fees.

9           5. Nothing in this section shall prevent an employer, insurance  
10 carrier, group self-insurance association, or certified workplace  
11 medical plan from contracting with a provider of medical care for a  
12 reimbursement rate that is greater than or less than limits  
13 established by the Fee Schedule.

14           6. A treating physician may not charge more than Four Hundred  
15 Dollars (\$400.00) per hour for preparation for or testimony at a  
16 deposition or appearance before the Commission in connection with a  
17 claim covered by the Administrative Workers' Compensation Act.

18           7. The Commission's review of medical and treatment charges  
19 pursuant to this section shall be conducted pursuant to the Fee  
20 Schedule in existence at the time the medical care or treatment was  
21 provided. The judgment approving the medical and treatment charges  
22 pursuant to this section shall be enforceable by the Commission in  
23 the same manner as provided in this act for the enforcement of other  
24 compensation payments.

1 8. Charges for prescription drugs dispensed by a pharmacy shall  
2 be limited to ninety percent (90%) of the average wholesale price of  
3 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per  
4 prescription. "Average wholesale price" means the amount determined  
5 from the latest publication designated by the Commission.  
6 Physicians shall prescribe and pharmacies shall dispense generic  
7 equivalent drugs when available. ~~If the National Drug Code, or~~  
8 ~~"NDC", for the drug product dispensed is for a repackaged drug, then~~  
9 ~~the maximum reimbursement shall be the lesser of the original~~  
10 ~~labeler's NDC and the lowest-cost therapeutic equivalent drug~~  
11 ~~product. Compounded medications shall be billed by the compounding~~  
12 ~~pharmacy at the ingredient level, with each ingredient identified~~  
13 ~~using the applicable NDC of the drug product, and the corresponding~~  
14 ~~quantity. Ingredients with no NDC area are not separately~~  
15 ~~reimbursable. Payment shall be based on a sum of the allowable fee~~  
16 ~~for each ingredient plus a dispensing fee of Five Dollars (\$5.00)~~  
17 ~~per prescription.~~

18 ~~9. When medical care includes prescription drugs dispensed by a~~  
19 ~~physician or other medical care provider and the NDC for the drug~~  
20 ~~product dispensed is for a repackaged drug, then the maximum~~  
21 ~~reimbursement shall be the lesser of the original labeler's NDC and~~  
22 ~~the lowest-cost therapeutic equivalent drug product. Payment shall~~  
23 ~~be based upon a sum of the allowable fee for each ingredient plus a~~  
24 ~~dispensing fee of Five Dollars (\$5.00) per prescription. Compounded~~



1 ~~medications shall be billed by the compounding pharmacy~~ The employer  
2 or insurance carrier shall choose a prescribing pharmacy which must  
3 maintain a physical location in Oklahoma and be licensed as a retail  
4 pharmacy by the State Board of Pharmacy. A prescribing doctor, a  
5 member of the doctor's family or a medical clinic associated with  
6 the doctor is prohibited from receiving any fees, rebates or any  
7 other form of financial gain from prescribing any drug. A physician  
8 shall not be allowed to dispense medicine from an office or clinic.  
9 Payment for compounded medications, repackaged medications, private  
10 label topical solutions or prescription kits shall not be payable  
11 unless such prescription is approved in advance by the employer or  
12 insurance carrier, it is proven that the employee could not tolerate  
13 an oral described drug, and the compounded medication, repackaged  
14 medication, private label topical solution or prescription kit are  
15 contained in the Drug Formulary approved by the Commission and the  
16 recommended formulary contained in the Official Disability  
17 Guidelines. Reimbursement of a compounded medication, repackaged  
18 medication, private label topical solution or prescription kit shall  
19 be limited to one hundred fifty percent (150%) of the dispensing  
20 pharmacy's lowest retail price for each ingredient, less any  
21 discounts, rebates or other reduction in price received by the  
22 pharmacy.

23 10. Implantables are paid in addition to procedural  
24 reimbursement paid for medical or surgical services. A

1 manufacturer's invoice for the actual cost to a physician, hospital  
2 or other entity of an implantable device shall be adjusted by the  
3 physician, hospital or other entity to reflect, at the time  
4 implanted, all applicable discounts, rebates, considerations and  
5 product replacement programs and shall be provided to the payer by  
6 the physician or hospital as a condition of payment for the  
7 implantable device. If the physician, or an entity in which the  
8 physician has a financial interest other than an ownership interest  
9 of less than five percent (5%) in a publically traded company,  
10 provides implantable devices, this relationship shall be disclosed  
11 to patient, employer, insurance company, third-party commission,  
12 certified workplace medical plan, case managers, and attorneys  
13 representing claimant and defendant. If the physician, or an entity  
14 in which the physician has a financial interest other than an  
15 ownership interest of less than five percent (5%) in a publically  
16 traded company, buys and resells implantable devices to a hospital  
17 or another physician, the markup shall be limited to ten percent  
18 (10%) above cost.

19 11. Payment for medical care as required by this act shall be  
20 due within forty-five (45) days of the receipt by the employer or  
21 insurance carrier of a complete and accurate invoice, unless the  
22 employer or insurance carrier has a good-faith reason to request  
23 additional information about such invoice. Thereafter, the  
24 Commission may assess a penalty up to twenty-five percent (25%) for

1 any amount due under the Fee Schedule that remains unpaid on the  
2 finding by the Commission that no good-faith reason existed for the  
3 delay in payment. If the Commission finds a pattern of an employer  
4 or insurance carrier willfully and knowingly delaying payments for  
5 medical care, the Commission may assess a civil penalty of not more  
6 than Five Thousand Dollars (\$5,000.00) per occurrence.

7 12. If an employee fails to appear for a scheduled appointment  
8 with a physician, the employer or insurance company shall pay to the  
9 physician a reasonable charge, to be determined by the Commission,  
10 for the missed appointment. In the absence of a good-faith reason  
11 for missing the appointment, the Commission shall order the employee  
12 to reimburse the employer or insurance company for the charge.

13 13. Physicians providing treatment under this act shall  
14 disclose under penalty of perjury to the Commission, on a form  
15 prescribed by the Commission, any ownership or interest in any  
16 health care facility, business, or diagnostic center that is not the  
17 physician's primary place of business. The disclosure shall include  
18 any employee leasing arrangement between the physician and any  
19 health care facility that is not the physician's primary place of  
20 business. A physician's failure to disclose as required by this  
21 section shall be grounds for the Commission to disqualify the  
22 physician from providing treatment under this act.

23 I. Formulary. The Commission by rule shall adopt a closed  
24 formulary. Rules adopted by the Commission shall allow an appeals

1 process for claims in which a treating doctor determines and  
2 documents that a drug not included in the formulary is necessary to  
3 treat an injured employee's compensable injury. The Commission by  
4 rule shall require the use of generic pharmaceutical medications and  
5 clinically appropriate over-the-counter alternatives to prescription  
6 medications unless otherwise specified by the prescribing doctor, in  
7 accordance with applicable state law.

8 J. The Commission, in cooperation with the Oklahoma Insurance  
9 Department, shall develop rules to license Pharmacy Benefit Managers  
10 (PBM) that provide prescription services for injured workers in the  
11 state. The Commission shall monitor PBM compliance with  
12 reimbursement limitations in this section. If the Commission finds  
13 evidence of overcharging for prescription drugs or tests related to  
14 pain management, such information shall be immediately reported to  
15 the Attorney General or the district attorney in the county where  
16 the overcharging has occurred.

17 SECTION 27. AMENDATORY Section 53, Chapter 208, O.S.L.  
18 2013 (85A O.S. Supp. 2016, Section 53), is amended to read as  
19 follows:

20 Section 53. A. An injured employee claiming to be entitled to  
21 benefits under this act shall submit to physical examination and  
22 treatment by another qualified physician, designated or approved by  
23 the Workers' Compensation Commission, as the Commission may require  
24 from time to time if reasonable and necessary.

1 B. In cases where the Commission directs examination or  
2 treatment, proceedings shall be suspended, and no compensation shall  
3 be payable for any period during which the employee refuses to  
4 submit to examination and treatment or otherwise obstructs the  
5 examination or treatment.

6 C. Failure of the employee to obey a judgment of the Commission  
7 for an examination or treatment ~~for a period of one (1) month from~~  
8 ~~the date of the judgment~~ shall bar the right of the claimant to  
9 further temporary total disability compensation in respect to the  
10 injury.

11 SECTION 28. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 54.1 of Title 85A, unless there  
13 is created a duplication in numbering, reads as follows:

14 A. In the event a treating physician recommends a surgery that  
15 is subject to choice and does not involve medical urgency or  
16 emergency, the Workers' Compensation Commission, upon request by the  
17 employer within fifteen (15) days of the receipt of the surgery  
18 recommendation, shall appoint an independent medical examiner to  
19 determine the reasonableness and necessity of such surgery.

20 B. The Commission shall either approve, deny, or modify the  
21 request for surgery within sixty (60) days of the receipt of the  
22 report of the independent medical examiner.

23  
24

1 SECTION 29. AMENDATORY Section 57, Chapter 208, O.S.L.  
2 2013 (85A O.S. Supp. 2016, Section 57), is amended to read as  
3 follows:

4 Section 57. A. If an injured employee misses two or more  
5 scheduled appointments for treatment, he or she shall no longer be  
6 eligible to receive temporary total disability benefits under this  
7 act, unless his or her absence was:

- 8 1. Caused by extraordinary circumstances beyond the employee's  
9 control as determined by the Workers' Compensation Commission; or
- 10 2. The employee gave the employer at least two (2) hours prior  
11 notice of the absence and had a valid excuse.

12 B. Inability to get transportation to or from the appointment  
13 shall not be considered extraordinary circumstances nor a valid  
14 excuse for the absence.

15 SECTION 30. AMENDATORY Section 60, Chapter 208, O.S.L.  
16 2013 (85A O.S. Supp. 2016, Section 60), is amended to read as  
17 follows:

18 Section 60. The Physician Advisory Committee may recommend the  
19 adoption of a method or system to evaluate permanent disability that  
20 shall deviate from, or be used in place of or in combination with  
21 the Guides. Such recommendation shall be made to the Workers'  
22 Compensation Commission which may adopt the recommendation in part  
23 or in whole. The adopted method or system shall be submitted by the  
24 Executive Director of the Commission to the Governor, the Speaker of

1 the House of Representatives and the President Pro Tempore of the  
2 Senate within the first ten (10) legislative days of a regular  
3 session of the Legislature. Such method or system so submitted  
4 shall be subject to disapproval by joint or concurrent resolution of  
5 the Legislature during the legislative session in which submitted.  
6 If disapproved, the existing method of determining permanent partial  
7 disability shall continue in effect. If the Legislature takes no  
8 action on the method or system submitted by the Executive Director,  
9 the method or system shall become operative thirty (30) days  
10 following the adjournment of the Legislature.

11 SECTION 31. AMENDATORY Section 61, Chapter 208, O.S.L.  
12 2013 (85A O.S. Supp. 2016, Section 61), is amended to read as  
13 follows:

14 Section 61. A. A hernia is not a compensable injury unless the  
15 injured employee can prove by a preponderance of the evidence that  
16 it meets the definition of "compensable injury" under this act and:

17 1. The occurrence of the hernia followed as the result of  
18 sudden effort, severe strain, or the application of force directly  
19 to the abdominal wall;

20 2. There was severe pain in the hernial region;

21 3. The pain caused the employee's work to be substantially  
22 affected;

23 4. Notice of the occurrence was given to the employer within  
24 ~~five (5)~~ thirty (30) days thereafter; and

1           5. The physical distress following the occurrence of the hernia  
2 was such as to require the attendance of a licensed physician.

3           B. 1. Notwithstanding the provisions of Section 45 of this ~~act~~  
4 title, if it is determined that a hernia is a compensable injury  
5 under subsection A of this section, the injured employee shall be  
6 entitled to temporary total disability for six (6) weeks.

7           2. If the injured employee refuses to permit the hernia  
8 operation if recommended by a physician, he or she shall be entitled  
9 to temporary total disability for thirteen (13) weeks in addition to  
10 appropriate medical care.

11           C. If the injured employee dies within one (1) year as a direct  
12 and sole result of the hernia or a radical operation of the hernia,  
13 the deceased employee's dependents shall be entitled to death  
14 compensation under Section 48 of this ~~act~~ title.

15           SECTION 32.           AMENDATORY           Section 62, Chapter 208, O.S.L.  
16 2013 (85A O.S. Supp. 2016, Section 62), is amended to read as  
17 follows:

18           Section 62. A. Notwithstanding the provisions of Section 45 of  
19 this ~~act~~ title, if an employee suffers a nonsurgical soft tissue  
20 injury, temporary total disability compensation shall not exceed  
21 eight (8) weeks, regardless of the number of parts of the body to  
22 which there is a nonsurgical soft tissue injury. An employee who is  
23 treated with an injection or injections shall be entitled to an  
24 extension of an additional eight (8) weeks. For purposes of this



1 section, an injection shall not include facet injections or  
2 intravenous injections. An employee who has been recommended by a  
3 treating physician for surgery for a soft tissue injury may petition  
4 the Workers' Compensation Commission for one extension of temporary  
5 total disability compensation and the Commission may order an  
6 extension, not to exceed sixteen (16) additional weeks. If the  
7 surgery is not performed within thirty (30) days of the approval of  
8 the surgery by the employer, its insurance carrier, or an order of  
9 the Commission authorizing the surgery, and the delay is caused by  
10 the employee acting in bad faith, the benefits for the extension  
11 period shall be terminated and the employee shall reimburse the  
12 employer any temporary total disability compensation he or she  
13 received beyond eight (8) weeks. An epidural steroid injection, or  
14 any procedure of the same or similar physical invasiveness, shall  
15 not be considered surgery.

16 B. For purposes of this section, "soft tissue injury" means  
17 damage to one or more of the tissues that surround bones and joints.  
18 Soft tissue injury includes, but is not limited to, sprains,  
19 strains, contusions, tendonitis and muscle tears. Cumulative trauma  
20 is to be considered a soft tissue injury unless corrective surgery  
21 is necessary. Soft tissue injury does not include any of the  
22 following:

23 1. Injury to or disease of the spine, spinal discs, spinal  
24 nerves or spinal cord, where corrective surgery is performed;

1        2. Brain or closed-head injury as evidenced by:

2            a. sensory or motor disturbances,

3            b. communication disturbances,

4            c. complex integrated disturbances of cerebral function,

5            d. episodic neurological disorders, or

6            e. other brain and closed-head injury conditions at least

7                    as severe in nature as any condition provided in

8                    subparagraphs a through d of this paragraph; or

9        3. Any joint replacement.

10        SECTION 33.        AMENDATORY        Section 65, Chapter 208, O.S.L.

11        2013, as amended by Section 3, Chapter 390, O.S.L. 2015 (85A O.S.

12        Supp. 2016, Section 65), is amended to read as follows:

13        Section 65. A. If an employee suffers from an occupational  
14        disease as defined in this section and is disabled or dies as a  
15        result of the disease, the employee, or, in case of death, his or  
16        her dependents, shall be entitled to compensation as if the  
17        disability or death were caused by injury arising out of work  
18        activities within the scope of employment, except as otherwise  
19        provided in this section.

20        B. No compensation shall be payable for an occupational disease  
21        if the employee, at the time of entering into the employment of the  
22        employer by whom the compensation would otherwise be payable,  
23        falsely represented himself or herself in writing as not having

1 previously been disabled, laid off, or compensated in damages or  
2 otherwise, because of the disease.

3 C. 1. If an occupational disease is aggravated by any other  
4 disease or infirmity, not itself compensable, or if disability or  
5 death from any other cause, not itself compensable, is aggravated,  
6 prolonged, accelerated, or in any way contributed to by an  
7 occupational disease, the compensation payable shall be reduced and  
8 limited to the proportion only of the compensation that would be  
9 payable if the occupational disease were the major cause of the  
10 disability or death as the occupational disease, as a causative  
11 factor, bears to all the causes of the disability or death.

12 2. The reduction in compensation is to be effected by reducing  
13 the number of weekly or monthly payments or the amounts of the  
14 payments, as under the circumstances of the particular case may be  
15 for the best interest of the claimant.

16 D. 1. "Occupational disease", as used in this act, unless the  
17 context otherwise requires, means any disease that results in  
18 disability or death and arises out of and in the course of the  
19 occupation or employment of the employee or naturally follows or  
20 unavoidably results from an injury as that term is defined in this  
21 act. A causal connection between the occupation or employment and  
22 the occupational disease shall be established by a preponderance of  
23 the evidence.

24

1        2. No compensation shall be payable for any contagious or  
2 infectious disease unless contracted in the course and scope of  
3 employment.

4        3. No compensation shall be payable for any ordinary disease of  
5 life to which the general public is exposed.

6        E. 1. When compensation is payable for an occupational  
7 disease, the employer in whose employment the employee was last  
8 injuriously exposed to the hazards of the disease and the carrier,  
9 if any, on the risk when the employee was last injuriously exposed  
10 under the employer shall be liable.

11        2. The amount of the compensation shall be based on the average  
12 weekly wage of the employee when last injuriously exposed under the  
13 employer, and the notice of injury and claim for compensation shall  
14 be given and made to that employer.

15        F. ~~1.~~ An employer shall not be liable for any compensation for  
16 an occupational disease unless:

17            a. ~~the disease is due to the nature of an employment in~~  
18            ~~which the hazards of the disease actually exist and is~~  
19            actually incurred in the course and scope of his or  
20            her employment. This includes any disease due to or  
21            attributable to exposure to or contact with any  
22            radioactive material by an employee in the course and  
23            scope of his or her employment.

24

1           ~~b.   disablement or death results within three (3) years in~~  
2           ~~case of silicosis or asbestosis, or one (1) year in~~  
3           ~~case of any other occupational disease, except a~~  
4           ~~diseased condition caused by exposure to X-rays,~~  
5           ~~radioactive substances, or ionizing radiation, after~~  
6           ~~the last injurious exposure to the disease in the~~  
7           ~~employment, or~~

8           ~~c.   in case of death, death follows continuous disability~~  
9           ~~from the disease, commencing within the period, for~~  
10          ~~which compensation has been paid or awarded or timely~~  
11          ~~claim made as provided in subparagraph b of this~~  
12          ~~paragraph and results within seven (7) years after the~~  
13          ~~last exposure.~~

14          ~~2.   However, in case of a diseased condition caused by exposure~~  
15          ~~to X-rays, radioactive substances, or ionizing radiation only, the~~  
16          ~~limitations expressed do not apply.~~

17          SECTION 34.        AMENDATORY        Section 66, Chapter 208, O.S.L.  
18          2013 (85A O.S. Supp. 2016, Section 66), is amended to read as  
19          follows:

20          Section 66.   A.   As used in this act, unless the context  
21          otherwise requires:

22          1.   "Asbestosis" means the characteristic fibrotic condition of  
23          the lungs caused by the inhalation of asbestos dust; and  
24

1        2. "Silicosis" means the characteristic fibrotic condition of  
2 the lungs caused by the inhalation of silica dust.

3        B. In the absence of ~~conclusive~~ a preponderance of the evidence  
4 in favor of the claim, disability or death from silicosis or  
5 asbestosis shall be presumed not to be due to the nature of any  
6 occupation within the provision of this section unless during the  
7 ten (10) years immediately preceding the date of disablement the  
8 employee has been exposed to the inhalation of silica dust or  
9 asbestos dust over a period of not less than five (5) years, two (2)  
10 years of which shall have been in this state, under a contract of  
11 employment performed in this state. However, if the employee has  
12 been employed by the same employer during the entire five-year  
13 period, his or her right to compensation against the employer shall  
14 not be affected by the fact that he or she had been employed during  
15 any part of the period outside of this state.

16        C. Except as otherwise provided in this section, compensation  
17 for disability from uncomplicated silicosis or asbestosis shall be  
18 payable in accordance with the provisions of Sections 45 and 48 of  
19 this ~~act~~ title.

20        D. 1. In case of disability or death from silicosis or  
21 asbestosis complicated with tuberculosis of the lungs, compensation  
22 shall be payable as for uncomplicated silicosis or asbestosis,  
23 provided that the silicosis or asbestosis was an essential factor in  
24 the causing of disability or death.

1           2. In case of disability or death from silicosis or asbestosis  
2 complicated with any other disease, or from any other disease  
3 complicated with silicosis or asbestosis, the compensation shall be  
4 reduced as provided in subsection C of Section 65 of this act title.

5           ~~E. 1. When an employee, though not actually disabled, is found  
6 by the Commission to be affected by silicosis or asbestosis to such  
7 a degree as to make it unduly hazardous for him or her to continue  
8 in an employment involving exposure to the hazards of the disease,  
9 the Commission may order that he or she be removed from his or her  
10 employment. In such a case, or in case he or she has already been  
11 discharged from the employment and is unemployed, he or she shall be  
12 entitled to compensation until he or she can obtain steady  
13 employment in some other suitable occupation in which there are no  
14 hazards of the disease.~~

15           ~~2. When in any case the forced change of employment shall, in  
16 the opinion of the Commission, require that the employee be given  
17 special training in order to qualify him or her for another  
18 occupation, the employer liable for compensation shall pay for the  
19 vocational rehabilitation and training provided for in this act.~~

20           SECTION 35.           AMENDATORY           Section 67, Chapter 208, O.S.L.  
21 2013 (85A O.S. Supp. 2016, Section 67), is amended to read as  
22 follows:

23           Section 67. A. ~~1.~~ Except as otherwise provided in this  
24 section, notice of disability resulting from an occupational disease

1 or cumulative trauma shall be the same as in cases of accidental  
2 injury.

3 ~~2.~~ B. Written notice shall be given to the employer of an  
4 occupational disease or cumulative trauma by the employee, or a  
5 representative of the employee in the case of incapacity or death,  
6 within six (6) months after the first distinct manifestation of the  
7 disease or cumulative trauma or within six (6) months after death.

8 ~~B. An award or denial of award of compensation for an  
9 occupational disease or cumulative trauma may be reviewed and  
10 compensation increased, reduced, or terminated where previously  
11 awarded, or awarded where previously denied, only on proof of fraud  
12 or undue influence or of change of condition, and then only on  
13 application by a party in interest made not later than one (1) year  
14 after the denial of award or, where compensation has been awarded,  
15 after the award or the date when the last payment was made under the  
16 award, except in cases of silicosis or asbestosis, where the statute  
17 of limitations shall be two (2) years.~~

18 SECTION 36. AMENDATORY Section 69, Chapter 208, O.S.L.  
19 2013 (85A O.S. Supp. 2016, Section 69), is amended to read as  
20 follows:

21 Section 69. A. Time for Filing.

22 1. A claim for benefits under this act, other than an  
23 occupational disease, shall be barred unless it is filed with the  
24 Commission within one (1) year from the date of the injury. If



1 during the one-year period following the filing of the claim the  
2 employee receives no weekly benefit compensation and receives no  
3 medical treatment resulting from the alleged injury, the claim shall  
4 be barred thereafter. For purposes of this section, the date of the  
5 injury shall be defined as the date an injury is caused by an  
6 accident as set forth in paragraph 9 of Section 2 of this ~~act~~ title.

7       2.    a.    A claim for compensation for disability on account of  
8                injury which is either an occupational disease or  
9                occupational infection shall be barred unless filed  
10              with the Workers' Compensation Commission within two  
11              (2) years from the date of the last injurious exposure  
12              to the hazards of the disease or infection.

13        b.    A claim for compensation for disability on account of  
14                silicosis or asbestosis shall be filed with the  
15                Commission within one (1) year after the time of  
16                disablement, and the disablement shall occur within  
17                three (3) years from the date of the last injurious  
18                exposure to the hazard of silicosis or asbestosis.

19        c.    A claim for compensation for disability on account of  
20                a disease condition caused by exposure to X-rays,  
21                radioactive substances, or ionizing radiation only  
22                shall be filed with the Commission within two (2)  
23                years from the date the condition is made known to an  
24

1           employee following examination and diagnosis by a  
2           medical doctor.

3           3. A claim for compensation on account of death shall be barred  
4 unless filed with the Commission within two (2) years of the date of  
5 such a death.

6           4. If within six (6) months after the filing of a claim for  
7 compensation no bona fide request for a hearing has been made with  
8 respect to the claim, the claim may, on motion and after hearing, be  
9 dismissed with prejudice.

10           B. Time for Filing Additional Compensation.

11           1. In cases in which any compensation, including disability or  
12 medical, has been paid on account of injury, a claim for additional  
13 compensation shall be barred unless filed with the Commission within  
14 one (1) year from the date of the last payment of disability  
15 compensation or two (2) years from the date of the injury, whichever  
16 is greater.

17           2. The statute of limitations provided in this subsection shall  
18 not apply to claims for the replacement of medicine, crutches,  
19 ambulatory devices, artificial limbs, eyeglasses, contact lenses,  
20 hearing aids, and other apparatus permanently or indefinitely  
21 required as the result of a compensable injury, when the employer or  
22 carrier previously furnished such medical supplies, but replacement  
23 of such items shall not constitute payment of compensation so as to  
24 toll the statute of limitations.

1 C. A claim for additional compensation shall specifically state  
2 that it is a claim for additional compensation. Documents which do  
3 not specifically request additional benefits shall not be considered  
4 a claim for additional compensation.

5 D. If within six (6) months after the filing of a claim for  
6 additional compensation no bona fide request for a hearing has been  
7 made with respect to the claim, the claim shall be dismissed without  
8 prejudice to the refiling of the claim within the limitation period  
9 specified in subsection B of this section.

10 E. Failure to File. Failure to file a claim within the period  
11 prescribed in subsection A or B of this section shall not be a bar  
12 to the right to benefits hereunder unless objection to the failure  
13 is made at the first hearing on the claim in which all parties in  
14 interest have been given a reasonable notice and opportunity to be  
15 heard by the Commission.

16 F. Persons under Disability.

17 1. Notwithstanding any statute of limitation provided for in  
18 this act, when it is established that failure to file a claim by an  
19 injured employee or his or her dependents was induced by fraud, the  
20 claim may be filed within one (1) year from the time of the  
21 discovery of the fraud.

22 2. Subsections A and B of this section shall not apply to a  
23 mental incompetent or minor so long as the person has no guardian or  
24 similar legal representative. The limitations prescribed in

1 subsections A and B of this section shall apply to the mental  
2 incompetent or minor from the date of the appointment of a guardian  
3 or similar legal representative for that person, and when no  
4 guardian or similar representative has been appointed, to a minor on  
5 reaching the age of majority.

6 G. A latent injury or condition shall not delay or toll the  
7 limitation periods specified in this section. This subsection shall  
8 not apply to the limitation period for occupational diseases  
9 specified in paragraph 2 of subsection A of this section.

10 SECTION 37. AMENDATORY Section 71, Chapter 208, O.S.L.  
11 2013 (85A O.S. Supp. 2016, Section 71), is amended to read as  
12 follows:

13 Section 71. A. Notice. Within ten (10) days after a claim for  
14 compensation has been filed, the Workers' Compensation Commission  
15 shall notify the employer and any other interested person of the  
16 filing of the claim.

17 B. Investigation - Hearing.

18 1. The Commission shall assign the claim to an administrative  
19 law judge who shall hold a hearing on application of any interested  
20 party, or on its own motion.

21 2. An application for a hearing shall clearly set forth the  
22 specific issues of fact or law in controversy and the contentions of  
23 the party applying for the hearing.

24

1 3. If any party is not represented by a lawyer, the  
2 administrative law judge shall define the issues to be heard.

3 4. If a hearing on the claim is ordered, the administrative law  
4 judge shall give the claimant and other interested parties ten (10)  
5 days' notice of the hearing served personally on the claimant and  
6 other parties, or by registered mail, facsimile, electronic mail or  
7 other electronic means with receipt of confirmation. The hearing  
8 ~~shall~~ may be held in ~~Tulsa or Oklahoma County~~ any county of the  
9 state, as determined by the Commission.

10 5. The award, together with the statement of the findings of  
11 fact and other matters pertinent to the issues, shall be filed with  
12 the record of the proceedings, and a copy of the award shall  
13 immediately be sent to the parties in or to counsels of record, if  
14 any.

15 C. Evidence and Construction.

16 1. a. At the hearing the claimant and the employer may each  
17 present evidence relating to the claim. Evidence may  
18 be presented by any person authorized in writing for  
19 such purpose. The evidence may include verified  
20 medical reports which shall be accorded such weight as  
21 may be warranted when considering all evidence in the  
22 case.

23  
24

1           b. Any determination of the existence or extent of  
2           physical impairment shall be supported by objective  
3           and measurable physical or mental findings.

4           2. When deciding any issue, administrative law judges and the  
5 Commission shall determine, on the basis of the record as a whole,  
6 whether the party having the burden of proof on the issue has  
7 established it by a preponderance of the evidence.

8           3. Administrative law judges, the Commission, and any reviewing  
9 courts shall strictly construe the provisions of this act.

10          4. In determining whether a party has met the burden of proof  
11 on an issue, administrative law judges and the Commission shall  
12 weigh the evidence impartially and without giving the benefit of the  
13 doubt to any party.

14          D. Judgment. The judgment denying the claim or making the  
15 award shall be filed in the office of the Commission, and a copy  
16 shall be sent by registered mail, facsimile, electronic mail or  
17 other electronic means with receipt of confirmation to the claimant  
18 and to the employer or to their attorneys.

19          E. No compensation for disability of an injured employee shall  
20 be payable for any period beyond his or her death; provided,  
21 however, an award of compensation for disability may be made after  
22 the death of the injured employee for the period of disability  
23 preceding death.

1 SECTION 38. AMENDATORY Section 78, Chapter 208, O.S.L.  
2 2013 (85A O.S. Supp. 2016, Section 78), is amended to read as  
3 follows:

4 Section 78. A. Any party feeling aggrieved by the judgment,  
5 decision, or award made by the administrative law judge may, within  
6 ten (10) days of issuance, appeal to the Workers' Compensation  
7 Commission. After hearing arguments, the Commission may reverse or  
8 modify the decision only if it determines that the decision was  
9 against the clear weight of the evidence or contrary to law. All  
10 such proceedings of the Commission shall be recorded by a court  
11 reporter, if requested by any party. Any judgment of the Commission  
12 which reverses a decision of the administrative law judge shall  
13 contain specific findings relating to the reversal.

14 B. The appellant shall pay a filing fee of One Hundred Seventy-  
15 five Dollars (\$175.00) to the Commission at the time of filing his  
16 or her appeal. The fee shall be deposited in the Workers'  
17 Compensation Commission Revolving Fund.

18 C. The judgment, decision or award of the Commission shall be  
19 final and conclusive on all questions within its jurisdiction  
20 between the parties unless an action is commenced in the Supreme  
21 Court of this state to review the judgment, decision or award within  
22 twenty (20) days of being sent to the parties. Any judgment,  
23 decision or award made by an administrative law judge shall be  
24 stayed until all appeal rights have been waived or exhausted. The

1 Supreme Court may modify, reverse, remand for rehearing, or set  
2 aside the judgment or award only if it was:

- 3 1. In violation of constitutional provisions;
- 4 2. In excess of the statutory authority or jurisdiction of the  
5 Commission;
- 6 3. Made on unlawful procedure;
- 7 4. Affected by other error of law;
- 8 5. Clearly erroneous in view of the reliable, material,  
9 probative and substantial competent evidence;
- 10 6. Arbitrary or capricious;
- 11 7. Procured by fraud; or
- 12 8. Missing findings of fact on issues essential to the  
13 decision.

14 This action shall be commenced by filing with the Clerk of the  
15 Supreme Court a certified copy of the judgment, decision or award of  
16 the Commission attached to the petition by the complaint which shall  
17 specify why the judgment, decision or award is erroneous or illegal.  
18 The proceedings shall be heard in a summary manner and shall have  
19 precedence over all other civil cases in the Supreme Court, except  
20 preferred Corporation Commission appeals. The Supreme Court shall  
21 require the appealing party to file within forty-five (45) days from  
22 the date of the filing of an appeal or a judgment appealed from, a  
23 transcript of the record of the proceedings before the Commission,  
24 or such later time as may be granted by the Supreme Court on



1 application and for good cause shown. The action shall be subject  
2 to the law and practice applicable to other civil actions cognizable  
3 in the Supreme Court.

4 D. A fee of One Hundred Dollars (\$100.00) per appeal to the  
5 Supreme Court shall be paid to the Commission and deposited in the  
6 Workers' Compensation Commission Revolving Fund as costs for  
7 preparing, assembling, indexing and transmitting the record for  
8 appellate review. This fee shall be paid by the party taking the  
9 appeal. If more than one party to the action files an appeal from  
10 the same judgment, decision or award, the fee shall be paid by the  
11 party whose petition in error commences the principal appeal.

12 E. During the pendency of an appeal filed by an employer or the  
13 employer's insurance carrier pursuant to this section, payment for  
14 any prescription drugs prescribed by the treating physician shall be  
15 continued. If payment for prescription drugs is an issue on appeal,  
16 and the employer is held not to be liable for payment for the  
17 prescription drugs, the employee shall reimburse the employer or the  
18 employer's insurance carrier for the cost of prescriptions filled  
19 during the time of the appeals process.

20 SECTION 39. AMENDATORY Section 80, Chapter 208, O.S.L.  
21 2013 (85A O.S. Supp. 2016, Section 80), is amended to read as  
22 follows:

23 Section 80. A. Except ~~where~~ when a joint petition settlement  
24 has been approved, the Workers' Compensation Commission may reopen

1 for review any compensation judgment, award, or decision. Such  
2 review based on a change of physical condition may be done at any  
3 time within six (6) months ~~of termination of the compensation period~~  
4 ~~fixed in the original compensation judgment or award~~ from the date  
5 of the last order in which monetary benefits or active medical  
6 treatment was provided, on the Commission's own motion or on the  
7 application of any party in interest, ~~on the ground of a change in~~  
8 ~~physical condition or on proof of erroneous wage rate~~ and unless  
9 filed within such period of time shall be forever barred. On  
10 review, the Commission may make a judgment or award terminating,  
11 continuing, decreasing, or increasing for the future the  
12 compensation previously awarded, subject to the maximum limits  
13 provided for in this act.

14 B. The review and subsequent judgment or award shall be made in  
15 accordance with the procedure prescribed in Sections 69 through 78  
16 of this ~~act~~ title. No review shall affect any compensation paid  
17 under a prior order, judgment or award.

18 C. The Commission may correct any clerical error in any  
19 compensation judgment or award within one (1) year from the date of  
20 its issuance.

21 D. Aging and the effects of aging on a compensable injury are  
22 not to be considered in determining whether there has been a change  
23 in physical condition. Aging or the effect of aging on a  
24

1 compensable injury shall not be considered in determining permanent  
2 disability under this section or any other section in this act.

3 SECTION 40. AMENDATORY Section 82, Chapter 208, O.S.L.  
4 2013 (85A O.S. Supp. 2016, Section 82), is amended to read as  
5 follows:

6 Section 82.

7 A. 1. a. Fees for legal services rendered in a claim shall not  
8 be valid unless approved by the Workers' Compensation  
9 Commission.

10 b. An attorney representing an injured employee may only  
11 recover attorney fees up to ten percent (10%) of any  
12 temporary total disability or temporary partial  
13 disability compensation and twenty percent (20%) of  
14 any permanent partial disability, permanent total  
15 disability, or death compensation awarded to an  
16 injured employee by the Commission from a controverted  
17 claim. If the employer makes a written offer to  
18 settle permanent partial disability, permanent total  
19 disability, or death compensation and that offer is  
20 rejected, the employee's attorney may not recover  
21 attorney fees in excess of thirty percent (30%) of the  
22 difference between the amount of any award and the  
23 settlement offer.

24

1 (1) Attorney fees may not be collected for recovery  
2 on noncontroverted claims.

3 (2) Attorney fees shall not be awarded on medical  
4 benefits or services.

5 (3) The fee for legal services rendered by an  
6 attorney representing an employee in connection  
7 with a change of physician requested by the  
8 injured employee, controverted by the employer,  
9 and awarded by the Commission, shall be Two  
10 Hundred Dollars (\$200.00).

11 (4) Attorney fees may include not more than ten  
12 percent (10%) of the value, or reasonable  
13 estimate thereof, of vocational rehabilitation  
14 services.

15 c. A "controverted claim" means that ~~there has been a~~  
16 ~~contested hearing before the Commission over the~~  
17 employer or the employer's insurance carrier has  
18 controverted whether there has been a compensable  
19 injury or whether the employee is entitled to  
20 temporary total disability, temporary partial  
21 disability, permanent partial disability, permanent  
22 total disability, or death compensation. A request  
23 for a change in physician shall not trigger a  
24 controverted claim for purposes of recovering any

1 attorney fees except the fees under division 3 of  
2 subparagraph b of this paragraph. A controverted  
3 claim shall not exist if the employee or his or her  
4 representative has withheld pertinent information in  
5 his or her possession related to the claim from the  
6 employer or has violated the provisions of Section 6  
7 of this ~~act~~ title.

8 ~~2. Any person who or entity that brings a controverted claim~~  
9 ~~against the State Treasurer, as a custodian of the Multiple Injury~~  
10 ~~Trust Fund, shall provide notice of the claim to the Commission.~~  
11 ~~Thereafter, the Commission shall direct fees for legal services be~~  
12 ~~paid from the Fund, in addition to any compensation award. The fees~~  
13 ~~shall be authorized only on the difference between the amount of~~  
14 ~~compensation controverted and the amount awarded from the Fund.~~

15 3. In any case ~~where~~ in which attorney fees are allowed by the  
16 Commission, the limitations expressed in subparagraph b of paragraph  
17 1 of this subsection shall apply.

18 ~~4.~~ 3. Medical providers may voluntarily contract with the  
19 attorney for the employee to recover disputed charges, and the  
20 provider may charge a reasonable fee for the cost of collection.

21 B. An attorney representing an employee under this act may not  
22 recover fees for services except as expressly provided in this  
23 section.

1 SECTION 41. AMENDATORY Section 86, Chapter 208, O.S.L.  
2 2013 (85A O.S. Supp. 2016, Section 86), is amended to read as  
3 follows:

4 Section 86. A. 1. Each employer desiring to controvert an  
5 employee's right to compensation ~~shall~~ may file with the Workers'  
6 Compensation Commission on or before the fifteenth day following  
7 notice of the alleged injury or death a statement on a form  
8 prescribed by the Commission that the right to compensation is  
9 controverted and the grounds for the controversion, the names of the  
10 claimant, employer, and carrier, if any, and the date and place of  
11 the alleged injury or death.

12 2. Failure to file the statement of controversion shall not  
13 preclude the employer's ability to controvert the claim or cause it  
14 to waive any defenses. The employer can make additional defenses  
15 not included in the initial notice at any time.

16 B. If an employer is unable to obtain sufficient medical  
17 information as to the alleged injury or death within fifteen (15)  
18 days following receipt of notice, although the employer has acted in  
19 good faith and with all due diligence, the employer may apply in  
20 writing for an extension of time for making payment of the first  
21 installment or controverting the claim. This written application is  
22 to be postmarked within the fifteen-day period. The Commission may,  
23 in its discretion, grant the extension and fix the additional time  
24

1 to be allowed. Filing of application for an extension shall not be  
2 deemed to be a controversion of the claim.

3 C. The provisions in subsection B of this section shall not  
4 apply in cases ~~where~~ in which the physician is an employee of, on  
5 retainer with, or has a written contract to provide medical services  
6 for the employer.

7 SECTION 42. AMENDATORY Section 87, Chapter 208, O.S.L.  
8 2013 (85A O.S. Supp. 2016, Section 87), is amended to read as  
9 follows:

10 Section 87. If the employer or carrier and the injured employee  
11 desire to settle the claim, they shall file a joint petition for  
12 settlement with the Workers' Compensation Commission. After the  
13 joint petition has been filed, the Commission shall order that all  
14 workers' compensation claims covered by the joint petition between  
15 the parties have been settled. No appeal shall lie from a judgment  
16 or award denying a joint petition.

17 SECTION 43. AMENDATORY Section 90, Chapter 208, O.S.L.  
18 2013 (85A O.S. Supp. 2016, Section 90), is amended to read as  
19 follows:

20 Section 90. A. The Workers' Compensation Commission may  
21 require any employer to make a deposit or bond with the Commission  
22 to secure the prompt and convenient payment of compensation, and  
23 payments shall be made on judgment of the Commission.

24

1        B. No proceeding to reverse, vacate or modify any order,  
2 decision or award of the Commission en banc or administrative law  
3 judge of the Commission wherein compensation has been awarded to an  
4 injured employee shall be entertained by the Supreme Court unless  
5 the Executive Director of the Commission shall take a written  
6 undertaking to the claimant executed on the part of the respondent  
7 or insurance carrier, or both, with one or more sureties to be  
8 approved by the Executive Director, to the effect that the appellant  
9 will pay the amount of the award rendered therein, together with  
10 interest thereon from the date of the award by the administrative  
11 law judge of the Commission and all costs of the proceeding, or on  
12 the further order of the Commission en banc or administrative law  
13 judge of the Commission after the appeal has been decided by the  
14 Supreme Court. Municipalities and other political subdivisions of  
15 this state shall be exempt from making such written undertakings.

16        SECTION 44.        AMENDATORY        Section 98, Chapter 208, O.S.L.  
17 2013, as amended by Section 4, Chapter 169, O.S.L. 2014 (85A O.S.  
18 Supp. 2016, Section 98), is amended to read as follows:

19        Section 98. The Self-insurance Guaranty Fund shall be derived  
20 from the following sources:

21        1. Any unexpended funds, including interest thereon, held by  
22 the State Treasurer in the Workers' Compensation Self-insurance  
23 Guaranty Fund transferred to the Self-insurance Guaranty Fund as  
24 provided in Section 124 of this title;



1        2. ~~Until the Self-insurance Guaranty Fund contains Two Million~~  
2 ~~Dollars (\$2,000,000.00) or in~~ In the event the amount in the net  
3 fund balance falls below ~~One Million Dollars (\$1,000,000.00)~~ Seven  
4 Hundred Fifty Thousand Dollars (\$750,000.00), the Workers'  
5 Compensation Commission shall make an assessment against each  
6 private self-insurer and group self-insurance association based on  
7 an assessment rate to be determined by the commissioners, not  
8 exceeding ~~one percent (1%)~~ two percent (2%) per annum of actual paid  
9 losses of the self-insurer during the preceding calendar year,  
10 payable to the Tax Commission for deposit to the fund. The  
11 assessment against private self-insurers shall be determined using a  
12 rate equal to the proportion that the deficiency in the fund  
13 attributable to private self-insurers bears to the actual paid  
14 losses of all private self-insurers for the year period of January 1  
15 through December 31 preceding the assessment. The assessment  
16 against group self-insurance associations shall be determined using  
17 a rate equal to the proportion that the deficiency in excess of the  
18 surplus of the Group Self-Insurance Association Guaranty Fund at the  
19 date of the transfer attributable to group self-insurance  
20 associations bears to the actual paid losses of all group self-  
21 insurance associations cumulatively for any calendar year preceding  
22 the assessment. Each self-insurer shall provide the Workers'  
23 Compensation Commission with such information as the Commission may  
24 determine is necessary to effectuate the purposes of this paragraph.

1 For purposes of this paragraph, "actual paid losses" means all  
2 medical and indemnity payments, including temporary disability,  
3 permanent disability, and death benefits, and excluding loss  
4 adjustment expenses and reserves.

5 a. The assessment shall be paid within thirty (30)  
6 calendar days after the date the commissioners notify  
7 the self-insurer of the assessment.

8 b. A private employer or group self-insurance association  
9 which ceases to be a self-insurer shall remain liable  
10 for any and all assessments of the self-insurer as  
11 provided in this paragraph based on actual paid losses  
12 for the calendar year period preceding the assessment.

13 c. Failure of a self-insurer to pay, or timely pay, an  
14 assessment required by this paragraph, or to report  
15 payment of the same to the Commission within ten (10)  
16 days of payment, shall be grounds for revocation by  
17 the Commission of the self-insurer's permit to self-  
18 insure in this state, after notice and hearing. A  
19 former self-insurer failing to make payments required  
20 by this paragraph promptly and correctly, or failing  
21 to report payment of the same to the Commission within  
22 ten (10) days of payment, shall be subject to  
23 administrative penalties as allowed by law, including  
24 but not limited to, a fine in the amount of Five

1 Hundred Dollars (\$500.00) or an amount equal to one  
2 percent (1%) of the unpaid amount, whichever is  
3 greater, to be paid and deposited to the credit of the  
4 Workers' Compensation Commission Revolving Fund  
5 created in Section ~~28~~ 28.1 of this title. It shall be  
6 the duty of the Tax Commission to collect the  
7 assessment provided for in this paragraph. The Tax  
8 Commission is authorized to bring an action for  
9 recovery of any delinquent or unpaid assessments, and  
10 may enforce payment of the assessment by proceeding in  
11 accordance with Section 79 of this title.

12 d. An impaired self-insurer shall be exempt from  
13 assessments beginning on the date of the Commission's  
14 designation until the Commission determines the self-  
15 insurer is no longer impaired.

16 e. The Tax Commission shall determine the fund balance as  
17 of March 1 and September 1 of each year, and when  
18 otherwise requested by the Workers' Compensation  
19 Commission, and shall advise the Workers' Compensation  
20 Commission in writing within thirty (30) days of each  
21 such determination; ~~and~~

22 3. Any excess funds, including interest thereon, transferred to  
23 the Self-insurance Guaranty Fund as provided in Section 99 of this  
24 title; and

1        4. Any interest accruing on monies paid into the fund.

2        SECTION 45.        AMENDATORY        Section 99, Chapter 208, O.S.L.  
3        2013, as amended by Section 5, Chapter 169, O.S.L. 2014 (85A O.S.  
4        Supp. 2016, Section 99), is amended to read as follows:

5        Section 99.    A. On determination by the Workers' Compensation  
6        Commission that a self-insurer has become an impaired self-insurer,  
7        the Commission shall promptly secure release of the security  
8        required by Section 38 of this title ~~and,~~ advise the Self-insurance  
9        Guaranty Fund Board of the impairment. ~~Claims administration,~~  
10       ~~including processing, investigating and paying valid claims against~~  
11       ~~an impaired self-insurer under the Administrative Workers'~~  
12       ~~Compensation Act, may include payment by the surety that issued the~~  
13       ~~surety bond or be under a contract between the Commission and an~~  
14       ~~insurance carrier, appropriate state governmental entity or an~~  
15       ~~approved service organization, as approved by the Commission, and~~  
16       transfer the proceeds of the security to the Self-insurance Guaranty  
17       Fund Board to be maintained in a segregated account for  
18       administering workers' compensation obligations of the impaired  
19       self-insurer. The Self-insurance Guaranty Fund Board shall be the  
20       fiduciary of the account.

21        B. Proceeds from the released security shall be used for  
22        administering the workers' compensation obligations of the impaired  
23        self-insurer. Claims administration includes, but is not limited  
24        to, processing, investigating and paying claims; actuarial studies;

1 attorney fees incurred for filing a proof of claim in the bankruptcy  
2 of the impaired self-insurer; and a pro rata portion of the staff  
3 expenses of the Self-insurance Guaranty Fund Board.

4 C. Except as otherwise provided by law or agreement of the  
5 parties, excess proceeds from the security remaining after each  
6 claim for benefits of an impaired self-insurer has been paid,  
7 settled or lapsed under the Administrative Workers' Compensation  
8 Act, and costs of administration of such claims have been paid, as  
9 determined by the Self-insurance Guaranty Fund Board, shall be  
10 transferred to the Self-insurance Guaranty Fund by the Commission or  
11 Board, as appropriate.

12 SECTION 46. AMENDATORY Section 101, Chapter 208, O.S.L.  
13 2013 (85A O.S. Supp. 2016, Section 101), is amended to read as  
14 follows:

15 Section 101. A. On or before the first day of July each year,  
16 the Workers' Compensation Commission shall prepare, make public and  
17 submit a report for the prior calendar year to the Governor, the  
18 President Pro Tempore of the Senate, the Speaker of the House of  
19 Representatives, and each member of the Legislature, containing a  
20 statement of the number of awards made and the causes of the  
21 accidents leading to the injuries for which the awards were made,  
22 total work load data of the administrative law judges, including a  
23 detailed report of the work load and judgments written by each  
24 judge, a detailed statement of the expenses of the Commission,

1 together with any other matter which the Commission deems proper to  
2 report.

3 B. After public hearing and consultation with representatives  
4 of employers, insurance carriers, and employees, the Commission  
5 shall implement, with the assistance of the Insurance Commissioner,  
6 by July 1, ~~2014~~ 2018, an electronic data interchange (EDI) system  
7 that provides relevant data concerning the Oklahoma workers'  
8 compensation system and the delivery of benefits to injured workers.

9 C. To assist the Commission in developing and implementing the  
10 EDI system, there is hereby created the Oklahoma Workers'  
11 Compensation Electronic Data Interchange Advisory Committee. Within  
12 thirty (30) days of the effective date of this act, the Governor  
13 shall appoint five persons to serve as members of the advisory  
14 committee, one of whom shall be selected by the Governor as chair.  
15 The chair shall provide adequate notice of meetings of the advisory  
16 committee and public hearings as required by law.

17 SECTION 47. AMENDATORY Section 105, Chapter 208, O.S.L.  
18 2013 (85A O.S. Supp. 2016, Section 105), is amended to read as  
19 follows:

20 Section 105. A. No employee of the Workers' Compensation  
21 Commission shall be competent to testify on any matter concerning  
22 any information the employee has received through the performance of  
23 the employee's duties under the provisions of this act, except for  
24 employees in the Compliance Division regarding their investigations,

1 custodians of the Commission's records, or if the Commission or any  
2 of its employees are a named party in the matter.

3 B. The commissioners and employees of the Commission shall not  
4 solicit employment for any attorney or physician nor shall they  
5 recommend or refer any claimant or employer to an attorney or  
6 physician. If any employee of the Commission makes such a  
7 solicitation, recommendation or reference, that person, upon  
8 conviction, shall be guilty of a misdemeanor punishable, for each  
9 offense, by a fine of not more than One Thousand Dollars (\$1,000.00)  
10 or by imprisonment in the county jail not to exceed one (1) year, or  
11 by both such fine and imprisonment. The Commission shall  
12 immediately terminate the employment of any employee who is guilty  
13 of such solicitation, recommendation or reference. A commissioner  
14 guilty of such solicitation, recommendation or reference shall be  
15 subject to removal from office.

16 C. No administrative law judge shall engage in any ex parte  
17 communication with any party to an action pending before the  
18 Commission or with any witness or medical provider regarding the  
19 merits of a specific matter pending before the judge for resolution.  
20 Any violation of this provision shall subject the judge to  
21 disqualification from the action or matter upon presentation of an  
22 application for disqualification.

23  
24

1 SECTION 48. AMENDATORY Section 155, Chapter 208, O.S.L.  
2 2013 (85A O.S. Supp. 2016, Section 112), is amended to read as  
3 follows:

4 Section 112. A. The Workers' Compensation Commission shall  
5 create, maintain and review a list of licensed physicians who shall  
6 serve as independent medical examiners from a list of licensed  
7 physicians who have completed such course study as the Commission  
8 may require. An independent medical examiner must agree to examine  
9 an employee within forty-five (45) days of appointment. The  
10 Commission shall, to the best of its ability, include the most  
11 experienced and competent physicians in the specific fields of  
12 expertise utilized most often in the treatment of injured employees.  
13 The period of qualification shall be two (2) years. Physicians may  
14 be qualified for successive two-year periods. Physicians serving as  
15 independent medical examiners on the effective date of this act  
16 shall serve the remainder of their respective two-year qualification  
17 periods and may reapply for successive qualification periods. The  
18 Commission may remove an independent medical examiner from the list  
19 for cause.

20 B. An administrative law judge may appoint an independent  
21 medical examiner to assist in determining any issue before the  
22 Commission. In the event surgery is recommended by a treating  
23 physician, upon request of the employer within fifteen (15) days  
24 after receipt of the surgery recommendation, an independent medical



1 examiner shall be appointed to determine the reasonableness and  
2 necessity of the recommended surgery. Such independent medical  
3 examiner shall be qualified to perform the type of surgery  
4 recommended and shall evaluate the employee within thirty (30) days  
5 after the Commission order.

6 C. An independent medical examiner shall be selected from the  
7 list of independent medical examiners within ten (10) days when the  
8 employer or the employee petitions the Commission for the selection  
9 of an independent medical examiner. The independent medical  
10 examiner shall be certified by a recognized specialty board in the  
11 area or areas appropriate to the condition under review.

12 D. The Commission shall, to the best of its ability, maintain a  
13 geographic balance of independent medical examiners.

14 E. Counsel for the employee and employer are responsible for  
15 transmittal of the employee's medical records to the independent  
16 medical examiner within ten (10) days of appointment.

17 F. After a physical examination and review of medical records  
18 and other appropriate information, including depositions and  
19 surveillance video, the independent medical examiner shall submit a  
20 verified written report to the Commission and to the parties. In  
21 the event the independent medical examiner determines that more  
22 medical treatment is necessary, the employer shall designate a  
23 treating physician to provide the indicated treatment.

24

1 G. Any independent medical examiner selected pursuant to the  
2 provisions of this section shall be reimbursed for the medical  
3 examination, reports and fees in a reasonable and customary amount  
4 set by the Commission, and these costs shall be borne by the  
5 employer.

6 H. The Commission shall create a review process to oversee on a  
7 continuing basis the quality of performance and the timeliness of  
8 the submission of medical findings by independent medical examiners.

9 I. If the Commission does not follow the opinion of the  
10 independent medical examiner on any issue, the administrative law  
11 judge or member of the Board of Review shall set out its reasons for  
12 deviating from the opinion of the independent medical examiner. The  
13 opinion of the independent medical examiner shall be followed unless  
14 there is clear and convincing evidence to the contrary.

15 J. Upon receipt of an independent medical examiner's report,  
16 any party shall have the right to object to the introduction of the  
17 report into evidence. The objection must be made by giving written  
18 notification to all parties and to the Commission within ten (10)  
19 days after receipt of the report. The employer shall be responsible  
20 for the reasonable charges of the physician for such testimony,  
21 preparation time, and the expense of the deposition.

22 SECTION 49. AMENDATORY Section 158, Chapter 208, O.S.L.  
23 2013 (85A O.S. Supp. 2016, Section 115), is amended to read as  
24 follows:

1 Section 115. A. If the employee and employer shall reach an  
2 agreement for the full, final and complete settlement of any issue  
3 of a claim pursuant to this act, a form designated as "Joint  
4 Petition" shall be signed by both the employer and employee, or  
5 representatives thereof, and shall be approved by the Workers'  
6 Compensation Commission or an administrative law judge, and filed  
7 with the Commission. In cases in which the employee is not  
8 represented by legal counsel, the Commission or an administrative  
9 law judge shall have jurisdiction to approve a full, final and  
10 complete settlement of any issue upon the filing of an Employer's  
11 First Notice of Injury. There shall be no requirement for the  
12 filing of an Employee's First Notice of Claim for Compensation to  
13 effect such settlement in cases in which the employee is not  
14 represented by legal counsel.

15 B. In the event all issues of a claim are not fully, finally  
16 and completely settled by a Joint Petition, the issues not settled  
17 by the parties and subject to the Commission's continuing  
18 jurisdiction must be noted by appendix to the Joint Petition or on a  
19 form created for such purpose by the Commission. The appendix must  
20 be signed by the parties and approved by the Commission as set forth  
21 herein.

22 C. In the absence of fraud, a Joint Petition shall be deemed  
23 binding upon the parties thereto and a final adjudication of all  
24 rights pursuant to this act or the workers' compensation law in

1 effect at the time of the injury or final order of the Workers'  
2 Compensation ~~Court~~ Commission. An official record shall be made by  
3 an official Commission reporter of the testimony taken to effect the  
4 Joint Petition.

5 D. A good-faith effort shall be made on the part of any  
6 insurance carrier, ~~CompSource Oklahoma~~, or group self-insured plan  
7 to notify an insured employer of the possibility of and terms of any  
8 settlement of a workers' compensation case pursuant to this section.  
9 Written comments or objections to settlements shall be filed with  
10 the Commission and periodically shared with the management of the  
11 applicable insurer. A written notice shall be made to all  
12 policyholders of their right to a good-faith effort by their insurer  
13 to notify them of any proposed settlement, if the policyholder so  
14 chooses.

15 E. If an employee has not filed a claim for compensation and  
16 the employer and the injured employee reach a final agreement as to  
17 the facts with relation to an injury and the resulting disability  
18 for which compensation is claimed under the Administrative Workers'  
19 Compensation Act, a memorandum of such agreement in a form  
20 prescribed by the Commission shall be filed by the employer with the  
21 Commission. Such memorandum shall be signed by both the employer  
22 and employee and approved by an administrative law judge.

23  
24

1 SECTION 50. AMENDATORY Section 161, Chapter 208, O.S.L.  
2 2013 (85A O.S. Supp. 2016, Section 118), is amended to read as  
3 follows:

4 Section 118. A. A fee of One Hundred Forty Dollars (\$140.00)  
5 per case, including any Joint Petition, medical fee dispute or claim  
6 for benefits under the Multiple Injury Trust Fund authorized by this  
7 ~~act~~ title, shall be collected by the Workers' Compensation  
8 Commission and assessed as costs to be paid by the party against  
9 whom any award becomes final, to be deposited as follows:

10 1. One Hundred Five Dollars (\$105.00) to the credit of the  
11 Workers' Compensation Commission Revolving Fund created by Section  
12 28.1 of this ~~act~~ title;

13 2. Ten Dollars (\$10.00) to the credit of the Attorney General's  
14 Workers' Compensation Fraud Unit Revolving Fund created by Section  
15 19.2 of Title 74 of the Oklahoma Statutes; and

16 3. Twenty-five Dollars (\$25.00) to the credit of the Workers'  
17 Compensation Commission Revolving Fund for purposes of implementing  
18 the provisions of this act, including strengthening and providing  
19 additional funding for the Attorney General's Workers' Compensation  
20 Fraud Investigation Unit, providing counseling services pursuant to  
21 the workers' compensation counselor or ombudsman program and safety  
22 in the workplace.

23 B. A fee of One Hundred Thirty Dollars (\$130.00) per action to  
24 reopen any case pursuant to Section 32 of this ~~act~~ title shall be

1 collected by the Commission and assessed as costs to be paid by the  
2 party that reopens the case. The fee collected pursuant to this  
3 subsection shall be deposited to the credit of the Workers'  
4 Compensation Commission Revolving Fund for purposes of implementing  
5 the provisions of this act, including strengthening and providing  
6 additional funding for the Attorney General's Workers' Compensation  
7 Fraud Investigation Unit, providing counseling services pursuant to  
8 the workers' compensation counselor or ombudsman program and safety  
9 in the workplace.

10 SECTION 51. AMENDATORY Section 162, Chapter 208, O.S.L.  
11 2013 (85A O.S. Supp. 2016, Section 119), is amended to read as  
12 follows:

13 Section 119. A. Persons requesting and receiving copies of  
14 documents on file with the Workers' Compensation Commission shall  
15 pay a fee to the Commission of One Dollar (\$1.00) for each page  
16 copied. All fees so collected shall be deposited in the State  
17 Treasury in the Workers' Compensation Commission Revolving Fund.

18 B. All penalties and fines imposed by the Commission, upon  
19 collection, shall be deposited to the credit of the Workers'  
20 Compensation Commission Revolving Fund.

21 SECTION 52. AMENDATORY Section 163, Chapter 208, O.S.L.  
22 2013 (85A O.S. Supp. 2016, Section 120), is amended to read as  
23 follows:

24

1 Section 120. A. Except as otherwise provided by state or  
2 federal law and subject to the provisions of this section, an  
3 employer may inquire about previous workers' compensation claims  
4 paid to an employee while the employee was employed by a previous  
5 employer. If the employee fails to answer truthfully about any  
6 previous permanent partial disability awards made pursuant to  
7 workers' compensation claims, the employee shall be subject to  
8 discharge by the employer.

9 B. 1. All requests made to the Workers' Compensation  
10 Commission for information on ~~prior~~ workers' compensation claims  
11 involving a worker, including written inquiries about prior claims  
12 and requests to access a worker's compensation claim file, must be  
13 in writing, on a form prescribed by the Commission, and accompanied  
14 by a fee of One Dollar (\$1.00) per search request, not to exceed One  
15 Dollar (\$1.00) per claims record of a particular worker. The fee  
16 shall be deposited to the credit of the Workers' Compensation  
17 Commission Revolving Fund. The form shall require identification of  
18 the person requesting the information, and the person for whom a  
19 search is being made if different from the requester. The form must  
20 contain an affidavit signed by the requester under penalty of  
21 perjury that the information sought is not requested for a purpose  
22 in violation of state or federal law. The form must be used by all  
23 repositories of archived Court claim files. All request forms shall  
24 be maintained by the Commission as a public record, together with a

1 record of a worker's written authorization permitting a search  
2 indexed by the worker's social security number as required by  
3 Section 3113 of Title 74 of the Oklahoma Statutes. The request  
4 forms and authorizations shall be indexed alphabetically by the last  
5 name of the worker.

6 2. This subsection shall not apply:

- 7 a. to requests for claims information made by a public  
8 officer or by a public employee in the performance of  
9 his or her duties on behalf of a governmental entity  
10 or as may be allowed by law,
- 11 b. to requests for claims information made by an insurer,  
12 self-insured employer, third-party claims  
13 administrator, or a legal representative thereof, when  
14 necessary to process or defend a workers' compensation  
15 claim,
- 16 c. when a worker or the worker's representative requests  
17 review of the worker's claims information,
- 18 d. when the disclosure is made for educational or  
19 research purposes and in such a manner that the  
20 disclosed information cannot be used to identify any  
21 worker who is the subject of a claim,
- 22 e. to requests for claims information made by a health  
23 care or rehabilitation provider or the provider's  
24 legal representative when necessary to process payment



1 of health care or rehabilitation services rendered to  
2 a worker, and

3 f. to requests for claims information made by an employer  
4 or personnel service company, including but not  
5 limited to an individual or entity, where the worker  
6 executes a written authorization permitting the search  
7 and designating the employer or personnel service  
8 company as the worker's representative for that  
9 purpose; however, nothing in this subparagraph shall  
10 relieve the employer or personnel service company from  
11 complying with the requirements of utilizing the form  
12 set forth in paragraph 1 of this subsection.

13 SECTION 53. AMENDATORY Section 164, Chapter 208, O.S.L.  
14 2013 (85A O.S. Supp. 2016, Section 121), is amended to read as  
15 follows:

16 Section 121. A. There is hereby created an Advisory Council on  
17 Workers' Compensation.

18 B. The voting membership of the Advisory Council shall consist  
19 of nine (9) members. Any member serving on the effective date of  
20 this section shall serve the remainder of his or her term. The  
21 chair of the Workers' Compensation Commission shall be an ex officio  
22 nonvoting member.

23 1. The Governor shall appoint three members representing  
24 employers in this state, one of whom shall be from a list of

1 nominees provided by the predominant statewide broad-based business  
2 organization.

3 2. The Speaker of the House of Representatives shall appoint  
4 three members representing employees in this state, one of whom  
5 shall be from a list of nominees provided by the most representative  
6 labor organization in the state.

7 3. The President Pro Tempore of the Senate shall appoint three  
8 members, two who are attorneys representing the legal profession in  
9 this state, one of whom shall be an attorney who practices primarily  
10 in the area of defense of workers' compensation claims, and one of  
11 whom shall be an attorney who primarily represents claimants, and a  
12 medical doctor or doctor of osteopathy actively engaged in the  
13 treatment of injured workers.

14 C. The term of office for appointees shall be as follows:

15 1. The term of office for three positions, one each appointed  
16 by the Governor, the President Pro Tempore of the Senate and the  
17 Speaker of the House of Representatives shall expire on January 1,  
18 2015;

19 2. The term of office for three positions, one each appointed  
20 by the Governor, the President Pro Tempore of the Senate and the  
21 Speaker of the House of Representatives shall expire on January 1,  
22 2016; and

23 3. The term of office for three positions, one each appointed  
24 by the Governor, the President Pro Tempore of the Senate and the

1 Speaker of the House of Representatives shall expire on January 1,  
2 2017.

3 D. Thereafter, successors in office shall be appointed for a  
4 three-year term. Members shall be eligible to succeed themselves in  
5 office.

6 E. Any person appointed to fill a vacancy shall be appointed  
7 for the unexpired portion of the term.

8 F. The chair and the vice-chair of the Advisory Council shall  
9 be appointed by the Governor.

10 G. Members shall receive their traveling and other necessary  
11 expenses incurred in the performance of their duties as provided in  
12 the State Travel Reimbursement Act.

13 H. Meetings of the Advisory Council shall be quarterly or as  
14 called by the chair or upon petition by a majority of the voting  
15 members. The presence of five voting members constitutes a quorum.  
16 No action shall be taken by the Advisory Council without the  
17 affirmative vote of at least five members.

18 I. The Workers' Compensation Commission shall provide office  
19 supplies and personnel of the Commission to carry out any of the  
20 duties that have been entrusted to the Advisory Council.

21 J. The Advisory Council shall analyze and review the workers'  
22 compensation system, the reports of the Commission, and trends in  
23 the field of workers' compensation. The Advisory Council may  
24 recommend improvements and proper responses to developing trends.

1 The Advisory Council shall report its findings annually to the  
2 Governor, the Chief Justice of the Supreme Court, the President Pro  
3 Tempore of the Senate, and the Speaker of the House of  
4 Representatives.

5 K. In addition to other duties required by this section, the  
6 Advisory Council shall consult with the Court regarding oversight of  
7 independent medical examiners as provided in Section 45 of this ~~act~~  
8 title.

9 ~~L. The Advisory Council shall review the Oklahoma Treatment~~  
10 ~~Guidelines as provided in the Workers' Compensation Code, and report~~  
11 ~~the findings of such review to the Commission as provided in this~~  
12 ~~act.~~

13 SECTION 54. AMENDATORY Section 165, Chapter 208, O.S.L.  
14 2013, as amended by Section 4, Chapter 344, O.S.L. 2015 (85A O.S.  
15 Supp. 2016, Section 122), is amended to read as follows:

16 Section 122. A. The Workers' Compensation Commission Revolving  
17 Fund established by Section ~~2~~ 28.1 of this ~~act~~ title shall be used  
18 for the costs of administering this act and for other purposes as  
19 authorized by law.

20 B. For the purpose of providing funds for the Workers'  
21 Compensation Commission Revolving Fund, for the Workers'  
22 Compensation Administrative Fund created in Section ~~5~~ 401.1 of this  
23 ~~act~~ title, for the Multiple Injury Trust Fund created in Section 28  
24

1 of this title, and to fund other provisions within this title, the  
2 following tax rates shall apply:

3 1. Each mutual or interinsurance association, stock company,  
4 CompSource Oklahoma or other insurance carrier writing workers'  
5 compensation insurance in this state shall pay to the Oklahoma Tax  
6 Commission an assessment at a rate of one percent (1%) of all gross  
7 direct premiums written during each quarter of the calendar year for  
8 workers' compensation insurance on risks located in this state after  
9 deducting from such gross direct premiums, return premiums,  
10 unabsorbed portions of any deposit premiums, policy dividends,  
11 safety refunds, savings and other similar returns paid or credited  
12 to policyholders. Such payments to the Tax Commission shall be made  
13 not later than the fifteenth day of the month following the close of  
14 each quarter of the calendar year in which such gross direct premium  
15 is collected or collectible. Contributions made by insurance  
16 carriers and CompSource Oklahoma, under the provisions of this  
17 section, shall be considered for the purpose of computing workers'  
18 compensation rates; and

19 2. When an employer is authorized to become a self-insurer, the  
20 Workers' Compensation Commission shall so notify the Tax Commission,  
21 giving the effective date of such authorization. The Tax Commission  
22 shall then assess and collect from the employers carrying their own  
23 risk an assessment at the rate of two percent (2%) of the total  
24 compensation for permanent total disability awards, permanent

1 partial disability awards and death benefits paid out during each  
2 quarter of the calendar year by the employers. Such assessment  
3 shall be payable by the employers and collected by the Tax  
4 Commission according to the provisions of this section regarding  
5 payment and collection of the assessment created in paragraph 1 of  
6 this subsection.

7 C. It shall be the duty of the Tax Commission to collect the  
8 payments provided for in this title. The Tax Commission is hereby  
9 authorized to bring an action for the recovery of any delinquent or  
10 unpaid payments required in this section. The Tax Commission may  
11 also enforce payments by proceeding in accordance with the  
12 provisions of Section 98 of this title.

13 D. The Tax Commission shall pay monthly to the State Treasurer  
14 to the credit of the Multiple Injury Trust Fund all monies collected  
15 under the provisions of this section less the annual amounts which  
16 shall be apportioned by the Oklahoma Tax Commission as follows:

17 1. Five Million Dollars (\$5,000,000.00) shall be payable in  
18 equal monthly installments to the credit of the Workers'  
19 Compensation Commission Revolving Fund established in Section ~~2~~ 28.1  
20 of this ~~act~~ title for the fiscal year ending June 30, 2016, and  
21 ~~Three Million Dollars (\$3,000,000.00)~~ Five Million Dollars  
22 (\$5,000,000.00) for the fiscal year ending June 30, 2017, and for  
23 all subsequent years to be used to implement the provisions of this  
24 title; and

1           2. Four Million Dollars (\$4,000,000.00) shall be payable in  
2 equal monthly installments to the credit of the Workers'  
3 Compensation Administrative Fund established in Section ~~5 of this~~  
4 ~~act~~ 401.1 of this title for the fiscal year ending June 30, 2016,  
5 Three Million Five Hundred Thousand Dollars (\$3,500,000.00) for the  
6 fiscal year ending June 30, 2017, Three Million Five Hundred  
7 Thousand Dollars (\$3,500,000.00) for the fiscal year ending June 30,  
8 2018, Three Million Dollars (\$3,000,000.00) for the fiscal year  
9 ending June 30, 2019, and Two Million Five Hundred Thousand Dollars  
10 (\$2,500,000.00) for the fiscal year ending June 30, 2020. Monies  
11 deposited in the Workers' Compensation Administrative Fund shall be  
12 used by the Workers' Compensation Court of Existing Claims to  
13 implement provisions provided for in this title.

14           E. The refund provisions of Sections 227 through 229 of Title  
15 68 of the Oklahoma Statutes shall be applicable to any payments made  
16 pursuant to this section.

17           SECTION 55.           AMENDATORY           Section 121, Chapter 208, O.S.L.  
18 2013 (85A O.S. Supp. 2016, Section 300), is amended to read as  
19 follows:

20           Section 300. Sections ~~121~~ 300 through ~~149~~ 328 of this ~~act~~ title  
21 shall be known and may be cited as the "Workers' Compensation  
22 Arbitration Act".

23  
24

1 SECTION 56. AMENDATORY Section 125, Chapter 208, O.S.L.  
2 2013 (85A O.S. Supp. 2016, Section 304), is amended to read as  
3 follows:

4 Section 304. A. Except as otherwise provided in subsections B  
5 and C of this section and in the laws of this state outside of this  
6 act, a party to an agreement to arbitrate or to an arbitration  
7 proceeding may waive, or the parties may vary the effect of, the  
8 requirements of this act to the extent permitted by law.

9 B. Before a controversy arises that is subject to an agreement  
10 to arbitrate, a party to the agreement may not:

11 1. Waive or agree to vary the effect of the requirements of  
12 subsection A of Section ~~126~~ 305, subsection A of Section ~~127~~ 306,  
13 Section ~~128~~ 307, subsection A or B of Section ~~138~~ 317, Section ~~147~~  
14 326 or Section ~~149~~ 328 of this ~~act~~ title;

15 2. Agree to unreasonably restrict the right to notice of the  
16 initiation of an arbitration proceeding under Section ~~130~~ 309 of  
17 this ~~act~~ title;

18 3. Agree to unreasonably restrict the right to disclosure of  
19 any facts by an arbitrator under Section ~~133~~ 312 of this ~~act~~ title;

20 4. Waive the right of a party to an agreement to arbitrate to  
21 be represented by a lawyer at any proceeding or hearing under  
22 Section ~~137~~ 316 of this ~~act~~ title; or

23 5. Agree to conduct arbitration proceedings outside of this  
24 state.



1 C. A party to an agreement to arbitrate or to an arbitration  
2 proceeding may not waive, or the parties may not vary the effect of,  
3 the requirements of this section or subsection A or C of Section ~~124~~  
4 303, Sections ~~128~~ 307, ~~135~~ 314 and ~~139~~ 318, subsection D or E of  
5 Section ~~141~~ 320, Sections ~~143~~ 322, ~~144~~ 323 and ~~145~~ 324, or  
6 subsection A or B of Section ~~146~~ 325 of this ~~act~~ title.

7 SECTION 57. AMENDATORY Section 126, Chapter 208, O.S.L.  
8 2013 (85A O.S. Supp. 2016, Section 305), is amended to read as  
9 follows:

10 Section 305. A. Except as otherwise provided in Section ~~150~~  
11 107 of this ~~act~~ title, an application for judicial relief under this  
12 act shall be made by application and motion to the Workers'  
13 Compensation Commission and heard in the manner provided by law or  
14 rule of the Commission for making and hearing motions.

15 B. Unless a civil action involving the agreement to arbitrate  
16 is pending, notice of an initial application and motion to the  
17 Commission under this act shall be served in the manner provided by  
18 law for the service of a summons in the filing of a civil action.  
19 Otherwise, notice of the motion shall be given in the manner  
20 provided by law or rule of court for serving motions in pending  
21 cases.

22 SECTION 58. AMENDATORY Section 128, Chapter 208, O.S.L.  
23 2013 (85A O.S. Supp. 2016, Section 307), is amended to read as  
24 follows:

1 Section 307. A. On application and motion of a person showing  
2 an agreement to arbitrate and alleging another person's refusal to  
3 arbitrate under the agreement:

4 1. If the refusing party does not appear or does not oppose the  
5 motion, the Workers' Compensation Commission shall order the parties  
6 to arbitrate; and

7 2. If the refusing party opposes the motion, the Commission  
8 shall proceed summarily to decide the issue and order the parties to  
9 arbitrate unless it finds that there is no enforceable agreement to  
10 arbitrate. The Commission may also assess costs against the party  
11 opposing the motion if it concludes the opposition was not brought  
12 in good faith to be deposited in the Workers' Compensation  
13 Commission Revolving Fund created by the Administrative Workers'  
14 Compensation Act.

15 B. On motion of a person alleging that an arbitration  
16 proceeding has been initiated or threatened but that there is no  
17 agreement to arbitrate, the Commission shall proceed summarily to  
18 decide the issue. If the Commission finds that there is an  
19 enforceable agreement to arbitrate, it shall order the parties to  
20 arbitrate. The Commission may also assess costs against the party  
21 opposing the motion if the Commission concludes the opposition was  
22 not brought in good faith to be deposited in the Workers'  
23 Compensation Commission Revolving Fund created by the Administrative  
24 Workers' Compensation Act.

1 C. If the Commission finds that the parties have not entered  
2 into an enforceable arbitration agreement, the dispute shall be  
3 resolved under the Administrative Workers' Compensation Act.

4 D. If an action is initiated in district court to determine  
5 whether an enforceable arbitration agreement exists, on motion by  
6 the responding party, that proceeding shall be transferred to the  
7 Commission for determination.

8 E. If a party challenges the enforceability of an arbitration  
9 agreement, the underlying claim, including all benefits, shall be  
10 stayed until the Commission determines whether an enforceable  
11 arbitration agreement exists.

12 SECTION 59. AMENDATORY Section 133, Chapter 208, O.S.L.  
13 2013 (85A O.S. Supp. 2016, Section 312), is amended to read as  
14 follows:

15 Section 312. A. Before accepting appointment, an individual  
16 who is requested to serve as an arbitrator, after making a  
17 reasonable inquiry, shall disclose to the parties to the arbitration  
18 agreement, the parties to the arbitration proceeding, and any other  
19 arbitrators any known facts that a reasonable person would consider  
20 likely to affect the impartiality of the arbitrator in the  
21 arbitration proceeding, including but not limited to:

22 1. A financial or personal interest in the outcome of the  
23 arbitration proceeding; and  
24

1           2. An existing or past relationship with any of the parties to  
2 the agreement to arbitrate or the arbitration proceeding, their  
3 counsel or representatives, a witness, or another arbitrator.

4           B. An arbitrator has a continuing obligation to disclose to the  
5 parties to the arbitration agreement, the arbitration proceeding,  
6 and to any other arbitrators any facts that the arbitrator learns  
7 after accepting appointment which a reasonable person would consider  
8 likely to affect the impartiality of the arbitrator.

9           C. If an arbitrator discloses a conflict under subsection A or  
10 B of this section, any party to the arbitration agreement or the  
11 arbitration proceeding may have the arbitrator removed by filing a  
12 notice of conflict with the Workers' Compensation Commission. If a  
13 notice of conflict is not filed within ten (10) days of disclosure  
14 of the conflict, the parties waive their rights to have any order or  
15 award entered vacated under Section ~~144~~ 323 of this ~~act~~ title.

16           SECTION 60.           AMENDATORY           Section 134, Chapter 208, O.S.L.  
17 2013 (85A O.S. Supp. 2016, Section 313), is amended to read as  
18 follows:

19           Section 313. If there is more than one arbitrator, the powers  
20 of an arbitrator shall be exercised by a majority of the  
21 arbitrators, but all of them shall conduct the hearing under Section  
22 ~~136~~ 315 of this ~~act~~ title.

23  
24

1 SECTION 61. AMENDATORY Section 135, Chapter 208, O.S.L.  
2 2013 (85A O.S. Supp. 2016, Section 314), is amended to read as  
3 follows:

4 Section 314. A. Arbitrators and arbitration organizations  
5 providing services under this act are immune from civil liability to  
6 the same extent as a judge of a court of this state acting in a  
7 judicial capacity.

8 B. The immunity afforded by this section supplements any  
9 immunity under other law.

10 C. The failure of an arbitrator to make a disclosure required  
11 by Section ~~133~~ 312 of this ~~act~~ title shall not cause any loss of  
12 immunity under this section.

13 D. An arbitrator or representative of an arbitration  
14 organization is not competent to testify in a judicial,  
15 administrative, or similar proceeding and may not be required to  
16 produce records as to any statement, conduct, decision, or ruling  
17 occurring during the arbitration proceeding, to the same extent as a  
18 judge of a court of this state acting in a judicial capacity. This  
19 subsection shall not apply to:

20 1. The extent necessary to determine the claim of an  
21 arbitrator, arbitration organization, or representative of the  
22 arbitration organization against a party to the arbitration  
23 proceeding; or  
24

1           2. A hearing on an application and motion to vacate an award  
2 under paragraphs 1 or 2 of subsection A of Section ~~144~~ 323 of this  
3 ~~act~~ title if the movant establishes prima facie that a ground for  
4 vacating the award exists.

5           E. If a person commences a civil action against an arbitrator,  
6 arbitration organization, or representative of an arbitration  
7 organization arising from the services of the arbitrator,  
8 organization, or representative or if a person seeks to compel an  
9 arbitrator or a representative of an arbitration organization to  
10 testify or produce records in violation of subsection D of this  
11 section, and the court decides that the arbitrator, arbitration  
12 organization, or representative of an arbitration organization is  
13 immune from civil liability or that the arbitrator or representative  
14 of the organization is not competent to testify, the court shall  
15 award to the arbitrator, organization, or representative reasonable  
16 attorney fees and other reasonable expenses of litigation.

17           SECTION 62.           AMENDATORY           Section 137, Chapter 208, O.S.L.  
18 2013 (85A O.S. Supp. 2016, Section 316), is amended to read as  
19 follows:

20           Section 316. A. A party to an arbitration proceeding may be  
21 represented by a lawyer.

22           B. Each party shall be responsible for payment of his or her  
23 legal fees incurred during arbitration, except as provided for in  
24 Section ~~142~~ 321 of this ~~act~~ title.

1 C. The employee's attorney may not recover legal fees in excess  
2 of the limits described in Section 82 of this ~~act~~ title.

3 SECTION 63. AMENDATORY Section 139, Chapter 208, O.S.L.  
4 2013 (85A O.S. Supp. 2016, Section 318), is amended to read as  
5 follows:

6 Section 318. If an arbitrator makes a pre-award ruling in favor  
7 of a party, the party may request the arbitrator to incorporate the  
8 ruling into an award under Section ~~140~~ 319 of this ~~act~~ title. A  
9 prevailing party may make an application and motion to the Workers'  
10 Compensation Commission for an expedited judgment to confirm the  
11 award under Section ~~143~~ 322 of this ~~act~~ title, in which case the  
12 Commission shall summarily decide the motion. The Commission shall  
13 issue a judgment to confirm the award unless the court vacates,  
14 modifies, or corrects the award under Section ~~144~~ 323 or ~~145~~ 324 of  
15 this ~~act~~ title.

16 SECTION 64. AMENDATORY Section 141, Chapter 208, O.S.L.  
17 2013 (85A O.S. Supp. 2016, Section 320), is amended to read as  
18 follows:

19 Section 320. A. On motion by a party to an arbitration  
20 proceeding, the arbitrator may modify or correct an award:

21 1. On a ground stated in paragraph 1 or 3 of subsection A of  
22 Section ~~145~~ 324 of this ~~act~~ title;

23  
24

1           2. Because the arbitrator has not made a final and definite  
2 award upon a claim submitted by the parties to the arbitration  
3 proceeding; or

4           3. To clarify the award.

5           B. A motion under subsection A of this section shall be made  
6 and notice given to all parties within twenty (20) days after the  
7 award is issued to the parties.

8           C. A party to the arbitration proceeding shall give notice of  
9 any objection to the motion within ten (10) days after receipt of  
10 the motion.

11           D. If a motion to the Workers' Compensation Commission is  
12 pending under Section ~~144~~ 323 or ~~145~~ 324 of this ~~act~~ title, the  
13 Commission may submit the claim to the arbitrator to consider  
14 whether to modify or correct the award:

15           1. On a ground stated in paragraph 1 or 3 of subsection A of  
16 Section ~~145~~ 324 of this ~~act~~ title;

17           2. Because the arbitrator has not made a final and definite  
18 award upon a claim submitted by the parties to the arbitration  
19 proceeding; or

20           3. To clarify the award.

21           E. An award modified or corrected under this section is subject  
22 to Sections ~~143, 144 and 145~~ 322, 323 and 324 of this ~~act~~ title.



1 SECTION 65. AMENDATORY Section 142, Chapter 208, O.S.L.  
2 2013 (85A O.S. Supp. 2016, Section 321), is amended to read as  
3 follows:

4 Section 321. A. An arbitrator may award benefits set forth in  
5 Sections 45, 46, 47 and 51 of this ~~act~~ title.

6 B. An arbitrator may award reasonable attorney fees and other  
7 reasonable expenses of arbitration if the arbitrator finds that a  
8 party was not acting in good faith throughout the arbitration.

9 C. As to all remedies other than those authorized by  
10 subsections A and B of this section, an arbitrator may order such  
11 remedies as the arbitrator considers just and appropriate under the  
12 circumstances of the arbitration proceeding. The fact that such a  
13 remedy could not or would not be granted by the Workers'  
14 Compensation Commission is not a ground for refusing to confirm an  
15 award under Section ~~143~~ 322 of this ~~act~~ title or for vacating an  
16 award under Section ~~144~~ 323 of this ~~act~~ title.

17 D. An arbitrator's expenses and fees, together with other  
18 expenses, shall be paid by the employer.

19 E. If an arbitrator awards relief under subsection A of this  
20 section, the arbitrator shall specify in the award the basis in fact  
21 justifying and the basis in law authorizing the award.

22 SECTION 66. AMENDATORY Section 143, Chapter 208, O.S.L.  
23 2013 (85A O.S. Supp. 2016, Section 322), is amended to read as  
24 follows:

1 Section 322. After a party to an arbitration proceeding  
2 receives notice of an award, the party may make an application and  
3 motion to the Workers' Compensation Commission for a judgment  
4 confirming the award at which time the Commission shall issue a  
5 confirming judgment unless the award is modified or corrected under  
6 Section ~~141~~ 320 or ~~145~~ 324 of this ~~act~~ title or is vacated under  
7 Section ~~144~~ 323 of this ~~act~~ title.

8 SECTION 67. AMENDATORY Section 144, Chapter 208, O.S.L.  
9 2013 (85A O.S. Supp. 2016, Section 323), is amended to read as  
10 follows:

11 Section 323. A. On an application and motion to the court by a  
12 party to an arbitration proceeding, the Workers' Compensation  
13 Commission shall vacate an award made in the arbitration proceeding  
14 if:

15 1. The award was procured by corruption, fraud, or other undue  
16 means;

17 2. There was:

18 a. evident partiality by an arbitrator appointed as a  
19 neutral arbitrator,

20 b. corruption by an arbitrator, or

21 c. misconduct by an arbitrator prejudicing the rights of  
22 a party to the arbitration proceeding;

23 3. An arbitrator refused to postpone the hearing upon showing  
24 of sufficient cause for postponement, refused to consider evidence

1 material to the controversy, or otherwise conducted the hearing  
2 contrary to Section ~~136~~ 315 of this ~~act~~ title, so as to prejudice  
3 substantially the rights of a party to the arbitration proceeding;

4 4. An arbitrator exceeded his or her powers under this act;

5 5. The arbitration was conducted without proper notice of the  
6 initiation of an arbitration as required in Section ~~130~~ 309 of this  
7 ~~act~~ title so as to prejudice substantially the rights of a party to  
8 the arbitration proceeding; or

9 6. It is determined that an arbitrator did not disclose a  
10 conflict under Section ~~133~~ 312 of this ~~act~~ title.

11 B. An application and motion under this section shall be filed  
12 within thirty (30) days after the movant receives notice of the  
13 award or within thirty (30) days after the movant receives notice of  
14 a modified or corrected award, unless the movant alleges that the  
15 award was procured by corruption, fraud, or other undue means, in  
16 which case the motion shall be made within ninety (90) days after  
17 the ground is known or by the exercise of reasonable care would have  
18 been known by the movant.

19 C. If the Commission vacates an award it may order a rehearing.  
20 If the award is vacated on a ground stated in paragraph 1, 2 or 6 of  
21 subsection A of this section, the rehearing shall be before a new  
22 arbitrator. If the award is vacated on a ground stated in paragraph  
23 3, 4 or 5 of subsection A of this section, the rehearing may be  
24 before the arbitrator who made the award or the arbitrator's

1 successor. The arbitrator shall render the decision in the  
2 rehearing within the same time as that provided in subsection B of  
3 Section ~~140~~ 319 of this ~~act~~ title for an award.

4 D. If the Commission denies a motion to vacate an award, it  
5 shall confirm the award unless a motion to modify or correct the  
6 award is pending.

7 SECTION 68. AMENDATORY Section 148, Chapter 208, O.S.L.  
8 2013 (85A O.S. Supp. 2016, Section 327), is amended to read as  
9 follows:

10 Section 327. ~~A.~~ A party may appeal the following actions to  
11 the district court as provided in Section ~~149~~ 328 of this ~~act~~ title:

- 12 1. An order denying a motion to compel arbitration;
- 13 2. An order granting a motion to stay arbitration;
- 14 3. An order confirming or denying confirmation of an award;
- 15 4. An order modifying or correcting an award;
- 16 5. An order vacating an award without directing a rehearing; or
- 17 6. A final judgment entered under the Workers' Compensation  
18 Arbitration Act.

19 SECTION 69. AMENDATORY Section 169, Chapter 208, O.S.L.  
20 2013 (85A O.S. Supp. 2016, Section 400), is amended to read as  
21 follows:

22 Section 400. A. The Workers' Compensation Court shall be  
23 renamed the Workers' Compensation Court of Existing Claims for the  
24 purpose of hearing disputes relating to claims that arise before

1 February 1, 2014. The Court shall consist of the existing judges  
2 for the remainder of his or her term. Each judge of the Court shall  
3 continue to serve as the appointment to a designated numbered  
4 position on the Court. The positions shall be numbered one through  
5 ten. The terms of the judges by position number shall expire on the  
6 following dates:

7 Position 1 shall expire 7-1-14.

8 Position 2 shall expire 7-1-14.

9 Position 3 shall expire 7-1-14.

10 Position 4 shall expire 7-1-20.

11 Position 5 shall expire 7-1-20.

12 Position 6 shall expire 7-1-16.

13 Position 7 shall expire 7-1-16.

14 Position 8 shall expire 7-1-20.

15 Position 9 shall expire 7-1-20.

16 Position 10 shall expire 7-1-14.

17 Provided, judges who are serving unexpired terms on the Workers'  
18 Compensation Court on the effective date of this section shall serve  
19 on the Court created by this section until their respective terms  
20 expire as provided in this act. Thereafter, each position shall be  
21 dissolved. After a judge serves this term, such judge shall be  
22 eligible to reapply for an administrative law judge with the  
23 Workers' Compensation Commission.

24

1           When a vacancy on the Court occurs or is certain to occur, the  
2 ~~Workers' Compensation Commission shall assign administrative law~~  
3 ~~judges from the Commission to assist in the duties of the Workers'~~  
4 ~~Compensation Court of Existing Claims~~ Governor shall appoint a  
5 replacement to serve the remainder of the term from a list of three  
6 applicants submitted to the Governor by the Judicial Nominating  
7 Commission.

8           B. A judge may be removed for cause by the Court on the  
9 Judiciary prior to the expiration of his or her term.

10          C. Each judge shall receive a salary equal to that paid to a  
11 district judge of this state, and shall devote full time to his or  
12 her duties and shall not engage in the private practice of law  
13 during the term in office.

14          D. The Court shall operate by the rules adopted by the Workers'  
15 Compensation Court prior to the effective date of this act.

16          E. The Court is hereby designated and confirmed as a court of  
17 record, with respect to any matter within the limits of its  
18 jurisdiction, and within such limits the judges thereof shall  
19 possess the powers and prerogatives of the judges of the other  
20 courts of record of this state, including the power to punish for  
21 contempt those persons who disobey a subpoena, or refuse to be sworn  
22 or to answer as a witness, when lawfully ordered to do so.

23          F. The principal office of the Court shall be situated in the  
24 City of Oklahoma City in quarters assigned by the Office of

1 Management and Enterprise Services. The Court may hold hearings in  
2 any city of this state.

3 G. All county commissioners and presiding district judges of  
4 this state shall make quarters available for the conducting of  
5 hearings by a judge of the Court upon request by the Court.

6 H. Judges of the Workers' Compensation Court of Existing Claims  
7 may punish for direct contempt pursuant to Sections 565, 565.1 and  
8 566 of Title 21 of the Oklahoma Statutes.

9 I. The Court shall be vested with jurisdiction over all claims  
10 filed pursuant to the Workers' Compensation Code or previous statute  
11 in effect on the date of an injury that occurred before February 1,  
12 2014. All claims so filed shall be heard by the judge sitting  
13 without a jury. The Court shall have full power and authority to  
14 determine all questions in relation to payment of claims for  
15 compensation under the provisions of the Workers' Compensation Code.  
16 The Court, upon application of either party, shall order a hearing.  
17 Upon a hearing, either party may present evidence and be represented  
18 by counsel. The decision of the Court shall be final as to all  
19 questions of fact and law; provided, the decision of the Court may  
20 be appealed to the ~~Commission~~ Court en banc or the Supreme Court as  
21 provided by the statute in effect on the date of the injury. The  
22 decision of the Court shall be issued within sixty (60) days  
23 following the submission of the case by the parties. The power and  
24 jurisdiction of the Court over each case shall be continuing and it

1 may, from time to time, make such modifications or changes with  
2 respect to former findings or orders relating thereto if, in its  
3 opinion, it may be justified.

4 ~~J. Any appeal of an order by the Workers' Compensation Court of~~  
5 ~~Existing Claims shall be heard by the Commission en banc. The~~  
6 ~~Commission shall review the decision using an abuse of discretion~~  
7 ~~standard of review. Orders by the Commission may be appealed in~~  
8 ~~accordance with Section 78 of this act.~~

9 ~~K.~~ To protect the integrity of the transition from the Workers'  
10 Compensation Court to the administrative system created by this act,  
11 and to protect all rights and privileges of parties to claims  
12 adjudicated by the Workers' Compensation Court, the Commission shall  
13 retain all remedies and responsibilities of the Workers'  
14 Compensation Court for as long as cases involving claims for  
15 compensation accruing before the effective date of this act but  
16 filed thereafter or which were pending before or adjudicated by the  
17 Workers' Compensation Court shall remain open.

18 ~~L. K.~~ For an injury occurring before ~~the effective date of this~~  
19 ~~act~~ February 1, 2014, all benefits and procedures to obtain benefits  
20 shall be determined by the workers' compensation law of this state  
21 in effect on the date of the injury. ~~Administrative law judges of~~  
22 ~~the Commission shall enforce all final orders of the Workers'~~  
23 ~~Compensation Court in a manner to secure for all parties the due~~  
24



1 ~~process and equal protection guarantees of the Constitution of the~~  
2 ~~State of Oklahoma.~~

3 M. L. All accrued rights and penalties incurred pursuant to a  
4 final order of the Workers' Compensation Court shall be preserved.  
5 ~~Administrative law judges of the Commission shall be authorized to~~  
6 ~~issue orders and conduct legal proceedings to enforce all such~~  
7 ~~accrued rights and penalties incurred.~~ No accrued right, penalty  
8 incurred, or proceeding begun by virtue of a statute repealed by  
9 this act shall be abrogated by the terms of this act.

10 SECTION 70. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 402 of Title 85A, unless there  
12 is created a duplication in numbering, reads as follows:

13 All notices, pleading, orders or other correspondence may be  
14 delivered to or by the Workers' Compensation Court of Existing  
15 Claims by the United States Postal Service, in person, or, as may be  
16 determined by the Administrator of the Court, by facsimile, email or  
17 other electronic means.

18 SECTION 71. AMENDATORY 36 O.S. 2011, Section 1250.5, as  
19 amended by Section 1, Chapter 105, O.S.L. 2012 (36 O.S. Supp. 2016,  
20 Section 1250.5), is amended to read as follows:

21 Section 1250.5 Any of the following acts by an insurer, if  
22 committed in violation of Section 1250.3 of this title, constitutes  
23 an unfair claim settlement practice exclusive of paragraph 16 of  
24

1 this section which shall be applicable solely to health benefit  
2 plans:

3 1. Failing to fully disclose to first party claimants,  
4 benefits, coverages, or other provisions of any insurance policy or  
5 insurance contract when the benefits, coverages or other provisions  
6 are pertinent to a claim;

7 2. Knowingly misrepresenting to claimants pertinent facts or  
8 policy provisions relating to coverages at issue;

9 3. Failing to adopt and implement reasonable standards for  
10 prompt investigations of claims arising under its insurance policies  
11 or insurance contracts;

12 4. Not attempting in good faith to effectuate prompt, fair and  
13 equitable settlement of claims submitted in which liability has  
14 become reasonably clear; provided, however, that in workers'  
15 compensation claims no cause of action shall be commenced unless the  
16 employer or insurance carrier denies a benefit provided by the  
17 Administrative Workers' Compensation Act in writing;

18 5. Failing to comply with the provisions of Section 1219 of  
19 this title;

20 6. Denying a claim for failure to exhibit the property without  
21 proof of demand and unfounded refusal by a claimant to do so;

22 7. Except where there is a time limit specified in the policy,  
23 making statements, written or otherwise, which require a claimant to  
24 give written notice of loss or proof of loss within a specified time

1 limit and which seek to relieve the company of its obligations if  
2 the time limit is not complied with unless the failure to comply  
3 with the time limit prejudices the rights of an insurer;

4 8. Requesting a claimant to sign a release that extends beyond  
5 the subject matter that gave rise to the claim payment;

6 9. Issuing checks or drafts in partial settlement of a loss or  
7 claim under a specified coverage which contain language releasing an  
8 insurer or its insured from its total liability;

9 10. Denying payment to a claimant on the grounds that services,  
10 procedures, or supplies provided by a treating physician or a  
11 hospital were not medically necessary unless the health insurer or  
12 administrator, as defined in Section 1442 of this title, first  
13 obtains an opinion from any provider of health care licensed by law  
14 and preceded by a medical examination or claim review, to the effect  
15 that the services, procedures or supplies for which payment is being  
16 denied were not medically necessary. Upon written request of a  
17 claimant, treating physician, or hospital, the opinion shall be set  
18 forth in a written report, prepared and signed by the reviewing  
19 physician. The report shall detail which specific services,  
20 procedures, or supplies were not medically necessary, in the opinion  
21 of the reviewing physician, and an explanation of that conclusion.  
22 A copy of each report of a reviewing physician shall be mailed by  
23 the health insurer, or administrator, postage prepaid, to the  
24 claimant, treating physician or hospital requesting same within

1 fifteen (15) days after receipt of the written request. As used in  
2 this paragraph, "physician" means a person holding a valid license  
3 to practice medicine and surgery, osteopathic medicine, podiatric  
4 medicine, dentistry, chiropractic, or optometry, pursuant to the  
5 state licensing provisions of Title 59 of the Oklahoma Statutes;

6 11. Compensating a reviewing physician, as defined in paragraph  
7 10 of this subsection, on the basis of a percentage of the amount by  
8 which a claim is reduced for payment;

9 12. Violating the provisions of the Health Care Fraud  
10 Prevention Act;

11 13. Compelling, without just cause, policyholders to institute  
12 suits to recover amounts due under its insurance policies or  
13 insurance contracts by offering substantially less than the amounts  
14 ultimately recovered in suits brought by them, when the  
15 policyholders have made claims for amounts reasonably similar to the  
16 amounts ultimately recovered;

17 14. Failing to maintain a complete record of all complaints  
18 which it has received during the preceding three (3) years or since  
19 the date of its last financial examination conducted or accepted by  
20 the Commissioner, whichever time is longer. This record shall  
21 indicate the total number of complaints, their classification by  
22 line of insurance, the nature of each complaint, the disposition of  
23 each complaint, and the time it took to process each complaint. For  
24

1 the purposes of this paragraph, "complaint" means any written  
2 communication primarily expressing a grievance;

3 15. Requesting a refund of all or a portion of a payment of a  
4 claim made to a claimant or health care provider more than twenty-  
5 four (24) months after the payment is made. This paragraph shall  
6 not apply:

7 a. if the payment was made because of fraud committed by  
8 the claimant or health care provider, or

9 b. if the claimant or health care provider has otherwise  
10 agreed to make a refund to the insurer for overpayment  
11 of a claim;

12 16. Failing to pay, or requesting a refund of a payment, for  
13 health care services covered under the policy if a health benefit  
14 plan, or its agent, has provided a preauthorization or  
15 precertification and verification of eligibility for those health  
16 care services. This paragraph shall not apply if:

17 a. the claim or payment was made because of fraud  
18 committed by the claimant or health care provider,

19 b. the subscriber had a preexisting exclusion under the  
20 policy related to the service provided, or

21 c. the subscriber or employer failed to pay the  
22 applicable premium and all grace periods and  
23 extensions of coverage have expired; or  
24

1 17. Denying or refusing to accept an application for life  
2 insurance, or refusing to renew, cancel, restrict or otherwise  
3 terminate a policy of life insurance, or charge a different rate  
4 based upon the lawful travel destination of an applicant or insured  
5 as provided in Section 4024 of this title.

6 SECTION 72. AMENDATORY 62 O.S. 2011, Section 195, as  
7 amended by Section 458, Chapter 304, O.S.L. 2012 (62 O.S. Supp.  
8 2016, Section 195), is amended to read as follows:

9 Section 195. A. 1. There is hereby created a petty cash fund  
10 at each of the following institutions: Oklahoma School for the  
11 Blind, Muskogee, Oklahoma; Oklahoma School for the Deaf, Sulphur,  
12 Oklahoma; Griffin Memorial Hospital, Norman, Oklahoma; Eastern State  
13 Hospital, Vinita, Oklahoma; Northern Oklahoma Resource Center of  
14 Enid, Enid, Oklahoma; Southern Oklahoma Resource Center of Pauls  
15 Valley, Pauls Valley, Oklahoma; Western State Psychiatric Center,  
16 Fort Supply, Oklahoma; Central Oklahoma Juvenile Treatment Center,  
17 Tecumseh, Oklahoma; L.E. Rader Children's Diagnostic and Evaluation  
18 Center, Sand Springs, Oklahoma; L.E. Rader Intensive Treatment  
19 Center, Sand Springs, Oklahoma; the Southwest Oklahoma Juvenile  
20 Center, Manitou, Oklahoma; the Office of Juvenile Affairs' Boys'  
21 Group Home, Enid, Oklahoma; the Office of Juvenile Affairs' Boys'  
22 Group Home, Lawton, Oklahoma; the Office of Juvenile Affairs' Girls'  
23 Group Home, Tulsa, Oklahoma; the Oklahoma Medical Center; and the  
24 J.D. McCarty Center for Children with Developmental Disabilities.

1           2. The Director of the Office of Management and Enterprise  
2 Services and the head of the institution involved are hereby  
3 authorized and it shall be their duty to fix the maximum amount of  
4 the petty cash funds. The Director of the Office of Management and  
5 Enterprise Services shall prescribe all forms, systems, and  
6 procedures for administering the petty cash funds of the  
7 institution.

8           B. 1. There is hereby created a petty cash fund in the legal  
9 division of the Department of Human Services which fund shall be  
10 used solely to pay court costs, filing fees, witness fees, and  
11 expenses related to any case or proceeding within the responsibility  
12 of the legal division.

13           2. There is hereby created a petty cash fund in the Child  
14 Support Enforcement Division of the Department of Human Services.  
15 The fund shall be used solely to pay litigation expenses, including  
16 court costs, filing fees, witness fees, and expenses related to any  
17 case or proceeding within the responsibility of the Child Support  
18 Enforcement Division.

19           3. The Director of the Office of Management and Enterprise  
20 Services and the Director of the Department of Human Services are  
21 hereby authorized and it shall be their duty to fix the maximum  
22 amount of the petty cash funds. The Director of the Office of  
23 Management and Enterprise Services shall prescribe all forms,  
24 systems, and procedures for administering the petty cash funds.

1 C. 1. There is hereby created a petty cash fund in the finance  
2 department of the Corporation Commission which shall be used solely  
3 to pay litigation expenses of the legal division, including court  
4 costs, filing fees, witness fees, and other expenses related to any  
5 case, proceeding, or matter within the responsibility of the legal  
6 division.

7 2. The Director of the Office of Management and Enterprise  
8 Services and the Corporation Commission are hereby authorized and it  
9 shall be their duty to fix the maximum amount of the petty cash  
10 fund, not to exceed Five Hundred Dollars (\$500.00). The Director of  
11 the Office of Management and Enterprise Services shall prescribe all  
12 forms, systems, and procedures for administering the petty cash  
13 fund.

14 D. 1. There is hereby created a petty cash fund for the  
15 Property Distribution Division of the Office of Management and  
16 Enterprise Services.

17 2. The amount of the Property Distribution petty cash fund  
18 shall not exceed Five Hundred Dollars (\$500.00). The initial amount  
19 shall be drawn by warrant from the State Surplus Property Revolving  
20 Fund. The Director of the Office of Management and Enterprise  
21 Services is authorized to prescribe forms, systems and procedures  
22 for the administration of the Property Distribution petty cash fund.

23 E. 1. There is hereby created a petty cash fund in the legal  
24 division of the Oklahoma Health Care Authority which fund shall be



1 used solely to pay for court costs, filing fees, witness fees, and  
2 expenses related to any case or proceeding within the responsibility  
3 of the legal division.

4 2. The Director of the Office of Management and Enterprise  
5 Services and the Chief Executive Officer of the Oklahoma Health Care  
6 Authority are hereby authorized and it shall be their duty to fix  
7 the maximum amount of the petty cash fund, not to exceed Five  
8 Hundred Dollars (\$500.00). The Director of the Office of Management  
9 and Enterprise Services shall prescribe all forms, systems, and  
10 procedures for administering the petty cash fund.

11 F. 1. The Director of the Office of Management and Enterprise  
12 Services is hereby authorized, upon request by the State  
13 Commissioner of Health, to establish a petty cash fund for the State  
14 Department of Health in an amount not to exceed One Thousand Dollars  
15 (\$1,000.00), to be used for the purpose of making change for persons  
16 obtaining licenses, paying fees and fines, and transacting other  
17 such business with the Department.

18 2. The fund shall be established and replenished from any  
19 monies available to the Department for operating expenses.

20 3. The Director of the Office of Management and Enterprise  
21 Services shall prescribe all forms, systems, and procedures for  
22 administering the fund.

23 G. There is hereby created a petty cash fund for the Workers'  
24 Compensation Commission which shall be used to make change for

1 persons purchasing printed or electronic materials from the  
2 Commission, paying fees and fines, and transacting other business  
3 with the Commission. The fund shall be established and replenished  
4 from any monies available to the Commission for operating expenses.  
5 The Director of the Office of Management and Enterprise Services and  
6 the Workers' Compensation Commission are hereby authorized and it  
7 shall be their duty to fix the maximum amount of the petty cash  
8 fund, not to exceed Five Hundred Dollars (\$500.00). The Director of  
9 the Office of Management and Enterprise Services shall prescribe all  
10 forms, systems and procedures for administering the petty cash fund.

11 SECTION 73. REPEALER Section 15, Chapter 208, O.S.L.  
12 2013 (85A O.S. Supp. 2016, Section 15), is hereby repealed.

13 SECTION 74. This act shall become effective November 1, 2017.

14 Passed the House of Representatives the 20th day of March, 2017.

15

16

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\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

18

19

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2017.

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Presiding Officer of the Senate

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