

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1921

By: Kannady

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to workers' compensation; amending
10 Sections 2, 3, 5, 7, 11, 16, 18, 19, as amended by
11 Section 4, H.J.R. No. 1096, p. 1747, O.S.L. 2014, 21,
12 22, 27, 29, 30, 31, as amended by Section 3, Chapter
13 344, O.S.L. 2015, 32, 33, 34, 38, 43, 45, as amended
14 by Section 2, Chapter 390, O.S.L. 2015, 46, 50, 53,
15 57, 60, 61, 62, 65, as amended by Section 3, Chapter
16 390, O.S.L. 2015, 66, 67, 69, 71, 78, 80, 82, 86, 87,
17 90, 101, 105, 155, 158, 161, 163, 164, 165, as
18 amended by Section 4, Chapter 344, O.S.L. 2015, 121,
19 125, 126, 133, 134, 135, 137, 139, 141, 142, 143,
20 144, 148 and 169, Chapter 208, O.S.L. 2013 (85A O.S.
21 Supp. 2016, Sections 2, 3, 5, 7, 11, 16, 18, 19, 21,
22 22, 27, 29, 30, 31, 32, 33, 34, 38, 43, 45, 46, 50,
23 53, 57, 60, 61, 62, 65, 66, 67, 69, 71, 78, 80, 82,
24 86, 87, 90, 101, 105, 112, 115, 118, 120, 121, 122,
 300, 304, 305, 312, 313, 314, 316, 318, 320, 321,
 322, 323, 327 and 400), which relate to notice, the
 Workers' Compensation Commission, fees, liability,
 securing compensation, disability, occupational
 disease, investigation and hearing, appeals, review
 of judgments, claims for legal services, bond,
 employees as witnesses, settlement, compensation
 claims, Advisory Council on Workers' Compensation and
 Workers' Compensation Court; modifying definitions;
 clarifying applicability of act; modifying scope of
 immunity; modifying jurisdiction over certain
 discrimination and retaliation matters; eliminating
 certain awards and costs; clarifying when spouse and
 dependents of alien nonresidents are entitled to
 compensation; modifying role of official disability

1 guidelines; adding methods of providing certain
2 notice; modifying powers and duties of Commission;
3 modifying duties of administrative law judges;
4 modifying requirements for certain fees; modifying
5 definition of physically impaired person; providing
6 for certain surcharge; providing for certain awards
7 relating to additional permanent disability;
8 modifying procedures and restrictions relating to the
9 Multiple Injury Trust Fund; modifying period of
10 payment; limiting fees for certain legal services;
11 modifying statute of limitation regarding the
12 Multiple Injury Trust Fund; modifying authority of
13 the Multiple Injury Trust Fund Director; providing
14 for Affidavits of Exempt Status; modifying certain
15 rulemaking authority; modifying rates for temporary
16 total and temporary partial disability; providing for
17 right of recovery for certain overpayments; modifying
18 rates for permanent partial and permanent total
19 disability; modifying rates for amputation or loss of
20 use of scheduled body part; modifying fee schedule
21 requirements; requiring use of certain pharmacies;
22 requiring approved prescriptions for payment for
23 certain medications and medical items; requiring
24 development of rules relating to licensing of
Pharmacy Benefit Managers; requiring reporting of
overcharging for prescription drugs and certain
tests; modifying bar to right to certain
compensation; providing procedures and requirements
pertaining to surgery that is subject to choice;
modifying prohibition relating to missed treatment
appointments; modifying notice requirement relating
to hernias; clarifying what constitutes an injection
for treatment of nonsurgical soft tissue injuries;
modifying what constitutes a soft tissue injury;
modifying employer liability for occupational
diseases; modifying standard of evidence in silicosis
and asbestosis claims; eliminating certain authority
of the Commission relating to silicosis and
asbestosis claims; modifying procedures relating to
occupational disease or cumulative trauma claims;
providing for payment for prescription drugs during
certain period of time; requiring reimbursement in
certain circumstances; modifying requirements and
procedures for review or denial of review for certain
judgments, awards and decisions; modifying definition
of controverted claim; eliminating certain notice
requirement; making certain notice optional;

1 providing procedure for certain Supreme Court review;
2 providing exceptions to prohibition on testimony by
3 Commission employees; specifying time requirements
4 pertaining to certain determinations by independent
5 medical examiners; providing for certain memorandum
6 of agreement; expanding collection of certain fees;
7 modifying allowable locations for certain hearings;
8 authorizing appointment of certain judge for
9 specified purpose; modifying procedures for review of
10 certain judgments; modifying certain notice
11 requirement; adding bond requirement for certain
12 proceedings; modifying date for implementation of
13 certain system; requiring filing of certain
14 agreements; requiring fee for certain claims;
15 clarifying form of certain inquiry; modifying duties
16 of Advisory Council on Workers' Compensation;
17 increasing distribution to the Multiple Injury Trust
18 Fund; modifying procedure for filling vacancies on
19 the Workers' Compensation Court of Existing Claims;
20 modifying certain appellate procedure; updating
21 statutory references; amending arbitration
22 requirements and procedures; updating statutory
23 references; amending 36 O.S. 2011, Section 1250.5, as
24 amended by Section 1, Chapter 105, O.S.L. 2012 (36
O.S. Supp. 2016, Section 1250.5), which relates to
the Unfair Claims Settlement Practices Act; modifying
what constitutes an unfair claim settlement practice;
repealing Section 15, Chapter 208, O.S.L. 2013 (85A
O.S. Supp. 2016, Section 15), which relates to Fraud
Investigation Unit funding report; repealing Section
36, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2016,
Section 36), which relates to liability other than
immediate employer; providing for codification; and
providing an effective date.

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

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

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

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

6 2. "Carrier" means any stock company, mutual company, or
7 reciprocal or interinsurance exchange authorized to write or carry
8 on the business of workers' compensation insurance in this state.

9 Whenever required by the context, the term "carrier" shall be deemed
10 to include duly qualified self-insureds or self-insured groups;

11 3. "Case management" means the ongoing coordination, by a case
12 manager, of health care services provided to an injured or disabled
13 worker, including but not limited to systematically monitoring the
14 treatment rendered and the medical progress of the injured or
15 disabled worker; ensuring that any treatment plan follows all
16 appropriate treatment protocols, utilization controls and practice
17 parameters; assessing whether alternative health care services are
18 appropriate and delivered in a cost-effective manner based upon
19 acceptable medical standards; and ensuring that the injured or
20 disabled worker is following the prescribed health care plan;

21 4. "Case manager" means a person who is a registered nurse with
22 a current, active unencumbered license from the Oklahoma Board of
23 Nursing, or possesses one or more of the following certifications
24 which indicate the individual has a minimum number of years of case

1 management experience, has passed a national competency test and
2 regularly obtains continuing education hours to maintain
3 certification:

- 4 a. Certified Disability Management Specialist (CDMS),
- 5 b. Certified Case Manager (CCM),
- 6 c. Certified Rehabilitation Registered Nurse (CRRN),
- 7 d. Case Manager - Certified (CMC),
- 8 e. Certified Occupational Health Nurse (COHN), or
- 9 f. Certified Occupational Health Nurse Specialist (COHN-
10 S);

11 5. "Certified workplace medical plan" means an organization of
12 health care providers or any other entity, certified by the State
13 Commissioner of Health, that is authorized to enter into a
14 contractual agreement with an employer, group self-insurance
15 association plan, an employer's workers' compensation insurance
16 carrier, third-party administrator or an insured to provide medical
17 care under the Administrative Workers' Compensation Act. Certified
18 plans shall only include plans which provide medical services and
19 payment for services on a fee-for-service basis to medical
20 providers;

21 6. "Child" means a natural or adopted son or daughter of the
22 employee under eighteen (18) years of age; or a natural or adopted
23 son or daughter of an employee eighteen (18) years of age or over
24 who is physically or mentally incapable of self-support; or any

1 natural or adopted son or daughter of an employee eighteen (18)
2 years of age or over who is actually dependent; or any natural or
3 adopted son or daughter of an employee between eighteen (18) and
4 twenty-three (23) years of age who is enrolled as a full-time
5 student in any accredited educational institution. The term "child"
6 includes a posthumous child, a child legally adopted or one for whom
7 adoption proceedings are pending at the time of death, an actually
8 dependent stepchild or an actually dependent acknowledged child born
9 out of wedlock;

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

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

14 9. a. "Compensable injury" means damage or harm to the
15 physical structure of the body, or prosthetic
16 appliances, including eyeglasses, contact lenses, or
17 hearing aids, caused solely as the result of either an
18 accident, cumulative trauma or occupational disease
19 arising out of the course and scope of employment. An
20 "accident" means an event involving factors external
21 to the employee that:

22 (1) was unintended, unanticipated, unforeseen,
23 unplanned and unexpected,
24

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

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

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

6 b. "Compensable injury" does not include:

7 (1) injury to any active participant in assaults or
8 combats which, although they may occur in the
9 workplace, are the result of non-employment-
10 related hostility or animus of one, both, or all
11 of the combatants and which assault or combat
12 amounts to a deviation from customary duties;
13 provided, however, injuries caused by horseplay
14 shall not be considered to be compensable
15 injuries, except for innocent victims,

16 (2) injury incurred while engaging in or performing
17 or as the result of engaging in or performing any
18 recreational or social activities for the
19 employee's personal pleasure,

20 (3) injury which was inflicted on the employee at a
21 time when employment services were not being
22 performed or before the employee was hired or
23 after the employment relationship was terminated,
24

1 (4) injury where the accident was caused by the use
2 of alcohol, illegal drugs, or prescription drugs
3 used in contravention of physician's orders. If,
4 within twenty-four (24) hours of being injured or
5 reporting an injury, an employee tests positive
6 for intoxication, an illegal controlled
7 substance, or a legal controlled substance used
8 in contravention to a treating physician's
9 orders, or refuses to undergo the drug and
10 alcohol testing, there shall be a rebuttable
11 presumption that the injury was caused by the use
12 of alcohol, illegal drugs, or prescription drugs
13 used in contravention of physician's orders.
14 This presumption may only be overcome if the
15 employee proves by clear and convincing evidence
16 that his or her state of intoxication had no
17 causal relationship to the injury,

18 (5) any strain, degeneration, damage or harm to, or
19 disease or condition of, the eye or
20 musculoskeletal structure or other body part
21 resulting from the natural results of aging,
22 osteoarthritis, arthritis, or degenerative
23 process including, but not limited to,
24 degenerative joint disease, degenerative disc

1 disease, degenerative

2 spondylosis/spondylolisthesis and spinal

3 stenosis, or

4 (6) any preexisting condition except when the
5 treating physician clearly confirms an
6 identifiable and significant aggravation incurred
7 in the course and scope of employment.

8 c. The definition of "compensable injury" shall not be
9 construed to limit or abrogate the right to recover
10 for mental injuries as described in Section 13 of this
11 ~~act~~ title, heart or lung injury or illness as
12 described in Section 14 of this ~~act~~ title, or
13 occupational diseases as described in Section 65 of
14 this ~~act~~ title.

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

18 e. The injured employee shall prove by a preponderance of
19 the evidence that he or she has suffered a compensable
20 injury.

21 f. Benefits shall not be payable for a condition which
22 results from a non-work-related independent
23 intervening cause following a compensable injury which
24 causes or prolongs disability, aggravation, or

1 requires treatment. A non-work-related independent
2 intervening cause does not require negligence or
3 recklessness on the part of a claimant.

4 g. An employee who suffers a compensable injury shall be
5 entitled to receive compensation as prescribed in this
6 act. Notwithstanding other provisions of law, if it
7 is determined that a compensable injury did not occur,
8 the employee shall not be entitled to compensation
9 under this act;

10 10. "Compensation" means the money allowance payable to the
11 employee or to his or her dependents and includes the medical
12 services and supplies provided for in Section 50 of this ~~act~~ title
13 and funeral expenses;

14 11. "Consequential injury" means injury or harm to a part of
15 the body that is a direct result of the injury or medical treatment
16 to the part of the body originally injured in the claim. The
17 Commission shall not make a finding of a consequential injury unless
18 it is established by objective medical evidence that medical
19 treatment for such part of the body is required;

20 12. "Continuing medical maintenance" means medical treatment
21 that is reasonable and necessary to maintain claimant's condition
22 resulting from the compensable injury or illness after reaching
23 maximum medical improvement. Continuing medical maintenance shall
24 not include diagnostic tests, surgery, injections, counseling,

1 physical therapy, or pain management devices or equipment unless the
2 Commission finds it is in the best interest of the employee.
3 Continuing medical maintenance shall not be awarded in excess of two
4 (2) years beyond the date permanent partial disability or permanent
5 total disability is awarded unless, after hearing, the Commission
6 determines there is clear and convincing evidence that such
7 treatment is reasonable and necessary and should continue;

8 13. "Course and scope of employment" means an activity of any
9 kind or character for which the employee was hired and that relates
10 to and derives from the work, business, trade or profession of an
11 employer, and is performed by an employee in the furtherance of the
12 affairs or business of an employer. The term includes activities
13 conducted on the premises of an employer or at other locations
14 designated by an employer and travel by an employee in furtherance
15 of the affairs of an employer that is specifically directed by the
16 employer. This term does not include:

- 17 a. an employee's transportation to and from his or her
18 place of employment,
- 19 b. travel by an employee in furtherance of the affairs of
20 an employer if the travel is also in furtherance of
21 personal or private affairs of the employee,
- 22 c. any injury occurring in a parking lot or other common
23 area adjacent to an employer's place of business
24 before the employee clocks in or otherwise begins work

1 for the employer or after the employee clocks out or
2 otherwise stops work for the employer, unless the
3 employer owns or maintains control of such area, or

4 d. any injury occurring while an employee is on a work
5 break, unless the injury occurs while the employee is
6 on a work break inside the employer's facility or in
7 an area owned by or controlled by the employer and the
8 work break is authorized by the employee's supervisor;

9 14. "Cumulative trauma" means an injury to an employee that is
10 caused by the combined effect of repetitive physical activities
11 extending over a period of time in the course and scope of
12 employment. Cumulative trauma shall not mean fatigue, soreness or
13 general aches and pain that may have been caused, aggravated,
14 exacerbated or accelerated by the employee's course and scope of
15 employment. Cumulative trauma shall have resulted directly and
16 independently of all other causes ~~and the employee shall have~~
17 ~~completed at least one hundred eighty (180) days of continuous~~
18 ~~active employment with the employer;~~

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

21 16. "Disability" means ~~incapacity because of compensable injury~~
22 ~~to earn, in the same or any other employment, substantially the same~~
23 ~~amount of wages the employee was receiving at the time of the~~

1 ~~compensable injury~~ the loss of use or function of a part of the body
2 which must be proved by objective medical evidence;

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

8 18. a. "Employee" means any person, including a minor, in the
9 service of an employer under any contract of hire or
10 apprenticeship, written or oral, expressed or implied,
11 but excluding one whose employment is casual and not
12 in the course of the trade, business, profession, or
13 occupation of his or her employer and excluding one
14 who is required to perform work for a municipality or
15 county or the state or federal government on having
16 been convicted of a criminal offense or while
17 incarcerated. "Employee" shall also include a member
18 of the Oklahoma National Guard while in the
19 performance of duties only while in response to state
20 orders and any authorized voluntary or uncompensated
21 worker, rendering services as a firefighter, peace
22 officer or emergency management worker. Travel by a
23 policeman, fireman, or a member of a first aid or
24 rescue squad, in responding to and returning from an

1 emergency, shall be deemed to be in the course of
2 employment.

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

4 (1) any person for whom an employer is liable under
5 any Act of Congress for providing compensation to
6 employees for injuries, disease or death arising
7 out of and in the course of employment including,
8 but not limited to, the Federal Employees'
9 Compensation Act, the Federal Employers'
10 Liability Act, the Longshore and Harbor Workers'
11 Compensation Act and the Jones Act, to the extent
12 his or her employees are subject to such acts,

13 (2) any person who is employed in agriculture or
14 horticulture by an employer who had a gross
15 annual payroll in the preceding calendar year of
16 less than One Hundred Thousand Dollars

17 (\$100,000.00) wages for agricultural or
18 horticultural workers, or any person who is
19 employed in agriculture or horticulture who is
20 not engaged in operation of motorized machines,

21 (3) any person who is a licensed real estate sales
22 associate or broker, paid on a commission basis,

23 (4) any person who is providing services in a medical
24 care or social services program, or who is a

1 participant in a work or training program,
2 administered by the Department of Human Services,
3 unless the Department is required by federal law
4 or regulations to provide workers' compensation
5 for such person. This division shall not be
6 construed to include nursing homes,

7 (5) any person employed by an employer with five or
8 fewer total employees, ~~all of whom~~ who are
9 related within the second degree by blood or
10 marriage to the employer, or are dependents
11 living in the household of the employer if the
12 employer is a natural person or a general or
13 limited partnership, ~~or~~ an incorporator of a
14 corporation formed under the laws of this state
15 or another state if the corporation is the
16 employer, or a member or manager of a limited
17 liability company formed under the laws of this
18 state or another state if the limited liability
19 company is the employer,

20 (6) any person employed by an employer which is a
21 youth sports league which qualifies for exemption
22 from federal income taxation pursuant to federal
23 law,
24

- 1 (7) sole proprietors, members of a partnership,
2 individuals who are party to a franchise
3 agreement as set out by the Federal Trade
4 Commission franchise disclosure rule, 16 CFR
5 436.1 through 436.11, members of a limited
6 liability company who own at least ten percent
7 (10%) of the capital of the limited liability
8 company or any stockholder-employees of a
9 corporation who own ten percent (10%) or more
10 stock in the corporation, unless they elect to be
11 covered by a policy of insurance covering
12 benefits under the Administrative Workers'
13 Compensation Act,
- 14 (8) any person providing or performing voluntary
15 service who receives no wages for the services
16 other than meals, drug or alcohol rehabilitative
17 therapy, transportation, lodging or reimbursement
18 for incidental expenses except for volunteers
19 specifically provided for in subparagraph a of
20 this paragraph,
- 21 (9) a person, commonly referred to as an owner-
22 operator, who owns or leases a truck-tractor or
23 truck for hire, if the owner-operator actually
24 operates the truck-tractor or truck and if the

1 person contracting with the owner-operator is not
2 the lessor of the truck-tractor or truck.

3 Provided, however, an owner-operator shall not be
4 precluded from workers' compensation coverage
5 under the Administrative Workers' Compensation
6 Act if the owner-operator elects to participate
7 as a sole proprietor,

8 (10) a person referred to as a drive-away owner-
9 operator who privately owns and utilizes a tow
10 vehicle in drive-away operations and operates
11 independently for hire, if the drive-away owner-
12 operator actually utilizes the tow vehicle and if
13 the person contracting with the drive-away owner-
14 operator is not the lessor of the tow vehicle.

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

20 (11) any person who is employed as a domestic servant
21 or as a casual worker in and about a private home
22 or household, which private home or household had
23 a gross annual payroll in the preceding calendar
24

1 year of less than Fifty Thousand Dollars
2 (\$50,000.00) for such workers;

3 19. "Employer" means a person, partnership, association,
4 limited liability company, corporation, and the legal
5 representatives of a deceased employer, or the receiver or trustee
6 of a person, partnership, association, corporation, or limited
7 liability company, departments, instrumentalities and institutions
8 of this state and divisions thereof, counties and divisions thereof,
9 public trusts, boards of education and incorporated cities or towns
10 and divisions thereof, employing a person included within the term
11 "employee" as defined in this section. Employer may also mean the
12 employer's workers' compensation insurance carrier, if applicable.
13 Except as provided otherwise, this act applies to all public and
14 private entities and institutions. Employer shall not include a
15 qualified employer with an employee benefit plan as provided under
16 the Oklahoma Employee Injury Benefit Act in Sections ~~107~~ 200 through
17 ~~120~~ 213 of this ~~act~~ title;

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

22 21. "Evidence-based" means expert-based, literature-supported
23 and outcomes validated by well-designed randomized trials when such
24

1 information is available and which uses the best available evidence
2 to support medical decision making;

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

6 23. "Impaired self-insurer" means a private self-insurer or
7 group self-insurance association that fails to pay its workers'
8 compensation obligations, or is financially unable to do so and is
9 the subject of any proceeding under the Federal Bankruptcy Reform
10 Act of 1978, and any subsequent amendments or is the subject of any
11 proceeding in which a receiver, custodian, liquidator,
12 rehabilitator, trustee or similar officer has been appointed by a
13 court of competent jurisdiction to act in lieu of or on behalf of
14 the self-insurer;

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

17 25. "Insurance Commissioner" means the Insurance Commissioner
18 of the State of Oklahoma;

19 26. "Insurance Department" means the Insurance Department of
20 the State of Oklahoma;

21 27. "Major cause" means more than fifty percent (50%) of the
22 resulting injury, disease or illness. A finding of major cause
23 shall be established by a preponderance of the evidence. A finding
24 that the workplace was not a major cause of the injury, disease or

1 illness shall not adversely affect the exclusive remedy provisions
2 of this act and shall not create a separate cause of action outside
3 this act;

4 28. "Maximum medical improvement" means that no further
5 material improvement would reasonably be expected from medical
6 treatment or the passage of time;

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

9 30. "Misconduct" shall include the following:

- 10 a. unexplained absenteeism or tardiness,
 - 11 b. willful or wanton indifference to or neglect of the
12 duties required,
 - 13 c. willful or wanton breach of any duty required by the
14 employer,
 - 15 d. the mismanagement of a position of employment by
16 action or inaction,
 - 17 e. actions or omissions that place in jeopardy the
18 health, life, or property of self or others,
 - 19 f. dishonesty,
 - 20 g. wrongdoing,
 - 21 h. violation of a law, or
 - 22 i. a violation of a policy or rule adopted to ensure
23 orderly work or the safety of self or others;
- 24

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

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

9 (b) For the purpose of making permanent
10 disability ratings to the spine, physicians
11 shall use criteria established by the most
12 current edition of the American Medical
13 ~~Association~~ Association's "Guides to the
14 Evaluation of Permanent Impairment".

15 (3) (a) Objective evidence necessary to prove
16 permanent disability in occupational hearing
17 loss cases may be established by medically
18 recognized and accepted clinical diagnostic
19 methodologies, including, but not limited
20 to, audiological tests that measure air and
21 bone conduction thresholds and speech
22 discrimination ability.

23 (b) Any difference in the baseline hearing
24 levels shall be confirmed by subsequent

1 testing; provided, however, such test shall
2 be given within four (4) weeks of the
3 initial baseline hearing level test but not
4 before five (5) days after being adjusted
5 for presbycusis.

6 b. Medical opinions addressing compensability and
7 permanent disability shall be stated within a
8 reasonable degree of medical certainty;

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

12 33. "Permanent disability" means the extent, expressed as a
13 percentage, of the loss of a portion of the total physiological
14 capabilities of the human body as established by competent medical
15 evidence and based on the current edition of the American Medical
16 Association guides to the evaluation of impairment, if the
17 impairment is contained therein. Loss of earning capacity directly
18 related to the permanent loss of use of a part of the body shall be
19 considered when determining permanent disability, but shall not
20 constitute a separate remedy under the Administrative Workers'
21 Compensation Act;

22 34. "Permanent partial disability" means a permanent disability
23 or loss of use of a part of the body after maximum medical
24 improvement has been reached ~~which prevents the injured employee,~~

1 ~~who has been released to return to work by the treating physician,~~
2 ~~from returning to his or her pre-injury or equivalent job.~~ All
3 evaluations of permanent partial disability must be supported by
4 objective findings;

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

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

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

21 38. "Private self-insurer" means a private employer that has
22 been authorized to self-insure its workers' compensation obligations
23 pursuant to this act, but does not include group self-insurance
24

1 associations authorized by this act, or any public employer that
2 self-insures pursuant to this act;

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

6 40. "Scheduled member" or "member" means hands, fingers, arms,
7 legs, feet, toes, and eyes. In addition, for purposes of the
8 Multiple Injury Trust Fund only, "scheduled member" means hearing
9 impairment;

10 41. "Scientifically based" involves the application of
11 rigorous, systematic, and objective procedures to obtain reliable
12 and valid knowledge relevant to medical testing, diagnoses and
13 treatment; is adequate to justify the general conclusions drawn; and
14 has been accepted by a peer-review journal or approved by a panel of
15 independent experts through a comparably rigorous, objective, and
16 scientific review;

17 42. "State average weekly wage" means the state average weekly
18 wage determined by the Oklahoma Employment Security Commission in
19 the preceding calendar year. If such determination is not
20 available, the Commission shall determine the wage annually after
21 reasonable investigation;

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

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

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

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

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

13 48. "Wages" means money compensation received for employment at
14 the time of the accident, including the reasonable value of board,
15 rent, housing, lodging, or similar advantage received from the
16 employer and includes the amount of tips required to be reported by
17 the employer under Section 6053 of the Internal Revenue Code and the
18 regulations promulgated pursuant thereto or the amount of actual
19 tips reported, whichever amount is greater.

20 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2016, Section 3), is amended to read as
22 follows:

23 Section 3. A. ~~Every employer and every employee, unless~~
24 ~~otherwise specifically provided in this act, shall be~~ subject and

1 bound to the provisions of the Administrative Workers' Compensation
2 Act shall pay or provide benefits according to the provisions of
3 this act for the accidental injury or death of an employee arising
4 out of and in the course of his or her employment, without regard to
5 fault for such injury, if the employee's contract of employment was
6 made or if the injury occurred within this state. If an employee
7 makes claim for an injury in another jurisdiction and a final
8 adjudication is entered in the case, the employee is precluded from
9 his or her right of action under the Administrative Workers'
10 Compensation Act of this state. If the employee brings an action in
11 this state prior to a final adjudication in another jurisdiction,
12 any receipt of benefits in the other jurisdiction shall not bar the
13 action in this state; provided, however, in no event shall the
14 Workers' Compensation Commission grant benefits that duplicate those
15 paid by the employer or insurance carrier in the other jurisdiction.
16 ~~However, nothing~~ Nothing in this act shall be construed to conflict
17 with any valid Act of Congress governing the liability of employers
18 for injuries received by their employees.

19 B. The State of Oklahoma accepts the provisions of the Acts of
20 Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C.,
21 Section 290, and hereby extends the territorial jurisdiction of the
22 Administrative Workers' Compensation Act to all lands and premises
23 within the exterior boundaries of this state which the Government of
24 the United States of America owns or holds by deed or act of

1 cession, and to all purchases, projects, buildings, constructions,
2 improvements and property within the exterior boundaries of this
3 state belonging to the Government of the United States of America,
4 in the same way and to the same extent as if the premises were under
5 the exclusive jurisdiction of this state, subject only to the
6 limitations placed thereon by the Acts of Congress.

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

10 ~~C.~~ D. The Workers' Compensation Code in effect before ~~the~~
11 ~~effective date of this act~~ February 1, 2014, shall govern all rights
12 in respect to claims for injuries and death based on accidents
13 occurring before ~~the effective date of this act~~ February 1, 2014.

14 SECTION 3. AMENDATORY Section 5, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2016, Section 5), is amended to read as
16 follows:

17 Section 5. A. The rights and remedies granted to an employee
18 subject to the provisions of the Administrative Workers'
19 Compensation Act shall be exclusive of all other rights and remedies
20 of the employee, his legal representative, dependents, next of kin,
21 or anyone else claiming rights to recovery on behalf of the employee
22 against the employer, or any principal, officer, director, employee,
23 stockholder, partner, or prime contractor of the employer on account
24 of injury, illness, or death. Negligent acts of a co-employee may

1 not be imputed to the employer. No role, capacity, or persona of
2 any employer, principal, officer, director, employee, or stockholder
3 other than that existing in the role of employer of the employee
4 shall be relevant for consideration for purposes of this act, and
5 the remedies and rights provided by this act shall be exclusive
6 regardless of the multiple roles, capacities, or personas the
7 employer may be deemed to have. ~~For the purpose of extending the~~
8 ~~immunity of this section, any operator or owner of an oil or gas~~
9 ~~well or other operation for exploring for, drilling for, or~~
10 ~~producing oil or gas shall be deemed to be an intermediate or~~
11 ~~principal employer for services performed at a drill site or~~
12 ~~location with respect to injured or deceased workers whose immediate~~
13 ~~employer was hired by such operator or owner at the time of the~~
14 ~~injury or death.~~

15 B. Exclusive remedy shall not apply if:

16 1. An employer fails to secure the payment of compensation due
17 to the employee as required by this act. An injured employee, or
18 his or her legal representative in case death results from the
19 injury, may, at his or her option, elect to claim compensation under
20 this act or to maintain a legal action in court for damages on
21 account of the injury or death; or

22 2. The injury was caused by an intentional tort committed by
23 the employer. An intentional tort shall exist only when the
24 employee is injured as a result of willful, deliberate, specific

1 intent of the employer to cause such injury. Allegations or proof
2 that the employer had knowledge that the injury was substantially
3 certain to result from the employer's conduct shall not constitute
4 an intentional tort. The employee shall plead facts that show it is
5 at least as likely as it is not that the employer acted with the
6 purpose of injuring the employee. The issue of whether an act is an
7 intentional tort shall be a question of law.

8 C. The immunity from civil liability described in subsection A
9 of this section shall apply regardless of whether the injured
10 employee is denied compensation or deemed ineligible to receive
11 compensation under this act.

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

17 E. The immunity created by the provisions of this section shall
18 not extend to action against another employer, or its employees, on
19 the same job as the injured or deceased worker where such other
20 employer does not stand in the position of an intermediate or
21 principal employer to the immediate employer of the injured or
22 deceased worker.

23 F. The immunity created by the provisions of this section shall
24 not extend to action against another employer, or its employees, on

1 the same job as the injured or deceased worker even though such
2 other employer may be considered as standing in the position of a
3 special master of a loaned servant where such special master neither
4 is the immediate employer of the injured or deceased worker nor
5 stands in the position of an intermediate or principal employer to
6 the immediate employer of the injured or deceased worker.

7 G. This section shall not be construed to abrogate the loaned
8 servant doctrine in any respect other than that described in
9 subsection F of this section. Nothing in this act shall be
10 construed to relieve the employer from any other penalty provided
11 for in this act for failure to secure the payment of compensation
12 under this act.

13 H. For the purpose of extending the immunity of this section,
14 any architect, professional engineer, or land surveyor shall be
15 deemed an intermediate or principal employer for services performed
16 at or on the site of a construction project, but this immunity shall
17 not extend to the negligent preparation of design plans and
18 specifications.

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

24

1 SECTION 4. AMENDATORY Section 7, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 7), is amended to read as
3 follows:

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

- 6 1. Filed a claim under this act;
- 7 2. Retained a lawyer for representation regarding a claim under
8 this act;
- 9 3. Instituted or caused to be instituted any proceeding under
10 the provisions of this act; or
- 11 4. Testified or is about to testify in any proceeding under the
12 provisions of this act.

13 B. The ~~Commission~~ district courts shall have exclusive
14 jurisdiction to hear and decide claims based on ~~subsection A~~ of this
15 section.

16 C. ~~If the Commission determines that the defendant violated~~
17 ~~subsection A of this section, the Commission may award the employee~~
18 ~~back pay up to a maximum of One Hundred Thousand Dollars~~
19 ~~(\$100,000.00). Interim earnings or amounts earnable with reasonable~~
20 ~~diligence by the person discriminated against shall reduce the back~~
21 ~~pay otherwise allowable.~~

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

24

1 ~~E.~~ No employer may discharge an employee during a period of
2 temporary total disability for the sole reason of being absent from
3 work or for the purpose of avoiding payment of temporary total
4 disability benefits to the injured employee.

5 ~~F.~~ D. Notwithstanding any other provision of this section, an
6 employer shall not be required to rehire or retain an employee who,
7 after temporary total disability has been exhausted, is determined
8 by a physician to be physically unable to perform his or her
9 assigned duties, or whose position is no longer available.

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

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

15 SECTION 5. AMENDATORY Section 11, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2016, Section 11), is amended to read as
17 follows:

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

1 father or mother whom the employee has supported, either wholly or
2 in part, for the period of one (1) year before the date of the
3 injury.

4 SECTION 6. AMENDATORY Section 16, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2016, Section 16), is amended to read as
6 follows:

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

20 B. Physicians providing care to an employee shall prescribe for
21 the employee any necessary prescription drugs and over-the-counter
22 alternatives to prescription medicine as clinically appropriate and
23 as recommended under the Official Disability Guidelines.
24 Prescriptions and nonprescription drugs that are not preferred,

1 exceed or are not addressed by ODG require preauthorization and the
2 preauthorization request shall include the prescribing doctor's drug
3 regimen plan of care and the anticipated dosage or range of dosages.

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

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

20 B. The notice shall include:

- 21 1. The name of the employer;
- 22 2. The name of the insurer, if known;
- 23 3. The name of the employee receiving the services;
- 24 4. The general nature of the injury, if known; and

1 5. Where a claim has been filed, the claim number, if known.

2 C. When an injury or bill is found to be noncompensable under
3 this act, the hospital, physician, or other health care provider
4 shall be entitled to pursue the employee for any unpaid portion of
5 the fee or other charges for authorized services provided to the
6 employee. Any applicable statute of limitations for an action for
7 the fees or other charges shall be tolled from the time notice is
8 given to the hospital, physician, or other health care provider
9 until a determination of noncompensability in regard to the injury
10 which is the basis of the services is made, or if there is an
11 appeal, until a final determination of noncompensability is rendered
12 and all appeal deadlines have passed.

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

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

17 SECTION 8. AMENDATORY Section 19, Chapter 208, O.S.L.
18 2013, as amended by Section 4, H.J.R. No. 1096, p. 1747, O.S.L. 2014
19 (85A O.S. Supp. 2016, Section 19), is amended to read as follows:

20 Section 19. A. There is hereby created the Oklahoma Workers'
21 Compensation Commission, an executive agency of the State of
22 Oklahoma, which shall have the exclusive responsibility and duty to
23 carry out the provisions of this act, except as otherwise provided.
24

1 B. The Commission shall consist of three (3) full-time
2 commissioners, each of whom must have been involved in the workers'
3 compensation field for at least three (3) years, appointed by the
4 Governor: one of whom is chosen from a slate of three selected by
5 the Speaker of the House of Representatives, with all three
6 confirmed by the Senate. The term of each appointee shall be six
7 (6) years to administer the provisions of this act. The Governor
8 may request a subsequent slate of nominees from the Speaker of the
9 House of Representatives if a suitable nominee is not found. Any or
10 all of the commissioners may be reappointed for additional six-year
11 terms upon reconfirmation by the Senate. However, the initial
12 commissioners shall serve staggered terms of two (2), four (4), and
13 six (6) years, respectively, as determined by the Governor. If the
14 Legislature is not in session at the time of appointment, the
15 appointment shall be subject to confirmation by the Senate upon
16 convening of the next regular session of the Legislature.

17 Membership on the Commission shall be a full-time position and no
18 commissioner shall have any other employment, unless authorized or
19 excused by law. Each commissioner shall receive a salary equal to
20 that paid to a district judge of this state; provided however, the
21 commissioners shall not receive any increase in salary as a result
22 of the provisions of Section 1 of this resolution.

23 C. The Commission shall have the authority to adopt reasonable
24 rules within its respective areas of responsibility including the

1 rules of procedure for administrative hearings, after notice and
2 public hearing, for effecting the purposes of this act, in
3 accordance with the Oklahoma Administrative Procedures Act. All
4 rules, upon adoption, shall be published and be made available to
5 the public and, if not inconsistent with the law, shall be binding
6 in the administration of this act.

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

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

17 1. To organize, direct and develop the administrative work of
18 the administrative law judges, including but not limited to
19 docketing, clerical, technical and financial work and establishment
20 of hours of operation;

21 2. To employ administrative staff for the Commission, within
22 budgetary limitation; and

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

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

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

1 SECTION 9. AMENDATORY Section 21, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 21), is amended to read as
3 follows:

4 Section 21. A. Commissioners shall be considered officers and
5 shall take the oath prescribed by the Oklahoma Constitution and the
6 laws of this state.

7 B. 1. A majority of the Workers' Compensation Commission shall
8 constitute a quorum for the transaction of business, and vacancies
9 shall not impair the right of the remaining commissioners to
10 exercise all the powers of the full Commission, so long as a
11 majority remains.

12 2. Any investigation, inquiry, or hearing which the Commission
13 is authorized to hold or undertake may be held or undertaken by or
14 before any one commissioner of the Commission, or appointee acting
15 for him or her, under authorization of the Commission.

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

19 D. Except with respect to the Commission's authority to hear
20 appeals of decisions from administrative law judges other than as
21 provided pursuant to subsection B of Section 78 of this title, any
22 reference in this ~~act~~ title to the Commission's ability to hear and
23 decide the rights of interested parties under this ~~act~~ title shall
24

1 not prevent it from delegating that responsibility to an
2 administrative law judge.

3 SECTION 10. AMENDATORY Section 22, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 22), is amended to read as
5 follows:

6 Section 22. A. 1. For the purpose of administering the
7 provisions of this ~~act~~ title, the Workers' Compensation Commission
8 is authorized:

9 a. to make rules necessary for the administration and
10 operation of the Commission,

11 b. to appoint and fix the compensation of temporary
12 technical assistants, medical and legal advisers,
13 clerical assistants and other officers and employees,
14 and

15 c. to make such expenditures, including those for
16 personal service, rent, books, periodicals, office
17 equipment, and supplies, and for printing and binding
18 as may be necessary.

19 2. a. ~~Before~~ The Commission shall vote on any substantive
20 change to any form and the effective date of such
21 substantive change.

22 b. The Commission shall comply with the provisions of the
23 Administrative Procedures Act applicable to the filing
24 and publication requirements for rules before the

1 adoption, prescription, amendment, modification, or
2 repeal of any rule, regulation, or form, the
3 Commission shall give at least thirty (30) days'
4 notice of its intended action.

5 b. The notice shall include a statement of the terms or
6 substance of the intended action or description of the
7 subjects and issues involved, and the time, place, and
8 manner in which interested persons may present their
9 views thereon.

10 e. The notice shall be mailed to any person specified by
11 law or who shall have requested advance notice of
12 rule-making proceedings.

13 3. The Commission shall afford all interested persons a
14 reasonable opportunity to submit written data, views, or arguments,
15 and, if the Commission in its discretion shall so direct, oral
16 testimony or argument.

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

20 5. All expenditures of the Commission in the administration of
21 this act shall be allowed and paid from the Workers' Compensation
22 Fund on the presentation of itemized vouchers approved by the
23 Commission.

1 B. 1. The Commission may appoint as many persons as may be
2 necessary to be administrative law judges and in addition may
3 appoint such examiners, investigators, medical examiners, clerks,
4 and other employees as it deems necessary to effectuate the
5 provisions of this ~~act~~ title.

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

8 C. Additionally, the Commission shall have the following powers
9 and duties:

10 1. To hear and approve compromise settlements;

11 2. To review and approve own-risk applications and group self-
12 insurance association applications;

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

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

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

1 6. To hear and determine claims concerning disputed medical
2 bills;

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

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

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

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

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

16 SECTION 11. AMENDATORY Section 27, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2016, Section 27), is amended to read as
18 follows:

19 Section 27. A. The Workers' Compensation Commission shall be
20 vested with jurisdiction over all claims filed pursuant to the
21 Administrative Workers' Compensation Act. All claims so filed shall
22 be heard by the administrative law judge sitting without a jury.
23 The Commission shall have full power and authority to determine all
24 questions in relation to claims for compensation under the

1 provisions of the Administrative Workers' Compensation Act. The
2 Commission, upon application of either party, shall order a hearing.
3 Upon a hearing, either party may present evidence and be represented
4 by counsel. Except as provided in this act, the decision of the
5 administrative law judge shall be final as to all questions of fact
6 and law. The decision of the administrative law judge shall be
7 issued within thirty (30) days following the submission of the case
8 by the parties. The power and jurisdiction of the Commission over
9 each case shall be continuing and it may, from time to time, make
10 such modifications or changes with respect to former findings or
11 orders relating thereto if, in its opinion, it may be justified.

12 B. In addition to the duties set forth in this section, the
13 administrative law judges shall have the following duties and
14 powers:

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

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

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

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

1 SECTION 12. AMENDATORY Section 29, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 29), is amended to read as
3 follows:

4 Section 29. A. Each carrier writing compensation insurance in
5 this state shall pay to the Workers' Compensation Commission ~~at the~~
6 ~~time of securing a license to transact business in this state an~~
7 annual fee of One Thousand Dollars (\$1,000.00) ~~for the privilege of~~
8 ~~qualifying with the Commission for the writing of compensation~~
9 ~~insurance.~~

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

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

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

18 SECTION 13. AMENDATORY Section 30, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2016, Section 30), is amended to read as
20 follows:

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

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

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

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

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

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

20 SECTION 14. AMENDATORY Section 31, Chapter 208, O.S.L.
21 2013, as amended by Section 3, Chapter 344, O.S.L. 2015 (85A O.S.
22 Supp. 2016, Section 31), is amended to read as follows:

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

1 1. As soon as practicable after January 1 of each year, the
2 commissioners of the Workers' Compensation Commission shall
3 establish an assessment rate applicable to each mutual or
4 interinsurance association, stock company, ~~CompSource Oklahoma~~, or
5 other insurance carrier writing workers' compensation insurance in
6 this state, each employer carrying its own risk, and each group
7 self-insurance association, for amounts for purposes of computing
8 the assessment authorized by this section necessary to pay the
9 annual obligations of the Multiple Injury Trust Fund determined on
10 or before December 31 of each year by the MITF Director, provided
11 for in subsection P of this section, to be outstanding for the next
12 calendar year, and to pay the allocations provided for in subsection
13 I of this section. The rate shall be equal for all parties required
14 to pay the assessment. ~~If CompSource begins operating as a mutual~~
15 ~~insurance company, the~~ The Board of Directors for CompSource Mutual
16 Insurance Company shall have the power to disapprove the rate
17 established by the MITF Director until the Multiple Injury Trust
18 Fund repays in full the amount due on any loan from CompSource
19 Mutual Insurance Company or its predecessor CompSource Oklahoma. If
20 the MITF Director and CompSource Mutual Insurance Company have not
21 agreed on the assessment rate within thirty (30) days, the
22 Commission shall set an assessment rate sufficient to cover all
23 foreseeable obligations of the Multiple Injury Trust Fund, including
24 interest and principal owed by the Fund on any loan. ~~The rate in~~

1 ~~effect on the effective date of this act shall remain effective~~
2 ~~through June 30, 2014;~~

3 2. The Oklahoma Tax Commission shall assess and collect from
4 any uninsured employer a temporary assessment at the rate of five
5 percent (5%) of the total compensation for permanent total
6 disability awards, permanent partial disability awards, and death
7 benefits paid out during each quarter of the calendar year by the
8 employers;

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

23 a. The assessment authorized in this section shall be
24 determined using a rate equal to the proportion that

1 the sum of the outstanding obligations of the Multiple
2 Injury Trust Fund as determined pursuant to paragraph
3 1 of this subsection and the allocations provided for
4 in subsection I of this section bear to the combined
5 gross direct written premiums of all such insurers;
6 all actual paid losses of all individual self-
7 insureds; and the normal premium of all group self-
8 insurance associations, for the year period from
9 January 1 to December 31 preceding the assessment.

10 b. For purposes of this subsection:

11 (1) "actual paid losses" means all medical and
12 indemnity payments, including temporary
13 disability, permanent disability, and death
14 benefits, and excluding loss adjustment expenses
15 and reserves, and

16 (2) "normal premium" means a standard premium less
17 any discounts;

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

23 5. Each mutual or interinsurance association, stock company,
24 ~~Comp Source Oklahoma,~~ or other insurance carrier writing workers'

1 compensation insurance in this state, and each employer carrying its
2 own risk, including each group self-insurance association, shall be
3 notified by the Commission in writing of the rate for the assessment
4 on or before May 1 of each year in which a rate is determined. The
5 rate determined by the Commission shall be in effect for four
6 calendar quarters beginning July 1 following determination by the
7 Commission; and

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

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

18 c. No group self-insurance association may be assessed in
19 any year an amount greater than six percent (6%) of
20 the normal premium of that group self-insurance
21 association.

22 d. If the ~~maximum~~ assessment does not provide in any one
23 year an amount sufficient to make all necessary
24 payments for obligations of the Multiple Injury Trust

1 Fund and for the allocations provided for in
2 subsection I of this section, the unpaid portion shall
3 be paid as soon thereafter as funds become available,
4 and a temporary surcharge, not to exceed ten percent
5 (10%), shall be immediately assessed by the Workers'
6 Compensation Commission sufficient to cover all
7 foreseeable obligations of the Multiple Injury Trust
8 Fund as follows:

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

1 (3) in making and entering awards for compensation
2 for permanent total disability or permanent
3 partial disability, the Workers' Compensation
4 Commission and the Workers' Compensation Court of
5 Existing Claims shall determine and fix the
6 amounts that shall be paid to the Tax Commission
7 under this subparagraph. The total amount of
8 deduction so determined and fixed shall have the
9 same force and effect as an award for
10 compensation and all provisions relating to the
11 collection of such awards shall apply to such
12 judgments, and

13 (4) the temporary surcharge shall remain in effect
14 until such time as the Commission is notified by
15 the Multiple Injury Trust Fund that the
16 assessment under subparagraph a of this paragraph
17 is sufficient to cover its foreseeable
18 obligations.

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

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

1 D. Any mutual or interinsurance association, stock company~~7~~ or
2 other insurance company, which is subject to regulation by the
3 Insurance Commissioner, ~~or CompSource Oklahoma,~~ failing to make
4 payments required in this act promptly and correctly~~7~~, and failing to
5 report payment of the same to the Insurance ~~Commission~~ Commissioner
6 within ten (10) days of payment shall be subject to administrative
7 penalties as allowed by law, including but not limited to a fine in
8 the amount of Five Hundred Dollars (\$500.00) or an amount equal to
9 one percent (1%) of the unpaid amount, whichever is greater, to be
10 paid to the Insurance Commissioner.

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

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

1 and the Tax Commission of the amount of money held as of October 1
2 of that year by the State Treasurer to the credit of the Multiple
3 Injury Trust Fund.

4 2. Until such time as the Multiple Injury Trust Fund fully
5 satisfies any loan obligation payable to CompSource Mutual Insurance
6 Company or its predecessor CompSource Oklahoma, the State Treasurer
7 shall:

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

13 b. advise the Chief Executive Officer of CompSource
14 Mutual Insurance Company on or before the first day of
15 November of the money held as of October 1 of that
16 year by the State Treasurer to the credit of the
17 Multiple Injury Trust Fund.

18 G. Eighty percent (80%) of all sums held by the State Treasurer
19 to the credit of the Multiple Injury Trust Fund may by order of the
20 MITF Director be invested in or loaned on the pledge of any of the
21 securities in which a state bank may invest the monies deposited
22 therein by the State Treasurer~~+~~L or may be deposited in state or
23 national banks or trust companies upon insured time deposit bearing
24 interest at a rate no less than currently being paid upon insured

1 savings accounts in the institutions. As used in this section,
2 "insured" means insurance as provided by an agency of the federal
3 government. All such securities or evidence of indebtedness shall
4 be placed in the hands of the State Treasurer, who shall be the
5 custodian thereof, who shall collect the principal and interest when
6 due, and pay the same into the Multiple Injury Trust Fund. The
7 State Treasurer shall pay by vouchers drawn on the Multiple Injury
8 Trust Fund for the making of such investments, when signed by the
9 MITF Director, upon delivery of such securities or evidence of
10 indebtedness to the State Treasurer. The MITF Director may sell any
11 of such securities, the proceeds thereof to be paid over to the
12 State Treasurer for the Multiple Injury Trust Fund.

13 H. The refund provisions of Sections 227 through 229 of Title
14 68 of the Oklahoma Statutes shall be applicable to any payments made
15 to the Multiple Injury Trust Fund. Refunds shall be paid from and
16 out of the Multiple Injury Trust Fund.

17 I. The Tax Commission shall pay, monthly, to the State
18 Treasurer to the credit of the Multiple Injury Trust Fund all monies
19 collected pursuant to the provisions of this section. The State
20 Treasurer shall pay out of the Multiple Injury Trust Fund only upon
21 the order and direction of the Workers' Compensation Commission
22 acting under the provisions hereof.

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

1 K. The Insurance Commissioner shall promulgate rules relating
2 to insurers as defined in Title 36 of the Oklahoma Statutes, as the
3 Insurance Commissioner deems necessary to effectuate the provisions
4 of this section.

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

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

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

16 1. In the event of failure of the Multiple Injury Trust Fund to
17 meet all lawful obligations, the monies shall be credited to the
18 Multiple Injury Trust Fund and shall be used by the Multiple Injury
19 Trust Fund to meet all lawful obligations of the Multiple Injury
20 Trust Fund; and

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

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

3 P. The person serving as the Administrator of the Multiple
4 Injury Trust Fund on the date of passage and approval of this act
5 shall serve as the initial MITF Director, provided such person is
6 serving as the Administrator of the Multiple Injury Trust Fund on
7 the effective date of this act. The MITF Director shall be
8 appointed by and serve at the pleasure of the Governor.

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

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

18 SECTION 15. AMENDATORY Section 32, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2016, Section 32), is amended to read as
20 follows:

21 Section 32. A. ~~For actions in which the subsequent injury~~
22 ~~occurred on or after November 1, 2005, if~~ Except as otherwise
23 provided in this section, an employee who is a "physically impaired
24 person" and who receives an accidental personal injury compensable

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

23 B. Permanent total disability awards from the Multiple Injury
24 Trust Fund shall be payable in periodic installments for a period of

1 ~~fifteen (15)~~ ten (10) years or until the employee reaches sixty-five
2 (65) years of age, whichever period is longer.

3 C. Permanent total disability awards from the Multiple Injury
4 Trust Fund shall accrue from the file date of the order of the
5 Workers' Compensation Commission finding the claimant to be
6 permanently and totally disabled.

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

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

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

23 ~~F.~~ G. The Multiple Injury Trust Fund shall have authority to
24 compromise a claim for less than the indicated amount of permanent

1 total disability. An order entered ~~after the effective date of this~~
2 ~~act may~~ shall be paid in periodic installments beginning on the date
3 of the award, ~~or may be~~ unless commuted to a lump-sum payment or
4 payments, by agreement of the claimant and the Multiple Injury Trust
5 Fund. All offers made by the Multiple Injury Trust Fund pursuant to
6 this section shall be conveyed by the claimant's attorney to the
7 claimant within five (5) days of receipt of the offer.

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

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

18 I. Fees for legal services rendered by an attorney representing
19 a claimant against the Multiple Injury Trust Fund shall not exceed
20 twenty percent (20%) of the award and shall be paid periodically at
21 the rate of every fifth check until the attorney fee is satisfied.
22 Attorney fees in Multiple Injury Trust Fund cases shall be based
23 upon a maximum of four hundred (400) weeks of compensation. The
24

1 right to any such attorney fee shall be vested at the time an award
2 becomes final.

3 J. In the event a claimant receiving benefits for permanent and
4 total disability from the Multiple Injury Trust Fund dies as a
5 result of his or her injury before the award has been fully paid,
6 payments shall continue to the surviving spouse for five (5) years
7 or upon remarriage, whichever occurs first. In no event shall
8 payments to the surviving spouse extend beyond the period of
9 benefits awarded to the claimant.

10 SECTION 16. AMENDATORY Section 33, Chapter 208, O.S.L.
11 2013 (85A O.S. Supp. 2016, Section 33), is amended to read as
12 follows:

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

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

23 C. An attorney who represents a respondent or insurance carrier
24 in a claim against the last employer shall not represent the

1 employee in a subsequent claim against the Multiple Injury Trust
2 Fund.

3 SECTION 17. AMENDATORY Section 34, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 34), is amended to read as
5 follows:

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

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

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

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

22 ~~D. The State Treasurer shall allocate to the MITF Director~~
23 ~~sufficient funds for administration expenses thereof in amounts to~~
24

1 ~~be fixed and approved by the Administrator for the Multiple Injury~~
2 ~~Trust Fund, unless rejected by the Governor and Attorney General.~~

3 SECTION 18. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 36.1 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Any person who is not required to be covered under a
7 workers' compensation insurance policy or other plan for the payment
8 of workers' compensation may execute an Affidavit of Exempt Status
9 under the Administrative Workers' Compensation Act. The affidavit
10 shall be a form prescribed by the Workers' Compensation Commission
11 and shall be available on the Commission's website. The affidavit
12 shall contain the following statement, under oath:

13 "1. I operate as a separate entity and am not an employee of
14 any individual or entity;

15 2. No individual or entity directs my hours of employment or
16 methods employed in performance of my job or provides tools for the
17 performance of my job;

18 3. I do not hire any worker or workers for which I direct hours
19 of employment or methods employed in performance of a job or provide
20 tools for the completion of a job. If I do hire any employee, I
21 will purchase a standard workers' compensation insurance policy; and

22 4. The employer accepting this affidavit in lieu of a standard
23 insurance certificate acknowledges that this affidavit does not
24 constitute insurance and that if an individual offering this

1 affidavit hires an employee, the affidavit is invalid for such
2 employee and any liability falls on the employer accepting the
3 affidavit."

4 B. Execution of the affidavit shall establish a rebuttable
5 presumption that the executor is not an employee for purposes of the
6 Administrative Workers' Compensation Act and that an individual or
7 company possessing the affidavit is in compliance and shall not be
8 responsible for workers' compensation claims made by the executor.
9 Any employer has the right to reject this Affidavit of Exempt Status
10 and require a certificate of coverage from an Oklahoma licensed
11 workers' compensation insurance carrier.

12 C. The execution of an affidavit shall not affect the rights or
13 coverage of any employee of the individual executing the affidavit.

14 D. 1. Knowingly providing false information on a notarized
15 Affidavit of Exempt Status under the Administrative Workers'
16 Compensation Act shall constitute a misdemeanor punishable by a fine
17 not to exceed One Thousand Dollars (\$1,000.00).

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

21 3. The Commission shall immediately notify the Workers'
22 Compensation Fraud Unit in the Office of the Attorney General of any
23 violations or suspected violations of this section. The Commission
24

1 shall cooperate with the Fraud Unit in any investigation involving
2 affidavits executed pursuant to this section.

3 E. Application fees collected pursuant to this section shall be
4 deposited in the State Treasury to the credit of the Workers'
5 Compensation Commission's Revolving Fund.

6 F. If any employer relies in good faith on proof of a valid
7 workers' compensation insurance policy issued to a contractor of any
8 tier or on proof of an Affidavit of Exempt Status under this
9 section, the employer shall not be liable for injuries of any
10 employees of the contractor, unless the employer knew, or with the
11 exercise of reasonable care, should have known that any workers'
12 compensation insurance policy was not in force or Affidavit of
13 Exempt Status was false, in whole or in part.

14 SECTION 19. AMENDATORY Section 38, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2016, Section 38), is amended to read as
16 follows:

17 Section 38. A. An employer shall secure compensation to
18 employees under this act in one of the following ways:

19 1. By insuring and keeping insured the payment of compensation
20 with any stock corporation, mutual association, or other concerns
21 authorized to transact the business of workers' compensation
22 insurance in this state. When an insurer issues a policy to provide
23 workers' compensation benefits under the provisions of this act, it
24 shall file a notice with the Workers' Compensation Commission

1 containing the name, address, and principal occupation of the
2 employer, the number, effective date, and expiration date of the
3 policy, and such other information as may be required by the
4 Commission. The notice shall be filed by the insurer within thirty
5 (30) days after the effective date of the policy. Any insurer who
6 does not file the notice required by this paragraph shall be subject
7 to a fine by the Commission of not more than One Thousand Dollars
8 (\$1,000.00);

9 2. By obtaining and keeping in force guaranty insurance with
10 any company authorized to do guaranty business in this state. Each
11 company that issues workers' compensation guaranty insurance shall
12 file a copy of the contract with the Commission within thirty (30)
13 days after the effective date of the contract. Any company that
14 does not file a copy of the contract as required by this paragraph
15 shall be subject to a fine by the Commission of not more than One
16 Thousand Dollars (\$1,000.00);

17 3. By furnishing satisfactory proof to the Commission of the
18 employer's financial ability to pay the compensation. ~~The~~
19 ~~Commission, under~~ Under rules adopted by the ~~Insurance Department~~
20 Commission, the Commission shall require any employer that has:

21 a. less than one hundred employees or less than One
22 Million Dollars (\$1,000,000.00) in net assets to:
23 (1) deposit with the Commission securities, an
24 irrevocable letter of credit or a surety bond

1 payable to the state, in an amount determined by
2 the Commission which shall be at least an average
3 of the yearly claims for the last three (3)
4 years, or

5 (2) provide proof of excess coverage with such terms
6 and conditions as is commensurate with their
7 ability to pay the benefits required by the
8 provisions of this act, and

9 b. one hundred or more employees and One Million Dollars
10 (\$1,000,000.00) or more in net assets to:

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

16 (2) provide proof of excess coverage with terms and
17 conditions that are commensurate with their
18 ability to pay the benefits required by the
19 provisions of this act;

20 4. By forming a group self-insurance association consisting of
21 two or more employers which shall have a common interest and which
22 shall have entered into an agreement to pool their liabilities under
23 the Administrative Workers' Compensation Act. Such agreement shall
24 be subject to rules of the Commission. Any employer, upon

1 application to become a member of a group self-insurance
2 association, shall file with the Commission a notice, in such form
3 as prescribed by the Commission, acknowledging that the employer
4 accepts joint and several liability. Upon approval by the
5 Commission of such application for membership, said member shall be
6 a qualified self-insured employer; or

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

9 B. The Commission may waive the requirements of this section in
10 an amount which is commensurate with the ability of the employer to
11 pay the benefits required by the provisions of this act.

12 Irrevocable letters of credit required by this subsection shall
13 contain such terms as may be prescribed by the Commission and shall
14 be issued for the benefit of the state by a financial institution
15 whose deposits are insured by the Federal Deposit Insurance
16 Corporation.

17 C. An employer who does not fulfill the requirements of this
18 section is not relieved of the obligation to pay compensation under
19 this act. The security required under this section, including any
20 interest, shall be maintained by the Commission as provided in this
21 act until each claim for benefits is paid, settled, or lapses under
22 this act, and costs of administration of such claims are paid.

23 D. Failure on the part of any employer to secure the payment of
24 compensation provided in this act shall have the effect of enabling

1 the Commission to assert the rights of an injured employee against
2 the employer.

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

7 SECTION 20. AMENDATORY Section 43, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2016, Section 43), is amended to read as
9 follows:

10 Section 43. A. Liability Unaffected.

11 1. a. The making of a claim for compensation against any
12 employer or carrier for the injury or death of an
13 employee shall not affect the right of the employee,
14 or his or her dependents, to make a claim or maintain
15 an action in court against any third party for the
16 injury.

17 b. The employer or the employer's carrier shall be
18 entitled to reasonable notice and opportunity to join
19 in the action.

20 c. If the employer or employer's carrier join in the
21 action against a third party for injury or death, they
22 shall be entitled to a first lien on two-thirds (2/3)
23 of the net proceeds recovered in the action that
24 remain after the payment of the reasonable costs of

1 collection, for the payment to them of the amount paid
2 and to be paid by them as compensation to the injured
3 employee or his or her dependents. The Workers'
4 Compensation Commission shall have jurisdiction to
5 decide disputes as to the determination of the net
6 proceeds as provided for in this section.

7 2. The commencement of an action by an employee or his or her
8 dependents against a third party for damages by reason of an injury
9 to which this act is applicable, or the adjustment of any claim,
10 shall not affect the rights of the injured employee or his or her
11 dependents to recover compensation, but any amount recovered by the
12 injured employee or his or her dependents from a third party shall
13 be applied as follows:

14 a. reasonable fees and costs of collection shall be
15 deducted,

16 b. the employer or carrier, as applicable, shall receive
17 two-thirds (2/3) of the remainder of the recovery or
18 the amount of the workers' compensation lien,
19 whichever is less, and

20 c. the remainder of the recovery shall go to the injured
21 employee or his or her dependents.

22 B. Subrogation.

23 1. An employer or carrier liable for compensation under this
24 act for the injury or death of an employee shall have the right to

1 maintain an action in tort against any third party responsible for
2 the injury or death. However, the employer or the carrier shall
3 notify the claimant in writing that the claimant has the right to
4 hire a private attorney to pursue any benefits to which the claimant
5 is entitled in addition to the subrogation interest against any
6 third party responsible for the injury or death.

7 2. After reasonable notice and opportunity to be represented in
8 the action has been given to the injured employee, the liability of
9 the third party to the compensation beneficiary shall be determined
10 in the action, as well as the third party's liability to the
11 employer and carrier.

12 3. If the employer recovers against the third party, by suit or
13 otherwise, the injured employee shall be entitled to any amount
14 recovered in excess of the amount that the employer and carrier have
15 paid or are liable for in compensation, after deducting reasonable
16 costs of collection.

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

21 SECTION 21. AMENDATORY Section 45, Chapter 208, O.S.L.
22 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
23 Supp. 2016, Section 45), is amended to read as follows:

24 Section 45. A. Temporary Total Disability.

1 1. If the injured employee is temporarily unable to perform his
2 or her job or any alternative work offered by the employer, he or
3 she shall be entitled to receive compensation equal to seventy
4 percent (70%) of the injured employee's average weekly wage, but not
5 to exceed ~~seventy percent (70%)~~ of the state average weekly wage, as
6 determined pursuant to paragraph 42 of Section 2 of this title for
7 one hundred four (104) weeks. Provided, there shall be no payment
8 for the first three (3) days of the initial period of temporary
9 total disability. If an administrative law judge finds that a
10 consequential injury has occurred and that additional time is needed
11 to reach maximum medical improvement, temporary total disability may
12 continue for a period of not more than an additional fifty-two (52)
13 weeks. Such finding shall be based upon a showing of medical
14 necessity by clear and convincing evidence. An employer shall have
15 the right to recover any overpayment of temporary total disability
16 from a subsequent permanent partial disability award.

17 2. When the injured employee is released from active medical
18 treatment by the treating physician for all body parts found by the
19 Commission to be injured, or in the event that the employee, without
20 a valid excuse, misses three consecutive medical treatment
21 appointments, fails to comply with medical orders of the treating
22 physician, or otherwise abandons medical care, the employer shall be
23 entitled to terminate temporary total disability by notifying the
24 employee, or if represented, his or her counsel. If, however, an

1 objection to the termination is filed by the employee within ten
2 (10) days of termination, the Commission shall set the matter within
3 twenty (20) days for a determination if temporary total disability
4 compensation shall be reinstated. The temporary total disability
5 shall remain terminated ~~unless the employee proves the existence of~~
6 ~~a valid excuse for his or her failure to comply~~ until such time as
7 the employee complies with medical orders of the treating physician
8 or his or her abandonment of medical care. The administrative law
9 judge may appoint an independent medical examiner to determine if
10 further medical treatment is reasonable and necessary. The
11 independent medical examiner shall not provide treatment to the
12 injured worker, unless agreed upon by the parties.

13 B. Temporary Partial Disability.

14 1. If the injured employee is temporarily unable to perform his
15 or her job, but may perform alternative work offered by the
16 employer, he or she shall be entitled to receive compensation equal
17 to ~~the greater of~~ seventy percent (70%) of the difference between
18 the injured employee's average weekly wage before the injury and his
19 or her weekly wage for performing alternative work after the injury,
20 but only if his or her weekly wage for performing the alternative
21 work is less than the temporary total disability rate. The injured
22 employee's actual earnings plus temporary partial disability shall
23 not exceed the temporary total disability rate.

24

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

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

6 C. Permanent Partial Disability.

7 1. A permanent partial disability award or combination of
8 awards granted an injured worker may not exceed a permanent partial
9 disability rating of one hundred percent (100%) to any body part or
10 to the body as a whole. The determination of permanent partial
11 disability shall be the responsibility of the Commission through its
12 administrative law judges. Any claim by an employee for
13 compensation for permanent partial disability must be supported by
14 competent medical testimony of a medical doctor, osteopathic
15 physician, or chiropractor, and shall be supported by objective
16 medical findings, as defined in this act. The opinion of the
17 physician shall include employee's percentage of permanent partial
18 disability and whether or not the disability is job-related and
19 caused by the accidental injury or occupational disease. A
20 physician's opinion of the nature and extent of permanent partial
21 disability to parts of the body other than scheduled members must be
22 based solely on criteria established by the current edition of the
23 American Medical Association's "Guides to the Evaluation of
24 Permanent Impairment". A copy of any written evaluation shall be

1 sent to both parties within seven (7) days of issuance. Medical
2 opinions addressing compensability and permanent disability must be
3 stated within a reasonable degree of medical certainty. Any party
4 may submit the report of an evaluating physician.

5 2. Permanent partial disability shall not be allowed to a part
6 of the body for which no medical treatment has been received. A
7 determination of permanent partial disability made by the Commission
8 or administrative law judge which is not supported by objective
9 medical findings provided by a treating physician who is a medical
10 doctor, doctor of osteopathy, chiropractor or a qualified
11 independent medical examiner shall be considered an abuse of
12 discretion.

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

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

22 5. ~~Except pursuant to settlement agreements entered into by the~~
23 ~~employer and employee, payment of a permanent partial disability~~
24 ~~award shall be deferred and held in reserve by the employer or~~

1 ~~insurance company if the employee has reached maximum medical~~
2 ~~improvement and has been released to return to work by his or her~~
3 ~~treating physician, and then returns to his pre-injury or equivalent~~
4 ~~job for a term of weeks determined by dividing the total dollar~~
5 ~~value of the award by seventy percent (70%) of the employee's~~
6 ~~average weekly wage.~~

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

11 b. ~~If, for any reason other than misconduct as defined in~~
12 ~~Section 2 of this act, the employer terminates the~~
13 ~~employee or the position offered is not the pre-injury~~
14 ~~or equivalent job, the remaining permanent partial~~
15 ~~disability award shall be paid in a lump sum. If the~~
16 ~~employee is discharged for misconduct, the employer~~
17 ~~shall have the burden to prove that the employee~~
18 ~~engaged in misconduct.~~

19 c. ~~If the employee refuses an offer to return to his pre-~~
20 ~~injury or equivalent job, the permanent partial~~
21 ~~disability award shall continue to be deferred and~~
22 ~~shall be reduced by seventy percent (70%) of the~~
23 ~~employee's average weekly wage for each week he~~
24 ~~refuses to return to his pre-injury or equivalent job.~~

1 d. ~~Attorney fees for permanent partial disability awards,~~
2 ~~as approved by the Commission, shall be calculated~~
3 ~~based upon the total permanent partial disability~~
4 ~~award and paid in full at the time of the deferral.~~

5 e. Assessments pursuant to Sections 31, 98, ~~112~~ 205 and
6 ~~165~~ 122 of this ~~act~~ title shall be calculated based
7 upon the amount of the permanent partial disability
8 award and ~~shall be paid at the time of the deferral.~~

9 6. Previous Disability: The fact that an employee has suffered
10 previous disability or received compensation therefor shall not
11 preclude the employee from compensation for a later accidental
12 personal injury or occupational disease. In the event there exists
13 a previous permanent partial disability, including a previous non-
14 work-related injury or condition which produced permanent partial
15 disability and the same is aggravated or accelerated by an
16 accidental personal injury or occupational disease, compensation for
17 permanent partial disability shall be only for such amount as was
18 caused by such accidental personal injury or occupational disease
19 and no additional compensation shall be allowed for the preexisting
20 disability or impairment. Any such reduction shall not apply to
21 temporary total disability, nor shall it apply to compensation for
22 medical treatment.

23 a. If workers' compensation benefits have previously been
24 awarded through settlement or judicial or

1 administrative determination in Oklahoma, the
2 percentage basis of the prior settlement or award
3 shall conclusively establish the amount of permanent
4 partial disability determined to be preexisting. If
5 workers' compensation benefits have not previously
6 been awarded through settlement or judicial or
7 administrative determination in Oklahoma, the amount
8 of preexisting permanent partial disability shall be
9 established by competent evidence.

10 b. In all cases, the applicable reduction shall be
11 calculated as follows:

12 (1) if the preexisting impairment is the result of
13 injury sustained while working for the employer
14 against whom workers' compensation benefits are
15 currently being sought, any award of compensation
16 shall be reduced by the current dollar value
17 attributable under the Administrative Workers'
18 Compensation Act to the percentage of permanent
19 partial disability determined to be preexisting.
20 The current dollar value shall be calculated by
21 multiplying the percentage of preexisting
22 permanent partial disability by the compensation
23 rate in effect on the date of the accident or
24

1 injury against which the reduction will be
2 applied, and

3 (2) in all other cases, the employer against whom
4 benefits are currently being sought shall be
5 entitled to a credit for the percentage of
6 preexisting permanent partial disability.

7 7. No payments on any permanent partial disability order shall
8 begin until payments on any preexisting permanent partial disability
9 orders have been completed.

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

12 9. The permanent partial disability rate of compensation for
13 amputation or permanent total loss of use of a scheduled member
14 specified in Section 46 of this ~~act~~ title shall be seventy percent
15 (70%) of the employee's average weekly wage, not to exceed ~~Three~~
16 ~~Hundred Twenty-three Dollars (\$323.00)~~ fifty percent (50%) of the
17 state average weekly wage, as determined pursuant to paragraph 42 of
18 Section 2 of this title, multiplied by the number of weeks set forth
19 for the member in Section 46 of this ~~act~~ title, regardless of
20 whether the injured employee is able to return to his or her ~~pre-~~
21 ~~injury~~ preinjury or equivalent job.

22 10. An injured employee who is eligible for permanent partial
23 disability under this subsection shall be entitled to receive
24 vocational rehabilitation services provided by a technology center

1 or public secondary school offering vocational-technical education
2 courses, or a member institution of The Oklahoma State System of
3 Higher Education, which shall include retraining and job placement
4 to restore the employee to gainful employment. Vocational
5 rehabilitation services or training shall not extend for a period of
6 more than fifty-two (52) weeks.

7 D. Permanent Total Disability.

8 1. In case of total disability adjudged to be permanent,
9 seventy percent (70%) of the employee's average weekly wages, but
10 not in excess of the state's average weekly wage, as determined
11 pursuant to paragraph 42 of Section 2 of this title, shall be paid
12 to the employee during the continuance of the disability until such
13 time as the employee reaches the age of maximum Social Security
14 retirement benefits or for a period of fifteen (15) years, whichever
15 is longer. In the event the claimant dies of causes unrelated to
16 the injury or illness, benefits shall cease on the date of death.
17 Provided, however, any person entitled to revive the action shall
18 receive a one-time lump-sum payment equal to twenty-six (26) weeks
19 of weekly benefits for permanent total disability awarded the
20 claimant. If more than one person is entitled to revive the claim,
21 the lump-sum payment shall be evenly divided between or among such
22 persons. In the event the Commission awards both permanent partial
23 disability and permanent total disability benefits, the permanent
24 total disability award shall not be due until the permanent partial

1 disability award is paid in full. If otherwise qualified according
2 to the provisions of this act, permanent total disability benefits
3 may be awarded to an employee who has exhausted the maximum period
4 of temporary total disability even though the employee has not
5 reached maximum medical improvement.

6 2. The Commission shall annually review the status of any
7 employee receiving benefits for permanent total disability against
8 the last employer. The Commission shall require the employee to
9 annually file an affidavit under penalty of perjury stating that he
10 or she is not and has not been gainfully employed and is not capable
11 of gainful employment. Failure to file such affidavit shall result
12 in suspension of benefits; provided, however, reinstatement of
13 benefits may occur after proper hearing before the Commission.

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

17 2. The Vocational Rehabilitation Director shall help injured
18 workers return to the work force. If the injured employee is unable
19 to return to his or her ~~pre-injury~~ preinjury or equivalent position
20 due to permanent restrictions as determined by the treating
21 physician, upon the request of either party, the Vocational
22 Rehabilitation Director shall determine if it is appropriate for a
23 claimant to receive vocational rehabilitation training or services,
24 and will oversee such training. If appropriate, the Vocational

1 Rehabilitation Director shall issue administrative orders,
2 including, but not limited to, an order for a vocational
3 rehabilitation evaluation for any injured employee unable to work
4 for at least ninety (90) days. In addition, the Vocational
5 Rehabilitation Director may assign injured workers to vocational
6 rehabilitation counselors for coordination of recommended services.
7 The cost of the services shall be paid by the employer. All
8 administrative orders are subject to appeal to the full Commission.

9 3. There shall be a presumption in favor of ordering vocational
10 rehabilitation services or training for an eligible injured employee
11 under the following circumstances:

- 12 a. if the employee's occupation is truck driver or
13 laborer and the medical condition is traumatic brain
14 injury, stroke or uncontrolled vertigo,
- 15 b. if the employee's occupation is truck driver or
16 laborer performing high-risk tasks and the medical
17 condition is seizures,
- 18 c. if the employee's occupation is manual laborer and the
19 medical condition is bilateral wrist fusions,
- 20 d. if the employee's occupation is assembly-line worker
21 and the medical condition is radial head fracture with
22 surgical excision,

23
24

- 1 e. if the employee's occupation is heavy laborer and the
2 medical condition is myocardial infarction with
3 congestive heart failure,
- 4 f. if the employee's occupation is heavy manual laborer
5 and the medical condition is multilevel neck or back
6 fusions greater than two levels,
- 7 g. if the employee's occupation is laborer performing
8 overhead work and the medical condition is massive
9 rotator cuff tears, with or without surgery,
- 10 h. if the employee's occupation is heavy laborer and the
11 medical condition is recurrent inguinal hernia
12 following unsuccessful surgical repair,
- 13 i. if the employee's occupation is heavy manual laborer
14 and the medical condition is total knee replacement or
15 total hip replacement,
- 16 j. if the employee's occupation is roofer and the medical
17 condition is calcaneal fracture, medically or
18 surgically treated,
- 19 k. if the employee's occupation is laborer of any kind
20 and the medical condition is total shoulder
21 replacement,
- 22 l. if the employee's occupation is laborer and the
23 medical condition is amputation of a hand, arm, leg,
24 or foot,

- 1 m. if the employee's occupation is laborer and the
2 medical condition is tibial plateau fracture, pilon
3 fracture,
4 n. if the employee's occupation is laborer and the
5 medical condition is ankle fusion or knee fusion,
6 o. if the employee's occupation is driver or heavy
7 equipment operator and the medical condition is
8 unilateral industrial blindness, or
9 p. if the employee's occupation is laborer and the
10 medical condition is 3-, 4-, or 5-level positive
11 discogram of the cervical spine or lumbar spine,
12 medically treated.

13 4. Upon the request of either party, or by order of an
14 administrative law judge, the Vocational Rehabilitation Director
15 shall assist the Workers' Compensation Commission in determining if
16 it is appropriate for a claimant to receive vocational
17 rehabilitation training or services. If appropriate, the
18 administrative law judge shall refer the employee to a qualified
19 expert for evaluation of the practicability of, need for and kind of
20 rehabilitation services or training necessary and appropriate in
21 order to restore the employee to gainful employment. The cost of
22 the evaluation shall be paid by the employer. Following the
23 evaluation, if the employee refuses the services or training ordered
24 by the administrative law judge, or fails to complete in good faith

1 the vocational rehabilitation training ordered by the administrative
2 law judge, then the cost of the evaluation and services or training
3 rendered may, in the discretion of the administrative law judge, be
4 deducted from any award of benefits to the employee which remains
5 unpaid by the employer. Upon receipt of such report, and after
6 affording all parties an opportunity to be heard, the administrative
7 law judge shall order that any rehabilitation services or training,
8 recommended in the report, or such other rehabilitation services or
9 training as the administrative law judge may deem necessary,
10 provided the employee elects to receive such services, shall be
11 provided at the expense of the employer. Except as otherwise
12 provided in this subsection, refusal to accept rehabilitation
13 services by the employee shall in no way diminish any benefits
14 allowable to an employee.

15 5. The administrative law judge may order vocational
16 rehabilitation before the injured employee reaches maximum medical
17 improvement, if the treating physician believes that it is likely
18 that the employee's injury will prevent the employee from returning
19 to his or her former employment. In granting early benefits for
20 vocational rehabilitation, the Commission shall consider temporary
21 restrictions and the likelihood that such rehabilitation will return
22 the employee to gainful employment earlier than if such benefits are
23 granted after the permanent partial disability hearing in the claim.

24

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

8 7. If rehabilitation requires residence at or near the facility
9 or institution which is away from the employee's customary
10 residence, reasonable cost of the employee's board, lodging, travel,
11 tuition, books and necessary equipment in training shall be paid for
12 by the insurer in addition to weekly compensation benefits to which
13 the employee is otherwise entitled under the Administrative Workers'
14 Compensation Act.

15 8. During the period when an employee is actively and in good
16 faith being evaluated or participating in a retraining or job
17 placement program for purposes of evaluating permanent total
18 disability status, the employee shall be entitled to receive
19 benefits at the same rate as the employee's temporary total
20 disability benefits for an additional fifty-two (52) weeks. All
21 tuition related to vocational rehabilitation services shall be paid
22 by the employer or the employer's insurer on a periodic basis
23 directly to the facility providing the vocational rehabilitation
24 services or training to the employee. ~~The employer or employer's~~

1 ~~insurer may deduct the amount paid for tuition from compensation~~
2 ~~awarded to the employee.~~

3 F. Disfigurement.

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

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

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

13 G. Benefits for a single-event injury shall be determined by
14 the law in effect at the time of injury. Benefits for a cumulative
15 trauma injury or occupational disease or illness shall be determined
16 by the law in effect at the time the employee knew or reasonably
17 should have known that the injury, occupational disease or illness
18 was related to work activity. Benefits for death shall be
19 determined by the law in effect at the time of death.

20 SECTION 22. AMENDATORY Section 46, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2016, Section 46), is amended to read as
22 follows:

23 Section 46. A. An injured employee who is entitled to receive
24 permanent partial disability compensation under Section 45 of this

1 act shall receive compensation for each part of the body in
2 accordance with the number of weeks for the scheduled loss set forth
3 below.

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

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

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

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

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

13 6. Thumb amputated, sixty-six (66) weeks;

14 7. First finger amputated, thirty-nine (39) weeks;

15 8. Second finger amputated, thirty-three (33) weeks;

16 9. Third finger amputated, twenty-two (22) weeks;

17 10. Fourth finger amputated, seventeen (17) weeks;

18 11. Foot amputated, two hundred twenty (220) weeks;

19 12. Great toe amputated, thirty-three (33) weeks;

20 13. Toe other than great toe amputated, eleven (11) weeks;

21 14. Eye enucleated, in which there was useful vision, two
22 hundred seventy-five (275) weeks;

23 15. Loss of hearing of one ear, one hundred ten (110) weeks;

24

1 16. Loss of hearing of both ears, three hundred thirty (330)
2 weeks; and

3 17. Loss of one testicle, fifty-three (53) weeks; loss of both
4 testicles, one hundred fifty-eight (158) weeks.

5 B. The permanent partial disability rate of compensation for
6 amputation or permanent total loss of use of a scheduled member
7 specified in this section shall be seventy percent (70%) of the
8 employee's average weekly wage, not to exceed ~~Three Hundred Twenty-~~
9 ~~three Dollars (\$323.00)~~ fifty percent (50%) of the state average
10 weekly wage, as determined pursuant to paragraph 42 of Section 2 of
11 this title, multiplied by the number of weeks as set forth in this
12 section, regardless of whether or not the injured employee is able
13 to return to his or her ~~pre-injury~~ preinjury job.

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

24

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

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

6 E. 1. Compensation for the permanent loss of eighty percent
7 (80%) or more of the vision of an eye shall be the same as for the
8 loss of an eye.

9 2. In all cases of permanent loss of vision, the use of
10 corrective lenses may be taken into consideration in evaluating the
11 extent of loss of vision.

12 F. Compensation for amputation or loss of use of two or more
13 digits or one or more phalanges of two or more digits of a hand or a
14 foot may be proportioned to the total loss of use of the hand or the
15 foot occasioned thereby but shall not exceed the compensation for
16 total loss of a hand or a foot.

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

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

22 SECTION 23. AMENDATORY Section 50, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2016, Section 50), is amended to read as
24 follows:

1 Section 50. A. The employer shall promptly provide an injured
2 employee with medical, surgical, hospital, optometric, podiatric,
3 and nursing services, along any with medicine, crutches, ambulatory
4 devices, artificial limbs, eyeglasses, contact lenses, hearing aids,
5 and other apparatus as may be reasonably necessary in connection
6 with the injury received by the employee. The employer shall have
7 the right to choose the treating physician.

8 B. If the employer fails or neglects to provide medical
9 treatment within five (5) days after actual knowledge is received of
10 an injury, the injured employee may select a physician to provide
11 medical treatment at the expense of the employer; provided, however,
12 that the injured employee, or another in the employee's behalf, may
13 obtain emergency treatment at the expense of the employer where such
14 emergency treatment is not provided by the employer.

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

19 D. Unless recommended by the treating doctor at the time
20 claimant reaches maximum medical improvement or by an independent
21 medical examiner, continuing medical maintenance shall not be
22 awarded by the Commission. The employer or insurance carrier shall
23 not be responsible for continuing medical maintenance or pain
24 management treatment that is outside the parameters established by

1 the Physician Advisory Committee or ODG. The employer or insurance
2 carrier shall not be responsible for continuing medical maintenance
3 or pain management treatment not previously ordered by the
4 Commission or approved in advance by the employer or insurance
5 carrier.

6 E. An employee claiming or entitled to benefits under this act,
7 shall, if ordered by the Commission or requested by the employer or
8 insurance carrier, submit himself or herself for medical
9 examination. If an employee refuses to submit himself or herself to
10 examination, his or her right to prosecute any proceeding under this
11 act shall be suspended, and no compensation shall be payable for the
12 period of such refusal.

13 F. For compensable injuries resulting in the use of a medical
14 device, ongoing service for the medical device shall be provided in
15 situations including, but not limited to, medical device battery
16 replacement, ongoing medication refills related to the medical
17 device, medical device repair, or medical device replacement.

18 G. The employer shall reimburse the employee for the actual
19 mileage in excess of twenty (20) miles round-trip to and from the
20 employee's home to the location of a medical service provider for
21 all reasonable and necessary treatment, for an evaluation of an
22 independent medical examiner and for any evaluation made at the
23 request of the employer or insurance carrier. The rate of
24 reimbursement for such travel expense shall be the official

1 reimbursement rate as established by the State Travel Reimbursement
2 Act. In no event shall the reimbursement of travel for medical
3 treatment or evaluation exceed six hundred (600) miles round trip.

4 H. Fee Schedule.

5 1. The Commission shall conduct a review of the Fee Schedule
6 every two (2) years. The Fee Schedule shall establish the maximum
7 rates that medical providers shall be reimbursed for medical care
8 provided to injured employees, including, but not limited to,
9 charges by physicians, dentists, counselors, hospitals, ambulatory
10 and outpatient facilities, clinical laboratory services, diagnostic
11 testing services, and ambulance services, and charges for durable
12 medical equipment, prosthetics, orthotics, and supplies. The most
13 current Fee Schedule established by the Administrator of the
14 Workers' Compensation Court prior to the effective date of this
15 section shall remain in effect, unless or until the Legislature
16 approves the Commission's proposed Fee Schedule.

17 2. Reimbursement for medical care shall be prescribed and
18 limited by the Fee Schedule as adopted by the Commission, after
19 notice and public hearing, and after approval by the Legislature by
20 joint resolution. The director of the Employees Group Insurance
21 Division of the Office of Management and Enterprise Services shall
22 provide the Commission such information as may be relevant for the
23 development of the Fee Schedule. The Commission shall develop the
24 Fee Schedule in a manner in which quality of medical care is assured

1 and maintained for injured employees. The Commission shall give due
2 consideration to additional requirements for physicians treating an
3 injured worker under this act, including, but not limited to,
4 communication with claims representatives, case managers, attorneys,
5 and representatives of employers, and the additional time required
6 to complete forms for the Commission, insurance carriers, and
7 employers.

8 3. In making adjustments to the Fee Schedule, the Commission
9 shall use, as a benchmark, the reimbursement rate for each Current
10 Procedural Terminology (CPT) code provided for in the fee schedule
11 published by the Centers for Medicare and Medicaid Services of the
12 U.S. Department of Health and Human Services for use in Oklahoma
13 (Medicare Fee Schedule) on the effective date of this section,
14 workers' compensation fee schedules employed by neighboring states,
15 the latest edition of "Relative Values for Physicians" (RVP), usual,
16 customary and reasonable medical payments to workers' compensation
17 health care providers in the same trade area for comparable
18 treatment of a person with similar injuries, and all other data the
19 Commission deems relevant. For services not valued by CMS, the
20 Commission shall establish values based on the usual, customary and
21 reasonable medical payments to health care providers in the same
22 trade area for comparable treatment of a person with similar
23 injuries.

24

- 1 a. No reimbursement shall be allowed for any magnetic
2 resonance imaging (MRI) unless the MRI is provided by
3 an entity that meets Medicare requirements for the
4 payment of MRI services or is accredited by the
5 American College of Radiology, the Intersocietal
6 Accreditation Commission or the Joint Commission on
7 Accreditation of Healthcare Organizations. For all
8 other radiology procedures, the reimbursement rate
9 shall be the lesser of the reimbursement rate allowed
10 by the 2010 Oklahoma Fee Schedule and two hundred
11 seven percent (207%) of the Medicare Fee Schedule.
- 12 b. For reimbursement of medical services for Evaluation
13 and Management of injured employees as defined in the
14 Fee Schedule adopted by the Commission, the
15 reimbursement rate shall not be less than one hundred
16 fifty percent (150%) of the Medicare Fee Schedule.
- 17 c. Any entity providing durable medical equipment,
18 prosthetics, orthotics or supplies shall be accredited
19 by a CMS-approved accreditation organization. If a
20 physician provides durable medical equipment,
21 prosthetics, orthotics, prescription drugs, or
22 supplies to a patient ancillary to the patient's
23 visit, reimbursement shall be no more than ~~ten~~ forty
24 percent ~~(10%)~~ (40%) above cost, less any discounts,

1 rebates or other reduction in price received by the
2 physician.

3 d. The Commission shall develop a reasonable stop-loss
4 provision of the Fee Schedule to provide for adequate
5 reimbursement for treatment for major burns, severe
6 head and neurological injuries, ~~multiple-system~~
7 ~~injuries~~, and other catastrophic injuries requiring
8 extended periods of intensive care. Payment under the
9 stop-loss provision shall not exceed seventy percent
10 (70%) of total audited charges less the cost of
11 surgical hardware. Charges which shall be subject to
12 audit include errors and omissions, capital
13 expenditures, unbundled services and line item review,
14 as appropriate and medically necessary, and shall be
15 reimbursed at a rate no more than the Fee Schedule.

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

22 5. Nothing in this section shall prevent an employer, insurance
23 carrier, group self-insurance association, or certified workplace
24 medical plan from contracting with a provider of medical care for a

1 reimbursement rate that is greater than or less than limits
2 established by the Fee Schedule.

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

7 7. The Commission's review of medical and treatment charges
8 pursuant to this section shall be conducted pursuant to the Fee
9 Schedule in existence at the time the medical care or treatment was
10 provided. The judgment approving the medical and treatment charges
11 pursuant to this section shall be enforceable by the Commission in
12 the same manner as provided in this act for the enforcement of other
13 compensation payments.

14 8. Charges for prescription drugs dispensed by a pharmacy shall
15 be limited to ninety percent (90%) of the average wholesale price of
16 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per
17 prescription. "Average wholesale price" means the amount determined
18 from the latest publication designated by the Commission.

19 Physicians shall prescribe and pharmacies shall dispense generic
20 equivalent drugs when available. ~~If the National Drug Code, or~~
21 ~~"NDC", for the drug product dispensed is for a repackaged drug, then~~
22 ~~the maximum reimbursement shall be the lesser of the original~~
23 ~~labeler's NDC and the lowest cost therapeutic equivalent drug~~
24 ~~product. Compounded medications shall be billed by the compounding~~

1 ~~pharmacy at the ingredient level, with each ingredient identified~~
2 ~~using the applicable NDC of the drug product, and the corresponding~~
3 ~~quantity. Ingredients with no NDC area are not separately~~
4 ~~reimbursable. Payment shall be based on a sum of the allowable fee~~
5 ~~for each ingredient plus a dispensing fee of Five Dollars (\$5.00)~~
6 ~~per prescription.~~

7 9. ~~When medical care includes prescription drugs dispensed by a~~
8 ~~physician or other medical care provider and the NDC for the drug~~
9 ~~product dispensed is for a repackaged drug, then the maximum~~
10 ~~reimbursement shall be the lesser of the original labeler's NDC and~~
11 ~~the lowest cost therapeutic equivalent drug product. Payment shall~~
12 ~~be based upon a sum of the allowable fee for each ingredient plus a~~
13 ~~dispensing fee of Five Dollars (\$5.00) per prescription. Compounded~~
14 ~~medications shall be billed by the compounding pharmacy~~ The employer
15 or insurance carrier shall choose a prescribing pharmacy which must
16 maintain a physical location in Oklahoma and be licensed as a retail
17 pharmacy by the State Board of Pharmacy. A prescribing doctor, a
18 member of the doctor's family or a medical clinic associated with
19 the doctor is prohibited from receiving any fees, rebates or any
20 other form of financial gain from prescribing any drug. A physician
21 shall not be allowed to dispense medicine from an office or clinic.
22 Payment for compounded medications, repackaged medications, private
23 label topical solutions or prescription kits shall not be payable
24 unless such prescription is approved in advance by the employer or

1 insurance carrier, it is proven that the employee could not tolerate
2 an oral described drug, and the compounded medication, repackaged
3 medication, private label topical solution or prescription kit are
4 contained in the Drug Formulary approved by the Commission and the
5 recommended formulary contained in the Official Disability
6 Guidelines. Reimbursement of a compounded medication, repackaged
7 medication, private label topical solution or prescription kit shall
8 be limited to one hundred fifty percent (150%) of the dispensing
9 pharmacy's lowest retail price for each ingredient, less any
10 discounts, rebates or other reduction in price received by the
11 pharmacy.

12 10. Implantables are paid in addition to procedural
13 reimbursement paid for medical or surgical services. A
14 manufacturer's invoice for the actual cost to a physician, hospital
15 or other entity of an implantable device shall be adjusted by the
16 physician, hospital or other entity to reflect, at the time
17 implanted, all applicable discounts, rebates, considerations and
18 product replacement programs and shall be provided to the payer by
19 the physician or hospital as a condition of payment for the
20 implantable device. If the physician, or an entity in which the
21 physician has a financial interest other than an ownership interest
22 of less than five percent (5%) in a publically traded company,
23 provides implantable devices, this relationship shall be disclosed
24 to patient, employer, insurance company, third-party commission,

1 certified workplace medical plan, case managers, and attorneys
2 representing claimant and defendant. If the physician, or an entity
3 in which the physician has a financial interest other than an
4 ownership interest of less than five percent (5%) in a publically
5 traded company, buys and resells implantable devices to a hospital
6 or another physician, the markup shall be limited to ten percent
7 (10%) above cost.

8 11. Payment for medical care as required by this act shall be
9 due within forty-five (45) days of the receipt by the employer or
10 insurance carrier of a complete and accurate invoice, unless the
11 employer or insurance carrier has a good-faith reason to request
12 additional information about such invoice. Thereafter, the
13 Commission may assess a penalty up to twenty-five percent (25%) for
14 any amount due under the Fee Schedule that remains unpaid on the
15 finding by the Commission that no good-faith reason existed for the
16 delay in payment. If the Commission finds a pattern of an employer
17 or insurance carrier willfully and knowingly delaying payments for
18 medical care, the Commission may assess a civil penalty of not more
19 than Five Thousand Dollars (\$5,000.00) per occurrence.

20 12. If an employee fails to appear for a scheduled appointment
21 with a physician, the employer or insurance company shall pay to the
22 physician a reasonable charge, to be determined by the Commission,
23 for the missed appointment. In the absence of a good-faith reason
24

1 for missing the appointment, the Commission shall order the employee
2 to reimburse the employer or insurance company for the charge.

3 13. Physicians providing treatment under this act shall
4 disclose under penalty of perjury to the Commission, on a form
5 prescribed by the Commission, any ownership or interest in any
6 health care facility, business, or diagnostic center that is not the
7 physician's primary place of business. The disclosure shall include
8 any employee leasing arrangement between the physician and any
9 health care facility that is not the physician's primary place of
10 business. A physician's failure to disclose as required by this
11 section shall be grounds for the Commission to disqualify the
12 physician from providing treatment under this act.

13 I. Formulary. The Commission by rule shall adopt a closed
14 formulary. Rules adopted by the Commission shall allow an appeals
15 process for claims in which a treating doctor determines and
16 documents that a drug not included in the formulary is necessary to
17 treat an injured employee's compensable injury. The Commission by
18 rule shall require the use of generic pharmaceutical medications and
19 clinically appropriate over-the-counter alternatives to prescription
20 medications unless otherwise specified by the prescribing doctor, in
21 accordance with applicable state law.

22 J. The Commission, in cooperation with the Oklahoma Insurance
23 Department, shall develop rules to license Pharmacy Benefit Managers
24 (PBM) that provide prescription services for injured workers in the

1 state. The Commission shall monitor PBM compliance with
2 reimbursement limitations in this section. If the Commission finds
3 evidence of overcharging for prescription drugs or tests related to
4 pain management, such information shall be immediately reported to
5 the Attorney General or the district attorney in the county where
6 the overcharging has occurred.

7 SECTION 24. AMENDATORY Section 53, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2016, Section 53), is amended to read as
9 follows:

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

15 B. In cases where the Commission directs examination or
16 treatment, proceedings shall be suspended, and no compensation shall
17 be payable for any period during which the employee refuses to
18 submit to examination and treatment or otherwise obstructs the
19 examination or treatment.

20 C. Failure of the employee to obey a judgment of the Commission
21 for an examination or treatment ~~for a period of one (1) month from~~
22 ~~the date of the judgment~~ shall bar the right of the claimant to
23 further temporary total disability compensation in respect to the
24 injury.

1 SECTION 25. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 54.1 of Title 85A, unless there
3 is created a duplication in numbering, reads as follows:

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

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

13 SECTION 26. AMENDATORY Section 57, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2016, Section 57), is amended to read as
15 follows:

16 Section 57. A. If an injured employee misses two or more
17 scheduled appointments for treatment, he or she shall no longer be
18 eligible to receive temporary total disability benefits under this
19 ~~act~~ title, unless his or her absence was:

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

24

1 B. Inability to get transportation to or from the appointment
2 shall not be considered extraordinary circumstances nor a valid
3 excuse for the absence.

4 SECTION 27. AMENDATORY Section 60, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2016, Section 60), is amended to read as
6 follows:

7 Section 60. The Physician Advisory Committee may recommend the
8 adoption of a method or system to evaluate permanent disability that
9 shall deviate from, or be used in place of or in combination with
10 the Guides. Such recommendation shall be made to the Workers'
11 Compensation Commission which may adopt the recommendation in part
12 or in whole. The adopted method or system shall be submitted by the
13 Executive Director of the Commission to the Governor, the Speaker of
14 the House of Representatives and the President Pro Tempore of the
15 Senate within the first ten (10) legislative days of a regular
16 session of the Legislature. Such method or system so submitted
17 shall be subject to disapproval by joint or concurrent resolution of
18 the Legislature during the legislative session in which submitted.
19 If disapproved, the existing method of determining permanent partial
20 disability shall continue in effect. If the Legislature takes no
21 action on the method or system submitted by the Executive Director,
22 the method or system shall become operative thirty (30) days
23 following the adjournment of the Legislature.

1 SECTION 28. AMENDATORY Section 61, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 61), is amended to read as
3 follows:

4 Section 61. A. A hernia is not a compensable injury unless the
5 injured employee can prove by a preponderance of the evidence that
6 it meets the definition of "compensable injury" under this ~~act~~ title
7 and:

8 1. The occurrence of the hernia followed as the result of
9 sudden effort, severe strain, or the application of force directly
10 to the abdominal wall;

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

12 3. The pain caused the employee's work to be substantially
13 affected;

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

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

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

22 2. If the injured employee refuses to permit the hernia
23 operation if recommended by a physician, he or she shall be entitled
24

1 to temporary total disability for thirteen (13) weeks in addition to
2 appropriate medical care.

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

7 SECTION 29. AMENDATORY Section 62, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2016, Section 62), is amended to read as
9 follows:

10 Section 62. A. Notwithstanding the provisions of Section 45 of
11 this ~~act~~ title, if an employee suffers a nonsurgical soft tissue
12 injury, temporary total disability compensation shall not exceed
13 eight (8) weeks, regardless of the number of parts of the body to
14 which there is a nonsurgical soft tissue injury. An employee who is
15 treated with an injection or injections shall be entitled to an
16 extension of an additional eight (8) weeks. For purposes of this
17 section, an injection shall not include facet injections or
18 intravenous injections An employee who has been recommended by a
19 treating physician for surgery for a soft tissue injury may petition
20 the Workers' Compensation Commission for one extension of temporary
21 total disability compensation and the Commission may order an
22 extension, not to exceed sixteen (16) additional weeks. If the
23 surgery is not performed within thirty (30) days of the approval of
24 the surgery by the employer, its insurance carrier, or an order of

1 the Commission authorizing the surgery, and the delay is caused by
2 the employee acting in bad faith, the benefits for the extension
3 period shall be terminated and the employee shall reimburse the
4 employer any temporary total disability compensation he or she
5 received beyond eight (8) weeks. An epidural steroid injection, or
6 any procedure of the same or similar physical invasiveness, shall
7 not be considered surgery.

8 B. For purposes of this section, "soft tissue injury" means
9 damage to one or more of the tissues that surround bones and joints.
10 Soft tissue injury includes, but is not limited to, sprains,
11 strains, contusions, tendonitis and muscle tears. Cumulative trauma
12 is to be considered a soft tissue injury unless corrective surgery
13 is necessary. Soft tissue injury does not include any of the
14 following:

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

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

18 a. sensory or motor disturbances,

19 b. communication disturbances,

20 c. complex integrated disturbances of cerebral function,

21 d. episodic neurological disorders, or

22 e. other brain and closed-head injury conditions at least
23 as severe in nature as any condition provided in
24 subparagraphs a through d of this paragraph; or

1 3. Any joint replacement.

2 SECTION 30. AMENDATORY Section 65, Chapter 208, O.S.L.
3 2013, as amended by Section 3, Chapter 390, O.S.L. 2015 (85A O.S.
4 Supp. 2016, Section 65), is amended to read as follows:

5 Section 65. A. If an employee suffers from an occupational
6 disease as defined in this section and is disabled or dies as a
7 result of the disease, the employee, or, in case of death, his or
8 her dependents, shall be entitled to compensation as if the
9 disability or death were caused by injury arising out of work
10 activities within the scope of employment, except as otherwise
11 provided in this section.

12 B. No compensation shall be payable for an occupational disease
13 if the employee, at the time of entering into the employment of the
14 employer by whom the compensation would otherwise be payable,
15 falsely represented himself or herself in writing as not having
16 previously been disabled, laid off, or compensated in damages or
17 otherwise, because of the disease.

18 C. 1. If an occupational disease is aggravated by any other
19 disease or infirmity, not itself compensable, or if disability or
20 death from any other cause, not itself compensable, is aggravated,
21 prolonged, accelerated, or in any way contributed to by an
22 occupational disease, the compensation payable shall be reduced and
23 limited to the proportion only of the compensation that would be
24 payable if the occupational disease were the major cause of the

1 disability or death as the occupational disease, as a causative
2 factor, bears to all the causes of the disability or death.

3 2. The reduction in compensation is to be effected by reducing
4 the number of weekly or monthly payments or the amounts of the
5 payments, as under the circumstances of the particular case may be
6 for the best interest of the claimant.

7 D. 1. "Occupational disease", as used in this act, unless the
8 context otherwise requires, means any disease that results in
9 disability or death and arises out of and in the course of the
10 occupation or employment of the employee or naturally follows or
11 unavoidably results from an injury as that term is defined in this
12 act. A causal connection between the occupation or employment and
13 the occupational disease shall be established by a preponderance of
14 the evidence.

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

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

20 E. 1. When compensation is payable for an occupational
21 disease, the employer in whose employment the employee was last
22 injuriously exposed to the hazards of the disease and the carrier,
23 if any, on the risk when the employee was last injuriously exposed
24 under the employer shall be liable.

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

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

7 a. ~~the disease is due to the nature of an employment in~~
8 ~~which the hazards of the disease actually exist and is~~
9 ~~actually incurred in the course and scope of his or~~
10 ~~her employment. This includes any disease due to or~~
11 ~~attributable to exposure to or contact with any~~
12 ~~radioactive material by an employee in the course and~~
13 ~~scope of his or her employment,~~

14 b. ~~disablement or death results within three (3) years in~~
15 ~~case of silicosis or asbestosis, or one (1) year in~~
16 ~~case of any other occupational disease, except a~~
17 ~~diseased condition caused by exposure to X-rays,~~
18 ~~radioactive substances, or ionizing radiation, after~~
19 ~~the last injurious exposure to the disease in the~~
20 ~~employment, or~~

21 c. ~~in case of death, death follows continuous disability~~
22 ~~from the disease, commencing within the period, for~~
23 ~~which compensation has been paid or awarded or timely~~
24 ~~claim made as provided in subparagraph b of this~~

1 ~~paragraph and results within seven (7) years after the~~
2 ~~last exposure.~~

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

6 SECTION 31. AMENDATORY Section 66, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2016, Section 66), is amended to read as
8 follows:

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

11 1. "Asbestosis" means the characteristic fibrotic condition of
12 the lungs caused by the inhalation of asbestos dust; and

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

15 B. In the absence of ~~conclusive~~ a preponderance of the evidence
16 in favor of the claim, disability or death from silicosis or
17 asbestosis shall be presumed not to be due to the nature of any
18 occupation within the provision of this section unless during the
19 ten (10) years immediately preceding the date of disablement the
20 employee has been exposed to the inhalation of silica dust or
21 asbestos dust over a period of not less than five (5) years, two (2)
22 years of which shall have been in this state, under a contract of
23 employment performed in this state. However, if the employee has
24 been employed by the same employer during the entire five-year

1 period, his or her right to compensation against the employer shall
2 not be affected by the fact that he or she had been employed during
3 any part of the period outside of this state.

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

8 D. 1. In case of disability or death from silicosis or
9 asbestosis complicated with tuberculosis of the lungs, compensation
10 shall be payable as for uncomplicated silicosis or asbestosis,
11 provided that the silicosis or asbestosis was an essential factor in
12 the causing of disability or death.

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

17 ~~E. 1. When an employee, though not actually disabled, is found
18 by the Commission to be affected by silicosis or asbestosis to such
19 a degree as to make it unduly hazardous for him or her to continue
20 in an employment involving exposure to the hazards of the disease,
21 the Commission may order that he or she be removed from his or her
22 employment. In such a case, or in case he or she has already been
23 discharged from the employment and is unemployed, he or she shall be
24 entitled to compensation until he or she can obtain steady~~

1 ~~employment in some other suitable occupation in which there are no~~
2 ~~hazards of the disease.~~

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

8 SECTION 32. AMENDATORY Section 67, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2016, Section 67), is amended to read as
10 follows:

11 Section 67. A. ~~1.~~ Except as otherwise provided in this
12 section, notice of disability resulting from an occupational disease
13 or cumulative trauma shall be the same as in cases of accidental
14 injury.

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

20 ~~B. An award or denial of award of compensation for an~~
21 ~~occupational disease or cumulative trauma may be reviewed and~~
22 ~~compensation increased, reduced, or terminated where previously~~
23 ~~awarded, or awarded where previously denied, only on proof of fraud~~
24 ~~or undue influence or of change of condition, and then only on~~

1 ~~application by a party in interest made not later than one (1) year~~
2 ~~after the denial of award or, where compensation has been awarded,~~
3 ~~after the award or the date when the last payment was made under the~~
4 ~~award, except in cases of silicosis or asbestosis, where the statute~~
5 ~~of limitations shall be two (2) years.~~

6 SECTION 33. AMENDATORY Section 69, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2016, Section 69), is amended to read as
8 follows:

9 Section 69. A. Time for Filing.

10 1. A claim for benefits under this act, other than an
11 occupational disease, shall be barred unless it is filed with the
12 Commission within one (1) year from the date of the injury. If
13 during the one-year period following the filing of the claim the
14 employee receives no weekly benefit compensation and receives no
15 medical treatment resulting from the alleged injury, the claim shall
16 be barred thereafter. For purposes of this section, the date of the
17 injury shall be defined as the date an injury is caused by an
18 accident as set forth in paragraph 9 of Section 2 of this ~~act~~ title.

19 2. a. A claim for compensation for disability on account of
20 injury under this title which is either an
21 occupational disease or occupational infection shall
22 be barred unless filed with the Workers' Compensation
23 Commission within two (2) years from the date of the
24

1 last injurious exposure to the hazards of the disease
2 or infection.

3 b. A claim for compensation for disability on account of
4 silicosis or asbestosis shall be filed with the
5 Commission within one (1) year after the time of
6 disablement, and the disablement shall occur within
7 three (3) years from the date of the last injurious
8 exposure to the hazard of silicosis or asbestosis.

9 c. A claim for compensation for disability on account of
10 a disease condition caused by exposure to X-rays,
11 radioactive substances, or ionizing radiation only
12 shall be filed with the Commission within two (2)
13 years from the date the condition is made known to an
14 employee following examination and diagnosis by a
15 medical doctor.

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

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

23 B. Time for Filing Additional Compensation.
24

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

7 2. The statute of limitations provided in this subsection shall
8 not apply to claims for the replacement of medicine, crutches,
9 ambulatory devices, artificial limbs, eyeglasses, contact lenses,
10 hearing aids, and other apparatus permanently or indefinitely
11 required as the result of a compensable injury, when the employer or
12 carrier previously furnished such medical supplies, but replacement
13 of such items shall not constitute payment of compensation so as to
14 toll the statute of limitations.

15 C. A claim for additional compensation shall specifically state
16 that it is a claim for additional compensation. Documents which do
17 not specifically request additional benefits shall not be considered
18 a claim for additional compensation.

19 D. If within six (6) months after the filing of a claim for
20 additional compensation no bona fide request for a hearing has been
21 made with respect to the claim, the claim shall be dismissed without
22 prejudice to the refileing of the claim within the limitation period
23 specified in subsection B of this section.

24

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

7 F. Persons under Disability.

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

13 2. Subsections A and B of this section shall not apply to a
14 mental incompetent or minor so long as the person has no guardian or
15 similar legal representative. The limitations prescribed in
16 subsections A and B of this section shall apply to the mental
17 incompetent or minor from the date of the appointment of a guardian
18 or similar legal representative for that person, and when no
19 guardian or similar representative has been appointed, to a minor on
20 reaching the age of majority.

21 G. A latent injury or condition shall not delay or toll the
22 limitation periods specified in this section. This subsection shall
23 not apply to the limitation period for occupational diseases
24 specified in paragraph 2 of subsection A of this section.

1 SECTION 34. AMENDATORY Section 71, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 71), is amended to read as
3 follows:

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

8 B. Investigation - Hearing.

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

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

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

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

24

1 5. The award, together with the statement of the findings of
2 fact and other matters pertinent to the issues, shall be filed with
3 the record of the proceedings, and a copy of the award shall
4 immediately be sent to the parties in or to counsels of record, if
5 any.

6 C. Evidence and Construction.

7 1. a. At the hearing the claimant and the employer may each
8 present evidence relating to the claim. Evidence may
9 be presented by any person authorized in writing for
10 such purpose. The evidence may include verified
11 medical reports which shall be accorded such weight as
12 may be warranted when considering all evidence in the
13 case.

14 b. Any determination of the existence or extent of
15 physical impairment shall be supported by objective
16 and measurable physical or mental findings.

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

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

23 4. In determining whether a party has met the burden of proof
24 on an issue, administrative law judges and the Commission shall

1 weigh the evidence impartially and without giving the benefit of the
2 doubt to any party.

3 D. Judgment. The judgment denying the claim or making the
4 award shall be filed in the office of the Commission, and a copy
5 shall be sent by registered mail, facsimile, electronic mail or
6 other electronic means with receipt of confirmation to the claimant
7 and to the employer or to their attorneys.

8 E. No compensation for disability of an injured employee shall
9 be payable for any period beyond his or her death; provided,
10 however, an award of compensation for disability may be made after
11 the death of the injured employee for the period of disability
12 preceding death.

13 SECTION 35. AMENDATORY Section 78, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2016, Section 78), is amended to read as
15 follows:

16 Section 78. A. Any party feeling aggrieved by the judgment,
17 decision, or award made by the administrative law judge may, within
18 ten (10) days of issuance, appeal to the Workers' Compensation
19 Commission. After hearing arguments, the Commission may reverse or
20 modify the decision only if it determines that the decision was
21 against the clear weight of the evidence or contrary to law. All
22 such proceedings of the Commission shall be recorded by a court
23 reporter, if requested by any party. Any judgment of the Commission
24

1 which reverses a decision of the administrative law judge shall
2 contain specific findings relating to the reversal.

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

7 C. The judgment, decision or award of the Commission shall be
8 final and conclusive on all questions within its jurisdiction
9 between the parties unless an action is commenced in the Supreme
10 Court of this state to review the judgment, decision or award within
11 twenty (20) days of being sent to the parties. Any judgment,
12 decision or award made by an administrative law judge shall be
13 stayed until all appeal rights have been waived or exhausted. The
14 Supreme Court may modify, reverse, remand for rehearing, or set
15 aside the judgment or award only if it was:

- 16 1. In violation of constitutional provisions;
- 17 2. In excess of the statutory authority or jurisdiction of the
18 Commission;
- 19 3. Made on unlawful procedure;
- 20 4. Affected by other error of law;
- 21 5. Clearly erroneous in view of the reliable, material,
22 probative and substantial competent evidence;
- 23 6. Arbitrary or capricious;
- 24 7. Procured by fraud; or

1 8. Missing findings of fact on issues essential to the
2 decision.

3 This action shall be commenced by filing with the Clerk of the
4 Supreme Court a certified copy of the judgment, decision or award of
5 the Commission attached to the petition by the complaint which shall
6 specify why the judgment, decision or award is erroneous or illegal.
7 The proceedings shall be heard in a summary manner and shall have
8 precedence over all other civil cases in the Supreme Court, except
9 preferred Corporation Commission appeals. The Supreme Court shall
10 require the appealing party to file within forty-five (45) days from
11 the date of the filing of an appeal or a judgment appealed from, a
12 transcript of the record of the proceedings before the Commission,
13 or such later time as may be granted by the Supreme Court on
14 application and for good cause shown. The action shall be subject
15 to the law and practice applicable to other civil actions cognizable
16 in the Supreme Court.

17 D. A fee of One Hundred Dollars (\$100.00) per appeal to the
18 Supreme Court shall be paid to the Commission and deposited in the
19 Workers' Compensation Fund as costs for preparing, assembling,
20 indexing and transmitting the record for appellate review. This fee
21 shall be paid by the party taking the appeal. If more than one
22 party to the action files an appeal from the same judgment, decision
23 or award, the fee shall be paid by the party whose petition in error
24 commences the principal appeal.

1 E. During the pendency of an appeal filed by an employer or the
2 employer's insurance carrier pursuant to this section, payment for
3 any prescription drugs prescribed by the treating physician shall be
4 continued. If payment for prescription drugs is an issue on appeal,
5 and the employer is held not to be liable for payment for the
6 prescription drugs, the employee shall reimburse the employer or the
7 employer's insurance carrier for the cost of prescriptions filled
8 during the time of the appeals process.

9 SECTION 36. AMENDATORY Section 80, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2016, Section 80), is amended to read as
11 follows:

12 Section 80. A. Except ~~where~~ when a joint petition settlement
13 has been approved, the Workers' Compensation Commission may reopen
14 for review any compensation judgment, award, or decision. Such
15 review based on a change of physical condition may be done at any
16 time within six (6) months ~~of termination of the compensation period~~
17 ~~fixed in the original compensation judgment or award~~ from the date
18 of the last order in which monetary benefits or active medical
19 treatment was provided, on the Commission's own motion or on the
20 application of any party in interest, ~~on the ground of a change in~~
21 ~~physical condition or on proof of erroneous wage rate~~ and unless
22 filed within such period of time shall be forever barred. On
23 review, the Commission may make a judgment or award terminating,
24 continuing, decreasing, or increasing for the future the

1 compensation previously awarded, subject to the maximum limits
2 provided for in this ~~act~~ title.

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

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

10 D. Aging and the effects of aging on a compensable injury are
11 not to be considered in determining whether there has been a change
12 in physical condition. Aging or the effect of aging on a
13 compensable injury shall not be considered in determining permanent
14 disability under this section or any other section in this ~~act~~
15 title.

16 SECTION 37. AMENDATORY Section 82, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2016, Section 82), is amended to read as
18 follows:

19 Section 82.

20 A. 1. a. Fees for legal services rendered in a claim shall not
21 be valid unless approved by the Workers' Compensation
22 Commission.

23 b. An attorney representing an injured employee may only
24 recover attorney fees up to ten percent (10%) of any

1 temporary total disability or temporary partial
2 disability compensation and twenty percent (20%) of
3 any permanent partial disability, permanent total
4 disability, or death compensation awarded to an
5 injured employee by the Commission from a controverted
6 claim. If the employer makes a written offer to
7 settle permanent partial disability, permanent total
8 disability, or death compensation and that offer is
9 rejected, the employee's attorney may not recover
10 attorney fees in excess of thirty percent (30%) of the
11 difference between the amount of any award and the
12 settlement offer.

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

15 (2) Attorney fees shall not be awarded on medical
16 benefits or services.

17 (3) The fee for legal services rendered by an
18 attorney representing an employee in connection
19 with a change of physician requested by the
20 injured employee, controverted by the employer,
21 and awarded by the Commission, shall be Two
22 Hundred Dollars (\$200.00).

23 (4) Attorney fees may include not more than ten
24 percent (10%) of the value, or reasonable

1 estimate thereof, of vocational rehabilitation
2 services.

3 c. A "controverted claim" means that ~~there has been a~~
4 ~~contested hearing before the Commission over the~~
5 employer or the employer's insurance carrier has
6 controverted whether there has been a compensable
7 injury or whether the employee is entitled to
8 temporary total disability, temporary partial
9 disability, permanent partial disability, permanent
10 total disability, or death compensation. A request
11 for a change in physician shall not trigger a
12 controverted claim for purposes of recovering any
13 attorney fees except the fees under division 3 of
14 subparagraph b of this paragraph. A controverted
15 claim shall not exist if the employee or his or her
16 representative has withheld pertinent information in
17 his or her possession related to the claim from the
18 employer or has violated the provisions of Section 6
19 of this ~~act~~ title.

20 2. ~~Any person who or entity that brings a controverted claim~~
21 ~~against the State Treasurer, as a custodian of the Multiple Injury~~
22 ~~Trust Fund, shall provide notice of the claim to the Commission.~~
23 ~~Thereafter, the Commission shall direct fees for legal services be~~
24 ~~paid from the Fund, in addition to any compensation award. The fees~~

1 ~~shall be authorized only on the difference between the amount of~~
2 ~~compensation controverted and the amount awarded from the Fund.~~

3 3. In any case ~~where~~ in which attorney fees are allowed by the
4 Commission, the limitations expressed in subparagraph b of paragraph
5 1 of this subsection shall apply.

6 4. ~~3.~~ Medical providers may voluntarily contract with the
7 attorney for the employee to recover disputed charges, and the
8 provider may charge a reasonable fee for the cost of collection.

9 B. An attorney representing an employee under this act may not
10 recover fees for services except as expressly provided in this
11 section.

12 SECTION 38. AMENDATORY Section 86, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2016, Section 86), is amended to read as
14 follows:

15 Section 86. A. 1. Each employer desiring to controvert an
16 employee's right to compensation ~~shall~~ may file with the Workers'
17 Compensation Commission on or before the fifteenth day following
18 notice of the alleged injury or death a statement on a form
19 prescribed by the Commission that the right to compensation is
20 controverted and the grounds for the controversion, the names of the
21 claimant, employer, and carrier, if any, and the date and place of
22 the alleged injury or death.

23 2. Failure to file the statement of controversion shall not
24 preclude the employer's ability to controvert the claim or cause it

1 to waive any defenses. The employer can make additional defenses
2 not included in the initial notice at any time.

3 B. If an employer is unable to obtain sufficient medical
4 information as to the alleged injury or death within fifteen (15)
5 days following receipt of notice, although the employer has acted in
6 good faith and with all due diligence, the employer may apply in
7 writing for an extension of time for making payment of the first
8 installment or controverting the claim. This written application is
9 to be postmarked within the fifteen-day period. The Commission may,
10 in its discretion, grant the extension and fix the additional time
11 to be allowed. Filing of application for an extension shall not be
12 deemed to be a controversion of the claim.

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

17 SECTION 39. AMENDATORY Section 87, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2016, Section 87), is amended to read as
19 follows:

20 Section 87. If the employer or carrier and the injured employee
21 desire to settle the claim, they shall file a joint petition for
22 settlement with the Workers' Compensation Commission. After the
23 joint petition has been filed, the Commission shall order that all
24 workers' compensation claims covered by the joint petition between

1 the parties have been settled. No appeal shall lie from a judgment
2 or award denying a joint petition.

3 SECTION 40. AMENDATORY Section 90, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 90), is amended to read as
5 follows:

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

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

1 SECTION 41. AMENDATORY Section 101, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 101), is amended to read as
3 follows:

4 Section 101. A. On or before the first day of July each year,
5 the Workers' Compensation Commission shall prepare, make public and
6 submit a report for the prior calendar year to the Governor, the
7 President Pro Tempore of the Senate, the Speaker of the House of
8 Representatives, and each member of the Legislature, containing a
9 statement of the number of awards made and the causes of the
10 accidents leading to the injuries for which the awards were made,
11 total work load data of the administrative law judges, including a
12 detailed report of the work load and judgments written by each
13 judge, a detailed statement of the expenses of the Commission,
14 together with any other matter which the Commission deems proper to
15 report.

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

22 C. To assist the Commission in developing and implementing the
23 EDI system, there is hereby created the Oklahoma Workers'
24 Compensation Electronic Data Interchange Advisory Committee. Within

1 thirty (30) days of the effective date of this act, the Governor
2 shall appoint five persons to serve as members of the advisory
3 committee, one of whom shall be selected by the Governor as chair.
4 The chair shall provide adequate notice of meetings of the advisory
5 committee and public hearings as required by law.

6 SECTION 42. AMENDATORY Section 105, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2016, Section 105), is amended to read as
8 follows:

9 Section 105. A. No employee of the Workers' Compensation
10 Commission shall be competent to testify on any matter concerning
11 any information the employee has received through the performance of
12 the employee's duties under the provisions of this act, except for
13 employees in the Compliance Division regarding their investigations,
14 custodians of the Commission's records, or if the Commission or any
15 of its employees are a named party in the matter.

16 B. The commissioners and employees of the Commission shall not
17 solicit employment for any attorney or physician nor shall they
18 recommend or refer any claimant or employer to an attorney or
19 physician. If any employee of the Commission makes such a
20 solicitation, recommendation or reference, that person, upon
21 conviction, shall be guilty of a misdemeanor punishable, for each
22 offense, by a fine of not more than One Thousand Dollars (\$1,000.00)
23 or by imprisonment in the county jail not to exceed one (1) year, or
24 by both such fine and imprisonment. The Commission shall

1 immediately terminate the employment of any employee who is guilty
2 of such solicitation, recommendation or reference. A commissioner
3 guilty of such solicitation, recommendation or reference shall be
4 subject to removal from office.

5 C. No administrative law judge shall engage in any ex parte
6 communication with any party to an action pending before the
7 Commission or with any witness or medical provider regarding the
8 merits of a specific matter pending before the judge for resolution.
9 Any violation of this provision shall subject the judge to
10 disqualification from the action or matter upon presentation of an
11 application for disqualification.

12 SECTION 43. AMENDATORY Section 155, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2016, Section 112), is amended to read as
14 follows:

15 Section 112. A. The Workers' Compensation Commission shall
16 create, maintain and review a list of licensed physicians who shall
17 serve as independent medical examiners from a list of licensed
18 physicians who have completed such course study as the Commission
19 may require. An independent medical examiner must agree to examine
20 an employee within forty-five (45) days of appointment. The
21 Commission shall, to the best of its ability, include the most
22 experienced and competent physicians in the specific fields of
23 expertise utilized most often in the treatment of injured employees.
24 The period of qualification shall be two (2) years. Physicians may

1 be qualified for successive two-year periods. Physicians serving as
2 independent medical examiners on the effective date of this act
3 shall serve the remainder of their respective two-year qualification
4 periods and may reapply for successive qualification periods. The
5 Commission may remove an independent medical examiner from the list
6 for cause.

7 B. An administrative law judge may appoint an independent
8 medical examiner to assist in determining any issue before the
9 Commission. In the event surgery is recommended by a treating
10 physician, upon request of the employer within fifteen (15) days
11 after receipt of the surgery recommendation, an independent medical
12 examiner shall be appointed to determine the reasonableness and
13 necessity of the recommended surgery. Such independent medical
14 examiner shall be qualified to perform the type of surgery
15 recommended and shall evaluate the employee within thirty (30) days
16 after the Commission order.

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

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

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

4 F. After a physical examination and review of medical records
5 and other appropriate information, including depositions and
6 surveillance video, the independent medical examiner shall submit a
7 verified written report to the Commission and to the parties. In
8 the event the independent medical examiner determines that more
9 medical treatment is necessary, the employer shall designate a
10 treating physician to provide the indicated treatment.

11 G. Any independent medical examiner selected pursuant to the
12 provisions of this section shall be reimbursed for the medical
13 examination, reports and fees in a reasonable and customary amount
14 set by the Commission, and these costs shall be borne by the
15 employer.

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

19 I. If the Commission does not follow the opinion of the
20 independent medical examiner on any issue, the administrative law
21 judge or member of the Board of Review shall set out its reasons for
22 deviating from the opinion of the independent medical examiner. The
23 opinion of the independent medical examiner shall be followed unless
24 there is clear and convincing evidence to the contrary.

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

8 SECTION 44. AMENDATORY Section 158, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2016, Section 115), is amended to read as
10 follows:

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

1 B. In the event all issues of a claim are not fully, finally
2 and completely settled by a Joint Petition, the issues not settled
3 by the parties and subject to the Commission's continuing
4 jurisdiction must be noted by appendix to the Joint Petition or on a
5 form created for such purpose by the Commission. The appendix must
6 be signed by the parties and approved by the Commission as set forth
7 herein.

8 C. In the absence of fraud, a Joint Petition shall be deemed
9 binding upon the parties thereto and a final adjudication of all
10 rights pursuant to this ~~act~~ title or the workers' compensation law
11 in effect at the time of the injury or final order of the Workers'
12 Compensation ~~Court~~ Commission. An official record shall be made by
13 an official Commission reporter of the testimony taken to effect the
14 Joint Petition.

15 D. A good-faith effort shall be made on the part of any
16 insurance carrier, ~~CompSource Oklahoma,~~ or group self-insured plan
17 to notify an insured employer of the possibility of and terms of any
18 settlement of a workers' compensation case pursuant to this section.
19 Written comments or objections to settlements shall be filed with
20 the Commission and periodically shared with the management of the
21 applicable insurer. A written notice shall be made to all
22 policyholders of their right to a good-faith effort by their insurer
23 to notify them of any proposed settlement, if the policyholder so
24 chooses.

1 E. If an employee has not filed a claim for compensation and
2 the employer and the injured employee reach a final agreement as to
3 the facts with relation to an injury and the resulting disability
4 for which compensation is claimed under the Administrative Workers'
5 Compensation Act, a memorandum of such agreement in a form
6 prescribed by the Commission shall be filed by the employer with the
7 Commission. Such memorandum shall be signed by both the employer
8 and employee and approved by an administrative law judge.

9 SECTION 45. AMENDATORY Section 161, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2016, Section 118), is amended to read as
11 follows:

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

18 1. One Hundred Five Dollars (\$105.00) to the credit of the
19 Workers' Compensation Commission Revolving Fund created by Section
20 28.1 of this ~~act~~ title;

21 2. Ten Dollars (\$10.00) to the credit of the Attorney General's
22 Workers' Compensation Fraud Unit Revolving Fund created by Section
23 19.2 of Title 74 of the Oklahoma Statutes; and

24

1 3. Twenty-five Dollars (\$25.00) to the credit of the Workers'
2 Compensation Commission Revolving Fund for purposes of implementing
3 the provisions of this ~~act~~ title, including strengthening and
4 providing additional funding for the Attorney General's Workers'
5 Compensation Fraud Unit, providing counseling services pursuant to
6 the workers' compensation counselor or ombudsman program and safety
7 in the workplace.

8 B. A fee of One Hundred Thirty Dollars (\$130.00) per action to
9 reopen any case pursuant to Section 32 of this ~~act~~ title shall be
10 collected by the Commission and assessed as costs to be paid by the
11 party that reopens the case. The fee collected pursuant to this
12 subsection shall be deposited to the credit of the Workers'
13 Compensation Commission Revolving Fund for purposes of implementing
14 the provisions of this ~~act~~ title, including strengthening and
15 providing additional funding for the Attorney General's Workers'
16 Compensation Fraud Unit, providing counseling services pursuant to
17 the workers' compensation counselor or ombudsman program and safety
18 in the workplace.

19 SECTION 46. AMENDATORY Section 163, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2016, Section 120), is amended to read as
21 follows:

22 Section 120. A. Except as otherwise provided by state or
23 federal law and subject to the provisions of this section, an
24 employer may inquire about previous workers' compensation claims

1 paid to an employee while the employee was employed by a previous
2 employer. If the employee fails to answer truthfully about any
3 previous permanent partial disability awards made pursuant to
4 workers' compensation claims, the employee shall be subject to
5 discharge by the employer.

6 B. 1. All requests made to the Workers' Compensation
7 Commission for information on ~~prior~~ workers' compensation claims
8 involving a worker, including written inquiries about prior claims
9 and requests to access a worker's compensation claim file, must be
10 in writing, on a form prescribed by the Commission, and accompanied
11 by a fee of One Dollar (\$1.00) per search request, not to exceed One
12 Dollar (\$1.00) per claims record of a particular worker. The fee
13 shall be deposited to the credit of the Workers' Compensation
14 Commission Revolving Fund. The form shall require identification of
15 the person requesting the information, and the person for whom a
16 search is being made if different from the requester. The form must
17 contain an affidavit signed by the requester under penalty of
18 perjury that the information sought is not requested for a purpose
19 in violation of state or federal law. The form must be used by all
20 repositories of archived Court claim files. All request forms shall
21 be maintained by the Commission as a public record, together with a
22 record of a worker's written authorization permitting a search
23 indexed by the worker's social security number as required by
24 Section 3113 of Title 74 of the Oklahoma Statutes. The request

1 forms and authorizations shall be indexed alphabetically by the last
2 name of the worker.

3 2. This subsection shall not apply:

4 a. to requests for claims information made by a public
5 officer or by a public employee in the performance of
6 his or her duties on behalf of a governmental entity
7 or as may be allowed by law,

8 b. to requests for claims information made by an insurer,
9 self-insured employer, third-party claims
10 administrator, or a legal representative thereof, when
11 necessary to process or defend a workers' compensation
12 claim,

13 c. when a worker or the worker's representative requests
14 review of the worker's claims information,

15 d. when the disclosure is made for educational or
16 research purposes and in such a manner that the
17 disclosed information cannot be used to identify any
18 worker who is the subject of a claim,

19 e. to requests for claims information made by a health
20 care or rehabilitation provider or the provider's
21 legal representative when necessary to process payment
22 of health care or rehabilitation services rendered to
23 a worker, and
24

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

11 SECTION 47. AMENDATORY Section 164, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2016, Section 121), is amended to read as
13 follows:

14 Section 121. A. There is hereby created an Advisory Council on
15 Workers' Compensation.

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

21 1. The Governor shall appoint three members representing
22 employers in this state, one of whom shall be from a list of
23 nominees provided by the predominant statewide broad-based business
24 organization.

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

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

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

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

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

21 3. The term of office for three positions, one each appointed
22 by the Governor, the President Pro Tempore of the Senate and the
23 Speaker of the House of Representatives shall expire on January 1,
24 2017.

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

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

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

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

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

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

19 J. The Advisory Council shall analyze and review the workers'
20 compensation system, the reports of the Commission, and trends in
21 the field of workers' compensation. The Advisory Council may
22 recommend improvements and proper responses to developing trends.
23 The Advisory Council shall report its findings annually to the
24 Governor, the Chief Justice of the Supreme Court, the President Pro

1 Tempore of the Senate, and the Speaker of the House of
2 Representatives.

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

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

10 SECTION 48. AMENDATORY Section 165, Chapter 208, O.S.L.
11 2013, as amended by Section 4, Chapter 344, O.S.L. 2015 (85A O.S.
12 Supp. 2016, Section 122), is amended to read as follows:

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

17 B. For the purpose of providing funds for the Workers'
18 Compensation Commission Revolving Fund, for the Workers'
19 Compensation Administrative Fund created in Section ~~5~~ 401.1 of this
20 ~~act~~ title, for the Multiple Injury Trust Fund created in Section 28
21 of this title, and to fund other provisions within this title, the
22 following tax rates shall apply:

23 1. Each mutual or interinsurance association, stock company,
24 CompSource Oklahoma or other insurance carrier writing workers'

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

15 2. When an employer is authorized to become a self-insurer, the
16 Workers' Compensation Commission shall so notify the Tax Commission,
17 giving the effective date of such authorization. The Tax Commission
18 shall then assess and collect from the employers carrying their own
19 risk an assessment at the rate of two percent (2%) of the total
20 compensation for permanent total disability awards, permanent
21 partial disability awards and death benefits paid out during each
22 quarter of the calendar year by the employers. Such assessment
23 shall be payable by the employers and collected by the Tax
24 Commission according to the provisions of this section regarding

1 payment and collection of the assessment created in paragraph 1 of
2 this subsection.

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

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

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

21 2. Four Million Dollars (\$4,000,000.00) shall be payable in
22 equal monthly installments to the credit of the Workers'
23 Compensation Administrative Fund established in Section 5 of this
24 act for the fiscal year ending June 30, 2016, Three Million Five

1 Hundred Thousand Dollars (\$3,500,000.00) for the fiscal year ending
2 June 30, 2017, Three Million Five Hundred Thousand Dollars
3 (\$3,500,000.00) for the fiscal year ending June 30, 2018, Three
4 Million Dollars (\$3,000,000.00) for the fiscal year ending June 30,
5 2019, and Two Million Five Hundred Thousand Dollars (\$2,500,000.00)
6 for the fiscal year ending June 30, 2020. Monies deposited in the
7 Workers' Compensation Administrative Fund shall be used by the
8 Workers' Compensation Court of Existing Claims to implement
9 provisions provided for in this title.

10 E. The refund provisions of Sections 227 through 229 of Title
11 68 of the Oklahoma Statutes shall be applicable to any payments made
12 pursuant to this section.

13 SECTION 49. AMENDATORY Section 121, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2016, Section 300), is amended to read as
15 follows:

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

19 SECTION 50. AMENDATORY Section 125, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2016, Section 304), is amended to read as
21 follows:

22 Section 304. A. Except as otherwise provided in subsections B
23 and C of this section and in the laws of this state outside of this
24 ~~act~~ title, a party to an agreement to arbitrate or to an arbitration

1 proceeding may waive, or the parties may vary the effect of, the
2 requirements of this act to the extent permitted by law.

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

5 1. Waive or agree to vary the effect of the requirements of
6 subsection A of Section ~~126~~ 305, subsection A of Section ~~127~~ 306,
7 Section ~~128~~ 307, subsection A or B of Section ~~138~~ 317, Section ~~147~~
8 326 or Section ~~149~~ 328 of this ~~act~~ title;

9 2. Agree to unreasonably restrict the right to notice of the
10 initiation of an arbitration proceeding under Section ~~130~~ 309 of
11 this ~~act~~ title;

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

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

17 5. Agree to conduct arbitration proceedings outside of this
18 state.

19 C. A party to an agreement to arbitrate or to an arbitration
20 proceeding may not waive, or the parties may not vary the effect of,
21 the requirements of this section or subsection A or C of Section ~~124~~
22 303, Sections ~~128~~ 307, ~~135~~ 314 and ~~139~~ 318, subsection D or E of
23 Section ~~141~~ 320, Sections ~~143~~ 322, ~~144~~ 323 and ~~145~~ 324, or
24 subsection A or B of Section ~~146~~ 325 of this ~~act~~ title.

1 SECTION 51. AMENDATORY Section 126, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 305), is amended to read as
3 follows:

4 Section 305. A. Except as otherwise provided in Section ~~150~~
5 107 of this ~~act~~ title, an application for judicial relief under this
6 act shall be made by application and motion to the Workers'
7 Compensation Commission and heard in the manner provided by law or
8 rule of the Commission for making and hearing motions.

9 B. Unless a civil action involving the agreement to arbitrate
10 is pending, notice of an initial application and motion to the
11 Commission under this act shall be served in the manner provided by
12 law for the service of a summons in the filing of a civil action.
13 Otherwise, notice of the motion shall be given in the manner
14 provided by law or rule of court for serving motions in pending
15 cases.

16 SECTION 52. AMENDATORY Section 133, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2016, Section 312), is amended to read as
18 follows:

19 Section 312. A. Before accepting appointment, an individual
20 who is requested to serve as an arbitrator, after making a
21 reasonable inquiry, shall disclose to the parties to the arbitration
22 agreement, the parties to the arbitration proceeding, and any other
23 arbitrators any known facts that a reasonable person would consider
24

1 likely to affect the impartiality of the arbitrator in the
2 arbitration proceeding, including but not limited to:

3 1. A financial or personal interest in the outcome of the
4 arbitration proceeding; and

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

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

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

20 SECTION 53. AMENDATORY Section 134, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2016, Section 313), is amended to read as
22 follows:

23 Section 313. If there is more than one arbitrator, the powers
24 of an arbitrator shall be exercised by a majority of the

1 arbitrators, but all of them shall conduct the hearing under Section
2 ~~136~~ 315 of this ~~act~~ title.

3 SECTION 54. AMENDATORY Section 135, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 314), is amended to read as
5 follows:

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

10 B. The immunity afforded by this section supplements any
11 immunity under other law.

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

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

22 1. The extent necessary to determine the claim of an
23 arbitrator, arbitration organization, or representative of the
24

1 arbitration organization against a party to the arbitration
2 proceeding; or

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

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

19 SECTION 55. AMENDATORY Section 137, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2016, Section 316), is amended to read as
21 follows:

22 Section 316. A. A party to an arbitration proceeding may be
23 represented by a lawyer.

24

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

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

6 SECTION 56. AMENDATORY Section 139, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2016, Section 318), is amended to read as
8 follows:

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

19 SECTION 57. AMENDATORY Section 141, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2016, Section 320), is amended to read as
21 follows:

22 Section 320. A. On motion by a party to an arbitration
23 proceeding, the arbitrator may modify or correct an award:
24

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

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

6 3. To clarify the award.

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

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

13 D. If a motion to the Workers' Compensation Commission is
14 pending under Section ~~144~~ 323 or ~~145~~ 324 of this ~~act~~ title, the
15 Commission may submit the claim to the arbitrator to consider
16 whether to modify or correct the award:

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

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

22 3. To clarify the award.

23 E. An award modified or corrected under this section is subject
24 to Sections ~~143, 144 and 145~~ 322, 323 and 324 of this ~~act~~ title.

1 SECTION 58. 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 59. 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 60. 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 61. 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 62. 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 63. AMENDATORY 36 O.S. 2011, Section 1250.5, as
11 amended by Section 1, Chapter 105, O.S.L. 2012 (36 O.S. Supp. 2016,
12 Section 1250.5), is amended to read as follows:

13 Section 1250.5 Any of the following acts by an insurer, if
14 committed in violation of Section 1250.3 of this title, constitutes
15 an unfair claim settlement practice exclusive of paragraph 16 of
16 this section which shall be applicable solely to health benefit
17 plans:

18 1. Failing to fully disclose to first party claimants,
19 benefits, coverages, or other provisions of any insurance policy or
20 insurance contract when the benefits, coverages or other provisions
21 are pertinent to a claim;

22 2. Knowingly misrepresenting to claimants pertinent facts or
23 policy provisions relating to coverages at issue;

24

1 3. Failing to adopt and implement reasonable standards for
2 prompt investigations of claims arising under its insurance policies
3 or insurance contracts;

4 4. Not attempting in good faith to effectuate prompt, fair and
5 equitable settlement of claims submitted in which liability has
6 become reasonably clear; provided, however, that in workers'
7 compensation claims no cause of action shall be commenced unless the
8 employer or insurance carrier denies a benefit provided by the
9 Administrative Workers' Compensation Act in writing;

10 5. Failing to comply with the provisions of Section 1219 of
11 this title;

12 6. Denying a claim for failure to exhibit the property without
13 proof of demand and unfounded refusal by a claimant to do so;

14 7. Except where there is a time limit specified in the policy,
15 making statements, written or otherwise, which require a claimant to
16 give written notice of loss or proof of loss within a specified time
17 limit and which seek to relieve the company of its obligations if
18 the time limit is not complied with unless the failure to comply
19 with the time limit prejudices the rights of an insurer;

20 8. Requesting a claimant to sign a release that extends beyond
21 the subject matter that gave rise to the claim payment;

22 9. Issuing checks or drafts in partial settlement of a loss or
23 claim under a specified coverage which contain language releasing an
24 insurer or its insured from its total liability;

1 10. Denying payment to a claimant on the grounds that services,
2 procedures, or supplies provided by a treating physician or a
3 hospital were not medically necessary unless the health insurer or
4 administrator, as defined in Section 1442 of this title, first
5 obtains an opinion from any provider of health care licensed by law
6 and preceded by a medical examination or claim review, to the effect
7 that the services, procedures or supplies for which payment is being
8 denied were not medically necessary. Upon written request of a
9 claimant, treating physician, or hospital, the opinion shall be set
10 forth in a written report, prepared and signed by the reviewing
11 physician. The report shall detail which specific services,
12 procedures, or supplies were not medically necessary, in the opinion
13 of the reviewing physician, and an explanation of that conclusion.
14 A copy of each report of a reviewing physician shall be mailed by
15 the health insurer, or administrator, postage prepaid, to the
16 claimant, treating physician or hospital requesting same within
17 fifteen (15) days after receipt of the written request. As used in
18 this paragraph, "physician" means a person holding a valid license
19 to practice medicine and surgery, osteopathic medicine, podiatric
20 medicine, dentistry, chiropractic, or optometry, pursuant to the
21 state licensing provisions of Title 59 of the Oklahoma Statutes;

22 11. Compensating a reviewing physician, as defined in paragraph
23 10 of this subsection, on the basis of a percentage of the amount by
24 which a claim is reduced for payment;

1 12. Violating the provisions of the Health Care Fraud
2 Prevention Act;

3 13. Compelling, without just cause, policyholders to institute
4 suits to recover amounts due under its insurance policies or
5 insurance contracts by offering substantially less than the amounts
6 ultimately recovered in suits brought by them, when the
7 policyholders have made claims for amounts reasonably similar to the
8 amounts ultimately recovered;

9 14. Failing to maintain a complete record of all complaints
10 which it has received during the preceding three (3) years or since
11 the date of its last financial examination conducted or accepted by
12 the Commissioner, whichever time is longer. This record shall
13 indicate the total number of complaints, their classification by
14 line of insurance, the nature of each complaint, the disposition of
15 each complaint, and the time it took to process each complaint. For
16 the purposes of this paragraph, "complaint" means any written
17 communication primarily expressing a grievance;

18 15. Requesting a refund of all or a portion of a payment of a
19 claim made to a claimant or health care provider more than twenty-
20 four (24) months after the payment is made. This paragraph shall
21 not apply:

22 a. if the payment was made because of fraud committed by
23 the claimant or health care provider, or
24

1 b. if the claimant or health care provider has otherwise
2 agreed to make a refund to the insurer for overpayment
3 of a claim;

4 16. Failing to pay, or requesting a refund of a payment, for
5 health care services covered under the policy if a health benefit
6 plan, or its agent, has provided a preauthorization or
7 precertification and verification of eligibility for those health
8 care services. This paragraph shall not apply if:

- 9 a. the claim or payment was made because of fraud
10 committed by the claimant or health care provider,
11 b. the subscriber had a preexisting exclusion under the
12 policy related to the service provided, or
13 c. the subscriber or employer failed to pay the
14 applicable premium and all grace periods and
15 extensions of coverage have expired; or

16 17. Denying or refusing to accept an application for life
17 insurance, or refusing to renew, cancel, restrict or otherwise
18 terminate a policy of life insurance, or charge a different rate
19 based upon the lawful travel destination of an applicant or insured
20 as provided in Section 4024 of this title.

21 SECTION 64. REPEALER Sections 15 and 36, Chapter 208,
22 O.S.L. 2013 (85A O.S. Supp. 2016, Sections 15 and 36), are hereby
23 repealed.

1 SECTION 65. This act shall become effective November 1, 2017.

2
3 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL AND
4 ENVIRONMENTAL, dated 03/01/2017 - DO PASS, As Amended.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24