

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
BILL NO. 2239

By: May of the House

and

Daniels of the Senate

[workers' compensation - occupational diseases -
emergency]

11 AUTHOR: Remove as principal House author May and substitute as
principal House author Kannady

12 AUTHOR: Remove as principal House author Kannady and substitute as
13 principal House author Sterling

14 AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause
and entire bill and insert

15 "An Act relating to workers' compensation; amending
16 85A O.S. 2021, Section 400, which relates to the
Workers' Compensation Court of Existing Claims;
17 modifying composition of court; increasing term of
certain appointment; extending operation of court;
18 deleting obsolete references; and declaring an
emergency.

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

22 SECTION 1. AMENDATORY 85A O.S. 2021, Section 400, is
23 amended to read as follows:

24

1 Section 400. A. The Workers' Compensation Court shall be
2 renamed the Workers' Compensation Court of Existing Claims for the
3 purpose of hearing disputes relating to claims that arise before
4 February 1, 2014. ~~The Court shall consist of the existing judges~~
5 ~~for the remainder of his or her term. Each judge of the Court shall~~
6 ~~continue to serve as the appointment to a designated position on the~~
7 ~~Court. The terms of the judges by position number shall expire on~~
8 ~~the following dates:~~

9 ~~Position 4 shall expire 7-1-20.~~

10 ~~Position 5 shall expire 7-1-20.~~

11 ~~Position 8 shall expire 7-1-20.~~

12 ~~Position 9 shall expire 7-1-20.~~

13 B. ~~Effective July 1, 2020, the~~ The Workers' Compensation Court
14 of Existing Claims shall consist of one judge to be appointed by the
15 Governor, with confirmation by the Senate. The judge shall be
16 appointed for a term to expire on July 1, ~~2022~~ 2023. For the
17 purpose of continued operation of the Court of Existing Claims until
18 July 1, 2027, the existing judge on the effective date of this act
19 shall continue to serve, with the term to expire on July 1, 2027.

20 The Governor shall select the judge from a list of three applicants
21 submitted to the Governor by the Judicial Nominating Commission. If
22 the list is not acceptable to the Governor, the Governor may request
23 from the Judicial Nominating Commission a list of names of three
24 additional applicants. Any present judge of the Court of Existing

1 Claims may apply to the Judicial Nominating Commission for
2 appointment to fill any position authorized by this section.

3 C. A judge may be removed for cause by the Court on the
4 Judiciary prior to the expiration of his or her term.

5 D. Each judge shall receive a salary equal to that paid to a
6 district judge of this state, and shall devote full time to his or
7 her duties and shall not engage in the private practice of law
8 during the term in office.

9 E. If a vacancy occurs on the Court of Existing Claims, the
10 Governor shall appoint a judge to serve the remainder of the term
11 from a list of three applicants submitted to the Governor by the
12 Judicial Nominating Commission, with confirmation of the State
13 Senate. If the list is not acceptable to the Governor, the Governor
14 may request from the Judicial Nominating Commission a list of the
15 names of three additional applicants.

16 F. 1. ~~Effective January 1, 2020, the~~ The Governor shall
17 appoint an Administrator of the Court of Existing Claims, who shall
18 serve at the pleasure of the Governor. The Administrator shall be
19 appointed by the Governor with the advice and consent of the Senate.
20 The compensation for the Administrator shall be set at ninety
21 percent (90%) of the compensation of a district court judge.

22 2. The Administrator shall employ and supervise the work of
23 employees of the Court and shall have the authority to expend funds
24 and contract on behalf of the Court. The Administrator may contract

1 with the Workers' Compensation Commission to provide support
2 services or personnel needs necessary to carry out the purposes of
3 the Court and shall supervise the work of any such personnel as
4 necessary to maintain the Court as a Court of Record.

5 G. The Court of Existing Claims shall contract with the
6 Workers' Compensation Commission to integrate its case management
7 and records Information Technology System into the system of the
8 Workers' Compensation Commission with such integration to be
9 completed on or before July 1, 2022. The Court shall be entitled to
10 any fees generated for the retrieval of such data.

11 H. The Court shall operate by the rules adopted by the Workers'
12 Compensation Court prior to February 1, 2014.

13 I. The Court is hereby designated and confirmed as a court of
14 record, with respect to any matter within the limits of its
15 jurisdiction, and within such limits the judges thereof shall
16 possess the powers and prerogatives of the judges of the other
17 courts of record of this state including the power to punish for
18 contempt those persons who disobey a subpoena, or refuse to be sworn
19 or to answer as a witness, when lawfully ordered to do so.

20 J. The principal office of the Court shall be situated in the
21 City of Oklahoma City in quarters assigned by the Office of
22 Management and Enterprise Services. The Court may hold hearings in
23 any city of this state.

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1 K. All county commissioners and presiding district judges of
2 this state shall make quarters available for the conducting of
3 hearings by a judge of the Court upon request by the Court.

4 L. Judges of the Workers' Compensation Court of Existing Claims
5 may punish for direct contempt pursuant to Sections 565, 565.1 and
6 566 of Title 21 of the Oklahoma Statutes.

7 M. The Court shall be vested with jurisdiction over all claims
8 filed pursuant to the Workers' Compensation Code or previous statute
9 in effect on the date of an injury that occurred before February 1,
10 2014. All claims so filed shall be heard by the judge sitting
11 without a jury. The Court shall have full power and authority to
12 determine all questions in relation to payment of claims for
13 compensation under the provisions of the Workers' Compensation Code
14 or previous statute in effect on the date of an injury that occurred
15 before February 1, 2014. The Court, upon application of either
16 party, shall order a hearing. Upon a hearing, either party may
17 present evidence and be represented by counsel. The decision of the
18 Court shall be final as to all questions of fact and law; provided,
19 the decision of the Court may be appealed to the Court en banc or
20 the Supreme Court as provided by the Workers' Compensation Code or
21 previous statute in effect on the date of an injury that occurred
22 before February 1, 2014. In the event that an insufficient number
23 of active judges are available to comprise the three-judge en banc
24 panel, retired or former judges of the district court, Workers'

1 Compensation Court or Workers' Compensation Court of Existing Claims
2 may be designated by the Presiding Judge of the Court of Existing
3 Claims as eligible to serve on such panel. The Governor shall
4 provide to the Court of Existing Claims a list of designated judges
5 eligible for service on the Court en banc. The decision of the
6 Court shall be issued within thirty (30) days following the
7 submission of the case by the parties. The power and jurisdiction
8 of the Court over each case shall be continuing and it may, from
9 time to time, make such modifications or changes with respect to
10 former findings or orders relating thereto if, in its opinion, it
11 may be justified.

12 N. For an injury occurring before February 1, 2014, all
13 benefits and procedures to obtain benefits shall be determined by
14 the workers' compensation law of this state in effect on the date of
15 the injury.

16 O. All accrued rights and penalties incurred pursuant to a
17 final order of the Workers' Compensation Court shall be preserved.
18 No accrued right, penalty incurred, or proceeding begun by virtue of
19 a statute repealed by this act shall be abrogated by the terms of
20 this act.

21 P. Annually, on or before the first day of July, ~~commencing~~
22 ~~with July 2019,~~ the Administrator shall prepare and submit a report
23 for the prior calendar year to the Governor, the Chief Justice of
24 the Supreme Court, the President Pro Tempore of the Senate and the

1 Speaker of the House of Representatives which shall include a
2 statement of the number of awards made and the causes of the
3 accidents leading to the injuries for which the awards were made,
4 total work load data of the Court, a detailed report of the work
5 load of the judges of the Court, a detailed statement of the
6 expenses of the office of the Administrator of Workers' Compensation
7 Court of Existing Claims, together with any other matter which the
8 Administrator deems proper to report to the Governor including any
9 recommendations he or she may desire to make.

10 Q. Subject to the availability of funds, the Judge of the Court
11 of Existing Claims may employ one at-will full- or part-time special
12 workers' compensation judge with jurisdiction to hear cases as set
13 forth in subsection M of this section and as may be assigned by the
14 Judge. The special workers' compensation judge shall receive
15 compensation for such services in accordance with the provisions of
16 Section 92.1A of Title 20 of the Oklahoma Statutes.

17 SECTION 2. It being immediately necessary for the preservation
18 of the public peace, health or safety, an emergency is hereby
19 declared to exist, by reason whereof this act shall take effect and
20 be in full force from and after its passage and approval."
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1 Passed the Senate the 28th day of April, 2022.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2022.

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8 _____
9 Presiding Officer of the House
10 of Representatives

1 ENGROSSED HOUSE
2 BILL NO. 2239

By: May of the House

3 and

4 Daniels of the Senate

5
6
7 [workers' compensation - occupational diseases -
8 emergency]
9

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

12 SECTION 3. AMENDATORY Section 65, Chapter 208, O.S.L.
13 2013, as amended by Section 3, Chapter 390, O.S.L. 2015 (85A O.S.
14 Supp. 2020, Section 65), is amended to read as follows:

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

22 B. No compensation shall be payable for an occupational disease
23 if the employee, at the time of entering into the employment of the
24 employer by whom the compensation would otherwise be payable,

1 falsely represented himself or herself in writing as not having
2 previously been disabled, laid off, or compensated in damages or
3 otherwise, because of the disease.

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

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

17 D. 1. "Occupational disease", as used in ~~this act~~ the
18 Administrative Workers' Compensation Act, unless the context
19 otherwise requires, means any disease that results in disability or
20 death and arises out of and in the course of the occupation or
21 employment of the employee or naturally follows or unavoidably
22 results from an injury as that term is defined in ~~this act~~ the
23 Administrative Workers' Compensation Act. A causal connection
24

1 between the occupation or employment and the occupational disease
2 shall be established by a preponderance of the evidence.

3 2. No compensation shall be payable for any contagious or
4 infectious disease unless contracted in the course and scope of
5 employment. In the event a first responder tests positive for
6 severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2),
7 commonly known as the coronavirus or COVID-19, the disease shall be
8 presumed to have been contracted in the course and scope of
9 employment unless the employer proves by a preponderance of the
10 evidence that the disease was not contracted in the course and scope
11 of employment. The presumption shall apply to any claim filed on or
12 after the effective date of this act and to any claim filed before
13 the effective date of this act if the claim was denied and an appeal
14 of the denial has been filed with the Workers' Compensation
15 Commission. For purposes of this paragraph, a "first responder" is
16 defined as a peace officer, reserve peace officer, firefighter, or
17 emergency medical technician employed by a municipality, county,
18 emergency medical services provider, or the State of Oklahoma, or a
19 volunteer firefighter, who is exposed to COVID-19 during the
20 performance of his or her duties.

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

23 E. 1. When compensation is payable for an occupational
24 disease, the employer in whose employment the employee was last

1 injuriously exposed to the hazards of the disease and the carrier,
2 if any, ~~on~~ responsible for the risk when the employee was last
3 injuriously exposed under the employer shall be liable.

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

8 F. 1. An employer shall not be liable for any compensation for
9 an occupational disease unless:

- 10 a. the disease is due to the nature of an employment in
11 which the hazards of the disease actually exist and is
12 actually incurred by the employee in the course and
13 scope of his or her employment. This includes any
14 disease due to or attributable to exposure to or
15 contact with any radioactive material by an employee
16 in the course and scope of his or her employment,
- 17 b. the disease is COVID-19 and the employer has not
18 overcome the presumption provided for in paragraph 2
19 of subsection D of this section,
- 20 c. disablement or death results within three (3) years in
21 case of silicosis or asbestosis, or one (1) year in
22 case of any other occupational disease, except a
23 diseased condition caused by exposure to X-rays,
24 radioactive substances, or ionizing radiation, after

1 the last injurious exposure to the disease in the
2 employment, or

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

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

12 SECTION 4. It being immediately necessary for the preservation
13 of the public peace, health or safety, an emergency is hereby
14 declared to exist, by reason whereof this act shall take effect and
15 be in full force from and after its passage and approval.

16 Passed the House of Representatives the 10th day of March, 2021.

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18 _____
19 Presiding Officer of the House
of Representatives

20 Passed the Senate the ___ day of _____, 2021.

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22 _____
23 Presiding Officer of the Senate
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