

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 ENGROSSED SENATE
5 BILL NO. 324

 By: Daniels of the Senate

 and

 Echols of the House

10 An Act relating to workers' compensation; amending
11 Sections 2, Chapter 208, O.S.L. 2013, as last amended
12 by Section 1, Chapter 476, O.S.L. 2019, 3 and 5,
13 Chapter 208, O.S.L. 2013, as amended by Sections 2
14 and 3, Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2020,
15 Sections 2, 3 and 5), which relate to definitions,
16 applicability and exclusive liability; modifying
17 definition; clarifying applicability of act;
18 clarifying exception to exclusive remedy; and
19 providing an effective date.

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

21 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
22 2013, as last amended by Section 1, Chapter 476, O.S.L. 2019 (85A
23 O.S. Supp. 2020, Section 2), is amended to read as follows:

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

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

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

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

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

1 regularly obtains continuing education hours to maintain
2 certification:

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

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

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

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

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

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

13 9. a. "Compensable injury" means damage or harm to the
14 physical structure of the body, or damage or harm to
15 prosthetic appliances, including eyeglasses, contact
16 lenses, or hearing aids, of which the major cause is
17 either an accident, cumulative trauma ~~or~~, occupational
18 disease or the employer's knowledge that injury was
19 substantially certain to result from the employer's
20 conduct arising out of the course and scope of
21 employment. An "accident" means an event involving
22 factors external to the employee that:

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

- 1 (2) occurred at a specifically identifiable time and
2 place,
3 (3) occurred by chance or from unknown causes, 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,
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1 (4) injury if the accident was caused by the use of
2 alcohol, illegal drugs, or prescription drugs
3 used in contravention of physician's orders. If
4 a biological specimen is collected within twenty-
5 four (24) hours of the employee being injured or
6 reporting an injury, or if at any time after the
7 injury a biological specimen is collected by the
8 Oklahoma Office of the Chief Medical Examiner if
9 the injured employee does not survive for at
10 least twenty-four (24) hours after the injury and
11 the employee tests positive for intoxication, an
12 illegal controlled substance, or a legal
13 controlled substance used in contravention to a
14 treating physician's orders, or refuses to
15 undergo the drug and alcohol testing, there shall
16 be a rebuttable presumption that the injury was
17 caused by the use of alcohol, illegal drugs, or
18 prescription drugs used in contravention of
19 physician's orders. This presumption may only be
20 overcome if the employee proves by clear and
21 convincing evidence that his or her state of
22 intoxication had no causal relationship to the
23 injury,
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1 (5) any strain, degeneration, damage or harm to, or
2 disease or condition of, the eye or
3 musculoskeletal structure or other body part
4 resulting from the natural results of aging,
5 osteoarthritis, arthritis, or degenerative
6 process including, but not limited to,
7 degenerative joint disease, degenerative disc
8 disease, degenerative
9 spondylosis/spondylolisthesis and spinal
10 stenosis, or

11 (6) any preexisting condition except when the
12 treating physician clearly confirms an
13 identifiable and significant aggravation incurred
14 in the course and scope of employment.

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

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

21 e. 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 f. 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 title and
13 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

1 not include diagnostic tests, surgery, injections, counseling,
2 physical therapy, or pain management devices or equipment;

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

- 12 a. an employee's transportation to and from his or her
13 place of employment,
- 14 b. travel by an employee in furtherance of the affairs of
15 an employer if the travel is also in furtherance of
16 personal or private affairs of the employee,
- 17 c. any injury occurring in a parking lot or other common
18 area adjacent to an employer's place of business
19 before the employee clocks in or otherwise begins work
20 for the employer or after the employee clocks out or
21 otherwise stops work for the employer unless the
22 employer owns or maintains exclusive control over the
23 area, or

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

7 14. "Cumulative trauma" means an injury to an employee that is
8 caused by the combined effect of repetitive physical activities
9 extending over a period of time in the course and scope of
10 employment. Cumulative trauma shall not mean fatigue, soreness or
11 general aches and pain that may have been caused, aggravated,
12 exacerbated or accelerated by the employee's course and scope of
13 employment. Cumulative trauma shall have resulted directly and
14 independently of all other causes;

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

17 16. "Disability" means incapacity because of compensable injury
18 to earn, in the same or any other employment, substantially the same
19 amount of wages the employee was receiving at the time of the
20 compensable injury;

21 17. "Drive-away operations" includes every person engaged in
22 the business of transporting and delivering new or used vehicles by
23 driving, either singly or by ~~towbar~~ tow bar, saddle-mount or full-

1 mount method, or any combination thereof, with or without towing a
2 privately owned vehicle;

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

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

23 (1) any person for whom an employer is liable under
24 any Act of Congress for providing compensation to

1 employees for injuries, disease or death arising
2 out of and in the course of employment including,
3 but not limited to, the Federal Employees'
4 Compensation Act, the Federal Employers'
5 Liability Act, the Longshore and Harbor Workers'
6 Compensation Act and the Jones Act, to the extent
7 his or her employees are subject to such acts,

8 (2) any person who is employed in agriculture,
9 ranching or horticulture by an employer who had a
10 gross annual payroll in the preceding calendar
11 year of less than One Hundred Thousand Dollars
12 (\$100,000.00) wages for agricultural, ranching or
13 horticultural workers, or any person who is
14 employed in agriculture, ranching or horticulture
15 who is not engaged in operation of motorized
16 machines. This exemption applies to any period
17 of time for which such employment exists,
18 irrespective of whether or not the person is
19 employed in other activities for which the
20 exemption does not apply. If the person is
21 employed for part of a year in exempt activities
22 and for part of a year in nonexempt activities,
23 the employer shall be responsible for providing
24 workers' compensation only for the period of time

1 for which the person is employed in nonexempt
2 activities,

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

5 (4) any person who is providing services in a medical
6 care or social services program, or who is a
7 participant in a work or training program,
8 administered by the Department of Human Services,
9 unless the Department is required by federal law
10 or regulations to provide workers' compensation
11 for such person. This division shall not be
12 construed to include nursing homes,

13 (5) any person employed by an employer with five or
14 fewer total employees, all of whom are related
15 within the second degree by blood or marriage to
16 the employer, all of whom are dependents living
17 in the household of the employer, or all of whom
18 are a combination of such relatives and
19 dependents. If the employer is not a natural
20 person such relative shall be related within the
21 second degree by blood or marriage to a person
22 who owns fifty percent (50%) or more of the
23 employer, or such dependent shall be in the
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1 household of a person who owns fifty percent
2 (50%) or more of the employer,

3 (6) any person employed by an employer which is a
4 youth sports league which qualifies for exemption
5 from federal income taxation pursuant to federal
6 law,

7 (7) sole proprietors, members of a partnership,
8 individuals who are party to a franchise
9 agreement as set out by the Federal Trade
10 Commission franchise disclosure rule, 16 CFR
11 436.1 through 436.11, members of a limited
12 liability company who own at least ten percent
13 (10%) of the capital of the limited liability
14 company or any stockholder-employees of a
15 corporation who own ten percent (10%) or more
16 stock in the corporation, unless they elect to be
17 covered by a policy of insurance covering
18 benefits under the Administrative Workers'
19 Compensation Act,

20 (8) any person providing or performing voluntary
21 service who receives no wages for the services
22 other than meals, drug or alcohol rehabilitative
23 therapy, transportation, lodging or reimbursement
24 for incidental expenses except for volunteers

1 specifically provided for in subparagraph a of
2 this paragraph,

3 (9) a person, commonly referred to as an owner-
4 operator, who owns or leases a truck-tractor or
5 truck for hire, if the owner-operator actually
6 operates the truck-tractor or truck and if the
7 person contracting with the owner-operator is not
8 the lessor of the truck-tractor or truck.

9 Provided, however, an owner-operator shall not be
10 precluded from workers' compensation coverage
11 under the Administrative Workers' Compensation
12 Act if the owner-operator elects to participate
13 as a sole proprietor,

14 (10) a person referred to as a drive-away owner-
15 operator who privately owns and utilizes a tow
16 vehicle in drive-away operations and operates
17 independently for hire, if the drive-away owner-
18 operator actually utilizes the tow vehicle and if
19 the person contracting with the drive-away owner-
20 operator is not the lessor of the tow vehicle.

21 Provided, however, a drive-away owner-operator
22 shall not be precluded from workers' compensation
23 coverage under the Administrative Workers'

24

1 Compensation Act if the drive-away owner-operator
2 elects to participate as a sole proprietor, and
3 (11) any person who is employed as a domestic servant
4 or as a casual worker in and about a private home
5 or household, which private home or household had
6 a gross annual payroll in the preceding calendar
7 year of less than Fifty Thousand Dollars
8 (\$50,000.00) for such workers;

9 19. "Employer" means a natural person, partnership,
10 association, limited liability company, corporation, and the legal
11 representatives of a deceased employer, or the receiver or trustee
12 of a person, partnership, association, corporation, or limited
13 liability company, departments, instrumentalities and institutions
14 of this state and divisions thereof, counties and divisions thereof,
15 public trusts, boards of education and incorporated cities or towns
16 and divisions thereof, employing a person included within the term
17 "employee" as defined in this section. Employer may also mean the
18 employer's workers' compensation insurance carrier, if applicable.
19 Except as provided otherwise, this act applies to all public and
20 private entities and institutions;

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

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

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

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

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

19 25. "Insurance Commissioner" means the Insurance Commissioner
20 of the State of Oklahoma;

21 26. "Insurance Department" means the Insurance Department of
22 the State of Oklahoma;

23 27. "Major cause" means more than fifty percent (50%) of the
24 resulting injury, disease or illness. A finding of major cause

1 shall be established by a preponderance of the evidence. A finding
2 that the workplace was not a major cause of the injury, disease or
3 illness shall not adversely affect the exclusive remedy provisions
4 of this act and shall not create a separate cause of action outside
5 this act;

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

9 29. "Medical services" means those services specified in
10 Section 50 of this title;

11 30. "Misconduct" shall include the following:

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

1 i. a violation of a policy or rule adopted to ensure
2 orderly work or the safety of self or others;

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

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

11 (b) For the purpose of making permanent
12 disability ratings to the spine, physicians
13 shall use criteria established by the Sixth
14 Edition of the American Medical Association
15 "Guides to the Evaluation of Permanent
16 Impairment".

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

1 (b) Any difference in the baseline hearing
2 levels shall be confirmed by subsequent
3 testing; provided, however, such test shall
4 be given within four (4) weeks of the
5 initial baseline hearing level test but not
6 before five (5) days after being adjusted
7 for presbycusis.

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

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

14 33. "Permanent disability" means the extent, expressed as a
15 percentage, of the loss of a portion of the total physiological
16 capabilities of the human body as established by competent medical
17 evidence and based on the Sixth Edition of the American Medical
18 Association guides to the evaluation of impairment, if the
19 impairment is contained therein;

20 34. "Permanent partial disability" means a permanent disability
21 or loss of use after maximum medical improvement has been reached
22 which prevents the injured employee, who has been released to return
23 to work by the treating physician, from returning to his or her pre-

1 injury or equivalent job. All evaluations of permanent partial
2 disability must be supported by objective findings;

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

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

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

19 38. "Private self-insurer" means a private employer that has
20 been authorized to self-insure its workers' compensation obligations
21 pursuant to this act, but does not include group self-insurance
22 associations authorized by this act, or any public employer that
23 self-insures pursuant to this act;

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

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

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

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

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

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

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

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

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

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

18 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.
19 2013, as amended by Section 2, Chapter 476, O.S.L. 2019 (85A O.S.
20 Supp. 2020, Section 3), is amended to read as follows:

21 Section 3. A. Every employer and every employee, unless
22 otherwise specifically provided in this act, shall be subject and
23 bound to the provisions of the Administrative Workers' Compensation
24 Act and every employer shall pay or provide benefits according to

1 the provisions of this act for the ~~accidental~~ compensable injury to
2 or death of an employee arising out of and in the course of his or
3 her employment, without regard to fault for such injury, if the
4 employee's contract of employment was made or if the injury occurred
5 within this state. If an employee makes a claim for an injury in
6 another jurisdiction, the employee is precluded from his or her
7 right of action under the Administrative Workers' Compensation Act
8 unless the Workers' Compensation Commission determines that there is
9 a change in circumstances that creates a good cause to bring the
10 claim under the Administrative Workers' Compensation Act; provided,
11 however, that the employee may not receive duplicate benefits to
12 those received in the foreign jurisdiction and the employee's right
13 to bring a claim under this act shall be subject to the limitations
14 period for bringing a claim pursuant to paragraph 1 of subsection A
15 of Section 69 of this title. Nothing in this act shall be construed
16 to conflict with any valid Act of Congress governing the liability
17 of employers for injuries received by their employees.

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

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

7 C. The Administrative Workers' Compensation Act shall apply
8 only to claims for compensable injuries and death ~~based on accidents~~
9 arising out of the course and scope of employment which occur on or
10 after February 1, 2014.

11 D. The Workers' Compensation Code in effect before February 1,
12 2014, shall govern all rights in respect to claims for compensable
13 injuries and death ~~based on accidents~~ arising out of the course and
14 scope of employment occurring before February 1, 2014.

15 SECTION 3. AMENDATORY Section 5, Chapter 208, O.S.L.
16 2013, as amended by Section 3, Chapter 476, O.S.L. 2019 (85A O.S.
17 Supp. 2020, Section 5), is amended to read as follows:

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

1 of injury, illness, or death. Negligent acts of a co-employee may
2 not be imputed to the employer. No role, capacity, or persona of
3 any employer, principal, officer, director, employee, or stockholder
4 other than that existing in the role of employer of the employee
5 shall be relevant for consideration for purposes of this act, and
6 the remedies and rights provided by this act shall be exclusive
7 regardless of the multiple roles, capacities, or personas the
8 employer may be deemed to have.

9 B. Exclusive remedy shall not apply if:

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

16 2. The injury was caused by an intentional tort committed by
17 the employer. An intentional tort shall exist only when the
18 employee is injured as a result of willful, deliberate, specific
19 intent of the employer to cause such injury. ~~Allegations or proof~~
20 ~~that the employer had~~ The employer's knowledge that the injury was
21 substantially certain to result from the employer's conduct shall
22 not constitute an intentional tort. ~~The employee shall plead facts~~
23 ~~that show it is at least as likely as it is not that the employer~~
24 ~~acted with the purpose of injuring the employee~~ for the purposes of

1 application of exclusive remedy under the Administrative Workers'
2 Compensation Act. The issue of whether an act is an intentional
3 tort shall be a question of law.

4 C. The immunity from civil liability described in subsection A
5 of this section shall apply regardless of whether the injured
6 employee is denied compensation or deemed ineligible to receive
7 compensation under this act.

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

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

19 F. The immunity created by the provisions of this section shall
20 not extend to action against another employer, or its employees, on
21 the same job as the injured or deceased worker even though such
22 other employer may be considered as standing in the position of a
23 special master of a loaned servant where such special master neither
24 is the immediate employer of the injured or deceased worker nor

1 stands in the position of an intermediate or principal employer to
2 the immediate employer of the injured or deceased worker.

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

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

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

20 SECTION 4. This act shall become effective November 1, 2021.

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22 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 03/30/2021 - DO PASS.

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