

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 767

By: Sykes of the Senate

and

Echols of the House

6  
7  
8  
9 COMMITTEE SUBSTITUTE

10 [ workers' compensation - administrative workers'  
11 compensation system and Oklahoma Employee Injury  
12 Benefit Act - immunity from certain liability -  
13 temporary total disability - reporting requirements  
14 - attorney fees - appellate and adjudicative  
15 authority - effective date ]

16  
17  
18 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

19 SECTION 1. AMENDATORY Section 6, Chapter 208, O.S.L.  
20 2013 (85A O.S. Supp. 2014, Section 6), is amended to read as  
21 follows:

22 Section 6.

23 A. 1. a. Any person or entity who makes any material false  
24 statement or representation, who willfully and

1 knowingly omits or conceals any material information,  
2 or who employs any device, scheme, or artifice, or who  
3 aids and abets any person for the purpose of:

- 4 (1) obtaining any benefit or payment,
- 5 (2) increasing any claim for benefit or payment, or
- 6 (3) obtaining workers' compensation coverage under  
7 this act,

8 shall be guilty of a felony punishable pursuant to  
9 Section 1663 of Title 21 of the Oklahoma Statutes.

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

14 c. Fifty percent (50%) of any criminal fine imposed and  
15 collected under this section shall be paid and  
16 allocated in accordance with applicable law to the  
17 Workers' Compensation Fund administered by the  
18 Commission.

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

23 B. A copy of division (1) of subparagraph a of paragraph 1 of  
24 subsection A of this section shall be included on all forms

1 prescribed by the Commission for the use of injured employees  
2 claiming benefits and for the use of employers in responding to  
3 employees' claims under this act.

4 C. Where the Commission or the Attorney General finds that a  
5 violation of division (1) of subparagraph a of paragraph 1 of  
6 subsection A of this section has been committed, or that any other  
7 criminal violations in furtherance of this act were committed, the  
8 chair of the Commission or the Attorney General shall refer the  
9 matter for appropriate action to the prosecuting attorney having  
10 criminal jurisdiction over the matter.

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

19 b. (1) The Unit shall investigate workers' compensation  
20 fraud, any additional criminal violations that  
21 may be related to workers' compensation fraud,  
22 and any other insurance fraud matters as may be  
23 assigned at the discretion of the Attorney  
24 General.

1 (2) The Attorney General shall designate the  
2 personnel assigned to the Unit, who, on meeting  
3 the qualifications established by the Oklahoma  
4 Council on Law Enforcement Education and  
5 Training, shall have the powers of specialized  
6 law enforcement officers of the State of Oklahoma  
7 for the purpose of conducting investigations  
8 under this subparagraph. Personnel hired as  
9 specialized law enforcement officers shall have a  
10 minimum of three (3) years of certified law  
11 enforcement experience or its equivalent in  
12 national or military law enforcement experience  
13 as approved by the Oklahoma Council on Law  
14 Enforcement Education and Training.

15 2. The Attorney General and his or her deputies and assistants  
16 and the Director of the Workers' Compensation Fraud Investigation  
17 Unit and his or her deputies and assistants shall be vested with the  
18 power of enforcing the requirements of this section.

19 3. It shall be the duty of the Unit to assist the Attorney  
20 General in the performance of his or her duties. The Unit shall  
21 determine the identity of employees in this state who have violated  
22 division (1) of subparagraph a of paragraph 1 of subsection A of  
23 this section and report the violation to the Office of the Attorney  
24 General and the Commission. The Attorney General shall report the

1 violation to the prosecuting attorney having jurisdiction over the  
2 matter.

3 4. a. In the course of any investigation being conducted by  
4 the Unit, the Attorney General and his or her deputies  
5 and assistants and the Director and his or her  
6 deputies and assistants shall have the power of  
7 subpoena and may:

- 8 (1) subpoena witnesses,  
9 (2) administer oaths or affirmations and examine any  
10 individual under oath, and  
11 (3) require and compel the production of records,  
12 books, papers, contracts, and other documents.

13 b. The issuance of subpoenas for witnesses shall be  
14 served in the same manner as if issued by a district  
15 court.

16 c. (1) Upon application by the commissioner or the  
17 Director of the Unit, the district court located  
18 in the county where a subpoena was served may  
19 issue an order compelling an individual to comply  
20 with the subpoena to testify.

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

23 d. If any person has refused in connection with an  
24 investigation by the Director to be examined under

1 oath concerning his or her affairs, then the Director  
2 is authorized to conduct and enforce by all  
3 appropriate and available means any examination under  
4 oath in any state or territory of the United States in  
5 which any officer, director, or manager may then  
6 presently be to the full extent permitted by the laws  
7 of the state or territory.

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

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

17 6. a. Every carrier or employer who has reason to suspect  
18 that a violation of division (1) of subparagraph a of  
19 paragraph 1 of subsection A of this section has  
20 occurred shall be required to report all pertinent  
21 matters to the unit.

22 b. No carrier or employer who makes a report for a  
23 suspected violation of division (1) of subparagraph a  
24 of paragraph 1 of subsection A of this section by an

1 employee shall be liable to the employee unless the  
2 carrier or employer knowingly and intentionally  
3 included false information in the report.

4 c. (1) Any carrier or employer who willfully and  
5 knowingly fails to report a violation under  
6 division (1) of subparagraph a of paragraph 1 of  
7 subsection A of this section shall be guilty of a  
8 misdemeanor and on conviction shall be punished  
9 by a fine not to exceed One Thousand Dollars  
10 (\$1,000.00).

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

15 d. Any employee may report suspected violations of  
16 division (1) of subparagraph a of paragraph 1 of  
17 subsection A of this section. No employee who makes a  
18 report shall be liable to the employee whose suspected  
19 violations have been reported.

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

1           2. The prosecuting attorney of the district to whom a suspected  
2 violation of subsection A of this section, or any other criminal  
3 violations that may be related thereto, have been referred shall,  
4 for the purpose of assisting him or her in such prosecutions, have  
5 the authority to appoint as special deputy prosecuting attorneys  
6 licensed attorneys-at-law in the employment of the Unit or any other  
7 designated insurance fraud investigation division within the  
8 Attorney General's office. Such special deputy prosecuting  
9 attorneys shall, for the purpose of the prosecutions to which they  
10 are assigned, be responsible to and report to the prosecuting  
11 attorney.

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

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

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

23           I. The Commission shall include a statement on all forms for  
24 notices and instructions to employees, employers, carriers and



1 third-party administrators that any person who commits workers'  
2 compensation fraud, upon conviction, shall be guilty of a felony  
3 punishable by imprisonment, a fine or both.

4 J. If an injured employee is charged with workers' compensation  
5 fraud, any pending workers' compensation proceeding, including  
6 benefits, shall be stayed after the preliminary hearing is concluded  
7 and the claimant is bound over and shall remain stayed until the  
8 final disposition of the criminal case. All notice requirements  
9 shall continue during the stay.

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

1 shall not constitute material evidence. In the event of such  
2 motion, notice shall be given to the Attorney General's Workers  
3 Compensation Fraud and Investigation and Prosecution Unit. A  
4 hearing shall be held and, if the motion is granted, the evidence  
5 shall not be presented fewer than five (5) days later.

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

21 SECTION 2. AMENDATORY Section 40, Chapter 208, O.S.L.  
22 2013 (85A O.S. Supp. 2014, Section 40), is amended to read as  
23 follows:  
24

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

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

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

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

20 b. The request for a hearing does not need to be in any  
21 particular form but shall specify the grounds on which  
22 the person contests the proposed judgment, the  
23 proposed assessment, or both.

24

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

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

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

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

19 c. The carrier shall promptly, and no later than five (5)  
20 days before the hearing, respond in writing to the  
21 employer's allegation by providing evidence of  
22 coverage for the period in question or by  
23 affirmatively denying the employer's allegation.  
24

1           4. Hearings under this section shall be procedurally conducted  
2 as provided in Sections 69 through 78 of this ~~act~~ title. In lieu of  
3 a hearing, the Commission may utilize informal disposition in any  
4 individual proceeding under this section by consent agreement.

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

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

18           SECTION 3.           AMENDATORY           Section 45, Chapter 208, O.S.L.  
19 2013 (85A O.S. Supp. 2014, Section 45), is amended to read as  
20 follows:

21           Section 45.   A.   Temporary Total Disability.

22           1. If the injured employee is temporarily unable to perform his  
23 or her job or any alternative work offered by the employer, he or  
24 she shall be entitled to receive compensation equal to seventy

1 percent (70%) of the injured employee's average weekly wage, but not  
2 to exceed seventy percent (70%) of the state average weekly wage,  
3 for one hundred four (104) weeks. Provided, there shall be no  
4 payment for the first three (3) days of the initial period of  
5 temporary total disability. If an administrative law judge finds  
6 that a consequential injury has occurred and that additional time is  
7 needed to reach maximum medical improvement, temporary total  
8 disability may continue for a period of not more than an additional  
9 fifty-two (52) weeks. Such finding shall be based upon a showing of  
10 medical necessity by clear and convincing evidence.

11 2. When the injured employee is released from active medical  
12 treatment by the treating physician for all body parts found by the  
13 Commission to be injured, or in the event that the employee, ~~without~~  
14 ~~a valid excuse,~~ misses ~~three consecutive medical treatment~~ two or  
15 more appointments as prescribed under Section 57 of this title,  
16 fails to comply with medical orders of the treating physician, or  
17 otherwise abandons medical care, the employer shall be entitled to  
18 terminate temporary total disability by notifying the employee, or  
19 if represented, his or her counsel. If, however, an objection to  
20 the termination is filed by the employee within ten (10) days of  
21 termination, the Commission shall set the matter within twenty (20)  
22 days for a determination if temporary total disability compensation  
23 shall be reinstated. The temporary total disability shall remain  
24 terminated unless the employee proves the existence of a valid

1 excuse for his or her failure to comply with medical orders of the  
2 treating physician or his or her abandonment of medical care. The  
3 administrative law judge may appoint an independent medical examiner  
4 to determine if further medical treatment is reasonable and  
5 necessary. The independent medical examiner shall not provide  
6 treatment to the injured worker, unless agreed upon by the parties.

7 B. Temporary Partial Disability.

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

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

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

23 C. Permanent Partial Disability.  
24

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

23           2. Permanent partial disability shall not be allowed to a part  
24 of the body for which no medical treatment has been received. A



1 determination of permanent partial disability made by the Commission  
2 or administrative law judge which is not supported by objective  
3 medical findings provided by a treating physician who is a medical  
4 doctor or doctor of osteopathy or a qualified independent medical  
5 examiner shall be considered an abuse of discretion.

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

8 4. In cases of permanent partial disability, the compensation  
9 shall be seventy percent (70%) of the employee's average weekly  
10 wage, not to exceed Three Hundred Twenty-three Dollars (\$323.00) per  
11 week, for a term not to exceed a total of three hundred fifty (350)  
12 weeks for the body as a whole.

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

22 a. The amount of the permanent partial disability award  
23 shall be reduced by seventy percent (70%) of the  
24

1 employee's average weekly wage for each week he works  
2 in his pre-injury or equivalent job.

3 b. If, for any reason other than misconduct as defined in  
4 Section 2 of this ~~act~~ title, the employer terminates  
5 the employee or the position offered is not the pre-  
6 injury or equivalent job, the remaining permanent  
7 partial disability award shall be paid in a lump sum.  
8 If the employee is discharged for misconduct, the  
9 employer shall have the burden to prove that the  
10 employee engaged in misconduct.

11 c. If the employee refuses an offer to return to his pre-  
12 injury or equivalent job, the permanent partial  
13 disability award shall continue to be deferred and  
14 shall be reduced by seventy percent (70%) of the  
15 employee's average weekly wage for each week he  
16 refuses to return to his pre-injury or equivalent job.

17 d. Attorney fees for permanent partial disability awards,  
18 as approved by the Commission, shall be calculated  
19 based upon the total permanent partial disability  
20 award and paid in full at the time of the deferral.

21 e. Assessments pursuant to Sections 31, 98, 112 and 165  
22 of this act shall be calculated based upon the amount  
23 of the permanent partial disability award and shall be  
24 paid at the time of the deferral.

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

15           a. If workers' compensation benefits have previously been  
16 awarded through settlement or judicial or  
17 administrative determination in Oklahoma, the  
18 percentage basis of the prior settlement or award  
19 shall conclusively establish the amount of permanent  
20 partial disability determined to be preexisting. If  
21 workers' compensation benefits have not previously  
22 been awarded through settlement or judicial or  
23 administrative determination in Oklahoma, the amount

24

1 of preexisting permanent partial disability shall be  
2 established by competent evidence.

3 b. In all cases, the applicable reduction shall be  
4 calculated as follows:

5 (1) if the preexisting impairment is the result of  
6 injury sustained while working for the employer  
7 against whom workers' compensation benefits are  
8 currently being sought, any award of compensation  
9 shall be reduced by the current dollar value  
10 attributable under the Administrative Workers'  
11 Compensation Act to the percentage of permanent  
12 partial disability determined to be preexisting.  
13 The current dollar value shall be calculated by  
14 multiplying the percentage of preexisting  
15 permanent partial disability by the compensation  
16 rate in effect on the date of the accident or  
17 injury against which the reduction will be  
18 applied, and

19 (2) in all other cases, the employer against whom  
20 benefits are currently being sought shall be  
21 entitled to a credit for the percentage of  
22 preexisting permanent partial disability.  
23  
24

1 7. No payments on any permanent partial disability order shall  
2 begin until payments on any preexisting permanent partial disability  
3 orders have been completed.

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

6 9. The permanent partial disability rate of compensation for  
7 amputation or permanent total loss of use of a scheduled member  
8 specified in Section 46 of this ~~act~~ title shall be seventy percent  
9 (70%) of the employee's average weekly wage, not to exceed Three  
10 Hundred Twenty-three Dollars (\$323.00), multiplied by the number of  
11 weeks set forth for the member in Section 46 of this ~~act~~ title,  
12 regardless of whether the injured employee is able to return to his  
13 or her pre-injury or equivalent job.

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

23 D. Permanent Total Disability.  
24

1           1. In case of total disability adjudged to be permanent,  
2 seventy percent (70%) of the employee's average weekly wages, but  
3 not in excess of the state's average weekly wage, shall be paid to  
4 the employee during the continuance of the disability until such  
5 time as the employee reaches the age of maximum Social Security  
6 retirement benefits or for a period of fifteen (15) years, whichever  
7 is longer. In the event the claimant dies of causes unrelated to  
8 the injury or illness, benefits shall cease on the date of death.  
9 Provided, however, any person entitled to revive the action shall  
10 receive a one-time lump-sum payment equal to twenty-six (26) weeks  
11 of weekly benefits for permanent total disability awarded the  
12 claimant. If more than one person is entitled to revive the claim,  
13 the lump-sum payment shall be evenly divided between or among such  
14 persons. In the event the Commission awards both permanent partial  
15 disability and permanent total disability benefits, the permanent  
16 total disability award shall not be due until the permanent partial  
17 disability award is paid in full. If otherwise qualified according  
18 to the provisions of this act, permanent total disability benefits  
19 may be awarded to an employee who has exhausted the maximum period  
20 of temporary total disability even though the employee has not  
21 reached maximum medical improvement.

22           2. The Commission shall annually review the status of any  
23 employee receiving benefits for permanent total disability against  
24 the last employer. The Commission shall require the employee to

1 annually file an affidavit under penalty of perjury stating that he  
2 or she is not and has not been gainfully employed and is not capable  
3 of gainful employment. Failure to file such affidavit shall result  
4 in suspension of benefits; provided, however, reinstatement of  
5 benefits may occur after proper hearing before the Commission.

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

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

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

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



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

1           p.    if the employee's occupation is laborer and the  
2                    medical condition is 3-, 4-, or 5-level positive  
3                    discogram of the cervical spine or lumbar spine,  
4                    medically treated.

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

1 training as the administrative law judge may deem necessary,  
2 provided the employee elects to receive such services, shall be  
3 provided at the expense of the employer. Except as otherwise  
4 provided in this subsection, refusal to accept rehabilitation  
5 services by the employee shall in no way diminish any benefits  
6 allowable to an employee.

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

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

23 7. If rehabilitation requires residence at or near the facility  
24 or institution which is away from the employee's customary

1 residence, reasonable cost of the employee's board, lodging, travel,  
2 tuition, books and necessary equipment in training shall be paid for  
3 by the insurer in addition to weekly compensation benefits to which  
4 the employee is otherwise entitled under the Administrative Workers'  
5 Compensation Act.

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

18 F. Disfigurement.

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

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

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

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

11           SECTION 4.           AMENDATORY           Section 63, Chapter 208, O.S.L.  
12 2013 (85A O.S. Supp. 2014, Section 63), is amended to read as  
13 follows:

14           Section 63. A. Within ten (10) days after the date of receipt  
15 of notice or of knowledge of injury that results in absence from  
16 work for more than three (3) days or death, the employer shall send  
17 to the Commission a report setting forth:

- 18           1. The name, address, and business of the employer;
  - 19           2. The name, address, and occupation of the employee;
  - 20           3. The cause and nature of the injury or death;
  - 21           4. The year, month, day, approximately when, and the particular  
22 locality where, the injury or death occurred; and
  - 23           5. Such other information as the Commission may require.
- 24

1 B. Additional reports with respect to the injury and of the  
2 condition of the employee shall be sent by the employer to the  
3 Commission at such time and in such manner as the Commission may  
4 prescribe. However, an employer may refuse to provide any  
5 information that it deems privileged or confidential.

6 C. Any report provided for in subsection A or B of this section  
7 shall not be evidence of any fact stated in the report in any  
8 proceeding with respect to the injury or death on account of which  
9 the report is made.

10 D. The mailing of any report in a stamped envelope, properly  
11 addressed, within the time prescribed in subsection A or B of this  
12 section, shall be in compliance with this section. In addition, the  
13 Commission shall establish a means of electronic delivery of any  
14 report or other information required by this section.

15 E. 1. Any employer who after notice refuses to send any report  
16 required by this section shall be subject to a civil penalty in an  
17 amount of Five Hundred Dollars (\$500.00) for each refusal.

18 2. Whenever the employer has failed or refused to comply as  
19 provided in this section, the Commission may serve on the employer a  
20 proposed judgment declaring the employer to be in violation of this  
21 act and containing the amount, if any, of the civil penalty to be  
22 assessed against the employer under this section.

23 F. An employer may contest a proposed judgment of the  
24 Commission issued under subsection E of this section by filing with

1 the Commission, within twenty (20) days of receipt of the proposed  
2 judgment, a written request for a hearing. If a written request for  
3 hearing is not filed with the Commission within this time, the  
4 proposed judgment, proposed penalty, or both, shall be a final  
5 judgment of the Commission. The request for a hearing does not need  
6 to be in any particular form but shall specify the grounds on which  
7 the person contests the proposed judgment, the proposed assessment,  
8 or both. A proposed judgment by the Commission under this section  
9 shall be prima facie correct, and the burden is on the employer to  
10 prove that the proposed judgment is incorrect.

11 G. Hearings conducted under this section shall proceed as  
12 provided in Sections 69 through 78 of this ~~act~~ title.

13 H. If an employer fails to pay any civil penalty assessed  
14 against the employer after a judgment issued under this section has  
15 become final by operation of law, the Commission may petition the  
16 district court of the county where the employer's principal place of  
17 business is located for an order enjoining the employer from  
18 engaging in further employment or conduct of business until such  
19 time as the employer makes all required reports and pays all civil  
20 penalties.

21 SECTION 5. AMENDATORY Section 65, Chapter 208, O.S.L.  
22 2013 (85A O.S. Supp. 2014, Section 65), is amended to read as  
23 follows:  
24

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

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

14 C. 1. If an occupational disease is aggravated by any other  
15 disease or infirmity, not itself compensable, or if disability or  
16 death from any other cause, not itself compensable, is aggravated,  
17 prolonged, accelerated, or in any way contributed to by an  
18 occupational disease, the compensation payable shall be reduced and  
19 limited to the proportion only of the compensation that would be  
20 payable if the occupational disease were the major cause of the  
21 disability or death as the occupational disease, as a causative  
22 factor, bears to all the causes of the disability or death.

23 2. The reduction in compensation is to be effected by reducing  
24 the number of weekly or monthly payments or the amounts of the



1 payments, as under the circumstances of the particular case may be  
2 for the best interest of the claimant.

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

11 2. No compensation shall be payable for any contagious or  
12 infectious disease unless contracted in the course and scope of  
13 employment ~~in or immediately connected with a hospital or sanatorium~~  
14 ~~in which persons suffering from that disease are cared for or~~  
15 ~~treated.~~

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

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

23 2. The amount of the compensation shall be based on the average  
24 weekly wage of the employee when last injuriously exposed under the

1 employer, and the notice of injury and claim for compensation shall  
2 be given and made to that employer.

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

5 a. the disease is due to the nature of an employment in  
6 which the hazards of the disease actually exist and  
7 ~~are characteristic thereof and peculiar to the trade,~~  
8 ~~occupation, process, or employment~~ and is actually  
9 incurred in the course and scope of his or her  
10 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 6. AMENDATORY Section 82, Chapter 208, O.S.L.  
7 2013 (85A O.S. Supp. 2014, Section 82), is amended to read as  
8 follows:

9 Section 82.

10 A. 1. a. Fees for legal services rendered in a claim shall not  
11 be valid unless approved by the Commission.

12 b. An attorney representing an injured employee may only  
13 recover attorney fees up to ten percent (10%) of any  
14 temporary total disability or temporary partial  
15 disability compensation and twenty percent (20%) of  
16 any permanent partial disability, permanent total  
17 disability, or death compensation awarded to an  
18 injured employee by the Commission from a controverted  
19 claim. If the employer makes a written offer to  
20 settle permanent partial disability, permanent total  
21 disability, or death compensation and that offer is  
22 rejected, the employee's attorney may not recover  
23 attorney fees in excess of thirty percent (30%) of the  
24

1 difference between the amount of any award and the  
2 settlement offer.

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

5 (2) Attorney fees shall not be awarded on medical  
6 benefits or services.

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

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

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

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

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

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

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

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

1 SECTION 7. AMENDATORY Section 109, Chapter 208, O.S.L.  
2 2013 (85A O.S. Supp. 2014, Section 202), is amended to read as  
3 follows:

4 Section 202. A. Any employer may voluntarily elect to be  
5 exempt from the Administrative Workers' Compensation Act and become  
6 a qualified employer if the employer:

7 1. Is in compliance with the notice requirements in subsections  
8 B and H of this section; and

9 2. Has established a written benefit plan as described in  
10 Section ~~110~~ 203 of this ~~act~~ title.

11 B. An employer that has elected to become a qualified employer  
12 by satisfying the requirements of this section shall notify the  
13 Insurance Commissioner in writing of the election and the date that  
14 the election is to become effective, which may not be sooner than  
15 the date that the qualified employer satisfies the employee notice  
16 requirements in this section. Such qualified employer shall pay to  
17 the Commissioner an annual nonrefundable fee of ~~One Thousand Five~~  
18 ~~Hundred Dollars (\$1,500.00)~~ One Thousand Dollars (\$1,000.00) on the  
19 date of filing written notice and every year thereafter.

20 C. The Commissioner shall collect and maintain the information  
21 required under this section and shall monitor compliance with the  
22 requirements of this section. The Commissioner may also require an  
23 employer to confirm its qualified-employer status. Subject to  
24 subsection D of this section, the Commissioner shall adopt rules

1 designating the methods and procedures for confirming whether an  
2 employer is a qualified employer, notifying an employer of any  
3 qualifying deficiencies, and the consequences thereof. The  
4 Commissioner shall record the date and time each notice of  
5 qualified-employer status is received and the effective date of  
6 qualified-employer election. The Commissioner shall maintain a list  
7 on its official website accessible by the public of all qualified  
8 employers and the date and time such exemption became effective.

9 D. Except as otherwise expressly provided in this act, neither  
10 the Workers' Compensation Commission, the courts of this state, or  
11 any state administrative agencies shall promulgate rules or any  
12 procedures related to design, documentation, implementation,  
13 administration or funding of a qualified employer's benefit plan.

14 E. The Commissioner may designate an information collection  
15 agent, implement an electronic reporting and public information  
16 access program, and adopt rules as necessary to implement the  
17 information collection requirements of this section.

18 F. The Commissioner may prescribe rules and forms to be used  
19 for the qualified-employer notification and shall require the  
20 qualified employer to provide its name, address, contact person and  
21 phone number, federal tax identification number, number of persons  
22 employed in this state as of a specified date, claim administration  
23 contact information, and a listing of all covered business locations  
24 in the state. The Commissioner shall notify the Commissioner of

1 Labor of all qualified-employer notifications. The Department of  
2 Labor shall provide such notifications to other governmental  
3 agencies as it deems necessary.

4 G. The Commissioner may contract with the Oklahoma Employment  
5 Security Commission, the State Treasurer or the Department of Labor  
6 for assistance in collecting the notification required under this  
7 section or otherwise fulfilling the Commissioner's responsibilities  
8 under this act. Such agencies shall cooperate with the Commissioner  
9 in enforcing the provisions of this section.

10 H. A qualified employer shall notify each of its employees in  
11 the manner provided in this section that it is a qualified employer,  
12 that it does not carry workers' compensation insurance coverage and  
13 that such coverage has terminated or been cancelled.

14 I. The qualified employer shall provide written notification to  
15 employees as required by this section at the time the employee is  
16 hired or at the time of designation as a qualified employer. The  
17 qualified employer shall post the employee notification required by  
18 this section at conspicuous locations at the qualified employer's  
19 places of business as necessary to provide reasonable notice to all  
20 employees. The Commissioner may adopt rules relating to the form,  
21 content, and method of delivery of the employee notification  
22 required by this section.

23

24



1 SECTION 8. AMENDATORY Section 118, Chapter 208, O.S.L.  
2 2013 (85A O.S. Supp. 2014, Section 211), is amended to read as  
3 follows:

4 Section 211. A. If an employer denies a claimant's claim for  
5 benefits under this act, the employer shall notify him or her in  
6 writing of the decision or the need for additional information  
7 within fifteen (15) days after receipt of the claim. Unless  
8 otherwise provided by law, the adverse benefit determination letter  
9 shall contain an explanation of why the claim was denied, including  
10 the plan provisions that were the basis for the denial, and a  
11 detailed description of how to appeal the determination. Additional  
12 claim procedures consistent with this section may be specified in  
13 the benefit plan.

14 B. The benefit plan shall provide the following minimum appeal  
15 rights:

16 1. The claimant may appeal in writing an initial adverse  
17 benefit determination to an appeals committee within one hundred  
18 eighty (180) days following his or her receipt of the adverse  
19 benefit determination. The appeal shall be heard by a committee  
20 consisting of at least three people that were not involved in the  
21 original adverse benefit determination. The appeals committee shall  
22 not give any deference to the claimant's initial adverse benefit  
23 determination in its review;

24

1           2. The committee may request any additional information it  
2 deems necessary to make a decision, including having the claimant  
3 submit to a medical exam;

4           3. The committee shall notify the claimant in writing of its  
5 decision, including an explanation of the decision and his or her  
6 right to judicial review;

7           4. Subject to the need for a reasonable extension of time due  
8 to matters beyond the control of the benefit plan, the committee  
9 shall review the determination and issue a decision no later than  
10 forty-five (45) days from the date the notice of contest is  
11 received. No legal action may be brought by or with respect to a  
12 claimant to recover benefits under the benefit plan before the  
13 foregoing claim procedures have been exhausted;

14           5. If any part of an adverse benefit determination is upheld by  
15 the committee, the claimant may then file a petition for review with  
16 the Commission sitting en banc within one (1) year after the date  
17 the claimant receives notice that the adverse benefit determination,  
18 or part thereof, was upheld. The Commission en banc shall act as  
19 the court of competent jurisdiction under 29 U.S.C.A. Section  
20 1132(e)(1), and shall possess adjudicative authority to render  
21 decisions in individual proceedings by claimants to recover benefits  
22 due to the claimant under the terms of the claimant's plan, to  
23 enforce the claimant's rights under the terms of the plan, or to

24

1 clarify the claimant's rights to future benefits under the terms of  
2 the plan;

3 6. The Commission ~~shall rely on the record established by the~~  
4 ~~internal appeal process and use an objective standard of review that~~  
5 ~~is not arbitrary or capricious~~ sitting en banc may reverse or modify  
6 the decision only if it determines the decision was against the  
7 clear weight of the evidence or contrary to law. The Commission, as  
8 a body, shall act as the court of competent jurisdiction under 29  
9 U.S.C.A. Section 1132(e) (1), and shall possess adjudicative  
10 authority to render decisions in individual proceedings by a  
11 claimant to recover benefits due to the claimant under the terms of  
12 the claimant's plan, to enforce the claimant's rights under the  
13 terms of the plan, or to clarify the claimant's rights to future  
14 benefits under the terms of the plan. Any award by the  
15 administrative law judge or Commission en banc shall be limited to  
16 benefits payable under the terms of the benefit plan and, to the  
17 extent provided herein, attorney fees and costs; and

18 7. If the claimant appeals to the Commission and any part of  
19 the adverse benefit determination is upheld, he or she may appeal to  
20 the Oklahoma Supreme Court by filing with the Clerk of the Supreme  
21 Court a certified copy of the decision of the Commission attached to  
22 a petition which shall specify why the decision is contrary to law  
23 within twenty (20) days of the decision being issued. The Supreme  
24

1 Court may modify, reverse, remand for rehearing, or set aside the  
2 decision only if the decision was contrary to law.

3 The Supreme Court shall require the claimant to file within  
4 forty-five (45) days from the date of the filing of an appeal a  
5 transcript of the record of the proceedings before the Commission,  
6 or such later time as may be granted by the Supreme Court on  
7 application and for good cause shown. The action shall be subject  
8 to the law and practice applicable to comparable civil actions  
9 cognizable in the Supreme Court.

10 C. If any of the provisions in paragraphs 5 through 7 of  
11 subsection B of this section are determined to be unconstitutional  
12 or otherwise unenforceable by the final nonappealable ruling of a  
13 court of competent jurisdiction, then the following minimal appeal  
14 procedures will go into effect:

15 1. The appeal shall be heard by a committee consisting of at  
16 least three people that were not involved in the original adverse  
17 benefit determination. The appeals committee shall not give any  
18 deference to the claimant's initial adverse benefit determination in  
19 its review;

20 2. The committee may request any additional information it  
21 deems necessary to make a decision, including having the claimant  
22 submit to a medical exam;

23

24

1 3. The committee shall notify the claimant in writing of its  
2 decision, including an explanation of the decision and his or her  
3 right to judicial review;

4 4. The committee shall review the determination and issue a  
5 decision no later than forty-five (45) days from the date the notice  
6 of contest is received;

7 5. If any part of an adverse benefit determination is upheld by  
8 the committee, the claimant may then file a petition for review in a  
9 proper state district court; and

10 6. The district court shall rely on the record established by  
11 the internal appeal process and use a deferential standard of  
12 review.

13 D. The provisions of this section shall apply to the extent not  
14 inconsistent with or preempted by any other applicable law or rule.

15 E. All intentional tort or other employers' liability claims  
16 may proceed through the appropriate state courts of Oklahoma,  
17 mediation, arbitration, or any other form of alternative dispute  
18 resolution or settlement process available by law.

19 SECTION 9. This act shall become effective November 1, 2015.  
20

21 55-1-7271 EK 04/01/15  
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