

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 2132

BY: SETTLE, COMBS, MAXEY,
ROACH, STOTTLEMYRE and
STEIDLEY of the HOUSE

and

WILLIAMS (Don) of the
SENATE

(WORKERS' COMPENSATION - AMENDING 85 O.S. 1991,
SECTIONS 1.2, 3, 14, 16, 21, 22, 30, 41, 66.1,
66.2, 172, 173 AND 201 - WORKERS' COMPENSATION
ACT -

EFFECTIVE DATE)

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

"[WORKERS' COMPENSATION - AMENDING 36 O.S., SECTION 924.2
AND 85 O.S., SECTIONS 1.2, 3, 14, 16, 21, 22, 30, 41,
61, 66.1, 66.2, 172, 173 AND 201 - WORKERS' COMPENSATION
ACT -

EFFECTIVE DATE]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.5 of Title 36, unless there is created a duplication in numbering, reads as follows:

No insurer or rating organization shall file a request for an increase in rates for workers' compensation insurance for a three-year period following the date of approval by the State Board for Property and Casualty Rates of an increase in workers' compensation insurance rates.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.6 of Title 36, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, no rating organization shall make any filing on behalf of an insurer seeking a change in any rate or rating plan, schedule or classification system pertaining to workers' compensation insurance.

SECTION 3. AMENDATORY 36 O.S. 1991, Section 924.2, is amended to read as follows:

Section 924.2 A. Any rate, schedule of rates or rating plan for workers' compensation insurance submitted to or filed with the State Board for Property and Casualty Rates, or fixed by the Board of Managers of the State Insurance Fund, and premiums, by whatever name, for workers' compensation for self-insureds except for group self-insured associations shall provide for an appropriate reduction in premium charges, by whatever name, for those eligible insured employers who have successfully participated in the occupational safety and health consultation, education and training program administered by the Commissioner of the Department of Labor pursuant to Section 414 of Title 40 of the Oklahoma Statutes.

B. All insurance companies writing workers' compensation insurance in this state, including the State Insurance Fund, and all self-insureds providing workers' compensation insurance except for group self-insured associations, shall allow an appropriate

reduction in premium charges to all eligible employers who qualify for the reduction pursuant to the provisions of this section.

C. Eligible employers shall be those employers:

1. Who are insured by an insurance company writing workers' compensation insurance in this state;
2. Who are self-insured; or
3. Who are insured by the State Insurance Fund.

D. In order to qualify for the reduction in workers' compensation insurance premium, an employer shall successfully participate annually in the occupational safety and health consultation, education and training program administered by the Department of Labor. Successful participation shall be defined as:

1. Undergoing a safety and health hazard survey of the workplace, including an evaluation of the employer's safety and health program and onsite interviews with employees by the Department's consultant;
2. Correcting all hazards identified during the onsite visit within a reasonable period of time as established by the Department;
3. Establishing an effective workplace safety and health program and implementing program provisions within a reasonable period of time as established by the Department. The program shall include:
 - a. demonstration of management commitment to worker safety and health,
 - b. procedures for identifying and controlling workplace hazards,
 - c. development and communication of safety plans, rules and work procedures, and
 - d. training for supervisors and employees in safe and healthful work practices;
4. Reducing by one-third (1/3) or more the extent to which the lost workday case rate, as measured by the Department of Labor, was

above the national average for the industry at the time the employer elected to participate in the occupational safety and health consultation, education and training program, or maintaining a rate at or below the national average for the industry; and

5. Documenting a reduction in workers' compensation claims for the preceding year by showing one of the following:

- a. a ten percent (10%) reduction in the dollar amount of claims,
- b. a ten percent (10%) reduction in the severity of claims, or
- c. no reported claims,

as a result of attending the occupational safety and health consultation, education and training program administered by the Department of Labor.

E. 1. Upon successful participation in the occupational safety and health consultation, education and training program as defined in subsection D of this section, an employer shall be issued a certificate by the Commissioner of the Department of Labor which shall be the basis of qualification for the reduction in workers' compensation insurance premium, by whatever name. The certificate shall qualify the employer for a premium reduction for a one-year period.

2. Upon issuance of a certificate to an employer, the Commissioner of the Department of Labor shall mail a copy of the certificate to the employer's insurer. Any insurer required by this section to allow an appropriate reduction in premium charges to a qualified employer which willfully fails to allow such reduction after receiving a copy of the certificate shall be subject, after notice and hearing, to an administrative fine, imposed by the Insurance Commissioner, which shall be not less than Ten Thousand Dollars (\$10,000.00) or three times the amount of the premium reduction, whichever is greater. The Insurance Commissioner shall

promulgate rules necessary to carry out the provisions of this paragraph.

F. The Insurance Commissioner, the Administrator of the Workers' Compensation Court and the State Insurance Fund Commissioner shall maintain records documenting reductions in workers' compensation insurance premiums granted pursuant to this section and shall make an annual report of such reductions to the President Pro Tempore of the Senate and the Speaker of the House of Representatives by January 1 of each year. Insurers shall report such premium reductions in their annual statement.

G. The State Insurance Fund shall instruct its actuary to continually review the insurance premium credit program, developed and implemented pursuant to Section 142a of Title 85 of the Oklahoma Statutes, to determine if the program is detrimental to the financial stability of the Fund. If the actuary determines that the program contributes detrimentally to the financial stability of the Fund, the actuary shall immediately recommend to the State Insurance Fund Commissioner that the safety premium reduction cease for a one-year period.

SECTION 4. AMENDATORY 85 O.S. 1991, Section 1.2, is amended to read as follows:

Section 1.2 A. There is hereby created the Workers' Compensation Court which shall consist of nine (9) judges. Each judge of the Court shall be appointed to a designated numbered position on the Court. The positions shall be numbered one through nine. The initial terms of the judges by position number shall expire on the following dates:

Position 1 shall expire 7-1-84.

Position 2 shall expire 7-1-84.

Position 3 shall expire 7-1-84.

Position 4 shall expire 7-1-82.

Position 5 shall expire 7-1-82.

Position 6 shall expire 7-1-80.

Position 7 shall expire 7-1-80.

Position 8 shall expire 7-1-88.

Position 9 shall expire 7-1-88 after being appointed under the provisions hereinafter set forth effective August 1, 1985.

Thereafter, each position shall be filled by a judge appointed to serve a six-year term.

Provided the judges serving unexpired terms on the State Industrial Court shall serve on the Workers' Compensation Court until their terms expire only as provided herein. The judges of the State Industrial Court whose terms expire March 14, 1979, shall serve in Positions 6 and 7 until that date, and the judge whose term expires March 14, 1981, shall serve in Position 5 until that date. Upon expiration of these terms, the Governor shall appoint judges to serve the remainder of the initial terms designated in this section. When a vacancy on the Court occurs or is certain to occur or for initial appointments to the Court, the Judicial Nominating Commission shall choose and submit to the Governor and the Chief Justice of the Supreme Court the names of three persons, in addition to the name of the incumbent judge, if any, for each appointment, each of whom has previously notified the Commission in writing that he will serve as a judge if appointed. The Governor shall appoint one of the nominees to fill the vacancy, but if he fails to do so within sixty (60) days, the Chief Justice of the Supreme Court shall appoint one of the nominees, the appointment to be certified to the Secretary of State.

B. A judge of the Court shall have been licensed to practice law in this state for a period of not less than five (5) years prior to appointment. Each judge, before entering upon the duties of his office, shall take and subscribe to an oath of office and file same with the Secretary of State. Each judge shall continue to serve until his successor shall have been appointed and qualified. A

judge shall be eligible for reappointment, provided that he may be removed for cause by the Court on the Judiciary prior to the expiration of his term.

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

D. The Governor shall appoint from among the judges of the Workers' Compensation Court a presiding judge of that Court who shall serve for a two-year term commencing with the initial appointment beginning January 1, 1987. Any judge so appointed shall not serve more than two times in succession. The presiding judge shall preside at all hearings held by the Court, preside at such meetings of the judges of the Court as may be necessary and perform such other supervisory duties as the needs of the Court may require. The presiding judge may designate one of the other judges to act as presiding judge in his place whenever necessary during the disqualification, disability, or absence of the presiding judge. During the disqualification, disability, or absence of the presiding judge, the acting presiding judge shall exercise all of the powers of the presiding judge.

E. The Court shall have the authority to adopt reasonable rules and regulations within its respective areas of responsibility including the rules of procedure for the Court en banc, after notice and public hearing, for effecting the purposes of the Workers' Compensation Act. All of the judges of the Court shall be present at all meetings wherein rules and regulations are adopted or amended. All rules and regulations, upon adoption, shall be submitted to the Supreme Court, which shall either approve or disapprove them within thirty (30) days. All rules and regulations, upon approval by the Supreme Court, shall be published and be made

available to the public and, if not inconsistent with the law, shall be binding in the administration of the Workers' Compensation Act.

F. The Court is hereby designated and confirmed as a court of record, with respect to any matter within the limits of its jurisdiction, and within such limits the judges thereof shall possess the powers and prerogatives of the judges of the other courts of record of this state.

G. The principal office of the Court shall be situated in the City of Oklahoma City in quarters assigned by the Office of Public Affairs. The Court may hold hearings in any city of this state.

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

I. The judges of the Court shall determine the qualifications necessary for the job of Administrator. Said qualifications shall be submitted to the Chief Justice of the Supreme Court for approval, disapproval or modification.

J. Judges of the Workers' Compensation Court may punish for direct contempt pursuant to Sections 565, 565.1 and 566 of Title 21 of the Oklahoma Statutes.

SECTION 5. AMENDATORY 85 O.S. 1991, Section 3, is amended to read as follows:

Section 3. As used in the Workers' Compensation Act:

~~(1)~~ 1. "Administrator" means the Administrator of workers' compensation as provided for in the Workers' Compensation Act.

~~(2)~~ 2. "Court" means the Workers' Compensation Court.

~~(3)~~ 3. "Employer", except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of

education and incorporated cities or towns and divisions thereof, employing a person included within the term "employee" as herein defined.

~~(4)~~ 4. "Employee" means any person engaged in the employment of any person, firm or corporation covered by the terms of the Workers' Compensation Act, and shall include workers associating themselves together under an agreement for the performance of a particular piece of work, in which event such persons so associating themselves together shall be deemed employees of the person having the work executed; provided, that if such associated workers shall employ a worker in the execution of such contract, then as to such employed worker, both the associated employees and the principal employer shall at once become subject to the provisions of the Workers' Compensation Act relating to independent contractors. Sole proprietors, members of a partnership or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation are specifically excluded from the foregoing definition of "employee", and shall not be deemed to be employees as respects the benefits of the Workers' Compensation Act. Provided, a sole proprietor, member of a partnership or any stockholder-employee of a corporation who owns ten percent (10%) or more stock in the corporation who does not so elect to be covered by a policy of insurance covering benefits under the Workers' Compensation Act, when acting as a subcontractor, shall not be eligible to be covered under the prime contractor's policy of workers' compensation insurance; however, nothing herein shall relieve the entities enumerated from providing workers' compensation insurance coverage for their employees. Sole proprietors, members of a partnership or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation may elect to include the sole proprietors, any or all of the partnership members or any or all stockholder-employees as employees, if otherwise qualified, by

endorsement to the policy specifically including them under any policy of insurance covering benefits under the Workers' Compensation Act. When so included the sole proprietors or members of a partnership or any or all stockholder-employees shall be deemed to be employees as respects the benefits of the Workers' Compensation Act. "Employee" shall also include any person who is employed by the departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof. "Employee" shall also include a member of the Oklahoma National Guard while in the performance of duties only while in response to state orders and any authorized voluntary or uncompensated worker, rendering services as a fire fighter, peace officer or civil defense worker. "Employee" shall also include a participant in a sheltered workshop program which is certified by the United States Department of Labor. "Employee" shall not include a person, commonly referred to as an owner-operator, who owns or leases a truck-tractor or truck for hire, if the owner-operator actually operates the truck-tractor or truck and if the person contracting with the owner-operator is not the lessor of the truck-tractor or truck. Provided however, an owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Act if the owner-operator elects to participate as a sole proprietor.

~~(5)~~ 5. "Employment" includes work or labor in a trade, business, occupation or activity carried on by an employer for pecuniary gain or any authorized voluntary or uncompensated worker rendering services as a fire fighter, peace officer or civil defense worker.

~~(6)~~ 6. "Compensation" means the money allowance payable to an employee as provided for in the Workers' Compensation Act.

- ~~(7)~~ 7. a. "Injury" or "personal injury" means only
accidental injuries ~~injury or occupational~~
disease as such terms are defined in this
section, arising solely out of and in the course
of employment and such disease or infection as
may naturally result therefrom and occupational
disease arising out of and in the course of
employment as herein defined. Provided, only
injuries having as their source a risk not purely
personal but one that is reasonably connected
with the conditions of employment shall be deemed
to arise out of the employment as such term is
defined in the Workers' Compensation Act.
- b. "Injury" or "personal injury" shall not include heart-
related or perivascular injury, illness or death and
is not compensable pursuant to this title unless it is
demonstrated by clear and convincing evidence that:
(1) the physical work stress was extraordinary and
unusual in comparison to the stress or exertion
experienced by other employees in that occupation, and
(2) the physical work stress or exertion and not some
other source of stress or pre-existing condition was
the predominant cause of the heart-related or
perivascular injury, illness, or death.
- c. "Injury" or "personal injury" shall not include mental
injury caused by mental stress except for a mental
injury caused by the mental stress of sexual
harassment. Any mental injury caused by, resulting
from, or related to physical injury or occupational
disease is included as part of the physical injury
award. No further or additional compensation award
shall be granted due to any mental injury.

d. Pre-existing conditions of injury or health, as well as the normal wear and tear of life to the person, are not compensable.

e. Accidental injury is an unexpected event which results in an injury. A person who is under the influence of alcohol or drugs as defined in this act at the time of such employee's injury is not covered under this act.

~~(8)~~ 8. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer.

~~(9)~~ 9. "Insurance carrier" shall include stock corporations, reciprocal or interinsurance associations, or mutual associations with which employers have insured, and employers permitted to pay compensation, directly under the provisions of ~~subsection (d)~~ paragraph 4 of subsection A of Section 61 of this title.

~~(10)~~ 10. "Occupational disease" means only that disease or illness which is due to causes and conditions characteristic of or peculiar to the particular trade, occupation, process or employment in which the employee is exposed to such disease.

~~(11)~~ 11. "Permanent impairment" means any anatomical or functional abnormality or loss after reasonable medical treatment has been achieved, which abnormality or loss the physician considers to be capable of being evaluated at the time the rating is made. Except as otherwise provided herein, any examining physician shall only evaluate impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the ~~incident for which compensation is sought~~ injury. However, revisions to the guides made by the American Medical Association which are published after January 1, 1989 shall be operative one hundred twenty (120) days after the last day of the month of publication. The examining

physician shall not follow the guides based on race or ethnic origin, ~~but otherwise~~ and shall not deviate from said guides except as may be specifically provided for in the guides. These officially adopted guides shall be the exclusive basis for testimony and conclusions with regard to permanent impairment with the exception of paragraph 3 of Section 22 of this title, relating to scheduled member injury or loss; and impairment, including pain or loss of strength, may be awarded with respect to those injuries or areas of the body not specifically covered by said guides.

~~(12)~~ 12. "Permanent total disability" means incapacity because of accidental injury or occupational disease to earn any wages in any employment for which the employee is or ~~becomes~~ may become physically suited and reasonably fitted by education, training or experience, including vocational rehabilitation; loss of both hands, or both feet, or both legs, or both eyes, or any two thereof, shall constitute permanent total disability.

~~(13)~~ 13. "Permanent partial disability" means permanent disability which is less than total and shall be equal to or the same as permanent impairment only to the extent that the claimant is unable to pursue any employment for which the employee is physically suited and reasonably fitted by education, training or experience. Permanent partial disability does not exist without a loss in earning capacity, unless such disability is incurred through the loss, or loss of use, of a limb. Such disability shall include loss of sight and loss of hearing, if applicable.

14. a. "Under the influence of alcohol or drugs" means:

- (1) the state of having an alcohol concentration of 0.1 percent or more, where "alcohol concentration" has the meaning assigned to it in Section 756 of Title 47 of the Oklahoma Statutes,
or

(2) the state of not having the normal use of mental or physical faculties resulting from the introduction into the body of:

(a) an alcoholic beverage as that is defined by Section 506 of Title 37 of the Oklahoma Statutes,

(b) a controlled dangerous substance, as that is defined by Section 2-101 of Title 63 of the Oklahoma Statutes,

(c) any compound, liquid, chemical, controlled dangerous substance, prescription drugs or any other substance or chemical containing any ketones, aldehydes, organic acetones, ether, chlorinated hydrocarbons or metallic powders such as gasoline, glue, fingernail polish, adhesive cement, mucilage, dope, paint dispensed from pressurized containers or any other substance or combination thereof containing solvents releasing toxic vapors, as provided in Section 465.20 of Title 63 of the Oklahoma Statutes, or

(d) any similar substance, the use of which is regulated under state law,

b. "under the influence of alcohol or drugs" does not include the loss of normal use of mental or physical faculties resulting from the introduction into the body of a substance taken under and in accordance with a prescription written for the employee by the employee's doctor and of which the employee has notified the employer in advance,

c. for the purposes of this paragraph, the employer has the right to administer testing for drugs, alcohol, or

other substances as provided in this paragraph or demand that the employee submit himself to such testing immediately after an alleged injury. If the employee refuses to submit himself to such testing immediately after an alleged injury, then it shall be presumed that the employee was under the influence of alcohol or drugs at the time of the accident.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3.4A of Title 85, unless there is created a duplication in numbering, reads as follows:

No insurer shall agree to a settlement of a workers' compensation claim without prior notification of the insured by registered mail of the terms of the settlement.

SECTION 7. AMENDATORY 85 O.S. 1991, Section 5, is amended to read as follows:

Section 5. A. 1. No person, firm, partnership or corporation may discharge any employee because the employee has in good faith filed a claim, or has retained a lawyer to represent him in said claim, instituted or caused to be instituted, in good faith, any proceeding under the provisions of Title 85 of the Oklahoma Statutes, or has testified or is about to testify in any such proceeding. ~~Provided no~~

2. No person, firm, partnership or corporation may discharge an employee during a period of temporary total disability solely on the basis of absence from work.

B. No employer shall be required to rehire or retain any employee who is determined physically unable even with reasonable accommodation to perform his assigned duties. The failure of an employer to rehire or retain any such employee shall in no manner be deemed a violation of this section.

SECTION 8. AMENDATORY 85 O.S. 1991, Section 13, is amended to read as follows:

Section 13. A. No compensation shall be allowed for the first seven (7) calendar days of disability except the benefits as provided for in Section 14 of this title; provided that if disability continues beyond the twenty-first calendar day, compensation shall be computed from the inception date of such disability.

B. If the disability is not disputed, compensation for temporary total disability shall be commenced within fifteen (15) calendar days after the employer receives notice of the injury. If an employee files a claim for compensation pursuant to Section 3.4 of this title, compensation for temporary total disability shall be commenced within fifteen (15) calendar days after the employee requests a hearing on the compensation issue, unless liability for the disability is denied by the employer. Such hearings shall be set for trial no later than forty-five (45) days after the request for hearing is filed by the employee.

SECTION 9. AMENDATORY 85 O.S. 1991, Section 14, is amended to read as follows:

Section 14. A. The employer shall promptly provide for an injured employee such medical, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus as may be necessary after the injury. The attending physician shall supply the injured employee and the employer with a full examining report of injuries found at the time of examination and proposed treatment, this report to be supplied within seven (7) days after the examination; also, at the conclusion of the treatment the attending physician shall supply a full report of his treatment to the employer of the injured employee.

B. The employer's selected physician shall have the right to examine the injured employee. A report of such examination shall be furnished the injured employee within seven (7) days after such examination.

C. If the employer fails or neglects to provide the same within a reasonable time after knowledge of the injury, the injured employee, during the period of such neglect or failure, may do so at the expense of the employer; provided, however, that the injured employee, or another in his behalf, may obtain emergency treatment at the expense of the employer where such emergency treatment is not provided by the employer. Notwithstanding any other provision of this section, the employee may select a physician of his choice to render necessary medical treatment, at the expense of the employer; provided, however, that the attending physician so selected by the employee shall notify the employer and/or the insurance carrier within seven (7) days after examination or treatment was first rendered.

D. The term "physician" as used in this section shall mean any person licensed in Oklahoma as a medical doctor, chiropractor, chiropodist, dentist, osteopathic physician or optometrist. The Court may accept testimony from a psychologist if the testimony is made under the direction of a medical doctor. If such injured employee should become deceased, whether or not he has filed a claim, such fact shall not affect liability for medical attention previously rendered, and any person or persons entitled to such benefits may enforce charges therefor as though such employee had survived.

E. Whoever renders medical, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches and apparatus, or emergency treatment, may submit such charges and duration of treatment to the Administrator of the Court for review in accordance with the rules and regulations of the Administrator. Such charges and duration of treatment shall be limited to the usual, customary and reasonable charges and duration of treatment as prescribed and limited by a schedule of fees and treatment for all medical providers to be adopted, after notice and public hearing, by

the Administrator. Said fee and treatment schedule shall be based on the usual, customary and reasonable medical charges of health care providers in the same trade area for comparable treatment of a person with similar injuries and the duration of treatment prevailing in this state for persons with similar injuries. The fee and treatment schedule shall be reviewed biennially by the Administrator and, after such review, and notice and public hearing, the Administrator shall be empowered to amend or alter said fee and treatment schedule to ensure its adequacy. The Administrator's review of medical and treatment charges pursuant to this section shall be conducted pursuant to the fee and treatment schedule in existence at the time the medical care or treatment was provided. The order of the Administrator approving medical and treatment charges pursuant to this section shall be enforceable by the Court in the same manner as provided in the Workers' Compensation Act for the enforcement of other compensation payments. Any party feeling aggrieved by the order, decision or award of the Administrator shall, within ten (10) days, have the right to request a hearing on such medical and treatment charges by a judge of the Workers' Compensation Court. The judge of the Court may affirm the decision of the Administrator, or reverse or modify said decision only if it is found to be contrary to the fee and treatment schedule existing at the time the said medical care or treatment was provided. The order of the judge shall be subject to the same appellate procedure set forth in Section 3.6 of this title for all other orders of the Court. The right to recover charges for every type of medical care for personal injuries arising out of and in the course of covered employment as herein defined, shall lie solely with the Workers' Compensation Court, and all jurisdiction of the other trial courts of this state over such action is hereby abolished. The foregoing provision, relating to approval and enforcement of such charges and duration of treatment, shall not apply where a written contract

exists between the employer or insurance carrier and the person who renders such medical, surgical or other attendance or treatment, nurse and hospital service, or furnishes medicine, crutches or apparatus.

F. The Court or Administrator shall have authority on application of employee or employer or its insurance carrier to order a change of physicians at the expense of the employer when, in its judgment, such change is desirable or necessary; provided, the employer shall not be liable to make any of the payments provided for in this section, in case of contest of liability, where the Court shall decide that the injury does not come within the provisions of the Workers' Compensation Act.

G. If the employee chooses a physician for treatment and subsequently changes physicians without the approval of the Court or Administrator, or without agreement of the parties, the maximum liability of the employer for the expenses of all such subsequent physicians shall be Five Hundred Dollars (\$500.00). Provided, the limitations shall not apply to referrals by the treating physician for treatment or diagnostic procedures.

SECTION 10. AMENDATORY 85 O.S. 1991, Section 16, is amended to read as follows:

Section 16. A. An employee who has suffered an accidental injury or occupational disease covered by the Workers' Compensation Act shall be entitled to prompt and reasonable physical rehabilitation services. When, as a result of the injury, the employee is unable to perform the same occupational duties he was performing prior to the injury, he shall be entitled to such vocational rehabilitation services, including retraining and job placement so as to restore him to gainful employment. The Administrator shall promulgate rules and regulations governing notice to an injured employee of the right to receive vocational rehabilitation. If rehabilitation services are not voluntarily

offered by the employer and accepted by the employee, the judge of the Court may on his own motion, or if requested by a party shall, after affording all parties an opportunity to be heard, refer the employee to a qualified physician or facility for evaluation of the practicability of, need for and kind of rehabilitation services or training necessary and appropriate in order to restore the employee to gainful employment. Upon receipt of such report, and after affording all parties an opportunity to be heard, the Court shall order that any rehabilitation services or training, recommended in the report, or such other rehabilitation services or training as the Court may deem necessary, provided the employee elects to receive such services, shall be provided at the expense of the employer. Refusal to accept rehabilitation services by the employee shall in no way diminish any benefits allowable to an employee.

B. The Court shall cooperate on a reciprocal basis with the Vocational Rehabilitation Section of the Department of Human Services and the employment service of the Oklahoma Employment Security Commission for the purpose of providing the injured employee vocational rehabilitation and job placement services.

C. Vocational rehabilitation services or training shall not extend for a period of more than fifty-two (52) weeks. This period may be extended ~~by the Court~~ for an additional fifty-two (52) weeks or portion thereof by special order of the Court, after affording the interested parties an opportunity to be heard. A request for vocational rehabilitation services or training may be filed with the Administrator by an interested party at any time after the date of injury but not later than sixty (60) days from the date of the final determination that permanent disability benefits are payable to the employee.

D. Where rehabilitation requires residence at or near the facility or institution which is away from the employee's customary residence, reasonable cost of his board, lodging, travel, tuition,

books and necessary equipment in training shall be paid for by the insurer in addition to weekly compensation benefits to which the employee is otherwise entitled under the Workers' Compensation Act.

SECTION 11. AMENDATORY 85 O.S. 1991, Section 21, is amended to read as follows:

Section 21. Except as otherwise provided in this act, the average weekly wages of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

1. If the injured employee shall have worked in the employment in which he was working at the time of the accident whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of ~~three hundred~~ two hundred sixty times the average daily wage or salary which he shall have earned in such employment during the days when so employed.

2. If the injured employee shall not have worked in such employment during substantially the whole of such year, his average annual earnings shall consist of ~~three hundred~~ two hundred sixty times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or in a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed.

3. If either of the foregoing methods of arriving at the annual average earnings of an injured employee cannot reasonably and fairly be applied, such annual earnings shall be such sum as, having regard to the previous earnings of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured

employee in the employment in which he was working at the time of the accident.

4. The average weekly wages of an employee shall be one fifty-second (1/52) part of his average annual earnings.

5. If it be established that the injured employee was a minor when injured, and that under normal conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wages.

SECTION 12. AMENDATORY 85 O.S. 1991, Section 22, is amended to read as follows:

Section 22. The following schedule of compensation is hereby established:

1. Permanent Total Disability. In case of total disability adjudged to be permanent, sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages shall be paid to the employee during the continuance of such total disability.

2. Temporary Total Disability. In cases of temporary total disability, ~~sixty-six and two-thirds percent (66 2/3%)~~ seventy percent (70%) of the employee's average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of one hundred fifty (150) weeks, except as otherwise provided in the Workers' Compensation Act. Provided, after compensation has been paid for a period of one hundred forty (140) weeks, the employee may request a review of the case by a Judge of the Court for continued temporary total disability benefits provided by the Workers' Compensation Act. Upon a finding that benefits should be extended beyond the initial one-hundred-fifty-week period, compensation may be continued for an additional one hundred fifty (150) weeks. Provided, that a qualified self-insured employer who pays temporary total disability benefits at a higher weekly rate than required by statute without diminishing the employee's accrued leave on such

payments, then the employer is entitled to credit for such overpayment against any permanent partial disability owed.

3. Permanent Partial Disability. In case of disability, partial in character but permanent in quality, the compensation shall be sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages, and shall be paid to the employee for the period named in the schedule, as follows:

Thumb: For the loss of thumb, sixty (60) weeks.

First Finger: For the loss of the first finger, commonly called the index finger, thirty-five (35) weeks.

Second Finger: For the loss of a second finger, thirty (30) weeks.

Third Finger: For the loss of a third finger, twenty (20) weeks.

Fourth Finger: For the loss of a fourth finger, commonly called the little finger, fifteen (15) weeks.

Phalange of Thumb or Finger: The loss of the first phalange of the thumb or finger shall be considered equal to the loss of one-half (1/2) of such thumb or finger, and compensation shall be one-half (1/2) of the amount above specified; the loss of more than one phalange shall be considered as the loss of the entire thumb or finger; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

Great Toe: For the loss of a great toe, thirty (30) weeks.

Other Toes: For the loss of one of the toes other than the great toe, ten (10) weeks.

Phalange of Toe: The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half (1/2) of the amount specified. The loss of more than one phalange shall be considered as the loss of the entire toe.

Hand: For the loss of a hand, two hundred (200) weeks.

Arm: For the loss of an arm, two hundred fifty (250) weeks.

Foot: For the loss of a foot, two hundred (200) weeks.

Leg: For the loss of a leg, two hundred fifty (250) weeks.

Eye: For the loss of an eye, two hundred (200) weeks. Loss of sight of an eye shall be determined on the amount of loss after correction, including the use of any prosthetic device.

Deafness: Deafness from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, three hundred (300) weeks, and total deafness of one ear from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, one hundred (100) weeks. Any examining physician shall only evaluate deafness or hearing impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" ~~adopted and published by the American Medical Association~~ in effect at the time of the injury. However, revisions to the guides made by the American Medical Association which are published after January 1, 1989, shall be operative one hundred twenty (120) days after the last day of the month of publication. The examining physician shall only evaluate the amount of deafness or hearing impairment after correction, including the use of hearing aids and shall not follow the guides based on race or ethnic origin and shall not deviate from said guides except as may be specifically provided for in the guides. The guides shall be the exclusive basis for testimony and conclusions with regard to deafness or hearing impairment.

Loss of Use: Permanent loss of use of a thumb, finger, toe, arm, hand, foot, leg or eye shall be considered as the equivalent of the loss of such thumb, finger, toe, hand, arm, foot, leg or eye.

For the permanent partial loss of use of a member, loss of hearing or sight of an eye, sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage during that portion of the number of weeks in the foregoing schedule provided for the loss

of such member or sight of an eye which the partial loss of use thereof bears to the total loss of use of such member, loss of hearing or sight of an eye.

Amputations: Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be considered as the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm. Amputation at or above the knee shall be considered as the loss of a leg.

The compensation for the foregoing specific injuries shall be in lieu of all other compensation except the benefits provided in Section 14 of this title and Section 16 of this title.

In case of an injury resulting in serious and permanent disfigurement, compensation shall be payable in an amount to be determined by the Court, but not in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ Twenty Thousand Dollars (\$20,000.00); provided, that compensation for permanent disfigurement shall not be in addition to the other compensation provided for in this section, but shall be taken into consideration in fixing the compensation otherwise provided.

Hernia: In case of an injury resulting in hernia, temporary total compensation for fourteen (14) weeks, and the cost of an operation shall be payable; provided, in any case where the injured employee has been twice previously operated for hernia in the same area and it is established by opinion of a competent surgeon that further surgery in the same area will not result in full relief of the condition, the Court may then award compensation for disability resulting therefrom under paragraph 1 of this section, or, if not totally and permanently disabled, then under the "Other Cases" subdivision following, and, after a second surgical attempt to repair hernia, the injured may not be required to submit to further surgery in an effort to relieve the disability thereafter existing;

provided, further, the use of any artificial reinforcement or device, with or without surgery, shall not be the basis of reducing extent of disability to be awarded.

Other Cases: In all other classes of disabilities, excluding only those heretofore referred to in paragraph 3, which disabilities result in loss of use of any portion of an employee's body, and which disabilities are permanent in quality but partial in character, disability shall mean the percentage of permanent impairment. The compensation ordered paid shall be sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage for the number of weeks which the partial disability of the employee bears to five hundred (500) weeks.

4. Temporary Partial Disability. In case of temporary partial disability, except the particular cases mentioned in paragraph 3 of this section, an injured employee shall receive sixty-six and two-thirds percent (66 2/3%) of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, if less than before the injury, during continuance of such partial disability, but not to exceed one hundred fifty (150) weeks. Provided, after compensation has been paid for a period of one hundred forty (140) weeks, the employee may request a review of the case by a Judge of the Court for continued temporary partial disability benefits provided by the Workers' Compensation Act. Upon a finding that benefits should be extended beyond the initial one-hundred-fifty-week period, compensation may be continued for an additional one hundred fifty (150) weeks.

5. Notwithstanding any other section of the Workers' Compensation Act, temporary disability shall be payable without an award by the Court. The first payment of temporary disability compensation shall become due on the tenth day after the employer has received notice of injury as specified in Section 24.2 of this title. All compensation owed on that date shall be paid and

thereafter payments shall be made weekly except when otherwise ordered by the Court.

If any compensation payments owed without an award are not paid within ten (10) days after becoming due there shall be added to such owed payments an amount equal to ten percent (10%) of the amount due which shall be paid at the same time in addition to the owed payments unless such nonpayment is excused by the Court after a showing by the employer that conditions exist over which the employer had no control in that either payments were not made within the prescribed time or the employer denies coverage within the time specified for the employer to respond.

6. Limitation. The compensation payments under the provisions of the Workers' Compensation Act shall not exceed the sum of ~~sixty-six and two-thirds percent (66 2/3%)~~ seventy-five percent (75%) of the state's average weekly wage as determined by the Oklahoma Employment Security Commission for temporary disability; Sixty Dollars (\$60.00) per week beginning as of the effective date of the Workers' Compensation Act, and Seventy Dollars (\$70.00) per week beginning January 1, 1979, and Eighty Dollars (\$80.00) per week beginning January 1, 1980, and Ninety Dollars (\$90.00) per week beginning January 1, 1981, and to fifty percent (50%) of the state's average weekly wage beginning January 1, 1982, for permanent partial disability; Seventy-five Dollars (\$75.00) per week beginning as of the effective date of the Workers' Compensation Act, and Ninety Dollars (\$90.00) per week beginning January 1, 1979, and One Hundred Ten Dollars (\$110.00) per week beginning January 1, 1980, and to ~~sixty-six and two-thirds percent (66 2/3%)~~ of the state's average weekly wage beginning January 1, 1981, for permanent total disability, or at any time be less than Thirty Dollars (\$30.00) per week; provided, however, that if an employee that is permanently and totally disabled but who is receiving vocational rehabilitation services or training pursuant to Section 16 of this title shall be

entitled to temporary total disability benefits during the period in which such services or training are received. If the employee's wages at the time of the injury are less than Thirty Dollars (\$30.00) per week, he shall receive his full weekly wages; provided further, that the compensation received, as provided under paragraph 4 of this section, shall not, when added to the wages received by such employee after such injury, amount to a greater sum than eighty percent (80%) of his average weekly wages received prior to said injury.

The average weekly wage in this state shall be determined by the Oklahoma Employment Security Commission every three (3) years beginning July 1, 1984, and shall be used to establish maximum benefits under the Workers' Compensation Act for injuries occurring during a three-year period, which period shall begin on the first day of ~~the fourth month~~ November after publication by the Oklahoma Employment Security Commission. For the purpose of computing benefits payable under the Workers' Compensation Act, the state's average weekly wage shall be rounded to the nearest dollar amount.

The benefit level for members of the National Guard and any authorized voluntary or uncompensated worker rendering services as a fire fighter, peace officer or civil defense worker shall be determined by using the earnings of the individual in his regular occupation.

7. Previous Disability. The fact that an employee has suffered previous disability or impairment or received compensation therefor shall not preclude him from compensation for a later accidental personal injury or occupational disease; but in determining compensation for the later accidental personal injury or occupational disease his average weekly wages shall be such sum as will reasonably represent his earning capacity at the time of the later accidental personal injury or occupational disease. In the event there exists a previous impairment which produced permanent

disability and the same is aggravated or accelerated by an accidental personal injury or occupational disease, compensation for permanent disability shall be only for such amount as was caused by such accidental personal injury or occupational disease and no additional compensation shall be allowed for the pre-existing disability or impairment.

8. Income benefits for death. If the injury or occupational disease causes death, income benefits shall be payable in the amount and for the benefit of the persons following, subject to the maximum limits specified hereafter:

(a) Benefit amounts for particular classes of dependents.

(1) If there is a surviving spouse, to such surviving spouse fifty percent (50%) of the average weekly wages the deceased was earning. The benefit amount to the surviving spouse shall not be subject to the provisions of subparagraphs (c) and (d) of this paragraph.

(2) If there is a child or children, to such child or children fifteen percent (15%) of the average weekly wages the deceased was earning for each child. Where there are more than two such children, the income benefits payable for the benefit of all children shall be divided among all children, to share and share alike, subject to the provisions of subparagraphs (c) and (d) of this paragraph.

(3) In addition to the benefits theretofore paid or due, two (2) years' indemnity benefit in one lump sum shall be payable to a surviving spouse upon remarriage.

(4) To the children, if there is no surviving spouse, thirty-five percent (35%) of the average weekly wages the deceased was earning for one child, and fifteen percent (15%) of such wage for each additional child, divided among all children, to share and share alike, subject to the provisions of subparagraphs (c) and (d) of this paragraph.

(5) The income benefits payable for the benefit of any child under this section shall cease when he dies, marries or reaches the age of eighteen (18), or when the child over such age ceases to be physically or mentally incapable of self-support, or if the actually dependent child ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of twenty-three (23). A child who originally qualified as a dependent by virtue of being less than eighteen (18) years of age may, upon reaching age eighteen (18), continue to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actually dependent or enrolled in an accredited educational institution.

(6) To each parent, if actually dependent, twenty-five percent (25%) of the average weekly wages the deceased was earning subject to the provisions of subparagraphs (c) and (d) of this paragraph.

(7) To the brothers, sisters, grandparents and grandchildren, if actually dependent, twenty-five percent (25%) of the average weekly wages the deceased was earning to each such dependent. If there should be more than one of such dependents, the total income benefits payable for the benefit of such dependents shall be divided to share and share alike subject to the provisions of subparagraphs (c) and (d) of this paragraph.

(8) The income benefits of each beneficiary under divisions (6) and (7) above, shall be paid until the beneficiary, if a parent or grandparent, dies, marries or ceases to be actually dependent, or, if a brother, sister or grandchild, dies, marries or reaches the age of eighteen (18), is over the age of eighteen (18) and ceases to be physically or mentally incapable of self-support or ceases to be actually dependent.

(9) A person ceases to be actually dependent when
his income from all sources exclusive of workers'
compensation income benefits is such that, if it

had existed at the time the original determination of actual dependency was made, it would not have supported a finding of dependency. If the present annual income of an actually dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three (3) years after the time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this paragraph and paragraph (1) of Section 3.1 of this title.

(b) Change in dependents. Upon the cessation of income benefits under this section to or for the benefit of any person, the income benefits payable to the remaining persons who continue to be entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

(c) Maximum income benefits for death. For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state. In no case shall the aggregate weekly income benefits payable to all

beneficiaries under this section exceed the maximum income benefits that were or would have been payable for total permanent disability to the deceased.

(d) Maximum total payment. The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed seventy-five percent (75%) of the average weekly wages the deceased was earning, subject to the maximum limits in subparagraph (c) of this paragraph. The maximum aggregate limitation shall not apply in case of payment of two (2) years' income benefits to the surviving spouse upon remarriage, as provided under division (3) of subparagraph (a) of this paragraph, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subparagraph (b) of this paragraph. The weekly income benefits as recalculated to the remaining beneficiaries shall not exceed the weekly benefit that was or would have been payable for total permanent disability to the deceased. The classes of beneficiaries specified in divisions (1), (2) and (4) of subparagraph (a) of this paragraph shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this subparagraph should prevent payments to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in division (7) of subparagraph (a) of this paragraph in a separate class.

9. Where some pecuniary loss may be shown by heirs-at-law of the deceased, as defined by the descent and distribution statutes of Oklahoma, who are otherwise not entitled to receive benefits under other provisions of this section, such heirs-at-law shall receive

compensation for their pecuniary loss not to exceed an aggregate of Five Thousand Dollars (\$5,000.00).

10. In the event that no benefits under other provisions of this section are paid to the dependents or the heirs-at-law of the deceased, an amount not to exceed Three Thousand Dollars (\$3,000.00) shall be paid for funeral expenses.

11. (a) If there is a surviving spouse and surviving children entitled to receive death benefits herein, such survivors shall be entitled to an immediate lump-sum payment of ~~Ten Thousand Dollars (\$10,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) to the spouse and ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Ten Thousand Dollars (\$10,000.00) to each surviving child not to exceed two children.

(b) If there is no surviving spouse but there are surviving children entitled to receive death benefits herein, such surviving children shall be entitled to a lump-sum payment of Ten Thousand Dollars (\$10,000.00) to be divided among all the children to share and share alike.

(c) Any claim under this paragraph shall be substantiated by the filing of a properly executed and authenticated proof of loss, which form shall be prescribed by the Administrator, and payment of such sum shall be made within fifteen (15) days after adjudication of entitlement by the Court. Such sum shall not be subject to any award of attorney fees in uncontested cases, except the Court shall appoint a guardian ad litem to represent known and unknown minor children and said guardian ad litem shall be paid a reasonable fee for his services.

Provided, that all judgments rendered awarding lump-sum death benefits, except lump-sum attorney fee awards, may, at the discretion of the Court, provide that said benefits be paid in trust to an interest-bearing account in a federally insured banking institution in the county wherein the judgment was rendered. The

banking institution may make appropriate charges to the beneficiary for costs of trust management. These charges shall be fixed by agreement of such institution and the judge rendering the judgment. The judgment awarding lump-sum death benefits shall contain instructions for regularly scheduled disbursements to be fixed by the Court which may be modified by the Court upon a proper showing of change of circumstance. The banking institution shall issue a numbered receipt to the person paying the benefits into trust and deliver a copy of the receipt to the Administrator. Each banking institution receiving trust funds for deposit shall receive a schedule of disbursements and shall monthly pay said disbursements to the beneficiary as ordered by the Court. An annual accounting of all such trust funds received and deposited shall be rendered by each banking institution to the Court granting the judgment.

12. No payments on any permanent impairment order shall start until payments on any pre-existing permanent impairment orders have been completed.

SECTION 13. AMENDATORY 85 O.S. 1991, Section 30, is amended to read as follows:

Section 30. If the Court before which any proceedings for compensation or concerning an award of compensation have been brought, under the Workers' Compensation Act, determines that such proceedings have not been brought on a reasonable ground, or that denial of benefits has not been based on a reasonable ground, the Court shall assess the total cost of the proceedings on the party, who has brought them or the party who has unreasonably denied payment of benefits. Claims for services or treatment rendered or supplies furnished pursuant to Section 14 of this title shall not be enforceable unless approved by the Court. If approved, such claim shall become a lien upon the compensation awarded, but shall be paid therefrom only in the manner fixed by the Court. A claim for legal services shall be determined by the Court on a quantum meruit basis;

provided, that such claim shall not exceed ten percent (10%) of the amount of the award for temporary disability and shall not exceed twenty percent (20%) of the amount of the award for permanent disability or death benefits. Claims for legal services for temporary disability awards shall be paid periodically. Claims for legal fees for permanent total disability awards shall be paid periodically at the rate of twenty percent (20%) of each weekly check to the claimant until the attorney fee is satisfied. The right to any such attorneys' fees shall be vested at the time the award therefor becomes final. Claims for legal services for permanent partial disability awards may be paid in a lump sum the same to be deducted from the end of the award. Claims for legal services for ~~permanent total disability awards~~ or death awards may be paid in a lump sum which shall be deducted from the periodic compensation payments at a rate of ten percent (10%) per payment until the attorney fee is satisfied.

SECTION 14. AMENDATORY 85 O.S. 1991, Section 41, is amended to read as follows:

Section 41. A. Awards for permanent partial disability under Section 22 of this title shall be made for the total number of weeks of compensation which the Court shall find the claimant will be entitled to receive, less any sums previously paid which the Court may find to be a proper credit thereon. When the award becomes final, the whole sum or any unpaid portion thereof shall operate as a final adjudicated obligation and payment thereof may be enforced by the claimant or in case of his death, by the surviving beneficiary entitled to the proceeds as provided in Section 48 of this title. All awards shall be paid by periodic installments as determined by the Court. Whenever an injured person receives an award for permanent partial disability, permanent total disability or death benefits, the injured employee or claimant, for good cause shown, may have the award commuted to a lump-sum payment by

permission of the Court. This authorization for commutation shall not be applicable to attorneys' fees in permanent total disability cases. The lump-sum payment shall not exceed Four Thousand Dollars (\$4,000.00) or twenty-five percent (25%) of the total award, whichever is the larger sum. ~~However, attorney~~ Attorney fees shall be based upon not more than a five-hundred-week award and, with respect to attorneys' fees in a permanent total disability case, shall be paid periodically. Such commutation shall be in addition to any commutation to a lump-sum payment for legal services. The balance of the total award shall be paid in periodic installments. In case of the death of a claimant due to causes other than his accidental personal injury or occupational disease at any time before satisfaction or payment of the total award is made, the award shall not abate, but shall be revived in favor of the persons determined by the Court to be entitled thereto. In proceedings to enforce claims for compensation during a period of healing or temporary total disability, the compensation under the provisions of the Workers' Compensation Act shall be payable periodically, in accordance with the method of payment of the wages of the employee at the time of his injury, and shall be so provided for in any award made.

B. Awards for permanent total disability shall be made by the Court under Section 22 of this title. The Court shall make a determination that the claimant will be entitled to receive the weekly income benefits provided in this title as long as his permanent total disability continues to exist. When an award for total permanent disability becomes final, the accrued portion thereof shall operate as a final adjudicated obligation and payment thereof may be enforced by the claimant. In proceedings to enforce claims for total permanent disability, the compensation under the provisions of the Workers' Compensation Act shall be payable periodically and shall be so provided in any award made thereon.

Total permanent disability awards shall not be commuted to a lump-sum payment ~~except as to legal services as provided herein.~~

C. All payments shall be made on any award in the manner and form prescribed by the Court not to exceed the weekly rate of compensation specified in Section 22 of this title, and employers and insurance carriers shall, for such purposes, be permitted, or when necessary to protect the interests of the beneficiary, may be required to make deposits with the Administrator to secure the prompt and convenient payment of awards made. Provided that, all weekly or periodic payments shall be made through the use of United States legal tender, negotiable instruments payable on demand or negotiable drafts when each such payment does not exceed One Thousand Dollars (\$1,000.00). Failure for ten (10) days to pay any final award or any portion thereof, as ordered shall immediately entitle the beneficiary to an order finding the respondent and/or insurance carrier to be in default and all unpaid portions, including future periodic installments unpaid, shall immediately become due and may be immediately enforced as provided by Section 42 of this title.

An award for disability may be made after the death of the injured employee, when death results from causes other than the injury. If an employee dies as a result of a compensable injury or an occupational disease, any unaccrued portions of an award or order shall abate.

SECTION 15. AMENDATORY 85 O.S. 1991, Section 66.1, is amended to read as follows:

Section 66.1 A. There is hereby created the "Individual ~~Self-Insured~~ Self-Insureds' Guaranty Fund Board". The Board shall have supervision over the administration and operation of the Individual ~~Self-Insured~~ Self-Insureds' Guaranty Fund.

B. 1. The Board shall consist of not less than three (3) nor more than nine (9) members. Each member shall be from an employer

who has been approved by the Workers' Compensation Court as an ~~own risk carrier or self-insured risk~~ individual self-insured. No more than one board member may be appointed from an employer. The Board shall be appointed by the Administrator.

2. The initial members of the Board shall be appointed to terms of office as follows:

- ~~1.~~ a. One member shall be appointed for one (1) year;
- ~~2.~~ b. One member shall be appointed for two (2) years; and
- ~~3.~~ c. One member shall be appointed for three (3) years.

3. If more than three members are appointed, the fourth member shall be appointed for four (4) years and each of the others appointed shall be for terms of office in the order of their appointment of one, two, three or four years with the ninth member also serving four (4) years. Thereafter, each person appointed shall serve ~~for a four (4) years~~ year term.

C. The State Treasurer shall establish the Individual ~~Self-Insured~~ Self-Insureds' Guaranty Fund in the State Treasury.

D. The monies paid into the Fund, together with the interest thereon, shall constitute the Individual ~~Self-Insured's~~ Self-Insureds' Guaranty Fund.

E. Until the Individual ~~Self-Insured~~ Self-Insureds' Guaranty Fund contains ~~One Million Dollars (\$1,000,000.00)~~ Five Million Dollars (\$5,000,000.00), exclusive of monies received pursuant to subsection F of this section, the Oklahoma Tax Commission shall assess and collect from ~~the employers carrying their own risk~~ each employer approved by the Court as an individual self-insured a tax at the rate of ~~one percent (1%)~~ four percent (4%) of the total compensation ~~for permanent partial disability awards~~ paid out during each quarter of the calendar year ~~by the employers~~ for permanent partial disability awards against that employer. The Oklahoma Tax Commission shall forward to the State Treasurer the proceeds of the tax for deposit in the Fund. The State Treasurer shall place monies

in the Fund in interest-bearing accounts and any interest generated thereby shall accrue to the benefit of the Fund. When the ~~amount in the Fund falls below Seven Hundred Fifty Thousand Dollars (\$750,000.00), the tax made pursuant to this section shall be assessed until the Fund contains One Million Dollars (\$1,000,000.00).~~ The State Treasurer shall place monies in the Fund in interest-bearing accounts Fund reaches a level of Five Million Dollars (\$5,000,000.00), the Administrator shall review the tax rate to determine actuarially the need for any modification thereto necessary to maintain the balance in the Fund at the five-million-dollar level. The rate shall be recommended to the Board and if approved, shall be made applicable to tax assessments in the next ensuing calendar year. The Administrator shall review the tax rate annually thereafter to maintain the Fund within two percent (2%) of the five-million-dollar level.

F. 1. If an employer, who is ~~currently~~ approved by the Administrator of the Workers' Compensation Court as a self-insured or own risk carrier, ~~is unable to make payment of an award and judgment is rendered against such employer and execution is levied and returned unsatisfied in whole or in part~~ is unable to make payment of an award or any employee benefits as required by the Workers' Compensation Act within sixty (60) days of when due, payments for such liabilities ~~shall~~ may be made from the Individual ~~Self-Insured~~ Self-Insureds' Guaranty Fund.

~~The Administrator shall proceed to recover such~~ An employer's delinquency in payments as provided in this section shall be sufficient grounds for the Administrator to terminate the employer's approval to act as a self-insured and shall entitle the Board to the right of immediate possession of any posted security. The Administrator, custodian, surety or issuer of any irrevocable letter of credit shall turn over the security to the Board, together with any interest accrued thereon since the date of the self-insured's

delinquency in payment. The Administrator may require additional security of the self-insured employer.

The Board shall determine which awards or benefits shall be paid from the Fund and may order such payments. To assure that the injured employee receives benefits prescribed by the Workers' Compensation Act, benefits shall be paid in the following order:

- a. weekly benefits due or awarded and unpaid for temporary total disability,
- b. weekly benefits due or awarded and unpaid for permanent total disability,
- c. weekly benefits due or awarded and unpaid to persons entitled thereto as death benefits, and
- d. weekly benefits due or awarded and unpaid for permanent partial disability.

Attorneys' fees and medical expenses also shall be paid. No attorneys' fees or accrued weekly benefits shall be paid in a lump sum. All reasonable and necessary medical expenses incurred by an employee in an amount not exceeding One Hundred Thousand Dollars (\$100,000.00) shall be paid by the Fund. However, the Fund's liability for any medical expenses exceeding One Hundred Thousand Dollars (\$100,000.00) shall be limited to fifty percent (50%) of such excess amount. The fund shall not be liable for any interest or penalties assessed on accrued benefits. If funds over and above the security are required to pay benefits, the Administrator shall advise the Board which shall recover such additional payments from the employer, or the employer's receiver or trustee in bankruptcy, and may commence an action or proceeding or file a claim therefor.

The Attorney General shall appear on behalf of the ~~Administrator~~ Board in any such action or proceeding. All monies recovered in such action shall be paid into the Fund. The fact that such additional funds in excess of the security are needed shall not limit the payment of benefits if the Fund is able to pay. If at any

time the Fund is not sufficient to make the payments or reimbursements then owing, the Board shall levy a special assessment on each self-insured employer in an amount determined by the Board based on the employer's Oklahoma payroll. Such special assessment may not be levied more than once per calendar year.

2. Each employer approved as an individual ~~self-insurer or own risk carrier~~ self-insured shall pay ~~into~~ to the ~~Fund~~ Tax Commission a sum equal to that assessed against such employer as provided for in subsection E of this section. When the award becomes final, the sum shall be payable regardless of whether or not the award made to the claimant is paid. The Tax Commission shall bill each employer for sums due.

3. ~~In making and entering awards for compensation for permanent partial disability, the Court shall determine and fix the amounts that shall be paid to the Tax Commission pursuant to the provisions of subsection E of this section. The amount so determined and fixed shall have the same force and effect as an award of the Court for compensation and all provisions relating to the collection of awards of the Court shall apply to such judgments.~~ The Board shall determine and fix the tax to be paid to the Tax Commission pursuant to the provisions of subsection E of this section. The amount so determined and fixed shall have the same force and effect as an award for benefits and all provisions relating to the collection of awards of the Court shall apply.

4. It shall be the duty of the Oklahoma Tax Commission to collect the payments provided for in this section. The Oklahoma Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section. The Oklahoma Tax Commission may also enforce payments by proceeding in accordance with the provisions of Section 42 of Title 85 of the Oklahoma Statutes.

The Oklahoma Tax Commission shall on or before the first day of ~~April~~ January of each year find and determine the amount of money held as of ~~March~~ December 1 of ~~that~~ the preceding year by the State Treasurer for the benefit of the Individual ~~Self-Insured~~ Self-Insureds' Guaranty Fund and ~~shall on or before the first day of October of each year find and determine the amount of money held as of September 1 of that year by the State Treasurer for the benefit of the Individual Self-Insured Guaranty Fund.~~ Promptly after making ~~each such~~ the determination, the Oklahoma Tax Commission shall advise the Administrator of the Workers' Compensation Court in writing of its findings.

5. Eighty percent (80%) of all sums held by the State Treasurer to the credit of the Individual ~~Self-Insured~~ Self-Insureds' Guaranty Fund by order of the Administrator, with the approval of the Individual ~~Self-Insured~~ Self-Insureds' Guaranty Fund Board, may be invested in or loaned on the pledge of any of the securities in which a state bank may invest the moneys deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in said institutions. "Insured" as used in this section shall mean insurance as provided by an agency of the federal government. All such securities or evidence of indebtedness shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, who shall collect the principal and interest when due, and pay the same into said Fund. The State Treasurer shall pay by vouchers drawn on the Individual ~~Self-Insured~~ Self-Insureds' Guaranty Fund for the making of such investments, when signed by the Administrator and approved by the Individual ~~Self-Insured~~ Self-Insureds' Guaranty Board, upon delivery of such securities or evidence of indebtedness to him. The Administrator, upon approval of the individual ~~Self-Insured~~ Self-Insureds' Guaranty Board, may sell any of such

securities, the proceeds thereof to be paid over to the State Treasurer for deposit in the Fund.

6. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payment of assessments made to the Fund when the Fund has over ~~One Million Dollars (\$1,000,000.00)~~ Ten Million Dollars (\$10,000,000.00) in it. Refunds shall be paid from the Fund. The amount of such refunds shall be determined by the Board.

7. The Oklahoma Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Individual ~~Self-Insured Self-Insureds'~~ Self-Insureds' Guaranty Fund all moneys collected under the provisions of this section. The State Treasurer shall pay out of the Individual ~~Self-Insured Self-Insureds'~~ Self-Insureds' Guaranty Fund only upon the order and direction of ~~a court of this state acting under the provisions thereof~~ the Board.

8. ~~Where an award has been made by the Court or a payment in lieu thereof for compensable injury for a permanent partial disability, the~~ The employer shall pay to the Tax Commission such sum as is due of which ninety-eight percent (98%) of said sum shall be paid into the Fund and the remaining two percent (2%) thereof shall be ~~paid to~~ retained by the Oklahoma Tax Commission not later than the fifteenth of the month following the close of the calendar quarter in which the ~~award~~ assessment was made.

G. The Board may retain an insurance carrier ~~or,~~ an approved service organization ~~to process, investigate and pay valid claims,~~ the State Insurance Fund or such other persons as are necessary to handle claims and perform other duties of the Board. The charge for such service shall be paid from the Fund.

H. The provisions of this section shall not apply to any state entity or any political subdivision of the state.

I. No claim or award shall be allowed against the Fund unless such claim or award is made within (1) one year of the time provided in paragraph 1 of subsection F of this section.

SECTION 16. AMENDATORY 85 O.S. 1991, Section 66.2, is amended to read as follows:

Section 66.2 A. There is hereby created the "Group Self-Insurance Association Guaranty Fund Board". The Board shall have supervision over the administration and operation of the Group Self-Insurance Association Guaranty Fund.

B. The Board shall consist of not less than three (3) nor more than nine (9) members. Each member shall be an administrator or a member of a Group Self-Insurance Association which has been approved by the Workers' Compensation Court as ~~an own risk carrier or a~~ a self-insured risk. The Board shall be appointed by the Administrator. The initial members of the Board shall be appointed to terms of office as follows:

1. One member shall be appointed for one (1) year;
2. One member shall be appointed for two (2) years; and
3. One member shall be appointed for three (3) years.

If more than three members are appointed, the fourth member shall be appointed for four (4) years ~~and each of the others appointed shall be for terms of office in the order of their appointment of one, two, three or four years with the ninth member also serving four (4) years;~~ the fifth member shall be appointed for a term of one (1) year; the sixth member shall be appointed for a term of two (2) years; the seventh member shall be appointed for a term of three (3) years; and the eighth and ninth members shall be appointed for a term of four (4) years. Thereafter, each person appointed shall ~~serve~~ be appointed for a term of four (4) years.

C. The State Treasurer shall establish the Group Self-Insurance Association Guaranty Fund in the State Treasury.

D. The monies paid into the Fund, together with the interest thereon and those sums that may be assessed and paid by members of a group which have been assessed and paid because of the inability of another member of the group to make such payments or sums recovered by the Board, shall constitute the Group Self-Insurance Association Guaranty Fund.

E. Until the Group Self-Insurance Association Guaranty Fund contains ~~One Million Dollars (\$1,000,000.00)~~ Two Million Dollars (\$2,000,000.00), exclusive of monies received pursuant to subsection F of this section, the Oklahoma Tax Commission shall assess and collect from each group self-insurance association ~~carrying their own risk~~, a tax at the rate of ~~one percent (1%)~~ four percent (4%) of the amount of total compensation paid out for permanent partial disability awards ~~paid out~~ during each quarter of the calendar year by ~~each~~ the group self-insurance association for the preceding quarter. The Oklahoma Tax Commission shall forward to the State Treasurer the proceeds of the tax for deposit in the Fund. When the amount in the Fund ~~falls below Seven Hundred Fifty Thousand Dollars (\$750,000.00)~~, ~~the tax made pursuant to this section shall be assessed until the Fund contains One Million Dollars (\$1,000,000.00)~~ reaches a level of Two Million Dollars (\$2,000,000.00), the Administrator shall actuarially determine a tax rate for the next year which shall maintain said Fund within two percent (2%) of the two-million-dollar level and recommend the same to the Board who shall adopt said rate which then becomes said tax rate to be assessed for the next year and such determination shall be made each year thereafter. The State Treasurer shall place monies in the Fund in interest-bearing accounts which shall accrue to the benefit of the Fund.

F. 1. If a group self-insurance association, that is ~~currently~~ approved by the Administrator of the Workers' Compensation Court as a self-insured ~~or own risk carrier~~, is unable to make payment of an

~~award and judgment is rendered against such group self-insurance association and execution is levied and returned unsatisfied in whole or in part~~ or any employee benefits as required by the Workers' Compensation Act within sixty (60) days of when due, payments for such liabilities ~~shall~~ may be made from the Group Self-Insurance Association Guaranty Fund.

~~The Administrator shall proceed to recover such payments from the group self-insurance association, or the group self-insurance association's receiver or trustee in bankruptcy, and may commence an action or proceeding or file a claim therefor.~~

~~The Attorney General shall appear on behalf of the Administrator in any such action or proceeding. All monies recovered in such action shall be paid into the Fund.~~

~~2. Each group self-insurance association approved as a self-insurer or own risk carrier shall pay into the Fund a sum equal to that assessed against such group self-insurance association as provided for in subsection E of this section. When the award becomes final, the sum shall be payable regardless of whether or not the award made to the claimant is paid.~~

~~3. In making and entering awards for compensation for permanent partial disability, the Court shall determine and fix the amounts that shall be paid to the Tax Commission pursuant to the provisions of subsection E of this section. The amount so determined and fixed shall have the same force and effect as an award of the Court for compensation and all provisions relating to the collection of awards of the Court shall apply to such judgments.~~

~~4. A group self-insurance association's delinquency in payments as provided in this section shall be sufficient grounds for the Board to become entitled to right of immediate possession of any posted security. The Administrator, custodian, surety, or issuer of any irrevocable letter of credit shall turn over the security to the Board, together with any interest accrued thereon since the date of~~

the group self-insurance association's delinquency in payment. The Board shall have the power and authority to hold hearings to determine the condition of the group and determine whether or not to replace the administrator, to continue the service company and such other action as may be appropriate. The Board may order payment from the Fund for the payment of such benefits as have become due or awarded in the following order according to the sufficiency of the Fund:

- a. weekly benefits due or awarded and unpaid for temporary total disability,
- b. weekly benefits due or awarded and unpaid for permanent total disability,
- c. weekly benefits due or awarded and unpaid to persons entitled thereto as death benefits, and
- d. weekly benefits due or awarded and unpaid for permanent partial disability.

Attorneys' fees and medical expenses also shall be paid. No attorneys' fees or accrued weekly benefits shall be paid in a lump sum. All reasonable and necessary medical expenses incurred by an employee in an amount not exceeding One Hundred Thousand Dollars (\$100,000.00) shall be paid by the Fund. However, the Fund's liability for any medical expenses exceeding One Hundred Thousand Dollars (\$100,000.00) shall be limited to fifty percent (50%) of such excess amount. The Fund shall not be liable for any interest or penalties assessed on accrued benefits.

If at any time the Fund is not sufficient to make the payments or reimbursements then owing, the Board shall levy a special assessment on each group self-insurance association in an amount determined by the Board based on the group self-insurance association's Oklahoma payroll. Such special assessment may not be levied more than once per calendar year. If a court action is

required, the Attorney General shall appear on behalf of the Board in any such proceeding.

2. If the group becomes rehabilitated, the Administrator of the Court may reinstate the group as a self-insured if requested by the members of the group.

3. Each group approved as a self-insured shall pay to the Oklahoma Tax Commission for the benefit of the Fund a sum equal to that assessed as provided in subsection E of this section.

4. The Board shall determine and fix the amounts to be paid to the Tax Commission pursuant to subsection E of this section.

5. The Oklahoma Tax Commission, on or before the first day of January of each year, shall determine the amount of money held in the Fund as of December 31 of the preceding year by the State Treasurer for the benefit of the Group Self-insurance Association Guaranty Fund. Promptly after making the determination, the Oklahoma Tax Commission shall advise the Administrator of the Workers' Compensation Court, in writing, of its findings.

It shall be the duty of the Oklahoma Tax Commission to collect the payments provided for in this section. The Oklahoma Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section. The Oklahoma Tax Commission may also enforce payments by proceeding in accordance with the provisions of Section 42 of Title 85 of the Oklahoma Statutes.

~~The Oklahoma Tax Commission shall on or before the first day of April of each year find and determine the amount of money held as of March 1 of that year by the State Treasurer for the benefit of the Group Self-Insurance Association Guaranty Fund and shall on or before the first day of October of each year find and determine the amount of money held as of September 1 of that year by the State Treasurer for the benefit of the Group Self-Insurance Association Guaranty Fund. Promptly after making each such determination, the~~

~~Oklahoma Tax Commission shall advise the Administrator in writing of its findings.~~

~~5.~~ 6. Eighty percent (80%) of all sums held by the State Treasurer to the credit of the Group Self-Insurance Association Guaranty Fund by order of the Administrator, with the approval of the Group Self-Insurance Association Guaranty Fund Board, may be invested in or loaned on the pledge of any of the securities in which a state bank may invest the moneys deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in said institutions. "Insured" as used in this section shall mean insurance as provided by an agency of the federal government. All such securities or evidence of indebtedness shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, who shall collect the principal and interest when due, and pay the same into said Fund. The State Treasurer shall pay by vouchers drawn on the Group Self-Insurance Association Guaranty Fund for the making of such investments, when ordered by the Board and signed by the Administrator ~~and approved by the Group Self-Insurance Association Guaranty Board~~, upon delivery of such securities or evidence of indebtedness to him. The Administrator, upon approval of the Group Self-Insurance Association Guaranty Board, may sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for deposit in the Fund.

~~6.~~ 7. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payment of assessments made to the Fund when the Fund has over ~~One Million Dollars (\$1,000,000.00)~~ Two Million Dollars (\$2,000,000.00) in it. Refunds shall be paid from the Fund.

~~7.~~ 8. The Oklahoma Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Group Self-Insurance

Association Guaranty Fund all moneys collected during the preceding month under the provisions of this section. The State Treasurer shall pay out of the Group Self-Insurance Association Guaranty Fund only upon the order and direction of ~~a court of this state acting under the provisions thereof.~~

~~8. Where an award has been made by the Court or a payment in lieu thereof for compensable injury for a permanent partial disability, the employer~~ the Board.

9. Group self-insurance associations shall pay to the Tax Commission such sum ~~as is~~ or sums as may be due of which ninety-eight percent (98%) of said sum or sums shall be paid into the Fund and the remaining two percent (2%) thereof shall be ~~paid to retained by~~ the Oklahoma Tax Commission ~~not later than the fifteenth of the month following the close of the calendar quarter in which the award was made.~~ The distribution of said sum or sums shall be made by the Tax Commission at the time the money is to be paid to the State Treasurer.

G. The Board may retain an insurance carrier ~~or,~~ an approved service organization ~~to process, investigate and pay valid claims,~~ the State Insurance Fund or such other persons as are necessary to handle claims and perform other duties of the Board. The charge for such service shall be paid from the Fund.

H. The provisions of this section shall not apply to any ~~group self-insurance association consisting of~~ state entities or ~~of any~~ political subdivisions of the state.

I. No claim or award shall be allowed against said Fund unless such claim or award is made within one (1) year of the time provided in paragraph 1 of subsection F of this section.

SECTION 17. The Advisory Council on Workers' Compensation shall conduct a study of the feasibility of establishing an exclusive state fund or exclusive commercial fund for the purpose of providing workers' compensation insurance to all employers of this state. The

Advisory Council shall report its findings and recommendations to the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Governor of this state no later than November 1, 1992.

SECTION 18. AMENDATORY 85 O.S. 1991, Section 172, is amended to read as follows:

Section 172. A. If an employee who is a "physically impaired person" receives an accidental personal injury compensable under the Workers' Compensation Act which results in additional permanent disability so that the degree of disability caused by the combination of both disabilities is materially greater than that which would have resulted from the subsequent injury alone, the employee shall receive compensation on the basis of such combined disabilities. Only disability due to an injury to the body as a whole shall be combinable with a prior body disability, except that disability to a major member may be combined with disability to the body as a whole. If such combined disabilities constitute partial permanent disability as now defined by the Workers' Compensation Act of this state, then such employee shall receive full compensation as now provided by law for the disability resulting directly and specifically from such subsequent injury, and in addition thereto such employee shall receive full compensation for his combined disability as above defined, after deducting therefrom the percent of that disability that constituted the employee a "physically impaired person", as defined herein, all of which shall be computed upon the schedule and provision of the Workers' Compensation Act of this state. Provided the employer shall be liable only for the degree of percent of disability which would have resulted from the latter injury if there had been no preexisting impairment. After payments by the employer or his insurance carrier, if any, have ceased, the remainder of such compensation shall be paid out of the

Special Indemnity Fund provided for in Section 173 of this title, in periodic installments.

B. If such combined disabilities constitute permanent total disability, as now defined by the Workers' Compensation Act, then the employee shall receive full compensation as now provided by law for the disability resulting directly and specifically from such subsequent injury. In addition, the employee shall receive full compensation for his combined disability, as above defined, all of which shall be computed upon the schedule and provisions of the Workers' Compensation Act. The employer shall be liable only for the degree of percent of disability which would have resulted from the latter injury if there had been no preexisting impairment. After payments by the employer or his insurance carrier have ceased, the remainder of such compensation shall be paid out of the Special Indemnity Fund provided for in Section 173 of this title, in periodic installments. In permanent total disability cases the same shall be paid in periodic payments, as set forth in Section 22 of this title, and shall not be commuted to a lump-sum payment. The compensation rate for permanent total awards from the Special Indemnity Fund shall be the compensation rate for permanent partial disability paid by the employer in the last combinable compensable injury. Permanent total awards from the Special Indemnity Fund shall be payable for a period of five (5) years or until the employee reaches sixty-five (65) years of age, whichever period is the longer.

C. Before a physically impaired person can proceed against the Special Indemnity Fund, the preexisting permanent partial disability and the permanent partial disability from the last injury must exceed a total amount equal to ~~seventeen percent (17%)~~ forty percent (40%) to the body.

D. Awards from the Special Indemnity Fund shall abate upon the death, from any cause, of the employee.

SECTION 19. AMENDATORY 85 O.S. 1991, Section 173, is amended to read as follows:

Section 173. There is hereby created, for the purposes herein declared, a Special Indemnity Fund to be derived from the following sources:

A. Each mutual or interinsurance association, stock company, the State Insurance Fund, or other insurance carrier writing workers' compensation insurance in this state, and each self-insurer, shall pay to the Oklahoma Tax Commission a sum equal to ~~three percent (3%)~~ five percent (5%) of the total compensation for permanent total disability or permanent partial disability paid out or payable during each quarter-year period of the calendar year. Such payments to the Tax Commission shall be made not later than the fifteenth day of the month following the close of the quarter-year in which compensation is paid or becomes payable. Contributions made by insurance carriers and the State Insurance Fund, under the provisions of the Workers' Compensation Act, to the Special Indemnity Fund shall be considered losses for the purpose of computing workers' compensation rates.

B. The Special Indemnity Fund is hereby authorized to receive and expend monies appropriated by the Legislature.

C. Where an award has been made by the Court, or any payments in lieu thereof, for compensable injury for a permanent total disability or a permanent partial disability, the employer or insurance carrier shall pay to such employee ~~ninety-seven percent (97%)~~ ninety-five percent (95%) of the same and the remaining ~~three percent (3%)~~ five percent (5%) thereof shall be paid by such employer to the Oklahoma Tax Commission. Such payments to the Tax Commission shall be made not later than the fifteenth day of the month following the close of each quarter of the calendar year in which compensation is paid or became payable.

D. The payments provided for in the foregoing subsections A and C, which aggregate ~~six percent (6%)~~ ten percent (10%) of the awards for permanent disability, shall, in the event the award becomes final, accrue and be payable regardless of whether or not the award made to a claimant is paid.

E. In making and entering awards for compensation for permanent total disability or permanent partial disability, the Court shall determine and fix the amounts that shall be paid to the Tax Commission under subsections A and C of this section. The total amount of the deduction so determined and fixed shall have the same force and effect as an award of the Court for compensation and all provisions relating to the collection of awards of the Court shall apply to such judgments.

F. It shall be the duty of the Oklahoma Tax Commission to collect the payments provided for herein. The Oklahoma Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section. The Oklahoma Tax Commission may also enforce payments by proceeding in accordance with the provisions of Section 42 of this title.

G. The Oklahoma Tax Commission shall on or before the first day of April of each year find and determine the amount of money held as of March 1 of that year by the State Treasurer for the benefit of the Special Indemnity Fund and shall on or before the first day of October of each year find and determine the amount of money held as of September 1 of that year by the State Treasurer for the benefit of the Special Indemnity Fund. Promptly after making each such determination, the Oklahoma Tax Commission shall advise the State Insurance Fund and the Administrator in writing of its findings and determination in the foregoing particulars.

H. Eighty percent (80%) of all sums held by the State Treasurer to the credit of the Special Indemnity Fund may by order of the Commissioner of the State Insurance Fund, with the approval of the

Board of Managers of the State Insurance Fund, be invested in or loaned on the pledge of any of the securities in which a state bank may invest the monies deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in said institutions. "Insured" as used in this section shall mean insurance as provided by an agency of the federal government. All such securities or evidence of indebtedness shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, who shall collect the principal and interest when due, and pay the same into the Special Indemnity Fund. The State Treasurer shall pay by vouchers drawn on the Special Indemnity Fund for the making of such investments, when signed by the Commissioner and approved by the Board of Managers of the State Insurance Fund, upon delivery of such securities or evidence of indebtedness to him. The Commissioner may, upon like approval of the Board of Managers of the State Insurance Fund, sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for the Special Indemnity Fund.

I. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made to the Special Indemnity Fund. Refunds shall be paid from and out of the Special Indemnity Fund.

J. The Oklahoma Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Special Indemnity Fund all monies collected under the provisions of this section. The State Treasurer shall pay out of the Special Indemnity Fund only upon the order and direction of the Court of this state acting under the provisions hereof.

SECTION 20. AMENDATORY 85 O.S. 1991, Section 201, is amended to read as follows:

Section 201. A. A health care provider who knowingly charges for treatment under Workers' Compensation an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges, shall be liable for an administrative penalty.

B. The Administrator shall adopt rules and regulations to establish a system of review of medical practices of health care providers through the workers' compensation system to evaluate on an aggregate basis the quantity and quality of treatment and charges of such providers. If the Administrator determines that a health care provider has, on an aggregate basis, established a pattern of over or under treating, failing to adhere to the AMA Guides, or overcharging, the Administrator shall impose administrative penalties for abusive practices.

C. If the Administrator determines that there is a reasonable likelihood that a violation has occurred, the Administrator shall notify the health care provider, by certified mail, return receipt requested, delivery restricted. This notice shall contain the following:

1. The substance of the alleged violation;
2. The amount of any fees, fines, penalties and costs which may be imposed if the provider is found guilty or fails to respond; and
3. The date that a response must be made or a hearing requested.

D. The provider shall file a response to the allegations or request a hearing within twenty (20) days after receipt of the notice required by subsection C of this section.

E. Upon receipt of the response or request for hearing, the Administrator shall set a date, time and place for hearing which shall be not less than ten (10) nor more than thirty (30) days after receipt of the request for hearing. The Administrator shall notify

all interested parties of the hearing by first-class mail. This notice shall include the following:

1. The date, time and place for such hearing;
2. A brief description of the procedures to be followed; and
3. A statement that the health care provider may appear, may be represented by counsel, and may present witnesses and testimony.

F. The Administrator shall, within thirty (30) days after completion of the proceedings, make written findings of fact and conclusions of law which shall be sent to the health care provider by first-class mail together with a notice which shall contain the following:

1. A statement that ~~an appeal may be sought pursuant to the Administrative Procedures Act~~ a health care provider aggrieved by the decision of the Administrator shall have ten (10) days after the decision is filed within which to request a hearing before a judge of the Workers' Compensation Court to determine the propriety of the Administrator's decision; and that the order of the judge shall be subject to the same appellate procedure set forth in Section 3.6 of this title for all other orders of the Court; and
2. Directions for remitting the penalty, if any.

G. ~~The proceedings provided for by this section shall be subject to the Administrative Procedures Act~~ No hospital or health provider shall charge more for a workers' compensation claim than for the same service not involving workers' compensation.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 174.1 of Title 85, unless there is created a duplication in numbering, reads as follows:

Whenever any person, corporation or other business entity, doing work for which the law requires workers' compensation, obtains an occupational license from any city or town in this state, such city or town shall require proof that said person, corporation or other business entity has a workers' compensation insurance policy in

force and effect at the time an occupational license is issued. Such license shall not be issued until such proof is provided.

SECTION 22. AMENDATORY 85 O.S. 1991, Section 61, is amended to read as follows:

Section 61. A. An employer shall secure compensation to his employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation with any stock corporation, mutual association, or other concerns authorized to transact the business of workers' compensation insurance in this state, or by exchanging contracts of indemnity or interinsurance, pursuant to reasonable rules or regulations prescribed by the Administrator providing for and securing the payment of the compensation provided for in the Workers' Compensation Act. When an insurer issues a policy to provide workers' compensation benefits pursuant to the provisions of the Workers' Compensation Act, the insurer shall file, or cause to be filed, with the Administrator a notice in such form and detail as the Administrator may prescribe by rule and regulation. The notice shall contain the name, address, and principal occupation of the employer, the number, effective date, and expiration date of the policy, and such other information as may be required by the Administrator. The notice shall be filed by the insurer within thirty (30) days after the effective date of the policy. Any insurer who knowingly fails to file the notice required by this subsection, upon conviction, is guilty of a misdemeanor and shall be fined in an amount not to exceed Two Hundred Dollars (\$200.00) for each such offense.

2. By obtaining and keeping in force guaranty insurance with any company authorized to do guaranty business in this state. Each company that issues such guaranty insurance shall file a copy of the contract with the Administrator within thirty (30) days after the effective date of the contract. Any company that knowingly fails to

file a copy of the contract as required by this subsection, upon conviction, is guilty of a misdemeanor and shall be fined in an amount not to exceed Two Hundred Dollars (\$200.00) for each such offense.

3. Subject to the approval of the Administrator, by entering into or continuing an agreement with his employees to provide a scheme of compensation, benefits, or combination of health, disability and life insurance which provides twenty-four-hour coverage for an employee whether or not the injury or illness is work related, in lieu of the compensation and insurance provided for in the Workers' Compensation Act. The scheme shall not provide less than the benefits secured by the Workers' Compensation Act nor vary the compensation period for disabilities or the provisions of the Workers' Compensation Act with respect to periodic payments or the percentage that those payments shall bear to weekly wages, except that the ~~sums~~ compensation period for disabilities and the payments required may be increased. The Administrator shall approve a scheme that provides for contributions by workers, only when it confers benefits commensurate with such contributions and in addition to those required by the Workers' Compensation Act.

4. By furnishing satisfactory proof to the Administrator of the employer's financial ability to pay such compensation. The Administrator, pursuant to rules adopted by the Court or the Administrator for an individual self-insured, an own risk carrier or a group self-insurance association, shall require an employer that has:

- a. less than one hundred (100) employees or less than One Million Dollars (\$1,000,000.00) in net assets to:
 - (1) deposit with the Administrator securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the Administrator which shall be at least an

average of the yearly claims for the last three
(3) years; or

(2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of the Workers' Compensation Act.

b. one hundred (100) or more employees and One Million Dollars (\$1,000,000.00) or more in net assets to:

- (1) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount determined by the Administrator which shall be at least an average of the yearly claims for the last three (3) years; or
- (2) secure excess insurance.

The Administrator may waive the requirements of this paragraph in an amount which is commensurate with the ability of the individual self-insured, own risk carrier or group self-insurance association to pay the benefits required by the provisions of the Workers' Compensation Act. Irrevocable letters of credit required by this section shall contain such terms as may be prescribed by the Administrator and shall be issued for the benefit of the Workers' Compensation Court by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

B. An employer who fails to comply with the provisions of this section shall be subject to the penalty provided for in Section 12 of this title.

C. Any employer that knowingly provides false information to the Administrator for purposes of becoming self-insured, an own risk carrier or a group self-insurance association shall be subject to the perjury laws of this state.

D. The provisions of this title shall not be construed to limit or restrict the ability of political subdivisions of this state or

employers subject to the provisions of the Workers' Compensation Act from joining together to form group self-insurance associations pursuant to law or rules promulgated by the Court or the Administrator.

SECTION 23. The provisions of Section 17 shall not be codified in the Oklahoma Statutes.

SECTION 24. This act shall become effective September 1, 1992."

Passed the Senate the 18th day of March, 1992.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1992.

Speaker of the House of Representatives