

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2132

BY: SETTLE

AS INTRODUCED

AN ACT RELATING TO WORKERS' COMPENSATION; AMENDING 85
O.S. 1991, SECTIONS 1.2, 3, 14, 16, 21, 22, 30, 41,
66.1, 66.2, 172 AND 173, WHICH RELATE TO THE
WORKERS' COMPENSATION ACT; MODIFYING PROCEDURES FOR
JUDICIAL APPOINTMENTS; MODIFYING DEFINITIONS;
REQUIRING THE USE OF CERTAIN SCHEDULES; DELETING
OBSOLETE LANGUAGE; MODIFYING THE TIME PERIOD FOR
REQUESTING VOCATIONAL REHABILITATION; MODIFYING THE
COMPUTATION OF AN EMPLOYEE'S AVERAGE WEEKLY WAGES;
INCREASING THE AMOUNT OF TEMPORARY TOTAL DISABILITY
AND PERMANENT PARTIAL DISABILITY BENEFITS;
PROVIDING OPERATIVE DATE OF REVISIONS TO THE GUIDES
TO THE EVALUATION OF PERMANENT IMPAIRMENT;
PROHIBITING CERTAIN ACTS BY EXAMINING PHYSICIANS;
INCREASING MAXIMUM COMPENSATION FOR DISFIGUREMENT;
INCREASING MAXIMUM FOR TEMPORARY DISABILITY
BENEFITS; AUTHORIZING TEMPORARY TOTAL DISABILITY
BENEFITS DURING PERIOD OF VOCATIONAL
REHABILITATION; MODIFYING FREQUENCY OF COMPUTING
STATE'S AVERAGE WEEKLY WAGE; REQUIRING PERIODIC
PAYMENT OF ATTORNEYS' FEES IN PERMANENT TOTAL
DISABILITY CASES; EXCLUDING CERTAIN FEES FROM
COMMUTATION TO A LUMP SUM; PROVIDING PROCEDURES FOR
THE PAYMENT OF CERTAIN ATTORNEYS' FEES; DELETING

OBSOLETE LANGUAGE; MODIFYING NAME AND COMPOSITION OF THE INDIVIDUAL SELF-INSURED GUARANTY FUND; INCREASING DEPOSIT LEVEL OF THE FUND; INCREASING THE TAX RATES APPLICABLE TO THE FUND; PROVIDING AND MODIFYING PROCEDURES RELATING TO THE MANAGEMENT OF THE FUND AND ASSESSMENTS THERETO; TRANSFERRING RESPONSIBILITIES FROM THE ADMINISTRATOR OF THE WORKERS' COMPENSATION COURT TO THE INDIVIDUAL SELF-INSUREDS' GUARANTY FUND BOARD; STATING POWERS AND DUTIES OF THE BOARD; MODIFYING COMPOSITION OF THE GROUP SELF-INSURANCE ASSOCIATION GUARANTY FUND BOARD; PROVIDING FOR TERMS OF BOARD MEMBERS; MODIFYING CONTENTS OF THE GROUP SELF-INSURANCE ASSOCIATION GUARANTY FUND; INCREASING DEPOSIT LEVEL OF THE FUND; INCREASING THE TAX RATES APPLICABLE TO THE FUND; PROVIDING AND MODIFYING PROCEDURES RELATING TO THE MANAGEMENT OF THE FUND AND ASSESSMENTS THERETO; PROVIDING POWERS AND DUTIES OF THE GROUP SELF-INSURANCE ASSOCIATION GUARANTY FUND BOARD; REQUIRING CERTAIN DISTRIBUTIONS BY THE OKLAHOMA TAX COMMISSION; INCREASING THRESHOLD FOR CLAIMS AGAINST THE SPECIAL INDEMNITY FUND; INCREASING PAYMENTS BY INSURERS TO THE SPECIAL INDEMNITY FUND; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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 2. 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. "Injury or personal injury" means only accidental injuries arising 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.

~~(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.

SECTION 3. 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 4. 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 5. 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 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 6. 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 ($66 \frac{2}{3}\%$) 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.

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%)~~ seventy percent (70%) 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.

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 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.~~ 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~~ year beginning July 1, ~~1984~~ 1993, and shall be used to establish maximum benefits under the Workers' Compensation Act for injuries occurring during a ~~three-year~~ one-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.

(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) to the spouse and Two Thousand Five Hundred Dollars (\$2,500.00) 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 7. 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 8. 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 9. 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), 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 by the employer
during each quarter of the calendar year ~~by the employers~~ for
permanent partial disability awards against the employees. 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 because
of insolvency or the declaration of bankruptcy, 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. The Administrator may require
additional security of the self-insured employer. In addition, the
Administrator shall call the letter of credit or take the cash or
bond and place such funds in the Individual Self-insureds' Guaranty
Fund.

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;
- d. Weekly benefits due or awarded and unpaid for permanent partial disability.

Attorneys fees and medical expenses shall also 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. 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.

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' Guaranty Fund all moneys collected under the provisions of this section. The State Treasurer shall pay out of the Individual ~~Self-Insured~~ 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 or the State Insurance Fund to process, investigate and pay valid claims. 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 10. 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~~ 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), 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 timely 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 because of a lack of resources, 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 seize the group and become its administrator. 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;
- 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 Board shall assess such sums as may be necessary and possible to replace the benefits paid. In the event a court action is required, the Attorney General shall appear on behalf of the Board in any such proceeding.

2. If the group is rehabilitated by the administration of its affairs by the Board, the Administrator of the Court may reinstate the group 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 approved service organization to process, investigate and pay valid claims.~~ The charge for such service such expertise as may be necessary to manage the Fund and may make such assessments as are necessary to pay all benefits and administrative expenses that are due or will

become due as provided in the Workers' Compensation Act. All such expenditures 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 11. 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 12. 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%) of the same and the remaining three percent (3%) 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%)~~ nine percent (9%) 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 13. This act shall become effective September 1, 1992.

43-2-7527

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