

STATE OF OKLAHOMA

2nd Extraordinary Session of the 44th Legislature (1994)
COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1002

By: McCorkell, Hutchison and
Kirby of the House

and

Robinson and Muegge of
the Senate

COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending Section 29, Chapter 349, O.S.L. 1993 (21 O.S. Supp. 1994, Section 1663), which relates to workers' compensation fraud; modifying what constitutes workers' compensation fraud; making certain acts with regard to certain writings unlawful; amending 22 O.S. 1991, Section 152, which relates to limitations of prosecutions; specifying limitations for certain fraud crimes; providing for the calculation of certain workers' compensation premiums; imposing duties on the State Board for Property and Casualty Rates; amending 36 O.S. 1991, Section 1252, as amended by Section 2, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1994, Section 1250.2), which relates to the Unfair Claims Settlement Practices Act; modifying definition; requiring certain employers to establish a safety program and stating the requisites thereof; requiring certain rules; providing penalty; providing for a sales tax refund and eligibility therefor; providing for the Safety Enhancement Fund; amending Section 27, Chapter 349, O.S.L. 1993 (74 O.S. Supp. 1994, Section 18m-1), which relates to the Workers' Compensation Fraud Unit; insulating certain persons from civil and criminal liability; amending 85 O.S. 1991, Sections 1.2, as last amended by Section 1, Chapter 349, O.S.L. 1993, 3, as last amended by Section 33, Chapter 2, O.S.L. 1994, 3.4, as amended by Section 3, Chapter 349, O.S.L. 1993, 3.9, 5, as amended by Section 3, Chapter 294, O.S.L. 1992, 13, 14, as last amended by Section 7, Chapter 349, O.S.L. 1993, 17, 22, as last amended by Section 10, Chapter 349, O.S.L. 1993, 24.1, as amended by Section 32, Chapter 335, O.S.L. 1992, 26, 27.1, 28, 43, 84, and 112 (85 O.S. Supp. 1994, Sections 1.2, 3, 3.4, 5, 14, 22 and 24.1), which relate to the Workers' Compensation Act; authorizing special judges at the Workers' Compensation Court; providing for the appointment, removal, jurisdiction and compensation of such judges; modifying definition; defining terms; permitting prehearing conferences before special judges; renaming the ombudsman program the workers' compensation counselor program and expanding its duties; prohibiting certain acts by employers; modifying an employee's authority to select a physician; modifying process for developing the Schedule of Medical Fees; providing for certified workplace medical plans; stating

duties of the Insurance Commissioner of the State of Oklahoma; providing procedures relating to regulation of workplace medical plans; requiring certain rules; terminating the force and effect of certain provisions upon certain occurrence; providing for the development and implementation of an independent medical examiner system; imposing duties upon the Workers' Compensation Court; modifying schedule of compensation; modifying contents of certain injury reports; modifying time when a claim for compensation may be presented; providing for certain notices; specifying manner in which certain awards may be paid; terminating the force and effect of certain provisions upon certain occurrence; requiring use of a certified independent medical examiner in certain cases; modifying reference; providing for certain notices; modifying the composition and terms of members of the Advisory Council on Workers' Compensation; modifying duties of such Council; amending 85 O.S. 1991, Sections 131, 134 and 139, as amended by Section 2, Chapter 60, O.S.L. 1992 (85 O.S. Supp. 1994, Section 139), which relate to the State Insurance Fund; imposing duties on the State Insurance Fund; exempting the State Insurance Fund from certain personnel related limitations; modifying the State Insurance Fund's Commissioner's powers; making the Fund's losses the sole responsibility of the Fund; providing exception; modifying who may perform yearly audits of the State Insurance Fund; requiring the State Insurance Commissioner to examine the Fund; amending 85 O.S. 1991, Section 177, as last amended by Section 3, Chapter 22, O.S.L. 1994 (85 O.S. Supp. 1994, Section 177), which relates to the Workers' Compensation Administration Fund; modifying allocation of certain collections; amending Section 34, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, Section 211), which relates to examination of certain records; permitting contempt actions; providing for application of act; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 29, Chapter 349, O.S.L. 1993 (21 O.S. Supp. 1994, Section 1663), is amended to read as follows:

Section 1663. A. Any person who commits workers' compensation fraud, upon conviction, shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not exceeding five (5) years or by a fine not exceeding Five Thousand Dollars (\$5,000.00) or by both such fine and imprisonment.

B. For the purposes of this section, workers' compensation fraud shall include, but not be limited to, any act or omission

prohibited by subsection C of this section and committed by a person with the intent to injure, defraud or deceive another with respect to any of the following:

1. A claim for payment or other benefit pursuant to a contract of insurance;
2. An application for the issuance of a contract of insurance;
3. The rating of a contract of insurance or any risk associated with the contract;
4. Premiums paid on any contract of insurance whether or not the contract was actually issued;
5. Payments made in accordance with the terms of a contract of insurance;
6. An application for any license which is required by the Oklahoma Insurance Code, Title 36 of the Oklahoma Statutes;
7. An application for a license which is required for the organization, operation or maintenance of a health maintenance organization pursuant to Section 2501 et seq. of Title 63 of the Oklahoma Statutes;
8. A request for any approval, license, permit or permission required by the Workers' Compensation Act, by the rules of the Workers' Compensation Court or by the rules of the Workers' Compensation Court Administrator necessary to secure compensation as required by Section 61 of Title 85 of the Oklahoma Statutes;
9. The financial condition of an insurer or purported insurer; ~~or~~
10. The acquisition of any insurer; or
11. A contract of insurance or a Certification of Non-Coverage Under the Workers' Compensation Act.

C. A person is guilty of workers' compensation fraud who:

1. Presents, causes to be presented or intends to present to another, any statement as part of or in support of any of the purposes described in subsection B of this section knowing that such statement contains any false, fraudulent, incomplete or misleading information concerning any fact or thing material to the purpose for the statement;

2. Assists, abets, solicits or conspires with another to prepare or make any statement that is intended to be presented to, used by or relied upon by another in connection with or in support of any of the purposes described in subsection B of this section knowing that such statement contains any false, fraudulent, incomplete or misleading information concerning any fact or thing material to the purpose of the statement;

3. Conceals, attempts to conceal or conspires to conceal any information concerning any fact material to any of the purposes described in subsection B of this section;

4. Solicits, accepts or conspires to solicit or accept new or renewal insurance risks by or for an insolvent insurer;

5. Removes, attempts to remove or conspires to remove the assets or records of the insurer or a material part thereof, from the place of business of the insurer or from a place of safekeeping of the insurer;

6. Conceals, attempts to conceal or conspires to conceal the assets or records of the insurer or a material part thereof;

7. Diverts, attempts to divert, or conspires to divert funds of an insurer or other person in connection with:

- a. a contract of insurance,
- b. the business of an insurer, or
- c. the formation, acquisition or dissolution of an insurer;

8. Solicits, accepts or conspires to solicit or accept any benefit in exchange for violating any provision of this section;

~~or~~

9. Conceals, attempts to conceal, conspires to conceal or fails to disclose any change in any material fact, circumstance or thing for which there is a duty to disclose to another; or

10. Alters, falsifies, forges, distorts, counterfeits or otherwise changes any material statement, form, document, contract, application, certificate, or other writing with the intent to defraud, deceive, or mislead another.

D. It shall not be a defense to an allegation of a violation of this section that the person accused did not have a contractual relationship with the insurer.

E. For the purposes of this section:

1. "Contract of insurance" includes, but is not limited to, workers' compensation insurance or any other means of securing compensation permitted by the Workers' Compensation Act or reinsurance for such insurance or other means of securing compensation;

2. "Insurer" includes, but is not limited to, any person who is engaged in the business of making contracts of insurance; and

3. "Statement" includes, but is not limited to, any oral, written, computer-generated or otherwise produced notice, proof of loss, bill of lading, receipt for payment, invoice, account, certificate, survey affidavit, book, paper, writing, estimate of property damage, bill for services, diagnosis, prescription, medical record, x-ray, test result or other evidence of loss, injury or expense.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 152, is amended to read as follows:

Section 152. A. Prosecutions for the crimes of bribery, embezzlement of public money, bonds, securities, assets or property of the state or any county, school district, municipality or other subdivision thereof, or of any misappropriation of public money, bonds, securities, assets or property of the state or any county, school district, municipality or other subdivision thereof, falsification of public records of the state or any county, school district, municipality or other subdivision thereof, and conspiracy to defraud the State of Oklahoma or any county, school district, municipality or other subdivision thereof in any manner or for any purpose shall be commenced within seven (7) years after the discovery of the crime; provided, however, prosecutions for the crimes of embezzlement or misappropriation of public money, bonds, securities, assets or property of any school district, including those relating to student activity funds, or the crime of falsification of public records of any independent

school district, the crime of lewd or indecent proposals or acts against children, pursuant to Section 1123 of Title 21 of the Oklahoma Statutes, the crimes of involving minors in pornography, pursuant to Sections 1021.2 and 1021.3 of Title 21 of the Oklahoma Statutes, the crime of sodomy, the crime of criminal conspiracy, or the crime of embezzlement, pursuant to Sections 1451 through 1462 of Title 21 of the Oklahoma Statutes shall be commenced within five (5) years after the discovery of the crime.

B. Prosecutions for criminal violations of any state income tax laws shall be commenced within five (5) years after the commission of such violation.

C. Prosecutions for the crime of rape or forcible sodomy, pursuant to Sections 888, 1111, 1111.1, 1113 or 1114 of Title 21 of the Oklahoma Statutes, shall be commenced within seven (7) years after the discovery of the crime.

D. Prosecutions for criminal violations of any provision of the Oklahoma Wildlife Conservation Code shall be commenced within three (3) years after the commission of such offense.

E. Prosecutions for the crime of consumer fraud or home repair fraud pursuant to Sections 751 et seq. and 765.1 et seq. of Title 15 of the Oklahoma Statutes, criminal fraud or workers' compensation fraud pursuant to Sections 1541.1, 1541.2, 1662, 1663 or 1701 of Title 21 of the Oklahoma Statutes, unemployment fraud pursuant to Section 5-102 of Title 40 of the Oklahoma Statutes, or welfare fraud, food stamp fraud or medicaid fraud pursuant to Sections 185, 243 and 1001 et seq. of Title 56 of the Oklahoma Statutes shall commence within three (3) years after the discovery of the crime.

F. In all other cases a prosecution for a public offense must be commenced within three (3) years after its commission.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

Workers' compensation premiums shall be calculated on a basis that, as nearly as is practicable, after the effects of experience rating and other applicable rating plans have been considered, the

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sum of expected losses and expected expenses as a percentage of premium shall be the same for high and low wage-paying employers in the same job classification. The State Board for Property and Casualty Rates shall:

1. Determine the extent to which high wage-paying employers are paying premiums higher than those which would produce the same ratio of expected losses and expenses to premiums as for employers paying lower wages;

2. Determine whether this effect is primarily seen in certain types of job classifications;

3. Investigate alternatives and modifications to the current method of computing workers' compensation premiums, including wage rate recognition plans used in other states, split classifications, wage rate caps, and hours worked;

4. Conduct a hearing or hearings on this matter, including consideration of other alternatives; and

5. Unless rate filings consistent with the findings of the hearing or hearings are made to be effective within a reasonable time after the conclusion of the hearing or hearings, the State Board for Property and Casualty Rates shall promulgate rules to become effective no later than January 1, 1996, to equalize, as nearly as is practicable, expected losses and expenses as a percentage of workers' compensation premiums for high and low wage-paying employers in the same job classification. If the effect is found to be primarily seen in certain types of job classifications, the rules shall be promulgated to apply only to such types of job classifications.

SECTION 4. AMENDATORY 36 O.S. 1991, Section 1252, as amended by Section 2, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1994, Section 1250.2), is amended to read as follows:

Section 1250.2 As used in the Unfair Claims Settlement Practices Act:

1. "Agent" means any individual, corporation, association, partnership, or other legal entity authorized to represent an insurer with respect to a claim;

2. "Claimant" means either a first party claimant, a third party claimant, or both, and includes such claimant's designated legal representatives and includes a member of the claimant's immediate family designated by the claimant;

3. "Commissioner" means the Insurance Commissioner;

4. "First party claimant" means an individual, corporation, association, partnership, or other legal entity, including a subscriber under any plan providing health services, asserting a right to payment pursuant to an insurance policy or insurance contract for an occurrence of contingency or loss covered by such policy or contract;

5. "Insurance policy or insurance contract" means any contract of insurance, certificate, indemnity, medical or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any entity subject to this Code;

6. "Insurer" means a person licensed by the Commissioner to issue or who issues any insurance policy or insurance contract in this state, including the State Insurance Fund;

7. "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract;

8. "Notification of claim" means any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim; and

9. "Third party claimant" means any individual, corporation, association, partnership, or other legal entity asserting a claim against any individual, corporation, association, partnership, or other legal entity insured under an insurance policy or insurance contract.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 403.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Not later than January 1, 1996, every public and private employer that employs more than twenty-five employees for twenty or more calendar weeks in the current or preceding calendar year and which is subject to the Workers' Compensation Act shall establish a safety program in accordance with rules promulgated by the Commissioner of Labor in consultation with the Worker Safety Policy Council created in Section 418.2 of Title 40 of the Oklahoma Statutes. Such employers shall adopt and maintain an effective written injury prevention program. Public and private employers that employ twenty-five or fewer employees are encouraged to develop a safety program consistent with the provisions of this section.

B. Each program shall establish a safety committee composed of members representing employees and members representing the employer, selected pursuant to procedures prescribed in rules promulgated by the Commissioner of Labor in consultation with the Worker Safety Policy Council.

C. An employer shall compensate employee members of the safety committee at their regular hourly wage plus their regular benefits while the employees are attending committee meetings or otherwise engaged in committee duties.

D. An employee shall not be discharged or discriminated against by his or her employer because he or she makes any oral or written complaint to the safety committee or any governmental agency having regulatory responsibility for occupational safety and health, and any employee so discharged or discriminated against shall be reinstated and shall receive reimbursement for lost wages and work benefits caused by the employer's action.

E. If the Commissioner of Labor finds, after notice and hearing, that an employer has failed to establish a safety program pursuant to this section within fifteen business days after written notification has been received from the Commissioner of Labor of the obligation to do so, the Commissioner of Labor may order payment of a civil penalty of not more than One Thousand Dollars (\$1,000.00) for each violation. Each day of continued violation shall constitute a separate violation.

F. The Commissioner of Labor shall promulgate rules in consultation with the Worker Safety Policy Council to implement the provisions of this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1357.8 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. There shall be a refund of four and one-half percent (4.5%) of all purchases of qualified safety equipment limited to one percent (1%) of annual gross payroll. Said refunds shall be paid from the Safety Enhancement Fund. Total payments from the Safety Enhancement Fund shall be limited to Five Million Dollars (\$5,000,000.00) in any fiscal year. In the event that payments exceed the limit provided by this subsection in any fiscal year, the refunds shall be paid in the order of their submission to the Oklahoma Department of Labor. Those qualified claims that are not paid in the year they accrued shall be eligible for a refund in the next fiscal year.

B. All claims for payment from the Safety Enhancement Fund shall be submitted to the Oklahoma Department of Labor for payment with such supporting documentation as required by both the Oklahoma Department of Labor and the Oklahoma Tax Commission.

C. Qualified safety equipment shall mean safety equipment above and beyond that equipment required by the Occupational Safety and Health Administration and verified by the Oklahoma Department of Labor.

D. Only companies with two hundred or less employees shall be eligible for refunds pursuant to this section.

E. In order to administer the refunds, the Oklahoma Department of Labor shall establish a Safety Enhancement Fund. The Oklahoma Tax Commission shall transfer to the Safety Enhancement Fund each month from sales tax collected, the amount which the Oklahoma Tax Commission estimates to be necessary to make refunds provided by this section.

SECTION 7. AMENDATORY Section 27, Chapter 349, O.S.L. 1993 (74 O.S. Supp. 1994, Section 18m-1), is amended to read as follows:

Section 18m-1. A. There is hereby created within the Office of the Attorney General a Workers' Compensation Fraud Unit.

B. The Workers' Compensation Fraud Unit, upon inquiry or complaint, shall determine the extent, if any, to which any violation has occurred of any statute or administrative rule of this state pertaining to workers' compensation fraud and may initiate any necessary investigation, civil action, criminal action, referral to the Insurance Commissioner or Insurance Department, referral to the Administrator of the Workers' Compensation Court, referral to a district attorney or referral to any appropriate official of this or any other state or of the federal government.

C. In the absence of fraud or actual malice, no person, insurer, or agent of an insurer shall be liable for damages in a civil action or subject to criminal prosecution for communication, publication, or any other action taken to supply information about suspected workers' compensation fraud to the Workers' Compensation Fraud Unit or any other agency involved in the investigation or prosecution of suspected workers' compensation fraud.

D. The Attorney General and the Office of the Attorney General, the Insurance Commissioner and the Insurance Department, the Administrator of the Workers' Compensation Court, every district attorney and every law enforcement agency shall cooperate and coordinate efforts for the investigation and prosecution of suspected workers' compensation fraud.

SECTION 8. AMENDATORY 85 O.S. 1991, Section 1.2, as last amended by Section 1, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, 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 ten (10) judges and not to exceed two special judges as may be appointed by a majority vote of the judges of the Workers' Compensation Court pursuant to subsection E of this section. Each judge of the Court, other than special judges, shall be appointed to a designated numbered position on the Court. The positions shall be numbered one

through ten. The initial terms of ~~the~~ such 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.

Position 10 shall expire 7-1-96 after being appointed under the provisions hereinafter set forth effective September 1, 1993.

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, other than a special judge, shall have been licensed to practice law in this state for a period of not less than five (5) years prior to appointment. Each such judge, before entering upon the duties of his office, shall take and subscribe to an oath of office and file the same with the Secretary of State. Each such judge shall continue to serve until his successor shall have been appointed and qualified. A judge, other than a special 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, other than a special 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, other than the special judges, 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~~ remaining judges, other than one of the special 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. Special judges shall be appointed and removed by a majority vote of the judges of the Workers' Compensation Court. Special judges shall conduct prehearing and settlement conferences and hear matters regarding the necessity of medical treatment. No order, award or judgment is void or subject to collateral attack merely because it was rendered by a special judge. Each special

judge shall be a licensed practicing attorney and shall have such additional qualifications as may be applicable to special judges of the district courts. Special judges of the Workers' Compensation Court shall be compensated to the same extent and in the same manner as special judges of the district courts.

F. The Court shall have the authority to adopt reasonable rules 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, including any special judges, shall be present at all meetings wherein rules are adopted or amended. All rules, upon adoption, shall be submitted to the Supreme Court, which shall either approve or disapprove them within thirty (30) days. All rules, 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.~~ G. 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, including any special judges appointed pursuant to subsection E of this section, shall possess the powers and prerogatives of the judges of the other courts of record of this state.

~~G.~~ H. The principal office of the Court shall be situated in the City of Oklahoma City in quarters assigned by the Department of Central Services. The Court may hold hearings in any city of this state.

~~H.~~ I. 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.~~ J. The judges of the Court, other than special judges, 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.~~ K. Judges of the Workers' Compensation Court, including special judges, may punish for direct contempt pursuant to Sections 565, 565.1 and 566 of Title 21 of the Oklahoma Statutes.

SECTION 9. AMENDATORY 85 O.S. 1991, Section 3, as last amended by Section 33, Chapter 2, O.S.L. 1994 (85 O.S. Supp. 1994, Section 3), is amended to read as follows:

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

1. "Administrator" means the Administrator of workers' compensation as provided for in the Workers' Compensation Act~~;~~;
2. "Court" means the Workers' Compensation Court~~;~~;
3. "Employer", except when otherwise expressly stated, means a person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, corporation, or limited liability company, 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. "Employee" means any person engaged in the employment of any person, firm, limited liability company 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, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company 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, member of a limited liability company who owns at least ten percent (10%) of the capital of the limited liability company 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, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company 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, any or all of the limited liability company 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, members of a partnership, members of a limited liability company 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-i

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-i

6. "Compensation" means the money allowance payable to an employee as provided for in the Workers' Compensation Act-i

7. a. "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.

b. "Injury" or "personal injury" includes heart-related or perivascular injury, illness or death if resultant from stress in excess of that experienced by a person in the conduct of everyday living. Such stress must arise out of and in the course of a claimant's employment.

c. "Injury" or "personal injury" shall not include mental injury that is unaccompanied by physical injury-i

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-; i

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 paragraph 4 of subsection A of Section 61 of this title-; i

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-; i

11. "Permanent impairment" means any anatomical or functional abnormality or loss after ~~reasonable maximum~~ medical treatment improvement 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~~ for scheduled injuries as set forth in Section 22 of this title, impairment shall only be evaluated 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 injury. All evaluations shall include an apportionment of injury causation. 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 evaluation under the guides shall not follow the guides~~ be based on race or ethnic origin. The examining physician guides shall not deviate be deviated from ~~said guides~~ except as may be specifically provided for in the guides or modifications to the guides adopted by the Administrator of the Workers' Compensation Court as provided for in Section 201.1 of this title. These officially adopted guides or modifications thereto 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;i

12. "Permanent total disability" means incapacity because of accidental injury or occupational disease to earn any wages in any employment for which the employee 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;i

13. "Permanent partial disability" means permanent disability which is less than total and shall be equal to or the same as permanent impairment;i

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

15. "Certified independent medical examiner" means a physician certified by the Court pursuant to Section 18 of this act;

16. "Certified workplace medical plan" means an organization of health care providers, certified by the Insurance Commissioner, that has entered into a contractual agreement with an insurance carrier or self-insured employer to provide medical care under the Workers' Compensation Act. Certified plans shall only include such plans which provide medical services and payment for services on a fee-for-service basis to medical providers and shall not include other plans which contract in some other manner, such as capitalized or pre-paid plans; and

17. "Treating physician", "attending physician" or "primary care physician" means the licensed physician, or specialist referred by the primary care physician, who has provided or is providing medical care to the injured employee.

SECTION 10. AMENDATORY 85 O.S. 1991, Section 3.4, as amended by Section 3, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, Section 3.4), is amended to read as follows:

Section 3.4 A. All claims for any compensation or benefits under the Workers' Compensation Act shall be commenced with the filing of a notice of injury with the Administrator. All claims filed for workers' compensation benefits shall contain a statement that all matters stated therein are true and accurate, and shall be signed by the claimant and his agent, if any. Any person who signs this statement or causes another to sign this statement knowing the statement to be false shall be guilty of perjury. An individual who signs on behalf of a claimant may be presumed to have the authorization of the claimant and to be acting at his direction. All answers and defenses to claims or other documents filed on behalf of a respondent or the respondent's insurer in a workers' compensation case shall contain a statement that all matters stated therein are true and accurate, and shall be signed by the respondent, the insurer, or their respective agents, if any. Any person who signs such a statement or causes another to sign such a statement, knowing the statement to be false, shall be guilty of perjury. An individual who signs on behalf of a respondent, its insurer, or its agent may be presumed to have the authorization of the respondent, its insurer and agent to be acting at their direction. All matters pertaining to such claims shall be presented to the Administrator until such time as the Administrator is notified in writing by a party that there is a controverted issue that cannot be resolved by the parties or that the parties have received an agreed final order from the Court. The Administrator shall, within seven (7) days of the receipt of such notification, set the matter for hearing at the earliest available time to be heard by the Court in the appropriate judicial district as provided in Section 3.5 of this title. The Administrator shall assign a member of the Court to hear a docket in each judicial district of the state at least once each calendar month when there has been a request for a hearing in the judicial district. The Administrator shall assign Judges to the state

judicial districts on a rotating basis for the purpose of holding prehearing conferences and hearing cases. At the request of either party, a prehearing conference shall be held before a special judge of the Court or if no special judge has been appointed to the Court as provided in Section 1.2 of this title, then before the member of the Court assigned to the case within forty-five (45) days of the filing of a claimant's request for a hearing. The purpose of the prehearing conference shall be to mediate and encourage settlement of the case or determine issues in dispute. The Court shall be vested with jurisdiction over all claims filed pursuant to the Workers' Compensation Act. The Court shall determine the lawfulness of any claim for compensation under the Workers' Compensation Act based on the weight of evidence; provided, however, any claim, and subsequent disability, that has as its source a physical condition resulting from incremental damage or injury or a gradual deterioration of physical health, which is caused by a condition arising out of and in the course of employment, must be proven by a preponderance of the evidence presented to the Court.

B. All claims so filed shall be heard by the Judge sitting without a jury. All petitions for final orders or awards filed pursuant to the provisions of Section 84 of this title must be approved by the Court having jurisdiction before a final order or award may be entered. All matters relating to a claim for benefits under the Workers' Compensation Act shall be filed with the Administrator.

SECTION 11. AMENDATORY 85 O.S. 1991, Section 3.9, is amended to read as follows:

Section 3.9 A. The Administrator shall establish ~~an~~ ombudsman ~~a workers' compensation counselor~~ program to assist injured workers, employers and persons claiming death benefits in obtaining benefits under the Workers' Compensation Act.

B. ~~Ombudsmen~~ Workers' compensation counselors shall provide information to injured workers, ~~ti~~ investigate complaints, ~~and;~~ communicate with employers, insurance carriers, self-insurers, and health care providers; provide informational seminars and

workshops on workers' compensation for medical providers, insurance adjustors, and employee and employer groups; and develop informational materials for employees, employers and medical providers. ~~An ombudsman~~ A workers' compensation counselor shall otherwise assist unrepresented claimants, employers, and other parties to enable them to protect their rights in the workers' compensation system.

SECTION 12. AMENDATORY 85 O.S. 1991, Section 5, as amended by Section 3, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1994, 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 this title, or has testified or is about to testify in any such proceeding.

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 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.

C. No employer, directly or indirectly, shall make the employee's selection of a physician as provided in Section 15 of this act a condition of employment.

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

Section 13. No compensation shall be allowed for the first ~~seven (7)~~ three (3) 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.~~

SECTION 14. AMENDATORY 85 O.S. 1991, Section 14, as last amended by Section 7, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, 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 when the employee has reached maximum medical improvement, 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~~ Except as otherwise provided in Section 15 of this act, the employee may select a physician of his choice to render necessary medical treatment, at the expense of the employer. 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 "attending physician" as used in this section shall mean any person licensed in Oklahoma as a medical doctor, chiropractor, ~~chiropract~~ podiatrist, 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 of the Administrator. Such charges and duration of treatment shall be limited to the ~~usual, customary and~~ reasonable charges necessary to procure the medical services 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 necessary to procure the medical services 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; provided, however, the fee and treatment schedule shall not be amended or altered until 1995 except to require the utilization of the latest Current Procedural Terminology (CPT) codes as published by the American Medical Association or to provide for the reduction of charges or duration of treatment. The Administrator shall submit the fee and treatment schedule in effect on the effective date of this act and any modifications thereto made thereafter to the Oklahoma Health Care Authority. The Oklahoma Health Care Authority shall review the fees adopted by the Administrator and shall, pursuant to rules promulgated by the Oklahoma Health Care Authority Board, modify

individual fee and treatment codes and procedures as necessary to assure reasonable procurement of services and to correspond as nearly as practicable to one hundred forty percent (140%) of that approved for Medicare reimbursement. 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 attending 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 aggregate 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 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14.2 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. If a self-insured employer or an employer's workers' compensation insurance carrier has contracted with a certified workplace medical plan, an employee may select that plan for necessary medical treatment as provided under the Workers' Compensation Act, or shall select a physician who has maintained the employee's medical records prior to an injury and has a documented history of treatment with the employee prior to an injury or a physician who has maintained the medical records of an immediate family member of the employee prior to an injury and has a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this subsection, immediate family member shall mean the employee's spouse, children, parents, step children, and step parents. The attending physician may refer to a specialist physician outside the certified workplace medical plan only if the specialist physician agrees to comply with the medical fee schedule of the certified workplace medical plan. Notwithstanding any other provision of law, those employees who are subject to such certified workplace medical plan shall receive medical treatment in the manner prescribed by the plan. Qualified employers shall, when a contract of employment is made or on the annual open enrollment date for the insurer's certified plan, provide the

employee with the opportunity to enroll in the plan or to indicate his desire to select a physician who has maintained the employee's medical records or the medical records of a member of the employee's immediate family. If no election is made by the employee when a contract of employment is made or on the annual open enrollment date for the insurer's certified plan, the employee may make the election at the time of injury. Procedures and forms for enrollment shall be provided by the self-insured employer or insurance carrier. The burden for notification of an employee's enrollment in a certified plan shall be the employer's. After enrollment, an employee shall seek treatment under the certified plan until the next annual open enrollment date. The employee may opt out of the plan, effective on the next annual open enrollment date only if the employee is changing to a physician who has maintained the employee's medical records or the medical records of a member of the employee's immediate family. However, if the date of the injury falls under a period of enrollment in a certified plan, treatment must be rendered under the certified plan treatment contract. The provisions of this section shall not preclude the employee from petitioning the Workers' Compensation Court or the Administrator of the Workers' Compensation Court for a change of attending physician within the certified plan or from seeking emergency medical treatment as provided in Section 14 of Title 85 of the Oklahoma Statutes. The provisions of this subsection shall not apply to an employee who is receiving medical treatment for an accepted accidental injury or occupational disease on the effective date of this act.

B. The Insurance Commissioner of the State of Oklahoma shall certify an entity as a certified plan for purposes of the Workers' Compensation Act and shall promulgate such rules as may be necessary to implement the provisions of subsection A of this section. Such rules shall authorize any person to petition the Insurance Commissioner for decertification of a certified plan from the list of certified plans for material violation of any rules promulgated pursuant to this subsection.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14.3 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Any person or entity may make written application to the Insurance Commissioner of the State of Oklahoma to have a workplace medical plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under the Workers' Compensation Act. Each application for certification shall be accompanied by a fee of One Thousand Five Hundred Dollars (\$1,500.00). A plan may be certified to provide services to a limited geographic area. A certificate is valid for the period the Commissioner prescribes unless revoked or suspended. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed program for providing services as the Commissioner may prescribe. The information shall include, but not be limited to:

1. A list of the names of all medical providers who will provide services under the plan, together with appropriate evidence of compliance with any licensing or certification requirements for those providers to practice in this state; and

2. A description of the places and manner of providing services under the plan.

B. 1. The Commissioner shall certify a plan if the Commissioner finds that the plan:

- a. proposes to provide quality services for all medical services that may be required by the Workers' Compensation Act in a manner that is timely, effective and convenient for the employee,
- b. is reasonably geographically convenient to employees it services,
- c. provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service,
- d. provides adequate methods of peer review, utilization review and dispute resolution to prevent

inappropriate, excessive or medically unnecessary treatment, and excludes participation in the plan by those individuals who violate these treatment standards,

- e. provides aggressive case management for injured employees and a program for early return to work, and cooperative efforts by the employees, the employer, and the workplace medical plan to promote the workplace health and safety consultative and other services,
- f. provides a timely and accurate method of reporting to the Commissioner necessary information regarding medical service costs and utilization to enable the Commissioner to determine the effectiveness of the plan,
- g. authorizes necessary emergency medical treatment for an injury provided by a provider of medical, surgical, and hospital services who is not a part of the plan; allows employees to receive medical, surgical, and hospital services from a physician who is not a member of the plan if such attending physician has been selected by the employees pursuant to Section 15 of this act; and authorizes such physician to refer the employee to a specialist physician outside the plan only if the specialist physician agrees to comply with the medical fee schedule of the plan,
- h. does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and hospital services to give employees convenient geographic accessibility to all categories of providers and adequate flexibility to choose providers of medical,

surgical, and hospital services from among those who provide services under the plan, and

- i. complies with any other requirement the Commissioner determines is necessary to provide quality medical services and health care to injured employees.

2. The Commissioner may accept findings, licenses or certifications of other state agencies as satisfactory evidence of compliance with a particular requirement of this section.

C. An employee shall exhaust the dispute resolution procedure of the certified workplace medical plan before filing a claim for benefits or otherwise seeking relief from the Workers' Compensation Court on an issue related to medical care under the plan. If an employee has exhausted the dispute resolution procedure of the certified plan, the employee may petition the Court for an evaluation by a third physician or, upon implementation of the independent medical examiner system provided for in Section 18 of this act, a review by a certified independent medical examiner. No pleading may be filed with the Court regarding the issue of the reasonableness and necessity of medical treatment unless a medical finding on such issue has been rendered by the third physician or certified independent medical examiner.

D. The Commissioner shall refuse to certify or shall revoke or suspend the certification of a plan if the Commissioner finds that the program for providing medical or health care services fails to meet the requirements of this section, or service under the plan is not being provided in accordance with the terms of a plan.

E. No person who participates in forming consortiums collectively negotiating fees or otherwise solicits or enters into contracts in a good faith effort to provide medical or health care services according to the provisions of this section shall be examined or subject to administrative or civil liability regarding any such participation except pursuant to the Commissioner's active supervision of such activities and the plan. Before engaging in such activities, the person shall provide notice of

intent to the Insurance Department in a form prescribed by the Commissioner.

F. The Commissioner shall promulgate such rules as may be necessary to implement the provisions of this section.

SECTION 17. AMENDATORY 85 O.S. 1991, Section 17, is amended to read as follows:

Section 17. A. The determination of disability shall be the responsibility of the Court. Any claim submitted by an employee for compensation for permanent disability must be supported by competent medical testimony which shall include an evaluation by a physician stating his opinion of the employee's percentage of permanent impairment and whether or not the impairment is job-related and caused by the accidental injury or occupational disease. For purposes of this section, a physician shall have the same meaning as defined in Section 14 of this title and shall include a person licensed by another state who would be qualified to be a licensed physician under the laws of Oklahoma. The written medical testimony of any physician shall be on a form provided by the Administrator.

When the medical testimony to be introduced on behalf of the employee and employer is divergent by more than twenty-five percent (25%) as to the extent of permanent impairment of the employee or when there is any disagreement in the evidence as to the medical cause of the medical permanent impairment, or if the employee has no lost time from employment, any party may challenge such testimony by giving written notice to all other parties and to the Administrator. The written notice shall be given prior to or during any prehearing conference. Upon receipt of such notice, the challenging party and the party challenged shall select a third physician who shall be afforded a reasonable opportunity to examine the employee together with all medical records involved and any other medical data or evidence that he may consider to be relevant. The third physician shall issue a verified written report on a form provided by the Administrator to the Court stating his finding of the percentage of permanent impairment of

the employee and whether or not the impairment is job-related and caused by the accidental injury or occupational disease.

B. When the challenging party and the challenged party are for any reason unable or unwilling to agree upon the appointment of a third physician within ten (10) days, the Court shall appoint the third physician. Upon receipt of the third physician's report, the party shall have the right to object to the introduction into evidence of the report. The objection must be made by giving written notification to all parties and to the Court within five (5) days after receipt of the report. The physicians must then testify in person or by deposition.

Any physician who is appointed or selected pursuant to the provisions of this section shall be reimbursed for the medical examination, reports and fees in a reasonable and customary amount set by the Court, and these costs shall be borne by the employer.

C. The parties may stipulate to the appointment of a third physician even in the absence of divergent medical testimony.

D. The impairment rating determined by the third physician may be followed by the Court. If the Court deviates from the third physician's impairment rating by more than ten percent (10%), the Court shall specifically identify the basis for such deviation in its order.

E. The provisions of this section shall cease to have the force and effect of law upon implementation of the independent medical examiner system provided for in Section 18 of this act.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17.1 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. 1. The Court shall develop and implement an independent medical examiner system consistent with the requirements of this section by no later than January 1, 1996. As part of this system, the Court shall, in the exercise of its discretion, create, maintain and periodically validate a list of not fewer than fifty (50) health care providers that are licensed in Oklahoma to practice medicine or surgery, chiropractic, or osteopathic

medicine and that it finds to be the most qualified and to be of high ethical character and to be highly experienced and competent in their specific fields of expertise and in the treatment of work-related injuries to serve as independent medical examiners from each of the health care specialties that the Court finds most commonly used by injured employees. A health care provider, in order to be eligible to be included on the list of certified independent medical examiners, shall have, during the immediately preceding calendar year, earned a majority of his gross income from the active practice of medicine and surgery, chiropractic, or osteopathic medicine. "Active practice" means the actual treatment of patients. Such health care providers shall be known as "certified independent medical examiners" and shall render medical findings on the medical condition of an employee and related issues as specified under this section.

2. The Court shall establish a fee schedule for services rendered by certified independent medical examiners and promulgate any rules considered necessary to effectuate the purposes of this section.

B. The certified independent medical examiner in a case may not be the employee's treating physician and may not have treated the employee with respect to the injury for which the claim is being made or the benefits are being paid. Nothing in this subsection precludes the selection of a health care provider authorized to receive reimbursement under Section 14 of Title 85 of the Oklahoma Statutes to serve in the capacity of a certified independent medical examiner.

C. 1. Upon certification by the treating physician that the claimant has reached maximum medical improvement and that the claimant may have a permanent impairment, the claimant shall be evaluated by a certified independent medical examiner, unless the treating physician has determined the amount of impairment and both parties have agreed to that determination. Furthermore, if there is any dispute with the attending physician's decision, either party may petition the Court for the random appointment of a certified independent medical examiner, if possible, in the area

of specialty most closely related to the claimant's alleged injury.

2. If the parties to a dispute cannot agree on a certified independent medical examiner of their own choosing, the Court shall randomly select a certified independent medical examiner, if possible, in the area of specialty most closely related to the claimant's alleged injury, from the list of certified examiners to render medical findings in any dispute relating to the medical condition of a claimant, including but not limited to disputes that involve the employee's medical condition, improvement or treatment, degree of impairment or ability to return to work.

D. The Court shall promulgate rules pertaining to geographic representation of certified independent medical examiners and to the procedures before the certified independent medical examiner, including the parties' ability to propound questions relating to the medical condition of the employee to be submitted to the certified independent medical examiner and the submission of medical records or other pertinent information to the certified independent medical examiner. In addition to the review of records and information submitted by the parties, the certified independent medical examiner may examine the employee as often as the examiner determines necessary to render medical findings on the questions propounded by the parties.

E. The certified independent medical examiner shall submit a written report to the Court, the employer and the employee stating the certified examiner's medical findings on the issues raised by that case and providing a description of findings sufficient to explain the basis of those findings. It is presumed that the employer and employee received the report three working days after mailing. The written report shall be on a form provided by the Administrator.

F. All subsequent medical evidence from the treating physician must be forwarded to the certified independent medical examiner no later than fourteen days prior to the hearing. The certified independent medical examiner must be notified of the hearing and shall make a supplemental report if the subsequent

medical evidence affects the medical findings of the certified independent medical examiner. If the certified independent medical examiner prepares a supplemental report, the report must be submitted to the Court and the parties at least three (3) days prior to the hearing.

G. Whether the parties agree to a certified independent medical examiner or if the Court randomly assigns a certified independent medical examiner, the Court shall adopt the medical findings of the certified independent medical examiner with regard to disputes involving the claimant's degree of impairment, unless there is clear and convincing evidence to the contrary that does not support the medical findings. In disputes involving the employee's medical condition, improvement or treatment or ability to return to work, medical findings of the certified independent medical examiner which differ from those of the employee's treating physician shall be adopted by the Court only if supported by a preponderance of the evidence. Any party to a case shall have the right, at any stage of the case, consistent with court rules, to challenge any medical evidence by making an appropriate offer of such evidence for consideration by the court. The cost of any evidence offered to contravene the medical evidence in a case shall be borne by the party offering such evidence. The Court shall state in writing the reasons for not accepting the medical findings of the certified independent medical examiner.

H. Any health care provider acting without malice and within the scope of the provider's duties as a certified independent medical examiner is immune from civil liability for making any report or other information available to the Court or for assisting in the origination, investigation or preparation of the report or other information so provided.

I. The Court, in consultation with the Advisory Council on Workers' Compensation, shall create a review process to oversee on a continuing basis the quality of performance and the timeliness of the submission of medical findings by the certified independent medical examiners.

J. Any certified independent medical examiner who is appointed or selected pursuant to the provisions of this section shall be reimbursed for the medical examination, reports and fees in a reasonable and customary amount set by the Court, and these costs shall be borne by the employer.

K. The determination of disability shall be the responsibility of the Court.

L. Any claim submitted by an employee for compensation for permanent disability must be supported by competent medical findings which shall include an evaluation by a physician, stating his opinion of the employee's percentage of permanent impairment and whether or not the impairment is job-related and caused by the accidental injury or occupational disease.

M. If the certified independent medical examiner determines that the employee is capable of returning to work, and the claimant elects not to do so, benefits shall cease. If the certified independent medical examiner determines that the employee is incapable of returning to work, the claimant shall continue under treatment by his attending physician, and benefits shall continue.

SECTION 19. AMENDATORY 85 O.S. 1991, Section 22, as last amended by Section 10, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, 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, seventy percent (70%) 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, 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. (a) With respect to injuries occurring prior to the effective date of this act, in case of disability, partial in character but permanent in quality, the compensation shall be 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~~ Deafness or hearing impairment shall only be evaluated 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 injury. All evaluations shall include an apportionment of injury causation. 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 evaluation under the guides shall not follow the guides be~~ based on race or ethnic origin. ~~The examining physician guides shall not deviate~~ be deviated from ~~said guides~~ except as may be specifically provided for in the guides or modifications to the guides adopted by the Administrator of the Workers' Compensation Court as provided for in Section ~~18~~ 201.1 of this ~~act~~ title. The guides or modifications thereto 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, seventy percent (70%) 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 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 of this section, 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 seventy percent (70%) 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.

(b) With respect to injuries occurring after the effective date of this act, in case of disability, partial in character but permanent in quality, the compensation shall be seventy percent (70%) of the employee's average weekly wages, and shall be paid to the employee for the period prescribed by the following schedule:

(1) For each percent of the first nine percent (9%) of disability, eighty percent (80%) of the number of weeks of compensation provided by law prior to the effective date of this act;

(2) For each percent of the next eleven percent (11%) of disability, the identical number of weeks of compensation provided by law prior to the effective date of this act;

(3) For each percent of the next thirty percent (30%) of disability, one hundred twenty percent (120%) of the number of weeks of compensation provided by law prior to the effective date of this act; and

(4) For each remaining percent of disability, the identical number of weeks of compensation provided by law prior to the effective date of this act.

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 seventy percent (70%) 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
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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 ~~seventy-five percent (75%)~~ one hundred percent (100%) 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, to sixty-six and two-thirds percent (66 2/3%) of the state's average weekly wage beginning January 1, 1981, and to seventy-five percent (75%) of the state's average weekly wage beginning September 1, 1992, for permanent total disability, or at any time be less than Thirty Dollars (\$30.00) per week; provided, however, that 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 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. In no event shall this spousal income benefit be diminished.

(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 Five Thousand Dollars (\$5,000.00) 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.

13. a. Any employee convicted of a misdemeanor or felony and sentenced to a term of incarceration of at least ninety (90) days in this state or in any other jurisdiction shall have all benefits for temporary total disability awarded by the Workers' Compensation Court forfeited by order of the Court on motion of the employer or the employer's insurer after confirmation of the employee's incarceration. The Court also may order the forfeiture of such benefits on its own motion upon receipt of notice

from the Director of the Oklahoma Department of Corrections that the person awarded the benefits is incarcerated as an inmate in a facility operated by or under contract with the Department. The provisions of this subparagraph shall not apply to any benefits awarded to an inmate for compensable injuries sustained by the inmate while in the employ of a private for-profit employer or while employed in private prison industries, involving a for-profit employer, which deal in interstate commerce or which sell products or services to the federal government.

b.—Any employee convicted of a misdemeanor or felony and sentenced to a term of incarceration of at least ninety (90) days in this state shall have all benefits for permanent total disability or temporary partial disability awarded by the Workers' Compensation Court and paid during the period of incarceration deposited to the credit of an account established pursuant to Section 549 of Title 57 of the Oklahoma Statutes for distribution in full to the Department of Corrections for costs of incarceration. The State Board of Corrections shall have the power to collect workers' compensation benefits on behalf of the prisoner as provided in this subparagraph and to distribute the benefits as provided by law.

SECTION 20. AMENDATORY 85 O.S. 1991, Section 24.1, as amended by Section 32, Chapter 335, O.S.L. 1992 (85 O.S. Supp. 1994, Section 24.1), is amended to read as follows:

Section 24.1 A. Every employer shall keep a record of injuries, which result in the loss of time beyond the shift or which require medical attention away from the work site, fatal or otherwise, received by his employees in the course of their employment.

B. Within ten (10) days or a reasonable time thereafter, after the occurrence of such injury a report thereof shall be made

in writing by the employer to the Court and to the employer's workers' compensation insurance carrier, if any, upon blanks to be procured from the Court for that purpose. Such reports shall state the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employee, the time, nature, and cause of the injury and such other information as may be required by the Administrator. If the employee is enrolled in a certified workplace medical plan as provided in Section 15 of this act, the report shall identify the employee as such and shall name the primary care physician chosen by the employee.

C. Any employer who refuses or neglects to make a report as required by this section shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars (\$1,000.00).

SECTION 21. AMENDATORY 85 O.S. 1991, Section 26, is amended to read as follows:

Section 26. A. The Administrator shall provide printed notice forms to be used by the injured employee. Notice of injury filed by the employee with the Administrator shall be verified subject to the laws of perjury of this state and shall be styled: In re: Claim of the _____ (the name of the employee) and shall include in addition to any other requirements the following information:

1. The name and social security number of the employee;
2. The name of the employer;
3. The judicial district of the county of residence of the employee at the time of the injury;
4. The address of the principal place of business of the employer;
5. The judicial district of the county where the injury occurred; and
6. The judicial district of the county where the injured employee wants the claim docketed.

B. Any time after the expiration of the first ~~seven (7)~~ three (3) days of disability on the part of the injured employee, a

claim for compensation may be presented to the Administrator. If the employer and the injured employee shall reach a final agreement as to the facts with relation to an injury, and the resulting disability for which compensation is claimed under the Workers' Compensation Act, a memorandum of such agreement, in form as prescribed by the Administrator, signed by both the employer and employee, and approved by the Court shall be filed by the employer with the Administrator. In the absence of fraud this agreement shall be deemed binding upon the parties thereto. Such agreement shall be approved by the Court only when the terms conform to the provisions of the Workers' Compensation Act. The Court shall have full power and authority to determine all questions in relation to payment of claims for compensation under the provisions of the Workers' Compensation Act. The Court shall make, or cause to be made, such investigation as it deems necessary, and upon application of either party shall order a hearing, and as soon as practicable, after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny an award determining such claim for compensation, and file the same in the office of the Administrator, together with the statement of its conclusion of fact and rulings of law. The award shall be paid weekly; provided, all or a portion of the award may be commuted to a lump-sum payment by permission of the Court only where there is a showing of undue hardship upon the claimant if payments are made weekly. Upon a hearing pursuant to this section either party may present evidence and be represented by counsel. The decision of the Court shall be final as to all questions of fact, and except as provided in Section 3.6 of this title, as to all questions of law.

C. A good faith effort shall be made on the part of any insurance carrier, the State Insurance Fund, or group self-insured plan to notify an insured employer of the possibility of, and/or terms of, any settlement of a workers' compensation case pursuant to this section. Written comments or objections to settlements shall be filed with the Workers' Compensation Court and

periodically shared with the management of the applicable insurer.
A written notice shall be made to all policyholders of their right
to a good faith effort by their insurer to notify them of any
proposed settlement, if the policyholder so chooses.

SECTION 22. AMENDATORY 85 O.S. 1991, Section 27.1, is amended to read as follows:

Section 27.1 A. Neither the claimant nor the respondent in hearings before the Court shall be permitted to introduce the testimony of more than two physicians where the evidence of any additional physician would be cumulative testimony; provided, however, that the Court, on its own motion, may order that any claimant appearing before it be examined by other physicians.

B. The provisions of this section shall cease to have the force and effect of law upon implementation of the independent medical examiner system provided for in Section 18 of this act.

SECTION 23. AMENDATORY 85 O.S. 1991, Section 28, is amended to read as follows:

Section 28. Upon its own motion or upon the application of any party in interest, on the ground of a change in conditions, the Court may at any time review any award, and, on such review, may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in the Workers' Compensation Act, Section 1 et seq. of this title, and shall state its conclusions of fact and rulings of law, and the Administrator shall immediately send to the parties a copy of the award. No such review shall effect such award as regards any money already paid. In a change in condition for the better changing a permanent total disability to a permanent partial disability, the weeks paid on the permanent total disability award shall not be deducted from a subsequent permanent partial disability award; however, permanent partial disability awards together with temporary compensation shall not exceed five hundred (500) weeks. Upon implementation of the independent medical examiner system provided for in Section 18 of this act, in a disputed claim for a change in condition for the worse which would either extend medical care, increase the degree of

impairment of the claimant or change a permanent partial disability to a permanent total disability, the Court must have a report from a certified independent medical examiner. The Court shall adopt the medical findings of the certified independent medical examiner with regard to the claimant's degree of impairment unless there is clear and convincing evidence to the contrary that does not support the medical findings. In disputes involving the claimant's medical condition, improvement or treatment or ability to return to work, medical findings of the certified examiner which differ from those of the claimant's treating physician shall be adopted by the Court only if supported by a preponderance of the evidence.

SECTION 24. AMENDATORY 85 O.S. 1991, Section 43, is amended to read as follows:

Section 43. A. The right to claim compensation under the Workers' Compensation Act shall be forever barred unless, within two (2) years after the date of accidental injury or death, a claim for compensation is filed with the Workers' Compensation Court. Provided however, a claim may be filed within two (2) years of the last payment of any compensation or remuneration paid in lieu of compensation or medical treatment which was authorized by the employer or the insurance carrier. Provided further however, with respect to disease or injury caused by repeated trauma causally connected with employment, a claim may be filed within two (2) years of the date of last trauma or hazardous exposure. Provided further however, in the case of asbestosis, silicosis or exposure to nuclear radiation causally connected with employment, a claim may be filed within two (2) years of the date of last hazardous exposure or within two (2) years from the date said condition first becomes manifest by a symptom or condition from which one learned in medicine could, with reasonable accuracy, diagnose such specific condition, whichever last occurs. The filing of any form or report by the employer or insurance carrier shall not toll the above limitations.

B. When a claim for compensation has been filed with the Administrator as herein provided, unless the claimant shall in

good faith request a hearing and final determination thereon within five (5) years from the date of filing thereof or within five (5) years from the date of last payment of compensation or wages in lieu thereof, same shall be barred as the basis of any claim for compensation under the Workers' Compensation Act and shall be dismissed by the Court for want of prosecution, which action shall operate as a final adjudication of the right to claim compensation thereunder. Provided, that any claims heretofore filed and pending on the effective date of the Workers' Compensation Act before the State Industrial Court shall likewise be barred after the expiration of five (5) years from the filing date or within five (5) years from the date of last payment of compensation or wages in lieu thereof.

C. The jurisdiction of the Court to reopen any cause upon an application based upon a change in condition shall extend for that period of time measured by the maximum number of weeks that could be awarded for the particular scheduled member where the change of condition occurred, or for three hundred (300) weeks in the case of injuries to the body or injuries not otherwise scheduled under the provisions of Section 22 of this title, and unless filed within said period of time after the date of the last order, shall be forever barred.

D. Each employer shall post a notice advising employees that they are covered by the Workers' Compensation Act and that ~~ombudsman~~ workers' compensation counselor services are available at the Workers' Compensation Court. The form of the notice shall be prescribed by the rules of the Court. No other notice to the employee shall be required other than said poster required by this section; provided that nothing in this subsection shall be construed to toll the Statute of Limitations provided above.

SECTION 25. AMENDATORY 85 O.S. 1991, Section 84, is amended to read as follows:

Section 84. A. The power and jurisdiction of the Court over each case shall be continuing and it may, from time to time, make such modifications or changes with respect to former findings or orders relating thereto if, in its opinion, it may be justified,

including the right to require physical examinations as provided for in Section 25 of this title, and subject to the same penalties for refusal; provided, that upon petition filed by the employer or insurance carrier, and the injured employee, or other person entitled to compensation under the Workers' Compensation Act, the Court shall have jurisdiction to consider the proposition of whether or not a final settlement may be had between the parties presenting such petition. The Court is authorized and empowered to have a full hearing on the petition, and to take testimony of physicians and others relating to the permanency or probable permanency of the injury, and to take such other testimony relevant to the subject matter of such petition as the Court may require. The Court shall have authority to consider such petition and to dismiss the same without a hearing if in its judgment the same shall not be set for a hearing; the expenses of such hearing or investigation, including necessary medical examinations, shall be paid by the employer or insurance carrier, and such expenses may be included in the final award. If the Court decides it is for the best interest of both parties to said petition that a final award be made, a decision shall be rendered accordingly and the Court may make an award that shall be final as to the rights of all parties to said petition and thereafter the Court shall have no jurisdiction over any claim for the injury or any results arising from same. The awards shall be paid weekly; provided, all or a portion of the award may be commuted to a lump-sum payment by permission of the Court only where there is a showing of undue hardship upon the claimant if payments are made weekly. If the Court shall decide the case should not be finally settled at the time of the hearing, the petition shall be dismissed without prejudice to either party, and the Court shall have the same jurisdiction over the matter as if said petition had not been filed. The same rights of appeal shall exist from the decision rendered under such petition as if provided for appeals in other cases before the Court; provided there shall be no appeal allowed from an order of the Court dismissing such petition as provided in this section.

B. A good faith effort shall be made on the part of any insurance carrier, the State Insurance Fund, or group self-insured plan to notify an insured employer of the possibility of, and/or terms of, any settlement of a workers' compensation case pursuant to this section. Written comments or objections to settlements shall be filed with the Workers' Compensation Court and periodically shared with the management of the applicable insurer. A written notice shall be made to all policyholders of their right to a good faith effort by their insurer to notify them of any proposed settlement, if the policyholder so chooses.

SECTION 26. AMENDATORY 85 O.S. 1991, Section 112, is amended to read as follows:

Section 112. A. There is hereby created an Advisory Council on Workers' Compensation.

B. The Beginning on the effective date of this act, the voting membership of the Advisory Council shall consist of ~~nine~~ ~~(9)~~ eight (8) members. The Administrator and Presiding Judge of the Court shall be ex officio non-voting members. Members shall serve at the pleasure of their respective appointing authorities.

1. The Governor shall appoint ~~three (3)~~ four (4) members ~~representing employers in this state, one~~ two of whom shall be from a list of nominees provided by the predominant statewide broad-based business organization and two of whom shall be from a list of nominees provided by the most representative labor organization in the state;

2. The Speaker of the House of Representatives shall appoint ~~three (3)~~ two (2) at large members ~~representing employees in this state, one of whom shall be from a list of nominees provided by the most representative labor organization in the state a~~ representative of labor and one of whom shall be a representative of business; and

3. The President Pro Tempore of the Senate shall appoint ~~three (3)~~ two (2) members ~~who are attorneys representing the legal profession in this state, one of whom shall be an attorney who practices primarily in the area of defense of workers' compensation claims,~~ one of whom shall be a representative from

the Oklahoma Municipal League and one of whom shall be a representative from the predominant public employees association.

~~C. 1. The term of office for initial appointees shall be as follows:~~

~~a. the term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall expire on March 1, 1992,~~

~~b. the term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall expire on March 1, 1993, and~~

~~c. the term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall expire on March 1, 1994;~~

~~2. Thereafter, successors in office shall be appointed for a three-year term. Members shall be eligible to succeed themselves in office; and~~

~~3. Any person appointed to fill a vacancy shall be appointed for the unexpired portion of the term.~~

~~D.~~ The chairman and the vice-chairman of the Advisory Council, one of whom shall be an employee representative and one of whom shall be an employer representative, shall be elected by the Council from among its voting members.

~~E.~~ D. Members shall receive their traveling and other necessary expenses incurred in the performance of their duties as provided in the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

~~F.~~ E. Meetings of the Advisory Council shall be quarterly or as called by the chair or upon petition by a majority of the voting members. The presence of five (5) voting members constitutes a quorum. No action shall be taken by the Advisory Council without the affirmative vote of at least five (5) members.

~~G.~~ F. The Administrator of the Court shall provide office supplies and personnel of the Workers' Compensation Court to carry out any of the duties that have been entrusted to the Council.

~~H.~~ G. The Advisory Council shall analyze and review the workers' compensation system, the reports of the Administrator of the Workers' Compensation Court, and trends in the field of workers' compensation. The Council may recommend improvements and proper responses to developing trends. The Council shall report its findings annually to the Governor, the Chief Justice of the Supreme Court, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

H. In addition to other duties required by this section, the Advisory Council shall consult with the Workers' Compensation Court regarding oversight of certified independent medical examiners as provided in Section 18 of this act.

SECTION 27. AMENDATORY 85 O.S. 1991, Section 131, is amended to read as follows:

Section 131. There is hereby created and established a fund to be known as "The State Insurance Fund", to be administered by the State Insurance Fund Commissioner, without liability on the part of the state beyond the amount of said fund, for the purpose of insuring employers against liability for compensation under Sections 131 through 151 of this title, and for assuring for the persons entitled thereto compensation provided by the workers' compensation law, and for the further purpose of insuring persons, firms and corporations against loss, expense or liability by reason of bodily injury, death by accident, occupational disability, or occupational disease suffered by employees, for which the insured may be liable or have assumed liability. Said fund may further provide insurance for employers against liability incurred as the result of injuries sustained by employees engaged in employment subject to the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C., Section 901 et seq., as enacted or as may be amended by the Congress of the United States.

(a) The State Insurance Fund shall be a revolving fund and shall consist of all premiums received and paid into said fund for
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insurance issued, all property and securities acquired by and through the use of monies belonging to the fund and all interest earned upon monies belonging to the fund and deposited or invested as herein provided.

(b) Said fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of expenses in the manner provided in Sections 131 through 151 of this title.

(c) Said fund shall be fairly competitive with other insurance carriers and it is the intent of the Legislature that said fund shall become neither more nor less than self-supporting.

(d) The State Insurance Fund shall report to the State Board for Property and Casualty Rates no later than December 1 of each year the amount of premium taxes and fees for which it would be liable if it were operating as a private carrier.

(e) The State Insurance Fund shall be exempt from any Executive Order governing freezes or limitations on the hiring or reinstatement of state employees or full-time equivalents (FTEs).

SECTION 28. AMENDATORY 85 O.S. 1991, Section 134, is amended to read as follows:

Section 134. A. In conducting the business and affairs of the State Insurance Fund, the Commissioner of the said fund, or other officer to whom such power and authority may be delegated by the Commissioner, as provided by ~~subsection 5, of Section 3, thereof~~ Section 133 of this title, shall have full power and authority:

~~(1)~~ 1. To enter into contracts of insurance, insuring employers against liability for compensation, and insuring to employees and other persons entitled thereto compensation as provided by ~~Chapter 72, Oklahoma Statutes, 1931.~~ the Workers' Compensation Act, Section 1 et seq. of this title;

~~(2)~~ 2. To decline to insure any risk in which the minimum requirements of the law with regard to construction, equipment and operation are not observed, or which is beyond the safe carrying of the State Insurance Fund, but shall not have power or authority, except as otherwise provided in this act to refuse to insure any compensation risk tendered with the premium therefor-; i

~~(3)~~ 3. To enter into contracts of insurance insuring persons, firms and corporations against loss, expense or liability by reason of bodily injury, death by accident, occupational disability, or occupational disease suffered by employees for which the insured may be liable or have assumed liability~~;~~i

~~(4)~~ 4. To reinsure any risk or any part thereof~~;~~i

~~(5)~~ 5. To inspect and audit, or cause to be inspected and audited the pay rolls of employers applying for insurance against liability for compensation~~;~~i

~~(6)~~ 6. To contract with physicians, surgeons and hospitals for medical and surgical treatment and the care and nursing of injured persons entitled to benefits from said fund~~;~~i

~~(7)~~ 7. To meet the reasonable expenses of conducting the business of the State Insurance Fund~~;~~i

~~(8)~~ 8. To produce a reasonable surplus to cover catastrophe hazard;i and

9. To administer a program in compliance with Section 924.3 of Title 36 of the Oklahoma Statutes, whereby employers may appeal rating classification decisions which are disputed. The State Insurance Fund shall notify employers of the availability of the program.

B. The State Insurance Fund must be funded through actuarially sound rates and premiums charged to its policyholders.

C. The State Insurance Fund shall establish and use rates and rating plans to assure that it is self-funding while those rates are in effect.

D. No later than September 1 of each year, the State Insurance Fund shall obtain an independent actuarial certification of the results of its operations for prior years and shall furnish a copy of the certification to the State Board for Property and Casualty Rates. If the projected ultimate incurred losses and expenses and dividends for prior years exceed collected premiums and accrued net investment income for prior years, the certification is subject to review and approval by the State Board for Property and Casualty Rates before it becomes final.

E. Whenever a deficit exists, the State Insurance Fund shall, within ninety (90) days, provide the State Board for Property and Casualty Rates with a program to eliminate the deficit within a reasonable time. The deficit may be funded both through increased rates and premiums charged to policyholders of the State Insurance Fund in the subsequent year and through assessments on employers insured in the State Insurance Fund if it uses assessable policies.

F. Any premium or assessments collected by the State Insurance Fund in excess of the amount necessary to fund its projected ultimate incurred losses and expenses and not paid to policyholders insured under the State Insurance Fund in conjunction with dividend programs shall be retained by the State Insurance Fund.

G. State Insurance Fund losses are the sole and exclusive responsibility of the State Insurance Fund, and payment for such losses must be funded in accordance with this section and must not come, directly or indirectly, from insurers or any guaranty association for such insurers, except for reinsurance purchased by the State Insurance Fund.

SECTION 29. AMENDATORY 85 O.S. 1991, Section 139, as amended by Section 2, Chapter 60, O.S.L. 1992 (85 O.S. Supp. 1994, Section 139), is amended to read as follows:

Section 139. The entire expenses of administering "The State Insurance Fund" shall be paid out of such fund upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment. On or before the first day of June of each year, or as soon thereafter as possible, there shall be submitted to the Board of Managers of the State Insurance Fund, for approval, an estimated budget of expenses for the succeeding fiscal year. The State Insurance Fund Commissioner may not expend from the funds belonging to the State Insurance Fund for purposes of administering any sum in excess of the amount specified in such budget for any item of expense therein set forth unless such expenditure is authorized by the Board of Managers of the State

Insurance Fund. In no event shall the entire expenses of administration of the State Insurance Fund, as authorized for the entire year, exceed twenty percent (20%) of the earned premiums of said year. The Board of Managers shall cause to be made and completed within ninety (90) days after the end of each calendar year, an audit of the books of account and financial records of the fund for such calendar year, such audit to be made by an independent certified public accountant, ~~a licensed public accountant, a firm of certified public accountants, or an accounting firm or individual holding a permit to practice accounting in this state~~ or an independent licensed public accountant.

The Fund shall submit to the State Insurance Commissioner an annual financial statement in the same manner as a domestic insurance carrier. The Insurance Commissioner ~~may audit~~ shall examine the State Insurance Fund in the same manner as a domestic insurance company. The State Insurance Fund Commissioner shall provide a copy of the annual financial statement to the Governor and State Insurance Fund Board of Managers.

SECTION 30. AMENDATORY 85 O.S. 1991, Section 177, as last amended by Section 3, Chapter 22, O.S.L. 1994 (85 O.S. Supp. 1994, Section 177), is amended to read as follows:

Section 177. A. There is hereby established with the State Treasurer a Workers' Compensation Administration Fund to be used for the costs of administering the Workers' Compensation Act and for other purposes pursuant to legislative appropriation.

No money on deposit with the State Treasurer to the credit of the Workers' Compensation Administration Fund shall be expended except pursuant to legislative appropriation.

B. For the purpose of providing funds for the Workers' Compensation Administration Fund, each mutual or interinsurance association, stock company, the State Insurance Fund or other insurance carrier writing workers' compensation insurance in this state or providing a workers' compensation equivalent insurance product as provided in Section ~~4~~ 65 of this ~~act~~ title shall pay to the Oklahoma Tax Commission a tax at a rate of one percent (1%) of

all gross direct premiums written during each quarter of the calendar year for workers' compensation insurance on risks located in this state after deducting from such gross direct premiums, return premiums, unabsorbed portions of any deposit premiums, policy dividends, safety refunds, savings and other similar returns paid or credited to policyholders. 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 such gross direct premium is collected or collectible. Contributions made by insurance carriers and the State Insurance Fund, under the provisions of this section, to the Workers' Compensation Administration Fund shall be considered losses for the purpose of computing workers' compensation rates.

C. When an employer is authorized to become a self-insurer, the Administrator as directed by the Court shall so notify the Oklahoma Tax Commission, giving the effective date of such authorization. The Oklahoma Tax Commission shall then assess and collect from the employers carrying their own risk a tax at the rate of two percent (2%) of the total compensation for permanent total disability awards, permanent partial disability awards and death benefits paid out during each quarter of the calendar year by the employers. Such tax shall be payable by the employers and collected by the Oklahoma Tax Commission according to the provisions of this section regarding payment and collection of the tax created in subsections B, D, E and F of this section.

D. 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.

E. ~~The~~ Until July 1, 1995, the Oklahoma Tax Commission shall pay monthly to the State Treasurer to the credit of the Workers' Compensation Administration Fund all monies collected under the provisions of this section. Beginning July 1, 1995, the Oklahoma

Tax Commission shall pay monthly to the State Treasurer all monies collected under the provisions of this section to be credited as follows: ninety percent (90%) to the Workers' Compensation Administration Fund, five percent (5%) to the Oklahoma Department of Labor for safety consultation and the regulation of the safety of employees through the Oklahoma Occupational Health and Safety Standards Act of 1970, Section 401 et seq. of Title 40 of the Oklahoma Statutes, and five percent (5%) to the State Department of Vocational and Technical Education to supplement other funding to the Department for purposes of implementing the provisions of subsection B of Section 414 of Title 40 of the Oklahoma Statutes.

F. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made to the Workers' Compensation Administration Fund.

SECTION 31. AMENDATORY Section 34, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, Section 211), is amended to read as follows:

Section 211. A. Every employer and every employee subject to the provisions of the Workers' Compensation Act, Section 1 et seq. of this title, upon filing a notice of injury, accidental injury, death, occupational disease, or claim for benefits from the Special Indemnity Fund, shall give written permission for the Administrator of the Workers' Compensation Court or a designee, the Insurance Commissioner or a designee, the Attorney General or a designee or a district attorney or a designee to examine all records relating to the notice, any matter contained in the notice, and any matter relating to the notice.

B. Written permission given pursuant to this section shall constitute authorization for access to medical records pursuant to Section 19 of Title 76 of the Oklahoma Statutes.

C. In carrying out the responsibilities given to the Workers' Compensation Fraud Unit, the Attorney General or designee shall have the power to issue or cause to be issued subpoenas or other process in aid of investigations and prosecutions and may take possession of records subject to examination pursuant to this section by subpoena. The Attorney General shall supply copies of
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the records obtained which are necessary to the continuation of normal business operations by the person maintaining the records or may require the person maintaining the records to provide copies as they are kept in the usual course of business.

D. Subpoenas ad testificandum or duces tecum issued pursuant to this section may be served by the Attorney General, any peace officer or any competent person over eighteen (18) years of age, and may require attendance or production at any place in this state. A refusal to obey such subpoena, or willful failure to appear, be sworn, testify or produce records at the place and time specified shall constitute contempt and shall be enforced by the district court of the county where issued or the county where served, at the election of the Attorney General, as if it was a contempt on that court.

E. Nothing in this section shall be construed to waive, limit or impair any evidentiary privilege recognized by law.

~~E.~~ F. The Workers' Compensation Court shall include a statement on forms for notices and instructions to employers and employees that the permission required by this section must be given at the time of filing a notice specified in subsection A of this section.

~~F.~~ G. As used in this section, "records" include, but are not limited to, anything for which a request to produce may be served pursuant to Section 3234 of Title 12 of the Oklahoma Statutes.

SECTION 32. This act applies only to injuries occurring after the effective date of this act, except for those provisions determined by a court of competent jurisdiction to be procedural and not substantive in nature.

SECTION 33. Section 6 of this act shall become effective July 1, 1995.

SECTION 34. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

