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BILL NO. 1447

By: Glover, Bass, Bastin,  
Breckinridge, Caldwell, Campbell,  
Coleman, Cox, Henshaw, Isaac,  
Maddox (Jim), Phillips, Pope,  
Roach, Roberts, Smith (David),  
Thornbrugh, Weaver, Weese,  
Widener, Bryant (James), Benson,  
Davis, Ferguson, Hamilton (Jeff),  
Hilliard, Holt, Sadler, Seikel and  
Sullivan of the House

and

Williams (Don) and Gustafson of  
the Senate

An Act relating to workers' compensation; amending 85 O.S. 1991, Sections 1.2, as amended by Section 1, Chapter 294, O.S.L. 1992, 3, as amended by Section 2, Chapter 294, O.S.L. 1992, 3.4, 3.6, 3.8, 11, 14, as amended by Section 4, Chapter 294, O.S.L. 1992, 16, as amended by Section 5, Chapter 294, O.S.L. 1992, 22, as amended by Section 7, Chapter 294, O.S.L. 1992, 24.2, 61, as amended by Section 33, Chapter 335, O.S.L. 1992, 64, 171, 173, as amended by Section 12, Chapter 294, O.S.L. 1992, and 201, as amended by Section 13, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1992, Sections 1.2, 3, 14, 16, 22, 61, 173 and 201), which relate to the Workers' Compensation Act; expanding composition of the Workers' Compensation Court; providing for terms, compensation, qualifications and duties; deleting obsolete language; updating statutory reference to the Department of Central Services; modifying definitions; requiring certain statements in pleadings; modifying burden of proof; modifying interest on certain awards and providing for the computation thereof; deleting obsolete language; modifying penalty relating to prohibition against referrals; prohibiting certain acts by judges of the Workers' Compensation Court; modifying liability of contractors and principal employers; prohibiting modification of the medical fee schedule; providing exceptions; providing for a pilot program; identifying educational facilities where vocational rehabilitation services may be provided; requiring certain evaluations prior to adjudication of permanent total disability; modifying procedures relating to vocational rehabilitation; authorizing certain benefits during the receipt of vocational rehabilitation services; modifying schedule of compensation; requiring forfeiture of certain benefits during period of incarceration and providing procedures related

thereto; providing exceptions; providing for the distribution of certain benefits to the Department of Corrections; stating purpose and providing procedure; adding certain notice requirements; deleting obsolete language; requiring certain notice; prohibiting certain acts by administrators of group self-insurance associations; modifying contents of insurance policies; providing procedures relating to deductibles; modifying definition of physically impaired person; providing for apportionment of certain funds and stating purposes for which monies may be used; prohibiting health care providers from charging certain fees; modifying sanctions; providing procedures; describing pattern of abusive practices; requiring disclosure of certain interests; creating the Physician Advisory Committee; providing for composition, duties, compensation and terms; amending 40 O.S. 1991, Section 403, as amended by Section 3, Chapter 305, O.S.L. 1992 (40 O.S. Supp. 1992, Section 403), which relates to the Oklahoma Occupational Health and Safety Standards Act; expanding employers' duties; providing for a Certification of Non-Coverage Under the Workers' Compensation Act and providing procedures related thereto; creating the Worker Safety Policy Council; providing for duties, composition and compensation; stating duties of rating organizations and insurers; defining terms; amending 36 O.S. 1991, Section 902.2, which relates to factors for reviewing rate filings; modifying factors; amending 36 O.S. 1991, Section 924.2, which relates to workers' compensation insurance; providing procedures and sanction relating to premium reduction; creating the Oklahoma Workers' Compensation Medical Care Task Force; stating purpose and duties; providing for composition and compensation; providing for a study regarding workers' compensation insurance rates; requiring certain report; creating the Workers' Compensation Fraud Unit within the Office of the Attorney General; stating powers and duties of the Unit; authorizing referral of certain matters to other agencies; requiring cooperation between agencies; granting power of district attorney under certain circumstances; making certain records and evidence confidential; making certain acts with regard to certain transactions unlawful; providing penalties; precluding certain defenses; defining terms; creating duty of insurers to report violations; requiring certain warning on insurance policy and claim forms; amending 74 O.S. 1991, Section 18b, as amended by Section 14, Chapter 294, O.S.L. 1992 (74 O.S. Supp. 1992, Section 18b), which relates to powers and duties of the Attorney General; deleting authority of the Attorney General to create a Workers' Compensation Fraud Unit; clarifying language; deleting obsolete language; requiring recipients of temporary disability benefits to report certain occurrences; requiring inclusion of

certain notices on certain forms; requiring permission for certain agencies to inspect certain records; making permission constitute certain authorization; authorizing the issuance of certain subpoenas; preserving evidentiary privileges; defining term; amending 40 O.S. 1991, Section 4-508, which relates to records of the Oklahoma Employment Security Commission; modifying disclosure of records; amending 85 O.S. 1991, Section 138, as amended by Section 1, Chapter 60, O.S.L. 1992 (85 O.S. Supp. 1992, Section 138), which relates to investments of the State Insurance Fund; prohibiting certain agreements; making appropriations to the Workers' Compensation Court; amending Section 22 of Enrolled House Bill No. 1834 of the 1st Session of the 44th Oklahoma Legislature, which relates to budgetary limitations; deleting reference to number of Judges of the Workers' Compensation Court; modifying budgetary limitations; making appropriations nonfiscal; repealing 85 O.S. 1991, Section 138.1, which relates to investments of the State Insurance Fund; providing for noncodification; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 1.2, as amended by Section 1, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1992, Section 1.2), is amended to read as follows:

Section 1.2 A. There is hereby created the Workers' Compensation Court which shall consist of ~~nine (9)~~ ten (10) judges. Each judge of the Court shall be appointed to a designated numbered position on the Court. The positions shall be numbered one through ~~nine~~ ten. The initial terms of the judges by position number shall expire on the following dates:

Position 1 shall expire 7-1-84.

Position 2 shall expire 7-1-84.

Position 3 shall expire 7-1-84.

Position 4 shall expire 7-1-82.

Position 5 shall expire 7-1-82.

Position 6 shall expire 7-1-80.

Position 7 shall expire 7-1-80.

Position 8 shall expire 7-1-88.

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

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 shall have been licensed to practice law in this state for a period of not less than five (5) years prior to appointment. Each judge, before entering upon the duties of his office, shall take and subscribe to an oath of office and file the same with the Secretary of State. Each judge shall continue to serve until his successor shall have been appointed and qualified. A judge shall be eligible for reappointment, provided that he may be removed for cause by the Court on the Judiciary prior to the expiration of his term.

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

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

E. The Court shall have the authority to adopt reasonable rules ~~and regulations~~ within its respective areas of responsibility including the rules of procedure for the Court en banc, after notice and public hearing, for effecting the purposes of the Workers' Compensation Act. All of the judges of the Court shall be present at all meetings wherein rules ~~and regulations~~ are adopted or amended. All rules ~~and regulations~~, upon adoption, shall be submitted to the Supreme Court, which shall either approve or disapprove them within thirty (30) days. All rules ~~and regulations~~, upon approval by the Supreme Court, shall be published and be made available to the public and, if not inconsistent with the law, shall be binding in the administration of the Workers' Compensation Act.

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

G. The principal office of the Court shall be situated in the City of Oklahoma City in quarters assigned by the ~~Office of Public~~

~~Affairs~~ Department of Central Services. The Court may hold hearings in any city of this state.

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

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

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

SECTION 2. AMENDATORY 85 O.S. 1991, Section 3, as amended by Section 2, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1992, 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, corporation, limited liability company, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association ~~or~~, 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 or 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.

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

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

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.

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

9. "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.

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

11. "Permanent impairment" means any anatomical or functional abnormality or loss after reasonable medical treatment has been achieved, which abnormality or loss the physician considers to be capable of being evaluated at the time the rating is made. Except as otherwise provided herein, any examining physician shall only evaluate impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the 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 shall not follow the guides based on race or ethnic origin ~~and~~. The examining physician shall not deviate 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 of this act. 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.

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

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

SECTION 3. AMENDATORY 85 O.S. 1991, Section 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 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 ~~Title 85 of the Oklahoma Statutes~~ 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 4. AMENDATORY 85 O.S. 1991, Section 3.6, is amended to read as follows:

Section 3.6 A. All the evidence pertaining to each case, except upon agreed orders, shall, insofar as may be possible, be heard by the judge initially assigned to the case. Upon the completion of such hearing or hearings, the judge hearing the cause shall make such order, decision or award as is proper, just and equitable in the matter. Either party feeling himself aggrieved by such order, decision or award shall, within ten (10) days, have the right to take an appeal from the order, decision or award of the Judge to the Workers' Compensation Court sitting en banc. Such appeal shall be allowed as a matter of right to either party upon filing with the Administrator a notice of such appeal. In each case filed in the Court en banc, and at the time of filing same, the appellant shall deposit with the clerk as costs One Hundred Dollars (\$100.00) of which no rebate of any part thereof shall be made. All fees so collected shall be deposited in the Workers' Compensation Administration Fund. Such Court en banc shall consist of three (3) Judges of the Court, none of whom shall have presided over any of the previous hearings on the claim. The Court en banc may reverse or modify the decision only if it determines that such decision was against the clear weight of the evidence or contrary to law. Upon



completion of the appeal, the members of the Court sitting en banc shall issue such order, decision or award as is proper, just and equitable. Only those members participating in the hearing on appeal shall participate in the making of the order, decision or award. All orders, decisions or awards shall be approved by a majority of the members of the Court sitting en banc. Provided, there may be more than one Court en banc sitting at the same time for purposes of hearing the appeals provided for herein. Appeals shall be allowed on a question of law or a question of fact, or a mixed question of law and fact, and shall be determined on the record made before the Judge. Provided, when the order of the Judge of the Court making an award to a claimant is appealed by the employer or the insurance carrier, interest ~~in the amount of eighteen percent (18%) per year~~ shall be allowed on the accrued amounts of the award due from the date the award was filed, if the award is not modified or vacated on appeal.

B. The order, decision or award of the Court shall be final and conclusive upon all questions within its jurisdiction between the parties, unless, within twenty (20) days after a copy of such order, decision or award has been sent by the Administrator to the parties affected, an action is commenced in the Supreme Court of the state, to review such order, decision or award. Any order, decision or award made by a judge of the Court shall be considered as final under the provisions of this section unless appealed to the Workers' Compensation Court sitting en banc as provided for in subsection A of this section. The order, decision or award of a judge of the Court shall be final and conclusive upon all questions within his jurisdiction between the parties unless appealed directly to the Supreme Court or to the Workers' Compensation Court sitting en banc as hereinbefore provided. Any party litigant desiring to appeal directly from such order, decision or award to the Supreme Court, shall, within twenty (20) days after a copy of the order, decision or award has been sent by the Administrator to the parties affected, commence an action in the Supreme Court of the state to review such order, decision or award. The Supreme Court shall have original jurisdiction of such action, and shall prescribe rules for the commencement and trial of the same. Such action shall be commenced by filing with the Clerk of the Supreme Court a certified copy of the order, decision or award of the Workers' Compensation Court sitting en banc or the judge attached to the petition by the complaint wherein the complainant or petitioner shall make his assignments or specifications as to wherein said order, decision or award is erroneous or illegal. Provided, however, no proceeding to reverse, vacate or modify any order, decision or award of the Workers' Compensation Court sitting en banc or judge of the Court wherein compensation has been awarded an injured employee shall be entertained by the Supreme Court unless the Administrator shall take a written undertaking to the claimant executed on the part of the respondent or insurance carrier, or both, with one or more sureties to be approved by the Administrator, to the effect that the appellant will pay the amount of the award rendered therein, together with interest thereon ~~at the rate of eighteen percent (18%) per year~~ from the date of the award by the judge of the Court and all costs of the proceeding, or on the further order of the Workers' Compensation Court sitting en banc or judge of the Court after the appeal has been decided by the Supreme Court, except that municipalities and other political subdivisions of the State of Oklahoma are exempt from making such written undertakings. Before the Clerk of the Supreme Court shall accept the action for filing, a certificate from the Administrator shall be required, showing that

this provision has been complied with. Said proceedings shall be heard in a summary manner and shall have precedence over all other civil cases in the Supreme Court, except preferred Corporation Commission appeals. The Supreme Court shall require the appealing party to file within forty-five (45) days from the date of the filing of an appeal or an order appealed from, a transcript of the record of the proceedings before the Workers' Compensation Court, or upon application and for good cause shown, the Supreme Court may extend the time for filing said transcript of the record for a period of time not to exceed ninety (90) days from said date, and such action shall be subject to the law and practice applicable to other civil actions cognizable in said Supreme Court. The Court whose action was appealed shall enter any order directed by the Supreme Court under the final determination.

C. When the only controverted issue in a death claim is the determination of proper beneficiaries entitled to receive death benefits, and the parties-beneficiary appeal the decision of the Court, the employer or insurance carrier may pay the proceeds, as they accrue, to the Administrator. The Administrator shall hold the proceeds in trust in an interest-bearing account during the appeal period and shall distribute the proceeds and interest to the proper beneficiaries upon written direction of the Court. The employer or insurance carrier shall not be taxed interest or cost on the order of the death claim if payments have been made to the Administrator as they accrue.

~~D. Claims filed and pending before the Workers' Compensation Court but which have not been finally determined by the effective date of this act shall be transferred to the Administrator for assignment for hearing and determination by a judge of the Court in the judicial district designated by the claimant consistent with the provisions of Section 3.5 of this title regarding venue, for a de novo determination pursuant to the Workers' Compensation Court sitting en banc in accordance with the prescribed procedures set forth in subsection A of this section.~~ An action to reopen any case under the provisions of the Workers' Compensation Act shall be assigned in the same manner as original assignments made hereunder.

Benefits for an injury shall be determined by the law in effect at the time of injury; benefits for death shall be determined by the law in effect at the time of death.

E. For purposes of this section, interest shall be computed pursuant to Section 727 of Title 12 of the Oklahoma Statutes.

SECTION 5. AMENDATORY 85 O.S. 1991, Section 3.8, is amended to read as follows:

Section 3.8 A. No employee of the Administrator shall be competent to testify on any matter before a court concerning any information he has received through the performance of his duties under the provisions of the Workers' Compensation Act.

B. The Administrator and his employees shall not solicit employment for any attorney or physician nor shall they recommend or refer any claimant or employer to an attorney or physician. If the Administrator or any of his employees makes such a solicitation, recommendation or reference, that person, upon conviction, shall be guilty of a misdemeanor and, upon conviction thereof, shall punishable, for each offense, ~~be punished~~ by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment. The Administrator shall immediately terminate the employment of any such employee who is guilty of such solicitation, recommendation or reference. An Administrator guilty of such solicitation, recommendation or reference shall be subject to removal from office.

C. No judge of the Workers' Compensation Court shall engage in any ex parte communication with any party to an action pending before the Court or with any medical provider regarding the merits of a specific matter pending before the judge for resolution. Any violation of this provision shall subject the judge to disqualification from the action or matter upon presentation of an application for disqualification.

SECTION 6. AMENDATORY 85 O.S. 1991, Section 11, is amended to read as follows:

Section 11. A. Every employer subject to the provisions of the Workers' Compensation Act shall pay, or provide as required by the Workers' Compensation Act, compensation according to the schedules of the Workers' Compensation Act for the disability or death of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment, without regard to fault as a cause of such injury, and in the event of disability only, except where the injury is occasioned by the willful intention of the injured employee to bring about injury to himself or of another, or where the injury results directly from the willful failure of the injured employee to use a guard or protection against accident furnished for his use pursuant to any statute or by order of the Commissioner of Labor, or results directly from the intoxication or drug or chemical abuse of the injured employee while on duty.

B. Liability of any person, firm, or corporation having an interest in the subject matter, employers and contracting employers, general or intermediate, for compensation under the Workers' Compensation Act, when other than the immediate employer of the injured employee, shall be as follows:

1. The independent contractor shall, at all times, be liable for compensation due to his direct employees, or the employees of any subcontractor ~~or~~ of such independent contractor, and the principal employer shall also be liable in the manner hereinafter specified for compensation due all direct employees, employees of the independent contractors, subcontractors, or other employees engaged in the general employer's business; provided however, if an independent contractor relies in good faith on proof of a valid workers' compensation insurance policy issued to a subcontractor of the independent contractor or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the subcontractor with the Commissioner of Labor under Section 20 of this act, then the independent contractor shall not be liable for injuries of any employees of the subcontractor. Provided further, such independent contractor shall not be liable for injuries of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act.

2. The person entitled to such compensation shall have the right to recover the same directly from his immediate employer, the independent contractor or intermediate contractor, and such claims may be presented against all such persons in one proceeding. If it appears in such proceeding that the principal employer has failed to require a compliance with the Workers' Compensation Act of this state, by his or their independent contractor, then such employee may proceed against such principal employer without regard to liability of any independent, intermediate or other contractor; provided, however, if a principal employer relies in good faith on proof of a valid workers' compensation insurance policy issued to an independent contractor of the employer or to a subcontractor of the

independent contractor or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the independent contractor or subcontractor with the Commissioner of Labor under Section 20 of this act, then the principal employer shall not be liable for injuries of any employees of the independent contractor or subcontractor. Provided further, such principal employer shall not be liable for injuries of any independent contractor of the employer or of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act. Provided, however, in any proceeding where compensation is awarded against the principal employer under the provisions hereof, such award shall not preclude the principal employer from recovering the same, and all expense in connection with said proceeding from any independent contractor, intermediate contractor or subcontractor whose duty it was to provide security for the payment of such compensation, and such recovery may be had by supplemental proceedings in the cause before the Court or by an independent action in any court of competent jurisdiction to enforce liability of contracts.

3. Where work is performed on a single family residential dwelling or its premises occupied by the owner, or for a farmer whose cash payroll for wages, excluding supplies, materials and equipment, for the preceding calendar year did not exceed One Hundred Thousand Dollars (\$100,000.00), such owner or farmer shall not be liable for compensation under the Workers' Compensation Act. Such owner or farmer shall not be liable to the employee of any independent contractor or subcontractor, where applicable, or the farmer's own employee.

4. Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, provided, however, that in the case of silicosis or asbestosis, the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO<sub>2</sub>) dust on each of at least sixty (60) days or more, and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer.

SECTION 7. AMENDATORY 85 O.S. 1991, Section 14, as amended by Section 4, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1992, Section 14), is amended to read as follows:

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

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

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

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

E. Whoever renders medical, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches and apparatus, or emergency treatment, may submit such charges and duration of treatment to the Administrator of the Court for review in accordance with the rules ~~and regulations~~ of the Administrator. Such charges and duration of treatment shall be limited to the usual, customary and reasonable charges and duration of treatment as prescribed and limited by a schedule of fees and treatment for all medical providers to be adopted, after notice and public hearing, by the Administrator. Said fee and treatment schedule shall be based on the usual, customary and reasonable medical charges of health care providers in the same trade area for comparable treatment of a person with similar injuries and the duration of treatment prevailing in this state for persons with similar injuries. The fee and treatment schedule shall be reviewed biennially by the Administrator and, after such review, and notice and public hearing, the Administrator shall be empowered to amend or alter said fee and treatment schedule to ensure its adequacy; 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's review of medical and treatment charges pursuant to this section shall be conducted pursuant to the fee and treatment schedule in existence at the time the medical care or treatment was provided. The order of the Administrator approving medical and treatment charges pursuant to this section shall be enforceable by the Court in the same manner as provided in the Workers' Compensation Act for the enforcement of other compensation payments. Any party feeling aggrieved by the order, decision or award of the Administrator shall, within ten (10) days, have the right to request a hearing on such medical and treatment charges by a judge of the Workers' Compensation Court. The judge of the Court may affirm the decision of the Administrator, or reverse or modify said decision only if it is found to be contrary to the fee and treatment schedule existing at the time the said medical care or treatment was provided. The order of the judge

shall be subject to the same appellate procedure set forth in Section 3.6 of this title for all other orders of the Court. The right to recover charges for every type of medical care for personal injuries arising out of and in the course of covered employment as herein defined, shall lie solely with the Workers' Compensation Court, and all jurisdiction of the other trial courts of this state over such action is hereby abolished. The foregoing provision, relating to approval and enforcement of such charges and duration of treatment, shall not apply where a written contract exists between the employer or insurance carrier and the person who renders such medical, surgical or other attendance or treatment, nurse and hospital service, or furnishes medicine, crutches or apparatus.

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

G. If the employee chooses a physician for treatment and subsequently changes physicians without the approval of the Court or Administrator, or without agreement of the parties, the maximum liability of the employer for the 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 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14.1 of Title 85, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner of the State of Oklahoma shall establish a pilot program of integrated management of an employer's workers' compensation and group health insurance claims by an insurer authorized to do business in the state and shall promulgate such rules as may be necessary to implement the provisions of this section. The integrated management of such claims shall in no event affect any benefits, rights or coverage established pursuant to a workers' compensation insurance policy.

SECTION 9. AMENDATORY 85 O.S. 1991, Section 16, as amended by Section 5, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1992, Section 16), is amended to read as follows:

Section 16. A. An employee who has suffered an accidental injury or occupational disease covered by the Workers' Compensation Act shall be entitled to prompt and reasonable physical rehabilitation services. When, as a result of the injury, the employee is unable to perform the same occupational duties he was performing prior to the injury, he shall be entitled to such vocational rehabilitation services provided by an area vocational-technical school, a public vocational skills center or public secondary school offering vocational-technical education courses, or a member institution of The Oklahoma State System of Higher Education, including which shall include retraining and job placement so as to restore him to gainful employment. No person shall be adjudicated to be permanently and totally disabled unless first having been evaluated as to the practicability of restoration to gainful employment through vocational rehabilitation services or training. If an employee claiming permanent total disability status unreasonably refuses to be evaluated or to accept vocational rehabilitation services or training, permanent total disability benefits shall not be awarded during the period of such refusal, and

the employee shall be limited to permanent partial disability benefits only. The Administrator shall promulgate rules ~~and regulations~~ governing notice to an injured employee of the right to receive vocational rehabilitation. If rehabilitation services are not voluntarily offered by the employer and accepted by the employee, the judge of the Court may on his own motion, or if requested by a party shall, after affording all parties an opportunity to be heard, refer the employee to a qualified physician or facility for evaluation of the practicability of, need for and kind of rehabilitation services or training necessary and appropriate in order to restore the employee to gainful employment. Upon receipt of such report, and after affording all parties an opportunity to be heard, the Court shall order that any rehabilitation services or training, recommended in the report, or such other rehabilitation services or training as the Court may deem necessary, provided the employee elects to receive such services, shall be provided at the expense of the employer. ~~Refusal~~ Except as otherwise provided in this subsection, refusal to accept rehabilitation services by the employee shall in no way diminish any benefits allowable to an employee.

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

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

~~D.~~ C. Where rehabilitation requires residence at or near the facility or institution which is away from the employee's customary residence, reasonable cost of his board, lodging, travel, tuition, books and necessary equipment in training shall be paid for by the insurer in addition to weekly compensation benefits to which the employee is otherwise entitled under the Workers' Compensation Act.

D. During the period when an employee is actively participating in a retraining or job placement program for purposes of evaluating permanent total disability status, the employee shall be entitled to receive benefits at the same rate as the employee's temporary total disability benefits computed pursuant to Section 22 of this title. No attorney fees shall be awarded or deducted from such benefits received during this period. All tuition related to vocational rehabilitation services shall be paid by the employer or the employer's insurer on a periodic basis directly to the educational facility attended by the employee.

SECTION 10. AMENDATORY 85 O.S. 1991, Section 22, as amended by Section 7, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1992, 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. ~~In~~ (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 or hearing impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the 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 shall not follow the guides based on race or ethnic origin ~~and~~. The examining physician shall not deviate 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 of this act. 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 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%) 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 ~~Three Thousand Dollars (\$3,000.00)~~ 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 11. AMENDATORY 85 O.S. 1991, Section 24.2, is amended to read as follows:

Section 24.2 A. Unless an employee gives oral or written notice to the employer within sixty (60) days of the date an injury occurs or the employee receives medical attention from a licensed physician during the sixty-day period from the date an injury occurred, the claim shall be forever barred, unless, in the discretion of the trial judge, good cause is shown by the employee to the Court to excuse such failure of notice or treatment. Provided, for an occupational disease or repeated trauma, notice shall be given to the employer within the statutory period for occupational disease set out in Section 43 of ~~Title 85 of the Oklahoma Statutes~~ this title. Provided further, there shall be a rebuttable presumption that injury from occupational disease or injury caused by repeated trauma does not arise out of and in the course of employment unless oral or written notice is given by the employee to the employer within one hundred eighty (180) days of the employee's separation from employment.

B. If the employer has notice of the injury and the injury is not disputed and weekly temporary total disability benefit payments are not commenced within twenty (20) days or if any subsequent installment of temporary total disability benefits is not made within ten (10) days after it becomes due, the insurer of the employer shall pay to the employee a penalty of fifteen percent (15%) of the unpaid or delayed weekly benefits. This penalty may be imposed by the Court for good cause shown on a case by case basis.

C. The Administrator, on the basis of information collected, may ask the Court to impose the penalty provided in subsection B of this section.

D. Any penalty imposed pursuant to subsections B or C of this section shall not be reported or used for ratemaking purposes.

SECTION 12. AMENDATORY 85 O.S. 1991, Section 61, as amended by Section 33, Chapter 335, O.S.L. 1992 (85 O.S. Supp. 1992, Section 61), is amended to read as follows:

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

1. By insuring and keeping insured the payment of such compensation with any stock corporation, mutual association, or other concerns authorized to transact the business of workers' compensation insurance in this state, or by exchanging contracts of indemnity or interinsurance, pursuant to reasonable rules ~~or regulations~~ prescribed by the Administrator providing for and securing the payment of the compensation provided for in the Workers' Compensation Act. When an insurer issues a policy to provide workers' compensation benefits pursuant to the provisions of the Workers' Compensation Act, the insurer shall file, or cause to be filed, with the Administrator a notice in such form and detail as the Administrator may prescribe by rule ~~and regulation~~. The notice shall contain the name, address, and principal occupation of the employer, the number, effective date, and expiration date of the policy, and such other information as may be required by the Administrator. The notice shall be filed by the insurer within thirty (30) days after the effective date of the policy. Any insurer who fails to file the notice required by this subsection 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) ~~;~~

2. By obtaining and keeping in force guaranty insurance with any company authorized to do guaranty business in this state. Each company that issues such guaranty insurance shall file a copy of the

contract with the Administrator within thirty (30) days after the effective date of the contract. Any company that fails to file a copy of the contract as required by this subsection 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) ~~;~~;

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

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

- a. less than one hundred (100) employees or less than One Million Dollars (\$1,000,000.00) in net assets to:
  - (1) deposit with the Administrator securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the Administrator which shall be at least an average of the yearly claims for the last three (3) years; or
  - (2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of the Workers' Compensation Act.
- b. one hundred (100) or more employees and One Million Dollars (\$1,000,000.00) or more in net assets to:
  - (1) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount determined by the Administrator which shall be at least an average of the yearly claims for the last three (3) years; or
  - (2) secure excess insurance.

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

B. An employer, upon application to become a member of a group self-insurance association, shall file with the Administrator of the Workers' Compensation Court a notice, in such form as prescribed by the Administrator of the Court, acknowledging that the employer, by entering into a group self-insurance association, accepts joint and several liability. Such notice shall be submitted to the Workers' Compensation Court with the application for membership.



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

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

~~D.~~ E. The provisions of this title shall not be construed to limit or restrict the ability of political subdivisions of this state or employers subject to the provisions of the Workers' Compensation Act from joining together to form group self-insurance associations pursuant to law or rules promulgated by the Court or the Administrator.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 61.1 of Title 85, unless there is created a duplication in numbering, reads as follows:

No person employed as an administrator of a group self-insurance association shall:

1. Be an attorney-of-record or receive attorney fees, directly or indirectly, for representing the group self-insurance association;
2. Have any financial interest in the company servicing the claims of the group self-insurance association;
3. Be involved as a provider of services to the group self-insurance association; or
4. Be compensated or employed by the claim servicing company of the group self-insurance association.

SECTION 14. AMENDATORY 85 O.S. 1991, Section 64, is amended to read as follows:

Section 64. ~~(a)~~ A. Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by a mutual association or other concern authorized to transact workers' compensation insurance in this state shall contain a provision setting forth the right of the Administrator to enforce in the name of the people of the State of Oklahoma, for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of said compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

~~(b)~~ B. Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be on the part of the insurance carrier, that jurisdiction of the employer shall, for the purpose incorporated in this title, be jurisdiction of the insurance carrier, and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provisions incorporated in this title.

~~(c)~~ C. Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries sustained by an employee during the life of such policy.

~~(d)~~ D. 1. Every such policy issued to cover a risk in this state shall include provisions giving the insured employer the option of choosing a deductible amount for medical benefits in

amounts ranging from Five Hundred Dollars (\$500.00) to Two Thousand Five Hundred Dollars (\$2,500.00) in increments of Five Hundred Dollars (\$500.00). The insured employer, if choosing to exercise the option, shall choose only one deductible amount.

2. If an insured employer exercises the option and chooses a deductible, the insured employer shall be liable for the amount of the deductible for the medical benefits paid for each claim of work injury suffered by an injured employee.

3. The Insurance Commissioner in exercising his authority to approve the form of the policy to be issued shall not approve any policy form that permits, directly or indirectly, any part of the deductible to be charged to or passed on to the injured worker or insurer.

4. The insurer shall pay the entire cost of medical bills directly to the provider of the services and then seek reimbursement from the insured employer for the deductible amount.

5. If the insured employer does not reimburse the deductible amount directly to the insurer within sixty (60) days of a written demand therefor, the insurer shall pay the compensable medical claim and may seek to recover the full amount of such claim from the insured employer.

6. The provisions of this subsection shall be fully disclosed to the prospective purchaser in writing.

E. Every contract or agreement of an employer the purpose of which is to indemnify him from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or his officer, agent or servant shall be absolutely void unless it shall also cover liability for the payment of the compensation provided for in this title.

~~(e)~~ F. No contract of insurance issued by a stock company or mutual association or other concern against the liability arising under this title shall be canceled within the time limited in such contract for its expiration until at least ten (10) days after notice of intention to cancel such contract, on a date specified in such notice, shall be filed in the office of the Administrator and also served on the employer. Such notice shall be served on the employer by delivering it to him or by sending it by mail, by registered letter, addressed to the employer at his or its last-known place of residence; provided, that if the employer be a partnership, then such notice may be so given to any one of the partners, and if the employer be a corporation, then the notice may be given to any agent or officer of the corporation upon whom legal process may be served. Provided, however, if a contract of insurance has been terminated by an employer insured thereunder who has obtained other compensation insurance, as evidenced by filing in compliance with Section 61 of this title, and no intervening rights of any employee are involved, omission of a predecessor insurer to file notice of time of termination of liability shall not constitute basis for imposition of liability against such predecessor insurer.

SECTION 15. AMENDATORY 85 O.S. 1991, Section 171, is amended to read as follows:

Section 171. For the purpose of Sections 171 through 176 of this title, the term "physically impaired person" ~~is hereby defined to be~~ means a person who as a result of accident, disease, birth, military action, or any other cause, has suffered the loss of the sight of one eye, the loss by amputation of the whole or a part of a ~~major~~ member of his body, or the loss of the use or partial loss of the use of a ~~major~~ member such as is obvious and apparent from observation or examination by an ordinary layman, that is, a person who is not skilled in the medical profession, or any pre-existing

disability ~~which previously has been~~ adjudged and determined by the Workers' Compensation Court including all or any disability resulting from separately adjudicated injuries and adjudicated occupational diseases even though arising at the same time.

SECTION 16. AMENDATORY 85 O.S. 1991, Section 173, as amended by Section 12, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1992, Section 173), is amended to read as follows:

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

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

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

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

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

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

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

G. The Oklahoma Tax Commission shall on or before the first day of April of each year find and determine the amount of money held as of March 1 of that year by the State Treasurer for the benefit of the Special Indemnity Fund and shall on or before the first day of October of each year find and determine the amount of money held as of September 1 of that year by the State Treasurer for the benefit

of the Special Indemnity Fund. Promptly after making each such determination, the Oklahoma Tax Commission shall advise the State Insurance Fund and the Administrator in writing of its findings and determination in the foregoing particulars.

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

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

J. ~~The~~ Until January 1, 1994, the Oklahoma Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Special Indemnity Fund all monies collected under the provisions of this section. Beginning January 1, 1994, 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 Special Indemnity Fund, five percent (5%) to the Oklahoma Department of Labor, two and one-half percent (2.5%) to the Office of the Attorney General and two and one-half percent (2.5%) to the State Department of Vocational and Technical Education. Monies received by the Department of Labor under this section shall be used for safety consultation and the regulation of the safety of public employees through the Occupational Safety and Health Act of 1970. Monies received by the Office of the Attorney General shall be deposited to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund created pursuant to Section 19.2 of Title 74 of the Oklahoma Statutes. Monies received by the State Department of Vocational and Technical Education shall 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. The State Treasurer shall pay out of the Special Indemnity Fund only upon the order and direction of the Court of this state acting under the provisions hereof.

SECTION 17. AMENDATORY 85 O.S. 1991, Section 201, as amended by Section 13, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1992, Section 201), is amended to read as follows:

Section 201. A. A health care provider who knowingly charges more for treatment under ~~Workers' Compensation an amount greater~~ workers' compensation than that normally charged for similar

treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges, shall be ~~liable for an administrative penalty~~ subject to penalties prescribed in this section.

B. The Administrator shall adopt rules ~~and regulations~~ to establish a system of review of medical practices of health care providers through the workers' compensation system to evaluate on an aggregate basis the quantity and quality of treatment and charges of such providers. The Administrator may refer charges of abusive practices by health care providers under the workers' compensation system to the Physician Advisory Committee for review and recommendation. The findings and recommendation of the Committee shall be only advisory to the Administrator and shall not be binding or conclusive upon him. If the Administrator determines that a health care provider has, on an aggregate basis, established a pattern of over or under treating, failing to adhere to the AMA Guides or modifications thereto, or overcharging, the Administrator shall impose administrative penalties for abusive practices and may waive payment for medical services of the health care provider rendered under the Workers' Compensation Act for not to exceed five (5) years. A pattern of abusive practices shall include, but not be limited to, a pattern of referral to a medical facility for treatment found to be in excess of treatment guidelines adopted by the Administrator under Section 18 of this act. Physicians providing treatment under the Workers' Compensation Act shall disclose any ownership or interest in any health care facility that is not the physician's primary place of business, to the Administrator of the Workers' Compensation Court on a form prescribed by the Administrator.

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

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

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

E. Upon receipt of the response or request for hearing, the Administrator shall set a date, time and place for hearing which shall be not less than ten (10) nor more than thirty (30) days after receipt of the request for hearing. The Administrator shall notify all interested parties of the hearing by first-class mail. This notice shall include the following:

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

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

1. A statement that a health care provider aggrieved by the decision of the Administrator shall have ten (10) days after the decision is filed within which to request a hearing before a judge

of the Workers' Compensation Court to determine the propriety of the Administrator's decision; and that the order of the judge shall be subject to the same appellate procedure set forth in Section 3.6 of this title for all other orders of the Court; and

2. Directions for remitting the penalty, if any.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 201.1 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a Physician Advisory Committee comprised of seven (7) members to be appointed as follows:

1. The Governor shall appoint three members, one of whom shall be licensed in this state as a doctor of medicine and surgery, one of whom shall be engaged in the practice of family medicine in a rural community of the state, and one of whom shall be an osteopathic physician;

2. The President Pro Tempore of the Senate shall appoint two members, one of whom shall be licensed in this state as a doctor of medicine and surgery and one of whom shall be licensed in this state as a podiatric physician;

3. The Speaker of the House of Representatives shall appoint two members, one of whom shall be licensed in this state as an osteopathic physician and one of whom shall be licensed in this state as a chiropractic physician.

B. The Committee shall:

1. Assist and advise the Administrator of the Workers' Compensation Court regarding utilization review as it relates to the medical practice and treatment of work-related injuries. Such utilization review shall include a review of reasonable and necessary treatment; abusive practices; needless treatments, testing, or procedures; or a pattern of billing in excess of or in violation of the Schedule of Medical Fees. The Physician Advisory Committee shall review and make findings and recommendations to the Administrator of the Workers' Compensation Court with respect to charges of inappropriate or unnecessary treatment or procedures, abusive practices, or excessive billing disclosed through utilization review.

2. Assist the Administrator of the Workers' Compensation Court in reviewing medical practices of health care providers as provided for in Section 201 of Title 85 of the Oklahoma Statutes. The Committee shall review and make findings and recommendations to the Administrator with respect to charges of abusive practices by health care providers providing medical services through the workers' compensation system.

3. After public hearing, review and make recommendations for acceptable deviations from the American Medical Association's "Guides to the Evaluation of Permanent Impairment" using appropriate and scientifically valid data. Those recommendations may be adopted, in part or in whole, by the Administrator to be used as provided for in paragraph 11 of Section 3 and Section 22 of Title 85 of the Oklahoma Statutes;

4. After public hearing, review and make recommendations for treatment guidelines. Those recommendations may be adopted, in part or in whole, by the Administrator;

5. Provide general recommendations to the judges of the Workers' Compensation Court on the issues of injury causation and apportionment;

6. Conduct educational seminars for the judges of the Workers' Compensation Court, employers, employees, and other interested parties; and

7. Assist the judges of the Workers' Compensation Court in accessing medical information from scientific literature.

C. The term of office for initial appointees shall expire March 1, 1994. Thereafter, successors in office shall serve at the pleasure of the appointing authority.

D. During their respective terms of office, the physicians appointed to the Physician Advisory Committee shall be strictly prohibited from serving as a third physician appointed by the Workers' Compensation Court pursuant to Section 17 of Title 85 of the Oklahoma Statutes.

E. Members of the Physician Advisory Committee shall receive no compensation for serving on the Committee but shall be reimbursed by the Workers' Compensation Court for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

F. Meetings of the Physician Advisory Committee shall be called by the Administrator but held at least quarterly. The presence of five members constitutes a quorum. No action shall be taken by the Physician Advisory Committee without the affirmative vote of at least five members.

G. The Administrator shall provide office supplies and personnel of the Workers' Compensation Court to assist the Committee in the performance of its duties.

SECTION 19. AMENDATORY 40 O.S. 1991, Section 403, as amended by Section 3, Chapter 305, O.S.L. 1992 (40 O.S. Supp. 1992, Section 403), is amended to read as follows:

Section 403. ~~(1)~~ A. Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, commensurate with the Occupational Safety and Health Act of 1970.

~~(2)~~ B. No person shall discharge, discriminate or take adverse personnel action against any employee because such employee has filed any complaint, or instituted or caused to be instituted any proceeding under or related to this act, or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or herself or others of any right affected by this act.

~~(3)~~ C. Within forty-eight (48) hours after the occurrence of an employment accident which is fatal to one or more employees or which results in hospitalization of five or more employees, the employer of any employees so injured or killed shall report the accident in writing to the Oklahoma City office of the Oklahoma Department of Labor, in a manner prescribed by the Department. The Commissioner of Labor may require such additional reports as he deems necessary, including the official death certificate from the Oklahoma State Department of Health.

~~(4)~~ D. No rule or standard promulgated under this act shall, or shall be deemed to, establish legal standards of conduct or legal duties, the violation of which standards or duties would constitute negligence or gross negligence in any civil proceeding.

E. Every employer having twenty-five (25) or more full- or part-time employees shall:

1. Designate an employee who shall coordinate all safety programs of the employer;

2. Provide safety classes to each type or class of employee no less than quarterly; and

3. Cooperate with the Department of Labor including allowing any announced inspection of the premises for the purpose of determining compliance with this subsection.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 415.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

The Commissioner of Labor shall receive and maintain any "Certification of Non-Coverage Under the Workers' Compensation Act", which, if filed by an individual exempt from the definition of employee under Section 3 of Title 85 of the Oklahoma Statutes, shall establish a rebuttable presumption that the filer is not an employee for purposes of the Workers' Compensation Act. The Commissioner of Labor shall develop necessary rules for the establishment and maintenance of such certificates and shall charge a reasonable filing fee, not to exceed Ten Dollars (\$10.00) for each certificate issued. Except as otherwise provided in Section 11 of Title 85 of the Oklahoma Statutes, the filing of such a certificate shall not affect the rights or coverage of any employee of the individual filing the certificate. Falsifying information for purposes of obtaining a "Certification of Non-Coverage Under the Workers' Compensation Act" shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00).

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 418.2 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Worker Safety Policy Council to study and formulate reforms for worker safety that could result in lower work-related injuries and result in lower workers' compensation costs for business.

B. The Worker Safety Policy Council shall be comprised of thirteen (13) members as follows:

1. The Commissioner of Labor or his designee, who shall act as chairman for the Council;
2. The Administrator of the Workers' Compensation Court or his designee;
3. The Commissioner of the State Insurance Fund or his designee;
4. The Insurance Commissioner or his designee;
5. The Director of the Department of Commerce or his designee;
6. A representative from the Oklahoma Safety Council who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner;
7. A representative from an American society or organization of safety engineers who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner;
8. A representative from an American industrial hygiene association who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner;
9. A representative from an Oklahoma labor union who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner;
10. A representative from the Oklahoma State Chamber of Commerce and Industry who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner;
11. A representative from an organization of the private sector who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner;
12. A representative from an organization of public employees who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner; and
13. A representative from the Oklahoma Municipal League who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner.



C. Vacancies on the Council shall be filled by the Commissioner of Labor. A simple majority of the Council shall constitute a quorum.

D. The Department of Labor shall provide such office supplies and personnel as may be necessary to assist the Council.

E. Members of the Council shall receive no compensation for serving on the Council, but shall be reimbursed by the Department of Labor for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

F. The Council shall hold at least two regular meetings each calendar year at a place and time to be fixed by the Council. The Council shall make annual recommendations for legislative and policy changes to public and private employers to reduce worker injuries and the resulting costs associated with those injuries. Commencing September 1, 1994, and annually thereafter, the Council shall submit a report of its recommendations to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.5 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Rating organizations shall develop and file for approval with the Insurance Commissioner in accordance with the provisions of this section, a filing containing advisory prospective loss costs and supporting actuarial and statistical data for workers' compensation insurance. Each insurer shall individually file their own specific profit and expense factors used to determine the final rates it will file for approval and the effective date of any rate changes.

B. As used in this section:

1. "Expenses" means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses and fees;

2. "Rate" means the cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit and variations in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums; and

3. "Prospective loss costs" means that portion of a rate that does not include provision for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

SECTION 23. AMENDATORY 36 O.S. 1991, Section 902.2, is amended to read as follows:

Section 902.2 A. The Board when reviewing a filing shall give due consideration to the following when, in its discretion, it determines that such factor or factors are applicable:

1. Past loss experience within and outside this state;
2. Prospective loss experience within and outside this state;
3. Physical hazards insured;
4. Safety and loss prevention programs;
5. Underwriting practices and judgment;
6. Catastrophe hazards;
7. Reasonable underwriting profit and contingencies;
8. Dividends, savings or unabsorbed premium deposits allowed or returned to policyholders;

9. Past expenses within and outside this state;
10. Prospective expenses within and outside this state;
11. Existence of classification rates for a given risk;
12. Investment income within and outside this state;
13. Rarity or peculiarity of the risks within and outside this state;

14. Differences in the hazard levels of different geographical regions of the state based on Court of Criminal Appeals judicial districts;

15. All other relevant factors within and outside this state;

~~15.~~ 16. In the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business in this state for not less than the previous five (5) years; and

~~16.~~ 17. Whether existing rates continue to meet the standards of this article.

B. The Board shall determine the weight to be accorded each of the factors contained in subsection A of this section.

C. Past or prospective expenses within or outside this state pursuant to paragraphs 9 and 10 of subsection A of this section shall not include prohibited expenses for advertising or prohibited expenses for membership in organizations.

1. For the purpose of this subsection:

- a. "prohibited expenses for advertising" means the cost of advertising in any media the purpose of which is to influence legislation or to advocate support for or opposition to a candidate for public office;
- b. "prohibited expenses for advertising" shall not mean:
  - (1) any communication to customers and the public of information regarding an insurer's insurance products,
  - (2) any communication to customers and the public of safety, safety education or loss prevention information,
  - (3) periodic publications or reports to stockholders or members required by the certificate or bylaws of the insurer,
  - (4) any communication with customers and the public which provides instruction in the use of the insurer's products and services, or
  - (5) any communication with customers and the public for giving notice or information required by law or otherwise necessary;
- c. "prohibited expenses for membership" means the cost of membership in any organization which conducts substantial efforts, including but not limited to prohibited expenses for advertising, the purpose of which is to influence legislation or to advocate support for or opposition to a candidate for public office; and
- d. "prohibited expenses for membership" shall not mean the cost of membership in rating organizations or other organizations the primary purpose of which is to provide statistical information on losses.

2. The Board shall promulgate rules and regulations for the implementation of this subsection.

SECTION 24. AMENDATORY 36 O.S. 1991, Section 924.2, is amended to read as follows:

Section 924.2 A. Any rate, schedule of rates or rating plan for workers' compensation insurance submitted to or filed with the State Board for Property and Casualty Rates, or fixed by the Board

of Managers of the State Insurance Fund, and premiums, by whatever name, for workers' compensation for self-insureds except for group self-insured associations shall provide for an appropriate reduction in premium charges, by whatever name, for those eligible insured employers who have successfully participated in the occupational safety and health consultation, education and training program administered by the Commissioner of the Department of Labor pursuant to Section 414 of Title 40 of the Oklahoma Statutes.

B. All insurance companies writing workers' compensation insurance in this state, including the State Insurance Fund, and all self-insureds providing workers' compensation insurance except for group self-insured associations, shall allow an appropriate reduction in premium charges to all eligible employers who qualify for the reduction pursuant to the provisions of this section.

C. Eligible employers shall be those employers:

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

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

1. Undergoing a safety and health hazard survey of the workplace, including an evaluation of the employer's safety and health program and onsite interviews with employees by the Department's consultant;
2. Correcting all hazards identified during the onsite visit within a reasonable period of time as established by the Department;
3. Establishing an effective workplace safety and health program and implementing program provisions within a reasonable period of time as established by the Department. The program shall include:

- a. demonstration of management commitment to worker safety and health,
- b. procedures for identifying and controlling workplace hazards,
- c. development and communication of safety plans, rules and work procedures, and
- d. training for supervisors and employees in safe and healthful work practices;

4. Reducing by one-third (1/3) or more the extent to which the lost workday case rate, as measured by the Department of Labor, was above the national average for the industry at the time the employer elected to participate in the occupational safety and health consultation, education and training program, or maintaining a rate at or below the national average for the industry; and

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

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

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

E. 1. Upon successful participation in the occupational safety and health consultation, education and training program as defined

in subsection D of this section, an employer shall be issued a certificate by the Commissioner of the Department of Labor which shall be the basis of qualification for the reduction in workers' compensation insurance premium, by whatever name. The certificate shall qualify the employer for a premium reduction for a one-year period.

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

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

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

SECTION 25. A. There is hereby created to continue until February 1, 1994, the Oklahoma Workers' Compensation Medical Care Task Force. The purpose of the Task Force shall be to explore and develop legislative recommendations for improvements in the delivery of health care services for accidental injuries and occupational disease requiring medical attention covered by the Workers' Compensation Act. The Task Force shall submit a report of its recommendations to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate by January 31, 1994.

B. The Task Force shall be comprised of nine (9) members as follows:

1. Two members appointed by the Governor;
2. Two members appointed by the President Pro Tempore of the Senate;
3. Two members appointed by the Speaker of the House of Representatives;
4. The Insurance Commissioner;
5. The Administrator of the Workers' Compensation Court; and
6. The Commissioner of the State Insurance Fund.

C. Members of the Oklahoma Workers' Compensation Medical Care Task Force shall receive no compensation for serving on the Task Force, but shall receive travel reimbursement as follows:

1. Legislative members of the Task Force, if any, shall be reimbursed for their necessary travel expenses incurred in the

performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes; and

2. Nonlegislative members of the Task Force shall be reimbursed by their respective agencies or appointing authorities for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

SECTION 26. The State Board for Property and Casualty Rates shall conduct a study on the feasibility, including the advantages and disadvantages, of establishing workers' compensation insurance rates based on current job classifications with approximately one-half (1/2) the rate being based upon the amount of payroll and approximately one-half (1/2) the rate being based upon hours worked by all covered employees in each job classification. The Board shall submit a report of its findings and recommendations, including suggestions for possible implementation, to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor by January 1, 1994.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18m-1 of Title 74, unless there is created a duplication in numbering, reads as follows:

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. 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 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18m-2 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. If the Attorney General or a designee has reason to believe as a result of inquiry or complaint that a person has engaged in or is engaging in an act or practice that violates any administrative rule or statute pertaining to workers' compensation fraud, the Attorney General or a designee shall have all of the powers of a district attorney.

B. Records, documents, reports and evidence obtained or created by the Office of the Attorney General as a result of workers' compensation fraud shall be confidential and shall not be subject to the Oklahoma Open Records Act or to outside review or release by any individual except when authorized by the Attorney General or when required by an administrative or judicial proceeding.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1663 of Title 21, unless there is created a duplication in numbering, reads as follows:

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.

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.

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 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 619.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

Any insurer which has reason to believe that a person has engaged in or is engaging in an act or practice that violates any workers' compensation fraud statute or administrative rule of this state shall immediately notify the Workers' Compensation Fraud Unit of the Office of the Attorney General.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3613.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

Every insurance policy and every insurance claim form shall contain a statement that clearly indicates in substance the following: "WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony." The absence of such a statement shall not constitute a defense in any prosecution.

SECTION 32. AMENDATORY 74 O.S. 1991, Section 18b, as amended by Section 14, Chapter 294, O.S.L. 1992 (74 O.S. Supp. 1992, Section 18b), is amended to read as follows:

Section 18b. A. The duties of the Attorney General as the chief law officer of the state shall be:

1. To appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the Supreme Court and Court of Criminal Appeals in which the state is interested as a party.

2. To appear for the state and prosecute and defend all actions and proceedings in any of the federal courts in which the state is interested as a party.

3. To appear at the request of the Governor, the Legislature, or either branch thereof, and prosecute and defend in any court or before any commission, board or officers any cause or proceeding, civil or criminal, in which the state may be a party or interested; and when so appearing in any such cause or proceeding, he may, if he deems it advisable and to the best interest of the state, take and

assume control of the prosecution or defense of the state's interest therein.

4. To consult with and advise district attorneys, when requested by them, in all matters pertaining to the duties of their offices, when said district attorneys shall furnish the Attorney General with a written opinion supported by citation of authorities upon the matter submitted.

5. To give his opinion in writing upon all questions of law submitted to him by the Legislature or either branch thereof, or by any state officer, board, commission or department, provided, that the Attorney General shall not furnish opinions to any but district attorneys, the Legislature or either branch thereof, or any other state official, board, commission or department, and to them only upon matters in which they are officially interested.

6. At the request of the Governor, State Auditor and Inspector, State Treasurer, or either branch of the Legislature, to prosecute any official bond or any contract in which the state is interested, upon a breach thereof, and to prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with either of their Departments.

7. Whenever requested by any state officer, board or commission, to prepare proper drafts for contracts, forms and other writing which may be wanted for the use of the state.

8. To prepare drafts of bills and resolutions for individual members of the Legislature upon their written request stating the gist of the bill or resolution desired.

9. To enforce the proper application of monies appropriated by the Legislature and to prosecute breaches of trust in the administration of such funds.

10. To institute actions to recover state monies illegally expended, to recover state property and to prevent the illegal use of any state property, upon the request of the Governor or the Legislature.

11. To pay into the State Treasury, immediately upon its receipt, all monies received by him belonging to the state.

12. To keep and file copies of all opinions, contracts, forms and letters of the office, and to keep an index of all opinions, contracts and forms according to subject and section of the law construed or applied.

13. To keep a register or docket of all actions, demands and investigations prosecuted, defended or conducted by him in behalf of the state. Said register or docket shall give the style of the case or investigation, where pending, court number, office number, the gist of the matter, result and the names of the assistants who handled the matter.

14. To keep a complete office file of all cases and investigations handled by him on behalf of the state.

15. To report to the Legislature or either branch thereof whenever requested upon any business relating to the duties of his office.

16. To institute civil actions against members of any state board or commission for failure of such members to perform their duties as prescribed by the statutes and the Constitution and to prosecute members of any state board or commission for violation of the criminal laws of this state where such violations have occurred in connection with the performance of such members' official duties.

17. To respond to any request for an opinion of his office, submitted by a member of the Legislature, regardless of subject matter, by written opinion determinative of the law regarding such subject matter.



18. To convene multicounty grand juries in such manner and for such purposes as provided by law; provided, such grand juries are composed of citizens from each of the counties on a pro rata basis by county.

19. To investigate any report by the State Auditor and Inspector filed with him pursuant to Section 223 of this title and prosecute all actions, civil or criminal, relating to such reports or any irregularities or derelictions in the management of public funds or property which are violations of the laws of this state.

20. To represent and protect the collective interests of all utility consumers of this state in rate-related proceedings before the Corporation Commission or in any other state or federal judicial or administrative proceeding.

21. To represent and protect the collective interests of insurance consumers of this state in rate-related proceedings before the Insurance Property and Casualty Rate Board or in any other state or federal judicial or administrative proceeding.

22. To certify local crimestoppers programs qualified to receive repayments of rewards pursuant to Section 991a of Title 22 of the Oklahoma Statutes.

~~23. To create within the Office of Attorney General, a Workers' Compensation Fraud Unit which shall be the state entity to which cases of suspected workers' compensation fraud shall be referred for the purposes of investigation, civil action, criminal action or referral to the district attorney.~~

~~Provided, that nothing contained B. Nothing in this act section shall be construed as requiring the Attorney General to appear and defend or prosecute in any court any cause or proceeding for or on behalf of the Oklahoma Tax Commission, the Board of Managers of the State Insurance Fund, or the Commissioners of the Land Office.~~

~~Provided further, that in C. In all appeals from the Corporation Commission to the Supreme Court of Oklahoma in which the state is a party, the Attorney General shall have the right to designate counsel of the Corporation Commission as his legally appointed representative in such appeals, and it shall be the duty of the said Corporation Commission counsel to act when so designated and to consult and advise with the Attorney General regarding such appeals prior to taking action therein.~~

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22.1 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Any person receiving temporary disability benefits from an employer or the employer's insurance carrier shall promptly report in writing to the employer or insurance carrier any change in a material fact or the amount of income he is receiving or any change in his employment status, occurring during the period of receipt of such benefits.

B. The Workers' Compensation Court shall include a statement on forms for notices and instructions to employers and employees informing employees that they must promptly comply with the provisions of this section.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 211 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Every employer and every employee subject to the provisions of the Workers' Compensation Act, 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 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. Nothing in this section shall be construed to waive, limit or impair any evidentiary privilege recognized by law.

E. 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. 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 35. AMENDATORY 40 O.S. 1991, Section 4-508, is amended to read as follows:

Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL - DISCLOSURE.

A. Except as otherwise provided by law, information obtained from any employing unit or individual pursuant to the administration of the Employment Security Act of 1980, and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or employer or such person as he may by writing authorize as his agent shall be supplied with information from the records of the Commission, to the extent necessary for the proper presentation of his claim or complaint in any proceeding under the Employment Security Act of 1980, Section 1-101 et seq. of this title, with respect thereto.

B. Upon receipt of written request by any employer who maintains a Supplemental Unemployment Benefit (SUB) Plan, the Commission or its designated representative may release to such employer information regarding weekly benefit amounts paid its workers during a specified temporary layoff period, provided such Supplemental Unemployment Benefit (SUB) Plan requires benefit payment information before Supplemental Unemployment Benefits can be paid to such workers. Any information disclosed under this provision shall be utilized solely for the purpose outlined herein and shall be held strictly confidential by the employer.

C. The provisions of this section shall not prevent the Commission from disclosing the following information and no liability whatsoever, civil or criminal, shall attach to any member of the Commission or any employee thereof for any error or omission in the disclosure of such information:

1. The delivery to taxpayer or claimant a copy of any report or other paper filed by him pursuant to the provision of the act;

2. The disclosure of information to any person for a purpose as authorized by the taxpayer or claimant pursuant to a waiver of

confidentiality. The waiver shall be in writing and shall be notarized;

3. The Oklahoma Department of Commerce may have access to data obtained pursuant to the Oklahoma Employment Security Act of 1980 pursuant to rules promulgated by the Oklahoma Employment Security Commission. The information obtained shall be held confidential by the Department and any of its agents and shall not be disclosed or be open to public inspection. The Oklahoma Department of Commerce, however, may release aggregated data, either by industry or county, provided that such aggregation meets disclosure requirements of the Oklahoma Employment Security Commission.

4. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

5. The disclosing of information or evidence to the Attorney General or any district attorney when said information or evidence is to be used by said officials or other parties to the proceedings to prosecute or defend allegations of violations of the act. Said information disclosed to the Attorney General or any district attorney shall be kept confidential by them and not be disclosed except when presented to a court in a prosecution of a violation of the act, and a violation by the Attorney General or district attorney by otherwise releasing the information shall be a felony;

6. The furnishing, at the discretion of the Commission, of any information disclosed by said records or files to any official person or body of this state, any other state or of the United States who is concerned with the administration of assessment of any similar tax in this state, any other state or the United States;

7. The furnishing of information to other state agencies for the limited purpose of aiding in the collection of debts owed by individuals to said requesting agencies;

8. The release to officials, employees, and agents of the Oklahoma Department of Transportation of information required for use in federally mandated regional transportation planning, which is performed as a part of their official duties; ~~or~~

9. The release to officials, employees and agents of the State Treasurer's office of information required to verify or evaluate the effectiveness of the Oklahoma Small Business Linked Deposit Program on job creation; or

10. The release to officials, employees, and agents of the Attorney General or the State Insurance Fund for use in investigation of workers' compensation fraud.

D. Should any of the disclosures provided for in this section require more than casual or incidental staff time, the Commission may charge the cost of such staff time to the party requesting the information.

E. It is further provided that the provisions of this section shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Commission.

SECTION 36. AMENDATORY 85 O.S. 1991, Section 138, as amended by Section 1, Chapter 60, O.S.L. 1992 (85 O.S. Supp. 1992, Section 138), is amended to read as follows:

Section 138. A. The Board of Managers shall discharge their duties with respect to the State Insurance Fund solely in the interest of the Fund and:

1. For the exclusive purpose of:
  - a. providing benefit to the Fund, and
  - b. defraying reasonable expenses of administering the State Insurance Fund;

2. With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

3. By diversifying the investments of the State Insurance Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

4. In accordance with the laws, documents and instruments governing the State Insurance Fund.

B. The monies of the State Insurance Fund shall be invested only in assets eligible for the investment of funds of a domestic property and casualty insurance company as provided for in the Oklahoma Insurance Code, Title 36 of the Oklahoma Statutes. The term admitted assets shall mean the amount of the monies of the State Insurance Fund and the provisions relating to limitation of investments as a percentage of surplus as regards policyholders shall be inapplicable with respect to investment of the monies of the State Insurance Fund. The monies of the State Insurance Fund may be invested in certificates of indebtedness or such other enforceable evidences of obligation as may be utilized in the rights-of-way acquisitions by the Oklahoma Department of Transportation. The monies of the State Insurance Fund may also be invested in bonds secured by first mortgages, pass-through securities and insured participation certificates representing interests in first mortgages or insured mortgage pass-through certificates on one- to four-family residences located within this state.

C. 1. The Commissioner, with the approval of the Board of Managers, is authorized to acquire any real estate deemed necessary for the immediate and reasonably anticipated future administrative office space needs of the State Insurance Fund. The Commissioner, with the approval of the Board of Managers, may sell, lease, rent or sublet any ~~current~~ real estate holdings of the State Insurance Fund. Any revenues of such transactions shall accrue to the surplus or reserve fund of the State Insurance Fund.

2. In any lease, rental, sublease or other agreement for the use or occupation of real estate holdings of the State Insurance Fund, no state agency may enter into an agreement which has a gross effective rental rate which is greater than the gross effective rental rate for which they can continue to occupy the premises which is currently rented at the time the agency proposes to move. For a period of two (2) years after the first use or occupation by the state agency, subsequent agreements, whether new agreements or continuations of a prior agreement, shall not contain a gross effective rental rate which is greater than that of the original agreement.

~~C. D.~~ The Board of Managers may procure insurance indemnifying the members of the State Insurance Fund from personal loss or accountability from liability resulting from a member's action or inaction as a member of the Board of Managers.

~~D. E.~~ The Board of Managers may establish an investment committee. The investment committee shall be composed of not more than three (3) members of the Board of Managers appointed by the chairman of the Board of Managers. The committee shall make recommendations to the full Board on all matters related to the choice of custodians and managers of the assets of the State Insurance Fund, on the establishment of investment and fund management guidelines, and in planning future investment policy. The committee shall have no authority to act on behalf of the Board of Managers or the Fund in any circumstances whatsoever. No

recommendation of the committee shall have effect as an action of the Board of Managers nor take effect without the approval of the Board of Managers as provided by law.

~~F.~~ F. The Board of Managers shall retain qualified investment managers to provide for the investment of the monies of the State Insurance Fund. The investment managers shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Board of Managers. Subject to the overall investment guidelines set by the Board of Managers, the investment managers shall have full discretion in the management of those monies of the State Insurance Fund allocated to the investment managers. The Board of Managers shall manage those monies not specifically allocated to the investment managers. The monies of the State Insurance Fund allocated to the investment managers shall be actively managed by the investment managers, which may include selling investments and realizing losses if such action is considered advantageous to longer term return maximization. Because of the total return objective, no distinction shall be made for management and performance evaluation purposes between realized and unrealized capital gains and losses.

~~F.~~ G. Funds and revenues for investment by the investment managers or the Board of Managers shall be placed with a custodian selected by the Board of Managers. The custodian shall be a bank or trust company offering master custodial services. The custodian shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Board of Managers. In compliance with the investment policy guidelines of the Board of Managers, the custodian bank or trust company shall be contractually responsible for ensuring that all monies of the State Insurance Fund are invested in income-producing investment vehicles at all times. If a custodian bank or trust company has not received direction from the investment managers of the State Insurance Fund as to the investment of the monies of the State Insurance Fund in specific investment vehicles, the custodian bank or trust company shall be contractually responsible to the Board of Managers for investing the monies in appropriately collateralized short-term interest-bearing investment vehicles.

~~G.~~ H. Prior to August 1 of each year, the Board of Managers shall develop and approve a written investment plan for the State Insurance Fund.

~~H.~~ I. The State Insurance Fund Commissioner shall compile a quarterly financial report of all the funds of the State Insurance Fund. The report shall be compiled and filed pursuant to uniform reporting standards prescribed by the State Insurance Commissioner for domestic property and casualty insurance companies. The report shall include several relevant measures of investment value, including acquisition cost and current fair market value with appropriate summaries of total holdings and returns. The report shall contain combined and individual rate of returns of the investment managers by category of investment, over periods of time. The report shall be distributed to the Governor, the Legislative Service Bureau and the Joint Committee on Fiscal Operations.

SECTION 37. There is hereby appropriated to the Workers' Compensation Court from any monies not otherwise appropriated from the Workers' Compensation Administration Fund of the State Treasury for the fiscal year ending June 30, 1993, the sum of Forty-two Thousand Sixty Dollars (\$42,060.00) or so much thereof as may be necessary to perform the duties imposed upon the Workers' Compensation Court by law.

SECTION 38. There is hereby appropriated to the Workers' Compensation Court from any monies not otherwise appropriated from the General Revenue Fund of the State Treasury for the fiscal year ending June 30, 1994, the sum of Eighty-two Thousand Nine Hundred Seventy-seven Dollars (\$82,977.00) or so much thereof as may be necessary to perform the duties imposed upon the Workers' Compensation Court by law.

SECTION 39. AMENDATORY Section 22 of Enrolled House Bill No. 1834 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 22. The duties and compensation of employees, not otherwise prescribed by law, necessary to perform the duties imposed upon the Workers' Compensation Court by law shall be set by the Administrator. The salary of the ~~nine~~ Judges of the Workers' Compensation Court shall not exceed Seventy-one Thousand Three Hundred Thirty Dollars (\$71,330.00) per annum, payable monthly for the fiscal year ending June 30, 1994. The Workers' Compensation Court for the fiscal year ending June 30, 1994, shall be subject to the following budgetary limitations, on full-time-equivalent employees and expenditures, excluding expenditures for capital and special projects, except as may be authorized pursuant to the provisions of Section 3603 of Title 74 of the Oklahoma Statutes:

<u>Budgetary Limitation</u>	<u>Amount</u>
Full-time-equivalent Employees	<u>85.0</u>
	<u>91.0</u>
Payroll, Salaries or Wages, Including Tax-sheltered Deferment Contracts and Longevity Payments Authorized by State Statutes	<del>\$2,978,330.00</del> <u>\$3,064,411.00</u>
Professional and Personal Services Contracts	\$65,000.00
Lease-Purchase Agreements	\$0.00
Purchase of Equipment	\$90,000.00
Expenditure of Revolving Funds	\$1,000,000.00
Expenditure of Federal Funds	\$0.00
Total Expenditures for Operations	<del>\$4,348,276.00</del> <u>\$4,473,313.00</u>

SECTION 40. The appropriations made by Sections 37 and 38 of this act shall not be subject to fiscal year limitations and shall be available for encumbrance and expenditure purposes for a period of thirty (30) months from the effective date of this act.

SECTION 41. REPEALER 85 O.S. 1991, Section 138.1, is hereby repealed.

SECTION 42. Sections 25 and 26 of this act shall not be codified in the Oklahoma Statutes.

SECTION 43. This act shall become effective September 1, 1993.

Passed the House of Representatives the 27th day of May, 1993.

Speaker of the House of  
Representatives

Passed the Senate the 28th day of May, 1993.

President of the Senate