

(2ND EXTRAORDINARY SESSION)
ENROLLED HOUSE
BILL NO. 1002

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Paulk, Phillips, Roberts, Seikel,
Thornbrugh and York of the House

and

Robinson, Muegge, Lawler, Williams
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Hooper, Kerr, Littlefield, Long
(Ed), Wright, Douglass and
Wilkerson of the Senate

An Act relating to workers' compensation; amending Section 29, Chapter 349, O.S.L. 1993 (21 O.S. Supp. 1994, Section 1663), which relates to workers' compensation fraud; modifying what constitutes workers' compensation fraud; making certain acts with regard to certain writings unlawful; amending 22 O.S. 1991, Section 152, which relates to limitations of prosecutions; specifying limitations for certain fraud crimes; providing for the calculation of certain workers' compensation premiums; imposing duties on the State Board for Property and Casualty Rates and the Board of Managers of the State Insurance Fund; amending 36 O.S. 1991, Sections 1252 and 1253, as amended by Sections 2 and 4, Chapter 342, O.S.L. 1994, 1223, as last amended by Section 9, Chapter 342, O.S.L. 1994, 1224, 1225, 1226 and 1258, as amended by Sections 10, 11, 13 and 14, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1994, Sections 1250.2, 1250.4, 1250.9, 1250.10, 1250.11, 1250.13 and 1250.14), which relate to the Unfair Claims Settlement Practices Act; subjecting the State Insurance Fund to the Unfair Claims Settlement Practices Act; exempting the State Insurance Fund from enforcement jurisdiction of the Insurance Commissioner; requiring certain workplace safety services to be provided to certain employers by workers' compensation insurers; stating duties of insurers and the Commissioner of Labor; providing for certain notices; prohibiting requests for and approval of certain increases or reimbursement for expenses; amending Section 27, Chapter 349, O.S.L.

1993 (74 O.S. Supp. 1994, Section 18m-1), which relates to the Workers' Compensation Fraud Unit; providing immunity from civil and criminal liability for certain communications; amending 85 O.S. 1991, Sections 3, as last amended by Section 33, Chapter 2, O.S.L. 1994, 3.6, as amended by Section 4, Chapter 349, O.S.L. 1993, 3.7, 3.9, 5, as amended by Section 3, Chapter 294, O.S.L. 1992, 13, 14, as last amended by Section 7, Chapter 349, O.S.L. 1993, 16, as last amended by Section 9, Chapter 349, O.S.L. 1993, 17, 22, as last amended by Section 10, Chapter 349, O.S.L. 1993, 26, 30, as amended by Section 8, Chapter 294, O.S.L. 1992, 42, 43, 45, 84, 93, as amended by Section 34, Chapter 335, O.S.L. 1992, and 112 (85 O.S. Supp. 1994, Sections 3, 3.6, 5, 14, 16, 22, 30 and 93), which relate to the Workers' Compensation Act; modifying definitions; defining terms; modifying fees and designating purposes; deleting obsolete language; modifying powers and duties of the Administrator of the Workers' Compensation Court; changing the name of the workers' compensation ombudsman program to the workers' compensation counselor program and modifying its duties; prohibiting certain acts by certain employers; modifying when compensation shall be allowed; requiring certain notices regarding an employee's medical condition and ability to perform light duty work; modifying an employee's ability to select a physician; specifying certain employee options; extending the limitation on modifying the existing schedule of medical fees; requiring the adoption of a new fee and treatment schedule and stating requirements applicable thereto; providing for certified workplace medical plans; stating duties of the Commissioner of Health; providing procedures relating to certification and supervision of certified workplace medical plans; requiring certain rules; making permissive the referral for rehabilitation services or training when requested by a party; requiring the Workers' Compensation Court to develop and implement an independent medical examiner system; specifying the requirements of such system; requiring certain rules; modifying duty of the Court upon deviation from an impairment rating; modifying the schedule of compensation; authorizing advance payments of temporary total disability benefits and reimbursement therefor; reducing the time after which a claim for compensation may be filed; providing for a good faith effort by an insurer to notify an insured employer regarding certain settlements; modifying attorney fees for permanent total disability awards; modifying procedures relating to failure to pay awards of compensation; modifying post-award interest on awards from the Special Indemnity Fund; modifying reference; prohibiting temporary total disability benefits and unemployment compensation benefits to be received for the same period of time; providing for a good

faith effort by an insurer to notify an insured employer regarding certain settlements; modifying fees collected by the Administrator of the Workers' Compensation Court and specifying the purposes thereof; modifying the duties of the Advisory Council on Workers' Compensation; creating the Advisory Committee on Workers' Compensation; providing for the composition and duties of the Committee; providing for reimbursement of certain expenses; amending 85 O.S. 1991, Sections 131, 134 and 135, which relate to the State Insurance Fund; modifying duties of said Fund; modifying powers and duties of the Commissioner of the State Insurance Fund; requiring certain warning; amending 85 O.S. 1991, Section 172, as amended by Section 11, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1994, Section 172), which relates to payment from the Special Indemnity Fund; requiring certain payments to be paid before a claim against the Special Indemnity Fund may be paid; providing for certain computation; creating the Joint Committee on the Special Indemnity Fund; providing for the composition and duties of the Committee; providing for reimbursement of certain expenses; amending 85 O.S. 1991, Section 201, as last amended by Section 17, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, Section 201), which relates to abusive practices; requiring the Administrator of the Workers' Compensation Court to adopt certain rules; providing penalties for certain practices; amending Section 18, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, Section 201.1), which relates to the Physician Advisory Committee; modifying composition and duties of the Committee; modifying terms of Committee members; requiring certain entities to provide information to the Committee when requested; amending Section 34, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, Section 211), which relates to examination of certain records; modifying subpoena power of the Attorney General; defining terms; prohibiting certain acts; providing sanctions; providing for application of the act; making certain appropriations; stating duty of the Administrator of the Workers' Compensation Court; providing lapse date; providing for codification; and declaring an emergency.

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

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

Section 1663. A. Any person who commits workers' compensation fraud, upon conviction, shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not exceeding five (5)

years or by a fine not exceeding Five Thousand Dollars (\$5,000.00) or by both such fine and imprisonment.

B. For the purposes of this section, workers' compensation fraud shall include, but not be limited to, any act or omission prohibited by subsection C of this section and committed by a person with the intent to injure, defraud or deceive another with respect to any of the following:

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

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

1. Presents, causes to be presented or intends to present to another, any statement as part of or in support of any of the purposes described in subsection B of this section knowing that such statement contains any false, fraudulent, incomplete or misleading information concerning any fact or thing material to the purpose for the statement;
2. Assists, abets, solicits or conspires with another to prepare or make any statement that is intended to be presented to, used by or relied upon by another in connection with or in support of any of the purposes described in subsection B of this section knowing that such statement contains any false, fraudulent, incomplete or misleading information concerning any fact or thing material to the purpose of the statement;
3. Conceals, attempts to conceal or conspires to conceal any information concerning any fact material to any of the purposes described in subsection B of this section;
4. Solicits, accepts or conspires to solicit or accept new or renewal insurance risks by or for an insolvent insurer;
5. Removes, attempts to remove or conspires to remove the assets or records of the insurer or a material part thereof, from the place of business of the insurer or from a place of safekeeping of the insurer;
6. Conceals, attempts to conceal or conspires to conceal the assets or records of the insurer or a material part thereof;
7. Diverts, attempts to divert, or conspires to divert funds of an insurer or other person in connection with:
 - a. a contract of insurance,

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

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

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

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

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

E. For the purposes of this section:

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

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

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

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

Section 152. A. Prosecutions for the crimes of bribery, embezzlement of public money, bonds, securities, assets or property of the state or any county, school district, municipality or other subdivision thereof, or of any misappropriation of public money, bonds, securities, assets or property of the state or any county, school district, municipality or other subdivision thereof, falsification of public records of the state or any county, school district, municipality or other subdivision thereof, and conspiracy to defraud the State of Oklahoma or any county, school district, municipality or other subdivision thereof in any manner or for any purpose shall be commenced within seven (7) years after the discovery of the crime; provided, however, prosecutions for the crimes of embezzlement or misappropriation of public money, bonds, securities, assets or property of any school district, including those relating to student activity funds, or the crime of falsification of public records of any independent school district, the crime of lewd or indecent proposals or acts against children, pursuant to Section 1123 of Title 21 of the Oklahoma Statutes, the crimes of involving minors in pornography, pursuant to Sections 1021.2 and 1021.3 of Title 21 of the Oklahoma Statutes, the crime of sodomy, the crime of criminal conspiracy, or the crime of embezzlement, pursuant to Sections 1451 through 1462 of Title 21 of the Oklahoma Statutes shall be commenced within five (5) years after the discovery of the crime.

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

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

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

E. Prosecutions for the crime of criminal fraud or workers' compensation fraud pursuant to Sections 1541.1, 1541.2, 1662 or 1663 of Title 21 of the Oklahoma Statutes shall commence within three (3) years after the discovery of the crime, but in no event greater than seven (7) years after the commission of the crime.

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

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

A. Workers' compensation premiums shall be calculated on a basis that, as nearly as is practicable, after the effects of experience rating and other applicable rating plans have been considered, the sum of expected losses and expected expenses as a percentage of premium shall be the same for high and low wage-paying employers in the same job classification.

B. The State Board for Property and Casualty Rates and the Board of Managers of the State Insurance Fund shall:

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

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

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

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

5. Adopt rules by January 1, 1996, to become effective on July 1, 1996, unless disapproved by the Legislature, to equalize, as nearly as is practicable, expected losses and expenses as a percentage of workers' compensation premiums for high and low wage-paying employers in the same job classification. If the effect is found to be primarily seen in certain types of job classifications, the rules shall be adopted to apply only to such types of job classifications. The adopted rules shall be subject to legislative review and shall be promulgated as permanent rules pursuant to the Administrative Procedures Act. The agency rule report required by the Administrative Procedures Act shall include a rule impact statement together with an actuarial analysis of the proposed rule describing in detail the classes of persons who most likely will be affected by the proposed rules; the classes of persons who will benefit from the adopted rules; and the probable economic impact of the proposed rules upon the affected classes of persons. The actuarial analysis shall be prepared by an independent actuary selected by the State Board of Property and Casualty Rates. The rules shall not be invalidated on the ground that the contents of the rule impact statement or the actuarial analysis are insufficient or inaccurate.

C. The cost of the premium adjustment plan shall be allocated among all employers purchasing workers' compensation insurance from all carriers, including the State Insurance Fund.

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

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

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

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

3. "Commissioner" means the Insurance Commissioner;

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

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

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

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

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

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

SECTION 5. AMENDATORY 36 O.S. 1991, Section 1253, as amended by Section 4, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1994, Section 1250.4), is amended to read as follows:

Section 1250.4 A. An insurer's claim files, other than the claim files of the State Insurance Fund, shall be subject to examination by the Insurance Commissioner or by his duly appointed designees. Such files shall contain all notes and work papers pertaining to a claim in such detail that pertinent events and the dates of such events can be reconstructed.

B. Every insurer, other than the State Insurance Fund, upon receipt of any inquiry from the Commissioner concerning a claim or a problem involving premium monies shall, within fifteen (15) business days after receipt of such inquiry, furnish the Commissioner with an adequate response to the inquiry.

C. Every insurer, upon receipt of any pertinent written communication from a claimant which reasonably suggests that a

response is expected, shall, within twenty (20) business days after receipt thereof, furnish the claimant with an adequate response to the communication.

SECTION 6. AMENDATORY 36 O.S. 1991, Section 1223, as last amended by Section 9, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1994, Section 1250.9), is amended to read as follows:

Section 1250.9 A. If the Insurance Commissioner determines, based on an investigation of complaints of unfair claim settlement practices, that an insurer, other than the State Insurance Fund, has engaged in unfair claim settlement practices with such frequency as to indicate a general business practice and that ~~the~~ such insurer should be subjected to closer supervision with respect to such practices, the Commissioner may require the insurer to file a report at such periodic intervals as the Commissioner deems necessary. The Commissioner shall also devise a statistical plan for such periodic reports, which shall contain but not be limited to the following information:

1. The total number of written claims filed, including the original amount filed for by the insured and the classification by line of insurance of each individual written claim, for the past twelve-month period or from the date of the insurer's last periodic report, whichever time is shorter;

2. The total number of written claims denied, for the past twelve-month period or from the date of the insurer's last periodic report, whichever time is shorter;

3. The total number of written claims settled, including the original amount filed for by the insured, the settled amount, and the classification of line of insurance of each individual settled claim, for the past twelve-month period or from the date of the insurer's last periodic report, whichever time is shorter;

4. The total number of written claims for which lawsuits were instituted against the insurer, including the original amount of the claim filed for by the insured, the amount of final adjudication, the reason for the lawsuit and the classification by line of insurance of each individual written claim, for the past twelve-month period or from the date of the insurer's last periodic report, whichever time is shorter; and

5. All information required by paragraph 12 of Section ~~5~~ 1250.5 of this ~~act~~ title.

B. For the purposes of this section, "written claims" means those claims reduced to writing and filed by a resident of this state with an insurer.

SECTION 7. AMENDATORY 36 O.S. 1991, Section 1224, as amended by Section 10, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1994, Section 1250.10), is amended to read as follows:

Section 1250.10 A. The Insurance Commissioner may hire additional employees and examiners as needed for the enforcement of the provisions of the Unfair Claims Settlement Practices Act.

B. The Commissioner shall compile the information received from an insurer pursuant to Section ~~9~~ 1250.9 of this ~~act~~ title in such a manner as to enable him to compare it to a minimum standard of performance which shall be promulgated by the Commissioner. If the Commissioner, after such comparison is made, finds that the insurer falls below the minimum standard of performance, he shall cause an investigation to be made of said insurer as to the reason, if any, for the substandard performance.

C. The Commissioner shall also provide for the receiving and processing of individual complaints alleging violations of the

Unfair Claims Settlement Practices Act by both insurers who are required to make periodic reports and those who are not required to make such reports, but not by the State Insurance Fund. If the Commissioner in his complaint experience determines that the number and type of complaints against an insurer, other than the State Insurance Fund, do not meet the minimum standard of performance or are out of proportion to those against other insurers writing similar lines of insurance, the Commissioner shall cause an investigation to be made of the insurer.

SECTION 8. AMENDATORY 36 O.S. 1991, Section 1225, as amended by Section 11, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1994, Section 1250.11), is amended to read as follows:

Section 1250.11 A. Upon the receipt of the results of an investigation instituted pursuant to the provisions of Section ~~10~~ 1250.10 of this ~~act~~ title, the Insurance Commissioner shall review the results and shall determine whether, by the standards set out in Sections ~~3~~ 1250.3 and ~~5~~ 1250.5 of this ~~act~~ title, further action is required. If the Insurance Commissioner deems further action necessary, the Commissioner shall issue and serve upon the insurer a statement of the charges and a notice of hearing thereon to be held at a time and place fixed in the notice, which shall not be less than thirty (30) days after the date of the service thereof. No insurer shall be deemed in violation of the Unfair Claims Settlement Practices Act solely by reason of the numbers and types of such complaints or claims.

B. The Insurance Commissioner shall not assert enforcement jurisdiction pursuant to this section over the State Insurance Fund.

SECTION 9. AMENDATORY 36 O.S. 1991, Section 1226, as amended by Section 13, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1994, Section 1250.13), is amended to read as follows:

Section 1250.13 A. The Insurance Commissioner, upon finding an insurer, other than the State Insurance Fund, in violation of any provision of the Unfair Claims Settlement Practices Act, shall issue a cease and desist order to said insurer directing it to stop such unlawful practices. If the insurer refuses or fails to comply with said order, the Commissioner shall have the authority to revoke or suspend the insurer's certificate of authority. The Commissioner shall also have the authority to limit, regulate, and control the insurer's line of business, the insurer's writing of policy forms or other particular forms, and the insurer's volume of its line of business or its writing of policy forms or other particular forms. The Commissioner shall use the above authority to the extent deemed necessary to obtain the insurer's compliance with the order. The Attorney General shall offer his assistance if requested by the Commissioner to enforce the Commissioner's orders.

B. Reasonable attorneys fees shall be awarded the Commissioner if judicial action is necessary for the enforcement of the orders.

SECTION 10. AMENDATORY 36 O.S. 1991, Section 1258, as amended by Section 14, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1994, Section 1250.14), is amended to read as follows:

Section 1250.14 For any violation of the Unfair Claims Settlement Practices Act, the Insurance Commissioner may, after notice and hearing, subject an insurer, other than the State Insurance Fund, to a civil fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each occurrence. Such fine may be enforced in the same manner in which

civil judgments may be enforced. Such fines shall be placed in the Insurance Commissioner's Revolving Fund.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6701 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. By January 1, 1996, each insurance company that provides workers' compensation insurance or an equivalent insurance product in this state shall maintain or provide workplace safety services for its policyholders as a condition for approval by the Insurance Commissioner to write such insurance. Such services shall be adequate to implement workplace safety plans as required by the nature of its policyholders' operations and shall include but not be limited to surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services.

2. The State Insurance Fund shall maintain or provide workplace safety services for its policyholders. Such safety services shall be adequate to implement workplace safety plans as required by the nature of its policyholders' operations and shall include but not be limited to surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services.

B. Notice that workplace safety services are available to the policyholder from the insurance company and the State Insurance Fund must appear in no less than ten (10) point bold type on the front of each workers' compensation insurance or equivalent insurance policy delivered or issued for delivery in this state.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 425 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner of Labor shall for each calendar year approve a list of the most hazardous industries in the state by Standard Industrial Classification Code based on the most current data available from the Federal Occupational Health and Safety Administration. In computing level of hazard the Commissioner of Labor shall include the following factors:

1. Total injuries;
2. Fatalities;
3. Number of fatal incidents;
4. High experience modifiers; and
5. Other factors as determined by the Commissioner to indicate a high hazard industry.

B. The Commissioner of Labor shall approve the annual list by November 1 of the prior year. The list shall be transmitted to the Insurance Commissioner for distribution to insurance companies providing workers' compensation insurance or an equivalent product in this state and to the State Insurance Fund.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6702 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Each insurance company desiring to write workers' compensation insurance or an equivalent insurance product in this state and the State Insurance Fund shall develop a workplace safety program for all policyholders who meet the following criteria:

1. A Standard Industrial Classification Code among those listed by the Commissioner of Labor as the most hazardous industries in the state and an experience modifier of one and one-quarter (1.25) or greater with an annual payroll of at least Two Hundred Thousand Dollars (\$200,000.00); or

2. A Standard Industrial Classification Code among those listed by the Commissioner of Labor as the most hazardous industries in the state and an experience modifier of two (2) or greater.

Policyholders meeting the criteria of this subsection are deemed to be high-hazard employers for the purposes of this section.

B. Each insurance company and the State Insurance Fund shall:

1. Notify policyholders if they are found to be high-hazard employers; and

2. Notify the policyholder that failure to implement a workplace safety plan within twelve (12) months of such notification will result in cancellation of coverage or a surcharge of premiums of up to ten percent (10%).

C. Workplace safety plans for high-hazard employers may be provided by:

1. The insurers' workplace safety services program;

2. The Department of Labor;

3. Private safety consultants;

4. Vocational-technical schools; and

5. Other entities if their workplace safety services have been approved by the Commissioner of Labor.

D. Failure on the part of an insurance company to implement the requirements of subsection B of this section shall constitute grounds for revocation by the Insurance Commissioner of the license to write workers' compensation insurance or an equivalent insurance product in this state.

E. Insurance companies and the State Insurance Fund shall notify the Commissioner of Labor, in writing, by July 1 of each calendar year as to the number and names of high-hazard employers for which the insurer writes a workers' compensation policy or an equivalent insurance product. Insurers shall also provide the Commissioner of Labor with data on changes in experience modifiers and injuries and fatalities before and after a safety program has been implemented for a high-hazard employer. The first report required by this subsection shall be due July 1, 1996. The Commissioner of Labor and the Worker Safety Policy Council shall jointly issue a report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives by November 1 of each year, beginning in 1996, summarizing data provided by insurers related to safety programs developed by high-hazard employers.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 61.2 of Title 85, unless there is created a duplication in numbering, reads as follows:

All self-insured employers and group self-insurance association plans shall be required to develop and implement workplace safety plans by January 1, 1996, and shall notify the Administrator of the Workers' Compensation Court, in writing, upon implementation of the plan. All private employers who become self-insured after the effective date of this act and group self-insurance association plans approved by the Administrator of the Workers' Compensation Court after the effective date of this act shall implement a workplace safety plan within six (6) months of becoming self-insured and shall notify the Administrator of the Workers' Compensation Court, in writing, upon implementation of the plan.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No insurance company shall request and the State Board for Property and Casualty Rates shall not approve an increase for the

expense portion of insurance company rate filings based upon the requirements of Sections 11 through 14 of this act.

B. The State Insurance Fund shall not request and its Board of Managers shall not approve reimbursement for expenses based upon the requirements of Sections 11 through 14 of this act above the limitation on expenses of administration of the State Insurance Fund specified in Section 139 of Title 85 of the Oklahoma Statutes.

SECTION 16. AMENDATORY Section 27, Chapter 349, O.S.L. 1993 (74 O.S. Supp. 1994, Section 18m-1), is amended to read as follows:

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

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

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

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

SECTION 17. AMENDATORY 85 O.S. 1991, Section 3, as last amended by Section 33, Chapter 2, O.S.L. 1994 (85 O.S. Supp. 1994, Section 3), is amended to read as follows:

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

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

2. "Court" means the Workers' Compensation Court~~;~~

3. "Employer", except when otherwise expressly stated, means a person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, corporation, or limited liability company, departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof, employing a person included within the term "employee" as herein defined~~;~~

4. "Employee" means any person engaged in the employment of any person, firm, limited liability company or corporation covered by the terms of the Workers' Compensation Act, and shall include workers associating themselves together under an agreement for the performance of a particular piece of work, in which event such persons so associating themselves together shall be deemed employees of the person having the work executed; provided, that if such associated workers shall employ a worker in the execution of such

contract, then as to such employed worker, both the associated employees and the principal employer shall at once become subject to the provisions of the Workers' Compensation Act relating to independent contractors. Sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation are specifically excluded from the foregoing definition of "employee", and shall not be deemed to be employees as respects the benefits of the Workers' Compensation Act. Provided, a sole proprietor, member of a partnership, member of a limited liability company who owns at least ten percent (10%) of the capital of the limited liability company or any stockholder-employee of a corporation who owns ten percent (10%) or more stock in the corporation who does not so elect to be covered by a policy of insurance covering benefits under the Workers' Compensation Act, when acting as a subcontractor, shall not be eligible to be covered under the prime contractor's policy of workers' compensation insurance; however, nothing herein shall relieve the entities enumerated from providing workers' compensation insurance coverage for their employees. Sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation may elect to include the sole proprietors, any or all of the partnership members, any or all of the limited liability company members or any or all stockholder-employees as employees, if otherwise qualified, by endorsement to the policy specifically including them under any policy of insurance covering benefits under the Workers' Compensation Act. When so included the sole proprietors, members of a partnership, members of a limited liability company or any or all stockholder-employees shall be deemed to be employees as respects the benefits of the Workers' Compensation Act. "Employee" shall also include any person who is employed by the departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof. "Employee" shall also include a member of the Oklahoma National Guard while in the performance of duties only while in response to state orders and any authorized voluntary or uncompensated worker, rendering services as a fire fighter, peace officer or civil defense worker. Provided, "employee" shall not include any other person providing or performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitative therapy, transportation, lodging or reimbursement for incidental expenses. "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. The Physician Advisory Committee may, pursuant to Section 201.1 of this title, recommend the adoption of a method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment". Such recommendation shall be made to the Administrator of the Workers' Compensation Court who may adopt the recommendation in part or in whole. The adopted method or system shall be submitted by the Administrator to the Speaker of the House of Representatives and the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Such method or system shall be operative one hundred twenty (120) days after the last day of the

month in which the Administrator submits the adopted method or system to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves it in part. If adopted, permanent impairment shall be evaluated only in accordance with the latest version of the alternative method or system in effect at the time of 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, and before January 1, 1995, shall be operative one hundred twenty (120) days after the last day of the month of publication. Revisions to the guides made by the American Medical Association which are published after December 31, 1994, may be adopted in whole or in part by the Administrator following recommendation by the Physician Advisory Committee. Revisions adopted by the Administrator shall be submitted by the Administrator to the Speaker of the House of Representatives and the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such revisions shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Revisions shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the revisions to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves them in part. The examining physician shall not follow the guides based on race or ethnic origin. The examining physician shall not deviate from said guides or any alternative thereto except as may be specifically provided for in the guides or modifications to the guides or except as may be specifically provided for in any alternative or modifications thereto, adopted by the Administrator of the Workers' Compensation Court as provided for in Section 201.1 of this title. These officially adopted guides or modifications thereto or alternative system or method of evaluating permanent impairment 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, or alternative to 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 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;

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

15. "Independent medical examiner" means a licensed physician authorized to serve as a medical examiner pursuant to Section 17 of this title;

16. "Certified workplace medical plan" means an organization of health care providers, certified by the Commissioner of Health, that has entered into a contractual agreement with a self-insured

employer, group self-insurance association plan or an employer's workers' compensation insurance carrier to provide medical care under the Workers' Compensation Act. Certified plans shall only include such plans which provide medical services and payment for services on a fee-for-service basis to medical providers and shall not include other plans which contract in some other manner, such as capitated or pre-paid plans; and

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

SECTION 18. AMENDATORY 85 O.S. 1991, Section 3.6, as amended by Section 4, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, 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 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. 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 Twenty-five Dollars (\$125.00) of which no rebate of any part thereof shall be made. The fee collected under this subsection shall be deposited as follows: One Hundred Dollars (\$100.00) to the credit of the Workers' Compensation Administration Fund for the costs of administering the Workers' Compensation Act and for other purposes pursuant to legislative appropriation; and Twenty-five Dollars (\$25.00) to the credit of the Workers' Compensation Administration Fund for purposes of implementing the provisions of this act, including strengthening and providing additional funding for the Attorney General's Workers' Compensation Fraud Unit,

providing counseling services pursuant to the workers' compensation counselor program and safety in the workplace.

C. 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 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.~~ D. 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.~~ E. 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.

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

SECTION 19. AMENDATORY 85 O.S. 1991, Section 3.7, is amended to read as follows:

Section 3.7 The Administrator shall have the following powers and duties:

1. To hear and approve settlements pursuant to direction by the judges of the Court;
2. To review and approve "own-risk" applications and group Self-insurance associations applications;
3. To monitor "own-risk", self-insurer and group self-insurance programs in accordance with the rules of the Court;
4. To establish a toll free telephone number in order to provide information and answer questions about the Court;
5. To hear and determine claims concerning disputed medical bills;
6. To promulgate necessary rules ~~and regulations~~ subject to the approval of the presiding judge;
7. Such other duties and responsibilities authorized by law or as the judges of the Court may prescribe;
8. To adopt rules ~~and regulations~~ which require every insurance company, the State Insurance Fund and every self-insurer authorized to transact workers' compensation insurance in this state to report to the Administrator its statistical experience to the Administrator and its experience regarding the utilization of independent medical examiners in permanent disability cases during the period from July 1, 1995, to July 1, 1997. The information regarding utilization of independent medical examiners shall include, but not be limited to, the number of independent medical examiner appointments, the parties requesting the independent medical examiner, the doctors participating and the number of evaluations done by each, a summary of awards and settlements, medical costs, and duration of temporary total disability. The Administrator shall compile the information collected and present a report of his findings to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Governor ~~and~~, the Advisory Council on Workers' Compensation and the Physician Advisory Committee; and
9. To adopt rules ~~and regulations~~ which impose an administrative penalty of One Hundred Dollars (\$100.00) for each day an insurance company or self-insurer fails to provide the information required pursuant to paragraph 8 of this ~~subsection~~ section.

SECTION 20. AMENDATORY 85 O.S. 1991, Section 3.9, is amended to read as follows:

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

B. ~~Ombudsmen~~ Workers' compensation counselors shall provide information to injured workers; ~~investigate complaints, and;~~ investigate complaints, and; communicate with employers, insurance carriers, self-insurers, and health care providers; provide informational seminars and workshops on workers' compensation for medical providers, insurance adjustors, and employee and employer groups; and develop informational materials for employees, employers and medical providers. ~~An ombudsman~~ A workers' compensation counselor shall otherwise assist unrepresented claimants, employers, and other parties to enable them to protect their rights in the workers' compensation system.

SECTION 21. AMENDATORY 85 O.S. 1991, Section 5, as amended by Section 3, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1994, Section 5), is amended to read as follows:

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

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

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

C. No person, firm, partnership or corporation may discharge any employee because the employee has in good faith elected to participate or not to participate in a certified workplace medical plan as provided in Section 14 of this title.

SECTION 22. AMENDATORY 85 O.S. 1991, Section 13, is amended to read as follows:

Section 13. No compensation shall be allowed for the first ~~seven (7)~~ three (3) calendar days of disability except the benefits as provided for in Section 14 of this title; ~~provided that if disability continues beyond the twenty-first calendar day, compensation shall be computed from the inception date of such disability.~~

SECTION 23. AMENDATORY 85 O.S. 1991, Section 14, as last amended by Section 7, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, Section 14), is amended to read as follows:

Section 14. A. 1. 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.

2. The attending physician who renders treatment to the employee at any time shall promptly notify the employee and employer or the employer's insurer in writing after the employee has reached

maximum medical improvement and is released from active medical care. If the employee is capable of returning to modified light duty work, the attending physician shall promptly notify the employee and the employer or the employer's insurer thereof in writing and shall also specify what restrictions, if any, must be followed by the employer in order to return the employee to work. In the event the attending physician provides such notification to the employer's insurer, the insurer shall promptly notify the employer.

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~~ Unless a self-insured employer, group self-insurance association plan, or an employer's workers' compensation insurance carrier has previously contracted with a certified workplace medical plan, the employee may select a physician of his choice to render necessary medical treatment, at the expense of the employer. The attending physician so selected by the employee shall notify the employer and/or the insurance carrier within seven (7) days after examination or treatment was first rendered. If a self-insured employer, group self-insurance association plan or an employer's workers' compensation insurance carrier has previously contracted with a certified workplace medical plan, the employee shall have two choices:

1. The employee shall have the right to select a physician who has maintained the employee's medical records prior to an injury and has a documented history of treatment with the employee prior to an injury or a physician who has maintained the medical records of an immediate family member of the employee prior to an injury and has a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this paragraph, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents. An attending physician selected under this paragraph must agree to comply with all the rules, terms, and conditions of the certified workplace medical plan. An attending physician selected under this paragraph may refer the employee to a physician outside the certified workplace medical plan only if the physician to whom the employee is referred agrees to comply with all the rules, terms, and conditions of the certified workplace medical plan; or

2. The employee shall elect to participate in the certified workplace medical plan.

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

E. Whoever renders medical, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches and apparatus, or emergency treatment, may submit such charges and duration of treatment to the Administrator of the Court for review in accordance with the rules of the Administrator. Such charges and duration of treatment shall be limited to the usual, customary and reasonable charges 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 January 1, 1996, 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. Before April 1, 1995, the Administrator shall adopt a new fee and treatment schedule to be effective no later than January 1, 1996, based on a relative value system which weights professional medical services based on the time, skill, complexity, intensity, severity of illness, patient risk, and medicolegal risk to the medical provider, with conversion factors appropriate to the State of Oklahoma. To the extent practicable, the new fee and treatment schedule shall result in a net projected savings system-wide of not less than five percent (5%). 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 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14.2 of Title 85, unless there is created a duplication in numbering, reads as follows:

If a self-insured employer, group self-insurance association plan or an employer's workers' compensation insurance carrier has contracted with a workplace medical plan that is certified by the Commissioner of Health as provided in Section 25 of this act, an employee shall exercise the election for which provision is made in subsection C of Section 14 of Title 85 of the Oklahoma Statutes. If a self-insured employer approved by the Workers' Compensation Court has in force a collective bargaining agreement with its employees, the certified workplace medical plan shall be selected with the approval of both parties signatory to the collective bargaining agreement. Notwithstanding any other provision of law, those employees who are subject to such certified workplace medical plan shall receive medical treatment in the manner prescribed by the plan. Qualified employers shall, when a contract of employment is made or on the annual open enrollment date for the insurer's certified plan, provide the employee with written notice of and the opportunity to enroll in the plan or to indicate his desire to select a physician who has maintained the employee's medical records or the medical records of a member of the employee's immediate family. The election must be made in writing: (1) within thirty (30) days of employment; (2) within thirty (30) days after an employee receives notice that a self-insured employer, group self-insurance association plan, or an employer's workers' compensation insurance carrier implements a certified workplace medical plan; or (3) on the annual open enrollment date of the certified workplace medical plan. Procedures and forms for enrollment shall be provided by the self-insured employer, group self-insurance association plan or insurance carrier. The burden for notification of an employee's enrollment in a certified workplace medical plan shall be the employer's. After enrollment, an employee shall seek treatment under the certified workplace medical plan for one (1) calendar year. The employee may opt out of the plan, effective on the next annual open enrollment date only if the employee is changing to a physician selected pursuant to the requirements of paragraph 1 of subsection C of Section 14 of Title 85 of the Oklahoma Statutes. However, if the date of the injury falls under a period of enrollment in a certified workplace medical plan, treatment must be rendered under the certified workplace medical plan treatment contract. The provisions of this section shall not preclude the employee from petitioning the Workers' Compensation Court or the Administrator of the Workers' Compensation Court for a change of attending physician within the certified workplace medical plan or for a change of physician outside the plan, if the physician agrees to comply with all the rules, terms and conditions of the certified

workplace medical plan. Nor shall the provisions of this section preclude an employee from seeking emergency medical treatment as provided in Section 14 of Title 85 of the Oklahoma Statutes. The provisions of this section shall not apply to treatment received by an employee for an accepted accidental injury or occupational disease for which treatment began prior to the effective date of this act.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14.3 of Title 85, unless there is created a duplication in numbering, reads as follows:

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

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

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

B. 1. The Commissioner shall not certify a plan unless the Commissioner finds that the plan:

- a. proposes to provide quality services for all medical services that may be required by the Workers' Compensation Act in a manner that is timely, effective and convenient for the employee,
- b. is reasonably geographically convenient to residents of the area for which it seeks certification,
- c. provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service,
- d. provides adequate methods of peer review, utilization review and dispute resolution to prevent inappropriate, excessive or medically unnecessary treatment, and excludes participation in the plan by those providers who violate these treatment standards,
- e. requires the dispute resolution procedure of the plan to include a requirement that disputes on an issue related to medical care under the plan be attempted to be resolved within ten (10) days of the time the dispute arises and if not resolved within ten (10) days, the employee may pursue remedies in the Workers' Compensation Court,
- f. provides aggressive case management for injured employees and a program for early return to work,
- g. provides workplace health and safety consultative services,
- h. provides a timely and accurate method of reporting to the Commissioner necessary information regarding medical service costs and utilization to enable the

Commissioner to determine the effectiveness of the plan,

- i. authorizes necessary emergency medical treatment for an injury provided by a provider of medical, surgical, and hospital services who is not a part of the plan; allows employees to receive medical, surgical, and hospital services from a physician who is not a member of the plan if such attending physician has been selected by the employee pursuant to paragraph 1 of subsection C of Section 14 of Title 85 of the Oklahoma Statutes; and allows a physician selected by the employee pursuant to paragraph 1 of subsection C of Section 14 of Title 85 of the Oklahoma Statutes to refer the employee to a physician outside the plan only if the physician to whom the employee is referred agrees to comply with all the rules, terms, and conditions of the plan,
- j. does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and hospital services to give participants access to all categories of providers and does not discriminate against ethnic minority providers of medical services, and
- k. complies with any other requirement the Commissioner determines is necessary to provide quality medical services and health care to injured employees.

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

C. An employee shall exhaust the dispute resolution procedure of the certified workplace medical plan before seeking legal relief on an issue related to medical care under the plan, provided the dispute resolution procedure shall create a process which shall attempt to resolve the dispute within ten (10) days of the time the dispute arises and if not resolved within ten (10) days, the employee may pursue remedies in the Workers' Compensation Court.

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

E. The Commissioner shall adopt such rules as may be necessary to implement the provisions of Section 24 of this act and this section. Such rules shall authorize any person to petition the Commissioner of Health for decertification of a certified workplace medical plan for material violation of any rules promulgated pursuant to this section.

SECTION 26. AMENDATORY 85 O.S. 1991, Section 16, as last amended by Section 9, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, 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, 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 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~~ may, 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. 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. 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.

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

Section 17. A. The determination of disability shall be the responsibility of the Court. Any claim submitted by an employee for

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

When the medical testimony to be introduced on behalf of the employee and employer is divergent by more than twenty-five percent (25%) as to the extent of permanent impairment of the employee or when there is any disagreement in the evidence as to the medical cause of the medical permanent impairment, or if the employee has no lost time from employment, any party may challenge such testimony by giving written notice to all other parties and to the Administrator. The written notice shall be given prior to or during any prehearing conference. Upon receipt of such notice, the challenging party and the party challenged shall select a third physician who shall be afforded a reasonable opportunity to examine the employee together with all medical records involved and any other medical data or evidence that he may consider to be relevant. The third physician shall issue a verified written report on a form provided by the Administrator to the Court stating his finding of the percentage of permanent impairment of the employee and whether or not the impairment is job-related and caused by the accidental injury or occupational disease.

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

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

C. D. 1. The Court shall develop and implement an independent medical examiner system by no later than July 1, 1995. The Court shall create, maintain and review a list of licensed physicians who shall serve as independent medical examiners from a list of licensed physicians who have completed such course study as the Administrator of the Workers' Compensation Court may require to establish familiarity with the American Medical Association's "Guides to the Evaluation of Permanent Impairment", or alternative method or system of evaluating permanent impairment, for the category of injury established by the Administrator for which such physician desires to be an independent medical examiner. The Court shall, to the best of its ability, include the most experienced and competent physicians in the specific fields of expertise utilized most often in the treatment of injured employees. Notwithstanding the provisions of this paragraph, physicians serving as third physicians before the effective date of this act shall be considered to have met the requirements of this paragraph.

2. The independent medical examiner in a case involving permanent disability may not be a treating physician of the employee and may not have treated the employee with respect to the injury for which the claim is being made or the benefits are being paid. Nothing in this subsection precludes the selection of a health care provider authorized to receive reimbursement under Section 14 of this title to serve in the capacity of an independent medical examiner.

3. At any time during the pendency of the action but not less than thirty (30) days before a hearing, any party to the action may request the appointment of an independent medical examiner from the list of independent medical examiners. An independent medical examiner may be appointed less than thirty (30) days before a hearing if mutually acceptable to the parties. If the parties are unable to agree on the independent medical examiner, the Court shall make the appointment. An independent medical examiner also may be appointed by the Court on its own motion. The appointment or selection of the independent medical examiner shall be made when requested by the parties even in the absence of any medical testimony supporting or contesting an issue.

4. The Court shall, to the best of its ability, maintain a geographic balance of independent medical examiners.

5. The parties are responsible for the expeditious transmittal of the employee's medical records, prior Court orders involving the employee, and other pertinent information to the independent medical examiner. The independent medical examiner may examine the employee as often as the independent medical examiner determines necessary.

6. The independent medical examiner shall submit a verified written report to the Court as provided in subsection A of this section and shall provide a copy of the report to the parties. If the independent medical examiner undertakes active treatment of the employee, the independent medical examiner shall provide the Court and parties with progress reports, not less often than every thirty (30) days. The independent medical examiner's report shall include a determination of whether or not the employee is capable of returning to light duty work, and what restrictions, if any, shall be followed by the employer in order to permit the employee to return to work.

7. If the independent medical examiner determines that the employee is capable of returning to work and the claimant elects not to do so, temporary total disability and medical benefits shall cease, unless otherwise ordered by the Court.

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

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

10. The Court shall promulgate rules necessary to effectuate the purposes of this subsection.

E. Until the implementation of the independent medical examiner system in subsection D of this section, third physicians shall be selected or appointed as provided in subsections A and B of this section. Upon implementation of the independent medical examiner system, independent medical examiners shall be selected or appointed as provided in subsection D of this section.

F. The parties may stipulate to the appointment of a third physician or, upon implementation of the independent medical examiner system in subsection D of this section, an independent medical examiner, even in the absence of divergent medical testimony.

~~D. G.~~ The impairment rating determined by the third physician or, upon implementation of the independent medical examiner system in subsection D of this section, the independent medical examiner, may be followed by the Court. If the Court deviates from the ~~third physician's~~ impairment rating ~~by more than ten percent (10%),~~ the Court shall specifically identify by written findings of fact the basis for such deviation in its order.

SECTION 28. AMENDATORY 85 O.S. 1991, Section 22, as last amended by Section 10, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, Section 22), is amended to read as follows:

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

1. Permanent Total Disability. In case of total disability adjudged to be permanent, seventy percent (70%) of the employee's average weekly wages shall be paid to the employee during the continuance of such total disability.

2. Temporary Total Disability. ~~In~~ (a) With respect to injuries occurring before the effective date of this act, 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.

(b) With respect to injuries occurring on or after the effective date of this act, 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 fifty-two (52) weeks, except as otherwise provided in the Workers' Compensation Act. Provided, after compensation has been paid for a period of forty-two (42) 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 fifty-two-week period, compensation may be continued for additional successive fifty-two-week periods, provided the employee has requested review of the case at forty-two (42) weeks during each period involved, and upon a finding by the Court that benefits should be extended. Total payments of compensation for temporary total disability may not exceed a maximum of three hundred (300) weeks in the aggregate.

3. Permanent Partial Disability. (a) With respect to injuries occurring prior to the effective date of this act, in case of disability, partial in character but permanent in quality, the compensation shall be seventy percent (70%) of the employee's average weekly wages, and shall be paid to the employee for the period named in the schedule, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

Eye: For the loss of an eye, two hundred (200) weeks.

Deafness: Deafness from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, three hundred (300) weeks, and total deafness of one ear from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, one hundred (100) weeks. Any Except as otherwise provided herein, 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. The Physician Advisory Committee may, pursuant to Section 201.1 of this title, recommend the adoption of a method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment". Such recommendation shall be made to the Administrator of the Workers' Compensation Court who may adopt the recommendation in part or in whole. The adopted method or system shall be submitted by the Administrator to the Speaker of the House of Representatives and President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Such method or system shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the adopted method or system to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves it in part. If adopted, permanent impairment shall be evaluated only in accordance with the latest version of the alternative method or system in effect at the time of 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, and before January 1, 1995, shall be operative one hundred twenty (120) days after the last day of the month of publication. Revisions to the guides made by the American Medical Association which are published after December 31, 1994, may be adopted in whole or in part by the Administrator following recommendation by the Physician Advisory Committee. Revisions adopted by the Administrator shall be submitted by the Administrator to the Speaker of the House of Representatives and President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such revisions shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Revisions shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the revisions to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves them in part. The examining physician shall not follow the guides based on race or ethnic origin. The examining physician shall not deviate from said guides or any alternative thereof except as may be specifically provided for in the guides or modifications to the guides or except as may be specifically provided for in any alternative or modifications thereto adopted by the Administrator of the Workers' Compensation Court as provided for in Section ~~18~~ 201.1 of this act title. The guides or modifications thereto or alternative system or method of evaluating permanent impairment 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~~ (a) With respect to injuries occurring before the effective date of this act, 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.

(b) With respect to injuries occurring on or after the effective date of this act, 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 fifty-two (52) weeks. Provided, after

compensation has been paid for a period of forty-two (42) 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 fifty-two-week period, compensation may be continued for additional successive fifty-two-week periods provided the employee has requested review of the case at forty-two (42) weeks during each period involved, and upon a finding by the Court that benefits should be extended. Total payments of compensation for temporary partial disability may not exceed a maximum of three hundred (300) weeks in the aggregate.

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, the sum of ninety percent (90%) of the state's average weekly wage beginning January 1, 1995, for injuries occurring after December 31, 1994, and the sum of one hundred percent (100%) of the state's average weekly wage beginning January 1, 1996, for injuries occurring after December 31, 1995, 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, to ninety percent (90%) of the state's average weekly wage beginning January 1, 1995, for injuries occurring after December 31, 1994, and to one hundred percent (100%) of the state's average weekly wage beginning January 1, 1996, for injuries occurring after December 31, 1995, 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. The sum of all permanent partial disability awards, including awards against the Special Indemnity Fund, shall not exceed one hundred percent (100%) permanent partial disability for any individual. An individual may not receive more than five hundred twenty (520) weeks' compensation for permanent partial disability, but may receive other benefits under the Workers' Compensation Act if otherwise eligible as provided in the Workers' Compensation Act.

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

(a) Benefit amounts for particular classes of dependents.

(1) If there is a surviving spouse, to such surviving spouse fifty percent (50%) of the average weekly wages the deceased was earning. In no event shall this spousal income benefit be diminished.

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

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

(4) To the children, if there is no surviving spouse, thirty-five percent (35%) of the average weekly wages the deceased

was earning for one child, and fifteen percent (15%) of such wage for each additional child, divided among all children, to share and share alike, subject to the provisions of subparagraphs (c) and (d) of this paragraph.

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

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

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

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

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

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

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

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

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

9. Where some pecuniary loss may be shown by heirs-at-law of the deceased, as defined by the descent and distribution statutes of Oklahoma, who are otherwise not entitled to receive benefits under other provisions of this section, such heirs-at-law shall receive compensation for their pecuniary loss not to exceed an aggregate of Five Thousand Dollars (\$5,000.00).

10. In the event that no benefits under other provisions of this section are paid to the dependents or the heirs-at-law of the deceased, an amount not to exceed Five Thousand Dollars (\$5,000.00) shall be paid for funeral expenses.

11. (a) ~~If~~ For deaths occurring before January 1, 1995, 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. For deaths occurring after December 31, 1994, 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 Twenty Thousand Dollars (\$20,000.00) to the spouse and Five Thousand Dollars (\$5,000.00) to each surviving child not to exceed two children.

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

(c) Any claim under this paragraph shall be substantiated by the filing of a properly executed and authenticated proof of loss, which form shall be prescribed by the Administrator, and payment of such sum shall be made within fifteen (15) days after adjudication of entitlement by the Court. Such sum shall not be subject to any award of attorney fees in uncontested cases, except the Court shall

appoint a guardian ad litem to represent known and unknown minor children and said guardian ad litem shall be paid a reasonable fee for his services.

Provided, that all judgments rendered awarding lump-sum death benefits, except lump-sum attorney fee awards, may, at the discretion of the Court, provide that said benefits be paid in trust to an interest-bearing account in a federally insured banking institution in the county wherein the judgment was rendered. The banking institution may make appropriate charges to the beneficiary for costs of trust management. These charges shall be fixed by agreement of such institution and the judge rendering the judgment. The judgment awarding lump-sum death benefits shall contain instructions for regularly scheduled disbursements to be fixed by the Court which may be modified by the Court upon a proper showing of change of circumstance. The banking institution shall issue a numbered receipt to the person paying the benefits into trust and deliver a copy of the receipt to the Administrator. Each banking institution receiving trust funds for deposit shall receive a schedule of disbursements and shall monthly pay said disbursements to the beneficiary as ordered by the Court. An annual accounting of all such trust funds received and deposited shall be rendered by each banking institution to the Court granting the judgment.

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

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 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24.3 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. After notice of an injury, any insured employer may, at its own option, commence payment of temporary total disability benefits to the injured employee. Such payments shall be in the amount provided by the Workers' Compensation Act for temporary total disability benefits and shall not exceed four (4) weeks in duration. Any employer electing to make such advance temporary total disability benefit payments shall immediately notify its insurance carrier in writing of the date of commencement and the amount of such payments. Such notice shall include an authorization signed by the injured employee, or if the injured employee is incapacitated, the person receiving payments, and shall authorize the insurance carrier to reimburse the employer for such payments.

B. No advance payments of temporary total disability benefits under this section shall be made to any person who is excluded from the definition of "employee" as provided by paragraph 4 of Section 3 of Title 85 of the Oklahoma Statutes, whether or not such person has elected coverage under the employer's policy of insurance.

C. Within thirty (30) days of the last advance payment of temporary total disability benefits, the insurance carrier shall reimburse the employer for all payments so made and shall charge such payments to the employer's loss experience in the same manner as other indemnity payments provided by the Workers' Compensation Act.

D. Payments made under this section shall not constitute admission by the employer or insurance carrier as to liability, compensation rate or any other material fact.

SECTION 30. AMENDATORY 85 O.S. 1991, Section 26, is amended to read as follows:

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

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

6. The judicial district of the county where the injured employee wants the claim docketed.

B. Any time after the expiration of the first ~~seven (7)~~ three (3) days of disability on the part of the injured employee, a claim for compensation may be presented to the Administrator. If the employer and the injured employee shall reach a final agreement as to the facts with relation to an injury, and the resulting disability for which compensation is claimed under the Workers' Compensation Act, a memorandum of such agreement, in form as prescribed by the Administrator, signed by both the employer and employee, and approved by the Court shall be filed by the employer with the Administrator. In the absence of fraud this agreement shall be deemed binding upon the parties thereto. Such agreement shall be approved by the Court only when the terms conform to the provisions of the Workers' Compensation Act. The Court shall have

full power and authority to determine all questions in relation to payment of claims for compensation under the provisions of the Workers' Compensation Act. The Court shall make, or cause to be made, such investigation as it deems necessary, and upon application of either party shall order a hearing, and as soon as practicable, after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny an award determining such claim for compensation, and file the same in the office of the Administrator, together with the statement of its conclusion of fact and rulings of law. Upon a hearing pursuant to this section either party may present evidence and be represented by counsel. The decision of the Court shall be final as to all questions of fact, and except as provided in Section 3.6 of this title, as to all questions of law.

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

SECTION 31. AMENDATORY 85 O.S. 1991, Section 30, as amended by Section 8, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1994, Section 30), is amended to read as follows:

Section 30. If the Court before which any proceedings for compensation or concerning an award of compensation have been brought, under the Workers' Compensation Act, determines that such proceedings have not been brought on a reasonable ground, or that denial of benefits has not been based on a reasonable ground, the Court shall assess the total cost of the proceedings on the party, who has brought them or the party who has unreasonably denied payment of benefits. Claims for services or treatment rendered or supplies furnished pursuant to Section 14 of this title shall not be enforceable unless approved by the Court. If approved, such claim shall become a lien upon the compensation awarded, but shall be paid therefrom only in the manner fixed by the Court. A claim for legal services shall be determined by the Court on a quantum meruit basis; provided, that such claim shall not exceed ten percent (10%) of the amount of the award for temporary disability and shall not exceed twenty percent (20%) of the amount of the award for permanent disability or death benefits. Claims for legal services for temporary disability awards shall be paid periodically. Claims for legal fees for permanent total disability awards shall be paid periodically at the rate of twenty percent (20%) of each weekly check to the claimant until the attorney fee is satisfied, based upon a maximum of four hundred (400) weeks of compensation. The right to any such attorney fee shall be vested at the time the award therefor becomes final. Claims for legal services for permanent partial disability awards may be paid in a lump sum the same to be deducted from the end of the award. Claims for legal services for death awards may be paid in a lump sum which shall be deducted from the periodic compensation payments at a rate of ten percent (10%) per payment until the attorney fee is satisfied.

SECTION 32. AMENDATORY 85 O.S. 1991, Section 42, is amended to read as follows:

Section 42. A. If payment of compensation or an installment payment of compensation due under the terms of an award, except in

the case of appeals from an appeal of an award or an award from the Special Indemnity Fund, is not made within ten (10) days after the same is due by the employer or insurance carrier liable therefor, the Court may order a certified copy of the award to be filed in the office of the court clerk and the county clerk of any county, which award whether accumulative or lump sum shall be entered on the judgment docket of the district court, and shall have the same force and be subject to the same law as judgments of the district court. Any compensation awarded and all payments thereof directed to be made by order of the Court, except in the case of an appeal of an award or an award of compensation from the Special Indemnity Fund, shall bear interest at the rate of eighteen percent (18%) per year from the date ordered paid by the Court until the date of satisfaction. Compensation ordered to be paid from the Special Indemnity Fund shall bear interest at the rate of interest applicable to judgments in civil cases pursuant to Section 727 of Title 12 of the Oklahoma Statutes from the date of the award. Any award from the Special Indemnity Fund prior to the effective date of this act shall bear interest at the rate of interest applicable to judgments in civil cases pursuant to Section 727 of Title 12 of the Oklahoma Statutes from the effective date of this act. Upon the filing of the certified copy of the Court's award a writ of execution shall issue and process shall be executed and the cost thereof taxed, as in the case of writs of execution, on judgments of courts of record, as provided by Title 12 of the Oklahoma Statutes. ~~Provided;~~ provided, however, the provisions of this section relating to execution and process for the enforcement of awards shall be and are cumulative to other provisions now existing or which may hereafter be adopted relating to liens or enforcement of awards or claims for compensation.

B. If any insurance carrier intentionally, knowingly, or willfully violates any of the provisions of the Workers' Compensation Act or any published rules or regulations promulgated thereunder, the Insurance Commissioner, on the request of a Judge of the Court or the Administrator, shall suspend or revoke the license or authority of such insurance carrier to do a compensation business in this state.

SECTION 33. AMENDATORY 85 O.S. 1991, Section 43, is amended to read as follows:

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

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

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

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

SECTION 34. AMENDATORY 85 O.S. 1991, Section 45, is amended to read as follows:

Section 45. A. No benefits, saving or insurance of the injured employee, independent of the provisions of this act shall be considered in determining the compensation or benefit to be paid under this act.

B. No employee may receive temporary total disability benefits covering the same period of time as unemployment compensation benefits received by the employee as provided by the Oklahoma Employment Security Commission.

SECTION 35. AMENDATORY 85 O.S. 1991, Section 84, is amended to read as follows:

Section 84. A. The power and jurisdiction of the Court over each case shall be continuing and it may, from time to time, make such modifications or changes with respect to former findings or orders relating thereto if, in its opinion, it may be justified, including the right to require physical examinations as provided for in Section 25 of this title, and subject to the same penalties for refusal; provided, that upon petition filed by the employer or insurance carrier, and the injured employee, or other person entitled to compensation under the Workers' Compensation Act, the Court shall have jurisdiction to consider the proposition of whether or not a final settlement may be had between the parties presenting such petition. The Court is authorized and empowered to have a full hearing on the petition, and to take testimony of physicians and others relating to the permanency or probable permanency of the injury, and to take such other testimony relevant to the subject matter of such petition as the Court may require. The Court shall have authority to consider such petition and to dismiss the same

without a hearing if in its judgment the same shall not be set for a hearing; the expenses of such hearing or investigation, including necessary medical examinations, shall be paid by the employer or insurance carrier, and such expenses may be included in the final award. If the Court decides it is for the best interest of both parties to said petition that a final award be made, a decision shall be rendered accordingly and the Court may make an award that shall be final as to the rights of all parties to said petition and thereafter the Court shall have no jurisdiction over any claim for the injury or any results arising from same. If the Court shall decide the case should not be finally settled at the time of the hearing, the petition shall be dismissed without prejudice to either party, and the Court shall have the same jurisdiction over the matter as if said petition had not been filed. The same rights of appeal shall exist from the decision rendered under such petition as if provided for appeals in other cases before the Court; provided there shall be no appeal allowed from an order of the Court dismissing such petition as provided in this section.

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

SECTION 36. AMENDATORY 85 O.S. 1991, Section 93, as amended by Section 34, Chapter 335, O.S.L. 1992 (85 O.S. Supp. 1994, Section 93), is amended to read as follows:

Section 93. A. The following fee shall be collected by the Administrator and taxed as costs to be paid by the party against whom any award becomes final:

~~A fee of Fifty Dollars (\$50.00)~~ Seventy-five Dollars (\$75.00) per case shall be collected by the Administrator and such fee shall be taxed as cost to be paid by the party against whom any award becomes final. to be deposited as follows:

~~B. 1. Twenty-five Dollars (\$25.00) of the fees collected under the provisions of subsection A shall be deposited to the credit of the Workers' Compensation Administration Fund created by Section 177 of this title;~~

~~C. 2. Fifteen Dollars (\$15.00) of the fees collected pursuant to the provisions of subsection A of this section shall be deposited to the credit of the Administrator of the Workers' Compensation Revolving Fund created by Section 95 of Title 85.~~ this title;

~~D. 3. Ten Dollars (\$10.00) of the fees collected pursuant to the provisions of subsection A of this section shall be deposited to the credit of the Office of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund created by Section 41.8 of Title 62~~ 19.2 of Title 74 of the Oklahoma Statutes; and

4. Twenty-five Dollars (\$25.00) to the Workers' Compensation Administration Fund for purposes of implementing the provisions of this act, including strengthening and providing additional funding for the Attorney General's Workers' Compensation Fraud Unit, providing counseling services pursuant to the workers' compensation counselor program and safety in the workplace.

B. A fee of Seventy-five Dollars (\$75.00) per action to reopen any case pursuant to Section 28 of this title shall be collected by the Administrator and taxed as costs to be paid by the party that

reopens the case. The fee collected pursuant to this subsection shall be deposited to the credit of the Workers' Compensation Administration Fund for purposes of implementing the provisions of this act, including strengthening and providing additional funding for the Attorney General's Workers' Compensation Fraud Unit, providing counseling services pursuant to the workers' compensation counselor program and safety in the workplace.

SECTION 37. AMENDATORY 85 O.S. 1991, Section 112, is amended to read as follows:

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

B. The voting membership of the Advisory Council shall consist of nine (9) members. The Administrator and Presiding Judge of the Court shall be ex officio non-voting members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. In addition to other duties required by this section, the Advisory Council shall consult with the Workers' Compensation Court regarding oversight of independent medical examiners as provided in Section 17 of this title.

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 113 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created to continue until January 1, 1997, the Advisory Committee on Workers' Compensation. The Advisory Committee shall review this act and previous legislation and the impact of such legislation upon the workers' compensation system, study workers' compensation issues and monitor the implementation and evaluation of this act and previous legislation.

B. The Administrator of the Workers' Compensation Court, or a designee, shall appear before the Advisory Committee and provide requested information relating to, but not limited to, the areas of workplace safety, independent medical examiners, managed health care plans, and fraud and abuse in the workers' compensation system. The Administrator may solicit information from the State Insurance Fund, the State Insurance Commission, the State Department of Labor, and the Office of Attorney General, as well as other state and national resources, and shall provide a quarterly, written report to the members of the Advisory Committee describing the effect of this act on the workers' compensation system.

C. The Advisory Committee shall provide information to the Judiciary Committees of the Senate and the House of Representatives regarding workers' compensation, and at the call of the Chair of either the Senate Judiciary Committee or the House Judiciary Committee or both, the members of the Advisory Committee shall meet with either or both committees.

D. The Advisory Committee shall be composed of fifteen (15) members. The President Pro Tempore of the Senate shall appoint five members of the Senate, the Speaker of the House of Representatives shall appoint five members of the House of Representatives, and the Governor shall appoint five members who shall be representatives of labor and business organizations of this state. All members shall serve at the pleasure of their appointing authority. The Commissioner of the State Insurance Fund, the State Commissioner of Insurance, a representative of the Attorney General's Workers' Compensation Fraud Unit designated by the Attorney General, and the State Commissioner of Labor shall be ex officio nonvoting members. The chairperson of the Advisory Committee shall be chosen by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Governor jointly and shall be one of the fifteen members. The vice-chairperson shall be elected by the members of the Advisory Committee.

E. Members of the Advisory Committee shall receive no compensation for serving on the Advisory Committee, but shall receive travel reimbursement as follows:

1. Legislative members of the Advisory Committee 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 Advisory Committee shall be reimbursed by their respective appointing authority 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.

F. The Advisory Committee shall meet twice each year. The Advisory Committee shall prepare a report by January 1, 1997, which details the results of this act and previously enacted legislation. The report shall include an analysis of changes resulting from this act and previously enacted legislation including, but not limited to, areas such as implementation of workplace safety programs, costs and savings due to the use of independent medical examiners and managed health care plans, and prosecution of fraud and abuse within the workers' compensation system. Also, the report shall include a standardized base of comparison of costs and benefits of the workers' compensation system with other states regionally and nationally.

SECTION 39. AMENDATORY 85 O.S. 1991, Section 131, is amended to read as follows:

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

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

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

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

(d) The State Insurance Fund shall report to the Insurance Commissioner no later than the last day of February of each year the amount of premium taxes and fees for which it would be liable if it were operating as a private carrier.

SECTION 40. AMENDATORY 85 O.S. 1991, Section 134, is amended to read as follows:

Section 134. A. In conducting the business and affairs of the State Insurance Fund, the Commissioner of the said fund, or other

officer to whom such power and authority may be delegated by the Commissioner, as provided by ~~subsection 5, of Section 3, thereof~~ Section 133 of this title, shall have full power and authority:

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

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

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

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

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

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

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

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

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

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

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

D. No later than September 1 of each year, the State Insurance Fund shall obtain an independent actuarial certification of the results of its operations for prior years.

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

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

SECTION 41. AMENDATORY 85 O.S. 1991, Section 135, is amended to read as follows:

Section 135. A. All receipts of money, with the exception of investment income, shall be deposited in the State Insurance Fund fund in the State Treasury. The Commissioner, subject to the direction of the Board of Managers, shall have the responsibility

for the management of the State Insurance Fund fund, and may transfer monies used for investment purposes from the State Insurance Fund fund in the State Treasury to the custodian bank or trust company of the State Insurance Fund.

B. 1. All benefits payable pursuant to the provisions of the bylaws of the State Insurance Fund, and refunds of premiums and overpayments, shall be paid from the State Insurance Fund upon warrants or vouchers signed by two persons designated by the Commissioner.

2. Every check, draft, warrant, or other instrument drawn for the payment of temporary total disability benefits by the State Insurance Fund shall contain on its face in a contrasting color of ink the following:

WARNING: It is a felony to knowingly receive money under false pretenses by accepting temporary total disability benefits while working at the same or a similar job. If you are employed or receiving wages, you should consult the State Insurance Fund or if you are represented by an attorney you should consult your attorney BEFORE presenting this instrument to any other person for payment.

3. The Commissioner may transfer monies from the custodian bank or trust company of the State Insurance Fund to the State Insurance Fund fund in the State Treasury for the purposes specified in this subsection.

SECTION 42. AMENDATORY 85 O.S. 1991, Section 172, as amended by Section 11, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1994, Section 172), is amended to read as follows:

Section 172. A. If an employee who is a "physically impaired person" receives an accidental personal injury compensable under the Workers' Compensation Act which results in additional permanent disability so that the degree of disability caused by the combination of both disabilities is materially greater than that which would have resulted from the subsequent injury alone, the employee shall receive compensation on the basis of such combined disabilities. Only disability due to an injury to the body as a whole shall be combinable with a prior body disability, except that disability to a major member may be combined with disability to the body as a whole. If such combined disabilities constitute partial permanent disability as now defined by the Workers' Compensation Act of this state, then such employee shall receive full compensation as now provided by law for the disability resulting directly and specifically from such subsequent injury, and in addition thereto such employee shall receive full compensation for his combined disability as above defined, after deducting therefrom the percent of that disability that constituted the employee a "physically impaired person", as defined herein, all of which shall be computed upon the schedule and provision of the Workers' Compensation Act of this state. Provided the employer shall be liable only for the degree of percent of disability which would have resulted from the latter injury if there had been no preexisting impairment. After payments by the employer or his insurance carrier, if any, have ceased, the remainder of such compensation shall be paid out of the Special Indemnity Fund provided for in Section 173 of this title, in periodic installments.

B. If such combined disabilities constitute permanent total disability, as now defined by the Workers' Compensation Act, then the employee shall receive full compensation as now provided by law for the disability resulting directly and specifically from such subsequent injury. In addition, the employee shall receive full compensation for his combined disability, as above defined, all of

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

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

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

E. All weekly payments for permanent partial disability shall be paid before any claim for benefits against the Special Indemnity Fund may be paid. In the case of a lump-sum permanent partial disability award or settlement, such award or settlement shall be divided by seventy percent (70%) of the employee's weekly wage up to a maximum of fifty percent (50%) of the state's average weekly wage, to determine the number of weeks which must elapse before a claim against the Special Indemnity Fund may be paid.

SECTION 43. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 182 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the "Joint Committee on the Special Indemnity Fund". The Committee shall conduct a study of the Special Indemnity Fund which shall include, but not be limited to:

1. A determination of the impact that dissolution of the Special Indemnity Fund would have on businesses located in this state;

2. A determination of the unfunded liability of the Special Indemnity Fund;

3. A determination of the impact of the federal Americans with Disabilities Act upon the Special Indemnity Fund; and

4. An analysis of factors and conditions associated with the growth of the workers' compensation system and its impact on the Special Indemnity Fund.

The Committee shall file a report of its findings by January 1, 1996, with the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

B. The Committee shall consist of ten (10) members, five of whom shall be members of the House of Representatives appointed by the Speaker of the House of Representatives and five of whom shall be members of the Senate appointed by the President Pro Tempore of the Senate. The Speaker of the House of Representatives shall designate a co-chairman of the Committee from among the House members appointed to the Committee. The President Pro Tempore shall designate a co-chairman of the Committee from among the Senate members appointed to the Committee. All members shall serve at the pleasure of their respective appointing authority.

C. Members of the Committee shall receive no compensation for serving on the Committee, but 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.

D. Staff for the Committee shall be provided by the House of Representatives and Senate from their existing staff.

SECTION 44. AMENDATORY 85 O.S. 1991, Section 201, as last amended by Section 17, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, Section 201), is amended to read as follows:

Section 201. A. A health care provider who knowingly charges more for treatment under 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 subject to penalties prescribed in this section.

B. The Administrator shall adopt rules 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~~ and evaluations of permanent impairment by 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 when evaluating permanent impairment, or overcharging, the Administrator shall impose administrative penalties for abusive practices and may waive payment for medical services or evaluations of permanent impairment 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~~ 201.1 of this ~~act~~ title. 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 45. AMENDATORY Section 18, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, Section 201.1), is amended to read as follows:

Section 201.1 A. 1. There is hereby created a Physician Advisory Committee comprised of ~~seven (7)~~ nine (9) members to be appointed as follows:

- ~~1.—The~~ a. 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~~ b. the President Pro Tempore of the Senate shall appoint ~~two~~ three members, one of whom shall be licensed in this state as a doctor of medicine and surgery, one of whom shall be licensed in this state either as a doctor of medicine or a doctor of osteopathy, and one of whom shall be licensed in this state as a podiatric physician~~†~~.
- ~~3.—The~~ c. the Speaker of the House of Representatives shall appoint ~~two~~ three members, one of whom shall be licensed in this state as an osteopathic physician, one of whom shall be licensed in this state either as a doctor of medicine or a doctor of osteopathy, and one of whom shall be licensed in this state as a chiropractic physician.

2. a. To fill the positions for which the term of office expires on January 1, 1996, the Governor shall appoint a resident of the Fifth Congressional District, the President Pro Tempore of the Senate shall appoint a resident of the First Congressional District and the Speaker of the House of Representatives shall appoint a resident of the Second Congressional District.

- b. To fill the positions for which the term of office expires on January 1, 1997, the Governor shall appoint a resident of the Sixth Congressional District, the President Pro Tempore of the Senate shall appoint a resident of the Third Congressional District and the Speaker of the House of Representatives shall appoint a resident of the Fourth Congressional District.

- c. To fill the positions for which the term of office expires on January 1, 1998, the Governor, the President Pro Tempore of the Senate and the Speaker of

the House of Representatives shall appoint residents of the state at large.

d. Thereafter, appointments shall be made from the same Congressional District as the original appointment was made pursuant to this paragraph.

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, including evaluations of permanent impairment provided by health care providers, as provided for in Section 201 of ~~Title 85 of the Oklahoma Statutes~~ this title. 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 or evaluations of permanent impairment 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~~ this title;

4. After public hearing, review and make recommendations for an alternative method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment". Appropriate and scientific data shall be considered. The alternative method or system to evaluate permanent impairment 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 this title. Revisions, deviations and alternatives to the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall become effective as provided in paragraph 11 of Section 3 and Section 22 of this title;

5. After public hearing, review and make recommendations for treatment guidelines. ~~Those recommendations may be adopted, in part or in whole,~~ and protocols and utilization controls for adoption by the Administrator no later than January 1, 1996. Such treatment guidelines and protocols and utilization controls may be adopted incrementally in the descending order of utilization frequency;

~~5.~~ 6. Provide general recommendations to the judges of the Workers' Compensation Court on the issues of injury causation and apportionment;

~~6.~~ 7. Conduct educational seminars for the judges of the Workers' Compensation Court, employers, employees, and other interested parties; ~~and~~

~~7.~~ 8. Assist the judges of the Workers' Compensation Court in accessing medical information from scientific literature; and

9. Report its progress annually to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

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.~~ as follows:

1. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives, shall expire on January 1, 1996;

2. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives, shall expire on January 1, 1997;

3. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives, shall expire on January 1, 1998;

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

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

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

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

G. Upon written request, the State Insurance Commissioner, the State Insurance Fund, and every approved self-insured employer in Oklahoma shall provide the Committee with data necessary to the performance of its duties.

SECTION 46. AMENDATORY Section 34, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, Section 211), is amended to read as follows:

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

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

C. In carrying out the responsibilities given to the Workers' Compensation Fraud Unit, the Attorney General or designee ~~shall have the power to issue or cause to be issued~~ may use 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. Subpoenas ad testificandum or duces tecum requested by the Attorney General or designee pursuant to subsection C of this section shall be issued by the district court in the county of the residence of the person to whom the subpoena is directed, in the county where the records are located or in the county where a person is to produce records or appear and be sworn. Subpoenas issued pursuant to this section may be served by the Attorney General, any peace officer or any competent person over eighteen (18) years of age, and may require attendance or production at any place in this state. Service may be made by mail and may be accomplished by mailing a copy thereof by certified mail with return receipt requested and delivery restricted to the person named in the subpoena. Proof of service shall be made upon affidavit, and if made by mail, a copy of the return receipt shall be attached. A refusal to obey such subpoena, or willful failure to appear, be sworn, testify or produce records at the place and time specified shall constitute contempt and shall be enforced by the district court of the county where issued.

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

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

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

SECTION 47. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 591 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Agent" means any person who acts for another at the request or with the knowledge of the other in dealing with third persons; and

2. "Runner", "capper", and "steerer" mean any person acting within this state for compensation as an agent for an attorney in the solicitation of employment for the attorney.

B. No attorney shall, by means of an agent, runner, capper, steerer, or other person who is not an attorney, solicit or procure a person to employ the attorney to present, compromise, or settle a claim under the workers' compensation laws of this state.

C. No attorney shall, directly or indirectly, pay or promise to pay any person, other than another attorney, any money, service, fee, commission, or other thing of value in consideration for the employment of the attorney to present, compromise, or settle a claim under the workers' compensation laws of this state.

D. No person shall act or agree to act as an agent, runner, capper, or steerer for an attorney.

E. Subsections B and C of this section shall not prohibit participation by an attorney in a voluntary attorney referral program including, but not limited to, referral programs operated by an association of attorneys. This subsection shall not authorize a referral program which is otherwise unauthorized under the Rules of Professional Conduct adopted by the Supreme Court.

F. Any contract for employment of an attorney secured in violation of this section shall be void and unenforceable and no attorney shall appear or otherwise provide services in an action in violation of this section.

G. Any person who violates the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of up to Two Thousand Five Hundred Dollars (\$2,500.00) for each offense, which shall not be subject to Section 101 of Title 85 of the Oklahoma Statutes. Penalties imposed pursuant to this section shall be in addition to any penalties which might be imposed by the Oklahoma Bar Association or similar organization of another state or by a court when punishing for contempt or when imposing sanctions against an attorney or party.

SECTION 48. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 592 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Agent" means any person who acts for another at the request or with the knowledge of the other in dealing with third persons;

2. "Medical care provider" means any person licensed in Oklahoma as a medical doctor, a chiropractor, a podiatrist, a dentist, an osteopathic physician or an optometrist or a hospital; and

3. "Runner", "capper", and "steerer" mean any person acting within this state for compensation as an agent for a medical care provider in the solicitation of a person to employ the medical care provider to provide medical services.

B. No medical care provider shall, by means of an agent, runner, capper, steerer, or other person who is not a medical care provider, solicit or procure a person to employ the medical care provider to provide medical services under the workers' compensation laws of this state.

C. No medical care provider shall, directly or indirectly, pay or promise to pay any person, other than another medical care provider, any money, service, fee, commission, or other thing of value in consideration for the employment of the medical care provider to provide medical services under the workers' compensation laws of this state.

D. No person shall act or agree to act as an agent, runner, capper, or steerer for a medical care provider.

E. Subsections B and C of this section shall not prohibit participation by a medical care provider in a voluntary medical care provider referral program including, but not limited to, referral programs operated by an association of medical care providers.

F. Any contract for employment of a medical care provider secured in violation of this section shall be void and unenforceable and no medical care provider shall provide medical services in violation of this section.

G. Any person who violates the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of up to Two Thousand Five Hundred Dollars (\$2,500.00) for each offense, which shall not be subject to Section 101 of Title 85 of

the Oklahoma Statutes. Penalties imposed pursuant to this section shall be in addition to any penalties which might be imposed by the professional licensing organization for the medical care provider or similar organization of another state or by a court when punishing for contempt or when imposing sanctions against a medical care provider or party.

SECTION 49. The provisions of Sections 1 through 46 of this act determined by a court of competent jurisdiction to be substantive and not procedural in nature shall be applicable only to injuries occurring on or after the effective date of this act.

SECTION 50. 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 amount of Eighty-six Thousand Nine Hundred Fifty-seven Dollars (\$86,957.00) or so much thereof as may be necessary to pay salaries and expenses for two (2) Full-time Equivalent Employees to perform the duties imposed upon the Physician Advisory Committee by law.

SECTION 51. 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 amount of Fourteen Thousand Four Hundred Forty-two Dollars (\$14,442.00) or so much thereof as may be necessary to pay the salary and expenses for one (1) Full-time Equivalent Employee to develop and implement the independent medical examiner system required by Section 17 of Title 85 of the Oklahoma Statutes.

SECTION 52. 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 amount of One Hundred One Thousand Five Hundred Eighty-nine Dollars (\$101,589.00) or so much thereof as may be necessary to pay salaries and expenses for three (3) Full-time Equivalent Employees to perform the duties imposed upon the Workers' Compensation Counselor Program by law.

SECTION 53. The duties, responsibilities and qualifications of any employees funded by Sections 50 through 52 of this act shall be developed in writing by the Administrator of the Workers' Compensation Court, and any employees hired shall meet such minimum qualifications.

SECTION 54. 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 amount of Twenty-five Thousand Dollars (\$25,000.00) or so much thereof as may be necessary to pay per diem and expenses of Senior Justices and Judges or Active Retired Judges under the provisions of Section 1104B of Title 20 of the Oklahoma Statutes who are assigned cases involving the Workers' Compensation Court.

SECTION 55. The appropriations made by this act shall be subject to fiscal year limitations and may be encumbered through June 30, 1995. Any unexpended funds remaining after November 15, 1995, shall lapse and be transferred to the credit of the proper fund for the then current fiscal year.

SECTION 56. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 4th day of November,
1994.

Speaker of the House of
Representatives

Passed the Senate the 4th day of November, 1994.

President of the Senate