

ENGROSSED HOUSE
BILL NO. 2430

By: Settle and Hilliard of
the House

and

Long (Lewis) of the
Senate

An Act relating to workers' compensation; amending 85 O.S. 1991, Sections 1.2, as last amended by Section 1, Chapter 349, O.S.L. 1993, 2.5, 3.4, as amended by Section 3, Chapter 349, O.S.L. 1993, 11, as amended by Section 6, Chapter 749, O.S.L. 1993, 14, as last amended by Section 23, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, 63.1, as amended by Section 1, Chapter 105, O.S.L. 1992, 149.1 and Section 8, Chapter 349, O.S.L. 1993, Section 24, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 and Section 33, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1995, Sections 1.2, 3.4, 11, 14, 14.1, 14.2, 22.1 and 63.1), which relate to the Workers' Compensation Act; providing for offices of the Workers' Compensation Court in Tulsa; specifying judges to be situated in Tulsa; modifying exemptions from the Workers' Compensation Act; requiring mediation prior to filing certain claims; providing for burden of proof for compensation claims; modifying injuries that are not subject to workers' compensation claims; modifying choice of physicians under workplace

medical plans; requiring report on status of pilot program; modifying number of physicians an employee may select under a certified workplace medical plan; modifying circumstances and information of report required of person receiving benefits; authorizing the Commissioner of Labor to waive civil penalty under certain circumstances; providing that certain group self-insurers shall not be subject to the Oklahoma Securities Act; amending 85 O.S. 1991, Section 174, which relates to the Special Indemnity Fund; modifying percentage of amount of certain compensation awards that goes to the Special Indemnity Fund; stating purpose and construction of amendment; repealing 85 O.S. 1991, Section 2.4, which relates to exemptions from the Workers' Compensation Act; providing for noncodification; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 1.2, as last amended by Section 1, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1995, Section 1.2), is amended to read as follows:

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

Position 1 shall expire 7-1-84.

Position 2 shall expire 7-1-84.

Position 3 shall expire 7-1-84.

Position 4 shall expire 7-1-82.

Position 5 shall expire 7-1-82.

Position 6 shall expire 7-1-80.

Position 7 shall expire 7-1-80.

Position 8 shall expire 7-1-88.

Position 9 shall expire 7-1-88.

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

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

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

B. A judge of the Court shall have been licensed to practice law in this state for a period of not less than five (5) years prior

to appointment. Each judge, before entering upon the duties of his office, shall take and subscribe to an oath of office and file the same with the Secretary of State. Each judge shall continue to serve until his successor shall have been appointed and qualified. A judge shall be eligible for reappointment, provided that he may be removed for cause by the Court on the Judiciary prior to the expiration of his term.

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

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

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

disapprove them within thirty (30) days. All rules, upon approval by the Supreme Court, shall be published and be made available to the public and, if not inconsistent with the law, shall be binding in the administration of the Workers' Compensation Act.

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

G. The ~~principal office~~ offices of the Court shall be situated in the City of Oklahoma City and in Tulsa in quarters assigned by the Department of Central Services. A minimum of two judges as selected by the presiding judge shall be situated in Tulsa. The Court may hold hearings in any city of this state.

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

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

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

SECTION 2. AMENDATORY 85 O.S. 1991, Section 2.5, is amended to read as follows:

Section 2.5 ~~The~~ Unless required by federal law or regulation, the Workers' Compensation Act shall not apply to any person who is ~~providing:~~

1. Providing services in a medical care or social services program, administered by the Department of Human Services;

2. An independent contractor licensed by the State Department of Rehabilitation Services; or who is a

3. A participant in a work or training program, administered by the Department of Human Services, unless the Department is required by federal law or regulations to provide workers' compensation for such person or the State Department of Rehabilitation Services.

This section shall not be construed to include nursing homes.

SECTION 3. AMENDATORY 85 O.S. 1991, Section 3.4, as amended by Section 3, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1995, Section 3.4), is amended to read as follows:

Section 3.4 A. Prior to commencing a claim for compensation or benefits with the exception of bona fide medical claims under the Workers' Compensation Act, the employee and employer must proceed through mediation. All claims for any compensation or benefits under the Workers' Compensation Act shall be commenced with the filing of a notice of injury with the Administrator. All claims filed for workers' compensation benefits shall contain a statement that all matters stated therein are true and accurate, and shall be signed by the claimant and ~~his~~ the claimant's agent, if any. Any person who signs this statement or causes another to sign this statement knowing the statement to be false shall be guilty of perjury. An individual who signs on behalf of a claimant may be presumed to have the authorization of the claimant and to be acting at ~~his~~ the claimant's direction. All answers and defenses to claims or other documents filed on behalf of a respondent or the respondent's insurer in a workers' compensation case shall contain a statement that all matters stated therein are true and accurate, and shall be signed by the respondent, the insurer, or their respective agents, if any. Any person who signs such a statement or causes another to sign such a statement, knowing the statement to be false, shall be guilty of perjury. An individual who signs on behalf of a respondent, its insurer, or its agent may be presumed to have the

authorization of the respondent, its insurer and agent to be acting at their direction. All matters pertaining to such claims shall be presented to the Administrator until such time as the Administrator is notified in writing by a party that there is a controverted issue that cannot be resolved by the parties or that the parties have received an agreed final order from the Court. The Administrator shall, within seven (7) days of the receipt of such notification, set the matter for hearing at the earliest available time to be heard by the Court in the appropriate judicial district as provided in Section 3.5 of this title. The Administrator shall assign a member of the Court to hear a docket in each judicial district of the state at least once each calendar month when there has been a request for a hearing in the judicial district. The Administrator shall assign Judges to the state judicial districts on a rotating basis for the purpose of holding prehearing conferences and hearing cases. At the request of either party, a prehearing conference shall be held before the member of the Court assigned to the case within forty-five (45) days of the filing of a claimant's request for a hearing. The purpose of the prehearing conference shall be to mediate and encourage settlement of the case or determine issues in dispute. The Court shall be vested with jurisdiction over all claims filed pursuant to the Workers' Compensation Act. ~~The Court shall determine the lawfulness of any claim for compensation under the Workers' Compensation Act based on the weight of evidence; provided, however,~~ burden of proof for any claim for compensation under the Workers' Compensation Act shall be on the employee. The burden of proof for accidental injuries arising out of and in the course of employment shall be a preponderance of the evidence. The burden of proof for any claim, and subsequent disability, that has as its source a physical condition resulting from incremental damage or injury or a gradual deterioration of physical health, which is caused by a condition arising out of and in the course of

employment, ~~must be proven by~~ shall be a preponderance of the evidence ~~presented to the Court.~~

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

SECTION 4. AMENDATORY 85 O.S. 1991, Section 11, as amended by Section 6, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1995, Section 11), is amended to read as follows:

Section 11. A. Every employer subject to the provisions of the Workers' Compensation Act shall pay, or provide as required by the Workers' Compensation Act, compensation according to the schedules of the Workers' Compensation Act for the disability or death of ~~his~~ an employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of ~~his~~ employment, without regard to fault as a cause of such injury, and in the event of disability only, except ~~where the injury is~~ as follows:

1. An injury occasioned by the willful intention of the injured employee to bring about injury to himself or ~~of~~ to another, ~~or where the injury;~~

2. An injury to any active participant in assaults or combats which, although they may occur in the workplace, are the result of nonemployment-related hostility of one, both, or all of the combatants, and which said assault or combat amounts to a deviation from customary duties shall not be compensable; further, except for innocent victims, injuries caused by horseplay shall not be considered to be compensable injuries;

3. An injury which results directly from the willful failure of the injured employee to use a guard or protection against accident

furnished for ~~his~~ the employee's use pursuant to any statute or by order of the Commissioner of Labor, ~~or~~ shall not be compensable; or

4. An injury which results directly from the ~~intoxication or drug or chemical abuse of~~ use or abuse of alcohol, illegal drugs or chemicals, or the use of prescription drugs in contravention of physician's orders by the injured employee while on duty shall not be compensable.

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

1. The independent contractor shall, at all times, be liable for compensation due to ~~his~~ direct employees, or the employees of any subcontractor of such independent contractor, and the principal employer shall also be liable in the manner hereinafter specified for compensation due all direct employees, employees of the independent contractors, subcontractors, or other employees engaged in the general employer's business; provided however, if an independent contractor relies in good faith on proof of a valid workers' compensation insurance policy issued to a subcontractor of the independent contractor or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the subcontractor with the Commissioner of Labor under Section ~~20 of~~ ~~this act~~ 415.1 of Title 40 of the Oklahoma Statutes, then the independent contractor shall not be liable for injuries of any employees of the subcontractor. Provided further, such independent contractor shall not be liable for injuries of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act.

2. The person entitled to such compensation shall have the right to recover the same directly from ~~his~~ the person's immediate employer, the independent contractor or intermediate contractor, and such claims may be presented against all such persons in one proceeding. If it appears in such proceeding that the principal employer has failed to require a compliance with the Workers' Compensation Act of this state, by ~~his~~ the principal employer or their independent contractor, then such employee may proceed against such principal employer without regard to liability of any independent, intermediate or other contractor; provided, however, if a principal employer relies in good faith on proof of a valid workers' compensation insurance policy issued to an independent contractor of the employer or to a subcontractor of the independent contractor or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the independent contractor or subcontractor with the Commissioner of Labor under Section ~~20 of~~ 415.1 of Title 40 of the Oklahoma Statutes, then the principal employer shall not be liable for injuries of any employees of the independent contractor or subcontractor. Provided further, such principal employer shall not be liable for injuries of any independent contractor of the employer or of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act. Provided, however, in any proceeding where compensation is awarded against the principal employer under the provisions hereof, such award shall not preclude the principal employer from recovering the same, and all expense in connection with said proceeding from any independent contractor, intermediate contractor or subcontractor whose duty it was to provide security for the payment of such compensation, and such recovery may be had by supplemental proceedings in the cause before the Court or by an

independent action in any court of competent jurisdiction to enforce liability of contracts.

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

4. Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, provided, however, that in the case of silicosis or asbestosis, the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO₂) dust on each of at least sixty (60) days or more, and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer.

SECTION 5. AMENDATORY 85 O.S. 1991, Section 14, as last amended by Section 23, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1995, 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. 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~~ physicians from each of the classes of physicians as defined in Section 725.2 of Title 59 of the Oklahoma Statutes, who ~~has~~

a. have maintained the employee's medical records prior to an injury and ~~has~~ have a documented history of treatment with the employee prior to an injury, or a ~~physician who has~~

b. have maintained the medical records of an immediate family member of the employee prior to an injury and ~~has~~ have a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this ~~paragraph~~ subparagraph, 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,

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 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 6. AMENDATORY Section 8, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1995, Section 14.1), is amended to read as follows:

Section 14.1 The Insurance Commissioner of the State of Oklahoma shall establish a pilot program of integrated management of an employer's workers' compensation and group health insurance claims by an insurer authorized to do business in the state and shall, no later than July 1, 1997, promulgate such rules as may be necessary to implement the provisions of this section. The integrated management of such claims shall in no event affect any benefits, rights or coverage established pursuant to a workers' compensation insurance policy. On or before January 1, 1998, the Insurance Commissioner shall provide the Legislature with a report on the status of the pilot program.

SECTION 7. AMENDATORY Section 24, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1995, Section 14.2), is amended to read as follows:

Section 14.2 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~~ 14.3 of this ~~act~~ title, an employee shall exercise the election for which provision is made in subsection C of Section 14 of ~~Title 85 of the Oklahoma Statutes~~ this title. 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~~ physicians who ~~has~~ have 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~~

1. Within thirty (30) days of employment; ~~(2) within~~
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~~
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 or physicians selected pursuant to the requirements of paragraph 1 of subsection C of Section 14 of ~~Title 85 of the Oklahoma Statutes~~ this title. 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~~ this title. 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~~ November 4, 1994.

SECTION 8. AMENDATORY Section 33, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1995, Section 22.1), is amended to read as follows:

Section 22.1 A. Any person receiving ~~temporary disability~~ or any person who may be entitled to receive workers' compensation benefits including, but not limited to, temporary total disability,

permanent total disability or medical benefits, from an employer or the employer's insurance carrier shall promptly report in writing to the employer or insurance carrier any change in a material fact ~~or~~ the amount of income he is receiving or any change in his employment status, occurring during the period of receipt of such benefits, any material improvement in the person's physical condition or any income earned or received from any type of employment and the names and addresses of any employer.

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

SECTION 9. AMENDATORY 85 O.S. 1991, Section 63.1, as amended by Section 1, Chapter 105, O.S.L. 1992 (85 O.S. Supp. 1995, Section 63.1), is amended to read as follows:

Section 63.1 A. In addition to any other penalty prescribed by law, any employer who fails to secure compensation required by Section 61 of this title shall be liable for a civil penalty, to be assessed by the Commissioner of Labor or his designee, of not more than Two Hundred Fifty Dollars (\$250.00) per employee for a first offense, and liable to a civil penalty of not more than Five Hundred Dollars (\$500.00) per employee for a second or subsequent offense. Provided, the maximum civil penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for all related series of violations. All civil penalties collected shall be deposited in the "Workers' Compensation Enforcement Revolving Fund" created by this section and shall be used to enforce the provisions of the Workers' Compensation Act. If an employer who has been assessed a civil penalty for failure to secure workers' compensation for a first offense secures such coverage within thirty (30) days from the date of citation, the civil penalty, or any part thereof, may be waived by the Commissioner of Labor.

B. After an employer is cited for two offenses of failing to obtain workers' compensation insurance, the Commissioner of Labor shall have the authority to issue cease and desist orders, in accordance with the Department of Labor administrative rules and procedures, against employers who continue to fail or refuse to obtain workers' compensation insurance as required by law. The Commissioner of Labor shall have the authority to require the cessation of activities of an employer whose employees are not covered by workers' compensation insurance until the violating employer shall obtain workers' compensation insurance for its employees; provided that an employer who has made application for workers' compensation coverage with either the State Insurance Fund or a private insurance carrier, and who, through no fault of his own, has not received notice that such coverage has commenced, shall not be made to cease operations, as provided for in this section, until a determination has been made concerning his application for workers' compensation coverage. Any order to cease and desist issued by the Commissioner may be enforced in district court. The district court may issue the Commissioner an injunction without bond, for the purposes of enforcing this section.

C. The Commissioner of Labor or his designee shall assess and collect any civil penalty incurred under subsection A of this section and, in his discretion, may remit, mitigate or negotiate said penalty. The Commissioner of Labor may waive a civil penalty, or any part thereof, against an employer pursuant to subsection A of this section. In determining the amount of the penalty to be assessed, or the amount agreed upon in any negotiation, consideration shall be given to the appropriateness of such penalty in light of the life of the business of the employer charged, the gravity of the violation, and the extent to which the employer charged has complied with the provisions of Section 61 of this title or has otherwise attempted to remedy the consequences of the said

violation. Individual proceedings shall be conducted pursuant to the provisions of Section 63.2 of this title.

D. There is hereby created in the State Treasury a revolving fund for the Department of Labor to be designated the "Workers' Compensation Enforcement Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies collected by the Department pursuant to the provisions of this section. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

E. No hospital or health provider shall charge more for a workers' compensation claim than for the same service not involving workers' compensation.

SECTION 10. AMENDATORY 85 O.S. 1991, Section 149.1, is amended to read as follows:

Section 149.1 A. The Workers' Compensation Court shall adopt rules permitting two or more employers not otherwise subject to the provisions of Section 2b of this title to pool together liabilities under this act for the purpose of qualifying as a group self-insurer and each such employer shall be classified as a self-insurer.

B. The Court shall approve the distribution of all undistributed policyholders' surplus of a Workers' Compensation Self-Insurance Program if the Program complies with the following criteria:

1. Has been in business for at least five (5) years;
2. Has its financial statements audited by a public accounting firm which audits at least one corporate client which has assets in excess of One Billion Dollars (\$1,000,000,000.00) and on which the accounting firm has issued an unqualified opinion as to the fair presentation of the financial position of the Program showing adequate solvency and reserves; and

3. Is in compliance with the provisions of this title and all other regulations as required by the Court.

C. A group self-insurer created pursuant to this section either prior to or after the effective date of this act shall not be subject to the provisions of the Oklahoma Securities Act.

SECTION 11. AMENDATORY 85 O.S. 1991, Section 174, is amended to read as follows:

Section 174. Every political or municipal subdivision of the state, covered by the provisions of the Workers' Compensation Act, including counties, cities, and towns, each shall provide sufficient funds in its annual estimate of the needs based on the total compensation paid out or benefits or payments in lieu thereof by such political or municipal subdivision during the prior fiscal year, to pay the amount due under the Workers' Compensation Act for the use and purpose of such Special Indemnity Fund, an amount equal to ~~three percent (3%)~~ five percent (5%) of the amount of compensation awards for permanent total disability or permanent partial disability made by the Court for all employees employed by them. It shall be the duty of the excise board of each county to approve an appropriation in such amount as may be necessary to pay such sum.

SECTION 12. The provisions of Section 11 of this act shall be considered and construed to be a clarification of the law as it has existed since the enactment of Section 12 of Enrolled House Bill No. 2132 of the 2nd Session of the 43rd Oklahoma Legislature to increase payments to the Special Indemnity Fund. The provisions of Section 11 of this act clarify that the increase in payments to the Special Indemnity Fund also applies to the entities addressed in Section 11 of this act. The provisions of Section 11 of this act shall not be considered or construed to be a change in the law as it has existed since September 1, 1992.

SECTION 13. NONCODIFICATION Section 12 of this act shall not be codified in the Oklahoma Statutes.

SECTION 14. REPEALER 85 O.S. 1991, Section 2.4, is hereby repealed.

SECTION 15. This act shall become effective November 1, 1996.

Passed the House of Representatives the 4th day of March, 1996.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1996.

President of the Senate