*PERSONAL.OY2***♥$Ö**********

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 730

By: Maddox, Douglass, Dunlap, Ford, Gustafson, Helton, Hendrick, Herbert, Laughlin, Martin, Milacek, Price, Snyder, Wilcoxson, Williamson, Campbell, Littlefield and Kerr of the Senate

and

Askins, Hilliard, Kinnamon, Ferguson, Bryant, Claunch, Dank, Deutschendorf, Dunegan, Hiett, Ingmire, Kirby, Kouba, Liotta, Maddux, Mitchell, Morgan, Newport, O'Neal, Perry, Pettigrew, Phillips, Pope (Tim), Ramsey, Reese, Sullivan (John), Sullivan (Leonard), Vaughn, Weaver, Wilt, Worthen, Adair, Case, Culver, Miller, Smith (Hopper), Voskuhl and Webb of the House

COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending 85 O.S. 1991, Sections 1.1, 1.2, as last amended by Section 1, Chapter 349, O.S.L. 1993, 1.3, 2b, as last amended by Section 24, Chapter 3, O.S.L. 1996, 3, as last amended by Section 1, Chapter 363, O.S.L. 1996, 3.4, as amended by Section 3, Chapter

349, O.S.L. 1993, 11, as last amended by Section 2, Chapter 363, O.S.L. 1996, 14, as last amended by Section 3, Chapter 363, O.S.L. 1996, Section 25, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, as last amended by Section 5, Chapter 363, O.S.L. 1996, 16, as amended by Section 26, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, 17, as amended by Section 27, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, 22, as last amended by Section 28, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, 24.2, as amended by Section 11, Chapter 349, O.S.L. 1993, 28, 30, as last amended by Section 31, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, 41.1, as amended by Section 10, Chapter 294, O.S.L. 1992, 43, as amended by Section 33, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, 44, 64, as last amended by Section 6, Chapter 363, O.S.L. 1996, 131, as last amended by Section 3, Chapter 326, O.S.L. 1995, 132, and 203 (85 O.S. Supp. 1996, Sections 1.2, 2b, 3, 3.4, 11, 14, 14.3, 16, 17, 22, 24.2, 30, 41.1, 43, 64 and 131), which relate to the Workers' Compensation Act; stating purposes of act; modifying language; placing certain burden of proof on party requesting benefits or relief under act; deleting obsolete language; requiring submission of three nominees to Governor for each vacant judgeship; providing term of certain administrator; allowing continued service of certain administrator for certain period; adding definitions; modifying definitions; declaring certain rebuttable presumption to exist in certain cases; requiring submission of certain

information to Governor; requiring use of certain form to rebut certain presumption; providing for voluntary mediation; requiring use of certain consent form; providing for certification of mediators; providing for compensation of mediators; providing for selection of mediators; declaring certain injuries to be incompensable; modifying the time limit for providing certain medical treatment; prohibiting certain testimony under certain circumstances; allowing a certain cause of action under certain circumstances; allowing reimbursement of certain expenses to employee after maximum medical improvement has been reached; allowing for request for appointment of Medical Case Manager; modifying the requirements for certified workplace medical plans; requiring certain information to be filed with the Department of Health; prohibiting certain payments under certain circumstances; requiring certain medical opinions to contain certain information; allowing discretion in court appointment of independent medical examiner; requiring court deviation from certain rating to be based on certain standard and contained in order; reducing certain awards; reducing time period for report of certain injuries; creating certain rebuttable presumption; modifying penalty for employer's failure to make certain payments; requiring certain records to be open for inspection by certain parties; limiting court discretion for amending previous award; limiting award of attorneys fees; allowing for certain credit for overpayment of compensation under certain

circumstances; reducing time limit for dismissing certain claims; deleting obsolete language; allowing voluntary dismissal under certain circumstances; limiting the ability to reopen certain cases; allowing court to dismiss claim without prejudice; deleting language which prohibits subrogation by employer or insurance carrier; allowing certain employers to opt out of the workers' compensation system under certain circumstances; requiring certain notice to certain employees; limiting certain benefit periods; requiring certain notice to certain employers; subjecting the State Insurance Fund to the Open Records Act; requiring certain payments under certain conditions; modifying the type of workers' compensation coverage that certain state entities can obtain; stating certain eligibility requirements for obtaining coverage through the State Insurance Fund; creating a special committee; stating the purpose of the special committee; setting forth the membership of the special committee; allowing certain travel reimbursement; allowing court to determine certain dispute over liability between insurance carrier or employers; allowing court to require certain reimbursement; amending Section 27, Chapter 349, O.S.L. 1993, as amended by Section 16, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (74 O.S. Supp. 1996, Section 18m-1), which relates to workers' compensation fraud; specifying the locations of the Workers' Compensation Fraud Unit; requiring certain staff in the Tulsa office; providing for codification;

providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 1.1, is amended to read as follows:

Section 1.1 ~~This act~~ A. The purposes of the Workers' Compensation Act include, but are not limited to, the following:

1. To abrogate the common law rights and remedies of employees and employers with respect to injuries sustained by employees in the workplace and to replace those rights and remedies with more certain rights and remedies regardless of fault or negligence;

2. To regulate the relation of employer and employee with respect to compensation for injuries received by the employee in connection with the employment;

3. To minimize expensive and protracted litigation in suits at law;

4. To relieve employers and employees of the uncertainties of a trial in a suit for damages, to substitute a more uniform scale of compensation than the varying and widely divergent estimates of juries, and to lessen the temptation to perjury in suits for damages;

5. To provide employers a liability which is limited and determinate;

6. To protect employers from the hazards and expense of litigation;

7. To protect employers from unjust and excessive claims and verdicts;

8. To provide for employees' and their dependents' protection, compensation, and economic aid where employees have suffered

injuries or death in connection with their employment even though the circumstances are such that recovery could not be had in an ordinary action at law, that is, without regard to fault or negligence;

9. To shift the burden of economic loss or waste from the employee and the employee's dependents to the industry in order that it may ultimately be borne by the consumer as a part of the necessary cost of doing business rather than by one particular employer and thereby to relieve society as a whole, at least partially, of the burden of supporting those injured or killed in industry and their dependents;

10. To require employers to look after the care and upkeep of those who labor for the benefit of the employer and to shift the burden of loss or injury from the individual to the persons who benefited from the labor;

11. To provide a remedy or form of relief to employees and their dependents that is prompt, adequate, certain, fair, and final and without the annoyance of a suit at law;

12. To create a new and wider remedy for victims of industrial accidents and diseases; and

13. To secure to the employee having a just claim the full amounts of compensation to which the employee is entitled without diminution by reason of the expense of litigation in the suits for damages.

B. The Workers' Compensation Act shall not apply to cases of occupational disease in which the last injurious exposure to the hazards of such disease occurred before ~~this law shall have taken effect~~ June 6, 1953.

C. The burden of proof, by a preponderance of the evidence, shall be on the party requesting benefits or relief pursuant to the provisions of the Workers' Compensation Act unless otherwise specifically provided for by law.

SECTION 2. AMENDATORY 85 O.S. 1991, Section 1.2, as last amended by Section 1, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1996, 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~~ <u>of this section,</u> 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.~~

B. 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~~ position. In the event the incumbent for the position to be filled has notified the Commission in writing ~~that he will serve as a judge if appointed~~ of the desire to serve another term, the name of that judge shall be submitted with the other three nominations. If more than one position is being filled simultaneously, the total number of qualified nominees submitted by the Judicial Nominating Commission to the Governor shall equal three times the number of positions being filled plus the number of incumbent judges applying for the vacant positions. All of the nominees shall be available for appointment to any of the vacancies being filled simultaneously. The Governor shall appoint one of the nominees to fill the vacancy~~, but if he~~. If the Governor 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.~~ C. ~~A judge of the Court~~ To be eligible for appointment, a nominee 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~~ a successor ~~shall have~~ has been appointed ~~and qualified~~. A judge shall be eligible for reappointment~~, provided that he~~. A judge may be removed for cause by the Court on the Judiciary prior to the expiration of ~~his~~ the term.

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

~~F.~~ G. The Court is hereby designated and confirmed as a court of record, with respect to any matter within the limits of its jurisdiction, and within such limits the judges thereof shall

possess the powers and prerogatives of the judges of the other courts of record of this state.

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

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

~~I. 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 3. AMENDATORY 85 O.S. 1991, Section 1.3, is amended to read as follows:

Section 1.3 A. The chief administrative officer of the Workers' Compensation Court shall be the Administrator, who shall be subject to the general supervision of the presiding judge of the Court, subject to the general administrative authority of the Chief Justice of the Supreme Court.

B. The ~~person serving as Administrator on the date of passage and approval of this act shall continue to serve as Administrator of the Court, provided said person is serving as Administrator on the effective date of this act~~ judges of the Court shall determine the qualifications necessary for the job of Administrator. The qualifications shall be submitted to the Chief Justice of the Supreme Court for approval, disapproval, or modification.

C. ~~Except as provided in subsection B of this section, the~~ The Administrator shall be appointed by the presiding judge of the Court

from a list of eligible persons established by the Special Workers' Compensation Administrator Selection Committee. The Special Workers' Compensation Administrator Selection Committee shall consist of the following five (5) members~~, to consist of~~:

~~(1)~~ 1. One member, who ~~shall~~ is not ~~have been admitted to the practice of law in the State of Oklahoma~~ a licensed attorney, selected by the Governor;

~~(2)~~ 2. One member selected by the Chief Justice of the Supreme Court;

~~(3)~~ 3. One member, who ~~shall~~ is not ~~be~~ a member of the Oklahoma Legislature, selected by the President Pro Tempore of the Senate;

~~(4)~~ 4. One member, who ~~shall~~ is not ~~be~~ a member of the Oklahoma Legislature, selected by the Speaker of the House of Representatives; and

~~(5)~~ 5. One member, who ~~shall be~~ is an attorney licensed to practice in the State of Oklahoma, selected by the Board of Governors of the Oklahoma Bar Association.

~~Said~~ D. The members shall serve without compensation and shall convene at the request of the presiding judge of the Court whenever a vacancy ~~shall occur~~ occurs in the position of Administrator.

~~D.~~ E. The salary of the Administrator shall be ninety percent (90%) of the authorized salary of a judge of the Court.

~~E.~~ F. The Administrator ~~may be~~ shall serve a term of four (4) years, and shall be eligible for appointment to subsequent terms unless removed from office ~~only~~ for cause by the presiding judge of the Court~~, subject to~~. Removal shall also require the approval of the Chief Justice of the Supreme Court. The first term provided for in this subsection shall expire on July 1, 2001. The Administrator serving on November 1, 1997, may continue to serve in that capacity until the expiration of the first term.

~~F.~~ G. An Administrator ~~who otherwise qualifies to serve as a judge of the Court~~ shall not be eligible to serve as a judge of the

Court for a period of one (1) year from the last date served as Administrator of the Court.

~~G.~~ H. In addition to ~~his~~ any other duties ~~set forth in Title 85 of the Oklahoma Statutes~~ specified in the Workers' Compensation Act, the Administrator, subject to approval of the presiding judge, shall organize, direct, and develop the administrative work of the Court, including the docketing, clerical, technical, and financial work, establish hours of operation, and perform such other duties relating to matters within the purview of the Court ~~as~~ subject to the direction of any judge of the Court ~~may request~~.

~~H.~~ I. The Administrator shall employ other employees of the Court, within budgetary limitation, necessary to carry out the work and orders of the Court in an efficient and expedient manner.

SECTION 4. AMENDATORY 85 O.S. 1991, Section 3, as last amended by Section 1, Chapter 363, O.S.L. 1996 (85 O.S. Supp. 1996, 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. "Claimant" means a person who claims benefits for an injury pursuant to the provisions of the Workers' Compensation Act;

3. "Court" means the Workers' Compensation Court;

~~3.~~ 4. "Cumulative trauma" means an injury resulting from a specific employment activity which is repetitive and continuous in nature, engaged in over a period of time in which the employee has been so employed. Cumulative trauma therefrom must be shown to be preponderantly (more than fifty percent (50%)) due to the specific employment activity;

5. "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.~~ 6. "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.~~ 7. "Employment" includes work or labor in a trade, business, occupation or activity carried on by an employer or any authorized voluntary or uncompensated worker rendering services as a fire fighter, peace officer or civil defense worker;

~~6.~~ 8. "Compensation" means the money allowance payable to an employee as provided for in the Workers' Compensation Act;

~~7.~~ 9. a. "Injury" or "personal injury" means only accidental injuries arising out of and in the course of employment with a specific time and date of occurrence, which require medical services or result in disability or death, and such disease or infection as may naturally result therefrom ~~and~~. "Injury" or "personal injury" includes occupational disease and cumulative trauma arising out of and in the course of employment ~~as herein defined. Provided, only~~. Only injuries having as their source a risk not purely personal but one that is ~~reasonably~~ causally connected with the conditions of employment shall be deemed to arise out of the employment. Except in cases of cumulative trauma and occupational disease, a rebuttable presumption exists that a claimant did not sustain an injury unless the employer had actual notice or a report of the accident was filed with the employer within ninety (90) days after

termination of employment or received medical treatment for the complained-of condition prior to the termination of employment. The presumption shall be rebutted by clear and convincing evidence.

b. "Injury" or "personal injury" includes heart-related or ~~perivascular~~ vascular injury, illness or death only 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~~ the preponderant (more than fifty percent (50%)) cause is directly work-related.

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

~~8.~~ 10. "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.~~ 11. "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.~~ 12. "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. "Occupational disease" means an illness, disease, or infection arising out of and in the course of employment peculiar to the occupation in which the employee is engaged.

a. An occupational disease arises out of the employment only if there is a direct causal connection between

the conditions under which the work is performed and is a result of exposure occasioned by the employment. Occupational disease therefrom must be shown to be preponderantly (more than fifty percent (50%)) due to the specific employment activity.

b. An employer is not liable for compensation of any occupational illness, disease, or infection which cannot be traced to the employment as a direct and proximate cause;

~~11.~~ 13. "Permanent impairment" means any anatomical or functional abnormality or loss after ~~reasonable medical treatment~~ maximum medical improvement has been achieved, which abnormality or loss the physician considers to be capable of being evaluated at the time the rating is made. Except as otherwise provided herein, any examining physician shall only evaluate 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 Governor, 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 Governor and 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 Governor, 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 Governor and 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.~~ 14. "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.~~ 15. "Permanent partial disability" means permanent disability which is less than total and shall be equal to or the same as permanent impairment;

~~14.~~ 16. "Maximum medical improvement" means that no further material improvement would reasonably be expected from medical treatment or the passage of time;

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

~~16.~~ 18. a. "Certified workplace medical plan" means an organization of health care providers or any other entity, certified by the State Commissioner

of Health pursuant to Section 14.3 of this title, that is authorized to enter into a contractual agreement with a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or an insured, which shall include any member of an approved group self-insured association, policyholder or public entity, regardless of whether such entity is insured by the State Insurance Fund, to provide medical care under the Workers' Compensation Act. Certified workplace medical 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~~ utilize:

(1) a capitated or pre-paid ~~plans~~ basis for payment to medical providers, or

(2) a primary care physician as a gatekeeper to any medical care provided by other physicians.

b. If any insurer except, the State Insurance Fund, fails to contract with or provide access to a certified workplace medical plan, an insured, after sixty (60) days' written notice to its insurance carrier, shall be authorized to contract independently with a plan of his or her choice for a period of one (1) year, to provide medical care under the Workers' Compensation Act. The insured shall be authorized to contract, after sixty (60) days' written notice to its insurance carrier, for additional one-year periods if his or her insurer has not contracted with or provided access to a certified workplace medical plan.

c. If the State Insurance Fund fails to contract with at least three certified workplace medical plans, each covering at least fifty counties, then the insured, after sixty (60) days' written notice to the State Insurance Fund, shall be authorized to contract independently with a plan of his or her choice for a period of one (1) year to provide medical care under the Workers' Compensation Act. The insured shall be authorized to contract, after sixty (60) days' written notice to the State Insurance Fund, for additional one-year periods if the State Insurance Fund has not contracted with or fails to continue contracts with at least three certified workplace medical plans covering at least fifty counties; and

~~17.~~ 19. "Treating physician" or "attending physician" means the licensed physician who has provided or is providing medical care to the injured employee.

SECTION 5. AMENDATORY 85 O.S. 1991, Section 3.4, as amended by Section 3, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1996, Section 3.4), is amended to read as follows:

Section 3.4 A. All claims for any compensation or benefits under the Workers' Compensation Act shall be commenced with the filing of a notice of injury with the Administrator. All claims filed for workers' compensation benefits shall contain a statement that all matters stated therein are true and accurate, and shall be signed by the claimant and his agent, if any. Any person who signs this statement or causes another to sign this statement knowing the statement to be false shall be guilty of perjury. An individual who signs on behalf of a claimant may be presumed to have the authorization of the claimant and to be acting at his direction. This presumption will be overcome unless the claimant has first been given a form explaining the contractual relationship which will

ensue and the contingency fee agreement based on a percentage of temporary and permanent benefits which will control, and has received a full and complete explanation of the attorney-client contract, explained verbally by the attorney, and the notarized signature of the claimant appears on the form. The form shall be provided by the Administrator. The form shall not be submitted to the court unless a dispute as to representation arises. 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 that there is a controverted issue, set the matter for hearing at the earliest available time to be heard by the Court in the appropriate judicial district as provided in Section 3.5 of this title. The Administrator shall assign a member of the Court to hear a docket in each judicial district of the state at least once each calendar month when there has been a request for a hearing in the judicial district. The Administrator shall assign Judges to the state judicial districts on a rotating basis for the purpose of holding prehearing conferences and hearing cases. At the request of either party, a prehearing conference

shall be held before the member of the Court assigned to the case within forty-five (45) days of the filing of a claimant's request for a hearing. The purpose of the prehearing conference shall be to mediate and encourage settlement of the case or determine issues in dispute. The Court shall be vested with jurisdiction over all claims filed pursuant to the Workers' Compensation Act. The Court shall determine the lawfulness of any claim for compensation under the Workers' Compensation Act based on the weight of evidence; provided, however, any claim, and subsequent disability, that has as its source a physical condition resulting from incremental damage or injury or a gradual deterioration of physical health, which is caused by a condition arising out of and in the course of employment, must be proven by a preponderance of the evidence presented to the Court.

B. All claims so filed shall be heard by the Judge sitting without a jury. All petitions for final orders or awards filed pursuant to the provisions of Section 84 of 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.

C. The provisions of the Workers' Compensation Act shall be applied impartially to both claimants and respondents.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3.10 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Mediation shall be available to any party to a dispute arising pursuant to the provisions of the Workers' Compensation Act, subject to the limitation provisions of Section 14.3 of Title 85 of the Oklahoma Statutes and except for disputes against the Special Indemnity Fund.

B. Mediation shall be voluntary, and shall not be conducted without the consent of both parties.

1. Mediation is not a prerequisite to the commencement of a claim for benefits, pursuant to the provisions of the Workers' Compensation Act.

2. A request for mediation or consent to mediate does not invoke the jurisdiction of the Workers' Compensation Court.

C. No sanction or penalty may be imposed by the Administrator or any judge of the Court if a party refuses to mediate.

D. 1. A request for mediation shall be made in writing to the Administrator.

2. The party requesting mediation shall inform the Administrator of the issues in dispute, and the name, address, and telephone number of the opposing party or insurance company, if known. If the dispute involves a certified workplace medical plan, the requesting party shall provide the name and phone number of the contact person for the plan.

E. Once a request has been made, the Administrator shall contact the opposing party. If the opposing party does not wish to participate in mediation, the requesting party shall be notified of the refusal.

F. If both parties agree to mediation, they shall enter into a written consent to mediate on a form provided by the Administrator. The form shall contain a statement informing the parties of their rights and obligations and of the confidentiality of the proceedings. This written consent shall be signed by both parties to the dispute and shall be submitted to the Administrator before the selection of a mediator is made.

G. Mediation is confidential and no part of the proceeding shall be considered a matter of public record. Recommendations of the mediator are not binding unless the parties enter into a settlement agreement. If an agreement is not reached, the results

and statements made during the mediation are not admissible in any following proceeding.

H. Upon receipt of the consent form, the Administrator shall provide the parties with a list of certified mediators. Both parties shall agree to a mediator. If the parties are unable to agree, mediation shall not occur.

I. The judges of the Court shall be responsible for certifying those persons who are eligible and qualified to serve as mediators. An individual may be certified as a mediator if:

1. The applicant is certified pursuant to the Dispute Resolution Act, Section 1801 et seq. of Title 12 of the Oklahoma Statutes;

2. The applicant has completed twenty (20) hours of formal classroom training by a state-certified mediation trainer, which shall include training in the mediation process, the role and responsibilities of the mediator and participants, ethical considerations, listening skills, negotiations, communications, and working toward an agreement. The training shall also include other requirements as specified by the Court. The cost of the training shall be paid by the applicant;

3. The applicant has completed a minimum of two (2) observations of mediation sessions with any certified mediator approved by any state court or federal court program. The applicant shall conduct no fewer than three (3) actual mediation sessions while being observed by a certified mediator; and

4. The applicant has signed an agreement to be bound by the ethical standards set forth in Chapter 37, Appendix A of Title 12 of the Oklahoma Statutes, "Code of Professional Conduct for Mediators".

J. Each certified mediator shall remain on the list for five (5) years, unless removed. Mediators shall be required to complete at least six (6) hours of continuing education per two-year period in the areas of mediation and workers' compensation. This

continuing education requirement shall be in addition to any other such general requirement which may be required by the Oklahoma State Bar Association. Cost of continuing education is to be borne by the applicant.

K. Mediators shall be compensated at the rate or fee as determined by the mediator. The cost of mediation shall be paid by the respondent or its insurance carrier.

L. If the mediated dispute is voluntarily agreed to by both parties and resolved, any final settlement of the action shall include a consent to mediation form and shall be completed upon the filing of a Joint Petition or an Agreement Between Employer and Employee as to Fact with Relation to an Injury and Payment of Compensation.

SECTION 7. AMENDATORY 85 O.S. 1991, Section 11, as last amended by Section 2, Chapter 363, O.S.L. 1996 (85 O.S. Supp. 1996, 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 an employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of employment, without regard to fault as a cause of such injury, and in the event of disability only, except as follows:

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

2. An injury resulting directly from the willful failure of the injured employee to use a guard or protection against accident furnished for use pursuant to any statute or by order of the Commissioner of Labor. An injury shall not include:

a. mental injury that is unaccompanied by physical injury,

b. any injury, disease, or condition resulting from voluntary participation by an employee in employer-sponsored, off-duty recreational activities which are not a part of the regularly assigned duties of the employee, or

c. an injury where post-accident testing proves that the injury was substantially occasioned by the claimant's use of alcohol, illegal drugs, or prescription drugs used in contravention of the orders of a physician. The claimant's use of alcohol, illegal drugs, or prescription drugs used in contravention of physician orders shall create a rebuttable presumption that the injury did not arise out of and in the course of employment; and

3. An injury resulting directly from the use or abuse of alcohol, illegal drugs or chemicals, or the abuse of prescription drugs; provided, this paragraph shall only apply when the use or abuse rendered the employee incapable of acting in the manner in which an ordinarily prudent and cautious person, in full possession of his or her faculties, and using reasonable care, would have acted at the time of the injury.

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 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 immediate employer, the independent contractor or intermediate contractor, and such claims may be presented against all such persons in one proceeding. If it appears in such proceeding that the principal employer has failed to require a compliance with the Workers' Compensation Act of this state, by ~~his or their~~ the 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 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 <u>or cumulative trauma</u>, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, provided, however, that in the case of silicosis or asbestosis, the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last exposed

to harmful quantities of silicon dioxide (SiO 2) 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 8. AMENDATORY 85 O.S. 1991, Section 14, as last amended by Section 3, Chapter 363, O.S.L. 1996 (85 O.S. Supp. 1996, 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~~ medical treatment within ~~a reasonable time~~ three (3) days 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 the employee's 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 the employee's 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~~ and the insurance carrier within seven (7) days after examination or treatment was first rendered. If a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or an insured, which shall include any member of an approved group self-insured association, policyholder or public entity, regardless of whether such entity is insured by the State Insurance Fund, has previously contracted with a certified workplace medical plan, the employee shall have two choices:

1. a. The employee shall have the right, for each work-related injury, to select any physician from a list of physicians provided by the employee at the time of making an election not to participate in the certified workplace medical plan. The list shall consist only of physicians who have:

(1) maintained the employee's medical records prior to an injury and have a documented history of treatment with the employee prior to an injury, or

(2) maintained the medical records of an immediate family member of the employee prior to an injury and have a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this division, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents.

b. 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 this state 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. Nothing in this section shall be construed to permit any "physician" to submit written or oral medical testimony in any proceeding conducted pursuant to the provisions of the Workers' Compensation Act on any issue outside of the customary areas of expertise for which he is permitted to practice pursuant to his license. If an injured employee should die, whether or not the employee has filed a claim, that 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 the employee had survived.

E. Whoever renders medical, surgical, or other attendance or treatment, nurse and hospital service, medicine, crutches and apparatus, or emergency treatment, shall have a direct and exclusive cause of action for such charges against the insurance carrier, group self-insurance association, third-party administrator of a self-insured employer, or other person or entity responsible for the payment of compensation and 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.

H. When maximum medical improvement has been reached, the employee may seek medical treatment at the employee's own expense. The employee shall be reimbursed for such expenses if the treatment has improved the condition of the employee beyond the permanency rating given by the initial health professionals.

I. A request for continuing medical maintenance supervised by claimant's attending physician 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 or permanent total disability benefits are payable to the employee.

J. Any party may request the appointment of a Medical Case Manager at any time during the pendency of the action, but not less than thirty (30) days before a hearing. A request for the appointment which is contested shall be supported by the testimony of a licensed physician. If the parties are unable to select a Medical Case Manager for any reason, the Court shall make the

selection. The Court, on its own motion, may appoint a Medical Case Manager. In all cases, the appointment of the Medical Case Manager remains discretionary with the Court. The following shall apply to all selections or appointments:

1. The Medical Case Manager shall include licensed physicians, registered nurses, licensed practical nurses, and Certified Rehabilitation Counselors; and

2. The Court may accept testimony from a Medical Case Manager if the parties stipulate to its introduction, or if it is relied upon by a licensed physician.

SECTION 9. AMENDATORY Section 25, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, as last amended by Section 5, Chapter 363, O.S.L. 1996 (85 O.S. Supp. 1996, Section 14.3), is amended to read as follows:

Section 14.3 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~~, Section 1 et seq. of this title~~. 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~~ provides quality services for all medical services which:

(1) ~~may be~~ are required by the Workers' Compensation Act in a manner that is timely, effective and convenient for the employee, and

(2) utilizes medical treatment guidelines and protocols substantially similar to those established for use by medical service providers, which have been recommended by the Physician Advisory Committee and adopted by the Administrator pursuant to subsection B of Section 201.1 of this title. If the Administrator has not adopted medical treatment guidelines and protocols, the Commissioner may certify a plan that utilizes medical guidelines and protocols established by the plan if, in the discretion of the Commissioner, the guidelines and protocols are reasonable and will carry out the intent of the Workers' Compensation Act. Certified workplace medical plans must utilize medical treatment guidelines and protocols substantially similar to those adopted by the Administrator pursuant to Section 201.1 of this title, as such guidelines and protocols become adopted,

b. provides all medical services required by the Workers' Compensation Act in a manner that is reasonably geographically convenient, meaning a travel time of thirty (30) minutes or less to all residents of the

area for which it seeks certification, provided that the Commissioner may approve a service area with travel times of greater than thirty (30) minutes based on the following:

(1) providers are not available in the area,

(2) providers are available but do not meet the reasonable credentialing requirements of the plan, or

(3) providers are unwilling or unable to enter into a reasonable health services contract with the plan,

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~~ member of the plan~~;~~,

j. 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~~ D of Section 14 of this title~~; and~~,

k. allows a physician selected by the employee pursuant to paragraph 1 of subsection C of Section 14 of this title 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~~ fee-for-service payment provisions of the plan,

~~j.~~ l. does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services ~~and~~,

m. 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~~,

n. does not discriminate against ethnic minority providers of medical services, and

~~k.~~ o. 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. In order to monitor the utilization patterns of medical services and insure that there is no discrimination against any category of medical provider, the Commissioner of Health shall require each plan to annually file data with the Department of Health which accurately reflects the number of encounters by employees with each category of medical provider during the preceding year.

F. The Commissioner shall adopt such rules as may be necessary to implement the provisions of Section 14.2 of this title and this section. ~~Such~~ The rules shall authorize any person to petition the Commissioner of Health for decertification of a certified workplace medical plan for material violation of any provisions of the Workers' Compensation Act or the rules promulgated pursuant to this section.

SECTION 10. AMENDATORY 85 O.S. 1991, Section 16, as last amended by Section 26, Chapter 1, 2nd Extraordinary Session, O.S.L.

1994 (85 O.S. Supp. 1996, 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~~ may 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~~ may 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. If an employee accepts permanent partial disability benefits after such refusal, the employee shall not be entitled to permanent total disability benefits unless a change of condition is subsequently established. 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 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. The cost of the evaluation shall be paid by the employer. Following the evaluation, if the employee refuses the services or training ordered by the court, or fails to complete in good faith the vocational rehabilitation training ordered by the court, then the cost of the evaluation and services or training rendered shall be deducted from any award of benefits to the employee which remains unpaid by the employer. 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~~ providing the vocational rehabilitation services or training to the employee.

E. The court shall, when vocational rehabilitation is necessary, order vocational rehabilitation which will most expeditiously return the employee to gainful employment.

SECTION 11. AMENDATORY 85 O.S. 1991, Section 17, as amended by Section 27, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1996, 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. Medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty. 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~~ this state. ~~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 ~~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.

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. Such courses shall provide training 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~~ Physicians serving as third physicians before ~~the effective date of this act~~ November 4, 1994, 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~~ may 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~~ may 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.

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 impairment rating, the Court shall specifically identify by written medical findings of fact the basis for such deviation in its order. Such deviation shall be based on clear and convincing evidence and shall be contained in the order.

SECTION 12. AMENDATORY 85 O.S. 1991, Section 22, as last amended by Section 28, Chapter 1, 2nd Extraordinary Session, O.S.L.

1994 (85 O.S. Supp. 1996, 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. (a) With respect to injuries occurring before ~~the effective date of this act~~ November 4, 1994, 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~~ November 4, 1994, 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.

(c) With respect to injuries occurring on or after November 1, 1997, total payments of compensation for temporary total disability may not exceed a maximum of one hundred fifty-six (156) weeks in the aggregate.

3. Permanent Partial Disability. (a) With respect to injuries occurring prior to ~~the effective date of this act~~ November 4, 1994, 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. 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 Governor, 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 Governor, 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 201.1 of this 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~~ November 4, 1994, 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~~ November 4, 1994;

(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~~ November 4, 1994;

(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~~ November 4, 1994; 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~~ November 4, 1994.

(c) With respect to strain or sprain injuries occurring after November 1, 1997, an employee upon reaching maximum medical improvement who returns to or receives a good faith offer of employment with the same employer at the same or greater rate of pay shall not be eligible for a permanent disability award. No injury which requires surgery shall be considered a strain or sprain injury.

(1) Upon a request by the claimant within one hundred eighty (180) days of maximum medical improvement, the court shall examine the employment terms or offer of employment to determine the good faith of the employer.

(2) If the court finds there was not good faith, the court may order evaluation of the claimant for permanent disability by an independent medical examiner.

4. Temporary Partial Disability. (a) With respect to injuries occurring before ~~the effective date of this act~~ November 4, 1994, 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~~ November 4, 1994, 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.

(c) With respect to injuries occurring on or after November 1, 1997, total payments of compensation for temporary partial disability may not exceed a maximum of one hundred fifty-six (156) 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, 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~~ for temporary partial disability, 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) 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 13. AMENDATORY 85 O.S. 1991, Section 24.2, as amended by Section 11, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1996, Section 24.2), is amended to read as follows:

Section 24.2 A. Unless an employee gives oral or written notice to the employer within ~~sixty (60)~~ thirty (30) calendar days of the date an injury occurs or the employee receives medical attention from a licensed physician during the ~~sixty-day~~ thirty-day period from the date an injury occurred, ~~the claim shall be forever barred, unless, in the discretion of the trial judge, good cause is shown by the employee to the Court to excuse such failure of notice or treatment. Provided, for~~ the rebuttable presumption shall be that the injury was not work related. Such presumption must be overcome by clear and convincing evidence. For an occupational disease or repeated trauma, notice shall be given to the employer within the statutory period for occupational disease set out in Section 43 of this title~~. Provided further~~; provided, there shall be a rebuttable presumption that injury from occupational disease or injury caused by repeated trauma does not arise out of and in the course of employment unless oral or written notice is given by the employee to the employer within ~~one hundred eighty (180)~~ ninety (90) days of the employee's separation from employment.

B. If the employer has notice of the injury and the injury is not disputed and weekly temporary total disability benefit payments are not commenced within twenty (20) days or if any subsequent installment of temporary total disability benefits is not made within ten (10) days after it becomes due, the insurer of the employer shall pay to the employee a penalty of ~~fifteen percent (15%) of the unpaid or delayed weekly benefits~~ Five Hundred Dollars ($500.00) per week until the benefit payments are made. This penalty may be ~~imposed~~ waived by the Court for good cause shown on a case-by-case basis.

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

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

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 27.2 of Title 85, unless there is created a duplication in numbering, reads as follows:

The medical records for all previous relevant or contributory injuries shall be open for review by the insurance carrier, the State Insurance Fund, the group self-insurance plan, or self-insured employer involved in the claim for compensation pursuant to the provisions of the Workers' Compensation Act.

SECTION 15. AMENDATORY 85 O.S. 1991, Section 28, is amended to read as follows:

Section 28. Upon its own motion or upon the application of any party in interest, on the ground of a change in conditions, the Court may at any time review any award, and, on such review, may make an award ending, diminishing, or increasing the compensation previously awarded, but only as to those body parts adjudicated by the award or as a result of a consequential injury, subject to the maximum or minimum provided in the Workers' Compensation Act, and

shall state its conclusions of fact and rulings of law, and the Administrator shall immediately send to the parties a copy of the award. No such review shall effect such award as regards any money already paid. In a change in condition for the better changing a permanent total disability to a permanent partial disability, the weeks paid on the permanent total disability award shall not be deducted from a subsequent permanent partial disability award; however, permanent partial disability awards together with temporary compensation shall not exceed five hundred (500) weeks.

SECTION 16. AMENDATORY 85 O.S. 1991, Section 30, as last amended by Section 31, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1996, Section 30), is amended to read as follows:

Section 30. A. 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.

B. 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.

C. A claim for legal services shall be determined by the Court on a quantum meruit basis~~; provided, that such claim~~.

1. A claim for legal services in contested temporary disability cases shall not exceed ten percent (10%) of the amount of the award for temporary disability ~~and~~ by either the claimant's or respondent's lawyer.

2. A claim for legal services shall not exceed twenty percent (20%) of the amount of the award for permanent disability or death benefits after expenses by either the claimant's or the respondent's lawyer. Respondent-requested medical depositions shall not be calculated as expense for purposes of this section.

3. There shall be no legal services fee paid in uncontested cases resulting in an award for temporary total disability.

D. 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 17. AMENDATORY 85 O.S. 1991, Section 41.1, as amended by Section 10, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1996, Section 41.1), is amended to read as follows:

Section 41.1 A. In the event salary or any other remuneration is paid in lieu of temporary total compensation during the period of temporary total disability or for any other period of time, no respondent or insurance carrier shall be allowed to deduct from the amount of the award for permanent or partial permanent disability any amounts paid for temporary total disability, nor shall he be given credit for such additional payments on future temporary total disability, permanent partial disability, disfigurement, or any other compensation provided by the workers' compensation law.

B. Notwithstanding the provisions of subsection A of this section, a qualified individual self-insured employer that pays temporary total disability benefits at a higher weekly rate than required by statute, without diminishing the employee's accrued leave on such payments, shall be given credit for such overpayment against any permanent partial disability owed, after payment of attorney fees and taxes. This provision shall not apply where salary continuation was made by the self-insured employer pursuant to an applicable collective bargaining agreement.

C. The employer and insurance carrier may receive credit for overpayment of temporary total disability compensation to the claimant against permanent partial disability compensation due to the claimant, except as provided in subsection A of this section.

D. An employer and insurance carrier receive a credit against temporary total disability compensation owed to the claimant for all payments made to the claimant during the claimant's period of temporary total disability.

SECTION 18. AMENDATORY 85 O.S. 1991, Section 43, as amended by Section 33, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1996, 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)~~ two (2) years from the date of filing thereof or within ~~five (5)~~ two (2) 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~~ The claimant may, on the payment of the Court's filing fee and with an order of the Court, dismiss any claim brought by the claimant at any time before final submission of the case to the Court for decision. All parties to a claim may at any time before trial, with an order from the Court and on payment of the filing fee, by agreement dismiss the claim. Such dismissal shall be without prejudice unless the words "with prejudice" are included in the order. If any claim that is filed within the statutory time permitted by this section is dismissed without prejudice, a new

claim may be filed within one (1) year after the entry of the order dismissing the first claim even if the statutory time for filing has expired.

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 permanent partial order, shall be forever barred. No case shall be reopended by the Court unless permanent partial disability was awarded. A case shall not be reopened on any body part unless permanent partial disability was awarded to that body part. An order denying an application to reopen a claim shall not extend the period of the time set out herein for reopening the case.

D. Each employer shall post a notice advising employees that they are covered by the Workers' Compensation Act and that 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.

E. The judges of the Workers' Compensation Court shall have the right to dismiss a workers' compensation claim without prejudice.

SECTION 19. AMENDATORY 85 O.S. 1991, Section 44, is amended to read as follows:

Section 44. ~~(a)~~ A. If a worker entitled to compensation under the Workers' Compensation Act is injured or killed by the negligence or wrong of another not in the same employ, such injured worker

shall, before any suit or claim under the Workers' Compensation Act, elect whether to take compensation under the Workers' Compensation Act, or to pursue his remedy against such other. Such election shall be evidenced in such manner as the Administrator may by rule or regulation prescribe. If ~~he~~ a worker elects to take compensation under the Workers' Compensation Act, the cause of action against such other shall be assigned to the insurance carrier liable for the payment of such compensation, and if ~~he~~ a worker elects to proceed against such other person or insurance carrier, as the case may be, the employer's insurance carrier shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected, and the compensation provided or estimated by the Workers' Compensation Act for such case. The compromise of any such cause of action by the worker at any amount less than the compensation provided for by the Workers' Compensation Act shall be made only with the written approval of the Court. Whenever recovery against such other person is effected without compromise settlement by the employee or his representatives, the employer or insurance company having paid compensation under the Workers' Compensation Act shall be entitled to reimbursement as hereinafter set forth and shall pay from its share of said reimbursement a proportionate share of the expenses, including attorneys fees, incurred in effecting said recovery to be determined by the ratio that the amount of compensation paid by the employer bears to the amount of the recovery effected by the employee. After the expenses and attorneys fees have been paid, the balance of the recovery shall be apportioned between the employer or insurance company having paid the compensation and the employee or his representatives in the same ratio that the amount of compensation paid by the employer bears to the total amount recovered; provided, however, the balance of the recovery may be divided between the

employer or insurance company having paid compensation and the employee or his representatives as they may agree.

In the event that recovery is effected by compromise settlement, then in that event the expenses, attorneys fees and the balance of the recovery may be divided between the employer or insurance company having paid compensation and the employee or his representatives as they may agree. Provided, that in the event they are unable to agree, then the same shall be apportioned by the district court having jurisdiction of the employee's action against such other person, in such manner as is just and reasonable.

~~(b) The employer or his insurance carrier shall not have the right of subrogation to recover money paid by the employer or his insurance carrier for death claims or death benefits under the Workers' Compensation Act from third persons, with all common law rights against other than the employer and his employees preserved and to be in those persons who would have had such rights had there been no death claim or death benefits under the Workers' Compensation Act.~~

~~(c)~~ B. The employer or his insurance carrier shall have the right of subrogation to recover money paid by the employer or his insurance carrier for the expenses of the last illness or accident under the Workers' Compensation Act from third persons, with all common law rights against other than the employer and his employees preserved and to be in those persons who would have had such rights had there been no benefits under the Workers' Compensation Act.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 61.3 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Except as required by Section 2b of Title 85 of the Oklahoma Statutes or as otherwise provided by law, an employer who provides employer paid hospitalization insurance for their employees may elect not to secure workers' compensation to employees. Any

employer who elects not to secure workers' compensation to employees pursuant to the provisions of this act shall not be subject to the provisions of the Workers' Compensation Act.

B. Every employer who elects not to secure workers' compensation to employees shall file with the Administrator of the Workers' Compensation Court a notice of this election in such form and detail as the Administrator shall prescribe by rule. The notice shall contain information relating to the employer's business and other information as may be required by the Administrator.

C. 1. Every employer who elects not to secure workers' compensation to employees shall post in a conspicuous location at each of the employers' places of business a notice of this election in such form and detail as the Administrator may prescribe by rule.

2. In addition to the provisions of paragraph 1 of this subsection, every employer shall provide written notice to each employee not later than fifteen (15) days after the employer has elected not to secure workers' compensation to employees or has elected to obtain coverage under the provisions of the Workers' Compensation Act. A notice to inform an employee that the employer has elected not to secure workers' compensation shall include an explanation of the benefit program implemented by the employer.

D. 1. Every employer who elects not to secure workers' compensation to employees shall, in the alternative, purchase insurance for occupational or job-related injuries or occupational diseases which are equivalent to those benefits provided under the Workers' Compensation Act.

2. Notwithstanding the provisions of paragraph 1 of this subsection, an employee's eligibility for medical expense benefits and income replacement benefits for disability shall not exceed a maximum benefit period of ten (10) years and shall not include liability for permanent partial disability.

3. No employee shall be required to pay any coinsurance charges or costs for any job-related injury or illness.

SECTION 21. AMENDATORY 85 O.S. 1991, Section 64, as last amended by Section 6, Chapter 363, O.S.L. 1996 (85 O.S. Supp. 1996, Section 64), is amended to read as follows:

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

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

C. Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve

the insurance carrier from the payment of compensation for injuries sustained by an employee during the life of such policy.

D. 1. Every such policy issued to cover a risk in this state shall include provisions giving the insured employer the option of choosing a deductible amount for medical benefits in amounts ranging from Five Hundred Dollars ($500.00) to Two Thousand Five Hundred Dollars ($2,500.00) in increments of Five Hundred Dollars ($500.00). The insured employer, if choosing to exercise the option, shall choose only one deductible amount.

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

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

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

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

6. Claim amounts up to Five Hundred Dollars ($500.00) annually which are paid under the medical benefits deductible pursuant to this subsection shall be excluded from the calculation of the insured employer's experience modifier.

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

E. Every such policy issued to a sole proprietor, partnership, limited liability company, or corporation must disclose to the potential purchaser the option to 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 for workers' compensation insurance coverage by endorsement to the policy in accordance with Section 3 of this title.

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

~~F.~~ G. No contract of insurance issued by a stock company or mutual association or other concern against the liability arising under this title shall be canceled within the time limited in such contract for its expiration until at least ten (10) days after notice of intention to cancel such contract, on a date specified in such notice, shall be filed in the office of the Administrator and also served on the employer. Such notice shall be served on the employer by delivering it to him or by sending it by mail, by registered letter, addressed to the employer at his or its last-known place of residence; provided, that if the employer be a partnership, then such notice may be so given to any one of the partners, and if the employer be a corporation, then the notice may be given to any agent or officer of the corporation upon whom legal process may be served. Provided, however, if a contract of insurance has been terminated by an employer insured thereunder who has obtained other compensation insurance, as evidenced by filing in compliance with Section 61 of this title, and no intervening rights of any employee are involved, omission of a predecessor insurer to

file notice of time of termination of liability shall not constitute basis for imposition of liability against such predecessor insurer.

SECTION 22. AMENDATORY 85 O.S. 1991, Section 131, as last amended by Section 3, Chapter 326, O.S.L. 1995 (85 O.S. Supp. 1996, 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., or employees engaged in employment subject to Title IV of the Federal Coal Mine Health and Safety Act of 1969 as amended by the Black Lung Benefits Act of 1972, as enacted or as may be amended by the Congress of the United States.

~~(a)~~ 1. 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)~~ 2. 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)~~ 3. 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)~~ 4. 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.

5. The State Insurance Fund shall be subject to the Open Records Act.

SECTION 23. AMENDATORY 85 O.S. 1991, Section 132, is amended to read as follows:

Section 132. The State Insurance Fund Commissioner is hereby vested with full power, authority and jurisdiction over the State Insurance Fund. He shall perform any duties which are necessary or convenient in the exercise of any power, authority, or jurisdiction over the fund in the administration thereof, or in connection with the insurance business to be carried on by him under the provisions of Sections 131 through 151 of this title as fully and completely as a governing body of a private insurance carrier might or could do including the acquisition, operation and maintenance of an electronic data processing facility.

The Board of Managers of the State Insurance Fund shall have full power and authority to fix and determine the rates to be charged by the State Insurance Fund for insurance. If the Board of Managers determines that rates should be reduced, the State Insurance Fund shall be subject to paying an amount equal to the premium taxes required by Section 624 of Title 36 of the Oklahoma Statutes before the Board of Managers can approve a rate reduction. The premium taxes paid pursuant to this section shall be deposited

in the State Treasury to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund.

SECTION 24. AMENDATORY 85 O.S. 1991, Section 2b, as last amended by Section 24, Chapter 3, O.S.L. 1996 (85 O.S. Supp. 1996, Section 2b), is amended to read as follows:

Section 2b. A. All public entities of this state, their agencies and instrumentalities, authorities and public trusts of which they are beneficiaries shall provide workers' compensation to their employees and elected officials engaged in either governmental or proprietary functions in accordance with this section. Compensation or indemnification for compensation shall be paid out of the funds of such public entities.

B. 1. ~~Except as otherwise provided, the~~ The state and all its institutions of higher education, departments, instrumentalities, institutions and public trusts of which they are beneficiaries shall insure against liability for workers' compensation with the State Insurance Fund ~~and shall not insure with any other insurance carrier unless the State Insurance Fund refuses to accept the risk when the application for insurance is made, or unless specifically authorized by law.~~

~~2. The state and all its institutions of higher education except comprehensive universities, departments, instrumentalities, institutions, and public trusts of which the state is a beneficiary may~~; or, if it can be demonstrated that the policy will result in a lower cost than one with the State Insurance Fund, the state and all its institutions of higher education except comprehensive universities, departments, instrumentalities, institutions and public trusts of which they are beneficiaries may insure through a combination of the following:

a. self-insure ~~under rules promulgated by the State Insurance Fund. Self-insurance administration may only be obtained through the State Insurance Fund.~~

~~The state and all its institutions of higher education except comprehensive universities, departments, instrumentalities, institutions, and public trusts so electing to self-insure shall pay premiums set by the State Insurance Fund. The State Insurance Fund shall collect premiums, pay claims and provide for excess insurance. All dividends or profits accumulating from a self-insurance program shall be refunded to the participants on a formula devised by the State Insurance Fund.~~ and make any appropriation of funds to cover their risk, or

b. insure with other insurance carriers licensed in the State of Oklahoma.

~~3.~~ 2. All counties, cities and towns, their instrumentalities and public trusts of which they are beneficiaries shall insure against their liability for workers' compensation with the State Insurance Fund; or through any combination of the following may:

a. self-insure and make any appropriation of funds to cover their risk,

b. secure reinsurance or excess insurance over and above a self-insurance retention in any manner authorized by subsections B and C of Section 167 of Title 51 of the Oklahoma Statutes,

c. secure compensation for their employees in the manner provided in the Political Subdivision Tort Claims Act, subsection C of Section 167 of Title 51 of the Oklahoma Statutes, or

d. insure with other insurance carriers licensed in the State of Oklahoma.

As used in this section, "city" or "town" includes any public trust or authority of which the city or town is beneficiary.

~~4.~~ 3. Boards of education, their instrumentalities and public trusts of which they are beneficiaries shall insure against their liability for workers' compensation with the State Insurance Fund; or through any combination of the following may:

a. self-insure and make any appropriation of funds to cover their risk,

b. secure reinsurance or excess insurance over and above a self-insured retention in any manner authorized by subsection B of Section 168 of Title 51 of the Oklahoma Statutes, or

c. insure with other insurance carriers licensed in the State of Oklahoma.

~~5.~~ 4. Comprehensive universities shall insure against their liability for workers' compensation with the State Insurance Fund; or if it can be demonstrated to the Board of Regents of the comprehensive university prior to the inception date of a workers' compensation policy that the policy will result in a lower cost than one with the State Insurance Fund, the comprehensive university may insure through any combination of the following:

a. self-insure and make any appropriation of funds to cover their risk, or

b. insure with other insurance carriers licensed in the State of Oklahoma.

C. In addition to any other provision of this section, city, county, city-county and public trust hospitals may insure with other insurance carriers licensed in this state if it can be demonstrated to the governing body of the hospital prior to the inception date of a workers' compensation policy each year that such policy will result in a lower cost than one with the State Insurance Fund.

D. For purposes of the Workers' Compensation Act, all contracts of employment for state, county, municipal and state funded educational entities and public trusts will be considered to have

been entered into in this state regardless of where the work is performed.

E. Where a person who is employed by the state, a municipality or a county, or by any political subdivisions thereof, and who, while off-duty from the employment, is employed by a private employer, the private employer alone shall be liable for compensation under the Workers' Compensation Act for any injury of the person or his death arising out of and in the course of employment which occurs during the hours of his actual employment by the private employer. The provisions of Section 11 of this title shall be applicable to private employers specified in this subsection. The provisions of this subsection shall not relieve the state, a municipality or a county, or any political subdivision thereof, from providing disability benefits to which a person may be entitled pursuant to a pension or retirement plan. Provided, further, the provisions of this subsection shall not preclude an employee or group of employees so employed from providing separate compensation coverage for off-duty employment by a private employer.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 132a of Title 85, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided by law, no employer is eligible for workers' compensation insurance coverage with the State Insurance Fund unless such employer has been rejected by at least two insurers for workers' compensation coverage within the thirty (30) days prior to the employer's application to the State Insurance Fund. This section shall not apply to applications for renewal insurance.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 149.3 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created to continue until January 1, 1998, the Special Committee to Study the Privatization of the State

Insurance Fund. The Special Committee shall conduct a study of the State Insurance Fund which shall include, but not be limited to:

1. A determination of the available options for privatizing the State Insurance Fund;

2. A determination of the impact of privatizing the State Insurance Fund; and

3. A review and analysis of the ratemaking methods for the State Insurance Fund.

The Special Committee shall file a report of its findings and recommendations by January 30, 1998, with the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

B. The Special Committee shall be composed of fifteen (15) members as follows:

1. Three members appointed by the President Pro Tempore of the Senate, who shall be members of the Senate;

2. Three members appointed by the Speaker of the House of Representatives, who shall be members of the House of Representatives;

3. Three members appointed by the Governor, one of whom shall represent an association representing insurance agents, and one of whom shall represent an association representing workers' compensation carriers;

4. Two members appointed by the Board of Managers of the State Insurance Fund, one of whom shall be a member of the Board of Managers, and one of whom shall represent the insureds of the State Insurance Fund;

5. Two members appointed by the Oklahoma Bar Association, one of whom shall represent workers' compensation claimants, and one of whom shall represent employers;

6. One member appointed by the Insurance Commissioner; and

7. One member appointed by the presiding judge of the Workers' Compensation Court, who shall be a judge of the Court.

The Speaker of the House of Representatives shall designate a cochairperson of the Special Committee from among the House members appointed to the Special Committee. The Speaker Pro Tempore of the Senate shall designate a cochairperson of the Special Committee from among the Senate members appointed to the Special Committee. All members shall serve at the pleasure of their respective appointing authority.

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

1. Legislative members of the Special 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 Special 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.

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

SECTION 27. AMENDATORY 85 O.S. 1991, Section 203, is amended to read as follows:

Section 203. A. Whenever two or more carriers disagree as to which carrier shall be liable for the continuing health care expenses of an employee, the Court may order one of the carriers to start paying for health care costs immediately. The decision of the Court to choose one carrier over another to pay for the medical treatment of an employee shall not be appealable until the Court's final order as to the disability of the employee.

B. The Court shall promulgate rules for expedited hearings in cases involving carrier disputes over the need for immediate medical care.

C. The carrier in the final order who is liable on the risk for the injury shall immediately reimburse the other carrier for medical monies expended upon proper proof of payment.

D. In the event that two or more insurance carriers or employers disagree as to which entity is liable for the payment of temporary disability benefits, the court shall determine which carrier or employer is liable and order reimbursements as determined appropriate. In the event temporary benefits are overpaid by any carrier or employer, the court shall award a credit against any subsequent order for permanent disability in favor of the carrier or employer, subject to Section 41.1 of this title.

E. The court shall have authority to require an employer and an insurance carrier to reimburse other employers and insurance carriers for benefits paid pursuant to the Workers' Compensation Act in appropriate cases.

SECTION 28. AMENDATORY Section 27, Chapter 349, O.S.L. 1993, as amended by Section 16, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (74 O.S. Supp. 1996, 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. The offices of the Workers' Compensation Fraud Unit shall be situated in Oklahoma City and Tulsa. A minimum of one attorney and two investigators shall be situated in the Tulsa office.

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 29. Sections 1 through 25 and Sections 27 and 28 of this act shall become effective November 1, 1997.

SECTION 30. 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.

46-1-7335 JAK