

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 1771

6 By: Ervin, Hilliard and Cox of
7 the House

8 and

9 Henry of the Senate

10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to workers' compensation; requiring
12 the State Insurance Fund to declare and pay a
13 dividend under certain circumstances; stating
14 limitation regarding amount of dividend; providing
15 for deposit of dividend to state agencies;
16 authorizing expenditure of certain monies accruing
17 to the Multiple Injury Trust Fund; amending Section
18 4, Chapter 361, O.S.L. 1997, and 85 O.S. 1991,
19 Sections 2b, as last amended by Section 24, Chapter
20 3, O.S.L. 1996, 22, as last amended by Section 4,
21 Chapter 374, O.S.L. 1998, 42, as last amended by
22 Section 5, Chapter 374, O.S.L. 1998, and 92 (85 O.S.
23 Supp. 1998, Sections 2b, 3.10, 22 and 42), which
24 relate to workers' compensation; modifying sources
25 from which certain state entities may obtain
26 workers' compensation insurance coverage; providing
27 requirement and limitation; changing the name of the
28 Special Indemnity Fund to the Multiple Injury Trust
29 Fund; amending 85 O.S. 1991, Sections 172, as last
30 amended by Section 42, Chapter 1, 2nd Extraordinary
31 Session, O.S.L. 1994, 173, as last amended by
32 Section 16, Chapter 349, O.S.L. 1993, 174, as
amended by Section 13, Chapter 363, O.S.L. 1996,
175, Section 43, Chapter 1, 2nd Extraordinary
Session, O.S.L. 1994, as amended by Section 7,
Chapter 353, O.S.L. 1998, and Section 34, Chapter
349, O.S.L. 1993, as amended by Section 46, Chapter
1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S.
Supp. 1998, Sections 172, 173, 174, 182 and 211),
which relate to the Special Indemnity Fund; changing
the name of the Special Indemnity Fund to the
Multiple Injury Trust Fund; modifying method of
payment of permanent partial disability awards for
certain actions; providing that certain awards shall
accrue from certain date; prohibiting additional
benefits under certain circumstances; deleting
waiting period for certain benefits; requiring
certain awards be returned under certain
circumstances; providing for payment of certain
awards under certain circumstances; providing for
noncodification; and providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law not to be
3 codified in the Oklahoma Statutes reads as follows:

4 The State Insurance Fund shall immediately declare and pay an
5 extraordinary dividend to policyholders if, on the effective date of
6 this act, the ratio of direct written premiums to surplus exceeds
7 1:1.75. The dividend shall be in an amount which reduces the ratio
8 to 1:1.75 or less, but not less than 1:1.5.

9 SECTION 2. NEW LAW A new section of law not to be
10 codified in the Oklahoma Statutes reads as follows:

11 Any dividend, rebate, refund, or other distribution to
12 policyholders payable by the State Insurance Fund to a state agency
13 pursuant to Section 1 of this act shall be deposited in the State
14 Treasury to the credit of the Multiple Injury Trust Fund. All
15 monies accruing to the credit of the Fund pursuant to this section
16 are hereby appropriated and may be budgeted and expended by the
17 Multiple Injury Trust Fund for any lawful obligation of the Fund.

18 SECTION 3. AMENDATORY 85 O.S. 1991, Section 2b, as last
19 amended by Section 24, Chapter 3, O.S.L. 1996 (85 O.S. Supp. 1998,
20 Section 2b), is amended to read as follows:

21 Section 2b. A. 1. All public entities of this state, their
22 agencies and instrumentalities, authorities, and public trusts of
23 which they are beneficiaries shall provide workers' compensation to
24 their employees and elected officials engaged in either governmental
25 or proprietary functions in accordance with this section.
26 Compensation or indemnification for compensation shall be paid out
27 of the funds of ~~such~~ the public entities.

28 ~~B. 1.~~ 2. Except as otherwise provided, the state and all its
29 institutions of higher education, departments, instrumentalities,
30 institutions, and public trusts of which it or they are
31 beneficiaries shall insure against liability for workers'

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1 compensation with the State Insurance Fund and shall not insure with
2 any other insurance carrier unless:

3 a. the State Insurance Fund refuses to accept the risk
4 when the application for insurance is made, ~~;~~ or unless

5 b. specifically authorized by law; or

6 c. the state entity can obtain workers' compensation
7 insurance coverage at the same cost or at a lower cost
8 from another insurance carrier licensed in this state.

9 For the fiscal year beginning July 1, 1999, and each
10 fiscal year thereafter through the fiscal year

11 beginning July 1, 2002, not to exceed fifteen (15)

12 state entities each fiscal year may leave the State

13 Insurance Fund and obtain workers' compensation

14 insurance coverage pursuant to this subparagraph.

15 Beginning with the fiscal year beginning July 1, 2003,

16 all state entities may obtain workers' compensation

17 insurance coverage pursuant to this subparagraph.

18 ~~2.~~ 3. The state ~~and,~~ all ~~its~~ state institutions of higher
19 education except comprehensive universities, and all state
20 departments, instrumentalities, institutions, and public trusts of
21 which the state is a beneficiary, may self-insure under rules
22 promulgated by the State Insurance Fund. Self-insurance
23 administration may only be obtained through the State Insurance
24 Fund. The state ~~and,~~ all ~~its~~ state institutions of higher education
25 except comprehensive universities, and all state departments,
26 instrumentalities, institutions, and public trusts so electing to
27 self-insure shall pay premiums set by the State Insurance Fund. The
28 State Insurance Fund shall collect premiums, pay claims and provide
29 for excess insurance. All dividends or profits accumulating from a
30 self-insurance program shall be refunded to the participants on a
31 formula devised by the State Insurance Fund.

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

5 ~~a.~~ ~~self-insure~~ 1. Self-insure and make any appropriation of
6 funds to cover their risk~~;~~

7 ~~b.~~ ~~secure~~ 2. Secure reinsurance or excess insurance over and
8 above a self-insurance retention in any manner authorized by
9 subsections B and C of Section 167 of Title 51 of the Oklahoma
10 Statutes~~;~~

11 ~~c.~~ ~~secure~~ 3. Secure compensation for their employees in the
12 manner provided in the Political Subdivision Tort Claims Act~~;~~
13 subsection C of Section 167 of Title 51 of the Oklahoma Statutes, or

14 ~~d.~~ ~~insure~~ 4. Insure with other insurance carriers licensed
15 in the State of Oklahoma.

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

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

22 ~~a.~~ ~~self-insure~~ 1. Self-insure and make any appropriation of
23 funds to cover their risk~~;~~

24 ~~b.~~ ~~secure~~ 2. Secure reinsurance or excess insurance over and
25 above a self-insured retention in any manner authorized by
26 subsection B of Section 168 of Title 51 of the Oklahoma Statutes~~;~~
27 or

28 ~~c.~~ ~~insure~~ 3. Insure with other insurance carriers licensed
29 in the State of Oklahoma.

30 ~~5.~~ D. Comprehensive universities shall insure against their
31 liability for workers' compensation with the State Insurance Fund;
32 or if it can be demonstrated to the Board of Regents of the

1 comprehensive university prior to the inception date of a workers'
2 compensation policy that the policy will result in a lower cost than
3 one with the State Insurance Fund, ~~the comprehensive university may~~
4 ~~insure~~ or, through any combination of the following, may:

- 5 a. ~~self-insure~~ 1. Self-insure and make any appropriation
6 of funds to cover their risk, ; or
7 b. ~~insure~~ 2. Insure with other insurance carriers
8 licensed in the State of Oklahoma.

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

16 ~~D.~~ F. For purposes of the Workers' Compensation Act, all
17 contracts of employment for state, county, municipal, and state
18 funded educational entities and public trusts will be considered to
19 have been entered into in this state regardless of where the work is
20 performed.

21 ~~E.~~ G. Where a person who is employed by the state, a
22 municipality ~~or~~, a county, or by any political subdivisions thereof,
23 and who, while off-duty from the employment, is employed by a
24 private employer, the private employer alone shall be liable for
25 compensation under the Workers' Compensation Act for any injury ~~of~~
26 ~~the person~~ or ~~his~~ death of the person arising out of and in the
27 course of employment which occurs during the hours of ~~his~~ actual
28 employment by the private employer. The provisions of Section 11 of
29 this title shall be applicable to private employers specified in
30 this subsection. The provisions of this subsection shall not
31 relieve the state, a municipality or a county, or any political
32 subdivision thereof, from providing disability benefits to which a

1 person may be entitled pursuant to a pension or retirement plan.
2 ~~Provided, further, the~~ The provisions of this subsection shall not
3 preclude an employee or group of employees so employed from
4 providing separate compensation coverage for off-duty employment by
5 a private employer.

6 SECTION 4. AMENDATORY Section 4, Chapter 361, O.S.L.
7 1997 (85 O.S. Supp. 1998, Section 3.10), is amended to read as
8 follows:

9 Section 3.10 A. Mediation shall be available to any party to a
10 claim arising pursuant to the provisions of the Workers'
11 Compensation Act, subject to the limitation provisions of Section
12 14.3 of ~~Title 85 of the Oklahoma Statutes~~ this title and except for
13 claims against the ~~Special Indemnity~~ Multiple Injury Trust Fund.

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

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

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

21 C. No sanction or penalty may be imposed by the Administrator
22 of the Workers' Compensation Court or any judge of the Court if a
23 party refuses to mediate.

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

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

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

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

12 G. Mediation is confidential and no part of the proceeding
13 shall be considered a matter of public record. Recommendations of
14 the mediator are not binding unless the parties enter into a
15 settlement agreement. If an agreement is not reached, the results
16 and statements made during the mediation are not admissible in any
17 following proceeding.

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

22 I. The Supreme Court of the State of Oklahoma shall be
23 responsible for certifying those persons who are eligible and
24 qualified to serve as mediators. An individual may be certified as
25 a mediator if:

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

29 2. The applicant has such additional qualifications as required
30 by the Court; and

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

4 J. Each certified mediator shall remain on the list for five
5 (5) years, unless removed. Mediators shall be required to complete
6 at least six (6) hours of continuing education per two-year period
7 in the areas of mediation and workers' compensation. Proof of
8 compliance with this requirement shall be submitted to the
9 Administrator. This continuing education requirement shall be in
10 addition to any other such general requirement which may be required
11 by the Oklahoma State Bar Association. Cost of continuing education
12 is to be borne by the applicant.

13 K. Notwithstanding the Rules and Procedures for the Dispute
14 Resolution Act, mediators shall be compensated at the rate or fee as
15 determined by the mediator; provided however, the rate or fee shall
16 not exceed a maximum rate to be established by the Administrator by
17 rule. The cost of mediation shall be paid by the respondent or its
18 insurance carrier.

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

25 SECTION 5. AMENDATORY 85 O.S. 1991, Section 22, as last
26 amended by Section 4, Chapter 374, O.S.L. 1998 (85 O.S. Supp. 1998,
27 Section 22), is amended to read as follows:

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

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

3 2. Temporary Total Disability. (a) With respect to injuries
4 occurring before November 4, 1994, in cases of temporary total
5 disability, seventy percent (70%) of the employee's average weekly
6 wages shall be paid to the employee during the continuance thereof,
7 but not in excess of one hundred fifty (150) weeks, except as
8 otherwise provided in the Workers' Compensation Act. Provided,
9 after compensation has been paid for a period of one hundred forty
10 (140) weeks, the employee may request a review of the case by a
11 judge of the Court for continued temporary total disability benefits
12 provided by the Workers' Compensation Act. Upon a finding that
13 benefits should be extended beyond the initial one-hundred-fifty-
14 week period, compensation may be continued for an additional one
15 hundred fifty (150) weeks.

16 (b) With respect to injuries occurring on or after November 4,
17 1994, in cases of temporary total disability, seventy percent (70%)
18 of the employee's average weekly wages shall be paid to the employee
19 during the continuance thereof, but not in excess of fifty-two (52)
20 weeks, except as otherwise provided in the Workers' Compensation
21 Act. Provided, after compensation has been paid for a period of
22 forty-two (42) weeks, the employee may request a review of the case
23 by a judge of the Court for continued temporary total disability
24 benefits provided by the Workers' Compensation Act. Upon a finding
25 that benefits should be extended beyond the initial fifty-two-week
26 period, compensation may be continued for additional successive
27 fifty-two-week periods, provided the employee has requested review
28 of the case at forty-two (42) weeks during each period involved, and
29 upon a finding by the Court that benefits should be extended. Total
30 payments of compensation for temporary total disability may not
31 exceed a maximum of three hundred (300) weeks in the aggregate.
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1 (c) With respect to injuries occurring on or after November 1,
2 1997, total payments of compensation for temporary total disability
3 may not exceed a maximum of one hundred fifty-six (156) weeks in the
4 aggregate except for good cause shown, as determined by the Court.

5 3. Permanent Partial Disability. (a) With respect to injuries
6 occurring prior to November 4, 1994, in case of disability, partial
7 in character but permanent in quality, the compensation shall be
8 seventy percent (70%) of the employee's average weekly wages, and
9 shall be paid to the employee for the period named in the schedule,
10 as follows:

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

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

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

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

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

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

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

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

31 Phalange of Toe: The loss of the first phalange of any toe
32 shall be considered to be equal to the loss of one-half (1/2) of the

1 amount specified. The loss of more than one phalange shall be
2 considered as the loss of the entire toe.

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

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

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

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

7 Eye: For the loss of an eye, two hundred fifty (250) weeks.

8 Deafness: Deafness from industrial cause, including occupations
9 which are hazardous to hearing, accident or sudden trauma, three
10 hundred (300) weeks, and total deafness of one ear from industrial
11 cause, including occupations which are hazardous to hearing,
12 accident or sudden trauma, one hundred (100) weeks. Except as
13 otherwise provided herein, any examining physician shall only
14 evaluate deafness or hearing impairment in accordance with the
15 latest publication of the American Medical Association's "Guides to
16 the Evaluation of Permanent Impairment" in effect at the time of the
17 injury. The Physician Advisory Committee may, pursuant to Section
18 201.1 of this title, recommend the adoption of a method or system to
19 evaluate permanent impairment that shall be used in place of or in
20 combination with the American Medical Association's "Guides to the
21 Evaluation of Permanent Impairment". Such recommendation shall be
22 made to the Administrator of the Workers' Compensation Court who may
23 adopt the recommendation in part or in whole. The adopted method or
24 system shall be submitted by the Administrator to the Governor, the
25 Speaker of the House of Representatives and President Pro Tempore of
26 the Senate within the first ten (10) legislative days of a regular
27 session of the Legislature. Such method or system to evaluate
28 permanent impairment that shall be used in place of or in
29 combination with the American Medical Association's "Guides to the
30 Evaluation of Permanent Impairment" shall be subject to disapproval
31 in whole or in part by joint or concurrent resolution of the
32 Legislature during the legislative session in which submitted. Such

1 method or system shall be operative one hundred twenty (120) days
2 after the last day of the month in which the Administrator submits
3 the adopted method or system to the Legislature if the Legislature
4 takes no action or one hundred twenty (120) days after the last day
5 of the month in which the Legislature disapproves it in part. If
6 adopted, permanent impairment shall be evaluated only in accordance
7 with the latest version of the alternative method or system in
8 effect at the time of injury. All evaluations shall include an
9 apportionment of injury causation. However, revisions to the guides
10 made by the American Medical Association which are published after
11 January 1, 1989, and before January 1, 1995, shall be operative one
12 hundred twenty (120) days after the last day of the month of
13 publication. Revisions to the guides made by the American Medical
14 Association which are published after December 31, 1994, may be
15 adopted in whole or in part by the Administrator following
16 recommendation by the Physician Advisory Committee. Revisions
17 adopted by the Administrator shall be submitted by the Administrator
18 to the Governor, the Speaker of the House of Representatives and
19 President Pro Tempore of the Senate within the first ten (10)
20 legislative days of a regular session of the Legislature. Such
21 revisions shall be subject to disapproval in whole or in part by
22 joint or concurrent resolution of the Legislature during the
23 legislative session in which submitted. Revisions shall be
24 operative one hundred twenty (120) days after the last day of the
25 month in which the Administrator submits the revisions to the
26 Legislature if the Legislature takes no action or one hundred twenty
27 (120) days after the last day of the month in which the Legislature
28 disapproves them in part. The examining physician shall not follow
29 the guides based on race or ethnic origin. The examining physician
30 shall not deviate from said guides or any alternative thereof except
31 as may be specifically provided for in the guides or modifications
32 to the guides or except as may be specifically provided for in any

1 alternative or modifications thereto adopted by the Administrator of
2 the Workers' Compensation Court as provided for in Section 201.1 of
3 this title. The guides or modifications thereto or alternative
4 system or method of evaluating permanent impairment or modifications
5 thereto shall be the exclusive basis for testimony and conclusions
6 with regard to deafness or hearing impairment.

7 Loss of Use: Permanent loss of use of a thumb, finger, toe,
8 arm, hand, foot, leg or eye shall be considered as the equivalent of
9 the loss of such thumb, finger, toe, hand, arm, foot, leg or eye.

10 For the permanent partial loss of use of a member, loss of
11 hearing or sight of an eye, seventy percent (70%) of the employee's
12 average weekly wage during that portion of the number of weeks in
13 the foregoing schedule provided for the loss of such member or sight
14 of an eye which the partial loss of use thereof bears to the total
15 loss of use of such member, loss of hearing or sight of an eye.

16 Amputations: Amputation between the elbow and the wrist shall
17 be considered as the equivalent of the loss of a hand. Amputation
18 between the knee and the ankle shall be considered as the loss of a
19 foot. Amputation at or above the elbow shall be considered as the
20 loss of an arm. Amputation at or above the knee shall be considered
21 as the loss of a leg.

22 The compensation for the foregoing specific injuries shall be in
23 lieu of all other compensation except the benefits provided in
24 Section 14 of this title and Section 16 of this title.

25 In case of an injury resulting in serious and permanent
26 disfigurement, compensation shall be payable in an amount to be
27 determined by the Court, but not in excess of Twenty Thousand
28 Dollars (\$20,000.00); provided, that compensation for permanent
29 disfigurement shall not be in addition to the other compensation
30 provided for in this section, but shall be taken into consideration
31 in fixing the compensation otherwise provided.

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1 Hernia: In case of an injury resulting in hernia, temporary
2 total compensation for fourteen (14) weeks, and the cost of an
3 operation shall be payable; provided, in any case where the injured
4 employee has been twice previously operated for hernia in the same
5 area and it is established by opinion of a competent surgeon that
6 further surgery in the same area will not result in full relief of
7 the condition, the Court may then award compensation for disability
8 resulting therefrom under paragraph 1 of this section, or, if not
9 totally and permanently disabled, then under the "Other Cases"
10 subdivision following, and, after a second surgical attempt to
11 repair hernia, the injured may not be required to submit to further
12 surgery in an effort to relieve the disability thereafter existing;
13 provided, further, the use of any artificial reinforcement or
14 device, with or without surgery, shall not be the basis of reducing
15 extent of disability to be awarded.

16 Other Cases: In all other classes of disabilities, excluding
17 only those heretofore referred to in paragraph 3 of this section,
18 which disabilities result in loss of use of any portion of an
19 employee's body, and which disabilities are permanent in quality but
20 partial in character, disability shall mean the percentage of
21 permanent impairment. The compensation ordered paid shall be
22 seventy percent (70%) of the employee's average weekly wage for the
23 number of weeks which the partial disability of the employee bears
24 to five hundred (500) weeks.

25 (b) With respect to injuries occurring after November 4, 1994,
26 in case of disability, partial in character but permanent in
27 quality, the compensation shall be seventy percent (70%) of the
28 employee's average weekly wages, and shall be paid to the employee
29 for the period prescribed by the following schedule:

30 (1) For each percent of the first nine percent (9%) of
31 disability, eighty percent (80%) of the number of weeks of
32 compensation provided by law prior to November 4, 1994;

1 (2) For each percent of the next eleven percent (11%) of
2 disability, the identical number of weeks of compensation provided
3 by law prior to November 4, 1994;

4 (3) For each percent of the next thirty percent (30%) of
5 disability, one hundred twenty percent (120%) of the number of weeks
6 of compensation provided by law prior to November 4, 1994; and

7 (4) For each remaining percent of disability, the identical
8 number of weeks of compensation provided by law prior to November 4,
9 1994.

10 4. Temporary Partial Disability. (a) With respect to injuries
11 occurring before November 4, 1994, in case of temporary partial
12 disability, except the particular cases mentioned in paragraph 3 of
13 this section, an injured employee shall receive seventy percent
14 (70%) of the difference between ~~his~~ the average weekly wages of the
15 employee and ~~his~~ the wage-earning capacity of the employee
16 thereafter in the same employment or otherwise, if less than before
17 the injury, during continuance of such partial disability, but not
18 to exceed one hundred fifty (150) weeks. Provided, after
19 compensation has been paid for a period of one hundred forty (140)
20 weeks, the employee may request a review of the case by a judge of
21 the Court for continued temporary partial disability benefits
22 provided by the Workers' Compensation Act. Upon a finding that
23 benefits should be extended beyond the initial one-hundred-fifty-
24 week period, compensation may be continued for an additional one
25 hundred fifty (150) weeks.

26 (b) With respect to injuries occurring on or after November 4,
27 1994, in case of temporary partial disability, except the particular
28 cases mentioned in paragraph 3 of this section, an injured employee
29 shall receive seventy percent (70%) of the difference between ~~his~~
30 the average weekly wages of the employee and ~~his~~ the wage-earning
31 capacity of the employee thereafter in the same employment or
32 otherwise, if less than before the injury, during continuance of

1 such partial disability, but not to exceed fifty-two (52) weeks.
2 Provided, after compensation has been paid for a period of forty-two
3 (42) weeks, the employee may request a review of the case by a judge
4 of the Court for continued temporary partial disability benefits
5 provided by the Workers' Compensation Act. Upon a finding that
6 benefits should be extended beyond the initial fifty-two-week
7 period, compensation may be continued for additional successive
8 fifty-two-week periods provided the employee has requested review of
9 the case at forty-two (42) weeks during each period involved, and
10 upon a finding by the Court that benefits should be extended. Total
11 payments of compensation for temporary partial disability may not
12 exceed a maximum of three hundred (300) weeks in the aggregate.

13 (c) With respect to injuries occurring on or after November 1,
14 1997, total payments of compensation for temporary partial
15 disability may not exceed a maximum of one hundred fifty-six (156)
16 weeks in the aggregate except for good cause shown, as determined by
17 the Court.

18 5. Notwithstanding any other section of the Workers'
19 Compensation Act, temporary disability shall be payable without an
20 award by the Court. The first payment of temporary disability
21 compensation shall become due on the tenth day after the employer
22 has received notice of injury as specified in Section 24.2 of this
23 title. All compensation owed on that date shall be paid and
24 thereafter payments shall be made weekly except when otherwise
25 ordered by the Court.

26 If any compensation payments owed without an award are not paid
27 within ten (10) days after becoming due there shall be added to such
28 owed payments an amount equal to ten percent (10%) of the amount due
29 which shall be paid at the same time in addition to the owed
30 payments unless such nonpayment is excused by the Court after a
31 showing by the employer that conditions exist over which the
32 employer had no control in that either payments were not made within

1 the prescribed time or the employer denies coverage within the time
2 specified for the employer to respond.

3 6. Limitation. The compensation payments under the provisions
4 of the Workers' Compensation Act shall not exceed the sum of
5 seventy-five percent (75%) of the state's average weekly wage as
6 determined by the Oklahoma Employment Security Commission, the sum
7 of ninety percent (90%) of the state's average weekly wage beginning
8 January 1, 1995, for injuries occurring after December 31, 1994, and
9 the sum of one hundred percent (100%) of the state's average weekly
10 wage beginning January 1, 1996, for injuries occurring after
11 December 31, 1995, for temporary disability; Sixty Dollars (\$60.00)
12 per week beginning as of the effective date of the Workers'
13 Compensation Act, and Seventy Dollars (\$70.00) per week beginning
14 January 1, 1979, and Eighty Dollars (\$80.00) per week beginning
15 January 1, 1980, and Ninety Dollars (\$90.00) per week beginning
16 January 1, 1981, and to fifty percent (50%) of the state's average
17 weekly wage beginning January 1, 1982, for permanent partial
18 disability; Seventy-five Dollars (\$75.00) per week beginning as of
19 the effective date of the Workers' Compensation Act, and Ninety
20 Dollars (\$90.00) per week beginning January 1, 1979, and One Hundred
21 Ten Dollars (\$110.00) per week beginning January 1, 1980, to sixty-
22 six and two-thirds percent (66 2/3%) of the state's average weekly
23 wage beginning January 1, 1981, to seventy-five percent (75%) of the
24 state's average weekly wage beginning September 1, 1992, to ninety
25 percent (90%) of the state's average weekly wage beginning January
26 1, 1995, for injuries occurring after December 31, 1994, and to one
27 hundred percent (100%) of the state's average weekly wage beginning
28 January 1, 1996, for injuries occurring after December 31, 1995, for
29 permanent total disability, or at any time be less than Thirty
30 Dollars (\$30.00) per week; provided, however, that if the employee's
31 wages at the time of the injury are less than Thirty Dollars
32 (\$30.00) per week, ~~he~~ the employee shall receive ~~his~~ the full weekly

1 wages of the employee; provided further, that the compensation
2 received, as provided for temporary partial disability, shall not,
3 when added to the wages received by such employee after such injury,
4 amount to a greater sum than eighty percent (80%) of ~~his~~ the average
5 weekly wages of the employee received prior to said injury.

6 The average weekly wage in this state shall be determined by the
7 Oklahoma Employment Security Commission every three (3) years
8 beginning July 1, 1984, and shall be used to establish maximum
9 benefits under the Workers' Compensation Act for injuries occurring
10 during a three-year period, which period shall begin on the first
11 day of November after publication by the Oklahoma Employment
12 Security Commission. For the purpose of computing benefits payable
13 under the Workers' Compensation Act, the state's average weekly wage
14 shall be rounded to the nearest dollar amount.

15 The benefit level for members of the National Guard and any
16 authorized voluntary or uncompensated worker rendering services as a
17 fire fighter, peace officer or civil defense worker shall be
18 determined by using the earnings of the individual in his regular
19 occupation.

20 7. Previous Disability. The fact that an employee has suffered
21 previous disability or impairment or received compensation therefor
22 shall not preclude ~~him~~ the employee from compensation for a later
23 accidental personal injury or occupational disease; but in
24 determining compensation for the later accidental personal injury or
25 occupational disease ~~his~~ the average weekly wages of the employee
26 shall be such sum as will reasonably represent ~~his~~ the earning
27 capacity of the employee at the time of the later accidental
28 personal injury or occupational disease. In the event there exists
29 a previous impairment which produced permanent disability and the
30 same is aggravated or accelerated by an accidental personal injury
31 or occupational disease, compensation for permanent disability shall
32 be only for such amount as was caused by such accidental personal

1 injury or occupational disease and no additional compensation shall
2 be allowed for the pre-existing disability or impairment. The sum
3 of all permanent partial disability awards, including awards against
4 the ~~Special Indemnity~~ Multiple Injury Trust Fund, shall not exceed
5 one hundred percent (100%) permanent partial disability for any
6 individual. An individual may not receive more than five hundred
7 twenty (520) weeks' compensation for permanent partial disability,
8 but may receive other benefits under the Workers' Compensation Act
9 if otherwise eligible as provided in the Workers' Compensation Act.

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

14 (a) Benefit amounts for particular classes of dependents.

15 (1) If there is a surviving spouse, to such surviving spouse
16 seventy percent (70%) of the average weekly wages the deceased was
17 earning. In no event shall this spousal income benefit be
18 diminished.

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

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

29 (4) To the children, if there is no surviving spouse, fifty
30 percent (50%) of the average weekly wages the deceased was earning
31 for one child, and twenty percent (20%) of such wage for each
32 additional child, divided among all children, to share and share

1 alike, subject to the provisions of subparagraphs (c) and (d) of
2 this paragraph.

3 (5) The income benefits payable for the benefit of any child
4 under this section shall cease:

5 a. when the child dies, marries, or reaches the age of
6 eighteen (18),

7 b. when the child over eighteen (18) years of age ceases
8 to be physically or mentally incapable of self-
9 support,

10 c. when the actually dependent child ceases to be
11 actually dependent, or

12 d. when the child has been enrolled as a full-time
13 student in any accredited educational institution or
14 has been receiving education by other means, including
15 education at home pursuant to Section 4 of Article
16 XIII of the Oklahoma Constitution, and the child
17 ceases to be so enrolled or educated or reaches
18 twenty-three (23) years of age. A child who
19 originally qualified as a dependent by virtue of being
20 less than eighteen (18) years of age may, upon
21 reaching age eighteen (18), continue to qualify if the
22 child satisfies the tests of being physically or
23 mentally incapable of self-support, actually
24 dependent, or enrolled in an accredited educational
25 institution or being educated by other means,
26 including education at home pursuant to Section 4 of
27 Article XIII of the Oklahoma Constitution.

28 (6) To each parent, if actually dependent, twenty-five percent
29 (25%) of the average weekly wages the deceased was earning subject
30 to the provisions of subparagraphs (c) and (d) of this paragraph.

31 (7) To the brothers, sisters, grandparents and grandchildren,
32 if actually dependent, twenty-five percent (25%) of the average

1 weekly wages the deceased was earning to each such dependent. If
2 there should be more than one of such dependents, the total income
3 benefits payable for the benefit of such dependents shall be divided
4 to share and share alike subject to the provisions of subparagraphs
5 (c) and (d) of this paragraph.

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

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

29 (b) Change in dependents. Upon the cessation of income
30 benefits under this section to or for the benefit of any person, the
31 income benefits payable to the remaining persons who continue to be
32 entitled to income benefits for the unexpired part of the period

1 during which their income benefits are payable shall be that which
2 such persons would have received if they had been the only persons
3 entitled to income benefits at the time of the decedent's death.

4 (c) Maximum income benefits for death. For the purposes of
5 this section, the average weekly wage of the employee shall be taken
6 as not more than the average weekly wage of the state. In no case
7 shall the aggregate weekly income benefits payable to all
8 beneficiaries under this section exceed the maximum income benefits
9 that were or would have been payable for total permanent disability
10 to the deceased.

11 (d) Maximum total payment. The maximum weekly income benefits
12 payable for all beneficiaries in case of death shall not exceed one
13 hundred percent (100%) of the average weekly wages the deceased was
14 earning, subject to the maximum limits in subparagraph (c) of this
15 paragraph. The maximum aggregate limitation shall not apply in case
16 of payment of two (2) years' income benefits to the surviving spouse
17 upon remarriage, as provided under division (3) of subparagraph (a)
18 of this paragraph, to prevent the immediate recalculation and
19 payments of benefits to the remaining beneficiaries as provided
20 under subparagraph (b) of this paragraph. The weekly income
21 benefits as recalculated to the remaining beneficiaries shall not
22 exceed the weekly benefit that was or would have been payable for
23 total permanent disability to the deceased. The classes of
24 beneficiaries specified in divisions (1), (2) and (4) of
25 subparagraph (a) of this paragraph shall have priority over all
26 other beneficiaries in the apportionment of income benefits. If the
27 provisions of this subparagraph should prevent payments to other
28 beneficiaries of the income benefits to the full extent otherwise
29 provided for by this section, the gross remaining amount of income
30 benefits payable to such other beneficiaries shall be apportioned by
31 class, proportionate to the interest of each class in the remaining
32 amount. Parents shall be considered to be in one class and those

1 specified in division (7) of subparagraph (a) of this paragraph in a
2 separate class.

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

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

13 11. (a) For deaths occurring before January 1, 1995, if there
14 is a surviving spouse and surviving children entitled to receive
15 death benefits herein, such survivors shall be entitled to an
16 immediate lump-sum payment of Ten Thousand Dollars (\$10,000.00) to
17 the spouse and Two Thousand Five Hundred Dollars (\$2,500.00) to each
18 surviving child not to exceed two children. For deaths occurring
19 after December 31, 1994, if there is a surviving spouse and
20 surviving children entitled to receive death benefits herein, such
21 survivors shall be entitled to an immediate lump-sum payment of
22 Twenty Thousand Dollars (\$20,000.00) to the spouse and Five Thousand
23 Dollars (\$5,000.00) to each surviving child not to exceed two
24 children.

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

30 (c) Any claim under this paragraph shall be substantiated by
31 the filing of a properly executed and authenticated proof of loss,
32 which form shall be prescribed by the Administrator, and payment of

1 such sum shall be made within fifteen (15) days after adjudication
2 of entitlement by the Court. Such sum shall not be subject to any
3 award of attorney fees in uncontested cases, except the Court shall
4 appoint a guardian ad litem to represent known and unknown minor
5 children and said guardian ad litem shall be paid a reasonable fee
6 for ~~his~~ the services.

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

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

29 13. a. Any employee convicted of a misdemeanor or felony and
30 sentenced to a term of incarceration of at least
31 ninety (90) days in this state or in any other
32 jurisdiction shall have all benefits for temporary

1 total disability awarded by the Workers' Compensation
2 Court forfeited by order of the Court on motion of the
3 employer or the employer's insurer after confirmation
4 of the employee's incarceration. The Court also may
5 order the forfeiture of such benefits on its own
6 motion upon receipt of notice from the Director of the
7 Oklahoma Department of Corrections that the person
8 awarded the benefits is incarcerated as an inmate in a
9 facility operated by or under contract with the
10 Department. The provisions of this subparagraph shall
11 not apply to any benefits awarded to an inmate for
12 compensable injuries sustained by the inmate while in
13 the employ of a private for-profit employer or while
14 employed in private prison industries, involving a
15 for-profit employer, which deal in interstate commerce
16 or which sell products or services to the federal
17 government.

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

1 SECTION 6. AMENDATORY 85 O.S. 1991, Section 42, as last
2 amended by Section 5, Chapter 374, O.S.L. 1998 (85 O.S. Supp. 1998,
3 Section 42), is amended to read as follows:

4 Section 42. A. If payment of compensation or an installment
5 payment of compensation due under the terms of an award, except in
6 the case of an appeal of an award or an award from the ~~Special~~
7 ~~Indemnity~~ Multiple Injury Trust Fund, is not made within ten (10)
8 days after the same is due by the employer or insurance carrier
9 liable therefor, the Court may order a certified copy of the award
10 to be filed in the office of the court clerk of any county, which
11 award whether accumulative or lump sum shall have the same force and
12 be subject to the same law as judgments of the district court. Any
13 compensation awarded and all payments thereof directed to be made by
14 order of the Court, except in the case of an appeal of an award or
15 an award of compensation from the ~~Special Indemnity~~ Multiple Injury
16 Trust Fund, shall bear interest at the rate of eighteen percent
17 (18%) per year from the date ordered paid by the Court until the
18 date of satisfaction. Compensation ordered to be paid from the
19 ~~Special Indemnity~~ Multiple Injury Trust Fund shall bear interest at
20 the rate of interest applicable to judgments in civil cases pursuant
21 to Section 727 of Title 12 of the Oklahoma Statutes from the date of
22 the award. Any award from the ~~Special Indemnity~~ Multiple Injury
23 Trust Fund prior to ~~the effective date of this act~~ November 4, 1994,
24 shall bear interest at the rate of interest applicable to judgments
25 in civil cases pursuant to Section 727 of Title 12 of the Oklahoma
26 Statutes ~~from the effective date of this act~~. Upon the filing of
27 the certified copy of the Court's award a writ of execution shall
28 issue and process shall be executed and the cost thereof taxed, as
29 in the case of writs of execution, on judgments of courts of record,
30 as provided by Title 12 of the Oklahoma Statutes; provided, however,
31 the provisions of this section relating to execution and process for
32 the enforcement of awards shall be and are cumulative to other

1 provisions now existing or which may hereafter be adopted relating
2 to liens or enforcement of awards or claims for compensation.

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

10 SECTION 7. AMENDATORY 85 O.S. 1991, Section 92, is
11 amended to read as follows:

12 Section 92. It shall be unlawful and a misdemeanor for any
13 person acting as an attorney, adjustor, or representative in any
14 capacity for a respondent or insurance carrier in any workers'
15 compensation case before the Court to thereafter represent the
16 claimant in any such case in any action or proceeding for
17 compensation of such claimant against or from the ~~Special Indemnity~~
18 Multiple Injury Trust Fund.

19 SECTION 8. AMENDATORY 85 O.S. 1991, Section 172, as last
20 amended by Section 42, Chapter 1, 2nd Extraordinary Session, O.S.L.
21 1994 (85 O.S. Supp. 1998, Section 172), is amended to read as
22 follows:

23 Section 172. A. If an employee who is a "physically impaired
24 person" receives an accidental personal injury compensable under the
25 Workers' Compensation Act which results in additional permanent
26 disability so that the degree of disability caused by the
27 combination of both disabilities is materially greater than that
28 which would have resulted from the subsequent injury alone, the
29 employee shall receive compensation on the basis of such combined
30 disabilities. Only disability due to an injury to the body as a
31 whole shall be combinable with a prior body disability, except that
32 disability to a major member may be combined with disability to the

1 body as a whole. If such combined disabilities constitute partial
2 permanent disability as ~~now defined by the Workers' Compensation Act~~
3 ~~of this state~~ in Section 3 of this title, then such employee shall
4 receive full compensation as now provided by law for the disability
5 resulting directly and specifically from such subsequent injury, and
6 in addition thereto such employee shall receive full compensation
7 for ~~his~~ the combined disability as above defined, after deducting
8 therefrom the percent of that disability that constituted the
9 employee a "physically impaired person", as defined herein, all of
10 which shall be computed upon the schedule and provision of the
11 Workers' Compensation Act of this state. ~~Provided~~ For all actions,
12 the employer or the insurance carrier of the employer shall be
13 liable ~~only~~ for the degree of percent of disability which would have
14 resulted from the latter injury if there had been no preexisting
15 impairment. ~~After~~ For actions filed prior to November 1, 1999,
16 after payments by the employer or ~~his~~ the insurance carrier of the
17 employer, if any, have ceased, the remainder of such compensation
18 shall be paid out of the ~~Special Indemnity~~ Multiple Injury Trust
19 Fund provided for in Section 173 of this title, in periodic
20 installments. For actions filed on or after November 1, 1999, the
21 Multiple Injury Trust Fund shall not be liable for payment of the
22 remainder of the compensation award.

23 B. If such combined disabilities constitute permanent total
24 disability, as ~~now defined by the Workers' Compensation Act~~ in
25 Section 3 of this title, then the employee shall receive full
26 compensation as now provided by law for the disability resulting
27 directly and specifically from such subsequent injury. In addition,
28 the employee shall receive full compensation for ~~his~~ the combined
29 disability, as above defined, all of which shall be computed upon
30 the schedule and provisions of the Workers' Compensation Act. The
31 employer shall be liable only for the degree of percent of
32 disability which would have resulted from the latter injury if there

1 had been no preexisting impairment. After all permanent partial
2 payments by the employer or his the insurance carrier of the
3 employer have ceased, the remainder of such compensation shall be
4 paid out of the ~~Special Indemnity~~ Multiple Injury Trust Fund
5 provided for in Section 173 of this title, in periodic installments.
6 In permanent total disability cases the same shall be paid in
7 periodic payments, as set forth in Section 22 of this title, and
8 shall not be commuted to a lump-sum payment. The compensation rate
9 for permanent total awards from the ~~Special Indemnity~~ Multiple
10 Injury Trust Fund shall be the compensation rate for permanent
11 partial disability paid by the employer in the last combinable
12 compensable injury. Permanent total awards from the ~~Special~~
13 ~~Indemnity~~ Multiple Injury Trust Fund shall be payable for a period
14 of five (5) years or until the employee reaches sixty-five (65)
15 years of age, whichever period is the longer. Multiple Injury Trust
16 Fund awards shall accrue from the file date of the court order
17 finding the claimant to be permanently and totally disabled.

18 C. ~~Before~~ For all actions filed prior to November 1, 1999,
19 before a physically impaired person can proceed against the ~~Special~~
20 ~~Indemnity~~ Multiple Injury Trust Fund, the preexisting permanent
21 partial disability and the permanent partial disability from the
22 last injury must exceed a total amount equal to forty percent (40%)
23 to the body.

24 D. Awards from the ~~Special Indemnity~~ Multiple Injury Trust Fund
25 shall abate upon the death, from any cause, of the employee.

26 E. Reopening any prior injury claim other than the last
27 employer injury claim shall not give a claimant the right to
28 additional Multiple Injury Trust Fund benefits. All weekly payments
29 by the last employer or the insurance carrier of the employer for
30 permanent partial disability shall be paid before any claim for
31 benefits against the ~~Special Indemnity~~ Multiple Injury Trust Fund
32 may be paid. ~~In the case of a lump-sum permanent partial disability~~

1 ~~award or settlement, such award or settlement shall be divided by~~
2 ~~seventy percent (70%) of the employee's weekly wage up to a maximum~~
3 ~~of fifty percent (50%) of the state's average weekly wage, to~~
4 ~~determine the number of weeks which must elapse before a claim~~
5 ~~against the Special Indemnity Fund may be paid.~~

6 F. Awards that are not claimed within two (2) years of the date
7 on which the award first becomes available shall be returned to the
8 Multiple Injury Trust Fund. If the claimant is subsequently found
9 and claims the award, such award and interest as required by Section
10 42 of this title shall be paid to the claimant by the Multiple
11 Injury Trust Fund within sixty (60) days of the claim.

12 SECTION 9. AMENDATORY 85 O.S. 1991, Section 173, as last
13 amended by Section 16, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1998,
14 Section 173), is amended to read as follows:

15 Section 173. There is hereby created, for the purposes herein
16 declared, a Multiple Injury Trust Fund, formerly known as the
17 Special Indemnity Fund, to be derived from the following sources:

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

1 B. The ~~Special Indemnity~~ Multiple Injury Trust Fund is hereby
2 authorized to receive and expend monies appropriated by the
3 Legislature.

4 C. Where an award has been made by the Court, or any payments
5 in lieu thereof, for compensable injury for a permanent total
6 disability or a permanent partial disability, the employer or
7 insurance carrier shall pay to such employee ninety-five percent
8 (95%) of the same and the remaining five percent (5%) thereof shall
9 be paid by such employer to the Oklahoma Tax Commission. Such
10 payments to the Tax Commission shall be made not later than the
11 fifteenth day of the month following the close of each quarter of
12 the calendar year in which compensation is paid or became payable.

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

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

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

1 G. The Oklahoma Tax Commission shall on or before the first day
2 of April of each year find and determine the amount of money held as
3 of March 1 of that year by the State Treasurer for the benefit of
4 the ~~Special Indemnity~~ Multiple Injury Trust Fund and shall on or
5 before the first day of October of each year find and determine the
6 amount of money held as of September 1 of that year by the State
7 Treasurer for the benefit of the ~~Special Indemnity~~ Multiple Injury
8 Trust Fund. Promptly after making each such determination, the
9 Oklahoma Tax Commission shall advise the State Insurance Fund and
10 the Administrator in writing of its findings and determination in
11 the foregoing particulars.

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

1 State Insurance Fund, sell any of such securities, the proceeds
2 thereof to be paid over to the State Treasurer for the ~~Special~~
3 ~~Indemnity~~ Multiple Injury Trust Fund.

4 I. The refund provisions of Sections 227 through 229 of Title
5 68 of the Oklahoma Statutes shall be applicable to any payments made
6 to the ~~Special Indemnity~~ Multiple Injury Trust Fund. Refunds shall
7 be paid from and out of the ~~Special Indemnity~~ Multiple Injury Trust
8 Fund.

9 J. ~~Until January 1, 1994, the Oklahoma Tax Commission shall~~
10 ~~pay, monthly, to the State Treasurer to the credit of the Special~~
11 ~~Indemnity Fund all monies collected under the provisions of this~~
12 ~~section. Beginning January 1, 1994, the~~ The Oklahoma Tax Commission
13 shall pay, monthly, to the State Treasurer all monies collected
14 under the provisions of this section to be credited as follows:
15 ninety percent (90%) to the ~~Special Indemnity~~ Multiple Injury Trust
16 Fund, five percent (5%) to the Oklahoma Department of Labor, two and
17 one-half percent (2.5%) to the Office of the Attorney General and
18 two and one-half percent (2.5%) to the State Department of
19 Vocational and Technical Education. Monies received by the
20 Department of Labor under this section shall be used for safety
21 consultation and the regulation of the safety of public employees
22 through the Occupational Safety and Health Act of 1970. Monies
23 received by the Office of the Attorney General shall be deposited to
24 the credit of the Attorney General's Workers' Compensation Fraud
25 Unit Revolving Fund created pursuant to Section 19.2 of Title 74 of
26 the Oklahoma Statutes. Monies received by the State Department of
27 Vocational and Technical Education shall supplement other funding to
28 the Department for purposes of implementing the provisions of
29 subsection B of Section 414 of Title 40 of the Oklahoma Statutes.
30 The State Treasurer shall pay out of the ~~Special Indemnity~~ Multiple
31 Injury Trust Fund only upon the order and direction of the Court of
32 this state acting under the provisions hereof.

1 SECTION 10. AMENDATORY 85 O.S. 1991, Section 174, as
2 amended by Section 13, Chapter 363, O.S.L. 1996 (85 O.S. Supp. 1998,
3 Section 174), is amended to read as follows:

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

18 SECTION 11. AMENDATORY 85 O.S. 1991, Section 175, is
19 amended to read as follows:

20 Section 175. A. The State Insurance Fund of the State of
21 Oklahoma shall be charged with the administration and protection of
22 said ~~Special Indemnity~~ Multiple Injury Trust Fund and shall be
23 notified by the Administrator of all proceedings which may affect
24 such fund.

25 B. Any party interested shall have a right to bring a
26 proceeding in the Supreme Court of the State of Oklahoma to review
27 an award of the Court affecting such ~~Special Indemnity~~ Multiple
28 Injury Trust Fund, in the same manner as is now provided by law with
29 reference to other awards by the Court.

30 C. Provided further that the State Treasurer shall allocate to
31 the State Insurance Fund out of the ~~Special Indemnity~~ Multiple
32 Injury Trust Fund, sufficient funds for administration expenses

1 thereof in amounts to be fixed and approved by the Governor,
2 Attorney General, and Secretary of the State Board for Property and
3 Casualty Rates.

4 SECTION 12. AMENDATORY Section 43, Chapter 1, 2nd
5 Extraordinary Session, O.S.L. 1994, as amended by Section 7, Chapter
6 353, O.S.L. 1998 (85 O.S. Supp. 1998, Section 182), is amended to
7 read as follows:

8 Section 182. A. There is hereby created the "Joint Committee
9 on the ~~Special Indemnity~~ Multiple Injury Trust Fund". The Committee
10 shall conduct a study of the ~~Special Indemnity~~ Multiple Injury Trust
11 Fund which shall include, but not be limited to:

12 1. A determination of the impact that dissolution of the
13 ~~Special Indemnity~~ Multiple Injury Trust Fund would have on
14 businesses located in this state;

15 2. A determination of the unfunded liability of the ~~Special~~
16 ~~Indemnity~~ Multiple Injury Trust Fund;

17 3. A determination of the impact of a vocational rehabilitation
18 program for ~~Special Indemnity~~ Multiple Injury Trust Fund claimants;

19 4. A determination of the impact of the federal Americans with
20 Disabilities Act upon the ~~Special Indemnity~~ Multiple Injury Trust
21 Fund; and

22 5. An analysis of factors and conditions associated with the
23 growth of the workers' compensation system and its impact on the
24 ~~Special Indemnity~~ Multiple Injury Trust Fund.

25 The Committee shall file a report of its findings by January 1,
26 1999, with the Speaker of the House of Representatives and the
27 President Pro Tempore of the Senate.

28 B. The Committee shall consist of ten (10) members, five of
29 whom shall be members of the House of Representatives appointed by
30 the Speaker of the House of Representatives and five of whom shall
31 be members of the Senate appointed by the President Pro Tempore of
32 the Senate. The Speaker of the House of Representatives shall

1 designate a co-chair of the Committee from among the House members
2 appointed to the Committee. The President Pro Tempore shall
3 designate a co-chair of the Committee from among the Senate members
4 appointed to the Committee. All members shall serve at the pleasure
5 of their respective appointing authority.

6 C. Members of the Committee shall receive no compensation for
7 serving on the Committee, but shall be reimbursed for their
8 necessary travel expenses incurred in the performance of their
9 duties in accordance with Section 456 of Title 74 of the Oklahoma
10 Statutes.

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

13 SECTION 13. AMENDATORY Section 34, Chapter 349, O.S.L.
14 1993, as amended by Section 46, Chapter 1, 2nd Extraordinary
15 Session, O.S.L. 1994 (85 O.S. Supp. 1998, Section 211), is amended
16 to read as follows:

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

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

30 C. In carrying out the responsibilities given to the Workers'
31 Compensation Fraud Unit, the Attorney General or designee may use
32 subpoenas or other process in aid of investigations and prosecutions

1 and may take possession of records subject to examination pursuant
2 to this section by subpoena. The Attorney General shall supply
3 copies of the records obtained which are necessary to the
4 continuation of normal business operations by the person maintaining
5 the records or may require the person maintaining the records to
6 provide copies as they are kept in the usual course of business.

7 D. Subpoenas ad testificandum or duces tecum requested by the
8 Attorney General or designee pursuant to subsection C of this
9 section shall be issued by the district court in the county of the
10 residence of the person to whom the subpoena is directed, in the
11 county where the records are located or in the county where a person
12 is to produce records or appear and be sworn. Subpoenas issued
13 pursuant to this section may be served by the Attorney General, any
14 peace officer or any competent person over eighteen (18) years of
15 age, and may require attendance or production at any place in this
16 state. Service may be made by mail and may be accomplished by
17 mailing a copy thereof by certified mail with return receipt
18 requested and delivery restricted to the person named in the
19 subpoena. Proof of service shall be made upon affidavit, and if
20 made by mail, a copy of the return receipt shall be attached. A
21 refusal to obey such subpoena, or willful failure to appear, be
22 sworn, testify or produce records at the place and time specified
23 shall constitute contempt and shall be enforced by the district
24 court of the county where issued.

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

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

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

4 SECTION 14. This act shall become effective November 1, 1999.

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