

ENROLLED SENATE
BILL NO. 1414

By: Henry of the Senate

and

Ervin, Roberts, Covey,
Gilbert, Turner of the
House

An Act relating to workers' compensation; directing the Administrator and the Medical Cost Reduction Committee of the Workers' Compensation Court to reduce medical costs; providing for composition and procedures of the Medical Cost Reduction Committee; amending 85 O.S. 1991, Section 14, as last amended by Section 3, Chapter 353, O.S.L. 1998 (85 O.S. Supp. 1999, Section 14), which relates to medical treatment; limiting amount of increase of medical costs; requiring dividend under certain circumstances; specifying form of payment; specifying method of calculation; amending 85 O.S. 1991, Section 137, which relates to the State Insurance Fund; modifying limit of surplus; requiring dividend under certain circumstances; providing for distribution of dividends of state agencies; amending Section 2, Chapter 420, O.S.L. 1999, which relates to dividend of Multiple Injury Trust Fund; authorizing Multiple Injury Trust Fund to use right to any dividend to secure certain agreements with the State Insurance Fund; amending 85 O.S. 1991, Section 2b, as last amended by Section 3, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 1999, Section 2b), which relates to workers' compensation insurance for state agencies; modifying procedure for state agencies to obtain coverage from other carrier; amending 85 O.S. 1991, Section 110, which relates to records; providing certain procedure for obtaining records from the Workers' Compensation Court; requiring recommendations regarding certain inquiries; amending 85 O.S. 1991, Section 138, as last amended by Section 2, Chapter 26, O.S.L. 1995 (85 O.S. Supp. 1999, Section 138), which relates to the State Insurance Fund; authorizing the State Insurance Fund to enter into agreements with the Multiple Injury Trust Fund to meet certain obligations; authorizing agreement on behalf of Multiple Injury Trust Fund with reinsurers under certain conditions; amending 85 O.S. 1991, Section 173, as last amended by Section 9, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 1999, Section 173), which relates to the Multiple Injury Trust Fund; modifying payments by certain insurers; requiring payment of temporary assessments by certain self-

insurers and the State Insurance Fund; requiring treatment of assessments as losses for rate purposes; prohibiting separate listing on premium invoices and billing statements; modifying method of calculating monies to be distributed to certain agencies; authorizing the Multiple Injury Trust Fund to enter into certain agreements with the State Insurance Fund to meet certain obligations; authorizing agreements with reinsurers under certain circumstances; amending 85 O.S. 1991, Section 172, as last amended by Section 8, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 1999, Section 172), which relates to material increases in disability; modifying method for compensation for material increases in disability; modifying payment for compensation for material increases in disability; amending 85 O.S. 1991, Section 174, as last amended by Section 10, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 1999, Section 174), which relates to political and municipal subdivision payments for the Multiple Injury Trust Fund; modifying requirements for payments by political and municipal subdivisions for the Multiple Injury Trust Fund; repealing Section 1, Chapter 420, O.S.L. 1999, which relates to dividend payment by the State Insurance Fund under certain conditions; repealing Sections 1 and 2 of Enrolled House Bill No. 2395 of the 2nd Session of the 47th Oklahoma Legislature, which relate to certain obligations of the Multiple Injury Trust Fund and deposition of certain future dividends; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 173.2 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. On or before September 1, 2000, the Workers' Compensation Court Administrator shall reduce the current medical costs so as to result in a net savings system-wide of not less than four and six-tenths percent (4.6%) in accordance with recommendations of the Medical Cost Reduction Committee.

B. The Medical Cost Reduction Committee shall be composed of the following:

1. A representative designated by the Oklahoma Osteopathic Association;

2. A representative designated by the Oklahoma Medical Association;

3. Two (2) representatives designated by the Oklahoma Hospital Association, one of whom shall represent metropolitan hospitals and one of whom shall represent rural hospitals;

4. A representative designated by the Oklahoma State Chiropractic Association;

5. A representative designated by the Oklahoma Podiatric Medical Association;

6. A representative designated by the Oklahoma Pharmacists Association;

7. A representative designated by the Independent Medical Providers' Action Coalition; and

8. The Chair of the Physicians' Advisory Committee, or a designee.

C. The Medical Cost Reduction Committee shall meet no later than June 15, 2000, at a time and place agreed upon by all parties, and select a chairperson. Thereafter, all meetings shall be called by the chairperson. Each member of the Medical Cost Reduction Committee shall provide his or her own staff to assist in the work of the Committee. Members of the Committee shall not be entitled to receive any reimbursement for any expenses of any kind, incurred in the work of the Committee. If the Committee fails to submit recommendations to the Administrator by August 15, 2000, the Administrator shall reduce the current medical costs as required by this section.

SECTION 2. AMENDATORY 85 O.S. 1991, Section 14, as last amended by Section 3, Chapter 353, O.S.L. 1998 (85 O.S. Supp. 1999, 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 medical treatment within 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 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. 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 entitled to such benefits may enforce charges therefor as though the employee had survived.

E. 1. Whoever renders medical, surgical, or other attendance or treatment, nurse and hospital service, medicine, crutches and apparatus, or emergency treatment, may submit such charges and duration of treatment to the Administrator of the Court for review in accordance with the rules of the Administrator.

2. 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. The Administrator shall not increase the overall medical costs in an amount exceeding the cumulative percentage of change of the Consumer Price Index - Urban (CPI-U) for medical costs since the last biennial review.

3. The Administrator shall adopt a new fee and treatment schedule to be effective not later than January 1, 1998, which establishes maximum allowable reimbursement levels for preparation for or testimony at a deposition or court appearance which shall not exceed Two Hundred Dollars (\$200.00) per hour and for work related or medical disability evaluation services.

4. 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. When a medical care provider has brought a claim in the Workers' Compensation Court to obtain payment for services, a party who prevails in full on the claim shall be entitled to a reasonable attorney's fee.

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 prior approval of the Court or Administrator except when prior approval is waived for good cause shown, or without agreement of the parties, the maximum liability of the employer for the aggregate expenses of all such subsequent physicians shall be Five Hundred Dollars (\$500.00). Provided, the limitations shall not apply to referrals by the treating physician for treatment or diagnostic procedures.

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

On or before June 1, 2000, the State Insurance Fund shall declare and pay an extraordinary dividend to current policyholders if, on February 12, 2000, the ratio of net premiums to surplus exceeded 1:1.65. The dividend shall be in an amount which reduces the ratio to 1:1.65 or less. This dividend must be paid in cash or cash equivalents and shall not be paid in the form of a premium reduction. The amount of any surplus shall be calculated using generally accepted accounting principles.

SECTION 4. AMENDATORY 85 O.S. 1991, Section 137, is amended to read as follows:

Section 137. A. 1. Ten percent (10%) of the premiums collected from all persons, firms or corporations insured in the

State Insurance Fund, shall be set aside by the Commissioner for the creation of surplus, until the surplus shall amount to the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00), and thereafter five percent (5%) of such premiums shall be set aside until such time as in the judgment of the State Insurance Board such surplus shall be sufficiently large to cover the catastrophe hazard, and all other unanticipated losses.

2. If the ratio of net premium-to-surplus exceeds 1:2 on July 1 of any year, the Board of Managers shall, within sixty (60) days, declare a dividend of sufficient size to reduce the ratio of net premium-to-surplus to no more than 1:2. The dividend may be declared in the form of cash, cash equivalents, negotiable instruments, or credits against past, present, or future premiums on or before October 15 next following declaration of the dividend and shall be payable to policyholders having policies in force when the dividend is declared.

B. The Board of Managers is hereby vested with authority, in its discretion, to transfer funds from such surplus to other funds of the State Insurance Fund when deemed necessary or advisable; provided, that in no event shall such surplus be reduced to a sum less than One Hundred Fifty Thousand Dollars (\$150,000.00).

C. Reserves shall be ~~set up~~ established and maintained adequate to meet anticipated losses and to carry all claims and policies to maturity, which reserves shall be computed in accordance with ~~such~~ rules as approved adopted by the ~~State Insurance~~ Board of Managers.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 173.1 of Title 85, unless there is created a duplication in numbering, reads as follows:

Any dividend, rebate, or other distribution, payable by the State Insurance Fund or any other workers' compensation insurance carrier, to a state agency policyholder shall be paid to the State Treasurer, and shall be credited as follows:

1. In the event of failure of the Multiple Injury Trust Fund to meet all lawful obligations, the monies shall be credited to the Multiple Injury Trust Fund and shall be used by the Multiple Injury Trust Fund to meet all lawful obligations of the Multiple Injury Trust Fund; and

2. Otherwise, all future dividends made by the State Insurance Fund or any workers' compensation insurance carrier, on behalf of state agencies, shall be deposited to the credit of the General Revenue Fund of the State Treasury.

SECTION 6. AMENDATORY Section 2, Chapter 420, O.S.L. 1999, is amended to read as follows:

Section 2. Any Until satisfaction of any agreement pursuant to subsection A of Section 11 of this act, any dividend, rebate, refund, or other distribution to policyholders, or any right or interest therein, payable by the State Insurance Fund or any other insurance carrier to a state agency pursuant to Section 1 of this

~~act shall~~ policyholder may be deposited in the State Treasury to the credit of used by the Multiple Injury Trust Fund to secure such agreement. All monies accruing to the credit of the Fund pursuant to this section are hereby appropriated and may be budgeted and expended by the Multiple Injury Trust Fund for any lawful obligation of the Fund, including all court orders for material increases and the accrued interest thereon, and all orders for interest on previously paid awards.

SECTION 7. AMENDATORY 85 O.S. 1991, Section 2b, as last amended by Section 3, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 1999, Section 2b), is amended to read as follows:

Section 2b. A. 1. 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 the public entities.

2. Except as otherwise provided, the state and all its institutions of higher education, departments, instrumentalities, institutions, and public trusts of which it or 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:

- a. the State Insurance Fund refuses to accept the risk when the application for insurance is made~~+~~L
- b. specifically authorized by law~~+~~L or
- c. the state entity can obtain workers' compensation insurance coverage at the same cost or at a lower cost from another insurance carrier licensed in this state. ~~For the first fiscal year beginning subsequent to the satisfaction of any agreement entered into pursuant to subsection K of Section 173 of this title~~ Effective November 1, 1999, and for the next three two fiscal years thereafter, not to exceed fifteen (15) state entities each fiscal year may ~~leave the State Insurance Fund and~~ obtain workers' compensation insurance coverage pursuant to this subparagraph from an insurer other than the State Insurance Fund. Beginning with the ~~fourth~~ third fiscal year thereafter, all state entities may obtain workers' compensation insurance coverage pursuant to this subparagraph.

3. The state, all state institutions of higher education except comprehensive universities, and all state departments, instrumentalities, institutions, and public trusts of which the state is a beneficiary, may self-insure under rules promulgated by the State Insurance Fund. Self-insurance administration may only be obtained through the State Insurance Fund. The state, all state institutions of higher education except comprehensive universities,

and all state 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.

B. 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:

1. Self-insure and make any appropriation of funds to cover their risk;

2. 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;

3. 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

4. Insure with other insurance carriers licensed in the State of Oklahoma.

C. 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:

1. Self-insure and make any appropriation of funds to cover their risk;

2. 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

3. Insure with other insurance carriers licensed in the State of Oklahoma.

D. 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 or, through any combination of the following, may:

1. Self-insure and make any appropriation of funds to cover their risk; or

2. Insure with other insurance carriers licensed in the State of Oklahoma.

E. 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 the policy will result in a lower cost than one with the State Insurance Fund.

F. 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.

G. Where a person who is employed by the state, a municipality, 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 or death of the person arising out of and in the course of employment which occurs during the hours of 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. 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 8. AMENDATORY 85 O.S. 1991, Section 110, is amended to read as follows:

~~Section 110. Nothing in this title shall prevent an employer from inquiring~~ A. Except as otherwise provided by state or federal law and subject to the provisions of this section, an employer may inquire about previous workers' compensation claims paid to the an employee while said individual the employee was employed by a previous employer. If the employee fails to answer truthfully about any previous permanent partial disability awards made pursuant to workers' compensation claims, the employee shall be subject to discharge by the employer.

B. All requests made to the Workers' Compensation Court for information on prior workers' compensation claims involving a worker, including written inquiries about prior claims and requests to access a worker's compensation claim file, must be in writing on a form prescribed by the Administrator. The form shall require identification of the person requesting the information, and the person for whom a search is being made if different from the requester. The form must contain an affidavit signed by the requester under penalty of perjury that the information sought is not requested for a purpose in violation of state or federal law. The form must be used by all repositories of archived Workers' Compensation Court claim files. All request forms shall be maintained by the Administrator as a public record, together with a

record of a worker's written authorization permitting a search indexed by the worker's social security number as required by Section 3113 of Title 74 of the Oklahoma Statutes. The request forms and authorizations shall be indexed alphabetically by the last name of the worker. This subsection shall not apply to requests made by a public officer or by a public employee in the performance of his or her duties on behalf of a governmental entity or as may be allowed by law.

C. The Administrator shall develop recommendations for legislation and rules governing electronic and telephonic inquiries about information in workers' compensation claims files. The recommendations shall be submitted to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate no later than February 1, 2001.

SECTION 9. AMENDATORY 85 O.S. 1991, Section 138, as last amended by Section 2, Chapter 26, O.S.L. 1995 (85 O.S. Supp. 1999, Section 138), is amended to read as follows:

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

1. For the exclusive purpose of:

- a. providing benefit to the Fund, and
- b. defraying reasonable expenses of administering the State Insurance Fund;

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

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

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

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

securities and insured participation certificates representing interests in first mortgages or insured mortgage pass-through certificates on one- to four-family residences located within this state. The State Insurance Fund may enter into agreements with the Multiple Injury Trust Fund to fulfill any payment obligation of the Multiple Injury Trust Fund, including all court orders for material increases and the accrued interest thereon, and all orders for interest on previously paid awards.

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

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

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

E. The Board of Managers may establish an investment committee. The investment committee shall be composed of not more than three (3) members of the Board of Managers appointed by the chairman of the Board of Managers. The committee shall make recommendations to the full Board on all matters related to the choice of custodians and managers of the assets of the State Insurance Fund, on the establishment of investment and fund management guidelines, and in planning future investment policy. The committee shall have no authority to act on behalf of the Board of Managers or the Fund in any circumstances whatsoever. No recommendation of the committee shall have effect as an action of the Board of Managers nor take effect without the approval of the Board of Managers as provided by law.

F. The Board of Managers shall retain qualified investment managers to provide for the investment of the monies of the State Insurance Fund. The investment managers shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Board of Managers. Subject to the overall investment guidelines set by the Board of Managers, the investment managers shall have full discretion in the management of those monies of the State Insurance Fund allocated to the investment

managers. The Board of Managers shall manage those monies not specifically allocated to the investment managers. The monies of the State Insurance Fund allocated to the investment managers shall be actively managed by the investment managers, which may include selling investments and realizing losses if such action is considered advantageous to longer term return maximization. Because of the total return objective, no distinction shall be made for management and performance evaluation purposes between realized and unrealized capital gains and losses.

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

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

I. The State Insurance Fund Commissioner shall compile a quarterly financial report of all the funds of the State Insurance Fund. The report shall be compiled and filed pursuant to uniform reporting standards prescribed by the State Insurance Commissioner for domestic property and casualty insurance companies. The report shall include several relevant measures of investment value, including acquisition cost and current fair market value with appropriate summaries of total holdings and returns. The report shall contain combined and individual rate of returns of the investment managers by category of investment, over periods of time. The report shall contain a list of all investments made by the State Insurance Fund and a list of any commissions, fees or payments made for services regarding such investments for that reporting period. The report shall be distributed to the Governor, the Legislative Service Bureau and the Cash Management and Investment Oversight Commission.

J. The State Insurance Fund, on behalf of the Multiple Injury Trust Fund, may enter into an agreement with any reinsurer licensed to sell reinsurance by the State Insurance Commissioner selected pursuant to a competitive process administered by the Director of Central Purchasing in the Department of Central Services.

SECTION 10. AMENDATORY 85 O.S. 1991, Section 173, as last amended by Section 9, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 1999, Section 173), is amended to read as follows:

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

A. ~~Each~~ 1. Beginning July 1, 2000, and until such time as the Board of Managers of the State Insurance Fund, pursuant to an independent actuarial audit, has certified that there are sufficient funds to satisfy all outstanding obligations of the Multiple Injury Trust Fund, each mutual or interinsurance association, stock company, the State Insurance Fund, or other insurance carrier writing workers' compensation insurance in this state, and each self-insurer, shall pay to the Oklahoma Tax Commission a sum equal to ~~four percent (4%)~~ two percent (2%) of the total ~~compensation for permanent total disability or permanent partial disability paid out or payable during each quarter-year period of the calendar year.~~ Payments gross direct premiums written for workers' compensation on risks located in this state. The Oklahoma Tax Commission shall assess and collect from employers carrying their own risk, including group self-insurance associations, a temporary assessment at the rate of four percent (4%) of the total compensation for permanent total disability awards, permanent partial disability awards and death benefits paid out during each quarter of the calendar year by the employers and group self-insurance associations.

2. All monies received from premium and loss assessments shall be paid to the Multiple Injury Trust Fund. Insurance carriers shall pay the temporary premium assessments to the Oklahoma Tax Commission at the same time and in the same manner as premium taxes are paid. Self-insurers and group self-insurance associations shall ~~be made~~ pay the temporary loss assessment on the fifteenth day of the month following the close of each quarter of the calendar year. The State Insurance Fund shall pay the temporary premium assessment not later than the fifteenth day of the month following the close of ~~the~~ each quarter of the calendar year in which compensation is paid or becomes payable. ~~Contributions made by.~~ Assessments against insurance carriers and the State Insurance Fund, under the provisions of the Workers' Compensation Act, to the Multiple Injury Trust Fund shall be considered losses for the purpose of computing workers' compensation rates shall not be considered in determining whether any rate is excessive. Insurance carriers and the State Insurance Fund shall not separately state the amount of the assessment on any invoice or billing statement.

B. The Multiple Injury Trust Fund is hereby authorized to receive and expend monies appropriated by the Legislature.

C. ~~Where an award has been made by the Court, or any payments in lieu thereof, for compensable injury for a permanent total disability or a permanent partial disability, the employer or insurance carrier shall pay to such employee ninety-six percent (96%) of the same and the remaining four percent (4%) thereof shall be paid by the employer or insurance carrier to the Oklahoma Tax Commission. Payments to the Oklahoma Tax Commission shall be made~~

~~not later than the fifteenth day of the month following the close of each quarter of the calendar year in which compensation is paid or became payable.~~

~~D. The payments provided for in the foregoing subsections A and C, which aggregate eight percent (8%) of the awards for permanent disability, shall, in the event the award becomes final, accrue and be payable regardless of whether or not the award made to a claimant is paid.~~

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

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

~~G. D. The Oklahoma Tax Commission shall on or before the first day of April of each year find and determine the amount of money held as of March 1 of that year by the State Treasurer for the benefit of the Multiple Injury Trust Fund and shall on or before the first day of October of each year find and determine the amount of money held as of September 1 of that year by the State Treasurer for the benefit of the Multiple Injury Trust Fund. Promptly after making each determination, the Oklahoma Tax Commission shall advise the State Insurance Fund and the Administrator in writing of its findings and determination in the foregoing particulars.~~

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

Managers of the State Insurance Fund, sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for the Multiple Injury Trust Fund.

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

~~J.~~ G. The Oklahoma Tax Commission shall pay, monthly, to the State Treasurer all monies collected under the provisions of this section to be credited as follows: ~~ninety percent (90%) to the Multiple Injury Trust Fund, five percent (5%)~~ By the tenth day of each month, the Workers' Compensation Court Administrator shall provide to the Oklahoma Tax Commission the amount of all awards made by the Court, or any payments in lieu thereof, for compensable injuries for permanent total disability or permanent partial disability which employers or insurance carriers made during the previous month. An amount equal to eight-tenths of one percent (.8%) of the amount of these awards and payments in lieu thereof shall be deducted from the temporary assessment collected pursuant to this section during the previous month divided and paid to the following agencies: fifty percent (50%) to the Oklahoma Department of Labor, ~~two and one-half percent (2.5%)~~ twenty-five percent (25%) to the Office of the Attorney General and ~~two and one-half percent (2.5%)~~ twenty-five percent (25%) to the State Department of Vocational and Technical Education. The remaining amount of monies collected by the Oklahoma Tax Commission under the provisions of this section shall be paid to the Multiple Injury Trust Fund. Monies received by the Department of Labor under this section shall be used for safety consultation and the regulation of the safety of public employees through the Occupational Safety and Health Act of 1970. Monies received by the Office of the Attorney General shall be deposited to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund created pursuant to Section 19.2 of Title 74 of the Oklahoma Statutes. Monies received by the State Department of Vocational and Technical Education shall supplement other funding to the Department for purposes of implementing the provisions of subsection B of Section 414 of Title 40 of the Oklahoma Statutes. The State Treasurer shall pay out of the Multiple Injury Trust Fund only upon the order and direction of the Court of this state acting under the provisions hereof.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 173.3 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The Multiple Injury Trust Fund may enter into any agreement with the State Insurance Fund for the purpose of fulfilling all of its payment obligations, including all court orders for material increase and the accrued interest thereon, and all orders for interest on previously paid awards, upon terms acceptable to the Multiple Injury Trust Fund and the State Insurance Fund.

B. The Multiple Injury Trust Fund may enter into an agreement with any reinsurer licensed to sell reinsurance by the State Insurance Commissioner pursuant to a competitive process

administered by the Director of Central Purchasing in the Department of Central Services.

SECTION 12. AMENDATORY 85 O.S. 1991, Section 172, as last amended by Section 8, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 1999, Section 172), is amended to read as follows:

Section 172. A. 1. ~~Except~~ For actions filed before November 1, 1999, except as otherwise provided in this section, an employee, who is a "physically impaired person" and who receives an accidental personal injury compensable under the Workers' Compensation Act which results in additional permanent disability so that the degree of disability caused by the combination of both disabilities is materially greater than that which would have resulted from the subsequent injury alone, ~~the employee~~ shall receive compensation on the basis of such combined disabilities from the Multiple Injury Trust Fund. Only disability due to an injury to the body as a whole shall be combinable with a prior body disability, except that disability to a major member may be combined with disability to the body as a whole.

2. a. For actions filed before November 1, 1999, if such combined disabilities constitute partial permanent disability as defined in Section 3 of this title, then ~~such~~ the employee shall receive full compensation as now provided by law for the disability resulting directly and specifically from ~~such~~ the subsequent injury, and in addition thereto ~~such~~ the employee shall receive full compensation for the combined disability as above defined, after deducting therefrom the percent of that disability that constituted the employee a "physically impaired person", as defined herein, all of which shall be computed upon the schedule and ~~provision~~ pursuant to the provisions of the Workers' Compensation Act. After payments by the employer or the insurance carrier of the employer, if any, have ceased, the remainder of such compensation shall immediately be paid out of the Multiple Injury Trust Fund provided for in Section 173 of this title, in periodic installments. The employer or the insurance carrier of the employer shall be liable only for the degree of percent of disability which would have resulted from the latter injury if there had been no preexisting impairment.
- b. For actions filed on or after October 31, November 1, 1999, but before June 1, 2000, if ~~such~~ the combined disabilities constitute partial permanent disability as defined in Section 3 of this title, then ~~such~~ the employee shall receive full compensation as now provided by law for the disability resulting directly and specifically from ~~such~~ the subsequent injury. The employee shall not receive any additional compensation for the combined disability as above defined, after deducting therefrom the percent of disability that constituted the employee a "physically impaired person".

e. ~~For all actions, the employer or the insurance carrier of the employer shall be liable only for the degree of percent of disability which would have resulted from the latter injury if there had been no preexisting impairment.~~

B. ~~If 1. For actions in which the subsequent injury occurred before June 1, 2000, if such combined disabilities constitute permanent total disability, as defined in Section 3 of this title, then the employee shall receive full compensation as now provided by law for the disability resulting directly and specifically from the subsequent injury. In addition, the employee shall receive full compensation for the combined disability, as above defined, all of which shall be computed upon the schedule and provisions of the Workers' Compensation Act. The employer shall be liable only for the degree of percent of disability which would have resulted from the subsequent injury if there had been no preexisting impairment. After all permanent partial disability payments by the employer or the insurance carrier of the employer have ceased, the remainder of the compensation shall be paid out of the Multiple Injury Trust Fund provided for in Section 173 of this title, in periodic installments. In permanent total disability cases the same shall may be paid in periodic payments, as set forth in Section 22 of this title, and shall not or may be commuted to a lump-sum payment, by agreement of the claimant and the Multiple Injury Trust Fund. The compensation rate for permanent total awards from the Multiple Injury Trust Fund shall be the compensation rate for permanent partial disability paid by the employer in the last combinable compensable injury. Permanent total awards from the Multiple Injury Trust Fund shall be payable for a period of five (5) years or until the employee reaches sixty-five (65) years of age, whichever period is the longer. Multiple Injury Trust Fund awards shall accrue from the file date of the court order finding the claimant to be permanently and totally disabled.~~

2. For actions in which the subsequent injury occurred on or after June 1, 2000, if such combined disabilities constitute permanent total disability, as defined in Section 3 of this title, then the claimant shall receive full compensation as now provided by law for the disability resulting directly and specifically from the subsequent injury. In addition, the claimant shall receive full compensation for the combined disability, as above defined, all of which shall be computed upon the schedule and provisions of the Workers' Compensation Act. The employer shall be liable for the degree of percent of disability which would have resulted from the subsequent injury if there had been no preexisting impairment and for any material increase resulting from the combination of such injuries. Payment for the degree of disability resulting from the material increase in disability resulting from the combination of injuries may be paid in periodic installments or may be commuted to a lump-sum payment upon agreement of the claimant and the employer or insurance carrier for the employer. The compensation rate for permanent total awards resulting from a combination of injuries shall be the compensation rate for permanent partial disability paid by the employer in the last combinable compensable injury. Permanent total awards resulting from a material increase in

disability resulting from a combination of injuries shall be payable for a period of fifteen (15) years or until the claimant reaches sixty-five (65) years of age, whichever period is the longer. Such awards shall be paid from the date the court order finding the claimant to be permanently and totally disabled is filed.

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

D. Awards from the Multiple Injury Trust Fund under this section shall abate upon the death, from any cause, of the employee.

E. Reopening any prior injury claim other than the last employer injury claim shall not give a claimant the right to additional Multiple Injury Trust Fund benefits or additional benefits from any employer or an insurance carrier for any employer, for a material increase in disability resulting from the combination of injuries. All weekly payments by the last employer or the insurance carrier of the employer for permanent partial disability shall be paid before any claim for benefits against the Multiple Injury Trust Fund may be paid.

F. Awards that are not claimed within two (2) years of the date on which the award first becomes available shall be returned to the Multiple Injury Trust Fund the party who is responsible for payment of the award, less any attorney fees, as specified in the original court order awarding benefits for a material increase in disability resulting from a combination of injuries. Payment for attorney fees shall be made separately from payment to a claimant. If the claimant is subsequently found and claims the award, such award and interest as required by Section 42 of this title shall be paid to the claimant by the Multiple Injury Trust Fund party who is responsible for payment of the award, within sixty (60) days of the claim.

SECTION 13. AMENDATORY 85 O.S. 1991, Section 174, as last amended by Section 10, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 1999, Section 174), is amended to read as follows:

Section 174. Every Until such time as the Board of Managers of the State Insurance Fund, pursuant to an independent actuarial audit, has certified that there are sufficient funds to satisfy all outstanding obligations of the Multiple Injury Trust Fund, including all court orders for material increases and the accrued interest thereon, and all orders for interest on previously paid awards, every political or municipal subdivision of the state, covered by the provisions of the Workers' Compensation Act, including counties, cities, and towns, ~~each~~ shall provide sufficient funds in its annual estimate of the needs based on the total compensation paid out or benefits or payments in lieu thereof by such political or municipal subdivision during the prior fiscal year, to pay the amount due under the Workers' Compensation Act for the use and purpose of the Multiple Injury Trust Fund, an amount equal to five percent (5%) of the amount of compensation awards for permanent total disability or

permanent partial disability made by the Court for all employees employed by them. It shall be the duty of the excise board of each county to approve an appropriation in an amount necessary to pay such sum.

SECTION 14. REPEALER Upon execution of an agreement between the State Insurance Fund and the Multiple Injury Trust Fund, and tender of payment to the claimant or the claimant's attorney on all permanent partial disability awards against the Multiple Injury Trust Fund which are in arrears on the effective date of this act and accrued interest, including interest due on previously paid awards pursuant to subsection A of Section 11 of this act, Section 1, Chapter 420, O.S.L. 1999, is hereby repealed.

SECTION 15. REPEALER Sections 1 and 2 of Enrolled House Bill No. 2395 of the 2nd Session of the 47th Oklahoma Legislature, are hereby repealed.

SECTION 16. Sections 2, 4, 7 and 15 of this act shall become effective September 1, 2000.

SECTION 17. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 24th day of May, 2000.

President of the Senate

Passed the House of Representatives the 24th day of May, 2000.

Speaker of the House of Representatives

