CS for EHB 2046

THE STATE SENATE

Thursday, April 7, 2005

Committee Substitute for

ENGROSSED

House Bill No. 2046

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 2046 - By: HIETT, MORGAN (Fred), THOMPSON, ARMES, BANZ, BENGE, BILLY, CALVEY, CASE, COODY, COOKSEY, COX, DANK, DeWITT, HICKMAN, JACKSON, JOHNSON, KERN, LIEBMANN, MARTIN, MILLER (Doug), MILLER (Ken), NANCE, NEWPORT, PETERS, PETERSON (Pam), PETERSON (Ron), PIATT, RICHARDSON, ROGGOW, STEELE, TIBBS, WESSELHOFT, WINCHESTER, WORTHEN and YOUNG of the House and PRUITT of the Senate.

An Act relating to workers' compensation; authorizing use of certain rates prior to filing; requiring filing within certain time; amending 36 O.S. 2001, Section 2007, which relates to the Property and Casualty Insurance Guaranty Association; modifying obligation of the Property and Casualty Insurance Guaranty Association; amending 40 O.S. 2001, Section 554, which relates to drug testing by employers; modifying circumstances under which certain testing may occur; amending 68 O.S. 2001, Section 2358, as last amended by Section 14, Chapter 322, O.S.L. 2004 (68 O.S. Supp. 2004, Section 2358), which relates to adjustments to taxable income; providing income tax deduction for certain employers that utilize a certain program offered by the Oklahoma Department of Labor; providing amount of exemption; amending 74 O.S. 2001, Section 18m-2, which relates to workers' compensation fraud; authorizing civil suits under certain circumstances; providing statute of limitation; amending 85 O.S. 2001, Sections 1.1, 3, as amended by Section 60, Chapter 329, O.S.L. 2003, 3.5, 3.10, 14, as amended by Section 1, Chapter 215, O.S.L. 2002, 14.2, 14.3, 16, 17, as amended by Section 2, Chapter 215, O.S.L. 2002, 22, 24.1, 26, 30, 43 and 44 (85 O.S. Supp. 2004, Sections 3, 14 and 17), which relate to burden of proof, definitions, places hearings to be held, mediation, medical attention, certified workplace medical plans, rehabilitation and job placement services, determination of disability, schedule of compensation, reports, notice forms, costs, and claims against third parties; providing for construction of

(Bold face denotes Committee Amendments)

act; adding definition; modifying venue; authorizing Workers' Compensation Court to elect hearing site under certain circumstances; limiting hearing sites; requiring specified schools to provide quarters and technology for certain hearings; requiring certain persons to appear by videoconference; modifying procedures for mediation; authorizing Court to order mediation under certain circumstances; providing procedure to object to mediation; modifying qualifications of mediators; establishing mandatory Ombudsman Program; stating purpose; providing for rules; authorizing Insurance Department to establish and collect certain fees; providing for filing of employer's first notice of injury; providing consequences if partially disabled employee refuses suitable employment; modifying process for selecting certain physicians; authorizing one change of physician; requiring certain process for change of physician; eliminating certain certified workplace medical plan enrollment option; requiring use of generic drugs under certain circumstances; giving deference to opinion of treating physician under certain circumstances; limiting certain prescriptions; requiring certain employers to participate in certain plan; requiring implementation of site visit protocol; adding requirement for retraining; providing for noncompliance; providing requirements for medical testimony; providing burden of proof; requiring Court to give deference to certain testimony for specific purpose; providing that certain injuries, illnesses or deaths are not compensable, with exceptions; providing procedure for compensation for hearing; providing for certain soft tissue injuries; modifying certain benefits; requiring certain evidence for award of specific benefit; stating exception; requiring Court to appoint independent medical examiner in certain circumstances; increasing certain benefits; making certain filings confidential; authorizing certain lump-sum payment; specifying payment period for certain award; requiring certain evidence for award of specified benefit; authorizing attorney fees in certain circumstances; setting time limit for post-termination claims; modifying time for reopening claims; providing right of subrogation in certain circumstances; requiring CompSource Oklahoma to become a private, mutual company by a certain date; providing requirement for CompSource Oklahoma beginning on certain date; providing for transition coordinators and a transition team; providing duties; amending 85 O.S. 2001, Sections 172, 173, as amended by Section 4, Chapter 31, O.S.L. 2002, and 175, as amended

by Section 3, Chapter 145, O.S.L. 2002 (85 O.S. Supp. 2004, Sections 173 and 175), which relate to the Multiple Injury Trust Fund; providing that for certain actions payment from the Multiple Injury Trust Fund shall be for permanent total disability; clarifying language; providing CompSource Oklahoma shall have standing and authority to appear in certain cases; repealing 36 O.S. 2001, Section 902.1, as last amended by Section 5, Chapter 519, O.S.L. 2004 (36 O.S. Supp. 2004, Section 902.1), which relates to workers' compensation insurance rates; repealing 85 O.S. 2001, Section 3.9, which relates to a workers' compensation counselor program; providing for codification; providing for noncodification; and providing effective dates.

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 902.4 of Title 36, unless there is created a duplication in numbering, reads as follows:

Rates for workers' compensation insurance may be used before being filed with the State Board for Property and Casualty Rates; provided, a rate shall be filed with the Board within thirty (30) days of initial use. The rate shall stay in effect unless the Board reviews and disapproves the filing.

SECTION 2. AMENDATORY 36 O.S. 2001, Section 2007, is amended to read as follows:

Section 2007. A. The Association shall:

1. Be obligated to pay the covered claims existing prior to the determination of insolvency if the claims arise within thirty (30) days after the determination of insolvency, or before the policy expiration date if less than thirty (30) days after the

determination, or before the insured replaces the policy or causes its cancellation, if he does so within thirty (30) days of the determination. Such obligation shall be satisfied by paying to the claimant an amount as follows:

a. ~~the full amount of a covered claim for benefits under a workers' compensation insurance coverage,~~

~~b.~~ an amount not exceeding Ten Thousand Dollars ($10,000.00) per policy for a covered claim for the return of unearned premium, and

~~c.~~ b. an amount not exceeding One Hundred Fifty Thousand Dollars ($150,000.00) per claimant for all other covered claims.

In no event shall the Association be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises or in excess of the limits of the Association's obligation existing on the date on which the order of liquidation is filed with the court clerk;

2. Be deemed the insurer to the extent of the obligations on covered claims and to that extent shall have all rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent;

3. Allocate claims paid and expenses incurred among the three accounts set out in Section 2005 of this title separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the Association under this section subsequent to a member insurer becoming an insolvent insurer, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under Section 2013 of this title, and other expenses authorized by the Oklahoma Property and Casualty Insurance Guaranty Association Act~~, Sections 2001 et seq. of this title~~. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bear to the net direct written premiums of all participating insurers for the calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified in writing of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than two percent (2%) of the net direct written premiums of that member or one percent (1%) of that member insurer's surplus as regards policyholders for the calendar year preceding the assessment on the kinds of insurance in the account, whichever is less. If the maximum assessment, together with the other assets of the Association, does not provide in any

one (1) year in any account an amount sufficient to make all necessary payments from that account, the funds available may be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The Association shall pay claims in any order which it deems reasonable, including the payment of claims as the claims are received from the claimants or in groups or categories of claims. The Association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. During the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payments will not reduce capital or surplus below required minimums. Such payments may be refunded to those companies receiving larger assessments by virtue of such deferment, or, at the election of any such company credited against future assessments. Each member insurer serving as a servicing facility may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such covered claims by such member insurer if they are chargeable to the account for which the assessment is made;

4. Investigate claims brought against the Association and adjust, compromise, settle and pay covered claims to the extent of the obligation of the Association and deny all other claims and may review settlements, releases and judgments on covered claims to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested;

5. Notify such persons as the Commissioner directs as provided for in Section 2009 of this title;

6. Handle claims through employees or through one or more insurers or other persons incorporated and resident in the State of Oklahoma designated as servicing facilities. Designation of a servicing facility is subject to approval of the Commissioner, but such designation may be declined by a member insurer;

7. Reimburse each servicing facility for obligations of the Association paid by the facility and for reasonable expenses incurred by the facility while handling claims on behalf of the Association and pay the other expenses of the Association authorized by the Oklahoma Property and Casualty Insurance Guaranty Association Act; and

8. Have standing to appear before any court of this state which has jurisdiction over an impaired or insolvent insurer for whom the Association is or may become obligated pursuant to the

provisions of the Oklahoma Property and Casualty Insurance Guaranty Association Act. Such standing shall extend to all matters germane to the powers and duties of the Association including, but not limited to, proposals for rehabilitation, acquisition, merger, reinsuring, or guaranteeing the covered policies of the impaired or insolvent insurer, and the determination of covered policies and contractual obligations of the impaired or insolvent insurer.

B. The Association may:

1. Employ or retain such persons as are necessary to handle claims and perform other duties of the Association;

2. Borrow funds necessary to effect the purposes of the Oklahoma Property and Casualty Insurance Guaranty Association Act in accordance with the plan of operation;

3. Sue or be sued;

4. Negotiate and become a party to such contracts as are necessary to carry out the purpose of the Oklahoma Property and Casualty Insurance Guaranty Association Act;

5. Refund to member insurers in proportion to the contribution of each member insurer that amount by which the assets of the Association exceed its liabilities, if at the end of any calendar year the board of directors finds that the assets of the Association exceed the liabilities as estimated by the board of directors for the coming year;

6. Lend monies to an insurer declared to be impaired by the Commissioner. The Association, with approval of the Commissioner, shall approve the amount, length and terms of the loan. "Impaired Insurer" for purposes of this paragraph shall mean an insurer potentially unable to fulfill its contractual obligations, but shall not mean an insolvent insurer;

7. Perform such other acts as are necessary or proper to effectuate the purpose of the Oklahoma Property and Casualty Insurance Guaranty Association Act; and

8. Intervene as a party in interest in any supervision, conservation, liquidation, rehabilitation, impairment or receivership in which policyholders interests and interests of the Association may be or are affected.

SECTION 3. AMENDATORY 40 O.S. 2001, Section 554, is amended to read as follows:

Section 554. Employers who choose to conduct drug or alcohol testing may only request or require an applicant or employee to undergo testing under the following circumstances:

1. Applicant testing: A public or private employer may request or require a job applicant, upon a conditional offer of employment, to undergo drug or alcohol testing and may use a refusal to undergo testing or a confirmed positive test result as a basis for refusal to hire, provided that such testing does not violate the provisions

of the Americans with Disabilities Act of 1990, 42 U.S.C., Section 12101 et seq., and provided that such testing is required for all applicants who have received a conditional offer of employment for a particular employment classification;

2. Reasonable suspicion testing: A public or private employer may request or require an employee to undergo drug or alcohol testing if the employer has a reasonable suspicion that the employee has violated the employer's written policy;

3. Post-accident testing: A public or private employer may require an employee to undergo drug or alcohol testing if the ~~employer has a reasonable suspicion that the~~ employee or another person has sustained a work-related injury or the employer's property has been damaged ~~as a direct result of the employee's use of drugs or alcohol~~, including damage to equipment, in an amount reasonably estimated at the time of the accident to exceed Five Hundred Dollars ($500.00). For purposes of workers' compensation or unemployment compensation, no employee who tests positive for the presence of substances defined and consumed pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes, alcohol, illegal drugs, or illegally used chemicals shall be eligible for such compensation unless the employee proves by a preponderance of the evidence that the substances, alcohol, illegal drugs, or illegally used chemicals were not the proximate cause of the injury or accident;

4. Random testing: A public or private employer may request or require an employee to undergo drug or alcohol testing on a random selection basis, except that a public employer may require random testing only of employees who:

a. are police or peace officers,

b. have drug interdiction responsibilities,

c. are authorized to carry firearms,

d. are engaged in activities which directly affect the safety of others, or

e. work in direct contact with inmates in the custody of the Department of Corrections or work in direct contact with juvenile delinquents or children in need of supervision in the custody of the Department of Human Services;

5. Scheduled, periodic testing: A public or private employer may request or require an employee to undergo drug or alcohol testing if the test is conducted as a routine part of a routinely scheduled employee fitness-for-duty medical examination or is scheduled routinely for all members of an employment classification or group and which is part of the employer's written policy, except that a public employer may require scheduled, periodic testing only of employees who:

a. are police or peace officers,

b. have drug interdiction responsibilities,

c. are authorized to carry firearms,

d. are engaged in activities which directly affect the safety of others, or

e. work in direct contact with inmates in the custody of the Department of Corrections or work in direct contact with juvenile delinquents or children in need of supervision in the custody of the Department of Human Services; and

6. Post-rehabilitation testing: A public or private employer may request or require an employee to undergo drug or alcohol testing without prior notice for a period of up to two (2) years commencing with the employee's return to work, following a confirmed positive test or following participation in a drug or alcohol dependency treatment program under an employee benefit plan or at the request of the employer.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 2358, as last amended by Section 14, Chapter 322, O.S.L. 2004 (68 O.S. Supp. 2004, Section 2358), is amended to read as follows:

Section 2358. For all tax years beginning after December 31, 1981, taxable income and adjusted gross income shall be adjusted to arrive at Oklahoma taxable income and Oklahoma adjusted gross income as required by this section.

A. The taxable income of any taxpayer shall be adjusted to arrive at Oklahoma taxable income for corporations and Oklahoma adjusted gross income for individuals, as follows:

1. There shall be added interest income on obligations of any state or political subdivision thereto which is not otherwise exempted pursuant to other laws of this state, to the extent that such interest is not included in taxable income and adjusted gross income.

2. There shall be deducted amounts included in such income that the state is prohibited from taxing because of the provisions of the Federal Constitution, the State Constitution, federal laws or laws of Oklahoma.

3. The amount of any federal net operating loss deduction shall be adjusted as follows:

a. For carryovers and carrybacks to taxable years beginning before January 1, 1981, the amount of any net operating loss deduction allowed to a taxpayer for federal income tax purposes shall be reduced to an amount which is the same portion thereof as the loss from sources within this state, as determined pursuant to this section and Section 2362 of this title, for the taxable year in which such loss is sustained is of the total loss for such year;

b. For carryovers and carrybacks to taxable years beginning after December 31, 1980, the amount of any net operating loss deduction allowed for the taxable year shall be an amount equal to the aggregate of the Oklahoma net operating loss carryovers and carrybacks to such year. Oklahoma net operating losses shall be separately determined by reference to Section 172 of the Internal Revenue Code, 26 U.S.C., Section 172, as modified by the Oklahoma Income Tax Act, Section 2351 et seq. of this title, and shall be allowed without regard to the existence of a federal net operating loss. For tax years beginning after December 31, 2000, the years to which such losses may be carried shall be determined solely by reference to Section 172 of the Internal Revenue Code, 26 U.S.C., Section 172, with the exception that the terms "net operating loss" and "taxable income" shall be replaced with "Oklahoma net operating loss" and "Oklahoma taxable income".

4. Items of the following nature shall be allocated as indicated. Allowable deductions attributable to items separately allocable in subparagraphs a, b and c of this paragraph, whether or not such items of income were actually received, shall be allocated on the same basis as those items:

a. Income from real and tangible personal property, such as rents, oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property;

b. Income from intangible personal property, such as interest, dividends, patent or copyright royalties, and gains or losses from sales of such property, shall be allocated in accordance with the domiciliary situs of the taxpayer, except that:

(1) where such property has acquired a nonunitary business or commercial situs apart from the domicile of the taxpayer such income shall be allocated in accordance with such business or commercial situs; interest income from investments held to generate working capital for a unitary business enterprise shall be included in apportionable income; a resident trust or resident estate shall be treated as having a separate commercial or business situs insofar as undistributed income is concerned, but shall not be treated as having a separate commercial or

business situs insofar as distributed income is concerned,

(2) income from such property which is required to be allocated pursuant to the provisions of paragraph 5 of this subsection shall be allocated as herein provided;

c. Net income or loss from a business activity which is not a part of business carried on within or without the state of a unitary character shall be separately allocated to the state in which such activity is conducted;

d. In the case of a manufacturing or processing enterprise the business of which in Oklahoma consists solely of marketing its products by:

(1) sales having a situs without this state, shipped directly to a point from without the state to a purchaser within the state, commonly known as interstate sales,

(2) sales of the product stored in public warehouses within the state pursuant to "in transit" tariffs, as prescribed and allowed by the Interstate Commerce Commission, to a purchaser within the state,

(3) sales of the product stored in public warehouses within the state where the shipment to such warehouses is not covered by "in transit" tariffs, as prescribed and allowed by the Interstate Commerce Commission, to a purchaser within or without the state,

the Oklahoma net income shall, at the option of the taxpayer, be that portion of the total net income of the taxpayer for federal income tax purposes derived from the manufacture and/or processing and sales everywhere as determined by the ratio of the sales defined in this section made to the purchaser within the state to the total sales everywhere. The term "public warehouse" as used in this subparagraph means a licensed public warehouse, the principal business of which is warehousing merchandise for the public;

e. In the case of insurance companies, Oklahoma taxable income shall be taxable income of the taxpayer for federal tax purposes, as adjusted for the adjustments provided pursuant to the provisions of paragraphs 1 and 2 of this subsection, apportioned as follows:

(1) except as otherwise provided by division (2) of this subparagraph, taxable income of an insurance

company for a taxable year shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the direct premiums written for insurance on property or risks in this state, and the denominator of which is the direct premiums written for insurance on property or risks everywhere. For purposes of this subsection, the term "direct premiums written" means the total amount of direct premiums written, assessments and annuity considerations as reported for the taxable year on the annual statement filed by the company with the Insurance Commissioner in the form approved by the National Association of Insurance Commissioners, or such other form as may be prescribed in lieu thereof,

(2) if the principal source of premiums written by an insurance company consists of premiums for reinsurance accepted by it, the taxable income of such company shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the sum of (a) direct premiums written for insurance on property or

risks in this state, plus (b) premiums written for reinsurance accepted in respect of property or risks in this state, and the denominator of which is the sum of (c) direct premiums written for insurance on property or risks everywhere, plus (d) premiums written for reinsurance accepted in respect of property or risks everywhere. For purposes of this paragraph, premiums written for reinsurance accepted in respect of property or risks in this state, whether or not otherwise determinable, may at the election of the company be determined on the basis of the proportion which premiums written for insurance accepted from companies commercially domiciled in Oklahoma bears to premiums written for reinsurance accepted from all sources, or alternatively in the proportion which the sum of the direct premiums written for insurance on property or risks in this state by each ceding company from which reinsurance is accepted bears to the sum of the total direct premiums written by each such ceding company for the taxable year.

5. The net income or loss remaining after the separate allocation in paragraph 4 of this subsection, being that which is derived from a unitary business enterprise, shall be apportioned to this state on the basis of the arithmetical average of three factors consisting of property, payroll and sales or gross revenue enumerated as subparagraphs a, b and c of this paragraph. Net income or loss as used in this paragraph includes that derived from patent or copyright royalties, purchase discounts, and interest on accounts receivable relating to or arising from a business activity, the income from which is apportioned pursuant to this subsection, including the sale or other disposition of such property and any other property used in the unitary enterprise. Deductions used in computing such net income or loss shall not include taxes based on or measured by income. Provided, for corporations whose property for purposes of the tax imposed by Section 2355 of this title has an initial investment cost equaling or exceeding Two Hundred Million Dollars ($200,000,000.00) and such investment is made on or after July 1, 1997, or for corporations which expand their property or facilities in this state and such expansion has an investment cost equaling or exceeding Two Hundred Million Dollars ($200,000,000.00) over a period not to exceed three (3) years, and such expansion is commenced on or after January 1, 2000, the three factors shall be apportioned with property and payroll, each comprising twenty-five

percent (25%) of the apportionment factor and sales comprising fifty percent (50%) of the apportionment factor. The apportionment factors shall be computed as follows:

a. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property everywhere owned or rented and used during the tax period.

(1) Property, the income from which is separately allocated in paragraph 4 of this subsection, shall not be included in determining this fraction. The numerator of the fraction shall include a portion of the investment in transportation and other equipment having no fixed situs, such as rolling stock, buses, trucks and trailers, including machinery and equipment carried thereon, airplanes, salespersons' automobiles and other similar equipment, in the proportion that miles traveled in Oklahoma by such equipment bears to total miles traveled,

(2) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer, less any annual rental rate received by the taxpayer from subrentals,

(3) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Oklahoma Tax Commission may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property;

b. The payroll factor is a fraction, the numerator of which is the total compensation for services rendered in the state during the tax period, and the denominator of which is the total compensation for services rendered everywhere during the tax period. "Compensation", as used in this subsection means those paid-for services to the extent related to the unitary business but does not include officers' salaries, wages and other compensation.

(1) In the case of a transportation enterprise, the numerator of the fraction shall include a portion of such expenditure in connection with employees operating equipment over a fixed route, such as railroad employees, airline pilots, or bus drivers, in this state only a part of the time, in the proportion that mileage traveled in Oklahoma bears to total mileage traveled by such employees,

(2) In any case the numerator of the fraction shall include a portion of such expenditures in connection with itinerant employees, such as traveling salespersons, in this state only a part of the time, in the proportion that time spent in Oklahoma bears to total time spent in furtherance of the enterprise by such employees;

c. The sales factor is a fraction, the numerator of which is the total sales or gross revenue of the taxpayer in this state during the tax period, and the denominator of which is the total sales or gross revenue of the taxpayer everywhere during the tax period. "Sales", as used in this subsection does not include sales or

gross revenue which are separately allocated in paragraph 4 of this subsection.

(1) Sales of tangible personal property have a situs in this state if the property is delivered or shipped to a purchaser other than the United States government, within this state regardless of the FOB point or other conditions of the sale; or the property is shipped from an office, store, warehouse, factory or other place of storage in this state and (a) the purchaser is the United States government or (b) the taxpayer is not doing business in the state of the destination of the shipment.

(2) In the case of a railroad or interurban railway enterprise, the numerator of the fraction shall not be less than the allocation of revenues to this state as shown in its annual report to the Corporation Commission.

(3) In the case of an airline, truck or bus enterprise or freight car, tank car, refrigerator car or other railroad equipment enterprise, the numerator of the fraction shall include a portion of revenue from interstate transportation in the

proportion that interstate mileage traveled in Oklahoma bears to total interstate mileage traveled.

(4) In the case of an oil, gasoline or gas pipeline enterprise, the numerator of the fraction shall be either the total of traffic units of the enterprise within Oklahoma or the revenue allocated to Oklahoma based upon miles moved, at the option of the taxpayer, and the denominator of which shall be the total of traffic units of the enterprise or the revenue of the enterprise everywhere as appropriate to the numerator. A "traffic unit" is hereby defined as the transportation for a distance of one (1) mile of one (1) barrel of oil, one (1) gallon of gasoline or one thousand (1,000) cubic feet of natural or casinghead gas, as the case may be.

(5) In the case of a telephone or telegraph or other communication enterprise, the numerator of the fraction shall include that portion of the interstate revenue as is allocated pursuant to the accounting procedures prescribed by the Federal Communications Commission; provided that

in respect to each corporation or business entity required by the Federal Communications Commission to keep its books and records in accordance with a uniform system of accounts prescribed by such Commission, the intrastate net income shall be determined separately in the manner provided by such uniform system of accounts and only the interstate income shall be subject to allocation pursuant to the provisions of this subsection. Provided further, that the gross revenue factors shall be those as are determined pursuant to the accounting procedures prescribed by the Federal Communications Commission.

In any case where the apportionment of the three factors prescribed in this paragraph attributes to Oklahoma a portion of net income of the enterprise out of all appropriate proportion to the property owned and/or business transacted within this state, because of the fact that one or more of the factors so prescribed are not employed to any appreciable extent in furtherance of the enterprise; or because one or more factors not so prescribed are employed to a considerable extent in furtherance of the enterprise; or because of other reasons, the Tax Commission is empowered to permit, after a showing by taxpayer that an excessive portion of net income has been

attributed to Oklahoma, or require, when in its judgment an insufficient portion of net income has been attributed to Oklahoma, the elimination, substitution, or use of additional factors, or reduction or increase in the weight of such prescribed factors. Provided, however, that any such variance from such prescribed factors which has the effect of increasing the portion of net income attributable to Oklahoma must not be inherently arbitrary, and application of the recomputed final apportionment to the net income of the enterprise must attribute to Oklahoma only a reasonable portion thereof.

6. For calendar years 1997 and 1998, the owner of a new or expanded agricultural commodity processing facility in this state may exclude from Oklahoma taxable income, or in the case of an individual, the Oklahoma adjusted gross income, fifteen percent (15%) of the investment by the owner in the new or expanded agricultural commodity processing facility. For calendar year 1999, and all subsequent years, the percentage, not to exceed fifteen percent (15%), available to the owner of a new or expanded agricultural commodity processing facility in this state claiming the exemption shall be adjusted annually so that the total estimated reduction in tax liability does not exceed One Million Dollars ($1,000,000.00) annually. The Tax Commission shall promulgate rules for determining the percentage of the investment which each eligible

taxpayer may exclude. The exclusion provided by this paragraph shall be taken in the taxable year when the investment is made. In the event the total reduction in tax liability authorized by this paragraph exceeds One Million Dollars ($1,000,000.00) in any calendar year, the Tax Commission shall permit any excess over One Million Dollars ($1,000,000.00) and shall factor such excess into the percentage for subsequent years. Any amount of the exemption permitted to be excluded pursuant to the provisions of this paragraph but not used in any year may be carried forward as an exemption from income pursuant to the provisions of this paragraph for a period not exceeding six (6) years following the year in which the investment was originally made.

For purposes of this paragraph:

a. "Agricultural commodity processing facility" means building, structures, fixtures and improvements used or operated primarily for the processing or production of marketable products from agricultural commodities. The term shall also mean a dairy operation that requires a depreciable investment of at least Two Hundred Fifty Thousand Dollars ($250,000.00) and which produces milk from dairy cows. The term does not include a facility that provides only, and nothing

more than, storage, cleaning, drying or transportation of agricultural commodities, and

b. "Facility" means each part of the facility which is used in a process primarily for:

(1) the processing of agricultural commodities, including receiving or storing agricultural commodities, or the production of milk at a dairy operation,

(2) transporting the agricultural commodities or product before, during or after the processing, or

(3) packaging or otherwise preparing the product for sale or shipment.

7. Despite any provision to the contrary in paragraph 3 of this subsection, for taxable years beginning after December 31, 1999, in the case of a taxpayer which has a farming loss, such farming loss shall be considered a net operating loss carryback in accordance with and to the extent of the Internal Revenue Code, 26 U.S.C., Section 172(b)(G). However, the amount of the net operating loss carryback shall not exceed the lesser of:

a. Sixty Thousand Dollars ($60,000.00), or

b. the loss properly shown on Schedule F of the Internal Revenue Service Form 1040 reduced by one-half (1/2) of

the income from all other sources other than reflected on Schedule F.

8. In taxable years beginning after December 31, 1995, all qualified wages equal to the federal income tax credit set forth in 26 U.S.C.A., Section 45A, shall be deducted from taxable income. The deduction allowed pursuant to this paragraph shall only be permitted for the tax years in which the federal tax credit pursuant to 26 U.S.C.A., Section 45A, is allowed. For purposes of this paragraph, "qualified wages" means those wages used to calculate the federal credit pursuant to 26 U.S.C.A., Section 45A.

9. In taxable years beginning after December 31, 2005, an employer that is eligible for and utilizes the Safety Pays OSHA Consultation Service provided by the Oklahoma Department of Labor shall receive an exemption from taxable income in the amount of One Thousand Dollars ($1,000.00) for the tax year that the service is utilized.

B. The taxable income of any corporation shall be further adjusted to arrive at Oklahoma taxable income, except those corporations electing treatment as provided in subchapter S of the Internal Revenue Code, 26 U.S.C., Section 1361 et seq., and Section 2365 of this title, deductions pursuant to the provisions of the Accelerated Cost Recovery System as defined and allowed in the Economic Recovery Tax Act of 1981, Public Law 97-34, 26 U.S.C.,

Section 168, for depreciation of assets placed into service after December 31, 1981, shall not be allowed in calculating Oklahoma taxable income. Such corporations shall be allowed a deduction for depreciation of assets placed into service after December 31, 1981, in accordance with provisions of the Internal Revenue Code, 26 U.S.C., Section 1 et seq., in effect immediately prior to the enactment of the Accelerated Cost Recovery System. The Oklahoma tax basis for all such assets placed into service after December 31, 1981, calculated in this section shall be retained and utilized for all Oklahoma income tax purposes through the final disposition of such assets.

Notwithstanding any other provisions of the Oklahoma Income Tax Act, Section 2351 et seq. of this title, or of the Internal Revenue Code to the contrary, this subsection shall control calculation of depreciation of assets placed into service after December 31, 1981, and before January 1, 1983.

For assets placed in service and held by a corporation in which accelerated cost recovery system was previously disallowed, an adjustment to taxable income is required in the first taxable year beginning after December 31, 1982, to reconcile the basis of such assets to the basis allowed in the Internal Revenue Code. The purpose of this adjustment is to equalize the basis and allowance

for depreciation accounts between that reported to the Internal Revenue Service and that reported to Oklahoma.

C. 1. For taxable years beginning after December 31, 1987, the taxable income of any corporation shall be further adjusted to arrive at Oklahoma taxable income for transfers of technology to qualified small businesses located in Oklahoma. Such transferor corporation shall be allowed an exemption from taxable income of an amount equal to the amount of royalty payment received as a result of such transfer; provided, however, such amount shall not exceed ten percent (10%) of the amount of gross proceeds received by such transferor corporation as a result of the technology transfer. Such exemption shall be allowed for a period not to exceed ten (10) years from the date of receipt of the first royalty payment accruing from such transfer. No exemption may be claimed for transfers of technology to qualified small businesses made prior to January 1, 1988.

2. For purposes of this subsection:

a. "Qualified small business" means an entity, whether organized as a corporation, partnership, or proprietorship, organized for profit with its principal place of business located within this state and which meets the following criteria:

(1) Capitalization of not more than Two Hundred Fifty Thousand Dollars ($250,000.00),

(2) Having at least fifty percent (50%) of its employees and assets located in Oklahoma at the time of the transfer, and

(3) Not a subsidiary or affiliate of the transferor corporation;

b. "Technology" means a proprietary process, formula, pattern, device or compilation of scientific or technical information which is not in the public domain;

c. "Transferor corporation" means a corporation which is the exclusive and undisputed owner of the technology at the time the transfer is made; and

d. "Gross proceeds" means the total amount of consideration for the transfer of technology, whether the consideration is in money or otherwise.

D. The Oklahoma adjusted gross income of any individual taxpayer shall be further adjusted as follows to arrive at Oklahoma taxable income:

1. a. In the case of individuals, there shall be added or deducted, as the case may be, the difference necessary to allow personal exemptions of One Thousand Dollars

($1,000.00) in lieu of the personal exemptions allowed by the Internal Revenue Code.

b. There shall be allowed an additional exemption of One Thousand Dollars ($1,000.00) for each taxpayer or spouse who is blind at the close of the tax year. For purposes of this subparagraph, an individual is blind only if the central visual acuity of the individual does not exceed 20/200 in the better eye with correcting lenses, or if the visual acuity of the individual is greater than 20/200, but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees.

c. There shall be allowed an additional exemption of One Thousand Dollars ($1,000.00) for each taxpayer or spouse who is sixty-five (65) years of age or older at the close of the tax year based upon the filing status and federal adjusted gross income of the taxpayer. Taxpayers with the following filing status may claim this exemption if the federal adjusted gross income does not exceed:

(1) Twenty-five Thousand Dollars ($25,000.00) if married and filing jointly;

(2) Twelve Thousand Five Hundred Dollars ($12,500.00) if married and filing separately;

(3) Fifteen Thousand Dollars ($15,000.00) if single; and

(4) Nineteen Thousand Dollars ($19,000.00) if a qualifying head of household.

Provided, for taxable years beginning after December 31, 1999, amounts included in the calculation of federal adjusted gross income pursuant to the conversion of a traditional individual retirement account to a Roth individual retirement account shall be excluded from federal adjusted gross income for purposes of the income thresholds provided in this subparagraph.

d. For taxable years beginning after December 31, 1990, and beginning before January 1, 1992, there shall be allowed a one-time additional exemption of Four Hundred Dollars ($400.00) for each taxpayer or spouse who is a member of the National Guard or any reserve unit of the Armed Forces of the United States and who was at any time during such taxable year deployed in active service during a time of war or conflict with an enemy of the United States.

2. In the case of individuals who use the standard deduction in determining taxable income, there shall be added or deducted, as the case may be, the difference necessary to allow a standard deduction in lieu of the standard deduction allowed by the Internal Revenue Code, in an amount equal to the larger of fifteen percent (15%) of the Oklahoma adjusted gross income or One Thousand Dollars ($1,000.00), but not to exceed Two Thousand Dollars ($2,000.00), except that in the case of a married individual filing a separate return such deduction shall be the larger of fifteen percent (15%) of such Oklahoma adjusted gross income or Five Hundred Dollars ($500.00), but not to exceed the maximum amount of One Thousand Dollars ($1,000.00).

3. In the case of resident and part-year resident individuals having adjusted gross income from sources both within and without the state, the itemized or standard deductions and personal exemptions shall be reduced to an amount which is the same portion of the total thereof as Oklahoma adjusted gross income is of adjusted gross income. To the extent itemized deductions include allowable moving expense, proration of moving expense shall not be required or permitted but allowable moving expense shall be fully deductible for those taxpayers moving within or into Oklahoma and no part of moving expense shall be deductible for those taxpayers moving without or out of Oklahoma. All other itemized or standard

deductions and personal exemptions shall be subject to proration as provided by law.

4. A resident individual with a physical disability constituting a substantial handicap to employment may deduct from Oklahoma adjusted gross income such expenditures to modify a motor vehicle, home or workplace as are necessary to compensate for his or her handicap. A veteran certified by the Veterans Administration of the federal government as having a service-connected disability shall be conclusively presumed to be an individual with a physical disability constituting a substantial handicap to employment. The Tax Commission shall promulgate rules containing a list of combinations of common disabilities and modifications which may be presumed to qualify for this deduction. The Tax Commission shall prescribe necessary requirements for verification.

5. In any taxable year the first One Thousand Five Hundred Dollars ($1,500.00) received by any person from the United States as salary or compensation in any form, other than retirement benefits, as a member of any component of the Armed Forces of the United States shall be deducted from taxable income. Whenever the filing of a timely income tax return by a member of the Armed Forces of the United States is made impracticable or impossible of accomplishment by reason of:

a. absence from the United States, which term includes only the states and the District of Columbia;

b. absence from the State of Oklahoma while on active duty; or

c. confinement in a hospital within the United States for treatment of wounds, injuries or disease,

the time for filing a return and paying an income tax shall be and is hereby extended without incurring liability for interest or penalties, to the fifteenth day of the third month following the month in which:

(1) Such individual shall return to the United States if the extension is granted pursuant to subparagraph a of this paragraph, return to the State of Oklahoma if the extension is granted pursuant to subparagraph b of this paragraph or be discharged from such hospital if the extension is granted pursuant to subparagraph c of this paragraph; or

(2) An executor, administrator, or conservator of the estate of the taxpayer is appointed, whichever event occurs the earliest.

Provided, that the Tax Commission may, in its discretion, grant any member of the Armed Forces of the United States an extension of time

for filing of income tax returns and payment of income tax without incurring liabilities for interest or penalties. Such extension may be granted only when in the judgment of the Tax Commission a good cause exists therefor and may be for a period in excess of six (6) months. A record of every such extension granted, and the reason therefor, shall be kept.

6. The salary or any other form of compensation, received from the United States by a member of any component of the Armed Forces of the United States, shall be deducted from taxable income during the time in which the person is detained by the enemy in a conflict, is a prisoner of war or is missing in action and not deceased.

7. Notwithstanding anything in the Internal Revenue Code or in the Oklahoma Income Tax Act to the contrary, it is expressly provided that, in the case of resident individuals, amounts received as dividends or distributions of earnings from savings and loan associations or credit unions located in Oklahoma, and interest received on savings accounts and time deposits from such sources or from state and national banks or trust companies located in Oklahoma, shall qualify as dividends for the purpose of the dividend exclusion, and taxable income shall be adjusted accordingly to arrive at Oklahoma taxable income; provided, however, that the dividend, distribution of earnings and/or interest exclusion provided for hereinabove shall not be cumulative to the maximum

dividend exclusion allowed by the Internal Revenue Code. Any dividend exclusion already allowed by the Internal Revenue Code and reflected in the taxpayer's Oklahoma taxable income together with exclusion allowed herein shall not exceed the total of One Hundred Dollars ($100.00) per individual or Two Hundred Dollars ($200.00) per couple filing a joint return.

8. a. An individual taxpayer, whether resident or nonresident, may deduct an amount equal to the federal income taxes paid by the taxpayer during the taxable year.

b. Federal taxes as described in subparagraph a of this paragraph shall be deductible by any individual taxpayer, whether resident or nonresident, only to the extent they relate to income subject to taxation pursuant to the provisions of the Oklahoma Income Tax Act. The maximum amount allowable in the preceding paragraph shall be prorated on the ratio of the Oklahoma adjusted gross income to federal adjusted gross income.

c. For the purpose of this paragraph, "federal income taxes paid" shall mean federal income taxes, surtaxes imposed on incomes or excess profits taxes, as though the taxpayer was on the accrual basis. In determining

the amount of deduction for federal income taxes for tax year 2001, the amount of the deduction shall not be adjusted by the amount of any accelerated ten percent (10%) tax rate bracket credit or advanced refund of the credit received during the tax year provided pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. No. ~~170-16~~ 107-16, and the advanced refund of such credit shall not be subject to taxation.

d. The provisions of this paragraph shall apply to all taxable years ending after December 31, 1978.

9. Retirement benefits not to exceed Five Thousand Five Hundred Dollars ($5,500.00) for the 2004 tax year and Seven Thousand Five Hundred Dollars ($7,500.00) for the 2005 tax year and all subsequent tax years, which are received by an individual from the civil service of the United States, any component of the Armed Forces of the United States, the Oklahoma Public Employees Retirement System, the Teachers' Retirement System of Oklahoma, the Oklahoma Law Enforcement Retirement System, the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System, the employee retirement systems created by counties pursuant to Section 951 et seq. of Title 19 of the Oklahoma Statutes, the Uniform Retirement System for Justices and Judges, the Oklahoma

Wildlife Conservation Department Retirement Fund, the Oklahoma Employment Security Commission Retirement Plan, or the employee retirement systems created by municipalities pursuant to Section 48-101 et seq. of Title 11 of the Oklahoma Statutes shall be exempt from taxable income.

10. In taxable years beginning after December 31, 1984, Social Security benefits received by an individual shall be exempt from taxable income, to the extent such benefits are included in the federal adjusted gross income pursuant to the provisions of Section 86 of the Internal Revenue Code, 26 U.S.C., Section 86.

11. For taxable years beginning after December 31, 1994, lump-sum distributions from employer plans of deferred compensation, which are not qualified plans within the meaning of Section 401(a) of the Internal Revenue Code, 26 U.S.C., Section 401(a), and which are deposited in and accounted for within a separate bank account or brokerage account in a financial institution within this state, shall be excluded from taxable income in the same manner as a qualifying rollover contribution to an individual retirement account within the meaning of Section 408 of the Internal Revenue Code, 26 U.S.C., Section 408. Amounts withdrawn from such bank or brokerage account, including any earnings thereon, shall be included in taxable income when withdrawn in the same manner as withdrawals from

individual retirement accounts within the meaning of Section 408 of the Internal Revenue Code.

12. In taxable years beginning after December 31, 1995, contributions made to and interest received from a medical savings account established pursuant to Sections 2621 through 2623 of Title 63 of the Oklahoma Statutes shall be exempt from taxable income.

13. For taxable years beginning after December 31, 1996, the Oklahoma adjusted gross income of any individual taxpayer who is a swine or poultry producer may be further adjusted for the deduction for depreciation allowed for new construction or expansion costs which may be computed using the same depreciation method elected for federal income tax purposes except that the useful life shall be seven (7) years for purposes of this paragraph. If depreciation is allowed as a deduction in determining the adjusted gross income of an individual, any depreciation calculated and claimed pursuant to this section shall in no event be a duplication of any depreciation allowed or permitted on the federal income tax return of the individual.

14. a. In taxable years beginning after December 31, 2002, nonrecurring adoption expenses paid by a resident individual taxpayer in connection with:

(1) the adoption of a minor, or

(2) a proposed adoption of a minor which did not result in a decreed adoption,

may be deducted from the Oklahoma adjusted gross income.

b. The deductions for adoptions and proposed adoptions authorized by this paragraph shall not exceed Twenty Thousand Dollars ($20,000.00) per calendar year.

c. The Tax Commission shall promulgate rules to implement the provisions of this paragraph which shall contain a specific list of nonrecurring adoption expenses which may be presumed to qualify for the deduction. The Tax Commission shall prescribe necessary requirements for verification.

d. "Nonrecurring adoption expenses" means adoption fees, court costs, medical expenses, attorney fees and expenses which are directly related to the legal process of adoption of a child including, but not limited to, costs relating to the adoption study, health and psychological examinations, transportation and reasonable costs of lodging and food for the child or adoptive parents which are incurred to complete the adoption process and are not reimbursed by other sources. The term "nonrecurring adoption expenses"

shall not include attorney fees incurred for the purpose of litigating a contested adoption, from and after the point of the initiation of the contest, costs associated with physical remodeling, renovation and alteration of the adoptive parents' home or property, except for a special needs child as authorized by the court.

15. In taxable years beginning before January 1, 2005, retirement benefits not to exceed the amounts specified in this paragraph, which are received by an individual sixty-five (65) years of age or older and whose Oklahoma adjusted gross income is Twenty-five Thousand Dollars ($25,000.00) or less if the filing status is single, head of household, or married filing separate, or Fifty Thousand Dollars ($50,000.00) or less if the filing status is married filing joint or qualifying widow, shall be exempt from taxable income. In taxable years beginning after December 31, 2004, retirement benefits not to exceed the amounts specified in this paragraph, which are received by an individual whose Oklahoma adjusted gross income is Thirty-seven Thousand Five Hundred Dollars ($37,500.00) or less if the filing status is single, head of household, or married filing separate, or Seventy-Five Thousand Dollars ($75,000.00) or less if the filing status is married filing jointly or qualifying widow, shall be exempt from taxable income.

For purposes of this paragraph, "retirement benefits" means the total distributions or withdrawals from the following:

a. an employee pension benefit plan which satisfies the requirements of Section 401 of the Internal Revenue Code, 26 U.S.C., Section 401,

b. an eligible deferred compensation plan that satisfies the requirements of Section 457 of the Internal Revenue Code, 26 U.S.C., Section 457,

c. an individual retirement account, annuity or trust or simplified employee pension that satisfies the requirements of Section 408 of the Internal Revenue Code, 26 U.S.C., Section 408,

d. an employee annuity subject to the provisions of Section 403(a) or (b) of the Internal Revenue Code, 26 U.S.C., Section 403(a) or (b),

e. United States Retirement Bonds which satisfy the requirements of Section 86 of the Internal Revenue Code, 26 U.S.C., Section 86, or

f. lump-sum distributions from a retirement plan which satisfies the requirements of Section 402(e) of the Internal Revenue Code, 26 U.S.C., Section 402(e).

The amount of the exemption provided by this paragraph shall be limited to Five Thousand Five Hundred Dollars ($5,500.00) for the

2004 tax year and Seven Thousand Five Hundred Dollars ($7,500.00) for the 2005 tax year and for all subsequent tax years. Any individual who claims the exemption provided for in paragraph 9 of this subsection shall not be permitted to claim a combined total exemption pursuant to this paragraph and paragraph 9 of this subsection in an amount exceeding Five Thousand Five Hundred Dollars ($5,500.00) for the 2004 tax year and Seven Thousand Five Hundred Dollars ($7,500.00) for the 2005 tax year and subsequent tax years.

16. In taxable years beginning after December 31, 1999, for an individual engaged in production agriculture who has filed a Schedule F form with the taxpayer's federal income tax return for such taxable year, there shall be excluded from taxable income any amount which was included as federal taxable income or federal adjusted gross income and which consists of the discharge of an obligation by a creditor of the taxpayer incurred to finance the production of agricultural products.

17. In taxable years beginning December 31, 2000, an amount equal to one hundred percent (100%) of the amount of any scholarship or stipend received from participation in the Oklahoma Police Corps Program, as established in Section 2-140.3 of Title 47 of the Oklahoma Statutes shall be exempt from taxable income.

18. In taxable years beginning after December 31, 2001, there shall be allowed a deduction in the amount of contributions to

accounts established pursuant to the Oklahoma College Savings Plan Act. The deduction shall equal the amount of contributions to accounts, but in no event shall the deduction for each contributor exceed Two Thousand Five Hundred Dollars ($2,500.00) each taxable year for each account.

E. 1. For taxable years beginning after December 31, 2004, a deduction from the Oklahoma adjusted gross income of any individual taxpayer shall be allowed for qualifying gains receiving capital treatment earned by the individual taxpayer during the taxable year and included in the federal taxable income of such individual taxpayer.

2. As used in this subsection:

a. "qualifying gains receiving capital treatment" means the amount of net capital gains, as defined in Section 1222(11) of the Internal Revenue Code, included in an individual taxpayer's federal income tax return that was:

(1) earned by the individual taxpayer on real or tangible personal property located within Oklahoma that has been owned by the individual taxpayer for a holding period of at least five (5) years prior to the date of the transaction from which such net capital gains arise, or

(2) earned on the sale of stock or on the sale of an ownership interest in an Oklahoma company, limited liability company, or partnership where such stock or ownership interest has been owned by the individual taxpayer for a holding period of at least three (3) years prior to the date of the transaction from which the net capital gains arise,

b. "holding period" means an uninterrupted period of time, and

c. "Oklahoma company," "limited liability company," or "partnership" means an entity whose primary headquarters have been located in Oklahoma for at least three (3) uninterrupted years prior to the date of the transaction from which the net capital gains arise.

SECTION 5. AMENDATORY 74 O.S. 2001, Section 18m-2, is amended to read as follows:

Section 18m-2. A. If the Attorney General or a designee has reason to believe as a result of inquiry or complaint that a person has engaged in or is engaging in an act or practice that violates any administrative rule or statute pertaining to workers' compensation fraud, the Attorney General or a designee shall have

all of the powers of a district attorney. Nothing in this section shall be construed to limit the powers of a district attorney in any action involving workers' compensation fraud.

B. If an employer has reason to believe that a former or present employee of the employer has engaged or is engaging in an act or practice that violates any administrative rule or statute pertaining to workers' compensation fraud regarding past, present or potential claims arising out of employment with the employer, the employer or a designee may proceed with a civil action for fraud against the employee in a district court. In addition to actual damages awarded, a successful plaintiff shall be entitled to punitive damages. An action brought pursuant to this subsection shall be brought within two (2) years after the cause of action shall have accrued and not afterwards.

C. Records, documents, reports and evidence obtained or created by the Office of the Attorney General as a result of workers' compensation fraud shall be confidential and shall not be subject to the Oklahoma Open Records Act or to outside review or release by any individual except when authorized by the Attorney General or when required by an administrative or judicial proceeding.

SECTION 6. AMENDATORY 85 O.S. 2001, Section 1.1, is amended to read as follows:

Section 1.1 A. ~~This act~~ The Workers' Compensation Act shall not apply to cases of occupational disease in which the last injurious exposure to the hazards of such disease occurred before June 6, 1953.

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

C. The provisions of the Workers' Compensation Act shall be strictly construed by the Workers' Compensation Court and any appellate court reviewing a decision of the Workers' Compensation Court.

SECTION 7. AMENDATORY 85 O.S. 2001, Section 3, as amended by Section 60, Chapter 329, O.S.L. 2003 (85 O.S. Supp. 2004, Section 3), is amended to read as follows:

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

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

2. "Amount in dispute" means the dollar amount agreed to and paid by the employer to the employee or the dollar amount of the award granted to the employee by the Court which is greater than the dollar amount previously offered by the employer to the employee;

3. "Case management" means the ongoing coordination, by a case manager, of health care services provided to an injured or disabled worker, including, but not limited to:

a. systematically monitoring the treatment rendered and the medical progress of the injured or disabled worker,

b. ensuring that any treatment plan follows all appropriate treatment protocols, utilization controls and practice parameters,

c. assessing whether alternative health care services are appropriate and delivered in a cost-effective manner based upon acceptable medical standards, and

d. ensuring that the injured or disabled worker is following the prescribed health care plan;

~~3.~~ 4. "Case manager" means a person who:

a. is a registered nurse with a current, active unencumbered license from the Oklahoma Board of Nursing, or

b. possesses one or more of the following certifications which indicate the individual has a minimum number of years of case management experience, has passed a national competency test and regularly obtains continuing education hours to maintain certification:

(1) Certified Disability Management Specialist (CDMS),

(2) Certified Case Manager (CCM),

(3) Certified Rehabilitation Registered Nurse (CRRN),

(4) Case Manager – Certified (CMC),

(5) Certified Occupational Health Nurse (COHN), or

(6) Certified Occupational Health Nurse Specialist (COHN-S);

~~4.~~ 5. "Claimant" means a person who claims benefits for an injury pursuant to the provisions of the Workers' Compensation Act;

~~5.~~ 6. "Court" means the Workers' Compensation Court;

~~6.~~ 7. "Cumulative trauma" means an injury resulting from employment activities which are repetitive in nature and engaged in over a period of time;

~~7.~~ 8. "Employer", except when otherwise expressly stated, means a person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, corporation, or limited liability company, departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof,

employing a person included within the term "employee" as herein defined;

~~8.~~ 9. "Employee" means any person engaged in the employment of any person, firm, limited liability company or corporation covered by the terms of the Workers' Compensation Act, and shall include workers associating themselves together under an agreement for the performance of a particular piece of work, in which event such persons so associating themselves together shall be deemed employees of the person having the work executed; provided, that if such associated workers shall employ a worker in the execution of such contract, then as to such employed worker, both the associated employees and the principal employer shall at once become subject to the provisions of the Workers' Compensation Act relating to independent contractors. Sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation are specifically excluded from the foregoing definition of "employee", and shall not be deemed to be employees as respects the benefits of the Workers' Compensation Act. Provided, a sole proprietor, member of a partnership, member of a limited liability company who owns at least ten percent (10%) of the capital of the limited liability company or any stockholder-employee

of a corporation who owns ten percent (10%) or more stock in the corporation who does not so elect to be covered by a policy of insurance covering benefits under the Workers' Compensation Act, when acting as a subcontractor, shall not be eligible to be covered under the prime contractor's policy of workers' compensation insurance; however, nothing herein shall relieve the entities enumerated from providing workers' compensation insurance coverage for their employees. Sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation may elect to include the sole proprietors, any or all of the partnership members, any or all of the limited liability company members or any or all stockholder-employees as employees, if otherwise qualified, by endorsement to the policy specifically including them under any policy of insurance covering benefits under the Workers' Compensation Act. When so included, the sole proprietors, members of a partnership, members of a limited liability company or any or all stockholder-employees shall be deemed to be employees as respects the benefits of the Workers' Compensation Act. "Employee" shall also include any person who is employed by the departments, instrumentalities and institutions of this state and divisions thereof, counties and

divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof. "Employee" shall also include a member of the Oklahoma National Guard while in the performance of duties only while in response to state orders and any authorized voluntary or uncompensated worker, rendering services as a firefighter, peace officer or emergency management worker. Provided, "employee" shall not include any other person providing or performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitative therapy, transportation, lodging or reimbursement for incidental expenses. "Employee" shall also include a participant in a sheltered workshop program which is certified by the United States Department of Labor. "Employee" shall not include a person, commonly referred to as an owner-operator, who owns or leases a truck-tractor or truck for hire, if the owner-operator actually operates the truck-tractor or truck and if the person contracting with the owner-operator is not the lessor of the truck-tractor or truck. Provided, however, an owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Act if the owner-operator elects to participate as a sole proprietor. "Employee" shall not include a person referred to as a drive-away owner-operator who privately owns and utilizes a tow vehicle in drive-away operations and operates independently for hire, if the drive-away owner-

operator actually utilizes the tow vehicle and if the person contracting with the drive-away owner-operator is not the lessor of the tow vehicle. Provided, however, a drive-away owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Act if the drive-away owner-operator elects to participate as a sole proprietor;

~~9.~~ 10. "Drive-away operations" include every person engaged in the business of transporting and delivering new or used vehicles by driving, either singly or by towbar, saddle mount or full mount method, or any combination thereof, with or without towing a privately owned vehicle;

~~10.~~ 11. "Employment" includes work or labor in a trade, business, occupation or activity carried on by an employer or any authorized voluntary or uncompensated worker rendering services as a firefighter, peace officer or emergency management worker;

~~11.~~ 12. "Compensation" means the money allowance payable to an employee as provided for in the Workers' Compensation Act;

~~12.~~

13. a. "Injury" or "personal injury" means only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally result therefrom and occupational disease arising out of and in the course of employment as

herein defined. Only injuries having as their source a risk not purely personal but one that is causally connected with the conditions of employment shall be deemed to arise out of the employment.

b. "Injury" or "personal injury" includes heart-related or vascular injury, illness or death only if resultant from stress in excess of that experienced by a person in the conduct of everyday living. Such stress must arise out of and in the course of a claimant's employment.

c. "Injury" or "personal injury" shall not include mental injury that is unaccompanied by physical injury, except in the case of rape which arises out of and in the course of employment;

~~13.~~ 14. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer;

~~14.~~ 15. "Insurance carrier" shall include stock corporations, reciprocal or interinsurance associations, or mutual associations with which employers have insured, and employers permitted to pay compensation, directly under the provisions of paragraph 4 of subsection A of Section 61 of this title;

1 ~~15.~~ 16. "Occupational disease" means only that disease or
2 illness which is due to causes and conditions characteristic of or
3 peculiar to the particular trade, occupation, process or employment
4 in which the employee is exposed to such disease. An occupational
5 disease arises out of the employment only if there is a direct
6 causal connection between the occupational disease and the
7 conditions under which the work is performed;
8 ~~16.~~ 17. "Permanent impairment" means any anatomical or
9 functional abnormality or loss after maximum medical improvement has
10 been achieved, which abnormality or loss the physician considers to
11 be capable of being evaluated at the time the rating is made.
12 Except as otherwise provided herein, any examining physician shall
13 only evaluate impairment in accordance with the latest publication
14 of the American Medical Association's "Guides to the Evaluation of
15 Permanent Impairment" in effect at the time of the injury. The
16 Physician Advisory Committee may, pursuant to Section 201.1 of this
17 title, recommend the adoption of a method or system to evaluate
18 permanent impairment that shall be used in place of or in
19 combination with the American Medical Association's "Guides to the
20 Evaluation of Permanent Impairment". Such recommendation shall be
21 made to the Administrator of the Workers' Compensation Court who may
22 adopt the recommendation in part or in whole. The adopted method or
23 system shall be submitted by the Administrator to the Governor, the

1 Speaker of the House of Representatives and the President Pro
2 Tempore of the Senate within the first ten (10) legislative days of
3 a regular session of the Legislature. Such method or system to
4 evaluate permanent impairment that shall be used in place of or in
5 combination with the American Medical Association's "Guides to the
6 Evaluation of Permanent Impairment" shall be subject to disapproval
7 in whole or in part by joint or concurrent resolution of the
8 Legislature during the legislative session in which submitted. Such
9 method or system shall be operative one hundred twenty (120) days
10 after the last day of the month in which the Administrator submits
11 the adopted method or system to the Legislature if the Legislature
12 takes no action or one hundred twenty (120) days after the last day
13 of the month in which the Legislature disapproves it in part. If
14 adopted, permanent impairment shall be evaluated only in accordance
15 with the latest version of the alternative method or system in
16 effect at the time of injury. Except as otherwise provided in
17 Section 11 of this title, all evaluations shall include an
18 apportionment of injury causation. However, revisions to the guides
19 made by the American Medical Association which are published after
20 January 1, 1989, and before January 1, 1995, shall be operative one
21 hundred twenty (120) days after the last day of the month of
22 publication. Revisions to the guides made by the American Medical
23 Association which are published after December 31, 1994, may be

adopted in whole or in part by the Administrator following recommendation by the Physician Advisory Committee. Revisions adopted by the Administrator shall be submitted by the Administrator to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such revisions shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Revisions shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the revisions to the Governor and the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves them in part. The examining physician shall not follow the guides based on race or ethnic origin. The examining physician shall not deviate from said guides or any alternative thereto except as may be specifically provided for in the guides or modifications to the guides or except as may be specifically provided for in any alternative or modifications thereto, adopted by the Administrator of the Workers' Compensation Court as provided for in Section 201.1 of this title. These officially adopted guides or modifications thereto or alternative system or method of evaluating permanent impairment or modifications

thereto shall be the exclusive basis for testimony and conclusions with regard to permanent impairment with the exception of paragraph 3 of Section 22 of this title, relating to scheduled member injury or loss; and impairment, including pain or loss of strength, may be awarded with respect to those injuries or areas of the body not specifically covered by said guides or alternative to said guides;

~~17.~~ 18. "Permanent total disability" means incapacity because of accidental injury or occupational disease to earn any wages in any employment for which the employee may become physically suited and reasonably fitted by education, training or experience, including vocational rehabilitation; loss of both hands, or both feet, or both legs, or both eyes, or any two thereof, shall constitute permanent total disability;

~~18.~~ 19. "Permanent partial disability" means permanent disability which is less than total and shall be equal to or the same as permanent impairment;

~~19.~~ 20. "Maximum medical improvement" means that no further material improvement would reasonably be expected from medical treatment or the passage of time;

~~20.~~ 21. "Independent medical examiner" means a licensed physician authorized to serve as a medical examiner pursuant to Section 17 of this title;

~~21. a.~~

22. "Certified workplace medical plan" means an organization of health care providers or any other entity, certified by the State Commissioner of Health pursuant to Section 14.3 of this title, that is authorized to enter into a contractual agreement with a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or an insured, which shall include any member of an approved group self-insured association, policyholder or public entity, regardless of whether such entity is insured by CompSource Oklahoma, to provide medical care under the Workers' Compensation Act. Certified plans shall only include such plans which provide medical services and payment for services on a fee-for-service basis to medical providers and shall not include other plans which contract in some other manner, such as capitated or pre-paid plans~~.~~

~~b. If any insurer, except CompSource Oklahoma, fails to contract with or provide access to a certified workplace medical plan, an insured, after sixty (60) days' written notice to its insurance carrier, shall be authorized to contract independently with a plan of his or her choice for a period of one (1) year, to provide medical care under the Workers' Compensation Act. The insured shall be authorized to contract, after sixty (60) days' written notice to its insurance~~

~~carrier, for additional one-year periods if his or her insurer has not contracted with or provided access to a certified workplace medical plan.~~

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

~~22.~~ 23. "Treating physician" ~~or "attending physician"~~ means the licensed physician selected by an employee from a list of physicians provided by the employer or selected by an employer, who has provided or is providing medical care to the injured employee.

SECTION 8. AMENDATORY 85 O.S. 2001, Section 3.5, is amended to read as follows:

Section 3.5 A. The claimant at the time of filing ~~his~~ notice of injury shall elect where necessary hearings by the Workers' Compensation Court shall be held; provided, that if the claimant is a legal resident of the State of Oklahoma, ~~he shall be required to elect either~~ the venue shall be the judicial district of the county of ~~his~~ the legal residence of the claimant at the time ~~he sustained his~~ the injury was sustained, the judicial district of the county where the injury occurred or the judicial district of the county of the principal place of business of the employer.

In the event that the claimant is not a legal resident of the State of Oklahoma, the necessary hearings shall be held in the judicial district of the county of the principal place of business of the employer~~; provided, that if the injury occurred within the state, the hearings shall be held in the judicial district of the county where the injury occurred. In the event the claimant is not a legal resident of the State of Oklahoma and the accident resulting in injury occurred outside the territorial limits of the state, then the hearings shall be held in the judicial district of the county in this state wherein the contract of employment was entered into. After the election has been made as provided above, all future hearings by the Court affecting the claimant's case shall be held in the judicial district so designated unless the Court, upon agreement by the claimant and the employer, shall transfer such cause for~~

~~hearing to any other judicial district agreed upon. In addition, hearings may be held in any jurisdiction if the Judge determines that good cause has been shown~~.

B. The Court may elect to hold hearings related to a claim by videoconference. In the event the Court elects to hold a hearing by videoconference, the hearing shall be held at a career technology center in the judicial district in which venue lies pursuant to subsection A of this section. All attorneys for claimants shall be required to appear with their clients at any hearings held by videoconference.

C. All technology center schools in this state shall make quarters and technology available for hearings, as necessary.

SECTION 9. AMENDATORY 85 O.S. 2001, Section 3.10, is amended to read as follows:

Section 3.10 A. Mediation shall be available to any party to a claim arising pursuant to the provisions of the Workers' Compensation Act, subject to the limitation provisions of Section 14.3 of this title and except for claims against the Multiple Injury Trust Fund.

B. ~~Mediation~~ Unless ordered by the Workers' Compensation Court, mediation shall be voluntary, and shall not be conducted without the consent of both parties.

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

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

C. ~~No sanction or penalty may be imposed by the Administrator of the Workers' Compensation Court or any judge of the Court if a party refuses to mediate~~ The Court may order mediation upon request of either party or in any case in which the Court believes that mediation may be beneficial to a prompt and efficient resolution of the claim.

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

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

E. Once a request has been made, the Administrator shall contact the opposing party. If no objection is filed, the parties shall complete mediation within thirty (30) days of the notification. If the opposing party does not wish to participate in

mediation, ~~the requesting party shall be notified of the refusal~~ a hearing shall be scheduled on the matter. The opposing party shall bear the burden of proving that mediation would not be beneficial to a prompt and efficient resolution of the claim. If the opposing party fails to meet the burden of proof, the Court shall order the parties to participate in mediation.

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

G. Mediation is confidential and no part of the proceeding shall be considered a matter of public record. Recommendations of the mediator are not binding unless the parties enter into a settlement agreement. If an agreement is not reached, the results and statements made during the mediation are not admissible in any following proceeding. No judge who conducts a hearing pursuant to the provisions of subsection E of this section shall be the judge to whom the case is assigned or a member of the Court en banc hearing the case.

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

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

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

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

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

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

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

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

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

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3.12 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Except in those cases in which a settlement has been reached between the employer and injured employee, any dispute arising pursuant to the provisions of the Workers' Compensation Act shall be submitted to the Ombudsman Program established pursuant to this

section. All administrative procedures provided for in this section shall be exhausted prior to the filing of the Employee's First Notice of Accidental Injury and Claim for Compensation and the case shall not proceed until the administrative procedures are completed.

B. There is hereby established an Ombudsman Program within the Insurance Department that shall be coordinated and directed by the Office of the Insurance Commissioner.

C. The purpose of the Ombudsman Program is to assist injured employees in the coordination and receipt of benefits, to assist employers in the delivery of benefits, medical or otherwise, to injured employees and to assist in the resolution of conflicts relating to medical treatment, ability to return to work, or compensation.

D. The Insurance Commissioner shall promulgate rules consistent with the provisions of this section.

E. The Insurance Department shall establish and collect fees for services provided by the Ombudsman Program pursuant to the provisions of this section, which fees shall be paid by the employer in each case. Said fees shall be reasonably related to the expenses of the Insurance Department to establish and operate the Ombudsman Program.

SECTION 11. AMENDATORY 85 O.S. 2001, Section 14, as amended by Section 1, Chapter 215, O.S.L. 2002 (85 O.S. Supp. 2004, 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~~ treating 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~~ treating physician shall supply a full report of the treatment to the employer of the injured employee.

2. The ~~attending~~ treating 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~~ treating 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~~ treating physician provides such notification to the employer's insurer, the insurer shall promptly notify the employer. If an injured employee, only partially disabled, refuses employment suitable to the capacity of the employee, the employee shall not be entitled to any compensation at any time during the continuance of such refusal unless in the opinion of the treating physician such refusal was justifiable; provided, before compensation may be denied, the employee shall be served with a notice setting forth the consequences of the refusal of employment and shall be entitled to a hearing on the matter before the Workers' Compensation Court.

B. The employer's selected physician ~~shall have the right to examine the injured employee and~~, except as otherwise provided in this section, shall have the right and responsibility to treat the injured employee. A report of such examination shall be furnished to the employer and 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 actual knowledge of the injury is received by the employer, the injured employee, during the period of such neglect or failure, may select a physician to provide medical treatment 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. 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.

D. 1. 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 CompSource Oklahoma, has previously contracted with a certified workplace medical plan, the ~~employee~~ employer 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~~ select for the injured employee a treating physician from the physicians listed within the network of the certified workplace medical plan.

2. The ~~employee~~ claimant may apply for a change of physician by utilizing the dispute resolution process set out in the certified

workplace medical plan on file ~~at~~ with the State Department of Health.

E. 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.

F. 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

1 comparable treatment of a person with similar injuries and the
2 duration of treatment prevailing in this state for persons with
3 similar injuries. The fee and treatment schedule shall be reviewed
4 biennially by the Administrator and, after such review, and notice
5 and public hearing, the Administrator shall be empowered to amend or
6 alter said fee and treatment schedule to ensure its adequacy;
7 provided, however, the fee and treatment schedule shall not be
8 amended or altered until January 1, 2003, except to require the
9 utilization of the latest Current Procedural Terminology (CPT) codes
10 as published by the American Medical Association or the Centers for
11 Medicare and Medicaid Services' codes and coding of supplies and
12 materials. Until January 1, 2003, the fee and treatment schedule
13 adopted by the Administrator effective October 1, 2000, shall govern
14 and apply to all health care services rendered and supplies provided
15 after September 30, 2000, to employees with compensable injuries,
16 regardless of the employee's date of injury. The Administrator
17 shall not increase the overall maximum reimbursement levels for
18 health care providers, including hospitals and ambulatory surgical
19 centers, in an amount exceeding the cumulative percentage of change
20 of the Consumer Price Index - Urban (CPI-U) for medical costs since
21 the last biennial review.
22 3. The Administrator shall adopt a new fee and treatment
23 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 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 fee.

G. ~~Where~~ If the employee is not covered by a certified workplace medical plan, ~~the Court on application of~~ and the employer selected the treating physician, the employee ~~shall order~~ is entitled one change of treating physician~~; provided, such~~ from the list of physicians selected by the employer for good cause shown. The employee must prove by clear and convincing evidence that good cause exits to support the employee's request for a change of treating physician. Additionally, a change of physician shall be allowed for each individual body part injured if the treating physician determines that the employee's injured body parts cannot be treated by the same physician. Any change of physician pursuant to this subsection shall be at the expense of the employer;

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. On application of the employee for a change of physician, the Court shall set the matter for hearing within seven (7) days of filing the application. At or before the hearing, the ~~employee~~ employer shall present to the ~~employer~~ employee a list of three physicians qualified to treat the employee's injury, and the ~~employer~~ employee shall choose one of the physicians. ~~The~~ If the Court finds that the employee has proven by clear and convincing evidence that good cause exists to support the employee's request for a change of treating physician, the Court shall order that the selected physician be allowed to treat the employee at the expense of the employer. ~~Except in cases covered by a certified workplace medical plan, in any case where the claimant and the treating physician disagree as to the necessity of surgery, the claimant may petition the Court for the appointment of an independent medical examiner to determine the appropriateness of the surgery. In no event may the independent medical examiner, whether directly, or indirectly by virtue of a pecuniary interest, economically benefit from the performance of said surgery or be allowed to perform such surgery unless both employee and employer agree through written stipulation and said~~

~~stipulation occurs prior to appointment, referral and notice to said independent medical examiner.~~

H. 1. Whenever a workers' compensation case is not covered under a certified workplace medical plan, case management may be utilized whenever the employee has more than three (3) lost workdays in succession. For cases not covered by a certified workplace medical plan, and where the insurance company does not provide case management, case management may be granted by the Workers' Compensation Court on the request of any party, or when the Court determines that case management is appropriate. The Court shall appoint a case manager from a list of qualified case managers developed, maintained and periodically reviewed by the Court.

2. The reasonable and customary charges of a medical case manager appointed by the Court shall be borne by the employer.

3. Except in cases covered by a certified workplace medical plan, a case manager may be replaced if requested by the employee.

I. If prescription drugs are required for the treatment of an injured employee, the prescription shall be filled with the generic equivalent brand of the name brand drug, when available.

J. Any prescription or renewal of a prescription for any controlled substance included in Schedule II of the Uniform Controlled Dangerous Substances Act shall be limited to no more than a ten-day supply; provided, the treating physician shall renew the

prescription only if the physician determines that it is medically necessary.

SECTION 12. AMENDATORY 85 O.S. 2001, Section 14.2, is amended to read as follows:

Section 14.2 A. 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 CompSource, has contracted with a workplace medical plan that is certified by the State Commissioner of Health as provided in Section 14.3 of this title, ~~an employee~~ the employer shall ~~exercise the election for which provision is made in subsection D of Section 14 of this title. If a self-insured employer approved by the Workers' Compensation Court has in force a collective bargaining agreement with its employees, the certified workplace medical plan shall be selected with the approval of both parties signatory to the collective bargaining agreement~~ select for the injured employee a treating physician from the physicians listed within the network of the certified workplace medical plan. The claimant may apply to the certified workplace medical plan for a one-time change of physician to another appropriate physician within the network of the certified workplace medical plan by utilizing the dispute resolution process

set out in the certified workplace medical plan on file with the State Department of Health.

Notwithstanding any other provision of law, those employees who are subject to such certified workplace medical plan shall receive medical treatment in the manner prescribed by the plan.

B. ~~Qualified employers shall, when a contract of employment is made and prior to the annual open enrollment date for the insurer's certified workplace medical plan, provide the employee with written notice of and the opportunity to make the election for which provision is made in subsection D of Section 14 of this title. The written notice must be given by the employer in the form and manner prescribed by the State Commissioner of Health. The election must be made on the form specified in subsection D of this section and must be signed by the employee:~~

~~1. Within thirty (30) days of employment;~~

~~2. Within thirty (30) days after an employee receives notice that a self-insured employer, group self-insurance association plan, or an employer's workers' compensation insurance carrier has implemented a certified workplace medical plan; or~~

~~3. On or before the annual open enrollment date of the certified workplace medical plan.~~

~~C. 1. If an employee elects not to enroll in the certified workplace medical plan, the employee shall, on the election form,~~

~~provide a list of physicians who meet the requirements set forth in paragraph 1 of subsection D of Section 14 of this title. The employee's list of physicians may be updated on the election form made available to the employee prior to the annual open enrollment date of the certified workplace medical plan.~~

~~2. Procedures and the form for making the election for which provision is made in subsection D of Section 14 of this title shall be prescribed by the State Commissioner of Health; however, the election form shall:~~

~~a. be provided to the employee at least fifteen (15) days prior to the date when the employee must make the election,~~

~~b. fully inform the employee of the employee's right to select the certified workplace medical plan provider network or to select the employee's personal physician or physicians who meet the requirements set forth in paragraph 1 of subsection D of Section 14 of this title,~~

~~c. fully inform the employee of the consequences of the election insofar as medical care is concerned,~~

~~d. fully inform the employee that the employee cannot be discharged by the employer because the employee has in good faith elected to select the certified workplace~~

~~medical plan provider network or to select the employee's personal physician or physicians who meet the requirements set forth in paragraph 1 of subsection D of Section 14 of this title, and~~

~~c. provide adequate space for the employee to list his or her personal physician or physicians, by category of physician as specified in subsection E of Section 14 of this title, who meet the requirements set forth in paragraph 1 of subsection D of Section 14 of this title.~~

~~D. The burden for notification of an employee's enrollment in a certified workplace medical plan shall be the employer's. After enrollment, an employee shall seek treatment under the certified workplace medical plan for one (1) calendar year. The employee may opt out of the plan, effective on the next annual open enrollment date, only if the employee is changing to a physician selected pursuant to the requirements of paragraph 1 of subsection D of Section 14 of this title; however, if the date of the injury falls under a period of enrollment in a certified workplace medical plan, treatment must be rendered under the certified workplace medical plan treatment contract.~~

~~E.~~ The provisions of this section shall not preclude:

1. An employee, who has exhausted the dispute resolution process of the certified workplace medical plan, from petitioning the Workers' Compensation Court or the Administrator of the Workers' Compensation Court for a change of treating physician within the certified workplace medical plan or, if a physician who is qualified to treat the employee's injuries is not available within the plan, for a change of physician outside the plan, if the physician agrees to comply with all the rules, terms and conditions of the certified workplace medical plan; or

2. An employee from seeking emergency medical treatment as provided in Section 14 of this title.

~~F.~~ C. The provisions of this section shall not apply to treatment received by an employee for an accepted accidental injury or occupational disease for which treatment began prior to November 4, 1994.

SECTION 13. AMENDATORY 85 O.S. 2001, Section 14.3, is amended to read as follows:

Section 14.3 A. Any person or entity may make written application to the Commissioner of Health of the State of Oklahoma to have a workplace medical plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under the Workers' Compensation Act~~, Section 1 et seq. of this title~~. Each application for certification shall be

accompanied by a fee of One Thousand Five Hundred Dollars ($1,500.00). A workplace medical plan may be certified to provide services to a limited geographic area. A certificate is valid for a five-year period, unless revoked or suspended. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed program for providing services as the Commissioner may prescribe. The information shall include, but not be limited to:

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

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

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

a. proposes to provide quality services for all medical services which:

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

(2) utilizes medical treatment guidelines and protocols substantially similar to those

1 established for use by medical service providers,
2 which have been recommended by the Physician
3 Advisory Committee and adopted by the
4 Administrator pursuant to subsection B of Section
5 201.1 of this title. If the Administrator has
6 not adopted medical treatment guidelines and
7 protocols, the Commissioner may certify a plan
8 that utilizes medical guidelines and protocols
9 established by the plan if, in the discretion of
10 the Commissioner, the guidelines and protocols
11 are reasonable and will carry out the intent of
12 the Workers' Compensation Act. Certified plans
13 must utilize medical treatment guidelines and
14 protocols substantially similar to those adopted
15 by the Administrator pursuant to Section 201.1 of
16 this title, as such guidelines and protocols
17 become adopted,
18 b. is reasonably geographically convenient to residents
19 of the area for which it seeks certification,
20 c. provides appropriate financial incentives to reduce
21 service costs and utilization without sacrificing the
22 quality of service,

d. provides adequate methods of peer review, utilization review and dispute resolution to prevent inappropriate, excessive or medically unnecessary treatment, and excludes participation in the plan by those providers who violate these treatment standards,

e. requires the dispute resolution procedure of the plan to include a requirement that disputes on an issue, including a subsequent change of physician as described in the provisions of Section 14 of this title and this section, related to medical care under the plan be attempted to be resolved within ten (10) days of the time the dispute arises and if not resolved within ten (10) days, the employee may pursue remedies in the Workers' Compensation Court,

f. provides aggressive case management for injured employees and a program for early return to work,

g. provides workplace health and safety consultative services,

h. provides a timely and accurate method of reporting to the Commissioner necessary information regarding medical service costs and utilization to enable the Commissioner to determine the effectiveness of the plan,

i. authorizes necessary emergency medical treatment for an injury provided by a provider of medical, surgical, and hospital services who is not a part of the plan~~; allows employees to receive medical, surgical, and hospital services from a physician who is not a member of the plan if such attending physician has been selected by the employee pursuant to paragraph 1 of subsection D of Section 14 of this title; and allows a physician selected by the employee pursuant to paragraph 1 of subsection D of Section 14 of this title to refer the employee to a physician outside the plan only if the physician to whom the employee is referred agrees to comply with all the rules, terms, and conditions of the plan~~,

j. does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and hospital services to give participants access to all categories of providers and does not discriminate against ethnic minority providers of medical services, and

k. complies with any other requirement the Commissioner determines is necessary to provide quality medical services and health care to injured employees.

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

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

D. If CompSource Oklahoma fails to contract with at least three certified workplace medical plans, each covering at least fifty counties, then the insured, after sixty (60) days' written notice to CompSource Oklahoma, shall be authorized to contract independently with a plan of the insured's choice for a period of one (1) year to provide medical care under the Workers' Compensation Act. The insured shall be authorized to contract, after sixty (60) days'

written notice to CompSource Oklahoma, for additional one-year periods if CompSource Oklahoma has not contracted with or fails to continue contracts with at least three certified workplace medical plans covering at least fifty counties.

E. An employee shall exhaust the dispute resolution procedure of the certified workplace medical plan before seeking legal relief on an issue related to medical care under the plan, including a subsequent change of physician as described in the provisions of Section 14 of this title and this section, provided the dispute resolution procedure shall create a process which shall attempt to resolve the dispute within ten (10) days of the time the dispute arises and if not resolved within ten (10) days, the employee may pursue remedies in the Workers' Compensation Court.

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

~~E.~~ G. On or before November 1, 2005, the Commissioner of Health shall implement a site visit protocol for employees of the State Department of Health to perform an inspection of a certified workplace medical plan to ensure that medical services to a claimant and the medical management of the claimant's needs are adequately

met in a timely manner and that the certified workplace medical plan is complying with all other applicable provisions of this act and the rules of the State Department of Health. Such protocol shall include, but not be limited to:

1. A site visit shall be made to each certified workplace medical plan not less often than once every year, but not later than thirty (30) days following the anniversary date of issuance of the initial or latest renewal certificate;

2. A site visit shall conclude with a determination that a certified workplace medical plan is or is not operating in accordance with its latest application to the State Department of Health;

3. Compliant operations shall include, but not be limited to:

a. timely and effective medical services are available with reasonable geographic convenience,

b. use of appropriate treatment guidelines and protocols, and

c. effective programs for utilization review, case management, grievances, and dispute resolution;

4. Performance of a site visit shall include:

a. inspection of organizational documentation,

b. inspection of systems documentation and processes,

c. random or systematic sampling of closed and open case management cases (files),

d. random or systematic sampling, or a one hundred percent (100%) inspection of all dispute resolution, grievance, and/or Department of Health request for assistance files,

e. workplace medical plan employee and management interviews, as appropriate;

5. An initial site visit may occur with an interval of less than twelve (12) months to a recently certified plan, or a site visit may occur more often than once in every twelve (12) months if the Commissioner of Health has reason to suspect that a plan is not operating in accordance with its certification;

6. If a deficient practice is identified during a site visit, the State Department of Health shall require a certified workplace medical plan to submit a timely and acceptable written plan of correction, and then may perform a follow-up visit(s) to ensure that the deficient practice has been eliminated;

7. A deficient practice that is not remedied by a certified workplace medical plan on a timely basis shall require the Commissioner of Health to revoke or to suspend the certification of a plan;

8. The fees payable to the State Department of Health shall be:

a. One Thousand Five Hundred Dollars ($1,500.00) for an initial, annual site visit,

b. One Thousand Dollars ($1,000.00) if a follow-up visit is performed,

c. these fees are separate from the once in five (5) years certification application fee, and

d. if more than two site visits occur in a twelve-month period, no fee may be charged; and

9. In addition to the site visit fee, employees of the State Department of Health may charge to the certified workplace medical plan reasonable travel and travel-related expenses for the site visit such as overnight lodging and meals. A certified workplace medical plan shall reimburse travel expenses to the State Department of Health at rates equal to the amounts then currently allowed under the State Travel Reimbursement Act.

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

SECTION 14. AMENDATORY 85 O.S. 2001, Section 16, is amended to read as follows:

Section 16. A. An employee who has suffered an accidental injury or occupational disease covered by the Workers' Compensation Act shall be entitled to prompt and reasonable physical rehabilitation services. When, as a result of the injury, the employee is unable to perform the same occupational duties he was performing prior to the injury, ~~he~~ the employee shall be entitled to such vocational rehabilitation services provided by a technology center school, a public vocational skills center or public secondary school offering vocational-technical education courses, or a member institution of The Oklahoma State System of Higher Education, which shall include retraining and job placement so as to restore him to gainful employment. No person shall be adjudicated to be permanently and totally disabled unless first having been evaluated as to the practicability of restoration to gainful employment through vocational rehabilitation services or training. If an employee claiming permanent total disability status unreasonably refuses to be evaluated or to accept vocational rehabilitation services or training, permanent total disability benefits shall not be awarded during the period of such refusal, and the employee shall be limited to permanent partial disability benefits only. The Administrator shall promulgate rules governing notice to an injured employee of the right to receive vocational rehabilitation. If rehabilitation services are not voluntarily offered by the employer

and accepted by the employee, the judge of the Court may on ~~his~~ the Court's own motion, or if requested by a party may, after affording all parties an opportunity to be heard, refer the employee to a qualified physician or facility for evaluation of the practicability of, need for and kind of rehabilitation services or training necessary and appropriate in order to restore the employee to gainful employment. The cost of the evaluation shall be paid by the employer. Following the evaluation, if the employee refuses the services or training ordered by the ~~court~~ Court, or fails to complete in good faith the vocational rehabilitation training ordered by the ~~court~~ Court, then the cost of the evaluation and services or training rendered may, in the discretion of the ~~court~~ Court, be deducted from any award of benefits to the employee which remains unpaid by the employer. Upon receipt of such report, and after affording all parties an opportunity to be heard, the Court shall order that any rehabilitation services or training, recommended in the report, or such other rehabilitation services or training as the Court may deem necessary, provided the employee elects to receive such services, shall be provided at the expense of the employer. Except as otherwise provided in this subsection, refusal to accept rehabilitation services by the employee shall in no way diminish any benefits allowable to an employee.

B. Vocational rehabilitation services or training shall not extend for a period of more than fifty-two (52) weeks. This period may be extended for an additional fifty-two (52) weeks or portion thereof by special order of the Court, after affording the interested parties an opportunity to be heard. A request for vocational rehabilitation services or training may be filed with the Administrator by an interested party at any time after the date of injury but not later than sixty (60) days from the date of the final determination that permanent partial disability benefits are payable to the employee.

C. Where rehabilitation requires residence at or near the facility or institution which is away from the employee's customary residence, reasonable cost of ~~his~~ the employee's board, lodging, travel, tuition, books and necessary equipment in training shall be paid for by the insurer in addition to weekly compensation benefits to which the employee is otherwise entitled under the Workers' Compensation Act.

D. During the period when an employee is actively and in good faith participating in a retraining or job placement program for purposes of evaluating permanent total disability status, the employee shall be entitled to receive benefits at the same rate as the employee's temporary total disability benefits computed pursuant to Section 22 of this title for a period of fifty-two (52) weeks

which may be extended by the Court for up to an additional fifty-two (52) weeks; provided, unless the employee petitions for, and the Court grants, a change in retraining or job placement program, if a person fails to achieve acceptable academic progress, the person shall not be considered to be participating actively and in good faith. No attorney fees shall be awarded or deducted from such benefits received during this period. All tuition related to vocational rehabilitation services shall be paid by the employer or the employer's insurer on a periodic basis directly to the facility providing the vocational rehabilitation services or training to the employee.

SECTION 15. AMENDATORY 85 O.S. 2001, Section 17, as amended by Section 2, Chapter 215, O.S.L. 2002 (85 O.S. Supp. 2004, Section 17), is amended to read as follows:

Section 17. A. 1. The determination of disability shall be the responsibility of the Workers' Compensation Court. Any claim submitted by an employee for compensation for permanent disability must be supported by competent medical testimony which shall be supported by objective and measurable findings and which shall include an evaluation by a physician, including, but not limited to, the treating physician or an independent medical examiner stating his or her opinion of the employee's percentage of permanent impairment and whether or not the impairment is job-related and

caused by the accidental injury or occupational disease. Medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty. For purposes of this section, a physician shall have the same meaning as defined in Section 14 of this title and shall include a person licensed by another state who would be qualified to be a licensed physician under the laws of this state.

2. ~~When the medical testimony to be introduced on behalf of the employee and employer is divergent by more than twenty-five percent (25%) as to the extent of permanent impairment of the employee or when there is any disagreement in the evidence as to the medical cause of the medical permanent impairment, or if the employee has no lost time from employment, any party may challenge such testimony by giving written notice to all other parties and to the Administrator. The written notice shall be given prior to or during any prehearing conference. Upon receipt of such notice, the challenging party and the party challenged shall select a third physician who shall be afforded a reasonable opportunity to examine the employee together with all medical records involved and any other medical data or evidence that the physician may consider to be relevant. The third physician shall issue a verified written report on a form provided by the Administrator to the Court stating his or her finding of the percentage of permanent impairment of the employee and whether or~~

~~not the impairment is job-related and caused by the accidental injury or occupational disease~~ Opinions of the treating physician on the issue of temporary disability, permanent disability, causation, apportionment, rehabilitation or necessity of medical treatment shall be followed by the Court unless to do so is against the greater weight of the evidence of the case. Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical or mental findings. If the Court does not follow the opinions of the treating physician, the Court shall follow the opinions of either a physician testifying on behalf of the employee or an independent medical examiner to be appointed by the Court.

3. Any party may request the deposition testimony of any physician providing a written medical report on the issue of temporary disability, permanent disability, causation, apportionment or rehabilitation. Except in the case of Independent Medical Examiners appointed by order of the Court, the party requesting the deposition testimony of any such physician shall be responsible for the reasonable charges of the physician for such testimony, preparation time, and the expense of the deposition.

B. ~~When the challenging party and the challenged party are for any reason unable or unwilling to agree upon the appointment of a third physician within ten (10) days, the Court shall appoint the~~

~~third physician.~~ Upon receipt of ~~the third physician's~~ an Independent Medical Examiner's report, ~~the~~ any party shall have the right to object to the introduction into evidence of the report. The objection must be made by giving written notification to all parties and to the Court within five (5) days after receipt of the report. The ~~physicians must~~ Independent Medical Examiner shall then testify in person or by deposition.

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

D. 1. The Court shall develop and implement an independent medical examiner system by no later than July 1, 1995. The Court shall create, maintain and review a list of licensed physicians who shall serve as independent medical examiners from a list of licensed physicians who have completed such course study as the Administrator of the Workers' Compensation Court may require. Such courses shall provide training to establish familiarity with the American Medical Association's "Guides to the Evaluation of Permanent Impairment", or alternative method or system of evaluating permanent impairment, for the category of injury established by the Administrator for which such physician desires to be an independent medical examiner. The Court shall, to the best of its ability, include the most

experienced and competent physicians in the specific fields of expertise utilized most often in the treatment of injured employees. Physicians serving as third physicians before November 4, 1994, shall be considered to have met the requirements of this paragraph.

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

3. ~~At any time during the pendency of the action but not less than thirty (30) days before a hearing, any party to the action may request the appointment of~~ The Court shall appoint an independent medical examiner from the list of independent medical examiners if the Court does not follow the opinions of the treating physician at any hearing. At any time during the pendency of the action but not less than thirty (30) days before a hearing, the employer or the employee may petition the Court for the appointment of an independent medical examiner if the employer or employee disagrees with the findings of the treating physician. An independent medical examiner may be appointed less than thirty (30) days before a

hearing if mutually acceptable to the parties. ~~If the parties are unable to agree on the independent medical examiner, the Court may make the appointment. An independent medical examiner also may be appointed by the Court on its own motion. The appointment or selection of the independent medical examiner may be made when requested by the parties even in the absence of any medical testimony supporting or contesting an issue.~~

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

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

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

be followed by the employer in order to permit the employee to return to work.

7. If the independent medical examiner determines that the employee is capable of returning to work and the claimant elects not to do so, temporary total disability and medical benefits shall cease, unless otherwise ordered by the Court. In any case where the claimant contests the cessation of such benefits, the Court shall hear the dispute within thirty (30) days after the filing of the employee's Motion to Set for Trial. The trial shall not be delayed unless both parties agree.

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

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

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

E. ~~Until the implementation of the independent medical examiner system in subsection D of this section, third physicians shall be~~

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

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

~~G.~~ The impairment rating determined by the ~~third physician or, upon implementation of the independent medical examiner system, the~~ independent medical examiner~~,~~ or a physician testifying on behalf of the employee may be followed by the Court only if the Court finds the impairment rating determined by the treating physician is against the greater weight of the evidence. ~~If the Court deviates from the impairment rating, the Court shall specifically identify by written findings of fact the basis for such deviation in its order~~ The Court shall follow the impairment rating of the treating physician, a physician testifying on behalf of the employee or an independent medical examiner. The Court shall not deviate from the impairment rating selected by the Court.

~~H.~~ F. In no event may an independent medical examiner, whether directly, or indirectly by virtue of a pecuniary interest,

1 economically benefit from the performance of treatment of an
2 employee whose claim the independent medical examiner has reviewed
3 for permanent impairment, return to work, or the necessity of
4 further medical treatment, unless both employee and employer agree
5 through written stipulation and said stipulation occurs prior to
6 appointment, referral and notice to said independent medical
7 examiner.
8 SECTION 16. AMENDATORY 85 O.S. 2001, Section 22, is
9 amended to read as follows:
10 Section 22. The following schedule of compensation is hereby
11 established:
12 1. Permanent Total Disability. In case of total disability
13 adjudged to be permanent, seventy percent (70%) of the employee's
14 average weekly wages shall be paid to the employee during the
15 continuance of such total disability.
16 2. Temporary Total Disability. (a) With respect to injuries
17 occurring before November 4, 1994, in cases of temporary total
18 disability, seventy percent (70%) of the employee's average weekly
19 wages shall be paid to the employee during the continuance thereof,
20 but not in excess of one hundred fifty (150) weeks, except as
21 otherwise provided in the Workers' Compensation Act. Provided,
22 after compensation has been paid for a period of one hundred forty
23 (140) weeks, the employee may request a review of the case by a

1 judge of the Workers' Compensation Court for continued temporary
2 total disability benefits provided by the Workers' Compensation Act.
3 Upon a finding that benefits should be extended beyond the initial
4 one-hundred-fifty-week period, compensation may be continued for an
5 additional one hundred fifty (150) weeks.
6 (b) With respect to injuries occurring on or after November 4,
7 1994, in cases of temporary total disability, seventy percent (70%)
8 of the employee's average weekly wages shall be paid to the employee
9 during the continuance thereof, but not in excess of fifty-two (52)
10 weeks, except as otherwise provided in the Workers' Compensation
11 Act. Provided, after compensation has been paid for a period of
12 forty-two (42) weeks, the employee may request a review of the case
13 by a judge of the Court for continued temporary total disability
14 benefits provided by the Workers' Compensation Act. Upon a finding
15 that benefits should be extended beyond the initial fifty-two-week
16 period, compensation may be continued for additional successive
17 fifty-two-week periods, provided the employee has requested review
18 of the case at forty-two (42) weeks during each period involved, and
19 upon a finding by the Court that benefits should be extended. Total
20 payments of compensation for temporary total disability may not
21 exceed a maximum of three hundred (300) weeks in the aggregate.
22 (c) With respect to injuries occurring on or after November 1,
23 1997, total payments of compensation for temporary total disability

may not exceed a maximum of one hundred fifty-six (156) weeks in the aggregate except for good cause shown, as determined by the Court.

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

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

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

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

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

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

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

for more than one finger exceed the amount provided in this schedule for the loss of a hand.

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

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

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

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

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

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

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

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

Deafness: Deafness from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, three hundred (300) weeks, and total deafness of one ear from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, one hundred (100) weeks. Except as otherwise provided herein, any examining physician shall only evaluate deafness or hearing impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the

1 injury. The Physician Advisory Committee may, pursuant to Section
2 201.1 of this title, recommend the adoption of a method or system to
3 evaluate permanent impairment that shall be used in place of or in
4 combination with the American Medical Association's "Guides to the
5 Evaluation of Permanent Impairment". Such recommendation shall be
6 made to the Administrator of the Workers' Compensation Court who may
7 adopt the recommendation in part or in whole. The adopted method or
8 system shall be submitted by the Administrator to the Governor, the
9 Speaker of the House of Representatives and President Pro Tempore of
10 the Senate within the first ten (10) legislative days of a regular
11 session of the Legislature. Such method or system to evaluate
12 permanent impairment that shall be used in place of or in
13 combination with the American Medical Association's "Guides to the
14 Evaluation of Permanent Impairment" shall be subject to disapproval
15 in whole or in part by joint or concurrent resolution of the
16 Legislature during the legislative session in which submitted. Such
17 method or system shall be operative one hundred twenty (120) days
18 after the last day of the month in which the Administrator submits
19 the adopted method or system to the Legislature if the Legislature
20 takes no action or one hundred twenty (120) days after the last day
21 of the month in which the Legislature disapproves it in part. If
22 adopted, permanent impairment shall be evaluated only in accordance
23 with the latest version of the alternative method or system in

1 effect at the time of injury. Except as otherwise provided in
2 Section 11 of this title, all evaluations shall include an
3 apportionment of injury causation. However, revisions to the guides
4 made by the American Medical Association which are published after
5 January 1, 1989, and before January 1, 1995, shall be operative one
6 hundred twenty (120) days after the last day of the month of
7 publication. Revisions to the guides made by the American Medical
8 Association which are published after December 31, 1994, may be
9 adopted in whole or in part by the Administrator following
10 recommendation by the Physician Advisory Committee. Revisions
11 adopted by the Administrator shall be submitted by the Administrator
12 to the Governor, the Speaker of the House of Representatives and
13 President Pro Tempore of the Senate within the first ten (10)
14 legislative days of a regular session of the Legislature. Such
15 revisions shall be subject to disapproval in whole or in part by
16 joint or concurrent resolution of the Legislature during the
17 legislative session in which submitted. Revisions shall be
18 operative one hundred twenty (120) days after the last day of the
19 month in which the Administrator submits the revisions to the
20 Legislature if the Legislature takes no action or one hundred twenty
21 (120) days after the last day of the month in which the Legislature
22 disapproves them in part. The examining physician shall not follow
23 the guides based on race or ethnic origin. The examining physician

shall not deviate from said guides or any alternative thereof except as may be specifically provided for in the guides or modifications to the guides or except as may be specifically provided for in any alternative or modifications thereto adopted by the Administrator of the Workers' Compensation Court as provided for in Section 201.1 of this title. The guides or modifications thereto or alternative system or method of evaluating permanent impairment or modifications thereto shall be the exclusive basis for testimony and conclusions with regard to deafness or hearing impairment.

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

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

Amputations: Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be considered as the loss of a foot. Amputation at or above the elbow shall be considered as the

loss of an arm. Amputation at or above the knee shall be considered as the loss of a leg.

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

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

Hernia: In case of an injury resulting in hernia, temporary total compensation for fourteen (14) weeks, and the cost of an operation shall be payable; provided, in any case where the injured employee has been twice previously operated for hernia in the same area and it is established by opinion of a competent surgeon that further surgery in the same area will not result in full relief of the condition, the Court may then award compensation for disability resulting therefrom under paragraph 1 of this section, or, if not totally and permanently disabled, then under the "Other Cases" subdivision following, and, after a second surgical attempt to repair hernia, the injured may not be required to submit to further

1 surgery in an effort to relieve the disability thereafter existing;
2 provided, further, the use of any artificial reinforcement or
3 device, with or without surgery, shall not be the basis of reducing
4 extent of disability to be awarded.
5 Other Cases: In all other classes of disabilities, excluding
6 only those heretofore referred to in paragraph 3 of this section,
7 which disabilities result in loss of use of any portion of an
8 employee's body, and which disabilities are permanent in quality but
9 partial in character, disability shall mean the percentage of
10 permanent impairment. The compensation ordered paid shall be
11 seventy percent (70%) of the employee's average weekly wage for the
12 number of weeks which the partial disability of the employee bears
13 to five hundred (500) weeks.
14 (b) With respect to injuries occurring after November 4, 1994,
15 through December 31, 2001, in case of disability, partial in
16 character but permanent in quality, the compensation shall be
17 seventy percent (70%) of the employee's average weekly wages, and
18 shall be paid to the employee for the period prescribed by the
19 following schedule:
20 (1) For each percent of the first nine percent (9%) of
21 disability, eighty percent (80%) of the number of weeks of
22 compensation provided by law prior to November 4, 1994;

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

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

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

(c) With respect to injuries occurring on or after January 1, 2002, through December 31, 2002, in case of disability, partial in character but permanent in quality, the compensation shall be seventy percent (70%) of the employee's average weekly wages, and shall be paid to the employee for the period prescribed by the following schedule:

Thumb: For the loss of thumb, sixty-three (63) weeks.

First Finger: For the loss of the first finger, commonly called the index finger, thirty-seven (37) weeks.

Second Finger: For the loss of a second finger, thirty-two (32) weeks.

Third Finger: For the loss of a third finger, twenty-one (21) weeks.

Fourth Finger: For the loss of a fourth finger, commonly called the little finger, sixteen (16) weeks.

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

Great Toe: For the loss of a great toe, thirty-two (32) weeks.

Other Toes: For the loss of one of the toes other than the great toe, eleven (11) weeks.

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

Hand: For the loss of a hand, two hundred ten (210) weeks.

Arm: For the loss of an arm, two hundred sixty-three (263) weeks.

Foot: For the loss of a foot, two hundred ten (210) weeks.

Leg: For the loss of a leg, two hundred sixty-three (263) weeks.

Eye: For the loss of an eye, two hundred sixty-three (263) weeks.

Deafness: Deafness from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, three hundred fifteen (315) weeks, and total deafness of one ear from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, one hundred five (105) weeks. Except as otherwise provided herein, any examining physician shall only evaluate deafness or hearing impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the injury. The Physician Advisory Committee may, pursuant to Section 201.1 of this title, recommend the adoption of a method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment". Such recommendation shall be made to the Administrator of the Workers' Compensation Court who may adopt the recommendation in part or in whole. The adopted method or system shall be submitted by the Administrator to the Governor, the Speaker of the House of Representatives and President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such method or system to evaluate permanent impairment that shall be used in place of or in

1 combination with the American Medical Association's "Guides to the
2 Evaluation of Permanent Impairment" shall be subject to disapproval
3 in whole or in part by joint or concurrent resolution of the
4 Legislature during the legislative session in which submitted. Such
5 method or system shall be operative one hundred twenty (120) days
6 after the last day of the month in which the Administrator submits
7 the adopted method or system to the Legislature if the Legislature
8 takes no action or one hundred twenty (120) days after the last day
9 of the month in which the Legislature disapproves it in part. If
10 adopted, permanent impairment shall be evaluated only in accordance
11 with the latest version of the alternative method or system in
12 effect at the time of injury. Except as otherwise provided in
13 Section 11 of this title, all evaluations shall include an
14 apportionment of injury causation. However, revisions to the guides
15 made by the American Medical Association which are published after
16 January 1, 1989, and before January 1, 1995, shall be operative one
17 hundred twenty (120) days after the last day of the month of
18 publication. Revisions to the guides made by the American Medical
19 Association which are published after December 31, 1994, may be
20 adopted in whole or in part by the Administrator following
21 recommendation by the Physician Advisory Committee. Revisions
22 adopted by the Administrator shall be submitted by the Administrator
23 to the Governor, the Speaker of the House of Representatives and

President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such revisions shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Revisions shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the revisions to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves them in part. The examining physician shall not follow the guides based on race or ethnic origin. The examining physician shall not deviate from such guides or any alternative thereof except as may be specifically provided for in the guides or modifications to the guides or except as may be specifically provided for in any alternative or modifications thereto adopted by the Administrator of the Workers' Compensation Court as provided in Section 201.1 of this title. The guides or modifications thereto or alternative system or method of evaluating permanent impairment or modifications thereto shall be the exclusive basis for testimony and conclusions with regard to deafness or hearing impairment.

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

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

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

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

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

1 Hernia: In case of an injury resulting in hernia, temporary
2 total compensation for six (6) weeks, and the cost of an operation
3 shall be payable, unless the employee has not been released from
4 active medical treatment, temporary total compensation not to exceed
5 nine (9) weeks, and the cost of an operation shall be payable;
6 provided, in any case where the injured employee has been twice
7 previously operated on for hernia in the same area and it is
8 established by opinion of a competent surgeon that further surgery
9 in the same area will not result in full relief of the condition,
10 the Court may then award compensation for disability resulting
11 therefrom under paragraph 1 of this section, or, if not totally and
12 permanently disabled, then under the "Other Cases" subdivision
13 following, and, after a second surgical attempt to repair hernia,
14 the injured may not be required to submit to further surgery in an
15 effort to relieve the disability thereafter existing; provided
16 further, the use of any artificial reinforcement or device, with or
17 without surgery, shall not be the basis of reducing extent of
18 disability to be awarded.
19 Other Cases: In all other classes of disabilities, excluding
20 only those heretofore referred to in this paragraph, which
21 disabilities result in loss of use of any portion of an employee's
22 body, and which disabilities are partial in character but permanent
23 in quality, disability shall mean the percentage of permanent

impairment. The compensation ordered paid shall be seventy percent (70%) of the employee's average weekly wage for the number of weeks which the partial disability of the employee bears to five hundred (500) weeks.

(d) With respect to injuries occurring on or after January 1, 2003, in case of disability, partial in character but permanent in quality, the compensation shall be seventy percent (70%) of the employee's average weekly wages, and shall be paid to the employee for the period prescribed by the following schedule:

Thumb: For the loss of thumb, sixty-six (66) weeks.

First Finger: For the loss of the first finger, commonly called the index finger, thirty-nine (39) weeks.

Second Finger: For the loss of a second finger, thirty-three (33) weeks.

Third Finger: For the loss of a third finger, twenty-two (22) weeks.

Fourth Finger: For the loss of a fourth finger, commonly called the little finger, seventeen (17) weeks.

Phalange of Thumb or Finger: The loss of the first phalange of the thumb or finger shall be considered equal to the loss of one-half (1/2) of such thumb or finger, and compensation shall be one-half (1/2) of the amount above specified; the loss of more than one phalange shall be considered as the loss of the entire thumb or

finger; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

Great Toe: For the loss of a great toe, thirty-three (33) weeks.

Other Toes: For the loss of one of the toes other than the great toe, eleven (11) weeks.

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

Hand: For the loss of a hand, two hundred twenty (220) weeks.

Arm: For the loss of an arm, two hundred seventy-five (275) weeks.

Foot: For the loss of a foot, two hundred twenty (220) weeks.

Leg: For the loss of a leg, two hundred seventy-five (275) weeks.

Eye: For the loss of an eye, two hundred seventy-five (275) weeks.

Deafness: Deafness from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, three hundred thirty (330) weeks, and total deafness of one ear from industrial cause, including occupations which are hazardous to

hearing, accident or sudden trauma, one hundred ten (110) weeks. Except as otherwise provided herein, any examining physician shall only evaluate deafness or hearing impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the injury. The Physician Advisory Committee may, pursuant to Section 201.1 of this title, recommend the adoption of a method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment". Such recommendation shall be made to the Administrator of the Workers' Compensation Court who may adopt the recommendation in part or in whole. The adopted method or system shall be submitted by the Administrator to the Governor, the Speaker of the House of Representatives and President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Such method or system shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits

1 the adopted method or system to the Legislature if the Legislature
2 takes no action or one hundred twenty (120) days after the last day
3 of the month in which the Legislature disapproves it in part. If
4 adopted, permanent impairment shall be evaluated only in accordance
5 with the latest version of the alternative method or system in
6 effect at the time of injury. Except as otherwise provided in
7 Section 11 of this title, all evaluations shall include an
8 apportionment of injury causation. However, revisions to the guides
9 made by the American Medical Association which are published after
10 January 1, 1989, and before January 1, 1995, shall be operative one
11 hundred twenty (120) days after the last day of the month of
12 publication. Revisions to the guides made by the American Medical
13 Association which are published after December 31, 1994, may be
14 adopted in whole or in part by the Administrator following
15 recommendation by the Physician Advisory Committee. Revisions
16 adopted by the Administrator shall be submitted by the Administrator
17 to the Governor, the Speaker of the House of Representatives and
18 President Pro Tempore of the Senate within the first ten (10)
19 legislative days of a regular session of the Legislature. Such
20 revisions shall be subject to disapproval in whole or in part by
21 joint or concurrent resolution of the Legislature during the
22 legislative session in which submitted. Revisions shall be
23 operative one hundred twenty (120) days after the last day of the

month in which the Administrator submits the revisions to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves them in part. The examining physician shall not follow the guides based on race or ethnic origin. The examining physician shall not deviate from such guides or any alternative thereof except as may be specifically provided for in the guides or modifications to the guides or except as may be specifically provided for in any alternative or modifications thereto adopted by the Administrator of the Workers' Compensation Court as provided in Section 201.1 of this title. The guides or modifications thereto or alternative system or method of evaluating permanent impairment or modifications thereto shall be the exclusive basis for testimony and conclusions with regard to deafness or hearing impairment.

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

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

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

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

In case of an injury resulting in serious and permanent disfigurement, compensation shall be payable in an amount to be determined by the Court, but not in excess of Twenty Thousand Dollars ($20,000.00)~~; provided, that compensation for permanent disfigurement shall not be in addition to the other compensation provided for in this section but shall be taken into consideration in fixing the compensation otherwise provided~~ for an injury occurring before November 1, 2005, and not in excess of Fifty Thousand Dollars ($50,000.00) for an injury occurring on or after November 1, 2005.

Hernia: In case of an injury resulting in hernia, temporary total compensation for six (6) weeks, and all necessary medical costs including, but not limited to, the cost of an operation shall be payable~~, unless the employee has not been released from active~~

~~medical treatment, temporary total compensation not to exceed nine (9) weeks, and the cost of an operation shall be payable; provided, in any case where the injured employee has been twice previously operated on for hernia in the same area and it is established by opinion of a competent surgeon that further surgery in the same area will not result in full relief of the condition, the Court may then award compensation for disability resulting therefrom under paragraph 1 of this section, or, if not totally and permanently disabled, then under the "Other Cases" subdivision following, and, after a second surgical attempt to repair hernia, the injured may not be required to submit to further surgery in an effort to relieve the disability thereafter existing; provided further, the use of any artificial reinforcement or device, with or without surgery, shall not be the basis of reducing extent of disability to be awarded~~. A claimant who has had surgery for a hernia may petition the court for one extension of temporary total compensation and the court may order such an extension, not to exceed six (6) additional weeks, if the treating physician or an independent medical examiner, appointed by the court or agreed to by all parties, indicates such an extension is appropriate. All nonemergency corrective surgeries for hernia shall require a second opinion from an independent physician confirming the need for such surgery, unless both parties agree that such corrective surgery is necessary. If the claimant is enrolled

in a certified workplace medical plan, the second opinion will be from a physician within the certified workplace medical plan.

Soft Tissue Injury: In case of a soft tissue injury, temporary total compensation shall not exceed six (6) weeks. For purposes of this section, "soft tissue injury" means damage to one or more of the tissues that surround bones and joints. "Soft tissue injury" includes, but is not limited to: sprains, strains, contusions, tendonitis, and muscle tears. Cumulative trauma is to be considered a soft tissue injury. "Soft tissue injury" does not include any of the following:

(1) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk; and

(2) Brain or closed-head injury as evidenced by:

a. sensory or motor disturbances,

b. communication disturbances,

c. complex integrated disturbances of cerebral function,

d. episodic neurological disorders, or

e. other brain and closed-head injury conditions at least as severe in nature as any condition provided in subparagraphs a through d of this paragraph.

In all cases of soft tissue injury, the employee shall only be entitled to appropriate and necessary medical care and temporary total disability as set out in paragraph 2 of this section, unless

there is objective evidence of a permanent anatomical or functional abnormality to a specific portion of the employee's body or there is credible evidence that the employee's ability to earn wages at the same level as on the date of injury is adversely impaired.

Other Cases: In all other classes of disabilities, excluding only those heretofore referred to in this paragraph, which disabilities result in loss of use of any portion of an employee's body, and which disabilities are partial in character but permanent in quality, disability shall mean the percentage of permanent impairment. The compensation ordered paid shall be seventy percent (70%) of the employee's average weekly wage for the number of weeks which the partial disability of the employee bears to five hundred (500) weeks. No permanent disability shall be awarded unless there is objective evidence of a permanent anatomical abnormality or there is evidence that the ability of the employee to earn wages at the same level as on the date of injury is adversely impaired.

4. Temporary Partial Disability. (a) With respect to injuries occurring before November 4, 1994, in case of temporary partial disability, except the particular cases mentioned in paragraph 3 of this section, an injured employee shall receive seventy percent (70%) of the difference between the employee's average weekly wages and the employee's wage-earning capacity thereafter in the same employment or otherwise, if less than before the injury, during

1 continuance of such partial disability, but not to exceed one
2 hundred fifty (150) weeks. Provided, after compensation has been
3 paid for a period of one hundred forty (140) weeks, the employee may
4 request a review of the case by a judge of the Court for continued
5 temporary partial disability benefits provided by the Workers'
6 Compensation Act. Upon a finding that benefits should be extended
7 beyond the initial one-hundred-fifty-week period, compensation may
8 be continued for an additional one hundred fifty (150) weeks.
9 (b) With respect to injuries occurring on or after November 4,
10 1994, in case of temporary partial disability, except the particular
11 cases mentioned in paragraph 3 of this section, an injured employee
12 shall receive seventy percent (70%) of the difference between the
13 employee's average weekly wages and the employee's wage-earning
14 capacity thereafter in the same employment or otherwise, if less
15 than before the injury, during continuance of such partial
16 disability, but not to exceed fifty-two (52) weeks. Provided, after
17 compensation has been paid for a period of forty-two (42) weeks, the
18 employee may request a review of the case by a judge of the Court
19 for continued temporary partial disability benefits provided by the
20 Workers' Compensation Act. Upon a finding that benefits should be
21 extended beyond the initial fifty-two-week period, compensation may
22 be continued for additional successive fifty-two-week periods
23 provided the employee has requested review of the case at forty-two

1 (42) weeks during each period involved, and upon a finding by the
2 Court that benefits should be extended. Total payments of
3 compensation for temporary partial disability may not exceed a
4 maximum of three hundred (300) weeks in the aggregate.
5 (c) With respect to injuries occurring on or after November 1,
6 1997, total payments of compensation for temporary partial
7 disability may not exceed a maximum of one hundred fifty-six (156)
8 weeks in the aggregate except for good cause shown, as determined by
9 the Court.
10 5. Notwithstanding any other section of the Workers'
11 Compensation Act, temporary disability shall be payable without an
12 award by the Court. The first payment of temporary disability
13 compensation shall become due on the tenth day after the employer
14 has received notice of injury as specified in Section 24.2 of this
15 title. All compensation owed on that date shall be paid and
16 thereafter payments shall be made weekly except when otherwise
17 ordered by the Court.
18 If any compensation payments owed without an award are not paid
19 within ten (10) days after becoming due, there shall be added to
20 such owed payments an amount equal to ten percent (10%) of the
21 amount due which shall be paid at the same time in addition to the
22 owed payments unless such nonpayment is excused by the Court after a
23 showing by the employer that conditions exist over which the

employer had no control in that either payments were not made within the prescribed time or the employer denies coverage within the time specified for the employer to respond.

6. Limitation. The compensation payments under the provisions of the Workers' Compensation Act shall not exceed the sum of seventy-five percent (75%) of the state's average weekly wage as determined by the Oklahoma Employment Security Commission, the sum of ninety percent (90%) of the state's average weekly wage beginning January 1, 1995, for injuries occurring after December 31, 1994, and the sum of one hundred percent (100%) of the state's average weekly wage beginning January 1, 1996, for injuries occurring after December 31, 1995, for temporary disability; Sixty Dollars ($60.00) per week beginning as of the effective date of the Workers' Compensation Act, and Seventy Dollars ($70.00) per week beginning January 1, 1979, and Eighty Dollars ($80.00) per week beginning January 1, 1980, and Ninety Dollars ($90.00) per week beginning January 1, 1981, and to fifty percent (50%) of the state's average weekly wage beginning January 1, 1982, for permanent partial disability; Seventy-five Dollars ($75.00) per week beginning as of the effective date of the Workers' Compensation Act, and Ninety Dollars ($90.00) per week beginning January 1, 1979, and One Hundred Ten Dollars ($110.00) per week beginning January 1, 1980, to sixty-six and two-thirds percent (66 2/3%) of the state's average weekly

wage beginning January 1, 1981, to seventy-five percent (75%) of the state's average weekly wage beginning September 1, 1992, to ninety percent (90%) of the state's average weekly wage beginning January 1, 1995, for injuries occurring after December 31, 1994, and to one hundred percent (100%) of the state's average weekly wage beginning January 1, 1996, for injuries occurring after December 31, 1995, for permanent total disability, or at any time be less than Thirty Dollars ($30.00) per week; provided, however, that if the employee's wages at the time of the injury are less than Thirty Dollars ($30.00) per week, the employee shall receive the employee's full weekly wages; provided further, that the compensation received, as provided for temporary partial disability, shall not, when added to the wages received by such employee after such injury, amount to a greater sum than eighty percent (80%) of the average weekly wages of the employee received prior to said injury.

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

1 under the Workers' Compensation Act, the state's average weekly wage
2 shall be rounded to the nearest dollar amount.
3 The benefit level for members of the National Guard and any
4 authorized voluntary or uncompensated worker rendering services as a
5 fire fighter, peace officer or civil defense worker shall be
6 determined by using the earnings of the individual in the
7 individual's regular occupation.
8 7. Previous Disability. The fact that an employee has suffered
9 previous disability or impairment or received compensation therefor
10 shall not preclude the employee from compensation for a later
11 accidental personal injury or occupational disease; but in
12 determining compensation for the later accidental personal injury or
13 occupational disease the employee's average weekly wages shall be
14 such sum as will reasonably represent the employee's earning
15 capacity at the time of the later accidental personal injury or
16 occupational disease. In the event there exists a previous
17 impairment which produced permanent disability and the same is
18 aggravated or accelerated by an accidental personal injury or
19 occupational disease, compensation for permanent disability shall be
20 only for such amount as was caused by such accidental personal
21 injury or occupational disease and no additional compensation shall
22 be allowed for the pre-existing disability or impairment. The sum
23 of all permanent partial disability awards, excluding awards against

the Multiple Injury Trust Fund and awards for amputations, and surgeries, shall not exceed one hundred percent (100%) permanent partial disability for any individual. An individual may not receive more than five hundred twenty (520) weeks' compensation for permanent partial disability, but may receive other benefits under the Workers' Compensation Act if otherwise eligible as provided in the Workers' Compensation Act.

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

(a) Benefit amounts for particular classes of dependents.

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

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

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

(4) To the children, if there is no surviving spouse, fifty percent (50%) of the average weekly wages the deceased was earning for one child, and twenty percent (20%) of such wage for each additional child, divided among all children, to share and share alike, subject to the provisions of subparagraphs (c) and (d) of this paragraph.

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

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

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

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

d. when the child has been enrolled as a full-time student in any accredited educational institution or has been receiving education by other means, including education at home pursuant to Section 4 of Article XIII of the Oklahoma Constitution, and the child

ceases to be so enrolled or educated or reaches twenty-three (23) years of age. A child who originally qualified as a dependent by virtue of being less than eighteen (18) years of age may, upon reaching eighteen (18) years of age, continue to qualify if the child satisfies the tests of being physically or mentally incapable of self-support, actually dependent, or enrolled in an accredited educational institution or being educated by other means, including education at home pursuant to Section 4 of Article XIII of the Oklahoma Constitution.

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

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

(8) The income benefits of each beneficiary under divisions (6) and (7) above shall be paid until the beneficiary, if a parent or

grandparent, dies, marries or ceases to be actually dependent, or, if a brother, sister or grandchild, dies, marries or reaches the age of eighteen (18), is over the age of eighteen (18) and ceases to be physically or mentally incapable of self-support or ceases to be actually dependent.

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

(b) Change in dependents. Upon the cessation of income benefits under this section to or for the benefit of any person, the

1 income benefits payable to the remaining persons who continue to be
2 entitled to income benefits for the unexpired part of the period
3 during which their income benefits are payable shall be that which
4 such persons would have received if they had been the only persons
5 entitled to income benefits at the time of the decedent's death.
6 (c) Maximum income benefits for death. For the purposes of
7 this section, the average weekly wage of the employee shall be taken
8 as not more than the average weekly wage of the state. If the
9 average weekly wages of the employee are equal to or greater than
10 the average weekly wage of the state, then the aggregate weekly
11 income benefits payable to all beneficiaries under this section
12 shall not exceed the average weekly wage of the state. If the
13 average weekly wages of the employee are less than the average
14 weekly wage of the state, the aggregate weekly income benefits
15 payable to all beneficiaries under this section shall not exceed one
16 hundred percent (100%) of the average weekly wages of the employee.
17 (d) Maximum total payment. The maximum weekly income benefits
18 payable for all beneficiaries in case of death shall not exceed one
19 hundred percent (100%) of the average weekly wages the deceased was
20 earning, subject to the maximum limits in subparagraph (c) of this
21 paragraph. The maximum aggregate limitation shall not apply in case
22 of payment of two (2) years' income benefits to the surviving spouse
23 upon remarriage, as provided under division (3) of subparagraph (a)

of this paragraph, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subparagraph (b) of this paragraph. The weekly income benefits as recalculated to the remaining beneficiaries shall not exceed the weekly benefit that was or would have been payable for total permanent disability to the deceased. The classes of beneficiaries specified in divisions (1), (2) and (4) of subparagraph (a) of this paragraph shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this subparagraph should prevent payments to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in division (7) of subparagraph (a) of this paragraph in a separate class.

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

10. ~~In~~ For deaths occurring before November 1, 2005, in the event that no benefits under other provisions of this section are paid to the dependents or the heirs-at-law of the deceased, an amount not to exceed Five Thousand Dollars ($5,000.00) shall be paid for funeral expenses. For deaths occurring on or after November 1, 2005, in the event that no benefits under other provisions of this section are paid to the dependents or the heirs-at-law of the deceased, an amount not to exceed Ten Thousand Dollars ($10,000.00) shall be paid for funeral expenses.

11. (a) For deaths occurring before January 1, 1995, if there is a surviving spouse and surviving children entitled to receive death benefits herein, such survivors shall be entitled to an immediate lump-sum payment of Ten Thousand Dollars ($10,000.00) to the spouse and Two Thousand Five Hundred Dollars ($2,500.00) to each surviving child not to exceed two children. For deaths occurring after December 31, 1994, if there is a surviving spouse and surviving children entitled to receive death benefits herein, such survivors shall be entitled to an immediate lump-sum payment of Twenty Thousand Dollars ($20,000.00) to the spouse and Five Thousand Dollars ($5,000.00) to each surviving child not to exceed two children. For deaths occurring on or after November 1, 2005, if there is a surviving spouse and surviving children entitled to receive death benefits herein, such survivors shall be entitled to

an immediate lump-sum payment of One Hundred Thousand Dollars ($100,000.00) to the spouse and Twenty-five Thousand Dollars ($25,000.00) to each surviving child not to exceed two children. In addition, the survivors shall be entitled to receive funeral benefits in an amount not to exceed Ten Thousand Dollars ($10,000.00).

(b) ~~If~~ For deaths occurring before November 1, 2005, if there is no surviving spouse but there are surviving children entitled to receive death benefits herein, such surviving children shall be entitled to a lump-sum payment of Ten Thousand Dollars ($10,000.00) to be divided among all the children to share and share alike. For deaths occurring on or after November 1, 2005, if there is no surviving spouse but there are surviving children entitled to receive death benefits herein, each surviving child shall be entitled to a lump-sum payment of Twenty-five Thousand Dollars ($25,000.00), provided the total amount of lump-sum payments shall not exceed One Hundred Fifty Thousand Dollars ($150,000.00), to be divided among all the children to share and share alike. The survivors shall also be entitled to receive funeral benefits in an amount not to exceed Ten Thousand Dollars ($10,000.00).

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

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

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

all such trust funds received and deposited shall be rendered by each banking institution to the Court granting the judgment.

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

13. (a) Any employee convicted of a misdemeanor or felony and sentenced to a term of incarceration of at least ninety (90) days in this state or in any other jurisdiction shall have all benefits for temporary total disability awarded by the Workers' Compensation Court forfeited by order of the Court on motion of the employer or the employer's insurer after confirmation of the employee's incarceration. The Court also may order the forfeiture of such benefits on its own motion upon receipt of notice from the Director of the Department of Corrections that the person awarded the benefits is incarcerated as an inmate in a facility operated by or under contract with the Department. The provisions of this subparagraph shall not apply to any benefits awarded to an inmate for compensable injuries sustained by the inmate while in the employ of a private for-profit employer or while employed in private prison industries, involving a for-profit employer, which deal in interstate commerce or which sell products or services to the federal government.

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

SECTION 17. AMENDATORY 85 O.S. 2001, Section 24.1, is amended to read as follows:

Section 24.1 A. Every employer shall keep a record of injuries, which result in the loss of time beyond the shift or which require medical attention away from the work site, fatal or otherwise, received by his employees in the course of their employment.

B. Within ten (10) days or a reasonable time thereafter, after the occurrence of such injury a report thereof shall be made in writing by the employer to the Court and to the employer's workers' compensation insurance carrier, if any, upon blanks to be procured from the Court for that purpose. Such reports shall state the name

and nature of the business of the employer, the location of ~~his~~ the employer's establishment or place of work, the name, address and occupation of the injured employee, the time, nature, and cause of the injury and such other information as may be required by the Administrator. The report, known as the employer's first notice of injury, shall be kept confidential and shall not be open to public inspection.

C. Any employer who refuses or neglects to make a report as required by this section shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars ($1,000.00).

SECTION 18. AMENDATORY 85 O.S. 2001, Section 26, is amended to read as follows:

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

1. The name and social security number of the employee;

2. The name of the employer;

3. The judicial district of the county of residence of the employee at the time of the injury;

4. The address of the principal place of business of the employer;

5. The judicial district of the county where the injury occurred; and

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

B. Any time after the expiration of the first three (3) days of disability on the part of the injured employee, a claim for compensation may be presented to the Administrator. If the employer and the injured employee shall reach a final agreement as to the facts with relation to an injury, and the resulting disability for which compensation is claimed under the Workers' Compensation Act, a memorandum of such agreement, in form as prescribed by the Administrator, signed by both the employer and employee~~, and approved by the Court~~ shall be filed by the employer with the Administrator. <u>If the injured worker is not represented by counsel, a memorandum of such agreement must be approved by the Court. An agreement, including a lump-sum payment to the employee, signed by both the employer and employee shall be approved by the Court as long as the terms of the agreement conform to the Workers' Compensation Act.</u> In the absence of fraud this agreement shall be deemed binding upon the parties thereto. ~~Such agreement shall be approved by the Court only when the terms conform to the provisions~~

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

C. A good faith effort shall be made on the part of any insurance carrier, ~~the State Insurance Fund~~ CompSource Oklahoma, or group self-insured plan to notify an insured employer of the possibility of, and/or terms of, any settlement of a workers' compensation case pursuant to this section. Written comments or objections to settlements shall be filed with the Workers' Compensation Court and periodically shared with the management of

the applicable insurer. A written notice shall be made to all policyholders of their right to a good faith effort by their insurer to notify them of any proposed settlement, if the policyholder so chooses.

D. No attorney for an employer or attorney for an insurance carrier shall contact, either directly or indirectly, an employee who is not represented by counsel in relation to any claim for compensation under the Worker's Compensation Act.

SECTION 19. AMENDATORY 85 O.S. 2001, Section 30, is amended to read as follows:

Section 30. A. 1. If the Workers' Compensation Court before which any proceedings for compensation or concerning an award of compensation have been brought, under the Workers' Compensation Act, determines that such proceedings have not been brought on a reasonable ground, or that denial of benefits has not been based on a reasonable ground, the Court shall assess the total cost of the proceedings on the party, who has brought them or the party who has unreasonably denied payment of benefits.

2. In the event a respondent fails to pay travel expenses as required by an order of the Court within twenty-five (25) business days of such order, the Court shall assess a Five Hundred Dollar ($500.00) penalty against the respondent and payable to the claimant.

B. Claims for services or treatment rendered or supplies furnished pursuant to Section 14 of this title shall not be enforceable unless approved by the Court. If approved, such claim shall become a lien upon the compensation awarded, but shall be paid therefrom only in the manner fixed by the Court.

C. A claim for legal services shall be determined by the Court on a quantum meruit basis.

1. A claim for legal services in contested temporary disability cases shall not exceed ten percent (10%) of the amount of the award for temporary disability. Legal service fees paid in uncontested cases for temporary total disability shall not exceed ten percent (10%) based on quantum meruit as ordered by the Court.

2. A claim for legal services shall not exceed twenty percent (20%) of the amount <u>in dispute</u> of the award for permanent disability or death benefits.

D. Claims for legal services for temporary disability awards shall be paid periodically. Claims for legal fees for permanent total disability awards shall be paid periodically at the rate of twenty percent (20%) of each weekly check to the claimant until the attorney fee is satisfied, based upon a maximum of four hundred (400) weeks of compensation. The right to any such attorney fee shall be vested at the time the award therefor becomes final. Claims for legal services for permanent partial disability awards

may be paid in a lump sum the same to be deducted from the end of the award. Claims for legal services for death awards may be paid in a lump sum which shall be deducted from the periodic compensation payments at a rate of ten percent (10%) per payment until the attorney fee is satisfied.

E. Claims for legal services for workers' compensation indemnity benefits filed on or after November 1, 2005, shall not exceed twenty percent (20%) of the amount in dispute to the employee exclusive of medical and rehabilitation expenses.

F. Claims for legal services on behalf of workers' compensation respondents filed on or after November 1, 2005, must be approved by the Court and shall not exceed Seventy-five Dollars ($75.00) per hour for services provided by an attorney licensed or permitted to practice in this state or Five Thousand Dollars ($5,000.00) per case, whichever is less.

SECTION 20. AMENDATORY 85 O.S. 2001, Section 43, is amended to read as follows:

Section 43. A. The right to claim compensation under the Workers' Compensation Act shall be forever barred unless, within two (2) years after the date of accidental injury or death, a claim for compensation is filed with the Workers' Compensation Court. Provided however, a claim may be filed within two (2) years of the last payment of any compensation or remuneration paid in lieu of

compensation or medical treatment which was authorized by the employer or the insurance carrier. Provided further however, with respect to disease or injury caused by repeated trauma causally connected with employment, a claim may be filed within two (2) years of the date of last trauma or hazardous exposure. Provided, further however, in the case of asbestosis, silicosis or exposure to nuclear radiation causally connected with employment, a claim may be filed within two (2) years of the date of last hazardous exposure or within two (2) years from the date said condition first becomes manifest by a symptom or condition from which one learned in medicine could, with reasonable accuracy, diagnose such specific condition, whichever last occurs. The filing of any form or report by the employer or insurance carrier shall not toll the above limitations. <u>Post-termination claims shall be filed within thirty (30) days of termination of employment.</u>

B. When a claim for compensation has been filed with the Administrator as herein provided, unless the claimant shall in good faith request a hearing and final determination thereon within three (3) years from the date of filing thereof or within three (3) years from the date of last payment of compensation or wages in lieu thereof, same shall be barred as the basis of any claim for compensation under the Workers' Compensation Act and shall be dismissed by the Court for want of prosecution, which action shall

operate as a final adjudication of the right to claim compensation thereunder. If represented by counsel, the claimant may, upon the payment of the Court's filing fee, dismiss any claim brought by the claimant at any time before final submission of the case to the Court for decision. Any claimant not represented by counsel may, upon the payment of the Court's filing fee and with an order of the Court, dismiss any claim brought by the claimant at any time before final submission of the case to the Court for decision. Such dismissal shall be without prejudice unless the words "with prejudice" are included in the order. If any claim that is filed within the statutory time permitted by this section is dismissed without prejudice, a new claim may be filed within one (1) year after the entry of the order dismissing the first claim even if the statutory time for filing has expired.

C. The jurisdiction of the Court to reopen any cause upon an application based upon a change in condition shall ~~extend for that period of time measured by the maximum number of weeks that could be awarded for the particular scheduled member where the change of condition occurred, or for two hundred eight (208) weeks in the case of injuries to the body or injuries not otherwise scheduled under the provisions of Section 22 of this title~~ <u>be one (1) year from the date of the last order</u>, and unless filed within said period of time ~~after the date of the last order~~, shall be forever barred. An order

denying an application to reopen a claim shall not extend the period of the time set out herein for reopening the case.

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

SECTION 21. AMENDATORY 85 O.S. 2001, Section 44, is amended to read as follows:

Section 44. (a) If a worker entitled to compensation under the Workers' Compensation Act is injured or killed by the negligence or wrong of another not in the same employ, such injured worker shall, before any suit or claim under the Workers' Compensation Act, elect whether to take compensation under the Workers' Compensation Act, or to pursue ~~his~~ the worker's remedy against such other. Such election shall be evidenced in such manner as the Administrator may by rule or regulation prescribe. If ~~he~~ the worker elects to take compensation under the Workers' Compensation Act, the cause of action against such other shall be assigned to the insurance carrier

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

amount recovered; provided, however, the balance of the recovery may be divided between the employer or insurance company having paid compensation and the employee or ~~his~~ representatives of the employee as they may agree.

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

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

(c) The employer or ~~his~~ the employer's insurance carrier shall have the right of subrogation to recover money paid by the employer

or his insurance carrier for the expenses of the last illness or accident under the Workers' Compensation Act from third persons, with all common law rights against other than the employer and ~~his~~ the employer's employees preserved and to be in those persons who would have had such rights had there been no benefits under the Workers' Compensation Act.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 131c of Title 85, unless there is created a duplication in numbering, reads as follows:

A. By January 1, 2007, CompSource Oklahoma shall become a mutual company and the state shall relinquish its interest in CompSource Oklahoma.

B. Beginning January 1, 2007, CompSource Oklahoma shall:

1. Be liable for paying premium taxes and fees on all premiums collected during the calendar year;

2. Be a member of the Oklahoma Property and Casualty Guaranty Association and be subject to the Oklahoma Property and Casualty Guaranty Association Act;

3. Be subject to the jurisdiction of the Insurance Department of the State of Oklahoma and the Insurance Commissioner; and

4. Comply with all statutes pertaining to insurers who provided property and casualty insurance coverage and all applicable rules of the Insurance Department and the Insurance Commissioner.

SECTION 23. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. Effective November 1, 2005, the President and Chief Executive Officer of CompSource Oklahoma, the Insurance Commissioner, a person designated by the Speaker of the House of Representatives, and a person designated by the President Pro Tempore of the Senate shall serve as transition coordinators for the privatization of CompSource Oklahoma. The transition coordinators shall establish a transition team and may assign personnel to the transition team from CompSource Oklahoma and the Insurance Department as deemed necessary.

B. The transition team shall:

1. In conjunction with the Department of Central Services, the Office of State Finance and the Office of Personnel Management, oversee and administer the orderly sale of CompSource Oklahoma, including the transfer of responsibilities, liabilities, property, records and any outstanding financial obligations or encumbrances;

2. Devise a proposal for the transfer of state employees currently employed by CompSource Oklahoma. The proposal shall include a reduction-in-force plan and a severance benefits plan that conform with the requirements of the State Government Reduction-in-Force and Severance Benefits Act;

3. Identify statutes which will need to be amended or repealed to implement the privatization of CompSource Oklahoma; and

4. Take such other action as may be reasonably necessary and appropriate to effectuate the orderly privatization of CompSource Oklahoma.

SECTION 24. AMENDATORY 85 O.S. 2001, Section 172, is amended to read as follows:

Section 172. A. 1. 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, 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 the employee shall receive full compensation as now

provided by law for the disability resulting directly and specifically from the subsequent injury, and in addition thereto 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 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 November 1, 1999, but before June 1, 2000, if the combined disabilities constitute partial permanent 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. 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".

B. 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 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 may be paid in periodic

payments, as set forth in Section 22 of this title, 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, <u>but before November 1, 2005,</u> 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~~ <u>permanent total</u> disability <u>if the combination of injuries renders the employee permanently and totally disabled</u>, 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~~ permanent total disability if the combination of such injuries renders the employee permanently and totally disabled. Payment for the ~~degree of~~ permanent total disability ~~resulting from the material increase in disability~~ resulting from the combination of injuries which renders the employee permanently and totally disabled 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 disability 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 disability 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.

3. For actions in which the subsequent injury occurred on or after November 1, 2005, if such combined disabilities constitute permanent total disability, as defined in Section 3 of this title, then the employee shall receive full compensation as provided by law

for the disability resulting directly and specifically from the subsequent injury. In addition, the employee shall receive full compensation for permanent total disability if the combination of injuries renders the employee permanently and totally disabled, 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. In permanent total disability cases the remainder of the compensation shall be paid out of the Multiple Injury Trust Fund and may be paid in periodic payments, as set forth in Section 22 of this title, 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 disability 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 disability 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. Permanent total disability awards from the Multiple Injury Trust Fund shall accrue from the file date of the court order finding the claimant to be permanently and totally disabled.

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 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.

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 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 party who is

1 responsible for payment of the award, within sixty (60) days of the
2 claim.
3 SECTION 25. AMENDATORY 85 O.S. 2001, Section 173, as
4 amended by Section 4, Chapter 31, O.S.L. 2002 (85 O.S. Supp. 2004,
5 Section 173), is amended to read as follows:
6 Section 173. There is hereby created, for the purposes herein
7 declared, a Multiple Injury Trust Fund, formerly known as the
8 Special Indemnity Fund, to be derived from the following sources:
9 A. 1. a. As soon as practicable after January 1 of each year
10 and until such time as the Board of Managers of
11 CompSource Oklahoma, pursuant to an independent
12 actuarial audit, has certified that there are
13 sufficient funds to satisfy all outstanding
14 obligations of the Multiple Injury Trust Fund, the
15 Workers' Compensation Court Administrator shall
16 establish an assessment rate applicable to each mutual
17 or interinsurance association, stock company,
18 CompSource Oklahoma, or other insurance carrier
19 writing workers' compensation insurance in this state,
20 each employer carrying its own risk, and each group
21 self-insurance association, for amounts for purposes
22 of computing the assessment authorized by this section
23 necessary to pay the annual obligations of the

Multiple Injury Trust Fund determined on or before December 31 of each year by the Board of Managers of CompSource Oklahoma to be outstanding for the next calendar year, and to pay the allocations provided for in subsection I of this section. The rate shall be equal for all parties required to pay the assessment.

b. Until such time as the Board of Managers of CompSource Oklahoma, pursuant to an independent actuarial audit, has certified that there are sufficient funds to satisfy all outstanding obligations of the Multiple Injury Trust Fund, the Oklahoma Tax Commission shall assess and collect from any uninsured employer a temporary assessment at the rate of five percent (5%) 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.

2. The assessments shall be paid to the Oklahoma Tax Commission. Insurance carriers, self-insurers, group self-insurance associations and CompSource Oklahoma shall pay the assessment in four equal installments not later than the fifteenth day of the month following the close of each quarter of the calendar year of the assessment. Assessments shall be determined based upon gross

direct written premiums, normal premiums or actual paid losses of the paying party, as applicable, during the calendar quarter for which the assessment is due. Uninsured employers shall pay the assessment not later than the fifteenth day of the month following the close of each quarter of the calendar year of the assessment. For purposes of this section, "uninsured employer" means an employer required by law to carry workers' compensation insurance but who has failed or neglected to do so. Only one-third (1/3) of assessments against insurance carriers and CompSource Oklahoma may be charged to policyholders and shall not be considered in determining whether any rate is excessive. The remaining two-thirds (2/3) of assessments against insurance carriers and CompSource Oklahoma may not be included in any rate, premium, charge, fee, assessment or other amount to be collected from a policyholder. Insurance carriers and CompSource Oklahoma shall not separately state the amount of the assessment on any invoice or billing assessment.

3. a. The assessment authorized in this section shall be determined using a rate equal to the proportion that the sum of the outstanding obligations of the Multiple Injury Trust Fund as determined pursuant to paragraph 1 of this subsection and the allocations provided for in subsection I of this section bear to the combined gross direct written premiums of all such insurers;

all actual paid losses of all individual self-insureds; and the normal premium of all group self-insurance associations, for the year period from January 1 to December 31 preceding the assessment. Notwithstanding any law to the contrary, the rate for the first two calendar quarters of 2002 shall equal six percent (6%).

b. No employer or insurer shall be liable for payment of the January 15, 2002, assessment. Payments made pursuant to the January 15, 2002, assessment shall be credited to any assessment obligation of the payor pursuant to this section. Any payment made pursuant to the January 15, 2002, assessment by a payor having no assessment obligation pursuant to this section during the 2002 calendar year shall be refunded in its entirety to the payor upon application by the payor in the same time and manner as provided for the payment of rebates in Section ~~2~~ 6101 of ~~this act~~ Title 68 of the Oklahoma Statutes.

c. For purposes of this subsection:

(1) "actual paid losses" means all medical and indemnity payments, including temporary disability, permanent disability, and death

benefits, and excluding loss adjustment expenses and reserves, and

(2) "normal premium" means a standard premium less any discounts.

4. By April 15 of each year, the Insurance Commissioner, Board of Managers of CompSource Oklahoma and each individual and group self-insured shall provide the Administrator with such information as the Administrator may determine is necessary to effectuate the purposes of this section.

5. Each mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state, and each employer carrying its own risk, including each group self-insurance association, shall be notified by the Administrator in writing of the rate for the assessment on or before May 1 of each year in which a rate is determined. The rate determined by the Administrator shall be in effect for four calendar quarters beginning July 1 following determination by the Administrator.

6. a. No mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state, may be assessed in any year an amount

1 greater than six percent (6%) of the gross direct
2 written premiums of that insurer.
3 b. No employer carrying its own risk may be assessed in
4 any year an amount greater than six percent (6%) of
5 the total actual paid losses of that individual self-
6 insured.
7 c. No group self-insurance association may be assessed in
8 any year an amount greater than six percent (6%) of
9 the normal premium of that group self-insurance
10 association.
11 d. If the maximum assessment does not provide in any one
12 year an amount sufficient to make all necessary
13 payments for obligations of the Multiple Injury Trust
14 Fund and for the allocations provided for in
15 subsection I of this section, the unpaid portion shall
16 be paid as soon thereafter as funds become available.
17 B. The Multiple Injury Trust Fund is hereby authorized to
18 receive and expend monies appropriated by the Legislature.
19 C. It shall be the duty of the Oklahoma Tax Commission to
20 collect the payments provided for herein. The Oklahoma Tax
21 Commission is hereby authorized to bring an action for the recovery
22 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.

D. Any mutual or interinsurance association, stock company, or other insurance company, which is subject to regulation by the Insurance Commissioner, or CompSource Oklahoma, failing to make payments required herein promptly and correctly, and failing to report payment of the same to the Insurance Commission within ten (10) days of payment shall be subject to administrative penalties as allowed by law, including but not limited to, a fine in the amount of Five Hundred Dollars ($500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater, to be paid to the Insurance Commissioner.

E. Any employer carrying its own risk, or group self-insurance association failing to make payments required herein promptly and correctly, and failing to report payment of the same to the Administrator within ten (10) days of payment shall be subject to administrative penalties as allowed by law, including but not limited to a fine in the amount of Five Hundred Dollars ($500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater, to be paid to the Administrator.

F. On or before the first day of April of each year, the State Treasurer shall advise the Court Administrator, the Board of Managers of CompSource Oklahoma and the Oklahoma Tax Commission of

the amount of money held as of March 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund. On or before the first day of November of each year, the State Treasurer shall advise the Court Administrator, the Board of Managers of CompSource Oklahoma and the Oklahoma Tax Commission of the amount of money held as of October 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund.

G. 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 CompSource Oklahoma, with the approval of the Board of Managers of CompSource Oklahoma, 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 CompSource Oklahoma, 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 CompSource Oklahoma, sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for the Multiple Injury Trust Fund.

H. 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.

I. Beginning January 1, 2002, the Oklahoma Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Multiple Injury Trust Fund all monies collected pursuant to the provisions of this section, less the annual sum of One Million Seven Hundred Thousand Dollars ($1,700,000.00), of which Eight Hundred Fifty Thousand Dollars ($850,000.00) shall be payable by the Oklahoma Tax Commission to the State Treasurer in equal monthly installments to the credit of the Department of Labor, Four Hundred Twenty-five Thousand Dollars ($425,000.00) shall be payable in equal monthly installments to the credit of the Office of the Attorney General, and Four Hundred Twenty-five Thousand Dollars ($425,000.00) shall be payable in equal monthly installments to the credit of the Oklahoma Department of Career and Technology Education. 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 Oklahoma Department of Career and Technology 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.

J. The Administrator of the Workers' Compensation Court shall promulgate rules as the Administrator deems necessary to effectuate the provisions of this section and Section 174 of this title.

K. The Insurance Commissioner shall promulgate rules relating to insurers as defined in Title 36 of the Oklahoma Statutes, as the Insurance Commissioner deems necessary to effectuate the provisions of this section.

SECTION 26. AMENDATORY 85 O.S. 2001, Section 175, as amended by Section 3, Chapter 145, O.S.L. 2002 (85 O.S. Supp. 2004, Section 175), is amended to read as follows:

Section 175. A. CompSource Oklahoma shall be charged with the administration and protection of the Multiple Injury Trust Fund and shall be notified by the Administrator of all proceedings which may affect such fund.

B. CompSource Oklahoma shall have standing and the authority to appear in any case before the Workers' Compensation Court in which the Court is considering an award from the Multiple Injury Trust Fund.

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

~~C.~~ D. The State Treasurer shall allocate to CompSource Oklahoma out of the Multiple Injury Trust Fund, sufficient funds for administration expenses thereof in amounts to be fixed and approved by the Administrator for the Multiple Injury Trust Fund, unless rejected by the Governor and Attorney General.

SECTION 27. REPEALER 36 O.S. 2001, Section 902.1, as last amended by Section 5, Chapter 519, O.S.L. 2004 (36 O.S. Supp. 2004, Section 902.1), is hereby repealed.

SECTION 28. REPEALER 85 O.S. 2001, Section 3.9, is hereby repealed.

1 SECTION 29. Sections 1, 2, 3 and 5 through 32 of this act shall
2 become effective November 1, 2005.
3 SECTION 30. Section 4 of this act shall become effective
4 January 1, 2006.
5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-5-05 - DO PASS,
6 As Amended.