

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 2605

By: McCullough

6
7 COMMITTEE SUBSTITUTE

8 (Workers' compensation - Workers' Compensation

9 Commission - codification - recodification -

10 effective dates)

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

15 SECTION 1. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 2357.301 of Title 68, unless
17 there is created a duplication in numbering, reads as follows:

18 A. As used in this section:

19 1. "Qualified employer" means a sole proprietor, general
20 partnership, limited partnership, limited liability company,
21 corporation or other legally recognized business entity;

22 2. "Small employer" means a sole proprietor, general
23 partnership, limited partnership, limited liability company,
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1 corporation or other legally recognized business entity with fewer
2 than fifty (50) employees;

3 3. "Large employer" means a sole proprietor, general
4 partnership, limited partnership, limited liability company,
5 corporation or other legally recognized business entity with fifty
6 (50) or more employees;

7 4. "Qualified person" means any person whose occupation is an
8 in-house safety officer or workers' compensation case worker; and

9 5. "Qualified wage cost" means either payments in the form of
10 contract labor for which the payor is required to provide a Form
11 1099 to the person paid, or wages subject to withholding paid to a
12 part-time employee or full-time employee for wages, salary or other
13 remuneration paid to such person, exclusive of any employer-provided
14 retirement benefit, employer-provided medical or health care
15 benefit, reimbursement for travel, meals, lodging or any other
16 expense reimbursed to the qualified person.

17 B. For taxable years beginning after December 31, 2008, there
18 shall be allowed a credit against the tax imposed pursuant to
19 Section 2355 of Title 68 of the Oklahoma Statutes for qualified wage
20 costs incurred with respect to a qualified person by a qualified
21 employer.

22 C. The credit authorized by subsection B of this section shall
23 be in the amount of Five Thousand Dollars (\$5,000.00) for small
24 employers and up to, but not exceeding, Fifty Thousand Dollars

1 (\$50,000.00). The credit for large employers shall be determined on
2 a sliding scale based upon the qualified wage cost of that employer.

3 D. The credit authorized by this section shall not be used to
4 reduce the tax liability of the taxpayer to less than zero (0).

5 E. Any credit not used may be carried over, in order, to each
6 of the five (5) subsequent taxable years.

7 F. No credit otherwise authorized pursuant to this section
8 shall be claimed by a qualified employer based upon qualifying wage
9 costs with respect to a qualified person after the fifth taxable
10 year for which any credit authorized by this section is claimed
11 based upon qualified wage costs with respect to such qualified
12 person, regardless of the total number of employers claiming a
13 credit authorized by this section.

14 G. The provisions of this section shall not prohibit a
15 qualified employer from claiming a credit for qualified wage costs
16 if the qualified person to whom remuneration or compensation was
17 paid previously worked for any other qualified employer who claimed
18 credit authorized by this section.

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 154 of Title 85, unless there is
21 created a duplication in numbering, reads as follows:

22 When information is furnished by CompSource Oklahoma to the
23 National Council on Compensation Insurance, Incorporated (NCCI), all
24 information shall be accurate, complete and truthful. CompSource

1 Oklahoma shall provide certain data to all information released to
2 NCCI.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 301 of Title 85, unless there is
5 created a duplication in numbering, reads as follows:

6 A. This act shall be known and may be cited as the "Workers'
7 Compensation Law".

8 B. The primary purposes of the workers' compensation laws are
9 to pay timely temporary and permanent disability benefits to all
10 legitimately injured workers who suffer an injury or disease arising
11 out of and in the course of their employment, to pay reasonable and
12 necessary medical expenses resulting therefrom, and then to return
13 the worker to the work force; to improve workplace safety through
14 safety programs; to improve health care delivery through use of
15 managed care concepts; to encourage the return to work of injured
16 workers; to deter and punish frauds of agents, brokers, solicitors,
17 employers, and employees relating to procurement of workers'
18 compensation coverage or the provision or denial of benefits; to
19 curtail the rise in medical costs associated with the provision of
20 workers' compensation benefits; and to emphasize that the workers'
21 compensation system in this state must be returned to a state of
22 economic viability.

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 302 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 As used in this act:

5 1. "Carrier" means any stock company, mutual company, or
6 reciprocal or interinsurance exchange authorized to write or carry
7 on the business of workers' compensation insurance in this state.
8 Whenever required by the context, the term "carrier" shall be deemed
9 to include duly qualified self-insureds or self-insured groups;

10 2. "Child" means a natural child, a posthumous child, a child
11 legally adopted prior to injury of the employee, a stepchild, an
12 acknowledged illegitimate child of the deceased or of the spouse of
13 the deceased, and a foster child;

14 3. "Commission" means the Workers' Compensation Commission;

15 4. a. "Compensable injury" means:

16 (1) an accidental injury causing internal or external
17 physical harm to the body or accidental injury to
18 prosthetic appliances, including, but not limited
19 to, eyeglasses, contact lenses, or hearing aids,
20 arising out of and in the course of employment
21 and which requires medical services or results in
22 disability or death. An injury is "accidental"
23 only if it is caused by a specific incident and
24

1 is identifiable by time and place of occurrence,
2 or

3 (2) an injury causing internal or external physical
4 harm to the body and arising out of and in the
5 course of employment if it is not caused by a
6 specific incident or is not identifiable by time
7 and place of occurrence, if the injury is:

8 (a) caused by rapid repetitive motion. Carpal
9 tunnel syndrome is specifically categorized
10 as a compensable injury falling within this
11 definition,

12 (b) a back or neck injury which is not caused by
13 a specific incident or which is not
14 identifiable by time and place of
15 occurrence, or

16 (c) hearing loss which is not caused by a
17 specific incident or which is not
18 identifiable by time and place of
19 occurrence.

20 b. "Compensable injury" includes, but is not limited to:

21 (1) "mental illness", which means an illness as
22 provided for in Section 15 of this act,

23 (2) "heart" or "cardiovascular injury", "accident",
24 or "disease", which means an injury, accident, or

1 disease as provided for in Section 16 of this
2 act,

3 (3) a "hernia", which means an injury as provided for
4 in Section 70 of this act, or

5 (4) an "adverse reaction", which means a reaction
6 experienced by any employee of the Department of
7 Health and Human Services or any employee of a
8 hospital licensed by the Department related to
9 vaccination with Vaccinia vaccines for smallpox,
10 including, but not limited to, the Dryvax
11 vaccine, regardless of whether the adverse
12 reaction is the result of voluntary action by the
13 injured employee.

14 c. "Compensable injury" does not include:

15 (1) injury to any active participant in assaults or
16 combats which, although they may occur in the
17 workplace, are the result of non-employment-
18 related hostility or animus of one, both, or all
19 of the combatants and which assault or combat
20 amounts to a deviation from customary duties;
21 furthermore, except for innocent victims,
22 injuries caused by horseplay shall not be
23 considered to be compensable injuries,

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1 (2) injury incurred while engaging in or performing,
2 or as the result of engaging in or performing,
3 any recreational or social activities for the
4 personal pleasure of the employee,

5 (3) injury which was inflicted upon the employee at a
6 time when employment services were not being
7 performed or before the employee was hired or
8 after the employment relationship was terminated,
9 or

10 (4) injury where the accident was substantially
11 occasioned by the use of alcohol, illegal drugs,
12 or prescription drugs used in contravention of
13 the orders of a physician.

14 (a) The presence of alcohol, illegal drugs, or
15 prescription drugs used in contravention of
16 orders of a physician shall create a
17 rebuttable presumption that the injury or
18 accident was substantially occasioned by the
19 use of alcohol, illegal drugs, or
20 prescription drugs used in contravention of
21 orders of a physician.

22 (b) Every employee is deemed by his or her
23 performance of services to have impliedly
24 consented to reasonable and responsible

1 testing by properly trained medical or law
2 enforcement personnel for the presence of
3 any of the aforementioned substances in the
4 body of the employee.

5 (c) An employee shall not be entitled to
6 compensation unless it is proved by a
7 preponderance of the evidence that the
8 alcohol, illegal drugs, or prescription
9 drugs utilized in contravention of the
10 orders of the physician did not
11 substantially occasion the injury or
12 accident.

13 d. The definition of "compensable injury" as set forth in
14 this paragraph shall not be deemed to limit or
15 abrogate the right to recover for mental injuries as
16 set forth in Section 15 of this act or occupational
17 diseases as set forth in Sections 78 through 80 of
18 this act.

19 e. A compensable injury must be established by medical
20 evidence supported by objective findings as defined in
21 paragraph 16 of this section.

22 f. BURDEN OF PROOF. The burden of proof of a compensable
23 injury shall be on the employee and shall be as
24 follows:

1 (1) for injuries falling within the definition of
2 compensable injury under division (1) of
3 subparagraph a of this paragraph, the burden of
4 proof shall be a preponderance of the evidence,
5 or

6 (2) for injuries falling within the definition of
7 compensable injury under division (2) of
8 subparagraph a of this paragraph, the burden of
9 proof shall be by a preponderance of the
10 evidence, and the resultant condition is
11 compensable only if the alleged compensable
12 injury is the major cause of the disability or
13 need for treatment.

14 g. BENEFITS.

15 (1) When an employee is determined to have a
16 compensable injury, the employee is entitled to
17 medical and temporary disability as provided by
18 this section.

19 (2) (a) Permanent benefits shall be awarded only
20 upon a determination that the compensable
21 injury was the major cause of the disability
22 or impairment.

23 (b) If any compensable injury combines with a
24 preexisting disease or condition or the

1 natural process of aging to cause or prolong
2 disability or a need for treatment,
3 permanent benefits shall be payable for the
4 resultant condition only if the compensable
5 injury is the major cause of the permanent
6 disability or need for treatment.

7 (3) Under this subparagraph, benefits shall not be
8 payable for a condition which results from a non-
9 work-related independent intervening cause
10 following a compensable injury which causes or
11 prolongs disability or a need for treatment. A
12 non-work-related independent intervening cause
13 does not require negligence or recklessness on
14 the part of a claimant.

15 (4) Nothing in this subparagraph shall limit the
16 payment of rehabilitation benefits or benefits
17 for disfigurement as set forth in this section;

18 5. "Compensation" means the monetary award payable to the
19 employee or to his or her dependents in the form of a temporary
20 total or permanent partial disability award that shall be placed in
21 a designated escrow account which shall be used for future medical
22 care or for any fees and costs associated with the vocational
23 rehabilitation and includes the allowances provided for in Section
24 57 of this act and funeral expenses;

1 6. "Death" means only death resulting from compensable injury
2 as defined in paragraph 4 of this section;

3 7. "Department" means the Oklahoma Insurance Department;

4 8. "Disability" means incapacity, because of a compensable
5 injury, to earn, in the same or any other employment, the wages
6 which the employee was receiving at the time of the compensable
7 injury;

8 9. a. "Employee" means any person, including a minor,
9 whether lawfully or unlawfully employed in the service
10 of an employer under any contract of hire or
11 apprenticeship, written or oral, expressed or implied,
12 but excluding one whose employment is casual and not
13 in the course of the trade, business, profession, or
14 occupation of his or her employer and excluding one
15 who is required to perform work for a municipality or
16 county or the state or federal government upon having
17 been convicted of a criminal offense or while
18 incarcerated.

19 b. The term "employee" shall not include any individual
20 who is both a licensee as defined in Section 858-102
21 of Title 59 and a qualified real estate agent as that
22 term is defined in Section 3508(b)(1) of the Internal
23 Revenue Code of 1986, including all regulations under
24 the Internal Revenue Code of 1986.

1 c. Any individual holding from the Commission a current
2 certification of noncoverage under this act shall be
3 conclusively presumed not to be an employee for
4 purposes of this act or otherwise during the term of
5 his or her certification or any renewals thereof or
6 until he or she elects otherwise, whichever time
7 period is shorter.

8 d. Any reference to an employee who has been injured,
9 when that employee is dead, shall also include his or
10 her legal representative, dependents, and other
11 persons to whom compensation may be payable;

12 10. "Employer" means any individual, partnership, limited
13 liability company, association, or corporation carrying on any
14 employment, the receiver or trustee of the same, or the legal
15 representative of a deceased employer;

16 11. "Employment" means:

17 a. every employment in the state in which three or more
18 employees are regularly employed by the same employer
19 in the course of business except:

20 (1) an employee employed as a domestic servant in or
21 about a private home,

22 (2) an employee employed to do gardening,
23 maintenance, repair, remodeling, or similar work
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1 in or about the private home or residence of the
2 person employing the employee,

3 (3) agricultural farm labor,

4 (4) a person for whom a rule of liability for injury
5 or death arising out of and in the course of
6 employment is provided by the laws of the United
7 States,

8 (5) a person performing services for any nonprofit
9 religious, charitable, or relief organization,

10 (6) any person engaged in the vending, selling,
11 offering for sale, or delivery directly to the
12 general public of any newspapers, magazines, or
13 periodicals, or any person acting as a sales
14 agent or distributor as an independent contractor
15 of or for any newspaper, magazine, or periodical,
16 and

17 (7) any individual who is both a licensee as defined
18 in Section 858-102 of Title 59 of the Oklahoma
19 Statutes and a qualified real estate agent as
20 that term is defined in Section 3508(b)(1) of the
21 Internal Revenue Code of 1986, including all
22 regulations under the Internal Revenue Code of
23 1986,

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1 b. every employment in which two or more employees are
2 employed by any person engaged in building or building
3 repair work,

4 c. every employment in which one or more employees are
5 employed by a contractor who subcontracts any part of
6 his or her contract, and

7 d. every employment in which one or more employees are
8 employed by a subcontractor;

9 12. "Healing period" means that period for healing of an injury
10 resulting from an accident;

11 13. "Insurance Commissioner" means the Insurance Commissioner
12 of the State of Oklahoma;

13 14. a. "Major cause" means more than fifty percent (50%) of
14 the cause.

15 b. A finding of major cause shall be established
16 according to the preponderance of the evidence;

17 15. "Medical services" means those services specified in
18 Section 56 of this act;

19 16. a. (1) "Objective findings" are those findings which
20 cannot come under the voluntary control of the
21 patient.

22 (2) (a) When determining physical or anatomical
23 impairment, neither a physician, any other
24 medical provider, an administrative law

1 judge, the Workers' Compensation Commission,
2 nor the courts may consider complaints of
3 pain.

4 (b) For the purpose of making physical or
5 anatomical impairment ratings to the spine,
6 straight-leg-raising tests or range-of-
7 motion tests shall not be considered
8 objective findings.

9 (3) (a) Objective evidence necessary to prove
10 physical or anatomical impairment in
11 occupational hearing loss cases may be
12 established by medically recognized and
13 accepted clinical diagnostic methodologies,
14 including, but not limited to, audiological
15 tests that measure air and bone conduction
16 thresholds and speech discrimination
17 ability.

18 (b) Any difference in the baseline hearing
19 levels must be confirmed with a subsequent
20 test within the next four (4) weeks but not
21 before five (5) days and being adjusted for
22 presbycusis.

1 b. Medical opinions addressing compensability and
2 permanent impairment must be stated within a
3 reasonable degree of medical certainty;

4 17. a. "State average weekly wage" means the state average
5 weekly wage determined annually by the Department of
6 Labor in the preceding calendar year pursuant to
7 Section 2-104 of Title 40 of the Oklahoma Statutes.

8 b. If, for any reason, the determination is not
9 available, the Commission shall determine the wage
10 annually after reasonable investigation and public
11 hearing;

12 18. "Time of accident" or "date of accident" means the time or
13 date of the occurrence of the accidental incident from which
14 compensable injury, disability, or death results;

15 19. "Wages" means the money rate at which the service rendered
16 is recompensed under the contract of hiring in force at the time of
17 the accident, including the reasonable value of board, rent,
18 housing, lodging, or similar advantage received from the employer
19 and includes the amount of tips required to be reported by the
20 employer pursuant to Section 6053 of the Internal Revenue Code of
21 1954 and the regulations promulgated pursuant thereto or the amount
22 of actual tips reported, whichever amount is greater; and
23
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1 20. a. "Widow" shall include only the legal wife of the
2 decedent, living with or dependent for support upon
3 him at the time of his death.

4 b. "Widower" shall include only the legal husband of the
5 decedent, living with or dependent for support upon
6 her at the time of her death.

7 SECTION 5. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 303 of Title 85, unless there is
9 created a duplication in numbering, reads as follows:

10 A. Every employer and every employee, unless otherwise
11 specifically provided in this act, shall be subject to the
12 provisions of this act and shall be bound by its provisions.
13 However, nothing in this act shall be construed to conflict with any
14 valid act of Congress governing the liability of employers for
15 injuries received by their employees.

16 B. This act shall apply only to claims for injuries and death
17 based upon accidents which occur on or after November 1, 2008.

18 C. The Workers' Compensation Act in effect prior to November 1,
19 2008, shall govern all rights in respect to claims for injuries and
20 death based upon accidents occurring prior to November 1, 2008.

21 SECTION 6. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 304 of Title 85, unless there is
23 created a duplication in numbering, reads as follows:

1 If any part of this act is adjudged unconstitutional by the
2 courts and the adjudication has the effect of invalidating any
3 payment of compensation under this act, the period intervening
4 between the time the injury was sustained and the time of the
5 adjudication shall not be computed as part of the time prescribed by
6 law for the commencement of any action against the employer in
7 respect of the injury, but the amount of any compensation paid under
8 this act on account of the injury shall be deducted from the amount
9 of damages awarded in the action in respect to the injury.

10 SECTION 7. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 305 of Title 85, unless there is
12 created a duplication in numbering, reads as follows:

13 A. The rights and remedies granted to an employee subject to
14 the provisions of this act, on account of injury or death, shall be
15 exclusive of all other rights and remedies of the employee, the
16 legal representative of the employee, dependents, next of kin, or
17 anyone otherwise entitled to recover damages from the employer, or
18 any principal, officer, director, stockholder, or partner acting in
19 the capacity as an employer, or prime contractor of the employer, on
20 account of the injury or death, and the negligent acts of a
21 coemployee shall not be imputed to the employer. No role, capacity,
22 or persona of any employer, principal, officer, director, or
23 stockholder other than that existing in the role of employer of the
24 employee shall be relevant for consideration for purposes of this

1 act, and the remedies and rights provided by this act shall in fact
2 be exclusive regardless of the multiple roles, capacities, or
3 personas the employer may be deemed to have.

4 B. 1. However, if an employer fails to secure the payment of
5 compensation as required by this act, an injured employee, or the
6 legal representative of the injured employee in case death results
7 from the injury, may, at the option of the injured employee, elect
8 to claim compensation under this act or to maintain a legal action
9 in court for damages on account of the injury or death.

10 2. In a legal action, it shall not be necessary to plead or
11 prove freedom from contributory negligence, nor may the defendant-
12 employer plead as a defense that the injury was caused by the
13 negligence of a fellow servant, that the employee assumed the risk
14 of employment, or that the injury was due to the contributory
15 negligence of the employee.

16 SECTION 8. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 306 of Title 85, unless there is
18 created a duplication in numbering, reads as follows:

19 A. 1. a. Any person or entity who willfully and knowingly makes
20 any material false statement or representation, who
21 willfully and knowingly omits or conceals any material
22 information, or who willfully and knowingly employs
23 any device, scheme, or artifice for the purpose of:
24 (1) obtaining any benefit or payment,

1 (2) defeating or wrongfully increasing or wrongfully
2 decreasing any claim for benefit or payment, or
3 (3) obtaining or avoiding workers' compensation
4 coverage or avoiding payment of the proper
5 insurance premium, or who aids and abets for any
6 of said purposes, under this act,

7 shall be guilty of a felony and shall be punished by a
8 fine of not less than Five Hundred Dollars (\$500.00),
9 nor more than Two Thousand Dollars (\$2,000.00), or by
10 imprisonment in the county jail for a term of not less
11 than one (1) year, or by both fine and imprisonment.

12 b. Fifty percent (50%) of any criminal fine imposed and
13 collected under this paragraph or paragraph 2 of this
14 subsection shall be paid and allocated in accordance
15 with applicable law to the Death and Permanent Total
16 Disability Trust Fund administered by the Workers'
17 Compensation Commission.

18 2. It is to be understood that any person or entity with whom
19 any person identified in paragraph 1 of this subsection has
20 conspired to achieve the proscribed ends shall, by reason of such
21 conspiracy, be guilty as a principal of a felony and shall be
22 punished by a fine of not less than Five Hundred Dollars (\$500.00),
23 nor more than Two Thousand Dollars (\$2,000.00), or by imprisonment
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1 in the county jail for a term of not less than one (1) year, or by
2 both fine and imprisonment.

3 B. A copy of paragraph 1 of subsection A of this section shall
4 be placed on all forms prescribed by the Workers' Compensation
5 Commission for the use of injured employees claiming benefits and
6 for the use of employers in responding to such employees' claims
7 under this act.

8 C. Where the Workers' Compensation Commission or the Insurance
9 Commissioner finds that false statements or representations were
10 made willfully and knowingly, that material information was
11 willfully and knowingly omitted or concealed, or that any device,
12 scheme, or artifice was willfully and knowingly employed for the
13 purpose of:

14 1. Obtaining benefits or payments;

15 2. Obtaining, wrongfully increasing, wrongfully decreasing, or
16 defeating any claim for benefit or payment; or

17 3. Obtaining or avoiding workers' compensation coverage or
18 avoiding payment of the proper insurance premium under this act or
19 that any other related criminal violations were committed,
20 the chairman of the Workers' Compensation Commission or the
21 Insurance Commissioner shall refer the matter for appropriate action
22 to the prosecuting attorney having criminal jurisdiction in the
23 matter.

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1 D. 1. a. There shall be established within the Oklahoma
2 Insurance Department a Workers' Compensation Fraud
3 Investigation Unit, funded by the Commission, which
4 will be headed and supervised by a director who may
5 also serve as the director of any other designated
6 insurance fraud investigation division within the
7 Department, in which event the compensation of the
8 director shall be paid solely from the funds of such
9 insurance fraud investigation division.

10 b. (1) The unit designated in subparagraph a of this
11 paragraph will investigate workers' compensation
12 fraud, additional criminal violations that may be
13 related to workers' compensation fraud, and any
14 other insurance fraud matters as may be assigned
15 at the discretion of the director.

16 (2) The Insurance Commissioner shall designate the
17 personnel assigned to the unit, who shall have
18 the powers of specialized law enforcement
19 officers of the State of Oklahoma for the purpose
20 of conducting investigations under this
21 subparagraph. Personnel hired as specialized law
22 enforcement officers shall have a minimum of
23 three (3) years of certified law enforcement
24 experience or its equivalent in national or

1 military law enforcement experience as approved
2 by the Council on Law Enforcement Education and
3 Training.

4 2. The Insurance Commissioner and the deputies and assistants
5 of the Insurance Commissioner and the fraud director and the
6 deputies and assistants of the fraud director shall be vested with
7 the power of enforcing this section and rendering more effective the
8 disclosure and apprehension of persons or entities who abuse the
9 workers' compensation system as established by the Legislature by
10 making false or misleading statements for the purpose of either
11 obtaining, wrongfully increasing, wrongfully decreasing or defeating
12 the payment of benefits, obtaining or avoiding workers' compensation
13 coverage, or avoiding payment of the proper insurance premium.

14 3. It shall be the duty of the unit to assist the Insurance
15 Commissioner and the Department in the performance of duties, and,
16 further, to determine the identity of carriers, employers, or
17 employees who within the State of Oklahoma have violated subsection
18 A of this section and report the violation to the Workers'
19 Compensation Commission and to the Insurance Commissioner, who
20 shall, in turn, be responsible for reporting the violation to the
21 prosecuting attorney having criminal jurisdiction in the matter.

22 4. a. With respect to the subject of any investigation being
23 conducted by the unit, the Insurance Commissioner and
24 the deputies and assistants of the Insurance

1 Commissioner and the fraud director and the deputies
2 and assistants of the fraud director shall have the
3 power of subpoena and may:

- 4 (1) subpoena witnesses,
- 5 (2) administer oaths or affirmations and examine any
6 individual under oath, and
- 7 (3) require and compel the production of records,
8 books, papers, contracts, and other documents.

9 b. Subpoenas of witnesses shall be served in the same
10 manner as if issued by a district court.

11 c. (1) If any individual fails to obey a subpoena issued
12 and served pursuant to this section with respect
13 to any matter concerning which the individual may
14 be lawfully interrogated, then upon application
15 of the Commissioner or fraud director, the
16 district court of the county where the subpoena
17 was served may issue an order requiring the
18 individual to comply with the subpoena and to
19 testify.

20 (2) Any failure to obey the order of the court may be
21 punished by the court as a contempt.

22 d. If any person has refused in connection with an
23 investigation by the fraud director to be examined
24 under oath concerning the affairs of that person, then

1 the fraud director is authorized to conduct and
2 enforce by all appropriate and available means any
3 examination under oath in any state or territory of
4 the United States in which any officer, director, or
5 manager may then presently be to the full extent
6 permitted by the laws of the state or territory.

7 e. Any person testifying falsely under oath or
8 affirmation in this state as to any matter material to
9 any investigation or hearing conducted pursuant to
10 subparagraph d of this paragraph, or any workers'
11 compensation hearing, shall upon conviction be guilty
12 of perjury and punished accordingly.

13 5. Fees and mileage of the officers serving the subpoenas and
14 of the witnesses in answer to subpoenas shall be as provided by law.

15 6. a. Every carrier or employer who has reason to suspect
16 that a violation of paragraph 1 of subsection A of
17 this section has occurred shall be required to report
18 all pertinent matters relating to the violation to the
19 unit.

20 b. No carrier shall be liable to any employer or employee
21 for any report, and no employer shall be liable to any
22 employee for a report unless it knowingly and
23 intentionally includes false information.

1 c. (1) Any carrier or employer who willfully and
2 knowingly fails to report any violation shall be
3 guilty of a misdemeanor and upon conviction shall
4 be punished by a fine not to exceed One Thousand
5 Dollars (\$1,000.00) or by imprisonment for a
6 period not to exceed one (1) year, or by both
7 fine and imprisonment.

8 (2) Fifty percent (50%) of any criminal fine imposed
9 and collected under this subparagraph shall be
10 paid and allocated in accordance with applicable
11 law to the fund administered by the Commission.

12 d. Although not mandated to report suspected violations
13 of paragraph 1 of subsection A of this section by an
14 employer or employee, any employee who does make such
15 a report shall not be liable to the employer or
16 employee whose suspected violations have been
17 reported.

18 e. In addition, any immunity from liability provisions of
19 the Oklahoma Insurance Code applicable to the
20 reporting of suspected fraudulent insurance acts shall
21 also be applicable to the reporting of information
22 under this paragraph.

23 E. 1. For the purpose of imposing criminal sanctions or a fine
24 for violation of the duties of this act, the prosecuting attorney

1 shall have the right and discretion to proceed against any person or
2 organization responsible for violations, both organizational and
3 individual liability being intended by this act.

4 2. The prosecuting attorney of the district to whom a suspected
5 violation of subsection A of this section, Section 39 of this act,
6 Section 43 of this act, or any other criminal violations that may be
7 related to a violation of this act, have been referred shall, for
8 the purpose of assisting the prosecuting attorney in the
9 prosecutions, have the authority to appoint as special deputy
10 prosecuting attorneys, licensed attorneys at law in the employment
11 of the unit or any other designated insurance fraud investigation
12 division within the Department. The special deputy prosecuting
13 attorneys shall, for the purpose of the prosecutions to which they
14 are assigned, be responsible to and report to the prosecuting
15 attorney.

16 F. It is the specific intent of this section that active
17 investigatory files as maintained by the Department and by the unit
18 be deemed confidential and privileged and not be made open to the
19 public until the matter under investigation is closed by the fraud
20 director with the consent of the Insurance Commissioner, except that
21 the active investigatory files shall also be subject to any
22 confidentiality provisions of the Oklahoma Insurance Code that are
23 applicable to the investigation of fraudulent insurance acts.

24

1 G. The Insurance Commissioner, with the cooperation and
2 assistance of the Workers' Compensation Commission, is authorized to
3 establish rules and regulations as may be necessary to carry out the
4 provisions of this section.

5 H. Nothing in this section shall be deemed to create a civil
6 cause of action.

7 SECTION 9. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 307 of Title 85, unless there is
9 created a duplication in numbering, reads as follows:

10 A. 1. Any employer who willfully discriminates in regard to
11 the hiring or tenure of work or any term or condition of work of any
12 individual on account of the claim by the individual for benefits
13 under this act, or who in any manner obstructs or impedes the filing
14 of claims for benefits under this act, shall be subject to a fine of
15 up to Ten Thousand Dollars (\$10,000.00) as determined by the
16 Workers' Compensation Commission.

17 2. This fine shall be payable to the Second Injury Trust Fund
18 and paid by the employer and not by the carrier.

19 B. 1. In addition, the prevailing party shall be entitled to
20 recover costs and a reasonable attorney fee payable from the fine.

21 2. Provided, however, if the employee is the nonprevailing
22 party, the attorney fee and costs shall, at the election of the
23 employer, be paid by the employee or deducted from future workers'
24 compensation benefits.

1 C. The employer may also be guilty of a misdemeanor and shall
2 be punished by a fine not to exceed Five Hundred Dollars (\$500.00),
3 or by imprisonment in the county jail for a term not to exceed one
4 (1) year, or by both fine and imprisonment.

5 D. This section shall not be construed as establishing an
6 exception to the employment-at-will doctrine.

7 E. A purpose of this section is to preserve the exclusive
8 remedy doctrine and specifically annul any inconsistent case law.

9 SECTION 10. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 308 of Title 85, unless there is
11 created a duplication in numbering, reads as follows:

12 A. No agreement by an employee to waive the right to
13 compensation shall be valid, and no contract, regulation, or device
14 whatsoever shall operate to relieve the employer or carrier, in
15 whole or in part, from any liability created by this act, except as
16 specifically provided in this act.

17 B. 1. However, any officer of a corporation, sole proprietor,
18 partner of a partnership, member of a limited liability company,
19 member of a professional association, or self-employed employer who
20 is not a subcontractor and who owns and operates a business, may by
21 agreement or contract exclude themselves from coverage or waive
22 their right to coverage or compensation under this act.

23 2. If the exclusion from coverage of the officer of a
24 corporation, sole proprietor, partner of a partnership, member of a

1 limited liability company, member of a professional association, or
2 self-employed employer reduces the number of employees of the
3 business to fewer than three, the employer shall nevertheless
4 continue to provide workers' compensation coverage for the
5 employees.

6 SECTION 11. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 309 of Title 85, unless there is
8 created a duplication in numbering, reads as follows:

9 A. No agreement by an employee to pay any portion of the
10 premium paid by the employer to a carrier or to contribute to a
11 safety program as provided under Section 46 of this act or a benefit
12 fund or department maintained by the employer for the purpose of
13 providing compensation or medical services and supplies as required
14 by this act shall be valid.

15 B. Any employer who makes a deduction for the purposes provided
16 in subsection A of this section from the pay of any employee
17 entitled to the benefits of this act shall be guilty of a
18 misdemeanor and shall be punished by a fine not to exceed Five
19 Hundred Dollars (\$500.00), or by imprisonment in the county jail for
20 a term not to exceed one (1) year, or by both fine and imprisonment.

21 SECTION 12. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 310 of Title 85, unless there is
23 created a duplication in numbering, reads as follows:

24

1 A. The right to compensation shall not be assignable and shall
2 not be subject to garnishment, attachment, levy, execution, or any
3 other legal process, except for child support obligations and monies
4 retained by the Department of Corrections.

5 B. Money compensation to dependents of a deceased employee
6 shall not constitute assets of the estate of the deceased employee
7 and shall be payable to and for the benefit of the dependents alone.

8 C. 1. After November 1, 2008, the Workers' Compensation
9 Commission shall forward monthly a computer tape listing the name,
10 address, and social security number, if available, on all persons
11 for whom the Commission has established a file during the preceding
12 month to the Child Support Enforcement Division. The computer tape
13 shall also include the name of the workers' compensation carrier and
14 the name of the employer.

15 2. The same information shall be provided to individuals who
16 apply for the information with the Commission on an individual
17 employee to an individual certifying that they have an interest in
18 the child support obligations of the employee on whom the
19 information is requested.

20 D. 1. Amounts withheld from weekly compensation benefits for
21 child support obligations shall not exceed twenty-five percent (25%)
22 of the benefit amount.

23

24

1 2. Amounts withheld from a lump-sum settlement on a joint
2 petition for child support obligations shall not exceed fifty
3 percent (50%) of the settlement amount.

4 E. Any amount withheld under subsection D of this section shall
5 be paid through the appropriate court payable to the person or
6 agency to whom the obligation is payable.

7 F. Any amount withheld pursuant to the provisions of this
8 section shall for all purposes be treated as if it were paid to the
9 employee as workers' compensation and paid by the employee to the
10 person or agency to whom the obligation is payable.

11 G. For purposes of this section, "child support obligations" is
12 defined as only those support obligations which are contained in a
13 decree or order of the district court which provides for the payment
14 of money for the support and care of any child or children.

15 SECTION 13. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 311 of Title 85, unless there is
17 created a duplication in numbering, reads as follows:

18 A. Compensation to alien nonresidents of the United States or
19 Canada shall be the same in amount as provided for residents, except
20 that alien nonresident dependents in any foreign country shall be
21 limited to the surviving wife or children or, if there is no
22 surviving wife or children, to the surviving father or mother whom
23 the employee has supported, either wholly or in part, for the period
24 of one (1) year prior to the date of the injury.

1 B. Upon its own motion or upon application of an interested
2 party, the Workers' Compensation Commission may order the payment of
3 all future compensation to be paid in one lump sum, which shall be
4 equal to one-half (1/2) of the face value of all future installments
5 of compensation.

6 SECTION 14. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 312 of Title 85, unless there is
8 created a duplication in numbering, reads as follows:

9 Compensation due an injured employee or dependents of the
10 injured employee shall have the same preference as is allowed by law
11 to an employee for unpaid wages.

12 SECTION 15. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 313 of Title 85, unless there is
14 created a duplication in numbering, reads as follows:

15 A. 1. A mental injury or illness is not a compensable injury
16 unless it is caused by physical injury to the employee's body, and
17 shall not be considered an injury arising out of and in the course
18 of employment or compensable unless it is demonstrated by a
19 preponderance of the evidence; provided, however, that this physical
20 injury limitation shall not apply to any victim of a crime of
21 violence.

22 2. No mental injury or illness under this section shall be
23 compensable unless it is also diagnosed by a licensed psychiatrist
24 or psychologist and unless the diagnosis of the condition meets the

1 criteria established in the most current issue of the Diagnostic and
2 Statistical Manual of Mental Disorders.

3 B. 1. Where a claim is by reason of mental injury or illness,
4 the employee shall be limited to twenty-six (26) weeks of disability
5 benefits.

6 2. a. In case death results directly from the mental injury
7 or illness within a period of one (1) year,
8 compensation shall be paid to the dependents as
9 provided in other death cases under this act.

10 b. Death directly or indirectly related to the mental
11 injury or illness occurring one (1) year or more from
12 the incident resulting in the mental injury or illness
13 shall not be a compensable injury.

14 SECTION 16. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 314 of Title 85, unless there is
16 created a duplication in numbering, reads as follows:

17 A. A cardiovascular, coronary, pulmonary, respiratory, or
18 cerebrovascular accident or myocardial infarction causing injury,
19 illness, or death is a compensable injury only if, in relation to
20 other factors contributing to the physical harm, an accident is the
21 major cause of the physical harm.

22 B. 1. An injury or disease included in subsection A of this
23 section shall not be deemed to be a compensable injury unless it is
24 shown that the exertion of the work necessary to precipitate the

1 disability or death was extraordinary and unusual in comparison to
2 the usual work of the employee in the course of the regular
3 employment of the employee, or alternately, that some unusual and
4 unpredicted incident occurred which is found to have been the major
5 cause of the physical harm.

6 2. Stress, physical or mental, shall not be considered in
7 determining whether the employee or claimant has met the burden of
8 proof.

9 SECTION 17. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 315 of Title 85, unless there is
11 created a duplication in numbering, reads as follows:

12 A. 1. At any time an application is made for workers'
13 compensation, an employer shall require the applicant for
14 compensation to state whether or not the applicant has child support
15 obligations, if the obligations are current or past due, and to whom
16 the obligations are payable.

17 2. The application shall also include the name of the workers'
18 compensation carrier and the name of the employer.

19 B. The employer shall forward a copy of the application to the
20 Child Support Enforcement Division.

21 SECTION 18. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 316 of Title 85, unless there is
23 created a duplication in numbering, reads as follows:

24

1 A. 1. One (1) month before the beginning of any fiscal
2 quarter, the Insurance Commissioner shall provide to the Workers'
3 Compensation Commission the estimated funding need of the Workers'
4 Compensation Fraud Investigation Unit of the Oklahoma Insurance
5 Department for the ensuing quarter.

6 2. The provided certification shall itemize each position to be
7 utilized in the unit and funded by the Commission and make estimates
8 of all other budgetary line items necessary to provide support to
9 the unit.

10 3. This certification must deduct unexpended and unencumbered
11 balances of the unit from the previous quarter, so that only the
12 current need, excluding unexpended and unencumbered funds, is
13 certified for fund transfer authorized in this section.

14 B. 1. On or before the first day of each fiscal quarter, the
15 Commission shall certify to the Chief fiscal officer of the State
16 that funds are available for transfer. Upon the certification, the
17 chief fiscal officer of the state, the State Treasurer, and the
18 State Auditor and Inspector shall transfer those funds from the
19 Workers' Compensation Fund of the Commission to the fund account
20 used for the maintenance, operation, and support of the unit.

21 2. The sum of the four quarterly transfers in each fiscal year
22 ending June 30 cannot exceed One Hundred Fifty Thousand Dollars
23 (\$150,000.00).
24

1 SECTION 19. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 317 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 Pursuant to its rulemaking authority, the Workers' Compensation
5 Commission shall be empowered to enact medical diagnostic and
6 treatment guidelines regarding occupational carpal tunnel syndrome
7 upon the joint recommendation of the Oklahoma chapter of the
8 American Federation of Labor and Congress of Industrial
9 Organizations and the Oklahoma State Chamber of Commerce.

10 SECTION 20. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 318 of Title 85, unless there is
12 created a duplication in numbering, reads as follows:

13 A. No hospital, physician, or other health care provider shall
14 bill or attempt to collect any fee or any portion of a fee for
15 services rendered to an employee due to a work-related injury or
16 report to any credit reporting agency any failure of the employee to
17 make the payment, when a claim for compensation has been filed under
18 this act and the hospital, physician, or health care provider has
19 received actual notice given in writing by the employee or the
20 representative of the employee. Actual notice shall be deemed
21 received by the hospital, physician, or health care provider five
22 (5) days after mailing by certified mail by the employee or the
23 representative of the employee to the hospital, physician, or health
24 care provider.

1 B. The notice shall include:

2 1. The name of the employer;

3 2. The name of the insurer, if known;

4 3. The name of the employee receiving the services;

5 4. The general nature of the injury, if known; and

6 5. Where a claim has been filed and the claim number, if known.

7 C. When an injury or bill is found to be noncompensable under
8 this act, the hospital, physician, or other health care provider
9 shall be entitled to pursue the employee for any unpaid portion of
10 the fee or other charges for authorized services provided to the
11 employee. Any applicable statute of limitations for an action for
12 the fees or other charges shall be tolled from the time notice is
13 given to the hospital, physician, or other health care provider
14 until a determination of noncompensability in regard to the injury
15 that is the basis of the services is made, or in the event that
16 there is an appeal to the Workers' Compensation Commission, the
17 Court of Civil Appeals, or the Supreme Court, until a final
18 determination of noncompensability is rendered and all appeal
19 deadlines have passed.

20 D. This section shall not avoid, modify, or amend any other
21 section or subsection of this act, including, but not limited to,
22 the prohibition against balanced billing contained in Section 56 of
23 this act and any rules and regulations adopted pursuant to Section
24 56 of this act.

1 E. An order by the Commission pursuant to this section shall
2 stay all proceedings for collection.

3 SECTION 21. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 319 of Title 85, unless there is
5 created a duplication in numbering, reads as follows:

6 A. The Workers' Compensation Commission shall consist of three
7 (3) members appointed by the Governor for terms of six (6) years who
8 shall devote their entire time to the duties of the Commission and
9 shall administer the provisions of this act.

10 1. One member shall be an attorney who has at least five (5)
11 years' experience representing employers in workers' compensation
12 matters or shall be a person who, on account of a previous vocation,
13 employment, or affiliation, has had at least five (5) years of
14 experience as an employer and can be classed as a representative of
15 employers.

16 2. One member shall be an attorney who has at least five (5)
17 years' experience predominantly representing claimants in workers'
18 compensation matters or employees in labor relations matters or
19 shall be a person who, on account of a previous vocation,
20 employment, or affiliation, has had at least five (5) years of
21 membership in a bona fide labor organization and can be classed as a
22 representative of employees.

23 3. One member shall be an attorney, who shall be chair of the
24 Commission and who shall have been engaged in active practice of law

1 in the State of Oklahoma for not less than five (5) years next
2 preceding the date of appointment.

3 B. Each member shall receive a salary as may be established by
4 law for salaries of state employees. The salaries shall be paid
5 from the Workers' Compensation Fund and shall be paid in the manner
6 as are salaries of other state officials or employees.

7 C. 1. When any member of the Commission is disqualified for
8 any reason to hear and participate in the determination of any
9 matter pending before the Commission, the Governor shall appoint a
10 qualified person to hear and participate in the decision on the
11 particular matter. The special member so appointed shall have all
12 authority and responsibility with respect to the particular matter
13 before the Commission as if the person were a regular member of the
14 Commission but shall have no authority or responsibility with
15 respect to any other matter before the Commission.

16 2. A person appointed as a special member of the Commission
17 pursuant to the provisions of this section shall be entitled to
18 receive a per diem not to exceed One Hundred Dollars (\$100.00) for
19 each day spent in attending to duties as a special member of the
20 Commission. The compensation shall be paid from any funds of the
21 Commission which are available for or may legally be used for paying
22 such per diem.

23

24

1 SECTION 22. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 320 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. The members shall give bond in the sum of Ten Thousand
5 Dollars (\$10,000.00) executed by a surety company authorized to do
6 business in the state for the faithful performance of their duties.

7 B. The bond shall be approved by the Governor and kept on file
8 in the Office of the Secretary of State.

9 C. Any action on the bond for breach shall be instituted by the
10 Attorney General and shall be in the name of the State of Oklahoma.

11 D. The premium upon the bonds shall be paid out of the Workers'
12 Compensation Fund.

13 SECTION 23. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 321 of Title 85, unless there is
15 created a duplication in numbering, reads as follows:

16 A. The Governor may, at any time, remove any member of the
17 Workers' Compensation Commission for inefficiency, neglect of duty,
18 or misconduct in office, giving that member in advance a copy of the
19 charges preferred and an opportunity of being publicly heard, in
20 person or by counsel, upon not less than ten (10) days' notice.

21 B. A representative of the Office of the Attorney General shall
22 attend the proceedings and upon the request of the Governor shall
23 advise or assist in the proceedings.

24

1 C. Either party may procure the attendance of witnesses and
2 testimony by those witnesses as provided for in the Code of Civil
3 Procedure in ordinary actions.

4 D. If a member is removed, the Governor shall file in the
5 Office of the Secretary of State a complete statement of all charges
6 made against the member and findings, together with a complete
7 record of all proceedings and a transcript of testimony. It shall
8 constitute a public record of the state.

9 SECTION 24. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 322 of Title 85, unless there is
11 created a duplication in numbering, reads as follows:

12 A. Members of the Workers' Compensation Commission shall be
13 considered as officers and shall take the oath prescribed by the
14 Oklahoma Constitution and the laws of Oklahoma.

15 B. 1. A majority of the Commission shall constitute a quorum
16 for the transaction of business, and vacancies shall not impair the
17 right of the remaining members to exercise all the powers of the
18 full Commission, so long as a majority remains.

19 2. Any investigation, inquiry, or hearing which the Commission
20 is authorized to hold or undertake may be held or undertaken by or
21 before any one member of the Commission, or referee acting for the
22 member of the Commission, under authorization of the Commission.

23 C. 1. The Commission shall maintain and keep open, during
24 reasonable business hours, an office in Oklahoma City, for the

1 transaction of business, at which office its official records and
2 papers shall be kept.

3 2. The Commission or any member of the Commission shall hold
4 sessions and conduct hearings at any local career and technology
5 education center, also known as state-sponsored Career Tech, within
6 the state.

7 D. The Commission shall have a seal for authentication of its
8 orders, awards, and proceedings, which shall have inscribed the
9 words: "Workers' Compensation Commission, State of Oklahoma".

10 SECTION 25. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 323 of Title 85, unless there is
12 created a duplication in numbering, reads as follows:

13 A. 1. For the purpose of administering the provisions of this
14 act, the Workers' Compensation Commission is authorized:

15 a. to make such rules and regulations as may be found
16 necessary,

17 b. to appoint and fix the compensation of temporary
18 technical assistants and medical and legal advisers
19 and to appoint and to fix the compensation of clerical
20 assistants and other officers and employees, and

21 c. to make such expenditures, including those for
22 personal service, rent, books, periodicals, office
23 equipment, and supplies, and for printing and binding
24 as may be necessary.

1 2. a. Prior to the adoption, prescription, amendment,
2 modification, or repeal of any rule, regulation, or
3 form, the Commission shall give at least forty-five
4 (45) days' notice of its intended action.

5 b. The notice shall include a statement of the terms or
6 substance of the intended action or description of the
7 subjects and issues involved, and the time, place, and
8 manner in which interested persons may present their
9 views thereon.

10 c. The notice shall be mailed to any person specified by
11 law or who shall have requested advance notice of
12 rule-making proceedings.

13 3. The Commission shall afford all interested persons a
14 reasonable opportunity to submit written data, views, or arguments,
15 and, if the Commission in its discretion directs, oral testimony or
16 argument.

17 4. Each rule, regulation, or form adopted by the Commission
18 shall be effective twenty (20) days after adoption unless a later
19 date is specified by law or in the rule itself.

20 5. All expenditures of the Commission in the administration of
21 this act shall be allowed and paid from the Workers' Compensation
22 Fund upon the presentation of itemized vouchers approved by the
23 Commission.

1 B. 1. The Commission may appoint as many persons as may be
2 necessary to be administrative law judges and in addition may
3 appoint such examiners, rate experts, investigators, medical
4 examiners, clerks, and other employees as it deems necessary to
5 effectuate the provisions of this act, provided that the appointment
6 of all rate experts shall be made by the Insurance Commissioner,
7 whose duty it is to approve the rates charged.

8 2. Rate experts shall be considered employees of the Commission
9 and the Insurance Commissioner and shall be paid from the Workers'
10 Compensation Fund.

11 3. Employees appointed pursuant to this subsection shall
12 receive an annual salary to be fixed by the Commission within the
13 appropriation made for the Commission.

14 C. It shall be the duty of an administrative law judge, under
15 the rules adopted by the Commission, to hear and determine claims
16 for compensation and to conduct hearings and investigations and to
17 make such orders, decisions, and determinations as may be required
18 by any rule or order of the Commission.

19 SECTION 26. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 324 of Title 85, unless there is
21 created a duplication in numbering, reads as follows:

22 Any member or employee of the Workers' Compensation Commission
23 shall be entitled to receive necessary traveling expenses actually
24 incurred and for subsistence while traveling on official business

1 and away from the designated station of that member or employee.
2 The expenses shall be certified by the person who incurred them and
3 shall be allowed and paid upon presentation of vouchers approved by
4 the Commission.

5 SECTION 27. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 325 of Title 85, unless there is
7 created a duplication in numbering, reads as follows:

8 A. In addition to its other duties and powers, the Workers'
9 Compensation Commission is given and granted full power and
10 authority to:

11 1. Hear and determine all claims for compensation, including,
12 but not limited to, claims based upon injuries that occurred outside
13 the State of Oklahoma for which compensation is payable under this
14 act;

15 2. Require and order medical services for and examinations of
16 injured employees and to employ special medical examiners and
17 advisors who shall be paid a reasonable amount per day to be
18 determined by the Commission, plus reasonable traveling expenses;

19 3. Approve claims for medical services and attorney fees;

20 4. Excuse failure to give notice either of injury or death of
21 any employee;

22 5. Approve agreements, make, modify, or rescind awards, and
23 make and enter findings of fact and rulings of law;

24 6. Enter orders in appealed cases;

- 1 7. Determine the time for the payment of compensation and order
2 the reimbursement of employers for amounts advanced;
- 3 8. Assess penalties;
- 4 9. Prescribe rules and regulations governing the representation
5 of employees, employers, and carriers in respect to claims before
6 the Commission;
- 7 10. Issue subpoenas, administer oaths, and take testimony, by
8 deposition or otherwise;
- 9 11. Make surveys and determine the existence and prevalence of
10 occupational disease hazards within this state, to determine the
11 measures necessary to eliminate or reduce these hazards, and add to
12 the schedule of occupational diseases subject to appropriate
13 conditions and after public hearing;
- 14 12. Make available to the Director of the Department of Labor
15 all records in connection with all cases of personal injury. The
16 Director may propose rules for the prevention of injuries and
17 transmit the rules to the Commission. The Commission may recommend
18 to the Director proposed rules for prevention of injuries;
- 19 13. Have and exercise all other powers and duties conferred or
20 imposed by this act; and
- 21 14. Transfer the excess of income over expenses from the
22 Commission's annual educational conference to any nonprofit
23 charitable organization designed to provide scholarships to children
24 of workers who have been killed or become permanently and totally

1 disabled from a compensable injury, including, but not limited to,
2 any accumulation from prior years' conferences.

3 B. 1. In addition to the other powers and duties granted to
4 the Commission in this section and otherwise provided by law, the
5 Commission is authorized to establish and impose reasonable fees to
6 recover the cost of preparation of various informative materials
7 distributed by the Commission.

8 2. The fees shall be established by regulation of the
9 Commission.

10 3. Funds derived from fees shall be deposited in the Workers'
11 Compensation Fund to be used to defray expenses incurred in
12 preparation and distribution of materials.

13 SECTION 28. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 326 of Title 85, unless there is
15 created a duplication in numbering, reads as follows:

16 On or before the first day of the regular session of the
17 Legislature, the Workers' Compensation Commission under the
18 authority of at least two of its members shall make to the Governor
19 and to the Legislature a report of the administration of this act
20 for the preceding annual period, together with such recommendations
21 as the Commission may deem advisable.

22 SECTION 29. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 327 of Title 85, unless there is
24 created a duplication in numbering, reads as follows:

1 A. The Workers' Compensation Commission shall publish annually,
2 on an aggregate basis, information pertaining to the distribution of
3 workers' compensation insurance premiums, losses, expenses, and net
4 income to be compiled from reports required to be filed with the
5 Insurance Commissioner, as amended, or any similar information
6 required to be filed by the Insurance Commissioner regarding
7 workers' compensation insurance.

8 B. The Commission shall also publish in that same annual report
9 information regarding aggregate workers' compensation benefit
10 distribution to claimants, medical providers, and attorneys if that
11 specific information or similar information becomes available from
12 revised or additional reporting requirements that may be required by
13 the Insurance Commissioner.

14 SECTION 30. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 328 of Title 85, unless there is
16 created a duplication in numbering, reads as follows:

17 A. 1. The Workers' Compensation Commission is hereby
18 authorized to fund financial obligations of the Death and Permanent
19 Total Disability Trust Fund through the purchase of structured
20 annuity contracts; provided, the Commission shall purchase such
21 annuity contracts only when the Commission determines that it is
22 financially advantageous to the trust fund involved.

23 2. Structured annuity contracts shall be purchased only from
24 insurance companies:

- a. licensed to do business in Oklahoma and authorized to write annuities as regulated by the Oklahoma Insurance Department,
- b. experienced in the business of writing and administering structured annuities,
- c. determined to be financially sound and having an A.M. Best rating of A+ and category size VIII or greater, or equivalent independent industry rating, and
- d. be rated AA+ or better by Standard and Poor's, Moody's, or an equivalent rating by an equivalent rating service.

3. Structured annuity contracts purchased by the Commission shall:

- a. include a separate contract for each claimant or beneficiary covered,
- b. require that the payments to the claimant or beneficiary be sent to the Commission so that it can maintain administrative control over the payments, and the Commission will distribute the payments in full to the claimants or beneficiaries, and
- c. provide for return of principal to the appropriate fund in the event that the obligations of the Death and Permanent Total Disability Trust Fund to any

1 claimant or beneficiary cease prior to the end of the
2 period of certain guarantee in the contract.

3 B. The Commission shall adopt such appropriate rules and
4 regulations consistent with the provisions of this section as it
5 deems necessary to enable it to efficiently and effectively
6 administer the provisions of this section and any structured annuity
7 arrangement it may enter into pursuant to the authority granted in
8 this act.

9 SECTION 31. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 329 of Title 85, unless there is
11 created a duplication in numbering, reads as follows:

12 A. There are established on the books of the State Treasurer,
13 State Auditor and Inspector, and the chief fiscal officer of the
14 state, three separate funds:

- 15 1. The "Workers' Compensation Fund";
- 16 2. The "Second Injury Trust Fund"; and
- 17 3. The "Death and Permanent Total Disability Trust Fund".

18 B. Except for funds transferred into a General Revenue Fund
19 Account, no money shall be appropriated from these funds for any
20 purpose except for the use and benefit, or at the direction of, the
21 Workers' Compensation Commission.

22 C. All funds established pursuant to this section shall be
23 administered, disbursed, and invested under the direction of the
24 Commission.

1 D. All incomes derived through investment of the Workers'
2 Compensation Fund, the Second Injury Trust Fund, and the Death and
3 Permanent Total Disability Trust Fund shall be credited as
4 investment income, to the fund which participated in the investment.
5 For the purpose of investment, Workers' Compensation Fund monies
6 shall be invested in accordance with the laws of the Oklahoma State
7 Treasury.

8 E. Except for monies transferred into a General Revenue Fund
9 Account, all monies deposited to the funds provided in subsection A
10 of this section shall not be subject to any deduction, tax, levy, or
11 any other type of assessment.

12 F. If the balance in the Second Injury Trust Fund becomes
13 insufficient to fully compensate those employees to whom it is
14 obligated, payment shall be suspended until such time as the Second
15 Injury Trust Fund is capable of meeting its obligations, paying all
16 arrearages, and restoring normal benefit payments. In no event
17 shall there be any reverter of responsibility to the employer or
18 carrier.

19 G. 1. Upon the effective maturity dates of each investment,
20 the investment shall be transferred to the State Treasurer for
21 deposit into the Death and Permanent Total Disability Trust Fund
22 created in this section.

23

24

1 2. The free balances of the Death and Permanent Total
2 Disability Bank Fund shall be transferred to the Death and Permanent
3 Total Disability Trust Fund.

4 SECTION 32. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 330 of Title 85, unless there is
6 created a duplication in numbering, reads as follows:

7 A. Each carrier writing compensation insurance in this state
8 shall pay to the Insurance Commissioner, in addition to the premium
9 taxes and fees now required under existing laws, at the time of
10 securing the first license to transact business in the state the sum
11 of Five Hundred Dollars (\$500.00) for the privilege of qualifying
12 with the Workers' Compensation Commission for the writing of
13 compensation insurance.

14 B. At the time of qualifying, each self-insurer or third-party
15 administrator shall pay to the Commission the sum of One Hundred
16 Dollars (\$100.00) for the privilege of qualifying as a self-insurer
17 or third-party administrator.

18 C. All carriers, self-insurers, or third-party administrators
19 qualifying under the provisions of this act shall be required to pay
20 this initial assessment before they shall be qualified.

21 D. These fees shall be deposited into the Workers' Compensation
22 Fund created in Section 31 of this act.

23 E. The Commission may assess a third-party administrator an
24 annual fee of One Hundred Dollars (\$100.00).

1 SECTION 33. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 331 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. In addition to the premium taxes collected from carriers,
5 the carriers shall pay annually to the Workers' Compensation
6 Commission a tax, at the rate to be determined as provided in
7 Section 36 of this act, but not to exceed three percent (3%), on all
8 written manual premiums resulting from the writing of workers'
9 compensation insurance on risks within the state.

10 B. "Written manual premium" means premium produced in a given
11 year by the manual rates in effect during the experience period and
12 shall exclude the premium produced by the expense constant.
13 Furthermore, "written manual premium", for the purposes of this act,
14 means premium before any allowable deviated discounts, any
15 experience rating modification, any premium discount, any
16 reinsurance or deductible arrangement as common with fronting
17 carriers, any dividend consideration, or other trade discount.

18 C. 1. This tax shall be collected by the Commission from the
19 carriers at the same time and in the same manner as insurance
20 premium taxes and deposited into the funds created in Section 31 of
21 this act.

22 2. The deposit into the funds created in Section 31 of this act
23 shall be in the same proportions that deposits were made into the
24 three funds as set forth in Section 36 of this act.

1 D. 1. Assessments upon which premium taxes are based shall be
2 made on forms prescribed by the Commission and shall be paid to the
3 Commission.

4 2. Absent a waiver obtained from the Commission for good cause,
5 the failure of the licensed carrier to pay the assessment when due
6 shall be referred to the Insurance Commissioner for appropriate
7 administrative action against the Oklahoma certificate of authority
8 of the delinquent insurer.

9 E. Premium tax payments shall be made by check payable to the
10 Commission.

11 SECTION 34. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 332 of Title 85, unless there is
13 created a duplication in numbering, reads as follows:

14 A. It shall be the duty of the Workers' Compensation Commission
15 to collect a tax from every self-insured employer at a rate to be
16 determined as provided by Section 36 of this act, but not to exceed
17 three percent (3%) of the written manual premium, which would have
18 to be paid under Section 33 of this act by a carrier if the self-
19 insured employer were insured by a carrier.

20 B. If the tax provided for under this section is not paid
21 within thirty (30) days of the date provided in Section 36 of this
22 act, there shall be assessed a penalty for each thirty (30) days the
23 amount so assessed remains unpaid which is equal to ten percent
24

1 (10%) of the unpaid amounts and which shall be collected at the same
2 time as a part of the tax assessed.

3 SECTION 35. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 333 of Title 85, unless there is
5 created a duplication in numbering, reads as follows:

6 A. 1. It shall be the duty of the Workers' Compensation
7 Commission to collect a tax from every public employer providing
8 workers' compensation coverage to its employees at a rate to be
9 determined as provided by Section 36 of this act, but not to exceed
10 three percent (3%) of the written manual premium which an insurance
11 carrier would have to pay under Section 33 of this act if the public
12 employer were insured by a carrier.

13 2. a. The Commission shall tabulate and collect the tax to
14 be collected from entities whose workers' compensation
15 claims are administered by the Public Employee Claims
16 Division.

17 b. In tabulating the manual premium, a public employer
18 whose workers' compensation claims are administered by
19 the Division shall use the average compensation rate
20 for this state as promulgated by the National Council
21 on Compensation Insurance for the tax year in
22 question.

23

24

1 3. The tax collected shall be deposited in and paid to the
2 Commission from the Workers' Compensation Revolving Fund and
3 miscellaneous revolving funds.

4 B. 1. In the event that any public employer whose workers'
5 compensation claims are administered by the Division fails to
6 cooperate in furnishing information upon which the tax will be
7 computed or fails to pay the tax within thirty (30) days of the date
8 provided in Section 36 of this act, the Commission shall notify the
9 Director of the Public Employee Claims Division of the failure, and
10 the Commission shall decertify the public employer from
11 participation in the state's workers' compensation program.

12 2. In the event of decertification, the public employer shall
13 obtain its employer's workers' compensation liability coverage from
14 the private market and shall not be entitled to participate in the
15 state's workers' compensation program for a period of one (1) year
16 thereafter.

17 C. The procedure for decertification shall be the same as for
18 the revocation or termination of the self-insurer privilege.

19 SECTION 36. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 334 of Title 85, unless there is
21 created a duplication in numbering, reads as follows:

22 A. 1. The Workers' Compensation Commission, on or before
23 December 31 of each year, shall determine the surplus, if any, in
24

1 the Workers' Compensation Fund, together with the additional amounts
2 necessary to properly administer this act for the ensuing year.

3 2. The Commission shall determine the rate of taxation for
4 collections for that year on or before March 1 of the following
5 year.

6 B. 1. The Commission, on or before December 31 of each year,
7 shall determine the surplus, if any, in the Second Injury Trust
8 Fund, together with the additional amounts necessary to properly
9 administer this act for the ensuing year.

10 2. The Commission shall determine the rate of taxation for
11 collections for that year on or before March 1 of the following
12 year.

13 C. 1. The Commission, on or before December 31 of each year,
14 shall determine the surplus, if any, in the Death and Permanent
15 Total Disability Trust Fund, together with the additional amounts
16 necessary to properly administer this act for the ensuing year.

17 2. The Commission shall determine the rate of taxation for
18 collections for that year on or before March 1 of the following
19 year.

20 D. The total rate of taxation for all three funds when added
21 together shall not exceed three percent (3%).

22 E. 1. The Commission shall notify each insurance carrier of
23 the rate of taxation applicable to each fund for the preceding year,
24

1 and taxes shall be computed and paid pursuant to the provisions of
2 Section 33 of this act on or before April 1 of the following year.

3 2. The Commission shall notify each self-insured employer
4 subject to the tax of the rate of taxation applicable to each fund
5 for the preceding year, and taxes shall be computed by the
6 Commission and paid to each fund by the self-insurer through
7 payments made directly to the Commission on or before April 1 of the
8 following year.

9 3. The Commission shall notify each public employer subject to
10 this tax of the rate of taxation applicable to each fund for the
11 preceding year, and taxes shall be computed by the Commission and
12 paid to each respective fund through payments made directly to the
13 Commission by the public employer on or before April 1 of the
14 following year.

15 F. The Commission shall have the authority to promulgate rules
16 or regulations for administration of the assessment and tax
17 collection process, including, but not limited to, rules and
18 regulations applicable to the funds established in Section 31 of
19 this act.

20 G. No later than March 30 each year, the Commission shall
21 provide the Insurance Commissioner a complete listing of workers'
22 compensation premium tax collections for the preceding calendar
23 year, including the monetary amount of workers' compensation premium
24

1 tax paid, by year, by name of workers' compensation carrier, and by
2 National Association of Insurance Commissioners identity number.

3 SECTION 37. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 335 of Title 85, unless there is
5 created a duplication in numbering, reads as follows:

6 A. During the annual period beginning July 1, 2009, and
7 thereafter, the Oklahoma Insurance Department shall certify to the
8 Chief fiscal officer of the State the cost of administering the
9 Public Employee Claims Division.

10 B. The certification shall be made the month following each
11 quarter of the fiscal year and shall include a report of the
12 expenditures of the Division for workers' compensation claims paid
13 on behalf of the cities, the counties, and the public schools, each
14 of the three reported as a class of employers, and each state agency
15 supported from Treasury funds or fund accounts.

16 C. After the certification has been received and approved by
17 the Chief fiscal officer of the State, the Chief fiscal officer of
18 the State shall transfer funds from the Public School Fund, the
19 Municipal Aid Fund, the County Aid Fund, and from the various
20 Treasury funds of state agencies to the State General Services Fund
21 Account.

22 D. The transfers shall be made in the same proportion that
23 payments were made in behalf of that entity for workers'
24

1 compensation claims in the prior quarter as certified by the
2 Department.

3 E. The amount transferred shall be the proportional cost
4 associated with the fund as certified to and approved by the Chief
5 fiscal officer of the State.

6 F. Should a state agency be supported from more than one
7 Treasury fund, the fund transfers from that agency shall be in the
8 same proportion that appropriations were made to that agency for
9 regular salaries from the respective funds.

10 SECTION 38. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 336 of Title 85, unless there is
12 created a duplication in numbering, reads as follows:

13 A. 1. Every employer shall secure compensation to its
14 employees and pay or provide compensation for their disability or
15 death from compensable injury arising out of and in the course of
16 employment without regard to fault as a cause of the injury.

17 2. There shall be no liability for compensation under this act
18 where the injury or death was substantially occasioned by the
19 willful intention of the injured employee to bring about such
20 compensable injury or death.

21 B. The primary obligation to pay compensation is upon the
22 employer, and the procurement of a policy of insurance by an
23 employer to cover the obligation in respect to this act shall not
24 relieve the employer of the obligation.

1 SECTION 39. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 337 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. Where a subcontractor fails to secure compensation required
5 by this act, the prime contractor shall be liable for compensation
6 to the employees of the subcontractor unless there is an
7 intermediate subcontractor who has workers' compensation coverage.

8 B. 1. Any contractor or the contractor's insurance carrier who
9 shall become liable for the payment of compensation on account of
10 injury to or death of an employee of the subcontractor may recover
11 from the subcontractor the amount of the compensation paid or for
12 which liability is incurred.

13 2. The claim for the recovery shall constitute a lien against
14 any monies due or to become due to the subcontractor from the prime
15 contractor.

16 3. A claim for recovery, however, shall not affect the right of
17 the injured employee or the dependents of the deceased employee to
18 recover compensation due from the prime contractor or the insurance
19 carrier of the prime contractor.

20 C. 1. a. When a sole proprietorship or partnership fails to
21 elect to cover the sole proprietor or partners under
22 this act, the prime contractor is not liable under
23 this act for injuries sustained by the sole proprietor
24

1 or partners if the sole proprietor or partners are not
2 employees of the prime contractor.

3 b. (1) A sole proprietor or the partners of a
4 partnership who do not elect to be covered by
5 this act and be deemed employees under this act,
6 and who deliver to the prime contractor a current
7 certification of noncoverage issued by the
8 Workers' Compensation Commission shall be
9 conclusively presumed not to be covered by the
10 law or to be employees of the prime contractor
11 during the term of certification or any renewals
12 of the certification.

13 (2) A certificate of noncoverage may not be presented
14 to a subcontractor who does not have workers'
15 compensation coverage.

16 (3) This provision shall not affect the rights or
17 coverage of any employees of the sole proprietor
18 or of the partnership.

19 2. Furthermore, the insurance carrier of the prime contractor
20 is not liable for injuries to the sole proprietor or partners
21 described in this section who have provided a current certification
22 of noncoverage, and the carrier shall not include compensation paid
23 by the prime contractor to the sole proprietor or partners described
24 above in computing the insurance premium for the prime contractor.

- 1 3. a. Any prime contractor who, after being presented with a
2 current certification of noncoverage by a sole
3 proprietor or partnership, nonetheless compels the
4 sole proprietor or partnership to pay or contribute to
5 workers' compensation coverage of that sole proprietor
6 or partnership, shall be guilty of a misdemeanor and
7 shall be punished by a fine not to exceed Five Hundred
8 Dollars (\$500.00), or by imprisonment in the county
9 jail for a term not to exceed one (1) year, or by both
10 fine and imprisonment.
- 11 b. Any prime contractor who compels a sole proprietor or
12 partnership to obtain a certification of noncoverage
13 when the sole proprietor or partnership does not
14 desire to do so is guilty of a misdemeanor and shall
15 be punished by a fine not to exceed Five Hundred
16 Dollars (\$500.00), or by imprisonment in the county
17 jail for a term not to exceed one (1) year, or by both
18 fine and imprisonment.
- 19 c. Any applicant who makes a false statement when
20 applying for a certification of noncoverage or any
21 renewals of a certification shall be guilty of a
22 misdemeanor and shall be punished by a fine not to
23 exceed Five Hundred Dollars (\$500.00), or by
24

1 imprisonment in the county jail for a term not to
2 exceed one (1) year, or by both fine and imprisonment.

3 D. 1. A certification of noncoverage issued by the Commission
4 after July 1, 2009, shall be valid for two (2) years after the
5 effective date stated on the certification. Both the effective date
6 and the expiration date must be listed on the face of the
7 certification by the Commission. The certification must expire at
8 midnight two (2) years from its issue date, as noted on the face of
9 the certification.

10 2. The Commission may assess a fee not to exceed Fifty Dollars
11 (\$50.00) with each application for a certification of noncoverage or
12 any renewals of a certification.

13 3. Any certification of noncoverage issued by the Commission
14 shall contain the social security number and notarized signature of
15 the applicant. The notarization shall be in a form and manner
16 prescribed by the Commission.

17 4. The Commission may prescribe by rule forms and procedures
18 for issuing or renewing a certification of noncoverage.

19 SECTION 40. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 338 of Title 85, unless there is
21 created a duplication in numbering, reads as follows:

22 A. Any employer carrying on any exempted or excepted employment
23 may at any time waive the exemptions or exceptions as to any
24 employee or all employees engaged in the employment as the employer

1 may elect by giving notice of waiver of the exemptions or exceptions
2 as provided in subsection B of this section.

3 B. Notice of waiver of exemption or exception referred to in
4 subsection A of this section shall be given in accordance with the
5 following provisions:

6 1. Every employer who waives the exemption or exception shall
7 post, and keep posted, in and about the employer's place of
8 business, typewritten or printed notices to that effect in
9 accordance with a form to be prescribed by the Workers' Compensation
10 Commission, and the employer shall file a duplicate of the notice
11 with the Commission; and

12 2. The notice shall be given at least thirty (30) days prior to
13 any injury. However, if the injury occurs less than thirty (30)
14 days after the date of employment, the notice, if given at the time
15 of employment, shall be sufficient notice.

16 SECTION 41. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 339 of Title 85, unless there is
18 created a duplication in numbering, reads as follows:

19 A. Every employer shall secure the payment of compensation
20 under this act:

21 1. By insuring and keeping insured the payment of the
22 compensation with any carrier authorized to write workers'
23 compensation insurance;

24

1 2. By furnishing satisfactory proof to the Workers'
2 Compensation Commission of the employer's financial ability to pay
3 compensation and receiving an authorization from the Commission to
4 pay compensation directly.

5 a. The Commission, as a condition to such authorization,
6 may require the employer, except municipalities,
7 counties, or the State of Oklahoma or its political
8 subdivisions, to deposit in a depository designated by
9 the Commission either an indemnity bond, irrevocable
10 letter of credit, or securities of any kind and in an
11 amount determined by the Commission, subject to
12 reasonable conditions as the Commission may prescribe.
13 The conditions shall include authorization to the
14 Commission, in case of default, to sell any securities
15 sufficient to pay compensation awards or to bring suit
16 on the bonds or the letter of credit to procure prompt
17 payment of compensation under this act.

18 b. Any employer securing compensation in accordance with
19 the provisions of this paragraph shall be known as a
20 self-insurer and shall be classed as a carrier of its
21 own insurance.

22 c. A self-insurer may have the privilege of securing
23 those portions of the payment of compensation under
24 this act as the self-insurer shall elect by insuring

1 the portions with a company approved by the
2 Commission. The liability of the company shall be
3 limited to those features and liabilities of this act
4 as are expressly stated, and none other.

5 3. a. The Commission, under the rules and regulations as it
6 may prescribe, may permit two or more employers
7 engaged in the same type of business activity or
8 pursuit to enter into agreements to pool their
9 liabilities under this section for the purpose of
10 qualifying as self-insurers, and each approved group
11 shall be classified as a homogeneous self-insurer.

12 b. (1) The Commission, under the rules and regulations
13 as it may prescribe, may permit two or more
14 employers who are members of the same trade or
15 professional association to enter into agreements
16 to pool their liabilities under this section for
17 the purpose of qualifying as self-insurers, and
18 each approved group shall be classified as a
19 common self-insurer.

20 (2) The trade or professional association shall have
21 been in active existence for at least three (3)
22 years; the associations shall have a constitution
23 or by-laws; and all trustees shall be
24 participants in the common self-insurer program,

1 shall have members that support the association
2 by regular payment of dues on an annual,
3 semiannual, quarterly, or monthly basis, and
4 shall be created in good faith for purposes other
5 than that of creating workers' compensation
6 common self-insurer pools.

7 (3) No two trade or professional associations shall
8 be allowed to combine or join each other and
9 qualify as a common self-insurer.

10 c. In order to qualify as group self-insurers, these
11 groups shall furnish to or satisfy the Commission as
12 to the following:

13 (1) an application on a form prescribed by the
14 Commission by an elected board of trustees to
15 establish a self-insurance fund to be
16 administered under the direction of the trustees,

17 (2) the application shall be accompanied by:

18 (a) an indemnity agreement in a form
19 satisfactory to the Commission jointly and
20 severally binding the groups and each member
21 of the groups to comply with the provisions
22 of the Workers' Compensation Law, as
23 provided by this act, and
24

1 (b) an individual application by each member of
2 the groups applying for coverage in the
3 fund,

4 (3) a current, audited financial statement of each
5 member of the groups showing a combined net worth
6 of all members applying for coverage of not less
7 than One Million Dollars (\$1,000,000.00), a
8 combined ratio of current assets to current
9 liabilities of not less than one-to-one, and
10 working capital of an amount establishing
11 financial ability and liquidity sufficient to pay
12 normal compensation claims promptly,

13 (4) (a) that the groups deposit and maintain with
14 the Commission acceptable securities or have
15 posted a surety bond issued by a corporate
16 surety authorized to do business in the
17 State of Oklahoma, in an amount determined
18 by the Commission, but not less than Two
19 Hundred Thousand Dollars (\$200,000.00).

20 (b) However, this division shall not be
21 applicable to municipalities, counties, or
22 the State of Oklahoma and its political
23 subdivisions,
24

1 (5) that there exist ample facilities and competent
2 personnel of good character within the groups, or
3 through an approved service organization, for the
4 groups to service their own programs with respect
5 to underwriting matters, claims and adjusting,
6 industrial safety engineering, accounting, and
7 financial management,

8 (6) (a) that the groups maintain excess insurance
9 with an insurance company authorized to do
10 business in this state in an amount
11 acceptable to the Commission.

12 (b) However, this division shall not be
13 applicable to municipalities, counties, or
14 the State of Oklahoma and its political
15 subdivisions,

16 (7) (a) that such financial statements, payroll
17 records, accident experience, compensation
18 reports, and other reports and statements
19 are filed at the time and in the manner as
20 the Commission shall require.

21 (b) However, any fund which fails or refuses to
22 file the reports within the time limits
23 prescribed by the Commission shall be
24 subject to a civil penalty in an amount as

1 the Commission may prescribe not to exceed
2 One Hundred Dollars (\$100.00) per infraction
3 per day, and the failure or refusal may be
4 considered good cause for revocation or
5 suspension of self-insurance privileges.

6 4. Each member of the groups shall file financial reports and
7 statements at the times and in the manner as the Commission may
8 require to satisfy itself as to the continued financial stability of
9 the member.

10 5. In order to continue to qualify as a homogeneous self-
11 insurer fund or common self-insurer fund, the groups shall continue
12 to meet the minimum requirements as set forth in paragraph 3 of this
13 subsection or as prescribed by the Commission.

14 B. 1. Except for the initial qualification of the groups, a
15 certified audited financial statement shall not be required of any
16 member of a group either for initial membership or as a condition
17 for continued membership in the group.

18 2. However, each financial statement filed with the Commission
19 shall be duly certified by the president and treasurer of the
20 member, in the case of a corporation, and by the owner and general
21 partners, respectively, in the case of an individual proprietorship
22 or partnership, to the effect that the financial statement is true
23 and correct to the best of the knowledge and belief of the officer,
24

1 individual owner, or partner and truly reflects the financial
2 condition of the member.

3 C. Any person who knowingly files a false or fraudulent
4 financial statement under the provisions of this act shall, upon
5 conviction, be fined not more than Ten Thousand Dollars (\$10,000.00)
6 or imprisoned not more than five (5) years, or both.

7 D. Jurisdiction for the enforcement of the provisions of this
8 act or any appeal taken from the enforcement of the provisions of
9 this act shall be in the Oklahoma County district court. The
10 underlying purpose of this act is to assure the payment of benefits
11 due employees, and this act shall be strictly construed to that end.

12 E. 1. The Commission may suspend or revoke any authorization
13 to a self-insurer for a good cause shown after a hearing at which
14 the self-insurer shall be entitled to be heard in person or by
15 counsel and to present evidence.

16 2. No suspension or revocation shall affect the liability
17 already incurred of any self-insurer.

18 F. Authorization to write compensation insurance under this act
19 shall be given to a carrier only after the carrier has received a
20 certificate of authority from the Insurance Commissioner to transact
21 the business of workers' compensation insurance in Oklahoma and the
22 Commission has been notified in writing of the issuance of the
23 certificate of authority.

24

1 SECTION 42. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 340 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. In any case where the employer is not a self-insurer, in
5 order that the liability for compensation imposed by this act may be
6 most effectively discharged by the employer and in order that the
7 administration of this act with respect to that liability may be
8 facilitated, the Workers' Compensation Commission shall by
9 regulation provide for the discharge by the carrier, for the
10 employer, of the obligations and duties of the employer with respect
11 to the liability imposed by this act upon the employer as it
12 considers proper in order to effectuate the provisions of this act.

13 B. For such purpose:

14 1. Notice to or knowledge of, an employer of the occurrence of
15 the injury shall be notice to or knowledge of the carrier;

16 2. Jurisdiction over the employer by the Commission or by any
17 court under this act shall be jurisdiction over the carrier; and

18 3. Any requirements by the Commission or any court under any
19 compensation order, finding, or decision shall be binding upon the
20 carrier in the same manner and to the same extent as upon the
21 employer.

22 SECTION 43. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 341 of Title 85, unless there is
24 created a duplication in numbering, reads as follows:

1 A. 1. Any employer required to secure the payment of
2 compensation under this act who fails to secure compensation shall
3 be subject to a fine of up to Ten Thousand Dollars (\$10,000.00) as
4 determined by the Workers' Compensation Commission payable to the
5 Death and Permanent Total Disability Trust Fund or be guilty of a
6 misdemeanor and shall be punished by a fine not to exceed Five
7 Hundred Dollars (\$500.00), or by imprisonment in the county jail for
8 a term not to exceed one (1) year, or by both fine and imprisonment.

9 2. This subsection shall not affect any other liability of the
10 employer under this act.

11 B. 1. Whenever the Commission has reason to believe that any
12 employer required to secure the payment of compensation under this
13 act has failed to do so, the Commission shall serve upon the
14 employer a proposed order declaring the employer to be in violation
15 of this act and containing the amount, if any, of the civil penalty
16 to be assessed against the employer pursuant to paragraph 5 of this
17 subsection.

18 2. a. An employer may contest a proposed order of the
19 Commission issued pursuant to paragraph 1 of this
20 subsection by filing with the Commission, within
21 twenty (20) days of receipt of the proposed order, a
22 written request for a hearing.

23 b. Such a request for a hearing need not be in any
24 particular form but shall specify the grounds upon

1 which the person contests the proposed order, the
2 proposed assessment, or both.

3 c. If a written request for hearing is not filed with the
4 Commission within this time, the proposed order, the
5 proposed penalty, or both, shall be a final order of
6 the Commission and shall not be subject to further
7 review by any court.

8 d. A proposed order by the Commission pursuant to this
9 section is prima facie correct, and the burden is upon
10 the employer to prove that the proposed order is
11 incorrect.

12 3. a. If the employer alleges that a carrier has contracted
13 to provide the employer workers' compensation
14 insurance coverage for the period in question, the
15 employer shall include the allegation in its request
16 for hearing and shall name the carrier.

17 b. The Commission shall promptly notify the carrier of
18 the allegation of the employer and of the date of
19 hearing.

20 c. The carrier shall promptly, and no later than five (5)
21 days prior to the hearing, respond in writing to the
22 allegation of the employer by providing evidence of
23 coverage for the period in question or by
24 affirmatively denying the allegation of the employer.

1 4. Hearings conducted under this section shall proceed as
2 provided in Sections 84 through 91 of this act.

3 5. The Commission may assess a fine against an employer who
4 fails to secure the payment of compensation in an amount up to One
5 Thousand Dollars (\$1,000.00) per day of violation payable to the
6 fund.

7 6. If an employer fails to secure the payment of compensation
8 or pay any civil penalty assessed against the employer after an
9 order issued pursuant to this section has become final by operation
10 of law or upon appeal, the Commission may petition the district
11 court of Oklahoma County or of the county where the principal place
12 of business of the employer is located for an order enjoining the
13 employer from engaging in further employment until the employer
14 secures the payment of compensation or makes full payment of all
15 civil penalties.

16 SECTION 44. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 342 of Title 85, unless there is
18 created a duplication in numbering, reads as follows:

19 A. Every employer who has secured compensation under the
20 provisions of this act shall keep posted in a conspicuous place in
21 and about the place of business of the employer, typewritten or
22 printed notices in accordance with a form prescribed by the Workers'
23 Compensation Commission. The notices shall state that the employer
24

1 has secured the payment of compensation in accordance with the
2 provisions of this act.

3 B. The notices shall contain the name and address of the
4 carrier, if any, with whom the employer has secured payment of
5 compensation and the date of the expiration of the policy.

6 SECTION 45. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 343 of Title 85, unless there is
8 created a duplication in numbering, reads as follows:

9 A. CONTENTS. Every policy or contract of insurance issued by a
10 carrier to an employer to secure the payment of compensation under
11 this act shall contain:

12 1. a. Provisions that identify the insured employer and
13 either identify each covered employee or describe
14 covered employees by class or type of labor performed
15 and the estimated number of employees of each such
16 class or type.

17 b. No single policy of workers' compensation insurance
18 may be issued to any group of employers who are
19 unaffiliated with one another in terms of ownership,
20 control, or right to participate in the profits of the
21 affiliated enterprises;

22 2. Provisions that insolvency or bankruptcy of the employer or
23 discharge in bankruptcy shall not relieve the carrier from payment
24

1 of compensation for compensable injuries sustained by an employee
2 during the term of the policy or contract;

3 3. a. The agreement of the carrier that it will promptly pay
4 to the person entitled to compensation every
5 installment of compensation that may be awarded or
6 agreed upon and that this obligation shall not be
7 affected by any default of the employer or by any
8 default in the giving of any notice required by the
9 policy or otherwise.

10 b. The agreement shall be construed to be a direct
11 obligation by the carrier to the person entitled to
12 compensation, enforceable in the name of that person;
13 and

14 4. Such other provisions as the Oklahoma Insurance Department
15 allows or requires carriers to include in workers' compensation
16 policies.

17 B. CANCELLATION.

18 1. An employer may cancel coverage with a carrier by giving the
19 carrier at least thirty (30) days' notice, unless a shorter period
20 is permitted under subparagraph b of this paragraph.

21 a. Cancellation of coverage is effective at 12:01 a.m.
22 thirty (30) days after the date the cancellation
23 notice is received by the carrier, unless a later date
24 is specified in the notice to the carrier.

1 b. (1) An employer may cancel coverage effective less
2 than thirty (30) days after written notice is
3 received by the carrier where the employer
4 obtains other coverage or becomes a self-insurer.

5 (2) A cancellation under this subparagraph is
6 effective immediately upon the effective date of
7 the other coverage or upon authorization as a
8 self-insurer.

9 2. a. A notice of cancellation from the carrier shall state
10 the hour and date that cancellation is effective.

11 b. A carrier shall not cancel coverage issued to an
12 employer under this act prior to the date specified
13 for expiration in the policy or contract or until at
14 least thirty (30) days have elapsed after a notice of
15 cancellation has been mailed to the Workers'
16 Compensation Commission and to the employer, or until
17 ten (10) days have elapsed after the notice has been
18 mailed to the employer and to the Commission if the
19 cancellation is for nonpayment of premium.

20 c. However, if the employer procures other insurance
21 within the notice period, the effective date of the
22 new policy shall be the cancellation date of the old
23 policy.

1 3. Cancellation of coverage by an employer or a carrier shall
2 in no way limit liability that was incurred under the policy or
3 contract prior to the effective date of cancellation.

4 C. COVERAGE.

5 1. No policy or contract of insurance shall be issued against
6 liability under this act unless the policy or contract covers the
7 entire liability of the employer. Split coverage, whereby some
8 employees of an employer are insured by one carrier and other
9 employees are insured by another carrier, or by the Oklahoma
10 Workers' Compensation Insurance Plan, or a plan of self-insurance is
11 expressly prohibited except for:

12 a. a policy issued whereby all employees performing
13 services for a client under a professional employer
14 organization are covered under the same policy,
15 contract, or plan, or

16 b. a policy issued covering the liability of an employer
17 or of multiple employers as to specific jobs,
18 ventures, contracts, or undertakings, but only if the
19 policy meets with the reasonable satisfaction and
20 approval of the Insurance Commissioner that the policy
21 is in the best interest of the employers and the
22 employees concerned and does not unduly or improperly
23 affect the continuity of workers' compensation
24 coverage by seriously and negatively affecting other

1 carriers and agents with outstanding policies issued
2 to any of the employers in issue.

3 2. As to any questions of liability between the employer and
4 the carrier, the terms of the policy or contract shall govern.

5 D. Under the rules and regulations as may be adopted by the
6 Insurance Commissioner, and notwithstanding other provisions of this
7 act, the Insurance Commissioner may certify five or more employers
8 as an insurance group which shall be considered an employer for the
9 purposes of this act.

10 SECTION 46. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 344 of Title 85, unless there is
12 created a duplication in numbering, reads as follows:

13 A. WORKERS' HEALTH AND SAFETY DIVISION.

14 1. The Workers' Compensation Commission shall establish a
15 Workers' Health and Safety Division, hereinafter referred to as the
16 "Division".

17 2. The Division shall collect and serve as a repository for
18 statistical information on workers' health and safety. As may be
19 deemed necessary by the Commission, and in cooperation with and with
20 the assistance of the Department of Labor, the Oklahoma Insurance
21 Department, the state-sponsored career and technology education
22 centers, also known as Career Tech, and the Department of
23 Rehabilitation Services, the Division shall analyze and use the
24 information to identify and assign priorities to safety needs and to

1 better coordinate the safety services provided by public or private
2 organizations, including insurance carriers. In cooperation with
3 and with the assistance of the Department of Labor and the Oklahoma
4 Insurance Department, the Division shall promote workers' health and
5 safety through educational programs and other innovative programs
6 developed by the Division.

7 3. In cooperation with and with the assistance of the
8 Department of Labor and the Oklahoma Insurance Department, the
9 Division shall coordinate or supervise the collection of information
10 relating to job safety.

11 4. The Chair of the Workers' Compensation Commission, the
12 Director of the Department of Labor, and the Insurance Commissioner
13 shall function as an advisory committee to resolve questions
14 regarding duplication of efforts, assignment of new programs and
15 other matters that need cooperation and coordination.

16 5. a. In cooperation with and with the assistance of the
17 Department of Labor and the Oklahoma Insurance
18 Department, the Division shall publish or procure and
19 issue educational books, pamphlets, brochures, films,
20 videotapes, and other informational and educational
21 material. Specific educational material shall be
22 directed to high-risk industries and jobs and shall
23 specifically address means and methods of avoiding
24 high-frequency but preventable workers' injuries.

1 Other educational material shall be directed to
2 business and industry generally, and shall
3 specifically address means and methods of avoiding
4 common workers' injuries.

5 b. Specific decisions as to what issues and problems
6 should be addressed by such information shall be made
7 by the Division in cooperation with and with the
8 assistance of the Department of Labor and the Oklahoma
9 Insurance Department and with Commission approval
10 after assigning appropriate priorities based on
11 frequency of injuries, degree of hazard, severity of
12 injuries, and similar considerations.

13 c. The educational materials shall include specific
14 references to the requirements of state and federal
15 laws and regulations, to recommendations and practices
16 of business, industry, and trade associations, and,
17 where needed, to recommended work practices based on
18 recommendations made by the Division, in cooperation
19 with and with the assistance of the Department of
20 Labor and the Oklahoma Insurance Department for the
21 prevention of injury.

22 6. In cooperation with, and with the assistance of, the
23 Department of Labor and the Oklahoma Insurance Department, the
24 Division shall cooperate with employers and employees to develop

1 means and methods of educating employees and employers with regard
2 to workplace safety.

3 7. In cooperation with and with the assistance of the
4 Department of Labor and the Oklahoma Insurance Department, the
5 Division shall encourage other entities to develop safety courses,
6 safety plans, and safety programs.

7 8. In cooperation with and with the assistance of the
8 Department of Labor and the Oklahoma Insurance Department, the
9 Division shall certify safe employers to provide peer review safety
10 programs.

11 9. In cooperation with and with the assistance of the
12 Department of Labor and the Oklahoma Insurance Department, the
13 Division shall advise insurance carrier loss-control service
14 organizations of hazard classifications, specific employers,
15 industries, occupations, or geographic regions to which loss-control
16 services should be directed, or of the identity and types of
17 injuries or occupational diseases for prevention of the same to
18 which loss-control services should be directed and shall advise
19 insurance carrier loss-control service organizations of safety needs
20 and priorities recommended by the Division in cooperation with and
21 with the assistance of the Department of Labor and the Oklahoma
22 Insurance Department.

23 B. JOB SAFETY INFORMATION SYSTEM.
24

1 1. In cooperation with and with the assistance of the
2 Department of Labor and the Oklahoma Insurance Department, the
3 Division shall establish and maintain a job safety information
4 system.

5 2. a. The job safety information system shall include a
6 comprehensive data base that incorporates all
7 pertinent information relating to each reported
8 injury.

9 b. The identity of the employee is confidential and may
10 not be disclosed as part of the job safety information
11 system.

12 3. Employers shall file with the Commission any reports as may
13 be necessary. The Commission shall promulgate rules and prescribe
14 the form and manner of the reports.

15 4. In cooperation with and with the assistance of the
16 Department of Labor and the Oklahoma Insurance Department, the
17 Division is authorized, empowered, and directed to obtain, from any
18 state agency, data and statistics, including those compiled for the
19 purpose of rate making.

20 5. The Division shall consult the Department of Labor and any
21 other affected state agencies in the design of data information and
22 retrieval systems that will accomplish the mutual purposes of those
23 agencies and of the Division.

24 C. EXTRA-HAZARDOUS EMPLOYER PROGRAM.

1 1. a. In cooperation with and with the assistance of the
2 Department of Labor and the Oklahoma Insurance
3 Department, the Division shall develop a program,
4 including injury frequency, to identify extra-
5 hazardous employers. The term "extra-hazardous
6 employer" includes an employer whose injury
7 frequencies substantially exceed those that may
8 reasonably be expected in the business or industry of
9 that employer, an employer whose experience modifier
10 is identified by the Commission as too high, and other
11 employers as may, following a public hearing, be
12 identified as extra-hazardous.

13 b. The Division shall notify each identified extra-
14 hazardous employer or the carrier for the employer
15 that the employer has been identified as an extra-
16 hazardous employer.

17 2. a. An employer who receives notification under
18 subparagraph b of paragraph 1 of this subsection must
19 obtain a safety consultation within thirty (30) days
20 from the Department of Labor, the insurance carrier of
21 the employer, or another professional source approved
22 by the Division for that purpose.

23 b. The safety consultant shall file a written report with
24 the Division and the employer setting out any

1 hazardous conditions or practices identified by the
2 safety consultation.

3 3. The employer and the consultant shall formulate a specific
4 accident prevention plan that addresses the hazards identified by
5 the consultant. The employer shall comply with the accident
6 prevention plan.

7 4. The Division may investigate accidents occurring at the work
8 sites of an employer for whom a plan has been formulated under
9 paragraph 3 of this subsection, and the Division may otherwise
10 monitor the implementation of the accident prevention plan as it
11 finds necessary.

12 5. a. Six (6) months after the formulation of an accident
13 prevention plan prescribed by paragraph 3 of this
14 subsection, the Division shall conduct a follow-up
15 inspection of the premises of the employer. The
16 Division may require the participation of the safety
17 consultant who performed the initial consultation and
18 formulated the safety plan.

19 b. If the Division determines that the employer has
20 complied with the terms of the accident prevention
21 plan or has implemented other acceptable corrective
22 measures, the Division shall so certify.

23 c. An employer who the Division determines has failed or
24 refused to implement the accident prevention plan or

1 other suitable hazard abatement measures is subject to
2 civil penalties as follows:

3 (1) the Commission may assess a civil penalty against
4 an employer who fails or refuses to implement the
5 accident prevention plan or other suitable hazard
6 abatement procedures in an amount up to One
7 Thousand Dollars (\$1,000.00) per day of violation
8 payable to the Death and Permanent Total
9 Disability Trust Fund, and

10 (2) the Commission may petition the Oklahoma County
11 district court, or the court of the county where
12 the business is located, for an order enjoining
13 the employer from engaging in further employment
14 until such time as the employer implements the
15 prevention plan or abatement measure described in
16 this subsection or makes payment of all civil
17 penalties.

18 6. If, at the time of the inspection required under
19 subparagraph a of paragraph 5 of this subsection, the employer
20 continues to exceed the injury frequencies that may reasonably be
21 expected in the business or industry of that employer, the Division
22 shall continue to monitor the safety conditions at the work site and
23 may formulate additional safety plans reasonably calculated to abate
24 hazards. The employer shall comply with the plans and may be

1 subject to additional penalties for failure to implement the plan or
2 plans.

3 7. An employer may request a hearing before the full Commission
4 to contest findings made by the Division under this section.

5 8. The identification as an extra-hazardous employer under this
6 section is not admissible in any judicial proceeding unless the
7 Commission has determined that the employer is not in compliance
8 with this section and unless that determination has not been
9 reversed or superseded at the time of the event giving rise to the
10 judicial proceeding.

11 D. ACCIDENT PREVENTION SERVICES.

12 1. Any insurance company licensed to provide casualty insurance
13 in the State of Oklahoma and desiring to write workers' compensation
14 insurance in Oklahoma shall maintain or provide accident prevention
15 services as a prerequisite to write workers' compensation insurance.
16 The services shall be adequate to furnish accident prevention
17 programs required by the nature of operations of the policyholder
18 and shall include surveys, recommendations, training programs,
19 consultations, analyses of accident causes, industrial hygiene, and
20 industrial health services to implement the program of accident
21 prevention services.

22 2. Notice that services are available to the policyholder from
23 the insurance company shall appear in no less than ten-point bold
24

1 type on the front of each workers' compensation insurance policy
2 delivered or issued for delivery in the state.

3 3. At least once each year, each insurance company writing
4 workers' compensation insurance in Oklahoma shall submit to the
5 Division detailed information on the type of accident prevention
6 services offered to the policyholders of that insurance company.
7 The information shall include any additional information required by
8 the Commission.

9 4. In cooperation with and with the assistance of the
10 Department of Labor and the Oklahoma Insurance Department, the
11 Division shall conduct inspections to determine the adequacy of the
12 accident prevention services required by paragraph 1 of this
13 subsection at least every two (2) years for each insurance company
14 writing workers' compensation insurance in Oklahoma.

15 5. If the insurance company does not maintain or provide the
16 accident prevention services required by this subsection, or if the
17 insurance company does not use the services in a reasonable manner
18 to prevent injury to employees of its policyholders, the insurance
19 company may be subjected to the same civil penalties as are
20 assessable and enforceable against employers as set forth in
21 subparagraph c of paragraph 5 of subsection C of this section and
22 shall be subject to suspension or revocation of license to do
23 business in this state by the Insurance Commissioner.

24

1 6. The Commission shall employ the qualified personnel
2 necessary to enforce this section.

3 E. IMMUNITY FROM CERTAIN LIABILITY.

4 1. Except as provided in paragraph 5 of subsection D of this
5 section, the insurance company, the agent, servant, or employee of
6 the insurance company or self-insured employer, or a safety
7 consultant who performs a safety consultation under this section
8 shall have no liability with respect to any accident based on the
9 allegation that the accident was caused or could have been prevented
10 by a program, inspection, or other activity or service undertaken by
11 the insurance company or self-insured employer for the prevention of
12 accidents in connection with operations of the employer.

13 2. Provided, however, this immunity shall not affect the
14 liability of the insurance carrier or self-insured employer for
15 compensation or as otherwise provided in this act.

16 F. EXCLUSIVE REMEDY. This section does not create an
17 independent cause of action at law or in equity.

18 SECTION 47. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 345 of Title 85, unless there is
20 created a duplication in numbering, reads as follows:

21 A. LIABILITY UNAFFECTED.

22 1. a. The making of a claim for compensation against any
23 employer or carrier for the injury or death of an
24 employee shall not affect the right of the employee,

1 or the dependents of the employee, to make a claim or
2 maintain an action in court against any third party
3 for the injury, but the employer or the insurance
4 carrier of the employer shall be entitled to
5 reasonable notice and opportunity to join in the
6 action.

7 b. If the employer or insurance carrier of the employer,
8 or both, join in the action, they shall be entitled to
9 a first lien upon two-thirds (2/3) of the net proceeds
10 recovered in the action that remain after the payment
11 of the reasonable costs of collection, for the payment
12 to them of the amount paid and to be paid by them as
13 compensation to the injured employee or the dependents
14 of the employee.

15 2. The commencement of an action by an employee, or the
16 dependents of the employee, against a third party for damages by
17 reason of an injury to which this act is applicable, or the
18 adjustment of any claim, shall not affect the rights of the injured
19 employee, or the dependents of the employee, to recover
20 compensation, but any amount recovered by the injured employee, or
21 the dependents of the employee, from a third party shall be applied
22 as follows:

23 a. reasonable costs of collection shall be deducted,
24

1 b. then, in every case, one-third (1/3) of the remainder
2 shall belong to the injured employee, or the
3 dependents of the employee, as the case may be,

4 c. the remainder, or so much as is necessary to discharge
5 the actual amount of the liability of the employer and
6 the carrier, shall belong to the employer or carrier,
7 and shall be distributed accordingly between those
8 entities, and

9 d. any excess shall belong to the injured employee or the
10 dependents of the employee.

11 B. SUBROGATION.

12 1. An employer or carrier liable for compensation under this
13 act for the injury or death of an employee shall have the right to
14 maintain an action in tort against any third party responsible for
15 the injury or death. However, the employer or the carrier must
16 notify the claimant in writing that the claimant has the right to
17 hire a private attorney to pursue any benefits to which the claimant
18 is entitled in addition to the subrogation interest against any
19 third party responsible for the injury or death.

20 2. After reasonable notice and opportunity to be represented in
21 the action has been given to the compensation beneficiary, the
22 liability of the third party to the compensation beneficiary shall
23 be determined in the action, as well as the liability of the third
24 party to the employer and carrier.

1 3. a. After recovery shall be had against the third party,
2 by legal action or otherwise, the compensation
3 beneficiary shall be entitled to any amount recovered
4 over and above the amount that the employer and
5 carrier have paid or are liable for in compensation,
6 after deducting reasonable costs of collection.

7 b. In no event shall the compensation beneficiary be
8 entitled to less than one-third (1/3) of the amount
9 recovered from the third party, after deducting the
10 reasonable cost of collection.

11 4. An employer or carrier who is liable for compensation under
12 this act on account of injury or death of an employee shall be
13 entitled to maintain a third-party action against the uninsured
14 motorist coverage or underinsured motorist coverage of the employer.

15 5. The purpose and intent of this subsection is to prevent
16 double payment to the employee.

17 C. SETTLEMENT OF CLAIMS.

18 1. Settlement of claims under subsections A and B of this
19 section must have the approval of the court or of the Commission,
20 except that the distribution of that portion of the settlement which
21 represents the compensation payable under this act must have the
22 approval of the Commission.

23 2. Where liability is admitted to the injured employee or the
24 dependents of the employee by the employer or carrier, the cost of

1 collection may be deducted from that portion of the settlement under
2 subsections A or B of this section representing compensation, upon
3 direction and approval of the Commission.

4 3. No party shall settle a claim under subsections A and B of
5 this section without first giving three (3) days' written notice to
6 all parties with an interest in the claim of the intent to settle.

7 4. Each party with an interest in a claim under subsections A
8 and B of this section shall cooperate with all other parties in
9 litigation or settlement of such claims.

10 D. INDEMNITY. Any permanent partial disability indemnity award
11 shall be placed in a designated escrow account which shall be used
12 for the purpose of future medical care of an injured worker or any
13 fees and costs associated with the vocational rehabilitation of the
14 injured worker.

15 SECTION 48. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 346 of Title 85, unless there is
17 created a duplication in numbering, reads as follows:

18 A. Any benefits payable to an injured worker under this act
19 shall be reduced in an amount equal to, dollar-for-dollar, the
20 amount of benefits the injured worker has previously received for
21 the same medical services or period of disability, whether those
22 benefits were paid under a group health care service plan, a group
23 disability policy, a group loss of income policy, a group accident,
24 health, or accident and health policy, a self-insured employee

1 health or welfare benefit plan, or a group hospital or medical
2 service contract.

3 B. The claimant shall be required to disclose in a manner to be
4 determined by the Workers' Compensation Commission the identity,
5 address, or phone number of any person or entity which has paid
6 benefits described in this section in connection with any claim
7 under this act.

8 C. 1. Prior to any final award or approval of a joint
9 petition, the claimant shall be required to furnish the respondent
10 with releases of all subrogation claims for the benefits described
11 in this section.

12 2. a. In the event that the claimant is unable to produce
13 releases required by this section, then the Commission
14 shall determine the amount of such potential
15 subrogation claims and shall direct the carrier or
16 self-insured employer to hold in reserve only the
17 specific sums determined by the Commission for a
18 period of five (5) years.

19 b. If, after the expiration of five (5) years, no release
20 or final court order is presented otherwise directing
21 the payment of the sums, then the carrier or self-
22 insured employer shall tender the sums to the Death
23 and Permanent Total Disability Trust Fund.

24

1 SECTION 49. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 347 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. 1. Compensation to the injured employee shall not be
5 allowed for the first seven (7) days of disability resulting from
6 injury, excluding the day of injury.

7 2. If a disability extends beyond that period, compensation
8 shall commence with the ninth day of disability.

9 3. If a disability extends for a period of two (2) weeks,
10 compensation shall be allowed beginning the first day of disability,
11 excluding the day of injury.

12 B. For compensation payable to an injured employee for
13 disability, other than permanent partial disability as specified in
14 subsection D of this section, and compensation payable to surviving
15 dependents of a deceased employee, the total disability rate shall
16 not exceed sixty-six and two-thirds percent (66 and 2/3%) of the
17 average weekly wage of the employee with a twenty-dollar-per-week
18 minimum, subject to the following maximums:

19 1. For a disability or death which results from an injury
20 occurring during a calendar year beginning on or after January 1,
21 2009, the maximum weekly benefit payable shall be seventy-five
22 percent (75%) of the state average weekly wage if, and only if, the
23 Insurance Commissioner certifies to the Workers' Compensation
24 Commission during December 2008, that the overall workers'

1 compensation insurance rates for Oklahoma have decreased by at least
2 ten percent (10%) subsequent to July 1, 2005; and

3 2. After January 1, 2009, the weekly benefit rate shall be
4 rounded to the nearest whole dollar. In explanation, if the actual
5 rate be a dollar amount plus forty-nine cents (49¢) or less, the
6 rate for compensation purposes shall be the next lower whole-dollar
7 amount, and, if the actual rate be a dollar amount plus fifty cents
8 (50¢) or more, then the rate for compensation purposes shall be the
9 next higher whole-dollar amount.

10 C. 1. Upon request of the respondent or carrier, the
11 commission shall review the claim and determine the necessity for
12 additional temporary total benefits after twenty (20) weeks or after
13 any thirteen-week interval after twenty (20) weeks and may, if
14 warranted by the preponderance of the evidence on the basis of the
15 record as a whole, extend the period of payment for temporary total
16 disability.

17 2. Any weekly benefit payments made after the Commission has
18 terminated temporary total benefits shall be classified as warranted
19 by the facts in the case and as otherwise provided for in this act.

20 D. 1. The permanent partial disability rate for compensation
21 payable to an employee for permanent partial disability which
22 results from an injury occurring on or after July 1, 2009, shall not
23 exceed sixty-six and two-thirds percent (66 and 2/3%) of the average
24 weekly wage of the employee, with a twenty-dollar-per-week minimum,

1 subject to a maximum of One Hundred Fifty-four Dollars (\$154.00).
2 However, if the total disability rate of the employee for the injury
3 would be Two Hundred Five Dollars and thirty-five cents (\$205.35)
4 per week or greater, then the maximum permanent partial disability
5 rate shall be seventy-five percent (75%) of the total disability
6 rate of the employee.

7 2. a. The permanent partial disability rate provided in this
8 section shall also apply to scheduled permanent
9 injuries except those resulting in amputation or
10 permanent total loss of use of a member.

11 b. The permanent partial disability rate for amputation
12 or permanent total loss of use of a member shall be
13 the same as the total disability rate of the employee
14 as specified in subsection B of this section, subject
15 to a maximum of eighty-five percent (85%) of the state
16 average weekly wage.

17 3. The provisions of this subsection shall apply only to those
18 injuries which occur on or after January 1, 2009.

19 E. Compensation payable to the dependents of a deceased
20 employee shall be in addition to the funeral allowance and those
21 benefits which were paid or to which the injured employee was
22 entitled in the lifetime of the employee under Sections 56 through
23 64 of this act and Sections 66 through 73 of this act.

24

1 SECTION 50. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 348 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. The benefits shall be paid for a period not to exceed four
5 hundred fifty (450) weeks of disability, except that this limitation
6 shall not apply in cases of permanent total disability or death.

7 B. 1. For injuries occurring on or after November 1, 2008, the
8 employer or its insurance carrier shall pay weekly benefits for
9 death or permanent total disability not to exceed three hundred
10 twenty-five (325) times the maximum total disability rate
11 established for the date of the injury under this act.

12 2. a. An employee or a dependent of an employee who receives
13 a total of Seventy-five Thousand Dollars (\$75,000.00)
14 in weekly benefits for injuries sustained on or before
15 November 1, 2008, shall be eligible to continue to
16 draw benefits at the rates prescribed in this act, but
17 all benefits in excess of Seventy-five Thousand
18 Dollars (\$75,000.00) shall be payable from the Death
19 and Permanent Total Disability Trust Fund.

20 b. An employee or a dependent of an employee who receives
21 the maximum amount specified in paragraph 1 of this
22 subsection shall be eligible to continue to draw
23 benefits at the rates prescribed by this act payable
24 from the Trust Fund.

1 3. The Trust Fund shall consist of such funds as may be
2 prescribed by law and shall be administered, invested, and disbursed
3 by the Workers' Compensation Commission.

4 4. Each employer or the insurance carrier of the employer in
5 each case of death of an employee where there are no dependents
6 shall pay into the Trust Fund the sum of Five Hundred Dollars
7 (\$500.00).

8 SECTION 51. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 349 of Title 85, unless there is
10 created a duplication in numbering, reads as follows:

11 A. 1. Notwithstanding any other definition of extra-hazardous
12 employer as provided by Section 46 of this act, any employer who
13 fails to utilize the consultative safety services available through
14 the Department of Labor, its own insurance carrier, or a private
15 safety consultant shall be identified as an extra-hazardous employer
16 if it is established by a preponderance of the evidence that an
17 injury or death is caused in substantial part by the failure of the
18 employer to comply with any Oklahoma statute or official regulation
19 pertaining to the health or safety of employees or failure to follow
20 safety consultant recommendations.

21 2. When so notified, the employer shall comply with the
22 provisions provided by Section 46 of this act.

23 B. Provided, if it is established by a preponderance of the
24 evidence that the employee is injured as a result of the violation

1 by the employee of the safety rules or instructions of the employer,
2 the provisions of this section shall not apply.

3 SECTION 52. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 350 of Title 85, unless there is
5 created a duplication in numbering, reads as follows:

6 A. Where an injury or death is sustained by a minor employed in
7 violation of federal or state statutes pertaining to minimum ages
8 for employment of minors, compensation or death benefits provided
9 for by this act shall be doubled.

10 B. However, the penalty shall not apply when the minor
11 misrepresents the minor's age, in writing, to the employer.

12 SECTION 53. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 351 of Title 85, unless there is
14 created a duplication in numbering, reads as follows:

15 A. 1. Any employer who without reasonable cause refuses to
16 return an employee who is injured in the course of employment to
17 work, where suitable employment is available within the physical and
18 mental limitations of the employee, upon order of the Workers'
19 Compensation Commission, and in addition to other benefits, shall be
20 liable to pay to the employee the difference between benefits
21 received and the average weekly wages lost during the period of the
22 refusal, for a period not exceeding one (1) year.

23 2. In determining the availability of employment, the
24 continuance in business of the employer shall be considered, and any

1 written rules promulgated by the employer with respect to seniority
2 or the provisions of any collective bargaining agreement with
3 respect to seniority shall control.

4 B. 1. In addition to benefits otherwise provided for by this
5 act, an employee who is entitled to receive compensation benefits
6 for permanent disability and who has not been offered an opportunity
7 to return to work or reemployment assistance shall be paid
8 reasonable expenses of travel and maintenance and other necessary
9 costs of a program of vocational rehabilitation if the Commission
10 finds that the program is reasonable in relation to the disability
11 sustained by the employee.

12 2. The responsibility of the employer for additional payments
13 shall not exceed seventy-two (72) weeks, regardless of the length of
14 the program requested.

15 3. The employee shall not be required to enter any program of
16 vocational rehabilitation against the consent of the employee;
17 however, no employee who waives rehabilitation or refuses to
18 participate in or cooperate for reasonable cause with either an
19 offered program of rehabilitation or job placement assistance shall
20 be entitled to permanent partial disability benefits in excess of
21 the percentage of permanent physical impairment established by
22 objective physical findings. If the employee waives rehabilitation
23 or refuses to participate in or cooperate with an offered program or
24 job placement assistance, then payments of benefits or awards shall

1 be placed in a designated escrow account which shall be used for the
2 purpose of future medical care.

3 4. A request for the program, if elected by the claimant, shall
4 be filed with the Commission prior to a determination of the amount
5 of permanent disability benefits payable to the employee.

6 C. If a request for the program is elected by the claimant,
7 mandatory vocational rehabilitation assessments shall be conducted
8 within four (4) weeks from the date of injury and every four (4)
9 weeks thereafter, as needed, for any case brought before the
10 Commission or its designees in the form of an administrative
11 hearing. The program shall commence as soon as reasonably
12 practicable, but not less than thirty (30) days after the vocational
13 rehabilitation assessment is completed, except in cases of permanent
14 total disability.

15 D. Mandatory vocational rehabilitation evaluations shall
16 include consideration of any preliminary medical prognosis or
17 diagnosis. If it is unlikely that the claimant will be able to
18 return to the prior job or occupation previously held by the
19 claimant, then the respondent shall present to the claimant no less
20 than two proposed occupational recovery plans.

21 E. This section shall not be construed as creating an exception
22 to the common law regarding employment at will.

23 F. The purpose and intent of this section is to place an
24 emphasis on returning the injured worker to work, while still

1 allowing and providing for vocational rehabilitation programs when
2 determined appropriate by the Commission.

3 SECTION 54. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 352 of Title 85, unless there is
5 created a duplication in numbering, reads as follows:

6 A. No compensation in any amount for temporary total, temporary
7 partial, or permanent total disability shall be payable to an
8 injured employee with respect to any week for which the injured
9 employee receives unemployment insurance benefits under the Oklahoma
10 Employment Security Law, or the unemployment insurance law of any
11 other state.

12 B. Provided, however, if a claim for temporary total disability
13 is controverted and later determined to be compensable, temporary
14 total disability shall be payable to an injured employee with
15 respect to any week for which the injured employee receives
16 unemployment benefits but only to the extent that the temporary
17 total disability otherwise payable exceeds the unemployment
18 benefits.

19 SECTION 55. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 353 of Title 85, unless there is
21 created a duplication in numbering, reads as follows:

22 A. For the fiscal year beginning July 1, 2009, the Workers'
23 Compensation Commission shall allocate One Hundred Thousand Dollars
24 (\$100,000.00) to a special project for the following purposes:

1 1. Identification of industries or jobs having a high incidence
2 of injuries;

3 2. Determination of the causes of injuries of which there is a
4 high incidence; and

5 3. The provision of educational or advisory services to
6 employers and employees designed to reduce the incidence of such
7 injuries.

8 B. It is the intent of this section to provide information and
9 other services to employers and employees which will improve
10 workplace safety in the State of Oklahoma.

11 C. For succeeding fiscal years, the Commission shall determine
12 to what extent the project should be funded.

13 SECTION 56. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 354 of Title 85, unless there is
15 created a duplication in numbering, reads as follows:

16 A. The employer shall promptly provide for an injured employee
17 such medical, surgical, hospital, chiropractic, optometric,
18 podiatric, and nursing services and medicine, crutches, ambulatory
19 devices, artificial limbs, eyeglasses, contact lenses, hearing aids,
20 and other apparatus as may be reasonably necessary in connection
21 with the injury received by the employee.

22 B. If the employer fails to provide the medical services
23 provided in subsection A of this section within a reasonable time
24 after knowledge of the injury, the Workers' Compensation Commission

1 may direct that the injured employee obtain the medical service at
2 the expense of the employer, and any emergency treatment afforded
3 the injured employee shall be at the expense of the employer. In no
4 circumstance may an employee, the family or dependents of the
5 employee, be billed or charged for any portion of the cost of
6 providing the benefits to which the employee is entitled under this
7 act.

8 C. If the Commission finds that the employer failed to provide
9 the medical services provided in subsection A of this section, the
10 Commission shall assess a fine against the employer, not to exceed
11 Five Thousand Dollars (\$5,000.00).

12 D. In order to help control the cost of medical benefits, the
13 Commission, on or before July 1, 2009, following a public hearing
14 and with the assistance and cooperation of the Oklahoma Insurance
15 Department, is authorized and directed to establish appropriate
16 rules and regulations to establish and implement a system of managed
17 health care for the State of Oklahoma.

18 E. For the purpose of establishing and implementing a system of
19 managed health care, the Commission is authorized to:

- 20 1. Develop rules and regulations for the certification of
21 managed care entities to provide managed care to injured workers;
- 22 2. Develop regulations for peer review, service utilization,
23 and resolution of medical disputes;

24

1 3. Prohibit "balance billing" from the employee, employer, or
2 carrier;

3 4. Establish fees for medical services. The Commission shall
4 make no distinction in approving fees from different classes of
5 medical service providers or health care providers for provision of
6 the same or essentially similar medical services or health care
7 services as defined in this act; and

8 5. a. Give the employer the right to choose the initial
9 treating physician, with the injured employee having
10 the right to petition the Commission for a one-time-
11 only change of physician to one who is associated with
12 a managed care entity certified by the Commission or
13 is the regular treating physician of the employee who
14 maintains the medical records of the employee and with
15 whom the employee has a bona fide doctor-patient
16 relationship demonstrated by a history of regular
17 treatment prior to the onset of the compensable
18 injury, but only if the primary care physician agrees
19 to refer the employee to a certified managed care
20 entity for any specialized treatment, including
21 physical therapy, and only if such primary care
22 physician agrees to comply with all the rules, terms,
23 and conditions regarding services performed by the
24 managed care entity initially chosen by the employer.

1 b. A petition for change of physician shall be expedited
2 by the commission.

3 F. The injured employee shall have direct access to any
4 optometric or ophthalmologic medical service provider who agrees to
5 provide services under the rules, terms, and conditions regarding
6 services performed by the managed care entity initially chosen by
7 the employer for the treatment and management of eye injuries or
8 conditions. Such optometric or ophthalmologic medical service
9 provider shall be considered a certified provider by the Commission.

10 G. The Commission is authorized to promulgate any other rules
11 or regulations as may be necessary to carry out the provisions of
12 this section and its purpose of controlling medical costs through
13 the establishment of a managed care system.

14 SECTION 57. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 355 of Title 85, unless there is
16 created a duplication in numbering, reads as follows:

17 The amounts payable or time periods allowable for authorized
18 medical, hospital, and other services and treatment furnished under
19 Sections 56 through 63 of this act, unless waived by the employer-
20 respondent or approved by the Workers' Compensation Commission and
21 warranted by the preponderance of the evidence on the basis of the
22 record as a whole, are:

23 1. Six (6) months if the claimant lost no compensable time from
24 work as a result of his or her injury;

1 2. Six (6) months following the return to work by an injured
2 employee who has been receiving authorized medical or hospital or
3 other services or treatment; and

4 3. Ten Thousand Dollars (\$10,000.00) aggregate for all
5 authorized medical, hospital, and other services and treatment,
6 including any amounts paid under subsections A and B of Section 56
7 of this act.

8 SECTION 58. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 356 of Title 85, unless there is
10 created a duplication in numbering, reads as follows:

11 The employer shall not be liable for any of the payments
12 provided for in Sections 56 through 63 of this act in the case of a
13 contest of liability where the Workers' Compensation Commission
14 shall decide that the injury does not come within the provisions of
15 this act.

16 SECTION 59. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 357 of Title 85, unless there is
18 created a duplication in numbering, reads as follows:

19 A. An injured employee claiming to be entitled to compensation
20 shall submit to such physical examination and treatment by another
21 qualified physician, designated or approved by the Workers'
22 Compensation Commission, as the Commission may require from time to
23 time if reasonable and necessary.

24

1 B. The places of examination and treatment shall be reasonably
2 convenient for the employee.

3 C. Such physician as the employee, employer, or insurance
4 carrier may select and pay for may participate in the examination if
5 the employee, employer, or insurance carrier so requests.

6 D. In cases where the Commission directs examination or
7 treatment, proceedings shall be suspended, and no compensation shall
8 be payable for any period during which the employee refuses to
9 submit to examination and treatment or otherwise obstructs the
10 examination or treatment.

11 E. Failure of the employee to obey the order of the Commission
12 in respect to examination or treatment for a period of one (1) year
13 from the date of suspension of compensation shall bar the right of
14 the claimant to further compensation in respect to the injury.

15 SECTION 60. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 358 of Title 85, unless there is
17 created a duplication in numbering, reads as follows:

18 Except in cases of hernia, which are specifically covered by
19 Section 70 of this act, where an injured person unreasonably refuses
20 to submit to a surgical operation which has been advised by at least
21 two qualified physicians and where the recommended operation does
22 not involve unreasonable risk of life or additional serious physical
23 impairment, the Workers' Compensation Commission, in fixing the
24

1 amount of compensation, may take into consideration such refusal to
2 submit to the advised operation.

3 SECTION 61. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 359 of Title 85, unless there is
5 created a duplication in numbering, reads as follows:

6 A. All persons who render services or provide things mentioned
7 in Sections 56 through 63 of this act shall submit the
8 reasonableness of the charges to the Workers' Compensation
9 Commission for its approval, and, when so approved, the charges
10 shall be enforceable by the Commission in the same manner as is
11 provided for the enforcement of compensation payments.

12 B. However, the provisions of this section relating to charges
13 shall not apply where a written contract exists between the employer
14 and the person who renders the service or furnishes the things.

15 SECTION 62. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 360 of Title 85, unless there is
17 created a duplication in numbering, reads as follows:

18 A. 1. If the employee selects a physician, the Workers'
19 Compensation Commission shall not authorize a change of physician
20 unless the employee first establishes to the satisfaction of the
21 Commission that there is a compelling reason or circumstance
22 justifying a change.

23 2. a. If the employer selects a physician, the claimant may
24 petition the Commission one time only for a change of

1 physician, and if the Commission approves the change
2 with or without a hearing, the Commission shall
3 determine the second physician and shall not be bound
4 by recommendations of claimant or respondent.

5 b. However, if the change desired by the claimant is to a
6 chiropractic physician, optometrist, or podiatrist,
7 the claimant may make the change by giving advance
8 written notification to the employer or carrier.

9 3. Following establishment of an Oklahoma managed care system
10 as provided in Section 56 of this act, paragraphs 1 and 2 of this
11 subsection shall become null and void, and thereafter:

12 a. (1) the employer shall have the right to select the
13 initial primary care physician from among those
14 associated with managed care entities certified
15 by the commission as provided in Section 56 of
16 this act,

17 (2) where the employer has contracted with a managed
18 care organization certified by the Commission,
19 the claimant employee, however, shall be allowed
20 to change physicians by petitioning the
21 commission one time only for a change of
22 physician to a physician who must either be
23 associated with the managed care entity chosen by
24 the employer or be the regular treating physician

1 of the employee who maintains the medical records
2 of the employee and with whom the employee has a
3 bona fide doctor-patient relationship
4 demonstrated by a history of regular treatment
5 prior to the onset of the compensable injury but
6 only if the primary care physician agrees to
7 refer the employee to the managed care entity
8 chosen by the employer for any specialized
9 treatment, including physical therapy, and only
10 if the primary care physician agrees to comply
11 with all the rules, terms, and conditions
12 regarding services performed by the managed care
13 entity chosen by the employer, and

14 (3) where the employer does not have a contract with
15 a managed care organization certified by the
16 Commission, the claimant employee, however, shall
17 be allowed to change physicians by petitioning
18 the commission one time only for a change of
19 physician, to a physician who must either be
20 associated with any managed care entity certified
21 by the Commission or be the regular treating
22 physician of the employee who maintains the
23 medical records of the employee and with whom the
24 employee has a bona fide doctor-patient

1 relationship demonstrated by a history of regular
2 treatment prior to the onset of the compensable
3 injury, but only if the primary care physician
4 agrees to refer the employee to a physician
5 associated with any managed care entity certified
6 by the Commission for any specialized treatment,
7 including physical therapy, and only if the
8 primary care physician agrees to comply with all
9 the rules, terms, and conditions regarding
10 services performed by any managed care entity
11 certified by the Commission.

12 b. A petition for change of physician shall be expedited
13 by the Commission.

14 B. Treatment or services furnished or prescribed by any
15 physician other than the ones selected according to the foregoing,
16 except emergency treatment, shall be at the expense of the claimant.

17 C. 1. After being notified of an injury, the employer or
18 insurance carrier shall deliver to the employee, in person or by
19 certified or registered mail, return receipt requested, a copy of a
20 notice, approved or prescribed by the Commission, which explains the
21 rights and responsibilities of the employee concerning change of
22 physician.

23 2. If, after notice of injury, the employee is not furnished a
24 copy of the notice, the change of physician rules do not apply.

1 3. Any unauthorized medical expense incurred after the employee
2 has received a copy of the notice shall not be the responsibility of
3 the employer.

4 D. A request for a hearing on a change of physician by either
5 the employer or the injured employee shall be given preference on
6 the docket of the Commission over all other matters.

7 E. Cooperation on the part of both the injured employee and the
8 employer in an effort to select another physician is encouraged.

9 F. When compensability is controverted, subsection B of this
10 section shall not apply if:

11 1. The employee requests medical assistance in writing prior to
12 seeking the same as a result of an alleged compensable injury;

13 2. The employer refuses to refer the employee to a medical
14 provider within forty-eight (48) hours after a written request as
15 provided above;

16 3. The alleged injury is later found to be a compensable
17 injury; and

18 4. The employer has not made a previous offer of medical
19 treatment.

20 G. The Commission shall by regulation require the inclusion of
21 the information set forth in subsection F of this section on all A-6
22 forms.

23 H. This section overrules *Conaghan v. Riverfield Country Day*
24 *School*, 2007 OK 60, 163 P.3d 557.

1 SECTION 63. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 361 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. 1. Every hospital or other person furnishing the injured
5 employee with medical services shall permit its records to be copied
6 by and shall furnish full written information to the Workers'
7 Compensation Commission, the Workers' Compensation Fraud
8 Investigation Unit, the employer, the carrier, and the employee or
9 the dependents of the employee.

10 2. The reasonable cost of copies shall be paid by the one
11 requesting them to the health care or medical service provider
12 furnishing them.

13 B. No person who in good faith pursuant to subsection A of this
14 section or pursuant to rules and regulations established by the
15 Commission reports medical information shall incur legal liability
16 for the disclosure of the information.

17 SECTION 64. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 362 of Title 85, unless there is
19 created a duplication in numbering, reads as follows:

20 The Workers' Compensation Commission is authorized to establish
21 rules and regulations, including schedules of maximum allowable fees
22 for specified medical services rendered with respect to compensable
23 injuries, for the purpose of controlling the cost of medical and
24

1 hospital services and supplies provided pursuant to Sections 56
2 through 63 of this act.

3 SECTION 65. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 363 of Title 85, unless there is
5 created a duplication in numbering, reads as follows:

6 A. 1. Compensation shall be computed on the average weekly
7 wage earned by the employee under the contract of hire in force at
8 the time of the accident and in no case shall be computed on less
9 than a full-time workweek in the employment.

10 2. Where the injured employee was working on a piece basis, the
11 average weekly wage shall be determined by dividing the earnings of
12 the employee by the number of hours required to earn the wages
13 during the period not to exceed fifty-two (52) weeks preceding the
14 week in which the accident occurred and by multiplying this hourly
15 wage by the number of hours in a full-time workweek in the
16 employment.

17 B. Overtime earnings are to be added to the regular weekly
18 wages and shall be computed by dividing the overtime earnings by the
19 number of weeks worked by the employee in the same employment under
20 the contract of hire in force at the time of the accident, not to
21 exceed a period of fifty-two (52) weeks preceding the accident.

22 C. If, because of exceptional circumstances, the average weekly
23 wage cannot be fairly and justly determined by the above formulas,
24

1 the Commission may determine the average weekly wage by a method
2 that is just and fair to all parties concerned.

3 SECTION 66. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 364 of Title 85, unless there is
5 created a duplication in numbering, reads as follows:

6 A. In case of total disability, there shall be paid to the
7 injured employee during the continuance of the total disability
8 sixty-six and two-thirds percent (66 and 2/3%) of the average weekly
9 wage of the employee.

10 B. In the absence of clear and convincing proof to the
11 contrary, the loss of both hands, both arms, or both eyes shall
12 constitute permanent total disability.

13 C. In all other cases, permanent total disability shall be
14 determined in accordance with the facts.

15 D. 1. No more often than annually, the carrier or self-insured
16 employer or the Death and Permanent Total Disability Trust Fund may
17 require an injured worker receiving permanent total disability
18 benefits to, as of the date thereof, certify on forms provided by
19 the Workers' Compensation Commission that the injured worker is
20 permanently and totally disabled and not gainfully employed.

21 2. Notice of the requirement shall be made by certified mail.

22 3. Failure of the employee to so certify within thirty (30)
23 days after receipt of the notice shall permit the discontinuance of
24 benefits without penalty until otherwise ordered by the Commission.

1 4. If the Commission finds that the claim of total disability
2 was made in bad faith by the employee, or if the employee made
3 misleading representations regarding disability benefits, the
4 Commission may assess a fine not to exceed Five Hundred Dollars
5 (\$500.00) against the employee. The assessed fine shall be deducted
6 from any final award to the employee.

7 E. 1. "Permanent total disability" means inability, because of
8 compensable injury or occupational disease, to earn any meaningful
9 wages in the same or other employment.

10 2. The burden of proof shall be on the employee to prove
11 inability to earn any meaningful wage in the same or other
12 employment.

13 F. In considering a claim for permanent disability, the
14 Commission and the courts shall not consider the odd-lot doctrine.

15 G. 1. a. The Commission, after a public hearing, shall adopt an
16 impairment rating guide to be used in the assessment
17 of anatomical impairment.

18 b. The guide shall not include pain as a basis for
19 impairment.

20 2. The impairment rating guide adopted by the Commission shall
21 be subject to review by the Legislature before April 1 of every odd-
22 numbered year beginning with the regular session of 2009.

1 SECTION 67. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 365 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 In case of temporary partial disability resulting in the
5 decrease of the average weekly wage of the injured employee, there
6 shall be paid to the employee sixty-six and two-thirds percent (66
7 and 2/3%) of the difference between the average weekly wage of the
8 employee prior to the accident and the wage-earning capacity of the
9 employee after the injury.

10 SECTION 68. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 366 of Title 85, unless there is
12 created a duplication in numbering, reads as follows:

13 A. An employee who sustains a permanent compensable injury
14 scheduled in this section shall receive, in addition to compensation
15 for temporary total and temporary partial benefits during the
16 healing period or until the employee returns to work, whichever
17 occurs first, weekly benefits in the amount of the permanent partial
18 disability rate attributable to the injury, for that period of time
19 set out in the following schedule:

20 1. Arm amputated at the elbow, or between the elbow and
21 shoulder, two hundred forty-four (244) weeks;

22 2. Arm amputated between the elbow and wrist, one hundred
23 eighty-three (183) weeks;

24

- 1 3. Leg amputated at the knee, or between the knee and the hip,
2 one hundred eighty-four (184) weeks;
- 3 4. Leg amputated between the knee and the ankle, one hundred
4 thirty-one (131) weeks;
- 5 5. Hand amputated, one hundred eighty-three (183) weeks;
- 6 6. Thumb amputated, seventy-three (73) weeks;
- 7 7. First finger amputated, forty-three (43) weeks;
- 8 8. Second finger amputated, thirty-seven (37) weeks;
- 9 9. Third finger amputated, twenty-four (24) weeks;
- 10 10. Fourth finger amputated, nineteen (19) weeks;
- 11 11. Foot amputated, one hundred thirty-one (131) weeks;
- 12 12. Great toe amputated, thirty-two (32) weeks;
- 13 13. Toe other than great toe amputated, eleven (11) weeks;
- 14 14. Eye enucleated, in which there was useful vision, one
15 hundred five (105) weeks;
- 16 15. Loss of hearing of one ear, forty-two (42) weeks;
- 17 16. Loss of hearing of both ears, one hundred fifty-eight (158)
18 weeks;
- 19 17. Loss of one testicle, fifty-three (53) weeks; loss of both
20 testicles, one hundred fifty-eight (158) weeks; and
- 21 18. Soft tissue injury, eight (8) weeks, with one possible
22 extension, not to exceed sixteen (16) additional weeks. This
23 paragraph overrules *Curling v. City Chevrolet*, 2007 OK CIV APP 63,
24 164 P.3d 1141, *Gee v. All 4 Kids, Inc.*, 2006 OK CIV APP 155, 149

1 P.3d 1106, Sysco Food Services of Oklahoma LLC v. Cunningham, 2007
2 OK CIV APP 52, 162 P.3d 973, and Urrutia v. Wendy's Old Fashioned
3 Hamburgers, 2007 OK CIV APP 104, 171 P.3d 915.

4 B. 1. Compensation for amputation of the first phalange shall
5 be one-half (1/2) of the compensation for the amputation of the
6 entire digit.

7 2. Compensation for amputation of more than one phalange of a
8 digit shall be the same as for amputation of the entire digit.

9 C. 1. Compensation for the permanent loss of eighty percent
10 (80%) or more of the vision of an eye shall be the same as for the
11 loss of an eye.

12 2. In all cases of permanent loss of vision, the use of
13 corrective lenses may be taken into consideration in evaluating the
14 extent of loss of vision.

15 D. Compensation for amputation or loss of use of two or more
16 digits or one or more phalanges of two or more digits of a hand or a
17 foot may be proportioned to the total loss of use of the hand or the
18 foot occasioned thereby but shall not exceed the compensation for
19 total loss of a hand or a foot.

20 E. Compensation for permanent total loss of use of a member
21 shall be the same as for amputation of the member.

22 F. Compensation for permanent partial loss or loss of use of a
23 member shall be for the proportionate loss or loss of use of the
24 member.

1 G. Any employee suffering a scheduled injury shall not be
2 entitled to permanent partial disability benefits in excess of the
3 percentage of permanent physical impairment set forth above except
4 as otherwise provided in subsection B of Section 66 of this act.

5 H. 1. a. The Workers' Compensation Commission, after a public
6 hearing, shall adopt an impairment rating guide to be
7 used in the assessment of anatomical impairment.

8 b. The guide shall not include pain as a basis for
9 impairment.

10 2. The impairment rating guide adopted by the Commission shall
11 be subject to review by the Legislature before April 1 of every odd-
12 numbered year beginning with the regular session of 2009.

13 SECTION 69. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 367 of Title 85, unless there is
15 created a duplication in numbering, reads as follows:

16 A. A permanent partial disability not scheduled in Section 68
17 of this act shall be apportioned to the body as a whole, which shall
18 have a value of two hundred sixty (260) weeks, and there shall be
19 paid compensation to the injured employee for the proportionate loss
20 of use of the body as a whole resulting from the injury.

21 B. 1. In considering claims for permanent partial disability
22 benefits in excess of the percentage of permanent physical
23 impairment of the employee, the Workers' Compensation Commission may
24 take into account, in addition to the percentage of permanent

1 physical impairment, factors such as the age of the employee,
2 education, work experience, and other matters reasonably expected to
3 affect the future earning capacity of the employee.

4 2. However, so long as an employee, subsequent to the injury of
5 the employee, has returned to work, has obtained other employment,
6 or has a bona fide and reasonably obtainable offer to be employed at
7 wages equal to or greater than the average weekly wage of the
8 employee at the time of the accident, the employee shall not be
9 entitled to permanent partial disability benefits in excess of the
10 percentage of permanent physical impairment established by a
11 preponderance of the medical testimony and evidence.

12 C. 1. The employer or the workers' compensation insurance
13 carrier of the employer shall have the burden of proving the
14 employment of the employee, or the receipt of a bona fide offer by
15 the employee to be employed, at wages equal to or greater than the
16 average weekly wage of the employee at the time of the accident.

17 2. Included in the stated intent of this section is to enable
18 an employer to reduce or diminish payments of benefits for a
19 functional disability, disability in excess of permanent physical
20 impairment, which, in fact, no longer exists, or exists because of
21 discharge for misconduct in connection with the work, or because the
22 employee left work voluntarily and without good cause connected with
23 the work.

24

1 D. In accordance with this section, the Commission may
2 reconsider the question of functional disability and change a
3 previously awarded disability rating based on facts occurring since
4 the original disability determination if any party makes application
5 for reconsideration within one (1) year after the occurrence of the
6 facts.

7 E. In considering a claim for permanent disability, the
8 commission and the courts shall not consider the odd-lot doctrine.

9 F. 1. Permanent total disability benefits shall be paid during
10 the period of permanent total disability until the employee reaches
11 the age of sixty-five (65); provided, with respect to permanent
12 total disabilities resulting from injuries which occur after age
13 sixty (60), regardless of the age of the employee, permanent total
14 disability benefits are payable for a period of two hundred sixty
15 (260) weeks.

16 2. The purpose and intent of this subsection is to prohibit
17 workers' compensation from becoming a retirement supplement.

18 G. 1. a. The Commission, after a public hearing, shall adopt an
19 impairment rating guide to be used in the assessment
20 of anatomical impairment.

21 b. The guide shall not include pain as a basis for
22 impairment.

23

24

1 2. The impairment rating guide adopted by the Commission shall
2 be subject to review by the Legislature before April 1 of every odd-
3 numbered year beginning with the regular session of 2009.

4 SECTION 70. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 368 of Title 85, unless there is
6 created a duplication in numbering, reads as follows:

7 A. In all cases of claims for hernia, it shall be shown to the
8 satisfaction of the Workers' Compensation Commission:

9 1. That the occurrence of the hernia immediately followed as
10 the result of sudden effort, severe strain, or the application of
11 force directly to the abdominal wall;

12 2. That there was severe pain in the hernial region;

13 3. That the pain caused the employee to cease work immediately;

14 4. That notice of the occurrence was given to the employer
15 within forty-eight (48) hours thereafter; and

16 5. That the physical distress following the occurrence of the
17 hernia was such as to require the attendance of a licensed physician
18 within seventy-two (72) hours after the occurrence.

19 B. 1. In every case of hernia, it shall be the duty of the
20 employer to provide the necessary and proper medical, surgical, and
21 hospital care and attention to effectuate a cure by radical
22 operation of the hernia, to pay all reasonable expenses in
23 connection with the care, and, in addition, to pay compensation not
24 exceeding a period of twenty-six (26) weeks.

1 2. In case the employee shall refuse to permit the operation,
2 it shall be the duty of the employer to provide all necessary first
3 aid, medical and hospital care and service, to supply the proper and
4 necessary truss or other mechanical appliance to enable the employee
5 to resume work, to pay all reasonable expenses in connection with
6 the care, and, in addition, to pay compensation not exceeding a
7 period of thirteen (13) weeks.

8 C. In case death results within a period of one (1) year,
9 either from the hernia or from the radical operation thereof,
10 compensation shall be paid to the dependents of the employee as
11 provided in other death cases under this act.

12 D. Recurrence of the hernia following radical operation thereof
13 shall be considered a separate hernia, and the provisions and
14 limitations regarding the original hernia shall apply.

15 SECTION 71. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 369 of Title 85, unless there is
17 created a duplication in numbering, reads as follows:

18 A. The Workers' Compensation Commission shall award
19 compensation for serious and permanent facial or head disfigurement
20 in a sum not to exceed Three Thousand Five Hundred Dollars
21 (\$3,500.00).

22 B. No award for disfigurement shall be entered until twelve
23 (12) months after the injury.

24

1 SECTION 72. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 370 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. 1. The Second Injury Trust Fund established in this act is
5 a special fund designed to ensure that an employer employing a
6 worker with a disability will not, in the event that the worker
7 suffers an injury on the job, be held liable for a greater
8 disability or impairment than actually occurred while the worker was
9 in employment.

10 2. The employee is to be fully protected in that the fund pays
11 the worker the difference between the liability of the employer and
12 the balance of the disability or impairment suffered by the employee
13 that results from all disabilities or impairments combined.

14 3. It is intended that latent conditions that are not known to
15 the employee or employer not be considered previous disabilities or
16 impairments which would give rise to a claim against the fund.

17 B. 1. Commencing November 1, 2008, all cases of permanent
18 disability or impairment in which there has been previous disability
19 or impairment shall be compensated as provided in this section.

20 2. Compensation shall be computed on the basis of the average
21 earnings at the time of the last injury.

22 3. If any employee who has a permanent partial disability or
23 impairment, whether from compensable injury or otherwise, receives a
24 subsequent compensable injury resulting in additional permanent

1 partial disability or impairment so that the degree or percentage of
2 disability or impairment caused by the combined disabilities or
3 impairments is greater than that which would have resulted from the
4 last injury, considered alone and of itself, and if the employee is
5 entitled to receive compensation on the basis of combined
6 disabilities or impairments, then the employer at the time of the
7 last injury shall be liable only for the degree or percentage of
8 disability or impairment that would have resulted from the last
9 injury had there been no preexisting disability or impairment.

10 4. After the compensation liability of the employer for the
11 last injury, considered alone, which shall be no greater than the
12 actual anatomical impairment resulting from the last injury, has
13 been determined by an administrative law judge or the Workers'
14 Compensation Commission, the degree or percentage of disability of
15 the employee that is attributable to all injuries or conditions
16 existing at the time the last injury was sustained shall then be
17 determined by the administrative law judge or the Commission, and
18 the degree or percentage of disability or impairment that existed
19 prior to the last injury plus the disability or impairment resulting
20 from the combined disability shall be determined, and compensation
21 for that balance, if any, shall be paid out of the Second Injury
22 Trust Fund provided for in Section 31 of this act.

23 5. If the previous disability or impairment, whether from
24 compensable injury or otherwise, and the last injury together result

1 in permanent total disability, the employer at the time of the last
2 injury shall be liable only for the actual anatomical impairment
3 resulting from the last injury considered alone and of itself.
4 However, if the compensation for which the employer at the time of
5 the last injury is liable is less than the compensation provided in
6 Sections 49 through 54 of this act for permanent total disability,
7 then, in addition to the compensation for which the employer is
8 liable and after the completion of payment of compensation by the
9 employer, the employee shall be paid the remainder of the
10 compensation that would be due for permanent total disability under
11 Sections 49 through 54 of this act out of the fund. The remainder
12 of the compensation paid to the employee shall be used for the
13 purpose of future medical care or for any fees and costs associated
14 with the vocational rehabilitation of the employee.

15 6. The State Treasurer shall be the custodian of the fund, and
16 any interest accruing shall be added to the fund.

17 7. The Commission shall direct the distribution of the funds
18 from the fund.

19 C. 1. In all cases in which a recovery against the fund is
20 sought for permanent partial disability or for permanent total
21 disability, the State Treasurer as custodian shall be named as a
22 party and shall be entitled to defend against the claim.

23

24

1 2. The State Treasurer, with the advice and consent of the
2 Attorney General, may enter into settlements as contemplated by
3 Sections 101 and 102 of this act.

4 3. All awards for permanent partial disability or for permanent
5 total disability affecting the fund shall be subject to the
6 provisions of this act, governing review and appeal.

7 D. 1. If more than one injury in the same employment causes
8 concurrent temporary disabilities, weekly benefits shall be payable
9 only for the longest and largest-paying disability.

10 2. If more than one injury in the same employment causes
11 concurrent and consecutive permanent partial disability, weekly
12 benefits for each subsequent disability shall not begin until the
13 end of the compensation period for the prior disability.

14 SECTION 73. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 371 of Title 85, unless there is
16 created a duplication in numbering, reads as follows:

17 If any injured employee refuses employment suitable to the
18 capacity of the employee, offered to or procured for the employee,
19 the employee shall not be entitled to any compensation during the
20 continuance of the refusal, unless in the opinion of the Workers'
21 Compensation Commission, the refusal is justifiable.

22 SECTION 74. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 372 of Title 85, unless there is
24 created a duplication in numbering, reads as follows:

1 A. FUNERAL EXPENSES. If death results from an injury occurring
2 on or after November 1, 2008, the employer shall pay the actual
3 funeral expenses, not exceeding the sum of Six Thousand Dollars
4 (\$6,000.00).

5 B. TIME OF DEATH. If death does not result within one (1) year
6 from the date of the accident or within the first three (3) years of
7 the period for compensation payments fixed by the compensation
8 order, a rebuttable presumption shall arise that the death did not
9 result from the injury.

10 C. BENEFICIARIES - AMOUNTS. Subject to the limitations as set
11 out in Sections 49 through 54 of this act, compensation for the
12 death of an employee shall be paid to those persons who were wholly
13 and actually dependent upon the deceased employee in the following
14 percentage of the average weekly wage of the employee and in the
15 following order of preference:

16 1. a. (1) To the widow if there is no child, thirty-five
17 percent (35%), and the compensation shall be paid
18 until her death or remarriage.

19 (2) However, the widow shall establish, in fact, some
20 dependency upon the deceased employee before she
21 will be entitled to benefits as provided in this
22 section, and

23
24

1 b. (1) To the widower if there is no child, thirty-five
2 percent (35%), and the compensation shall be paid
3 until his death or remarriage.

4 (2) However, the widower shall establish, in fact,
5 some dependency upon the deceased employee before
6 he will be entitled to benefits as provided in
7 this section;

8 2. To the widow or widower if there is a child, the
9 compensation payable under paragraph 1 of this subsection and
10 fifteen percent (15%) on account of each child;

11 3. a. To one child if there is no widow or widower, fifty
12 percent (50%), and

13 b. If more than one child, and there is no widow or
14 widower, fifteen percent (15%) for each child, and in
15 addition thereto, thirty-five percent (35%) to the
16 children as a class, to be divided equally among them;

17 4. To the parents, twenty-five percent (25%) each; and

18 5. To brothers, sisters, grandchildren, and grandparents,
19 fifteen percent (15%) each.

20 D. TERMINATIONS OF DEPENDENCE.

21 1. In the event the widow or widower remarries or cohabits with
22 a member of the opposite gender in a relationship resembling a
23 marriage before full and complete payment to the widow or widower of
24 the benefits provided in subsection C of this section, there shall

1 be paid a lump sum equal to compensation for fifty-two (52) weeks,
2 subject to the limitation set out in Sections 49 through 54 of this
3 act.

4 2. A physically or mentally incapacitated child, grandchild,
5 brother, or sister shall be entitled to compensation as a dependent
6 of the deceased employee without regard to age or marital status,
7 but if physically or mentally capacitated to earn a livelihood,
8 dependency shall terminate with the attainment of eighteen (18)
9 years of age or upon marriage. However, benefits to an otherwise
10 eligible child shall not terminate at the age of eighteen (18) years
11 provided the child is a full-time student who has not attained the
12 age of twenty-five (25) years.

13 E. APPORTIONMENT OF BENEFITS. Where, because of the limitation
14 in subsection C of this section, a person or class of persons cannot
15 receive the percentage of compensation specified as payable to or on
16 account of the person or class, there shall be available to the
17 person or class that proportion of the percentage which, when added
18 to the total percentage payable to all persons having priority or
19 preference, will not exceed a total of sixty-five percent (65%),
20 which proportion shall be paid:

21 1. To that person; or

22 2. To that class in equal shares unless the Worker's

23 Compensation Commission determines otherwise in accordance with the
24 provisions of subsection F of this section.

1 F. DETERMINATION OF BENEFICIARIES WITHIN CLASS. If the
2 Commission determines that payments in accordance with paragraph 2
3 of subsection E of this section would provide no substantial benefit
4 to any person of the class, it may provide for the payment of the
5 compensation to the persons within the class whom it considers will
6 be most benefited by the payment.

7 G. CESSATION OF COMPENSATION TO PART. Upon the cessation of
8 compensation under this section to or on account of any person, the
9 compensation of the remaining persons entitled to compensation for
10 the unexpired part of the period during which compensation is
11 payable shall be that which the persons would have received if they
12 had been the only persons entitled to compensation at the time of
13 the death of the decedent.

14 H. DETERMINATION OF DEPENDENCY. All questions of dependency
15 shall be determined as of the time of the injury.

16 I. PARTIAL DEPENDENCY.

17 1. If the employee leaves dependents that are only partially
18 dependent upon the earnings of the employee for support at the time
19 of injury, the compensation payable for partial dependency shall be
20 in the proportion that the partial dependency bears to total
21 dependency.

22 2. In any claim for partial dependency where the average weekly
23 contributions for support were not such as to entitle all dependents
24 to compensation in the aggregate sum of Seven Dollars (\$7.00) per

1 week, the dependents shall receive compensation for a period not to
2 exceed two hundred sixty (260) weeks in an amount not to exceed the
3 amount of average weekly contributions of the deceased employee for
4 the support of the dependents.

5 SECTION 75. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 373 of Title 85, unless there is
7 created a duplication in numbering, reads as follows:

8 A. Every employer shall keep a record with respect to any
9 injury to an employee.

10 B. The record shall contain such information of disability or
11 death with respect to the injury as the Workers' Compensation
12 Commission may by rule or regulation require.

13 C. The record shall be available for inspection by the
14 Commission or by any state authority at such time and under
15 conditions as the Commission may prescribe by rule.

16 SECTION 76. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 374 of Title 85, unless there is
18 created a duplication in numbering, reads as follows:

19 A. Within ten (10) days after the date of receipt of notice or
20 of knowledge of injury or death, the employer shall send to the
21 Workers' Compensation Commission a report setting forth:

- 22 1. The name, address, and business of the employer;
- 23 2. The name, address, and occupation of the employee;
- 24 3. The cause and nature of the injury or death;

1 4. The year, month, day, and hour when, and the particular
2 locality where, the injury or death occurred; and

3 5. Such other information as the Commission may require.

4 B. Additional reports with respect to the injury and of the
5 condition of the employee shall be sent by the employer to the
6 Commission at the time and in the manner as the Commission may
7 prescribe.

8 C. Any report provided for in subsection A or B of this section
9 shall not be evidence of any fact stated in the report in any
10 proceeding with respect to the injury or death on account of which
11 the report is made.

12 D. 1. The mailing of any report in a stamped envelope,
13 properly addressed, within the time prescribed in subsection A or B
14 of this section, shall be in compliance with this section.

15 2. The report required in subsection A or B of this section may
16 be submitted electronically within the time prescribed in subsection
17 A or B of this section in lieu of mailing the report.

18 E. 1. Any employer who after notice refuses to send any report
19 required of it by this section shall be subject to a civil penalty
20 in an amount up to Five Hundred Dollars (\$500.00) for each refusal.

21 2. Whenever the employer has failed or refused to comply as
22 provided in this section, the Commission may serve upon the employer
23 a proposed order declaring the employer to be in violation of this
24

1 act and containing the amount, if any, of the civil penalty to be
2 assessed against the employer pursuant to this section.

3 F. 1. An employer may contest a proposed order of the
4 Commission issued pursuant to subsection E of this section by filing
5 with the Commission, within twenty (20) days of receipt of the
6 proposed order, a written request for a hearing.

7 2. If a written request for hearing is not filed with the
8 Commission within this time, the proposed order, proposed penalty,
9 or both, shall be a final order of the Commission.

10 3. The request for a hearing need not be in any particular
11 form, but shall specify the grounds upon which the person contests
12 the proposed order, the proposed assessment, or both.

13 4. A proposed order by the Commission pursuant to this section
14 is prima facie correct, and the burden is upon the employer to prove
15 that the proposed order is incorrect.

16 G. Hearings conducted under this section shall proceed as
17 provided in Sections 84 through 91 of this act.

18 H. If an employer fails to pay any civil penalty assessed
19 against the employer after an order issued pursuant to this section
20 has become final by operation of law, the Commission may petition
21 the district court of the county where the principal place of
22 business of the employer is located for an order enjoining the
23 employer from engaging in further employment or conduct of business
24

1 or until the time as the employer makes all required reports and
2 pays all civil penalties.

3 SECTION 77. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 375 of Title 85, unless there is
5 created a duplication in numbering, reads as follows:

6 Implementation of Workers' Compensation Commission rules
7 relating to managed care shall be voluntary for all employers.

8 SECTION 78. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 376 of Title 85, unless there is
10 created a duplication in numbering, reads as follows:

11 A. Where an employee suffers from an occupational disease as
12 defined in this section and Sections 79 and 80 of this act, and is
13 disabled or dies as a result of the disease and where the disease
14 was due to the nature of the occupation or process in which the
15 employee was employed within the period previous to disablement as
16 limited in subsection G of this section, then the employee, or, in
17 case of death, the dependents of the employee, shall be entitled to
18 compensation as if the disablement or death were caused by injury,
19 except as otherwise provided in this section and Sections 79 and 80
20 of this act.

21 B. No compensation shall be payable for an occupational disease
22 if the employee, at the time of entering into the employment of the
23 employer by whom the compensation would otherwise be payable,
24 falsely represented in writing as not having previously been

1 disabled, laid off, or compensated in damages or otherwise, because
2 of the disease.

3 C. Where an occupational disease is aggravated by any other
4 disease or infirmity, not itself compensable, or where disability or
5 death from any other cause, not itself compensable, is aggravated,
6 prolonged, accelerated, or in any way contributed to by an
7 occupational disease, the compensation payable shall be reduced and
8 limited to the proportion only of the compensation that would be
9 payable if the occupational disease were the sole cause of the
10 disability or death as the occupational disease, as a causative
11 factor, bears to all the causes of the disability or death.

12 D. No compensation for death from an occupational disease shall
13 be payable to any person whose relationship to the deceased which,
14 under the provisions of this act, would give right to compensation,
15 arose subsequent to the beginning of the first compensable
16 disability except to a child or children of a marriage born after
17 the death and existing at the beginning of the disability.

18 E. 1. a. "Occupational disease", as used in this act, unless
19 the context otherwise requires, means any disease that
20 results in disability or death and arises out of and
21 in the course of the occupation or employment of the
22 employee or naturally follows or unavoidably results
23 from an injury as that term is defined in this act.

24

1 b. However, a causal connection between the occupation or
2 employment and the occupational disease must be
3 established by a preponderance of the evidence.

4 2. No compensation shall be payable for any contagious or
5 infectious disease unless contracted in the course of employment in
6 or immediate connection with a hospital or sanatorium in which
7 persons suffering from that disease are cared for or treated.

8 3. No compensation shall be payable for any ordinary disease of
9 life to which the general public is exposed.

10 F. 1. Where compensation is payable for an occupational
11 disease, the employer in whose employment the employee was last
12 injuriously exposed to the hazards of the disease and the carrier,
13 if any, on the risk when the employee was last injuriously exposed
14 under the employer shall be liable.

15 2. The amount of the compensation shall be based upon the
16 average weekly wage of the employee when last injuriously exposed
17 under the employment, and the notice of injury and claim for
18 compensation, as required pursuant to this section and Sections 79
19 and 80 of this act, shall be given and made to the employer.

20 G. 1. An employer shall not be liable for any compensation for
21 an occupational disease unless:

22 a. the disease is due to the nature of an employment in
23 which the hazards of the disease actually exist and
24 are characteristic thereof and peculiar to the trade,

1 occupation, process, or employment and is actually
2 incurred in the employment of the employee. This
3 includes any disease due to or attributable to
4 exposure to or contact with any radioactive material
5 by an employee in the course of employment,

6 b. disablement or death results within three (3) years in
7 case of silicosis or asbestosis, or one (1) year in
8 case of any other occupational disease, except a
9 diseased condition caused by exposure to X rays,
10 radioactive substances, or ionizing radiation, after
11 the last injurious exposure to the disease in the
12 employment, or

13 c. in case of death, death follows continuous disability
14 from the disease, commencing within the period above
15 limited, for which compensation has been paid or
16 awarded or timely claim made as provided in this
17 section and Sections 79 and 80 of this act and results
18 within seven (7) years after the last exposure.

19 2. However, in case of a diseased condition caused by exposure
20 to X rays, radioactive substances, or ionizing radiation only, the
21 limitations expressed do not apply.

22 SECTION 79. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 377 of Title 85, unless there is
24 created a duplication in numbering, reads as follows:

1 A. As used in this section and Sections 78 and 80 of this act,
2 unless the context otherwise requires:

3 1. "Asbestosis" means the characteristic fibrotic condition of
4 the lungs caused by the inhalation of asbestos dust; and

5 2. "Silicosis" means the characteristic fibrotic condition of
6 the lungs caused by the inhalation of silica dust.

7 B. In the absence of conclusive evidence in favor of the claim,
8 disability or death from silicosis or asbestosis shall be presumed
9 not to be due to the nature of any occupation within the provision
10 of this section and Sections 78 and 80 of this act unless during the
11 ten (10) years immediately preceding the date of disablement the
12 employee has been exposed to the inhalation of silica dust or
13 asbestos dust over a period of not less than five (5) years, two (2)
14 years of which shall have been in this state, under a contract of
15 employment existing in this state. However, if the employee has
16 been employed by the same employer during the whole of the five-year
17 period, the right to compensation against the employer shall not be
18 affected by the fact that the employee had been employed during any
19 part of the period outside of this state.

20 C. Except as provided in this section and Sections 78 and 80 of
21 this act, compensation for disability from uncomplicated silicosis
22 or asbestosis shall be payable in accordance with the provisions of
23 Sections 66 through 73 of this act. However, no compensation shall
24 be payable for disability from silicosis or asbestosis of less than

1 thirty-three and one-third percent (33 and 1/3%) of the total
2 disability.

3 D. 1. In case of disability or death from silicosis or
4 asbestosis complicated with tuberculosis of the lungs, compensation
5 shall be payable as for uncomplicated silicosis or asbestosis,
6 provided that the silicosis or asbestosis was an essential factor in
7 the causing of disability or death.

8 2. In case of disability or death from silicosis or asbestosis
9 complicated with any other disease, or from any other disease
10 complicated with silicosis or asbestosis, the compensation shall be
11 reduced as provided in subsection C of Section 78 of this act.

12 E. 1. a. (1) Where an employee, though not actually disabled,
13 is found by the Workers' Compensation Commission
14 to be affected by silicosis or asbestosis to such
15 a degree as to make it unduly hazardous for the
16 employee to continue in an employment involving
17 exposure to the hazards of the disease, the
18 Commission may order that the employee be removed
19 from employment. In such a case, or in case the
20 employee has already been discharged from the
21 employment and is unemployed, the employee shall
22 be entitled to compensation until the employee
23 can obtain steady employment in some other

24

1 suitable occupation in which there are no hazards
2 of the disease.

3 (2) However, the compensation shall in no case be
4 payable for longer than twenty-six (26) weeks
5 immediately following the date of removal or
6 discharge and unless application for compensation
7 is made within the period.

8 b. In case the employee obtains other suitable employment
9 at reduced wages, the payments of compensation during
10 such part of the twenty-six-week period as the
11 employee is so employed shall be at the rate
12 prescribed in Section 67 of this act.

13 2. a. When in any case the forced change of employment
14 shall, in the opinion of the Commission, require that
15 the employee be given special training in order to fit
16 the employee for another occupation, the employer
17 liable for compensation shall pay for the training and
18 incidental traveling expenses.

19 b. The payment shall be made for the benefit of the
20 employee to the person as the Commission shall direct.

21 c. No payment, however, shall be made unless the employee
22 accepts the special training directed by the
23 Commission, nor shall payment be made for a longer
24 period than the employee submits to the training.

1 3. If an employee has been compensated, whether specially
2 trained or not, and thereafter engages in any occupation which
3 exposes the employee to hazards of silicosis or asbestosis without
4 first having obtained the written approval of the Commission,
5 neither the employee, the dependents of the employee, personal
6 representative of the employee, nor any other person shall be
7 entitled to compensation or damages for the disablement or death of
8 the employee from either of the diseases.

9 4. However, neither a claim for nor receipt of compensation or
10 benefits under this subsection shall bar the employee from any right
11 to compensation for actual disability from silicosis or asbestosis
12 if the disability results not later and within the time limited in
13 subsection G of Section 78 of this act.

14 SECTION 80. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 378 of Title 85, unless there is
16 created a duplication in numbering, reads as follows:

17 A. 1. Except as otherwise provided in this section and
18 Sections 78 and 79 of this act, procedure with respect to notice of
19 disability or death and as to the filing of claims and determination
20 of claims shall be the same as in cases of accidental injury or
21 death.

22 2. a. Written notice shall be given to the employer of an
23 occupational disease by the employee, or someone in
24

1 behalf of the employee, within sixty (60) days after
2 the first distinct manifestation thereof.

3 b. In the case of death from an occupational disease,
4 written notice of death shall also be given to the
5 employer within sixty (60) days thereafter.

6 B. An award or denial of award of compensation for an
7 occupational disease may be reviewed and compensation increased,
8 reduced, or terminated where previously awarded, or awarded where
9 previously denied, only upon proof of fraud or undue influence or of
10 change of condition, and then only upon application by a party in
11 interest made not later than one (1) year after the denial of award
12 or, where compensation has been awarded, after the award or the date
13 when the last payment was made under the award, except in cases of
14 silicosis or asbestosis, where the time limit shall be two (2)
15 years.

16 SECTION 81. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 379 of Title 85, unless there is
18 created a duplication in numbering, reads as follows:

19 A. 1. Unless an injury either renders the employee physically
20 or mentally unable to do so, or is made known to the employer
21 immediately after it occurs, the employee shall report the injury to
22 the employer on a form prescribed or approved by the Workers'
23 Compensation Commission and to a person or at a place specified by
24 the employer, and the employer shall not be responsible for

1 disability, medical, or other benefits prior to receipt of the
2 report of injury by the employee.

3 2. All reporting procedures specified by the employer must be
4 reasonable and shall afford each employee reasonable notice of the
5 reporting requirements.

6 3. Paragraphs 1 and 2 of this subsection shall not apply when
7 an employee requires emergency medical treatment outside the normal
8 business hours of the employer; however, in that event, the employee
9 shall cause a report of the injury to be made to the employer on the
10 next regular business day of the employer.

11 B. 1. Failure to give the notice shall not bar any claim if
12 the:

- 13 a. employer had knowledge of the injury or death,
- 14 b. employee had no knowledge that the condition or
15 disease arose out of and in the course of the
16 employment, or
- 17 c. the Commission excuses the failure on the grounds that
18 for some satisfactory reason the notice could not be
19 given.

20 2. Objection to failure to give notice must be made at or
21 before the first hearing on the claim.

22 SECTION 82. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 380 of Title 85, unless there is
24 created a duplication in numbering, reads as follows:

1 A. TIME FOR FILING.

2 1. A claim for compensation for disability on account of an
3 injury, other than an occupational disease and occupational
4 infection, shall be barred unless filed with the Workers'
5 Compensation Commission within one (1) year from the date of the
6 compensable injury. If during the two-year period following the
7 filing of the claim the claimant receives no weekly benefit
8 compensation and receives no medical treatment resulting from the
9 alleged injury, the claim shall be barred. For purposes of this
10 section, the date of the compensable injury shall be defined as the
11 date an injury is caused by an accident as set forth in paragraph 4
12 of Section 4 of this act.

13 2. a. A claim for compensation for disability on account of
14 an injury which is either an occupational disease or
15 occupational infection shall be barred unless filed
16 with the Commission within one (1) year from the date
17 of the last injurious exposure to the hazards of the
18 disease or infection.

19 b. However, a claim for compensation for disability on
20 account of silicosis or asbestosis must be filed with
21 the Commission within one (1) year after the time of
22 disablement, and the disablement must occur within
23 three (3) years from the date of the last injurious
24 exposure to the hazard of silicosis or asbestosis.

1 c. Also, a claim for compensation for disability on
2 account of a disease condition caused by exposure to X
3 rays, radioactive substances, or ionizing radiation
4 only must be filed with the Commission within one (1)
5 year from the date the condition is made known to an
6 employee following examination and diagnosis by a
7 medical doctor.

8 3. A claim for compensation on account of death shall be barred
9 unless filed with the Commission within one (1) year of the date of
10 the death.

11 4. If within six (6) months after the filing of a claim for
12 compensation no bona fide request for a hearing has been made with
13 respect to the claim, the claim may, upon motion and after hearing,
14 be dismissed with prejudice to the refiling of the claim within
15 limitation periods specified in subparagraphs 1 through 3 of this
16 subsection.

17 B. TIME FOR FILING ADDITIONAL COMPENSATION.

18 1. In cases in which any compensation, including disability or
19 medical, has been paid on account of injury, a claim for additional
20 compensation shall be barred unless filed with the Commission within
21 one (1) year from the date of the last payment of compensation or
22 one (1) year from the date of the injury.

23 2. The time limitations of this subsection shall not apply to
24 claims for the replacement of medicine, crutches, ambulatory

1 devices, artificial limbs, eyeglasses, contact lenses, hearing aids,
2 and other apparatus permanently or indefinitely required as the
3 result of a compensable injury, when the employer or carrier
4 previously furnished such medical supplies, but replacement of such
5 items shall not constitute payment of compensation so as to toll the
6 running of the statute of limitations.

7 C. A claim for additional compensation must specifically state
8 that it is a claim for additional compensation. Documents which do
9 not specifically request additional benefits shall not be considered
10 a claim for additional compensation.

11 D. If within six (6) months after the filing of a claim for
12 additional compensation no bona fide request for a hearing has been
13 made with respect to the claim, the claim may, upon motion and after
14 hearing, if necessary, be dismissed with prejudice to the refileing
15 of the claim within the limitation period specified in subsection B
16 of this section.

17 E. FAILURE TO FILE. Failure to file a claim within the period
18 prescribed in subsection A or B of this section shall be a bar to
19 all rights under this act regardless of whether any objection to the
20 timely filing of the claim is raised by the claimant.

21 F. PERSONS UNDER DISABILITY.

22 1. When it is established that failure to file a claim by an
23 injured employee or the dependents of the employee was induced by
24

1 fraud, the claim may be filed within one (1) year from the time of
2 the discovery of the fraud.

3 2. Subsection A or B of this section shall not apply to a
4 mental incompetent or minor so long as the person has no guardian or
5 similar legal representative. The limitations prescribed in
6 subsection A or B of this section shall apply to the mental
7 incompetent or minor from the date of the appointment of a guardian
8 or similar legal representative for that person, and when no
9 guardian or similar representative has been appointed, to a minor
10 upon obtainment of majority.

11 G. 1. A latent injury or condition shall not delay or toll the
12 limitation periods specified in this section.

13 2. However, this subsection shall not apply to the limitation
14 period for occupational diseases specified in paragraph 2 of
15 subsection A of this section.

16 H. 1. The purpose of this section is to provide for a timely
17 hearing on claims for benefits.

18 2. The purpose and intent of this section also includes the
19 annulment of any case law inconsistent with this section.

20 SECTION 83. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 381 of Title 85, unless there is
22 created a duplication in numbering, reads as follows:

23 The Workers' Compensation Commission is authorized and directed
24 to promulgate appropriate rules to establish and implement, for

1 claims with respect to injuries occurring on or after November 1,
2 2008, a preliminary conference procedure designed to accomplish the
3 following objectives:

4 1. To provide the claimant an opportunity to confer with a
5 legal advisor on the staff of the Commission to be advised of the
6 rights of the claimant under this act and to ensure that the rights
7 are protected. The conference shall be held at the Career Tech
8 center nearest to the accident or the residence of the claimant,
9 unless otherwise agreed to between the parties, or otherwise
10 directed by the Commission;

11 2. To provide an opportunity for, but not to compel, a binding
12 settlement of some or all the issues present at the time;

13 3. To facilitate the resolution of issues without the expense
14 of litigation or attorney fees for either party; and

15 4. a. (1) To authorize the legal advisor to approve
16 compromise settlements entered into at or as a
17 result of the preliminary conference and those
18 joint petition settlements entered into pursuant
19 to Section 102 of this act.

20 (2) Provided, however, the same legal advisors shall
21 not both advise the claimant and approve the
22 joint petition.

23 b. The purpose and intent of this section is to affirm
24 the duty of the Commission to provide legal

1 assistance, thereby reducing litigation and workers'
2 compensation costs.

3 SECTION 84. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 382 of Title 85, unless there is
5 created a duplication in numbering, reads as follows:

6 A. NOTICE. Within ten (10) days after a claim for compensation
7 has been filed, the Workers' Compensation Commission shall notify
8 the employer and any other interested person of the filing of the
9 claim.

10 B. INVESTIGATION - HEARING.

11 1. The Commission shall make or cause to be made such
12 investigation as it considers necessary in respect to the claim, and
13 upon application of any interested party, or on its own motion,
14 shall order a hearing.

15 2. An application for a hearing must set forth clearly the
16 specific issues of fact or law in controversy and the contentions of
17 the party applying for the hearing.

18 3. If any party is not represented by a lawyer, the
19 administrative law judge shall define the issues to be heard.

20 4. a. If a hearing on the claim is ordered, the Commission
21 shall give the claimant and other interested parties
22 ten (10) days' notice of the hearing served personally
23 upon the claimant and other parties, or by registered
24

1 mail and where appropriate, shall send an unofficial
2 notice to the claimant by electronic mail.

3 b. The hearing shall be held at the Career Tech center
4 nearest to the location of the accident or the
5 residence of the claimant, unless otherwise agreed to
6 between the parties, or otherwise directed by the
7 Commission. If the accident occurred outside the
8 State of Oklahoma, and is one for which compensation
9 is payable under this section and Sections 81 through
10 97 of this act, the hearing may be held in the county
11 of the residence or place of business of the employer,
12 or any other county in the State of Oklahoma which
13 will, in the discretion of the Commission, be most
14 convenient for the hearing.

15 5. The award, together with the statement of the findings of
16 fact and other matters pertinent to the issues, shall be filed with
17 the record of the proceedings, and a copy of the award shall
18 immediately be sent to the parties in dispute or to their attorneys.

19 6. a. If an application for review is filed in the office of
20 the Commission within thirty (30) days from the date
21 of the receipt of the award, the full Commission shall
22 review the evidence or, if deemed advisable, hear the
23 parties, their representatives, and witnesses, and
24 shall make awards, together with its rulings of law,

1 and file same in like manner as specified in the
2 foregoing.

3 b. A copy of the award made on review shall immediately
4 be sent to the parties in dispute, or to their
5 attorneys.

6 7. The full Commission may remand to a single member of the
7 Commission or administrative law judge any case before the full
8 Commission for the purpose of taking additional evidence. The
9 evidence shall be delivered to the full Commission and shall be
10 taken into consideration before rendering any decision or award in
11 the case.

12 C. EVIDENCE AND CONSTRUCTION.

13 1. a. (1) At the hearing the claimant and the employer may
14 each present evidence in respect of the claim and
15 may be represented by any person authorized in
16 writing for such purpose.

17 (2) The evidence may include verified medical reports
18 which shall be accorded such weight as may be
19 warranted from all the evidence of the case.

20 b. Any determination of the existence or extent of
21 physical impairment shall be supported by objective
22 and measurable physical or mental findings.

23 2. When deciding any issue, administrative law judges and the
24 Commission shall determine, on the basis of the record as a whole,

1 whether the party having the burden of proof on the issue has
2 established it by a preponderance of the evidence.

3 3. Administrative law judges, the Commission, and any reviewing
4 courts shall construe the provisions of this act strictly.

5 4. In determining whether a party has met the burden of proof
6 on an issue, administrative law judges and the Commission shall
7 weigh the evidence impartially and without giving the benefit of the
8 doubt to any party.

9 D. ORDER. The order denying the claim or making the award
10 shall be filed in the office of the Commission, and a copy shall be
11 sent by registered mail to the claimant and to the employer or to
12 their attorneys.

13 E. AWARD AFTER DEATH.

14 1. No compensation for disability of an injured employee shall
15 be payable for any period beyond the death of the employee.

16 2. However, an award of compensation for disability may be made
17 after the death of the injured employee for the period of disability
18 preceding death.

19 SECTION 85. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 383 of Title 85, unless there is
21 created a duplication in numbering, reads as follows:

22 A. CONDUCT OF HEARING OR INQUIRY.

23 1. In making an investigation or inquiry or conducting a
24 hearing, the Workers' Compensation Commission shall not be bound by

1 technical or statutory rules of evidence or by technical or formal
2 rules of procedure, except as provided by this act, but may make
3 such investigation or inquiry, or conduct the hearing, in a manner
4 as will best ascertain the rights of the parties.

5 2. Declarations of a deceased employee concerning the injury in
6 respect of which the investigation or inquiry is being made, or the
7 hearing conducted, may be received in evidence and may, if
8 corroborated by other evidence, be sufficient to establish the
9 injury.

10 3. When deciding any issue, administrative law judges and the
11 Commission shall determine, on the basis of the record as a whole,
12 whether the party having the burden of proof on the issue has
13 established it by a preponderance of evidence.

14 B. HEARINGS TO BE PUBLIC - RECORDS.

15 1. a. Hearings before the Commission shall be open to the
16 public and shall be stenographically reported or
17 recorded in any other accurate and practicable manner.
18 The Commission is authorized to contract for the
19 reporting of the hearings.

20 b. The Commission shall, by rule, provide for the
21 preparation of a record of all hearings and other
22 proceedings before it.

23 2. However, the Commission shall not be required to
24 stenographically report or prepare a record of joint petition

1 hearings. Instead, the administrative law judge or legal advisor
2 shall tape the hearing at no cost to the parties.

3 C. INTRODUCTION OF EVIDENCE.

4 1. a. All oral evidence or documentary evidence shall be
5 presented to the designated representative of the
6 Commission at the initial hearing on a controverted
7 claim, which evidence shall be stenographically
8 reported or recorded in any other accurate and
9 practicable manner.

10 b. Each party shall present all evidence at the initial
11 hearing.

12 c. (1) Further hearings for the purpose of introducing
13 additional evidence will be granted only at the
14 discretion of the hearing officer or Commission.

15 (2) A request for a hearing for the introduction of
16 additional evidence must show the substance of
17 the evidence desired to be presented.

18 2. a. Any party proposing to introduce medical reports or
19 testimony of physicians at the hearing of a
20 controverted claim shall, as a condition precedent to
21 the right to do so, furnish to the opposing party and
22 to the Commission copies of the written reports of the
23 physicians of their findings and opinions at least ten
24 (10) days prior to the date of the hearing. However,

1 if no written reports are available to a party, then
2 the party shall, in lieu of furnishing the report,
3 notify in writing the opposing party and the
4 Commission of the name and address of the physicians
5 proposed to be used as witnesses at least ten (10)
6 days prior to the hearing and the substance of their
7 anticipated testimony.

8 b. If the opposing party desires to cross-examine the
9 physician, the opposing party should notify the party
10 who submits a medical report as soon as practicable,
11 in order that the party submitting a medical report
12 may make every effort to have the physician present
13 for the hearing.

14 3. A party failing to observe the requirements of this
15 subsection may not be allowed to introduce medical reports or
16 testimony of physicians at a hearing, except in the discretion of
17 the hearing officer or the Commission.

18 4. The time periods may be waived by the consent of the
19 parties.

20 D. Expert testimony shall not be allowed unless it satisfies
21 the requirements of Rule 702 of the Federal Rules of Evidence with
22 annotations and amendments, that is, Daubert v. Merrell-Dow
23 Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Kumho Tire Co. v.
24 Carmichael, 526 U.S. 137 (1999).

1 SECTION 86. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 384 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. The Workers' Compensation Commission shall have the power to
5 preserve and enforce order during any proceeding had before it, to
6 issue subpoenas for, administer oaths to, and compel the attendance
7 and testimony of witnesses, and require the production of books,
8 papers, documents, and other evidence.

9 B. If any person or party in proceedings before the Commission
10 disobeys or resists any lawful order or process, or misbehaves
11 during a hearing, or so near the place of the hearing so as to
12 obstruct the hearing or neglects to produce, after having been
13 ordered to do so, any book, paper, or document, or refuses to appear
14 after having been subpoenaed, or upon appearing refuses to take oath
15 as a witness, or after having taken the oath refuses to be examined
16 according to law, or refuses to comply with any final order of an
17 administrative law judge or the Commission, or willfully refuses to
18 pay an uncontroverted medical or related expense within thirty (30)
19 days after the respondent has received the statement, then the
20 person or party, at the discretion of the administrative law judge
21 or the Commission, may be found to be in contempt of the Commission
22 and may be subject to a fine not to exceed Ten Thousand Dollars
23 (\$10,000.00).

24

1 SECTION 87. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 385 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 In any proceeding for the enforcement of a claim for
5 compensation, the following prima facie presumptions shall exist:

- 6 1. The Workers' Compensation Commission has jurisdiction;
- 7 2. Sufficient notice was given; and
- 8 3. The injury was not occasioned by the willful intention of
9 the injured employee to bring about the injury of the employee or
10 another.

11 SECTION 88. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 386 of Title 85, unless there is
13 created a duplication in numbering, reads as follows:

14 The Workers' Compensation Commission may cause depositions of
15 witnesses to be taken in such manner as it may direct.

16 SECTION 89. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 387 of Title 85, unless there is
18 created a duplication in numbering, reads as follows:

19 Each witness who appears in obedience to a subpoena shall be
20 entitled to the same fees as witnesses in a civil action in the
21 district court.

22 SECTION 90. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 388 of Title 85, unless there is
24 created a duplication in numbering, reads as follows:

1 A. Where the Workers' Compensation Commission is a party to or
2 is otherwise interested in a court proceeding under this act, it
3 shall request representation by the Office of the Attorney General
4 to appear in its behalf.

5 B. If requested by the Commission, it shall be the duty of the
6 Attorney General or the prosecuting attorneys of the different
7 districts to represent the Commission without extra compensation.

8 SECTION 91. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 389 of Title 85, unless there is
10 created a duplication in numbering, reads as follows:

11 A. AWARD OR ORDER OF ADMINISTRATIVE LAW JUDGE OR SINGLE
12 COMMISSIONER - REVIEW.

13 1. A compensation order or award of an administrative law judge
14 or a single commissioner shall become final unless a party to the
15 dispute shall, within thirty (30) days from the receipt of the order
16 or award, petition in writing for a review by the full Commission of
17 the order or award.

18 2. Any other party to the dispute may cross appeal by filing a
19 written petition for cross appeal within fifteen (15) days after the
20 notice of appeal is filed in the office of the Workers' Compensation
21 Commission, except that in no event shall a cross appellant have
22 less than thirty (30) days from the receipt of the order or award
23 within which to file a notice of cross appeal.

24 B. AWARD OR ORDER OF COMMISSION - APPEAL.

1 1. A compensation order or award of the Commission shall become
2 final unless a party to the dispute shall, within thirty (30) days
3 from receipt of the order or award, file notice of appeal to the
4 Court of Appeals, which is designated as the forum for judicial
5 review of those orders and awards.

6 a. The appeal to the court may be taken by filing in the
7 office of the Commission, within thirty (30) days from
8 the date of the receipt of the order or award of the
9 Commission, a notice of appeal, whereupon the
10 Commission under its certificate shall send to the
11 court all pertinent documents and papers, together
12 with a transcript of evidence and the findings and
13 orders, which shall become the record of the cause.

14 b. Any other party to the dispute may cross appeal by
15 filing in the office of the Commission a notice of
16 cross appeal to the court within fifteen (15) days
17 after the notice of appeal is filed, except that in no
18 event shall a cross appellant have less than thirty
19 (30) days from receipt of the order or award of the
20 Commission within which to file a notice of cross
21 appeal.

22 c. The Commission may assess and collect an appeal
23 processing fee not to exceed Fifteen Dollars (\$15.00)
24

1 from the appellant and, if cross appealed, the cross
2 appellant.

3 2. Appeals from the Commission to the court shall be allowed as
4 in other civil actions and shall take precedence over all other
5 civil cases appealed to the court.

6 3. a. Upon appeal to the court, no additional evidence shall
7 be heard.

8 b. In the absence of fraud, the findings of fact made by
9 the Commission within its power shall be conclusive
10 and binding upon the court and shall be given the same
11 force and effect as in cases decided by the Supreme
12 Court, except subject to review as in paragraph 4 of
13 this subsection.

14 4. The court shall review only questions of law and may modify,
15 reverse, remand for rehearing, or set aside the order or award, upon
16 any of the following grounds, and no other, that the:

- 17 a. Commission acted without or in excess of its powers,
- 18 b. order or award was procured by fraud,
- 19 c. facts found by the Commission do not support the order
20 or award, or
- 21 d. order or award was not supported by substantial
22 evidence of record.

23 C. APPEAL COSTS.

24

1 1. In all appeals, the cost shall be assessed as provided by
2 law in civil cases.

3 2. The Commission may require a bond from either party, if it
4 deems necessary, in cases appealed to the court.

5 SECTION 92. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 390 of Title 85, unless there is
7 created a duplication in numbering, reads as follows:

8 If any employer fails to comply with a final compensation order
9 or award, any beneficiary of the order or award, or the Workers'
10 Compensation Commission, may file a certified copy of the order or
11 award in the office of the district clerk of any county in this
12 state where any property of the employer may be found. At that
13 time, the court clerk shall enter the order or award in the judgment
14 record of the county, and the order or award so recorded shall be a
15 judgment and lien as are judgments of the district court, and
16 enforceable as such.

17 SECTION 93. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 391 of Title 85, unless there is
19 created a duplication in numbering, reads as follows:

20 A. 1. Except where a joint petition settlement has been
21 approved, the Workers' Compensation Commission may review any
22 compensation order, award, or decision.

23 2. Review of any compensation order, award, or decision may be
24 done at any time within six (6) months of termination of the

1 compensation period fixed in the original compensation order or
2 award, upon the motion of the Commission or upon the application of
3 any party in interest, on the ground of a change in physical
4 condition or upon proof of erroneous wage rate.

5 3. Upon the review, the Commission may make an order or award
6 terminating, continuing, decreasing, or increasing for the future
7 the compensation previously awarded, subject to the maximum limits
8 provided for in this act.

9 B. The review and subsequent order or award shall be made in
10 accordance with the procedure prescribed in Section 84 of this act.

11 C. No review shall affect any compensation paid pursuant to a
12 prior order or award.

13 D. The Commission may, at any time, correct any clerical error
14 in any compensation order or award.

15 E. Aging and the effects of aging on a compensable injury are
16 not to be considered in determining whether there has been a change
17 in physical condition. Nor shall aging or the effect of aging on a
18 compensable injury be considered in determining permanent disability
19 pursuant to this section or any other section in this act. The
20 purpose and intent of this section is to annul any and all case law
21 inconsistent with this section.

22 SECTION 94. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 392 of Title 85, unless there is
24 created a duplication in numbering, reads as follows:

1 If the court having jurisdiction of proceedings in respect of
2 any claim or compensation order determines that the proceedings in
3 respect to the claim or order have been instituted or continued
4 without reasonable grounds, the cost of the proceedings shall be
5 assessed against the party who has instituted or continued the
6 proceedings.

7 SECTION 95. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 393 of Title 85, unless there is
9 created a duplication in numbering, reads as follows:

- 10 A. 1. a. Fees for legal services rendered in respect of a claim
11 shall not be valid unless approved by the Workers'
12 Compensation Commission.
- 13 b. Attorney fees shall be twenty percent (20%) of
14 compensation for indemnity benefits payable to the
15 injured employee or dependents of a deceased employee
16 or twenty percent (20%) of a bona fide offer. In the
17 event the bona fide offer is not accepted and the
18 claim is heard at an administrative hearing, the
19 attorney fee shall be the percentage of the amount in
20 excess of the bona fide offer that represents the
21 value added by the services and efforts of the
22 attorney. Attorney fees shall not be awarded on
23 medical benefits or services except as provided in
24 paragraph 4 of this subsection.

1 2. a. Whenever the Commission finds that a claim against the
2 State Treasurer, as custodian of the Second Injury
3 Trust Fund or as custodian of the Death and Permanent
4 Total Disability Trust Fund, has been controverted, in
5 whole or in part, the Commission shall direct that
6 fees for legal services be paid from the fund, in
7 addition to compensation awarded, and the fees shall
8 be allowed only on the amount of compensation
9 controverted and awarded from the fund.

10 b. (1) In all other cases, including, but not limited
11 to, cases where the adequacy of medical treatment
12 is controverted or there has been a controverted
13 change of physician, where the Commission finds
14 that a claim has been controverted, in whole or
15 in part, the Commission shall direct that fees
16 for legal services be paid to the attorney for
17 the claimant as follows: one-half (1/2) by the
18 employer or carrier in addition to compensation
19 awarded; and one-half (1/2) by the injured
20 employee or dependents of a deceased employee out
21 of compensation payable to them.

22 (2) The fees shall be allowed only on the amount of
23 compensation for indemnity benefits controverted
24 and awarded.

1 (3) However, the Commission shall not find that a
2 claim has been controverted if the claimant or
3 the representative of the claimant has withheld
4 from the respondent during the period of time
5 allotted for the respondent to determine its
6 position any medical information in the
7 possession of the claimant which substantiates
8 the claim.

9 c. (1) Whenever the Commission finds that a claim has
10 not been controverted but further finds that bona
11 fide legal services have been rendered in respect
12 to the claim, then the Commission shall direct
13 the payment of the fees by the injured employee
14 or dependents of a deceased employee out of the
15 compensation awarded as provided in subparagraph
16 a of paragraph 1 of this subsection.

17 (2) In determining the amount of fees when a claim is
18 not controverted, the Commission shall use its
19 discretion in awarding an attorney fee not to
20 exceed twenty percent (20%) as provided in
21 subparagraph a of paragraph 1 of this subsection
22 and in so doing shall take into consideration the
23 nature, length, and complexity of the services
24

1 performed and the benefits resulting to the
2 compensation beneficiaries.

3 3. In any case where attorney fees are allowed by the
4 Commission, the limitations expressed in paragraph 1 of this
5 subsection shall apply.

6 4. Medical providers may voluntarily contract with the attorney
7 for the claimant to recover disputed bills, and the attorney may
8 charge a reasonable fee to the medical provider as a cost of
9 collection.

10 B. 1. If the claimant prevails on appeal, the attorney for the
11 claimant shall be entitled to an additional fee at the full
12 Commission and appellate court levels in addition to the fees
13 provided in paragraph 1 of subsection A of this section, the
14 additional fee to be paid equally by the employer or carrier and by
15 the injured employee or dependents of a deceased employee, as
16 provided in this subsection and set by the Commission or appellate
17 court.

18 2. The maximum fees allowable pursuant to this subsection shall
19 be the sum of Five Hundred Dollars (\$500.00) on appeals to the full
20 Commission from a decision of the administrative law judge and the
21 sum of One Thousand Dollars (\$1,000.00) on appeals to the Court of
22 Appeals or Supreme Court from a decision of the Commission.

23 3. In determining the amount of fees, the Commission and the
24 Court shall take into consideration the nature, length, and

1 complexity of the services performed and the benefits resulting to
2 the compensation beneficiary.

3 C. 1. The fee for legal services rendered by the attorney of
4 the claimant in connection with a change of physician requested by
5 the injured employee, controverted by the employer or carrier and
6 awarded by the Commission, shall be Two Hundred Dollars (\$200.00).

7 2. No additional fee shall be payable with respect to
8 uncontroverted charges incurred in connection with treatment by the
9 new physician.

10 D. 1. No fees for legal services rendered by the attorney of
11 the claimant with respect to the preliminary conference procedure
12 shall be awarded by the Commission.

13 2. However, the attorney of the claimant or other
14 representative may charge a reasonable fee to the claimant for
15 representation in connection with the conference.

16 3. Unless compensability of a claim is controverted by the
17 employer or carrier, fees for legal services by the attorney of the
18 claimant with respect to disability for loss of wage-earning
19 capacity shall be payable only for amounts awarded at a contested
20 hearing which exceed the amount, if any, which the employer or
21 carrier agreed in writing to accept at the preliminary conference.

22 E. Attorney fees contained in this section shall be effective
23 with respect to benefits payable in connection with disability or
24 death due to injuries occurring on or after November 1, 2008.

1 SECTION 96. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 394 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. The Workers' Compensation Commission is authorized to
5 approve lump-sum attorney fees for legal services rendered in
6 respect of a claim before the Commission.

7 B. The lump-sum attorney fees are allowable notwithstanding
8 that the award of compensation to the injured employee is to be paid
9 on an installment basis.

10 C. Lump-sum attorney fees, if approved by the Commission, shall
11 be discounted at the rate provided in Section 101 of this act, as
12 that provision may be amended from time to time.

13 SECTION 97. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 395 of Title 85, unless there is
15 created a duplication in numbering, reads as follows:

16 A. 1. a. Every claim, request for benefits, request for
17 additional benefits, controversion of benefits,
18 request for a hearing, pleading, motion, and other
19 paper of a party represented by an attorney shall be
20 signed by at least one attorney of record in the
21 individual name of the attorney of record, whose
22 address shall be stated.

23 b. A party who is not represented by an attorney shall
24 sign the claim, request for benefits, request for

1 additional benefits, controversion of benefits,
2 request for a hearing, pleading, motion, or other
3 paper, and state the address of the party.

4 2. The signature of an attorney or party constitutes a
5 certificate by the attorney or party that:

6 a. the attorney or party has read the claim, request for
7 benefits, request for additional benefits,
8 controversion of benefits, request for a hearing,
9 pleading, motion, or other paper,

10 b. to the best of the knowledge, information, and belief
11 of the attorney or party formed after reasonable
12 inquiry, it is well grounded in fact and is warranted
13 by existing law or a good faith argument for the
14 extension, modification, or reversal of existing law,
15 and

16 c. it is not interposed for any improper purpose, such as
17 to harass or to cause unnecessary delay or needless
18 increase in the cost of litigation.

19 3. If a claim, request for benefits, request for additional
20 benefits, controversion of benefits, request for a hearing,
21 pleading, motion, or other paper is not signed, it shall be stricken
22 unless it is signed promptly after the omission is called to the
23 attention of the pleader or movant.

1 4. If a claim, request for benefits, request for additional
2 benefits, controversion of benefits, request for a hearing,
3 pleading, motion, or other paper is signed in violation of this
4 rule, the Workers' Compensation Commission, including administrative
5 law judges, upon motion or upon their own initiative, shall impose
6 upon the person who signed it, a represented party, or both, an
7 appropriate sanction, which may include an order to pay to the other
8 party or parties the amount of reasonable expenses incurred because
9 of the filing of a claim, request for benefits, request for
10 additional benefits, controversion of benefits, request for a
11 hearing, pleading, motion, or other paper, including a reasonable
12 attorney fee.

13 B. Appropriate sanctions, including the amount of reasonable
14 expenses and attorney fees, may also be imposed against a party or
15 its attorney who, without good cause shown, fails to appear for a
16 hearing, deposition, or any other matter scheduled by the Commission
17 or administrative law judge, or frivolously joins another party.

18 SECTION 98. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 396 of Title 85, unless there is
20 created a duplication in numbering, reads as follows:

21 A. Compensation shall be paid by check, direct deposit, or by
22 state warrant.

23
24

1 B. Payment shall be made payable to the order of the person
2 entitled to the compensation and paid directly to the person
3 entitled to the compensation.

4 C. If the compensation beneficiary is mentally incompetent or a
5 minor of tender years or immature judgment, the Workers'
6 Compensation Commission, in the exercise of its discretion, may
7 direct that payment shall be made to a legally appointed guardian of
8 the estate of the incompetent or minor.

9 SECTION 99. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 397 of Title 85, unless there is
11 created a duplication in numbering, reads as follows:

12 A. The first installment of compensation shall become due on
13 the fifteenth day after the employer has notice of the injury or
14 death, as provided in Section 81 of this act, on which date all
15 compensation then accrued shall be paid. Thereafter, compensation
16 shall be paid every ten (10) days except where the Workers'
17 Compensation Commission directs that installment payments be made at
18 other periods.

19 B. If any installment of compensation payable without an award
20 is not paid within ten (10) days after it becomes due, as provided
21 in subsection A of this section, there shall be added to the unpaid
22 installment an amount equal to eighteen percent (18%) thereof, which
23 shall be paid at the same time as, but in addition to, the
24 installment unless notice of controversion is filed or an extension

1 is granted the employer under Section 100 of this act or unless such
2 nonpayment is excused by the Commission after a showing by the
3 employer that, owing to conditions over which he had no control, the
4 installment could not be paid within the period prescribed.

5 C. If any installment payable under the terms of an award is
6 not paid within ten (10) days after it becomes due, there shall be
7 added to such unpaid installment an amount equal to twenty percent
8 (20%) thereof, which shall be paid at the same time as, but in
9 addition to, the installment unless review of the compensation order
10 making the award is had as provided in Sections 91 and 92 of this
11 act.

12 D. Medical bills are payable within ten (10) days after receipt
13 by the respondent unless disputed as to compensability or amount.

14 E. In the event that the Commission finds the failure to pay
15 any benefit is willful and intentional, the penalty shall be up to
16 thirty-six percent (36%), payable to the claimant.

17 SECTION 100. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 398 of Title 85, unless there is
19 created a duplication in numbering, reads as follows:

20 A. 1. Each employer desiring to controvert the right to
21 compensation shall file with the Workers' Compensation Commission on
22 or before the fifteenth day following notice of the alleged injury
23 or death a statement on a form prescribed by the Commission that the
24 right to compensation is controverted and the grounds for the

1 | controversion, the names of the claimant, employer, and carrier, if
2 | any, and the date and place of the alleged injury or death.

3 | 2. Failure to file the statement of controversion shall
4 | preclude the urging of any defense to the claim subsequently filed,
5 | except that the filing of a statement of controversion shall not
6 | preclude the urging of additional defenses to those contained in the
7 | statement of controversion.

8 | B. 1. If an employer is unable to obtain sufficient medical
9 | information as to the alleged injury or death within ten (10) days
10 | following receipt of notice, although the employer has acted in good
11 | faith and with all due diligence, the employer may apply in writing
12 | for an extension of time for making payment of the first installment
13 | or controverting the claim.

14 | 2. This written application is to be postmarked within the ten-
15 | day period.

16 | 3. The Commission may, in its discretion, grant the extension
17 | and fix the additional time to be allowed.

18 | 4. Filing of application for an extension shall not be deemed
19 | to be a controversion of the claim.

20 | C. The provision in subsection B of this section shall not
21 | apply in cases where the physician is an employee of, on retainer
22 | with, or has a written contract to provide medical services for the
23 | employer.

24 |

1 SECTION 101. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 399 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. 1. Whenever the Workers' Compensation Commission determines
5 that it is for the best interest of the parties entitled to
6 compensation, and after due notice to all parties in interest of a
7 hearing, the liability of the employer for compensation may be
8 discharged by the payment of a lump sum equal to the present value
9 of all future payments of compensation computed at a ten percent
10 (10%) discount, compounded annually.

11 2. Lump-sum settlements shall not be allowed if the employer
12 presents evidence which proves by a preponderance of the evidence
13 that ordering the compensation discharged in such a manner would
14 result in a substantial adverse effect on the continuing economic
15 viability of the employer.

16 B. 1. The probability of the death of the injured employee or
17 other persons entitled to compensation before the expiration of the
18 period during which they are entitled to compensation shall, in the
19 absence of special circumstances making such a course improper, be
20 determined in accordance with the following table.

21 2. It is intended that this table shall be used in conjunction
22 with the discount rate prescribed in paragraph 1 of subsection A of
23 this section for the purpose of calculating the present value of
24 lump-sum settlements to injured employees.

1	Age Years	Average Remaining
2		Lifetime Years
3	1	74.97
4	2	75.37
5	3	74.47
6	4	73.54
7	5	72.59
8	6	71.63
9	7	70.67
10	8	69.70
11	9	68.73
12	10	67.75
13	11	66.77
14	12	65.80
15	13	64.82
16	14	63.84
17	15	62.87
18	16	61.90
19	17	60.94
20	18	59.97
21	19	59.02
22	20	58.06
23	21	57.10
24	22	56.15

1	23	55.19
2	24	54.24
3	25	53.29
4	26	52.33
5	27	51.38
6	28	50.42
7	29	49.47
8	30	48.52
9	31	47.57
10	32	46.62
11	33	45.68
12	34	44.73
13	35	43.79
14	36	42.86
15	37	41.92
16	38	40.66
17	39	40.07
18	40	39.14
19	41	38.23
20	42	37.31
21	43	36.41
22	44	35.50
23	45	34.60
24	46	33.71

1	47	32.83
2	48	31.95
3	49	31.08
4	50	30.21
5	51	29.35
6	52	28.49
7	53	27.65
8	54	26.80
9	55	25.97
10	56	25.14
11	57	24.31
12	58	23.49
13	59	22.68
14	60	21.88
15	61	21.09
16	62	20.30
17	63	19.53
18	64	18.76
19	65	18.00
20	66	17.25
21	67	16.51
22	68	15.78
23	69	15.06
24	70	14.35

1	71	13.67
2	72	13.01
3	73	12.38
4	74	11.77
5	75	11.18
6	76	10.61
7	77	10.04
8	78	9.48
9	79	8.93
10	80	8.40
11	81	7.90
12	82	7.42
13	83	6.98
14	84	6.57
15	85	6.17
16	86	5.80
17	87	5.43
18	88	5.09
19	89	4.77
20	90	4.47
21	91	4.18
22	92	3.92
23	93	3.69
24	94	3.50

1	95	3.33
2	96	3.18
3	97	3.06
4	98	2.95
5	99	2.85
6	100	2.77

7 C. The probability of the happening of any other contingency
8 affecting the amount or duration of compensation shall be
9 disregarded, except the possibility of the remarriage of the widow
10 or widower, which shall be determined in accordance with the Danish
11 Annuity and Dutch Remarriage Table.

12 SECTION 102. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 400 of Title 85, unless there is
14 created a duplication in numbering, reads as follows:

15 A. Upon petition filed by the employer or carrier and the
16 injured employee requesting that a final settlement be had between
17 the parties, the Workers' Compensation Commission shall hear the
18 petition and take testimony and make investigations as may be
19 necessary to determine whether a final settlement should be had.

20 B. 1. If the Commission decides it is for the best interests
21 of the claimant that a final award be made, it may order an award
22 that shall be final as to the rights of all parties to the petition.

23 2. Thereafter, the Commission shall not have jurisdiction over
24 any claim for the same injury or any results arising from it.

1 C. If an employee has returned to work or agreed to return to
2 work, the Commission shall not approve a joint petition which has
3 allotted monies for vocational rehabilitation or any indemnity
4 benefits in excess of that payable as an anatomical impairment as
5 established by objective and measurable findings.

6 D. If the Commission denies the petition, the denial shall be
7 without prejudice to either party.

8 E. No appeal shall lie from an order or award denying a joint
9 petition.

10 SECTION 103. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 401 of Title 85, unless there is
12 created a duplication in numbering, reads as follows:

13 A. In any case where an employer changes insurance carriers or
14 where the employer having been self-insured, becomes insured or,
15 having been insured, is approved to be self-insured, and the only
16 dispute in a claim against that employer is the proper source of
17 payment of benefits, the Workers' Compensation Commission shall
18 direct that the appropriate compensation benefits be paid on an
19 equal basis by the carriers or self-insured employer.

20 B. Upon eventual resolution of the issue, the prevailing
21 respondent shall be entitled to reimbursement from the other
22 respondent of all monies paid together with interest at the legal
23 rate from the date of payment.

24

1 SECTION 104. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 402 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. If the employer has made advance payments for compensation,
5 the employer shall be entitled to be reimbursed out of any unpaid
6 installment or installments of compensation due.

7 B. If the injured employee receives full wages during
8 disability, the employee shall not be entitled to compensation
9 during the period.

10 SECTION 105. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 403 of Title 85, unless there is
12 created a duplication in numbering, reads as follows:

13 The Workers' Compensation Commission may require any employer to
14 make a deposit or bond with the Commission to secure the prompt and
15 convenient payment of compensation, and payments shall be made upon
16 order of the Commission.

17 SECTION 106. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 404 of Title 85, unless there is
19 created a duplication in numbering, reads as follows:

20 Compensation shall bear interest at the legal rate from the day
21 an award is made by either an administrative law judge or the full
22 Workers' Compensation Commission on all accrued and unpaid
23 compensation.

24

1 SECTION 107. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 405 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. Upon making the first payment and upon suspension of payment
5 of compensation, the employer shall notify the Workers' Compensation
6 Commission of that fact on a form prescribed by the Commission.

7 B. 1. Within thirty (30) days after the final payment of
8 compensation has been made, the employer shall send to the
9 Commission a notice, in accordance with a form prescribed by the
10 Commission. This form shall state that the final payment has been
11 made, the total amount of compensation paid, the name of the
12 employee and of any other person to whom compensation has been paid,
13 the date of the injury or death, and the person to whom compensation
14 has been paid.

15 2. If the employer fails so to notify the Commission within
16 that time, the Commission may assess against the employer a civil
17 penalty in an amount not exceeding One Hundred Dollars (\$100.00),
18 but no penalty shall be assessed without notice to the employer,
19 giving the employer an opportunity to be heard.

20 SECTION 108. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 406 of Title 85, unless there is
22 created a duplication in numbering, reads as follows:

23 Upon its own initiative at any time where compensation payments
24 are being made without an award, the Workers' Compensation

1 Commission may, and in any case where the right to compensation has
2 been controverted or where payments of compensation have been
3 suspended, or where an employer seeks to suspend payments made under
4 an award, or on application of an interested party, the Commission
5 shall make an investigation, cause a medical examination to be made,
6 hold hearings, and take further action as the Commission deems
7 proper for the protection of the rights of all parties.

8 SECTION 109. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 407 of Title 85, unless there is
10 created a duplication in numbering, reads as follows:

11 A. 1. When any person who receives workers' compensation
12 benefits is incarcerated in an institution under the control of the
13 Department of Corrections, the spouse of the inmate or, if no
14 spouse, the minor dependent children of the inmate, may petition the
15 Workers' Compensation Commission to award to the spouse or minor
16 dependent children the workers' compensation weekly disability
17 benefits of the inmate for the period of incarceration of the
18 claimant.

19 2. If the inmate has no surviving spouse or surviving minor
20 dependent children, the Department of Corrections may petition the
21 Commission to award to the Department the amount of the workers'
22 compensation weekly disability benefits for the period of
23 incarceration of the claimant necessary to reimburse the Department
24 for the cost of incarcerating the inmate.

1 B. The Commission shall promulgate rules necessary for the
2 implementation of this section.

3 SECTION 110. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 408 of Title 85, unless there is
5 created a duplication in numbering, reads as follows:

6 A. 1. Upon approval by the Insurance Commissioner, and
7 following the adoption of the rules that the Insurance Commissioner
8 deems necessary and advisable, each insurer issuing a policy under
9 this act shall offer, as a part of the policy or as an optional
10 endorsement to the policy, deductibles optional to the policyholder
11 for benefits payable under this act.

12 2. Deductible amounts offered shall be fully disclosed to the
13 prospective policyholder in writing in the amount of One Hundred
14 Dollars (\$100.00), Two Hundred Dollars (\$200.00), Three Hundred
15 Dollars (\$300.00), Four Hundred Dollars (\$400.00), and Five Hundred
16 Dollars (\$500.00), or increments of Five Hundred Dollars (\$500.00),
17 up to a maximum of Two Thousand Five Hundred Dollars (\$2,500.00) per
18 compensable claim, or in such other amounts as may be set by the
19 Insurance Commissioner.

20 3. The policyholder exercising the deductible option shall
21 choose only one deductible amount.

22 B. Optional deductibles shall be offered in each policy
23 insuring liability for workers' compensation that is issued,
24 delivered, issued for delivery, or renewed under this act on or

1 after approval by the Insurance Commissioner, unless an insured
2 employer and insurer agree to renegotiate a workers' compensation
3 policy in effect on that date so as to include a provision allowing
4 for a deductible.

5 C. 1. If the policyholder exercises the option and chooses a
6 deductible, the insured employer shall be liable for the amount of
7 the deductible for benefits paid for each compensable claim of work
8 injury suffered by an employee.

9 2. The insurer shall pay all or part of the deductible amount,
10 whichever is applicable to a compensable claim, to the person or
11 medical provider entitled to the benefits conferred by this act and
12 then seek reimbursement from the insured employer for the applicable
13 deductible amount.

14 3. The payment or nonpayment of deductible amounts by the
15 insured employer to the insurer shall be treated under the policy
16 insuring the liability for workers' compensation in the same manner
17 as payment or nonpayment of premiums.

18 D. If the Insurance Commissioner determines it to be feasible,
19 and under the rules that the Insurance Commissioner may adopt,
20 premium reduction for deductibles may be determined before the
21 application of any experience modification, premium surcharge, or
22 premium discounts, and, to the extent that an experience rating or
23 safety record of an employer is based on benefits paid, money paid
24 by the insured employer under a deductible as provided in this

1 section may not be included as benefits paid so as to harm the
2 experience rating of the employer.

3 E. This section shall not apply to employers who are approved
4 to self-insure against liability for workers' compensation or group
5 self-insurance funds for workers' compensation.

6 SECTION 111. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 409 of Title 85, unless there is
8 created a duplication in numbering, reads as follows:

9 A. 1. a. The Workers' Compensation Commission is hereby
10 authorized to recognize two separate entities to
11 function as guaranty funds for Oklahoma workers'
12 compensation self-insurers in the private sector.

13 b. One guaranty fund will be established for individual
14 self-insurers and homogeneous self-insurer groups, as
15 defined in subparagraph a of paragraph 3 of subsection
16 A of Section 41 of this act.

17 c. A separate guaranty fund will be established for
18 common self-insurer groups, as defined in subparagraph
19 b of paragraph 3 of subsection A of Section 41 of this
20 act.

21 2. The two funds shall be created, funded, and administered
22 independently from each other.

23
24

1 3. The assets of the two funds shall remain separate for all
2 purposes and shall not be combined, and the assets of one fund shall
3 not be utilized to satisfy the obligations of the other fund.

4 B. Public sector self-insurers are specifically exempted from
5 the provisions of this section and Sections 112 through 121 of this
6 act.

7 C. As used in this section and Sections 112 through 121 of this
8 act, "public sector self-insurer" means a group of municipalities, a
9 city, a county, or the state entity which directly exercises control
10 over an employee and which pays the salary of the employee.

11 SECTION 112. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 410 of Title 85, unless there is
13 created a duplication in numbering, reads as follows:

14 The Workers' Compensation Commission shall promulgate rules to
15 implement Sections 111 through 121 of this act.

16 SECTION 113. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 411 of Title 85, unless there is
18 created a duplication in numbering, reads as follows:

19 There shall be no liability on the part of, and no cause of
20 action of any nature shall lie, whether at law or in equity, against
21 any Oklahoma workers' compensation self-insurer or the Workers'
22 Compensation Commission or any of its representatives on account of
23 any action or inaction in the administration of the workers'

1 compensation self-insurer guaranty funds or the performance of
2 duties in connection with any action or inaction.

3 SECTION 114. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 412 of Title 85, unless there is
5 created a duplication in numbering, reads as follows:

6 A. The entities acting as the guaranty fund shall independently
7 determine periodically the amount of money each Oklahoma workers'
8 compensation self-insurer should contribute to each fund in order to
9 provide an adequate pool of money to pay workers' compensation
10 benefits owed by an Oklahoma self-insurer when such self-insurer
11 fails to meet its workers' compensation benefits obligations.

12 B. The Workers' Compensation Commission shall assess all
13 workers' compensation self-insurers in an amount determined by each
14 entity, and the Commission shall transmit the monies collected to
15 each entity to be used solely to make workers' compensation benefit
16 payments from each fund and to defray the expenses of each fund.

17 C. At any time that a workers' compensation self-insurer
18 guaranty fund becomes inadequate to make payments to its claimants,
19 the balance of that fund shall be prorated equally among the
20 claimants, and the Oklahoma workers' compensation self-insurers who
21 are members of that fund shall be assessed an amount necessary to
22 pay the outstanding claims and expenses and to replenish that fund.

23 D. The inadequacy of one fund to make payments to claimants
24 shall have no effect on the operation of the remaining fund, nor

1 shall the assets of the remaining fund be utilized in any manner to
2 satisfy the claims of claimants to the fund suffering from the
3 inadequacy.

4 SECTION 115. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 413 of Title 85, unless there is
6 created a duplication in numbering, reads as follows:

7 The Workers' Compensation Commission shall report to each entity
8 when the Commission has reasonable cause to believe that the payment
9 of potential claims by an Oklahoma workers' compensation self-
10 insurer is or may be jeopardized by the existing or potential
11 financial condition of the self-insurer. The entity which has the
12 affected self-insurer as a member shall, based upon such information
13 as is reasonably available, report to the Commission upon all
14 matters germane to the solvency, liquidation, rehabilitation, or
15 conservation of any workers' compensation self-insurer, and such
16 reports shall not be deemed public documents under the Freedom of
17 Information Act or any other law.

18 SECTION 116. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 414 of Title 85, unless there is
20 created a duplication in numbering, reads as follows:

21 A. Monies collected by the Workers' Compensation Commission and
22 disbursed to each entity shall be vested in the entity and shall not
23 be deemed state property and shall not be subject to appropriation
24 by the Legislature.

1 B. Each entity shall annually submit to an audit by an
2 independent certified public accountant, and a copy of the audit
3 report shall be transmitted to the Commission.

4 SECTION 117. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 415 of Title 85, unless there is
6 created a duplication in numbering, reads as follows:

7 Each entity shall direct the investment of monies in each
8 workers' compensation self-insurer guaranty fund, and all returns on
9 the investments shall be retained in each fund. The monies in each
10 fund shall be used solely to compensate persons entitled to receive
11 workers' compensation benefits from an Oklahoma self-insurer which
12 is unable to meet its workers' compensation benefits obligations and
13 to defray the expenses of each fund.

14 SECTION 118. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 416 of Title 85, unless there is
16 created a duplication in numbering, reads as follows:

17 A. Each entity shall have full rights of subrogation against
18 any source of payment or reimbursement for payments made by the
19 corporation on behalf of an Oklahoma workers' compensation self-
20 insurer.

21 B. Each entity shall have a right of recovery through the
22 maintenance of an action against any third party, other than a
23 coemployee, who is in any way responsible or liable for injury or
24 death to a covered worker.

1 SECTION 119. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 417 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. Each entity is also authorized to take all necessary action,
5 including bringing an action at law or in equity, to seek any
6 available relief as against any workers' compensation self-insurer,
7 whether the self-insurer has paid all assessments levied by the
8 Workers' Compensation Commission on behalf of the corporation.

9 B. If an entity is required to bring an action at law or in
10 equity to enforce any obligations, rights, or duties as regards a
11 workers' compensation self-insurer, the court may award reasonable
12 attorney fees and costs to that entity.

13 SECTION 120. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 418 of Title 85, unless there is
15 created a duplication in numbering, reads as follows:

16 All private sector participants in the Oklahoma workers'
17 compensation self-insurers' program may be members of one of the
18 entities acting as guaranty funds, and the Workers' Compensation
19 Commission may revoke any authority of the self-insurer to act as a
20 workers' compensation self-insurer if the self-insurer fails to
21 maintain membership in the applicable entity or fails to pay the
22 assessments levied by the Commission under Sections 111 through 121
23 of this act.

24

1 SECTION 121. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 419 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 Any person or entity whose workers' compensation self-insurer
5 status is terminated shall thereafter be subject to no further
6 assessments by the Workers' Compensation Commission, but shall
7 remain liable for all assessments due prior to the date of
8 termination.

9 SECTION 122. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 420 of Title 85, unless there is
11 created a duplication in numbering, reads as follows:

12 The Fifty-first Legislature realizes that the Oklahoma workers'
13 compensation statutes must be revised and amended from time to time.
14 Unfortunately, many of the changes made by this act were necessary
15 because the Workers' Compensation Court and other Oklahoma courts
16 have continually broadened the scope and eroded the purpose of the
17 workers' compensation statutes of this state. The Fifty-first
18 Legislature intends to restate that the major and controlling
19 purpose of workers' compensation is to pay timely temporary and
20 permanent disability benefits to all legitimately injured workers
21 that suffer an injury or disease arising out of and in the course of
22 employment, to pay reasonable and necessary medical expenses
23 resulting from the injury or disease, and then to return the worker
24 to the work force. When, and if, the workers' compensation statutes

1 of this state need to be changed, the Legislature acknowledges its
2 responsibility to do so. It is the specific intent of the Fifty-
3 first Legislature to repeal, annul, and hold for naught all prior
4 opinions or decisions of the Workers' Compensation Court, or other
5 courts of this state contrary to or in conflict with any provision
6 in this act. In the future, if such things as the statute of
7 limitations, the standard of review by the Workers' Compensation
8 Commission or courts, the extent to which any physical condition,
9 injury, or disease should be excluded from or added to coverage by
10 the law, or the scope of the workers' compensation statutes need to
11 be liberalized, broadened, or narrowed, those things shall be
12 addressed by the Legislature and should not be done by
13 administrative law judges, the Workers' Compensation Commission, or
14 the courts.

15 SECTION 123. AMENDATORY 74 O.S. 2001, Section 18m-1, is
16 amended to read as follows:

17 Section 18m-1. A. There is hereby created within the ~~Office of~~
18 ~~the Attorney General~~ Insurance Department a Workers' Compensation
19 Fraud Unit.

20 B. The Workers' Compensation Fraud Unit, upon inquiry or
21 complaint, shall determine the extent, if any, to which any
22 violation has occurred of any statute or administrative rule of this
23 state pertaining to workers' compensation fraud and may initiate any
24 necessary investigation, civil action, criminal action, referral to

1 the ~~Insurance Commissioner or Insurance Department~~ Attorney General
2 or Office of the Attorney General, referral to the ~~Administrator of~~
3 ~~the Workers' Compensation Court~~ Commission, referral to a district
4 attorney or referral to any appropriate official of this or any
5 other state or of the federal government.

6 C. In the absence of fraud, bad faith, reckless disregard for
7 the truth, or actual malice, no person, insurer, or agent of an
8 insurer shall be liable for damages in a civil action or subject to
9 criminal prosecution for communication, publication, or any other
10 action taken to supply information about suspected workers'
11 compensation fraud to the Workers' Compensation Fraud Unit or any
12 other agency involved in the investigation or prosecution of
13 suspected workers' compensation fraud.

14 D. The ~~Attorney General and the Office of the Attorney General,~~
15 ~~the Insurance Commissioner and the Insurance Department,~~ the
16 Attorney General and the Office of the Attorney General, the
17 ~~Administrator of the Workers' Compensation Court~~ Commission, every
18 district attorney and every law enforcement agency shall cooperate
19 and coordinate efforts for the investigation and prosecution of
20 suspected workers' compensation fraud.

21 E. The Workers' Compensation Fraud Unit is hereby transferred
22 from the Office of the Attorney General to the Insurance Department
23 effective January 1, 2009.

24

1 F. All assets, funds, liabilities, allotments, purchase orders,
2 outstanding financial obligations, encumbrances, records, aircraft,
3 vehicles, equipment, and other property of the Workers' Compensation
4 Fraud Unit is hereby transferred to the Insurance Department.

5 G. Personnel employed by the Office of the Attorney General who
6 are assigned to or designated as employees within the Workers'
7 Compensation Fraud Unit on January 1, 2009, shall be transferred to
8 the Insurance Department.

9 H. The classified and unclassified employees who are
10 transferred pursuant to this section shall be subject to the
11 following provisions:

12 1. Classified employees shall remain subject to the provisions
13 of the Merit System of Personnel Administration, as provided in the
14 Oklahoma Personnel Act;

15 2. Unclassified employees shall remain in the unclassified
16 service and shall serve at the pleasure of the Insurance
17 Commissioner;

18 3. All employees who are transferred to the Insurance
19 Department shall retain leave, sick and annual time earned and any
20 retirement and longevity benefits which have accrued during their
21 employment with the state. The salaries of employees who are
22 transferred shall not be reduced as a direct and immediate result of
23 the transfer;

1 4. If the Insurance Department should implement a reduction in
2 force, all employees transferred from the Office of the Attorney
3 General shall be credited for the time they were employed by the
4 Office of the Attorney General; and

5 5. The transfer of personnel shall be coordinated with the
6 Office of Personnel Management.

7 SECTION 124. AMENDATORY 74 O.S. 2001, Section 18m-2, is
8 amended to read as follows:

9 Section 18m-2. A. If the ~~Attorney General~~ Insurance
10 Commissioner or a designee has reason to believe as a result of
11 inquiry or complaint that a person has engaged in or is engaging in
12 an act or practice that violates any administrative rule or statute
13 pertaining to workers' compensation fraud, the ~~Attorney General~~
14 Insurance Commissioner or a designee shall have all of the powers of
15 a district attorney.

16 B. Records, documents, reports and evidence obtained or created
17 by the ~~Office of the Attorney General~~ Insurance Department as a
18 result of workers' compensation fraud shall be confidential and
19 shall not be subject to the Oklahoma Open Records Act or to outside
20 review or release by any individual except when authorized by the
21 ~~Attorney General~~ Insurance Commissioner or when required by an
22 administrative or judicial proceeding.

23 SECTION 125. AMENDATORY 74 O.S. 2001, Section 19.2, is
24 amended to read as follows:

1 Section 19.2 There is hereby created in the State Treasury a
2 revolving fund for the ~~Office of the Attorney General~~ Insurance
3 Department, to be designated the "~~Attorney General's~~ Insurance
4 Commissioner's Workers' Compensation Fraud Unit Revolving Fund".
5 The fund shall be a continuing fund, not subject to fiscal year
6 limitations, and shall consist of any monies designated to the fund
7 by law. All monies accruing to the credit of said fund are hereby
8 appropriated and may be budgeted and expended by the ~~Attorney~~
9 ~~General~~ Insurance Commissioner for the purposes of investigation,
10 civil action, criminal action or referral to the district attorney
11 in cases involving suspected workers' compensation fraud.

12 SECTION 126. RECODIFICATION 74 O.S. 2001, Section 18m-1,
13 as amended by Section 123 of this act, shall be recodified as
14 Section 364 of Title 36 of the Oklahoma Statutes, unless there is
15 created a duplication in numbering.

16 SECTION 127. RECODIFICATION 74 O.S. 2001, Section 18m-2,
17 as amended by Section 124 of this act, shall be recodified as
18 Section 365 of Title 36 of the Oklahoma Statutes, unless there is
19 created a duplication in numbering.

20 SECTION 128. RECODIFICATION 74 O.S. 2001, Section 19.2,
21 as amended by Section 125 of this act, shall be recodified as
22 Section 366 of Title 36 of the Oklahoma Statutes, unless there is
23 created a duplication in numbering.

24

1 SECTION 129. REPEALER 85 O.S. 2001, Sections 1, 1.1, as
2 amended by Section 7, Chapter 1, 1st Extraordinary Session, O.S.L.
3 2005, 1.2, 1.2A, 1.3, as amended by Section 8, Chapter 1, 1st
4 Extraordinary Session, O.S.L. 2005, 2b, 2e, 2.1, 2.2, 2.3, 2.4, 2.5,
5 2.6, 2.7, 3, as last amended by Section 9, Chapter 1, 1st
6 Extraordinary Session, O.S.L. 2005, 3.1, 3.4, 3.5, as amended by
7 Section 10, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 3.6,
8 3.7, 3.8, 3.9 and 3.10, as amended by Sections 11 and 12, Chapter 1,
9 1st Extraordinary Session, O.S.L. 2005, 3.11, 4, 5, as amended by
10 Section 13, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 6,
11 6.1, 7, 9, 11, as amended by Section 77, Chapter 264, O.S.L. 2006,
12 12, as amended by Section 14, Chapter 1, 1st Extraordinary Session,
13 O.S.L. 2005, 13, 14, as last amended by Section 15, Chapter 1, 1st
14 Extraordinary Session, O.S.L. 2005, 14.1, 14.2 and 14.3, as amended
15 by Sections 16 and 17, Chapter 1, 1st Extraordinary Session, O.S.L.
16 2005, 15, 16, as amended by Section 18, Chapter 1, 1st Extraordinary
17 Session, O.S.L. 2005, 17, as last amended by Section 19, Chapter 1,
18 1st Extraordinary Session, O.S.L. 2005, 21, 22, as amended by
19 Section 20, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 22.1,
20 24.1, as amended by Section 21, Chapter 1, 1st Extraordinary
21 Session, O.S.L. 2005, 24.2, 24.3, 25, 26, as amended by Section 22,
22 Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 27.1, 28, 30, as
23 amended by Section 23, Chapter 1, 1st Extraordinary Session, O.S.L.
24 2005, 41, 41.1, 42, 43 and 44, as amended by Sections 24 and 25,

1 Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 45, 46, 47, 47.1,
2 48, as amended by Section 26, Chapter 1, 1st Extraordinary Session,
3 O.S.L. 2005, 48.1, 49, 61, as amended by Section 78, Chapter 264,
4 O.S.L. 2006, 61.1, 61.2, 63, 63.1, 63.2, 63.3, 63.4, 64, as last
5 amended by Section 79, Chapter 264, O.S.L. 2006, 65, as amended by
6 Section 80, Chapter 264, O.S.L. 2006, 65.2, 65.3, 66.1, 66.2, 67.1,
7 69.5, 80, 81, 84, 85, 92, 93, 93.2, 95, 101, 103, 104, 106, 107,
8 109, 110, as amended by Section 1, Chapter 338, O.S.L. 2002, 112,
9 122, 171 and 172, as amended by Sections 27 and 28, Chapter 1, 1st
10 Extraordinary Session, O.S.L. 2005, 173, as last amended by Section
11 29, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 173.1, 173.2,
12 173.3, 174, 175, as last amended by Section 30, Chapter 1, 1st
13 Extraordinary Session, O.S.L. 2005, 176, 177, 178, 179, 180, 201,
14 201.1, as last amended by Section 31, Chapter 1, 1st Extraordinary
15 Session, O.S.L. 2005, 201.2, 203 and 211 (85 O.S. Supp. 2007,
16 Sections 1.1, 1.3, 3, 3.5, 3.9, 3.10, 5, 11, 12, 14, 14.2, 14.3, 16,
17 17, 22, 24.1, 26, 30, 43, 44, 48, 61, 64, 65, 110, 171, 172, 173,
18 175 and 201.1), are hereby repealed.

19 SECTION 130. Sections 1 through 122 and Section 129 of this act
20 shall become effective November 1, 2008.

21 SECTION 131. Sections 123 through 128 of this act shall become
22 effective January 1, 2009.

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24 51-2-10284 MMP 02/21/08

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