

**BILL SUMMARY**  
2<sup>nd</sup> Session of the 52<sup>nd</sup> Legislature

<b>Bill No.:</b>	<b>HB2652</b>
<b>Version:</b>	<b>CCR</b>
<b>Author:</b>	<b>Representative Sullivan</b> <b>Senator Sykes</b>
<b>Date:</b>	<b>5/17/2010</b>
<b>Impact:</b>	<b>\$0</b>

**Bill Summary**

Research Analyst: Arnella Karges

The Conference Committee Report (CCR) for HB2652, restores the Title on the Engrossed measure, which amends definitions as used in the Workers' Compensation Act. The measure extends the amount of time for a written settlement offer to be made for a permanent disability award, from 15 to 30 days, regarding "amount in dispute." The measure amends the definition for "compensable injury" to mean any injury or illness caused by employment and a specific incident; a heart-related injury if an accident or employment caused the injury; personal property such as artificial limbs, dentures, and glasses; injury as a result of the willful act of a third party; and injury or disease from a vaccine required due to employment. "Compensable injury" does not include mental injury absent physical injury; alcoholism; drug addiction; injury during commute to and from work; natural deterioration of the body; willful intention to harm self; injury or disease from exposure to toxic substance such as asbestos; mental stress; contagious disease; death due to natural causes; injury while not performing work; injury due to alcohol or drug use, without doctor's orders. A "compensable injury" requires medical evidence supported by objective findings and the burden of proof rests with the employee.

The measure amends the definition for "compensation" as used in the Act, repealing the current definition and defining types of disability payments and outlining computation of wages. The measure creates a definition for "objective findings" (repeals definition of "objective medical evidence") to mean those findings not under the voluntary control of the patient, listing medical tests that suffice.

The measure amends the definition of "permanent impairment" repealing reference to and duties of the Physician Advisory Committee so that the American Medical Association's "Guides to the Evaluation of Permanent Impairment" apply rather than the Committee's recommendations, and prohibiting an injury to the shoulder or hip be converted or combined to the body. The measure also creates a definition for "surgery," as used in the Workers' Compensation Act, to mean a medical procedure involving an incision to allow the insertion of an instrument for treatment or diagnosis, and specifying that an injection is not considered surgery for the purposes of the Act, regarding either temporary or permanent disability determinations.

The measure simplifies the definition of "child" in respect to death benefits under the Act to mean simply, any dependent as defined by the IRS. A new section of law outlines how compensation to alien nonresidents dependents shall be managed.

A form is required within ten business days for reporting single-incident injuries in order to claim benefits. The measure establishes any signed agreement between a claimant and an employer as final. The measure also requires the Oklahoma Workers' Compensation Court

(OWCC) to be bound by the Oklahoma Evidence Code and the Uniform Commercial Code. Medical reports or depositions are only to be used to decide compensability of a claim.

The measure limits the authority of the state Supreme Court for appeal of an order or award and authorizes the Supreme Court to require a bond from any party in appellate cases. The measure repeals duties of the Administrator of OWCC, including rules for insurance companies to transact workers' compensation coverage.

The measure limits when an employer shall pay workers' compensation awards to injuries arising out of and in the course of employment. The measure imposes penalties on employers not complying with the Act and creates further employer requirements, including posting notice that the employer has workers' compensation coverage, including carrier information. New language states that an employer is not liable for workers' compensation payments if the OWCC determines an injury is not compensable. The measure limits treatment as recommended by the Physician Advisory Committee, unless the employer waives.

The measure expands the amount of time an employer may contract with a certified workplace medical plan (CWMP), if an insurer fails to provide access to a CWMP, from one to five years. The measure requires all state agencies to adopt and implement a CWMP no later than November 1, 2011.

OWCC is required to hire a Vocational Rehabilitation Director to help injured workers return to employment. The measure also doubles the amount of time an employee may receive benefits provided he or she is actively participating in retraining or job placement, from one year to two years.

The measure also amends what constitutes a permanent total disability and prohibits a claimant from receiving both permanent total disability and other forms of disability at the same time. Insurers are authorized to require injured workers to certify through a form that they are totally disabled and not employed, failure to certify fact within one month will result in benefit termination.

The measure also modifies requirements for disability benefits. Individuals who have had surgery for soft tissue injury due to a physician recommendation may petition the OWCC to extend their benefits, as claimants who have had surgery recommended, but not yet performed currently are allowed. New language terminates extended benefits if surgery is not recommended or is recommended but not performed within three months after the recommendation. For soft tissue injuries, amendatory language prevents the employee from permanent impairment benefits unless medical evidence exists of a permanent anatomical abnormality.

The measure establishes new compensation schedules for partial permanent disability benefits beginning November 1, 2010, for loss of digits, limbs, sight, or hearing, permanent disfigurement, hernia, and soft tissue injuries. The weekly compensation, based upon the employee's wages, shall not exceed \$342 per week.

The measure authorizes OWCC to review awards at any time to order necessary changes.

The measure further limits attorneys' fees to 20% of the amount of any award or settlement for permanent partial disability, the current cap is 35% of the amount. The measure prohibits attorneys from withholding any portion of a judgment or settlement proceeds of a client, or any

money in trust for a client, for the purpose of donating to a political fund, PAC, campaign, or candidate for any office.

The measure removes the authority of individual self-insured employers to receive credit for overpayments of benefits. The measure allows the Insurance Commissioner to choose whether or not to revoke an insurance carrier's workers' compensation license for violations of the Act.

The measure limits time for claims to be filed for compensation under the Act, from two years to six months.

The measure amends the composition of the Advisory Council on Workers' Compensation, limiting membership to seven, prohibiting attorneys, law firm or insurance company employees, or doctors from serving on the Committee. The Physician Advisory Committee's duties are amended to include ensuring the appropriate medical treatment guidelines are recommended to the OWCC Administrator for adoption and use in all claims. New definitions for this section are included for "evidence-based," "nationally recognized," "scientifically based," "peer review," and "state-developed."

Finally, the measure repeals the following sections:

- Computation of compensation for minors;
- Review of award by OWCC for change of condition;
- Actions for injuries or death in defined employments; and
- Physician Advisory Committee strain and sprain injury recommendations.

### **Fiscal Summary**

Fiscal Analyst: Marilyn Anderson

The CCR for HB2652 modifies the Workers' Compensation Act.

### **Fiscal Analysis**

The CCR for HB2652 has no significant fiscal impact.

### **Long Term Fiscal Considerations**

None

Fiscal Analysis Reviewed By:

*Janice Buchanan*

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