STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 878

By: Sykes and Anderson of the Senate

and

Sullivan of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; creating the Workers' Compensation Code; providing short title; providing for exclusive liability for certain injury; defining term; providing that specified issue is question of law; authorizing certain action under specified circumstances; prohibiting extension of immunity to certain persons; construing provisions; providing for exclusive remedy; creating Workers' Compensation Court; specifying makeup of Court; authorizing certain reapplication; establishing procedures to fill certain vacancies; requiring Senate confirmation of certain appointments; providing eligibility requirements for certain appointments; establishing jurisdiction of Court; authorizing adoption of rules; providing procedures for approval and publication of rules; providing responsibilities and duties of Court; authorizing Governor to appoint presiding judge of Court; establishing term and eligibility requirements for presiding judge; establishing duties of presiding judge; creating position of Administrator of Court; requiring Governor to appoint Administrator; requiring Senate confirmation of Administrator; establishing term and salary of Administrator; establishing duties of Administrator; restricting certain actions of employees of Court; establishing penalty; defining terms; provides for computation of time; requiring employers to pay certain compensation; provides for jurisdiction for injuries

occurring outside this state; exempting certain employees from act; exempting certain injuries from act; establishing requirements for provision of certain benefits by public entities; applying provisions to certain private employers; establishing requirements of liability for persons or entities other than immediate employer; specifying laws governing benefit determinations; establishing liability for benefits for occupational disease; establishing liability for benefits for cumulative trauma; requiring claims to be filed within certain time periods; providing procedures for dismissal of certain claims; requiring establishment of workers' compensation counselor or ombudsman program; requiring certain notice; authorizing mediation for certain claims; establishing procedures for certain mediation; establishing eligibility requirements for mediators; requiring record and report of certain injuries; establishing procedures for certain reports; requiring posting of certain notice; establishing notification procedures for certain injury; requiring Administrator to provide certain notice forms; providing procedures for commencement of certain claims, answers and defenses; providing for assignment and venue of certain cases; authorizing videoconferencing of certain hearings; requiring provision of medical care upon notice of injury; establishing procedures for selection of physician; defining term; requiring adherence to certain guidelines in the provision of medical treatment; requiring suspension of benefits under certain circumstances; authorizing certain travel reimbursement; requiring development of certain medical fee schedule; requiring certain notice and hearing; establishing certain requirements for medical fee schedule; establishing jurisdiction over disputed medical charges; limiting charges for prescription drugs; defining term; providing for reimbursement for prescription drugs; requiring certain financial disclosure; establishing procedures for certain reimbursement; providing for change of physician under a certified workplace medical plan; establishing certification requirements for workplace medical plans; authorizing certain independent contracting with certified workplace medical plans; authorizing certain premium reduction; requiring implementation of site visit protocol for inspection

of medical plans; requiring adoption of certain rules; requiring creation and maintenance of list of independent medical examiners; establishing requirements for independent medical examiners; establishing procedures for utilization of independent medical examiners; authorizing case management under certain circumstances; establishing eligibility requirements and procedures for utilization of case managers; providing formulas for calculation of average weekly wages; establishing requirements for compensation for temporary total disability benefits; establishing requirements for compensation for temporary partial disability benefits; defining term; establishing requirements for evaluation of permanent partial impairment; establishing requirements for compensation for permanent partial impairment benefits; establishing requirements for compensation for disfigurement; requiring furnishing, maintenance and repair of certain devices under specified circumstances; establishing requirements for compensation for permanent total disability benefits; establishing requirements for compensation of death benefits to beneficiaries; requiring the provision of physical and vocational rehabilitation under certain circumstances; establishing requirements for certain rehabilitation services; requiring hiring or contracting for Vocational Rehabilitation Director; establishing procedures for obtaining certain rehabilitation services; requiring certain evaluation; establishing procedures for certain settlements; establishing certain appellate procedures; requiring payment of certain fee; prohibiting employer from taking certain actions under specified circumstances; providing for liability for certain damages; limiting certain damage awards; authorizing certain benefits for change of condition or consequential injury; establishing jurisdiction for claims for certain legal services; establishing guidelines for claims for certain legal services; requiring assessment of certain penalties under specified circumstances; directing payment of awards for permanent partial impairment; requiring periodic installments of certain awards; establishing requirements for certain payments; establishing procedures for enforcement of certain awards and orders; providing for subrogation

of certain claims; making certain agreements for payment of premiums invalid; creating misdemeanor; exempting certain compensation and benefits from assignment or execution; directing payment of certain benefits upon death of claimant; authorizing lien for certain purposes; providing ways for employers to secure workers' compensation obligations; providing penalties; establishing certain hearing procedures; creating misdemeanor; providing penalties; prohibiting administrator of group self-insurance association from certain conduct; requiring certain provisions in certain insurance policies; creating the Individual Self-Insured Guaranty Fund Board; establishing duties of Board; stating composition of Board; requiring establishment of Fund in State Treasury; providing funding sources for certain Fund; requiring Tax Commission to collect certain payments; establishing requirements for certain Fund; stating exceptions; providing sunset provisions; creating the Group Self-Insurance Association Guaranty Fund Board; establishing duties of Board; stating composition of Board; requiring establishment of Fund in State Treasury; providing funding sources for certain Fund; requiring Tax Commission to collect certain payments; establishing requirements for certain Fund; stating exceptions; providing sunset provisions; creating the Workers' Compensation Self-Insurance Guaranty Fund; requiring certain participation in Fund; stating composition of Board; establishing duties of Board; stating purpose of certain Fund; specifying procedures for expenditures from Fund; providing funding sources for Fund; providing procedures for determining specified assessments for funding under certain circumstances; providing definition; requiring assessment to be paid within specified time period; setting forth penalties for assessment payment defaults; requiring collection of certain assessments by tax commission; authorizing tax commission to bring recovery action for certain unpaid assessments; exempting certain entities from assessments; requiring tax commission to determine Fund balance at specified times; providing duties of court administrator when determining impairment of self-insure; stating rights of Workers' Compensation Self-Insurance Guaranty Fund Board in certain proceedings; providing for lapse of certain funds and boards to be succeeded by the Workers' Compensation

Self-Insurance Guaranty Fund; exempting specified workers' compensation personnel from certain liability; requiring court administrator to make certain annual report; requiring implementation of certain electronic data interchange system; creating the Oklahoma Workers' Compensation Electronic Data Interchange Advisory Committee; providing for certain fees; providing for deposit of fees; creating the Administrator of Workers' Compensation Revolving Fund; providing for expenditures from and credits to fund; requiring employer compliance for requests for specified information or testimony; providing for prosecution or punishment for perjury under certain circumstances; authorizing inquiry by employer into prior compensation claims of employee by previous employer; stating exceptions; authorizing discharge of employee under circumstances; providing procedure for accessing a workers' compensation claim file; stating exceptions to procedure; requiring Administrator to provide certain website within specified time period; creating the Physician Advisory Committee; providing for appointment of membership; providing qualifications of members; setting terms of membership; stating duties of committee; providing procedure for adopting Oklahoma Treatment Guidelines; binding court to certain treatment guidelines; providing certain reimbursements to members; requiring minimum number of meetings; providing for quorum; providing for simple majority; providing office supplies and personnel; requiring certain entities to provide requested data; exempting members from liability under certain circumstances; creating the Advisory Council on Workers' Compensation; providing ex officio nonvoting members; providing for appointment of membership; providing qualifications of members; setting terms of membership; providing certain reimbursements to members; providing for meetings; providing for quorum; providing for voting; providing office supplies and personnel; setting forth duties of council; defining term; stating application of certain provisions relating to Multiple Injury Trust Fund claim adjudications on or after certain date; creating the Multiple Injury Trust Fund; providing funding sources; requiring the Oklahoma Tax Commission to assess and collect certain assessment from specified entities at stated rate from certain

awards; providing procedures for other entities to determine and pay assessments; defining terms; requiring certain entities to provide information as deemed necessary by Administrator; providing for notice of assessment rate; providing effective dates of rates; providing maximum assessment rate; providing for insufficient fund obligations; authorizing expenditure of certain monies by fund; authorizing tax commission to bring actions for recovery of certain funds; authorizing administrative penalties against certain entities for specified actions; setting forth duties of State Treasurer relating to fund; authorizing investment of certain investments and refunds; requiring tax commission to pay certain monies to specified entities for certain uses; requiring promulgation of certain rules; authorizing Multiple Injury Trust Fund to enter into certain agreements; directing payment of certain monies; providing for payment of subsequent injuries under certain circumstances; stating degree of liability of employer; stating compensation rate for certain disability awards; stating payment periods for certain awards; stating accrual dates of certain awards; providing abatement of certain awards; authorizing compromise of claim under certain circumstances; authorizing certain types of payments; setting amount and procedure for certain attorney fees; authorizing certain payments to surviving spouse under certain circumstances; setting statute of limitation for certain claims; prohibiting attorney from certain representation; charging CompSource with administration and protection of Multiple Injury Trust Fund; granting standing to CompSource in certain cases; authorizing Supreme Court review of certain awards; requiring treasurer to allocate certain funds under certain circumstances; creating the Workers' Compensation Administration Fund; stating use of funds; requiring expenditure of funds pursuant to legislative appropriation; providing source of funds; requiring certain declaration on specified documents; providing for benefit payments where certain disagreements exist among carrier liability; making certain orders unappealable; requiring court to promulgate certain rules; requiring certain reimbursements under certain circumstances; requiring specified persons and entities to give written permission for examination

of certain information; construing provision; granting certain subpoena power; providing procedure for issuing subpoenas; defining term; stating application of certain court determination; transferring certain funds, assets, property, records and other obligations; requiring retention of certain employee benefits; prohibiting certain salary reductions and reduction in force; limiting use of funds; directing certain entity to coordinate specified transfers; prohibiting consideration of certain benefits in determining certain compensation; prohibiting certain agreements; prohibiting termination of certain insurance upon certain actions; repealing 85 O.S. 2001, Sections 1, 1.1, as amended by Section 7, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 1.2, as amended by Section 1, Chapter 453, O.S.L. 2010, 1.2A, 1.3, as amended by Section 8, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 2b, 2e, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, as last amended by Section 1, Chapter 84, O.S.L. 2010, 2.7, 3, as last amended by Section 1, Chapter 452, O.S.L. 2010, 3.1, 3.4, 3.5, as amended by Section 10, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 3.6, as amended by Section 1, Chapter 403, O.S.L. 2010, 3.7, as amended by Section 1 of Enrolled House Bill No. 2038 of the 1st Session of the 53rd Oklahoma Legislature, 3.8, 3.9, as last amended by Section 2, Chapter 403, O.S.L. 2010, 3.10, as last amended by Section 3, Chapter 403, O.S.L. 2010, 3.11, 4, 5, as amended by Section 13, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 6, 6.1, 7, 9, 11, as last amended by Section 2, Chapter 452, O.S.L. 2010, 12, as last amended by Section 3, Chapter 452, O.S.L. 2010, 13, 14, as last amended by Section 4, Chapter 452, O.S.L. 2010, 14.1, 14.2 and 14.3, as amended by Sections 16 and 17, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 15, 16, as amended by Section 18, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 17, as last amended by Section 19, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 21, 22, as last amended by Section 5, Chapter 452, O.S.L. 2010, 22.1, 24.1, as amended by Section 21, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 24.2, 24.3, 25, 26, as amended by Section 22, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 27.1, 28, 30, as amended by Section 23, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 41, 41.1, 42, as amended by

Section 1, Chapter 236, O.S.L. 2010, 43 and 44, as amended by Sections 24 and 25, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 45, 46, 47, 47.1, 48, as amended by Section 26, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 48.1, 49, 61, as amended by Section 78, Chapter 264, O.S.L. 2006, 61.1, 61.2, 63, 63.1, as amended by Section 3, Chapter 414, O.S.L. 2010, 63.2, 63.3, 63.4, 64, as last amended by Section 79, Chapter 264, O.S.L. 2006, 65, as amended by Section 80, Chapter 264, O.S.L. 2006, 65.2, 65.3, 66.1, 66.2, 67.1, 69.5, 80, 81, 84, 85, 92, 93, as amended by Section 4, Chapter 403, O.S.L. 2010, 93.2, as amended by Section 5, Chapter 403, O.S.L. 2010, 95, 101, 103, 104, 106, 107, 109, 110, as amended by Section 1, Chapter 338, O.S.L. 2002, 112, 122, 149.2, 171 and 172, as amended by Sections 27 and 28, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 173, as last amended by Section 29, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 173.1, 173.2, 173.3, 174, 175, as last amended by Section 30, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 176, 177, 178, 179, 180, 201, as amended by Section 6, Chapter 403, O.S.L. 2010, 201.1, as last amended by Section 6, Chapter 452, O.S.L. 2010, 201.2, 203 and 211 (85 O.S. Supp. 2010, Sections 1.1, 1.2, 1.3, 2.6, 3, 3.5, 3.6, 3.9, 3.10, 5, 11, 12, 14, 14.2, 14.3, 16, 17, 22, 24.1, 26, 30, 42, 43, 44, 48, 61, 63.1, 64, 65, 93, 93.2, 110, 171, 172, 173, 175, 201 and 201.1), which relate to workers' compensation; providing for codification; and providing for recodification.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301 of Title 85, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Workers' Compensation Code".

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

A. The liability prescribed in this act shall be exclusive and in place of all other liability of the employer and any of his or her employees, at common law or otherwise, for such injury, loss of services, or death, to the employee, or the spouse, personal representative, parents, or dependents of the employee, or any other person, except in the case of an intentional tort, or where the employer has failed to secure the payment of compensation for the injured employee.

B. An intentional tort shall exist only when the employee is injured as a result of willful, deliberate, specific intent of the employer to cause such injury. Allegations or proof that the employer had knowledge that such injury was substantially certain to result from the employer's conduct shall not constitute an intentional tort. The issue of whether an act is an intentional tort shall be a question of law for the Court.

C. If an employer has failed to secure the payment of compensation for his or her injured employee as provided for in Section 51 of this act, an injured employee, or his or her legal representatives if death results from the injury, may maintain an action in the district court for damages on account of such injury, and in such action the defendant may not plead or prove as a defense

that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his or her employment, or that the injury was due to the contributory negligence of the employee.

D. The immunity created by the provisions of this section shall not extend to action against another employer, or its employees, on the same job as the injured or deceased worker where such other employer does not stand in the position of an intermediate or principal employer to the immediate employer of the injured or deceased worker.

E. The immunity created by the provisions of this section shall not extend to action against another employer, or its employees, on the same job as the injured or deceased worker even though such other employer may be considered as standing in the position of a special master of a loaned servant where such special master neither is the immediate employer of the injured or deceased worker nor stands in the position of an intermediate or principal employer to the immediate employer of the injured or deceased worker.

F. This section shall not be construed to abrogate the loaned servant doctrine in any respect other than that described in subsection E of this section. Nothing in this act shall be construed to relieve the employer from any other penalty provided for in this act for failure to secure the payment of compensation under the Workers' Compensation Code.

G. For the purpose of extending the immunity of this section, any architect, professional engineer, or land surveyor shall be deemed an intermediate or principal employer for services performed at or on the site of a construction project, but this immunity shall not extend to the negligent preparation of design plans and specifications.

H. For the purpose of extending the immunity of this section, any operator or owner of an oil or gas well or other operation for exploring for, drilling for, or producing oil or gas shall be deemed to be an intermediate or principal employer for services performed at a drill site or location with respect to injured or deceased workers whose immediate employer was hired by such operator or owner at the time of such injury.

I. If the employer has failed to secure the payment of compensation as provided in Section 51 of this act or in the case of an intentional tort, the injured employee or his or her legal representative may maintain an action either in the Workers' Compensation Court or in the district court, but not both.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 303 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Workers' Compensation Court which shall consist of ten (10) judges, notwithstanding any reduction in the number of judges by operation of law before the

effective date of this act. Each judge of the Court shall be appointed to a designated numbered position on the Court. The positions shall be numbered one through ten, no more than seven of which shall be permanently assigned to the Oklahoma City location of the Workers' Compensation Court and no less than three of which shall be permanently assigned to the Tulsa location of the Workers' Compensation Court. The initial terms of the judges by position number shall expire on the following dates:

Position 1 shall expire 7-1-14.

Position 2 shall expire 7-1-14.

Position 3 shall expire 7-1-14.

Position 4 shall expire 7-1-12.

Position 5 shall expire 7-1-12.

Position 6 shall expire 7-1-16.

Position 7 shall expire 7-1-16.

Position 8 shall expire 7-1-12.

Position 9 shall expire 7-1-12.

Position 10 shall expire 7-1-14.

Provided, judges who are serving unexpired terms on the Workers' Compensation Court on the effective date of this act shall serve on the Court created by this section until their respective terms expire as provided in this act. Thereafter, each position shall be filled by a judge appointed to serve an eight-year term. Judges serving unexpired terms on the effective date of this act shall be

eligible upon expiration of such terms for appointment to one term of eight (8) years pursuant to this section. After a judge serves an eight-year term, such judge shall be eligible to reapply for an additional term.

When a vacancy on the Court occurs or is certain to occur, or for initial appointments to the Court, the Judicial Nominating Commission shall choose and submit to the Governor and the Chief Justice of the Supreme Court the names of three persons for each appointment, each of whom has previously notified the Commission in writing that he or she will serve as a judge if appointed. The Governor shall appoint one of the nominees to fill the vacancy with the advice and consent of the Senate. If the Governor fails to do so within sixty (60) days, the Chief Justice of the Supreme Court shall appoint one of the nominees with the advice and consent of the Senate, the appointment to be certified to the Secretary of State. Appointments by the Governor to fill a position for a term commencing July 1 shall be made by April 15. If the April 15 deadline cannot be met, the Governor shall notify the President Pro Tempore of the Senate of the date when the appointment is expected to be made. If the Senate fails to confirm within ninety (90) days, the Governor may select from the two remaining nominees or request three additional nominees from the Judicial Nominating Commission.

B. A judge of the Court shall have been licensed to practice law in this state for a period of not less than five (5) years and

shall have not less than five (5) years of workers' compensation experience prior to appointment. Each judge, before entering upon the duties of office, shall take and subscribe to an oath of office and file the same with the Secretary of State. Each judge shall continue to serve until his or her successor has been appointed and qualified. A judge may be removed for cause by the Court on the Judiciary prior to the expiration of his or her term.

C. Each judge shall receive a salary equal to that paid to a district judge of this state, and shall devote full time to his or her duties and shall not engage in the private practice of law during the term in office.

D. The Court shall have the authority to adopt reasonable rules within its respective areas of responsibility including the rules of procedure for the Court en banc, after notice and public hearing, for effecting the purposes of the Workers' Compensation Code. All of the judges of the Court shall be present at all meetings wherein rules are adopted or amended. All rules, upon adoption, shall be submitted to the Supreme Court, which shall either approve or disapprove them within thirty (30) days. All rules, upon approval by the Supreme Court, shall be published and be made available to the public and, if not inconsistent with the law, shall be binding in the administration of the Workers' Compensation Code.

E. The Court is hereby designated and confirmed as a court of record, with respect to any matter within the limits of its

jurisdiction, and within such limits the judges thereof shall possess the powers and prerogatives of the judges of the other courts of record of this state, including the power to punish for contempt those persons who disobey a subpoena, or refuse to be sworn or to answer as a witness, when lawfully ordered to do so.

F. The principal office of the Court shall be situated in the City of Oklahoma City in quarters assigned by the Department of Central Services. The Court may hold hearings in any city of this state. The Tulsa location of the Workers' Compensation Court shall not be closed without the approval of the Legislature.

G. All county commissioners and presiding district judges of this state shall make quarters available for the conducting of hearings by a judge of the Court upon request by the Court.

H. The judges of the Court shall determine the qualifications necessary for the position of Administrator. The qualifications shall be submitted to the Chief Justice of the Supreme Court for approval, disapproval or modification.

I. Judges of the Workers' Compensation Court may punish for direct contempt pursuant to Sections 565, 565.1 and 566 of Title 21 of the Oklahoma Statutes.

J. The Court shall be vested with jurisdiction over all claims filed pursuant to the Workers' Compensation Code. All claims so filed shall be heard by the judge sitting without a jury. The Court shall have full power and authority to determine all questions in

relation to payment of claims for compensation under the provisions of the Workers' Compensation Code. The Court, upon application of either party, shall order a hearing. Upon a hearing, either party may present evidence and be represented by counsel. Except as provided in Section 40 of this act, the decision of the Court shall be final as to all questions of fact and law. The decision of the Court shall be issued within sixty (60) days following the submission of the case by the parties. The power and jurisdiction of the Court over each case shall be continuing and it may, from time to time, make such modifications or changes with respect to former findings or orders relating thereto if, in its opinion, it may be justified.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 304 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The Governor shall appoint from among the judges of the Workers' Compensation Court a presiding judge of the Court who shall serve for a two-year term commencing with the initial appointment beginning January 1, 2013. The presiding judge serving on the effective date of this act shall serve the remainder of the term. If a presiding judge resigns the office during the term, the Governor shall appoint a new presiding judge to serve the remainder of the term.

B. The presiding judge shall preside at all meetings of the judges of the Court as may be necessary; perform such other supervisory duties as the needs of the Court may require; preside at all hearings before the Court en banc and at all conferences at which appeals and other matters are considered; make all procedural rulings for the Court except those to be made in the course of hearings before a single judge; assign or direct the assignment of cases to the several judges for hearing at places the presiding judge shall designate; direct and supervise the work of all employees of the Court; handle, oversee and be responsible for all administrative affairs of the Court, including but not limited to those of personnel, budgetary and financial management; and bear such other responsibilities and duties as may be necessary to operate the Court in an efficient manner. For the period during which the presiding judge is disqualified, disabled or absent, the presiding judge may designate another judge to act as presiding judge.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 305 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The chief administrative officer of the Workers' Compensation Court shall be the Administrator of the Workers' Compensation Court, who shall be subject to the general supervision

of the presiding judge of the Court, subject to the general administrative authority of the Chief Justice of the Supreme Court.

B. The person serving as Administrator on the effective date of this act shall be appointed by the Governor with the advice and consent of the Senate. The Administrator shall serve at the pleasure of the Governor.

C. The salary of the Administrator shall be ninety percent (90%) of the authorized salary of a judge of the Court.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 306 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. In addition to other duties, the Administrator of the Workers' Compensation Court, subject to approval of the presiding judge, shall organize, direct and develop the administrative work of the Workers' Compensation Court, including docketing, clerical, technical and financial work, establish hours of operation, and perform such other duties relating to matters within the purview of the Court. The Administrator shall employ other employees of the Court, within budgetary limitation, necessary to carry out the work and orders of the Court in an efficient and expedient manner.

B. The Administrator shall have the following powers and duties:

1. To hear and approve settlements pursuant to direction by the judges of the Court;

2. To review and approve own-risk applications and group self-insurance associations applications;

3. To monitor own-risk, self-insurer and group self-insurance programs in accordance with the rules of the Court;

4. To contract with an appropriate state governmental entity, insurance carrier or approved service organization to process, investigate and pay valid claims against an impaired self-insurer, charges for which shall be paid from the proceeds of security posted with the Administrator as provided in Section 51 of this act;

5. To establish a toll free telephone number in order to provide information and answer questions about the Court;

6. To hear and determine claims concerning disputed medical bills;

7. To promulgate necessary rules subject to the approval of the presiding judge; and

8. Such other duties and responsibilities authorized by law or as the judges of the Court may prescribe.

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

A. No employee of the Administrator of the Workers' Compensation Court shall be competent to testify on any matter before a court concerning any information the employee has received

through the performance of the employee's duties under the provisions of the Workers' Compensation Code.

B. The Administrator and employees of the Administrator shall not solicit employment for any attorney or physician nor shall they recommend or refer any claimant or employer to an attorney or physician. If the Administrator or any employee of the Administrator makes such a solicitation, recommendation or reference, that person, upon conviction, shall be guilty of a misdemeanor punishable, for each offense, by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment. The Administrator shall immediately terminate the employment of any employee who is guilty of such solicitation, recommendation or reference. An Administrator or judge of the Workers' Compensation Court guilty of such solicitation, recommendation or reference shall be subject to removal from office.

C. No judge of the Court shall engage in any ex parte communication with any party to an action pending before the Court or with any witness or medical provider regarding the merits of a specific matter pending before the judge for resolution. Any violation of this provision shall subject the judge to disqualification from the action or matter upon presentation of an application for disqualification.

D. An attorney and counselor shall not deduct or withhold any portion of a judgment from a court of law, settlement proceeds of a client, or any monies held in trust for a client for the purpose of donating or contributing funds or monies to a political fund, political action committee, campaign of any kind, or candidate for state, federal or local office.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 308 of Title 85, unless there is created a duplication in numbering, reads as follows:

As used in the Workers' Compensation Code:

1. "Actually dependent" means a surviving spouse, a child, or any other person who receives one-half (1/2) or more of his or her support from the employee;

2. "Administrator" means the Administrator of the Workers' Compensation Court;

3. "Amount in dispute" means the dollar value of any permanent disability award granted to the employee by the Court for a disability claim which is greater than the dollar amount offered by the employer that admits compensability within twenty (20) days of the filing of the Employee's First Notice of Accidental Injury and Claim for Compensation to the employee for such disability claim, when the employer has made a written settlement offer within thirty (30) days of the employee reaching maximum medical improvement;

4. "Brother" or "sister" means a sibling of the employee under eighteen (18) years of age, eighteen (18) years of age or over and physically or mentally incapable of self-support, eighteen (18) years of age or over and actually dependent and brothers and sisters by adoption;

5. "Case management" means the ongoing coordination, by a case manager, of health care services provided to an injured or disabled worker, including, but not limited to systematically monitoring the treatment rendered and the medical progress of the injured or disabled worker; ensuring that any treatment plan follows all appropriate treatment protocols, utilization controls and practice parameters; assessing whether alternative health care services are appropriate and delivered in a cost-effective manner based upon acceptable medical standards; and ensuring that the injured or disabled worker is following the prescribed health care plan;

6. "Case manager" means a person who is a registered nurse with a current, active unencumbered license from the Oklahoma Board of Nursing, or possesses one or more of the following certifications which indicate the individual has a minimum number of years of case management experience, has passed a national competency test and regularly obtains continuing education hours to maintain certification:

a. Certified Disability Management Specialist (CDMS),

b. Certified Case Manager (CCM),

c. Certified Rehabilitation Registered Nurse (CRRN),

d. Case Manager - Certified (CMC),

e. Certified Occupational Health Nurse (COHN), or

f. Certified Occupational Health Nurse Specialist (COHN-S);

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

8. "Child" means a natural or adopted son or daughter of the employee under eighteen (18) years of age; or a natural or adopted son or daughter of an employee eighteen (18) years of age or over who is physically or mentally incapable of self-support; or any natural or adopted son or daughter of an employee eighteen (18) years of age or over who is actually dependent; or any natural or

adopted son or daughter of an employee between eighteen (18) and twenty-three (23) years of age who is enrolled as a full-time student in any accredited educational institution. The term "child" includes a posthumous child, a child legally adopted or one for whom adoption proceedings are pending at the time of death, an actually dependent stepchild or an actually dependent acknowledged child born out of wedlock;

9. "Claimant" means a person who claims benefits for an injury pursuant to the provisions of the Workers' Compensation Code;

10. a. "Compensable injury" means any injury or occupational illness, causing internal or external harm to the body, which arises out of and in the course of employment if such employment was the major cause of the specific injury or illness. An injury, other than cumulative trauma, is compensable only if it is caused by a specific incident and is identifiable by time, place and occurrence unless it is otherwise defined as compensable in this act. A compensable injury must be established by objective medical evidence. The employee has the burden of proof to establish by a preponderance of the evidence that such unexpected or unforeseen injury was in fact caused by the employment. There is no presumption from the mere

occurrence of such unexpected or unforeseen injury that the injury was in fact caused by the employment.

b. "Compensable injury" means a cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death, only if, in relation to other factors contributing to the physical harm, a work-related activity is the major cause of the physical harm. Such injury shall not be deemed to be a compensable injury unless it is shown that the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the usual work of the employee, or alternately, that some unusual incident occurred which is found to have been the major cause of the physical harm.

c. "Compensable injury" shall not include the ordinary, gradual deterioration or progressive degeneration caused by the aging process, unless the employment is a major cause of the deterioration or degeneration and is supported by objective medical evidence; nor shall it include injury incurred while engaging in or performing, or as the result of engaging in or performing, any recreational or social activities.

d. "Compensable injury" includes personal property which is established by objective medical evidence to be medically necessary and which replaces or improves normal physical function of the body, such as artificial dentures, artificial limbs, glass eyes, eye glasses and other prostheses which are placed in or on the body and is damaged as a result of the injury.

e. "Compensable injury" shall not include an injury resulting directly or indirectly from idiopathic causes; any contagious or infectious disease unless it arises out of and occurs in the scope and course of employment; or death due to natural causes occurring while the worker is at work.

f. "Compensable injury" shall not include mental injury that does not arise directly as a result of a compensable physical injury, except in the case of rape or other crime of violence which arises out of and in the course of employment;

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

12. "Consequential injury" means injury or harm to a part of the body that is a direct result of the injury or medical treatment to the part of the body originally injured in the claim. The Court shall not make a finding of a consequential injury unless it is

established by objective medical evidence that medical treatment for such part of the body is required;

13. "Continuing medical maintenance" means medical treatment that is reasonable and necessary to maintain claimant's condition resulting from the compensable injury or illness after reaching maximum medical improvement. Continuing medical maintenance shall not include diagnostic tests, surgery, injections, counseling, physical therapy, or pain management devices or equipment, unless specifically authorized by the Workers' Compensation Court in advance of such treatment;

14. "Court" means the Workers' Compensation Court;

15. "Cumulative trauma" means a compensable injury which is repetitive in nature and engaged in over a period of time, the major cause of which results from employment activities, and proved by objective medical evidence;

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

17. "Employee" means any person engaged in the employment of an employer covered by the terms of the Workers' Compensation Code except for such persons as may be excluded elsewhere in this act. Provided, any person excluded as an employee may, if otherwise

qualified, be eligible for benefits under the Workers' Compensation Code if specifically covered by any policy of insurance covering benefits under the Workers' Compensation Code. "Employee" shall also include a member of the Oklahoma National Guard while in the performance of duties only while in response to state orders and any authorized voluntary or uncompensated worker, rendering services as a firefighter, peace officer or emergency management worker. "Employee" shall also include a participant in a sheltered workshop program which is certified by the United States Department of Labor;

18. "Employer", except when otherwise expressly stated, means a person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, corporation, or limited liability company, departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof, employing a person included within the term "employee" as defined in this section. Employer may also mean the employer's workers' compensation insurance carrier, if applicable;

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

20. "Evidence-based" means expert-based, literature-supported and outcomes validated by well-designed randomized trials when such information is available and which uses the best available evidence to support medical decision making;

21. "Gainful employment" means the capacity to perform employment for wages for a period of time that is not part-time, occasional or sporadic;

22. "Grandchild" means a child of a child;

23. "Impaired self-insurer" means a private self-insurer or group self-insurance association that fails to pay its workers' compensation obligations, or is financially unable to do so and is the subject of any proceeding under the Federal Bankruptcy Reform Act of 1978, and any subsequent amendments or is the subject of any proceeding in which a receiver, custodian, liquidator, rehabilitator, trustee or similar officer has been appointed by a court of competent jurisdiction to act in lieu of or on behalf of the self-insurer;

24. "Incapacity" means inadequate strength or ability to perform a work-related task;

25. "Independent medical examiner" means a licensed physician authorized to serve as a medical examiner pursuant to this act;

26. "Insurance carrier" shall include CompSource Oklahoma, stock corporations, reciprocal or interinsurance associations, or mutual associations with which employers have insured, and employers

permitted to pay compensation directly under the provisions of Section 51 of this act;

27. "Light duty" describes the status of an employee when a physician has declared the employee available for work with specific temporary physical restrictions;

28. "Major cause" means more than fifty percent (50%) of the resulting injury, disease or illness. A finding of major cause shall be established by a preponderance of the evidence. A finding that the workplace was not a major cause of the injury, disease or illness shall not adversely affect the exclusive remedy provisions of this act and shall not create a separate cause of action outside of this act;

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

30. "Medical treatment" means such medical, diagnostic, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus as may be reasonable and necessary after the compensable injury for an injured employee;

31. "Nationally recognized" includes, but is not limited to, syntheses of clinical issues that may take the form of published reports in the scientific literature, national consensus documents, formalized documents addressing standards of practice, practice parameters from professional societies or commissions, and

technology assessments produced by independent evidence-based practice centers;

32. "Objective medical evidence" means evidence which meets the criteria of Federal Rule of Evidence 702 and all U.S. Supreme Court case law applicable thereto. Objective findings are those findings which cannot come under the voluntary control of the patient. When determining physical or anatomical impairment, neither a physician, any other medical provider, a judge of the Workers' Compensation Court, nor the courts may consider complaints of pain. For the purpose of making physical or anatomical impairment ratings to the spine, physicians shall use criteria established by the American Medical Association guides or modifications thereto as approved by the Legislature. Objective evidence necessary to prove physical or anatomical impairment in occupational hearing loss cases shall be established by medically recognized and accepted clinical diagnostic methodologies, including, but not limited to, audiological tests that measure air and bone conduction thresholds and speech discrimination ability. Medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty;

33. "Occupational disease" means only that disease or illness which is due to causes and conditions characteristic of or peculiar to the particular trade, occupation, process or employment in which the employee is exposed to such disease. An occupational disease

arises out of the employment only if the employment was the major cause of the resulting occupational disease and such is supported by objective medical evidence, as defined in this section;

34. "Peer review" means the process of subjecting submitted manuscripts, guidelines, or other clinical or scholarly work to the scrutiny of others who are experts in the same field;

35. "Permanent partial impairment" means any anatomical abnormality or loss of use after maximum medical improvement has been achieved which can be evaluated by a physician. Any examining physician shall only evaluate impairment in accordance with the method prescribed in Section 33 of this act. All evaluations of permanent impairment must be supported by objective medical evidence;

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

37. "Private self-insurer" means a private employer that has been authorized to self-insure its workers' compensation obligations pursuant to Section 51 of this act, but does not include group self-insurance associations authorized under Section 51 of this act or

Section 398 of this title, or any public employer that self-insures pursuant to Section 13 of this act;

38. "Prosthetic device" means an artificial device used to replace a part or joint of the body that is lost or injured in an accident or illness covered by this act;

39. "Qualified independent medical examiner" means a licensed medical doctor or doctor of Osteopathy qualified to serve as an independent medical examiner pursuant to this act;

40. "Scheduled member" or "member" means hands, fingers, arms, legs, feet, toes, and eyes. In addition, for purposes of the Multiple Injury Trust Fund only, "scheduled member" means hearing impairment;

41. "Scientifically based" involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to medical testing, diagnoses and treatment; is adequate to justify the general conclusions drawn; and has been accepted by a peer-review journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review;

42. "State-developed" includes formalized treatment guidelines developed and adopted by state governments, or by the Workers' Compensation Court upon recommendation of the Physician Advisory Committee;

43. "State's average weekly wage" means the average weekly wage in this state determined by the Oklahoma Employment Security Commission annually, which shall be used to establish maximum benefits under the Workers' Compensation Code for injuries occurring during a one-year period, which period shall begin on the first day of November after publication by the Oklahoma Employment Security Commission. For the purpose of computing benefits payable under the Workers' Compensation Code, the state's average weekly wage shall be rounded to the nearest dollar;

44. "Subcontractor" means a person, firm, corporation or other legal entity hired by the general or prime contractor to perform a specific task for the completion of a work-related activity;

45. "Surgery" does not include an injection, or the forcing of fluids beneath the skin, for treatment or diagnosis;

46. "Surviving spouse" means the employee's spouse by reason of a legal marriage recognized by any state or nation or by common law, under the requirements of a common law marriage in this state, as determined by the Workers' Compensation Court;

47. "Temporary partial disability" describes the status of an injured worker who is under active medical care that is expected to improve his or her condition and who is unable to perform some of the normal activities of his or her work or is limited to a portion of his or her normal hours of employment;

48. "Treating physician" means the licensed physician authorized to provide active medical treatment for an injured worker; and

49. "Wages" means money compensation received for employment at the time of the injury, including the reasonable value of board, rent, housing, lodging, bonuses, sales commissions, or similar advantage received from the employer.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 309 of Title 85, unless there is created a duplication in numbering, reads as follows:

The time within which an act is to be done, as provided for in this act, shall be computed by excluding the first day and including the last day. If the last day is a legal holiday as defined by Section 82.1 of Title 25 of the Oklahoma Statutes, it shall be excluded.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 310 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Every employer subject to the provisions of the Workers' Compensation Code shall pay or provide benefits according to the provisions of this act for the accidental injury or death of an employee arising out of and in the course of his or her employment, without regard to fault for such injury, if the employee's contract of employment was made or if the injury occurred within this state.

If an employee makes claim for an injury in another jurisdiction and a final adjudication is entered in the case, the employee is precluded from his or her right of action under the Workers' Compensation Code of this state. If the employee brings an action in this state prior to a final adjudication in another jurisdiction, any receipt of benefits in the other jurisdiction shall not bar the action in this state; provided, however, in no event shall the Workers' Compensation Court grant benefits that duplicate those paid by the employer or insurance carrier in the other jurisdiction.

B. The State of Oklahoma accepts the provisions of the Acts of Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C., Section 290, and hereby extends the territorial jurisdiction of the Workers' Compensation Code of this state to all lands and premises within the exterior boundaries of this state which the Government of the United States of America owns or holds by deed or act of cession, and to all purchases, projects, buildings, constructions, improvements and property within the exterior boundaries of this state belonging to the Government of the United States of America, in the same way and to the same extent as if the premises were under the exclusive jurisdiction of this state, subject only to the limitations placed thereon by the Acts of Congress.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 311 of Title 85, unless there is created a duplication in numbering, reads as follows:

The Workers' Compensation Code shall not apply to the following employees:

1. Any person for whom an employer is liable under any Act of Congress for providing compensation to employees for injuries, disease or death arising out of and in the course of employment including, but not limited to, the Federal Employees' Compensation Act, the Federal Employers' Liability Act, the Longshoremen's and Harbor Workers' Act and the Jones Act, to the extent his or her employees are subject to such acts;

2. Any person who is employed in agriculture or horticulture by an employer who had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars ($100,000.00) wages for agricultural or horticultural workers, or any person who is employed in agriculture or horticulture who is not engaged in operation of motorized machines;

3. Any person who is a licensed real estate sales associate or broker, paid on a commission basis;

4. Any person who is providing services in a medical care or social services program, or who is a participant in a work or training program, administered by the Department of Human Services, unless the Department is required by federal law or regulations to provide workers' compensation for such person. This paragraph shall not be construed to include nursing homes;

5. Any person employed by an employer with five or less total employees, all of whom are related by blood or marriage to the employer, if the employer is a natural person or a general or limited partnership, or an incorporator of a corporation if the corporation is the employer;

6. Any person employed by an employer which is a youth sports league which qualifies for exemption from federal income taxation pursuant to federal law;

7. Sole proprietors, members of a partnership, individuals who are party to a franchise agreement as set out by the Federal Trade Commission franchise disclosure rule, 16 CFR 436.1 through 436.11, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation, unless they elect to be covered by a policy of insurance covering benefits under the Workers' Compensation Code;

8. Any person providing or performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitative therapy, transportation, lodging or reimbursement for incidental expenses;

9. A person, commonly referred to as an owner-operator, who owns or leases a truck-tractor or truck for hire, if the owner-operator actually operates the truck-tractor or truck and if the

person contracting with the owner-operator is not the lessor of the truck-tractor or truck. Provided, however, an owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Code if the owner-operator elects to participate as a sole proprietor;

10. A person referred to as a drive-away owner-operator who privately owns and utilizes a tow vehicle in drive-away operations and operates independently for hire, if the drive-away owner-operator actually utilizes the tow vehicle and if the person contracting with the drive-away owner-operator is not the lessor of the tow vehicle. Provided, however, a drive-away owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Code if the drive-away owner-operator elects to participate as a sole proprietor; and

11. Any person who is employed as a domestic servant or as a casual worker in and about a private home or household, which private home or household had a gross annual payroll in the preceding calendar year of less than Ten Thousand Dollars ($10,000.00) for such workers.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 312 of Title 85, unless there is created a duplication in numbering, reads as follows:

The following shall not constitute a compensable injury under the Workers' Compensation Code:

1. An injury occasioned by the willful intention of the injured employee to bring about injury to himself or herself, or another;

2. An injury resulting directly from the willful failure of the injured employee to use a guard or protection against accident furnished for use pursuant to any statute or by order of the Commissioner of Labor;

3. An injury which occurs when an employee's use of illegal drugs or chemicals or alcohol is the major cause of the injury or accident. The employee shall prove by a preponderance of the evidence that the use of drugs, chemicals or alcohol was not the major cause of the injury or accident. For the purposes of this paragraph, post-accident alcohol or drug testing results shall be admissible as evidence. A public or private employer may require an employee to undergo drug or alcohol testing if the employee has sustained an injury while at work. For purposes of workers' compensation, no employee who tests positive for the presence of substances defined and consumed pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes, alcohol, illegal drugs, or illegally used chemicals, or refuses to take a drug or alcohol test required by the employer, shall be eligible for such compensation;

4. Except for innocent victims, an injury caused by a prank, horseplay, or similar willful or intentional behavior;

5. An injury occurring at a time when employment services were not being performed before the employee was hired or after the employment relationship was terminated; and

6. An injury which occurs outside the course of employment. Employment shall be deemed to commence when an employee arrives at the employee's place of employment to report for work and shall terminate when the employee leaves the employee's place of employment, excluding areas not under the control of the employer or areas where essential job functions are not performed; provided, however, when the employee is instructed by the employer to perform a work-related task away from the employee's place of employment, the employee shall be deemed to be in the course of employment when the employee is engaged in the performance of job duties directly related to the task as instructed by the employer, including travel time that is solely related and necessary to the employee's performance of the task. Travel by a policeman, fireman, or a member of a first aid or rescue squad, in responding to and returning from an emergency, shall be deemed to be in the course of employment.

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

A. 1. All public entities of this state, their agencies and instrumentalities, authorities, and public trusts of which they are

beneficiaries shall provide workers' compensation to their employees and elected officials engaged in either governmental or proprietary functions in accordance with this section. Compensation or indemnification for compensation shall be paid out of the funds of the public entities.

2. Except as otherwise provided, the state and all its institutions of higher education, departments, instrumentalities, institutions, and public trusts of which it or they are beneficiaries shall insure against liability for workers' compensation with the State Insurance Fund and shall not insure with any other insurance carrier unless:

a. the State Insurance Fund refuses to accept the risk when the application for insurance is made,

b. specifically authorized by law, or

c. the state entity can obtain workers' compensation insurance coverage at the same cost or at a lower cost from another insurance carrier licensed in this state. Effective November 1, 1999, and for the next two fiscal years thereafter, not to exceed fifteen (15) state entities each fiscal year may obtain workers' compensation insurance coverage pursuant to this subparagraph from an insurer other than the State Insurance Fund. Beginning with the third fiscal year thereafter, all state entities may obtain workers'

compensation insurance coverage pursuant to this subparagraph.

3. The state, all state institutions of higher education except comprehensive universities, and all state departments, instrumentalities, institutions, and public trusts of which the state is a beneficiary, may self-insure under rules promulgated by the State Insurance Fund. Self-insurance administration may only be obtained through the State Insurance Fund. The state, all state institutions of higher education except comprehensive universities, and all state departments, instrumentalities, institutions, and public trusts so electing to self-insure shall pay premiums set by the State Insurance Fund. The State Insurance Fund shall collect premiums, pay claims and provide for excess insurance. All dividends or profits accumulating from a self-insurance program shall be refunded to the participants on a formula devised by the State Insurance Fund.

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

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

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

3. Secure compensation for their employees in the manner provided in the Political Subdivision Tort Claims Act; subsection C of Section 167 of Title 51 of the Oklahoma Statutes; or

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

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

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

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

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

D. Comprehensive universities shall insure against their liability for workers' compensation with the State Insurance Fund; or if it can be demonstrated to the Board of Regents of the comprehensive university prior to the inception date of a workers' compensation policy that the policy will result in a lower cost than

one with the State Insurance Fund or, through any combination of the following, may:

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

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

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

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

G. Where a person who is employed by the state, a municipality, a county, or by any political subdivisions thereof, and who, while off-duty from the employment, is employed by a private employer, the private employer alone shall be liable for compensation under the Workers' Compensation Act for any injury or death of the person arising out of and in the course of employment which occurs during

the hours of actual employment by the private employer. The provisions of Section 11 of this title shall be applicable to private employers specified in this subsection. The provisions of this subsection shall not relieve the state, a municipality or a county, or any political subdivision thereof, from providing disability benefits to which a person may be entitled pursuant to a pension or retirement plan. The provisions of this subsection shall not preclude an employee or group of employees so employed from providing separate compensation coverage for off-duty employment by a private employer.

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

Liability of any person, firm, or corporation having an interest in the subject matter, employers and contracting employers, general or intermediate, for compensation under the Workers' Compensation Code, when other than the immediate employer of the injured employee, shall be as follows:

1. In order for another employer on the same job as the injured or deceased worker to qualify as an intermediate or principal employer, the work performed by the immediate employer must be directly associated with the day to day activity carried on by such other employer's trade, industry, or business, or it must be the

type of work that would customarily be done in such other employer's trade, industry, or business.

2. The independent contractor shall, at all times, be liable for compensation due to his or her direct employees, or the employees of any subcontractor of such independent contractor, and the principal employer shall also be liable in the manner hereinafter specified for compensation due all direct employees, employees of the independent contractors, subcontractors, or other employees engaged in the general employer's business; provided, however, if an independent contractor relies in good faith on proof of a valid workers' compensation insurance policy issued to a subcontractor of the independent contractor or on proof of an Affidavit of Exempt Status under the Workers' Compensation Code properly executed by the subcontractor under Section 924.4 of Title 36 of the Oklahoma Statutes, then the independent contractor shall not be liable for injuries of any employees of the subcontractor. Provided further, such independent contractor shall not be liable for injuries of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the execution of an Affidavit of Exempt Status under the Workers' Compensation Code.

3. The person entitled to such compensation shall have the right to recover the same directly from the person's immediate employer, the independent contractor or intermediate contractor, and

such claims may be presented against all such persons in one proceeding. If it appears in such proceeding that the principal employer has failed to require a compliance with the Workers' Compensation Code of this state by the independent contractor, then such employee may proceed against such principal employer without regard to liability of any independent, intermediate or other contractor; provided, however, if a principal employer relies in good faith on proof of a valid workers' compensation insurance policy issued to an independent contractor of the employer or to a subcontractor of the independent contractor or on proof of an Affidavit of Exempt Status under the Workers' Compensation Code properly executed by the independent contractor or subcontractor under Section 924.4 of Title 36 of the Oklahoma Statutes, then the principal employer shall not be liable for injuries of any employees of the independent contractor or subcontractor. Provided further, such principal employer shall not be liable for injuries of any independent contractor of the employer or of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the execution of an Affidavit of Exempt Status under the Workers' Compensation Code. Provided, however, in any proceeding where compensation is awarded against the principal employer under the provisions hereof, such award shall not preclude the principal employer from recovering the same, and all expense in connection

with the proceeding from any independent contractor, intermediate contractor or subcontractor whose duty it was to provide security for the payment of such compensation, and such recovery may be had by supplemental proceedings in the cause before the Court or by an independent action in any court of competent jurisdiction to enforce liability of contracts.

4. Where work is performed by an independent contractor on a single family residential dwelling or its premises occupied by the owner, or for a farmer whose cash payroll for wages, excluding supplies, materials and equipment, for the preceding calendar year did not exceed One Hundred Thousand Dollars ($100,000.00), such owner or farmer shall not be liable for compensation under the Workers' Compensation Code for injuries to the independent contractor or his or her employees.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 315 of Title 85, unless there is created a duplication in numbering, reads as follows:

Benefits for a single event injury shall be determined by the law in effect at the time of injury. Benefits for a cumulative trauma injury or occupational disease or illness shall be determined by the law in effect at the time the employee knew or reasonably should have known that the injury, occupational disease or illness was related to work activity. Benefits for death shall be determined by the law in effect at the time of death.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 316 of Title 85, unless there is created a duplication in numbering, reads as follows:

Where benefits are payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier; provided, however, that in the case of silicosis, asbestosis or asbestosis related disease, the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide dust on each of at least sixty (60) days or more, and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317 of Title 85, unless there is created a duplication in numbering, reads as follows:

Where benefits are payable for an injury resulting from cumulative trauma, the last employer in whose employment the employee was last injuriously exposed to the trauma for a period of at least ninety (90) days of such injurious exposure, and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer, shall alone be liable therefor, without

right to contribution from any prior employer or insurance carrier. If there is no employer in whose employment the employee was injuriously exposed to the trauma for a period of at least ninety (90) days, then the last employer in whose employment the employee was last injuriously exposed to the trauma and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall be liable therefor, with right to contribution from any prior employer or insurance carrier.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 318 of Title 85, unless there is created a duplication in numbering, reads as follows:

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

B. With respect to disease or injury caused by cumulative trauma causally connected with employment, a claim must be filed within two (2) years of the date on which the employee was last employed by the employer.

C. In the case of asbestosis or asbestosis related disease, silicosis or exposure to nuclear radiation causally connected with employment, a claim must be filed within two (2) years of the date of last hazardous exposure or within two (2) years from the date the condition first becomes manifest by a symptom or condition from which one learned in medicine could, with reasonable accuracy, diagnose such specific condition, whichever last occurs.

D. The filing of any form or report by the employer or insurance carrier pursuant to subsection A, B or C of this section shall not toll any limitations provided for therein.

E. When a claim for compensation has been filed with the Administrator of the Workers' Compensation Court as provided in this act, unless the claimant shall in good faith request a hearing for benefits within two (2) years from the date of filing thereof or within two (2) years from the date of last payment of medical treatment or compensation or wages in lieu thereof, same shall be barred and shall be dismissed by the Court for want of prosecution, which action shall operate as a final adjudication of the right to claim benefits thereunder.

F. The jurisdiction of the Court to reopen any cause upon an application based upon a change in condition for the worse shall extend for three (3) years from the date of the last order in which monetary benefits or active medical treatment was provided, and unless filed within such period of time, shall be forever barred.

An order denying an application to reopen a claim shall not extend the period of the time set out in this act for reopening the case. A failure to comply with a medical treatment plan ordered by the Court shall bar reopening of a claim. This subsection shall be considered to be substantive in nature.

G. No limitation of time provided in this act shall run as against any person who is mentally incompetent or a minor so long as he or she has no guardian properly appointed by the district court.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 319 of Title 85, unless there is created a duplication in numbering, reads as follows:

Any claimant may, upon the payment of the Workers' Compensation Court's filing fee, dismiss any claim brought by the claimant at any time before final submission of the case to the Court for decision. Such dismissal shall be without prejudice unless the words "with prejudice" are included in the order. If any claim that is filed within the statutory time permitted by Section 18 of this act is dismissed without prejudice, a new claim may be filed within one (1) year after the entry of the order dismissing the first claim even if the statutory time for filing has expired.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 320 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The Administrator of the Workers' Compensation Court shall establish a workers' compensation counselor or ombudsman program to assist injured workers, employers and persons claiming death benefits in obtaining benefits under the Workers' Compensation Code.

B. Workers' compensation counselors or ombudsmen shall provide information to injured workers; investigate complaints; communicate with employers, insurance carriers, self-insurers, and health care providers; provide informational seminars and workshops on workers' compensation for medical providers, insurance adjustors, and employee and employer groups; and develop informational materials for employees, employers and medical providers.

C. The Administrator shall mail a notice to the injured worker within ten (10) days of the filing of an Employer's First Notice of Injury. The notice shall advise the injured worker of the availability of the services of the Workers' Compensation Court's counselor or ombudsman program and of the availability of mediation to assist the injured worker. The Administrator shall provide contact information for the Court's counselor or ombudsman program and all such additional information as the Administrator may determine necessary.

D. The Administrator shall develop a program by April 2, 2012, that provides for annual training for own-risk employers and claims representatives handling workers' compensation claims in Oklahoma. The training shall include information about the counselor and

ombudsman program, mediation, and other services provided by the Workers' Compensation Court.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 321 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Mediation shall be available to any party to a claim arising pursuant to the provisions of the Workers' Compensation Code, subject to limitations pertaining to certified workplace medical plans and except for claims against the Multiple Injury Trust Fund.

B. Unless ordered by the Workers' Compensation Court, mediation shall be voluntary, and shall not be conducted without the consent of both parties. Mediation is not a prerequisite to the commencement of a claim for benefits under the Workers' Compensation Code. A request for mediation or consent to mediate does not invoke the jurisdiction of the Court.

C. The Court may order mediation in any case in which the Court believes that mediation may be beneficial to a prompt and efficient resolution of the claim.

D. A request for mediation may be made by either party and shall be made in writing to the Administrator of the Workers' Compensation Court who shall set the case for prehearing before the assigned judge within fifteen (15) days. At the prehearing, the judge shall appoint a mediator and issue an order reflecting such appointment. The mediator shall contact the parties and schedule a

mediation session within thirty (30) days of such order, unless otherwise agreed to by the parties.

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

F. The Court shall be responsible for certifying those persons who are eligible and qualified to serve as mediators. An individual may be certified as a mediator if the applicant meets the qualifications as required by the Court. A certified mediator may be an attorney or non-attorney who has worked in the area of Oklahoma workers' compensation benefits for at least five (5) years. Mediators serving as Court certified mediators on the effective date of this act shall serve the remainder of their respective five-year certification periods and may reapply for successive certification periods.

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

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

H. Mediators shall be compensated at the rate or fee as determined by the mediator; provided, however, the rate or fee shall not exceed a maximum rate to be established by the Administrator or Court by rule. The cost of mediation shall be paid by the respondent or its insurance carrier. A mediator must schedule mediations for a minimum two (2) hour block of time, and may not schedule more than one mediation to take place at a time.

I. At the time of a mediation, the claimant shall be in attendance unless all parties agree, and all parties shall be represented during the entire mediation session by a person with full settlement authority to settle any issue of the claim. If a party does not have full settlement authority, or does not participate in good faith in the mediation process, the mediator shall report to the assigned judge of the Court who may for good cause shown assess costs, attorney fees, and sanctions.

J. To encourage early resolution of claims, an injured employee may participate in mediation without counsel. Upon compromise settlement of the claim, the parties may submit the settlement agreement to the Administrator for final approval.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 322 of Title 85, unless there is created a duplication in numbering, reads as follows:

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

B. Within ten (10) days of receipt of notice of an injury, a report thereof shall be made in writing by the employer to the Workers' Compensation Court and to the employer's workers' compensation insurance carrier, if any, on a form prescribed by the Administrator of the Workers' Compensation Court. Such reports shall provide such information as may be required by the Administrator. The report, known as the Employer's First Notice of Injury, shall vest the Court with jurisdiction to determine all issues covered by provisions of this act. The Employer's First Notice of Injury shall be kept confidential and shall not be open to public inspection; provided, such reports shall be made available immediately upon request by the injured employee named in the report, the injured employee's legal representative, the employer, the employer's legal representative or any prosecutorial authority, and at such time an Employee's First Notice of Injury shall be filed. Filing of an Employer's First Notice of Injury is not an

admission of liability or that the employee has provided proper notice of injury as provided in this act.

C. Each employer shall post a notice advising employees that they are covered by the Workers' Compensation Code and that workers' compensation counselor or ombudsman services are available at the Court. The form of the notice shall be prescribed by the rules of the Court. No other notice to the employee shall be required other than the poster required by this section; provided that nothing in this subsection shall be construed to toll the statute of limitations provided for in Section 18 of this act.

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

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 323 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Unless an employee gives oral or written notice to the employer within thirty (30) days of the date an injury occurs, or the employee receives medical attention from a licensed physician during the thirty-day period from the date a single event injury occurred, the rebuttable presumption shall be that the injury was not work-related. Such presumption must be overcome by a preponderance of the evidence.

B. Unless an employee gives oral or written notice to the employer within ninety (90) days of the employee's separation of employment, there shall be a rebuttable presumption that an occupational disease or cumulative trauma injury did not arise out of and in the course of employment. Such presumption must be overcome by a preponderance of the evidence.

C. The Administrator of the Workers' Compensation Court shall provide printed notice forms, "Employee's First Notice of Accidental Injury and Claim for Compensation", to be used by the injured employee. In addition to other information required by the Administrator, such notice shall include the name and social security number of the employee; the name and address of the employer; the date, place, and type of injury; a declaration whether the employee has filed a claim for Social Security Disability Insurance benefits; and a declaration whether the employee is receiving Medicare benefits, is eligible for Medicare benefits or will become eligible for Medicare benefits within thirty (30) months of the filing of such notice. Notice of injury filed by the employee with the Administrator shall be verified subject to the laws of perjury of this state.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 324 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Any claim for any benefit under the Workers' Compensation Code shall be commenced with the filing of an Employee's First Notice of Accidental Injury and Claim for Compensation by the Employee with the Administrator. The claim shall contain a statement that all matters stated therein are true and accurate and shall be signed by the claimant and the claimant's agent, if any. Any person who signs this statement or causes another to sign this statement knowing the statement to be false shall be guilty of perjury. An individual who signs on behalf of a claimant may be presumed to have the authorization of the claimant and to be acting at the claimant's direction.

B. All answers and defenses to claims or other documents filed on behalf of a respondent or the respondent's insurer in a workers' compensation case shall contain a statement that all matters stated therein are true and accurate and shall be signed by the respondent, the insurer, or their respective agents, if any. Any person who signs such a statement or causes another to sign such a statement, knowing the statement to be false, shall be guilty of perjury. An individual who signs on behalf of a respondent, its insurer, or its agent may be presumed to have the authorization of the respondent, its insurer or agent and to be acting at their direction.

C. Any party shall have the right to request a prehearing conference or trial before the Workers' Compensation Court on any issue. The Administrator of the Workers' Compensation Court shall,

within seven (7) days of the receipt of such notification, set the matter for prehearing conference or trial at the earliest available time to be heard by the Court.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 325 of Title 85, unless there is created a duplication in numbering, reads as follows:

The Administrator of the Workers' Compensation Court shall assign claims to judges based upon a fair and rotating basis to be heard either in Oklahoma City or Tulsa. The Administrator shall proportionately divide the counties of the state to determine proper venue for claims. Upon agreement of the parties and with the permission of the judge, hearings or prehearings may be held in other judicial districts or by videoconferencing.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 326 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Within seven (7) days of actual knowledge of an injury, the employer shall provide the employee reasonable and necessary medical care with a physician of the employer’s choice. The providing of medical care shall not be construed as an admission of compensability of an injury or illness. The physician selected by the employer shall become the treating physician.

B. If the employer fails or neglects to provide medical treatment within seven (7) days after actual knowledge is received

of an injury, the injured employee may select a physician to provide medical treatment at the expense of the employer; provided, however, that the injured employee, or another in the employee's behalf, may obtain emergency treatment at the expense of the employer where such emergency treatment is not provided by the employer.

C. If a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or an insured has previously contracted with a certified workplace medical plan, the employer shall select for the injured employee a treating physician from the physicians listed within the network of the certified workplace medical plan. The claimant may apply for a change of physician by utilizing the dispute resolution process set out in the certified workplace medical plan on file with the State Department of Health. If the dispute resolution process has been exhausted, the Workers' Compensation Court may appoint an independent medical examiner to determine the nature of medical treatment needed by the injured worker.

D. The term "physician" as used in this section shall mean any person licensed in this state as a medical doctor, chiropractor, podiatrist, dentist, osteopathic physician or optometrist. The Court may accept testimony from a psychologist if the testimony is requested by the Court.

E. Where the employee is not covered by a certified workplace medical plan, the employer shall select the treating physician as

provided in subsection A of this section. The Court on application of the employee shall order one change of treating physician for any affected body part. If the employer objects, the Court shall set the request for change of treating physician for hearing within ten (10) days. Provided, that no change of treating physician can be authorized for a part of the body if no authorized medical care has been provided for that part of the body for one hundred eighty (180) days prior to the date of the filing of the application for change of treating physician. Provided further, regardless of the number of parts of the body injured, a maximum of two (2) changes of physician may be allowed in a claim. In the event the employee makes application for such a change, the employee shall list on such application three (3) proposed physicians who are qualified to treat the body part affected. The employer may agree to one of the physicians listed by the employee or submit its own list of three (3) physicians. If the employer and employee do not agree on the physician, the Court may select a physician who is qualified to treat the body part affected and who can see the employee within a reasonable time, with preference given to physicians who are qualified independent medical examiners.

F. Diagnostic tests shall not be repeated sooner than six (6) months from the date of the test unless agreed to by the parties or ordered by the Court.

G. Effective March 1, 2012, the scope and duration of medical treatment shall be provided in accordance with the current edition of the "Official Disability Guidelines", as published by the Work Loss Data Institute. For medical treatment not addressed by the Official Disability Guidelines or addressed but not recommended in the ODG section in regard to injuries to the cervical, thoracic, or lumbar spine, the Physician Advisory Committee shall adopt the Oklahoma Treatment Guidelines as provided in Section 73 of this act. Medical treatment provided by or at the direction of the treating physician in accordance with the current edition of the Official Disability Guidelines or Oklahoma Treatment Guidelines is presumed to be reasonable and necessary medical care. The employer or insurance carrier shall not be responsible for charges for medical treatment not provided in accordance with the current edition of the Official Disability Guidelines or Oklahoma Treatment Guidelines unless the medical treatment was provided in a medical emergency, the medical treatment was preauthorized by the employer or insurance carrier, or the medical treatment is approved by the Court upon a finding based on clear and convincing evidence provided by a qualified independent medical examiner that medical treatment provided according to either ODG or OTG is not in the best interest of the employer.

H. Unless recommended by the treating doctor at the time claimant reaches maximum medical improvement or by an independent

medical examiner, continuing medical maintenance shall not be awarded by the Court. At the request of any party, the judge shall appoint an independent medical examiner to determine the nature and extent of continuing medical maintenance. The issue of continuing medical maintenance may be reviewed by the Court at any time. The employer or insurance carrier shall not be responsible for continuing medical maintenance or pain management treatment that is outside the parameters established by the Physician Advisory Committee. The employer or insurance carrier shall not be responsible for continuing medical maintenance or pain management treatment not previously ordered by the Court or approved in advance by the employer or insurance carrier.

I. An employee claiming or entitled to benefits under the Workers' Compensation Code, shall, if ordered by the Court or requested by the employer or insurance carrier, submit himself or herself for medical examination. If an employee refuses to submit himself or herself to examination, his or her right to prosecute any proceeding under the Workers' Compensation Code shall be suspended, and no compensation shall be payable for the period of such refusal.

J. For compensable injuries resulting in the use of a medical device, ongoing service for the medical device would be provided in situations including, but not limited to, medical device battery replacement, ongoing medication refills related to the medical device, medical device repair or medical device replacement.

K. The employer shall reimburse the employee for the actual mileage in excess of twenty (20) miles round-trip to and from the employee's home to the location of a medical service provider for all reasonable and necessary treatment, for an evaluation of an independent medical examiner and for any evaluation made at the request of the employer or insurance carrier. The rate of reimbursement for such travel expense shall be the official reimbursement rate as established by the State Travel Reimbursement Act. In no event shall the reimbursement of travel for medical treatment or evaluation exceed six hundred (600) miles round trip.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 327 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. For the express purpose of reducing the overall cost of medical care for injured workers in the workers' compensation system by five percent (5%), the Administrator of the Workers' Compensation Court is hereby directed to develop a new "Oklahoma Workers' Compensation Medical Fee Schedule" to be implemented by January 1, 2012. Thereafter, the Administrator shall conduct a review of the Fee Schedule every two (2) years. The Fee Schedule shall establish the maximum rates that medical providers shall be reimbursed for medical care provided to injured workers, including, but not limited to, charges by physicians, dentists, counselors, hospitals, ambulatory and outpatient facilities, clinical laboratory services,

diagnostic testing services, and ambulance services, and charges for durable medical equipment, prosthetics, orthotics, and supplies.

B. Reimbursement for medical care shall be prescribed and limited by the Fee Schedule as adopted by the Administrator, after notice and public hearing. The director of the Oklahoma State Employees Group Insurance Board shall provide the Administrator such information as may be relevant in the development of the Fee Schedule. The Administrator shall develop the Fee Schedule in a manner in which quality of medical care is assured and maintained for injured workers. The Administrator shall give due consideration to additional requirements for physicians treating an injured worker under this act, including, but not limited to, communication with claims representatives, case managers, attorneys, and representatives of employers, and the additional time required to complete forms for the Court, insurance carriers, and employers.

C. In making adjustments to the Fee Schedule, the Administrator shall use, as a benchmark, the reimbursement rate for each Current Procedural Terminology (CPT) code provided for in the fee schedule published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services for use in Oklahoma (Medicare Fee Schedule) on the effective date of this act. For services not valued by CMS, the Administrator shall establish values based on the usual, customary and reasonable medical payments to

health care providers in the same trade area for comparable treatment of a person with similar injuries.

1. No reimbursement shall be allowed for any magnetic resonance imaging (MRI) unless the MRI unit produces a field strength that is equal to or greater than 1.0 Tesla. For all other radiology procedures, the reimbursement rate shall be the lesser of the reimbursement rate allowed by the 2010 Oklahoma Fee Schedule or two hundred seven percent (207%) of the Medicare Fee Schedule.

2. For reimbursement of medical services for Evaluation and Management of injured employees as defined in the fee schedule adopted by the Administrator, the reimbursement rate shall not be less than one hundred fifty percent (150%) of the Medicare Fee Schedule.

3. Any entity providing durable medical equipment, prosthetics, orthotics or supplies must be accredited by a CMS-approved accreditation organization. In the event a physician provides durable medical equipment, prosthetics, orthotics, prescription drugs, or supplies to a patient ancillary to the patient visit, reimbursement will be no more than ten percent (10%) above cost.

4. The Administrator shall develop a reasonable stop loss provision of the Fee Schedule to provide for adequate reimbursement for treatment for major burns, severe head and neurological injuries, multiple system injuries, and other catastrophic injuries requiring extended periods of intensive care.

D. The right to recover charges for every type of medical care for injuries arising out of and in the course of covered employment as defined in this act shall lie solely with the Workers' Compensation Court and its administration. When a medical care provider has brought a claim in the Court to obtain payment for services, a party who prevails in full on the claim shall be entitled to a reasonable attorney fee.

E. Nothing in this section shall prevent an employer, insurance carrier, group self-insurance association, or certified workplace medical plan from contracting with a provider of medical care for a reimbursement rate that is greater than or less than limits established by the Fee Schedule.

F. A treating physician may not charge more than Four Hundred Dollars ($400.00) per hour for preparation for or testimony at a deposition or court appearance in connection with a claim covered by the Workers' Compensation Code.

G. The Administrator's review of medical and treatment charges pursuant to this section shall be conducted pursuant to the Fee Schedule in existence at the time the medical care or treatment was provided. The order approving the medical and treatment charges pursuant to this section shall be enforceable by the Court in the same manner as provided in the Workers' Compensation Code for the enforcement of other compensation payments. Any party feeling aggrieved by the order, decision or award of the Administrator

shall, within ten (10) days, have the right to request a hearing on such medical and treatment charges by a judge of the Court. The judge of the Court may affirm the decision of the Administrator, or reverse or modify the decision only if it is found to be contrary to the Fee Schedule existing at the time the medical care or treatment was provided. The order of the judge shall be subject to the same appellate procedure set forth for all other orders of the Court.

H. Charges for prescription drugs dispensed by a pharmacy shall be limited to ninety percent (90%) of the average wholesale price of the prescription, plus a dispensing fee of Five Dollars ($5.00) per prescription. "Average wholesale price" means the amount determined from the latest publication designated by the Administrator. Physicians shall prescribe and pharmacies shall dispense generic equivalent drugs when available. If the NDC for the drug product dispensed is for a repackaged drug, then the maximum reimbursement shall be the lesser of the original labeler's NDC or the lowest cost therapeutic equivalent drug product. Compounded medications shall be billed by the compounding pharmacy at the ingredient level, with each ingredient identified using the applicable NDC of the drug product, and the corresponding quantity. Ingredients with no NDC area are not separately reimbursable. Payment shall be based upon a sum of the allowable fee for each ingredient plus a dispensing fee of five dollars ($5.00) per prescription.

I. When medical care includes prescription drugs dispensed by a physician or other medical care provider, the employer or insurance carrier shall be required to pay the lesser of the reimbursement amount specified under the schedule of fees adopted by the Administrator, the reimbursement amount for prescription drugs obtained by mail order, when mail order is available, or the reimbursement amount for prescription drugs obtained at a retail pharmacy. If the National Drug Code (NDC) for the drug product dispensed is for a repackaged drug, then the maximum reimbursement shall be the lesser of the original labeler's NDC or the lowest cost therapeutic equivalent drug product. Compounded medications shall be billed by the compounding.

J. Implantables are paid in addition to procedural reimbursement paid for medical or surgical services. A manufacturer's invoice for the actual cost to a physician, hospital or other entity of an implantable device shall be adjusted by the physician, hospital or other entity to reflect, at the time implanted, all applicable discounts, rebates, considerations and product replacement programs and must be provided to the payer by the physician or hospital as a condition of payment for the implantable device. In the event the physician, or an entity that the physician has a financial interest in, other than an ownership interest of less than five percent (5%) in a publicly traded company provides implantable devices, this relationship must be disclosed to

patient, employer, insurance company, third party administrator, certified workplace medical plan, case managers, and attorneys representing claimant and defendant. In the event the physician, or an entity that the physician has a financial interest in, other than an ownership interest of less than five percent (5%) in a publicly traded company, buys and resells implantable devices to the hospital or another physician, that markup shall be limited to ten percent (10%) above cost.

K. Payment for medical care as required by this act shall be due within forty-five (45) days of the receipt by the employer or insurance carrier of a complete and accurate invoice, unless the employer or insurance carrier has a good faith reason to request additional information about such invoice. Thereafter, a judge of the Court may assess a penalty up to twenty-five percent (25%) for any amount due under the Fee Schedule that remains unpaid upon the finding by the Court that no good faith reason existed for the delay in payment. In the event the Court finds a pattern of an employer or insurance carrier willfully and knowingly delaying payments for medical care, the Court may assess a civil penalty of not more than Five Thousand Dollars ($5,000.00) per occurrence.

L. In the event an employee fails to appear for a scheduled appointment with a physician, the employer or insurance company shall pay to the physician a reasonable charge, to be determined by the Administrator, for the missed appointment. In the absence of a

good faith reason for missing the appointment, the Court shall order the employee to reimburse the employer or insurance company for such charge.

M. Physicians providing treatment under this act shall disclose under penalty of perjury to the Administrator of the Workers' Compensation Court, on a form prescribed by the Administrator, any ownership or interest in any health care facility, business, or diagnostic center that is not the physician's primary place of business. Such disclosure shall include any employee leasing arrangement between the physician and any health care facility that is not the physician's primary place of business. A physician's failure to disclose as required by this section shall be grounds for the Administrator to disqualify the physician from providing treatment under this act.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. If a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or an insured, which shall include any member of an approved group self-insured association, policyholder or public entity, has contracted with a workplace medical plan that is certified by the State Commissioner of Health as provided in this act, the employer shall select for the injured employee a treating physician from the

physicians listed within the network of the certified workplace medical plan. The claimant may apply to the certified workplace medical plan for a one-time change of physician to another appropriate physician within the network of the certified workplace medical plan by utilizing the dispute resolution process set out in the certified workplace medical plan on file with the State Department of Health. Notwithstanding any other provision of law, those employees who are subject to such certified workplace medical plan shall receive medical treatment in the manner prescribed by the plan.

B. The provisions of this section shall not preclude an employee, who has exhausted the dispute resolution process of the certified workplace medical plan, from petitioning the Workers' Compensation Court for a change of treating physician within the certified workplace medical plan or, if a physician who is qualified to treat the employee's injuries is not available within the plan, for a change of physician outside the plan, if the physician agrees to comply with all the rules, terms and conditions of the certified workplace medical plan; or an employee from seeking emergency medical treatment.

C. Any person or entity may make written application to the State Commissioner of Health to have a workplace medical plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under the Workers'

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

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

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

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

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

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

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

established for use by medical service providers which have been recommended by the Physician Advisory Committee and adopted by the Administrator pursuant to this act. If the Administrator has not adopted medical treatment guidelines and protocols, the Commissioner may certify a plan that utilizes medical guidelines and protocols established by the plan if, at the discretion of the Commissioner, the guidelines and protocols are reasonable and will carry out the intent of the Workers' Compensation Code. Certified plans must utilize medical treatment guidelines and protocols substantially similar to those adopted by the Administrator pursuant to this act, as such guidelines and protocols become adopted,

b. is reasonably geographically convenient to residents of the area for which it seeks certification,

c. provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service,

d. provides adequate methods of peer review, utilization review and dispute resolution to prevent inappropriate, excessive or medically unnecessary

treatment, and excludes participation in the plan by those providers who violate these treatment standards,

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

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

g. provides workplace health and safety consultative services,

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

i. authorizes necessary emergency medical treatment for an injury provided by a provider of medical, surgical, and hospital services who is not a part of the plan,

j. does not discriminate against or exclude from participation in the plan any category of providers of

medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and hospital services to give participants access to all categories of providers and does not discriminate against ethnic minority providers of medical services, and

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

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

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

F. If CompSource Oklahoma fails to contract with at least three certified workplace medical plans, each covering at least fifty

counties, then the insured, after sixty (60) days' written notice to CompSource Oklahoma, shall be authorized to contract independently with a plan of the insured's choice for a period of one (1) year to provide medical care under the Workers' Compensation Code. The insured shall be authorized to contract, after sixty (60) days' written notice to CompSource Oklahoma, for additional one-year periods if CompSource Oklahoma has not contracted with or fails to continue contracts with at least three certified workplace medical plans covering at least fifty counties. A workers' compensation insurance carrier, CompSource Oklahoma, or a group self-insurance association plan may grant a ten-percent premium reduction to an employer who is not experience rated when the employer participates in a certified workplace medical plan.

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

H. The State Commissioner of Health shall implement a site visit protocol for employees of the State Department of Health to perform an inspection of a certified workplace medical plan to ensure that medical services to a claimant and the medical management of the claimant's needs are adequately met in a timely manner and that the certified workplace medical plan is complying

with all other applicable provisions of this act and the rules of the State Department of Health. Such protocol shall include, but not be limited to:

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

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

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

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

b. appropriate treatment guidelines and protocols, and

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

4. Performance of a site visit shall include:

a. inspection of organizational documentation,

b. inspection of systems documentation and processes,

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

d. random or systematic sampling, or a one-hundred-percent inspection of all dispute resolution,

grievance, and Department of Health request for assistance files,

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

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

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

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

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

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

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

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

d. charged only if less than two site visits occur in a twelve-month period; and

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

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

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 329 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The Workers' Compensation Court shall create, maintain and review a list of licensed physicians who shall serve as independent medical examiners from a list of licensed physicians who have completed such course study as the Administrator of the Workers'

Compensation Court may require and who have been recommended as independent medical examiners by the Physician Advisory Committee. The Court shall, to the best of its ability, include the most experienced and competent physicians in the specific fields of expertise utilized most often in the treatment of injured employees. The period of qualification shall be two years. Physicians may be qualified for successive two-year periods. Physicians serving as Court qualified independent medical examiners on the effective date of this act shall serve the remainder of their respective two-year qualification periods and may reapply for successive qualification periods. The Court may remove an independent medical examiner from the list for cause. For purposes of this section, a physician shall be either a licensed medical doctor or a licensed doctor of osteopathy and shall include a person licensed by another state who would be qualified to be a licensed medical doctor or a licensed doctor of osteopathy under the laws of this state.

B. The Court at any time, regardless of the date of injury, may appoint an independent medical examiner to assist in determining any issue before the Court. In the event surgery is recommended by a treating physician, upon request of the employer, an independent medical examiner shall be appointed by the Court to determine the reasonableness and necessity of the recommended surgery. Such independent medical examiner shall be qualified to perform the type of surgery recommended.

C. An independent medical examiner in a case involving permanent disability shall not be a treating physician of the employee and shall not have treated the employee with respect to the injury for which the claim is being made or the benefits are being paid.

D. The Court shall select an independent medical examiner from the list of independent medical examiners within fifteen (15) days when the employer or the employee petitions the Court for the selection of an independent medical examiner. The independent medical examiner shall be certified by a recognized American medical or osteopathic specialty board in the area or areas appropriate to the condition under review.

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

F. Counsel for the employee and employer are responsible for transmittal of the employee's medical records to the independent medical examiner within ten (10) days of appointment.

G. After a physical examination and review of medical records and other appropriate information, including depositions and surveillance video, the independent medical examiner shall submit a verified written report to the Court and to the parties. In the event the independent medical examiner determines that more medical treatment is necessary, the employer shall designate a treating physician to provide the indicated treatment.

H. Any independent medical examiner selected pursuant to the provisions of this section shall be reimbursed for the medical examination, reports and fees in a reasonable and customary amount set by the Court, and these costs shall be borne by the employer.

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

J. If the Court does not follow the opinion of the independent medical examiner on any issue, the Court shall set out its reasons for deviating from the opinion of the independent medical examiner. The opinion of the independent medical examiner shall be followed unless there is clear and convincing evidence to the contrary.

K. Upon receipt of an independent medical examiner's report, any party shall have the right to object to the introduction of the report into evidence. The objection must be made by giving written notification to all parties and to the Court within ten (10) days after receipt of the report. The employer shall be responsible for the reasonable charges of the physician for such testimony, preparation time, and the expense of the deposition.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 330 of Title 85, unless there is created a duplication in numbering, reads as follows:

For cases not covered by a certified workplace medical plan, and where the employer, insurance company, or own-risk employer do not provide case management, case management may be granted by the Workers' Compensation Court on the request of any party, or when the Court determines that case management is appropriate. The Court shall appoint a case manager from a list of qualified case managers developed, maintained and periodically reviewed by the Court. The period of qualification shall be two years. Case managers may be qualified for successive two-year periods. Case managers serving as Court qualified case managers on the effective date of this act shall serve the remainder of their respective two-year qualification periods and may reapply for successive qualification periods. The reasonable and customary charges of a medical case manager appointed by the Court shall be borne by the employer or insurance carrier. The Court may order one change of case manager upon application of any party.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 331 of Title 85, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided in this act, the average weekly wages of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

1. If the injured employee shall have worked for the same employer for the year immediately preceding the injury, his or her average weekly wage shall be one fifty-second (1/52) of his or her total wages for the fifty-two (52) weeks preceding the injury; provided, however, that if the employee shall have received a pay raise or promotion during the year, the average weekly wage shall be one fifty-second (1/52) of 260 times the average daily wage at the increased rate of pay;

2. If the injured employee shall not have worked for the employer for one year prior to the injury, his or her average weekly wage shall be his or her total wages divided by the number of weeks employed; provided, however, that if the employee shall have received a pay raise or promotion during the time employed, the average weekly wage shall be one fifty-second (1/52) of 260 times the average daily wage at the increased rate of pay;

3. If either of the foregoing methods of arriving at the annual average earnings of an injured employee cannot reasonably and fairly be applied, the Workers' Compensation Court may consider average wages in the same or similar employment in the same area of the state where the injury occurred;

4. The benefit level for members of the National Guard and any authorized voluntary or uncompensated worker rendering services as a firefighter, peace officer or civil defense worker shall be

determined by using the wages of the employee in his or her regular occupation.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 332 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. In cases of temporary total disability, the injured employee shall be paid seventy percent (70%) of his or her average weekly wages, but not in excess of the state's average weekly wage, during continuance thereof; provided, there shall be no payment for the first seven (7) days of the initial period of temporary total disability unless the Workers' Compensation Court declares the employee to be temporarily totally disabled for more than twenty one (21) days. In that event, compensation shall be due from the first day of the period of temporary total disability. Total payments of compensation for temporary total disability shall not exceed one hundred fifty-six (156) weeks, except if the Court makes a finding of a consequential injury. In that event, the Court may order an additional period of temporary total disability not to exceed fifty-two (52) weeks. Any party may request overpayment or underpayment of temporary total disability compensation.

B. When the injured employee is released from active medical treatment by the treating physician for all body parts found by the Court to be injured, or in the event that the employee, without a valid excuse, misses three consecutive medical treatment

appointments, fails to comply with medical orders of the treating physician, or otherwise abandons medical care, the employer shall be entitled to terminate temporary total disability by notifying the employee, or if represented, his or her counsel. If there is no objection within ten (10) days, temporary total disability compensation shall be terminated. If, however, an objection to the termination is filed by the employee within ten (10) days, the Court shall set the matter within twenty (20) days for a determination if temporary total disability compensation shall continue or be terminated. The Court shall terminate temporary total disability unless the employee proves the existence of a valid excuse for his or her failure to comply with medical orders of the treating physician or his or her abandonment of medical care. The Court may appoint an independent medical examiner to determine if further medical treatment is reasonable and necessary. The independent medical examiner shall not provide treatment to the injured worker, unless agreed upon by the parties. The employer shall bear the cost of the independent medical examination.

C. There shall be a rebuttable presumption in favor of the treating physician's opinions on the issue of temporary disability and need for medical treatment. This presumption shall continue unless rebutted by clear and convincing evidence to the contrary of a qualified independent medical examiner.

D. The state and all its institutions of higher education, departments, instrumentalities, institutions and public trusts of which they are beneficiaries shall first provide temporary total disability benefits to employees injured on the job under their policy of workers' compensation insurance. At the option of the employee, temporary total disability benefits shall then be supplemented by any sick or annual leave available to the injured employee to the extent that the injured employee shall receive full wages during the employee's temporary absence from work; provided, the provisions of this subsection shall not preclude an employee from receiving any benefits to which the employee is entitled under the State Employees Disability Program Act, Section 1331 et seq. of Title 74 of the Oklahoma Statutes.

E. If the employer has actual notice of the injury and the injury is not disputed and weekly temporary total disability benefit payments are not commenced within ten (10) days or if any subsequent installment of temporary total disability benefits is not made within ten (10) days after it becomes due, the insurer of the employer shall pay to the employee a penalty of fifteen percent (15%) of the unpaid or delayed weekly benefits.

F. The physician who renders treatment to the employee shall notify the employee and employer or the employer's insurer in writing within seven (7) days after the employee has reached maximum medical improvement and is released from active medical care.

G. If the employee is capable of returning to modified light duty work, the physician shall within seven (7) days notify the employee and the employer or the employer's insurer thereof in writing. In the event that the treating physician releases a claimant for light-duty work and provides written restrictions from normal work duties, and the employer makes a good-faith offer in writing to provide a light-duty position at the same rate of pay that the claimant was receiving at the time of the injury, and the claimant refuses to accept the light-duty assignment, the claimant is not entitled to temporary total disability; provided, before compensation may be denied, the employee shall be served with a notice setting forth the consequences of the refusal of employment and that temporary benefits will be discontinued fifteen (15) days after the date of the notice. The employee, upon receipt of the notice, may seek a hearing before the Court. The Court shall grant an expedited hearing within five (5) days of any application by the employee. At the hearing, the Court may enter an order allowing the discontinuation of the benefits, denying the discontinuance of the benefits or temporarily denying the discontinuance of the benefits pending further hearing. An order denying or temporarily denying the discontinuation of temporary benefits shall be based on a finding by the Court that probable cause exists to believe the work does not meet the conditions of the treating physician's restrictions or that the restrictions are unreasonable.

H. Any person receiving temporary disability benefits from an employer or the employer's insurance carrier shall within seven (7) days report in writing to the employer or insurance carrier any change in a material fact or the amount of income he or she is receiving or any change in his or her employment status, occurring during the period of receipt of the benefits.

I. An employee convicted of a misdemeanor or felony in this state or any other jurisdiction shall not be entitled to temporary total disability benefits during any period of incarceration. Upon confirmation of the employee's incarceration, temporary total disability may be terminated by the employer or insurance carrier without an order of the Court. The provisions of this subsection shall not apply to any benefits awarded to an inmate for compensable injuries sustained by the inmate while in the employ of a private for-profit employer or while employed in private prison industries, involving a for-profit employer, which deal in interstate commerce or which sell products or services to the federal government.

J. In case of temporary partial disability, an injured employee shall receive seventy percent (70%) of the difference between the employee's average weekly wages and the employee's wage-earning capacity thereafter in the same employment or otherwise, if less than before the injury, during continuance of the partial disability. Total payments of temporary partial disability may not exceed one hundred fifty-six (156) weeks. In no event shall the

total payment of wages and temporary partial disability exceed eighty percent (80%) of the average weekly wage of the injured employee at the time of the accident.

K. In case of a nonsurgical soft tissue injury, in which the employer has provided medical care within seven (7) days after receipt of oral or written notice of the injury, temporary total disability compensation shall not exceed eight (8) weeks, regardless of the number of parts of the body to which there is a nonsurgical soft tissue injury. A claimant who has been recommended by a treating physician for one or more injections may petition the Court for one extension of temporary total disability compensation and the Court may order an extension, not to exceed eight (8) additional weeks. A claimant who has been recommended by a treating physician for surgery for a soft tissue injury may petition the Court for one extension of temporary total disability compensation and the Court may order an extension, not to exceed sixteen (16) additional weeks, if the treating physician indicates that an extension is appropriate or as agreed to by all parties. In the event the surgery is not performed within ninety (90) days of the approval of the surgery by the employer or employer's insurance carrier or an order of the Court authorizing the surgery, the benefits for the extension period shall be terminated by the Court, unless the Court finds the delay was beyond the control of the claimant. In the event surgery is performed, the period of temporary total disability is subject to

the limitations established by subsection A of this section. This subsection shall apply to all cases coming before the Court after the effective date of this act, regardless of the date of injury.

L. For purposes of this section, "soft tissue injury" means damage to one or more of the tissues that surround bones and joints. Soft tissue injury includes, but is not limited to: sprains, strains, contusions, tendonitis, and muscle tears. Cumulative trauma is to be considered a soft tissue injury. Soft tissue injury does not include any of the following:

1. Injury to or disease of the spine, spinal discs, spinal nerves or spinal cord, where corrective surgery is performed;

2. Brain or closed-head injury as evidenced by:

a. sensory or motor disturbances,

b. communication disturbances,

c. complex integrated disturbances of cerebral function,

d. episodic neurological disorders, or

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

3. Any joint replacement.

M. In all cases of nonsurgical soft tissue injury, the employee shall only be entitled to temporary total disability compensation as set out in subsection K of this section, unless there is objective medical evidence of a permanent anatomical abnormality. In

determining the existence of such an abnormality, the Court may consider if there is credible medical evidence that the ability of the employee to earn wages at the same level as before the injury has been impaired. This subsection shall apply to all cases coming before the Court after the effective date of this act, regardless of the date of injury.

N. Notwithstanding any other section of the Workers' Compensation Code, temporary disability compensation shall be payable without an award by the Court. The first payment of temporary disability compensation shall become due on the tenth day after the employer has received notice of injury.

O. Payments for temporary total disability or temporary partial disability shall not constitute admission by the employer or insurance carrier as to liability for benefits or any issue.

P. No employee may receive temporary total disability benefits covering the same period of time for which unemployment benefits as provided by the Oklahoma Employment Security Commission are received by the employee or for which short term disability benefits are received by the employee by reason of a policy of insurance provided by the employer.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 333 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The determination of permanent impairment or disability shall be the responsibility of the Workers' Compensation Court. Any claim by an employee for compensation for permanent partial impairment must be supported by competent medical testimony of the treating physician who is a medical doctor or a doctor of osteopathy or a qualified independent medical examiner which shall be supported by objective medical findings, as defined in this act, and which shall include an evaluation by a physician stating his or her opinion of the employee's percentage of permanent partial impairment and whether or not the impairment is job-related and caused by the accidental injury or occupational disease. A physician's opinion of the nature and extent of permanent partial impairment to parts of the body other than scheduled members must be based solely on criteria established by the American Medical Association's "Guides to the Evaluation of Permanent Impairment", Fifth Edition, or any subsequent edition approved by the Administrator after public hearing and review by the Physician Advisory Committee, hereinafter referred to as "Guides". A copy of any written evaluation shall be sent to both parties within seven (7) days of issuance. Medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty. For purposes of this section, "physician" has the same meaning as defined in Section 26 of this act and includes a person licensed by another state who would be qualified to be a licensed physician

under the laws of this state. Any party may submit the report of an evaluating physician.

B. Permanent partial impairment shall not be allowed to a part of the body for which no medical treatment has been received. A determination of permanent impairment or disability made by the Court which is not supported by objective medical findings provided by a treating physician who is a medical doctor or doctor of osteopathy or a qualified independent medical examiner shall be considered an abuse of discretion.

C. The Physician Advisory Committee may recommend the adoption of a method or system to evaluate permanent impairment that shall deviate from, be used in place of, or in combination with the Guides. Such recommendation shall be made to the Administrator of the Workers' Compensation Court who may adopt the recommendation in part or in whole. The adopted method or system shall be submitted by the Administrator to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such method or system so submitted shall be subject to disapproval by joint or concurrent resolution of the Legislature during the legislative session in which submitted. If disapproved, the existing method of determining permanent partial impairment shall continue in effect. If the Legislature takes no action on the method or system submitted by the Administrator, the method or

system shall become operative ten (10) days following the adjournment of the Legislature.

D. The examining physician shall not deviate from the Guides or any alternative thereto except as may be specifically provided for in the Guides or modifications to the Guides adopted pursuant to subsection C of this section.

E. In cases of permanent partial impairment, the compensation shall be seventy percent (70%) of the employee's average weekly wages, and shall be paid to the employee for the period prescribed by the following schedule:

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

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

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

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

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

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

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

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

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

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

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

Arm: For the loss of an arm, two hundred seventy-five (275) weeks. Provided, that for the purposes of the arm as a scheduled member, the arm shall mean that part of the body that extends from the surgical neck of the humerus and includes the elbow joint.

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

Leg: For the loss of a leg, two hundred seventy-five (275) weeks. Provided, that for the purposes of the leg as a scheduled member, the leg shall mean that part of the body that extends from the surgical neck of the femur and includes the knee joint.

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

Deafness: Deafness from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, three hundred thirty (330) weeks, and total deafness of one ear from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, one hundred ten (110) weeks. Any examining physician shall only evaluate deafness or hearing impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the injury or alternative method provided for under provisions of this act.

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

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

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

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

Hernia: In case of an injury resulting in the first or second hernia in the same area of the body, there shall be no award of permanent partial impairment. Payment of benefits in such cases shall be limited to temporary total disability compensation for six (6) weeks, and all necessary medical costs including, but not limited to, the cost of surgery. A claimant who has had surgery for a hernia may petition the Workers' Compensation Court for one extension of temporary total disability compensation and the Court may order such an extension, not to exceed six (6) additional weeks, if the treating physician indicates such an extension is appropriate, or as agreed to by all parties. An award for temporary total disability or permanent partial impairment may be entered by the Court if an injury results in a third hernia, or more, in the same area of the body.

Other cases: In cases in which the Court finds an injury to a part of the body not specifically covered by the foregoing provisions of this section, the employee may be entitled to compensation for permanent partial impairment. The compensation ordered paid shall be seventy percent (70%) of the employee's average weekly wage for the number of weeks which the partial disability of the employee bears to five hundred (500) weeks. No permanent disability shall be awarded unless there is objective

medical evidence of a permanent anatomical abnormality. In determining the existence of such an abnormality, the Court may consider if there is credible medical evidence that the ability of the employee to earn wages at the same level as before the injury has been permanently impaired.

F. The compensation payments under the provisions of the Workers' Compensation Code for permanent partial impairment shall not:

1. Exceed the sum of Three Hundred Twenty-three Dollars ($323.00) per week for injuries occurring on or after August 27, 2010, through August 26, 2015, or fifty percent (50%) of the state's average weekly wage beginning August 27, 2015;

2. At any time be less than One Hundred Fifty Dollars ($150.00) per week for injuries occurring on or after August 27, 2010.

G. Previous Disability: The fact that an employee has suffered previous disability or impairment or received compensation therefor shall not preclude the employee from compensation for a later accidental personal injury or occupational disease. In the event there exists a previous impairment, including a previous non-work-related injury or condition which produced permanent disability and the same is aggravated or accelerated by an accidental personal injury or occupational disease, compensation for permanent disability shall be only for such amount as was caused by such accidental personal injury or occupational disease and no additional

compensation shall be allowed for the preexisting disability or impairment. The sum of all permanent partial impairment awards, excluding awards against the Multiple Injury Trust Fund, shall not exceed five hundred twenty (520) weeks, except for awards for amputations and disability to the parts of the body for which surgery was received in the latest injury.

H. No payments on any permanent partial impairment order shall begin until payments on any preexisting permanent partial impairment orders have been completed.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 334 of Title 85, unless there is created a duplication in numbering, reads as follows:

In case of an injury resulting in serious and permanent disfigurement, compensation shall be payable in an amount to be determined by the Workers' Compensation Court, but not in excess of Fifty Thousand Dollars ($50,000.00). An award for permanent disfigurement shall not be made for a part of the body for which permanent partial impairment is awarded.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 335 of Title 85, unless there is created a duplication in numbering, reads as follows:

Where a compensable injury results in the loss of one or more eyes, teeth, or members of the body, or the replacement of a joint, the employer shall furnish such prosthetic devices as may be

necessary as determined by the Workers' Compensation Court in the treatment and rehabilitation of the injured worker for the lifetime of the worker. Where a worker sustains a compensable injury, arising out of and in the course of his or her employment, which results in damage to a prosthetic device with which such worker is equipped, the employer shall repair or replace such device. Provided, that a subsequent injury to the part of the body for which a prosthetic device is provided shall terminate the obligation of the employer to provide such prosthetic device.

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 336 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. In case of total disability adjudged to be permanent, seventy percent (70%) of the employee's average weekly wages, but not in excess of the state's average weekly wage, shall be paid to the employee during the continuance of the disability until such time as the employee reaches the age of maximum Social Security retirement benefits or for a period of fifteen (15) years, whichever is longer. In the event the claimant dies of causes unrelated to the injury or illness, benefits shall cease on the date of death. Provided, however, any person entitled under provisions of Section 49 to revive the action shall receive a one-time lump sum payment equal to twenty-six (26) weeks of weekly benefits for permanent total disability awarded the claimant. If more than one person is

entitled to revive the claim, the lump sum payment shall be evenly divided between or among such persons. In the event the Workers' Compensation Court awards both permanent partial impairment and permanent total disability benefits, the permanent total disability award shall not be due until the permanent partial impairment award is paid in full. If otherwise qualified according to the provisions of this act, permanent total disability benefits may be awarded to an employee who has exhausted the maximum period of temporary total disability even though the employee has not reached maximum medical improvement.

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

C. The Court shall, every three (3) years, review the status of any employee receiving benefits for permanent total disability. Upon request of the employer or insurance carrier, the Court shall

require the employee to annually file an affidavit under penalty of perjury stating that he or she is not and has not been gainfully employed and is not capable of gainful employment. Failure to file such affidavit shall result in suspension of benefits; provided, however, reinstatement of benefits may occur after proper hearing before the Court.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 337 of Title 85, unless there is created a duplication in numbering, reads as follows:

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

1. If there is a surviving spouse, to such surviving spouse who shall remain unmarried, seventy percent (70%) of the average weekly wages the deceased was earning. In no event shall this spousal weekly income benefit be diminished by the award to other beneficiaries. In addition to the benefits theretofore paid or due, two (2) years' indemnity benefit in one lump sum shall be payable to a surviving spouse upon remarriage;

2. If there is a surviving spouse and a child or children, fifteen percent (15%) of the average weekly wages the deceased was earning for each child. Where there are more than two such children, the income benefits payable for the benefit of all

children shall be divided among all children, to share and share alike, subject to the maximum limits in subsection D of this section;

3. To the children, if there is no surviving spouse, fifty percent (50%) of the average weekly wages the deceased was earning for one child, and twenty percent (20%) of such wage for each additional child, divided among all children, to share and share alike, subject to the maximum limits in subsection D of this section;

4. The weekly income benefits payable for the benefit of any child under this section shall cease when the child dies, marries, or reaches the age of eighteen (18), unless the child is over eighteen (18) years of age and remains enrolled as a full-time student in high school or is being home-schooled in a high-school course approved by the Oklahoma Department of Education; or unless a child is over eighteen (18) years of age and is physically or mentally incapable of self-support; or unless the child is under the age of twenty three (23) and enrolled as a full-time student in any accredited institution of higher education or vocational or technology education;

5. If there is no surviving spouse or children, to each parent, if actually dependent, twenty-five percent (25%) of the average weekly wages the deceased was earning, subject to the maximum limits in subsection D of this section;

6. If there is no surviving spouse or children, to the brothers, sisters, grandparents and grandchildren, if actually dependent, twenty-five percent (25%) of the average weekly wages the deceased was earning to each such dependent. If there should be more than one of such dependents, the total income benefits payable for the benefit of such dependents shall be divided to share and share alike, subject to the maximum limits in subsection D of this section;

7. The income benefits for each beneficiary under paragraphs 5 and 6 of this subsection shall be paid until the beneficiary, if a parent or grandparent, dies, marries or ceases to be actually dependent, or, if a brother, sister or grandchild, dies, marries or reaches the age of eighteen (18), is over the age of eighteen (18) and ceases to be physically or mentally incapable of self-support or ceases to be actually dependent.

B. A person ceases to be actually dependent when the person's income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time the original determination of actual dependency was made, it would not have supported a finding of dependency. In all cases, the period of actual dependency shall be presumed to be no longer than three (3) years after the person was found to be actually dependent. The presumption may be overcome by proof of continued actual dependency.

C. Change in dependents. Upon the cessation of income benefits under this section to or for the benefit of any person, the income benefits payable to the remaining persons who continue to be entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

D. For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the state's average weekly wage. The aggregate weekly income benefits payable to all beneficiaries under this section shall not exceed one hundred percent (100%) of the average weekly wages of the employee or one hundred percent (100%) of the state's average weekly wage, whichever is less.

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

F. In the event that no benefits under other provisions of this section are paid to the dependents or the heirs-at-law of the deceased, an amount not to exceed Eight Thousand Dollars ($8,000.00) shall be paid for funeral expenses.

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

H. In addition to weekly income benefits, if there is no surviving spouse, but there are surviving children entitled to receive death benefits herein, each surviving child shall be entitled to a lump-sum payment of Twenty-five Thousand Dollars ($25,000.00), provided the total amount of lump-sum payments shall not exceed One Hundred Fifty Thousand Dollars ($150,000.00), to be divided among all the children to share and share alike. The survivors shall also be entitled to receive funeral benefits in an amount not to exceed Ten Thousand Dollars ($10,000.00).

I. Any claim under this section shall be substantiated by the filing of a properly executed and authenticated proof of loss, which form shall be prescribed by the Administrator, and payment of such sum shall be made within fifteen (15) days after adjudication of entitlement by the Workers' Compensation Court. Such sum shall not be subject to any award of attorney fees in uncontested cases, except the Court shall appoint a guardian ad litem to represent

known and unknown minor children and the guardian ad litem shall be paid a reasonable fee for the services.

J. All orders of the Court awarding lump-sum death benefits and weekly income benefits to a child under eighteen (18) years of age, shall provide for the appointment of a guardian ad litem and that such benefits, after deducting for attorney fees and expenses incurred to prosecute the claim, be deposited, with proof of receipt thereof, in a federally insured banking institution in Oklahoma. The benefits so deposited shall not be withdrawn without further order of the Court or until the child reaches the age of eighteen (18). An annual accounting of all such trust funds shall be made to the Court by the duly appointed guardian ad litem.

K. Any claim for death benefits may be concluded by compromise settlement on a form prescribed by the Administrator and approved by a judge of the Court. In the event a claimant is a minor, a duly appointed guardian ad litem shall be authorized to enter into such compromise settlement.

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 338 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. An employee who has suffered an accidental injury or occupational disease covered by the Workers' Compensation Code shall be entitled to prompt and reasonable physical rehabilitation services. When, as a result of the injury, the employee is unable

to perform the same occupational duties the employee was performing prior to the injury, the employee shall be entitled to such vocational rehabilitation services provided by a technology center school, a public or private vocational skills center or public secondary school offering vocational-technical education courses, or a member institution of The Oklahoma State System of Higher Education, which shall include retraining and job placement so as to restore the employee to gainful employment. Vocational rehabilitation benefits shall not be provided to any nondocumented employee who is unable, by law, to be hired in Oklahoma.

B. The Administrator of the Workers' Compensation Court shall hire or contract for a Vocational Rehabilitation Director to oversee the vocational rehabilitation program of the Workers' Compensation Court. The job of the Vocational Rehabilitation Director is to help injured workers return to the work force through the encouragement of light-duty work or retraining.

C. Upon the request of either party, or by order of the Court, the Vocational Rehabilitation Director will assist the Court in determining if it is appropriate for a claimant to receive vocational rehabilitation training or services. If appropriate, the Court shall refer the employee to a qualified expert for evaluation of the practicability of, need for and kind of rehabilitation services or training necessary and appropriate in order to restore the employee to gainful employment. The cost of the evaluation

shall be paid by the employer. Following the evaluation, if the employee refuses the services or training ordered by the Court, or fails to complete in good faith the vocational rehabilitation training ordered by the Court, then the cost of the evaluation and services or training rendered may, in the discretion of the Court, be deducted from any award of benefits to the employee which remains unpaid by the employer. Upon receipt of such report, and after affording all parties an opportunity to be heard, the Court shall order that any rehabilitation services or training, recommended in the report, or such other rehabilitation services or training as the Court may deem necessary, provided the employee elects to receive such services, shall be provided at the expense of the employer. Except as otherwise provided in this subsection, refusal to accept rehabilitation services by the employee shall in no way diminish any benefits allowable to an employee.

D. Whenever it is apparent to the Court that the employee's injury will prevent the employee from returning to his or her former employment, the Court may order vocational rehabilitation services, even though the employee remains temporarily totally disabled and under active medical care. In granting early benefits for vocational rehabilitation, the Court shall consider temporary restrictions and the likelihood that such rehabilitation will return the employee to gainful employment earlier than if such benefits are granted after the permanent partial impairment hearing in the claim.

E. No person shall be adjudicated to be permanently and totally disabled, except in claims against the Multiple Injury Trust Fund, unless first having obtained an evaluation as to the practicability of restoration to gainful employment through vocational rehabilitation services or training. The employee seeking permanent and total benefits shall pay the cost of the evaluation. If an employee claiming permanent total disability status unreasonably refuses to be evaluated or to accept vocational rehabilitation services or training, or is capable of retraining but is ineligible pursuant to subsection A of this section, permanent total disability benefits shall not be awarded during the period of such refusal, and the employee shall be limited to permanent partial impairment benefits only.

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

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

H. During the period when an employee is actively and in good faith being evaluated or participating in a retraining or job placement program for purposes of evaluating permanent total disability status, the employee shall be entitled to receive benefits at the same rate as the employee's temporary total disability benefits for a period of fifty-two (52) weeks, which may be extended by the Court for up to a maximum of an additional fifty-two (52) weeks. No attorney fees shall be awarded or deducted from such benefits received during this period. All tuition related to vocational rehabilitation services shall be paid by the employer or the employer's insurer on a periodic basis directly to the facility providing the vocational rehabilitation services or training to the employee.

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 339 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. If the employee and employer shall reach an agreement for the full, final and complete settlement of any issue of a claim pursuant to the Workers' Compensation Code, a form designated as "Compromise Settlement" shall be signed by both the employer and employee, or representatives thereof, and shall be approved by a judge of the Workers' Compensation Court or the Administrator of the Workers' Compensation Court and filed with the Administrator. In cases in which the employee is not represented by legal counsel, a judge of the Court or the Administrator shall have jurisdiction to approve a full, final and complete settlement of any issue upon the filing of an Employer's First Notice of Injury. There shall be no requirement for the filing of an Employee's First Notice of Accidental Injury and Claim for Compensation to effect such settlement in cases in which the employee is not represented by legal counsel.

B. In the event all issues of a claim are not fully, finally and completely settled by a Compromise Settlement, the issues not settled by the parties and subject to the Court's continuing jurisdiction must be noted by appendix to the Compromise Settlement or on a form created for such purpose by the Administrator. The appendix must be signed by the parties and approved by the Court as set forth herein.

C. In the absence of fraud, a Compromise Settlement shall be deemed binding upon the parties thereto and a final adjudication of

all rights pursuant to the Workers' Compensation Code. An official record shall be made by a court reporter of the testimony taken to effect the Compromise Settlement.

D. A good faith effort shall be made on the part of any insurance carrier, CompSource Oklahoma, or group self-insured plan to notify an insured employer of the possibility of and terms of any settlement of a workers' compensation case pursuant to this section. Written comments or objections to settlements shall be filed with the Court and periodically shared with the management of the applicable insurer. A written notice shall be made to all policyholders of their right to a good faith effort by their insurer to notify them of any proposed settlement, if the policyholder so chooses.

SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 340 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Upon completion of any hearing, after the judge has made a just and equitable order, decision or award, any party feeling aggrieved by such order, decision, or award, shall, within ten (10) days, have the right to take an appeal to the Workers' Compensation Court sitting en banc by filing with the Administrator of the Workers' Compensation Court a notice of such appeal. The Court en banc shall consist of three (3) judges of the Court, none of whom shall have presided over any of the previous hearings on the claim.

The Court en banc, after hearing argument of counsel, or a party not represented by counsel, may reverse or modify the decision only if it determines that such decision was against the clear weight of the evidence or contrary to law. Upon completion of the appeal, the members of the Court sitting en banc shall issue such order, decision or award as is proper, just and equitable. All proceedings of the Court sitting en banc shall be recorded by a court reporter of the Court. Any order of the Court sitting en banc which reverses a decision of the trial judge shall contain specific findings to explain such reversal. All orders, decisions or awards shall be approved by a majority of the members of the Court sitting en banc. Provided, there may be more than one Court en banc sitting at the same time for purposes of hearing the appeals provided for herein.

B. Appeals shall be allowed on a question of law or a question of fact, or a mixed question of law and fact, and shall be determined on the record made before the trial judge. Provided, when the order of the judge of the Court making an award to a claimant is appealed by the employer or the insurance carrier, interest shall be allowed on the accrued amounts of the award due from the date the award was filed, if the award is not modified or vacated on appeal.

C. In each case filed with the Court en banc, and at the time of filing same, the appellant shall deposit with the clerk as costs One Hundred Seventy-five Dollars ($175.00) of which no rebate of any

part thereof shall be made. The fee collected under this subsection shall be deposited as follows: One Hundred Fifty Dollars ($150.00) to the credit of the Administrator of Workers' Compensation Revolving Fund for the costs of administering the Workers' Compensation Code; and Twenty-five Dollars ($25.00) to the credit of the Administrator of Workers' Compensation Revolving Fund for purposes of implementing the provisions of this act, including strengthening and providing additional funding for the Attorney General's Workers' Compensation Fraud Unit, providing counseling services pursuant to the workers' compensation counselor or ombudsman program and safety in the workplace.

D. The order, decision or award of the Court shall be final and conclusive upon all questions within its jurisdiction between the parties, unless, within twenty (20) days after a copy of such order, decision or award has been sent by the Administrator to the parties affected, an action is commenced in the Supreme Court, to review such order, decision or award. Any order, decision or award made by a judge of the Court shall be considered as final under the provisions of this section unless appealed to the Court sitting en banc as provided for in subsection A of this section. The order, decision or award of a judge of the Court shall be final and conclusive upon all questions within the judge's jurisdiction between the parties unless appealed directly to the Supreme Court or to the Court sitting en banc as hereinbefore provided. Any party

litigant desiring to appeal directly from such order, decision or award to the Supreme Court, shall, within twenty (20) days after a copy of the order, decision or award has been sent by the Administrator to the parties affected, commence an action in the Supreme Court to review such order, decision or award. The Supreme Court shall have original jurisdiction of such action, and shall prescribe rules for the commencement and trial of the same. After the effective date of this act, regardless of the date of injury, the Supreme Court may modify, reverse, remand for rehearing, or set aside the order or award upon any of the following grounds:

1. The Court acted without or in excess of its powers;

2. The order or award was contrary to law;

3. The order or award was procured by fraud; or

4. The order or award was against the clear weight of the evidence.

Such action shall be commenced by filing with the Clerk of the Supreme Court a certified copy of the order, decision or award of the Court sitting en banc or the judge attached to the petition by the complaint wherein the complainant or petitioner shall make the assignments or specifications as to wherein the order, decision or award is erroneous or illegal. Provided, however, no proceeding to reverse, vacate or modify any order, decision or award of the Court sitting en banc or judge of the Court wherein compensation has been awarded an injured employee shall be entertained by the Supreme

Court unless the Administrator shall take a written undertaking to the claimant executed on the part of the respondent or insurance carrier, or both, with one or more sureties to be approved by the Administrator, to the effect that the appellant will pay the amount of the award rendered therein, together with interest thereon from the date of the award by the judge of the Court and all costs of the proceeding, or on the further order of the Court sitting en banc or judge of the Court after the appeal has been decided by the Supreme Court, except that municipalities and other political subdivisions of this state are exempt from making such written undertakings. Before the Clerk of the Supreme Court shall accept the action for filing, a certificate from the Administrator shall be required, showing that this provision has been complied with. The proceedings shall be heard in a summary manner and shall have precedence over all other civil cases in the Supreme Court, except preferred Corporation Commission appeals. The Supreme Court shall require the appealing party to file within forty-five (45) days from the date of the filing of an appeal or an order appealed from, a transcript of the record of the proceedings before the Court, or upon application and for good cause shown, the Supreme Court may extend the time for filing the transcript of the record for a period of time not to exceed ninety (90) days from the date, and such action shall be subject to the law and practice applicable to other civil actions cognizable in the Supreme Court. The Court whose action was

appealed shall enter any order directed by the Supreme Court under the final determination.

E. A fee of One Hundred Dollars ($100.00) per appeal to the Supreme Court shall be collected by the Administrator and taxed as costs for preparing, assembling, indexing and transmitting the record for appellate review. This fee shall be paid by the party taking the appeal. If more than one party to the action shall prosecute an appeal from the same order, decision or award, the fee shall be paid by the party whose petition in error is determined by the Court or by the appellate court to commence the principal appeal. The fees collected shall be deposited to the credit of the Administrator of Workers' Compensation Revolving Fund.

F. When the only controverted issue in a death claim is the determination of proper beneficiaries entitled to receive death benefits, and the parties-beneficiary appeal the decision of the Court, the employer or insurance carrier may pay the proceeds, as they accrue, to the Administrator. The Administrator shall hold the proceeds in trust in an interest-bearing account during the appeal period and shall distribute the proceeds and interest to the proper beneficiaries upon written direction of the Court. The employer or insurance carrier shall not be taxed interest or cost on the order of the death claim if payments have been made to the Administrator as they accrue.

G. For purposes of this section, interest shall be computed pursuant to Section 727.1 of Title 12 of the Oklahoma Statutes.

SECTION 41. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 341 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. No employer may discharge or, except for nonpayment of premium, terminate any group health insurance of any employee because the employee has in good faith:

1. Filed a claim;

2. Retained a lawyer for representation regarding a claim;

3. Instituted or caused to be instituted any proceeding under the provisions of this act;

4. Testified or is about to testify in any proceeding under the provisions of this act; or

5. Elected to participate or not to participate in a certified workplace medical plan as provided in this act.

B. No employer may discharge any employee during a period of temporary total disability solely on the basis of absence from work.

C. After an employee's period of temporary total disability has ended, no employer shall be required to rehire or retain any employee who is determined to be physically unable to perform assigned duties. The failure of an employer to rehire or retain any such employee shall not be deemed a violation of this section.

D. No employer may discharge an employee for the purpose of avoiding payment of temporary total disability benefits to the injured employee.

E. An employer which violates any provision of this section shall be liable in a district court action for reasonable damages, actual and punitive if applicable, suffered by an employee as a result of the violation. An employee discharged in violation of the Workers' Compensation Code shall be entitled to be reinstated to his or her former position. Exemplary or punitive damage awards made pursuant to this section shall not exceed One Hundred Thousand Dollars ($100,000.00). The employee shall have the burden of proof by a preponderance of the evidence.

SECTION 42. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 342 of Title 85, unless there is created a duplication in numbering, reads as follows:

Within the time prescribed by Section 18 of this act, the Workers' Compensation Court may find that the injured employee has suffered a change of condition for the worse and order temporary total disability, additional permanent partial impairment, permanent total disability, and medical benefits. Provided, that any change of condition shall only be found to those body parts adjudicated by the previous award or as a result of a consequential injury and must be proved by objective medical evidence of a change of condition. Additional permanent partial impairment awarded after a change of

condition and the permanent partial impairment from the previous award shall not exceed five hundred twenty (520) weeks, except for additional permanent partial impairment resulting from amputation or surgery as a result of the change of condition.

SECTION 43. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 343 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The Workers' Compensation Court shall have exclusive jurisdiction of claims for legal services rendered in regard to the prosecution of a claim under this act. A claim for legal services in contested temporary disability cases shall not exceed ten percent (10%) of the amount of the award and shall be paid periodically with the attorney receiving every tenth check. There shall be no claim for legal services in cases in which periodic temporary total disability compensation was being paid at the time of the filing of the Employee's First Notice of Injury and Claim for Compensation.

B. A claim for legal services shall not exceed twenty percent (20%) of the amount of the award for permanent partial impairment. The legal fee shall be deducted from the end of the award, commuted to a lump sum and be paid within twenty (20) days of the order awarding such permanent partial impairment.

C. A claim for legal services shall not exceed twenty percent (20%) of a permanent total disability award. The right to such legal fee shall be vested when the award therefor becomes final and

shall be paid periodically with the attorney receiving twenty percent (20%) of each weekly check to the claimant until the attorney fee is satisfied, based upon a maximum of four hundred (400) weeks of compensation.

D. A claim for legal services in a contested death case shall not exceed twenty percent (20%) of the lump sum and accrued benefits awarded and shall be paid in a lump sum. The employer shall deduct from continuing periodic payments at a rate of ten percent (10%) per payment until the legal fee is satisfied.

E. In any claim in which the respondent has admitted compensability of an accidental injury within twenty (20) days of the filing of an Employee's First Notice of Accidental Injury and Claim for Compensation, has not disputed medical treatment, and has made a settlement offer in writing within thirty (30) days after the claimant reaches maximum medical improvement, the attorney fee shall be limited to thirty-five percent (35%) of the amount of any award or settlement of permanent partial impairment which is greater than the amount of the offer. In addition, an attorney fee shall be awarded for other contested benefits obtained on behalf of the injured worker at any time during the pendency of the claim and shall be based upon a reasonable hourly rate. In no event shall the total attorney fee be in excess of twenty percent (20%) of the total permanent partial impairment award or settlement.

F. No attorney fees shall be awarded in an uncontested death case, for the value of vocational rehabilitation in a compromise settlement or order of the Workers' Compensation Court, and for the amount of a Medicare Set Aside trust agreement required by the Centers for Medicaid and Medicare Services of the U.S. Department of Health and Human Services.

G. All attorney fees shall be deducted from the award or settlement to the injured worker, except as otherwise provided in this act.

H. In no event shall any claim for legal services exceed twenty percent (20%) of the total award or compromise settlement.

SECTION 44. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 344 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. If the Workers' Compensation Court determines that any proceeding has not been brought on a reasonable ground, or that denial of benefits has not been based on a reasonable ground, the Court shall assess the total cost of the proceeding on the party who has brought the proceeding, or the party who has unreasonably denied payment of benefits.

B. In the event an employer or insurance company fails to pay travel expenses as required by this act within sixty (60) days from the receipt of a request for reimbursement, the Court shall assess a

Five Hundred Dollar ($500.00) penalty against the employer or insurance company, payable to the claimant.

SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 345 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Awards for permanent partial impairment shall be made for the total number of weeks of compensation which the Workers' Compensation Court shall find the claimant will be entitled to receive, less any sums previously paid which the Court may find to be a proper credit thereon. When the award becomes final, the whole sum or any unpaid portion thereof shall operate as a final adjudicated obligation and payment thereof may be enforced by the claimant or in case of the claimant's death, by the surviving beneficiary entitled to the proceeds as provided in Section 49 of this act. All awards shall be paid by periodic installments as determined by the Court. Whenever an injured person receives an award for permanent partial impairment, the injured employee or claimant, for good cause shown, may have the award commuted to a lump-sum payment by permission of the Court. The lump-sum payment shall not exceed twenty-five percent (25%) of the total award. The balance of the total award shall be paid in periodic installments.

B. Awards for permanent total disability shall entitle the claimant to receive weekly income benefits for the period prescribed in Section 36 of this act. When an award for permanent total

disability becomes final, the accrued portion thereof shall operate as a final adjudicated obligation and payment thereof may be enforced by the claimant or in case of the claimant's death, by the surviving beneficiary entitled to the proceeds as provided in Section 49 of this act. Permanent total disability awards shall not be commuted to a lump-sum payment.

C. All weekly or periodic payments shall be made through the use of United States legal tender, negotiable instruments payable on demand or negotiable drafts. Failure for ten (10) days to pay any final award or any portion thereof as ordered shall immediately entitle the beneficiary to an order finding the respondent and insurance carrier to be in default and all unpaid portions, including future periodic installments unpaid, shall immediately become due.

D. An award for disability may be made after the death of the injured employee, when death results from causes other than the injury. If an employee dies as a result of a compensable injury or an occupational disease, any unaccrued portions of an award or order shall abate.

E. In the event salary or any other remuneration is paid in lieu of temporary total disability compensation during the period of temporary total disability or for any other period of time, no respondent or insurance carrier shall be allowed to deduct from the amount of the award for permanent partial or permanent total

disability any amounts paid for temporary total disability, nor shall the respondent or insurance carrier be given credit for future benefits under the Workers' Compensation Code.

SECTION 46. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 346 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. If payment of compensation or an installment payment of compensation due under the terms of an award, except in regard to an award from the Multiple Injury Trust Fund, is not made within ten (10) days after the same is due by the employer or insurance carrier liable therefor, the Workers' Compensation Court may order a certified copy of the award to be filed in the office of the court clerk of any county, which award whether accumulative or lump sum shall have the same force and be subject to the same law as judgments of the district court. The provisions of this section shall be cumulative to other provisions relating to liens or enforcement of awards or claims for compensation.

B. If any insurance carrier intentionally, knowingly, or willfully violates any of the provisions of the Workers' Compensation Code or any published rules or regulations promulgated thereunder, the Insurance Commissioner, on the request of a judge of the Court or the Administrator of the Workers' Compensation Court, shall suspend or revoke the license or authority of such insurance carrier to do a compensation business in this state.

C. Creation of a new business entity for the purpose of avoiding payment of a workers' compensation judgment is prohibited.

SECTION 47. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 347 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Failure to attend in obedience to a subpoena issued by the Workers' Compensation Court may be punishable as contempt of the Court. The Court may compel obedience to the subpoena by attachment proceedings as for contempt pursuant to Sections 393 and 396 of Title 12 of the Oklahoma Statutes. Punishment for failure to attend in obedience to a subpoena, except in case of a demand and failure to pay witness fees as provided by this act, shall be limited to a fine not to exceed One Thousand Dollars ($1,000.00) which the Court may order the witness to pay. The fine imposed by the Court shall be paid into the Administrator of Workers' Compensation Revolving Fund.

B. In case of disobedience of any person to comply with the order of the Court, the judge of the district court of the county in which the person resides or of the county in which such hearing is being conducted, on application of a judge of the Court, shall compel obedience by attachment proceedings as for contempt pursuant to Sections 393 and 396 of Title 12 of the Oklahoma Statutes.

SECTION 48. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 348 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. If an employee entitled to compensation under the Workers' Compensation Code is injured or killed by the negligence or wrong of another not in the same employ, such injured employee, surviving spouse or surviving dependent shall, before any suit or claim under the Workers' Compensation Code, elect whether to take compensation under the Workers' Compensation Code, or to pursue the employee's remedy against such other. Such election shall be evidenced in such manner as the Administrator may by rule or regulation prescribe. If the employee, surviving spouse or surviving dependent elects to take compensation under the Workers' Compensation Code, the cause of action against such other shall be assigned to the insurance carrier liable for the payment of such compensation, and if the employee, surviving spouse or surviving dependent elects to proceed against such other person or insurance carrier, as the case may be, the employer's insurance carrier shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected, and the compensation provided or estimated by the Workers' Compensation Code for such case. The compromise of any such cause of action by the employee, surviving spouse or surviving dependent at any amount less than the compensation provided for by the Workers' Compensation Code shall be made only with the written

approval of the Court. Whenever recovery against such other person is effected without compromise settlement by the employee, surviving spouse or surviving dependent or his or her representatives, the employer or insurance company having paid compensation under the Workers' Compensation Code shall be entitled to reimbursement as hereinafter set forth and shall pay from its share of the reimbursement a proportionate share of the expenses, including attorney fees, incurred in effecting the recovery to be determined by the ratio that the amount of compensation paid by the employer bears to the amount of the recovery effected by the employee, surviving spouse or surviving dependent. After the expenses and attorney fees have been paid, the balance of the recovery shall be apportioned between the employer or insurance company having paid the compensation and the employee or the employee's representatives in the same ratio that the amount of compensation paid by the employer bears to the total amount recovered; provided, however, the balance of the recovery may be divided between the employer or insurance company having paid compensation and the employee or the employee's representatives as they may agree. In the event that recovery is effected by compromise settlement, the expenses, attorney fees and the balance of the recovery may be divided between the employer or insurance company having paid compensation and the employee, surviving spouse or surviving dependent or the employee's representatives as they may agree. Provided, that in the event they

are unable to agree, then the same shall be apportioned by the district court having jurisdiction of the employee's action against such other person in such manner as is just and reasonable.

B. The employer or employer's insurance carrier shall have the right of subrogation to recover money paid by the employer or employer's insurance carrier for death claims or death benefits under the Workers' Compensation Code from third persons, with all common law rights against other than the employer and his or her employees preserved and to be in those persons who would have had such rights had there been no death claim or death benefits under the Workers' Compensation Code.

C. The employer or employer's insurance carrier shall have the right of subrogation to recover money paid by the employer or employer's insurance carrier for the expenses of the last illness or accident under the Workers' Compensation Code from third persons, with all common law rights against other than the employer and his or her employees preserved and to be in those persons who would have had such rights had there been no benefits under the Workers' Compensation Code.

D. In the event of a third party recovery by an injured employee or surviving spouse or surviving dependent, the employer or insurance carrier shall be granted a credit against future benefits under this act in an amount equal to the net recovery of the employee, surviving spouse or surviving dependent.

SECTION 49. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 349 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. No agreement by any employee to pay any portion of the premium paid by the employer for the purpose of providing compensation as herein required, shall be valid, and any employer who makes a deduction for such purpose from the wages or salary of any employee entitled to the benefits of this act shall be guilty of a misdemeanor.

B. Claims for compensation or benefits due under the Workers' Compensation Code shall not be assigned, released or commuted except as provided by the Workers' Compensation Code, and, except for child support liens, shall be exempt from all claims of creditors and from levy, execution or attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. If an employee dies as a result of the accidental personal injury or occupational disease, any unaccrued portions of an award or order for compensation benefits shall abate.

C. An award made to a claimant for permanent partial impairment under the provisions of the Workers' Compensation Code shall, in case of the death of the claimant, due to causes other than the injury for which the person has been awarded permanent partial impairment, be payable to and for the benefit of the following persons:

1. If there is a surviving spouse and no child of the deceased under the age of eighteen (18) years, to the surviving spouse;

2. If there is a surviving child or children of the deceased under the age of eighteen (18) years, or dependent blind or dependent crippled child or children of any age, but no surviving spouse, then for the support of each such child, to share and share alike until the full payment of the award;

3. If there is a surviving spouse, a surviving child or children of the deceased under the age of eighteen (18) years, or a dependent blind or dependent crippled child or children of any age, one-half (1/2) shall be payable to the surviving spouse and the other half to the surviving child or children;

4. If there is no surviving spouse or child under the age of eighteen (18), or dependent blind or dependent crippled child of any age, then to the dependent parents to share and share alike, and if there are no dependent parents, then to the dependent brothers and sisters, to share and share alike;

5. If the claimant is survived by none of the above named, then the award for compensation benefits shall abate.

D. If the claimant has been adjudged a permanent totally disabled person prior to death, and such death has resulted from causes other than the person's accidental personal injury or occupational disease causing such total permanent disability, the award may be revived by the surviving spouse, a dependent child

under the age of twenty three (23), or a child of any age who is physically or mentally disabled and incapable of personal support.

SECTION 50. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 350 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. A lien against workers' compensation benefits is authorized for the purpose of enforcing a judgment for child support. Child support liens filed in accordance with Section 135 of Title 43 of the Oklahoma Statutes are specifically authorized and shall be paid in accordance with such statute without any order of the Workers' Compensation Court.

B. Additionally, all income assignments or wage assignments for child support issued pursuant to Section 1170 of Title 12 of the Oklahoma Statutes or Section 237.7 of Title 56 of the Oklahoma Statutes are specifically authorized and shall be paid in accordance with such statutes without any order of the Court.

C. In the event a child support lien is filed in a case before the Court, a judge of the Court shall recognize such lien in any award of monetary benefits and the employer or insurance carrier shall include the name of the person or government agency asserting the lien on any check for benefits in excess of One Thousand Dollars ($1,000.00).

SECTION 51. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 351 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. An employer shall secure compensation to employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation with any stock corporation, mutual association, or other concerns authorized to transact the business of workers' compensation insurance in this state, or by exchanging contracts of indemnity or interinsurance, pursuant to reasonable rules prescribed by the Administrator of the Workers' Compensation Court providing for and securing the payment of the compensation provided for in the Workers' Compensation Code. When an insurer issues a policy to provide workers' compensation benefits pursuant to the provisions of the Workers' Compensation Code, the insurer shall file, or cause to be filed, with the Administrator a notice in such form and detail as the Administrator may prescribe by rule. The notice shall contain the name, address, and principal occupation of the employer, the number, effective date, and expiration date of the policy, and such other information as may be required by the Administrator. The notice shall be filed by the insurer within thirty (30) days after the effective date of the policy. Any insurer who fails to file the notice required by this subsection shall be liable for an

administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars ($1,000.00);

2. By obtaining and keeping in force guaranty insurance with any company authorized to do guaranty business in this state. Each company that issues such guaranty insurance shall file a copy of the contract with the Administrator within thirty (30) days after the effective date of the contract. Any company that fails to file a copy of the contract as required by this subsection shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars ($1,000.00);

3. a. By furnishing satisfactory proof to the Administrator of the employer's financial ability to pay such compensation. The Administrator, pursuant to rules adopted by the Workers' Compensation Court or the Administrator for an individual self-insured or a group self-insurance association, shall require an employer that has:

(1) less than one hundred employees or less than One Million Dollars ($1,000,000.00) in net assets to:

(a) deposit with the Administrator securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the Administrator which shall

be at least an average of the yearly claims for the last three (3) years, or

(b) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of the Workers' Compensation Code, or

(2) one hundred or more employees and One Million Dollars ($1,000,000.00) or more in net assets to:

(a) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount determined by the Administrator which shall be at least an average of the yearly claims for the last three (3) years, or

(b) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of the Workers' Compensation Code.

b. The Administrator may waive the requirements of this paragraph in an amount which is commensurate with the ability of the individual self-insured or group self-insurance association to pay the benefits required by the provisions of the Workers' Compensation Code.

Irrevocable letters of credit required by this paragraph shall contain such terms as may be prescribed by the Administrator and shall be issued for the benefit of the Court by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

c. An employer, upon application to become a member of a group self-insurance association, shall file with the Administrator a notice, in such form as prescribed by the Administrator, acknowledging that the employer, by entering into a group self-insurance association, accepts joint and several liability. Such notice shall be submitted to the Court with the application for membership.

d. All self-insurers under this act shall participate in the Workers' Compensation Self-Insurance Guaranty Fund created pursuant to Section 60 of this act, as a condition of authority to self-insure in this state, except public employers that self-insure pursuant to Section 13 of this act.

e. A self-insurer whose permit to self-insure is revoked, denied for renewal or surrendered is not relieved of the obligation for compensation to an employee for a compensable injury that occurred during the period of

self-insurance. The security required under this section, including any interest thereon, shall be maintained by the Administrator as provided in this act until each claim for workers' compensation benefits is paid, settled, or lapses under this act, and costs of administration of such claims are paid.

B. 1. An employer who fails to comply with the provisions of this section shall be subject to the penalties provided for in Sections 2 and 52 through 54 of this act.

2. Failure on the part of any employer to secure the payment of compensation provided in the Workers' Compensation Code shall have the effect of enabling the Administrator to proceed on behalf of an injured employee of such employer against the employer as provided in this section and Section 2 of this act.

3. Any employer that knowingly provides false information to the Administrator for purposes of securing or maintaining a self-insurance permit shall be subject to the perjury laws of this state.

SECTION 52. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 352 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. In addition to any other penalty prescribed by law, any employer who fails to secure compensation required by Section 51 of this act shall be liable for a civil penalty, to be assessed by the Commissioner of Labor or designee, of not more than Two Hundred

Fifty Dollars ($250.00) per employee for a first offense, unless the employer secures workers' compensation insurance within thirty (30) days after receiving notice of the violation. If the employer secures workers' compensation insurance within thirty (30) days after receiving notice of the violation, the employer shall be liable for a civil penalty of not more than Seventy-five Dollars ($75.00) per employee. An employer shall be liable for a civil penalty of not more than One Thousand Dollars ($1,000.00) per employee for a second or subsequent offense. Provided, the maximum civil penalty shall not exceed Ten Thousand Dollars ($10,000.00) for all related series of violations. All civil penalties collected shall be deposited in the Department of Labor Revolving Fund and shall be used to enforce the provisions of the Workers' Compensation Code.

B. After an employer is cited for two offenses of failing to obtain workers' compensation insurance and fails to obtain coverage within thirty (30) days of the second citation, the Commissioner of Labor shall issue cease and desist orders, in accordance with the Department of Labor administrative rules and procedures, against an employer until the violating employer shall obtain workers' compensation insurance for its employees. The Commissioner of Labor shall have the authority to require the cessation of activities of an employer whose employees are not covered by workers' compensation insurance until the violating employer shall obtain workers'

compensation insurance for its employees; provided that an employer who has made application for workers' compensation coverage with either CompSource Oklahoma or a private insurance carrier, and who, through no fault of the employer, has not received notice that such coverage has commenced, shall not be made to cease operations, as provided for in this section, until a determination has been made concerning the employee's application for workers' compensation coverage. Any order to cease and desist issued by the Commissioner may be enforced in district court. The district court may issue the Commissioner an injunction without bond, for the purposes of enforcing this section.

C. The Commissioner of Labor or designee shall assess and collect any civil penalty incurred under subsection A of this section and, in the Commissioner's discretion, may remit, mitigate or negotiate the penalty. In determining the amount of the penalty to be assessed, or the amount agreed upon in any negotiation, consideration shall be given to the appropriateness of such penalty in light of the life of the business of the employer charged, the gravity of the violation, and the extent to which the employer charged has complied with the provisions of Section 51 of this act or has otherwise attempted to remedy the consequences of the violation.

SECTION 53. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 353 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of determining if a civil fine should be assessed, a summary hearing shall be conducted by a hearing officer designated by the Commissioner of Labor. The hearing officer shall determine from all of the evidence submitted by the Department of Labor and the employer a fair and equitable resolution of the violation, taking into consideration the mitigating circumstances as required by Section 52 of this act. The hearing officer shall assess, upon the examination of the evidentiary record, a penalty commensurate with the violation so adjudged. Provided, the employer may provide additional mitigating circumstances or evidence to the hearing officer within ten (10) days of the assessment and a reevaluation of the penalty shall be conducted. Unless a formal hearing is requested pursuant to the provisions of subsection B of this section, the penalty shall become final within thirty (30) days of assessment. Upon becoming final, the penalty shall be regarded as any other money judgment and may be pursued for collection as prescribed by law for any other such remedy.

B. An employer may appeal the decision of the hearing officer to the Commissioner of Labor by filing, within thirty (30) days of the date of assessment, a written request for a formal hearing. The hearing shall be conducted in accordance with the provisions of the

Administrative Procedures Act. A final order from the hearing may be appealed to the district court in the county in which the business of the employer is located pursuant to the provisions of the Administrative Procedures Act. Subject to approval of the Attorney General, the Commissioner may engage in any proceeding of appeal in district court.

SECTION 54. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 354 of Title 85, unless there is created a duplication in numbering, reads as follows:

Any employer who willfully fails to provide compensation required by Section 51 of this act shall be charged with a misdemeanor and subject to a fine of not more than One Thousand Dollars ($1,000.00) or imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment. Evidence of two prior penalties assessed by the Department of Labor pursuant to Sections 52 and 53 of this act in any given three-year period shall constitute a prima facie case of a willful violation.

SECTION 55. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 355 of Title 85, unless there is created a duplication in numbering, reads as follows:

No person employed as an administrator of a group self-insurance association shall:

1. Be an attorney-of-record or receive attorney fees, directly or indirectly, for representing the group self-insurance association;

2. Have any financial interest in the company servicing the claims of the group self-insurance association;

3. Be involved as a provider of services to the group self-insurance association; or

4. Be compensated or employed by the claim servicing company of the group self-insurance association.

SECTION 56. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 356 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by a mutual association or other concern authorized to transact workers' compensation insurance in this state shall contain a provision setting forth the right of the Administrator of the Workers' Compensation Court to enforce in the name of the state, for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of the compensation by either the employer or the insurance carrier

shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

B. Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be on the part of the insurance carrier, that jurisdiction of the employer shall, for the purpose incorporated in this act, be jurisdiction of the insurance carrier, and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provisions incorporated in this act.

C. Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries sustained by an employee during the life of such policy.

D. 1. Every such policy issued to cover a risk in this state shall include provisions giving the insured employer the option of choosing a deductible amount for medical benefits in amounts ranging from Five Hundred Dollars ($500.00) to Two Thousand Five Hundred Dollars ($2,500.00) in increments of Five Hundred Dollars ($500.00). The policy issued may also include separate provisions giving the insured employer the option of choosing a deductible amount for indemnity benefits in amounts ranging from Five Hundred Dollars

($500.00) to Two Thousand Five Hundred Dollars ($2,500.00) in increments of Five Hundred Dollars ($500.00). The insured employer, if choosing to exercise the option, shall choose only one deductible amount.

2. If an insured employer exercises the option and chooses a medical benefits deductible or indemnity benefits deductible, the insured employer shall be liable for the amount of the deductible or deductibles for the medical or indemnity benefits paid for each claim of work injury suffered by an injured employee.

3. The Insurance Commissioner, in exercising the authority to approve the form of the policy to be issued, shall not approve any policy form that permits, directly or indirectly, any part of the deductible to be charged to or passed on to the injured worker or insurer.

4. The insurer shall pay the entire cost of medical bills directly to the provider of the services and then seek reimbursement from the insured employer for the deductible amount. The insurer shall pay the entire cost of the indemnity benefits as if no deductible were in place and then seek reimbursement from the insured employer for the deductible amount.

5. If the insured employer does not reimburse the deductible amount directly to the insurer within sixty (60) days of a written demand therefor, the insurer shall pay the compensable medical claim

or indemnity benefit and may seek to recover the full amount of such claim from the insured employer.

6. Claim amounts up to Five Hundred Dollars ($500.00) annually which are paid under the medical benefits deductible or indemnity benefits deductible pursuant to this subsection shall be excluded from the calculation of the insured employer's experience modifier.

7. The provisions of this subsection shall be fully disclosed to the prospective purchaser in writing.

E. Every such policy issued to a sole proprietor, partnership, limited liability company, corporation, or other business entity must disclose to the potential purchaser in writing the option to elect to include the sole proprietors, any or all of the partnership members, any or all of the limited liability company members, or any or all stockholder-employees as employees for the purpose of workers' compensation insurance coverage by endorsing the policy in accordance with this act.

F. Every contract or agreement of an employer the purpose of which is to indemnify the employer from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or the employer's officer, agent or servant shall be absolutely void unless it shall also cover liability for the payment of the compensation provided for in this act.

G. No contract of insurance issued by a stock company or mutual association or other concern against the liability arising under this act shall be canceled within the time limited in such contract for its expiration until at least ten (10) days after notice of intention to cancel such contract, on a date specified in such notice, shall be filed in the office of the Administrator and also served on the employer. Such notice shall be served on the employer by delivering it to the employer or by sending it by mail, by registered letter, addressed to the employer at the employer's last-known place of residence; provided that, if the employer is a partnership, then such notice may be so given to any one of the partners, and if the employer is a corporation, then the notice may be given to any agent or officer of the corporation upon whom legal process may be served. Provided, however, if a contract of insurance has been terminated by an employer insured thereunder who has obtained other compensation insurance, as evidenced by filing in compliance with this act, and no intervening rights of any employee are involved, omission of a predecessor insurer to file notice of time of termination of liability shall not constitute basis for imposition of liability against such predecessor insurer.

SECTION 57. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 357 of Title 85, unless there is created a duplication in numbering, reads as follows:

Every employer and insurance carrier who schedules any employee as a person employed by the employer for the purpose of paying or collecting insurance premiums on a workers' compensation insurance policy or who pays, receives or collects any premiums upon any insurance policy covering the liability of such employer under the workers' compensation law by reason of or upon the basis of the employment of any such employee shall be estopped to deny that such employee was employed by the employer.

SECTION 58. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 358 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the "Individual Self-Insured Guaranty Fund Board". The Board shall have supervision over the administration and operation of the Individual Self-Insured Guaranty Fund.

B. The Board shall consist of not less than three (3) nor more than nine (9) members. Each member shall be from an employer who has been approved by the Workers' Compensation Court as an own-risk carrier or self-insured risk. The Board shall be appointed by the Administrator of the Workers' Compensation Court.

The initial members of the Board shall be appointed to terms of office as follows:

1. One member shall be appointed for one (1) year;

2. One member shall be appointed for two (2) years; and

3. One member shall be appointed for three (3) years.

If more than three members are appointed, the fourth member shall be appointed for four (4) years and each of the others appointed shall be for terms of office in the order of their appointment of one, two, three or four years with the ninth member also serving four (4) years. Thereafter, each person appointed shall serve for four (4) years. Provided, board members serving on the effective date of this act shall continue to serve until expiration of their respective terms. Members may be appointed to successive terms.

C. The State Treasurer shall establish the Individual Self-Insured Guaranty Fund in the State Treasury.

D. The monies paid into the fund, together with the interest thereon, shall constitute the Individual Self-Insured Guaranty Fund.

E. Until the Individual Self-Insured Guaranty Fund contains One Million Dollars ($1,000,000.00), the Oklahoma Tax Commission shall assess and collect from the employers carrying their own-risk a tax at the rate of one percent (1%) of the total compensation for permanent partial impairment awards paid out during each quarter of the calendar year by the employers. The Oklahoma Tax Commission shall forward to the State Treasurer the proceeds of the tax for deposit in the fund. When the amount in the fund falls below Seven Hundred Fifty Thousand Dollars ($750,000.00), the tax made pursuant to this section shall be assessed until the fund contains One

Million Dollars ($1,000,000.00). The State Treasurer shall place monies in the fund in interest-bearing accounts.

F. If an employer, who is currently approved by the Court as a self-insured or own-risk carrier, is unable to make payment of an award and judgment is rendered against such employer and execution is levied and returned unsatisfied in whole or in part, payments for such liabilities shall be made from the Individual Self-Insured Guaranty Fund. The Administrator shall proceed to recover such payments from the employer, or the employer's receiver or trustee in bankruptcy, and may commence an action or proceeding or file a claim therefor. The Attorney General shall appear on behalf of the Administrator in any such action or proceeding. All monies recovered in such action shall be paid into the fund.

G. Each employer approved as an individual self-insurer or own-risk carrier shall pay into the fund a sum equal to that assessed against such employer as provided for in subsection E of this section. When the award becomes final, the sum shall be payable regardless of whether or not the award made to the claimant is paid.

H. In making and entering awards for compensation for permanent partial impairment, the Court shall determine and fix the amounts that shall be paid to the Tax Commission pursuant to the provisions of subsection E of this section. The amount so determined and fixed shall have the same force and effect as an award of the Court for

compensation and all provisions relating to the collection of awards of the Court shall apply to such judgments.

I. It shall be the duty of the Oklahoma Tax Commission to collect the payments provided for in this section. The Oklahoma Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section. The Oklahoma Tax Commission also may enforce payments by proceeding in accordance with Section 46 of this act.

J. The Oklahoma Tax Commission shall on or before the first day of April of each year find and determine the amount of money held as of March 1 of that year by the State Treasurer for the benefit of the Individual Self-Insured Guaranty Fund and shall on or before the first day of October of each year find and determine the amount of money held as of September 1 of that year by the State Treasurer for the benefit of the Individual Self-Insured Guaranty Fund. Promptly after making each such determination, the Oklahoma Tax Commission shall advise the Administrator in writing of its findings.

K. Eighty percent (80%) of all sums held by the State Treasurer to the credit of the Individual Self-Insured Guaranty Fund by order of the Administrator, with the approval of the Individual Self-Insured Guaranty Fund Board, may be invested in or loaned on the pledge of any of the securities in which a state bank may invest the moneys deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time

deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in the institutions. As used in this section, "insured" means insurance as provided by an agency of the federal government. All such securities or evidence of indebtedness shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, shall collect the principal and interest when due, and shall pay the same into the fund. The State Treasurer shall pay by vouchers drawn on the Individual Self-Insured Guaranty Fund for the making of such investments, when signed by the Administrator and approved by the Individual Self-Insured Guaranty Board, upon delivery of such securities or evidence of indebtedness to him or her. The Administrator, upon approval of the individual Self-Insured Guaranty Board, may sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for deposit in the fund.

L. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payment of assessments made to the fund when the fund has over One Million Dollars ($1,000,000.00) in it. Refunds shall be paid from the fund.

M. The Oklahoma Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Individual Self-Insured Guaranty Fund all moneys collected under the provisions of this section. The State Treasurer shall pay out of the Individual Self-Insured

Guaranty Fund only upon the order and direction of a court of this state acting under the provisions thereof.

N. Where an award has been made by the Court or a payment in lieu thereof for compensable injury for a permanent partial impairment, the employer shall pay to the Tax Commission such sum as is due of which ninety-eight percent (98%) of the sum shall be paid into the fund and the remaining two percent (2%) thereof shall be paid to the Oklahoma Tax Commission not later than the fifteenth of the month following the close of the calendar quarter in which the award was made.

O. The Board may retain an insurance carrier or approved service organization to process, investigate and pay valid claims. The charge for such service shall be paid from the fund.

P. The provisions of this section shall not apply to any state entity or any political subdivision of the state.

Q. No claim or award shall be allowed against the fund unless such claim or award is made within (1) one year of the time provided in this section.

R. Pursuant to the requirements of Section 65 of this act, the Individual Self-Insured Guaranty Fund and Board shall cease to exist once the initial appointments to the Workers' Compensation Self-Insurance Guaranty Fund Board are made as provided in Section 60 of this act.

SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 359 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the "Group Self-Insurance Association Guaranty Fund Board". The Board shall have supervision over the administration and operation of the Group Self-Insurance Association Guaranty Fund.

B. The Board shall consist of not less than three (3) nor more than nine (9) members. Each member shall be an administrator of a Group Self-Insurance Association which has been approved by the Workers' Compensation Court as an own-risk carrier or self-insured risk. The Board shall be appointed by the Administrator of the Workers' Compensation Court. The initial members of the Board shall be appointed to terms of office as follows:

1. One member shall be appointed for one (1) year;

2. One member shall be appointed for two (2) years; and

3. One member shall be appointed for three (3) years.

If more than three members are appointed, the fourth member shall be appointed for four (4) years and each of the others appointed shall be for terms of office in the order of their appointment of one, two, three or four years with the ninth member also serving four (4) years. Thereafter, each person appointed shall serve for four (4) years. Provided, board members serving on the effective date of this act shall continue to serve until

expiration of their respective terms. Members may be appointed to successive terms.

C. The State Treasurer shall establish the Group Self-Insurance Association Guaranty Fund in the State Treasury.

D. The monies paid into the fund, together with the interest thereon, shall constitute the Group Self-Insurance Association Guaranty Fund.

E. Until the Group Self-Insurance Association Guaranty Fund contains One Million Dollars ($1,000,000.00), the Oklahoma Tax Commission shall assess and collect from each group self-insurance association carrying their own risk, a tax at the rate of one percent (1%) of the total compensation for permanent partial impairment awards paid out during each quarter of the calendar year by each group self-insurance association. The Oklahoma Tax Commission shall forward to the State Treasurer the proceeds of the tax for deposit in the fund. When the amount in the fund falls below Seven Hundred Fifty Thousand Dollars ($750,000.00), the tax made pursuant to this section shall be assessed until the fund contains One Million Dollars ($1,000,000.00). The State Treasurer shall place monies in the fund in interest-bearing accounts.

F. If a group self-insurance association, that is currently approved by the Court as a self-insured or own-risk carrier, is unable to make payment of an award and judgment is rendered against such group self-insurance association and execution is levied and

returned unsatisfied in whole or in part, payments for such liabilities shall be made from the Group Self-Insurance Association Guaranty Fund. The Administrator shall proceed to recover such payments from the group self-insurance association, or the group self-insurance association's receiver or trustee in bankruptcy, and may commence an action or proceeding or file a claim therefor. The Attorney General shall appear on behalf of the Administrator in any such action or proceeding. All monies recovered in such action shall be paid into the fund.

G. Each group self-insurance association approved as a self-insurer or own-risk carrier shall pay into the fund a sum equal to that assessed against such group self-insurance association as provided for in subsection E of this section. When the award becomes final, the sum shall be payable regardless of whether or not the award made to the claimant is paid.

H. In making and entering awards for compensation for permanent partial impairment, the Court shall determine and fix the amounts that shall be paid to the Tax Commission pursuant to the provisions of subsection E of this section. The amount so determined and fixed shall have the same force and effect as an award of the Court for compensation and all provisions relating to the collection of awards of the Court shall apply to such judgments.

I. It shall be the duty of the Oklahoma Tax Commission to collect the payments provided for in this section. The Oklahoma Tax

Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section.

J. The Oklahoma Tax Commission shall on or before the first day of April of each year find and determine the amount of money held as of March 1 of that year by the State Treasurer for the benefit of the Group Self-Insurance Association Guaranty Fund and shall on or before the first day of October of each year find and determine the amount of money held as of September 1 of that year by the State Treasurer for the benefit of the Group Self-Insurance Association Guaranty Fund. Promptly after making each such determination, the Oklahoma Tax Commission shall advise the Administrator in writing of its findings.

K. Eighty percent (80%) of all sums held by the State Treasurer to the credit of the Group Self-Insurance Association Guaranty Fund by order of the Administrator, with the approval of the Group Self-Insurance Association Guaranty Fund Board, may be invested in or loaned on the pledge of any of the securities in which a state bank may invest the moneys deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in the institutions. As used in this section, "insured" means insurance as provided by an agency of the federal government. All such securities or evidence of indebtedness shall be placed in the hands

of the State Treasurer, who shall be the custodian thereof, who shall collect the principal and interest when due, and pay the same into the fund. The State Treasurer shall pay by vouchers drawn on the Group Self-Insurance Association Guaranty Fund for the making of such investments, when signed by the Administrator and approved by the Group Self-Insurance Association Guaranty Board, upon delivery or evidence of indebtedness to him or her. The Administrator, upon approval of the Group Self-Insurance Association Guaranty Board, may sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for deposit in the fund.

L. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payment of assessments made to the fund when the fund has over One Million Dollars ($1,000,000.00) in it. Refunds shall be paid from the fund.

M. The Oklahoma Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Group Self-Insurance Association Guaranty Fund all moneys collected under the provisions of this section. The State Treasurer shall pay out of the Group Self-Insurance Association Guaranty Fund only upon the order and direction of a court of this state acting under the provisions thereof.

N. Where an award has been made by the Court or a payment in lieu thereof for compensable injury for a permanent partial impairment, the employer shall pay to the Tax Commission such sum as

is due of which ninety-eight percent (98%) of the sum shall be paid into the fund and the remaining two percent (2%) thereof shall be paid to the Oklahoma Tax Commission not later than the fifteenth of the month following the close of the calendar quarter in which the award was made.

O. The Board may retain an insurance carrier or approved service organization to process, investigate and pay valid claims. The charge for such service shall be paid from the fund.

P. The provisions of this section shall not apply to any group self-insurance association consisting of state entities or of any political subdivisions of the state.

Q. No claim or award shall be allowed against the fund unless such claim or award is made within one (1) year of the time provided in subsection F of this section.

R. Pursuant to the requirements of Section 65 of this act, the Group Self-Insurance Association Guaranty Fund and Board shall cease to exist once the initial appointments to the Workers' Compensation Self-Insurance Guaranty Fund Board are made as provided in Section 60 of this act.

SECTION 60. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 360 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury the "Workers' Compensation Self-Insurance Guaranty Fund" to be administered,

supervised and protected by the Workers' Compensation Self-Insurance Guaranty Fund Board. All self-insurers under the Workers' Compensation Code shall participate in the fund as a condition of authority to self-insure in this state, except public employers that self-insure pursuant to Section 13 of this act.

B. 1. The Workers' Compensation Self-Insurance Guaranty Fund Board shall consist of five (5) members to be appointed as follows:

a. the Governor shall appoint two members, one of whom shall represent a private self-insurer, and one of whom shall represent an approved group self-insurance association authorized to self-insure pursuant to Section 51 of this act or Section 398 of this title,

b. the President Pro Tempore of the Senate shall appoint one member who shall be an attorney licensed in this state who is engaged in the primary practice of workers' compensation law,

c. the Speaker of the House of Representatives shall appoint one member who represents a private self-insurer, and

d. the Workers' Compensation Court Administrator shall appoint one member who shall be a licensed claims adjuster affiliated with either a private self-insurer or an approved group self-insurance association.

2. The term of office for initial appointees shall be as follows:

a. the term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and Speaker of the House of Representatives, shall expire on November 1, 2014, and

b. the term of office for two positions, one each appointed by the Governor and the Court Administrator, shall expire on November 1, 2013.

Thereafter, successors in office shall be appointed for a three-year term. Members may succeed themselves in office. Any person appointed to fill a vacancy shall be appointed for the unexpired portion of the term in the same manner as the original appointment.

3. The chair and vice chair of the Board shall be elected by the Board from among its members.

4. Members of the Board shall receive no compensation for serving on the Board but shall be reimbursed from monies in the fund for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

C. Meetings of the Board shall be held at least quarterly. The presence of a simple majority of the members constitutes a quorum. No action shall be taken by the Board without the affirmative vote of at least a simple majority of the members.

D. The Office of the Attorney General shall provide legal counsel to assist the Board in the performance of its duties.

SECTION 61. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 361 of Title 85, unless there is created a duplication in numbering, reads as follows:

The Workers Compensation Self-Insurance Guaranty Fund shall be for the purpose of continuation of workers' compensation benefits due and unpaid or interrupted due to the inability of an impaired self-insurer as defined in Section 8 of this act to meet its compensation obligations when its financial resources, security deposit, guaranty agreements, surety agreements and excess insurance are either inadequate or not immediately accessible for the payment of benefits. Monies in the fund, including interest accruing thereon, are not subject to appropriation and shall be expended to compensate employees for eligible benefits for a compensable injury under the Workers' Compensation Code, pay outstanding workers' compensation obligations of the impaired self-insurer, and for all claims for related administrative fees, operating costs of the Workers' Compensation Self-Insurance Guaranty Fund Board, attorney fees, and other costs reasonably incurred by the Board in the performance of its duties. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims as prescribed by law with the Director of the Office of State Finance for approval and payment. The Fund shall be subject to audit the

same as state funds and accounts, the cost for which shall be paid for from the fund.

SECTION 62. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 362 of Title 85, unless there is created a duplication in numbering, reads as follows:

The Workers' Compensation Self-Insurance Guaranty Fund shall be derived from the following sources:

1. Any unexpended funds, including interest thereon, held by the State Treasurer in the Individual Self-Insured Guaranty Fund or Group Self-Insurance Association Guaranty Fund transferred to the Workers' Compensation Self-Insurance Guaranty Fund pursuant to Section 65 of this act;

2. Until the Workers' Compensation Self-Insurance Guaranty Fund contains Two Million Dollars ($2,000,000.00) or in the event the amount in the fund falls below One Million Dollars ($1,000,000.00), an assessment against each private self-insurer and group self-insurance association based on an assessment rate to be determined by the Court Administrator, not exceeding one percent (1%) of actual paid losses of the self-insurer during the preceding calendar year, payable to the Oklahoma Tax Commission for deposit to the fund. The assessment against private self-insurers shall be determined using a rate equal to the proportion that the deficiency in the fund attributable to private self-insurers bears to the actual paid losses of all private self-insurers for the year period of January 1

through December 31 preceding the assessment. The assessment against group self-insurance associations shall be determined using a rate equal to the proportion that the deficiency in excess of the surplus of the Group Self-Insurance Association Guaranty Fund at the date of the transfer attributable to group self-insurance associations bears to the actual paid losses of all group self-insurance associations cumulatively for any calendar year preceding the assessment. Each self-insurer shall provide the Administrator with such information as the Administrator may determine is necessary to effectuate the purposes of this paragraph. For purposes of this paragraph, "actual paid losses" means all medical and indemnity payments, including temporary disability, permanent disability, and death benefits, and excluding loss adjustment expenses and reserves.

a. The assessment shall be paid within thirty (30) calendar days after the date the Administrator of the Workers' Compensation Court notifies the self-insurer of the assessment.

b. A private employer or group self-insurance association which ceases to be a self-insurer shall remain liable for any and all assessments of the self-insurer as provided in this paragraph based on actual paid losses for the calendar year period preceding the assessment.

c. Failure of a self-insurer to pay, or timely pay, an assessment required by this paragraph, or to report payment of the same to the Administrator within ten (10) days of payment, shall be grounds for revocation by the Administrator of the self-insurer's permit to self-insure in this state, after notice and hearing. A former self-insurer failing to make payments required by this paragraph promptly and correctly, or failing to report payment of the same to the Administrator within ten (10) days of payment, shall be subject to administrative penalties as allowed by law, including, but not limited to, a fine in the amount of Five Hundred Dollars ($500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater, to be paid to the Administrator for deposit to the credit of the Administrator of Workers' Compensation Revolving Fund created in Section 70 of this act. It shall be the duty of the Oklahoma Tax Commission to collect the assessment provided for in this paragraph. The Tax Commission is authorized to bring an action for recovery of any delinquent or unpaid assessments. The Tax Commission also may enforce payment of the assessment by proceeding in accordance with Section 46 of this act.

d. An impaired self-insurer shall be exempt from assessments beginning on the date of the Administrator's designation until the Administrator determines the self-insurer is no longer impaired.

e. The Tax Commission shall determine the fund balance as of March 1 and September 1 of each year, and when otherwise requested by the Administrator, and shall advise the Administrator thereof in writing within thirty (30) days of each such determination; and

3. Any interest accruing on monies paid into the fund.

SECTION 63. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 363 of Title 85, unless there is created a duplication in numbering, reads as follows:

On determination by the Workers' Compensation Court Administrator that a self-insurer has become an impaired self-insurer, the Administrator shall secure release of the security deposit required by Section 51 of this act and advise the Workers' Compensation Self-Insurance Guaranty Fund Board of the impairment. Claims administration, including processing, investigating and paying valid claims against an impaired self-insurer pursuant to the Workers' Compensation Code, may include payment by the surety that issued the surety bond or be pursuant to a contract between the Administrator and an insurance carrier, appropriate state

governmental entity or an approved service organization, as approved by the Administrator.

SECTION 64. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 364 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The Workers' Compensation Self-Insurance Guaranty Fund Board shall be a party in interest in all proceedings involving compensation claims against an impaired self-insurer whose compensation claims have been paid or assumed by the Board and shall have all rights of subrogation of the impaired self-insurer. In such proceedings, the Board shall assume and may exercise all rights and defenses of the impaired self-insurer, including, but not limited to, the right to:

1. Appear, defend and appeal claims;

2. Receive notice of, investigate, adjust, compromise, settle and pay claims; and

3. Investigate, handle and contest claims.

B. The Board may:

1. Retain such persons as are necessary to handle claims and perform other duties of the Board;

2. Sue or be sued; and

3. Negotiate and become a party to such contracts as are necessary to carry out the purposes of this act.

SECTION 65. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 365 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The Individual Self-Insured Guaranty Fund and its Board provided for in Section 58 of this act and the Group Self-Insurance Association Guaranty Fund and its Board provided for in Section 59 of this act shall cease to exist and shall be succeeded by the Workers' Compensation Self-Insurance Guaranty Fund and its Board once the initial appointments to the Workers' Compensation Self-Insurance Guaranty Fund Board are made pursuant to Section 60 of this act. At that time, all unexpended funds, including interest thereon, assets, property, records, and any outstanding financial obligations and encumbrances of the Individual Self-Insured Guaranty Fund Board and Group Self-Insurance Association Guaranty Fund Board shall be transferred to the Workers' Compensation Self-Insurance Guaranty Fund Board created by Section 60 of this act. The Director of the Office of State Finance is hereby directed to coordinate the transfer of funds, outstanding financial obligations or encumbrances provided for in this subsection.

B. Any claim existing or action or proceeding pending by, against or before the Individual Self-Insured Guaranty Fund Board or the Group Self-Insurance Association Guaranty Fund Board when the entities ceased existence may be continued as if the merger into the Workers' Compensation Self-Insurance Guaranty Fund Board did not

occur, or the Workers' Compensation Self-Insurance Guaranty Fund Board may be substituted in the matter. The Workers' Compensation Self-Insurance Guaranty Fund Board shall be responsible and liable for all liabilities and obligations of the entities that ceased existence.

SECTION 66. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 366 of Title 85, unless there is created a duplication in numbering, reads as follows:

No member or personnel of the Workers' Compensation Self-Insurance Guaranty Fund Board, the Workers' Compensation Court Administrator or any employee of the Workers' Compensation Court shall be liable in a civil proceeding for any act performed in good faith in the execution of that person's powers or duties pursuant to Sections 60 through 65 of this act.

SECTION 67. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 367 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Annually, on or before the first day of July, the Administrator of the Workers' Compensation Court shall prepare, make public and submit a report for the prior calendar year to the Governor, the Chief Justice of the Supreme Court, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and each member of the Legislature, which shall include a statement of the number of awards made and the causes of the accidents leading

to the injuries for which the awards were made, total work load data of the Workers' Compensation Court, a detailed report of the work load of and orders written by each judge of the Court, a detailed statement of the expenses of the office of the Administrator and the Court, together with any other matter which the Administrator deems proper to report to the Governor, including any recommendations the Administrator may desire to make.

B. After public hearing and consultation with representatives of employers, insurance carriers, and employees, the Administrator shall implement, with the assistance of the Insurance Commissioner, by July 1, 2012, an electronic data interchange (EDI) system that provides relevant data concerning the Oklahoma workers' compensation system and the delivery of benefits to injured workers.

C. To assist the Administrator in developing and implementing the EDI system, there is hereby created the Oklahoma Workers' Compensation Electronic Data Interchange Advisory Committee. Within thirty (30) days of the effective date of this act, the Governor shall appoint five persons to serve as members of the advisory committee, one of whom shall be selected by the Governor as chair. The Administrator and Insurance Commissioner shall be nonvoting members of the advisory committee. The Administrator shall provide adequate notice of meetings of the advisory committee and public hearings as required by law.

SECTION 68. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 368 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. A fee of One Hundred Forty Dollars ($140.00) per case, including any Compromise Settlement authorized by Section 39 of this act, shall be collected by the Administrator of the Workers' Compensation Court and taxed as costs to be paid by the party against whom any award becomes final, to be deposited as follows:

1. One Hundred Five Dollars ($105.00) to the credit of the Administrator of Workers' Compensation Revolving Fund created by Section 70 of this act;

2. Ten Dollars ($10.00) to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund created by Section 19.2 of Title 74 of the Oklahoma Statutes; and

3. Twenty-five Dollars ($25.00) to the credit of the Administrator of Workers' Compensation Revolving Fund for purposes of implementing the provisions of this act, including strengthening and providing additional funding for the Attorney General's Workers' Compensation Fraud Unit, providing counseling services pursuant to the workers' compensation counselor or ombudsman program and safety in the workplace.

B. A fee of One Hundred Thirty Dollars ($130.00) per action to reopen any case pursuant to Section 18 of this act shall be collected by the Administrator and taxed as costs to be paid by the

party that reopens the case. The fee collected pursuant to this subsection shall be deposited to the credit of the Administrator of Workers' Compensation Revolving Fund for purposes of implementing the provisions of this act, including strengthening and providing additional funding for the Attorney General's Workers' Compensation Fraud Unit, providing counseling services pursuant to the workers' compensation counselor or ombudsman program and safety in the workplace.

SECTION 69. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 369 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. All group self-insureds allowed pursuant to the provisions of Section 398 of this title shall pay an annual application fee of One Thousand Dollars ($1,000.00) to the Administrator of the Workers' Compensation Court.

B. All individual own-risk or self-insured risk employers shall pay an annual application fee of One Thousand Dollars ($1,000.00) to the Administrator.

C. All court-approved servicing companies shall pay an annual application fee of One Thousand Dollars ($1,000.00) to the Administrator.

D. Each individual own-risk or self-insured risk employer whose financial statements or loss runs, or both, are subject to interim review by Workers' Compensation Court personnel shall pay an

additional fee to the Administrator of Five Hundred Dollars ($500.00) per review, not to exceed One Thousand Dollars ($1,000.00) per state fiscal year.

E. All fees collected pursuant to the provisions of this section shall be deposited to the credit of the Administrator of Workers' Compensation Revolving Fund.

SECTION 70. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 370 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Persons requesting and receiving copies of documents on file with the Administrator of the Workers' Compensation Court shall pay a fee to the Administrator of One Dollar ($1.00) for each page copied. All fees so collected shall be deposited in the State Treasury in a revolving fund to be designated the "Administrator of Workers' Compensation Revolving Fund". The fund created in this section shall be a continuing fund not subject to fiscal year limitations. Monies accruing to the credit of the fund may be expended in the manner prescribed by law in defraying necessary expenses in carrying out the provisions of this act and without legislative appropriation. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims as prescribed by law with the Director of State Finance for approval and payment.

B. All penalties and fines imposed by the Workers' Compensation Court or Administrator, upon collection, shall be deposited to the credit of the Administrator of Workers' Compensation Revolving Fund.

SECTION 71. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 371 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Every employer shall furnish the Administrator of the Workers' Compensation Court, upon request, any information required by the Administrator to carry out the provisions of the Workers' Compensation Code.

B. All books, records and payrolls of the employers showing or reflecting in any way upon the amount of wage expenditures of such employers shall always be open for inspection by the Administrator or any other authorized auditors, accountants, or inspector for the purpose of ascertaining the correctness of the wage expenditure and number of employees and such other information as may be necessary for the purposes and uses of the Administrator in the administration of the Workers' Compensation Code. No person shall be excused from testifying or from producing any books or papers or documents in any investigation or inquiry, by or upon any hearing before the Workers' Compensation Court, when ordered to do so by the Court, upon the ground that the testimony or payroll or other competent evidence required of the person may tend to incriminate or subject the person to penalty or forfeiture; but no person shall be prosecuted,

punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which the person shall under oath, have, by order of the Court, testified to or produced documentary evidence of; provided however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by the person in the person's testimony.

SECTION 72. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 372 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by state or federal law and subject to the provisions of this section, an employer may inquire about previous workers' compensation claims paid to an employee while the employee was employed by a previous employer. If the employee fails to answer truthfully about any previous permanent partial impairment awards made pursuant to workers' compensation claims, the employee shall be subject to discharge by the employer.

B. 1. All requests made to the Workers' Compensation Court for information on prior workers' compensation claims involving a worker, including written inquiries about prior claims and requests to access a worker's compensation claim file, must be in writing, on a form prescribed by the Administrator, and accompanied by a fee of One Dollar ($1.00) per search request, not to exceed One Dollar ($1.00) per claims record of a particular worker. The fee shall be deposited to the credit of the Administrator of Workers'

Compensation Revolving Fund. The form shall require identification of the person requesting the information, and the person for whom a search is being made if different from the requester. The form must contain an affidavit signed by the requester under penalty of perjury that the information sought is not requested for a purpose in violation of state or federal law. The form must be used by all repositories of archived Court claim files. All request forms shall be maintained by the Administrator as a public record, together with a record of a worker's written authorization permitting a search indexed by the worker's social security number as required by Section 3113 of Title 74 of the Oklahoma Statutes. The request forms and authorizations shall be indexed alphabetically by the last name of the worker.

2. This subsection shall not apply:

a. to requests for claims information made by a public officer or by a public employee in the performance of his or her duties on behalf of a governmental entity or as may be allowed by law,

b. to requests for claims information made by an insurer, self-insured employer, third-party claims administrator, or a legal representative thereof, when necessary to process or defend a worker's compensation claim,

c. when a worker or the worker's representative requests review of the worker's claims information,

d. when the disclosure is made for educational or research purposes and in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim,

e. to requests for claims information made by a health care or rehabilitation provider or the provider's legal representative when necessary to process payment of health care or rehabilitation services rendered to a worker, and

f. to requests for claim information made by an employer or personnel service company, including but not limited to an individual or entity, where the worker executes a written authorization permitting the search and designating the employer or personnel service company as the worker's representative for that purpose; however, nothing in this subparagraph shall relieve the employer or personnel service company from complying with the requirements of utilizing the form set forth in paragraph 1 of this subsection.

C. The Administrator shall implement by January 1, 2012, a system which publishes on the internet under the name of the Oklahoma Workers Compensation Court the names of all claimants who

have filed a workers compensation claim in the preceding ten (10) years. This internet posting shall annually be updated and also notify the public of the services available by the workers compensation court listed under this section.

SECTION 73. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 373 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a Physician Advisory Committee comprised of nine (9) members to be appointed as follows:

1. The Governor shall appoint three members, one of whom shall be licensed in this state as a doctor of medicine and surgery, one of whom shall be engaged in the practice of family medicine in a rural community of the state, and one of whom shall be an osteopathic physician;

2. The President Pro Tempore of the Senate shall appoint three members, one of whom shall be licensed in this state as a doctor of medicine and orthopedic surgery, one of whom shall be licensed in this state either as a doctor of medicine or a doctor of osteopathy and a neurosurgeon, and one of whom shall be licensed in this state as a podiatric physician; and

3. The Speaker of the House of Representatives shall appoint three members, one of whom shall be licensed in this state as an osteopathic physician, one of whom shall be licensed in this state either as a doctor of medicine or a doctor of osteopathy and shall

be engaged in the practice of occupational medicine, and one of whom shall be licensed in this state as a chiropractic physician.

The terms of members serving on the effective date of this act shall end on the effective date of this act. Thereafter, each position will be filled by the appointing official for a term of three (3) years. Members shall be subject to reappointment, with any new appointee to serve out the remainder of the unexpired term of the Committee member so replaced.

B. The Committee shall:

1. Assist and advise the Administrator of the Workers' Compensation Court regarding utilization review as it relates to the medical practice and treatment of work-related injuries. Such utilization review shall include a review of reasonable and necessary medical treatment; abusive practices; needless treatments, testing, or procedures; or a pattern of billing in excess of or in violation of the Schedule of Medical Fees. The Physician Advisory Committee shall review and make findings and recommendations to the Administrator with respect to charges of inappropriate or unnecessary treatment or procedures, abusive practices, or excessive billing disclosed through utilization review;

2. Assist the Administrator in reviewing medical practices of health care providers, including evaluations of permanent impairment provided by health care providers. The Committee shall review and make findings and recommendations to the Administrator with respect

to charges of abusive practices by health care providers providing medical services or evaluations of permanent impairment through the workers' compensation system;

3. After public hearing, review and make recommendations for acceptable deviations from the American Medical Association's "Guides to the Evaluation of Permanent Impairment";

4. After public hearing, review and make recommendations to the Administrator for an alternative method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment". Appropriate and scientific data shall be considered;

5. After public hearing, adopt Oklahoma Treatment Guidelines and protocols for medical treatment not addressed by the current edition of the Official Disability Guidelines or addressed but not recommended in the ODG section in regard to injuries to the cervical, thoracic, and lumbar spine. The Oklahoma Treatment Guidelines shall be adopted on or before March 1, 2012, and shall remain in full force and effect until superseded.

a. The OTG shall be based upon evidence based medicine and scientifically based and nationally peer reviewed literature and shall include treatment for the top fifteen (15) medically-recognized conditions (ICD-9 or successor codes).

b. When completed, the OTG shall be submitted to the Oklahoma Workers' Compensation Advisory Council for review. After due notice and public hearing, the Council shall issue a report to the Administrator concerning the OTG submitted. After due notice and public hearing, the Administrator shall adopt or reject the proposal submitted. The OTG shall be submitted by the Administrator to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate within ten (10) legislative days following adoption. The OTG submitted shall be subject to disapproval by joint or concurrent resolution of the Legislature during the legislative session in which submitted. If disapproved, the existing treatment guidelines shall continue in effect. If the Legislature takes no action on the OTG submitted by the Administrator, the OTG shall become operative thirty (30) days following the adjournment of the Legislature;

6. After public hearing, adopt Oklahoma Treatment Guidelines for the prescription and dispensing of any controlled substance included in Schedule II of the Uniform Controlled Dangerous Substances Act if not addressed by the current edition of the Official Disability Guidelines;

7. Review utilization on cases or of providers when requested by any employer, injured employee or insurer. The Committee may issue a public or private censure to any provider for utilization which is excessive or inadequate, or recommend the Court order treatment within the treatment guidelines;

8. Provide general recommendations to the judges of the Court on the issues of injury causation and apportionment;

9. Conduct educational seminars for the judges of the Court, employers, employees, and other interested parties;

10. Assist the judges of the Court in accessing medical information from scientific literature; and

11. Report its progress annually to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

C. The Court shall be bound by treatment guidelines of the latest edition of the Official Disability Guidelines or the Oklahoma Treatment Guidelines.

D. Members of the Physician Advisory Committee shall receive no compensation for serving on the Committee but shall be reimbursed by the Court for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

E. Meetings of the Physician Advisory Committee shall be called by the Administrator but held at least quarterly. The presence of a

simple majority of the members constitutes a quorum. No action shall be taken by the Physician Advisory Committee without the affirmative vote of at least a simple majority of the members.

F. The Administrator shall provide office supplies and personnel of the Court to assist the Committee in the performance of its duties.

G. Upon written request, the Insurance Commissioner, CompSource Oklahoma, and every approved self-insured employer in Oklahoma shall provide the Committee with data necessary to the performance of its duties.

H. Any health care provider acting in good faith and within the scope of the provider's duties as a member of the Physician Advisory Committee shall be immune from civil liability for making any report or other information available to the judges of the Court or to the Administrator or for assisting in the origination, investigation, or preparation of the report or other information so provided.

SECTION 74. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 374 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created an Advisory Council on Workers' Compensation.

B. The voting membership of the Advisory Council shall consist of nine (9) members. Any member serving on the effective date of this act shall serve the remainder of his or her term. The

Administrator of the Workers' Compensation Court and presiding judge of the Workers' Compensation Court shall be ex officio nonvoting members.

1. The Governor shall appoint three (3) members representing employers in this state, one of whom shall be from a list of nominees provided by the predominant statewide broad-based business organization;

2. The Speaker of the House of Representatives shall appoint three (3) members representing employees in this state, one of whom shall be from a list of nominees provided by the most representative labor organization in the state; and

3. The President Pro Tempore of the Senate shall appoint three (3) members, two who are attorneys representing the legal profession in this state, one of whom shall be an attorney who practices primarily in the area of defense of workers' compensation claims, one of whom shall be an attorney who primarily represents claimants, and a medical doctor or doctor of osteopathy actively engaged in the treatment of injured workers.

C. The term of office for appointees shall be as follows:

1. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall expire on March 1, 2012;

2. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall expire on March 1, 2013; and

3. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall expire on March 1, 2014.

D. Thereafter, successors in office shall be appointed for a three-year term. Members shall be eligible to succeed themselves in office.

E. Any person appointed to fill a vacancy shall be appointed for the unexpired portion of the term.

F. The chair and the vice chair of the Advisory Council shall be appointed by the Governor.

G. Members shall receive their traveling and other necessary expenses incurred in the performance of their duties as provided in the State Travel Reimbursement Act.

H. Meetings of the Advisory Council shall be quarterly or as called by the chair or upon petition by a majority of the voting members. The presence of five (5) voting members constitutes a quorum. No action shall be taken by the Advisory Council without the affirmative vote of at least five (5) members.

I. The Administrator shall provide office supplies and personnel of the Court to carry out any of the duties that have been entrusted to the Advisory Council.

J. The Advisory Council shall analyze and review the workers' compensation system, the reports of the Administrator, and trends in the field of workers' compensation. The Advisory Council may recommend improvements and proper responses to developing trends. The Advisory Council shall report its findings annually to the Governor, the Chief Justice of the Supreme Court, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

K. In addition to other duties required by this section, the Advisory Council shall consult with the Court regarding oversight of independent medical examiners as provided in Section 29 of this act.

L. The Advisory Council shall review the Oklahoma Treatment Guidelines as provided in the Workers' Compensation Code, and report the findings of such review to the Administrator as provided in the Workers' Compensation Code.

SECTION 75. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 402 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of Sections 75 through 79 of this act, the term "physically impaired person" means a person who, as a result of

accident, disease, birth, military action, or any other cause, has suffered:

1. The loss of the sight of one eye;

2. The loss by amputation of the whole or a part of a member of the body;

3. The loss of use or partial loss of use of a member such as is obvious and apparent from observation or examination by a person who is not skilled in the medical profession;

4. Any previous adjudications of disability adjudged and determined by the Workers' Compensation Court or any disability resulting from separately adjudicated injuries and adjudicated occupational diseases even though arising at the same time. Provided, that any adjudication of preexisting disability to a part of the body shall not be combinable for purposes of the Multiple Injury Trust Fund unless that part of the body was deemed to have been injured in the claim being adjudicated.

B. This section shall apply to all adjudications of Multiple Injury Trust Fund claims heard by the Court on or after the effective date of this act.

SECTION 76. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 403 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created, for the purposes declared in this act, the "Multiple Injury Trust Fund" to be derived from the following sources:

1. As soon as practicable after January 1 of each year, the Administrator of the Workers' Compensation Court shall establish an assessment rate applicable to each mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state, each employer carrying its own risk, and each group self-insurance association, for amounts for purposes of computing the assessment authorized by this section necessary to pay the annual obligations of the Multiple Injury Trust Fund determined on or before December 31 of each year by the Board of Managers of CompSource Oklahoma to be outstanding for the next calendar year, and to pay the allocations provided for in subsection I of this section. The rate shall be equal for all parties required to pay the assessment. The rate in effect on the effective date of this act shall remain effective through June 30, 2012;

2. The Oklahoma Tax Commission shall assess and collect from any uninsured employer a temporary assessment at the rate of five percent (5%) of the total compensation for permanent total disability awards, permanent partial impairment awards, and death benefits paid out during each quarter of the calendar year by the employers;

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

a. The assessment authorized in this section shall be determined using a rate equal to the proportion that

the sum of the outstanding obligations of the Multiple Injury Trust Fund as determined pursuant to paragraph 1 of this subsection and the allocations provided for in subsection I of this section bear to the combined gross direct written premiums of all such insurers; all actual paid losses of all individual self-insureds; and the normal premium of all group self-insurance associations, for the year period from January 1 to December 31 preceding the assessment.

b. For purposes of this subsection:

(1) "actual paid losses" means all medical and indemnity payments, including temporary disability, permanent disability, and death benefits, and excluding loss adjustment expenses and reserves, and

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

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

5. Each mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers'

compensation insurance in this state, and each employer carrying its own risk, including each group self-insurance association, shall be notified by the Administrator in writing of the rate for the assessment on or before May 1 of each year in which a rate is determined. The rate determined by the Administrator shall be in effect for four calendar quarters beginning July 1 following determination by the Administrator;

6. a. No mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state, may be assessed in any year an amount greater than six percent (6%) of the gross direct written premiums of that insurer.

b. No employer carrying its own risk may be assessed in any year an amount greater than six percent (6%) of the total actual paid losses of that individual self-insured.

c. No group self-insurance association may be assessed in any year an amount greater than six percent (6%) of the normal premium of that group self-insurance association.

d. If the maximum assessment does not provide in any one year an amount sufficient to make all necessary payments for obligations of the Multiple Injury Trust

Fund and for the allocations provided for in subsection I of this section, the unpaid portion shall be paid as soon thereafter as funds become available.

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

C. It shall be the duty of the Tax Commission to collect the payments provided for in this act. The Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section.

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

E. Any employer carrying its own risk, or group self-insurance association failing to make payments required in this act promptly and correctly, and failing to report payment of the same to the Administrator within ten (10) days of payment shall be subject to administrative penalties as allowed by law, including but not

limited to a fine in the amount of Five Hundred Dollars ($500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater, to be paid to the Administrator.

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

G. Eighty percent (80%) of all sums held by the State Treasurer to the credit of the Multiple Injury Trust Fund may by order of the CompSource Oklahoma President and Chief Executive Officer, with the approval of the Board of Managers of CompSource Oklahoma, be invested in or loaned on the pledge of any of the securities in which a state bank may invest the monies deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in the institutions. As used in this section, "insured" means insurance as provided by an agency of the federal government. All

such securities or evidence of indebtedness shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, who shall collect the principal and interest when due, and pay the same into the Multiple Injury Trust Fund. The State Treasurer shall pay by vouchers drawn on the Multiple Injury Trust Fund for the making of such investments, when signed by the CompSource Oklahoma President and Chief Executive Officer and approved by the Board of Managers of CompSource Oklahoma, upon delivery of such securities or evidence of indebtedness to the State Treasurer. The CompSource Oklahoma President and Chief Executive Officer may, upon like approval of the Board of Managers of CompSource Oklahoma, sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for the Multiple Injury Trust Fund.

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

I. The Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Multiple Injury Trust Fund all monies collected pursuant to the provisions of this section, less the annual sum of Two Million Five Hundred Fifty Thousand Dollars ($2,550,000.00), of which One Million Two Hundred Seventy-five Thousand Dollars ($1,275,000.00) shall be payable by the Oklahoma Tax Commission to the State Treasurer in equal monthly installments

to the credit of the Department of Labor, Six Hundred Thirty-seven Thousand Five Hundred Dollars ($637,500.00) shall be payable in equal monthly installments to the credit of the Office of the Attorney General, and Six Hundred Thirty-seven Thousand Five Hundred Dollars ($637,500.00) shall be payable in equal monthly installments to the credit of the Oklahoma Department of Career and Technology Education. Monies received by the Department of Labor under this section shall be used for safety consultation and the regulation of the safety of public employees through the Occupational Safety and Health Act of 1970. Monies received by the Office of the Attorney General shall be deposited to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund created pursuant to Section 19.2 of Title 74 of the Oklahoma Statutes. Monies received by the Oklahoma Department of Career and Technology Education shall supplement other funding to the Department for purposes of implementing the provisions of subsection B of Section 414 of Title 40 of the Oklahoma Statutes. The State Treasurer shall pay out of the Multiple Injury Trust Fund only upon the order and direction of the Workers' Compensation Court acting under the provisions hereof.

J. The Administrator shall promulgate rules as the Administrator deems necessary to effectuate the provisions of this section.

K. The Insurance Commissioner shall promulgate rules relating to insurers as defined in Title 36 of the Oklahoma Statutes, as the

Insurance Commissioner deems necessary to effectuate the provisions of this section.

L. The Multiple Injury Trust Fund may enter into any agreement with CompSource Oklahoma for the purpose of fulfilling all of its payment obligations.

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

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

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

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

SECTION 77. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 404 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. For actions in which the subsequent injury occurred on or after November 1, 2005, if such combined disabilities constitute permanent total disability, as defined in Section 8 of this act, the employee shall receive full compensation as provided by law for the disability resulting directly and specifically from the subsequent injury. In addition, the employee shall receive compensation for permanent total disability if the combination of injuries renders the employee permanently and totally disabled. The employer shall be liable only for the degree of percent of disability which would have resulted from the subsequent injury if there had been no preexisting impairment. The compensation rate for permanent total disability awards from the Multiple Injury Trust Fund shall be the compensation rate for permanent partial impairment paid by the employer in the last combinable compensable injury.

B. Permanent total disability awards from the Multiple Injury Trust Fund shall be payable in periodic installments for a period of fifteen (15) years or until the employee reaches sixty-five (65) years of age, whichever period is longer.

C. Permanent total disability awards from the Multiple Injury Trust Fund shall accrue from the file date of the court order finding the claimant to be permanently and totally disabled.

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

E. Reopening any prior claim other than the last claim against the employer shall not give a claimant the right to additional Multiple Injury Trust Fund benefits.

F. The Multiple Injury Trust Fund shall have authority to compromise a claim for less than the indicated amount of permanent total disability. An order entered after the effective date of this act may be paid in periodic installments beginning on the date of the award, or may be commuted to a lump-sum payment or payments, by agreement of the claimant and the Multiple Injury Trust Fund.

G. An attorney for a claimant against the Multiple Injury Trust Fund shall be entitled to a fee equal to twenty percent (20%) of permanent disability benefits awarded. For awards entered after the effective date of this act, the attorney fee shall be paid in periodic installments by the attorney receiving every fifth check. All benefits awarded to the attorney shall be vested.

H. In the event a claimant receiving benefits for permanent and total disability from the Multiple Injury Trust Fund dies as a result of his or her injury before the award has been fully paid, payments shall continue to the surviving spouse for five (5) years or upon remarriage, whichever occurs first. In no event shall payments to the surviving spouse extend beyond the period of benefits awarded to the claimant.

SECTION 78. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 405 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The right to claim compensation for benefits from the Multiple Injury Trust Fund shall be forever barred unless a Notice of Claim, on a form prescribed by the Administrator of the Workers' Compensation Court, shall be filed with the Workers' Compensation Court within two (2) years of the date of the last order for permanent partial impairment from the latest claim against the employer.

B. When a claim for benefits from the Multiple Injury Trust Fund is filed, unless claimant shall in good faith request a hearing and final determination thereon within three (3) years of the filing thereof, the same shall be barred.

C. An attorney who represents a respondent or insurance carrier in a claim against the last employer shall not represent the employee in a subsequent claim against the Multiple Injury Trust Fund.

SECTION 79. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 406 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. CompSource Oklahoma shall be charged with the administration and protection of the Multiple Injury Trust Fund and shall be

notified by the Administrator of the Workers' Compensation Court of all proceedings which may affect such fund.

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

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

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

SECTION 80. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 407 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury the "Workers' Compensation Administration Fund" to be used for the costs of administering the Workers' Compensation Code and for other purposes pursuant to legislative appropriation.

B. No money on deposit with the State Treasurer to the credit of the Workers' Compensation Administration Fund shall be expended except pursuant to legislative appropriation.

C. For the purpose of providing funds for the Workers' Compensation Administration Fund, each mutual or interinsurance association, stock company, CompSource Oklahoma or other insurance carrier writing workers' compensation insurance in this state shall pay to the Oklahoma Tax Commission a tax at a rate of one percent (1%) of all gross direct premiums written during each quarter of the calendar year for workers' compensation insurance on risks located in this state after deducting from such gross direct premiums, return premiums, unabsorbed portions of any deposit premiums, policy dividends, safety refunds, savings and other similar returns paid or credited to policyholders. Such payments to the Tax Commission shall be made not later than the fifteenth day of the month following the close of each quarter of the calendar year in which such gross direct premium is collected or collectible. Contributions made by insurance carriers and CompSource Oklahoma, under the provisions of this section, shall be considered for the purpose of computing workers' compensation rates.

D. When an employer is authorized to become a self-insurer, the Administrator of the Workers' Compensation Court as directed by the Workers' Compensation Court shall so notify the Tax Commission, giving the effective date of such authorization. The Tax Commission

shall then assess and collect from the employers carrying their own risk a tax at the rate of two percent (2%) of the total compensation for permanent total disability awards, permanent partial impairment awards and death benefits paid out during each quarter of the calendar year by the employers. Such tax shall be payable by the employers and collected by the Tax Commission according to the provisions of this section regarding payment and collection of the tax created in subsections C, E, F and G of this section.

E. It shall be the duty of the Tax Commission to collect the payments provided for in this act. The Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section. The Tax Commission may also enforce payments by proceeding in accordance with the provisions of Section 46 of this act.

F. The Tax Commission shall pay monthly to the State Treasurer to the credit of the General Revenue Fund all monies collected under the provisions of this section.

G. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made pursuant to this section.

SECTION 81. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 408 of Title 85, unless there is created a duplication in numbering, reads as follows:

Any form, claim, answer or report to be filed by any person with the Administrator of the Workers' Compensation Court under the Workers' Compensation Code shall contain or be verified by a written declaration that such form, claim, answer or report is true and made under the penalty of perjury.

SECTION 82. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 409 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Whenever two or more carriers disagree as to which carrier shall be liable for benefits, including medical care and temporary total disability compensation, to an injured employee, the Workers' Compensation Court may order one of the carriers to start paying benefits immediately. The decision of the Court to choose one carrier over another to pay benefits shall not be appealable until the Court's final order as to the disability of the employee.

B. The Court shall promulgate rules for expedited hearings in cases involving carrier disputes over the need for immediate medical care and temporary total disability compensation.

C. The carrier in the final order who is liable on the risk for the injury shall, upon proper proof of payment, promptly reimburse the other carrier for benefits paid.

D. The Court shall have authority to require an employer and an insurance carrier to reimburse other employers and insurance

carriers for benefits paid pursuant to the Workers' Compensation Code in appropriate cases.

SECTION 83. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 410 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Every employer and every employee subject to the provisions of the Workers' Compensation Code, upon filing a notice of injury, accidental injury, death, occupational disease, or claim for benefits from the Multiple Injury Trust Fund, shall give written permission for the Administrator of the Workers' Compensation Court or a designee, the Insurance Commissioner or a designee, the Attorney General or a designee or a district attorney or a designee to examine all records relating to the notice, any matter contained in the notice, and any matter relating to the notice.

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

C. In carrying out the responsibilities given to the Workers' Compensation Fraud Unit, the Attorney General or designee may use subpoenas or other process in aid of investigations and prosecutions and may take possession of records subject to examination pursuant to this section by subpoena. The Attorney General shall supply copies of the records obtained which are necessary to the continuation of normal business operations by the person maintaining

the records or may require the person maintaining the records to provide copies as they are kept in the usual course of business.

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

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

F. The Workers' Compensation Court shall include a statement on forms for notices and instructions to employers and employees that

the permission required by this section must be given at the time of filing a notice specified in subsection A of this section.

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

SECTION 84. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 411 of Title 85, unless there is created a duplication in numbering, reads as follows:

The provisions of Sections 1 through 83 of this act determined by a court of competent jurisdiction to be substantive and not procedural in nature shall be applicable only to injuries occurring on or after the effective date of this act.

SECTION 85. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 412 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. 1. All unexpended funds, assets, property, records, personnel and any outstanding financial obligations and encumbrances of the Workers' Compensation Court before the effective date of this act are hereby transferred to the Workers' Compensation Court created in Section 3 of this act. The personnel transferred shall retain leave, sick and annual time earned and any retirement and longevity benefits which have accrued during their employment with the state. The salaries of employees who are transferred shall not

be reduced as a direct and immediate result of the transfer. There shall be no reduction-in-force as a result of the transfer.

2. Any unexpended funds, including interest thereon, held by the State Treasurer in an interest bearing agency special account maintained by the Workers' Compensation Court before the effective date of this act from which a self-insured employer's workers' compensation obligations are paid following nonpayment by the self-insured employer for any reason, including insolvency, shall be transferred to the Workers' Compensation Court created by Section 3 of this act. Such funds shall be expended by the Court only for the purpose of paying workers' compensation obligations of the self-insured employer, and costs related to the administration of such obligations, to the extent of the availability of such funds.

B. 1. All unexpended funds, assets, property, and records and any outstanding financial obligations and encumbrances of the Individual Self-Insured Guaranty Fund Board before the effective date of this act are hereby transferred to the Individual Self-Insured Guaranty Fund Board created in Section 58 of this act.

2. Any unexpended funds, including interest thereon, held by the State Treasurer in the Individual Self-Insured Guaranty Fund before the effective date of this act, shall be transferred to the Individual Self-Insured Guaranty Fund Board created by Section 58 of this act. Such funds shall be expended by the Board only as authorized in Section 58 of this act.

C. 1. All unexpended funds, assets, property, and records and any outstanding financial obligations and encumbrances of the Group Self-Insurance Association Board before the effective date of this act are hereby transferred to the Group Self-Insurance Association Guaranty Fund Board created in Section 59 of this act.

2. Any unexpended funds, including interest thereon, held by the State Treasurer in the Group Self-Insurance Association Guaranty Fund before the effective date of this act, shall be transferred to the Group Self-Insurance Association Guaranty Fund Board created by Section 59 of this act. Such funds shall be expended by the Board only as authorized in Section 59 of this act.

D. All property and records of the Physician Advisory Committee before the effective date of this act are hereby transferred to the Physician Advisory Committee created in Section 73 of this act.

E. All property and records of the Advisory Council on Workers' Compensation before the effective date of this act are hereby transferred to the Advisory Council on Workers' Compensation created in Section 74 of this act.

F. All unexpended funds, assets, property, records, personnel and any outstanding financial obligations and encumbrances of the Multiple Injury Trust Fund before the effective date of this act are hereby transferred to the Multiple Injury Trust Fund created in Section 76 of this act. The personnel transferred shall retain leave, sick and annual time earned and any retirement and longevity

benefits which have accrued during their employment with the state. The salaries of employees who are transferred shall not be reduced as a direct and immediate result of the transfer. There shall be no reduction-in-force as a result of the transfer.

G. The Director of State Finance is hereby directed to coordinate the transfer of funds, allotments, purchase orders, outstanding financial obligations or encumbrances provided for in subsections A and F of this section, and the transfer of funds, outstanding financial obligations or encumbrances provided for in subsections B and C of this section.

SECTION 86. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 413 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. No benefits, saving or insurance of the injured employee, independent of the provisions of this act shall be considered in determining the compensation or benefit to be paid under this act.

B. No agreement by an employee to waive his or her right to compensation under this act shall be valid.

SECTION 87. REPEALER 85 O.S. 2001, Sections 1, 1.1, as amended by Section 7, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 1.2, as amended by Section 1, Chapter 453, O.S.L. 2010, 1.2A, 1.3, as amended by Section 8, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 2b, 2e, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, as last amended by Section 1, Chapter 84, O.S.L. 2010, 2.7, 3, as last amended by

Section 1, Chapter 452, O.S.L. 2010, 3.1, 3.4, 3.5, as amended by Section 10, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 3.6, as amended by Section 1, Chapter 403, O.S.L. 2010, 3.7, as amended by Section 1 of Enrolled House Bill No. 2038 of the 1st Session of the 53rd Oklahoma Legislature, 3.8, 3.9, as last amended by Section 2, Chapter 403, O.S.L. 2010, 3.10, as last amended by Section 3, Chapter 403, O.S.L. 2010, 3.11, 4, 5, as amended by Section 13, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 6, 6.1, 7, 9, 11, as last amended by Section 2, Chapter 452, O.S.L. 2010, 12, as last amended by Section 3, Chapter 452, O.S.L. 2010, 13, 14, as last amended by Section 4, Chapter 452, O.S.L. 2010, 14.1, 14.2 and 14.3, as amended by Sections 16 and 17, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 15, 16, as amended by Section 18, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 17, as last amended by Section 19, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 21, 22, as last amended by Section 5, Chapter 452, O.S.L. 2010, 22.1, 24.1, as amended by Section 21, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 24.2, 24.3, 25, 26, as amended by Section 22, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 27.1, 28, 30, as amended by Section 23, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 41, 41.1, 42, as amended by Section 1, Chapter 236, O.S.L. 2010, 43 and 44, as amended by Sections 24 and 25, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 45, 46, 47, 47.1, 48, as amended by Section 26, Chapter 1, 1st Extraordinary Session, O.S.L. 2005,

48.1, 49, 61, as amended by Section 78, Chapter 264, O.S.L. 2006, 61.1, 61.2, 63, 63.1, as amended by Section 3, Chapter 414, O.S.L. 2010, 63.2, 63.3, 63.4, 64, as last amended by Section 79, Chapter 264, O.S.L. 2006, 65, as amended by Section 80, Chapter 264, O.S.L. 2006, 65.2, 65.3, 66.1, 66.2, 67.1, 69.5, 80, 81, 84, 85, 92, 93, as amended by Section 4, Chapter 403, O.S.L. 2010, 93.2, as amended by Section 5, Chapter 403, O.S.L. 2010, 95, 101, 103, 104, 106, 107, 109, 110, as amended by Section 1, Chapter 338, O.S.L. 2002, 112, 122, 171 and 172, as amended by Sections 27 and 28, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 173, as last amended by Section 29, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 173.1, 173.2, 173.3, 174, 175, as last amended by Section 30, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 176, 177, 178, 179, 180, 201, as amended by Section 6, Chapter 403, O.S.L. 2010, 201.1, as last amended by Section 6, Chapter 452, O.S.L. 2010, 201.2, 203 and 211 (85 O.S. Supp. 2010, Sections 1.1, 1.2, 1.3, 2.6, 3, 3.5, 3.6, 3.9, 3.10, 5, 11, 12, 14, 14.2, 14.3, 16, 17, 22, 24.1, 26, 30, 42, 43, 44, 48, 61, 63.1, 64, 65, 93, 93.2, 110, 171, 172, 173, 175, 201 and 201.1), are hereby repealed.

SECTION 88. RECODIFICATION 85 O.S. 2001, Section 131, as amended by Section 6, Chapter 50, O.S.L. 2002 (85 O.S. Supp. 2010, Section 131), shall be recodified as Section 375 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 131a, as amended by Section 7, Chapter 50, O.S.L. 2002 (85 O.S. Supp. 2010, Section 131a), shall be recodified as Section 376 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 131b, as amended by Section 8, Chapter 50, O.S.L. 2002 (85 O.S. Supp. 2010, Section 131b), shall be recodified as Section 377 of Title 85, unless there is created a duplication in numbering.

Section 1, Chapter 263, O.S.L. 2009 (85 O.S. Supp. 2010, Section 131c), shall be recodified as Section 378 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 132, as amended by Section 9, Chapter 50, O.S.L. 2002 (85 O.S. Supp. 2010, Section 132), shall be recodified as Section 379 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 132a, as amended by Section 1, Chapter 403, O.S.L. 2004 (85 O.S. Supp. 2010, Section 132a), shall be recodified as Section 380 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 133, as last amended by Section 2, Chapter 316, O.S.L. 2006 (85 O.S. Supp. 2010, Section 133), shall be recodified as Section 381 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 134, as last amended by Section 1, Chapter 77, O.S.L. 2008 (85 O.S. Supp. 2010, Section 134), shall be recodified as Section 382 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 135, as amended by Section 12, Chapter 50, O.S.L. 2002 (85 O.S. Supp. 2010, Section 135), shall be recodified as Section 383 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 135.1, as amended by Section 13, Chapter 50, O.S.L. 2002 (85 O.S. Supp. 2010, Section 135.1), shall be recodified as Section 384 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 136, as amended by Section 14, Chapter 50, O.S.L. 2002 (85 O.S. Supp. 2010, Section 136), shall be recodified as Section 385 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 137, as amended by Section 15, Chapter 50, O.S.L. 2002 (85 O.S. Supp. 2010, Section 137), shall be recodified as Section 386 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 138, as amended by Section 16, Chapter 50, O.S.L. 2002 (85 O.S. Supp. 2010, Section 138), shall be recodified as Section 387 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 138.2, shall be recodified as Section 388 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 139, as amended by Section 17, Chapter 50, O.S.L. 2002 (85 O.S. Supp. 2010, Section 139), shall be recodified as Section 389 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 141, as amended by Section 18, Chapter 50, O.S.L. 2002 (85 O.S. Supp. 2010, Section 141), shall be recodified as Section 390 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 142, as amended by Section 2, Chapter 145, O.S.L. 2002 (85 O.S. Supp. 2010, Section 142), shall be recodified as Section 391 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 142a, shall be recodified as Section 392 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 144, shall be recodified as Section 393 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 145, shall be recodified as Section 394 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 146, shall be recodified as Section 395 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 147, as amended by Section 19, Chapter 50, O.S.L. 2002 (85 O.S. Supp. 2010, Section 147), shall be recodified

as Section 396 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 148, as amended by Section 20, Chapter 50, O.S.L. 2002 (85 O.S. Supp. 2010, Section 148), shall be recodified as Section 397 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 149.1, shall be recodified as Section 398 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 149.2, shall be recodified as Section 399 of Title 85, unless there is created a duplication in numbering.

85 O.S. 2001, Section 151, shall be recodified as Section 400 of Title 85, unless there is created a duplication in numbering.

Section 21, Chapter 426, O.S.L. 2009 (85 O.S. Supp. 2010, Section 154), shall be recodified as Section 401 of Title 85, unless there is created a duplication in numbering.

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