

## BILL SUMMARY

MEASURE: Conference Committee Substitute for SB 878

AUTHOR: Representative Sullivan

SUBJECT: Workers' Compensation Code

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DATE: 05/19/2011

**Section 1: New Law.** Creates the Workers' Compensation Code.

**Section 2: New Law.** This section makes the liability prescribed in this act exclusive. Requirements for an intentional tort to exist are provided. Provides for a cause of action for an injured employee should an employer fail to secure payment of compensation. Certain actions may be maintained in Workers' Compensation Court or District Court, but not both. Immunities created in certain provisions are limited and will not extend to certain actions.

**Section 3: New Law** The Court will consist of ten judges, no more than seven will be assigned to Oklahoma City and no less than three will be assigned to Tulsa. The requirements and make-up of the judicial positions are provided.

**Section 4: New Law.** Directs the Governor to appoint a presiding judge to serve a two year term beginning January 1, 2013, and appoint a new presiding judge if a presiding judge resigns. The section outlines supervisory and managerial responsibilities and duties of the presiding judge. The presiding judge may designate another judge to act as presiding judge should the presiding judge become disqualified, disabled or absent.

**Section 5: New Law.** The Administrator of the Workers' Compensation Court will be subject to the supervision of the presiding judge subject to the general administrative authority of the Chief Justice of the Supreme Court. The section directs the Governor to appoint the Administrator who may be removed from office only for cause, pursuant to Title 22 of the Oklahoma Statutes.

**Section 6: New Law.** This section establishes the powers and duties of the Administrator.

**Section 7: New Law.** Provides that employees of the Administrator will not be competent to testify in court on matters concerning information received through the performance of their duties. The section prohibits the Administrator and employees from certain

dealings with attorneys and such persons in violation will be guilty of a misdemeanor and terminated from employment. Judges are prohibited from any ex parte communications.

**Section 8: New Law.** This section provides for several definitions as used within the Code.

**Section 9: New Law.** The time within which an act is to be done, as provided for in this Code, shall be computed by excluding the first day and including the last day.

**Section 10: New Law.** Requires employers to provide benefits for accidental injury or death of an employee occurring in the course of employment. The section precludes an employee from making a claim for such injury in this state if there was a final adjudication in another jurisdiction for the injury, but any receipt of benefits before final adjudication will not bar the action in this state, except duplicate benefits.

**Section 11: New Law.** This section provides that the Code will not apply to certain employees including persons employed by employers liable under certain Acts of Congress, persons employed in agriculture who has a certain gross annual payroll, real estate brokers, persons providing services in a medical care or social services program, persons who employ relatives, persons employed by youth sports league, sole proprietors, volunteers, owner-operators, and drive-away owner-operators.

**Section 12: New Law.** A compensable injury does not include certain injuries which occur from certain willful acts, willful failure to act, drug use, horseplay, and injuries that do not occur during the employment relationship or in the course of employment.

**Section 13: New Law.** Requires public state entities to provide workers' compensation benefits, paid out of their respective funds, to employees and certain elected officials and insure against liability for workers' compensation with CompSource Oklahoma. Such entities may self-insure through CompSource Oklahoma. Counties, municipalities, universities, and boards of education may insure against their liability through any combination of listed options.

**Section 14: New Law.** Provides for the liability of any person or entity for those other the immediate employer of the injured employee such as subcontractors, principal employers, and residential owners or farmers.

**Section 15: New Law.** Requires benefits for a single event injury be determined by the law at the time of the injury and benefits for a cumulative trauma injury or occupational disease be determined by the law at the time the employee knew or should have known such injury or disease was related to work activity. Benefits for death determined by the law at the time of death.

**Section 16: New Law.** This section makes certain most recent employers and insurance carriers liable, without right to contribution from any prior employer or insurance carrier, where

benefits are payable for an occupational disease and, in the course of employment, the employee was last injuriously exposed to such disease. Exceptions are provided for silicosis or asbestosis related diseases.

**Section 17: New Law.** This section makes certain recent employers and insurance carriers liable, without right to contribution from any prior employer or insurance carrier, where benefits are payable for an injury relating from cumulative trauma and, in the course of employment, the employee was injuriously exposed to the trauma for at least 90 days. If not applicable, the last employer and insurance carrier where the employee was injuriously exposed will be so liable.

**Section 18: New Law.** Claims for compensation under this Code will be barred after two years from the accidental injury or death, last authorized medical treatment, or payment of compensation. Claims related to cumulative trauma must be brought within two years from the date the employee was last employed by the employer. Claims related to silicosis, asbestosis, or nuclear radiation related diseases must be brought within two years from date of the last exposure, the condition manifests, or diagnosis, whichever last occurs. The claimant must request a hearing for benefits within two years from the date of filing the claim or the date of last payment of treatment or compensation. The Court is authorized to reopen any cause upon an application based upon change in condition for the worse within three years from the date of the last order, unless there is a failure to comply with the medical treatment plan ordered by the Court. Mentally incompetent or minor persons are exempt from such time limitation requirements.

**Section 19: New Law.** Any claimant is authorized to a dismissal, without prejudice, of any claim brought by the claimant before final submission of the case to the Court for decision and may file a new claim within one year after the first claim was dismissed.

**Section 20: New Law.** Directs the Administrator to establish a workers' compensation counselor or ombudsman program to assist eligible persons in obtaining benefit and provide information. The Administrator is required to mail a notice of availability of service of such program s to the injured worker with ten days of the filing of an Employers' First Notice of Injury. The Administrator is also directed to develop an annual training for own-risk employers and claims representatives.

**Section 21: New Law.** Requires voluntary mediation to be available to any party to a claim, subject to limitations, and is not a prerequisite to the commencement of claim for benefits. The Court may also order mediation in any case. Procedures for requested mediation and requirements for certified mediators are provided.

**Section 22: New Law.** Requires employers to keep a record of certain injuries received by his or her employees in the course of their employment and post notice advising employees that they are covered by this Code. The employer is also required to file a report, called an Employers' First Notice of Injury, to the Court and the insurance carrier within ten days of

receiving a notice of an injury. Such report will remain confidential and will not be an admission of liability or that the employee has provided proper notice of injury. Administrative violations and fines are provided for refusal or neglect to make such report.

**Section 23: New Law.** Creates a rebuttable presumption that the injury was not work related if the employee does not notify the employer or receive medical attention within 30 days from the date of the injury. The section also creates a rebuttable presumption that an occupational disease or cumulative trauma injury did not arise out of and in the course of employment if the employee does not notify the employer within 90 days of the employee's separation of employment.

The Administrator is directed to provide certain printed forms requiring certain information from the injured employee.

**Section 24: New Law.** Claims for benefit will be commenced by filing an Employee's First Notice of Accidental Injury and Claim for Compensation by the Employee with the Administrator. The section requires true and accurate statements, subject to the penalty perjury, for documents filed in a claim. Parties are granted the right of a prehearing conference or trial before the Court on any issue.

**Section 25: New Law.** The Administrator is directed to assign claims to judges and divide counties to determine proper venue for claims. Upon agreement, hearings or prehearing may be held in other judicial districts or by videoconferencing.

**Section 26: New Law.** The employer is required to provide an injured employee with medical care within seven days of actual knowledge of an injury, which will not be an admission of compensability. The physician selected by the employer will become the treating physician. If the employer fails to do so, or in the case of an emergency, the injured employee may select a physician at the expense of the employer. If there has been a previous contract with a certified workplace medical plan, the employer will select a treating physician from the within the network of such plan and the claimant may apply for a change of physician as set out in such plan.

Where the employee is not covered by such plan, the employee may be granted one change of treating physician for any affected body part. The employer may object and be granted a hearing. A maximum of two changes of physician are allowed in a claim.

**Section 27: New Law.** The Administrator is directed to develop a new Workers' Compensation Medical Fee Schedule by January 2012 that will establish the maximum rates that medical providers are permitted to be reimbursed for medical care provided to injured workers. The section provides when a new Fee Schedule will be developed and procedures for doing so. Other guidelines for charging and regulating medical rates are provided.

**Section 28: New Law.** If there has been a previous contract with a certified workplace medical plan, the employer will select a treating physician from the within the network of such plan and the employee may apply for a change of treating physician. Certification procedures for such plans to the State Commissioner of Health are provided. The State Commissioner of Health will implement site visits to inspect certified plans.

An insured may contract independently with a plan to provide workers' compensation insurance if an insurer, except CompSource Oklahoma, fails to provide access to a certified workplace medical plan. If CompSource Oklahoma fails to provide such access to at least three certified plans, the insured may contract independently with a plan.

**Section 29: New Law.** The Court is directed to create and maintain a list of licensed physicians to serve as independent medical examiners and, at any time, may appoint an independent medical examiner to assist in determining any issue before the Court. Guidelines for maintaining the list, appointing such examiners, and the duties of examiners are provided. After receiving a medical examiners report, the Court is required to submit reasons if it does not follow the opinion of the medical examiner.

**Section 30: New Law.** Case management may be granted and a case manager may be appointed by the Court on the request of a party, or when the Court determines appropriate, for cases not covered by a certified workplace medical plan and case management is not provided.

**Section 31: New Law.** The section provides a formula for which to compute compensation based on the average weekly wages of the injured employee at the time of the injury.

**Section 32: New Law.** The section provides a formula for which to award temporary total disability and soft tissue related injury benefits and provides time limits for payments of compensation and when such benefits may be terminated. A penalty of 15% of the any unpaid or delayed weekly benefits are provided for the employer if temporary total disability benefits are not commenced within ten days after they are due. Notice requirements for the treating physician are established once the employee is capable of returning to modified light duty and maximum medical improvement

An injured employee is required to report any changing in material fact relating to the claim. Employers may make a motion to the court to terminate benefits if an employee has been convicted of a misdemeanor or felony.

A formula and time limitations for which to award temporary partial disability benefits are provided.

**Section 33: New Law.** The Court will determine permanent impairment or disability and must be supported by medical testimony. A physician's opinion of the nature and extent of

permanent partial impairment to must be based on the “American Medical Association’s Guides to Evaluation of Permanent Impairment” or other certain subsequent editions (the Guides hereafter). Other requirements for medical opinions related to permanent impairment are provided.

The Physician Advisory Committee may recommend the adoption of a system to evaluate permanent impairment that deviates from the Guides, which may be disapproved by the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

The section provides a formula in which to award compensation in cases of permanent partial impairment based on the type of injury or body part injured.

**Section 34: New Law** Compensation for injuries resulting in serious and permanent disfigurement is capped at \$50,000.00.

**Section 35: New Law** Employers are required to furnish prosthetic devices as may be necessary as determined by the Workers’ Compensation Court.

**Section 36: New Law** Compensation for total permanent disability will continue unless the employee reaches the age of maximum Social Security retirement benefits or for 15 years, whichever is longer and will cease at death. Guidelines for awarding such compensation in conjunction with permanent partial compensation are provided. Compensation for incarcerated persons will be deposited to the credit of an account. The Court will review the status of employees receiving permanent total disability every three years.

**Section 37: New Law** The section provides a formula to award benefits to certain surviving persons and beneficiaries in the event of death of the employee.

**Section 38: New Law** Injured employees will be entitled to physical rehabilitation services and vocational rehabilitation services. Vocational Rehabilitation benefits will not be provided to any non documented employee who is unable, by law, to be hired in Oklahoma.

The section requires the Administrator to hire a Vocational Rehabilitation Director to help injured workers return to work. The role, powers, and duties of the Director and the Court are provided to determine if and in what manner the claimant should receive vocational rehabilitation training services. No person will be adjudicated to be permanently and totally disabled, unless first having obtained an evaluation through vocational rehabilitation services and such services are limited to 52 weeks and may be extended in certain circumstances.

**Section 39: New Law** Authorizes the employer and employee to submit a Compromise Settlement to the Court should they reach an agreement for the settlement of any issue of a claim and such agreement will be binding.

**Section 40: New Law** Parties have the right to an appeal within ten days of an award or decision and the Court may reverse or modify the decision in certain circumstances.

**Section 41: New Law** An employer is prohibited from discharging an employee or terminate any group health insurance of any employee if the employee takes certain actions related to instigating a workers' compensation proceeding. The employee is required to rehire the employee after a period of temporary total disability. Penalties are provided for such violations.

**Section 42: New Law** The Court is authorized to find a change of condition for the worse and order certain benefits.

**Section 43: New Law** The section creates a formula that limits claims for legal services based on the type of case and disability.

**Section 44: New Law** The Court is required to assess the total cost of the proceeding or other penalties on the party who brings a proceeding on unreasonable grounds or has unreasonably denied payment of benefits or for other actions.

**Section 45: New Law** The Court may award and the claimant may enforce an award for permanent partial impairment. The award will operate as a final adjudicated obligation, may be commuted to a lump-sum payment and be paid by periodic installments as determined by the Court. The claimant is entitled to receive weekly income benefits for awards for permanent total disability and will operated as a final adjudicated obligation. Requirements for such payments are provided.

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

**Section 46: New Law** If payment of compensation is not made within ten days after it is due, the award may be filed with the district court and subject to the same law as judgments of the district court.

Penalties are provided for insurance carriers who violate the Code.

The section prohibits the creation of new business entity for the purpose of avoiding payment of a judgment

**Section 47: New Law** Requires obedience to a subpoena issued by the Court and authorizes the Court to compel obedience and provides for penalties.

**Section 48: New Law** If another not in the same employ who causes an injury , the injured employee may file a claim under the Code (where such cause of action is assignable to the insurance carrier) or elect to pursue a remedy against the other person (where the insurance

carrier will contribute only the deficiency). Compromises must be approved by the Court. The employer or insurance carrier will be entitled to certain reimbursements and will have the right of subrogation to recover certain monies.

**Section 49: New Law** Makes agreements that require an employee to pay any portion of insurance premium paid by employer invalid and any related wage deductions will constitute a misdemeanor.

Claims for compensation, except child support liens, will be exempt from all claims of creditors and from levy, execution or attachment. Permanent partial impairment awards are payable to certain listed persons in case of the death of the claimant. Permanent total disability awards maybe revived by certain persons upon death of claimant.

**Section 50: New Law** Liens against benefits are authorized for enforcing child support judgments.

**Section 51: New Law** This section requires an employer to secure compensation to employees and outlines ways an employer may secure such compensation. Penalties for such violations are provided.

**Section 52: New Law** Creates and outlines a civil penalty for employers who fail to secure compensation. Penalties for multiple offenses are provided.

**Section 53: New Law** Requires a hearing to be conducted to determine if a civil fine should be assessed. The section provides consideration and evidence requirements for such hearings and provides the employer with a right to an appeal.

**Section 54: New Law** Creates a misdemeanor for employers who willfully fail to provide compensation.

**Section 55: New Law** Provides requirements for an administrator of a group self-insurance association.

**Section 56: New Law** This section outlines provisional requirements and other requirements for policies of insurance covering the liability of the employer for compensation. The Insurance Commissioner will approve such policies and is directed to disapprove policies in certain circumstances. The insurer is directed to pay medical bills and may not cancel a contract of insurance without notification.

**Section 57: New Law** Employers and insurance carriers are estopped to deny an employee was employed if such employee is provided compensation insurance.

**Section 58: New Law** The section creates the Individual Self-Insured Guaranty Fund Board and provides member requirements and make-up. The Oklahoma Tax Commission will

assess and collect taxes, fixed amounts in awards for permanent partial impairment, and other payments for the fund. The State Treasure is authorized to invest certain sums from the Fund.

**Section 59: New Law** The section creates the Group Self-Insurance Association Guaranty Fund Board and provides member requirements and make-up. The Oklahoma Tax Commission will assess and collect taxes, fixed amounts in awards for permanent partial impairment, and other payments for the fund. The State Treasurer is authorized to invest certain sums of the Fund.

**Section 60: New Law** The section creates the Workers' Compensation Self-Insurance Guaranty Fund to be administered, supervised and protected by the Workers' Compensation Self-Insurance Guaranty Fund Board. Board member requirements and make-up are provided.

**Section 61: New Law** The purpose of the Workers' Compensation Self-Insurance Guaranty Fund is to provide the continuation of workers' compensation benefits due and unpaid or interrupted due to the inability of a self insurer to meet its obligations and monies will be expended to compensate employees for injury, pay obligations, and for all claims and related fees.

**Section 62: New Law** The section lists the sources that that the Workers' Compensation Self-Insurance Guaranty Fund will be derived from, including assessments against private self insurers and group-insurers and interest accruing on monies paid into the fund.

**Section 63: New Law** The Administrator is required to secure release of a security deposit in certain circumstances.

**Section 64: New Law** The Workers' Compensation Self-Insurance Guaranty Fund Board will be a party in interest in compensation claims against certain impaired self-insurers. The Board is granted certain rights in such proceedings.

**Section 65: New Law** Provides for the transfer and merger of funds and claims from the Individual Self-Insurance Fund and its Board and the Group-Self Insurance Association Guaranty Fund and its Board, once they cease to exist, to the Workers' Compensation Self-Insurance Guaranty Fund.

**Section 66: New Law** Provides limited liability for member and personnel of the Workers' Compensation Self-Insurance Guaranty Fund Board.

**Section 67: New Law** Requires the Workers' Compensation Court Administrator to compile annual reports relating to characteristics of cases including number of awards and work load data.

Directs the Administrator and the Insurance Commissioner to create an electronic data interchange system that provides relevant data concerning the Oklahoma workers' compensation system.

**Section 68: New Law** Requires the Administrator to collect certain fees as listed in the section.

**Section 69: New Law** Requires group self-insureds and individual own-risk or self-insured risk employers to pay annual application fees and other fees.

**Section 70: New Law** Establishes fees for copies of documents on file with the Court and penalties and fines to be deposited in the Administrator of Workers' Compensation Revolving Fund.

**Section 71: New Law** Requires the employer to furnish the Administrator with certain information and have certain information open for inspection. Requires certain books and documents be produced in investigations and certain person to testify in such proceedings.

**Section 72: New Law** Authorizes an employer to inquire about previous compensation claims paid to an employee and discharge employee for untruthful answers. Requests to the Court are authorized for information on prior workers' compensation claims. Procedures for such requests are provided.

The Administrator is directed to implement a system which publishes on the internet the names of all claimants who have filed a workers' compensation claim in the preceding ten years which will be updated annually.

**Section 73: New Law** Creates the Physician Advisory Committee and provides member requirements and make-up. The powers and duties of the Committee are provided and include assisting the Administrator in utilization review of medical practice and treatment of work-related injuries, evaluation of permanent impairment, review and make recommendations of deviations from the Guides, adopt Oklahoma Treatment Guidelines for medical treatment, adopt Oklahoma Treatment Guidelines for prescription and dispensing of controlled substances, and other reviews and recommendations. The Court will be bound by such Guidelines.

**Section 74: New Law** The section creates the Advisory Council on Workers' Compensation and provides member requirements and make-up. The Council will analyze and review the workers' compensation system, report its findings, and consult with the Court.

**Section 75: New Law** Defines "physically impaired person."

**Section 76: New Law** The section creates the Multiple Injury Trust Fund which will be derived from certain listed sources and payments collect by the Tax Commission, who is authorized to receive and expend monies appropriated by the Legislature.

Other requirements for maintaining the Fund are provided. Provides penalties for untimely payments by certain individuals and entities. The State Treasurer is authorized to invest certain sums of monies. The Administrator is directed to promulgate related rules.

**Section 77: New Law** Provides for compensation for permanent total disabilities and liability of the employer for such disabilities. Payment rate and installment requirements are provided. Such disability awards from the Multiple Injury Trust Fund are limited, attorney fees are capped, and such claims may continue upon death of the claimant.

**Section 78: New Law** Procedures for filing and maintaining a claim for benefits from the Multiple Injury Trust Fund are provided.

**Section 79: New Law** CompSource will be charged with the administration and protection of the Multiple Injury Trust Fund and will have standing in related proceedings.

**Section 80: New Law** The section creates the Workers' Compensation Administration Fund to be expended except pursuant to legislative appropriation. The Tax Commission will collect taxes from insurance carriers writing compensation insurance and self insured employers.

**Section 81: New Law** Filings with the Court are required to verify that such filing is true and made under the penalty of perjury.

**Section 82: New Law** The section provides requirements for insurance carrier disputes and directs the Court to promulgate rules for hearing in such cases.

**Section 83: New Law** Employers and employees are required to give written permission for examination of certain records related to the notice. The Attorney General is authorized to conduct investigations and prosecutions and requirements for such proceedings are provided.

**Section 84: New Law** Makes the provisions of this act applicable to injures occurring on or after the effective date of this act.

**Section 85: New Law** Transfers funds, assets, obligations, records, and property are transferred to the Court and Funds created in this act.

**Section 86: New Law** Invalidates benefits, savings or insurance of the injured employee, or waiver of rights.

**Section 87: Repealer** Repeals several sections within Title 85

**Section 88: Recodification** Recodifies several sections within Title 85