

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1258

6 By: Moore

7 COMMITTEE SUBSTITUTE

8 An Act relating to workers' compensation; providing  
9 insurance carriers with options for payment of  
10 indemnity benefits; requiring promulgation of rules;  
11 amending 85 O.S. 2011, Sections 332, 345 and 356,  
12 which relate to the Workers' Compensation Code;  
13 providing insurance carriers with options for payment  
14 of indemnity benefits; amending 85 O.S. 2011, Section  
15 383, which relates to CompSource Oklahoma; providing  
16 CompSource Oklahoma with options for payment of  
17 indemnity benefits; providing for codification; and  
18 providing an effective date.

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

20 SECTION 1. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 367.1 of Title 85, unless there  
22 is created a duplication in numbering, reads as follows:

23 A. Beginning January 1, 2014, any insurance carrier, including  
24 CompSource Oklahoma, that makes payments of weekly income benefits  
to employees for temporary or permanent disability shall have the  
option to issue checks, make direct deposits or issue debit cards  
for payment of indemnity benefits.

1 B. The Administrator of the Workers' Compensation Court, in  
2 consultation with the CompSource Oklahoma President and Chief  
3 Executive Officer, shall promulgate rules for the implementation of  
4 this section.

5 SECTION 2. AMENDATORY 85 O.S. 2011, Section 332, is  
6 amended to read as follows:

7 Section 332. A. In cases of temporary total disability, the  
8 injured employee shall be paid seventy percent (70%) of his or her  
9 average weekly wages, but not in excess of the state's average  
10 weekly wage, during continuance thereof; provided, there shall be no  
11 payment for the first seven (7) days of the initial period of  
12 temporary total disability unless the Workers' Compensation Court  
13 declares the employee to be temporarily totally disabled for more  
14 than twenty one (21) days. In that event, compensation shall be due  
15 from the first day of the period of temporary total disability.  
16 Total payments of compensation for temporary total disability shall  
17 not exceed one hundred fifty-six (156) weeks, except if the Court  
18 makes a finding of a consequential injury. In that event, the Court  
19 may order an additional period of temporary total disability not to  
20 exceed fifty-two (52) weeks. Any party may request overpayment or  
21 underpayment of temporary total disability compensation.

22 B. When the injured employee is released from active medical  
23 treatment by the treating physician for all body parts found by the  
24 Court to be injured, or in the event that the employee, without a

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

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

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

14 E. If the employer has actual notice of the injury and the  
15 injury is not disputed and weekly temporary total disability benefit  
16 payments are not commenced within ten (10) days or if any subsequent  
17 installment of temporary total disability benefits is not made  
18 within ten (10) days after it becomes due, the insurer of the  
19 employer shall pay to the employee a penalty of fifteen percent  
20 (15%) of the unpaid or delayed weekly benefits.

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

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

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

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

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

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

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

1 the limitations established by subsection A of this section. This  
2 subsection shall apply to all cases coming before the Court after  
3 ~~the effective date of this act~~ August 26, 2011, regardless of the  
4 date of injury.

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

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

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

14 a. sensory or motor disturbances,

15 b. communication disturbances,

16 c. complex integrated disturbances of cerebral function,

17 d. episodic neurological disorders, or

18 e. other brain and closed-head injury conditions at least  
19 as severe in nature as any condition provided in

20 subparagraphs a through d of this paragraph; or

21 3. Any joint replacement.

22 M. In all cases of nonsurgical soft tissue injury, the employee  
23 shall only be entitled to temporary total disability compensation as  
24 set out in subsection K of this section, unless there is objective

1 medical evidence of a permanent anatomical abnormality. In  
2 determining the existence of such an abnormality, the Court may  
3 consider if there is credible medical evidence that the ability of  
4 the employee to earn wages at the same level as before the injury  
5 has been impaired. This subsection shall apply to all cases coming  
6 before the Court after ~~the effective date of this act~~ August 26,  
7 2011, regardless of the date of injury.

8 N. Notwithstanding any other section of the Workers'  
9 Compensation Code, temporary disability compensation shall be  
10 payable without an award by the Court. The first payment of  
11 temporary disability compensation shall become due on the tenth day  
12 after the employer has received notice of injury. Beginning January  
13 1, 2014, any insurance carrier making payment pursuant to this  
14 subsection shall have the option to issue checks, make direct  
15 deposits or issue debit cards for payment of indemnity benefits.

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

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

1 SECTION 3. AMENDATORY 85 O.S. 2011, Section 345, is  
2 amended to read as follows:

3 Section 345. A. Awards for permanent partial impairment shall  
4 be made for the total number of weeks of compensation which the  
5 Workers' Compensation Court shall find the claimant will be entitled  
6 to receive, less any sums previously paid which the Court may find  
7 to be a proper credit thereon. When the award becomes final, the  
8 whole sum or any unpaid portion thereof shall operate as a final  
9 adjudicated obligation and payment thereof may be enforced by the  
10 claimant or in case of the claimant's death, by the surviving  
11 beneficiary entitled to the proceeds as provided in Section ~~49~~ 349  
12 of this ~~act~~ title. All awards shall be paid by periodic  
13 installments as determined by the Court. Whenever an injured person  
14 receives an award for permanent partial impairment, the injured  
15 employee or claimant, for good cause shown, may have the award  
16 commuted to a lump-sum payment by permission of the Court. The  
17 lump-sum payment shall not exceed twenty-five percent (25%) of the  
18 total award. The balance of the total award shall be paid in  
19 periodic installments.

20 B. Awards for permanent total disability shall entitle the  
21 claimant to receive weekly income benefits for the period prescribed  
22 in Section ~~36~~ 336 of this ~~act~~ title. When an award for permanent  
23 total disability becomes final, the accrued portion thereof shall  
24 operate as a final adjudicated obligation and payment thereof may be

1 enforced by the claimant or in case of the claimant's death, by the  
2 surviving beneficiary entitled to the proceeds as provided in  
3 Section ~~49~~ 349 of this ~~act~~ title. Permanent total disability awards  
4 shall not be commuted to a lump-sum payment.

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

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

18 E. In the event salary or any other remuneration is paid in  
19 lieu of temporary total disability compensation during the period of  
20 temporary total disability or for any other period of time, no  
21 respondent or insurance carrier shall be allowed to deduct from the  
22 amount of the award for permanent partial or permanent total  
23 disability any amounts paid for temporary total disability, nor  
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1 shall the respondent or insurance carrier be given credit for future  
2 benefits under the Workers' Compensation Code.

3 SECTION 4. AMENDATORY 85 O.S. 2011, Section 356, is  
4 amended to read as follows:

5 Section 356. A. Every policy of insurance covering the  
6 liability of the employer for compensation issued by a stock company  
7 or by a mutual association or other concern authorized to transact  
8 workers' compensation insurance in this state shall contain a  
9 provision setting forth the right of the Administrator of the  
10 Workers' Compensation Court to enforce in the name of the state, for  
11 the benefit of the person entitled to the compensation insured by  
12 the policy either by filing a separate application or by making the  
13 insurance carrier a party to the original application, the liability  
14 of the insurance carrier in whole or in part for the payment of such  
15 compensation; provided, however, that payment in whole or in part of  
16 the compensation by either the employer or the insurance carrier  
17 shall, to the extent thereof, be a bar to the recovery against the  
18 other of the amount so paid.

19 B. Every such policy shall contain a provision that, as between  
20 the employee and the insurance carrier, the notice to or knowledge  
21 of the occurrence of the injury on the part of the employer shall be  
22 deemed notice or knowledge, as the case may be on the part of the  
23 insurance carrier, that jurisdiction of the employer shall, for the  
24 purpose incorporated in ~~this act~~ the Workers' Compensation Code, be

1 jurisdiction of the insurance carrier, and that the insurance  
2 carrier shall in all things be bound by and subject to the orders,  
3 findings, decisions or awards rendered against the employer for the  
4 payment of compensation under the provisions incorporated in ~~this~~  
5 ~~act~~ the Workers' Compensation Code.

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

10 D. Every such policy issued on or after January 1, 2014, shall  
11 contain a provision that gives the insurance carrier the option to  
12 issue checks, make direct deposits or issue debit cards for payment  
13 of indemnity benefits.

14 E. 1. Every such policy issued to cover a risk in this state  
15 shall include provisions giving the insured employer the option of  
16 choosing a deductible amount for medical benefits in amounts ranging  
17 from Five Hundred Dollars (\$500.00) to Two Thousand Five Hundred  
18 Dollars (\$2,500.00) in increments of Five Hundred Dollars (\$500.00).  
19 The policy issued may also include separate provisions giving the  
20 insured employer the option of choosing a deductible amount for  
21 indemnity benefits in amounts ranging from Five Hundred Dollars  
22 (\$500.00) to Two Thousand Five Hundred Dollars (\$2,500.00) in  
23 increments of Five Hundred Dollars (\$500.00). The insured employer,  
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1 | if choosing to exercise the option, shall choose only one deductible  
2 | amount.

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

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

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

19 |       5. If the insured employer does not reimburse the deductible  
20 | amount directly to the insurer within sixty (60) days of a written  
21 | demand therefor, the insurer shall pay the compensable medical claim  
22 | or indemnity benefit and may seek to recover the full amount of such  
23 | claim from the insured employer.

24 |

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

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

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

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

22       ~~G.~~ H. No contract of insurance issued by a stock company or  
23 mutual association or other concern against the liability arising  
24 under ~~this act~~ the Workers' Compensation Code shall be canceled

1 within the time limited in such contract for its expiration until at  
2 least ten (10) days after notice of intention to cancel such  
3 contract, on a date specified in such notice, shall be filed in the  
4 office of the Administrator and also served on the employer. Such  
5 notice shall be served on the employer by delivering it to the  
6 employer or by sending it by mail, by registered letter, addressed  
7 to the employer at the employer's last-known place of residence;  
8 provided that, if the employer is a partnership, then such notice  
9 may be so given to any one of the partners, and if the employer is a  
10 corporation, then the notice may be given to any agent or officer of  
11 the corporation upon whom legal process may be served. Provided,  
12 however, if a contract of insurance has been terminated by an  
13 employer insured thereunder who has obtained other compensation  
14 insurance, as evidenced by filing in compliance with ~~this act~~ the  
15 Workers' Compensation Code, and no intervening rights of any  
16 employee are involved, omission of a predecessor insurer to file  
17 notice of time of termination of liability shall not constitute  
18 basis for imposition of liability against such predecessor insurer.

19 SECTION 5. AMENDATORY 85 O.S. 2011, Section 383, is  
20 amended to read as follows:

21 Section 383. A. All receipts of money, with the exception of  
22 investment income, shall be deposited in the CompSource Oklahoma  
23 fund in the State Treasury. The CompSource Oklahoma President and  
24 Chief Executive Officer, subject to the direction of the Board of

1 Managers, shall have the responsibility for the management of the  
2 CompSource Oklahoma fund, and may transfer monies used for  
3 investment purposes from the CompSource Oklahoma fund in the State  
4 Treasury to the custodian bank or trust company of CompSource  
5 Oklahoma.

6 B. 1. All benefits, other than indemnity benefits payable on  
7 or after January 1, 2014, payable pursuant to the provisions of the  
8 bylaws of CompSource Oklahoma, and refunds of premiums and  
9 overpayments, shall be paid from CompSource Oklahoma upon warrants  
10 or vouchers signed by two persons designated by the CompSource  
11 Oklahoma President and Chief Executive Officer. Beginning January  
12 1, 2014, CompSource Oklahoma shall have the option of issuing  
13 checks, making direct deposits or issuing debit cards for payment of  
14 indemnity benefits.

15 2. Every check, draft, warrant, or other instrument drawn for  
16 the payment of temporary total disability benefits by CompSource  
17 Oklahoma shall contain on its face in a contrasting color of ink the  
18 following:

19 WARNING: It is a felony to knowingly receive money under false  
20 pretenses by accepting temporary total disability benefits while  
21 working at the same or a similar job. If you are employed or  
22 receiving wages, you should consult CompSource Oklahoma or if  
23 you are represented by an attorney you should consult your  
24

1 attorney BEFORE presenting this instrument to any other person  
2 for payment.

3 3. The CompSource Oklahoma President and Chief Executive  
4 Officer may transfer monies from the custodian bank or trust company  
5 of CompSource Oklahoma to the CompSource Oklahoma fund in the State  
6 Treasury for the purposes specified in this subsection.

7 SECTION 6. This act shall become effective November 1, 2013.

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