

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1362

By: Hulbert

4  
5  
6 AS INTRODUCED

7 An Act relating to workers' compensation; creating an  
8 administrative system for the Workers' Compensation  
9 Code; designating the Insurance Department as the  
10 state agency designated to oversee the workers'  
11 compensation system; creating the Division of  
12 Workers' Compensation within the Department;  
13 providing duties and authority of the Division;  
14 providing authority of the Insurance Commissioner and  
15 the Commissioner of Workers' Compensation; providing  
16 for investigations; providing duties of the Insurance  
17 Department; providing for the Commissioner of  
18 Workers' Compensation; providing duties and authority  
19 of the Commissioner; providing for appointment of the  
20 Commissioner; providing immunity from certain  
21 liability; establishing the goals of the workers'  
22 compensation system; providing for statutory  
23 references to prior Workers' Compensation Court and  
24 Administrator of the Workers' Compensation Court;  
providing procedures relating to complaints;  
providing for public participation; providing for  
Division staff; providing for promulgation of rules;  
providing for recommendations to the Legislature;  
providing for maintenance of Division records;  
authorizing inspection fee; requiring maintenance of  
certain information; providing that certain  
information is confidential; providing for record  
checks; providing for release of certain information;  
providing penalties for failure to maintain  
confidentiality; defining term; providing for  
investigation files; requiring cooperation between  
the Insurance Department and the Division of Workers'  
Compensation and the Office of Injured Employee  
Counsel; establishing the Office of Injured Employee  
Counsel; providing for the General Counsel as chief  
administrative officer of the Office; providing for

1 appointment of the General Counsel; providing  
2 relationship between the Office and the Insurance  
3 Department; providing duties of the Department in  
4 relation to the Office; requiring the Office to  
5 publish certain information; requiring the Office to  
6 develop and implement certain policy; providing  
7 procedures for complaints; providing qualifications  
8 of General Counsel; providing duties and authority of  
9 the Office of Injured Employee Counsel; authorizing  
10 the General Counsel to refuse or terminate services  
11 in certain circumstances; requiring the Office to  
12 inform appropriate authorities of workers'  
13 compensation fraud; providing for an ombudsman  
14 program within the Office; providing authority of the  
15 Office to assist employees in administrative  
16 procedures; granting the General Counsel access to  
17 certain information; providing for adoption of a  
18 notice of injured employee rights and  
19 responsibilities; providing confidentiality  
20 requirements applicable to General Counsel and  
21 Office; providing for Office access to information;  
22 providing for ombudsman program for death benefits;  
23 providing duties of ombudsman; providing for  
24 codification; providing for recodification; and  
providing an effective date.

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 502 of Title 85, unless there is  
created a duplication in numbering, reads as follows:

A. The Insurance Department is the state agency designated to  
oversee the workers' compensation system of this state.

B. The Division of Workers' Compensation is established as a  
division within the Insurance Department to administer and operate  
the workers' compensation system of this state.

1           SECTION 2.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 503 of Title 85, unless there is  
3 created a duplication in numbering, reads as follows:

4           A.   The Division of Workers' Compensation is administered by the  
5 Commissioner of Workers' Compensation. Except as otherwise provided  
6 by the Workers' Compensation Code, the Commissioner of Workers'  
7 Compensation shall exercise all executive authority, including  
8 rulemaking authority, under the Workers' Compensation Code.

9           B.   The Commissioner of Insurance may delegate to the  
10 Commissioner of Workers' Compensation or to that person's designee  
11 and may redact any delegation, and the Commissioner of Workers'  
12 Compensation may delegate to the Commissioner of Insurance or to  
13 that person's designee, any power or duty regarding workers'  
14 compensation imposed on the Commissioner of Insurance or the  
15 Commissioner of Workers' Compensation under the Workers'  
16 Compensation Code, including the authority to make final orders or  
17 decisions. A delegation made under this subsection must be made in  
18 writing.

19           C.   The Commissioner of Insurance shall develop and implement  
20 policies that clearly separate the respective responsibilities of  
21 the Insurance Department and the Division.

22           D.   The Commissioner of Insurance may provide advice, research,  
23 and comment regarding the adoption of rules by the Commissioner of  
24 Workers' Compensation.

1           SECTION 3.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 504 of Title 85, unless there is  
3 created a duplication in numbering, reads as follows:

4           The Insurance Department shall investigate the conduct of the  
5 work of the Division of Workers' Compensation. For that purpose,  
6 the Department shall have access at any time to all Division books  
7 and records and may require an officer or employee of the Division  
8 to furnish written or oral information.

9           SECTION 4.           NEW LAW           A new section of law to be codified  
10 in the Oklahoma Statutes as Section 505 of Title 85, unless there is  
11 created a duplication in numbering, reads as follows:

12           A. The Division of Workers' Compensation is administratively  
13 attached to the Insurance Department.

14           B. The Department shall provide the staff and facilities  
15 necessary to enable the Division to perform the duties of the  
16 Division under the Workers' Compensation Code, including:

- 17           1. Administrative assistance and services to the Division,  
18 including budget planning and purchasing;
- 19           2. Personnel and financial services; and
- 20           3. Computer equipment and support.

21           C. The Commissioner of Workers' Compensation and the  
22 Commissioner of Insurance may enter into agreements as necessary to  
23 implement the Workers' Compensation Code.

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1 SECTION 5. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 506 of Title 85, unless there is  
3 created a duplication in numbering, reads as follows:

4 A. In addition to other duties required under the Workers'  
5 Compensation Code, the Division of Workers' Compensation shall:

6 1. Regulate and administer the business of workers'  
7 compensation in this state; and

8 2. Ensure that the Workers' Compensation Code and other laws  
9 regarding workers' compensation are executed.

10 B. To the extent determined feasible by the Commissioner of  
11 Workers' Compensation, the Division shall establish a single point  
12 of contact for injured employees receiving services from the  
13 Division.

14 SECTION 6. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 507 of Title 85, unless there is  
16 created a duplication in numbering, reads as follows:

17 The Division of Workers' Compensation is composed of the  
18 Commissioner of Workers' Compensation and other officers and  
19 employees as required to efficiently implement:

20 1. The Workers' Compensation Code; and

21 2. Other laws granting jurisdiction or applicable to the  
22 Division or the Commissioner.

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1 SECTION 7. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 508 of Title 85, unless there is  
3 created a duplication in numbering, reads as follows:

4 A. The Commissioner of Workers' Compensation is the chief  
5 executive and administrative officer of the Division of Workers'  
6 Compensation. The Commissioner shall administer and enforce the  
7 Workers' Compensation Code and other laws granting jurisdiction to  
8 or applicable to the Division or the Commissioner. Except as  
9 otherwise specifically provided by the Workers' Compensation Code, a  
10 reference in Title 85 of the Oklahoma Statutes to the "Commissioner"  
11 means the Commissioner of Workers' Compensation.

12 B. The Commissioner has the powers and duties vested in the  
13 Division by the Workers' Compensation Code.

14 SECTION 8. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 509 of Title 85, unless there is  
16 created a duplication in numbering, reads as follows:

17 The Governor, subject to confirmation by the Senate, shall  
18 appoint the Commissioner of Workers' Compensation. The Commissioner  
19 shall serve at the pleasure of the Governor.

20 SECTION 9. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 510 of Title 85, unless there is  
22 created a duplication in numbering, reads as follows:

23 The Commissioner of Workers' Compensation shall:

24 1. Be a competent and experienced administrator;

1        2. Be well-informed and qualified in the field of workers'  
2 compensation; and

3        3. Have at least five (5) years of experience as an executive  
4 in the administration of business or government or as a practicing  
5 attorney, physician, or certified public accountant.

6        SECTION 10.        NEW LAW        A new section of law to be codified  
7 in the Oklahoma Statutes as Section 511 of Title 85, unless there is  
8 created a duplication in numbering, reads as follows:

9        The Commissioner of Workers' Compensation shall not be liable in  
10 a civil action for an act performed in good faith in the execution  
11 of duties as Commissioner.

12        SECTION 11.        NEW LAW        A new section of law to be codified  
13 in the Oklahoma Statutes as Section 512 of Title 85, unless there is  
14 created a duplication in numbering, reads as follows:

15        A. The Commissioner of Workers' Compensation shall conduct the  
16 daily operations of the Division and otherwise implement Division  
17 policy.

18        B. The Commissioner or the Commissioner's designee may:

19            1. Investigate misconduct;

20            2. Hold hearings;

21            3. Issue subpoenas to compel the attendance of witnesses and  
22 the production of documents;

23            4. Administer oaths;

24            5. Take testimony directly or by deposition or interrogatory;

1           6. Assess and enforce penalties established under the Workers'  
2 Compensation Code;

3           7. Enter appropriate orders as authorized by the Workers'  
4 Compensation Code;

5           8. Institute an action in the Division's name to enjoin the  
6 violation of the Workers' Compensation Code;

7           9. Initiate an action to intervene in a judicial proceeding  
8 that relates to the administration of the Workers' Compensation  
9 Code;

10          10. Prescribe the form, manner, and procedure for the  
11 transmission of information to the Division;

12          11. Correct clerical errors in the entry of orders; and

13          12. Exercise other powers and perform other duties as necessary  
14 to implement and enforce the Workers' Compensation Code.

15          C. The Commissioner is the agent for service of process on out-  
16 of-state employers.

17          SECTION 12.        NEW LAW        A new section of law to be codified  
18 in the Oklahoma Statutes as Section 513 of Title 85 unless there is  
19 created a duplication in numbering, reads as follows:

20          A. The basic goals of the workers' compensation system of this  
21 state are as follows:

22            1. Each employee shall be treated with dignity and respect when  
23 injured on the job;

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1           2. Each injured employee shall have access to a fair and  
2 accessible dispute resolution process;

3           3. Each injured employee shall have access to prompt, high-  
4 quality medical care within the framework established by the  
5 Workers' Compensation Code; and

6           4. Each injured employee shall receive services to facilitate  
7 the employee's return to employment as soon as it is considered safe  
8 and appropriate by the employee's health care provider.

9           B. It is the intent of the Legislature that, in implementing  
10 the goals described by subsection A of this section, the workers'  
11 compensation system of this state shall:

12           1. Promote safe and healthy workplaces through appropriate  
13 incentives, education, and other actions;

14           2. Encourage the safe and timely return of injured employees to  
15 productive roles in the workplace;

16           3. Provide appropriate income benefits and medical benefits in  
17 a manner that is timely and cost-effective;

18           4. Provide timely, appropriate, and high-quality medical care  
19 supporting restoration of the injured employee's physical condition  
20 and earning capacity;

21           5. Minimize the likelihood of disputes and resolve them  
22 promptly and fairly when identified;

23  
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1           6. Promote compliance with the Workers' Compensation Code and  
2 rules adopted under the Workers' Compensation Code through  
3 performance-based incentives;

4           7. Promptly detect and appropriately address acts or practices  
5 of noncompliance with the Workers' Compensation Code and rules  
6 adopted under the Workers' Compensation Code;

7           8. Effectively educate and clearly inform each person who  
8 participates in the system as a claimant, employer, insurance  
9 carrier, health care provider, or other participant of the person's  
10 rights and responsibilities under the system and how to  
11 appropriately interact within the system; and

12           9. Take maximum advantage of technological advances to provide  
13 the highest levels of service possible to system participants and to  
14 promote communication among system participants.

15           C. This section shall not be construed as:

16           1. Creating a cause of action; or

17           2. Establishing an entitlement to benefits to which a claimant  
18 is not otherwise entitled by the Workers' Compensation Code.

19           D. As provided by the Workers' Compensation Code, the Division  
20 of Workers' Compensation shall work to promote and help ensure the  
21 safe and timely return of injured employees to productive roles in  
22 the workforce.

1 SECTION 13. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 514 of Title 85, unless there is  
3 created a duplication in numbering, reads as follows:

4 A reference in the Workers' Compensation Code or any other law  
5 to the Workers' Compensation Court means the Division of Workers'  
6 Compensation of the Insurance Department. A reference to the  
7 Administrator of the Workers' Compensation Court means the  
8 Commissioner of the Division of Workers' Compensation.

9 SECTION 14. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 515 of Title 85, unless there is  
11 created a duplication in numbering, reads as follows:

12 A. The Commissioner of Workers' Compensation shall prepare  
13 information of public interest describing the functions of the  
14 Division and the procedures by which complaints are filed with and  
15 resolved by the Division of Workers' Compensation.

16 B. The Commissioner shall make the information available to the  
17 public and appropriate state agencies.

18 C. The Commissioner by rule shall ensure that each form,  
19 standard letter, and brochure of the Division:

- 20 1. Is written in plain language;
- 21 2. Is in a readable and understandable format; and
- 22 3. Complies with all applicable requirements relating to  
23 minimum readability requirements.

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1 SECTION 15. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 516 of Title 85, unless there is  
3 created a duplication in numbering, reads as follows:

4 A. The Commissioner of Workers' Compensation shall:

5 1. Adopt rules regarding the filing of a complaint under the  
6 Workers' Compensation Code against an individual or entity subject  
7 to regulation under the Workers' Compensation Code; and

8 2. Ensure that information regarding the complaint process is  
9 available on the Internet website of the Division of Workers'  
10 Compensation.

11 B. The rules adopted under this section shall, at a minimum:

12 1. Ensure that the Division clearly defines in rule the method  
13 for filing a complaint; and

14 2. Define what constitutes a frivolous complaint.

15 C. The Division shall develop and post on the Division's  
16 Internet website:

17 1. A simple standardized form for filing complaints under the  
18 Workers' Compensation Code; and

19 2. Information regarding the complaint filing process.

20 D. The Division shall adopt a policy outlining the Division's  
21 complaint process from receipt of the initial complaint to the  
22 complaint's disposition.

23 E. The Division shall keep an information file about each  
24 written complaint filed with the Division that is unrelated to a

1 specific workers' compensation claim, including a complaint  
2 regarding the administration of the workers' compensation system.

3 The information shall include:

- 4 1. The date the complaint is received;
- 5 2. The name of the complainant;
- 6 3. The subject matter of the complaint;
- 7 4. A record of all persons contacted in relation to the  
8 complaint;
- 9 5. A summary of the results of the review or investigation of  
10 the complaint; and
- 11 6. For complaints for which the Division took no action, an  
12 explanation of the reason the complaint was closed without action.

13 F. For each written complaint that is unrelated to a specific  
14 workers' compensation claim that the Division has authority to  
15 resolve, the Division shall provide to the person filing the  
16 complaint and the person about whom the complaint is made  
17 information about the Division's policies and procedures relating to  
18 complaint investigation and resolution. The Division, at least  
19 quarterly and until final disposition of the complaint, shall notify  
20 those persons about the status of the complaint unless the notice  
21 would jeopardize an undercover investigation.

22 SECTION 16. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 517 of Title 85, unless there is  
24 created a duplication in numbering, reads as follows:

1       A. The Division of Workers' Compensation shall develop  
2 procedures to formally document and analyze complaints received by  
3 the Division.

4       B. The Division shall compile detailed statistics on all  
5 complaints received and analyze complaint information trends,  
6 including:

- 7       1. The number of complaints;
- 8       2. The source of each complaint;
- 9       3. The types of complaints;
- 10      4. The length of time from the receipt of the complaint to its  
11 disposition; and
- 12      5. The disposition of complaints.

13      C. The Division shall report the information compiled and  
14 analyzed under subsection B of this section to the Commissioner of  
15 Workers' Compensation at regular intervals.

16      SECTION 17.       NEW LAW       A new section of law to be codified  
17 in the Oklahoma Statutes as Section 518 of Title 85, unless there is  
18 created a duplication in numbering, reads as follows:

19      A. The Division of Workers' Compensation shall assign  
20 priorities to complaint investigations based on risk. In developing  
21 priorities under this section, the Division shall develop a formal,  
22 risk-based complaint investigation system that considers:

- 23      1. The severity of the alleged violation;

24

1           2. Whether the alleged violator showed continued or wilful  
2 noncompliance; and

3           3. Whether an order of the Commissioner of Workers'  
4 Compensation has been violated.

5           B. The Commissioner may develop additional risk-based criteria  
6 as determined necessary.

7           SECTION 18.       NEW LAW       A new section of law to be codified  
8 in the Oklahoma Statutes as Section 519 of Title 85, unless there is  
9 created a duplication in numbering, reads as follows:

10          A. The Commissioner of Workers' Compensation shall develop and  
11 implement policies that provide the public with a reasonable  
12 opportunity to appear before the Division of Workers' Compensation  
13 and to speak on issues under the general jurisdiction of the  
14 Division.

15          B. The Division shall comply with federal and state laws  
16 related to program and facility accessibility.

17          SECTION 19.       NEW LAW       A new section of law to be codified  
18 in the Oklahoma Statutes as Section 520 of Title 85, unless there is  
19 created a duplication in numbering, reads as follows:

20          The Commissioner of Workers' Compensation shall appoint  
21 deputies, assistants, and other personnel as necessary to carry out  
22 the powers and duties of the Commissioner and the Division of  
23 Workers' Compensation under the Workers' Compensation Code and other  
24

1 laws granting jurisdiction or applicable to the Division or the  
2 Commissioner.

3 SECTION 20. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 521 of Title 85, unless there is  
5 created a duplication in numbering, reads as follows:

6 The Commissioner of Workers' Compensation shall promulgate rules  
7 as necessary for the implementation and enforcement of the Workers'  
8 Compensation Code.

9 SECTION 21. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 522 of Title 85, unless there is  
11 created a duplication in numbering, reads as follows:

12 A. The Commissioner of Workers' Compensation shall consider and  
13 recommend to the Legislature changes to the Workers' Compensation  
14 Code.

15 B. The Commissioner shall forward the recommended changes to  
16 the Legislature not later than December 1 of each even-numbered  
17 year.

18 SECTION 22. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 523 of Title 85, unless there is  
20 created a duplication in numbering, reads as follows:

21 A. The Commissioner of Workers' Compensation is the custodian  
22 of the Division of Workers' Compensation records and shall perform  
23 the duties of a custodian required by law, including providing  
24 copies and the certification of records.

1 B. The Division shall comply with records retention schedules  
2 as provided by law.

3 C. The Division may charge a reasonable fee for making  
4 available for inspection any of its information that contains  
5 confidential information that must be redacted before the  
6 information is made available. However, when a request for  
7 information is for the inspection of ten or fewer pages, and a copy  
8 of the information is not requested, the Division may charge only  
9 the cost of making a copy of the page from which confidential  
10 information must be redacted.

11 SECTION 23. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 524 of Title 85, unless there is  
13 created a duplication in numbering, reads as follows:

14 A. The Division of Workers' Compensation shall maintain  
15 demographic information on every compensable injury pursuant to  
16 rules promulgated by the Commission.

17 B. On request from the Office of Injured Employee Counsel, the  
18 Division shall provide to the Office the identity, claim number, and  
19 contact information of claimants receiving assistance from the  
20 Office.

21 SECTION 24. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 525 of Title 85, unless there is  
23 created a duplication in numbering, reads as follows:

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1       A. Information in or derived from a claim file regarding an  
2 employee is confidential and shall not be disclosed by the Division  
3 of Workers' Compensation except as provided by the Workers'  
4 Compensation Code.

5       B. Information concerning an employee who has been finally  
6 adjudicated of wrongfully obtaining payment under the Workers'  
7 Compensation Code is not confidential.

8       SECTION 25.       NEW LAW       A new section of law to be codified  
9 in the Oklahoma Statutes as Section 526 of Title 85, unless there is  
10 created a duplication in numbering, reads as follows:

11       A. The Division of Workers' Compensation shall perform and  
12 release a record check on an employee, including current or prior  
13 injury information, to the parties listed in subsection B of this  
14 section if:

- 15       1. The claim is:
- 16           a. open or pending before the Division,
  - 17           b. on appeal to a court of competent jurisdiction, or
  - 18           c. the subject of a subsequent suit in which the  
19               insurance carrier or the subsequent injury fund is  
20               subrogated to the rights of the named claimant; and

21       2. The requesting party requests the release on a form  
22 prescribed by the Division for this purpose and provides all  
23 required information.

24

1 B. Information on a claim may be released as provided by  
2 subsection A of this section to:

- 3 1. The employee or the employee's legal beneficiary;
- 4 2. The employee's or the legal beneficiary's representative;
- 5 3. The employer at the time of injury;

6 4. The insurance carrier;

7 5. The Individual Self-Insured Guaranty Fund Board, if that  
8 Fund is liable to make payments on a claim;

9 6. The Group Self-Insurance Association Guaranty Fund Board, if  
10 that Fund is liable to make payments on a claim;

11 7. The Workers' Compensation Self-Insurance Guaranty Fund  
12 Board, if that Fund is liable to make payments on a claim; or

13 8. A third-party litigant in a lawsuit in which the cause of  
14 action arises from the incident that gave rise to the injury.

15 C. The requirements of paragraph 1 of subsection A of this  
16 section do not apply to a request from a third-party litigant  
17 described by paragraph 8 of subsection B of this section.

18 D. For purposes of this section only, "insurance carrier"  
19 means:

20 1. A certified self-insurer; or

21 2. An entity authorized under the Insurance Code that provides  
22 health insurance coverage or health benefits in this state,  
23 including:

24

- a. an insurance company, including an insurance company that holds a certificate of authority issued by the Commissioner of Insurance to engage in the business of workers' compensation insurance in this state,
- b. a group hospital service corporation,
- c. a health maintenance organization,
- d. a fully self-insured plan, as described by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.),
- e. a governmental plan, as defined by Section 3(32), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(32)),
- f. an employee welfare benefit plan, as defined by Section 3(1), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(1)), or
- g. an insurer authorized by the Insurance Department to offer disability insurance in this state.

E. The Commissioner of Workers' Compensation by rule may establish a reasonable fee, not to exceed five cents (\$0.05) for each claimant listed in an information request, in an electronic data format. The Commissioner shall adopt rules to establish:

1. Reasonable security parameters for all transfers of information requested under this section in electronic data format;
- and

1           2. Requirements regarding the maintenance of electronic data in  
2 the possession of an insurance carrier.

3           F. The insurance carrier or the carrier's authorized  
4 representative shall execute a written agreement with the  
5 Commissioner before submitting the carrier's first request. The  
6 agreement shall contain a provision by which the carrier and the  
7 representative agree to comply with the Commissioner's rules  
8 governing security parameters applicable to the transfer of  
9 information and the maintenance of electronic data.

10           SECTION 26.           NEW LAW           A new section of law to be codified  
11 in the Oklahoma Statutes as Section 527 of Title 85, unless there is  
12 created a duplication in numbering, reads as follows:

13           A. The Division of Workers' Compensation shall release  
14 information on a claim to:

15           1. The Insurance Department for any statutory or regulatory  
16 purpose;

17           2. A legislative committee for legislative purposes;

18           3. A state or federal elected official requested in writing to  
19 provide assistance by a constituent who qualifies to obtain injury  
20 information under the Workers' Compensation Code, if the request for  
21 assistance is provided to the Division;

22           4. The Attorney General or the Department of Human Services,  
23 relating to:  
24

1 a. establishing, modifying, or enforcing a child support  
2 or medical support obligation, or

3 b. locating an absent parent; or

4 5. The Office of Injured Employee Counsel for any statutory or  
5 regulatory purpose that relates to a duty of that Office.

6 B. The Division may release information on a claim to a  
7 governmental agency, political subdivision, or regulatory body to  
8 use to:

9 1. Investigate an allegation of a criminal offense or licensing  
10 or regulatory violation;

11 2. Provide:

12 a. unemployment compensation benefits,

13 b. crime victims compensation benefits,

14 c. vocational rehabilitation services, or

15 d. health care benefits;

16 3. Investigate occupational safety or health violations;

17 4. Verify income on an application for benefits under an  
18 income-based state or federal assistance program; or

19 5. Assess financial resources in an action, including an  
20 administrative action, to:

21 a. establish, modify, or enforce a child support or  
22 medical support obligation,

23 b. establish paternity,

24 c. locate an absent parent, or

1           d.     cooperate with another state in an action authorized  
2                     under Part D, Title IV, Social Security Act (42 U.S.C.  
3                     Section 651 et seq.).

4           SECTION 27.       NEW LAW       A new section of law to be codified  
5 in the Oklahoma Statutes as Section 528 of Title 85, unless there is  
6 created a duplication in numbering, reads as follows:

7           A.   Information relating to a claim that is confidential under  
8 the Workers' Compensation Code remains confidential when released to  
9 any person, except when used in court for the purposes of an appeal.

10          B.   This section does not prohibit an employer from releasing  
11 information about a former employee to another employer with whom  
12 the employee has applied for employment, if that information was  
13 lawfully acquired by the employer releasing the information.

14          SECTION 28.       NEW LAW       A new section of law to be codified  
15 in the Oklahoma Statutes as Section 529 of Title 85, unless there is  
16 created a duplication in numbering, reads as follows:

17          A.   A prospective employer who has workers' compensation  
18 insurance coverage and who complies with the Workers' Compensation  
19 Code is entitled to obtain information on the prior injuries of an  
20 applicant for employment if the employer obtains written  
21 authorization from the applicant before making the request.

22          B.   The employer shall make the request by telephone or file the  
23 request in writing not later than the fourteenth day after the date  
24 on which the application for employment is made.

1 C. The request shall include the applicant's name, address, and  
2 social security number.

3 D. If the request is made in writing, the authorization shall  
4 be filed simultaneously. If the request is made by telephone, the  
5 employer shall file the authorization not later than the tenth day  
6 after the date on which the request is made.

7 SECTION 29. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 530 of Title 85, unless there is  
9 created a duplication in numbering, reads as follows:

10 A. A person commits an offense if the person knowingly,  
11 intentionally, or recklessly publishes, discloses, or distributes  
12 information that is confidential under the Workers' Compensation  
13 Code to a person not authorized to receive the information directly  
14 from the Division of Workers' Compensation.

15 B. A person commits an offense if the person knowingly,  
16 intentionally, or recklessly receives information that is  
17 confidential under the Workers' Compensation Code and that the  
18 person is not authorized to receive.

19 C. An offense under this section is a misdemeanor, subject to a  
20 fine of not more than One Thousand Dollars (\$1,000.00) or  
21 imprisonment in the county jail for not more than one (1) year, or  
22 both such fine and imprisonment.

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1 D. An offense under this section may be prosecuted in a  
2 district court in the county where the information was unlawfully  
3 received, published, disclosed, or distributed.

4 E. The court has jurisdiction to enjoin the use, publication,  
5 disclosure, or distribution of confidential information under this  
6 section.

7 SECTION 30. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 531 of Title 85, unless there is  
9 created a duplication in numbering, reads as follows:

10 A. In this section, "investigation file" means any information  
11 compiled or maintained by the Division with respect to a Division  
12 investigation authorized under the Workers' Compensation Code. The  
13 term does not include information or material acquired by the  
14 Division that is relevant to an investigation by the Anti-fraud Unit  
15 of the Insurance Department, the Office of Attorney General Workers'  
16 Compensation Fraud Unit or the Office of Attorney General Insurance  
17 Fraud Unit.

18 B. Information maintained in the investigation files of the  
19 Division of Workers' Compensation is confidential and shall not be  
20 disclosed except:

- 21 1. In a criminal proceeding;
- 22 2. In a hearing conducted by the Division;
- 23 3. On a judicial determination of good cause;

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1 4. To a governmental agency, political subdivision, or  
2 regulatory body if the disclosure is necessary or proper for the  
3 enforcement of the laws of this or another state or of the United  
4 States; or

5 5. To an insurance carrier if the investigation file relates  
6 directly to a felony regarding workers' compensation or to a claim  
7 in which restitution is required to be paid to the insurance  
8 carrier.

9 C. Division investigation files are not open records.

10 D. Information in an investigation file that is information in  
11 or derived from a claim file, or an employer injury report or  
12 occupational disease report, is governed by the confidentiality  
13 provisions relating to that information.

14 E. The Division, upon request, shall disclose the identity of a  
15 complainant under this section if the Division finds:

- 16 1. The complaint was groundless or made in bad faith;
- 17 2. The complaint lacks any basis in fact or evidence;
- 18 3. The complaint is frivolous; or
- 19 4. The complaint is done specifically for competitive or  
20 economic advantage.

21 F. Upon completion of an investigation in which the Division  
22 determines a complaint is described by subsection E of this section,  
23 the Division shall notify the person who was the subject of the  
24 complaint of its finding and the identity of the complainant.

1 SECTION 31. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 532 of Title 85, unless there is  
3 created a duplication in numbering, reads as follows:

4 A. The Insurance Department and the Division of Workers'  
5 Compensation shall cooperate with the Office of Injured Employee  
6 Counsel in providing services to claimants under the Workers'  
7 Compensation Code.

8 B. The Department shall provide facilities to the Office of  
9 Injured Employee Counsel.

10 SECTION 32. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 533 of Title 85, unless there is  
12 created a duplication in numbering, reads as follows:

13 A. The Office of Injured Employee Counsel is established to  
14 represent the interests of workers' compensation claimants in this  
15 state.

16 B. The chief administrative director of the Office shall be the  
17 General Counsel, who shall be appointed by the Governor, subject to  
18 confirmation by the Senate. The General Counsel shall serve at the  
19 pleasure of the Governor.

20 C. The Office is administratively attached to the Insurance  
21 Department but is independent of direction by the Insurance  
22 Commissioner or the Commissioner of Workers' Compensation.

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1 D. The Insurance Department shall provide the staff and  
2 facilities necessary to enable the Office to perform the duties of  
3 the Office, including:

- 4 1. Administrative assistance and services to the Office,  
5 including budget planning and purchasing;
- 6 2. Personnel services; and
- 7 3. Computer equipment and support.

8 E. The Office shall prepare information of public interest  
9 describing the functions of the Office and make the information  
10 available to the public and appropriate state agencies.

11 SECTION 33. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 534 of Title 85, unless there is  
13 created a duplication in numbering, reads as follows:

14 The Office of Injured Employee Counsel shall develop and  
15 implement a policy to encourage the use of appropriate alternative  
16 dispute resolution procedures under the Workers' Compensation Code,  
17 to assist in the resolution of internal and external disputes under  
18 the Office's jurisdiction.

19 SECTION 34. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 535 of Title 85, unless there is  
21 created a duplication in numbering, reads as follows:

22 A. The Office of Injured Employee Counsel shall maintain a  
23 system to promptly and efficiently act on complaints filed with the  
24 Office. The Office shall maintain information about parties to the

1 complaint, the subject matter of the complaint, a summary of the  
2 results of the review or investigation of the complaint, and its  
3 disposition.

4 B. The Office shall make information available describing its  
5 procedures for complaint investigation and resolution.

6 C. The Office shall periodically notify the complaint parties  
7 of the status of the complaint until final disposition.

8 SECTION 35. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 536 of Title 85, unless there is  
10 created a duplication in numbering, reads as follows:

11 To be eligible to serve as General Counsel of the Office of  
12 Injured Employee Counsel, a person shall:

- 13 1. Be a resident of this state;
- 14 2. Be licensed to practice law in this state;
- 15 3. Have management experience;
- 16 4. Possess knowledge and experience with the workers'  
17 compensation system; and
- 18 5. Have experience with legislative procedures and  
19 administrative law.

20 SECTION 36. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 537 of Title 85, unless there is  
22 created a duplication in numbering, reads as follows:

- 23 A. The Office of Injured Employee Counsel shall:
- 24 1. Provide assistance to workers' compensation claimants;

1           2. Advocate on behalf of injured employees as a class regarding  
2 rulemaking by the Commissioner and Commissioner of Insurance  
3 relating to workers' compensation;

4           3. Assist injured employees with contacting appropriate  
5 licensing boards for complaints against a health care provider;

6           4. Assist injured employees with referral to local, state, and  
7 federal financial assistance, rehabilitation, and work placement  
8 programs, as well as other social services that the Office considers  
9 appropriate;

10          5. Assist injured employees, through the ombudsman program,  
11 with the resolution of complaints pending at the Division of  
12 Workers' Compensation or the Insurance Department; and

13          6. Assist injured employees, through the ombudsman program, in  
14 the administrative dispute resolution system of the Division.

15          B. The Office shall not appear or intervene, as a party or  
16 otherwise, before the Commissioner of Workers' Compensation,  
17 Commissioner of Insurance, Division of Workers' Compensation, or  
18 Insurance Department on behalf of an individual injured employee,  
19 except through the ombudsman program.

20          SECTION 37.       NEW LAW       A new section of law to be codified  
21 in the Oklahoma Statutes as Section 538 of Title 85, unless there is  
22 created a duplication in numbering, reads as follows:

1           A. The General Counsel of the Office of Injured Employee  
2 Counsel may refuse to provide or may terminate the services of the  
3 Office to any claimant who:

4           1. Is abusive or violent to or who threatens any employee of  
5 the Office;

6           2. Requests assistance in claiming benefits not provided by  
7 law; or

8           3. Commits or threatens to commit a criminal act in pursuit of  
9 a workers' compensation claim.

10          B. If the General Counsel determines that the services of the  
11 Office should be refused or terminated, the Office shall inform the  
12 affected claimant in writing and notify the Division of Workers'  
13 Compensation.

14          C. The Office shall notify and cooperate with the appropriate  
15 law enforcement authority and the Office of Attorney General  
16 Workers' Compensation Fraud Unit, if the Office becomes aware that  
17 the claimant or a person acting on the claimant's behalf commits or  
18 threatens to commit a criminal act.

19          SECTION 38.        NEW LAW        A new section of law to be codified  
20 in the Oklahoma Statutes as Section 539 of Title 85, unless there is  
21 created a duplication in numbering, reads as follows:

22          A. The Office of Injured Employee Counsel shall operate an  
23 ombudsman program.

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1 B. The General Counsel of the Office shall assign staff  
2 attorneys, as the general counsel considers appropriate, to  
3 supervise the work of the ombudsman program and advise ombudsmen in  
4 providing assistance to claimants and preparing for informal and  
5 formal hearings.

6 SECTION 39. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 540 of Title 85, unless there is  
8 created a duplication in numbering, reads as follows:

9 A. The Office of Injured Employee Counsel, through the  
10 ombudsman program, may appear before the Commissioner of Workers'  
11 Compensation or the Division of Workers' Compensation to provide  
12 assistance to an individual injured employee during:

13 1. A workers' compensation administrative dispute resolution  
14 process; or

15 2. An enforcement action by the Division against an employee  
16 for a violation of the Workers' Compensation Code.

17 B. This section shall not be construed as requiring or allowing  
18 legal representation for an individual injured employee by an Office  
19 attorney or ombudsman in any proceeding.

20 SECTION 40. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 541 of Title 85, unless there is  
22 created a duplication in numbering, reads as follows:

23 A. The ombudsman program of Office of Injured Employee Counsel  
24 shall maintain an ombudsman program to assist injured employees and

1 persons claiming death benefits in obtaining benefits under the  
2 Workers' Compensation Code.

3 B. An ombudsman shall:

4 1. Meet with or otherwise provide information to injured  
5 employees;

6 2. Investigate complaints;

7 3. Communicate with employers, insurance carriers, and health  
8 care providers on behalf of injured employees; and

9 4. Assist unrepresented claimants to enable those persons to  
10 protect their rights in the workers' compensation system.

11 SECTION 41. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 542 of Title 85, unless there is  
13 created a duplication in numbering, reads as follows:

14 The General Counsel of the Office of Injured Employee Counsel:

15 1. Is entitled to the same access as a party to the records of  
16 the Division of Workers' Compensation available in a proceeding  
17 before the Commissioner of Workers' Compensation; and

18 2. Is entitled to obtain discovery of any nonprivileged matter  
19 that is relevant to the subject matter involved in a proceeding or  
20 submission before the Commissioner or Division.

21 SECTION 42. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 543 of Title 85, unless there is  
23 created a duplication in numbering, reads as follows:

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1 The General Counsel of the Office of Injured Employee Counsel  
2 shall adopt, after consultation with the Commissioner of Workers'  
3 Compensation, a notice of injured employee rights and  
4 responsibilities to be distributed by the Division of Workers'  
5 Compensation. This section shall not be construed as establishing  
6 an entitlement to benefits to which the claimant is not otherwise  
7 entitled under the Workers' Compensation Code.

8 SECTION 43. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 544 of Title 85, unless there is  
10 created a duplication in numbering, reads as follows:

11 A. Confidentiality requirements applicable to examination  
12 reports and to the Commissioner of Workers' Compensation apply to  
13 the General Counsel of the Office of Injured Employee Counsel.

14 B. An employee of the Office shall not be compelled to disclose  
15 information communicated to the employee by a claimant on any matter  
16 relating to the claimant's claim. This subsection does not prohibit  
17 or alter the Office's duty to notify and cooperate with the Office  
18 of Attorney General Workers' Compensation Fraud Unit.

19 SECTION 44. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 545 of Title 85, unless there is  
21 created a duplication in numbering, reads as follows:

22 A. When assisting an injured employee, the Office of Injured  
23 Employee Counsel is entitled to the same access to information  
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1 related to the employee's injury and workers' compensation claim as  
2 the employee or any other party to the claim.

3 B. The Office shall not access information under subsection A  
4 of this section that is an attorney-client communication or an  
5 attorney work product, or other information protected by a statutory  
6 privilege.

7 SECTION 45. RECODIFICATION 85 O.S. 2011, Section 301,  
8 shall be recodified as Section 501 of Title 85 of the Oklahoma  
9 Statutes, unless there is created a duplication in numbering.

10 SECTION 46. This act shall become effective January 1, 2015.

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