

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
BILL NO. 2205

By: Echols of the House

and

Sykes of the Senate

[workers' compensation - Administrative Workers'
Compensation Act - clarifying language - effective
date]

11 AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause
and entire bill and insert

"An Act relating to workers' compensation; amending
Sections 2, 7, 45, as amended by Section 2, Chapter
390, O.S.L. 2015, 46, 62, 68, 108, 109, 110, as
amended by Section 4, Chapter 390, O.S.L. 2015, 111,
112, as amended by Section 5, Chapter 390, O.S.L.
2015, 113 and 118, as amended by Section 6, Chapter
390, O.S.L. 2015, Chapter 208, O.S.L. 2013 (85A O.S.
Supp. 2015, Sections 2, 7, 45, 46, 62, 68, 201, 202,
203, 204, 205, 206 and 211), which relate to
discrimination, disability, soft tissue injury,
rebuttable presumption, the Oklahoma Employee Injury
Benefit Act, qualified employers, benefit plans,
compensation, Oklahoma Option Insured and Self-
insured Guaranty Funds, fees and appellate rights;
modifying definitions; modifying jurisdictional
requirement for certain claims; establishing
liability for damages for certain violations;
specifying burden of proof for certain violations;
modifying requirements for award of temporary total
disability; modifying requirements for award of
permanent partial disability; modifying calculation
for specified permanent partial disability; modifying
definitions; modifying procedures for application for
certain employer status; requiring certain notice;

1 requiring issuance of certain certificate; modifying
2 procedures for confirmation of certain status;
3 modifying procedures for certain notification;
4 specifying fee schedule for certain groups; modifying
5 requirements for certain benefit plans; clarifying
6 applicability of certain insurance coverage;
7 conforming language; modifying procedures for appeal
8 of denial of certain claims; requiring maintenance of
9 certain records; requiring certain notice;
10 establishing filing fee for certain appeals; and
11 providing an effective date.

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

SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2015, Section 2), is amended to read as
follows:

Section 2. As used in the Administrative Workers' Compensation
Act:

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

2. "Carrier" means any stock company, mutual company, or
reciprocal or interinsurance exchange authorized to write or carry
on the business of workers' compensation insurance in this state.

Whenever required by the context, the term "carrier" shall be deemed
to include duly qualified self-insureds or self-insured groups;

3. "Case management" means the ongoing coordination, by a case
manager, of health care services provided to an injured or disabled

1 worker, including but not limited to systematically monitoring the
2 treatment rendered and the medical progress of the injured or
3 disabled worker; ensuring that any treatment plan follows all
4 appropriate treatment protocols, utilization controls and practice
5 parameters; assessing whether alternative health care services are
6 appropriate and delivered in a cost-effective manner based upon
7 acceptable medical standards; and ensuring that the injured or
8 disabled worker is following the prescribed health care plan;

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

- 16 a. Certified Disability Management Specialist (CDMS),
- 17 b. Certified Case Manager (CCM),
- 18 c. Certified Rehabilitation Registered Nurse (CRRN),
- 19 d. Case Manager - Certified (CMC),
- 20 e. Certified Occupational Health Nurse (COHN), or
- 21 f. Certified Occupational Health Nurse Specialist (COHN-
22 S);

23 5. "Certified workplace medical plan" means an organization of
24 health care providers or any other entity, certified by the State

1 Commissioner of Health, that is authorized to enter into a
2 contractual agreement with an employer, group self-insurance
3 association plan, an employer's workers' compensation insurance
4 carrier, third-party administrator or an insured to provide medical
5 care under the Administrative Workers' Compensation Act. Certified
6 plans shall only include plans which provide medical services and
7 payment for services on a fee-for-service basis to medical
8 providers;

9 6. "Child" means a natural or adopted son or daughter of the
10 employee under eighteen (18) years of age; or a natural or adopted
11 son or daughter of an employee eighteen (18) years of age or over
12 who is physically or mentally incapable of self-support; or any
13 natural or adopted son or daughter of an employee eighteen (18)
14 years of age or over who is actually dependent; or any natural or
15 adopted son or daughter of an employee between eighteen (18) and
16 twenty-three (23) years of age who is enrolled as a full-time
17 student in any accredited educational institution. The term "child"
18 includes a posthumous child, a child legally adopted or one for whom
19 adoption proceedings are pending at the time of death, an actually
20 dependent stepchild or an actually dependent acknowledged child born
21 out of wedlock;

22 7. "Claimant" means a person who claims benefits for an injury
23 or occupational disease pursuant to the provisions of the
24 Administrative Workers' Compensation Act;

1 8. "Commission" means the Workers' Compensation Commission;

2 9. a. "Compensable injury" means damage or harm to the
3 physical structure of the body, or prosthetic
4 appliances, including eyeglasses, contact lenses, or
5 hearing aids, caused solely as the result of either an
6 accident, cumulative trauma or occupational disease
7 arising out of the course and scope of employment. An
8 "accident" means an event involving factors external
9 to the employee that:

10 (1) was unintended, unanticipated, unforeseen,
11 unplanned and unexpected,

12 (2) occurred at a specifically identifiable time and
13 place,

14 (3) occurred by chance or from unknown causes, and

15 (4) was independent of sickness, mental incapacity,
16 bodily infirmity or any other cause.

17 b. "Compensable injury" does not include:

18 (1) injury to any active participant in assaults or
19 combats which, although they may occur in the
20 workplace, are the result of non-employment-
21 related hostility or animus of one, both, or all
22 of the combatants and which assault or combat
23 amounts to a deviation from customary duties;
24 provided, however, injuries caused by horseplay

1 shall not be considered to be compensable
2 injuries, except for innocent victims,

3 (2) injury incurred while engaging in or performing
4 or as the result of engaging in or performing any
5 recreational or social activities for the
6 employee's personal pleasure,

7 (3) injury which was inflicted on the employee at a
8 time when employment services were not being
9 performed or before the employee was hired or
10 after the employment relationship was terminated,

11 (4) injury where the accident was caused by the use
12 of alcohol, illegal drugs, or prescription drugs
13 used in contravention of physician's orders. If,
14 within twenty-four (24) hours of being injured or
15 reporting an injury, an employee tests positive
16 for intoxication, an illegal controlled
17 substance, or a legal controlled substance used
18 in contravention to a treating physician's
19 orders, or refuses to undergo the drug and
20 alcohol testing, there shall be a rebuttable
21 presumption that the injury was caused by the use
22 of alcohol, illegal drugs, or prescription drugs
23 used in contravention of physician's orders.

24 This presumption may only be overcome if the

1 employee proves by objective, clear and
2 convincing evidence that his or her state of
3 intoxication had no causal relationship to the
4 injury,

5 (5) any strain, degeneration, damage or harm to, or
6 disease or condition of, the eye or
7 musculoskeletal structure or other body part
8 resulting from the natural results of aging,
9 osteoarthritis, arthritis, or degenerative
10 process including, but not limited to,
11 degenerative joint disease, degenerative disc
12 disease, degenerative
13 spondylosis/spondylolisthesis and spinal
14 stenosis, or

15 (6) any preexisting condition except when the
16 treating physician clearly confirms an
17 identifiable and significant aggravation incurred
18 in the course and scope of employment.

19 c. The definition of "compensable injury" shall not be
20 construed to limit or abrogate the right to recover
21 for mental injuries as described in Section 13 of this
22 act, heart or lung injury or illness as described in
23 Section 14 of this act, or occupational diseases as
24 described in Section 65 of this act.

1 d. A compensable injury shall be established by medical
2 evidence supported by objective findings as defined in
3 paragraph 30 of this section.

4 e. The injured employee shall prove by a preponderance of
5 the evidence that he or she has suffered a compensable
6 injury.

7 f. Benefits shall not be payable for a condition which
8 results from a non-work-related independent
9 intervening cause following a compensable injury which
10 causes or prolongs disability, aggravation, or
11 requires treatment. A non-work-related independent
12 intervening cause does not require negligence or
13 recklessness on the part of a claimant.

14 g. An employee who suffers a compensable injury shall be
15 entitled to receive compensation as prescribed in this
16 act. Notwithstanding other provisions of law, if it
17 is determined that a compensable injury did not occur,
18 the employee shall not be entitled to compensation
19 under this act;

20 10. "Compensation" means the money allowance payable to the
21 employee or to his or her dependents and includes the medical
22 services and supplies provided for in Section 50 of this act and
23 funeral expenses;

1 11. "Consequential injury" means injury or harm to a part of
2 the body that is a direct result of the injury or medical treatment
3 to the part of the body originally injured in the claim. The
4 Commission shall not make a finding of a consequential injury unless
5 it is established by objective medical evidence that medical
6 treatment for such part of the body is required;

7 12. "Continuing medical maintenance" means medical treatment
8 that is reasonable and necessary to maintain claimant's condition
9 resulting from the compensable injury or illness after reaching
10 maximum medical improvement. Continuing medical maintenance shall
11 not include diagnostic tests, surgery, injections, counseling,
12 physical therapy, or pain management devices or equipment;

13 13. "Course and scope of employment" means an activity of any
14 kind or character for which the employee was hired and that relates
15 to and derives from the work, business, trade or profession of an
16 employer, and is performed by an employee in the furtherance of the
17 affairs or business of an employer. The term includes activities
18 conducted on the premises of an employer or at other locations
19 designated by an employer and travel by an employee in furtherance
20 of the affairs of an employer that is specifically directed by the
21 employer. This term does not include:

22 a. an employee's transportation to and from his or her
23 place of employment,

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1 b. travel by an employee in furtherance of the affairs of
2 an employer if the travel is also in furtherance of
3 personal or private affairs of the employee,

4 c. any injury occurring in a parking lot or other common
5 area adjacent to an employer's place of business
6 before the employee clocks in or otherwise begins work
7 for the employer or after the employee clocks out or
8 otherwise stops work for the employer, or

9 d. any injury occurring while an employee is on a work
10 break, unless the injury occurs while the employee is
11 on a work break inside the employer's facility and the
12 work break is authorized by the employee's supervisor;

13 14. "Cumulative trauma" means an injury to an employee that is
14 caused by the combined effect of repetitive physical activities
15 extending over a period of time in the course and scope of
16 employment. Cumulative trauma shall not mean fatigue, soreness or
17 general aches and pain that may have been caused, aggravated,
18 exacerbated or accelerated by the employee's course and scope of
19 employment. Cumulative trauma shall have resulted directly and
20 independently of all other causes and the employee shall have
21 completed at least one hundred eighty (180) days of continuous
22 active employment with the employer;

23 15. "Death" means only death resulting from compensable injury
24 as defined in paragraph 9 of this section;

1 16. "Disability" means incapacity because of compensable injury
2 to earn, in the same or any other employment, substantially the same
3 amount of wages the employee was receiving at the time of the
4 compensable injury;

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

10 18. a. "Employee" means any person, including a minor, in the
11 service of an employer under any contract of hire or
12 apprenticeship, written or oral, expressed or implied,
13 but excluding one whose employment is casual and not
14 in the course of the trade, business, profession, or
15 occupation of his or her employer and excluding one
16 who is required to perform work for a municipality or
17 county or the state or federal government on having
18 been convicted of a criminal offense or while
19 incarcerated. "Employee" shall also include a member
20 of the Oklahoma National Guard while in the
21 performance of duties only while in response to state
22 orders and any authorized voluntary or uncompensated
23 worker, rendering services as a firefighter, peace
24 officer or emergency management worker. Travel by a

1 policeman, fireman, or a member of a first aid or
2 rescue squad, in responding to and returning from an
3 emergency, shall be deemed to be in the course of
4 employment.

5 b. The term "employee" shall not include:

6 (1) any person for whom an employer is liable under
7 any Act of Congress for providing compensation to
8 employees for injuries, disease or death arising
9 out of and in the course of employment including,
10 but not limited to, the Federal Employees'
11 Compensation Act, the Federal Employers'
12 Liability Act, the Longshore and Harbor Workers'
13 Compensation Act and the Jones Act, to the extent
14 his or her employees are subject to such acts,

15 (2) any person who is employed in agriculture or
16 horticulture by an employer who had a gross
17 annual payroll in the preceding calendar year of
18 less than One Hundred Thousand Dollars

19 (\$100,000.00) wages for agricultural or
20 horticultural workers, or any person who is
21 employed in agriculture or horticulture who is
22 not engaged in operation of motorized machines,

23 (3) any person who is a licensed real estate sales
24 associate or broker, paid on a commission basis,

- 1 (4) any person who is providing services in a medical
2 care or social services program, or who is a
3 participant in a work or training program,
4 administered by the Department of Human Services,
5 unless the Department is required by federal law
6 or regulations to provide workers' compensation
7 for such person. This division shall not be
8 construed to include nursing homes,
- 9 (5) any person employed by an employer with five or
10 fewer total employees, all of whom are related by
11 blood or marriage to the employer, if the
12 employer is a natural person or a general or
13 limited partnership, or an incorporator of a
14 corporation if the corporation is the employer,
- 15 (6) any person employed by an employer which is a
16 youth sports league which qualifies for exemption
17 from federal income taxation pursuant to federal
18 law,
- 19 (7) sole proprietors, members of a partnership,
20 individuals who are party to a franchise
21 agreement as set out by the Federal Trade
22 Commission franchise disclosure rule, 16 CFR
23 436.1 through 436.11, members of a limited
24 liability company who own at least ten percent

1 (10%) of the capital of the limited liability
2 company or any stockholder-employees of a
3 corporation who own ten percent (10%) or more
4 stock in the corporation, unless they elect to be
5 covered by a policy of insurance covering
6 benefits under the Administrative Workers'
7 Compensation Act,

8 (8) any person providing or performing voluntary
9 service who receives no wages for the services
10 other than meals, drug or alcohol rehabilitative
11 therapy, transportation, lodging or reimbursement
12 for incidental expenses except for volunteers
13 specifically provided for in subparagraph a of
14 this paragraph,

15 (9) a person, commonly referred to as an owner-
16 operator, who owns or leases a truck-tractor or
17 truck for hire, if the owner-operator actually
18 operates the truck-tractor or truck and if the
19 person contracting with the owner-operator is not
20 the lessor of the truck-tractor or truck.
21 Provided, however, an owner-operator shall not be
22 precluded from workers' compensation coverage
23 under the Administrative Workers' Compensation
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1 Act if the owner-operator elects to participate
2 as a sole proprietor,

3 (10) a person referred to as a drive-away owner-
4 operator who privately owns and utilizes a tow
5 vehicle in drive-away operations and operates
6 independently for hire, if the drive-away owner-
7 operator actually utilizes the tow vehicle and if
8 the person contracting with the drive-away owner-
9 operator is not the lessor of the tow vehicle.
10 Provided, however, a drive-away owner-operator
11 shall not be precluded from workers' compensation
12 coverage under the Administrative Workers'
13 Compensation Act if the drive-away owner-operator
14 elects to participate as a sole proprietor, and

15 (11) any person who is employed as a domestic servant
16 or as a casual worker in and about a private home
17 or household, which private home or household had
18 a gross annual payroll in the preceding calendar
19 year of less than Fifty Thousand Dollars
20 (\$50,000.00) for such workers;

21 19. "Employer" means a person, partnership, association,
22 limited liability company, corporation, and the legal
23 representatives of a deceased employer, or the receiver or trustee
24 of a person, partnership, association, corporation, or limited

1 liability company, departments, instrumentalities and institutions
2 of this state and divisions thereof, counties and divisions thereof,
3 public trusts, boards of education and incorporated cities or towns
4 and divisions thereof, employing a person included within the term
5 "employee" as defined in this section. Employer may also mean the
6 employer's workers' compensation insurance carrier, if applicable.
7 Except as provided otherwise, this act applies to all public and
8 private entities and institutions. Employer shall not include a
9 qualified employer with an employee benefit plan as provided under
10 the Oklahoma Employee Injury Benefit Act in Sections 107 through 120
11 of this act;

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

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

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

23 23. "Impaired self-insurer" means a private self-insurer or
24 group self-insurance association that fails to pay its workers'

1 compensation obligations, or is financially unable to do so and is
2 the subject of any proceeding under the Federal Bankruptcy Reform
3 Act of 1978, and any subsequent amendments or is the subject of any
4 proceeding in which a receiver, custodian, liquidator,
5 rehabilitator, trustee or similar officer has been appointed by a
6 court of competent jurisdiction to act in lieu of or on behalf of
7 the self-insurer;

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

10 25. "Insurance Commissioner" means the Insurance Commissioner
11 of the State of Oklahoma;

12 26. "Insurance Department" means the Insurance Department of
13 the State of Oklahoma;

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

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

24

1 29. "Medical services" means those services specified in
2 Section 50 of this act;

3 30. "Misconduct" shall include the following:

4 a. unexplained absenteeism or tardiness,

5 b. willful or wanton indifference to or neglect of the
6 duties required,

7 c. willful or wanton breach of any duty required by the
8 employer,

9 d. the mismanagement of a position of employment by
10 action or inaction,

11 e. actions or omissions that place in jeopardy the
12 health, life, or property of self or others,

13 f. dishonesty,

14 g. wrongdoing,

15 h. violation of a law, or

16 i. a violation of a policy or rule adopted to ensure
17 orderly work or the safety of self or others;

18 31. a. (1) "Objective findings" are those findings which
19 cannot come under the voluntary control of the
20 patient.

21 (2) (a) When determining permanent disability, a
22 physician, any other medical provider, an
23 administrative law judge, the Commission or
24

1 the courts shall not consider complaints of
2 pain.

3 (b) For the purpose of making permanent
4 disability ratings to the spine, physicians
5 shall use criteria established by the ~~most~~
6 ~~current~~ sixth edition of the American
7 Medical Association "Guides to the
8 Evaluation of Permanent Impairment".

9 (3) (a) Objective evidence necessary to prove
10 permanent disability in occupational hearing
11 loss cases may be established by medically
12 recognized and accepted clinical diagnostic
13 methodologies, including, but not limited
14 to, audiological tests that measure air and
15 bone conduction thresholds and speech
16 discrimination ability.

17 (b) Any difference in the baseline hearing
18 levels shall be confirmed by subsequent
19 testing; provided, however, such test shall
20 be given within four (4) weeks of the
21 initial baseline hearing level test but not
22 before five (5) days after being adjusted
23 for presbycusis.

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1 b. Medical opinions addressing compensability and
2 permanent disability shall be stated within a
3 reasonable degree of medical certainty;

4 32. "Official Disability Guidelines" or "ODG" means the current
5 edition of the Official Disability Guidelines and the ODG Treatment
6 in Workers' Comp as published by the Work Loss Data Institute;

7 33. "Permanent disability" means the extent, expressed as a
8 percentage, of the loss of a portion of the total physiological
9 capabilities of the human body as established by competent medical
10 evidence and based on the current edition of the American Medical
11 Association guides to the evaluation of impairment, if the
12 impairment is contained therein;

13 34. "Permanent partial disability" means a permanent disability
14 or loss of use after maximum medical improvement has been reached
15 which prevents the injured employee, who has been released to return
16 to work by the treating physician, from returning to his or her pre-
17 injury or equivalent job. All evaluations of permanent partial
18 disability must be supported by objective findings;

19 35. "Permanent total disability" means, based on objective
20 findings, incapacity, based upon accidental injury or occupational
21 disease, to earn wages in any employment for which the employee may
22 become physically suited and reasonably fitted by education,
23 training, experience or vocational rehabilitation provided under
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1 this act. Loss of both hands, both feet, both legs, or both eyes,
2 or any two thereof, shall constitute permanent total disability;

3 36. "Preexisting condition" means any illness, injury, disease,
4 or other physical or mental condition, whether or not work-related,
5 for which medical advice, diagnosis, care or treatment was
6 recommended or received preceding the date of injury;

7 37. "Pre-injury or equivalent job" means the job that the
8 claimant was working for the employer at the time the injury
9 occurred or any other employment offered by the claimant's employer
10 that pays at least one hundred percent (100%) of the employee's
11 average weekly wage;

12 38. "Private self-insurer" means a private employer that has
13 been authorized to self-insure its workers' compensation obligations
14 pursuant to this act, but does not include group self-insurance
15 associations authorized by this act, or any public employer that
16 self-insures pursuant to this act;

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

20 40. "Scheduled member" or "member" means ~~hands, fingers, arms,~~
21 ~~legs, feet, toes, and eyes. In addition, for purposes of the~~
22 ~~Multiple Injury Trust Fund only, "scheduled member" means hearing~~
23 ~~impairment~~ the body parts listed in Section 46 of this title which
24 are amputated or have permanent loss of use;

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

8 42. "State average weekly wage" means the state average weekly
9 wage determined by the Oklahoma Employment Security Commission in
10 the preceding calendar year. If such determination is not
11 available, the Commission shall determine the wage annually after
12 reasonable investigation;

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

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

18 45. "Surviving spouse" means the employee's spouse by reason of
19 a legal marriage recognized by the State of Oklahoma or under the
20 requirements of a common law marriage in this state, as determined
21 by the Workers' Compensation Commission;

22 46. "Temporary partial disability" means an injured employee
23 who is temporarily unable to perform his or her job, but may perform
24 alternative work offered by the employer;

1 47. "Time of accident" or "date of accident" means the time or
2 date of the occurrence of the accidental incident from which
3 compensable injury, disability, or death results; and

4 48. "Wages" means money compensation received for employment at
5 the time of the accident, including the reasonable value of board,
6 rent, housing, lodging, or similar advantage received from the
7 employer and includes the amount of tips required to be reported by
8 the employer under Section 6053 of the Internal Revenue Code and the
9 regulations promulgated pursuant thereto or the amount of actual
10 tips reported, whichever amount is greater.

11 SECTION 2. AMENDATORY Section 7, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2015, Section 7), is amended to read as
13 follows:

14 Section 7. A. An employer may not discriminate or retaliate
15 against an employee when the employee has in good faith:

- 16 1. Filed a claim under this act;
- 17 2. Retained a lawyer for representation regarding a claim under
18 this act;
- 19 3. Instituted or caused to be instituted any proceeding under
20 the provisions of this act; or
- 21 4. Testified or is about to testify in any proceeding under the
22 provisions of this act.

23 B. ~~The Commission shall have exclusive jurisdiction to hear and~~
24 ~~decide claims based on subsection A of this section.~~

1 ~~C.~~ If the Commission determines that the defendant violated
2 subsection A of this section, the Commission may award the employee
3 back pay up to a maximum of One Hundred Thousand Dollars
4 ~~(\$100,000.00)~~ If a district court of this state determines that an
5 employer violated a provision of this section, such employer shall
6 be liable for reasonable compensatory damages suffered by an
7 employee as a result of the violation. The employee shall have the
8 burden of proof to show such violation by a preponderance of the
9 evidence. Interim earnings or amounts earnable with reasonable
10 diligence by the person discriminated against shall reduce the ~~back~~
11 ~~pay~~ compensatory damages otherwise allowable.

12 ~~D.~~ C. The prevailing party shall be entitled to recover costs
13 and a reasonable attorney fee.

14 ~~E.~~ D. No employer may discharge an employee during a period of
15 temporary total disability for the sole reason of being absent from
16 work or for the purpose of avoiding payment of temporary total
17 disability benefits to the injured employee.

18 ~~F.~~ E. Notwithstanding any other provision of this section, an
19 employer shall not be required to rehire or retain an employee who,
20 after temporary total disability has been exhausted, is determined
21 by a physician to be physically unable to perform his or her
22 assigned duties, or whose position is no longer available.

23 ~~G.~~ F. This section shall not be construed as establishing an
24 exception to the employment at will doctrine.

1 ~~H.~~ G. The remedies provided for in this section shall be
2 exclusive with respect to any claim arising out of the conduct
3 described in subsection A of this section.

4 SECTION 3. AMENDATORY Section 45, Chapter 208, O.S.L.
5 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
6 Supp. 2015, Section 45), is amended to read as follows:

7 Section 45. A. Temporary Total Disability.

8 1. If the injured employee is temporarily unable to perform his
9 or her job or any alternative work offered by the employer, he or
10 she shall be entitled to receive compensation equal to seventy
11 percent (70%) of the injured employee's average weekly wage, but not
12 to exceed seventy percent (70%) of the state average weekly wage,
13 for one hundred four (104) weeks. Provided, there shall be no
14 payment for the first three (3) days of the initial period of
15 temporary total disability. If an administrative law judge finds
16 that a consequential injury has occurred and that additional time is
17 needed to reach maximum medical improvement, temporary total
18 disability may continue for a period of not more than an additional
19 fifty-two (52) weeks. Such finding shall be based upon a showing of
20 medical necessity by clear and convincing evidence.

21 2. When the injured employee is released from active medical
22 treatment by the treating physician for all body parts found by the
23 Commission to be injured, or in the event that the employee, ~~without~~
24 ~~a valid excuse,~~ misses ~~three consecutive medical treatment~~ two or

1 more appointments as prescribed under Section 57 of this title,
2 fails to comply with medical orders of the treating physician, or
3 otherwise abandons medical care, the employer shall be entitled to
4 terminate temporary total disability by notifying the employee, or
5 if represented, his or her counsel. If, however, an objection to
6 the termination is filed by the employee within ten (10) days of
7 termination, the Commission shall set the matter within twenty (20)
8 days for a determination if temporary total disability compensation
9 shall be reinstated. The temporary total disability shall remain
10 terminated unless the employee proves the existence of a valid
11 excuse for his or her failure to comply with medical orders of the
12 treating physician or his or her abandonment of medical care. The
13 administrative law judge may appoint an independent medical examiner
14 to determine if further medical treatment is reasonable and
15 necessary. The independent medical examiner shall not provide
16 treatment to the injured worker, unless agreed upon by the parties.

17 B. Temporary Partial Disability.

18 1. If the injured employee is temporarily unable to perform his
19 or her job, but may perform alternative work offered by the
20 employer, he or she shall be entitled to receive compensation equal
21 to ~~the greater of~~ seventy percent (70%) of the difference between
22 the injured employee's average weekly wage before the injury and his
23 or her weekly wage for performing alternative work after the injury,
24 but only if his or her weekly wage for performing the alternative

1 work is less than the temporary total disability rate. However, the
2 injured employee's actual earnings plus temporary partial disability
3 shall not exceed the temporary total disability rate.

4 2. Compensation under this subsection may not exceed fifty-two
5 (52) weeks.

6 3. If the employee refuses to perform the alternative work
7 offered by the ~~employee~~ employer, he or she shall not be entitled to
8 benefits under subsection A of this section or under this section.

9 C. Permanent Partial Disability.

10 1. A permanent partial disability award or combination of
11 awards granted an injured worker may not exceed a permanent partial
12 disability rating of one hundred percent (100%) to any body part or
13 to the body as a whole. The determination of permanent partial
14 disability shall be the responsibility of the Commission through its
15 administrative law judges. Any claim by an employee for
16 compensation for permanent partial disability must be supported by
17 competent medical testimony of a medical doctor, osteopathic
18 physician, or chiropractor, and shall be supported by objective
19 ~~medical~~ findings, as defined in this act. The opinion of the
20 physician shall include employee's percentage of permanent partial
21 disability and whether or not the disability is job-related and
22 caused by the accidental injury or occupational disease. A
23 physician's opinion of the nature and extent of permanent partial
24 disability to parts of the body ~~other than scheduled members~~ must be

1 based solely on criteria established by the ~~current~~ sixth edition of
2 the American Medical Association's "Guides to the Evaluation of
3 Permanent Impairment". A copy of any written evaluation shall be
4 sent to both parties within seven (7) days of issuance. Medical
5 opinions addressing compensability and permanent disability must be
6 stated within a reasonable degree of medical certainty. Any party
7 may submit the report of an evaluating physician.

8 2. Permanent partial disability shall not be allowed to a part
9 of the body for which no medical treatment has been received. A
10 determination of permanent partial disability made by the Commission
11 or administrative law judge which is not supported by objective
12 ~~medical~~ findings provided by a treating physician who is a medical
13 doctor, doctor of osteopathy, chiropractor or a qualified
14 independent medical examiner shall be considered an abuse of
15 discretion.

16 3. The examining physician shall not deviate from the Guides
17 except as may be specifically provided for in the Guides.

18 4. In cases of permanent partial disability, the compensation
19 shall be seventy percent (70%) of the employee's average weekly
20 wage, not to exceed Three Hundred Twenty-three Dollars (\$323.00) per
21 week, for a term not to exceed a total of three hundred fifty (350)
22 weeks for the body as a whole.

23 5. ~~Except pursuant to settlement agreements entered into by the~~
24 ~~employer and employee, payment of a permanent partial disability~~

1 ~~award shall be deferred and held in reserve by the employer or~~
2 ~~insurance company if the employee has reached maximum medical~~
3 ~~improvement and has been released to return to work by his or her~~
4 ~~treating physician, and then returns to his pre-injury or equivalent~~
5 ~~job for a term of weeks determined by dividing the total dollar~~
6 ~~value of the award by seventy percent (70%) of the employee's~~
7 ~~average weekly wage.~~

8 ~~a. The amount of the permanent partial disability award~~
9 ~~shall be reduced by seventy percent (70%) of the~~
10 ~~employee's average weekly wage for each week he works~~
11 ~~in his pre-injury or equivalent job.~~

12 ~~b. If, for any reason other than misconduct as defined in~~
13 ~~Section 2 of this act, the employer terminates the~~
14 ~~employee or the position offered is not the pre-injury~~
15 ~~or equivalent job, the remaining permanent partial~~
16 ~~disability award shall be paid in a lump sum. If the~~
17 ~~employee is discharged for misconduct, the employer~~
18 ~~shall have the burden to prove that the employee~~
19 ~~engaged in misconduct.~~

20 ~~c. If the employee refuses an offer to return to his pre-~~
21 ~~injury or equivalent job, the permanent partial~~
22 ~~disability award shall continue to be deferred and~~
23 ~~shall be reduced by seventy percent (70%) of the~~
24

1 ~~employee's average weekly wage for each week he~~
2 ~~refuses to return to his pre-injury or equivalent job.~~
3 ~~d. Attorney fees for permanent partial disability awards,~~
4 ~~as approved by the Commission, shall be calculated~~
5 ~~based upon the total permanent partial disability~~
6 ~~award and paid in full at the time of the deferral.~~
7 ~~e. Assessments pursuant to Sections 31, 98, 112 and 165~~
8 ~~of this act shall be calculated based upon the amount~~
9 ~~of the permanent partial disability award and shall be~~
10 ~~paid at the time of the deferral.~~

11 ~~6.~~ Previous Disability: The fact that an employee has suffered
12 previous disability or received compensation therefor shall not
13 preclude the employee from compensation for a later accidental
14 personal injury or occupational disease. In the event there exists
15 a previous permanent partial disability, including a previous non-
16 work-related injury or condition which produced permanent partial
17 disability and the same is aggravated or accelerated by an
18 accidental personal injury or occupational disease, compensation for
19 permanent partial disability shall be only for such amount as was
20 caused by such accidental personal injury or occupational disease
21 and no additional compensation shall be allowed for the preexisting
22 disability or impairment. Any such reduction shall not apply to
23 temporary total disability, nor shall it apply to compensation for
24 medical treatment.

1 a. If workers' compensation benefits have previously been
2 awarded through settlement or judicial or
3 administrative determination in Oklahoma, the
4 percentage basis of the prior settlement or award
5 shall conclusively establish the amount of permanent
6 partial disability determined to be preexisting. If
7 workers' compensation benefits have not previously
8 been awarded through settlement or judicial or
9 administrative determination in Oklahoma, the amount
10 of preexisting permanent partial disability shall be
11 established by competent evidence.

12 b. In all cases, the applicable reduction shall be
13 calculated as follows:

14 (1) if the preexisting impairment is the result of
15 injury sustained while working for the employer
16 against whom workers' compensation benefits are
17 currently being sought, any award of compensation
18 shall be reduced by the current dollar value
19 attributable under the Administrative Workers'
20 Compensation Act to the percentage of permanent
21 partial disability determined to be preexisting.
22 The current dollar value shall be calculated by
23 multiplying the percentage of preexisting
24 permanent partial disability by the compensation

1 rate in effect on the date of the accident or
2 injury against which the reduction will be
3 applied, and

4 (2) in all other cases, the employer against whom
5 benefits are currently being sought shall be
6 entitled to a credit for the percentage of
7 preexisting permanent partial disability.

8 ~~7.~~ 6. No payments on any permanent partial disability order
9 shall begin until payments on any preexisting permanent partial
10 disability orders have been completed.

11 ~~8.~~ 7. The whole body shall represent a maximum of three hundred
12 fifty (350) weeks.

13 ~~9.~~ 8. The permanent partial disability rate of compensation for
14 amputation or permanent total loss of use of a scheduled member
15 specified in Section 46 of this act shall be seventy percent (70%)
16 of the employee's average weekly wage, not to exceed Three Hundred
17 Twenty-three Dollars (\$323.00), multiplied by the number of weeks
18 set forth for the member in Section 46 of this act, regardless of
19 whether the injured employee is able to return to his or her pre-
20 injury or equivalent job.

21 ~~10.~~ 9. An injured employee who is eligible for permanent
22 partial disability under this subsection shall be entitled to
23 receive vocational rehabilitation services provided by a technology
24 center or public secondary school offering vocational-technical

1 education courses, or a member institution of The Oklahoma State
2 System of Higher Education, which shall include retraining and job
3 placement to restore the employee to gainful employment. Vocational
4 rehabilitation services or training shall not extend for a period of
5 more than fifty-two (52) weeks.

6 D. Permanent Total Disability.

7 1. In case of total disability adjudged to be permanent,
8 seventy percent (70%) of the employee's average weekly wages, but
9 not in excess of the state's average weekly wage, shall be paid to
10 the employee during the continuance of the disability until such
11 time as the employee reaches the age of maximum Social Security
12 retirement benefits or for a period of fifteen (15) years, whichever
13 is longer. In the event the claimant dies of causes unrelated to
14 the injury or illness, benefits shall cease on the date of death.
15 Provided, however, any person entitled to revive the action shall
16 receive a one-time lump-sum payment equal to twenty-six (26) weeks
17 of weekly benefits for permanent total disability awarded the
18 claimant. If more than one person is entitled to revive the claim,
19 the lump-sum payment shall be evenly divided between or among such
20 persons. In the event the Commission awards both permanent partial
21 disability and permanent total disability benefits, the permanent
22 total disability award shall not be due until the permanent partial
23 disability award is paid in full. If otherwise qualified according
24 to the provisions of this act, permanent total disability benefits

1 may be awarded to an employee who has exhausted the maximum period
2 of temporary total disability even though the employee has not
3 reached maximum medical improvement.

4 2. The Commission shall annually review the status of any
5 employee receiving benefits for permanent total disability against
6 the last employer. The Commission shall require the employee to
7 annually file an affidavit under penalty of perjury stating that he
8 or she is not and has not been gainfully employed and is not capable
9 of gainful employment. Failure to file such affidavit shall result
10 in suspension of benefits; provided, however, reinstatement of
11 benefits may occur after proper hearing before the Commission.

12 E. 1. The Workers' Compensation Commission shall hire or
13 contract for a Vocational Rehabilitation Director to oversee the
14 vocational rehabilitation program of the Commission.

15 2. The Vocational Rehabilitation Director shall help injured
16 workers return to the work force. If the injured employee is unable
17 to return to his or her pre-injury or equivalent position due to
18 permanent restrictions as determined by the treating physician, upon
19 the request of either party, the Vocational Rehabilitation Director
20 shall determine if it is appropriate for a claimant to receive
21 vocational rehabilitation training or services, and will oversee
22 such training. If appropriate, the Vocational Rehabilitation
23 Director shall issue administrative orders, including, but not
24 limited to, an order for a vocational rehabilitation evaluation for

1 any injured employee unable to work for at least ninety (90) days.
2 In addition, the Vocational Rehabilitation Director may assign
3 injured workers to vocational rehabilitation counselors for
4 coordination of recommended services. The cost of the services
5 shall be paid by the employer. All administrative orders are
6 subject to appeal to the full Commission.

7 3. There shall be a presumption in favor of ordering vocational
8 rehabilitation services or training for an eligible injured employee
9 under the following circumstances:

- 10 a. if the employee's occupation is truck driver or
11 laborer and the medical condition is traumatic brain
12 injury, stroke or uncontrolled vertigo,
- 13 b. if the employee's occupation is truck driver or
14 laborer performing high-risk tasks and the medical
15 condition is seizures,
- 16 c. if the employee's occupation is manual laborer and the
17 medical condition is bilateral wrist fusions,
- 18 d. if the employee's occupation is assembly-line worker
19 and the medical condition is radial head fracture with
20 surgical excision,
- 21 e. if the employee's occupation is heavy laborer and the
22 medical condition is myocardial infarction with
23 congestive heart failure,

24

- 1 f. if the employee's occupation is heavy manual laborer
2 and the medical condition is multilevel neck or back
3 fusions greater than two levels,
- 4 g. if the employee's occupation is laborer performing
5 overhead work and the medical condition is massive
6 rotator cuff tears, with or without surgery,
- 7 h. if the employee's occupation is heavy laborer and the
8 medical condition is recurrent inguinal hernia
9 following unsuccessful surgical repair,
- 10 i. if the employee's occupation is heavy manual laborer
11 and the medical condition is total knee replacement or
12 total hip replacement,
- 13 j. if the employee's occupation is roofer and the medical
14 condition is calcaneal fracture, medically or
15 surgically treated,
- 16 k. if the employee's occupation is laborer of any kind
17 and the medical condition is total shoulder
18 replacement,
- 19 l. if the employee's occupation is laborer and the
20 medical condition is amputation of a hand, arm, leg,
21 or foot,
- 22 m. if the employee's occupation is laborer and the
23 medical condition is tibial plateau fracture, pilon
24 fracture,

- n. if the employee's occupation is laborer and the medical condition is ankle fusion or knee fusion,
- o. if the employee's occupation is driver or heavy equipment operator and the medical condition is unilateral industrial blindness, or
- p. if the employee's occupation is laborer and the medical condition is 3-, 4-, or 5-level positive discogram of the cervical spine or lumbar spine, medically treated.

4. Upon the request of either party, or by order of an administrative law judge, the Vocational Rehabilitation Director shall assist the Workers' Compensation Commission in determining if it is appropriate for a claimant to receive vocational rehabilitation training or services. If appropriate, the administrative law judge shall refer the employee to a qualified expert for evaluation of the practicability of, need for and kind of rehabilitation services or training necessary and appropriate in order to restore the employee to gainful employment. The cost of the evaluation shall be paid by the employer. Following the evaluation, if the employee refuses the services or training ordered by the administrative law judge, or fails to complete in good faith the vocational rehabilitation training ordered by the administrative law judge, then the cost of the evaluation and services or training rendered may, in the discretion of the administrative law judge, be

1 deducted from any award of benefits to the employee which remains
2 unpaid by the employer. Upon receipt of such report, and after
3 affording all parties an opportunity to be heard, the administrative
4 law judge shall order that any rehabilitation services or training,
5 recommended in the report, or such other rehabilitation services or
6 training as the administrative law judge may deem necessary,
7 provided the employee elects to receive such services, shall be
8 provided at the expense of the employer. Except as otherwise
9 provided in this subsection, refusal to accept rehabilitation
10 services by the employee shall in no way diminish any benefits
11 allowable to an employee.

12 5. The administrative law judge may order vocational
13 rehabilitation before the injured employee reaches maximum medical
14 improvement, if the treating physician believes that it is likely
15 that the employee's injury will prevent the employee from returning
16 to his or her former employment. In granting early benefits for
17 vocational rehabilitation, the Commission shall consider temporary
18 restrictions and the likelihood that such rehabilitation will return
19 the employee to gainful employment earlier than if such benefits are
20 granted after the permanent partial disability hearing in the claim.

21 6. Vocational rehabilitation services or training shall not
22 extend for a period of more than fifty-two (52) weeks. A request
23 for vocational rehabilitation services or training shall be filed
24 with the Commission by an interested party not later than sixty (60)

1 days from the date of receiving permanent restrictions that prevent
2 the injured employee from returning to his or her pre-injury or
3 equivalent position.

4 7. If rehabilitation requires residence at or near the facility
5 or institution which is away from the employee's customary
6 residence, reasonable cost of the employee's board, lodging, travel,
7 tuition, books and necessary equipment in training shall be paid for
8 by the insurer in addition to weekly compensation benefits to which
9 the employee is otherwise entitled under the Administrative Workers'
10 Compensation Act.

11 8. During the period when an employee is actively and in good
12 faith being evaluated or participating in a retraining or job
13 placement program for purposes of evaluating permanent total
14 disability status, the employee shall be entitled to receive
15 benefits at the same rate as the employee's temporary total
16 disability benefits for an additional fifty-two (52) weeks. All
17 tuition related to vocational rehabilitation services shall be paid
18 by the employer or the employer's insurer on a periodic basis
19 directly to the facility providing the vocational rehabilitation
20 services or training to the employee. The employer or employer's
21 insurer may deduct the amount paid for tuition from compensation
22 awarded to the employee.

23 F. Disfigurement.
24

1 1. If an injured employee incurs serious and permanent
2 disfigurement to any part of the body, the Commission may award
3 compensation to the injured employee in an amount not to exceed
4 Fifty Thousand Dollars (\$50,000.00).

5 2. No award for disfigurement shall be entered until twelve
6 (12) months after the injury.

7 3. An injured employee shall not be entitled to compensation
8 under this subsection if he or she receives an award for permanent
9 partial disability to the same part of the body.

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

17 SECTION 4. AMENDATORY Section 46, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2015, Section 46), is amended to read as
19 follows:

20 Section 46. A. ~~An~~ In lieu of compensation provided pursuant to
21 paragraph 4 of subsection C of Section 45 of this title, an injured
22 employee who is entitled to receive permanent partial disability
23 compensation under Section 45 of this act suffers amputation or
24 permanent loss of use of a scheduled member shall receive

1 compensation for each part of the body ~~in accordance with~~ equal to
2 seventy percent (70%) of the employee's average weekly wage, not to
3 exceed Three Hundred Twenty-three Dollars (\$323.00) multiplied by
4 the number of weeks for the scheduled ~~loss~~ member set forth ~~below.~~
5 as follows:

- 6 1. Arm amputated at the elbow, or between the elbow and
7 shoulder, two hundred seventy-five (275) weeks;
- 8 2. Arm amputated between the elbow and wrist, two hundred
9 twenty (220) weeks;
- 10 3. Leg amputated at the knee, or between the knee and the hip,
11 two hundred seventy-five (275) weeks;
- 12 4. Leg amputated between the knee and the ankle, two hundred
13 twenty (220) weeks;
- 14 5. Hand amputated, two hundred twenty (220) weeks;
- 15 6. Thumb amputated, sixty-six (66) weeks;
- 16 7. First finger amputated, thirty-nine (39) weeks;
- 17 8. Second finger amputated, thirty-three (33) weeks;
- 18 9. Third finger amputated, twenty-two (22) weeks;
- 19 10. Fourth finger amputated, seventeen (17) weeks;
- 20 11. Foot amputated, two hundred twenty (220) weeks;
- 21 12. Great toe amputated, thirty-three (33) weeks;
- 22 13. Toe other than great toe amputated, eleven (11) weeks;
- 23 14. Eye enucleated, in which there was useful vision, two
24 hundred seventy-five (275) weeks;

1 15. Loss of hearing of one ear, one hundred ten (110) weeks;

2 16. Loss of hearing of both ears, three hundred thirty (330)
3 weeks; and

4 17. Loss of one testicle, fifty-three (53) weeks; loss of both
5 testicles, one hundred fifty-eight (158) weeks.

6 B. The permanent partial disability rate of compensation for
7 amputation or permanent total loss of use of a scheduled member
8 specified in this section shall be seventy percent (70%) of the
9 employee's average weekly wage, not to exceed Three Hundred Twenty-
10 three Dollars (\$323.00), multiplied by the number of weeks as set
11 forth in this section, regardless of whether or not the injured
12 employee is able to return to his or her pre-injury job.

13 C. Other cases: In cases in which the Commission finds an
14 injury to a part of the body not specifically covered by the
15 foregoing provisions of this section, the employee may be entitled
16 to compensation for permanent partial disability. The compensation
17 ordered paid shall be seventy percent (70%) of the employee's
18 average weekly wage, not to exceed Three Hundred Twenty-three
19 Dollars (\$323.00) for the number of weeks which the partial
20 disability of the employee bears to three hundred fifty (350) weeks.

21 D. 1. Compensation for amputation of the first phalange of a
22 digit shall be one-half (1/2) of the compensation for the amputation
23 of the entire digit.

1 2. Compensation for amputation of more than one phalange of a
2 digit shall be the same as for amputation of the entire digit.

3 E. 1. Compensation for the permanent loss of eighty percent
4 (80%) or more of the vision of an eye shall be the same as for the
5 loss of an eye.

6 2. In all cases of permanent loss of vision, the use of
7 corrective lenses may be taken into consideration in evaluating the
8 extent of loss of vision.

9 F. Compensation for amputation or loss of use of two or more
10 digits or one or more phalanges of two or more digits of a hand or a
11 foot may be proportioned to the total loss of use of the hand or the
12 foot occasioned thereby but shall not exceed the compensation for
13 total loss of a hand or a foot.

14 G. Compensation for permanent total loss of use of a member
15 shall be the same as for amputation of the member.

16 H. The sum of all permanent partial disability awards,
17 excluding awards against the Multiple Injury Trust Fund, shall not
18 exceed three hundred fifty (350) weeks.

19 SECTION 5. AMENDATORY Section 62, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2015, Section 62), is amended to read as
21 follows:

22 Section 62. A. Notwithstanding the provisions of Section 45 of
23 this act, if an employee suffers a nonsurgical soft tissue injury,
24 temporary total disability compensation shall not exceed eight (8)

1 weeks, regardless of the number of parts of the body to which there
2 is a nonsurgical soft tissue injury. An employee who is treated
3 with an epidural steroid injection ~~or injections~~ shall be entitled
4 to an extension of an additional eight (8) weeks total, regardless
5 of the number of injections. An employee who has been recommended
6 by a treating physician for surgery for a soft tissue injury may
7 petition the Workers' Compensation Commission for one extension of
8 temporary total disability compensation and the Commission may order
9 an extension, not to exceed sixteen (16) additional weeks. If the
10 surgery is not performed within thirty (30) days of the approval of
11 the surgery by the employer, its insurance carrier, or an order of
12 the Commission authorizing the surgery, and the delay is caused by
13 the employee acting in bad faith, the benefits for the extension
14 period shall be terminated and the employee shall reimburse the
15 employer any temporary total disability compensation he or she
16 received beyond eight (8) weeks. An epidural steroid injection, or
17 any procedure of the same or similar physical invasiveness, shall
18 not be considered surgery.

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

- 1 1. Injury to or disease of the spine, spinal discs, spinal
- 2 nerves or spinal cord, where corrective surgery is performed;
- 3 2. Brain or closed-head injury as evidenced by:
 - 4 a. sensory or motor disturbances,
 - 5 b. communication disturbances,
 - 6 c. complex integrated disturbances of cerebral function,
 - 7 d. episodic neurological disorders, or
 - 8 e. other brain and closed-head injury conditions at least
 - 9 as severe in nature as any condition provided in
 - 10 subparagraphs a through d of this paragraph; or
- 11 3. Any joint replacement.

12 SECTION 6. AMENDATORY Section 68, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2015, Section 68), is amended to read as
14 follows:

15 Section 68. A. Unless an employee gives oral or written notice
16 to the employer within ~~thirty (30)~~ fifteen (15) days of the date an
17 injury occurs, the rebuttable presumption shall be that the injury
18 was not work-related. Such presumption ~~must~~ may be overcome by a
19 preponderance of the evidence. If the notice of injury is not
20 timely given but the employee overcomes the presumption, no
21 compensation shall be due for the time period prior to the date
22 notice was given. In no event shall compensation be allowed if
23 notice is not given within one hundred twenty (120) days after the
24 date of the injury.

1 B. Unless an employee gives oral or written notice to the
2 employer within thirty (30) days of the employee's separation from
3 employment, there shall be a rebuttable presumption that an
4 occupational disease or cumulative trauma injury did not arise out
5 of and in the course of employment. Such presumption ~~must~~ may be
6 overcome by a preponderance of the evidence.

7 SECTION 7. AMENDATORY Section 108, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2015, Section 201), is amended to read as
9 follows:

10 Section 201. A. As used in the Oklahoma Employee Injury
11 Benefit Act:

12 1. "Benefit plan" means a written plan established by a
13 qualified employer under the requirements of ~~Section 110 of this act~~
14 the Employee Injury Benefit Act;

15 2. "Commission" means the Workers' Compensation Commission
16 under the Administrative Workers' Compensation Act;

17 3. ~~"Commissioner" means the Insurance Commissioner of the State~~
18 ~~of Oklahoma~~ "Claimant" means a covered employee or his or her
19 representative or beneficiary who claims benefits under the Employee
20 Injury Benefit Act;

21 4. "Covered employee" means an employee whose employment with a
22 qualified employer is principally located within the state;

23 5. "Department" means the Insurance Department of the State of
24 Oklahoma;

1 6. "Employee" means any person defined as an employee pursuant
2 to Section 2 of this act;

3 ~~6.~~ 7. "Employer", except when otherwise expressly stated, means
4 a person, partnership, association, limited liability company,
5 corporation, and the legal representatives of a deceased employer,
6 or the receiver or trustee of a person, partnership, association,
7 corporation, or limited liability company, department,
8 instrumentality or institution of this state and divisions thereof,
9 counties and divisions thereof and other political subdivisions of
10 this state and public trusts employing a person included within the
11 term employee as defined in this section;

12 8. "Fully insured plan" means insurance coverage of one hundred
13 percent (100%) of an employer's statutory benefit liability, which
14 may include a self-insured retention of up to Twenty-five Thousand
15 Dollars (\$25,000.00) per person, per occurrence;

16 ~~7.~~ 9. "Occupational injury disease" ~~means an injury, including~~
17 ~~death, or occupational illness, causing internal or external harm to~~
18 ~~the body, which arises out of and in the course of employment shall~~
19 have the same meaning provided pursuant to Section 65 of this title;

20 ~~8.~~ 10. "Qualified employer" means an employer ~~otherwise subject~~
21 ~~to the Administrative Workers' Compensation Act that voluntarily~~
22 ~~elects~~ is approved to be exempt from ~~such act~~ the Administrative
23 Workers' Compensation Act by satisfying the requirements under ~~this~~
24 ~~act~~ the Employee Injury Benefit Act; and

1 ~~9.~~ 11. "Surviving spouse" means the covered employee's spouse
2 by reason of a legal marriage recognized by the State of Oklahoma or
3 under the requirements of a common law marriage in this state.

4 B. Unless otherwise defined in this section, defined terms in
5 the Administrative Workers' Compensation Act shall have the same
6 meaning in ~~this act~~ the Employee Injury Benefit Act.

7 SECTION 8. AMENDATORY Section 109, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2015, Section 202), is amended to read as
9 follows:

10 Section 202. A. Any employer may ~~voluntarily elect~~ apply to ~~be~~
11 ~~exempt from the Administrative Workers' Compensation Act~~ and become
12 a qualified employer ~~if the employer~~ by submitting to the
13 Department:

14 1. ~~Is in compliance with the notice requirements in subsections~~
15 ~~B and H of this section~~ A qualified employer election form published
16 by the Department; and

17 2. ~~Has established a written~~ A benefit plan as described in
18 ~~Section 110 of this act~~ and its proposed effective date, subject to
19 the Department's approval;

20 3. An annual nonrefundable fee of One Thousand Five Hundred
21 Dollars (\$1,500.00);

22 4. The notice to employees required by subsection G of this
23 section; and

24

1 5. Any additional information required pursuant to rules
2 promulgated by the Department.

3 B. ~~An employer that has elected~~ The Department shall notify an
4 employer whether it has met the requirements to become a qualified
5 employer ~~by satisfying the.~~ If such requirements ~~of this section~~
6 ~~shall notify the Insurance Commissioner in writing of the election~~
7 ~~and the date that the election is to become effective, which may not~~
8 ~~be sooner than the date that the qualified employer satisfies the~~
9 ~~employee notice requirements in this section.~~ Such qualified
10 employer shall pay to the Commissioner an annual nonrefundable fee
11 of One Thousand Five Hundred Dollars (\$1,500.00) on the date of
12 ~~filing written notice and every year thereafter~~ have been met, the
13 Department shall issue a certificate of qualified employer to the
14 employer. If such requirements have not been met, the notice shall
15 contain a description of the deficiencies and how such deficiencies
16 may be resolved.

17 C. ~~The Commissioner~~ Department shall collect and maintain the
18 information required under this section and shall monitor compliance
19 with the requirements of this section. ~~The Commissioner~~ Department
20 may ~~also~~ require ~~an~~ a qualified employer to provide information
21 periodically to confirm its qualified employer status. ~~Subject to~~
22 ~~subsection D of this section, the Commissioner~~ that it is still in
23 compliance with the requirements of a qualified employer. The
24 Department shall adopt rules designating the methods and procedures

1 for confirming whether an employer ~~is~~ has met and continues to meet
2 the requirements to become a qualified employer, notifying an
3 employer of any ~~qualifying~~ deficiencies, and the consequences
4 ~~thereof~~ of noncompliance with the requirements of the Employee
5 Injury Benefit Act. The ~~Commissioner~~ Department shall record the
6 ~~date and time each notice of qualified employer~~ that an employer is
7 approved as a qualified employer and the date that such status is
8 ~~received and the~~ becomes effective ~~date of qualified employer~~
9 election. The ~~Commissioner~~ Department shall maintain a list on its
10 official website accessible by the public of all qualified employers
11 and the date ~~and time~~ that such ~~exemption~~ status became effective.

12 D. ~~Except as otherwise expressly provided in this act, neither~~
13 ~~the Workers' Compensation Commission, the courts of this state, or~~
14 ~~any state administrative agencies shall promulgate rules or any~~
15 ~~procedures related to design, documentation, implementation,~~
16 ~~administration or funding of a qualified employer's benefit plan~~ If
17 the Department determines that a qualified employer is deficient in
18 any requirements, it shall provide written notice of the deficiency
19 to the employer. Within ten (10) days, the qualified employer shall
20 provide proof to the Department that it has cured the deficiency or
21 it shall automatically lose status as a qualified employer and
22 become subject to the provisions of the Administrative Workers'
23 Compensation Act. An employer that has lost status as a qualified
24 employer may reapply for such status.

1 E. The ~~Commissioner~~ Department may designate an information
2 collection agent, implement an electronic reporting and public
3 information access program, and adopt rules as necessary to
4 implement the information collection requirements of this section.

5 ~~F. The Commissioner may prescribe rules and forms to be used~~
6 ~~for the qualified-employer notification and shall require the A~~
7 ~~qualified employer to~~ shall provide its the Department with:

8 1. Its name, address, contact person and phone number, federal
9 tax identification number, number of persons employed in this state
10 as of a specified date;

11 2. The name, title, address and telephone number of the person
12 to contact for claim administration ~~contact information;~~ and a

13 3. A listing of all covered business locations in the state.

14 The ~~Commissioner~~ Department shall notify the ~~Commissioner~~ Workers'
15 Compensation Commission and the Department of Labor of all
16 qualified-employer notifications. ~~The Department of Labor shall~~
17 ~~provide such notifications to other governmental agencies as it~~
18 ~~deems necessary.~~

19 G. ~~The Commissioner may contract with the Oklahoma Employment~~
20 ~~Security Commission, the State Treasurer or the Department of Labor~~
21 ~~for assistance in collecting the notification required under this~~
22 ~~section or otherwise fulfilling the Commissioner's responsibilities~~
23 ~~under this act. Such agencies shall cooperate with the Commissioner~~
24 ~~in enforcing the provisions of this section.~~

1 ~~H. A qualified employer shall notify each of its employees in~~
2 ~~the manner provided in this section that it is a qualified employer,~~
3 ~~that it does not carry workers' compensation insurance coverage and~~
4 ~~that such coverage has terminated or been cancelled.~~

5 ~~I. The~~ A qualified employer shall provide written notification
6 to covered employees ~~as required by this section~~ that it does not
7 carry workers' compensation coverage at the time the covered
8 employee is hired or at least five (5) days before the effective
9 time of ~~designation as a qualified employer~~ the benefit plan, as
10 applicable. The notice shall contain the name, title, address and
11 telephone number of the person to contact for claim administration.

12 A qualified employer shall post the employee notification required
13 by this section at conspicuous locations at the qualified employer's
14 places of business as necessary to provide reasonable notice to all
15 covered employees. The ~~Commissioner~~ Department may adopt rules
16 relating to the form, content, and method of delivery of the
17 employee notification required by this section.

18 H. Two or more employers who are members of a controlled group
19 may apply to the Department for approval as a single qualified
20 employer and be listed on a single qualified employer certificate.
21 The first member of the controlled group shall pay to the Department
22 an annual nonrefundable fee as required by paragraph 3 of subsection
23 A of this section. Each additional participating member of the
24 controlled group shall:

1 1. If the controlled group is fully insured, pay to the
2 Department an annual nonrefundable fee of Two Hundred Fifty Dollars
3 (\$250.00) on the date of filing written notice of election and every
4 year thereafter; or

5 2. If the controlled group is self-insured, pay to the
6 Department an annual nonrefundable fee of Seven Hundred Fifty
7 Dollars (\$750.00) on the date of filing written notice of election
8 and every year thereafter.

9 SECTION 9. AMENDATORY Section 110, Chapter 208, O.S.L.
10 2013, as amended by Section 4, Chapter 390, O.S.L. 2015 (85A O.S.
11 Supp. 2015, Section 203), is amended to read as follows:

12 Section 203. A. An employer ~~voluntarily~~ electing to become a
13 qualified employer shall adopt a ~~written~~ benefit plan that complies
14 with the requirements of this section. ~~Qualified-employer status is~~
15 ~~optional for eligible employers. The benefit plan shall not become~~
16 ~~effective until the date that the qualified employer first satisfies~~
17 ~~the notice requirements in Section 202 of this title.~~

18 B. The benefit plan shall provide for payment of the same forms
19 of benefits included in the Administrative Workers' Compensation Act
20 for ~~temporary total disability, temporary partial disability,~~
21 ~~permanent partial disability, vocational rehabilitation, permanent~~
22 ~~total disability, disfigurement, amputation or permanent total loss~~
23 ~~of use of a scheduled member, death and medical benefits as a result~~
24 ~~of an occupational compensable injury, on a no-fault basis, with the~~

1 same statute of limitations, notice of injury reporting, and with
2 dollar, percentage, and duration limits that are at least equal to
3 ~~or greater than~~ the dollar, percentage, and duration limits
4 contained in ~~Sections 45, 46 and 47 of this title.~~ For this
5 ~~purpose, the standards for determination of average weekly wage,~~
6 ~~death beneficiaries, and disability under the Administrative~~
7 ~~Workers' Compensation Act shall apply under the Oklahoma Employee~~
8 ~~Injury Benefit Act; but no~~ such Act. Benefit plans shall not be
9 subject to other provision requirements of the Administrative
10 Workers' Compensation Act ~~defining covered injuries, medical~~
11 ~~management, dispute resolution or other process, funding, notices or~~
12 ~~penalties shall apply or otherwise be controlling under the Oklahoma~~
13 ~~Employee Injury Benefit Act,~~ unless expressly incorporated.

14 C. ~~The benefit plan may provide for lump-sum payouts that are,~~
15 ~~as reasonably determined by the administrator of such plan appointed~~
16 ~~by the qualified employer, actuarially equivalent to expected future~~
17 ~~payments. The benefit plan may also provide for settlement~~
18 ~~agreements; provided, however, any settlement agreement by a covered~~
19 ~~employee shall be voluntary, entered into not earlier than the tenth~~
20 ~~business day after the date of the initial report of injury, and~~
21 ~~signed after the covered employee has received a medical evaluation~~
22 ~~from a nonemergency care doctor, with any waiver of rights being~~
23 ~~conspicuous and on the face of the agreement. The benefit plan~~
24 ~~shall pay benefits without regard to whether the covered employee,~~

1 ~~the qualified employer, or a third party caused the occupational~~
2 ~~injury; and provided further, that the benefit plan shall provide~~
3 ~~eligibility to participate in and provide the same forms and levels~~
4 ~~of benefits to all Oklahoma employees of the qualified employer.~~
5 ~~The Administrative Workers' Compensation Act shall not define,~~
6 ~~restrict, expand or otherwise apply to a benefit plan. Regardless~~
7 ~~of whether such provisions are incorporated into a benefit plan,~~
8 ~~qualified employers and their covered employees shall be subject to~~
9 ~~the provisions of the Administrative Workers' Compensation Act~~
10 ~~related to:~~

11 1. Compensable injury, as defined pursuant to paragraph 9 of
12 Section 2 of this title;

13 2. Course and scope of employment, as defined pursuant to
14 paragraph 13 of Section 2 of this title;

15 3. Fraud, pursuant to Section 6 of this title;

16 4. Discrimination or retaliation, pursuant to Section 7 of this
17 title;

18 5. Liability other than immediate employer, pursuant to Section
19 36 of this title; and

20 6. Failure to appear for scheduled appointments, pursuant to
21 Section 57 of this title.

22 D. ~~No~~ A qualified employer shall not charge any fee or cost to
23 an employee shall apply related to a qualified employer's benefit
24 plan.

1 E. ~~The qualified employer shall provide to the Commissioner and~~
2 ~~covered employees notice of the name, title, address, and telephone~~
3 ~~number for the person to contact for injury benefit claims~~
4 ~~administration, whether in-house at the qualified employer or a~~
5 ~~third-party administrator.~~

6 F. Information submitted to the ~~Commissioner~~ Department as part
7 of the application for approval as a qualified employer, to confirm
8 eligibility for continuing status as a qualified employer, or as
9 otherwise required by the Oklahoma Employee Injury Benefit Act may
10 not be made public by the ~~Commissioner or by an agent or employee of~~
11 ~~the Commissioner~~ Department without the written consent of the
12 applicant or qualified employer, as applicable, except that:

13 1. The information may be discoverable by a party in a civil
14 action or contested case to which the employer that submitted the
15 information is a party, upon a showing by the party seeking to
16 discover the information that:

- 17 a. the information sought is relevant to and necessary
- 18 for the furtherance of the action or case,
- 19 b. the information sought is unavailable ~~for~~ from other
- 20 non-confidential sources, and
- 21 c. a subpoena issued by a judicial or administrative
- 22 officer of competent jurisdiction has been submitted
- 23 to the ~~Commissioner~~ Department; and

1 2. The ~~Commissioner~~ Department may disclose the information to
2 a public officer having jurisdiction over the regulation of
3 insurance in another state if:

4 a. the public officer agrees in writing to maintain the
5 confidentiality of the information, and

6 b. the laws of the state in which the public officer
7 serves require the information to be kept
8 confidential; and

9 3. A qualified employer's benefit plan and employee notice
10 shall be open to the public.

11 F. A qualified employer's insurance coverage pertains only to
12 covered employees in this state. An employer with employees in
13 other states shall obtain insurance coverage in compliance with the
14 laws of that state; provided:

15 1. A qualified employer's benefit plan and insurance coverage
16 may apply to an employee who is employed outside of this state on
17 temporary assignment;

18 2. A qualified employer's insurance policy may include an
19 endorsement that provides coverage for employees working in other
20 states in compliance with the laws of such states; and

21 3. If an employee is not principally employed in this state but
22 is injured in this state, the employee shall be subject to the
23 provisions of the Act under this title under which the employer
24 provides coverage.

1 SECTION 10. AMENDATORY Section 111, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2015, Section 204), is amended to read as
3 follows:

4 Section 204. A. A qualified employer may self-fund or insure
5 benefits payable under the benefit plan, employers' liability under
6 this act, and any other insurable risk related to its status as a
7 qualified employer with any insurance carrier authorized to do
8 business in this state.

9 B. Insurance coverage or surety bond obtained by a qualified
10 employer shall be from an admitted or surplus lines insurer with an
11 AM Best Rating of B+ or better. The ~~Insurance~~ Department has no
12 duty to approve insurance rates charged for this coverage. A
13 qualified employer shall secure compensation to covered employees in
14 one of the following ways:

15 1. Obtaining accidental insurance coverage in an amount equal
16 to the compensation obligation;

17 2. Furnishing satisfactory proof to the ~~Commissioner~~ Department
18 of the employer's financial ability to pay the compensation. ~~The~~
19 ~~Commissioner, under~~ Under rules adopted by the ~~Insurance~~ Department
20 ~~or the Commissioner~~ for an individual self-insured employer, the
21 Department shall require an employer that has:

22 a. less than one hundred employees or less than One
23 Million Dollars (\$1,000,000.00) in net assets to:
24

- 1 (1) deposit with the ~~Commissioner~~ Department
2 securities, an irrevocable letter of credit or a
3 surety bond payable to the state, in an amount
4 determined by the ~~Commissioner~~ Department which
5 shall be at least an average of the yearly claims
6 for the last three (3) years, or
7 (2) provide proof of excess coverage with such terms
8 and conditions as is commensurate with their
9 ability to pay the benefits required by the
10 provisions of this act,

11 b. one hundred or more employees and One Million Dollars
12 (\$1,000,000.00) or more in net assets to:

- 13 (1) secure a surety bond payable to the state, or an
14 irrevocable letter of credit, in an amount
15 determined by the ~~Commissioner~~ Department which
16 shall be at least an average of the yearly claims
17 for the last three (3) years, or
18 (2) provide proof of excess coverage with such terms
19 and conditions as is commensurate with their
20 ability to pay the benefits required by the
21 provisions of this act; or

22 3. Any other security as may be approved by the ~~Commissioner~~
23 Department.

24

1 C. The ~~Commissioner~~ Department may waive the requirements of
2 this section in an amount which is commensurate with the ability of
3 the employer to pay the benefits required by the provisions of this
4 act. Irrevocable letters of credit required by this section shall
5 contain such terms as may be prescribed by the ~~Commissioner~~
6 Department and shall be issued for the benefit of the state by a
7 financial institution whose deposits are insured by the Federal
8 Deposit Insurance Corporation.

9 D. An employer who does not fulfill the requirements of this
10 section is not relieved of the obligation for compensation to a
11 covered employee. The security required under this section,
12 including any interest thereon, shall be maintained by the
13 ~~Commissioner~~ Department as provided in this act until each claim for
14 benefits is paid, settled, or lapses under this act, and costs of
15 administration of such claims are paid.

16 E. Any bond shall be filed and held by the ~~Commissioner~~
17 Department and shall be for the exclusive benefit of any covered
18 employee of a qualified employer.

19 F. Any security held by the ~~Commissioner~~ Department may be used
20 to make a payment to or on behalf of a covered employee provided the
21 following requirements are met:

22 1. The covered employee sustained an occupational injury that
23 is covered by the qualified employer's benefit plan;

24

1 2. The covered employee's claim for payment of a specific
2 medical or wage replacement benefit amount has been accepted by the
3 plan administrator of the benefit plan or acknowledged in a final
4 judgment or court order assessing a specific dollar figure for
5 benefits payable under the benefit plan;

6 3. The covered employee is unable to receive payment from the
7 benefit plan or collect on such judgment or court order because the
8 qualified employer has filed for bankruptcy or the benefit plan has
9 become insolvent; and

10 4. The covered employee is listed as an unsecured creditor of
11 the qualified employer because of the acceptance of such claim by
12 the plan administrator of the benefit plan or judgment or court
13 order assessing a specific dollar figure for benefits payable under
14 the benefit plan.

15 G. The ~~Commissioner~~ Department shall promulgate rules to carry
16 out the provisions of this section including those establishing the
17 procedure by which a covered employee may request and receive
18 payment from the security held by the ~~Commissioner~~ Department.

19 H. The benefit plan may provide some level of benefits for
20 sickness, injury or death not due to an occupational injury.

21 I. A qualified employer shall hold harmless any insurance agent
22 or broker who sold the employer a benefits program compliant with
23 the Oklahoma Employee Injury Benefit Act if the qualified employer
24

1 is sued in district court for an injury arising in the course and
2 scope of employment.

3 SECTION 11. AMENDATORY Section 112, Chapter 208, O.S.L.
4 2013, as amended by Section 5, Chapter 390, O.S.L. 2015 (85A O.S.
5 Supp. 2015, Section 205), is amended to read as follows:

6 Section 205. A. There are established within the Office of the
7 State Treasurer two separate funds:

- 8 1. The Oklahoma Option Insured Guaranty Fund; and
- 9 2. The Oklahoma Option Self-insured Guaranty Fund.

10 B. The funds established pursuant to subsection A of this
11 section shall be for the purpose of continuation of benefits under
12 this act for covered claims that are due and unpaid or interrupted
13 due to the inability of the insurer or sponsor of a self-insured
14 plan, as applicable, to meet its compensation obligations because
15 its financial resources, security deposit, guaranty agreements,
16 surety agreements and excess insurance are either inadequate or not
17 immediately accessible for the payment of benefits. Monies in such
18 funds, including interest, are not subject to appropriation and
19 shall be expended to compensate employees for eligible benefits for
20 a compensable injury under this act, pay outstanding workers'
21 compensation obligations of the impaired insurer, and for all claims
22 for related administrative fees, operating costs, attorney fees, and
23 other costs reasonably incurred by the Oklahoma Property and
24 Casualty Guaranty Association in the performance of its duties under

1 this act. Expenditures from such funds shall be made on warrants
2 issued by the State Treasurer against claims as prescribed by law.
3 Such funds shall be subject to audit the same as state funds and
4 accounts, the cost for which shall be paid for from the funds. A
5 "covered claim" has the meaning given to it pursuant to paragraph 7
6 of Section 2004 of Title 36 of the Oklahoma Statutes.

7 C. The funds established under this section shall be
8 administered, disbursed, and invested under the direction of the
9 Oklahoma Property and Casualty Insurance Guaranty Association
10 established by Section 2005 of Title 36 of the Oklahoma Statutes.

11 D. The funds established under this section shall be funded
12 from the following sources:

13 1. Insured Guaranty Fund:

14 Until the Insured Guaranty Fund contains Two Million Dollars
15 (\$2,000,000.00) or if the amount in the fund falls below One Million
16 Dollars (\$1,000,000.00), each insurer shall be assessed a fee equal
17 to two percent (2%) of all gross direct premiums written during each
18 quarter of the calendar year for insurance covering a benefit plan
19 under this act after deducting from such gross direct premiums,
20 return premiums, unabsorbed portions of any deposit premiums, policy
21 dividends, safety refunds, savings and other similar returns paid or
22 credited to policyholders. The assessment shall be paid to the
23 Insured Guaranty Fund, care of the Commission, no later than the
24 fifteenth day of the month following the close of each quarter of

1 the calendar year in which the gross direct premium is collected or
2 collectible. No insurer may be assessed in any year an amount
3 greater than two percent (2%) of the net direct written premiums of
4 that insurer or one percent (1%) of that surplus of the insurer as
5 regards policyholders for the calendar year preceding the assessment
6 on the kinds of insurance in the account, whichever is less; and

7 2. Self-insured Guaranty Fund:

8 Until the Self-insured Guaranty Fund contains One Million
9 Dollars (\$1,000,000.00) or if the amount in the fund falls below
10 Seven Hundred Fifty Thousand Dollars (\$750,000.00), each self-
11 insurer shall be assessed a fee at the rate of one percent (1%) of
12 the total compensation for permanent partial disability awards paid
13 out during each quarter of the calendar year by the employers. The
14 fee shall be paid to the Self-insured Guaranty Fund, care of the
15 Commission, no later than the fifteenth day of the month following
16 the close of each quarter of the calendar year. The fee shall be
17 determined using a rate equal to the proportion that the deficiency
18 in the fund attributable to self-insurers bears to the actual paid
19 losses of all self-insurers for the preceding calendar year. Each
20 self-insurer shall provide the Commission with the information
21 necessary to determine the amount of the fee to be assessed.

22 E. The Guaranty Association shall create a separate account for
23 each fund which may not be commingled with any other account managed
24 by the Guaranty Association.

1 F. On determination by the ~~Commissioner~~ Department that a self-
2 insurer has become an impaired insurer, the ~~Commissioner~~ Department
3 shall release the security required by paragraph 2 of subsection B
4 of Section 111 of this ~~act~~ title and advise the Guaranty Association
5 of the impairment. Claims administration, including processing,
6 investigating and paying valid claims against an impaired self-
7 insurer under this act, may include payment by the surety that
8 issued the surety bond or be under a contract between the
9 ~~Commissioner~~ Department and an insurance carrier, appropriate state
10 governmental entity or an approved service organization.

11 G. The Guaranty Association shall be a party in interest in all
12 proceedings involving any claims for benefits under this act with
13 respect to an impaired insurer and shall have all rights of
14 subrogation of the impaired insurer. In those proceedings, the
15 Guaranty Association may assume and exercise all rights and defenses
16 of the impaired insurer, including, but not limited to, the right
17 to:

- 18 1. Appear, defend and appeal claims;
- 19 2. Receive notice of, investigate, adjust, compromise, settle
20 and pay claims; and
- 21 3. Investigate, handle and contest claims.

22 H. The Guaranty Association may also:

- 23 1. Retain persons necessary to handle claims and perform other
24 duties of the Guaranty Association;

1 2. Sue or be sued;

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

4 4. Exercise any other powers necessary to perform its duties
5 under this act.

6 I. No monies deposited to the funds shall be subject to any
7 deduction, tax, levy or any other type of assessment.

8 J. An impaired self-insurer shall be exempt from assessments
9 until it is no longer impaired.

10 K. Unless provided otherwise in this act, all fines and
11 penalties assessed under this act shall be paid to the Commission
12 for deposit into the funds established in this section in equal
13 amounts.

14 SECTION 12. AMENDATORY Section 113, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2015, Section 206), is amended to read as
16 follows:

17 Section 206. A. In addition to the premium or surplus lines
18 taxes collected from carriers, the carriers shall pay annually to
19 the Workers' Compensation Commission a fee, at the rate to be
20 determined as provided in Section 115 of this ~~act~~ title but not to
21 exceed three percent (3%), on all written premiums resulting from
22 the writing of insurance under this act on risks within the state.

23 B. The fee required pursuant to subsection A of this section
24 shall be collected by the Workers' Compensation Commission from the

1 carriers at the same time and in the same manner as insurance
2 premium taxes under Title 36 of the Oklahoma Statutes and deposited
3 into the Oklahoma Option Insured Guaranty Fund.

4 C. 1. Assessments on which premium taxes are based shall be
5 made on forms prescribed by the Commission and shall be paid to the
6 Commission.

7 2. Absent a waiver obtained from the Commission for good cause,
8 the failure of the carrier to pay the assessment when due shall be
9 referred to the ~~Commissioner~~ Department for appropriate
10 administrative action against the Oklahoma certificate of authority
11 of the delinquent insurer.

12 D. Payments shall be made by check payable to the Commission.

13 SECTION 13. AMENDATORY Section 118, Chapter 208, O.S.L.
14 2013, as amended by Section 6, Chapter 390, O.S.L. 2015 (85A O.S.
15 Supp. 2015, Section 211), is amended to read as follows:

16 Section 211. A. If ~~an~~ a qualified employer denies a claimant's
17 claim for benefits under ~~this act~~ the Employee Injury Benefit Act,
18 the qualified employer shall notify him or her in writing of the
19 decision ~~or the need for additional information~~ within fifteen (15)
20 days after receipt of the claim, subject to a reasonable extension
21 if the qualified employer requests additional information. Unless
22 otherwise provided by law, the adverse benefit determination letter
23 shall contain an explanation of why the claim was denied, including
24 the benefit plan provision or provisions that were the basis for the

1 denial, and a detailed description of how to appeal the
2 determination. The letter shall also inform the claimant of the
3 right to testify at the hearing, produce witnesses in person or by
4 written statement and submit expert reports. Additional claim
5 procedures consistent with this section may be specified in the
6 benefit plan.

7 B. ~~The benefit plan~~ Qualified employers and claimants shall
8 ~~provide~~ be subject to the following ~~minimum~~ appeal rights:

9 1. The claimant may appeal in writing an initial adverse
10 benefit determination to an appeals committee within one hundred
11 eighty (180) days following his or her receipt of the adverse
12 benefit determination. ~~The appeal~~ appeals committee shall be heard
13 ~~by a committee consisting~~ consist of at least three people, none of
14 whom are employees of the qualified employer, that were not involved
15 in the original adverse benefit determination or have any pecuniary
16 interest in the outcome of the appeal. The appeals committee shall
17 conduct a full and fair hearing including, but not limited to, the
18 opportunity to present live testimony, witness statements, briefs,
19 expert reports and oral argument on the merits. The appeals
20 committee shall not give any deference to the claimant's initial
21 adverse benefit determination in its review;

22 2. The appeals committee may request any additional information
23 it deems necessary to make a decision, including having the claimant
24 submit to a medical exam. The committee shall create a

1 comprehensive record of the hearing and maintain such record for no
2 less than two (2) years from the date the decision on appeal is
3 issued;

4 ~~3. The committee shall notify the claimant in writing of its~~
5 ~~decision, including an explanation of the decision and his or her~~
6 ~~right to judicial review;~~

7 4. Subject to the need for a reasonable extension of time due
8 to matters beyond the control of the benefit plan, the appeals
9 committee shall review the determination and issue a decision no
10 later than forty-five (45) days from the date the notice of contest
11 is received. The committee shall provide written notice of its
12 decision to the claimant and the qualified employer. Such notice
13 shall include a detailed explanation of the decision, analysis of
14 evidence presented and instruction for seeking judicial review of
15 the decision. No legal action may be brought by or with respect to
16 a claimant to recover benefits under the benefit plan before the
17 foregoing claim procedures have been exhausted;

18 ~~5. If any part of an adverse benefit determination is upheld by~~
19 ~~the committee, the~~ 4. The qualified employer or claimant may then
20 file appeal the decision of the appeals committee by filing a
21 petition for review with the Commission within one (1) year after
22 the date the ~~claimant receives notice that~~ of the adverse benefit
23 ~~determination, or part thereof, was upheld~~ is received. The appeals
24 committee shall provide the record of the hearing to the Commission

1 within seven (7) days of notice from the Commission. If the
2 Commission determines in its sole discretion that the record is
3 deficient, it shall provide written notice to the appeals committee
4 of the defect or defects, after which the committee shall have three
5 (3) days to submit a cured record. If the record is not cured, the
6 administrative law judge shall presume that the defect or defects
7 are unfavorable to the qualified employer. The Commission shall
8 appoint an administrative law judge to hear ~~any~~ the appeal ~~of an~~
9 ~~adverse benefit determination~~ as a trial de novo. The Commission
10 shall prescribe additional rules governing the authority and
11 responsibility of the parties, the administrative law judge and the
12 Commission during the appeal processes. The administrative law
13 judge and Commission shall act as the court of competent
14 jurisdiction under 29 U.S.C.A. Section 1132(e)(1), and shall possess
15 adjudicative authority to render decisions in individual proceedings
16 by claimants ~~to recover benefits due to the claimant~~ or employers
17 under the terms of the ~~claimant's~~ applicable plan, including the
18 authority to award or deny benefits and otherwise enforce ~~the~~
19 ~~claimant's~~ rights under the terms of the benefit plan, ~~or to clarify~~
20 ~~the claimant's rights to future benefits under the terms of the~~
21 ~~plan;~~

22 ~~6.~~ 5. The ~~Commission~~ administrative law judge shall ~~rely on the~~
23 ~~record established by the internal appeal process and use an~~
24 ~~objective standard of review that is not arbitrary or capricious~~ the

1 claim de novo. Any party aggrieved by the judgment, decision, or
2 award made by an administrative law judge may, within ten (10) days
3 of issuance, appeal to the Commission. After hearing, the
4 Commission may reverse or modify the decision of the administrative
5 law judge only if it determines that the decision was against the
6 clear weight of evidence or contrary to law. All such proceedings
7 of the Commission shall be recorded by a court reporter. Any
8 judgment of the Commission which reverses a decision of the
9 administrative law judge shall contain specific findings relating to
10 the reversal. Any award by the administrative law judge or
11 Commission shall be limited to benefits payable under the terms of
12 the benefit plan and, to the extent provided herein, attorney fees
13 and costs; and

14 ~~7.~~ 6. If the claimant appeals to the Commission and any part of
15 the adverse benefit determination is upheld, he or she may appeal to
16 the Oklahoma Supreme Court. The judgment, decision or award of the
17 Commission shall be final and conclusive on all questions within its
18 jurisdiction between the parties unless an action is commenced in
19 the Supreme Court of this state to review the judgment, decision or
20 award within twenty (20) days of being sent to the parties. Any
21 judgment, decision or award made by an administrative law judge
22 shall be stayed until all appeal rights have been waived or
23 exhausted. The Supreme Court may modify, reverse, remand for
24

1 rehearing, or set aside the judgment, decision or award only if it
2 was:

- 3 a. in violation of constitutional provisions,
- 4 b. in excess of the statutory authority or jurisdiction
5 of the Commission,
- 6 c. made on unlawful procedure,
- 7 d. affected by other error of law,
- 8 e. clearly erroneous in view of the reliable, material,
9 probative and substantial competent evidence,
- 10 f. arbitrary or capricious,
- 11 g. procured by fraud, or
- 12 h. missing findings of fact on issues essential to the
13 decision.

14 Such action shall be commenced by filing with the Clerk of the
15 Supreme Court a certified copy of the judgment, decision or award of
16 the Commission attached to a petition which shall specify why the
17 judgment, decision or award is erroneous or illegal.

18 The Supreme Court shall require the appealing party to file
19 within forty-five (45) days from the date of the filing of an appeal
20 a transcript of the record of the proceedings before the Commission,
21 or such later time as may be granted by the Supreme Court on
22 application and for good cause shown. The action shall be subject
23 to the law and practice applicable to comparable civil actions
24 cognizable in the Supreme Court.

1 ~~C. If any of the provisions in paragraphs 5 through 7 of~~
2 ~~subsection B of this section are determined to be unconstitutional~~
3 ~~or otherwise unenforceable by the final nonappealable ruling of a~~
4 ~~court of competent jurisdiction, then the following minimal appeal~~
5 ~~procedures will go into effect:~~

6 ~~1. The appeal shall be heard by a committee consisting of at~~
7 ~~least three people that were not involved in the original adverse~~
8 ~~benefit determination. The appeals committee shall not give any~~
9 ~~deference to the claimant's initial adverse benefit determination in~~
10 ~~its review;~~

11 ~~2. The committee may request any additional information it~~
12 ~~deems necessary to make a decision, including having the claimant~~
13 ~~submit to a medical exam;~~

14 ~~3. The committee shall notify the claimant in writing of its~~
15 ~~decision, including an explanation of the decision and his or her~~
16 ~~right to judicial review;~~

17 ~~4. The committee shall review the determination and issue a~~
18 ~~decision no later than forty-five (45) days from the date the notice~~
19 ~~of contest is received;~~

20 ~~5. If any part of an adverse benefit determination is upheld by~~
21 ~~the committee, the claimant may then file a petition for review in a~~
22 ~~proper state district court; and~~

1 ~~6. The district court shall rely on the record established by~~
2 ~~the internal appeal process and use a deferential standard of~~
3 ~~review.~~

4 ~~D. The provisions of this section shall apply to the extent not~~
5 ~~inconsistent with or preempted by any other applicable law or rule.~~

6 ~~E. All intentional tort or other employers' liability claims~~
7 ~~may proceed through the appropriate state courts of Oklahoma,~~
8 ~~mediation, arbitration, or any other form of alternative dispute~~
9 ~~resolution or settlement process available by law.~~

10 A fee of One Hundred Dollars (\$100.00) per appeal to the Supreme
11 Court shall be paid by the party filing the appeal to the Commission
12 and deposited to the credit of the Workers' Compensation Fund as
13 costs for preparing, assembling, indexing and transmitting the
14 record for appellate review. If more than one party to the action
15 files an appeal from the same judgment, decision or award, the fee
16 shall be paid by the party whose petition in error commences the
17 principal appeal.

18 SECTION 14. This act shall become effective in accordance with
19 the provisions of Section 58 of Article V of the Oklahoma
20 Constitution."
21
22
23
24

1 ENGROSSED HOUSE
2 BILL NO. 2205

By: Echols of the House
and
Sykes of the Senate

3
4
5
6
7 [workers' compensation - Administrative Workers'
8 Compensation Act - clarifying language - effective
9 date]
10
11

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

13 SECTION 1. AMENDATORY Section 29, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2014, Section 29), is amended to read as
15 follows:

16 Section 29. A. Each carrier writing compensation insurance in
17 this state shall pay to the Commission at the time of securing or
18 renewing a license to transact business in this state an annual fee
19 of One Thousand Dollars (\$1,000.00) for the privilege of qualifying
20 with the Commission for the writing of compensation insurance.

21 B. Each self-insurer shall pay to the Commission an annual fee
22 of One Thousand Dollars (\$1,000.00) at the time it is approved to
23 self-insure the obligations under ~~this act~~ the Administrative
24 Workers' Compensation Act.

1 C. The Commission may assess third-party administrators an
2 annual fee of One Thousand Dollars (\$1,000.00).

3 D. Fees required pursuant to this section shall be deposited
4 into the Workers' Compensation Fund.

5 SECTION 2. AMENDATORY Section 65, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2014, Section 65), is amended to read as
7 follows:

8 Section 65. A. If an employee suffers from an occupational
9 disease as defined in this section and is disabled or dies as a
10 result of the disease, the employee, or, in case of death, his or
11 her dependents, shall be entitled to compensation as if the
12 disability or death were caused by injury arising out of work
13 activities within the scope of employment, except as otherwise
14 provided in this section.

15 B. No compensation shall be payable for an occupational disease
16 if the employee, at the time of entering into the employment of the
17 employer by whom the compensation would otherwise be payable,
18 falsely represented himself or herself in writing as not having
19 previously been disabled, laid off, or compensated in damages or
20 otherwise, because of the disease.

21 C. 1. If an occupational disease is aggravated by any other
22 disease or infirmity, not itself compensable, or if disability or
23 death from any other cause, not itself compensable, is aggravated,
24 prolonged, accelerated, or in any way contributed to by an

1 occupational disease, the compensation payable shall be reduced and
2 limited to the proportion only of the compensation that would be
3 payable if the occupational disease were the major cause of the
4 disability or death as the occupational disease, as a causative
5 factor, bears to all the causes of the disability or death.

6 2. The reduction in compensation is to be effected by reducing
7 the number of weekly or monthly payments or the amounts of the
8 payments, as under the circumstances of the particular case may be
9 for the best interest of the claimant.

10 D. 1. "Occupational disease", as used in this act, unless the
11 context otherwise requires, means any disease that results in
12 disability or death and arises out of and in the course of the
13 occupation or employment of the employee or naturally follows or
14 unavoidably results from an injury as that term is defined in this
15 act. A causal connection between the occupation or employment and
16 the occupational disease shall be established by a preponderance of
17 the evidence.

18 2. No compensation shall be payable for any contagious or
19 infectious disease unless contracted in the course and scope of
20 employment ~~in or immediately connected with a hospital or sanatorium~~
21 ~~in which persons suffering from that disease are cared for or~~
22 ~~treated.~~

23 3. No compensation shall be payable for any ordinary disease of
24 life to which the general public is exposed.

1 E. 1. When compensation is payable for an occupational
2 disease, the employer in whose employment the employee was last
3 injuriously exposed to the hazards of the disease and the carrier,
4 if any, on the risk when the employee was last injuriously exposed
5 under the employer shall be liable.

6 2. The amount of the compensation shall be based on the average
7 weekly wage of the employee when last injuriously exposed under the
8 employer, and the notice of injury and claim for compensation shall
9 be given and made to that employer.

10 F. 1. An employer shall not be liable for any compensation for
11 an occupational disease unless:

12 a. the disease is due to the nature of an employment in
13 which the hazards of the disease actually exist and
14 are characteristic thereof and peculiar to the trade,
15 occupation, process, or employment and is actually
16 incurred in the course and scope of his or her
17 employment. This includes any disease due to or
18 attributable to exposure to or contact with any
19 radioactive material by an employee in the course and
20 scope of his or her employment,

21 b. disablement or death results within three (3) years in
22 case of silicosis or asbestosis, or one (1) year in
23 case of any other occupational disease, except a
24 diseased condition caused by exposure to X-rays,

1 radioactive substances, or ionizing radiation, after
2 the last injurious exposure to the disease in the
3 employment, or

4 c. in case of death, death follows continuous disability
5 from the disease, commencing within the period, for
6 which compensation has been paid or awarded or timely
7 claim made as provided in subparagraph b of this
8 paragraph and results within seven (7) years after the
9 last exposure.

10 2. However, in case of a diseased condition caused by exposure
11 to X-rays, radioactive substances, or ionizing radiation only, the
12 limitations expressed do not apply.

13 SECTION 3. AMENDATORY Section 96, Chapter 208, O.S.L.
14 2013, as amended by Section 2, Chapter 169, O.S.L. 2014 (85A O.S.
15 Supp. 2014, Section 96), is amended to read as follows:

16 Section 96. A. The Self-insurance Guaranty Fund shall be
17 administered, supervised and protected by the Self-insurance
18 Guaranty Fund Board. All self-insurers under the Administrative
19 Workers' Compensation Act and all self-insured qualified employers
20 under the Oklahoma Employee Injury Benefit Act shall participate in
21 the fund as a condition of authority to self-insure in this state,
22 except public employers that self-insure pursuant to Section 107 of
23 this title.

1 B. 1. The Self-insurance Guaranty Fund Board shall consist of
2 five (5) members to be appointed as follows:

3 a. the Governor shall appoint two members, one of whom
4 shall represent an approved group self-insurance
5 association authorized to self-insure pursuant to
6 Section 38 or Section 102 of this title,

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

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

14 d. the Chair of the Oklahoma Workers' Compensation
15 Commission shall appoint one member who shall be a
16 licensed claims adjuster affiliated with either a
17 private self-insurer or an approved group self-
18 insurance association.

19 2. Members of the Workers' Compensation Self-insurance Guaranty
20 Fund Board serving on January 31, 2014, shall constitute the initial
21 appointees to the Self-insurance Guaranty Fund Board created
22 pursuant to this section, with terms extended an additional two (2)
23 years beyond their original, respective expiration dates.

1 3. In the event of a vacancy, the appointing authority for the
2 position shall appoint a qualified successor to serve as the
3 appointee for the unexpired term of the member so replaced. The
4 term of office for the appointees shall be as follows:

5 a. the term of office for three positions, one each
6 appointed by the Governor, President Pro Tempore of
7 the Senate and Speaker of the House of
8 Representatives, shall expire on November 1, 2016, and

9 b. the term of office for two positions, one each
10 appointed by the Governor and the Chair of the
11 Commission, shall expire on November 1, 2015.

12 Thereafter, successor members shall be appointed for a three-
13 year term. Members may serve successive terms. Any person
14 appointed to fill a vacancy shall be appointed for the unexpired
15 portion of the term in the same manner as the original appointment.

16 4. The chair and vice-chair of the Board shall be elected by
17 the Board from among its members.

18 5. Members of the Board shall not receive compensation for
19 serving on the Board but shall be reimbursed from monies in the fund
20 for their necessary travel expenses incurred in the performance of
21 their duties in accordance with the State Travel Reimbursement Act.

22 C. Meetings of the Board shall be held at least quarterly. The
23 presence of a majority of the members constitutes a quorum. No
24

1 action shall be taken by the Board without the affirmative vote of
2 at least a majority of the members.

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

5 E. No member or personnel of the Self-insurance Guaranty Fund
6 Board, the Workers' Compensation commissioners or any employee of
7 the Workers' Compensation Commission shall be liable in a civil
8 proceeding for any act performed in good faith in the execution of
9 that person's powers or duties pursuant to Sections 96 through 100
10 of ~~the Administrative Workers' Compensation Act~~ this title.

11 SECTION 4. AMENDATORY Section 97, Chapter 208, O.S.L.
12 2013, as amended by Section 3, Chapter 169, O.S.L. 2014 (85A O.S.
13 Supp. 2014, Section 97), is amended to read as follows:

14 Section 97. The Self-insurance Guaranty Fund shall be for the
15 purpose of continuation of workers' compensation benefits or
16 compensation pursuant to a written benefit plan as provided in
17 Section 203 of this title due and unpaid or interrupted due to the
18 inability of a self-insurer to meet its compensation obligations
19 because its financial resources, security deposit, guaranty
20 agreements, surety agreements and excess insurance are either
21 inadequate or not immediately accessible for the payment of
22 benefits. Monies in the fund, including interest, are ~~not subject~~
23 ~~to appropriation~~ hereby appropriated, but shall not be transferred
24 by the Legislature from this fund to any other fund in the State

1 Treasury, and shall be expended to compensate employees for eligible
2 benefits for a compensable injury under the Administrative Workers'
3 Compensation Act or the Oklahoma Employee Injury Benefit Act, pay
4 outstanding workers' compensation or benefit plan obligations of the
5 impaired self-insurer, and for all claims for related administrative
6 fees, operating costs of the Self-insurance Guaranty Fund Board,
7 attorney fees, and other costs reasonably incurred by the Board in
8 the performance of its duties. Expenditures from the fund shall be
9 made on warrants issued by the State Treasurer against claims as
10 prescribed by law. The fund shall be subject to audit in the same
11 manner as state funds and accounts, the cost for which shall be paid
12 for from the fund.

13 SECTION 5. AMENDATORY Section 98, Chapter 208, O.S.L.
14 2013, as amended by Section 4, Chapter 169, O.S.L. 2014 (85A O.S.
15 Supp. 2014, Section 98), is amended to read as follows:

16 Section 98. The Self-insurance Guaranty Fund shall be derived
17 from the following sources:

18 1. Any unexpended funds, including interest thereon, held by
19 the State Treasurer in the Workers' Compensation Self-insurance
20 Guaranty Fund transferred to the Self-insurance Guaranty Fund as
21 provided in Section 124 of this title;

22 2. ~~Until the Self-insurance Guaranty Fund contains Two Million~~
23 ~~Dollars (\$2,000,000.00) or in~~ Any unexpended funds, including
24 interest thereon, held by the State Treasurer in the Oklahoma Option

1 Insured Guaranty Fund and the Oklahoma Option Self-insured Guaranty
2 Fund transferred to the Self-insurance Guaranty Fund as provided in
3 Section 205 of this title;

4 3. In the event the amount in the fund falls below One Million
5 Dollars (\$1,000,000.00), an assessment levied against each private
6 self-insurer and group self-insurance association based on an
7 assessment rate to be determined by the commissioners, not exceeding
8 one percent (1%) of actual paid losses of the self-insurer during
9 the preceding calendar year, payable to the Tax Commission for
10 deposit to the fund. The assessment levied against private self-
11 insurers shall be determined using a rate equal to the proportion
12 that the deficiency in the fund attributable to private self-
13 insurers bears to the actual paid losses of all private self-
14 insurers for the year period of January 1 through December 31
15 preceding the assessment. The assessment levied against group self-
16 insurance associations shall be determined using a rate equal to the
17 proportion that the deficiency in excess of the surplus of the Group
18 Self-insurance Association Guaranty Fund at the date of the transfer
19 attributable to group self-insurance associations bears to the
20 actual paid losses of all group self-insurance associations
21 cumulatively for any calendar year preceding the assessment. Each
22 self-insurer shall provide the Workers' Compensation Commission with
23 such information as the Commission may determine is necessary to
24 effectuate the purposes of this paragraph. For purposes of this

1 paragraph, "actual paid losses" means all medical and indemnity
2 payments, including temporary disability, permanent disability, and
3 death benefits, and excluding loss adjustment expenses and reserves.

4 a. The assessment shall be paid within thirty (30)
5 calendar days after the date the commissioners notify
6 the self-insurer of the assessment.

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

12 c. Failure of a self-insurer to pay, or timely pay, an
13 assessment required by this paragraph, or to report
14 payment of the same to the Commission within ten (10)
15 days of payment, shall be grounds for revocation by
16 the Commission of the self-insurer's permit to self-
17 insure in this state, after notice and hearing. A
18 former self-insurer failing to make payments required
19 by this paragraph promptly and correctly, or failing
20 to report payment of the same to the Commission within
21 ten (10) days of payment, shall be subject to
22 administrative penalties as allowed by law, including
23 but not limited to, a fine in the amount of Five
24 Hundred Dollars (\$500.00) or an amount equal to one

1 percent (1%) of the unpaid amount, whichever is
2 greater, to be paid and deposited to the credit of the
3 Workers' Compensation Fund created in Section 28 of
4 this title. It shall be the duty of the Tax
5 Commission to collect the assessment provided for in
6 this paragraph. The Tax Commission is authorized to
7 bring an action for recovery of any delinquent or
8 unpaid assessments, and may enforce payment of the
9 assessment by proceeding in accordance with Section 79
10 of this title.

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

15 e. The Tax Commission shall determine the fund balance as
16 of March 1 and September 1 of each year, and when
17 otherwise requested by the Workers' Compensation
18 Commission, and shall advise the Workers' Compensation
19 Commission in writing within thirty (30) days of each
20 such determination; and

21 ~~3.~~ 4. Any interest accruing on monies paid into the fund.

22 SECTION 6. AMENDATORY Section 110, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2014, Section 203), is amended to read as
24 follows:

1 Section 203. A. An employer voluntarily electing to become a
2 qualified employer shall adopt a written benefit plan that complies
3 with the requirements of this section. Qualified-employer status is
4 optional for eligible employers. The benefit plan shall not become
5 effective until the date that the qualified employer first satisfies
6 the approval and notice requirements in this section and Section 109
7 202 of this act title.

8 B. The benefit plan shall provide for payment of the same ~~forms~~
9 types of benefits included in the Administrative Workers'
10 Compensation Act for temporary total disability, temporary partial
11 disability, permanent partial disability, vocational rehabilitation,
12 permanent total disability, disfigurement, amputation or permanent
13 total loss of use of a scheduled member, death and medical benefits
14 as a result of an occupational injury, on a no-fault basis, ~~with the~~
15 ~~same statute of limitations,~~ and with dollar, percentage, and
16 duration limits that are at least equal to or greater than the
17 dollar, percentage, and duration limits contained in Sections 45, 46
18 and 47 of this ~~act~~ title. For this purpose, the ~~standards for~~
19 ~~determination~~ definitions of average weekly wage, death
20 beneficiaries, and disability under the Administrative Workers'
21 Compensation Act shall apply under the Oklahoma Employee Injury
22 Benefit Act; but no other provision of the Administrative Workers'
23 Compensation Act defining covered injuries, medical management,
24 dispute resolution or other process, funding, notices or penalties

1 shall apply or otherwise be controlling under the Oklahoma Employee
2 Injury Benefit Act, unless expressly incorporated.

3 C. The benefit plan may provide for lump-sum payouts that are,
4 as reasonably determined by the administrator of such plan appointed
5 by the qualified employer, actuarially equivalent to expected future
6 payments. The benefit plan may also provide for settlement
7 agreements; provided, however, any settlement agreement by a covered
8 employee shall be voluntary, entered into not earlier than the tenth
9 business day after the date of the initial report of injury, and
10 signed after the covered employee has received a medical evaluation
11 from a nonemergency care doctor, with any waiver of rights being
12 conspicuous and on the face of the agreement. The benefit plan
13 shall pay benefits without regard to whether the covered employee,
14 the qualified employer, or a third party caused the occupational
15 injury; and provided further, that the benefit plan shall provide
16 eligibility to participate in and provide the same forms and levels
17 of benefits to all Oklahoma employees of the qualified employer.
18 The Except as otherwise provided in the Oklahoma Employee Injury
19 Benefit Act, the Administrative Workers' Compensation Act shall not
20 define, restrict, expand or otherwise apply to a benefit plan.

21 D. No fee or cost to an employee shall apply to a qualified
22 employer's benefit plan.

23 E. The qualified employer shall provide to the Commissioner and
24 covered employees notice of the name, title, address, and telephone

1 number for the person to contact for injury benefit claims
2 administration, whether in-house at the qualified employer, with an
3 insurer, or a third-party administrator.

4 F. Information submitted to the Commissioner as part of the
5 application for approval as a qualified employer, to confirm
6 eligibility for continuing status as a qualified employer, or as
7 otherwise required by the Oklahoma Employee Injury Benefit Act may
8 not be made public by the Commissioner or by an agent or employee of
9 the Commissioner without the written consent of the applicant,
10 except that:

11 1. The information may be discoverable by a party in a civil
12 action or contested case to which the employer that submitted the
13 information is a party, upon a showing by the party seeking to
14 discover the information that:

- 15 a. the information sought is relevant to and necessary
16 for the furtherance of the action or case,
17 b. the information sought is unavailable for other
18 nonconfidential sources, and
19 c. a subpoena issued by a judicial or administrative
20 officer of competent jurisdiction has been submitted
21 to the Commissioners; and

22 2. The Commissioner may disclose the information to a public
23 officer having jurisdiction over the regulation of insurance in
24 another state if:

- 1 a. the public officer agrees in writing to maintain the
2 confidentiality of the information, and
3 b. the laws of the state in which the public officer
4 serves require the information to be kept
5 confidential.

6 G. In addition to satisfying the notice and benefit plan
7 requirements of the Oklahoma Employee Injury Benefit Act, no
8 employer may be a qualified employer until approved by the
9 Commissioner. The Commissioner shall promulgate rules to carry out
10 the provisions of this section including those establishing the
11 procedure and the information to be submitted by a qualified
12 employer in an application for approval as a qualified employer.

13 H. A qualified employer's insurance coverage pertains to
14 Oklahoma covered employees only, and employers with employees
15 working in states other than Oklahoma shall arrange separate
16 insurance coverage in compliance with such states' laws; provided:

17 1. A qualified employer's benefit plan and insurance coverage
18 may apply to an employee who is employed outside Oklahoma on
19 temporary assignment;

20 2. A qualified employer's insurance policy may include an
21 endorsement that provides coverage for employees working in states
22 other than Oklahoma in compliance with such states' laws; and

23 3. For an employee who is not principally employed in Oklahoma,
24 but is injured in Oklahoma:

- 1 a. if the employer carries workers' compensation coverage
2 or coverage pursuant to the Oklahoma Employee Injury
3 Benefit Act in Oklahoma, that coverage applies, and
4 b. if the employer does not carry workers' compensation
5 coverage or coverage pursuant to the Oklahoma Employee
6 Injury Benefit Act in Oklahoma, workers' compensation
7 benefits apply.

8 I. Two or more employers who are members of a controlled group
9 may apply to the Insurance Commissioner for approval as a single
10 qualified employer and be listed on a single qualified employer
11 certificate. Such qualified employers shall pay the Commissioner
12 the fee specified in subsection B of Section 202 of this title;
13 provided, however, in the case of a self-insured controlled group
14 the fee required by subsection B of Section 202 of this title is
15 applicable to the first member of a controlled group and a fee of
16 Two Hundred Fifty Dollars (\$250.00) for each additional
17 participating member of the controlled group is due on the date of
18 filing written notice of election and every year thereafter.

19 SECTION 7. AMENDATORY Section 111, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2014, Section 204), is amended to read as
21 follows:

22 Section 204. A. A qualified employer may self-fund or insure
23 benefits payable under the benefit plan, employers' liability under
24 ~~this act~~ the Oklahoma Employee Injury Benefit Act, and any other

1 insurable risk related to its status as a qualified employer ~~with~~
2 ~~any insurance carrier authorized to do business in this state.~~

3 B. Insurance coverage or surety bond obtained by a qualified
4 employer shall be from ~~an admitted~~ either a licensed insurer or a
5 surplus lines insurer with an AM Best Rating of B+ or better. The
6 Insurance Department has no duty to approve insurance rates charged
7 for this coverage. A qualified employer shall secure compensation
8 to covered employees in one of the following ways:

9 1. Obtaining ~~accidental~~ insurance coverage in an amount equal
10 to the compensation obligation;

11 2. Furnishing satisfactory proof to the Commissioner of the
12 employer's financial ability to pay the compensation. The
13 Commissioner, under rules adopted by ~~the Insurance Department or the~~
14 Commissioner for an individual self-insured employer, shall require
15 an employer that has:

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

18 (1) deposit with the Commissioner securities, an
19 irrevocable letter of credit or a surety bond
20 payable to the state, in an amount determined by
21 the Commissioner which shall be at least an
22 average of the yearly claims for the last three
23 (3) years, or

24

1 (2) provide proof of excess coverage with such terms
2 and conditions as is commensurate with their
3 ability to pay the benefits required by the
4 provisions of ~~this act~~ the Oklahoma Employee
5 Injury Benefit Act,

6 b. one hundred or more employees and One Million Dollars
7 (\$1,000,000.00) or more in net assets to:

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

13 (2) provide proof of excess coverage with such terms
14 and conditions as is commensurate with their
15 ability to pay the benefits required by the
16 provisions of ~~this act~~ the Oklahoma Employee
17 Injury Benefit Act; or

18 3. Any other security as may be approved by the Commissioner.

19 C. The Commissioner may waive the requirements of this section
20 in an amount which is commensurate with the ability of the employer
21 to pay the benefits required by the provisions of ~~this act~~ the
22 Oklahoma Employee Injury Benefit Act. Irrevocable letters of credit
23 required by this section shall contain such terms as may be
24 prescribed by the Commissioner and shall be issued for the benefit

1 of the state by a financial institution whose deposits are insured
2 by the Federal Deposit Insurance Corporation.

3 D. An employer who does not fulfill the requirements of this
4 section is not relieved of the obligation for compensation to a
5 covered employee. The security required under this section,
6 including any interest thereon, shall be maintained by the
7 Commissioner as provided in ~~this act~~ the Oklahoma Employee Injury
8 Benefit Act until ~~each~~:

9 1. Each claim for benefits is paid, settled, or lapses under
10 ~~this act~~ pursuant to the Oklahoma Employee Injury Benefit Act, and
11 costs of administration of such claims are paid; or

12 2. The Commissioner has determined that the self-insured
13 qualified employer is impaired, advised the Self-insurance Guaranty
14 Fund Board of the impairment, and released the balance of any
15 security required by this section to the Self-insurance Guaranty
16 Fund. Claims administration, including processing, investigating,
17 and paying valid claims against an impaired self-insured qualified
18 employer's benefit plan under the Oklahoma Employee Injury Benefit
19 Act may include claim upon the surety that issued any bond, a draw
20 upon the bank that issued any letter of credit, or liquidation or
21 other security.

22 E. ~~Any bond~~ Except as otherwise provided in this section, any
23 security shall be ~~filed~~ deposited with and held by the Commissioner
24 and shall be for the exclusive benefit of any covered employee of a

1 qualified employer. Any security deposited by a qualified employer,
2 as required by this subsection, shall not be released without the
3 signature of the Commissioner. Administration of deposited security
4 shall be subject to the provisions of Article 17 of Title 36 of the
5 Oklahoma Statutes.

6 F. Any security ~~held~~ released by the Commissioner to the Self-
7 insurance Guaranty Fund may be used to make a payment to or on
8 behalf of a covered employee provided the following requirements are
9 met:

10 1. The covered employee sustained an occupational injury that
11 is covered by the qualified employer's benefit plan;

12 2. The covered employee's claim for payment of a specific
13 medical or wage replacement benefit amount has been accepted by the
14 plan administrator of the benefit plan or acknowledged in a final
15 judgment or court order assessing a specific dollar figure for
16 benefits payable under the benefit plan;

17 3. The covered employee is unable to receive payment from the
18 benefit plan or collect on such judgment or court order because the
19 qualified employer has filed for bankruptcy or the benefit plan has
20 become insolvent; and

21 4. The covered employee is listed as an unsecured creditor of
22 the qualified employer because of the acceptance of such claim by
23 the plan administrator of the benefit plan or judgment or court
24

1 order assessing a specific dollar figure for benefits payable under
2 the benefit plan.

3 G. The Commissioner shall promulgate rules to carry out the
4 provisions of this section including those establishing the
5 procedure ~~by which a covered employee may request and receive~~
6 ~~payment from the security held by the Commissioner~~ to determine
7 whether or not a qualified employer's program is self-insured
8 pursuant to the Oklahoma Employee Injury Benefit Act.

9 H. The benefit plan may provide some level of benefits for
10 sickness, injury or death not due to an occupational injury.

11 I. A qualified employer shall hold harmless any insurance agent
12 or broker who sold the employer a benefits program compliant with
13 the Oklahoma Employee Injury Benefit Act if the qualified employer
14 is sued ~~in district court~~ for an injury arising in the course and
15 scope of employment.

16 J. Except as provided in Section 203 of this title, documents,
17 materials, financial reports, or other information in the possession
18 or control of the Insurance Department that are obtained by or
19 disclosed by the Commissioner or any other person in the course of
20 an evaluation, examination, investigation, or review made pursuant
21 to Section 202, 203 or 204 of this title shall be confidential by
22 law and shall not be subject to discovery or admissible in evidence
23 in any private civil action if obtained from the Commissioner or any
24 employees of the Commissioner.

1 K. The provisions of Section 29 of this title shall not apply
2 to self-insured qualified employers, third-party administrators in
3 the handling of claims pursuant to the Oklahoma Employee Injury
4 Benefit Act in Oklahoma, or to insurance coverage of qualified
5 employers pursuant to the Oklahoma Employee Injury Benefit Act in
6 Oklahoma.

7 L. No provision of the Administrative Workers' Compensation Act
8 pertaining to the Multiple Injury Trust Fund is applicable to
9 qualified employers under the Oklahoma Employee Injury Benefit Act
10 or to insurance coverage of qualified employers under the Oklahoma
11 Employee Injury Benefit Act.

12 SECTION 8. AMENDATORY Section 112, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2014, Section 205), is amended to read as
14 follows:

15 Section 205. A. ~~There are established within the Office of the~~
16 ~~State Treasurer two separate funds:~~

- 17 1. ~~The Oklahoma Option Insured Guaranty Fund,~~ and
18 2. ~~The the~~ the Oklahoma Option Self-insured Guaranty Fund are
19 hereby abolished.

20 B. ~~The~~ Any monies in the funds established abolished pursuant
21 to subsection A of this section shall be ~~for the purpose of~~
22 ~~continuation of benefits under this act for covered claims that are~~
23 ~~due and unpaid or interrupted due to the inability of the insurer or~~
24 ~~sponsor of a self-insured plan, as applicable, to meet its~~

1 ~~compensation obligations because its financial resources, security~~
2 ~~deposit, guaranty agreements, surety agreements and excess insurance~~
3 ~~are either inadequate or not immediately accessible for the payment~~
4 ~~of benefits. Monies in such funds, including interest, are not~~
5 ~~subject to appropriation and shall be expended to compensate~~
6 ~~employees for eligible benefits for a compensable injury under this~~
7 ~~act, pay outstanding workers' compensation obligations of the~~
8 ~~impaired insurer, and for all claims for related administrative~~
9 ~~fees, operating costs, attorney fees, and other costs reasonably~~
10 ~~incurred by the Oklahoma Property and Casualty Guaranty Association~~
11 ~~in the performance of its duties under this act. Expenditures from~~
12 ~~such funds shall be made on warrants issued by the State Treasurer~~
13 ~~against claims as prescribed by law. Such funds shall be subject to~~
14 ~~audit the same as state funds and accounts, the cost for which shall~~
15 ~~be paid for from the funds. A "covered claim" has the meaning given~~
16 ~~to it pursuant to paragraph 7 of Section 2004 of Title 36 of the~~
17 ~~Oklahoma Statutes.~~

18 ~~C. The funds established under this section shall be~~
19 ~~administered, disbursed, and invested under the direction of the~~
20 ~~Oklahoma Property and Casualty Insurance Guaranty Association~~
21 ~~established by Section 2005 of Title 36 of the Oklahoma Statutes.~~

22 ~~D. The funds established under this section shall be funded~~
23 ~~from the following sources:~~

24 ~~1. Insured Guaranty Fund:~~

1 ~~Until the Insured Guaranty Fund contains Two Million Dollars~~
2 ~~(\$2,000,000.00) or if the amount in the fund falls below One Million~~
3 ~~Dollars (\$1,000,000.00), each insurer shall be assessed a fee equal~~
4 ~~to two percent (2%) of all gross direct premiums written during each~~
5 ~~quarter of the calendar year for insurance covering a benefit plan~~
6 ~~under this act after deducting from such gross direct premiums,~~
7 ~~return premiums, unabsorbed portions of any deposit premiums, policy~~
8 ~~dividends, safety refunds, savings and other similar returns paid or~~
9 ~~credited to policyholders. The assessment shall be paid to the~~
10 ~~Insured Guaranty Fund, care of the Commission, no later than the~~
11 ~~fifteenth day of the month following the close of each quarter of~~
12 ~~the calendar year in which the gross direct premium is collected or~~
13 ~~collectible. No insurer may be assessed in any year an amount~~
14 ~~greater than two percent (2%) of the net direct written premiums of~~
15 ~~that insurer or one percent (1%) of that surplus of the insurer as~~
16 ~~regards policyholders for the calendar year preceding the assessment~~
17 ~~on the kinds of insurance in the account, whichever is less; and~~

18 ~~2. Self-insured Guaranty Fund:~~

19 ~~Until the Self-insured Guaranty Fund contains One Million~~
20 ~~Dollars (\$1,000,000.00) or if the amount in the fund falls below~~
21 ~~Seven Hundred Fifty Thousand Dollars (\$750,000.00), each self-~~
22 ~~insurer shall be assessed a fee at the rate of one percent (1%) of~~
23 ~~the total compensation for permanent partial disability awards paid~~
24 ~~out during each quarter of the calendar year by the employers. The~~

1 ~~fee shall be paid to the Self-insured Guaranty Fund, care of the~~
2 ~~Commission, no later than the fifteenth day of the month following~~
3 ~~the close of each quarter of the calendar year. The fee shall be~~
4 ~~determined using a rate equal to the proportion that the deficiency~~
5 ~~in the fund attributable to self-insurers bears to the actual paid~~
6 ~~losses of all self-insurers for the preceding calendar year. Each~~
7 ~~self-insurer shall provide the Commission with the information~~
8 ~~necessary to determine the amount of the fee to be assessed.~~

9 ~~E. The Guaranty Association shall create a separate account for~~
10 ~~each fund which may not be commingled with any other account managed~~
11 ~~by the Guaranty Association.~~

12 ~~F. On determination by the Commission that a self-insurer has~~
13 ~~become an impaired insurer, the Commission shall release the~~
14 ~~security required by paragraph 2 of subsection B of Section 111 of~~
15 ~~this act and advise the Guaranty Association of the impairment.~~
16 ~~Claims administration, including processing, investigating and~~
17 ~~paying valid claims against an impaired self-insurer under this act,~~
18 ~~may include payment by the surety that issued the surety bond or be~~
19 ~~under a contract between the Commission and an insurance carrier,~~
20 ~~appropriate state governmental entity or an approved service~~
21 ~~organization.~~

22 ~~G. The Guaranty Association shall be a party in interest in all~~
23 ~~proceedings involving any claims for benefits under this act with~~
24 ~~respect to an impaired insurer and shall have all rights of~~

1 ~~subrogation of the impaired insurer. In those proceedings, the~~
2 ~~Guaranty Association may assume and exercise all rights and defenses~~
3 ~~of the impaired insurer, including, but not limited to, the right~~
4 ~~to:~~

5 1. ~~Appear, defend and appeal claims;~~

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

8 3. ~~Investigate, handle and contest claims.~~

9 H. ~~The Guaranty Association may also:~~

10 1. ~~Retain persons necessary to handle claims and perform other~~
11 ~~duties of the Guaranty Association;~~

12 2. ~~Sue or be sued;~~

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

15 4. ~~Exercise any other powers necessary to perform its duties~~
16 ~~under this act.~~

17 I. ~~No monies deposited to the funds shall be subject to any~~
18 ~~deduction, tax, levy or any other type of assessment.~~

19 J. ~~An impaired self-insurer shall be exempt from assessments~~
20 ~~until it is no longer impaired.~~

21 K. ~~Unless provided otherwise in this act, all fines and~~
22 ~~penalties assessed under this act shall be paid to the Commission~~
23 ~~for deposit into the funds established in this section in equal~~
24 ~~amounts transferred to the Self-insurance Guaranty Fund.~~

1 C. Every self-insured qualified employer shall be subject to
2 all provisions of Title 85A of the Oklahoma Statutes establishing
3 and governing the operations of the Self-insurance Guaranty Fund.
4 Assessments paid by self-insured, qualified employers into the Self-
5 insurance Guaranty Fund shall be for the purpose of continuation of
6 benefits under the Oklahoma Employee Injury Benefit Act for covered
7 claims that are due and unpaid or interrupted due to the inability
8 of the insurer or sponsor of a self-insured plan, as applicable, to
9 meet its compensation obligations because its financial resources,
10 security deposit, guaranty agreements, surety agreements and excess
11 insurance are either inadequate or not immediately accessible for
12 the payment of benefits. The Workers' Compensation Commission shall
13 have the authority to promulgate rules to carry out the provisions
14 of this section.

15 SECTION 9. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 206.1 of Title 85A unless there
17 is created a duplication in numbering, reads as follows:

18 A. In the event that the insurer of benefit obligations of an
19 insured qualified employer shall be a member of the Oklahoma
20 Property and Casualty Insurance Guaranty Association and is
21 determined by a court of competent jurisdiction to be an insolvent
22 insurer pursuant to Articles 18 and 19 of Title 36 of the Oklahoma
23 Statutes and a final order of liquidation is entered, the provisions
24 of Article 20A of Title 36 of the Oklahoma Statutes, the Oklahoma

1 Property and Casualty Insurance Guaranty Association Act, shall
2 become applicable for the purpose of continuation of benefits under
3 the Oklahoma Employee Injury Benefit Act. For purposes of Article
4 20A of Title 36 of the Oklahoma Statutes, all net direct premiums
5 written for insurance covering in whole or in part the benefit
6 obligations of such an insured qualified employer under the Oklahoma
7 Employee Injury Benefit Act shall be deemed to be workers'
8 compensation insurance premiums.

9 B. In the event that the insurer of benefit obligations of an
10 insured employer shall be a member insurer of the Oklahoma Life and
11 Health Insurance Guaranty Association and is determined by a court
12 of competent jurisdiction to be an insolvent insurer pursuant to
13 Articles 18 and 19 of Title 36 of the Oklahoma Statutes and a final
14 order of liquidation is entered, the provisions of Article 20B of
15 Title 36 of the Oklahoma Statutes, the Oklahoma Life and Health
16 Insurance Guaranty Association Act, shall become applicable for the
17 purpose of continuation of benefits under the Oklahoma Employee
18 Injury Benefit Act. For purposes of Article 20B of Title 36 of the
19 Oklahoma Statutes, all premiums received on business in this state
20 for insurance covering the benefit obligations of such an insured
21 qualified employer under the Oklahoma Employee Injury Benefit Act
22 shall be deemed to be life and health insurance premiums.

23 C. The Commissioner shall have the authority to promulgate
24 rules to carry out the provisions of this section.

1 SECTION 10. AMENDATORY Section 118, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2014, Section 211), is amended to read as
3 follows:

4 Section 211. A. If an employer denies a claimant's claim for
5 benefits under ~~this act~~ the Oklahoma Employee Injury Benefit Act,
6 the employer shall notify him or her in writing of the decision or
7 the need for additional information within fifteen (15) days after
8 receipt of the claim. Unless otherwise provided by law, the adverse
9 benefit determination letter shall contain an explanation of why the
10 claim was denied, including the plan provisions that were the basis
11 for the denial, and a detailed description of how to appeal the
12 determination. Additional claim procedures consistent with this
13 section may be specified in the benefit plan and by the Commission.
14 References in this section to a decision on a claim for benefits by
15 an employer shall include a decision on a claim for benefits by an
16 insurance company or claims administrator on behalf of an employer.

17 B. The benefit plan shall provide the following minimum appeal
18 rights:

19 1. The claimant may appeal in writing an initial adverse
20 benefit determination to a final review officer or an appeals
21 committee within one hundred eighty (180) days following his or her
22 receipt of the adverse benefit determination. The appeal shall be
23 heard by a final review officer or committee consisting of at least
24 three people that were not involved in the original adverse benefit

1 determination. The appeals committee shall not give any deference
2 to the claimant's initial adverse benefit determination in its
3 review;

4 2. The final review officer or committee may request any
5 additional information it deems necessary to make a decision,
6 including having the claimant submit to a medical exam;

7 3. The final review officer or committee shall notify the
8 claimant in writing of its decision, including an explanation of the
9 decision and his or her right to judicial review;

10 4. Subject to the need for a reasonable extension of time due
11 to matters beyond the control of the benefit plan, the final review
12 officer or committee shall review the determination and issue a
13 decision no later than forty-five (45) days from the date the notice
14 of contest is received. No legal action may be brought by or with
15 respect to a claimant to recover benefits under the benefit plan
16 before the foregoing claim procedures have been exhausted;

17 5. If any part of an adverse benefit determination is upheld by
18 the final review officer or committee, the claimant may then file a
19 petition for review with the Commission ~~sitting en banc~~ within one
20 (1) year after the date the claimant receives notice that the
21 adverse benefit determination, or part thereof, was upheld. The
22 Commission ~~en banc~~ shall appoint an administrative law judge to hear
23 any appeal of an adverse benefit determination. The administrative
24 law judge shall not give any deference to the qualified employer's

1 adverse benefit determination. The Commission shall prescribe
2 additional rules governing the authority and responsibility of the
3 parties, the administrative law judge and the Commission during
4 these appeal processes, including, but not limited to, filing fees.
5 The administrative law judge and Commission shall act as the court
6 of competent jurisdiction under Oklahoma Law and 29 U.S.C.A. Section
7 1132(e)(1), and shall possess adjudicative authority to render
8 decisions in individual proceedings by claimants to recover benefits
9 due to the claimant under the terms of the ~~claimant's~~ employer's
10 plan, to enforce the claimant's rights under the terms of the plan,
11 or to clarify the claimant's rights to future benefits under the
12 terms of the plan;

13 6. ~~The Commission shall rely on the record established by the~~
14 ~~internal appeal process and use an objective standard of review that~~
15 ~~is not arbitrary or capricious~~ Any party aggrieved by the judgment,
16 decision, or award made by an administrative law judge may, within
17 ten (10) days of issuance, appeal to the Commission. After hearing
18 arguments the Commission may reverse or modify the decision of the
19 administrative law judge only if it determines that the decision was
20 against the clear weight of the evidence or contrary to law. All
21 such proceedings of the Commission shall be recorded by a court
22 reporter. Any judgment of the Commission which reverses a decision
23 of the administrative law judge shall contain specific findings
24 relating to the reversal. Any award by the administrative law judge

1 or Commission shall be limited to benefits payable under the terms
2 of the benefit plan and, to the extent provided herein, attorney
3 fees and costs; and

4 7. ~~If the claimant appeals to the Commission and any part of~~
5 ~~the adverse benefit determination is upheld, he or she may appeal to~~
6 ~~the Oklahoma Supreme Court~~ The judgment, decision or award of the
7 Commission shall be final and conclusive on all questions within its
8 jurisdiction between the parties unless an action is commenced in
9 the Supreme Court of this state to review the judgment, decision or
10 award within twenty (20) days of being sent to the parties. Any
11 judgment, decision or award made by an administrative law judge
12 shall be stayed until all appeal rights have been waived or
13 exhausted. The Supreme Court may modify, reverse, remand for
14 rehearing, or set aside the judgment or award only if it was:

- 15 a. in violation of constitutional provisions,
- 16 b. in excess of the statutory authority or jurisdiction
17 of the Commission,
- 18 c. made on unlawful procedure,
- 19 d. affected by other error of law,
- 20 e. clearly erroneous in view of the reliable, material,
21 probative and substantial competent evidence,
- 22 f. arbitrary or capricious,
- 23 g. procured by fraud, or

24

1 h. missing findings of fact on issues essential to the
2 decision.

3 This action shall be commenced by filing with the Clerk of the
4 Supreme Court a certified copy of the judgment, decision or award of
5 the Commission attached to a petition which shall specify why the
6 judgment, decision or award is ~~contrary to law within twenty (20)~~
7 ~~days of the decision being issued.~~ The Supreme Court may modify,
8 ~~reverse, remand for rehearing, or set aside the decision only if the~~
9 ~~decision was contrary to law~~ erroneous or illegal. The proceedings
10 shall be heard in a summary manner and shall have precedence over
11 all other civil cases in the Supreme Court, except preferred
12 Corporation Commission appeals. The Supreme Court shall require the
13 ~~claimant~~ appealing party to file within forty-five (45) days from
14 the date of the filing of an appeal, or a judgment appealed from, a
15 transcript of the record of the proceedings before the Commission,
16 or such later time as may be granted by the Supreme Court on
17 application and for good cause shown. The action shall be subject
18 to the law and practice applicable to comparable civil actions
19 cognizable in the Supreme Court.

20 C. If any of the provisions in paragraphs 5 through 7 of
21 subsection B of this section are determined to be unconstitutional
22 or otherwise unenforceable by the final nonappealable ruling of a
23 court of competent jurisdiction, then the following minimal appeal
24 procedures will go into effect:

1 1. The appeal shall be heard by a final review officer or
2 committee consisting of at least three people ~~that were not.~~ No
3 final review officer or member of such committee shall be involved
4 in the original adverse benefit determination or be an employee of
5 the employer sponsoring the benefit plan. The final review officer
6 or appeals committee shall not give any deference to the claimant's
7 initial adverse benefit determination in its review;

8 2. ~~The~~ A final review officer or the committee may request any
9 additional information it deems necessary to make a decision,
10 including having the claimant submit to a medical exam;

11 3. ~~The~~ A final review officer or the committee shall notify the
12 claimant in writing of its decision, including an explanation of the
13 decision and his or her right to judicial review;

14 4. ~~The~~ A final review officer or the committee shall review the
15 determination and issue a decision no later than forty-five (45)
16 days from the date the notice of contest is received;

17 5. If any part of an adverse benefit determination is upheld by
18 a final review officer or the committee, the claimant may then file
19 a petition for review in a proper state district court; and

20 6. The district court shall ~~rely on the record established by~~
21 ~~the internal appeal process and use a deferential standard of review~~
22 not give any deference to the claimant's initial adverse benefit
23 determination in its review.

24

1 D. The provisions of this section shall apply to the extent not
2 inconsistent with or preempted by any other applicable law or rule.

3 E. All intentional tort or other employers' liability claims
4 may proceed through the appropriate state courts of Oklahoma,
5 mediation, arbitration, or any other form of alternative dispute
6 resolution or settlement process available by law.

7 SECTION 11. AMENDATORY Section 119, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2014, Section 212), is amended to read as
9 follows:

10 Section 212. ~~This act~~ The Oklahoma Employee Injury Benefit Act
11 shall be ~~liberally~~ strictly construed ~~to give the fullest effect of~~
12 ~~its provisions~~ by the Insurance Commissioner, the Workers'
13 Compensation Commission and any court. Any conflict between this
14 act and any other law shall be resolved in favor of the operation of
15 this act.

16 SECTION 12. REPEALER Sections 113, 114 and 115, Chapter
17 208, O.S.L. 2013 (85A O.S. Supp. 2014, Sections 206, 207 and 208),
18 are hereby repealed.

19 SECTION 13. This act shall become effective November 1, 2015.
20
21
22
23
24

1 Passed the House of Representatives the 4th day of March, 2015.

2
3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2015.

6
7
8 _____
9 Presiding Officer of the Senate