

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2837 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Jon Echols _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2837

By: Echols

7
8 PROPOSED COMMITTEE SUBSTITUTE

9 An Act relating to workers' compensation; amending
10 Sections 2, 3, 7, 17, 18, 21, 29 and 78, Chapter 208,
11 O.S.L. 2013 (85A O.S. Supp. 2015, Sections 2, 3, 7,
12 17, 18, 21, 29 and 78), which relate to the
13 Administrative Workers' Compensation Act; modifying
14 definitions; modifying applicability of the
15 Administrative Workers' Compensation Act; providing
16 for compensatory damages for discrimination or
17 retaliation; removing obsolete reference to
18 CompSource Oklahoma; expanding methods of providing
19 actual notice; clarifying that certain fees are
20 annual fees; authorizing assessment of fee for
21 marketing firms; modifying appeals process; and
22 providing an effective date.

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

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

4 2. "Carrier" means any stock company, mutual company, or
5 reciprocal or interinsurance exchange authorized to write or carry
6 on the business of workers' compensation insurance in this state.
7 Whenever required by the context, the term "carrier" shall be deemed
8 to include duly qualified self-insureds or self-insured groups;

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

19 4. "Case manager" means a person who is a registered nurse with
20 a current, active unencumbered license from the Oklahoma Board of
21 Nursing, or possesses one or more of the following certifications
22 which indicate the individual has a minimum number of years of case
23 management experience, has passed a national competency test and
24

1 regularly obtains continuing education hours to maintain
2 certification:

- 3 a. Certified Disability Management Specialist (CDMS),
- 4 b. Certified Case Manager (CCM),
- 5 c. Certified Rehabilitation Registered Nurse (CRRN),
- 6 d. Case Manager - Certified (CMC),
- 7 e. Certified Occupational Health Nurse (COHN), or
- 8 f. Certified Occupational Health Nurse Specialist (COHN-
9 S);

10 5. "Certified workplace medical plan" means an organization of
11 health care providers or any other entity, certified by the State
12 Commissioner of Health, that is authorized to enter into a
13 contractual agreement with an employer, group self-insurance
14 association plan, an employer's workers' compensation insurance
15 carrier, third-party administrator or an insured to provide medical
16 care under the Administrative Workers' Compensation Act. Certified
17 plans shall only include plans which provide medical services and
18 payment for services on a fee-for-service basis to medical
19 providers;

20 6. "Child" means a natural or adopted son or daughter of the
21 employee under eighteen (18) years of age; or a natural or adopted
22 son or daughter of an employee eighteen (18) years of age or over
23 who is physically or mentally incapable of self-support; or any
24 natural or adopted son or daughter of an employee eighteen (18)

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

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

12 8. "Commission" means the Workers' Compensation Commission, the
13 executive agency established pursuant to Section 19 of this title,
14 unless a plain reading of a section of law indicates the reference
15 means the individual members of the Workers' Compensation
16 Commission;

17 9. a. "Compensable injury" means damage or harm to the
18 physical structure of the body, or prosthetic
19 appliances, including eyeglasses, contact lenses, or
20 hearing aids, caused solely as the result of either an
21 accident, cumulative trauma or occupational disease
22 arising out of the course and scope of employment. An
23 "accident" means an event involving factors external
24 to the employee that:

- 1 (1) was unintended, unanticipated, unforeseen,
2 unplanned and unexpected,
- 3 (2) occurred at a specifically identifiable time and
4 place,
- 5 (3) occurred by chance or from unknown causes, and
- 6 (4) was independent of sickness, mental incapacity,
7 bodily infirmity or any other cause.

8 b. "Compensable injury" does not include:

- 9 (1) injury to any active participant in assaults or
10 combats which, although they may occur in the
11 workplace, are the result of non-employment-
12 related hostility or animus of one, both, or all
13 of the combatants and which assault or combat
14 amounts to a deviation from customary duties;
15 provided, however, injuries caused by horseplay
16 shall not be considered to be compensable
17 injuries, except for innocent victims,
- 18 (2) injury incurred while engaging in or performing
19 or as the result of engaging in or performing any
20 recreational or social activities for the
21 employee's personal pleasure,
- 22 (3) injury which was inflicted on the employee at a
23 time when employment services were not being
24

1 performed or before the employee was hired or
2 after the employment relationship was terminated,
3 (4) injury where the accident was caused by the use
4 of alcohol, illegal drugs, or prescription drugs
5 used in contravention of physician's orders. If,
6 within twenty-four (24) hours of being injured or
7 reporting an injury, an employee tests positive
8 for intoxication, an illegal controlled
9 substance, or a legal controlled substance used
10 in contravention to a treating physician's
11 orders, or refuses to undergo the drug and
12 alcohol testing, there shall be a rebuttable
13 presumption that the injury was caused by the use
14 of alcohol, illegal drugs, or prescription drugs
15 used in contravention of physician's orders.
16 This presumption may only be overcome if the
17 employee proves by clear and convincing evidence
18 that his or her state of intoxication had no
19 causal relationship to the injury,
20 (5) any strain, degeneration, damage or harm to, or
21 disease or condition of, the eye or
22 musculoskeletal structure or other body part
23 resulting from the natural results of aging,
24 osteoarthritis, arthritis, or degenerative

1 process including, but not limited to,
2 degenerative joint disease, degenerative disc
3 disease, degenerative
4 spondylosis/spondylolisthesis and spinal
5 stenosis, or

6 (6) any preexisting condition except when the
7 treating physician clearly confirms an
8 identifiable and significant aggravation incurred
9 in the course and scope of employment.

10 c. The definition of "compensable injury" shall not be
11 construed to limit or abrogate the right to recover
12 for mental injuries as described in Section 13 of this
13 ~~act~~ title, heart or lung injury or illness as
14 described in Section 14 of this ~~act~~ this title, or
15 occupational diseases as described in Section 65 of
16 this ~~act~~ title.

17 d. A compensable injury shall be established by medical
18 evidence supported by objective findings as defined in
19 paragraph ~~30~~ 31 of this section.

20 e. The injured employee shall prove by a preponderance of
21 the evidence that he or she has suffered a compensable
22 injury.

23 f. Benefits shall not be payable for a condition which
24 results from a non-work-related independent

1 intervening cause following a compensable injury which
2 causes or prolongs disability, aggravation, or
3 requires treatment. A non-work-related independent
4 intervening cause does not require negligence or
5 recklessness on the part of a claimant.

6 g. An employee who suffers a compensable injury shall be
7 entitled to receive compensation as prescribed in this
8 act. Notwithstanding other provisions of law, if it
9 is determined that a compensable injury did not occur,
10 the employee shall not be entitled to compensation
11 under ~~this act~~ the Administrative Workers'
12 Compensation Act;

13 10. "Compensation" means the money allowance payable to the
14 employee or to his or her dependents and includes the medical
15 services and supplies provided for in Section 50 of this ~~act~~ title
16 and funeral expenses;

17 11. "Consequential injury" means injury or harm to a part of
18 the body that is a direct result of the injury or medical treatment
19 to the part of the body originally injured in the claim. The
20 Commission shall not make a finding of a consequential injury unless
21 it is established by objective medical evidence that medical
22 treatment for such part of the body is required;

23 12. "Continuing medical maintenance" means medical treatment
24 that is reasonable and necessary to maintain claimant's condition

1 resulting from the compensable injury or illness after reaching
2 maximum medical improvement. Continuing medical maintenance shall
3 not include diagnostic tests, surgery, injections, counseling,
4 physical therapy, or pain management devices or equipment;

5 13. "Course and scope of employment" means an activity of any
6 kind or character for which the employee was hired and that relates
7 to and derives from the work, business, trade or profession of an
8 employer, and is performed by an employee in the furtherance of the
9 affairs or business of an employer. The term includes activities
10 conducted on the premises of an employer or at other locations
11 designated by an employer and travel by an employee in furtherance
12 of the affairs of an employer that is specifically directed by the
13 employer. This term does not include:

- 14 a. an employee's transportation to and from his or her
15 place of employment,
- 16 b. travel by an employee in furtherance of the affairs of
17 an employer if the travel is also in furtherance of
18 personal or private affairs of the employee,
- 19 c. any injury occurring in a parking lot or other common
20 area adjacent to an employer's place of business
21 before the employee clocks in or otherwise begins work
22 for the employer or after the employee clocks out or
23 otherwise stops work for the employer, or
24

1 d. any injury occurring while an employee is on a work
2 break, unless the injury occurs while the employee is
3 on a work break inside the employer's facility and the
4 work break is authorized by the employee's supervisor;

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

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

17 16. "Disability" means incapacity because of compensable injury
18 to earn, in the same or any other employment, substantially the same
19 amount of wages the employee was receiving at the time of the
20 compensable injury;

21 17. "Drive-away operations" includes every person engaged in
22 the business of transporting and delivering new or used vehicles by
23 driving, either singly or by towbar, saddle-mount or full-mount
24

1 method, or any combination thereof, with or without towing a
2 privately owned vehicle;

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

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

23 (1) any person for whom an employer is liable under
24 any Act of Congress for providing compensation to

1 employees for injuries, disease or death arising
2 out of and in the course of employment including,
3 but not limited to, the Federal Employees'
4 Compensation Act, the Federal Employers'
5 Liability Act, the Longshore and Harbor Workers'
6 Compensation Act and the Jones Act, to the extent
7 his or her employees are subject to such acts,

8 (2) any person who is employed in agriculture or
9 horticulture by an employer who had a gross
10 annual payroll in the preceding calendar year of
11 less than One Hundred Thousand Dollars

12 (\$100,000.00) wages for agricultural or
13 horticultural workers, or any person who is
14 employed in agriculture or horticulture who is
15 not engaged in operation of motorized machines,

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

18 (4) any person who is providing services in a medical
19 care or social services program, or who is a
20 participant in a work or training program,
21 administered by the Department of Human Services,
22 unless the Department is required by federal law
23 or regulations to provide workers' compensation
24

1 for such person. This division shall not be
2 construed to include nursing homes,

3 (5) any person employed by an employer with five or
4 fewer total employees, all of whom are related
5 within the second degree by blood or marriage to
6 the employer, or a dependent living in the
7 household of the employer if the employer is a
8 natural person ~~or~~, a general or limited
9 partnership, or an incorporator of a corporation
10 or a limited liability company formed under the
11 law of this state or the law of another state, if
12 the corporation or the limited liability company
13 is the employer,

14 (6) any person employed by an employer which is a
15 youth sports league which qualifies for exemption
16 from federal income taxation pursuant to federal
17 law,

18 (7) sole proprietors, members of a partnership,
19 individuals who are party to a franchise
20 agreement as set out by the Federal Trade
21 Commission franchise disclosure rule, 16 CFR
22 436.1 through 436.11, members of a limited
23 liability company who own at least ten percent
24 (10%) of the capital of the limited liability

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

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

14 (9) a person, commonly referred to as an owner-
15 operator, who owns or leases a truck-tractor or
16 truck for hire, if the owner-operator actually
17 operates the truck-tractor or truck and if the
18 person contracting with the owner-operator is not
19 the lessor of the truck-tractor or truck.

20 Provided, however, an owner-operator shall not be
21 precluded from workers' compensation coverage
22 under the Administrative Workers' Compensation
23 Act if the owner-operator elects to participate
24 as a sole proprietor,

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

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

19 19. "Employer" means a person, partnership, association,
20 limited liability company, corporation, and the legal
21 representatives of a deceased employer, or the receiver or trustee
22 of a person, partnership, association, corporation, or limited
23 liability company, departments, instrumentalities and institutions
24 of this state and divisions thereof, counties and divisions thereof,

1 public trusts, boards of education and incorporated cities or towns
2 and divisions thereof, employing a person included within the term
3 "employee" as defined in this section. Employer may also mean the
4 employer's workers' compensation insurance carrier, if applicable.
5 Except as provided otherwise, this act applies to all public and
6 private entities and institutions. Employer shall not include a
7 qualified employer with an employee benefit plan as provided under
8 the Oklahoma Employee Injury Benefit Act in Sections ~~107~~ 200 through
9 ~~120~~ 213 of this ~~act~~ title;

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

14 21. "Evidence-based" means expert-based, literature-supported
15 and outcomes_validated by well-designed randomized trials when such
16 information is available and which uses the best available evidence
17 to support medical decision_making;

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

21 23. "Impaired self-insurer" means a private self-insurer or
22 group self-insurance association that fails to pay its workers'
23 compensation obligations, or is financially unable to do so and is
24 the subject of any proceeding under the Federal Bankruptcy Reform

1 Act of 1978, and any subsequent amendments or is the subject of any
2 proceeding in which a receiver, custodian, liquidator,
3 rehabilitator, trustee or similar officer has been appointed by a
4 court of competent jurisdiction to act in lieu of or on behalf of
5 the self-insurer;

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

8 25. "Insurance Commissioner" means the Insurance Commissioner
9 of the State of Oklahoma;

10 26. "Insurance Department" means the Insurance Department of
11 the State of Oklahoma;

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

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

23 29. "Medical services" means those services specified in
24 Section 50 of this ~~act~~ title;

1 30. "Misconduct" shall include the following:

- 2 a. unexplained absenteeism or tardiness,
- 3 b. willful or wanton indifference to or neglect of the
- 4 duties required,
- 5 c. willful or wanton breach of any duty required by the
- 6 employer,
- 7 d. the mismanagement of a position of employment by
- 8 action or inaction,
- 9 e. actions or omissions that place in jeopardy the
- 10 health, life, or property of self or others,
- 11 f. dishonesty,
- 12 g. wrongdoing,
- 13 h. violation of a law, or
- 14 i. a violation of a policy or rule adopted to ensure
- 15 orderly work or the safety of self or others;

16 31. a. (1) "Objective findings" are those findings which

17 cannot come under the voluntary control of the

18 patient.

- 19 (2) (a) When determining permanent disability, a
- 20 physician, any other medical provider, an
- 21 administrative law judge, the Commission or
- 22 the courts shall not consider complaints of
- 23 pain.

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

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

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

22 b. Medical opinions addressing compensability and
23 permanent disability shall be stated within a
24 reasonable degree of medical certainty;

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

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

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

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

23 36. "Preexisting condition" means any illness, injury, disease,
24 or other physical or mental condition, whether or not work-related,

1 for which medical advice, diagnosis, care or treatment was
2 recommended or received preceding the date of injury;

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

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

13 39. "Prosthetic" means an artificial device used to replace a
14 part or joint of the body that is lost or injured in an accident or
15 illness covered by ~~this act~~ the Administrative Workers' Compensation
16 Act;

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

21 41. "Scientifically based" involves the application of
22 rigorous, systematic, and objective procedures to obtain reliable
23 and valid knowledge relevant to medical testing, diagnoses and
24 treatment; is adequate to justify the general conclusions drawn; and

1 has been accepted by a peer-review journal or approved by a panel of
2 independent experts through a comparably rigorous, objective, and
3 scientific review;

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

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

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

14 45. "Surviving spouse" means the employee's spouse by reason of
15 a legal marriage recognized by the State of Oklahoma or under the
16 requirements of a common-law marriage in this state, as determined
17 by the Workers' Compensation Commission;

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

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

24

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

8 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2015, Section 3), is amended to read as
10 follows:

11 Section 3. A. Every employer ~~and every employee, unless~~
12 ~~otherwise specifically provided in this act, shall be~~ subject to and
13 ~~bound to~~ by the provisions of the Administrative Workers'
14 Compensation Act shall pay or provide benefits according to the
15 provisions of this title for the accidental injury or death of an
16 employee arising out of and in the course of his or her employment,
17 without regard to fault for the injury or death, if the employee's
18 contract of employment was made or if the injury or death occurred
19 within this state. If an employee or employee's representative
20 makes claim for injury or death that occurred in another
21 jurisdiction and a final adjudication is entered in the case, the
22 employee or employee's representative is precluded from bringing an
23 action under the Administrative Workers' Compensation Act. If the
24 employee or employee's representative brings an action in this state

1 prior to a final adjudication in another jurisdiction, any receipt
2 of benefits in the other jurisdiction shall not bar the action in
3 this state; provided, however, in no event shall the Workers'
4 Compensation Commission grant benefits that duplicate those paid by
5 the employer or insurance carrier in the other jurisdiction.

6 ~~However, nothing~~ Nothing in this ~~act~~ title shall be construed to
7 conflict with any valid Act of Congress governing the liability of
8 employers for injuries received by their employees.

9 B. This ~~act~~ state accepts the provisions of the Act of Congress
10 designated as 40 U.S.C., Section 3172, and hereby extends the
11 territorial jurisdiction of the Administrative Workers' Compensation
12 Act to all lands and premises within the exterior boundaries of this
13 state which the Government of the United States of America owns or
14 holds by deed or act of cession, and all purchases, projects,
15 buildings, constructions, improvements and property within the
16 exterior boundaries of this state belonging to the federal
17 government, in the same way and to the same extent as if the
18 premises were under the exclusive jurisdiction of this state,
19 subject only to the limitations placed thereon by Congress.

20 C. The Administrative Workers' Compensation Act shall apply
21 only to claims for injuries and death based on accidents which occur
22 on or after ~~the effective date of this act~~ February 1, 2014.

23 ~~C. D.~~ D. The Workers' Compensation Code in effect before the
24 ~~effective date of this act~~ February 1, 2014, shall govern all rights

1 in respect to claims for injuries and death based on accidents
2 occurring before ~~the effective date of this act~~ February 1, 2014.

3 SECTION 3. AMENDATORY Section 7, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2015, Section 7), is amended to read as
5 follows:

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

- 8 1. Filed a claim under this ~~act~~ title;
- 9 2. Retained a lawyer for representation regarding a claim under
10 this ~~act~~ title;
- 11 3. Instituted or caused to be instituted any proceeding under
12 the provisions of this ~~act~~ title; or
- 13 4. Testified or is about to testify in any proceeding under the
14 provisions of this ~~act~~ title.

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

17 C. ~~If the Commission determines that the defendant violated~~
18 ~~subsection A of this section, the Commission may award the employee~~
19 ~~back pay up to a maximum of One Hundred Thousand Dollars~~
20 ~~(\$100,000.00)~~ An employer that is determined by a district court of
21 this state to have violated any provision of this section shall be
22 liable for reasonable compensatory damages suffered by an employee
23 as a result of the violation. Interim earnings or amounts earnable
24

1 with reasonable diligence by the person discriminated against shall
2 reduce the ~~back pay~~ compensatory damages otherwise allowable.

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

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

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

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

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

19 SECTION 4. AMENDATORY Section 17, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2015, Section 17), is amended to read as
21 follows:

22 Section 17. A. There is hereby created a Physician Advisory
23 Committee comprised of nine (9) members to be appointed as follows:

24

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

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

12 3. The Speaker of the House of Representatives shall appoint
13 three members, one of whom shall be licensed in this state as an
14 osteopathic physician, one of whom shall be licensed in this state
15 either as a doctor of medicine or a doctor of osteopathy and shall
16 be engaged in the practice of occupational medicine, and one of whom
17 shall be licensed in this state as a chiropractic physician.

18 Any member serving on the effective date of this section shall
19 serve the remainder of his or her term. Thereafter, each position
20 will be filled by the appointing official for a term of three (3)
21 years. Members shall be subject to reappointment, with any new
22 appointee to serve out the remainder of the unexpired term of the
23 Committee member so replaced.

24 B. The Committee shall:

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

12 2. Assist the Commission in reviewing medical practices of
13 health care providers, including evaluations of permanent disability
14 provided by health care providers. The Committee shall review and
15 make findings and recommendations to the Commission with respect to
16 charges of abusive practices by health care providers providing
17 medical services or evaluations of permanent partial disability
18 through the workers' compensation system;

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

22 4. After public hearing, adopt Physician Advisory Committee
23 Guidelines (PACG) and protocols for only medical treatment not
24

1 addressed by the latest edition of the Official Disability
2 Guidelines;

3 5. After public hearing, adopt Physician Advisory Committee
4 Guidelines for the prescription and dispensing of any controlled
5 substance included in Schedule II of the Uniform Controlled
6 Dangerous Substances Act if not addressed by the current edition of
7 the Official Disability Guidelines;

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

13 7. Provide general recommendations to the Commission on the
14 issues of injury causation and apportionment;

15 8. Conduct educational seminars for the Commission, employers,
16 employees, and other interested parties;

17 9. Assist the Commission in accessing medical information from
18 scientific literature; and

19 10. Report its progress annually to the Governor, the President
20 Pro Tempore of the Senate, and the Speaker of the House of
21 Representatives.

22 C. The Commission shall recognize the latest edition of the
23 Official Disability Guidelines as the primary standard of reference,
24 at the time of treatment, in determining the frequency and extent of

1 services presumed to be medically necessary and appropriate for
2 compensable injuries under ~~this act~~ the Administrative Workers'
3 Compensation Act, or in resolving such matters in the event a
4 dispute arises.

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

10 E. Meetings of the Physician Advisory Committee shall be called
11 by the Commission but held at least quarterly. The presence of a
12 majority of the members shall constitute a quorum. No action shall
13 be taken by the Physician Advisory Committee without the affirmative
14 vote of at least a majority of the members.

15 F. The Commission shall provide office supplies and personnel
16 of the Commission to assist the Committee in the performance of its
17 duties.

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

22 H. Any health care provider acting in good faith and within the
23 scope of the provider's duties as a member of the Physician Advisory
24 Committee shall be immune from civil liability for making any report

1 or other information available to the judges of the Commission or to
2 the Commission or for assisting in the origination, investigation,
3 or preparation of the report or other information so provided.

4 SECTION 5. AMENDATORY Section 18, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2015, Section 18), is amended to read as
6 follows:

7 Section 18. A. No hospital, physician, or other health care
8 provider shall bill or attempt to collect any fee or any portion of
9 a fee for services rendered to an employee due to a work-related
10 injury or report to any credit-reporting agency any failure of the
11 employee to make the payment, when a claim for compensation has been
12 filed under this act and the hospital, physician, or health care
13 provider has received actual notice given in writing by the employee
14 or the employee's representative. Actual notice shall be deemed
15 received by the hospital, physician, or health care provider upon
16 confirmed delivery of a facsimile, email, or other electronic means
17 with confirmation of receipt, or five (5) days after mailing by
18 certified mail by the employee or his or her representative to the
19 hospital, physician, or health care provider.

20 B. The notice shall include:

- 21 1. The name of the employer;
- 22 2. The name of the insurer, if known;
- 23 3. The name of the employee receiving the services;
- 24 4. The general nature of the injury, if known; and

1 5. Where a claim has been filed, the claim number, if known.

2 C. When an injury or bill is found to be noncompensable under
3 ~~this act~~ the Administrative Workers' Compensation Act, the hospital,
4 physician, or other health care provider shall be entitled to pursue
5 the employee for any unpaid portion of the fee or other charges for
6 authorized services provided to the employee. Any applicable
7 statute of limitations for an action for the fees or other charges
8 shall be tolled from the time notice is given to the hospital,
9 physician, or other health care provider until a determination of
10 noncompensability in regard to the injury which is the basis of the
11 services is made, or if there is an appeal, until a final
12 determination of noncompensability is rendered and all appeal
13 deadlines have passed.

14 D. This section shall not avoid, modify, or amend any other
15 section or subsection of ~~this act~~ the Administrative Workers'
16 Compensation Act.

17 E. An order by the Commission under this section shall stay all
18 proceedings for collection.

19 SECTION 6. AMENDATORY Section 21, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2015, Section 21), is amended to read as
21 follows:

22 Section 21. A. Commissioners shall be considered officers and
23 shall take the oath prescribed by the Oklahoma Constitution and the
24 laws of this state.

1 B. 1. A majority of the Workers' Compensation Commission shall
2 constitute a quorum for the transaction of business, and vacancies
3 shall not impair the right of the remaining commissioners to
4 exercise all the powers of the full Commission, so long as a
5 majority remains.

6 2. Any investigation, inquiry, or hearing which the Commission
7 is authorized to hold or undertake may be held or undertaken by or
8 before any one commissioner of the Commission, or appointee acting
9 for him or her, under authorization of the Commission.

10 C. The Commission shall have a seal for authentication of its
11 judgments, awards, and proceedings, on which shall be inscribed the
12 words: "Workers' Compensation Commission, State of Oklahoma".

13 D. Except with respect to the Commission's authority to hear
14 appeals of decisions from administrative law judges other than as
15 provided in subsection B of Section 78 of this title, any reference
16 in ~~this act~~ the Administrative Workers' Compensation Act to the
17 Commission's ability to hear and decide the rights of interested
18 parties under this ~~act~~ title shall not prevent it from delegating
19 that responsibility to an administrative law judge.

20 SECTION 7. AMENDATORY Section 29, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2015, Section 29), is amended to read as
22 follows:

23 Section 29. A. Each carrier writing compensation insurance in
24 this state shall pay to the Workers' Compensation Commission ~~at the~~

1 ~~time of securing a license to transact business in this state an~~
2 ~~annual fee of One Thousand Dollars (\$1,000.00) for the privilege of~~
3 ~~qualifying with the Commission for the writing of compensation~~
4 ~~insurance.~~

5 B. Each self-insurer shall pay to the Commission an annual fee
6 of One Thousand Dollars (\$1,000.00) at the time it is approved to
7 self-insure the obligations under this ~~act~~ title.

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

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

12 SECTION 8. AMENDATORY Section 78, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2015, Section 78), is amended to read as
14 follows:

15 Section 78. A. Any party feeling aggrieved by the judgment,
16 decision, or award made by the administrative law judge may, within
17 ten (10) days of issuance, appeal to the Workers' Compensation
18 Commission. After hearing arguments, the Commission may reverse or
19 modify the decision 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, if requested by any party. Any judgment of the Commission
23 which reverses a decision of the administrative law judge shall
24 contain specific findings relating to the reversal.

1 B. The Chair of the Commission may appoint an administrative
2 law judge to the panel of Commissioners provided for in subsection A
3 of this section to fill a vacancy or in the absence of a
4 Commissioner; provided, the appointed administrative law judge shall
5 not have presided over any previous hearing on the claim.

6 C. The appellant shall pay a filing fee of One Hundred Seventy-
7 five Dollars (\$175.00) to the Commission at the time of filing his
8 or her appeal. The fee shall be deposited in the Workers'
9 Compensation Fund.

10 ~~C.~~ D. The judgment, decision or award of the Commission shall
11 be final and conclusive on all questions within its jurisdiction
12 between the parties unless an action is commenced in the Supreme
13 Court of this state to review the judgment, decision or award within
14 twenty (20) days of being sent to the parties. Any judgment,
15 decision or award made by an administrative law judge shall be
16 stayed until all appeal rights have been waived or exhausted. The
17 Supreme Court may modify, reverse, remand for rehearing, or set
18 aside the judgment or award only if it was:

- 19 1. In violation of constitutional provisions;
- 20 2. In excess of the statutory authority or jurisdiction of the
21 Commission;
- 22 3. Made on unlawful procedure;
- 23 4. Affected by other error of law;

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- 1 5. Clearly erroneous in view of the reliable, material,
- 2 probative and substantial competent evidence;
- 3 6. Arbitrary or capricious;
- 4 7. Procured by fraud; or
- 5 8. Missing findings of fact on issues essential to the
- 6 decision.

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

21 ~~D.~~ E. A fee of One Hundred Dollars (\$100.00) per appeal to the
22 Supreme Court shall be paid to the Commission and deposited in the
23 Workers' Compensation Fund as costs for preparing, assembling,
24 indexing and transmitting the record for appellate review. This fee

1 shall be paid by the party taking the appeal. If more than one
2 party to the action files an appeal from the same judgment, decision
3 or award, the fee shall be paid by the party whose petition in error
4 commences the principal appeal.

5 SECTION 9. This act shall become effective November 1, 2016.

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