

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 1528

By: Bingman

AS INTRODUCED

An Act relating to the administrative workers' compensation; amending Sections 2, 3, 18, 21, 22, 29, 36, 38, 45, as amended by Section 2, Chapter 390, O.S.L. 2015, 60, 67, 71, 78, 80, 82, 90, 101, 105, 158, 161, 163, 164, 167, as amended by Section 7, Chapter 169, O.S.L. 2014, and 169, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Sections 2, 3, 18, 21, 22, 29, 36, 38, 45, 60, 67, 71, 78, 80, 82, 90, 101, 105, 115, 118, 120, 121, 124 and 400), which relate to notice, the Workers' Compensation Commission, fees, liability, securing compensation, disability, occupational disease, investigation and hearing, appeals, review of judgments, claims for legal services, bond, employees as witnesses, settlement, compensation claims, Advisory Council on Workers' Compensation and Workers' Compensation Court; modifying definitions; clarifying applicability of Act; adding form of certain notice; adding certain exception; modifying certain powers of Commission; modifying requirements for certain fees; modifying procedures for liability of certain employees; requiring Commission to adopt certain rules; modifying rate for temporary partial disability; clarifying officer required to make certain submission; removing review for certain award or denial; adding form of certain notice; modifying allowable locations for certain hearings; authorizing appointment of certain judge for specified purpose; modifying procedures for review of certain judgments; modifying certain notice requirement; adding bond requirement for certain proceedings; modifying date for implementation of certain system; establishing exception for certain testimony; requiring filing of certain agreements; requiring fee for certain claims; clarifying form of certain inquiry; modifying duties

1 of Council; modifying requirements for transfer of
2 certain personnel; directing payment of certain
3 expenses; modifying certain appellate procedure;
4 updating statutory references; amending Sections 107,
5 108, 109, 112, as amended by Section 5, Chapter 390,
6 O.S.L. 2015, 113, 114, 115, 116 and 117, Chapter 208,
7 O.S.L. 2013 (85A O.S. Supp. 2015, Sections 200, 201,
8 202, 205, 206, 207, 208, 209 and 210), which relate
9 to qualified employers, Oklahoma Option Insured
10 Guaranty Fund and Oklahoma Option Self-insured
11 Guaranty Fund, fees, determinations and damages;
12 updating statutory references; modifying duties and
13 responsibilities of certain entity and official;
14 amending Sections 121, 125, 126, 133, 134, 135, 137,
15 139, 141, 142, 143, 144 and 148, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2015, Sections 300, 304, 305,
17 312, 313, 314, 316, 318, 320, 321, 322, 323 and 327),
18 which relate to arbitration requirements and
19 procedures; updating statutory references; repealing
20 Section 15, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
21 2015, Section 15), which relates to Fraud
22 Investigation Unit funding report; and providing an
23 effective date.
24

1 5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 6 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
1 7 2013 (85A O.S. Supp. 2015, Section 2), is amended to read as
1 8 follows:

1 9 Section 2. As used in the Administrative Workers' Compensation
2 0 Act:

2 1 1. "Actually dependent" means a surviving spouse, a child or
2 2 any other person who receives one-half (1/2) or more of his or her
2 3 support from the employee;
2 4

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

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

16 4. "Case manager" means a person who is a registered nurse with
17 a current, active unencumbered license from the Oklahoma Board of
18 Nursing, or possesses one or more of the following certifications
19 which indicate the individual has a minimum number of years of case
20 management experience, has passed a national competency test and
21 regularly obtains continuing education hours to maintain
22 certification:

- 23 a. Certified Disability Management Specialist (CDMS),
- 24 b. Certified Case Manager (CCM),

- 1 c. Certified Rehabilitation Registered Nurse (CRRN),
- 2 d. Case Manager - Certified (CMC),
- 3 e. Certified Occupational Health Nurse (COHN), or
- 4 f. Certified Occupational Health Nurse Specialist (COHN-
- 5 S);

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

16 6. "Child" means a natural or adopted son or daughter of the
17 employee under eighteen (18) years of age; or a natural or adopted
18 son or daughter of an employee eighteen (18) years of age or over
19 who is physically or mentally incapable of self-support; or any
20 natural or adopted son or daughter of an employee eighteen (18)
21 years of age or over who is actually dependent; or any natural or
22 adopted son or daughter of an employee between eighteen (18) and
23 twenty-three (23) years of age who is enrolled as a full-time
24 student in any accredited educational institution. The term "child"

1 includes a posthumous child, a child legally adopted or one for whom
2 adoption proceedings are pending at the time of death, an actually
3 dependent stepchild or an actually dependent acknowledged child born
4 out of wedlock;

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

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

9 9. a. "Compensable injury" means damage or harm to the
10 physical structure of the body, or prosthetic
11 appliances, including eyeglasses, contact lenses, or
12 hearing aids, caused solely as the result of either an
13 accident, cumulative trauma or occupational disease
14 arising out of the course and scope of employment. An
15 "accident" means an event involving factors external
16 to the employee that:

17 (1) was unintended, unanticipated, unforeseen,
18 unplanned and unexpected,

19 (2) occurred at a specifically identifiable time and
20 place,

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

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

24 b. "Compensable injury" does not include:

- 1 (1) injury to any active participant in assaults or
2 combats which, although they may occur in the
3 workplace, are the result of non-employment-
4 related hostility or animus of one, both, or all
5 of the combatants and which assault or combat
6 amounts to a deviation from customary duties;
7 provided, however, injuries caused by horseplay
8 shall not be considered to be compensable
9 injuries, except for innocent victims,
- 1 0 (2) injury incurred while engaging in or performing
1 1 or as the result of engaging in or performing any
1 2 recreational or social activities for the
1 3 employee's personal pleasure,
- 1 4 (3) injury which was inflicted on the employee at a
1 5 time when employment services were not being
1 6 performed or before the employee was hired or
1 7 after the employment relationship was terminated,
- 1 8 (4) injury where the accident was caused by the use
1 9 of alcohol, illegal drugs, or prescription drugs
2 0 used in contravention of physician's orders. If,
2 1 within twenty-four (24) hours of being injured or
2 2 reporting an injury, an employee tests positive
2 3 for intoxication, an illegal controlled
2 4 substance, or a legal controlled substance used

1 in contravention to a treating physician's
2 orders, or refuses to undergo the drug and
3 alcohol testing, there shall be a rebuttable
4 presumption that the injury was caused by the use
5 of alcohol, illegal drugs, or prescription drugs
6 used in contravention of physician's orders.
7 This presumption may only be overcome if the
8 employee proves by clear and convincing evidence
9 that his or her state of intoxication had no
10 causal relationship to the injury,

- 11 (5) any strain, degeneration, damage or harm to, or
12 disease or condition of, the eye or
13 musculoskeletal structure or other body part
14 resulting from the natural results of aging,
15 osteoarthritis, arthritis, or degenerative
16 process including, but not limited to,
17 degenerative joint disease, degenerative disc
18 disease, degenerative
19 spondylosis/spondylolisthesis and spinal
20 stenosis, or
21 (6) any preexisting condition except when the
22 treating physician clearly confirms an
23 identifiable and significant aggravation incurred
24 in the course and scope of employment.

- 1 c. The definition of "compensable injury" shall not be
2 construed to limit or abrogate the right to recover
3 for mental injuries as described in Section 13 of this
4 act, heart or lung injury or illness as described in
5 Section 14 of this act, or occupational diseases as
6 described in Section 65 of this act.
- 7 d. A compensable injury shall be established by medical
8 evidence supported by objective findings as defined in
9 paragraph 30 of this section.
- 10 e. The injured employee shall prove by a preponderance of
11 the evidence that he or she has suffered a compensable
12 injury.
- 13 f. Benefits shall not be payable for a condition which
14 results from a non-work-related independent
15 intervening cause following a compensable injury which
16 causes or prolongs disability, aggravation, or
17 requires treatment. A non-work-related independent
18 intervening cause does not require negligence or
19 recklessness on the part of a claimant.
- 20 g. An employee who suffers a compensable injury shall be
21 entitled to receive compensation as prescribed in this
22 act. Notwithstanding other provisions of law, if it
23 is determined that a compensable injury did not occur,
24

1 the employee shall not be entitled to compensation
2 under this act;

3 10. "Compensation" means the money allowance payable to the
4 employee or to his or her dependents and includes the medical
5 services and supplies provided for in Section 50 of this act and
6 funeral expenses;

7 11. "Consequential injury" means injury or harm to a part of
8 the body that is a direct result of the injury or medical treatment
9 to the part of the body originally injured in the claim. The
10 Commission shall not make a finding of a consequential injury unless
11 it is established by objective medical evidence that medical
12 treatment for such part of the body is required;

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

19 13. "Course and scope of employment" means an activity of any
20 kind or character for which the employee was hired and that relates
21 to and derives from the work, business, trade or profession of an
22 employer, and is performed by an employee in the furtherance of the
23 affairs or business of an employer. The term includes activities
24 conducted on the premises of an employer or at other locations

1 designated by an employer and travel by an employee in furtherance
2 of the affairs of an employer that is specifically directed by the
3 employer. This term does not include:

- 4 a. an employee's transportation to and from his or her
5 place of employment,
- 6 b. travel by an employee in furtherance of the affairs of
7 an employer if the travel is also in furtherance of
8 personal or private affairs of the employee,
- 9 c. any injury occurring in a parking lot or other common
10 area adjacent to an employer's place of business
11 before the employee clocks in or otherwise begins work
12 for the employer or after the employee clocks out or
13 otherwise stops work for the employer, or
- 14 d. any injury occurring while an employee is on a work
15 break, unless the injury occurs while the employee is
16 on a work break inside the employer's facility and the
17 work break is authorized by the employee's supervisor;

18 14. "Cumulative trauma" means an injury to an employee that is
19 caused by the combined effect of repetitive physical activities
20 extending over a period of time in the course and scope of
21 employment. Cumulative trauma shall not mean fatigue, soreness or
22 general aches and pain that may have been caused, aggravated,
23 exacerbated or accelerated by the employee's course and scope of
24 employment. Cumulative trauma shall have resulted directly and

1 independently of all other causes and the employee shall have
2 completed at least one hundred eighty (180) days of continuous
3 active employment with the employer;

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

6 16. "Disability" means incapacity because of compensable injury
7 to earn, in the same or any other employment, substantially the same
8 amount of wages the employee was receiving at the time of the
9 compensable injury;

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

15 18. a. "Employee" means any person, including a minor, in the
16 service of an employer under any contract of hire or
17 apprenticeship, written or oral, expressed or implied,
18 but excluding one whose employment is casual and not
19 in the course of the trade, business, profession, or
20 occupation of his or her employer and excluding one
21 who is required to perform work for a municipality or
22 county or the state or federal government on having
23 been convicted of a criminal offense or while
24 incarcerated. "Employee" shall also include a member

1 of the Oklahoma National Guard while in the
2 performance of duties only while in response to state
3 orders and any authorized voluntary or uncompensated
4 worker, rendering services as a firefighter, peace
5 officer or emergency management worker. Travel by a
6 policeman, fireman, or a member of a first aid or
7 rescue squad, in responding to and returning from an
8 emergency, shall be deemed to be in the course of
9 employment.

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

- 11 (1) any person for whom an employer is liable under
12 any Act of Congress for providing compensation to
13 employees for injuries, disease or death arising
14 out of and in the course of employment including,
15 but not limited to, the Federal Employees'
16 Compensation Act, the Federal Employers'
17 Liability Act, the Longshore and Harbor Workers'
18 Compensation Act and the Jones Act, to the extent
19 his or her employees are subject to such acts,
- 20 (2) any person who is employed in agriculture or
21 horticulture by an employer who had a gross
22 annual payroll in the preceding calendar year of
23 less than One Hundred Thousand Dollars
24 (\$100,000.00) wages for agricultural or

- 1 horticultural workers, or any person who is
2 employed in agriculture or horticulture who is
3 not engaged in operation of motorized machines,
- 4 (3) any person who is a licensed real estate sales
5 associate or broker, paid on a commission basis,
- 6 (4) any person who is providing services in a medical
7 care or social services program, or who is a
8 participant in a work or training program,
9 administered by the Department of Human Services,
10 unless the Department is required by federal law
11 or regulations to provide workers' compensation
12 for such person. This division shall not be
13 construed to include nursing homes,
- 14 (5) any person employed by an employer with five or
15 fewer total employees, all of whom are related
16 within the second degree by blood or marriage to
17 the employer, or a dependent living in the
18 household of the employer, if the employer is a
19 natural person or a general or limited
20 partnership, or an incorporator of a corporation
21 or a limited liability company formed under the
22 laws of this state or another state if the
23 corporation or the limited liability company is
24 the employer,

1 (6) any person employed by an employer which is a
2 youth sports league which qualifies for exemption
3 from federal income taxation pursuant to federal
4 law,

5 (7) sole proprietors, members of a partnership,
6 individuals who are party to a franchise
7 agreement as set out by the Federal Trade
8 Commission franchise disclosure rule, 16 CFR
9 436.1 through 436.11, members of a limited
10 liability company who own at least ten percent
11 (10%) of the capital of the limited liability
12 company or any stockholder-employees of a
13 corporation who own ten percent (10%) or more
14 stock in the corporation, unless they elect to be
15 covered by a policy of insurance covering
16 benefits under the Administrative Workers'
17 Compensation Act,

18 (8) any person providing or performing voluntary
19 service who receives no wages for the services
20 other than meals, drug or alcohol rehabilitative
21 therapy, transportation, lodging or reimbursement
22 for incidental expenses except for volunteers
23 specifically provided for in subparagraph a of
24 this paragraph,

1 (9) a person, commonly referred to as an owner-
2 operator, who owns or leases a truck-tractor or
3 truck for hire, if the owner-operator actually
4 operates the truck-tractor or truck and if the
5 person contracting with the owner-operator is not
6 the lessor of the truck-tractor or truck.
7 Provided, however, an owner-operator shall not be
8 precluded from workers' compensation coverage
9 under the Administrative Workers' Compensation
10 Act if the owner-operator elects to participate
11 as a sole proprietor,

12 (10) a person referred to as a drive-away owner-
13 operator who privately owns and utilizes a tow
14 vehicle in drive-away operations and operates
15 independently for hire, if the drive-away owner-
16 operator actually utilizes the tow vehicle and if
17 the person contracting with the drive-away owner-
18 operator is not the lessor of the tow vehicle.
19 Provided, however, a drive-away owner-operator
20 shall not be precluded from workers' compensation
21 coverage under the Administrative Workers'
22 Compensation Act if the drive-away owner-operator
23 elects to participate as a sole proprietor, and
24

1 (11) any person who is employed as a domestic servant
2 or as a casual worker in and about a private home
3 or household, which private home or household had
4 a gross annual payroll in the preceding calendar
5 year of less than Fifty Thousand Dollars
6 (\$50,000.00) for such workers;

7 19. "Employer" means a person, partnership, association,
8 limited liability company, corporation, and the legal
9 representatives of a deceased employer, or the receiver or trustee
10 of a person, partnership, association, corporation, or limited
11 liability company, departments, instrumentalities and institutions
12 of this state and divisions thereof, counties and divisions thereof,
13 public trusts, boards of education and incorporated cities or towns
14 and divisions thereof, employing a person included within the term
15 "employee" as defined in this section. Employer may also mean the
16 employer's workers' compensation insurance carrier, if applicable.
17 Except as provided otherwise, this act applies to all public and
18 private entities and institutions. Employer shall not include a
19 qualified employer with an employee benefit plan as provided under
20 the Oklahoma Employee Injury Benefit Act in Sections ~~107~~ 200 through
21 ~~120~~ 213 of this ~~act~~ title;

22 20. "Employment" includes work or labor in a trade, business,
23 occupation or activity carried on by an employer or any authorized
24

1 voluntary or uncompensated worker rendering services as a
2 firefighter, peace officer or emergency management worker;

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

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

10 23. "Impaired self-insurer" means a private self-insurer or
11 group self-insurance association that fails to pay its workers'
12 compensation obligations, or is financially unable to do so and is
13 the subject of any proceeding under the Federal Bankruptcy Reform
14 Act of 1978, and any subsequent amendments or is the subject of any
15 proceeding in which a receiver, custodian, liquidator,
16 rehabilitator, trustee or similar officer has been appointed by a
17 court of competent jurisdiction to act in lieu of or on behalf of
18 the self-insurer;

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

21 25. "Insurance Commissioner" means the Insurance Commissioner
22 of the State of Oklahoma;

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

1 27. "Major cause" means more than fifty percent (50%) of the
2 resulting injury, disease or illness. A finding of major cause
3 shall be established by a preponderance of the evidence. A finding
4 that the workplace was not a major cause of the injury, disease or
5 illness shall not adversely affect the exclusive remedy provisions
6 of this act and shall not create a separate cause of action outside
7 this act;

8 28. "Maximum medical improvement" means that no further
9 material improvement would reasonably be expected from medical
10 treatment or the passage of time;

11 29. "Medical services" means those services specified in
12 Section 50 of this act;

13 30. "Misconduct" shall include the following:

- 14 a. unexplained absenteeism or tardiness,
- 15 b. willful or wanton indifference to or neglect of the
16 duties required,
- 17 c. willful or wanton breach of any duty required by the
18 employer,
- 19 d. the mismanagement of a position of employment by
20 action or inaction,
- 21 e. actions or omissions that place in jeopardy the
22 health, life, or property of self or others,
- 23 f. dishonesty,
- 24 g. wrongdoing,

- 1 h. violation of a law, or
2 i. a violation of a policy or rule adopted to ensure
3 orderly work or the safety of self or others;

4 31. a. (1) "Objective findings" are those findings which
5 cannot come under the voluntary control of the
6 patient.

7 (2) (a) When determining permanent disability, a
8 physician, any other medical provider, an
9 administrative law judge, the Commission or
10 the courts shall not consider complaints of
11 pain.

12 (b) For the purpose of making permanent
13 disability ratings to the spine, physicians
14 shall use criteria established by the most
15 current edition of the American Medical
16 Association "Guides to the Evaluation of
17 Permanent Impairment".

18 (3) (a) Objective evidence necessary to prove
19 permanent disability in occupational hearing
20 loss cases may be established by medically
21 recognized and accepted clinical diagnostic
22 methodologies, including, but not limited
23 to, audiological tests that measure air and
24

1 bone conduction thresholds and speech
2 discrimination ability.

3 (b) Any difference in the baseline hearing
4 levels shall be confirmed by subsequent
5 testing; provided, however, such test shall
6 be given within four (4) weeks of the
7 initial baseline hearing level test but not
8 before five (5) days after being adjusted
9 for presbycusis.

10 b. Medical opinions addressing compensability and
11 permanent disability shall be stated within a
12 reasonable degree of medical certainty;

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

16 33. "Permanent disability" means the extent, expressed as a
17 percentage, of the loss of a portion of the total physiological
18 capabilities of the human body as established by competent medical
19 evidence and based on the current edition of the American Medical
20 Association guides to the evaluation of impairment, if the
21 impairment is contained therein;

22 34. "Permanent partial disability" means a permanent disability
23 or loss of use after maximum medical improvement has been reached
24 which prevents the injured employee, who has been released to return

1 to work by the treating physician, from returning to his or her pre-
2 injury or equivalent job. All evaluations of permanent partial
3 disability must be supported by objective findings;

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

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

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

20 38. "Private self-insurer" means a private employer that has
21 been authorized to self-insure its workers' compensation obligations
22 pursuant to this act, but does not include group self-insurance
23 associations authorized by this act, or any public employer that
24 self-insures pursuant to this act;

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

4 40. "Scheduled member" or "member" means hands, fingers, arms,
5 legs, feet, toes, and eyes. In addition, for purposes of the
6 Multiple Injury Trust Fund only, "scheduled member" means hearing
7 impairment;

8 41. "Scientifically based" involves the application of
9 rigorous, systematic, and objective procedures to obtain reliable
10 and valid knowledge relevant to medical testing, diagnoses and
11 treatment; is adequate to justify the general conclusions drawn; and
12 has been accepted by a peer-review journal or approved by a panel of
13 independent experts through a comparably rigorous, objective, and
14 scientific review;

15 42. "State average weekly wage" means the state average weekly
16 wage determined by the Oklahoma Employment Security Commission in
17 the preceding calendar year. If such determination is not
18 available, the Commission shall determine the wage annually after
19 reasonable investigation;

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

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

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

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

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

11 48. "Wages" means money compensation received for employment at
12 the time of the accident, including the reasonable value of board,
13 rent, housing, lodging, or similar advantage received from the
14 employer and includes the amount of tips required to be reported by
15 the employer under Section 6053 of the Internal Revenue Code and the
16 regulations promulgated pursuant thereto or the amount of actual
17 tips reported, whichever amount is greater.

18 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2015, Section 3), is amended to read as
20 follows:

21 Section 3. A. Every employer and every employee, ~~unless~~
22 ~~otherwise specifically provided in this act, shall be~~ subject and
23 bound to the provisions of the Administrative Workers' Compensation
24 Act shall pay or provide benefits according to the provisions of

1 this act for the accidental injury or death of an employee arising
2 out of and in the course of his or her employment, without regard to
3 fault for such injury, if the employee's contract of employment was
4 made or if the injury occurred within this state. If an employee
5 makes claim for an injury in another jurisdiction and a final
6 adjudication is entered in the case, the employee is precluded from
7 his or her right of action under the Administrative Workers'
8 Compensation Act. If the employee brings an action in this state
9 prior to a final adjudication in another jurisdiction, any receipt
10 of benefits in the other jurisdiction shall not bar the action in
11 this state; provided, however, in no event shall the Workers'
12 Compensation Commission grant benefits that duplicate those paid by
13 the employer or insurance carrier in the other jurisdiction.
14 ~~However, nothing~~ Nothing in this act shall be construed to conflict
15 with any valid Act of Congress governing the liability of employers
16 for injuries received by their employees.

17 B. The State of Oklahoma accepts the provisions of the Acts of
18 Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C.,
19 Section 290, and hereby extends the territorial jurisdiction of the
20 Administrative Workers' Compensation Act to all lands and premises
21 within the exterior boundaries of this state which the Government of
22 the United States of America owns or holds by deed or act of
23 cession, and to all purchases, projects, buildings, constructions,
24 improvements and property within the exterior boundaries of this

1 state belonging to the Government of the United States of America,
2 in the same way and to the same extent as if the premises were under
3 the exclusive jurisdiction of this state, subject only to the
4 limitations placed thereon by the Acts of Congress.

5 C. This act shall apply only to claims for injuries and death
6 based on accidents which occur on or after the effective date of
7 this act.

8 ~~C.~~ D. The Workers' Compensation Code in effect before the
9 effective date of this act shall govern all rights in respect to
10 claims for injuries and death based on accidents occurring before
11 the effective date of this act.

12 SECTION 3. AMENDATORY Section 18, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2015, Section 18), is amended to read as
14 follows:

15 Section 18. A. No hospital, physician, or other health care
16 provider shall bill or attempt to collect any fee or any portion of
17 a fee for services rendered to an employee due to a work-related
18 injury or report to any credit-reporting agency any failure of the
19 employee to make the payment, when a claim for compensation has been
20 filed under this act and the hospital, physician, or health care
21 provider has received actual notice given in writing by the employee
22 or the employee's representative. Actual notice shall be deemed
23 received by the hospital, physician, or health care provider five
24 (5) days after mailing by certified mail or sending by facsimile,

1 electronic mail or other electronic means with receipt of
2 confirmation by the employee or his or her representative to the
3 hospital, physician, or health care provider.

4 B. The notice shall include:

- 5 1. The name of the employer;
- 6 2. The name of the insurer, if known;
- 7 3. The name of the employee receiving the services;
- 8 4. The general nature of the injury, if known; and
- 9 5. Where a claim has been filed, the claim number, if known.

10 C. When an injury or bill is found to be noncompensable under
11 this act, the hospital, physician, or other health care provider
12 shall be entitled to pursue the employee for any unpaid portion of
13 the fee or other charges for authorized services provided to the
14 employee. Any applicable statute of limitations for an action for
15 the fees or other charges shall be tolled from the time notice is
16 given to the hospital, physician, or other health care provider
17 until a determination of noncompensability in regard to the injury
18 which is the basis of the services is made, or if there is an
19 appeal, until a final determination of noncompensability is rendered
20 and all appeal deadlines have passed.

21 D. This section shall not avoid, modify, or amend any other
22 section or subsection of this act.

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

1 SECTION 4. AMENDATORY Section 21, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2015, Section 21), is amended to read as
3 follows:

4 Section 21. A. Commissioners shall be considered officers and
5 shall take the oath prescribed by the Oklahoma Constitution and the
6 laws of this state.

7 B. 1. A majority of the Workers' Compensation Commission shall
8 constitute a quorum for the transaction of business, and vacancies
9 shall not impair the right of the remaining commissioners to
10 exercise all the powers of the full Commission, so long as a
11 majority remains.

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

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

19 D. Except with respect to the Commission's authority to hear
20 appeals of decisions from administrative law judges other than as
21 provided pursuant to subsection B of Section 78 of this title, any
22 reference in this ~~act~~ title to the Commission's ability to hear and
23 decide the rights of interested parties under this ~~act~~ title shall
24

1 not prevent it from delegating that responsibility to an
2 administrative law judge.

3 SECTION 5. AMENDATORY Section 22, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2015, Section 22), is amended to read as
5 follows:

6 Section 22. A. 1. For the purpose of administering the
7 provisions of this ~~act~~ title, the Workers' Compensation Commission
8 is authorized:

9 a. to make rules necessary for the administration and
10 operation of the Commission,

11 b. to appoint and fix the compensation of temporary
12 technical assistants, medical and legal advisers,
13 clerical assistants and other officers and employees,
14 and

15 c. to make such expenditures, including those for
16 personal service, rent, books, periodicals, office
17 equipment, and supplies, and for printing and binding
18 as may be necessary.

19 2. a. ~~Before~~ The Commission shall vote on any substantive
20 change to any form and the effective date of such
21 substantive change.

22 b. The Commission shall comply with the provisions of the
23 Administrative Procedures Act applicable to the filing
24 and publication requirements for rules before the

1 adoption, prescription, amendment, modification, or
2 repeal of any rule, regulation, or form, the
3 Commission shall give at least thirty (30) days'
4 notice of its intended action.

5 ~~b. The notice shall include a statement of the terms or
6 substance of the intended action or description of the
7 subjects and issues involved, and the time, place, and
8 manner in which interested persons may present their
9 views thereon.~~

10 ~~c. The notice shall be mailed to any person specified by
11 law or who shall have requested advance notice of
12 rule-making proceedings.~~

13 ~~3. The Commission shall afford all interested persons a
14 reasonable opportunity to submit written data, views, or arguments,
15 and, if the Commission in its discretion shall so direct, oral
16 testimony or argument.~~

17 ~~4. Each rule, regulation, or form adopted by the Commission
18 shall be effective twenty (20) days after adoption unless a later
19 date is specified by law or in the rule itself.~~

20 ~~5. All expenditures of the Commission in the administration of
21 this act shall be allowed and paid from the Workers' Compensation
22 Fund on the presentation of itemized vouchers approved by the
23 Commission.~~

1 B. 1. The Commission may appoint as many persons as may be
2 necessary to be administrative law judges and in addition may
3 appoint such examiners, investigators, medical examiners, clerks,
4 and other employees as it deems necessary to effectuate the
5 provisions of this ~~act~~ title.

6 2. Employees appointed under this subsection shall receive an
7 annual salary to be fixed by the Commission.

8 C. Additionally, the Commission shall have the following powers
9 and duties:

10 1. To hear and approve compromise settlements;

11 2. To review and approve own-risk applications and group self-
12 insurance association applications;

13 3. To monitor own-risk, self-insurer and group self-insurance
14 programs, in accordance with the rules of the Commission;

15 4. To contract with an appropriate state governmental entity,
16 insurance carrier or approved service organization to process,
17 investigate and pay valid claims against an impaired self-insurer
18 which fails, due to insolvency or otherwise, to pay its workers'
19 compensation obligations, charges for which shall be paid from the
20 proceeds of security posted with the Commission as provided in
21 Section 38 of this ~~act~~ title;

22 5. To establish a toll-free telephone number in order to
23 provide information and answer questions about the Commission;
24

1 6. To hear and determine claims concerning disputed medical
2 bills;

3 7. To promulgate necessary rules for administering this ~~act~~
4 title and develop uniform forms and procedures for use by
5 administrative law judges. Such rules shall be reviewable by the
6 Legislature;

7 8. To invest funds on behalf of the Multiple Injury Trust Fund;

8 9. To appoint a Commission Mediator to conduct informal
9 sessions to attempt to resolve assigned disputes; and

10 10. Such other duties and responsibilities authorized by law.

11 D. It shall be the duty of an administrative law judge, under
12 the rules adopted by the Commission, to hear and determine claims
13 for compensation and to conduct hearings and investigations and to
14 make such judgments, decisions, and determinations as may be
15 required by any rule or judgment of the Commission.

16 SECTION 6. AMENDATORY Section 29, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2015, Section 29), is amended to read as
18 follows:

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

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

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

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

8 SECTION 7. AMENDATORY Section 36, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2015, Section 36), is amended to read as
10 follows:

11 Section 36. A. ~~If a subcontractor fails to secure compensation~~
12 ~~required by this act, the prime contractor shall be liable for~~
13 ~~compensation to the employees of the subcontractor unless there is~~
14 ~~an intermediate subcontractor who has workers' compensation~~
15 ~~coverage.~~

16 B. ~~1. Any contractor or the contractor's insurance carrier who~~
17 ~~shall become liable for the payment of compensation on account of~~
18 ~~injury to or death of an employee of his or her subcontractor may~~
19 ~~recover from the subcontractor the amount of the compensation paid~~
20 ~~or for which liability is incurred.~~

21 ~~2. The claim for the recovery shall constitute a lien against~~
22 ~~any monies due or to become due to the subcontractor from the prime~~
23 ~~contractor.~~

1 ~~3. A claim for recovery shall not affect the right of the~~
2 ~~injured employee or the dependents of the deceased employee to~~
3 ~~recover compensation due from the prime contractor or his or her~~
4 ~~insurance carrier.~~

5 ~~C. 1. a. When a sole proprietorship or partnership fails to~~
6 ~~elect to cover the sole proprietor or partners under~~
7 ~~this act, the prime contractor is not liable under~~
8 ~~this act for injuries sustained by the sole proprietor~~
9 ~~or partners if the sole proprietor or partners are not~~
10 ~~employees of the prime contractor.~~

11 ~~b. (1) A sole proprietor or the partners of a~~
12 ~~partnership who do not elect to be covered by~~
13 ~~this act and be deemed employees thereunder and~~
14 ~~who deliver to the prime contractor a current~~
15 ~~certification of noncoverage issued by the~~
16 ~~Commission shall be conclusively presumed not to~~
17 ~~be covered by the law or to be employees of the~~
18 ~~prime contractor during the term of his or her~~
19 ~~certification or any renewals thereof.~~

20 ~~(2) A certificate of noncoverage may not be presented~~
21 ~~to a subcontractor who does not have workers'~~
22 ~~compensation coverage.~~

~~(3) This provision shall not affect the rights or coverage of any employees of the sole proprietor or of the partnership.~~

~~2. The prime contractor's insurance carrier shall not be liable for injuries to the sole proprietor or partners described in this section who have provided a current certification of noncoverage, and the carrier shall not include compensation paid by the prime contractor to the sole proprietor or partners described above in computing the insurance premium for the prime contractor.~~

~~3. a. Any prime contractor who after being presented with a current certification of noncoverage by a sole proprietor or partnership compels the sole proprietor or partnership to pay or contribute to workers' compensation coverage of that sole proprietor or partnership shall be guilty of a misdemeanor.~~

~~b. Any prime contractor who compels a sole proprietor or partnership to obtain a certification of noncoverage when the sole proprietor or partnership does not desire to do so shall be guilty of a misdemeanor.~~

~~c. Any applicant who makes a false statement when applying for a certification of noncoverage or any renewals thereof shall be guilty of a felony.~~

~~D. 1. A certification of noncoverage issued by the Commission shall be valid for two (2) years after the effective date stated~~

1 ~~thereon. Both the effective date and the expiration date shall be~~
2 ~~listed on the face of the certificate by the Commission. The~~
3 ~~certificate shall expire at midnight two (2) years from its issue~~
4 ~~date, as noted on the face of the certificate.~~

5 2. ~~The Commission may assess a fee not to exceed Fifty Dollars~~
6 ~~(\$50.00) with each application for a certification of noncoverage or~~
7 ~~any renewals thereof.~~

8 3. ~~Any certification of noncoverage issued by the Commission~~
9 ~~shall contain the social security number and notarized signature of~~
10 ~~the applicant. The notarization shall be in a form and manner~~
11 ~~prescribed by the Commission.~~

12 4. ~~The Commission may prescribe by rule forms and procedures~~
13 ~~for issuing or renewing a certification of noncoverage.~~

14 E. ~~If work is performed by an independent contractor on a single-~~
15 ~~family residential dwelling occupied by the owner, or the premises~~
16 ~~of such dwelling, or for a farmer whose cash payroll for wages,~~
17 ~~excluding supplies, materials and equipment, for the preceding~~
18 ~~calendar year did not exceed One Hundred Thousand Dollars~~
19 ~~(\$100,000.00), such owner or farmer shall not be liable for~~
20 ~~compensation under this act for injuries to the independent~~
21 ~~contractor or his or her employees Any person who is not required to~~
22 ~~be covered under a workers' compensation insurance policy or other~~
23 ~~plan for the payment of workers' compensation may execute an~~
24 ~~Affidavit of Exempt Status under the Administrative Workers'~~

1 Compensation Act. The affidavit shall be a form prescribed by the
2 Commission and shall be available on the Commission's website.

3 B. Execution of the affidavit shall establish a rebuttable
4 presumption that the executor is not an employee for purposes of the
5 Administrative Workers' Compensation Act and that an individual or
6 company possessing the affidavit is in compliance and shall not be
7 responsible for workers' compensation claims made by the executor.

8 C. The execution of an affidavit shall not affect the rights or
9 coverage of any employee of the individual executing the affidavit.

10 D. 1. Knowingly providing false information on a notarized
11 Affidavit of Exempt Status under the Administrative Workers'
12 Compensation Act shall constitute a misdemeanor punishable by a fine
13 not to exceed One Thousand Dollars (\$1,000.00).

14 2. Affidavits shall conspicuously state on the front thereof in at
15 least ten-point, bold-faced print that it is a crime to falsify
16 information on the form.

17 3. The Commission shall immediately notify the Workers'
18 Compensation Fraud Unit in the Office of the Attorney General of any
19 violations or suspected violations of this section. The Commission
20 shall cooperate with the Fraud Unit in any investigation involving
21 affidavits executed pursuant to this section.

22 E. Application fees collected pursuant to this section shall be
23 deposited in the State Treasury to the credit of the Workers'
24 Compensation Commission's Revolving Fund.

1 F. If any employer relies in good faith on proof of a valid
2 workers' compensation insurance policy issued to a contractor of any
3 tier or on proof of an Affidavit of Exempt Status under this
4 section, the employer shall not be liable for injuries of any
5 employees of the contractor.

6 SECTION 8. AMENDATORY Section 38, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2015, Section 38), is amended to read as
8 follows:

9 Section 38. A. An employer shall secure compensation to
10 employees under this act in one of the following ways:

11 1. By insuring and keeping insured the payment of compensation
12 with any stock corporation, mutual association, or other concerns
13 authorized to transact the business of workers' compensation
14 insurance in this state. When an insurer issues a policy to provide
15 workers' compensation benefits under the provisions of this act, it
16 shall file a notice with the Commission containing the name,
17 address, and principal occupation of the employer, the number,
18 effective date, and expiration date of the policy, and such other
19 information as may be required by the Commission. The notice shall
20 be filed by the insurer within thirty (30) days after the effective
21 date of the policy. Any insurer who does not file the notice
22 required by this paragraph shall be subject to a fine by the
23 Commission of not more than One Thousand Dollars (\$1,000.00);
24

1 2. By obtaining and keeping in force guaranty insurance with
2 any company authorized to do guaranty business in this state. Each
3 company that issues workers' compensation guaranty insurance shall
4 file a copy of the contract with the Commission within thirty (30)
5 days after the effective date of the contract. Any company that
6 does not file a copy of the contract as required by this paragraph
7 shall be subject to a fine by the Commission of not more than One
8 Thousand Dollars (\$1,000.00);

9 3. By furnishing satisfactory proof to the Commission of the
10 employer's financial ability to pay the compensation. ~~The~~
11 ~~Commission, under~~ Under rules adopted by the ~~Insurance Department~~
12 Commission, the Commission shall require any employer that has:

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

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

21 (2) provide proof of excess coverage with such terms
22 and conditions as is commensurate with their
23 ability to pay the benefits required by the
24 provisions of this act, and

1 b. one hundred or more employees and One Million Dollars
2 (\$1,000,000.00) or more in net assets to:

3 (1) secure a surety bond payable to the state, or an
4 irrevocable letter of credit, in an amount
5 determined by the Commission which shall be at
6 least an average of the yearly claims for the
7 last three (3) years, or

8 (2) provide proof of excess coverage with terms and
9 conditions that are commensurate with their
10 ability to pay the benefits required by the
11 provisions of this act;

12 4. By forming a group self-insurance association consisting of
13 two or more employers which shall have a common interest and which
14 shall have entered into an agreement to pool their liabilities under
15 the Administrative Workers' Compensation Act. Such agreement shall
16 be subject to rules of the Commission. Any employer, upon
17 application to become a member of a group self-insurance
18 association, shall file with the Commission a notice, in such form
19 as prescribed by the Commission, acknowledging that the employer
20 accepts joint and several liability. Upon approval by the
21 Commission of such application for membership, said member shall be
22 a qualified self-insured employer; or

23 5. By any other security as may be approved by the Commission
24 and the Insurance Department.

1 B. The Commission may waive the requirements of this section in
2 an amount which is commensurate with the ability of the employer to
3 pay the benefits required by the provisions of this act.

4 Irrevocable letters of credit required by this subsection shall
5 contain such terms as may be prescribed by the Commission and shall
6 be issued for the benefit of the state by a financial institution
7 whose deposits are insured by the Federal Deposit Insurance
8 Corporation.

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

15 D. Failure on the part of any employer to secure the payment of
16 compensation provided in this act shall have the effect of enabling
17 the Commission to assert the rights of an injured employee against
18 the employer.

19 E. Any employer that knowingly provides false information to
20 the Commission for purposes of securing or maintaining a self-
21 insurance permit shall be guilty of a felony and subject to a
22 maximum fine of Ten Thousand Dollars (\$10,000.00).

23
24

1 SECTION 9. AMENDATORY Section 45, Chapter 208, O.S.L.
2 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
3 Supp. 2015, Section 45), is amended to read as follows:

4 Section 45. A. Temporary Total Disability.

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

18 2. When the injured employee is released from active medical
19 treatment by the treating physician for all body parts found by the
20 Commission to be injured, or in the event that the employee, without
21 a valid excuse, misses three consecutive medical treatment
22 appointments, fails to comply with medical orders of the treating
23 physician, or otherwise abandons medical care, the employer shall be
24 entitled to terminate temporary total disability by notifying the

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

13 B. Temporary Partial Disability.

14 1. If the injured employee is temporarily unable to perform his
15 or her job, but may perform alternative work offered by the
16 employer, he or she shall be entitled to receive compensation equal
17 to ~~the greater of~~ seventy percent (70%) of the difference between
18 the injured employee's average weekly wage before the injury and his
19 or her weekly wage for performing alternative work after the injury,
20 but only if his or her weekly wage for performing the alternative
21 work is less than the temporary total disability rate. The injured
22 employee's actual earnings plus temporary total disability shall not
23 exceed the temporary total disability rate.
24

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

3 3. If the employee refuses to perform the alternative work
4 offered by the employee, he or she shall not be entitled to benefits
5 under subsection A of this section or under this section.

6 C. Permanent Partial Disability.

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

1 sent to both parties within seven (7) days of issuance. Medical
2 opinions addressing compensability and permanent disability must be
3 stated within a reasonable degree of medical certainty. Any party
4 may submit the report of an evaluating physician.

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

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

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

20 5. Except pursuant to settlement agreements entered into by the
21 employer and employee, payment of a permanent partial disability
22 award shall be deferred and held in reserve by the employer or
23 insurance company if the employee has reached maximum medical
24 improvement and has been released to return to work by his or her

1 treating physician, and then returns to his pre-injury or equivalent
2 job for a term of weeks determined by dividing the total dollar
3 value of the award by seventy percent (70%) of the employee's
4 average weekly wage.

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

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

17 c. If the employee refuses an offer to return to his pre-
18 injury or equivalent job, the permanent partial
19 disability award shall continue to be deferred and
20 shall be reduced by seventy percent (70%) of the
21 employee's average weekly wage for each week he
22 refuses to return to his pre-injury or equivalent job.

23 d. Attorney fees for permanent partial disability awards,
24 as approved by the Commission, shall be calculated

1 based upon the total permanent partial disability
2 award and paid in full at the time of the deferral.

3 e. Assessments pursuant to Sections 31, 98, ~~112~~ 205 and
4 ~~165~~ 122 of this ~~act~~ title shall be calculated based
5 upon the amount of the permanent partial disability
6 award and shall be paid at the time of the deferral.

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

21 a. If workers' compensation benefits have previously been
22 awarded through settlement or judicial or
23 administrative determination in Oklahoma, the
24 percentage basis of the prior settlement or award

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

8 b. In all cases, the applicable reduction shall be
9 calculated as follows:

10 (1) if the preexisting impairment is the result of
11 injury sustained while working for the employer
12 against whom workers' compensation benefits are
13 currently being sought, any award of compensation
14 shall be reduced by the current dollar value
15 attributable under the Administrative Workers'
16 Compensation Act to the percentage of permanent
17 partial disability determined to be preexisting.
18 The current dollar value shall be calculated by
19 multiplying the percentage of preexisting
20 permanent partial disability by the compensation
21 rate in effect on the date of the accident or
22 injury against which the reduction will be
23 applied, and
24

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

5 7. No payments on any permanent partial disability order shall
6 begin until payments on any preexisting permanent partial disability
7 orders have been completed.

8 8. The whole body shall represent a maximum of three hundred
9 fifty (350) weeks.

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

18 10. An injured employee who is eligible for permanent partial
19 disability under this subsection shall be entitled to receive
20 vocational rehabilitation services provided by a technology center
21 or public secondary school offering vocational-technical education
22 courses, or a member institution of The Oklahoma State System of
23 Higher Education, which shall include retraining and job placement
24 to restore the employee to gainful employment. Vocational

1 rehabilitation services or training shall not extend for a period of
2 more than fifty-two (52) weeks.

3 D. Permanent Total Disability.

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

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

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

12 2. The Vocational Rehabilitation Director shall help injured
13 workers return to the work force. If the injured employee is unable
14 to return to his or her pre-injury or equivalent position due to
15 permanent restrictions as determined by the treating physician, upon
16 the request of either party, the Vocational Rehabilitation Director
17 shall determine if it is appropriate for a claimant to receive
18 vocational rehabilitation training or services, and will oversee
19 such training. If appropriate, the Vocational Rehabilitation
20 Director shall issue administrative orders, including, but not
21 limited to, an order for a vocational rehabilitation evaluation for
22 any injured employee unable to work for at least ninety (90) days.
23 In addition, the Vocational Rehabilitation Director may assign
24 injured workers to vocational rehabilitation counselors for

1 coordination of recommended services. The cost of the services
2 shall be paid by the employer. All administrative orders are
3 subject to appeal to the full Commission.

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

- 7 a. if the employee's occupation is truck driver or
8 laborer and the medical condition is traumatic brain
9 injury, stroke or uncontrolled vertigo,
- 10 b. if the employee's occupation is truck driver or
11 laborer performing high-risk tasks and the medical
12 condition is seizures,
- 13 c. if the employee's occupation is manual laborer and the
14 medical condition is bilateral wrist fusions,
- 15 d. if the employee's occupation is assembly-line worker
16 and the medical condition is radial head fracture with
17 surgical excision,
- 18 e. if the employee's occupation is heavy laborer and the
19 medical condition is myocardial infarction with
20 congestive heart failure,
- 21 f. if the employee's occupation is heavy manual laborer
22 and the medical condition is multilevel neck or back
23 fusions greater than two levels,
- 24

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

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

8 4. Upon the request of either party, or by order of an
9 administrative law judge, the Vocational Rehabilitation Director
10 shall assist the Workers' Compensation Commission in determining if
11 it is appropriate for a claimant to receive vocational
12 rehabilitation training or services. If appropriate, the
13 administrative law judge shall refer the employee to a qualified
14 expert for evaluation of the practicability of, need for and kind of
15 rehabilitation services or training necessary and appropriate in
16 order to restore the employee to gainful employment. The cost of
17 the evaluation shall be paid by the employer. Following the
18 evaluation, if the employee refuses the services or training ordered
19 by the administrative law judge, or fails to complete in good faith
20 the vocational rehabilitation training ordered by the administrative
21 law judge, then the cost of the evaluation and services or training
22 rendered may, in the discretion of the administrative law judge, be
23 deducted from any award of benefits to the employee which remains
24 unpaid by the employer. Upon receipt of such report, and after

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

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

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

1 the injured employee from returning to his or her pre-injury or
2 equivalent position.

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

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

22 F. Disfigurement.

23 1. If an injured employee incurs serious and permanent
24 disfigurement to any part of the body, the Commission may award

1 compensation to the injured employee in an amount not to exceed
2 Fifty Thousand Dollars (\$50,000.00).

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

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

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

15 SECTION 10. AMENDATORY Section 60, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2015, Section 60), is amended to read as
17 follows:

18 Section 60. The Physician Advisory Committee may recommend the
19 adoption of a method or system to evaluate permanent disability that
20 shall deviate from, or be used in place of or in combination with
21 the Guides. Such recommendation shall be made to the Commission
22 which may adopt the recommendation in part or in whole. The adopted
23 method or system shall be submitted by the Executive Director of the
24 Commission to the Governor, the Speaker of the House of

1 Representatives and the President Pro Tempore of the Senate within
2 the first ten (10) legislative days of a regular session of the
3 Legislature. Such method or system so submitted shall be subject to
4 disapproval by joint or concurrent resolution of the Legislature
5 during the legislative session in which submitted. If disapproved,
6 the existing method of determining permanent partial disability
7 shall continue in effect. If the Legislature takes no action on the
8 method or system submitted by the Executive Director, the method or
9 system shall become operative thirty (30) days following the
10 adjournment of the Legislature.

11 SECTION 11. AMENDATORY Section 67, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2015, Section 67), is amended to read as
13 follows:

14 Section 67. A. 1. Except as otherwise provided in this
15 section, notice of disability resulting from an occupational disease
16 or cumulative trauma shall be the same as in cases of accidental
17 injury.

18 2. Written notice shall be given to the employer of an
19 occupational disease or cumulative trauma by the employee, or a
20 representative of the employee in the case of incapacity or death,
21 within six (6) months after the first distinct manifestation of the
22 disease or cumulative trauma or within six (6) months after death.

23 B. An award or denial of award of compensation for an
24 occupational disease ~~or cumulative trauma~~ may be reviewed and

1 compensation increased, reduced, or terminated where previously
2 awarded, or awarded where previously denied, only on proof of fraud
3 or undue influence or of change of condition, and then only on
4 application by a party in interest made not later than one (1) year
5 after the denial of award or, where compensation has been awarded,
6 after the award or the date when the last payment was made under the
7 award, except in cases of silicosis or asbestosis, where the statute
8 of limitations shall be two (2) years.

9 SECTION 12. AMENDATORY Section 71, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2015, Section 71), is amended to read as
11 follows:

12 Section 71. A. Notice. Within ten (10) days after a claim for
13 compensation has been filed, the Commission shall notify the
14 employer and any other interested person of the filing of the claim.

15 B. Investigation - Hearing.

16 1. The Commission shall assign the claim to an administrative
17 law judge who shall hold a hearing on application of any interested
18 party, or on its own motion.

19 2. An application for a hearing shall clearly set forth the
20 specific issues of fact or law in controversy and the contentions of
21 the party applying for the hearing.

22 3. If any party is not represented by a lawyer, the
23 administrative law judge shall define the issues to be heard.
24

1 4. If a hearing on the claim is ordered, the administrative law
2 judge shall give the claimant and other interested parties ten (10)
3 days' notice of the hearing served personally on the claimant and
4 other parties, or by registered mail, facsimile, electronic mail or
5 by other electronic means with receipt of confirmation. The hearing
6 ~~shall~~ may be held in ~~Tulsa or Oklahoma County~~ any county of this
7 state, as determined by the Commission.

8 5. The award, together with the statement of the findings of
9 fact and other matters pertinent to the issues, shall be filed with
10 the record of the proceedings, and a copy of the award shall
11 immediately be sent to the parties in or to counsels of record, if
12 any.

13 C. Evidence and Construction.

14 1. a. At the hearing the claimant and the employer may each
15 present evidence relating to the claim. Evidence may
16 be presented by any person authorized in writing for
17 such purpose. The evidence may include verified
18 medical reports which shall be accorded such weight as
19 may be warranted when considering all evidence in the
20 case.

21 b. Any determination of the existence or extent of
22 physical impairment shall be supported by objective
23 and measurable physical or mental findings.
24

1 2. When deciding any issue, administrative law judges and the
2 Commission shall determine, on the basis of the record as a whole,
3 whether the party having the burden of proof on the issue has
4 established it by a preponderance of the evidence.

5 3. Administrative law judges, the Commission, and any reviewing
6 courts shall strictly construe the provisions of this act.

7 4. In determining whether a party has met the burden of proof
8 on an issue, administrative law judges and the Commission shall
9 weigh the evidence impartially and without giving the benefit of the
10 doubt to any party.

11 D. Judgment. The judgment denying the claim or making the
12 award shall be filed in the office of the Commission, and a copy
13 shall be sent by registered mail, facsimile, electronic mail or by
14 other electronic means with receipt of confirmation to the claimant
15 and to the employer or to their attorneys.

16 E. No compensation for disability of an injured employee shall
17 be payable for any period beyond his or her death; provided,
18 however, an award of compensation for disability may be made after
19 the death of the injured employee for the period of disability
20 preceding death.

21 SECTION 13. AMENDATORY Section 78, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2015, Section 78), is amended to read as
23 follows:
24

1 Section 78. A. Any party feeling aggrieved by the judgment,
2 decision, or award made by the administrative law judge may, within
3 ten (10) days of issuance, appeal to the Workers' Compensation
4 Commission. After hearing arguments, the Commission may reverse or
5 modify the decision only if it determines that the decision was
6 against the clear weight of the evidence or contrary to law. All
7 such proceedings of the Commission shall be recorded by a court
8 reporter, if requested by any party. Any judgment of the Commission
9 which reverses a decision of the administrative law judge shall
10 contain specific findings relating to the reversal.

11 B. The Chair shall have the authority to appoint an
12 administrative law judge to the en banc panel to fill a vacancy or
13 absence of a Commissioner provided the appointed administrative law
14 judge shall not have presided over any of the previous hearings on
15 the claim.

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

20 ~~E.~~ D. The judgment, decision or award of the Commission shall
21 be final and conclusive on all questions within its jurisdiction
22 between the parties unless an action is commenced in the Supreme
23 Court of this state to review the judgment, decision or award within
24 twenty (20) days of being sent to the parties. Any judgment,

1 decision or award made by an administrative law judge shall be
2 stayed until all appeal rights have been waived or exhausted. The
3 Supreme Court may modify, reverse, remand for rehearing, or set
4 aside the judgment or award only if it was:

- 5 1. In violation of constitutional provisions;
- 6 2. In excess of the statutory authority or jurisdiction of the
7 Commission;
- 8 3. Made on unlawful procedure;
- 9 4. Affected by other error of law;
- 10 5. Clearly erroneous in view of the reliable, material,
11 probative and substantial competent evidence;
- 12 6. Arbitrary or capricious;
- 13 7. Procured by fraud; or
- 14 8. Missing findings of fact on issues essential to the
15 decision.

16 This action shall be commenced by filing with the Clerk of the
17 Supreme Court a certified copy of the judgment, decision or award of
18 the Commission attached to the petition by the complaint which shall
19 specify why the judgment, decision or award is erroneous or illegal.
20 The proceedings shall be heard in a summary manner and shall have
21 precedence over all other civil cases in the Supreme Court, except
22 preferred Corporation Commission appeals. The Supreme Court shall
23 require the appealing party to file within forty-five (45) days from
24 the date of the filing of an appeal or a judgment appealed from, a

1 transcript of the record of the proceedings before the Commission,
2 or such later time as may be granted by the Supreme Court on
3 application and for good cause shown. The action shall be subject
4 to the law and practice applicable to other civil actions cognizable
5 in the Supreme Court.

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

14 SECTION 14. AMENDATORY Section 80, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2015, Section 80), is amended to read as
16 follows:

17 Section 80. A. Except where a joint petition settlement has
18 been approved, the Commission may reopen for review any compensation
19 judgment, award, or decision. Such review based on a change of
20 physical condition may be done at any time within six (6) months ~~of~~
21 ~~termination of the compensation period fixed in the original~~
22 ~~compensation judgment or award~~ from the date of the last order in
23 which monetary benefits or active medical treatment was provided, on
24 the Commission's own motion or on the application of any party in

1 interest, ~~on the ground of a change in physical condition or on~~
2 ~~proof of erroneous wage rate~~ and unless filed within such period of
3 time, shall be forever barred. On review, the Commission may make a
4 judgment or award terminating, continuing, decreasing, or increasing
5 for the future the compensation previously awarded, subject to the
6 maximum limits provided for in this ~~act~~ title. An order denying an
7 application to reopen a claim shall not extend the period of time
8 set out in this title for reopening the case. A failure to comply
9 with a medical treatment plan ordered by the Commission shall bar
10 reopening of a claim.

11 B. The review and subsequent judgment or award shall be made in
12 accordance with the procedure prescribed in Sections 69 through 78
13 of this ~~act~~ title. No review shall affect any compensation paid
14 under a prior order, judgment or award.

15 C. The Commission may correct any clerical error in any
16 compensation judgment or award within one (1) year from the date of
17 its issuance.

18 D. Aging and the effects of aging on a compensable injury are
19 not to be considered in determining whether there has been a change
20 in physical condition. Aging or the effect of aging on a
21 compensable injury shall not be considered in determining permanent
22 disability under this section or any other section in this ~~act~~
23 title.
24

1 SECTION 15. AMENDATORY Section 82, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2015, Section 82), is amended to read as
3 follows:

4 Section 82.

5 A. 1. a. Fees for legal services rendered in a claim shall not
6 be valid unless approved by the Commission.

7 b. An attorney representing an injured employee may only
8 recover attorney fees up to ten percent (10%) of any
9 temporary total disability or temporary partial
10 disability compensation and twenty percent (20%) of
11 any permanent partial disability, permanent total
12 disability, or death compensation awarded to an
13 injured employee by the Commission from a controverted
14 claim. If the employer makes a written offer to
15 settle permanent partial disability, permanent total
16 disability, or death compensation and that offer is
17 rejected, the employee's attorney may not recover
18 attorney fees in excess of thirty percent (30%) of the
19 difference between the amount of any award and the
20 settlement offer.

21 (1) Attorney fees may not be collected for recovery
22 on noncontroverted claims.

23 (2) Attorney fees shall not be awarded on medical
24 benefits or services.

1 (3) The fee for legal services rendered by an
2 attorney representing an employee in connection
3 with a change of physician requested by the
4 injured employee, controverted by the employer,
5 and awarded by the Commission, shall be Two
6 Hundred Dollars (\$200.00).

7 (4) Attorney fees may include not more than ten
8 percent (10%) of the value, or reasonable
9 estimate thereof, of vocational rehabilitation
10 services.

11 c. A "controverted claim" means that there has been a
12 contested hearing before the Commission over whether
13 there has been a compensable injury or whether the
14 employee is entitled to temporary total disability,
15 temporary partial disability, permanent partial
16 disability, permanent total disability, or death
17 compensation. A request for a change in physician
18 shall not trigger a controverted claim for purposes of
19 recovering any attorney fees except the fees under
20 division 3 of subparagraph b of this paragraph. A
21 controverted claim shall not exist if the employee or
22 his or her representative has withheld pertinent
23 information in his or her possession related to the
24

1 claim from the employer or has violated the provisions
2 of Section 6 of this ~~act~~ title.

3 2. Any person who or entity that brings a controverted claim
4 against ~~the State Treasurer, as a custodian of~~ the Multiple Injury
5 Trust Fund, shall provide notice of the claim to the Commission.
6 Thereafter, the Commission shall direct fees for legal services be
7 paid from the Fund, in addition to any compensation award. The fees
8 shall be authorized only on the difference between the amount of
9 compensation controverted and the amount awarded from the Fund.

10 3. In any case where attorney fees are allowed by the
11 Commission, the limitations expressed in subparagraph b of paragraph
12 1 of this subsection shall apply.

13 4. Medical providers may voluntarily contract with the attorney
14 for the employee to recover disputed charges, and the provider may
15 charge a reasonable fee for the cost of collection.

16 B. An attorney representing an employee under this act may not
17 recover fees for services except as expressly provided in this
18 section.

19 SECTION 16. AMENDATORY Section 90, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2015, Section 90), is amended to read as
21 follows:

22 Section 90. A. The Workers' Compensation Commission may
23 require any employer to make a deposit or bond with the Commission
24

1 to secure the prompt and convenient payment of compensation, and
2 payments shall be made on judgment of the Commission.

3 B. No proceeding to reverse, vacate or modify any order,
4 decision or award of the Commission en banc or administrative law
5 judge of the Commission wherein compensation has been awarded to an
6 injured employee shall be entertained by the Supreme Court unless
7 the Executive Director shall take a written undertaking to the
8 claimant executed on the part of the respondent or insurance
9 carrier, or both, with one or more sureties to be approved by the
10 Executive Director, to the effect that the appellant will pay the
11 amount of the award rendered therein, together with interest thereon
12 from the date of the award by the administrative law judge of the
13 Commission and all costs of the proceeding, or on the further order
14 of the Commission en banc or administrative law judge of the
15 Commission after the appeal has been decided by the Supreme Court.
16 Municipalities and other political subdivisions of this state shall
17 be exempt from making such written undertakings.

18 SECTION 17. AMENDATORY Section 101, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2015, Section 101), is amended to read as
20 follows:

21 Section 101. A. On or before the first day of July each year,
22 the Commission shall prepare, make public and submit a report for
23 the prior calendar year to the Governor, the President Pro Tempore
24 of the Senate, the Speaker of the House of Representatives, and each

1 member of the Legislature, containing a statement of the number of
2 awards made and the causes of the accidents leading to the injuries
3 for which the awards were made, total work load data of the
4 administrative law judges, including a detailed report of the work
5 load and judgments written by each judge, a detailed statement of
6 the expenses of the Commission, together with any other matter which
7 the Commission deems proper to report.

8 B. After public hearing and consultation with representatives
9 of employers, insurance carriers, and employees, the Commission
10 shall implement, with the assistance of the Insurance Commissioner,
11 by July 1, ~~2014~~ 2017, an electronic data interchange (EDI) system
12 that provides relevant data concerning the Oklahoma workers'
13 compensation system and the delivery of benefits to injured workers.

14 C. To assist the Commission in developing and implementing the
15 EDI system, there is hereby created the Oklahoma Workers'
16 Compensation Electronic Data Interchange Advisory Committee. Within
17 thirty (30) days of the effective date of this act, the Governor
18 shall appoint five persons to serve as members of the advisory
19 committee, one of whom shall be selected by the Governor as chair.
20 The chair shall provide adequate notice of meetings of the advisory
21 committee and public hearings as required by law.

22 SECTION 18. AMENDATORY Section 105, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2015, Section 105), is amended to read as
24 follows:

1 Section 105. A. No employee of the Workers' Compensation
2 Commission shall be competent to testify on any matter concerning
3 any information the employee has received through the performance of
4 the employee's duties under the provisions of this act, except for
5 employees in the Compliance Division regarding their investigations,
6 custodians of the Commission's records, or if the Commission or any
7 of its employees are a named party in the matter.

8 B. The commissioners and employees of the Commission shall not
9 solicit employment for any attorney or physician nor shall they
10 recommend or refer any claimant or employer to an attorney or
11 physician. If any employee of the Commission makes such a
12 solicitation, recommendation or reference, that person, upon
13 conviction, shall be guilty of a misdemeanor punishable, for each
14 offense, by a fine of not more than One Thousand Dollars (\$1,000.00)
15 or by imprisonment in the county jail not to exceed one (1) year, or
16 by both such fine and imprisonment. The Commission shall
17 immediately terminate the employment of any employee who is guilty
18 of such solicitation, recommendation or reference. A commissioner
19 guilty of such solicitation, recommendation or reference shall be
20 subject to removal from office.

21 C. No administrative law judge shall engage in any ex parte
22 communication with any party to an action pending before the
23 Commission or with any witness or medical provider regarding the
24 merits of a specific matter pending before the judge for resolution.

1 Any violation of this provision shall subject the judge to
2 disqualification from the action or matter upon presentation of an
3 application for disqualification.

4 SECTION 19. AMENDATORY Section 158, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2015, Section 115), is amended to read as
6 follows:

7 Section 115. A. If the employee and employer shall reach an
8 agreement for the full, final and complete settlement of any issue
9 of a claim pursuant to this act, a form designated as "Joint
10 Petition" shall be signed by both the employer and employee, or
11 representatives thereof, and shall be approved by the Workers'
12 Compensation Commission or an administrative law judge, and filed
13 with the Commission. In cases in which the employee is not
14 represented by legal counsel, the Commission or an administrative
15 law judge shall have jurisdiction to approve a full, final and
16 complete settlement of any issue upon the filing of an Employer's
17 First Notice of Injury. There shall be no requirement for the
18 filing of an Employee's First Notice of Claim for Compensation to
19 effect such settlement in cases in which the employee is not
20 represented by legal counsel.

21 B. In the event all issues of a claim are not fully, finally
22 and completely settled by a Joint Petition, the issues not settled
23 by the parties and subject to the Commission's continuing
24 jurisdiction must be noted by appendix to the Joint Petition or on a

1 form created for such purpose by the Commission. The appendix must
2 be signed by the parties and approved by the Commission as set forth
3 herein.

4 C. In the absence of fraud, a Joint Petition shall be deemed
5 binding upon the parties thereto and a final adjudication of all
6 rights pursuant to this ~~act~~ title or the workers' compensation law
7 in effect at the time of the injury or final order of the Workers'
8 Compensation ~~Court~~ Commission. An official record shall be made by
9 an official Commission reporter of the testimony taken to effect the
10 Joint Petition.

11 D. A good-faith effort shall be made on the part of any
12 insurance carrier, ~~CompSource Oklahoma~~, or group self-insured plan
13 to notify an insured employer of the possibility of and terms of any
14 settlement of a workers' compensation case pursuant to this section.
15 Written comments or objections to settlements shall be filed with
16 the Commission and periodically shared with the management of the
17 applicable insurer. A written notice shall be made to all
18 policyholders of their right to a good-faith effort by their insurer
19 to notify them of any proposed settlement, if the policyholder so
20 chooses.

21 E. If an employee has not filed a claim for compensation and
22 the employer and the injured employee reach a final agreement as to
23 the facts with relation to an injury and the resulting disability
24 for which compensation is claimed under the Administrative Workers'

1 Compensation Act, a memorandum of such agreement in a form
2 prescribed by the Commission shall be filed by the employer with the
3 Commission. Such memorandum shall be signed by both the employer
4 and employee and approved by an administrative law judge.

5 SECTION 20. AMENDATORY Section 161, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2015, Section 118), is amended to read as
7 follows:

8 Section 118. A. A fee of One Hundred Forty Dollars (\$140.00)
9 per case, including any Joint Petition, medical fee dispute, claim
10 for discrimination or retaliation, or claim for benefits under the
11 Multiple Injury Trust Fund authorized by this ~~act~~ title, shall be
12 collected by the Workers' Compensation Commission and assessed as
13 costs to be paid by the party against whom any award becomes final,
14 to be deposited as follows:

15 1. One Hundred Five Dollars (\$105.00) to the credit of the
16 Workers' Compensation Fund created by this ~~act~~ title;

17 2. Ten Dollars (\$10.00) to the credit of the Attorney General's
18 Workers' Compensation Fraud Unit Revolving Fund created by Section
19 19.2 of Title 74 of the Oklahoma Statutes; and

20 3. Twenty-five Dollars (\$25.00) to the credit of the Workers'
21 Compensation Fund for purposes of implementing the provisions of
22 this ~~act~~ title, including strengthening and providing additional
23 funding for the Attorney General's Workers' Compensation Fraud Unit,
24

1 providing counseling services pursuant to the workers' compensation
2 counselor or ombudsman program and safety in the workplace.

3 B. A fee of One Hundred Thirty Dollars (\$130.00) per action to
4 reopen any case pursuant to Section 32 of this ~~act~~ title shall be
5 collected by the Commission and assessed as costs to be paid by the
6 party that reopens the case. The fee collected pursuant to this
7 subsection shall be deposited to the credit of the Workers'
8 Compensation Fund for purposes of implementing the provisions of
9 this ~~act~~ title, including strengthening and providing additional
10 funding for the Attorney General's Workers' Compensation Fraud Unit,
11 providing counseling services pursuant to the workers' compensation
12 counselor or ombudsman program and safety in the workplace.

13 SECTION 21. AMENDATORY Section 163, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2015, Section 120), is amended to read as
15 follows:

16 Section 120. A. Except as otherwise provided by state or
17 federal law and subject to the provisions of this section, an
18 employer may inquire about previous workers' compensation claims
19 paid to an employee while the employee was employed by a previous
20 employer. If the employee fails to answer truthfully about any
21 previous permanent partial disability awards made pursuant to
22 workers' compensation claims, the employee shall be subject to
23 discharge by the employer.
24

1 B. 1. All requests made to the Workers' Compensation
2 Commission for information on ~~prior~~ workers' compensation claims
3 involving a worker, including written inquiries about prior claims
4 and requests to access a worker's compensation claim file, must be
5 in writing, on a form prescribed by the Commission, and accompanied
6 by a fee of One Dollar (\$1.00) per search request, not to exceed One
7 Dollar (\$1.00) per claims record of a particular worker. The fee
8 shall be deposited to the credit of the Workers' Compensation Fund.
9 The form shall require identification of the person requesting the
10 information, and the person for whom a search is being made if
11 different from the requester. The form must contain an affidavit
12 signed by the requester under penalty of perjury that the
13 information sought is not requested for a purpose in violation of
14 state or federal law. The form must be used by all repositories of
15 archived Court claim files. All request forms shall be maintained
16 by the Commission as a public record, together with a record of a
17 worker's written authorization permitting a search indexed by the
18 worker's social security number as required by Section 3113 of Title
19 74 of the Oklahoma Statutes. The request forms and authorizations
20 shall be indexed alphabetically by the last name of the worker.

21 2. This subsection shall not apply:

- 22 a. to requests for claims information made by a public
23 officer or by a public employee in the performance of
24

1 his or her duties on behalf of a governmental entity
2 or as may be allowed by law,

3 b. to requests for claims information made by an insurer,
4 self-insured employer, third-party claims
5 administrator, or a legal representative thereof, when
6 necessary to process or defend a workers' compensation
7 claim,

8 c. when a worker or the worker's representative requests
9 review of the worker's claims information,

10 d. when the disclosure is made for educational or
11 research purposes and in such a manner that the
12 disclosed information cannot be used to identify any
13 worker who is the subject of a claim,

14 e. to requests for claims information made by a health
15 care or rehabilitation provider or the provider's
16 legal representative when necessary to process payment
17 of health care or rehabilitation services rendered to
18 a worker, and

19 f. to requests for claims information made by an employer
20 or personnel service company, including but not
21 limited to an individual or entity, where the worker
22 executes a written authorization permitting the search
23 and designating the employer or personnel service
24 company as the worker's representative for that

1 purpose; however, nothing in this subparagraph shall
2 relieve the employer or personnel service company from
3 complying with the requirements of utilizing the form
4 set forth in paragraph 1 of this subsection.

5 SECTION 22. AMENDATORY Section 164, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2015, Section 121), is amended to read as
7 follows:

8 Section 121. A. There is hereby created an Advisory Council on
9 Workers' Compensation.

10 B. The voting membership of the Advisory Council shall consist
11 of nine (9) members. Any member serving on the effective date of
12 this section shall serve the remainder of his or her term. The
13 chair of the Workers' Compensation Commission shall be an ex officio
14 nonvoting member.

15 1. The Governor shall appoint three members representing
16 employers in this state, one of whom shall be from a list of
17 nominees provided by the predominant statewide broad-based business
18 organization.

19 2. The Speaker of the House of Representatives shall appoint
20 three members representing employees in this state, one of whom
21 shall be from a list of nominees provided by the most representative
22 labor organization in the state.

23 3. The President Pro Tempore of the Senate shall appoint three
24 members, two who are attorneys representing the legal profession in

1 this state, one of whom shall be an attorney who practices primarily
2 in the area of defense of workers' compensation claims, and one of
3 whom shall be an attorney who primarily represents claimants, and a
4 medical doctor or doctor of osteopathy actively engaged in the
5 treatment of injured workers.

6 C. The term of office for appointees shall be as follows:

7 1. The term of office for three positions, one each appointed
8 by the Governor, the President Pro Tempore of the Senate and the
9 Speaker of the House of Representatives shall expire on January 1,
10 2015;

11 2. The term of office for three positions, one each appointed
12 by the Governor, the President Pro Tempore of the Senate and the
13 Speaker of the House of Representatives shall expire on January 1,
14 2016; and

15 3. The term of office for three positions, one each appointed
16 by the Governor, the President Pro Tempore of the Senate and the
17 Speaker of the House of Representatives shall expire on January 1,
18 2017.

19 D. Thereafter, successors in office shall be appointed for a
20 three-year term. Members shall be eligible to succeed themselves in
21 office.

22 E. Any person appointed to fill a vacancy shall be appointed
23 for the unexpired portion of the term.
24

1 F. The chair and the vice-chair of the Advisory Council shall
2 be appointed by the Governor.

3 G. Members shall receive their traveling and other necessary
4 expenses incurred in the performance of their duties as provided in
5 the State Travel Reimbursement Act.

6 H. Meetings of the Advisory Council shall be quarterly or as
7 called by the chair or upon petition by a majority of the voting
8 members. The presence of five voting members constitutes a quorum.
9 No action shall be taken by the Advisory Council without the
10 affirmative vote of at least five members.

11 I. The Commission shall provide office supplies and personnel
12 of the Commission to carry out any of the duties that have been
13 entrusted to the Advisory Council.

14 J. The Advisory Council shall analyze and review the workers'
15 compensation system, the reports of the Commission, and trends in
16 the field of workers' compensation. The Advisory Council may
17 recommend improvements and proper responses to developing trends.
18 The Advisory Council shall report its findings annually to the
19 Governor, the Chief Justice of the Supreme Court, the President Pro
20 Tempore of the Senate, and the Speaker of the House of
21 Representatives.

22 K. In addition to other duties required by this section, the
23 Advisory Council shall consult with the ~~Court~~ Commission regarding
24

1 oversight of independent medical examiners as provided in Section 45
2 of this ~~act~~ title.

3 ~~L. The Advisory Council shall review the Oklahoma Treatment~~
4 ~~Guidelines as provided in the Workers' Compensation Code, and report~~
5 ~~the findings of such review to the Commission as provided in this~~
6 ~~act.~~

7 SECTION 23. AMENDATORY Section 167, Chapter 208, O.S.L.
8 2013, as amended by Section 7, Chapter 169, O.S.L. 2014 (85A O.S.
9 Supp. 2015, Section 124), is amended to read as follows:

10 Section 124. A. 1. All unexpended funds, assets, property,
11 records, personnel and any outstanding financial obligations and
12 encumbrances of the Workers' Compensation Court before February 1,
13 2014, are hereby transferred to the Workers' Compensation
14 Commission, except for personnel transferred to the Court of
15 Existing Claims on July 9, 2014. The personnel transferred to the
16 Commission and retained by the Commission shall retain leave, sick
17 and annual time earned and any retirement and longevity benefits
18 which have accrued during their employment with the state. The
19 salaries of employees who are transferred shall not be reduced as a
20 direct and immediate result of the transfer. There shall be no
21 reduction-in-force as a result of the transfer. The Court of
22 Existing Claims shall pay the expense of maintaining its records as
23 long as the Legislature appropriates funding for the Court of
24 Existing Claims independent of the Commission.

1 2. Any unexpended funds, including interest thereon, held by
2 the State Treasurer in an interest-bearing division special account
3 maintained by the Workers' Compensation Court before February 1,
4 2014, from which a self-insured employer's workers' compensation
5 obligations are paid following nonpayment by the self-insured
6 employer for any reason, including insolvency, shall be transferred
7 to the Workers' Compensation Commission. Such funds shall be
8 expended by the Commission only for the purpose of paying workers'
9 compensation obligations of the self-insured employer, and costs
10 related to the administration of such obligations, to the extent of
11 the availability of such funds.

12 B. 1. All unexpended funds, assets, property, and records and
13 any outstanding financial obligations and encumbrances of the
14 Workers' Compensation Self-insurance Guaranty Fund Board before
15 February 1, 2014, are hereby transferred to the Self-insurance
16 Guaranty Fund Board created in the Administrative Workers'
17 Compensation Act.

18 2. Any unexpended funds, including interest thereon, held by
19 the State Treasurer in the Workers' Compensation Self-insurance
20 Guaranty Fund before February 1, 2014, shall be transferred to the
21 Self-insurance Guaranty Fund Board created by the Administrative
22 Workers' Compensation Act. Such funds shall be expended by the
23 Board only as authorized in the Administrative Workers' Compensation
24 Act.

1 3. Any claim existing or action or proceeding pending by,
2 against or before the Workers' Compensation Self-insurance Guaranty
3 Fund Board when the Board ceased existence may be continued as if
4 the Self-insurance Guaranty Fund Board was not created, or the Self-
5 insurance Guaranty Fund Board may be substituted in the matter. The
6 Self-insurance Guaranty Fund Board shall be responsible and liable
7 for all liabilities and obligations of the Workers' Compensation
8 Self-insurance Guaranty Fund Board.

9 C. All property and records of the Physician Advisory Committee
10 before February 1, 2014, are hereby transferred to the Physician
11 Advisory Committee created in the Administrative Workers'
12 Compensation Act.

13 D. All property and records of the Advisory Council on Workers'
14 Compensation before February 1, 2014, are hereby transferred to the
15 Advisory Council on Workers' Compensation created in the
16 Administrative Workers' Compensation Act.

17 E. All unexpended funds, assets, property, records, personnel
18 and any outstanding financial obligations and encumbrances of the
19 Multiple Injury Trust Fund before February 1, 2014, are hereby
20 transferred to the Multiple Injury Trust Fund created in the
21 Administrative Workers' Compensation Act. The personnel transferred
22 shall retain leave, sick and annual time earned and any retirement
23 and longevity benefits which have accrued during their employment
24 with the state. The salaries of employees who are transferred shall

1 not be reduced as a direct and immediate result of the transfer.
2 There shall be no reduction-in-force as a result of the transfer.

3 F. The Director of the Office of Management and Enterprise
4 Services is hereby directed to coordinate the transfer of funds,
5 allotments, purchase orders, outstanding financial obligations or
6 encumbrances provided for in subsections A and E of this section,
7 and the transfer of funds, outstanding financial obligations or
8 encumbrances provided for in subsection B of this section.

9 SECTION 24. AMENDATORY Section 169, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2015, Section 400), is amended to read as
11 follows:

12 Section 400. A. The Workers' Compensation Court shall be
13 renamed the Workers' Compensation Court of Existing Claims for the
14 purpose of hearing disputes relating to claims that arise before
15 February 1, 2014. The Court shall consist of the existing judges
16 for the remainder of his or her term. Each judge of the Court shall
17 continue to serve as the appointment to a designated numbered
18 position on the Court. The positions shall be numbered one through
19 ten. The terms of the judges by position number shall expire on the
20 following dates:

21 Position 1 shall expire 7-1-14.

22 Position 2 shall expire 7-1-14.

23 Position 3 shall expire 7-1-14.

24 Position 4 shall expire 7-1-20.

1 Position 5 shall expire 7-1-20.

2 Position 6 shall expire 7-1-16.

3 Position 7 shall expire 7-1-16.

4 Position 8 shall expire 7-1-20.

5 Position 9 shall expire 7-1-20.

6 Position 10 shall expire 7-1-14.

7 Provided, judges who are serving unexpired terms on the Workers'
8 Compensation Court on the effective date of this section shall serve
9 on the Court created by this section until their respective terms
10 expire as provided in this act. Thereafter, each position shall be
11 dissolved. After a judge serves this term, such judge shall be
12 eligible to reapply for an administrative law judge with the
13 Workers' Compensation Commission.

14 When a vacancy on the Court occurs or is certain to occur, the
15 Workers' Compensation Commission shall assign administrative law
16 judges from the Commission to assist in the duties of the Workers'
17 Compensation Court of Existing Claims.

18 B. A judge may be removed for cause by the Court on the
19 Judiciary prior to the expiration of his or her term.

20 C. Each judge shall receive a salary equal to that paid to a
21 district judge of this state, and shall devote full time to his or
22 her duties and shall not engage in the private practice of law
23 during the term in office.

1 D. The Court shall operate by the rules adopted by the Workers'
2 Compensation Court prior to the effective date of this act.

3 E. The Court is hereby designated and confirmed as a court of
4 record, with respect to any matter within the limits of its
5 jurisdiction, and within such limits the judges thereof shall
6 possess the powers and prerogatives of the judges of the other
7 courts of record of this state, including the power to punish for
8 contempt those persons who disobey a subpoena, or refuse to be sworn
9 or to answer as a witness, when lawfully ordered to do so.

10 F. The principal office of the Court shall be situated in the
11 City of Oklahoma City in quarters assigned by the Office of
12 Management and Enterprise Services. The Court may hold hearings in
13 any city of this state.

14 G. All county commissioners and presiding district judges of
15 this state shall make quarters available for the conducting of
16 hearings by a judge of the Court upon request by the Court.

17 H. Judges of the Workers' Compensation Court of Existing Claims
18 may punish for direct contempt pursuant to Sections 565, 565.1 and
19 566 of Title 21 of the Oklahoma Statutes.

20 I. The Court shall be vested with jurisdiction over all claims
21 filed pursuant to the Workers' Compensation Code. All claims so
22 filed shall be heard by the judge sitting without a jury. The Court
23 shall have full power and authority to determine all questions in
24 relation to payment of claims for compensation under the provisions

1 of the Workers' Compensation Code. The Court, upon application of
2 either party, shall order a hearing. Upon a hearing, either party
3 may present evidence and be represented by counsel. The decision of
4 the Court shall be final as to all questions of fact and law;
5 provided, the decision of the Court may be appealed to the
6 Commission. The decision of the Court shall be issued within sixty
7 (60) days following the submission of the case by the parties. The
8 power and jurisdiction of the Court over each case shall be
9 continuing and it may, from time to time, make such modifications or
10 changes with respect to former findings or orders relating thereto
11 if, in its opinion, it may be justified.

12 ~~J. Any appeal of an order by the Workers' Compensation Court of~~
13 ~~Existing Claims shall be heard by the Commission en banc. The~~
14 ~~Commission shall review the decision using an abuse of discretion~~
15 ~~standard of review. Orders by the Commission may be appealed in~~
16 ~~accordance with Section 78 of this act.~~

17 ~~K.~~ To protect the integrity of the transition from the Workers'
18 Compensation Court to the administrative system created by this act,
19 and to protect all rights and privileges of parties to claims
20 adjudicated by the Workers' Compensation Court, the Commission shall
21 retain all remedies and responsibilities of the Workers'
22 Compensation Court for as long as cases involving claims for
23 compensation accruing before the effective date of this act but
24

1 filed thereafter or which were pending before or adjudicated by the
2 Workers' Compensation Court shall remain open.

3 ~~H.~~ K. For an injury occurring before the effective date of this
4 act, all benefits and procedures to obtain benefits shall be
5 determined by the workers' compensation law of this state in effect
6 on the date of the injury. Administrative law judges of the
7 Commission shall enforce all final orders of the Workers'
8 Compensation Court in a manner to secure for all parties the due
9 process and equal protection guarantees of the Constitution of the
10 State of Oklahoma.

11 ~~M.~~ L. All accrued rights and penalties incurred pursuant to a
12 final order of the Workers' Compensation Court shall be preserved.
13 Administrative law judges of the Commission shall be authorized to
14 issue orders and conduct legal proceedings to enforce all such
15 accrued rights and penalties incurred. No accrued right, penalty
16 incurred, or proceeding begun by virtue of a statute repealed by
17 this act shall be abrogated by the terms of this act.

18 SECTION 25. AMENDATORY Section 107, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2015, Section 200), is amended to read as
20 follows:

21 Section 200. Sections ~~107~~ 200 through ~~120~~ 212 of this ~~act~~ title
22 shall be known and may be cited as the "Oklahoma Employee Injury
23 Benefit Act".
24

1 SECTION 26. AMENDATORY Section 108, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2015, Section 201), is amended to read as
3 follows:

4 Section 201. A. As used in the Oklahoma Employee Injury
5 Benefit Act:

6 1. "Benefit plan" means a plan established by a qualified
7 employer under the requirements of Section ~~110~~ 203 of this ~~act~~
8 title;

9 2. "Commission" means the Workers' Compensation Commission
10 under the Administrative Workers' Compensation Act;

11 3. "Commissioner" means the Insurance Commissioner of the State
12 of Oklahoma;

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

15 5. "Employee" means any person defined as an employee pursuant
16 to Section 2 of this ~~act~~ title;

17 6. "Employer", except when otherwise expressly stated, means a
18 person, partnership, association, limited liability company,
19 corporation, and the legal representatives of a deceased employer,
20 or the receiver or trustee of a person, partnership, association,
21 corporation, or limited liability company, department,
22 instrumentality or institution of this state and divisions thereof,
23 counties and divisions thereof and other political subdivisions of
24

1 this state and public trusts employing a person included within the
2 term employee as defined in this section;

3 7. "Occupational injury" means an injury, including death, or
4 occupational illness, causing internal or external harm to the body,
5 which arises out of and in the course of employment;

6 8. "Qualified employer" means an employer otherwise subject to
7 the Administrative Workers' Compensation Act that voluntarily elects
8 to be exempt from such act by satisfying the requirements under this
9 act; and

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

13 B. Unless otherwise defined in this section, defined terms in
14 the Administrative Workers' Compensation Act shall have the same
15 meaning in this act.

16 SECTION 27. AMENDATORY Section 109, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2015, Section 202), is amended to read as
18 follows:

19 Section 202. A. Any employer may voluntarily elect to be
20 exempt from the Administrative Workers' Compensation Act and become
21 a qualified employer if the employer:

22 1. Is in compliance with the notice requirements in subsections
23 B and H of this section; and
24

1 2. Has established a written benefit plan as described in
2 Section ~~110~~ 203 of this ~~act~~ title.

3 B. An employer that has elected to become a qualified employer
4 by satisfying the requirements of this section shall notify the
5 Insurance Commissioner in writing of the election and the date that
6 the election is to become effective, which may not be sooner than
7 the date that the qualified employer satisfies the employee notice
8 requirements in this section. Such qualified employer shall pay to
9 the Commissioner an annual nonrefundable fee of One Thousand Five
10 Hundred Dollars (\$1,500.00) on the date of filing written notice and
11 every year thereafter.

12 C. The Commissioner shall collect and maintain the information
13 required under this section and shall monitor compliance with the
14 requirements of this section. The Commissioner may also require an
15 employer to confirm its qualified-employer status. Subject to
16 subsection D of this section, the Commissioner shall adopt rules
17 designating the methods and procedures for confirming whether an
18 employer is a qualified employer, notifying an employer of any
19 qualifying deficiencies, and the consequences thereof. The
20 Commissioner shall record the date and time each notice of
21 qualified-employer status is received and the effective date of
22 qualified-employer election. The Commissioner shall maintain a list
23 on its official website accessible by the public of all qualified
24 employers and the date and time such exemption became effective.

1 D. Except as otherwise expressly provided in this act, neither
2 the Workers' Compensation Commission, the courts of this state, or
3 any state administrative agencies shall promulgate rules or any
4 procedures related to design, documentation, implementation,
5 administration or funding of a qualified employer's benefit plan.

6 E. The Commissioner may designate an information collection
7 agent, implement an electronic reporting and public information
8 access program, and adopt rules as necessary to implement the
9 information collection requirements of this section.

10 F. The Commissioner may prescribe rules and forms to be used
11 for the qualified-employer notification and shall require the
12 qualified employer to provide its name, address, contact person and
13 phone number, federal tax identification number, number of persons
14 employed in this state as of a specified date, claim administration
15 contact information, and a listing of all covered business locations
16 in the state. The Commissioner shall notify the Commissioner of
17 Labor of all qualified-employer notifications. The Department of
18 Labor shall provide such notifications to other governmental
19 agencies as it deems necessary.

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

1 under this act. Such agencies shall cooperate with the Commissioner
2 in enforcing the provisions of this section.

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

7 I. The qualified employer shall provide written notification to
8 employees as required by this section at the time the employee is
9 hired or at the time of designation as a qualified employer. The
10 qualified employer shall post the employee notification required by
11 this section at conspicuous locations at the qualified employer's
12 places of business as necessary to provide reasonable notice to all
13 employees. The Commissioner may adopt rules relating to the form,
14 content, and method of delivery of the employee notification
15 required by this section.

16 SECTION 28. AMENDATORY Section 112, Chapter 208, O.S.L.
17 2013, as amended by Section 5, Chapter 390, O.S.L. 2015 (85A O.S.
18 Supp. 2015, Section 205), is amended to read as follows:

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

- 21 1. The Oklahoma Option Insured Guaranty Fund; and
- 22 2. The Oklahoma Option Self-insured Guaranty Fund.

23 B. The funds established pursuant to subsection A of this
24 section shall be for the purpose of continuation of benefits under

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

20 C. The funds established under this section shall be
21 administered, disbursed, and invested under the direction of the
22 Oklahoma Property and Casualty Insurance Guaranty Association
23 established by Section 2005 of Title 36 of the Oklahoma Statutes.
24

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

3 1. Insured Guaranty Fund:

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

22 2. Self-insured Guaranty Fund:

23 Until the Self-insured Guaranty Fund contains One Million
24 Dollars (\$1,000,000.00) or if the amount in the fund falls below

1 Seven Hundred Fifty Thousand Dollars (\$750,000.00), each self-
2 insurer shall be assessed a fee at the rate of one percent (1%) of
3 the total compensation for permanent partial disability awards paid
4 out during each quarter of the calendar year by the employers. The
5 fee shall be paid to the Self-insured Guaranty Fund, care of the
6 ~~Commission~~ Commissioner, no later than the fifteenth day of the
7 month following the close of each quarter of the calendar year. The
8 fee shall be determined using a rate equal to the proportion that
9 the deficiency in the fund attributable to self-insurers bears to
10 the actual paid losses of all self-insurers for the preceding
11 calendar year. Each self-insurer shall provide the ~~Commission~~
12 Commissioner with the information necessary to determine the amount
13 of the fee to be assessed.

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

17 F. On determination by the Commissioner that a self-insurer has
18 become an impaired insurer, the Commissioner shall release the
19 security required by paragraph 2 of subsection B of Section ~~111~~ 204
20 of this ~~act~~ title and advise the Guaranty Association of the
21 impairment. Claims administration, including processing,
22 investigating and paying valid claims against an impaired self-
23 insurer under this act, may include payment by the surety that
24 issued the surety bond or be under a contract between the

1 Commissioner and an insurance carrier, appropriate state
2 governmental entity or an approved service organization.

3 G. The Guaranty Association shall be a party in interest in all
4 proceedings involving any claims for benefits under this act with
5 respect to an impaired insurer and shall have all rights of
6 subrogation of the impaired insurer. In those proceedings, the
7 Guaranty Association may assume and exercise all rights and defenses
8 of the impaired insurer, including, but not limited to, the right
9 to:

10 1. Appear, defend and appeal claims;

11 2. Receive notice of, investigate, adjust, compromise, settle
12 and pay claims; and

13 3. Investigate, handle and contest claims.

14 H. The Guaranty Association may also:

15 1. Retain persons necessary to handle claims and perform other
16 duties of the Guaranty Association;

17 2. Sue or be sued;

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

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

22 I. No monies deposited to the funds shall be subject to any
23 deduction, tax, levy or any other type of assessment.
24

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

3 K. Unless provided otherwise in this act, all fines and
4 penalties assessed under this act shall be paid to the ~~Commission~~
5 Commissioner for deposit into the funds established in this section
6 in equal amounts.

7 SECTION 29. AMENDATORY Section 113, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2015, Section 206), is amended to read as
9 follows:

10 Section 206. A. In addition to the premium or surplus lines
11 taxes collected from carriers, the carriers shall pay annually to
12 the ~~Workers' Compensation Commission~~ Commissioner a fee, at the rate
13 to be determined as provided in Section ~~115~~ 208 of this ~~act~~ title
14 but not to exceed three percent (3%), on all written premiums
15 resulting from the writing of insurance under this act on risks
16 within the state.

17 B. The fee required pursuant to subsection A of this section
18 shall be collected by the ~~Workers' Compensation Commission~~
19 Commissioner from the carriers at the same time and in the same
20 manner as insurance premium taxes under Title 36 of the Oklahoma
21 Statutes and deposited into the Oklahoma Option Insured Guaranty
22 Fund.

1 C. 1. Assessments on which premium taxes are based shall be
2 made on forms prescribed by the ~~Commission~~ Commissioner and shall be
3 paid to the ~~Commission~~ Commissioner.

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

9 D. Payments shall be made by check payable to the ~~Commission~~
10 Commissioner.

11 SECTION 30. AMENDATORY Section 114, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2015, Section 207), is amended to read as
13 follows:

14 Section 207. A. It shall be the duty of the ~~Workers'~~
15 ~~Compensation Commission~~ Commissioner to collect a fee from every
16 self-insured employer at a rate to be determined as provided by
17 Section ~~115~~ 208 of this ~~act~~ title but not to exceed three percent
18 (3%) of the written premium which would have to be paid under
19 Section ~~113~~ 206 of this ~~act~~ title by a carrier if the self-insured
20 employer were insured by a carrier.

21 B. If the fee provided for under this section is not paid
22 within thirty (30) days of the date provided in Section ~~115~~ 208 of
23 this ~~act~~ title, there shall be assessed a penalty for each thirty
24 (30) days the amount so assessed remains unpaid which is equal to

1 ten percent (10%) of the unpaid amounts and which shall be collected
2 at the same time as a part of the fee assessed.

3 SECTION 31. AMENDATORY Section 115, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2014, Section 208), is amended to read as
5 follows:

6 Section 208. A. 1. The ~~Workers' Compensation Commission~~
7 Commissioner, on or before December 31 of each year, shall determine
8 the surplus, if any, in the Oklahoma Option Insured Guaranty Fund,
9 together with the additional amounts necessary to properly
10 administer this act for the ensuing year.

11 2. The ~~Commission~~ Commissioner shall determine the rate of
12 assessment for collections for that year on or before March 1 of the
13 following year.

14 B. 1. The ~~Commission~~ Commissioner shall notify each insurance
15 carrier of the rate of assessment applicable to the Oklahoma Option
16 Insured Guaranty Fund for the preceding year, and fees shall be
17 computed and paid under the provisions of subsection B of Section
18 ~~113~~ 206 of this ~~act~~ title on or before April 1 of the following
19 year.

20 2. The ~~Commission~~ Commissioner shall notify each self-insured
21 employer subject to the fee of the rate of assessment applicable to
22 the Oklahoma Option Self-insured Fund for the preceding year, and
23 fees shall be computed by the ~~Commission~~ Commissioner and paid to
24 the Oklahoma Option Self-insured Guaranty Fund by the self-insurer

1 through payments made directly to the ~~Workers' Compensation~~
2 ~~Commission~~ Commissioner on or before April 1 of the following year.

3 C. The ~~Commission~~ Commissioner shall have the authority to
4 promulgate rules for administration of the assessment and fee
5 collection process, including, but not limited to, rules applicable
6 to the funds established in Section ~~112~~ 205 of this ~~act~~ title.

7 SECTION 32. AMENDATORY Section 116, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2015, Section 209), is amended to read as
9 follows:

10 Section 209. A. A qualified employer's liability under the
11 benefit plan and otherwise prescribed in this act shall be exclusive
12 and in place of all other liability of the qualified employer and
13 any of its employees at common law or otherwise, for a covered
14 employee's occupational injury or loss of services, to the covered
15 employee, or the spouse, personal representative, parents, or
16 dependents of the covered employee, or any other person. The
17 exclusive remedy protections provided by this subsection shall be as
18 broad as the exclusive remedy protections of Section 5 of this ~~act~~
19 title, and thus preclude a covered employee's claim against a
20 qualified employer, its employees, and insurer for negligence or
21 other causes of action.

22 B. Except as otherwise provided by its benefit plan, or
23 applicable federal law, a qualified employer is only subject to
24 liability in any action brought by a covered employee or his or her

1 dependent family members for injury resulting from an occupational
2 injury if the injury is the result of an intentional tort on the
3 part of the qualified employer. An intentional tort shall exist
4 only when the covered employee is injured because of willful,
5 deliberate, specific intent of the qualified employer to cause such
6 injury. Allegations or proof that the qualified employer had
7 knowledge that such injury was substantially certain to result from
8 its conduct shall not constitute an intentional tort. The issue of
9 whether an act is an intentional tort shall be a question of law for
10 the court or the duly appointed arbitrator, as applicable.

11 C. If an employee tests positive for intoxication, use of an
12 illegal controlled substance, or a legal controlled substance that
13 is used in contravention with a treating physician's orders within
14 twenty-four (24) hours of being injured or reporting an injury, he
15 or she shall not be eligible to receive benefits under a qualified
16 employer's benefit plan. In order to retain exclusive remedy and
17 enjoy immunity from common law negligence claims, an employee shall
18 be entitled to receive benefits under a qualified employer's benefit
19 plan if the employee can prove by a preponderance of the evidence
20 that the acts described by this section were not the major cause of
21 an injury.

22 D. Any benefits paid under a qualified employer's benefit plan
23 shall offset any other award against such qualified employer under
24 subsection B of this section.

1 E. Other than an action brought to enforce the provisions of
2 the benefit plan, any action brought by a covered employee or his or
3 her spouse, personal representative, parents, or dependents based on
4 a claim against a qualified employer arising out of any occupational
5 injury shall be filed no later than two (2) years from the date of
6 the injury or death giving rise to such action.

7 SECTION 33. AMENDATORY Section 117, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2015, Section 210), is amended to read as
9 follows:

10 Section 210. A. A qualified employer or its insurers or other
11 payment sources shall be responsible for:

12 1. Compliance with any applicable federal law regarding the
13 administration of the plan and claims for benefits under such plan;

14 2. Any damage awarded against the qualified employer for
15 intentional tort under Section ~~116~~ 209 of this ~~act~~ title, including
16 any pre- and post-judgment interest on the award and reasonable
17 court costs as may be lawfully awarded in the action; and

18 3. Reasonable attorney fees awarded against a qualified
19 employer under Section ~~116~~ 209 of this ~~act~~ title; provided, however,
20 that an employee's attorney fees that are contingent on a recovery
21 under the terms of the benefit plan shall be payable by a qualified
22 employer as part of and not in addition to such recovery. An award
23 of attorney fees in favor of a covered employee against a qualified
24 employer on a claim for intentional tort, excluding death, shall be

1 limited to no more than twenty percent (20%) of any lost earnings
2 awarded to the covered employee or his or her spouse, personal
3 representative, parents, or dependents of the covered employee under
4 the benefit plan and such award. Nothing in this paragraph shall be
5 construed to restrict an award of fees and costs made under federal
6 law.

7 B. An employer who is not a qualified employer shall comply
8 with the provisions of the Administrative Workers' Compensation Act.

9 SECTION 34. AMENDATORY Section 121, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2015, Section 300), is amended to read as
11 follows:

12 Section 300. Sections ~~121~~ 300 through ~~149~~ 328 of this ~~act~~ title
13 shall be known and may be cited as the "Workers' Compensation
14 Arbitration Act".

15 SECTION 35. AMENDATORY Section 125, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2015, Section 304), is amended to read as
17 follows:

18 Section 304. A. Except as otherwise provided in subsections B
19 and C of this section and in the laws of this state outside of this
20 act, a party to an agreement to arbitrate or to an arbitration
21 proceeding may waive, or the parties may vary the effect of, the
22 requirements of this act to the extent permitted by law.

23 B. Before a controversy arises that is subject to an agreement
24 to arbitrate, a party to the agreement may not:

1 1. Waive or agree to vary the effect of the requirements of
2 subsection A of Section ~~126~~ 305, subsection A of Section ~~127~~ 306,
3 Section ~~128~~ 307, subsection A or B of Section ~~138~~ 317, Section ~~147~~
4 326 or Section ~~149~~ 328 of this ~~act~~ title;

5 2. Agree to unreasonably restrict the right to notice of the
6 initiation of an arbitration proceeding under Section ~~130~~ 309 of
7 this ~~act~~ title;

8 3. Agree to unreasonably restrict the right to disclosure of
9 any facts by an arbitrator under Section ~~133~~ 312 of this ~~act~~ title;

10 4. Waive the right of a party to an agreement to arbitrate to
11 be represented by a lawyer at any proceeding or hearing under
12 Section ~~137~~ 316 of this ~~act~~ title; or

13 5. Agree to conduct arbitration proceedings outside of this
14 state.

15 C. A party to an agreement to arbitrate or to an arbitration
16 proceeding may not waive, or the parties may not vary the effect of,
17 the requirements of this section or subsection A or C of Section ~~124~~
18 303, Sections ~~128~~ 307, ~~135~~ 314 and ~~139~~ 318, subsection D or E of
19 Section ~~141~~ 320, Sections ~~143~~ 322, ~~144~~ 323 and ~~145~~ 324, or
20 subsection A or B of Section ~~146~~ 325 of this ~~act~~ title.

21 SECTION 36. AMENDATORY Section 126, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2015, Section 305), is amended to read as
23 follows:
24

1 Section 305. A. Except as otherwise provided in Section ~~150~~
2 107 of this ~~act~~ title, an application for judicial relief under this
3 act shall be made by application and motion to the Commission and
4 heard in the manner provided by law or rule of the Commission for
5 making and hearing motions.

6 B. Unless a civil action involving the agreement to arbitrate
7 is pending, notice of an initial application and motion to the
8 Commission under this act shall be served in the manner provided by
9 law for the service of a summons in the filing of a civil action.
10 Otherwise, notice of the motion shall be given in the manner
11 provided by law or rule of court for serving motions in pending
12 cases.

13 SECTION 37. AMENDATORY Section 133, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2015, Section 312), is amended to read as
15 follows:

16 Section 312. A. Before accepting appointment, an individual
17 who is requested to serve as an arbitrator, after making a
18 reasonable inquiry, shall disclose to the parties to the arbitration
19 agreement, the parties to the arbitration proceeding, and any other
20 arbitrators any known facts that a reasonable person would consider
21 likely to affect the impartiality of the arbitrator in the
22 arbitration proceeding, including but not limited to:

23 1. A financial or personal interest in the outcome of the
24 arbitration proceeding; and

1 2. An existing or past relationship with any of the parties to
2 the agreement to arbitrate or the arbitration proceeding, their
3 counsel or representatives, a witness, or another arbitrator.

4 B. An arbitrator has a continuing obligation to disclose to the
5 parties to the arbitration agreement, the arbitration proceeding,
6 and to any other arbitrators any facts that the arbitrator learns
7 after accepting appointment which a reasonable person would consider
8 likely to affect the impartiality of the arbitrator.

9 C. If an arbitrator discloses a conflict under subsection A or
10 B of this section, any party to the arbitration agreement or the
11 arbitration proceeding may have the arbitrator removed by filing a
12 notice of conflict with the Commission. If a notice of conflict is
13 not filed within ten (10) days of disclosure of the conflict, the
14 parties waive their rights to have any order or award entered
15 vacated under Section ~~144~~ 323 of this ~~act~~ title.

16 SECTION 38. AMENDATORY Section 134, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2015, Section 313), is amended to read as
18 follows:

19 Section 313. If there is more than one arbitrator, the powers
20 of an arbitrator shall be exercised by a majority of the
21 arbitrators, but all of them shall conduct the hearing under Section
22 ~~136~~ 315 of this ~~act~~ title.

1 SECTION 39. AMENDATORY Section 135, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2015, Section 314), is amended to read as
3 follows:

4 Section 314. A. Arbitrators and arbitration organizations
5 providing services under this act are immune from civil liability to
6 the same extent as a judge of a court of this state acting in a
7 judicial capacity.

8 B. The immunity afforded by this section supplements any
9 immunity under other law.

10 C. The failure of an arbitrator to make a disclosure required
11 by Section ~~133~~ 312 of this ~~act~~ title shall not cause any loss of
12 immunity under this section.

13 D. An arbitrator or representative of an arbitration
14 organization is not competent to testify in a judicial,
15 administrative, or similar proceeding and may not be required to
16 produce records as to any statement, conduct, decision, or ruling
17 occurring during the arbitration proceeding, to the same extent as a
18 judge of a court of this state acting in a judicial capacity. This
19 subsection shall not apply to:

20 1. The extent necessary to determine the claim of an
21 arbitrator, arbitration organization, or representative of the
22 arbitration organization against a party to the arbitration
23 proceeding; or
24

1 2. A hearing on an application and motion to vacate an award
2 under paragraphs 1 or 2 of subsection A of Section ~~144~~ 323 of this
3 ~~act~~ title if the movant establishes prima facie that a ground for
4 vacating the award exists.

5 E. If a person commences a civil action against an arbitrator,
6 arbitration organization, or representative of an arbitration
7 organization arising from the services of the arbitrator,
8 organization, or representative or if a person seeks to compel an
9 arbitrator or a representative of an arbitration organization to
10 testify or produce records in violation of subsection D of this
11 section, and the court decides that the arbitrator, arbitration
12 organization, or representative of an arbitration organization is
13 immune from civil liability or that the arbitrator or representative
14 of the organization is not competent to testify, the court shall
15 award to the arbitrator, organization, or representative reasonable
16 attorney fees and other reasonable expenses of litigation.

17 SECTION 40. AMENDATORY Section 137, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2015, Section 316), is amended to read as
19 follows:

20 Section 316. A. A party to an arbitration proceeding may be
21 represented by a lawyer.

22 B. Each party shall be responsible for payment of his or her
23 legal fees incurred during arbitration, except as provided for in
24 Section ~~142~~ 321 of this ~~act~~ title.

1 C. The employee's attorney may not recover legal fees in excess
2 of the limits described in Section 82 of this ~~act~~ title.

3 SECTION 41. AMENDATORY Section 139, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2015, Section 318), is amended to read as
5 follows:

6 Section 318. If an arbitrator makes a pre-award ruling in favor
7 of a party, the party may request the arbitrator to incorporate the
8 ruling into an award under Section ~~140~~ 319 of this ~~act~~ title. A
9 prevailing party may make an application and motion to the
10 Commission for an expedited judgment to confirm the award under
11 Section ~~143~~ 322 of this ~~act~~ title, in which case the Commission
12 shall summarily decide the motion. The Commission shall issue a
13 judgment to confirm the award unless the court vacates, modifies, or
14 corrects the award under Section ~~144~~ 323 or ~~145~~ 324 of this ~~act~~
15 title.

16 SECTION 42. AMENDATORY Section 141, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2015, Section 320), is amended to read as
18 follows:

19 Section 320. A. On motion by a party to an arbitration
20 proceeding, the arbitrator may modify or correct an award:

21 1. On a ground stated in paragraph 1 or 3 of subsection A of
22 Section ~~145~~ 324 of this ~~act~~ title;

1 2. Because the arbitrator has not made a final and definite
2 award upon a claim submitted by the parties to the arbitration
3 proceeding; or

4 3. To clarify the award.

5 B. A motion under subsection A of this section shall be made
6 and notice given to all parties within twenty (20) days after the
7 award is issued to the parties.

8 C. A party to the arbitration proceeding shall give notice of
9 any objection to the motion within ten (10) days after receipt of
10 the motion.

11 D. If a motion to the Commission is pending under Section ~~144~~
12 323 or ~~145~~ 324 of this ~~act~~ title, the Commission may submit the
13 claim to the arbitrator to consider whether to modify or correct the
14 award:

15 1. On a ground stated in paragraph 1 or 3 of subsection A of
16 Section ~~145~~ 324 of this ~~act~~ title;

17 2. Because the arbitrator has not made a final and definite
18 award upon a claim submitted by the parties to the arbitration
19 proceeding; or

20 3. To clarify the award.

21 E. An award modified or corrected under this section is subject
22 to Sections ~~143~~ 322, ~~144~~ 323 and ~~145~~ 324 of this ~~act~~ title.

1 SECTION 43. AMENDATORY Section 142, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2015, Section 321), is amended to read as
3 follows:

4 Section 321. A. An arbitrator may award benefits set forth in
5 Sections 45, 46, 47 and 51 of this ~~act~~ title.

6 B. An arbitrator may award reasonable attorney fees and other
7 reasonable expenses of arbitration if the arbitrator finds that a
8 party was not acting in good faith throughout the arbitration.

9 C. As to all remedies other than those authorized by
10 subsections A and B of this section, an arbitrator may order such
11 remedies as the arbitrator considers just and appropriate under the
12 circumstances of the arbitration proceeding. The fact that such a
13 remedy could not or would not be granted by the Commission is not a
14 ground for refusing to confirm an award under Section ~~143~~ 322 of
15 this ~~act~~ title or for vacating an award under Section ~~144~~ 323 of
16 this ~~act~~ title.

17 D. An arbitrator's expenses and fees, together with other
18 expenses, shall be paid by the employer.

19 E. If an arbitrator awards relief under subsection A of this
20 section, the arbitrator shall specify in the award the basis in fact
21 justifying and the basis in law authorizing the award.

22 SECTION 44. AMENDATORY Section 143, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2015, Section 322), is amended to read as
24 follows:

1 Section 322. After a party to an arbitration proceeding
2 receives notice of an award, the party may make an application and
3 motion to the Commission for a judgment confirming the award at
4 which time the Commission shall issue a confirming judgment unless
5 the award is modified or corrected under Section ~~141~~ 320 or ~~145~~ 324
6 of this ~~act~~ title or is vacated under Section ~~144~~ 323 of this ~~act~~
7 title.

8 SECTION 45. AMENDATORY Section 144, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2015, Section 323), is amended to read as
10 follows:

11 Section 323. A. On an application and motion to the court by a
12 party to an arbitration proceeding, the Commission shall vacate an
13 award made in the arbitration proceeding if:

14 1. The award was procured by corruption, fraud, or other undue
15 means;

16 2. There was:

17 a. evident partiality by an arbitrator appointed as a
18 neutral arbitrator,

19 b. corruption by an arbitrator, or

20 c. misconduct by an arbitrator prejudicing the rights of
21 a party to the arbitration proceeding;

22 3. An arbitrator refused to postpone the hearing upon showing
23 of sufficient cause for postponement, refused to consider evidence
24 material to the controversy, or otherwise conducted the hearing

1 contrary to Section ~~136~~ 315 of this ~~act~~ title, so as to prejudice
2 substantially the rights of a party to the arbitration proceeding;

3 4. An arbitrator exceeded his or her powers under this act;

4 5. The arbitration was conducted without proper notice of the
5 initiation of an arbitration as required in Section ~~130~~ 309 of this
6 ~~act~~ title so as to prejudice substantially the rights of a party to
7 the arbitration proceeding; or

8 6. It is determined that an arbitrator did not disclose a
9 conflict under Section ~~133~~ 312 of this ~~act~~ title.

10 B. An application and motion under this section shall be filed
11 within thirty (30) days after the movant receives notice of the
12 award or within thirty (30) days after the movant receives notice of
13 a modified or corrected award, unless the movant alleges that the
14 award was procured by corruption, fraud, or other undue means, in
15 which case the motion shall be made within ninety (90) days after
16 the ground is known or by the exercise of reasonable care would have
17 been known by the movant.

18 C. If the Commission vacates an award it may order a rehearing.
19 If the award is vacated on a ground stated in paragraph 1, 2 or 6 of
20 subsection A of this section, the rehearing shall be before a new
21 arbitrator. If the award is vacated on a ground stated in paragraph
22 3, 4 or 5 of subsection A of this section, the rehearing may be
23 before the arbitrator who made the award or the arbitrator's
24 successor. The arbitrator shall render the decision in the

1 rehearing within the same time as that provided in subsection B of
2 Section ~~140~~ 319 of this ~~act~~ title for an award.

3 D. If the Commission denies a motion to vacate an award, it
4 shall confirm the award unless a motion to modify or correct the
5 award is pending.

6 SECTION 46. AMENDATORY Section 148, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2015, Section 327), is amended to read as
8 follows:

9 Section 327. A. A party may appeal the following actions to
10 the district court as provided in Section ~~149~~ 328 of this ~~act~~ title:

- 11 1. An order denying a motion to compel arbitration;
- 12 2. An order granting a motion to stay arbitration;
- 13 3. An order confirming or denying confirmation of an award;
- 14 4. An order modifying or correcting an award;
- 15 5. An order vacating an award without directing a rehearing; or
- 16 6. A final judgment entered under the Workers' Compensation
17 Arbitration Act.

18 SECTION 47. REPEALER Section 15, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2015, Section 15), is hereby repealed.

20 SECTION 48. This act shall become effective November 1, 2016.

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