

1 **SENATE FLOOR VERSION**

2 February 28, 2017

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 737

6 By: Sykes

7 [workers' compensation - volunteer firefighters -
8 Administrative Workers' Compensation Act -
9 eligibility for benefits - Self-insurance Guaranty
10 Fund - certain appeals - repealer - codification -
11 effective date]

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

13 SECTION 1. AMENDATORY 85 O.S. 2011, Section 380, as
14 amended by Section 45, Chapter 254, O.S.L. 2013 (85 O.S. Supp. 2016,
15 Section 380), is amended to read as follows:

16 Section 380. A. 1. Volunteer fire departments organized
17 pursuant to state law may obtain workers' compensation insurance for
18 volunteer firefighters through the Volunteer Firefighter Group
19 Insurance Pool pursuant to requirements established by ~~CompSource~~
20 ~~Mutual Insurance Company~~ an insurance company selected by the Office
21 of Management and Enterprise Services through a competitive bid
22 which shall administer the Pool. For the premium set by ~~CompSource~~
23 ~~Mutual Insurance Company~~ the insurance company, the state shall
24 provide ~~Fifty-five Dollars (\$55.00)~~ Eighty-five Dollars and thirty-

1 two cents (\$85.32) per firefighter per year. Except as otherwise
2 provided by subsection D of this section, the total amount paid by
3 the state shall not exceed ~~Three Hundred Twenty Thousand Three~~
4 ~~Hundred Thirty-eight Dollars (\$320,338.00)~~ Eight Hundred Ninety-
5 eight Thousand Six Hundred Seventy-five Dollars and fifty-six cents
6 (\$898,675.56) per year or so much thereof as may be necessary to
7 fund the Volunteer Firefighter Group Insurance Pool.

8 2. ~~CompSource Mutual Insurance Company~~ The Legislature shall
9 ~~collect the premium from state agencies, public trusts and other~~
10 ~~instrumentalities of the state~~ appropriate adequate funding to the
11 Office of Management and Enterprise Services for the purpose of
12 providing workers' compensation insurance pursuant to this section.
13 Any funds received by ~~CompSource Mutual Insurance Company~~ the
14 insurance company from ~~any state agency, public trust, or other~~
15 ~~instrumentality~~ the Office of Management and Enterprise Services for
16 purposes of workers' compensation insurance pursuant to this section
17 shall be deposited to the credit of the Volunteer Firefighter Group
18 Insurance Pool. ~~CompSource Mutual Insurance Company~~ The insurance
19 company shall collect premiums, pay claims, and provide for excess
20 insurance as needed.

21 B. ~~CompSource Mutual Insurance Company~~ The Office of Management
22 and Enterprise Services shall report, annually, to the Governor, the
23 Speaker of the Oklahoma House of Representatives, and the President
24 Pro Tempore of the State Senate the number of enrollees in the

1 Volunteer Firefighter Group Insurance Pool, and the amount of any
2 anticipated surplus or deficiency of the Pool; and shall also
3 provide to the Governor, the Speaker of the Oklahoma House of
4 Representatives and the President Pro Tempore of the State Senate
5 sixty (60) days advance notice of any proposed change in rates for
6 the Volunteer Firefighter Group Insurance Pool as determined by the
7 insurance company.

8 C. The amount of claims paid, claim expenses, underwriting
9 losses, loss ratio, or any other financial aspect of the Volunteer
10 Firefighter Group Insurance Pool shall not be considered when
11 determining or considering bids for the amount of any premiums,
12 rates, or expenses owed by, or any discounts, rebates, dividends, or
13 other financial benefits owed to any other policyholder of
14 ~~CompSource Mutual Insurance Company~~ the insurance company.

15 D. Except as otherwise provided by law, any increase in the
16 state payment rate for volunteer firefighters under the Volunteer
17 Firefighter Group Insurance Pool shall not exceed five percent (5%)
18 per annum. Any proposed change in rates for the Volunteer
19 Firefighter Group Insurance Pool ~~must~~ shall be approved by the ~~Board~~
20 ~~of Directors of CompSource Mutual Insurance Company~~ Office of
21 Management and Enterprise Services with notice provided pursuant to
22 subsection B of this section. ~~CompSource Mutual Insurance Company~~
23 The insurance company shall not increase premiums for the Volunteer
24 Firefighter Group Insurance Pool more than once per annum.

1 E. For purposes of this section, the term "volunteer fire
2 departments" includes those volunteer fire departments which have
3 authorized voluntary or uncompensated workers rendering services as
4 firefighters and are created by statute pursuant to Section 592 of
5 Title 18 of the Oklahoma Statutes, Sections 29-201 through 29-204 of
6 Title 11 of the Oklahoma Statutes, and those defined by Section 351
7 of Title 19 of the Oklahoma Statutes.

8 SECTION 2. AMENDATORY Section 2, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2016, Section 2), is amended to read as
10 follows:

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

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

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

21 3. "Case management" means the ongoing coordination, by a case
22 manager, of health care services provided to an injured or disabled
23 worker, including but not limited to systematically monitoring the
24 treatment rendered and the medical progress of the injured or

1 disabled worker; ensuring that any treatment plan follows all
2 appropriate treatment protocols, utilization controls and practice
3 parameters; assessing whether alternative health care services are
4 appropriate and delivered in a cost-effective manner based upon
5 acceptable medical standards; and ensuring that the injured or
6 disabled worker is following the prescribed health care plan;

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

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

21 5. "Certified workplace medical plan" means an organization of
22 health care providers or any other entity, certified by the State
23 Commissioner of Health, that is authorized to enter into a
24 contractual agreement with an employer, group self-insurance

1 association plan, an employer's workers' compensation insurance
2 carrier, third-party administrator or an insured to provide medical
3 care under the Administrative Workers' Compensation Act. Certified
4 plans shall only include plans which provide medical services and
5 payment for services on a fee-for-service basis to medical
6 providers;

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

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

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

24

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

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

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

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

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

16 b. "Compensable injury" does not include:

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

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

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

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

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

24 This presumption may only be overcome if the

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

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

15 (6) any injury that is related to a preexisting
16 condition except ~~when~~ if the treating physician
17 ~~clearly confirms~~ determines by objective findings
18 that the injury is an identifiable and
19 significant aggravation ~~incurred~~ of the pre-
20 existing condition that:

21 (a) occurred in the course and scope of
22 employment,

1 (b) is not only a recurrence of symptoms
2 inherent in the etiology of the pre-existing
3 condition, and

4 (c) is substantially caused by the work-related
5 accident.

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

13 d. A compensable injury shall be established by medical
14 evidence supported by objective findings as defined in
15 paragraph 30 of this section.

16 e. The injured employee shall prove by a preponderance of
17 the evidence that he or she has suffered a compensable
18 injury.

19 f. Benefits shall not be payable for a condition which
20 results from a non-work-related independent
21 intervening cause following a compensable injury which
22 causes or prolongs disability, aggravation, or
23 requires treatment. A non-work-related independent
24

1 intervening cause does not require negligence or
2 recklessness on the part of ~~a claimant~~ an employee.

3 g. An employee who suffers a compensable injury shall be
4 entitled to receive compensation as prescribed in ~~this~~
5 ~~act~~ the Administrative Workers' Compensation Act.

6 Notwithstanding other provisions of law, if it is
7 determined that a compensable injury did not occur,
8 the employee shall not be entitled to compensation
9 under ~~this act~~ the Administrative Workers'
10 Compensation Act;

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

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

21 ~~12.~~ "Continuing medical maintenance" means medical treatment
22 that is reasonable and necessary to maintain ~~claimant's~~ the
23 employee's condition resulting from the compensable injury or
24 illness after reaching maximum medical improvement. Continuing

1 medical maintenance shall not include diagnostic tests, surgery,
2 injections, counseling, physical therapy, or pain management devices
3 or equipment;

4 ~~13.~~ 12. "Course and scope of employment" means an activity of
5 any kind or character for which the employee was hired and that
6 relates to and derives from the work, business, trade or profession
7 of an employer, and is performed by an employee in the furtherance
8 of the affairs or business of an employer. The term includes
9 activities conducted on the premises of an employer or at other
10 locations designated by an employer and travel by an employee in
11 furtherance of the affairs of an employer that is specifically
12 directed by the employer. This term does not include:

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

1 on a work break inside the employer's facility and the
2 work break is authorized by the employee's supervisor;

3 ~~14.~~ 13. "Cumulative trauma" means an injury to an employee that
4 is caused by the combined effect of repetitive physical activities
5 extending over a period of time in the course and scope of
6 employment. Cumulative trauma shall not mean fatigue, soreness or
7 general aches and pain that may have been caused, aggravated,
8 exacerbated or accelerated by the employee's course and scope of
9 employment. Cumulative trauma shall have resulted directly and
10 independently of all other causes ~~and the employee shall have~~
11 ~~completed at least one hundred eighty (180) days of continuous~~
12 ~~active employment with the employer;~~

13 ~~15.~~ 14. "Death" means only death resulting from compensable
14 injury as defined in paragraph 9 of this section;

15 ~~16.~~ 15. "Disability" means ~~incapacity because of compensable~~
16 ~~injury to earn, in the same or any other employment, substantially~~
17 ~~the same amount of wages the employee was receiving at the time of~~
18 ~~the, based on objective findings, impairment of a portion of the~~
19 total physiological capabilities of the human body caused by a
20 compensable injury;

21 ~~17.~~ 16. "Drive-away operations" includes every person engaged
22 in the business of transporting and delivering new or used vehicles
23 by driving, either singly or by towbar, saddle-mount or full-mount
24

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

3 ~~18.~~

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

23 b. The term "employee" shall not include:
24

- 1 (1) any person for whom an employer is liable under
2 any Act of Congress for providing compensation to
3 employees for injuries, disease or death arising
4 out of and in the course of employment including,
5 but not limited to, the Federal Employees'
6 Compensation Act, the Federal Employers'
7 Liability Act, the Longshore and Harbor Workers'
8 Compensation Act and the Jones Act, to the extent
9 his or her employees are subject to such acts,
- 10 (2) any person who is employed in agriculture or
11 horticulture by an employer who had a gross
12 annual payroll in the preceding calendar year of
13 less than One Hundred Thousand Dollars
14 (\$100,000.00) wages for agricultural or
15 horticultural workers, or any person who is
16 employed in agriculture or horticulture who is
17 not engaged in operation of motorized machines,
- 18 (3) any person who is a licensed real estate sales
19 associate or broker, paid on a commission basis,
- 20 (4) any person who is providing services in a medical
21 care or social services program, or who is a
22 participant in a work or training program,
23 administered by the Department of Human Services,
24 unless the Department is required by federal law

1 or regulations to provide workers' compensation
2 for such person. This division shall not be
3 construed to include nursing homes,

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

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

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

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

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

13 (9) a person, commonly referred to as an owner-
14 operator, who owns or leases a truck-tractor or
15 truck for hire, if the owner-operator actually
16 operates the truck-tractor or truck and if the
17 person contracting with the owner-operator is not
18 the lessor of the truck-tractor or truck.
19 Provided, however, an owner-operator shall not be
20 precluded from workers' compensation coverage
21 under the Administrative Workers' Compensation
22 Act if the owner-operator elects to participate
23 as a sole proprietor,
24

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

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

19 ~~19.~~ 18. "Employer" means a person, partnership, association,
20 limited liability company, corporation, and the legal
21 representatives of a deceased employer, or the receiver or trustee
22 of a person, partnership, association, corporation, or limited
23 liability company, departments, instrumentalities and institutions
24 of this state and divisions thereof, counties and divisions thereof,

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

10 ~~20.~~ 19. "Employment" includes work or labor in a trade,
11 business, occupation or activity carried on by an employer or any
12 authorized voluntary or uncompensated worker rendering services as a
13 firefighter, peace officer or emergency management worker;

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

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

21 ~~23.~~ 20. "Impaired self-insurer" means a private self-insurer or
22 group self-insurance association that fails to pay its workers'
23 compensation obligations, or is financially unable to do so and is
24 the subject of any proceeding under the Federal Bankruptcy Reform

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

6 21. "Impairment" means a loss of, or loss of the function of, a
7 body part, organ or system;

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

10 ~~25. 22.~~ "Insurance Commissioner" means the ~~Insurance~~
11 Commissioner of the ~~State of Oklahoma~~ Insurance Department;

12 ~~26. 23.~~ "Insurance Department" means the Insurance Department
13 of the State of Oklahoma;

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

21 ~~28. 24.~~ "Maximum medical improvement" means that no further
22 material improvement would reasonably be expected from medical
23 treatment or the passage of time;

24

1 ~~29.~~ 25. "Medical services" means those services specified in
2 Section 50 of this ~~act~~ title;

3 ~~30.~~ 26. "Misconduct" shall include the following:

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

18 ~~31.~~

19 27. a. (1) "Objective findings" ~~are those~~ means findings
20 based on objective medical evidence which cannot
21 come under the voluntary control of the patient.

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

1 the courts shall not consider complaints of
2 pain.

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

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

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

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

4 ~~32.~~ 28. "Occupational disease" means a disease arising out of
5 and in the course and scope of employment that causes damage or harm
6 to the physical structure of the body. The term includes a disease
7 or infection that naturally results from the work-related disease.
8 The term does not include an ordinary disease of life to which the
9 general public is exposed outside of employment, unless that disease
10 is an incident to a compensable injury or occupational disease;

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

15 ~~33.~~ 30. "Permanent disability" means the extent, expressed as a
16 percentage, of the permanent loss of a portion of the total
17 physiological capabilities of the human body as established by
18 competent medical evidence and caused by a compensable injury based
19 on the current edition Sixth Edition of the American Medical
20 Association guides to the evaluation of impairment, if the
21 impairment is contained therein;

22 ~~34.~~ 31. "Permanent partial disability" means a permanent
23 disability or loss of use after maximum medical improvement has been
24 reached which prevents the injured employee, who has been released

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

4 ~~35.~~ 32. "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~~ the Administrative Workers' Compensation Act. Loss of both
10 hands, both feet, both legs, or both eyes, or any two thereof, shall
11 constitute permanent total disability;

12 ~~36.~~ 33. "Preexisting condition" means any illness, injury,
13 disease, or other physical or mental condition, whether or not work-
14 related, for which medical advice, diagnosis, care or treatment was
15 recommended or received preceding the date of injury;

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

21 ~~38.~~ 34. "Private self-insurer" means a private employer that
22 has been authorized to self-insure its workers' compensation
23 obligations pursuant to ~~this act~~ the Administrative Workers'
24 Compensation Act, but does not include group self-insurance

1 associations authorized by ~~this act~~ the Administrative Workers'
2 Compensation Act, or any public employer that self-insures pursuant
3 to ~~this act~~ the Administrative Workers' Compensation Act;

4 ~~39.~~ 35. "Prosthetic" means an artificial device used to replace
5 a part or joint of the body that is lost or injured in an accident
6 or illness covered by ~~this act~~ the Administrative Workers'
7 Compensation Act;

8 ~~40.~~ "~~Scheduled member~~" or "~~member~~" means ~~hands, fingers, arms,~~
9 ~~legs, feet, toes, and eyes.~~ In addition, for purposes of the
10 ~~Multiple Injury Trust Fund only,~~ "~~scheduled member~~" means ~~hearing~~
11 ~~impairment;~~

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

19 ~~42.~~ 36. "State average weekly wage" means the state average
20 weekly wage determined by the Oklahoma Employment Security
21 Commission in the preceding calendar year. If such determination is
22 not available, the Commission shall determine the wage annually
23 after reasonable investigation;

24

1 ~~43.~~ 37. "Subcontractor" means a person, firm, corporation or
2 other legal entity hired by the general or prime contractor to
3 perform a specific task for the completion of a work-related
4 activity;

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

7 ~~45.~~ 38. "Surviving spouse" means the employee's spouse by
8 reason of a legal marriage recognized by the State of Oklahoma or
9 under the requirements of a common law marriage in this state, as
10 determined by the Workers' Compensation Commission;

11 ~~46.~~ 39. "Temporary partial disability" means an injured
12 employee who is temporarily unable to perform his or her job, but
13 may perform alternative work offered by the employer;

14 ~~47.~~ ~~"Time of accident" or "date of accident" means the time or~~
15 ~~date of the occurrence of the accidental incident from which~~
16 ~~compensable injury, disability, or death results; and~~

17 ~~48.~~ 40. "Total loss of use" means a one-hundred-percent
18 permanent partial disability rating to the specific body part; and

19 41. "Wages" means money compensation received for employment at
20 the time of the accident, including the reasonable value of board,
21 rent, housing, lodging, or similar advantage received from the
22 employer and includes the amount of tips required to be reported by
23 the employer under Section 6053 of the Internal Revenue Code and the
24

1 regulations promulgated pursuant thereto or the amount of actual
2 tips reported, whichever amount is greater.

3 SECTION 3. AMENDATORY Section 3, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 3), is amended to read as
5 follows:

6 Section 3. A. Every employer and every employee, unless
7 otherwise specifically provided in ~~this act~~ the Administrative
8 Workers' Compensation Act, shall be subject and bound to the
9 provisions of the Administrative Workers' Compensation Act.
10 However, nothing in ~~this act~~ the Administrative Workers'
11 Compensation Act shall be construed to conflict with any valid Act
12 of Congress governing the liability of employers for injuries
13 received by their employees.

14 B. ~~This act~~ The Administrative Workers' Compensation Act shall
15 apply only to claims for injuries and death based on accidents which
16 occur on or after ~~the effective date of this act~~ February 1, 2014.

17 C. The Workers' Compensation Code in effect before ~~the~~
18 ~~effective date of this act~~ February 1, 2014, shall govern all rights
19 in respect to claims for injuries and death based on accidents
20 occurring before ~~the effective date of this act~~ February 1, 2014.

21 D. If an employee files a workers' compensation claim or
22 receives benefits in another jurisdiction, the employee shall not be
23 eligible to receive benefits under this act for the same injury.

24

1 SECTION 4. AMENDATORY Section 7, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 7), is amended to read as
3 follows:

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

6 1. Filed a claim under ~~this act~~ the Administrative Workers'
7 Compensation Act;

8 2. Retained a lawyer for representation regarding a claim under
9 ~~this act~~ the Administrative Workers' Compensation Act;

10 3. Instituted or caused to be instituted any proceeding under
11 the provisions of ~~this act~~ the Administrative Workers' Compensation
12 Act; or

13 4. Testified or is about to testify in any proceeding under the
14 provisions of ~~this act~~ the Administrative Workers' Compensation Act.

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

17 C. ~~If the Commission determines that the defendant violated~~
18 ~~subsection A of this section, the Commission may award the employee~~
19 ~~back pay up to a maximum of One Hundred Thousand Dollars~~

20 ~~(\$100,000.00)~~ If a district court of this state determines that an
21 employer violated a provision of this section, such employer shall

22 be liable for reasonable compensatory damages suffered by an

23 employee as a result of the violation. The employee shall have the

24 burden of proof to show such violation by a preponderance of the

1 evidence. Interim earnings or amounts earnable with reasonable
2 diligence by the person discriminated against shall reduce the ~~back~~
3 ~~pay~~ compensatory damages otherwise allowable. Exemplary or punitive
4 damage awards made pursuant to this section shall not exceed One
5 Hundred Thousand Dollars (\$100,000.00).

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

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

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

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

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

22 SECTION 5. AMENDATORY Section 14, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2016, Section 14), is amended to read as
24 follows:

1 Section 14. ~~A. A cardiovascular, coronary, pulmonary,~~
2 ~~respiratory, or cerebrovascular accident or myocardial infarction~~
3 ~~causing injury, illness, or death is a compensable injury only if,~~
4 ~~in relation to other factors contributing to the physical harm, the~~
5 ~~course and scope of employment was the major cause.~~

6 ~~B. 1. An injury or disease included in subsection A of this~~
7 ~~section shall not be deemed to be a compensable injury unless it is~~
8 ~~shown that the exertion of the work necessary to precipitate the~~
9 ~~disability or death was extraordinary and unusual in comparison to~~
10 ~~the employee's usual work in the course of the employee's regular~~
11 ~~employment, or that some unusual and unpredicted incident occurred~~
12 ~~which is found to have been the major cause of the physical harm.~~

13 ~~2. Physical or mental stress shall not be considered in~~
14 ~~determining whether the employee or claimant has met his or her~~
15 ~~burden of proof:~~

16 1. It occurred at a definite time and place;

17 2. It was caused by a specific event occurring in the course
18 and scope of employment;

19 3. The preponderance of the evidence indicates that the
20 employee's work was the main contributing factor, rather than the
21 natural progression of a preexisting condition; and

22 4. It was not triggered by physical or mental stress.

1 SECTION 6. AMENDATORY Section 16, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 16), is amended to read as
3 follows:

4 Section 16. A. The Official Disability Guidelines ~~—Treatment~~
5 ~~in Workers Compensation (ODG), published by the Work Loss Data~~
6 ~~Institute, is to~~ shall be recognized as the primary standard of
7 reference, at the time of treatment, in determining the frequency
8 and extent of services presumed to be medically necessary and
9 appropriate for compensable injuries under ~~this act~~ the
10 Administrative Workers' Compensation Act, or in resolving such
11 matters in the event a dispute arises. ~~The medical treatment~~
12 ~~guidelines are not requirements, nor are they mandates or standards;~~
13 ~~they provide advice by identifying the care most likely to benefit~~
14 ~~injured workers. The guidelines shall be evidence-based,~~
15 ~~scientifically valid, outcome-focused, and designed to reduce~~
16 ~~excessive or inappropriate medical care while safeguarding necessary~~
17 ~~medical care.~~

18 B. Physicians providing care to an employee shall prescribe for
19 the employee any necessary prescription drugs and over-the-counter
20 alternatives to prescription medicine as clinically appropriate and
21 as recommended under the Official Disability Guidelines.
22 Prescriptions and nonprescription drugs that are not preferred,
23 exceed or are not addressed by ~~ODG~~ the Official Disability
24 Guidelines require preauthorization and the preauthorization request

1 shall include the prescribing doctor's drug regimen plan of care and
2 the anticipated dosage or range of dosages.

3 SECTION 7. AMENDATORY Section 17, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 17), is amended to read as
5 follows:

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

8 1. The Governor shall appoint three members, one of whom shall
9 be licensed in this state as a doctor of medicine and surgery, one
10 of whom shall be engaged in the practice of family medicine in a
11 rural community of the state, and one of whom shall be an
12 osteopathic physician;

13 2. The President Pro Tempore of the Senate shall appoint three
14 members, one of whom shall be licensed in this state as a doctor of
15 medicine and orthopedic surgery, one of whom shall be licensed in
16 this state either as a doctor of medicine or a doctor of osteopathy
17 and a neurosurgeon, and one of whom shall be licensed in this state
18 as a podiatric physician; and

19 3. The Speaker of the House of Representatives shall appoint
20 three members, one of whom shall be licensed in this state as an
21 osteopathic physician, one of whom shall be licensed in this state
22 either as a doctor of medicine or a doctor of osteopathy and shall
23 be engaged in the practice of occupational medicine, and one of whom
24 shall be licensed in this state as a chiropractic physician.

1 Any member serving on the ~~effective date of this section~~
2 February 1, 2014, shall serve the remainder of his or her term.
3 Thereafter, each position will be filled by the appointing official
4 for a term of three (3) years. Members shall be subject to
5 reappointment, with any new appointee to serve out the remainder of
6 the unexpired term of the Committee member so replaced.

7 B. The Committee shall:

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

19 2. Assist the Commission in reviewing medical practices of
20 health care providers, including evaluations of permanent disability
21 provided by health care providers. The Committee shall review and
22 make findings and recommendations to the Commission with respect to
23 charges of abusive practices by health care providers providing
24

1 medical services or evaluations of permanent partial disability
2 through the workers' compensation system;

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

6 4. After public hearing, adopt Physician Advisory Committee
7 Guidelines (PACG) and protocols for only medical treatment not
8 addressed by the latest edition of the Official Disability
9 Guidelines;

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

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

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

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

24

1 9. Assist the Commission in accessing medical information from
2 scientific literature; and

3 10. Report its progress annually to the Governor, the President
4 Pro Tempore of the Senate, and the Speaker of the House of
5 Representatives.

6 C. The Commission shall recognize the latest edition of the
7 Official Disability Guidelines as the primary standard of reference,
8 at the time of treatment, in determining the frequency and extent of
9 services presumed to be medically necessary and appropriate for
10 compensable injuries ~~under this act~~ the Administrative Workers'
11 Compensation Act, or in resolving such matters in the event a
12 dispute arises.

13 D. Members of the Physician Advisory Committee shall receive no
14 compensation for serving on the Committee but shall be reimbursed by
15 the Commission for their necessary travel expenses incurred in the
16 performance of their duties in accordance with the State Travel
17 Reimbursement Act.

18 E. Meetings of the Physician Advisory Committee shall be called
19 by the Commission but held at least quarterly. The presence of a
20 majority of the members shall constitute a quorum. No action shall
21 be taken by the Physician Advisory Committee without the affirmative
22 vote of at least a majority of the members.

23

24

1 F. The Commission shall provide office supplies and personnel
2 of the Commission to assist the Committee in the performance of its
3 duties.

4 G. Upon written request, the Insurance Commissioner, CompSource
5 Oklahoma, and every approved self-insured employer in Oklahoma shall
6 provide the Committee with data necessary to the performance of its
7 duties.

8 H. Any health care provider acting in good faith and within the
9 scope of the provider's duties as a member of the Physician Advisory
10 Committee shall be immune from civil liability for making any report
11 or other information available to the judges of the Commission or to
12 the Commission or for assisting in the origination, investigation,
13 or preparation of the report or other information so provided.

14 SECTION 8. AMENDATORY Section 18, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2016, Section 18), is amended to read as
16 follows:

17 Section 18. A. No hospital, physician, or other health care
18 provider shall bill or attempt to collect any fee or any portion of
19 a fee for services rendered to an employee due to a work-related
20 injury or report to any credit-reporting agency any failure of the
21 employee to make the payment, when a claim for compensation has been
22 filed under ~~this act~~ the Administrative Workers' Compensation Act
23 and the hospital, physician, or health care provider has received
24 actual notice given in writing by the employee or the employee's

1 representative. Actual notice shall be deemed received by the
2 hospital, physician, or health care provider five (5) days after
3 mailing by certified mail or sending by facsimile, electronic mail
4 or other electronic means with confirmation of receipt by the
5 employee or his or her representative to the hospital, physician, or
6 health care provider.

7 B. The notice shall include:

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

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

1 D. This section shall not ~~avoid~~ void, modify, or amend any
2 other section or subsection of ~~this act~~ the Administrative Workers'
3 Compensation Act.

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

6 SECTION 9. AMENDATORY Section 19, Chapter 208, O.S.L.
7 2013, as amended by Section 4, House Joint Resolution No. 1096,
8 O.S.L. 2014 (85A O.S. Supp. 2016, Section 19), is amended to read as
9 follows:

10 Section 19. A. There is hereby created the Oklahoma Workers'
11 Compensation Commission, an executive agency of the State of
12 Oklahoma, which shall have the exclusive responsibility and duty to
13 carry out the provisions of ~~this act~~ the Administrative Workers'
14 Compensation Act, except as otherwise provided.

15 B. The Commission shall consist of three (3) full-time
16 commissioners, ~~each two~~ of whom ~~must~~ shall have been involved in the
17 workers' compensation field for at least three (3) years, appointed
18 by the Governor: ~~one of whom is chosen from a slate of three~~
19 ~~selected by the Speaker of the House of Representatives~~, with all
20 three confirmed by the Senate. The term of each appointee shall be
21 six (6) years to administer the provisions of ~~this act~~ the
22 Administrative Workers' Compensation Act. The Governor may request
23 a subsequent slate of nominees from the Speaker of the House of
24 Representatives if a suitable nominee is not found. Any or all of

1 the commissioners may be reappointed for additional six-year terms
2 upon reconfirmation by the Senate. However, the initial
3 commissioners shall serve staggered terms of two (2), four (4), and
4 six (6) years, respectively, as determined by the Governor. If the
5 Legislature is not in session at the time of appointment, the
6 appointment shall be subject to confirmation by the Senate upon
7 convening of the next regular session of the Legislature.
8 Membership on the Commission shall be a full-time position and no
9 commissioner shall have any other employment, unless authorized or
10 excused by law. Each commissioner shall receive a salary equal to
11 that paid to a district judge of this state; provided however, the
12 commissioners shall not receive any increase in salary as a result
13 of the provisions of Section 1 of ~~this resolution~~ House Joint
14 Resolution No. 1096 of the 2nd Session of the 54th Oklahoma
15 Legislature.

16 C. The Commission shall have the authority to adopt reasonable
17 rules within its respective areas of responsibility including the
18 rules of procedure for administrative hearings, after notice and
19 public hearing, for effecting the purposes of ~~this act~~ the
20 Administrative Workers' Compensation Act, in accordance with the
21 Oklahoma Administrative Procedures Act. All rules, upon adoption,
22 shall be published and be made available to the public and, if not
23 inconsistent with the law, shall be binding in the administration of
24 ~~this act~~ the Administrative Workers' Compensation Act.

1 D. The principal office of the Commission shall be situated in
2 the City of Oklahoma City in quarters assigned by the Office of
3 Management and Enterprise Services. The Commission shall maintain
4 and keep open, during reasonable business hours, the office in
5 Oklahoma City, for the transaction of business, at which office its
6 official records and papers shall be kept. The Commission or any
7 commissioner may hold hearings in any city of this state.

8 E. The Governor shall appoint one of the commissioners to be
9 chair of the Commission. In addition to other duties, the chair of
10 the Commission shall have the following powers and duties:

11 1. To organize, direct and develop the administrative work of
12 the administrative law judges, including but not limited to
13 docketing, clerical, technical and financial work and establishment
14 of hours of operation;

15 2. To employ administrative staff for the Commission, within
16 budgetary limitation; and

17 3. Such other duties and responsibilities authorized by law or
18 as the Commission may prescribe.

19 F. All appeals or disputes arising from actions of the
20 Commission shall be governed by provisions of ~~this act~~ the
21 Administrative Workers' Compensation Act and the Commission shall
22 not be subject to the provisions of the Oklahoma Administrative
23 Procedures Act, except as provided in ~~this act~~ the Administrative
24 Workers' Compensation Act.

1 G. ~~When any commissioner of the Commission is disqualified for~~
2 ~~any reason to hear and participate in the determination of any~~
3 ~~matter pending before the Commission, the Governor shall appoint a~~
4 ~~qualified person to hear and participate in the decision on the~~
5 ~~particular matter. The special commissioner so appointed shall have~~
6 ~~all authority and responsibility with respect to the particular~~
7 ~~matter before the Commission as if the person were a regular~~
8 ~~commissioner of the Commission but shall have no authority or~~
9 ~~responsibility with respect to any other matter before the~~
10 ~~Commission. A person appointed as a special commissioner of the~~
11 ~~Commission under the provisions of this subsection shall be entitled~~
12 ~~to receive a per diem equal to the annual salary of the~~
13 ~~commissioners prorated for the number of days he or she serves in~~
14 ~~the capacity of a special commissioner of the Commission.~~
15 ~~Furthermore, when a vacancy on the Commission occurs or is certain~~
16 ~~to occur, the position shall be filled pursuant to the provisions of~~
17 ~~this section~~ The power of the Commission to decide issues of fact
18 does not include the power to determine the constitutionality of
19 provisions of this act or the constitutionality of application of
20 the provisions of this act.

21 SECTION 10. AMENDATORY Section 20, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2016, Section 20), is amended to read as
23 follows:
24

1 Section 20. A. In addition to its other duties and powers, the
2 Commission is given and granted full power and authority:

3 1. To appoint administrative law judges to hear all claims for
4 compensation, including claims based on injuries which occurred
5 outside this state for which compensation is payable under ~~this act~~
6 the Administrative Workers' Compensation Act. An administrative law
7 judge shall have been licensed to practice law in this state for a
8 period of not less than three (3) years ~~and shall have not less than~~
9 ~~three (3) years of workers' compensation experience prior to~~
10 ~~appointment;~~

11 2. To remand any case to an administrative law judge for the
12 purpose of taking additional evidence;

13 3. To assess penalties;

14 4. To prescribe rules governing the representation of
15 employees, employers, and carriers in respect to claims before the
16 Commission;

17 5. To make available all records in connection with all cases
18 of personal injury to the Oklahoma Department of Labor. The
19 Commissioner of Labor may propose rules for the prevention of
20 injuries and transmit the rules to the Commission. The Commission
21 may recommend proposed rules for prevention of injuries to the
22 Commissioner of Labor; and

23 6. To have and exercise all other powers and duties conferred
24 or imposed by ~~this act~~ the Administrative Workers' Compensation Act.

1 B. 1. In addition to the other powers and duties granted to
2 the Commission in this section and otherwise provided by law, the
3 Commission is authorized to establish and impose reasonable
4 administrative fees to recover the cost of preparation of various
5 informative materials distributed by the Commission.

6 2. The administrative fees shall be established by regulation
7 of the Commission.

8 3. Funds derived from administrative fees shall be deposited
9 into the Workers' Compensation Fund to be used to defray expenses
10 incurred in preparation and distribution of materials.

11 SECTION 11. AMENDATORY Section 21, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2016, Section 21), is amended to read as
13 follows:

14 Section 21. A. Commissioners shall be considered officers and
15 shall take the oath prescribed by the Oklahoma Constitution and the
16 laws of this state.

17 B. 1. A majority of the Workers' Compensation Commission shall
18 constitute a quorum for the transaction of business, and vacancies
19 shall not impair the right of the remaining commissioners to
20 exercise all the powers of the full Commission, so long as a
21 majority remains.

22 2. Any investigation, inquiry, or hearing which the Commission
23 is authorized to hold or undertake may be held or undertaken by or
24

1 before any one commissioner of the Commission, or appointee acting
2 for him or her, under authorization of the Commission.

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

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

14 SECTION 12. AMENDATORY Section 22, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2016, Section 22), is amended to read as
16 follows:

17 Section 22. A. 1. For the purpose of administering the
18 provisions of ~~this act~~ the Administrative Workers' Compensation Act,
19 the Workers' Compensation Commission is authorized:

- 20 a. to make rules necessary for the administration and
21 operation of the Commission,
22 b. to appoint and fix the compensation of temporary
23 technical assistants, medical and legal advisers,
24

1 clerical assistants and other officers and employees,
2 and

3 c. to make such expenditures, including those for
4 personal service, rent, books, periodicals, office
5 equipment, and supplies, and for printing and binding
6 as may be necessary.

7 2. ~~a. Before the adoption, prescription, amendment,~~
8 ~~modification, or repeal of any rule, regulation, or~~
9 ~~form, the Commission shall give at least thirty (30)~~
10 ~~days' notice of its intended action.~~

11 ~~b. The notice shall include a statement of the terms or~~
12 ~~substance of the intended action or description of the~~
13 ~~subjects and issues involved, and the time, place, and~~
14 ~~manner in which interested persons may present their~~
15 ~~views thereon.~~

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

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

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

4 ~~5. All expenditures of the Commission in the administration of~~
5 ~~this act shall be allowed and paid from the Workers' Compensation~~
6 ~~Fund on the presentation of itemized vouchers approved by the~~
7 ~~Commission~~ The Commission shall comply with the provisions of the
8 Administrative Procedures Act applicable to the filing and
9 publication requirements for rules.

10 B. 1. The Commission may appoint as many persons as may be
11 necessary to be administrative law judges and in addition may
12 appoint such examiners, investigators, medical examiners, clerks,
13 and other employees as it deems necessary to effectuate the
14 provisions of ~~this act~~ the Administrative Workers' Compensation Act.

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

17 C. Additionally, the Commission shall have the following powers
18 and duties:

19 1. To hear and approve compromise settlements;

20 2. To review and approve own-risk applications and group self-
21 insurance association applications;

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

24

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

8 ~~5.~~ To establish a toll-free telephone number in order to
9 provide information and answer questions about the Commission;

10 ~~6.~~ 5. To hear and determine claims concerning disputed medical
11 bills;

12 ~~7.~~ 6. To promulgate necessary rules for administering ~~this act~~
13 the Administrative Workers' Compensation Act and develop uniform
14 forms and procedures for use by administrative law judges. Such
15 rules shall be reviewable by the Legislature;

16 ~~8.~~ 7. To invest funds on behalf of the Multiple Injury Trust
17 Fund;

18 ~~9.~~ 8. To appoint a Commission Mediator to conduct informal
19 sessions to attempt to resolve assigned disputes; and

20 ~~10.~~ 9. Such other duties and responsibilities authorized by
21 law.

22 D. It shall be the duty of an administrative law judge, under
23 the rules adopted by the Commission, to hear and determine claims
24 for compensation and to conduct hearings and investigations and to

1 make such judgments, decisions, and determinations as may be
2 required by any rule or judgment of the Commission.

3 SECTION 13. AMENDATORY Section 31, Chapter 208, O.S.L.
4 2013, as amended by Section 3, Chapter 344, O.S.L. 2015 (85A O.S.
5 Supp. 2016, Section 31), is amended to read as follows:

6 Section 31. A. The Multiple Injury Trust Fund shall be derived
7 from the following additional sources:

8 1. As soon as practicable after January 1 of each year, the
9 ~~commissioners of the~~ Workers' Compensation Commission shall
10 establish an assessment rate applicable to each mutual or
11 interinsurance association, stock company, CompSource Oklahoma, or
12 other insurance carrier writing workers' compensation insurance in
13 this state, each employer carrying its own risk, and each group
14 self-insurance association, for amounts for purposes of computing
15 the assessment authorized by this section necessary to pay the
16 annual obligations of the Multiple Injury Trust Fund determined on
17 or before December 31 of each year by the MITF Director, provided
18 for in subsection P of this section, to be outstanding for the next
19 calendar year, and to pay the allocations provided for in subsection
20 I of this section. The rate shall be equal for all parties required
21 to pay the assessment. If CompSource begins operating as a mutual
22 insurance company, the Board of Directors for CompSource Mutual
23 Insurance Company shall have the power to disapprove the rate
24 established by the MITF Director until the Multiple Injury Trust

1 Fund repays in full the amount due on any loan from CompSource
2 Mutual Insurance Company or its predecessor CompSource Oklahoma. If
3 the MITF Director and CompSource have not agreed on the assessment
4 rate within thirty (30) days, the Commission shall set an assessment
5 rate sufficient to cover all foreseeable obligations of the Multiple
6 Injury Trust Fund, including interest and principal owed by the Fund
7 on any loan. The rate in effect on the ~~effective date of this act~~
8 February 1, 2014, shall remain effective through June 30, 2014;

9 2. The Oklahoma Tax Commission shall assess and collect from
10 any uninsured employer a temporary assessment at the rate of five
11 percent (5%) of the total compensation for permanent total
12 disability awards, permanent partial disability awards, and death
13 benefits paid out during each quarter of the calendar year by the
14 employers;

15 3. The assessments shall be paid to the Tax Commission.
16 Insurance carriers, self-insurers, group self-insurance associations
17 and CompSource Oklahoma shall pay the assessment in four equal
18 installments not later than the fifteenth day of the month following
19 the close of each quarter of the calendar year of the assessment.
20 Assessments shall be determined based upon gross direct written
21 premiums, normal premiums or actual paid losses of the paying party,
22 as applicable, during the calendar quarter for which the assessment
23 is due. Uninsured employers shall pay the assessment not later than
24 the fifteenth day of the month following the close of each quarter

1 of the calendar year of the assessment. For purposes of this
2 section, "uninsured employer" means an employer required by law to
3 carry workers' compensation insurance but who has failed or
4 neglected to do so.

5 a. The assessment authorized in this section shall be
6 determined using a rate equal to the proportion that
7 the sum of the outstanding obligations of the Multiple
8 Injury Trust Fund as determined pursuant to paragraph
9 1 of this subsection and the allocations provided for
10 in subsection I of this section bear to the combined
11 gross direct written premiums of all such insurers;
12 all actual paid losses of all individual self-
13 insureds; and the normal premium of all group self-
14 insurance associations, for the year period from
15 January 1 to December 31 preceding the assessment.

16 b. For purposes of this subsection:

17 (1) "actual paid losses" means all medical and
18 indemnity payments, including temporary
19 disability, permanent disability, and death
20 benefits, and excluding loss adjustment expenses
21 and reserves, and

22 (2) "normal premium" means a standard premium less
23 any discounts;

24

1 4. By April 15 of each year, the Insurance Commissioner, the
2 MITF Director and each individual and group self-insured shall
3 provide the Commission with such information as the Commission may
4 determine is necessary to effectuate the purposes of this section;

5 5. Each mutual or interinsurance association, stock company,
6 CompSource Oklahoma, or other insurance carrier writing workers'
7 compensation insurance in this state, and each employer carrying its
8 own risk, including each group self-insurance association, shall be
9 notified by the Commission in writing of the rate for the assessment
10 on or before May 1 of each year in which a rate is determined. The
11 rate determined by the Commission shall be in effect for four
12 calendar quarters beginning July 1 following determination by the
13 Commission; and

14 6. a. No mutual or interinsurance association, stock
15 company, CompSource Oklahoma, or other insurance
16 carrier writing workers' compensation insurance in
17 this state may be assessed in any year an amount
18 greater than six percent (6%) of the gross direct
19 written premiums of that insurer.

20 b. No employer carrying its own risk may be assessed in
21 any year an amount greater than six percent (6%) of
22 the total actual paid losses of that individual self-
23 insured.

1 c. No group self-insurance association may be assessed in
2 any year an amount greater than six percent (6%) of
3 the normal premium of that group self-insurance
4 association.

5 d. If the maximum assessment does not provide in any one
6 year an amount sufficient to make all necessary
7 payments for obligations of the Multiple Injury Trust
8 Fund and for the allocations provided for in
9 subsection I of this section, the unpaid portion shall
10 be paid as soon thereafter as funds become available.

11 B. The Multiple Injury Trust Fund is hereby authorized to
12 receive and expend monies appropriated by the Legislature.

13 C. It shall be the duty of the Tax Commission to collect the
14 payments provided for in ~~this act~~ the Administrative Workers'
15 Compensation Act. The Tax Commission is hereby authorized to bring
16 an action for the recovery of any delinquent or unpaid payments
17 required in this section.

18 D. Any mutual or interinsurance association, stock company, or
19 other insurance company, which is subject to regulation by the
20 Insurance Commissioner, or CompSource Oklahoma, failing to make
21 payments required in ~~this act~~ the Administrative Workers'
22 Compensation Act promptly and correctly, and failing to report
23 payment of the same to the Insurance Commission within ten (10) days
24 of payment shall be subject to administrative penalties as allowed

1 by law, including but not limited to a fine in the amount of Five
2 Hundred Dollars (\$500.00) or an amount equal to one percent (1%) of
3 the unpaid amount, whichever is greater, to be paid to the Insurance
4 Commissioner.

5 E. Any employer carrying its own risk, or group self-insurance
6 association failing to make payments required in ~~this act~~ the
7 Administrative Workers' Compensation Act promptly and correctly, and
8 failing to report payment of the same to the Commission within ten
9 (10) days of payment shall be subject to administrative penalties as
10 allowed by law, including but not limited to a fine in the amount of
11 Five Hundred Dollars (\$500.00) or an amount equal to one percent
12 (1%) of the unpaid amount, whichever is greater, to be paid to the
13 Commission.

14 F. ~~1.~~ On or before the first day of April of each year, the
15 State Treasurer shall advise the Commission, the MITF Director and
16 the Tax Commission of the amount of money held as of March 1 of that
17 year by the State Treasurer to the credit of the Multiple Injury
18 Trust Fund. On or before the first day of November of each year,
19 the State Treasurer shall advise the Commission, the MITF Director
20 and the Tax Commission of the amount of money held as of October 1
21 of that year by the State Treasurer to the credit of the Multiple
22 Injury Trust Fund.

23 ~~2. Until such time as the Multiple Injury Trust Fund fully~~
24 ~~satisfies any loan obligation payable to CompSource Mutual Insurance~~

1 ~~Company or its predecessor CompSource Oklahoma, the State Treasurer~~
2 ~~shall:~~

3 ~~a. advise the Chief Executive Officer of CompSource on or~~
4 ~~before the first day of April of the money held as of~~
5 ~~March 1 of that year by the State Treasurer to the~~
6 ~~credit of the Multiple Injury Trust Fund, and~~

7 ~~b. advise the Chief Executive Officer of CompSource on or~~
8 ~~before the first day of November of the money held as~~
9 ~~of October 1 of that year by the State Treasurer to~~
10 ~~the credit of the Multiple Injury Trust Fund.~~

11 G. Eighty percent (80%) of all sums held by the State Treasurer
12 to the credit of the Multiple Injury Trust Fund may by order of the
13 MITF Director be invested in or loaned on the pledge of any of the
14 securities in which a state bank may invest the monies deposited
15 therein by the State Treasurer; or may be deposited in state or
16 national banks or trust companies upon insured time deposit bearing
17 interest at a rate no less than currently being paid upon insured
18 savings accounts in the institutions. As used in this section,
19 "insured" means insurance as provided by an agency of the federal
20 government. All such securities or evidence of indebtedness shall
21 be placed in the hands of the State Treasurer, who shall be the
22 custodian thereof, who shall collect the principal and interest when
23 due, and pay the same into the Multiple Injury Trust Fund. The
24 State Treasurer shall pay by vouchers drawn on the Multiple Injury

1 Trust Fund for the making of such investments, when signed by the
2 MITF Director, upon delivery of such securities or evidence of
3 indebtedness to the State Treasurer. The MITF Director may sell any
4 of such securities, the proceeds thereof to be paid over to the
5 State Treasurer for the Multiple Injury Trust Fund.

6 H. The refund provisions of Sections 227 through 229 of Title
7 68 of the Oklahoma Statutes shall be applicable to any payments made
8 to the Multiple Injury Trust Fund. Refunds shall be paid from and
9 out of the Multiple Injury Trust Fund.

10 I. The Tax Commission shall pay, monthly, to the State
11 Treasurer to the credit of the Multiple Injury Trust Fund all monies
12 collected pursuant to the provisions of this section. The State
13 Treasurer shall pay out of the Multiple Injury Trust Fund only upon
14 the order and direction of the Workers' Compensation Commission
15 acting under the provisions hereof.

16 J. The Commission shall promulgate rules as the Commission
17 deems necessary to effectuate the provisions of this section.

18 K. The Insurance Commissioner shall promulgate rules relating
19 to insurers as defined in Title 36 of the Oklahoma Statutes, as the
20 Insurance Commissioner deems necessary to effectuate the provisions
21 of this section.

22 L. The MITF Director shall have authority to fulfill all
23 payment obligations of the Multiple Injury Trust Fund.

24

1 M. The Multiple Injury Trust Fund may enter into an agreement
2 with any reinsurer licensed to sell reinsurance by the Insurance
3 Commissioner pursuant to a competitive process administered by the
4 Director of Central Purchasing in the Office of Management and
5 Enterprise Services.

6 N. Any dividend, rebate, or other distribution, payable by
7 CompSource Oklahoma or any other workers' compensation insurance
8 carrier, to a state agency policyholder shall be paid to the State
9 Treasurer, and shall be credited as follows:

10 1. In the event of failure of the Multiple Injury Trust Fund to
11 meet all lawful obligations, the monies shall be credited to the
12 Multiple Injury Trust Fund and shall be used by the Multiple Injury
13 Trust Fund to meet all lawful obligations of the Multiple Injury
14 Trust Fund; and

15 2. Otherwise, all future dividends made by CompSource Oklahoma
16 or any workers' compensation insurance carrier, on behalf of state
17 agencies, shall be deposited to the credit of the General Revenue
18 Fund of the State Treasury.

19 O. The Workers' Compensation Commission shall be charged with
20 the administration and protection of the Multiple Injury Trust Fund.

21 P. The person serving as the Administrator of the Multiple
22 Injury Trust Fund on the date of passage and approval of ~~this act~~
23 the Administrative Workers' Compensation Act shall serve as the
24 initial MITF Director, provided such person is serving as the

1 Administrator of the Multiple Injury Trust Fund on the ~~effective~~
2 ~~date of this act~~ February 1, 2014. The MITF Director shall be
3 appointed by and serve at the pleasure of the Governor.

4 Q. Any party interested shall have a right to bring a
5 proceeding in the Supreme Court to review an award of the Commission
6 affecting such Multiple Injury Trust Fund, in the same manner as is
7 provided by law with reference to other awards by the Commission.

8 R. The State Treasurer shall allocate to the Commission out of
9 the Multiple Injury Trust Fund sufficient funds for administration
10 expenses thereof in amounts to be fixed and approved by the
11 Administrator for the Multiple Injury Trust Fund, unless rejected by
12 the Commission.

13 SECTION 14. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 36.1 of Title 85A, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Any person who is not required to be covered under a
17 workers' compensation insurance policy or other plan for the payment
18 of workers' compensation may execute an Affidavit of Exempt Status
19 under the Administrative Workers' Compensation Act. The affidavit
20 shall be a form prescribed by the Workers' Compensation Commission
21 and will be available on the Commission's website.

22 B. Execution of the affidavit shall establish a rebuttable
23 presumption that the executor is not an employee for purposes of the
24 Administrative Workers' Compensation Act and therefore shall not be

1 eligible to seek workers' compensation benefits against any
2 contractor.

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

5 D. The lack of an executed affidavit under this section shall
6 not prejudice any defense by an employer to a claim for workers'
7 compensation benefits.

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

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

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

20 F. The Commission may assess a fee not to exceed Fifty Dollars
21 (\$50.00) for an Affidavit of Exempt Status Application. Fees
22 collected pursuant to this section shall be deposited in the State
23 Treasury to the credit of the Workers' Compensation Commission
24 Revolving Fund.

1 G. If an 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 15. AMENDATORY Section 43, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2016, Section 43), is amended to read as
8 follows:

9 Section 43. A. ~~Liability Unaffected.~~

10 ~~1. a. The making of a claim for compensation against any~~
11 ~~employer or carrier for the injury or death of an~~
12 ~~employee shall not affect the right of the employee,~~
13 ~~or his or her dependents, to make a claim or maintain~~
14 ~~an action in court against any third party for the~~
15 ~~injury.~~

16 ~~b. The employer or the employer's carrier shall be~~
17 ~~entitled to reasonable notice and opportunity to join~~
18 ~~in the action.~~

19 ~~c. If the employer or employer's carrier join in the~~
20 ~~action against a third party for injury or death, they~~
21 ~~shall be entitled to a first lien on two-thirds (2/3)~~
22 ~~of the net proceeds recovered in the action that~~
23 ~~remain after the payment of the reasonable costs of~~
24 ~~collection, for the payment to them of the amount paid~~

1 ~~and to be paid by them as compensation to the injured~~
2 ~~employee or his or her dependents.~~

3 ~~2. The commencement of an action by an employee or his or her~~
4 ~~dependents against a third party for damages by reason of an injury~~
5 ~~to which this act is applicable, or the adjustment of any claim,~~
6 ~~shall not affect the rights of the injured employee or his or her~~
7 ~~dependents to recover compensation, but any amount recovered by the~~
8 ~~injured employee or his or her dependents from a third party shall~~
9 ~~be applied as follows:~~

10 ~~a. reasonable fees and costs of collection shall be~~
11 ~~deducted,~~

12 ~~b. the employer or carrier, as applicable, shall receive~~
13 ~~two thirds (2/3) of the remainder of the recovery or~~
14 ~~the amount of the workers' compensation lien,~~
15 ~~whichever is less, and~~

16 ~~c. the remainder of the recovery shall go to the injured~~
17 ~~employee or his or her dependents~~

18 The acceptance of compensation benefits from or the making of a
19 claim for compensation against an employer or insurer for the injury
20 or death of an employee shall not affect the right of the employee
21 or his dependents to sue any other party at law for such injury or
22 death. The employer and the carrier shall have an automatic first
23 lien on the amount recovered by the injured employee or his
24

1 dependents or legal representative from a third party, which shall
2 be applied as follows:

3 1. Reasonable costs of collection as approved and allowed by
4 the court in which such action is pending, or by the Workers'
5 Compensation Commission in case of settlement without suit, shall be
6 deducted;

7 2. The employer and carrier shall receive the remainder of the
8 recovery or the amount of the workers' compensation lien, whichever
9 is less; and

10 3. Any excess shall belong to the injured employee or his
11 dependents.

12 B. Subrogation.

13 1. An employer or carrier liable for compensation under ~~this~~
14 ~~act~~ the Administrative Workers' Compensation Act for the injury or
15 death of an employee shall have the right to maintain an action in
16 tort against any third party responsible for the injury or death.
17 However, the employer or the carrier shall notify the claimant in
18 writing that the claimant has the right to hire a private attorney
19 to pursue any benefits to which the claimant is entitled in addition
20 to the subrogation interest against any third party responsible for
21 the injury or death.

22 2. After reasonable notice and opportunity to be represented in
23 the action has been given to the injured employee, the liability of
24 the third party to the compensation beneficiary shall be determined

1 in the action, as well as the third party's liability to the
2 employer and carrier.

3 3. If the employer recovers against the third party, by suit or
4 otherwise, the injured employee shall be entitled to any amount
5 recovered in excess of the amount that the employer and carrier have
6 paid or are liable for in compensation, after deducting reasonable
7 costs of collection.

8 4. An employer or carrier who is liable for compensation under
9 ~~this act~~ the Administrative Workers' Compensation Act on account of
10 injury or death of an employee shall be entitled to maintain a
11 third-party action against the employer's uninsured motorist
12 coverage or underinsured motorist coverage.

13 SECTION 16. AMENDATORY Section 45, Chapter 208, O.S.L.
14 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
15 Supp. 2016, Section 45), is amended to read as follows:

16 Section 45. A. Temporary Total Disability. 1. If the injured
17 employee is temporarily unable to perform his or her job or any
18 alternative work offered by the employer because of a disability, he
19 or she shall be entitled to receive compensation equal to seventy
20 percent (70%) of the injured employee's average weekly wage per
21 week, but not to exceed ~~seventy percent (70%)~~ of the state average
22 weekly wage, for up to one hundred four (104) weeks. Provided,
23 there shall be no payment for the first three (3) days of the
24 initial period of temporary total disability. If an administrative

1 law judge finds that a ~~consequential~~ subsequent injury has occurred
2 as a direct result of the injury or medical treatment to the part of
3 the body originally injured and that additional time is needed to
4 reach maximum medical improvement, temporary total disability may
5 continue for a period of not more than an additional fifty-two (52)
6 weeks. Such finding shall be based upon a showing of medical
7 necessity by clear and convincing evidence.

8 2. When the injured employee is released from active medical
9 treatment by the treating physician for all body parts found by the
10 Commission to be injured, or in the event that the employee, ~~without~~
11 ~~a valid excuse, misses three consecutive medical treatment~~
12 ~~appointments,~~ fails to comply with medical orders of the treating
13 physician, or otherwise abandons medical care, the employer shall be
14 entitled to terminate temporary total disability by notifying the
15 employee, or if represented, his or her counsel. If, however, an
16 objection to the termination of temporary total disability is filed
17 by the employee within ten (10) days of termination, the Commission
18 shall set the matter within twenty (20) days for a determination if
19 temporary total disability compensation shall be reinstated. The
20 temporary total disability shall remain terminated unless the
21 employee proves the existence of a valid excuse for his or her
22 failure to comply with medical orders of the treating physician or
23 his or her abandonment of medical care. The administrative law
24 judge may appoint an independent medical examiner to determine if

1 further medical treatment is reasonable and necessary. The
2 independent medical examiner shall not provide treatment to the
3 injured ~~worker~~ employee, unless agreed upon by the parties.

4 B. Temporary Partial Disability.

5 1. If the injured employee is temporarily unable to perform his
6 or her job because of a disability, but may perform alternative work
7 offered by the employer, he or she shall be entitled to receive
8 compensation equal to ~~the greater of~~ seventy percent (70%) of the
9 difference between the injured employee's average weekly wage before
10 the injury and his or her weekly wage for performing alternative
11 work after the injury, but only if his or her weekly wage for
12 performing the alternative work is less than the temporary total
13 disability rate. However, the injured employee's actual earnings
14 plus temporary partial disability shall not exceed the temporary
15 total disability rate.

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

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

21 C. Permanent Partial Disability.

22 1. If the injured employee has a permanent disability after
23 reaching maximum medical improvement, he or she shall be entitled to
24 receive compensation equal to seventy percent (70%) of the

1 employee's average weekly wage per week, not to exceed Three Hundred
2 Fifty Dollars (\$350.00) per week, for three and a half weeks for
3 each percentage point of impairment, but not to exceed the earlier
4 of three hundred fifty (350) weeks or the date of the injured
5 employee's death.

6 2. A permanent partial disability award or combination of
7 awards granted an injured ~~worker~~ employee may not exceed a permanent
8 partial disability rating of one hundred percent (100%) to any body
9 part or to the body as a whole. The determination of permanent
10 partial disability shall be the responsibility of the Commission
11 through its administrative law judges. Any claim by an employee for
12 compensation for permanent partial disability must be supported by
13 competent medical testimony of a medical doctor, osteopathic
14 physician, or chiropractor, and shall be supported by objective
15 ~~medical~~ findings, as defined in ~~this act~~ Section 2 of this title.
16 The opinion of the physician shall include employee's percentage of
17 permanent partial disability and whether or not the disability is
18 job-related and caused by the accidental injury or occupational
19 disease. A physician's opinion of the nature and extent of
20 permanent partial disability to parts of the body other than
21 ~~scheduled members must~~ those listed in Section 46 of this title
22 shall be based solely on criteria established by the ~~current edition~~
23 Sixth Edition of the American Medical Association's "Guides to the
24 Evaluation of Permanent Impairment". A copy of any written

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

6 ~~2.~~ 3. Permanent partial disability shall not be allowed to a
7 part of the body for which no medical treatment has been received.
8 A determination of permanent partial disability made by the
9 Commission or administrative law judge which is not supported by
10 objective ~~medical~~ findings provided by a treating physician who is a
11 medical doctor, doctor of osteopathy, chiropractor or a qualified
12 independent medical examiner shall be considered an abuse of
13 discretion.

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

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

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

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

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

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

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

1 ~~d. Attorney fees for permanent partial disability awards,~~
2 ~~as approved by the Commission, shall be calculated~~
3 ~~based upon the total permanent partial disability~~
4 ~~award and paid in full at the time of the deferral.~~

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

9 ~~6. If an employee is eligible to receive permanent total~~
10 ~~disability benefits, he or she may not also receive permanent~~
11 ~~partial disability benefits.~~

12 5. An employee may elect to commute the remainder of the
13 permanent partial disability award to which the employee is
14 entitled, including under Section 46 of this title, if the employee
15 has returned to work for at least six months and is earning at least
16 seventy percent (70%) of the employee's average weekly wage at the
17 time of the injury. An employee who elects to commute the permanent
18 partial disability award is not entitled to additional benefits for
19 the injury.

20 6. Previous Disability: The fact that an employee has suffered
21 previous disability or received compensation therefor shall not
22 preclude the employee from compensation for a later accidental
23 personal injury or occupational disease. In the event there exists
24 a previous permanent partial disability, including a previous non-

1 work-related injury or condition which produced permanent partial
2 disability and the same is aggravated or accelerated by an
3 accidental personal injury or occupational disease, compensation for
4 permanent partial disability shall be only for such amount as was
5 caused by such accidental personal injury or occupational disease
6 and no additional compensation shall be allowed for the preexisting
7 disability ~~or impairment~~. Any such reduction shall not apply to
8 temporary total disability, nor shall it apply to compensation for
9 medical treatment.

10 a. If workers' compensation benefits have previously been
11 awarded through settlement or judicial or
12 administrative determination in Oklahoma, the
13 percentage basis of the prior settlement or award
14 shall conclusively establish the amount of permanent
15 partial disability determined to be preexisting. If
16 workers' compensation benefits have not previously
17 been awarded through settlement or judicial or
18 administrative determination in Oklahoma, the amount
19 of preexisting permanent partial disability shall be
20 established by competent evidence.

21 b. In all cases, the applicable reduction shall be
22 calculated as follows:

23 (1) if the preexisting ~~impairment~~ disability is the
24 result of injury sustained while working for the

1 employer against whom workers' compensation
2 benefits are currently being sought, any award of
3 compensation shall be reduced by the current
4 dollar value attributable under the
5 Administrative Workers' Compensation Act to the
6 percentage of permanent partial disability
7 determined to be preexisting. The current dollar
8 value shall be calculated by multiplying the
9 percentage of preexisting permanent partial
10 disability by the compensation rate in effect on
11 the date of the accident or injury against which
12 the reduction will be applied, and

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

17 7. No payments on any permanent partial disability order shall
18 begin until payments on any preexisting permanent partial disability
19 orders have been completed.

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

22 ~~9. The permanent partial disability rate of compensation for~~
23 ~~amputation or permanent total loss of use of a scheduled member~~
24 ~~specified in Section 46 of this act shall be seventy percent (70%)~~

1 ~~of the employee's average weekly wage, not to exceed Three Hundred~~
2 ~~Twenty-three Dollars (\$323.00), multiplied by the number of weeks~~
3 ~~set forth for the member in Section 46 of this act, regardless of~~
4 ~~whether the injured employee is able to return to his or her pre-~~
5 ~~injury or equivalent job.~~

6 ~~10. An injured employee who is eligible for permanent partial~~
7 ~~disability under this subsection shall be entitled to receive~~
8 ~~vocational rehabilitation services provided by a technology center~~
9 ~~or public secondary school offering vocational technical education~~
10 ~~courses, or a member institution of The Oklahoma State System of~~
11 ~~Higher Education, which shall include retraining and job placement~~
12 ~~to restore the employee to gainful employment. Vocational~~
13 ~~rehabilitation services or training shall not extend for a period of~~
14 ~~more than fifty-two (52) weeks.~~

15 D. Permanent Total Disability.

16 ~~1. In case of total disability adjudged to be permanent, If the~~
17 ~~injured employee is incapable of earning wages in any employment for~~
18 ~~which the employee may become physically suited and reasonably~~
19 ~~fitted by education, training, experience or vocational~~
20 ~~rehabilitation provided under this act because of a disability, he~~
21 ~~or she shall be entitled to receive compensation equal to seventy~~
22 ~~percent (70%) of the employee's average weekly wages per week, but~~
23 ~~not in excess of the state's average weekly wage, ~~shall be paid to~~~~
24 ~~the employee during for the continuance duration of the disability~~

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

19 ~~2. The Commission shall annually review the status of any~~
20 ~~employee receiving benefits for permanent total disability against~~
21 ~~the last employer. The Commission shall require the employee to~~
22 ~~annually file an affidavit under penalty of perjury stating that he~~
23 ~~or she is not and has not been gainfully employed and is not capable~~
24 ~~of gainful employment. Failure to file such affidavit shall result~~

1 ~~in suspension of benefits; provided, however, reinstatement of~~
2 ~~benefits may occur after proper hearing before the Commission.~~

3 E. 1. ~~The Workers' Compensation Commission shall hire or~~
4 ~~contract for a Vocational Rehabilitation Director to oversee the~~
5 ~~vocational rehabilitation program of the Commission.~~

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

22 3. ~~There shall be a presumption in favor of ordering vocational~~
23 ~~rehabilitation services or training for an eligible injured employee~~
24 ~~under the following circumstances:~~

- 1 ~~a. if the employee's occupation is truck driver or~~
2 ~~laborer and the medical condition is traumatic brain~~
3 ~~injury, stroke or uncontrolled vertigo,~~
- 4 ~~b. if the employee's occupation is truck driver or~~
5 ~~laborer performing high-risk tasks and the medical~~
6 ~~condition is seizures,~~
- 7 ~~c. if the employee's occupation is manual laborer and the~~
8 ~~medical condition is bilateral wrist fusions,~~
- 9 ~~d. if the employee's occupation is assembly-line worker~~
10 ~~and the medical condition is radial head fracture with~~
11 ~~surgical excision,~~
- 12 ~~e. if the employee's occupation is heavy laborer and the~~
13 ~~medical condition is myocardial infarction with~~
14 ~~congestive heart failure,~~
- 15 ~~f. if the employee's occupation is heavy manual laborer~~
16 ~~and the medical condition is multilevel neck or back~~
17 ~~fusions greater than two levels,~~
- 18 ~~g. if the employee's occupation is laborer performing~~
19 ~~overhead work and the medical condition is massive~~
20 ~~rotator cuff tears, with or without surgery,~~
- 21 ~~h. if the employee's occupation is heavy laborer and the~~
22 ~~medical condition is recurrent inguinal hernia~~
23 ~~following unsuccessful surgical repair,~~
- 24

- 1 ~~i. if the employee's occupation is heavy manual laborer~~
2 ~~and the medical condition is total knee replacement or~~
3 ~~total hip replacement,~~
- 4 ~~j. if the employee's occupation is roofer and the medical~~
5 ~~condition is calcaneal fracture, medically or~~
6 ~~surgically treated,~~
- 7 ~~k. if the employee's occupation is laborer of any kind~~
8 ~~and the medical condition is total shoulder~~
9 ~~replacement,~~
- 10 ~~l. if the employee's occupation is laborer and the~~
11 ~~medical condition is amputation of a hand, arm, leg,~~
12 ~~or foot,~~
- 13 ~~m. if the employee's occupation is laborer and the~~
14 ~~medical condition is tibial plateau fracture, pilon~~
15 ~~fracture,~~
- 16 ~~n. if the employee's occupation is laborer and the~~
17 ~~medical condition is ankle fusion or knee fusion,~~
- 18 ~~o. if the employee's occupation is driver or heavy~~
19 ~~equipment operator and the medical condition is~~
20 ~~unilateral industrial blindness, or~~
- 21 ~~p. if the employee's occupation is laborer and the~~
22 ~~medical condition is 3-, 4-, or 5-level positive~~
23 ~~discogram of the cervical spine or lumbar spine,~~
24 ~~medically treated.~~

1 ~~4. Upon the request of either party, or by order of an~~
2 ~~administrative law judge, the Vocational Rehabilitation Director~~
3 ~~shall assist the Workers' Compensation Commission in determining if~~
4 ~~it is appropriate for a claimant to receive vocational~~
5 ~~rehabilitation training or services. If appropriate, the~~
6 ~~administrative law judge shall refer the employee to a qualified~~
7 ~~expert for evaluation of the practicability of, need for and kind of~~
8 ~~rehabilitation services or training necessary and appropriate in~~
9 ~~order to restore the employee to gainful employment. The cost of~~
10 ~~the evaluation shall be paid by the employer. Following the~~
11 ~~evaluation, if the employee refuses the services or training ordered~~
12 ~~by the administrative law judge, or fails to complete in good faith~~
13 ~~the vocational rehabilitation training ordered by the administrative~~
14 ~~law judge, then the cost of the evaluation and services or training~~
15 ~~rendered may, in the discretion of the administrative law judge, be~~
16 ~~deducted from any award of benefits to the employee which remains~~
17 ~~unpaid by the employer. Upon receipt of such report, and after~~
18 ~~affording all parties an opportunity to be heard, the administrative~~
19 ~~law judge shall order that any rehabilitation services or training,~~
20 ~~recommended in the report, or such other rehabilitation services or~~
21 ~~training as the administrative law judge may deem necessary,~~
22 ~~provided the employee elects to receive such services, shall be~~
23 ~~provided at the expense of the employer. Except as otherwise~~
24 ~~provided in this subsection, refusal to accept rehabilitation~~

1 ~~services by the employee shall in no way diminish any benefits~~
2 ~~allowable to an employee.~~

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

12 ~~6. Vocational rehabilitation services or training shall not~~
13 ~~extend for a period of more than fifty-two (52) weeks. A request~~
14 ~~for vocational rehabilitation services or training shall be filed~~
15 ~~with the Commission by an interested party not later than sixty (60)~~
16 ~~days from the date of receiving permanent restrictions that prevent~~
17 ~~the injured employee from returning to his or her pre-injury or~~
18 ~~equivalent position.~~

19 ~~7. If rehabilitation requires residence at or near the facility~~
20 ~~or institution which is away from the employee's customary~~
21 ~~residence, reasonable cost of the employee's board, lodging, travel,~~
22 ~~tuition, books and necessary equipment in training shall be paid for~~
23 ~~by the insurer in addition to weekly compensation benefits to which~~
24

1 ~~the employee is otherwise entitled under the Administrative Workers'~~
2 ~~Compensation Act.~~

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

15 1. If the injured employee has a permanent disability after
16 reaching maximum medical improvement and, as a result, is unable to
17 return to his or her pre-injury job or another job that pays at
18 least eighty percent (80%) of the injured employee's pre-injury
19 wages, the injured employee shall be entitled to vocational
20 rehabilitation services provided by a technology center or public
21 secondary school offering vocational-technical education courses, or
22 a member institution of The Oklahoma State System of Higher
23 Education, which shall include retraining and job placement to
24 restore the employee to full-time employment. Vocational

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

3 2. An administrative law judge may order vocational
4 rehabilitation before the injured employee reaches maximum medical
5 improvement if the treating physician believes that it is likely
6 that the employee will ultimately be eligible.

7 3. If vocational rehabilitation requires residence at or near
8 the facility or institution which is away from the employee's
9 customary residence, reasonable cost of the employee's board,
10 lodging, travel, tuition, books and necessary equipment in training
11 shall be paid by the employer in addition to weekly compensation
12 benefits to which the employee is otherwise entitled.

13 F. Disfigurement.

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

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

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

23 ~~G. Benefits for a single event injury shall be determined by~~
24 ~~the law in effect at the time of injury. Benefits for a cumulative~~

1 ~~trauma injury or occupational disease or illness shall be determined~~
2 ~~by the law in effect at the time the employee knew or reasonably~~
3 ~~should have known that the injury, occupational disease or illness~~
4 ~~was related to work activity. Benefits for death shall be~~
5 ~~determined by the law in effect at the time of death.~~

6 SECTION 17. AMENDATORY Section 46, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2016, Section 46), is amended to read as
8 follows:

9 Section 46. A. ~~An~~ In lieu of compensation provided pursuant to
10 paragraph 1 of subsection C of Section 45 of this title, an injured
11 employee who is entitled to receive permanent partial disability
12 compensation under Section 45 of this act suffers amputation or
13 permanent total loss of use as described in this subsection shall
14 receive compensation for each part of the body in accordance with
15 equal to seventy percent (70%) of the employee's average weekly wage
16 per week, not to exceed Three Hundred Fifty Dollars (\$350.00) per
17 week, for the number of weeks for the scheduled loss set forth
18 below. as follows:

19 1. Arm amputated at the elbow, or between the elbow and
20 shoulder, two hundred seventy-five (275) weeks;

21 2. Arm amputated between the elbow and wrist, two hundred
22 twenty (220) weeks;

23 3. Leg amputated at the knee, or between the knee and the hip,
24 two hundred seventy-five (275) weeks;

1 4. Leg amputated between the knee and the ankle, two hundred
2 twenty (220) weeks;

3 5. Hand amputated, two hundred twenty (220) weeks;

4 6. Thumb amputated, sixty-six (66) weeks;

5 7. First finger amputated, thirty-nine (39) weeks;

6 8. Second finger amputated, thirty-three (33) weeks;

7 9. Third finger amputated, twenty-two (22) weeks;

8 10. Fourth finger amputated, seventeen (17) weeks;

9 11. Foot amputated, two hundred twenty (220) weeks;

10 12. Great toe amputated, thirty-three (33) weeks;

11 13. Toe other than great toe amputated, eleven (11) weeks;

12 14. Eye enucleated, in which there was useful vision, two
13 hundred seventy-five (275) weeks;

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

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

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

19 B. ~~The permanent partial disability rate of compensation for~~
20 ~~amputation or permanent total loss of use of a scheduled member~~
21 ~~specified in this section shall be seventy percent (70%) of the~~
22 ~~employee's average weekly wage, not to exceed Three Hundred Twenty-~~
23 ~~three Dollars (\$323.00), multiplied by the number of weeks as set~~

24

1 ~~forth in this section, regardless of whether or not the injured~~
2 ~~employee is able to return to his or her pre-injury job.~~

3 ~~C. Other cases: In cases in which the Commission finds an~~
4 ~~injury to a part of the body not specifically covered by the~~
5 ~~foregoing provisions of this section, the employee may be entitled~~
6 ~~to compensation for permanent partial disability. The compensation~~
7 ~~ordered paid shall be seventy percent (70%) of the employee's~~
8 ~~average weekly wage, not to exceed Three Hundred Twenty-three~~
9 ~~Dollars (\$323.00) for the number of weeks which the partial~~
10 ~~disability of the employee bears to three hundred fifty (350) weeks.~~

11 ~~D.~~ 1. Compensation for amputation of the first phalange of a
12 digit shall be one-half (1/2) of the compensation for the amputation
13 of the entire digit.

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

16 ~~E.~~ C. 1. Compensation for the permanent loss of eighty percent
17 (80%) or more of the vision of an eye shall be the same as for the
18 loss of an eye.

19 2. In all cases of permanent loss of vision, the use of
20 corrective lenses may be taken into consideration in evaluating the
21 extent of loss of vision.

22 ~~F.~~ D. Compensation for amputation or loss of use of two or more
23 digits or one or more phalanges of two or more digits of a hand or a
24 foot may be proportioned to the total loss of use of the hand or the

1 foot occasioned thereby but shall not exceed the compensation for
2 total loss of a hand or a foot.

3 ~~G. Compensation for permanent total loss of use of a member
4 shall be the same as for amputation of the member.~~

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

8 SECTION 18. AMENDATORY Section 56, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2016, Section 56), is amended to read as
10 follows:

11 Section 56. A. If the employer has previously contracted with
12 a certified workplace medical plan, the employer shall select for
13 the injured employee a treating physician from the physicians listed
14 within the network of the certified workplace medical plan. The
15 employee may apply for a change of physician by utilizing the
16 dispute resolution process set out in the certified workplace
17 medical plan on file with the State Department of Health.

18 B. If the employer is not covered by a certified workplace
19 medical plan, the employer shall select the treating physician. The
20 Commission on application of the employee shall order one change of
21 treating physician, regardless of the number of body parts being
22 treated. Upon the Commission's granting of the application, the
23 employer shall provide a list of three physicians from whom the
24 employee may select the replacement. The employer may identify

1 physicians within the same practice, facility or hospital as the
2 treating physician. The only requirement for the three physicians
3 on the list is that they be licensed and accredited to perform the
4 necessary treatment.

5 SECTION 19. AMENDATORY Section 57, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2016, Section 57), is amended to read as
7 follows:

8 Section 57. A. If an injured employee misses ~~two~~ three or more
9 scheduled appointments for treatment, he or she shall no longer be
10 eligible to receive benefits under ~~this act~~ the Administrative
11 Workers' Compensation Act, unless his or her absence was:

- 12 1. Caused by extraordinary circumstances beyond the employee's
13 control as determined by the Commission; or
- 14 2. The employee gave the employer at least two (2) hours prior
15 notice of the absence and had a valid excuse.

16 B. Inability to get transportation to or from the appointment
17 shall not be considered extraordinary circumstances nor a valid
18 excuse for the absence.

19 SECTION 20. AMENDATORY Section 62, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2016, Section 62), is amended to read as
21 follows:

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

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

20 B. For purposes of this section, 7:

21 1. "~~soft~~ Soft tissue injury" means damage to one or more of the
22 tissues that surround bones and joints. Soft tissue injury
23 includes, but is not limited to, sprains, strains, contusions,
24 tendonitis and muscle tears. Cumulative trauma is to be considered

1 a soft tissue injury. Soft tissue injury does not include any of
2 the following:

3 ~~1. a. Injury~~ injury to or disease of the spine, spinal
4 discs, spinal nerves or spinal cord, where corrective
5 surgery is performed~~;~~

6 ~~2. b. Brain~~ brain or closed-head injury as evidenced by:
7 ~~a.~~ (1) sensory or motor disturbances,
8 ~~b.~~ (2) communication disturbances,
9 ~~c.~~ (3) complex integrated disturbances of cerebral
10 function,
11 ~~d.~~ (4) episodic neurological disorders, or
12 ~~e.~~ (5) other brain and closed-head injury conditions at
13 least as severe in nature as any condition
14 provided in subparagraphs a through d of this
15 paragraph~~;~~ or

16 ~~3. c. Any~~ any joint replacement; and

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

19 SECTION 21. AMENDATORY Section 65, Chapter 208, O.S.L.
20 2013, as amended by Section 3, Chapter 390, O.S.L. 2015 (85A O.S.
21 Supp. 2016, Section 65), is amended to read as follows:

22 Section 65. A. If an employee suffers from an occupational
23 disease as defined in this section and is disabled or dies as a
24 result of the disease, the employee, or, in case of death, his or

1 her dependents, shall be entitled to compensation as if the
2 disability or death were caused by injury arising out of work
3 activities within the scope of employment, except as otherwise
4 provided in this section.

5 B. No compensation shall be payable for an occupational disease
6 if the employee, at the time of entering into the employment of the
7 employer by whom the compensation would otherwise be payable,
8 falsely represented himself or herself in writing as not having
9 previously been disabled, laid off, or compensated in damages or
10 otherwise, because of the disease.

11 C. 1. If an occupational disease is aggravated by any other
12 disease or infirmity, not itself compensable, or if disability or
13 death from any other cause, not itself compensable, is aggravated,
14 prolonged, accelerated, or in any way contributed to by an
15 occupational disease, the compensation payable shall be reduced and
16 limited to the proportion ~~only of the compensation that would be~~
17 ~~payable if the occupational disease were the major cause of the~~
18 ~~disability or death as the occupational disease, as a causative~~
19 ~~factor, bears to all the causes of the disability or death~~ that is a
20 compensable injury.

21 2. The reduction in compensation is to be effected by reducing
22 the number of weekly or monthly payments or the amounts of the
23 payments, as under the circumstances of the particular case may be
24 for the best interest of the claimant.

1 D. 1. ~~"Occupational disease", as used in this act, unless the~~
2 ~~context otherwise requires, means any disease that results in~~
3 ~~disability or death and arises out of and in the course of the~~
4 ~~occupation or employment of the employee or naturally follows or~~
5 ~~unavoidably results from an injury as that term is defined in this~~
6 ~~act.~~ A causal connection between the occupation or employment and
7 the occupational disease shall be established by a preponderance of
8 the evidence.

9 2. No compensation shall be payable for any contagious or
10 infectious disease unless contracted in the course and scope of
11 employment.

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

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

19 2. The amount of the compensation shall be based on the average
20 weekly wage of the employee when last injuriously exposed under the
21 employer, and the notice of injury and claim for compensation shall
22 be given and made to that employer.

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

- 1 a. the disease is due to the nature of an employment in
2 which the hazards of the disease actually exist and is
3 actually incurred in the course and scope of his or
4 her employment. This includes any disease due to or
5 attributable to exposure to or contact with any
6 radioactive material by an employee in the course and
7 scope of his or her employment,
- 8 b. disablement or death results within three (3) years in
9 case of silicosis or asbestosis, or one (1) year in
10 case of any other occupational disease, except a
11 diseased condition caused by exposure to X-rays,
12 radioactive substances, or ionizing radiation, after
13 the last injurious exposure to the disease in the
14 employment, or
- 15 c. in case of death, death follows continuous disability
16 from the disease, commencing within the period, for
17 which compensation has been paid or awarded or timely
18 claim made as provided in subparagraph b of this
19 paragraph and results within seven (7) years after the
20 last exposure.

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

1 SECTION 22. AMENDATORY Section 68, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 68), is amended to read as
3 follows:

4 Section 68. A. ~~Unless an~~ An employee ~~gives oral or written~~
5 shall give notice of an injury to the employer within ~~thirty (30)~~
6 fifteen (15) days of the date an on which the injury occurs or, if
7 ~~the rebuttable presumption shall be that the injury was not work-~~
8 ~~related. Such presumption must be overcome by a preponderance of~~
9 ~~the evidence~~ is an occupational disease or cumulative trauma, the
10 date on which the employee knew or should have known that the injury
11 may be related to the employment.

12 B. ~~Unless an~~ If the employee ~~gives oral or written~~ does not
13 give timely notice of an injury to the employer within ~~thirty (30)~~
14 ~~days of the employee's separation from employment,~~ there shall be a
15 rebuttable presumption that ~~an occupational disease or cumulative~~
16 ~~trauma~~ the injury did not arise out of and in the course of
17 ~~employment~~ is not a compensable injury. Such presumption ~~must~~ may
18 be overcome by a preponderance of the evidence. If notice is not
19 timely given but the employee overcomes the presumption that the
20 injury is not compensable, the employee shall not be entitled to
21 receive benefits for the time period before the date on which the
22 employee reported the injury.

23 C. For purposes of this section, if the injury is an
24 occupational disease or cumulative trauma, the employer is the

1 person who employed the employee on the date of the last injurious
2 exposure to the hazards of the disease.

3 SECTION 23. AMENDATORY Section 69, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 69), is amended to read as
5 follows:

6 Section 69. A. Time for Filing.

7 1. A claim for benefits under ~~this act~~ the Administrative
8 Workers' Compensation Act, ~~other than an occupational disease~~, shall
9 be ~~barred unless it is~~ filed with the Commission within:

10 a. one (1) year from the date of the injury. ~~If during~~
11 ~~the one year period following the filing of the claim~~
12 ~~the employee receives no weekly benefit compensation~~
13 ~~and receives no medical treatment resulting from the~~
14 ~~alleged injury, the claim shall be barred thereafter.~~
15 ~~For purposes of this section, the date of the injury~~
16 ~~shall be defined as the date an injury is caused by an~~
17 ~~accident as set forth in paragraph 9 of Section 2 of~~
18 ~~this act.~~

19 b. two (2) years from the date of injury for an
20 occupational disease or cumulative trauma, or

21 c. two (2) years from the date of death;

22 2. ~~a.~~ ~~A claim for compensation for disability on account of~~
23 ~~injury which is either an occupational disease or~~
24 ~~occupational infection shall be barred unless filed~~

1 ~~with the Commission within two (2) years from the date~~
2 ~~of the last injurious exposure to the hazards of the~~
3 ~~disease or infection.~~

4 ~~b. A claim for compensation for disability on account of~~
5 ~~silicosis or asbestosis shall be filed with the~~
6 ~~Commission within one (1) year after the time of~~
7 ~~disablement, and the disablement shall occur within~~
8 ~~three (3) years from the date of the last injurious~~
9 ~~exposure to the hazard of silicosis or asbestosis.~~

10 ~~e. A claim for compensation for disability on account of~~
11 ~~a disease condition caused by exposure to X-rays,~~
12 ~~radioactive substances, or ionizing radiation only~~
13 ~~shall be filed with the Commission within two (2)~~
14 ~~years from the date the condition is made known to an~~
15 ~~employee following examination and diagnosis by a~~
16 ~~medical doctor.~~

17 ~~3. A claim for compensation on account of death shall be barred~~
18 ~~unless filed with the Commission within two (2) years of the date of~~
19 ~~such a death.~~

20 ~~4. If within six (6) months after the filing of a claim for~~
21 ~~compensation no bona fide request for a hearing has been made with~~
22 ~~respect to the claim, the claim may, on motion and after hearing, be~~
23 ~~dismissed with prejudice For purposes of this section, the date of~~
24 ~~injury for an occupational disease or cumulative trauma shall be the~~

1 date the employee knew or should have known that the injury may be
2 related to the employment.

3 B. Time for Filing Additional Compensation.

4 1. ~~In cases in which any compensation, including disability or~~
5 ~~medical, has been paid on account of injury, a claim for additional~~
6 ~~compensation shall be barred unless filed with the Commission within~~
7 ~~one (1) year from the date of the last payment of disability~~
8 ~~compensation or two (2) years from the date of the injury, whichever~~
9 ~~is greater~~ If a claim for benefits under this act has been timely
10 filed with the Commission, any claim for additional compensation
11 shall be filed within ninety (90) days of the date that the last
12 benefit was received, except as otherwise prescribed by the treating
13 physician at the time of the last appointment.

14 2. The statute of limitations provided in paragraph 1 of this
15 subsection shall not apply to claims for the replacement of
16 medicine, crutches, ambulatory devices, artificial limbs,
17 eyeglasses, contact lenses, hearing aids, and other apparatus
18 permanently or indefinitely required as the result of a compensable
19 injury, when the employer or carrier previously furnished such
20 medical supplies, but replacement of such items shall not constitute
21 payment of compensation so as to toll the statute of limitations.

22 C. ~~A claim for additional compensation shall specifically state~~
23 ~~that it is a claim for additional compensation. Documents which do~~

24

1 ~~not specifically request additional benefits shall not be considered~~
2 ~~a claim for additional compensation.~~

3 ~~D. If within six (6) months after the filing of a claim for~~
4 ~~additional compensation no bona fide request for a hearing has been~~
5 ~~made with respect to the claim, the claim shall be dismissed without~~
6 ~~prejudice to the refiling of the claim within the limitation period~~
7 ~~specified in subsection B of this section.~~

8 ~~E. Failure to File. Failure to file a claim within the period~~
9 ~~prescribed in subsection A or B of this section shall not be a bar~~
10 ~~to the right to benefits hereunder unless objection to the failure~~
11 ~~is made at the first hearing on the claim in which all parties in~~
12 ~~interest have been given a reasonable notice and opportunity to be~~
13 ~~heard by the Commission.~~

14 ~~F. Persons under Disability.~~

15 ~~1. Notwithstanding any statute of limitation provided for in~~
16 ~~this act, when it is established that failure to file a claim by an~~
17 ~~injured employee or his or her dependents was induced by fraud, the~~
18 ~~claim may be filed within one (1) year from the time of the~~
19 ~~discovery of the fraud.~~

20 ~~2. Subsections A and B of this section shall not apply to a~~
21 ~~mental incompetent or minor so long as the person has no guardian or~~
22 ~~similar legal representative. The limitations prescribed in~~
23 ~~subsections A and B of this section shall apply to the mental~~
24 ~~incompetent or minor from the date of the appointment of a guardian~~

1 or similar legal representative for that person, and when no
2 guardian or similar representative has been appointed, to a minor on
3 reaching the age of majority.

4 ~~C. A latent injury or condition shall not delay or toll the~~
5 ~~limitation periods specified in this section. This subsection shall~~
6 ~~not apply to the limitation period for occupational diseases~~
7 ~~specified in paragraph 2 of subsection A of this section.~~

8 SECTION 24. AMENDATORY Section 71, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2016, Section 71), is amended to read as
10 follows:

11 Section 71. A. ~~Notice.~~ Within ten (10) days after a an
12 Employee's Notice of Claim for Compensation or other claim for
13 compensation benefits has been filed, the Commission shall notify
14 the employer and any other interested person of the filing of the
15 claim.

16 B. ~~Investigation - Hearing.~~

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

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

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

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. The hearing shall be held in~~
5 ~~Tulsa or Oklahoma County, as determined by the Commission.~~

6 ~~5. The award, together with the statement of the findings of~~
7 ~~fact and other matters pertinent to the issues, shall be filed with~~
8 ~~the record of the proceedings, and a copy of the award shall~~
9 ~~immediately be sent to the parties in or to counsels of record, if~~
10 ~~any pre-hearing conference within seven (7) days of filing of the~~
11 ~~Employee's Notice of Claim for Compensation or other claim for~~
12 ~~benefits. At the pre-hearing conference, the claim shall be set for~~
13 ~~trial at a date no later than sixty (60) days from the date of the~~
14 ~~pre-hearing conference.~~

15 C. Hearings and trials shall not be continued absent
16 extraordinary circumstances as determined by the Commission.

17 D. Evidence and Construction.

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

1 b. Any determination of the existence or extent of
2 physical impairment shall be supported by objective
3 ~~and measurable physical or mental~~ findings.

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

8 3. Administrative law judges, the Commission, and any reviewing
9 courts shall strictly construe the provisions of ~~this act~~ the
10 Administrative Workers' Compensation Act.

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

15 ~~D.~~ E. Judgment. The judgment denying the claim or making the
16 award shall be filed in the office of the Commission, and a copy
17 shall be sent by registered mail, facsimile, electronic mail or by
18 other electronic means with confirmation of receipt to the claimant
19 and to the employer or to their attorneys.

20 ~~E.~~ F. No compensation for disability of an injured employee
21 shall be payable for any period beyond his or her death; provided,
22 however, an award of compensation for disability may be made after
23 the death of the injured employee for the period of disability
24 preceding death.

1 SECTION 25. AMENDATORY Section 78, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 78), is amended to read as
3 follows:

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

14 B. The chair of the Commission shall have the authority to
15 appoint an administrative law judge to the en banc panel when any
16 Commissioner of the Commission is disqualified for any reason, to
17 fill a vacancy, or in the absence of a Commissioner; provided, the
18 appointed administrative law judge shall not have presided over any
19 of the previous hearings on the claim.

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

24

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

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

21 This action shall be commenced by filing with the Clerk of the
22 Supreme Court a certified copy of the judgment, decision or award of
23 the Commission attached to the petition by the complaint which shall
24 specify why the judgment, decision or award is erroneous or illegal.

1 The proceedings shall be heard in a summary manner and shall have
2 precedence over all other civil cases in the Supreme Court, except
3 preferred Corporation Commission appeals. The Supreme Court shall
4 require the appealing party to file within forty-five (45) days from
5 the date of the filing of an appeal or a judgment appealed from, a
6 transcript of the record of the proceedings before the Commission,
7 or such later time as may be granted by the Supreme Court on
8 application and for good cause shown. The action shall be subject
9 to the law and practice applicable to other civil actions cognizable
10 in the Supreme Court.

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

19 SECTION 26. AMENDATORY Section 82, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2016, Section 82), is amended to read as
21 follows:

22 Section 82.

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

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

16 (1) Attorney fees may not be collected for recovery
17 on noncontroverted claims.

18 (2) Attorney fees shall not be awarded on medical
19 benefits or services.

20 (3) The fee for legal services rendered by an
21 attorney representing an employee in connection
22 with a change of physician requested by the
23 injured employee, controverted by the employer,
24

1 and awarded by the Commission, shall be Two
2 Hundred Dollars (\$200.00).

3 ~~(4) Attorney fees may include not more than ten~~
4 ~~percent (10%) of the value, or reasonable~~
5 ~~estimate thereof, of vocational rehabilitation~~
6 ~~services.~~

7 c. A "controverted claim" means ~~that there has been a~~
8 ~~contested hearing before the Commission over whether~~
9 ~~there has been a compensable injury or whether the~~
10 ~~employee is entitled to~~ a claim where the employer has
11 denied compensability or denied the payment of
12 temporary total disability, temporary partial
13 disability, permanent partial disability, permanent
14 total disability, or death compensation. A request
15 for a change in physician shall not trigger a
16 controverted claim for purposes of recovering any
17 attorney fees except the fees under division 3 of
18 subparagraph b of this paragraph. A controverted
19 claim shall not exist if the employee or his or her
20 representative has withheld pertinent information in
21 his or her possession related to the claim from the
22 employer or has violated the provisions of Section 6
23 of this act title.

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

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

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

14 B. An attorney representing an employee under ~~this act~~ the
15 Administrative Workers' Compensation Act may not recover fees for
16 services except as expressly provided in this section.

17 SECTION 27. AMENDATORY Section 87, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2016, Section 87), is amended to read as
19 follows:

20 Section 87. A. If the employer or carrier and the injured
21 employee desire to settle the claim, they shall file a joint
22 petition for settlement with the Commission. After the joint
23 petition has been filed, the Commission shall order that all claims
24

1 between the parties have been settled. No appeal shall lie from a
2 judgment or award denying a joint petition.

3 B. The Commission shall not approve a joint petition or other
4 settlement that provides for the payment of benefits in a lump sum
5 except as provided in paragraph 5 of subsection C of Section 45 of
6 this title.

7 SECTION 28. AMENDATORY Section 98, Chapter 208, O.S.L.
8 2013, as amended by Section 4, Chapter 169, O.S.L. 2014 (85A O.S.
9 Supp. 2016, Section 98), is amended to read as follows:

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

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

16 2. ~~Until~~ In the event the Self-insurance Guaranty Fund ~~contains~~
17 ~~Two Million Dollars (\$2,000,000.00) or in the event the amount in~~
18 ~~the fund falls below One Million Dollars (\$1,000,000.00)~~ Eight
19 Hundred Thousand Dollars (\$800,000.00), an assessment levied by the
20 Commission against each private self-insurer and group self-
21 insurance association based on an assessment rate to be determined
22 by the commissioners, not exceeding ~~one percent (1%)~~ two percent
23 (2%) per annum of actual paid losses of the self-insurer during the
24 preceding calendar year, payable to the Tax Commission for deposit

1 to the fund. The assessment against private self-insurers shall be
2 determined using a rate equal to the proportion that the deficiency
3 in the fund attributable to private self-insurers bears to the
4 actual paid losses of all private self-insurers for the year period
5 of January 1 through December 31 preceding the assessment. The
6 assessment against group self-insurance associations shall be
7 determined using a rate equal to the proportion that the deficiency
8 in excess of the surplus of the Group Self-Insurance Association
9 Guaranty Fund at the date of the transfer attributable to group
10 self-insurance associations bears to the actual paid losses of all
11 group self-insurance associations cumulatively for any calendar year
12 preceding the assessment. Each self-insurer shall provide the
13 Workers' Compensation Commission with such information as the
14 Commission may determine is necessary to effectuate the purposes of
15 this paragraph. For purposes of this paragraph, "actual paid
16 losses" means all medical and indemnity payments, including
17 temporary disability, permanent disability, and death benefits, and
18 excluding loss adjustment expenses and reserves.

19 a. The assessment shall be paid within thirty (30)
20 calendar days after the date the commissioners notify
21 the self-insurer of the assessment.

22 b. A private employer or group self-insurance association
23 which ceases to be a self-insurer shall remain liable
24 for any and all assessments of the self-insurer as

1 provided in this paragraph based on actual paid losses
2 for the calendar year period preceding the assessment.

3 c. Failure of a self-insurer to pay, or timely pay, an
4 assessment required by this paragraph, or to report
5 payment of the same to the Commission within ten (10)
6 days of payment, shall be grounds for revocation by
7 the Commission of the self-insurer's permit to self-
8 insure in this state, after notice and hearing. A
9 former self-insurer failing to make payments required
10 by this paragraph promptly and correctly, or failing
11 to report payment of the same to the Commission within
12 ten (10) days of payment, shall be subject to
13 administrative penalties as allowed by law, including
14 but not limited to, a fine in the amount of Five
15 Hundred Dollars (\$500.00) or an amount equal to one
16 percent (1%) of the unpaid amount, whichever is
17 greater, to be paid and deposited to the credit of the
18 Workers' Compensation Fund created in Section 28 of
19 this title. It shall be the duty of the Tax
20 Commission to collect the assessment provided for in
21 this paragraph. The Tax Commission is authorized to
22 bring an action for recovery of any delinquent or
23 unpaid assessments, and may enforce payment of the
24

1 assessment by proceeding in accordance with Section 79
2 of this title.

3 d. An impaired self-insurer shall be exempt from
4 assessments beginning on the date of the Commission's
5 designation until the Commission determines the self-
6 insurer is no longer impaired.

7 e. The Tax Commission shall determine the fund balance as
8 of March 1 and September 1 of each year, and when
9 otherwise requested by the Workers' Compensation
10 Commission, and shall advise the Workers' Compensation
11 Commission in writing within thirty (30) days of each
12 such determination; ~~and~~

13 3. Any excess funds, including interest thereon, transferred to
14 the Self-insurance Guaranty Fund as provided in subsection D of
15 Section 99 of this title; and

16 4. Any interest accruing on monies paid into the fund.

17 SECTION 29. AMENDATORY Section 99, Chapter 208, O.S.L.
18 2013, as amended by Section 5, Chapter 169, O.S.L. 2014 (85A O.S.
19 Supp. 2016, Section 99), is amended to read as follows:

20 Section 99. A. On determination by the Workers' Compensation
21 Commission that a self-insurer has become an impaired self-insurer,
22 the Commission shall promptly secure release of the security
23 required by Section 38 of this title ~~and,~~ advise the Self-insurance
24 Guaranty Fund Board of the impairment. ~~Claims administration,~~

1 ~~including processing, investigating and paying valid claims against~~
2 ~~an impaired self-insurer under the Administrative Workers'~~
3 ~~Compensation Act, may include payment by the surety that issued the~~
4 ~~surety bond or be under a contract between the Commission and an~~
5 ~~insurance carrier, appropriate state governmental entity or an~~
6 ~~approved service organization, as approved by the Commission and~~
7 transfer the proceeds of the security to the Self-insurance Guaranty
8 Fund Board to be maintained in a segregated interest-bearing
9 division special agency account for administering workers'
10 compensation obligations of the impaired self-insurer. The Self-
11 insurance Guaranty Fund Board shall be the fiduciary of the account.

12 B. Proceeds from the released security, including interest
13 thereon, shall be used by the Board to administer the workers'
14 compensation obligations of the impaired self-insurer. Claims
15 administration includes, but is not limited to, processing,
16 investigating and paying claims, actuarial studies, attorney fees
17 incurred for filing a proof of claim in the bankruptcy of the
18 impaired self-insurer and a pro rata portion of the staff expenses
19 of the Self-insurance Guaranty Fund Board.

20 C. Any unexpended funds, including interest thereon, held by
21 the State Treasurer in an interest-bearing account maintained by the
22 Commission before the effective date of this act from which an
23 impaired self-insurer's workers' compensation obligations are paid,
24 shall be transferred to the Board. Such funds shall be expended by

1 the Board only for the purpose of administering the workers'
2 compensation obligations of the impaired self-insurer and as
3 otherwise authorized in subsection D of this section.

4 D. Except as otherwise provided by law or by agreement of the
5 parties, excess proceeds from the security remaining after each
6 claim for benefits of an impaired self-insurer has been paid,
7 settled or lapsed under the Administrative Workers' Compensation
8 Act, and costs of administration of such claims have been paid, as
9 determined by the Self-insurance Guaranty Fund Board, shall be
10 transferred to the Self-insurance Guaranty Fund by the Board.

11 SECTION 30. AMENDATORY Section 154, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2016, Section 111), is amended to read as
13 follows:

14 Section 111. A. ~~Any claim for any benefit under this act shall~~
15 ~~be commenced with the~~ If any claimant is denied any rights under
16 this act, the claimant may challenge the denial by filing of an
17 Employee's First Notice of Claim for Compensation by the employee
18 with the Workers' Compensation Commission. The ~~claim~~ Notice of
19 Claim for Compensation shall ~~contain a~~ be on a form prescribed by
20 the Commission and shall require:

21 1. A description of the alleged injury, including the affected
22 body parts;

23 2. A description of the claim for benefits, including the
24 rights denied by the employer;

1 3. The section of this act which is the basis for the claim;

2 and

3 4. A statement that all matters stated therein are true and
4 accurate and shall be signed by the claimant and the claimant's
5 agent, if any.

6 Any person who signs this statement or causes another to sign
7 this statement knowing the statement to be false shall be guilty of
8 perjury. An individual who signs on behalf of a claimant may be
9 presumed to have the authorization of the claimant and to be acting
10 at the claimant's direction. If the Notice of Claim for
11 Compensation does not contain the information required by this
12 subsection, it shall be rejected by the Commission.

13 B. If an employer controverts any issue related to the
14 Employee's First Notice of Claim for Compensation, the employer
15 shall file a Notice of Contested Issues on a form prescribed by the
16 Commission. All answers and defenses to claims or other documents
17 filed on behalf of a respondent or the respondent's insurer in a
18 workers' compensation case shall contain a statement that all
19 matters stated therein are true and accurate and shall be signed by
20 the respondent, the insurer, or their respective agents, if any.
21 Any person who signs such a statement or causes another to sign such
22 a statement, knowing the statement to be false, shall be guilty of
23 perjury. An individual who signs on behalf of a respondent, its
24 insurer, or its agent may be presumed to have the authorization of

1 the respondent, its insurer or agent and to be acting at their
2 direction.

3 ~~C. Any party shall have the right to request a prehearing
4 conference or administrative hearing before the Commission on any
5 issue. The Commission shall, within seven (7) days of the receipt
6 of such notification, set the matter for prehearing conference or
7 administrative hearing at the earliest available time. In the event
8 the compensability of a claim is contested, the respondent shall
9 complete discovery and secure a medical evaluation of the claimant
10 within sixty (60) days of the filing of a request for benefits.~~

11 SECTION 31. AMENDATORY Section 158, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2016, Section 115), is amended to read as
13 follows:

14 Section 115. A. If the employee and employer shall reach an
15 agreement for the full, final and complete settlement of any issue
16 of a claim pursuant to ~~this act~~ the Administrative Workers'
17 Compensation Act, a form designated as "Joint Petition" shall be
18 signed by both the employer and employee, or representatives
19 thereof, and shall be approved by the Workers' Compensation
20 Commission or an administrative law judge, and filed with the
21 Commission. In cases in which the employee is not represented by
22 legal counsel, the Commission or an administrative law judge shall
23 have jurisdiction to approve a full, final and complete settlement
24 of any issue upon the filing of an ~~Employer's First Notice of Injury~~

1 Employee's Notice of Claim for Compensation. There shall be no
2 requirement for the filing of an Employee's First Notice of Claim
3 for Compensation to effect such settlement in cases in which the
4 employee is not represented by legal counsel.

5 B. In the event all issues of a claim are not fully, finally
6 and completely settled by a Joint Petition, the issues not settled
7 by the parties and subject to the Commission's continuing
8 jurisdiction must be noted by appendix to the Joint Petition or on a
9 form created for such purpose by the Commission. The appendix must
10 be signed by the parties and approved by the Commission as set forth
11 herein.

12 C. In the absence of fraud, a Joint Petition shall be deemed
13 binding upon the parties thereto and a final adjudication of all
14 rights pursuant to ~~this act~~ the Administrative Workers' Compensation
15 Act or the workers' compensation law in effect at the time of the
16 injury or final order of the Workers' Compensation Court. An
17 official record shall be made by an official Commission reporter of
18 the testimony taken to effect the Joint Petition.

19 D. A good-faith effort shall be made on the part of any
20 insurance carrier, CompSource Oklahoma, or group self-insured plan
21 to notify an insured employer of the possibility of and terms of any
22 settlement of a workers' compensation case pursuant to this section.
23 Written comments or objections to settlements shall be filed with
24 the Commission and periodically shared with the management of the

1 applicable insurer. A written notice shall be made to all
2 policyholders of their right to a good-faith effort by their insurer
3 to notify them of any proposed settlement, if the policyholder so
4 chooses.

5 SECTION 32. REPEALER Sections 36, 60, 61, 63, 67, 80,
6 159 and 160, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2016, Sections
7 36, 60, 61, 63, 67, 80, 116 and 117), are hereby repealed.

8 SECTION 33. This act shall become effective November 1, 2017.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
10 February 28, 2017 - DO PASS AS AMENDED

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