

1 ENGROSSED SENATE
2 BILL NO. 1062

By: Bingman, Sykes, Holt,
Fields, Brooks, Justice,
Treat, Simpson, Loveless,
Boggs, Branan, Brown,
Newberry, David, Jolley,
Ford, Crain, Allen,
Brinkley, Brecheen,
Standridge, Marlatt and
Schulz of the Senate

and

Shannon, Roberts (Sean),
McBride and Cooksey of the
House

11 An Act relating to workers' compensation
12 administrative system; creating the Administrative
13 Workers' Compensation Act; providing short title;
14 defining terms; stating applicability of act; stating
15 effect of finding of unconstitutionality; providing
16 for exclusivity of certain remedies; providing
17 exceptions; prohibiting certain statement or
18 misrepresentation; creating felony offense; directing
19 allocation of certain fine; requiring referral of
20 certain violations; creating certain investigation
21 unit; requiring Attorney General to designate certain
22 personnel; establishing qualifications for certain
23 personnel; designating certain enforcement powers to
24 Attorney General; requiring employers to make certain
reports; creating misdemeanor offense; imposing fine
for certain offense; directing allocation of certain
fine; specifying authority for certain prosecuting
attorneys; establishing confidentiality of certain
investigatory files; authorizing Attorney General to
promulgate certain rules; providing for stay of
certain proceeding under specified circumstances;
prohibiting certain discrimination or retaliation;
establishing exclusive jurisdiction over certain
claims; providing remedies for certain violations;
construing provisions; providing for invalidity of
certain waivers or agreements; providing exceptions;
creating felony offense; prohibiting assignment or

1 garnishment of certain claims or benefits;
2 establishing requirements for certain compensation to
3 alien nonresidents; authorizing certain lump sum
4 payments; establishing preference for certain
5 compensation; prohibiting compensation for certain
6 injury; providing exceptions; limiting benefits for
7 certain disability; establishing requirements for
8 determination of certain injury or illness as
9 compensable injury; requiring Attorney General to
10 provide certain report to Commission; establishing
11 requirements for certain report; requiring certain
12 certification; providing for applicability of certain
13 guidelines; creating a Physician Advisory Committee;
14 specifying membership of Committee; directing
15 appointment of certain membership; providing for
16 terms of certain membership; establishing duties of
17 Committee; prohibiting certain compensation;
18 providing for reimbursement of certain travel
19 expenses; establishing requirements for conducting
20 committee business; requiring provision of certain
21 data; providing immunity from liability for certain
22 reports; prohibiting attempt to collect fee for
23 services under certain circumstances; requiring
24 certain notice; specifying contents of certain
notice; authorizing collection for certain charges;
requiring stay of certain proceedings; establishing
membership of certain Commission; providing for
appointment and confirmation of certain
commissioners; providing for terms of certain
commissioners; providing for certain salary;
establishing authority of special commissioner;
authorizing certain per diem; providing for
appointment of certain chair; establishing
qualifications of certain chair; establishing duties
of certain chair; granting specified authority to
Commission; directing deposit of certain fees;
requiring certain oath; establishing requirements for
conducting of Commission business; providing for
adoption of certain rules; requiring certain notice;
authorizing appointment of certain employees;
providing for salary to certain employees;
establishing duty of certain judges; authorizing
reimbursement for certain travel expenses; requiring
submission of certain report; requiring publication
of certain information; establishing procedures for
removal of commissioner; establishing duties of
certain judges; specifying revenue sources for

1 Multiple Injury Trust Fund; establishing methods for
2 determination of certain assessments; defining terms;
3 requiring certain notice; establishing maximum limit
4 for certain assessments; establishing duty for
5 collection of certain payments; establishing
6 administrative penalties for failure to make or
7 report certain payments; establishing requirements
8 for management and administration of certain Fund;
9 requiring promulgation of certain rules; providing
10 for establishment of certain Funds; establishing
11 requirements for management and administration of
12 certain Funds; requiring certain fees; directing
13 deposit of certain fees; requiring employers to
14 secure certain compensation; establishing
15 requirements for contractor liability for certain
16 compensation; creating felony offense; establishing
17 requirements for certification of noncoverage;
18 authorizing waiver of certain exemptions;
19 establishing requirements for certain notice of
20 waiver; establishing methods for employers to secure
21 required compensation; authorizing waiver of certain
22 requirements; establishing consequences for failure
23 to obtain certain compensation; creating felony
24 offense; authorizing carrier to discharge certain
obligations; directing deposit of certain fine;
establishing procedures for certain violations;
requiring posting of certain notices; specifying
required contents of certain notices; specifying
required contents of certain policy or contract;
establishing procedures for cancellation of certain
coverage; establishing requirements for coverage of
certain liabilities; prohibiting split coverage under
certain circumstances; stating effects of certain
claims; authorizing subrogation of certain claims;
establishing procedures for certain subrogation;
providing for reduction of benefits under certain
circumstances; requiring certain disclosures;
requiring production of certain releases;
establishing requirements for benefits for temporary
total disability; establishing requirements for
benefits for temporary partial disability;
establishing requirements for benefits for permanent
partial disability; establishing requirements for
benefits for permanent total disability; establishing
requirements for benefits for disfigurement;
establishing time limitations for permanent partial
disability compensation; creating certain rebuttable

1 presumption; prohibiting benefits to common law
2 spouse; providing exception; establishing
3 requirements for death benefits to beneficiaries;
4 providing for termination of certain benefits;
5 providing for doubling of certain benefits; providing
6 exception; prohibiting certain disability
7 compensation while receiving unemployment benefits;
8 requiring provision of certain medical services to
9 injured employee; authorizing Commission to direct
10 provision of medical services under certain
11 circumstances; requiring establishment and review of
12 certain Fee Schedule; providing requirements for
13 certain Fee Schedule; requiring adoption of rules for
14 certain formulary; requiring employer to pay certain
15 percentage of specified expenses; prohibiting certain
16 employer liability; requiring submission to certain
17 examination or treatment under certain circumstances;
18 requiring suspension of certain proceedings under
19 certain circumstances; barring right to certain
20 compensation under specified circumstances; requiring
21 consideration of certain refusal in determination of
22 certain compensation; authorizing review and
23 amendment of certain charges; providing exception;
24 establishing procedures for selection or change of
physician; defining term; providing for
responsibility of employee for certain treatment or
services; requiring certain notice; providing for
applicability of certain requirements; requiring
inclusion of certain information on specified forms;
establishing consequences for absence from certain
treatment appointments; authorizing copies of certain
information; providing for computation of average
weekly wages; establishing requirements for
consideration of claims for permanent partial or
total disability; prohibiting consideration of
certain condition as compensable injury; providing
exception; providing for benefits for certain injury;
authorizing extension of certain benefits under
specified circumstances; stating applicability of
provisions; defining term; stating purpose of certain
Fund; providing for compensation for certain injury
from certain Fund; specifying liability for certain
injury; establishing duties of State Treasurer for
administration of certain Fund; requiring certain
report of injury from employer to Commission;
authorizing refusal to provide certain confidential
information; establishing requirements for certain

1 reports; establishing penalty for refusal to submit
2 certain reports; establishing procedures for
3 judgments for certain violations; authorizing
4 application for certification of certain medical
5 plans; requiring fee for certain certification;
6 requiring inclusion of certain information in
7 application for certification; establishing
8 requirements for certification of certain plans;
9 authorizing independent contracting with certain
10 medical plans under specified circumstances;
11 authorizing certain premium reductions; prohibiting
12 certification of certain plans; requiring
13 implementation of certain site visit protocol;
14 establishing requirements of certain protocol;
15 requiring adoption of certain rules; establishing
16 requirements for compensation for occupational
17 disease; defining term; specifying liability of
18 certain employer for compensation for certain
19 disease; specifying applicability of certain
20 provisions; defining terms; establishing requirements
21 for compensation for disability or death from
22 silicosis or asbestosis; establishing limitations on
23 certain compensation; requiring payment for certain
24 training; establishing notice of disability
requirements for occupational disease and cumulative
trauma; authorizing review of certain award or
denial; requiring report of injury to employer;
establishing certain reporting requirements;
establishing procedures for filing claim for certain
benefits; establishing time limitations for filing of
certain claims; establishing procedures for filing
claim for additional compensation; stating
consequences for failure to file certain claim within
specified time period; providing exceptions;
directing Commission to promulgate certain rules;
requiring establishment and implementation of certain
preliminary conference procedure; requiring certain
notice; establishing hearing procedure for certain
claims; establishing evidentiary requirements for
certain hearing; directing filing and mailing of
certain judgment; prohibiting disability compensation
for certain period; providing exception; establishing
requirements for investigation or inquiry by
Commission and certain judges; requiring certain
hearing be open to the public; providing for
recording of certain proceedings; providing
procedures for introduction of certain evidence;

1 establishing certain powers of Commission; imposing
2 fine for certain contempt; creating certain
3 rebuttable presumptions; authorizing certain
4 depositions; authorizing certain witness fees;
5 authorizing employment of attorneys for certain
6 proceedings; permitting appeal of judgment or
7 decision to Commission; establishing procedures for
8 certain appeal; establishing procedures for
9 commencement of action in Supreme Court; authorizing
10 Supreme Court to modify certain judgments or awards
11 under specified circumstances; establishing
12 procedures for appeal to Supreme Court; requiring fee
13 for certain appeal; providing for recording of
14 certain judgment; authorizing Commission review of
15 certain compensation judgment or award; establishing
16 requirements for certain review; requiring assessment
17 of certain costs; requiring Commission approval of
18 certain legal fees; imposing limits on certain
19 attorney fees; defining term; requiring certain
20 notice; requiring Commission to direct fees for
21 certain legal services; establishing certain
22 signature requirements; authorizing sanctions under
23 certain circumstances; specifying form of certain
24 payments; requiring certain payments be made within
specified time period; defining term; establishing
procedures for controversion of certain claims;
authorizing application for certain extension;
establishing procedures for joint petition for
settlement of claims; directing payment of certain
benefits when source of payment is disputed;
providing for certain reimbursement; providing for
certain interest; authorizing requirement of certain
deposit or bond; providing for certain interest on
certain compensation award; requiring certain notice;
authorizing assessment of certain penalty;
authorizing Commission to take certain actions;
prohibiting benefits to incarcerated employees;
requiring offer of certain deductible options;
establishing requirements for optional deductibles;
authorizing adoption of certain rules; stating
applicability of certain provisions; requiring
administration of Self-insurance Guaranty Fund by
Board; providing for membership of Board;
establishing terms for certain membership;
prohibiting certain compensation; authorizing certain
reimbursement; establishing requirements for
conducting Board business; prohibiting certain

1 liability; stating purpose of certain Fund; stating
2 requirements for expenditure of monies in certain
3 Fund; establishing funding sources for Workers'
4 Compensation Self-Insured Guaranty Fund; requiring
5 Commission to secure certain releases under specified
6 circumstances; requiring Board to be party in certain
7 proceedings; authorizing Board to exercise certain
8 rights and defenses; requiring Commission to submit
9 certain report; requiring implementation of certain
10 electronic data interchange system; creating the
11 Oklahoma Workers' Compensation Electronic Data
12 Interchange Advisory Committee; directing appointment
13 of membership of Committee; requiring notice of
14 certain meetings; creating CompSource Oklahoma fund;
15 stating purpose of certain fund; establishing funding
16 sources for certain fund; requiring certain report;
17 creating CompSource Board of managers; specifying
18 membership of Board; providing for election of chair
19 and secretary of Board; establishing requirements for
20 conducting of Board business; authorizing
21 reimbursement for certain expenses; requiring
22 appointment of Board President; establishing powers
23 of President; authorizing delegation of certain
24 powers; prohibiting certain personal liability;
establishing authority of President and certain
officers; requiring establishment and use of certain
rates and rating plans; requiring certain
certification; directing deposit of certain excess
premium or assessments; specifying responsibility for
certain losses; directing deposit of certain monies;
providing for management of certain fund; authorizing
transfer of certain monies; specifying requirements
for certain payments; requiring inclusion of certain
warning on certain instruments; creating certain
petty cash fund; providing requirements for
expenditures from certain fund; providing for certain
reimbursement; requiring certain appointments;
requiring creation of certain surplus; requiring
certain dividend under specified circumstances;
authorizing transfer of certain funds; requiring
establishment and maintenance of certain reserves;
imposing certain duties upon specified Board;
directing investment of certain assets; authorizing
certain agreements; authorizing purchase of certain
real estate; authorizing procurement of certain
insurance; authorizing establishment of certain
investment committee; stating purpose of certain

1 committee; requiring retention of investment
2 managers; establishing duties of certain investment
3 managers; requiring custodian of certain funds and
4 revenues; establishing duties of certain custodian;
5 requiring development of certain investment plan;
6 requiring certain report; specifying required
7 contents of certain report; authorizing certain
8 reinsurance agreements; prohibiting fiduciary from
9 causing certain transactions; prohibiting fiduciary
10 from certain actions; authorizing fiduciary to take
11 certain actions; defining term; directing expenditure
12 of certain funds; placing limit on certain expenses;
13 requiring submission of certain annual financial
14 statement; authorizing certain audit; requiring
15 account of certain expenses; directing payment of
16 certain premiums; requiring receipt of certain
17 contract or policy; requiring development and
18 implementation of insurance premium credit program;
19 authorizing cancellation of policy under certain
20 circumstances; requiring maintenance of certain
21 records; creating felony offense; imposing certain
22 fine; providing for confidentiality of certain
23 information; creating misdemeanor offense; imposing
24 certain fine; requiring provision of certain
information to Commissioner of Labor; requiring
certain annual report; requiring payment of annual
market equalization assessment; establishing rate of
certain assessment; providing for liability upon
failure to remit certain assessments; prohibiting
liability in certain proceedings; renaming Workers'
Compensation Court as Workers' Compensation Court of
Existing Claims; establishing procedures for
appointment to certain court; establishing
qualifications for certain nominees; providing for
certain salary; establishing Court of Existing Claims
as court of record; establishing jurisdiction of
certain court; providing for locations for conducting
of court hearings; establishing procedures for appeal
of certain orders; establishing procedures for final
orders on open claims after certain time period;
providing for transfer of certain monies; construing
provisions; creating the Oklahoma Employee Injury
Benefit Act; providing short title; defining terms;
authorizing exemption from certain act; requiring
certain notice; requiring payment of certain fee;
requiring maintenance of certain information;
requiring adoption of certain rules; authorizing

1 designation of certain information collection agent;
2 requiring certain notice; authorizing certain
3 contracts; authorizing prescription of certain rules
4 and forms; requiring certain notice; requiring
5 adoption of certain benefit plan under specified
6 circumstances; establishing requirements for certain
7 benefit plans; requiring benefit plans to provide
8 certain compensation; stating applicability of
9 certain standards; authorizing certain lump sum
10 payments; authorizing certain settlement agreements;
11 authorizing specification of certain conditions and
12 limitations; prohibiting certain fees or costs;
13 requiring provision of certain information;
14 authorizing qualified employers to insure certain
15 risks; requiring employers to secure compensation in
16 specified ways; authorizing certain waivers;
17 prohibiting relief of certain compensation;
18 establishing requirements for certain bond;
19 establishing certain security requirements;
20 authorizing promulgation of certain rules;
21 establishing requirements of certain benefit plans;
22 establishing certain funds; stating purpose of
23 certain funds; directing expenditures of certain
24 funds; defining term; directing administration and
disbursement of certain funds; authorizing funding
from certain sources; requiring creation of certain
account; authorizing certain Association to exercise
certain rights and defenses; directing deposit of
certain fines and penalties; requiring annual payment
of certain fee; directing deposit of certain premium
taxes; providing for collection of certain premiums;
requiring collection of certain fees; establishing
determination of certain surplus; establishing
determination of certain assessment; requiring
certain notice; authorizing promulgation of certain
rules; providing for exclusivity of certain liability
and remedy; providing for eligibility of certain
benefits; requiring filing of certain action within
certain time period; establishing responsibility of
certain employer; requiring certain notice; requiring
plan to contain certain rights; construing
provisions; authorizing procedures for certain
appeal; providing for invalidity of certain
provisions; creating the Workers' Compensation
Arbitration Act; providing short title; authorizing
validity of certain agreements; establishing
requirements for certain notice; specifying

1 governance of certain act; authorizing waiver of
2 certain requirements; prohibiting certain agreements;
3 prohibiting certain waiver; requiring certain
4 application; providing for validity of certain
5 agreement; authorizing arbitration of certain
6 agreement; authorizing assessment of certain costs;
7 providing for dispute of certain proceeding;
8 authorizing Commission to enter certain findings;
9 authorizing certain judgment; authorizing actions of
10 certain arbitrators; requiring certain notice;
11 authorizing consolidation of arbitration proceedings
12 under certain circumstances; requiring following of
13 certain agreement under specified circumstances;
14 requiring certain disclosure; authorizing removal of
15 arbitrator under certain circumstances; establishing
16 continuing disclosure requirements; providing for
17 exercise of authority for majority of arbitrators;
18 providing for immunity of certain civil liability;
19 establishing requirements for certain testimony;
20 authorizing award of certain fees and costs under
21 certain circumstances; establishing requirements for
22 certain arbitrations; establishing authority of
23 arbitrators; providing for appointment of replacement
24 arbitrator; authorizing legal representation under
certain circumstances; providing for payment of legal
fees; granting subpoena authority to arbitrator;
establishing requirements for deposition and
discovery; authorizing issuance of protective order
for certain purpose; authorizing enforcement of
certain orders; authorizing certain motions;
requiring certain record; specifying time period for
certain award; authorizing modification of certain
award; requiring certain notice; establishing
procedures for certain modification; authorizing
award of certain benefits; authorizing order for
certain remedies; authorizing motion for confirmation
of certain award; establishing procedures for
vacating certain award; requiring modification under
certain circumstances; requiring recording of certain
judgment; granting exclusive jurisdiction;
authorizing appeal of certain actions; directing
certain motions to certain courts; repealing Title 85
of the Oklahoma Statutes, in its entirety, which
relates to the Workers' Compensation Code; providing
for codification; and providing an effective date.

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

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

5 Sections 1 through 119 of this act shall be known and may be
6 cited as the "Administrative Workers' Compensation Act".

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

10 As used in the Administrative Workers' Compensation Act:

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

16 2. "Case management" means the ongoing coordination, by a case
17 manager, of health care services provided to an injured or disabled
18 worker, including, but not limited to systematically monitoring the
19 treatment rendered and the medical progress of the injured or
20 disabled worker; ensuring that any treatment plan follows all
21 appropriate treatment protocols, utilization controls and practice
22 parameters; assessing whether alternative health care services are
23 appropriate and delivered in a cost-effective manner based upon
24

1 acceptable medical standards; and ensuring that the injured or
2 disabled worker is following the prescribed health care plan;

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

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

17 4. "Certified workplace medical plan" means an organization of
18 health care providers or any other entity, certified by the State
19 Commissioner of Health, that is authorized to enter into a
20 contractual agreement with an employer, group self-insurance
21 association plan, an employer's workers' compensation insurance
22 carrier, third party administrator or an insured to provide medical
23 care under the Administrative Workers' Compensation Act. Certified
24 plans shall only include plans which provide medical services and

1 payment for services on a fee-for-service basis to medical
2 providers;

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

16 6. "Commission" means the Workers' Compensation Commission;

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

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

b. "Compensable injury" does not include:

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

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

1 natural results of aging, osteoarthritis,
2 arthritis, or degenerative process including, but
3 not limited to, degenerative joint disease,
4 degenerative disc disease, degenerative
5 spondylosis/spondylolisthesis and spinal
6 stenosis, or

7 (6) any preexisting condition except to the limited
8 extent, if any, that a treating physician clearly
9 confirms an identifiable and significant
10 aggravation incurred in the course and scope of
11 employment of a preexisting condition that has
12 been previously repaired or rehabilitated.

13 c. The definition of "compensable injury" shall not be
14 construed to limit or abrogate the right to recover
15 for mental injuries as described in Section 13 of this
16 act, heart or lung injury or illness as described in
17 Section 14 of this act, or occupational diseases as
18 described in Section 62 of this act.

19 d. A compensable injury shall be established by medical
20 evidence supported by objective findings as defined in
21 paragraph 26 of this section.

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

1 f. Benefits shall not be payable for a condition which
2 results from a non-work related independent
3 intervening cause following a compensable injury which
4 causes or prolongs disability, aggravation, or
5 requires treatment. A non-work related independent
6 intervening cause does not require negligence or
7 recklessness on the part of a claimant.

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

14 8. "Compensation" means the money allowance payable to the
15 employee or to his or her dependents and includes the medical
16 services and supplies provided for in Section 46 of this act and
17 funeral expenses;

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

1 of the affairs of an employer that is specifically directed by the
2 employer. This term does not include:

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

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

1 completed at least one hundred eighty (180) days of continuous
2 active employment with the employer;

3 11. "Death" means only death resulting from compensable injury
4 as defined in paragraph 7 of this section;

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

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

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

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

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

1 unless the Department is required by federal law
2 or regulations to provide workers' compensation
3 for such person. This division shall not be
4 construed to include nursing homes,

5 (5) any person employed by an employer with five or
6 less total employees, all of whom are related by
7 blood or marriage to the employer, if the
8 employer is a natural person or a general or
9 limited partnership, or an incorporator of a
10 corporation if the corporation is the employer,

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

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

covered by a policy of insurance covering
benefits under the Administrative Workers'
Compensation Act,

(8) any person providing or performing voluntary
service who receives no wages for the services
other than meals, drug or alcohol rehabilitative
therapy, transportation, lodging or reimbursement
for incidental expenses,

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

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

(10) a person referred to as a drive-away owner-
operator who privately owns and utilizes a tow
vehicle in drive-away operations and operates
independently for hire, if the drive-away owner-
operator actually utilizes the tow vehicle and if

1 the person contracting with the drive-away owner-
2 operator is not the lessor of the tow vehicle.

3 Provided, however, a drive-away owner-operator
4 shall not be precluded from workers' compensation
5 coverage under the Administrative Workers'

6 Compensation Act if the drive-away owner-operator
7 elects to participate as a sole proprietor, and

8 (11) any person who is employed as a domestic servant
9 or as a casual worker in and about a private home
10 or household, which private home or household had
11 a gross annual payroll in the preceding calendar
12 year of less than Ten Thousand Dollars

13 (\$10,000.00) for such workers;

14 15. "Employer" means a person, partnership, association,
15 limited liability company, corporation, and the legal
16 representatives of a deceased employer, or the receiver or trustee
17 of a person, partnership, association, corporation, or limited
18 liability company, departments, instrumentalities and institutions
19 of this state and divisions thereof, counties and divisions thereof,
20 public trusts, boards of education and incorporated cities or towns
21 and divisions thereof, employing a person included within the term
22 "employee" as defined in this section. Employer may also mean the
23 employer's workers' compensation insurance carrier, if applicable.
24 Except as provided otherwise, this act applies to all public and

1 private entities and institutions. Employer shall not include a
2 qualified employer with an employee benefit plan as provided under
3 the Oklahoma Employee Injury Benefit Act in Sections 120 through 133
4 of this act;

5 16. "Employment" includes work or labor in a trade, business,
6 occupation or activity carried on by an employer or any authorized
7 voluntary or uncompensated worker rendering services as a
8 firefighter, peace officer or emergency management worker;

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

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

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

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

3 21. "Insurance Commissioner" means the Insurance Commissioner
4 of the State of Oklahoma;

5 22. "Insurance Department" means the Insurance Department of
6 the State of Oklahoma;

7 23. "Major cause" means more than fifty percent (50%) of the
8 cause. A finding of major cause shall be established by a
9 preponderance of the evidence;

10 24. "Maximum medical improvement" means that no further
11 material improvement would reasonably be expected from medical
12 treatment or the passage of time;

13 25. "Medical services" means those services specified in
14 Section 46 of this act;

15 26. a. (1) "Objective findings" are those findings which
16 cannot come under the voluntary control of the
17 patient.

18 (2) (a) When determining physical or anatomical
19 impairment, a physician, any other medical
20 provider, an administrative law judge, the
21 Commission or the courts shall not consider
22 complaints of pain.

23 (b) For the purpose of making physical or
24 anatomical impairment ratings to the spine,

1 straight-leg-raising tests or range-of-
2 motion tests shall not be considered
3 objective findings.

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

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

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

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

4 28. "Permanent partial disability" means, based on objective
5 findings, a permanent anatomical impairment or loss of use after
6 maximum medical improvement has been reached which prevents the
7 injured employee from returning to his or her pre-injury or
8 equivalent job;

9 29. "Permanent total disability" means, based on objective
10 findings, incapacity to earn wages in any employment for which the
11 employee may become physically suited and reasonably fitted by
12 vocational rehabilitation provided under this act;

13 30. "Preexisting condition" means any illness, injury, disease,
14 or other physical or mental condition, whether or not work-related,
15 for which medical advice, diagnosis, care or treatment was
16 recommended or received within the six-month period preceding the
17 date of injury;

18 31. "Pre-injury or equivalent job" means the job that the
19 employee was working at the time the injury occurred or any other
20 employment that pays at least one hundred percent (100%) of the
21 employee's average weekly wage;

22 32. "Private self-insurer" means a private employer that has
23 been authorized to self-insure its workers' compensation obligations
24 pursuant to this act, but does not include group self-insurance

1 associations authorized this act, or any public employer that self-
2 insures pursuant to this act;

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

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

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

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

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

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

3 39. "Surviving spouse" means the employee's spouse by reason of
4 a legal marriage recognized by any state or nation or by common law,
5 under the requirements of a common law marriage in this state, as
6 determined by the Workers' Compensation Commission;

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

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

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

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

23 A. Every employer and every employee, unless otherwise
24 specifically provided in this act, shall be subject and bound to the

1 provisions of the Administrative Workers' Compensation Act.

2 However, nothing in this act shall be construed to conflict with any
3 valid act of Congress governing the liability of employers for
4 injuries received by their employees.

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

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

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

15 If any part of this act is adjudged unconstitutional by the
16 courts and the adjudication has the effect of invalidating any
17 payment of compensation under this act, the period intervening
18 between the time the injury was sustained and the time of the
19 adjudication shall not be computed as part of the time prescribed by
20 law for the commencement of any action against the employer in
21 respect of the injury, but the amount of any compensation paid under
22 this act on account of the injury shall be deducted from the amount
23 of damages awarded in the action in respect to the injury.

1 SECTION 5. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 5 of Title 85A, unless there is
3 created a duplication in numbering, reads as follows:

4 A. The rights and remedies granted to an employee subject to
5 the provisions of the Administrative Workers' Compensation Act shall
6 be exclusive of all other rights and remedies of the employee, his
7 legal representative, dependents, next of kin, or anyone else
8 claiming rights to recovery on behalf of the employee against the
9 employer, or any principal, officer, director, employee,
10 stockholder, partner, or prime contractor of the employer on account
11 of injury, illness, or death. Negligent acts of a co-employee may
12 not be imputed to the employer. No role, capacity, or persona of
13 any employer, principal, officer, director, employee, or stockholder
14 other than that existing in the role of employer of the employee
15 shall be relevant for consideration for purposes of this act, and
16 the remedies and rights provided by this act shall be exclusive
17 regardless of the multiple roles, capacities, or personas the
18 employer may be deemed to have.

19 B. Exclusive remedy shall not apply if:

20 1. An employer fails to secure the payment of compensation due
21 to the employee as required by this act, not including claims that
22 are controverted. An injured employee, or his or her legal
23 representative in case death results from the injury, may, at his or
24 her option, elect to claim compensation under this act or to

1 maintain a legal action in court for damages on account of the
2 injury or death; or

3 2. The injury was caused by an intentional tort committed by
4 the employer. An intentional tort shall exist only when the
5 employee is injured as a result of willful, deliberate, specific
6 intent of the employer to cause such injury. Allegations or proof
7 that the employer had knowledge that the injury was substantially
8 certain to result from the employer's conduct shall not constitute
9 an intentional tort. The employee shall plead facts that show it is
10 at least as likely as it is not that the employer acted with the
11 purpose of injuring the employee. The issue of whether an act is an
12 intentional tort shall be a question of law.

13 C. The immunity from civil liability described in subsection A
14 of this section shall apply regardless of whether the injured
15 employee is denied compensation or deemed ineligible to receive
16 compensation under this act.

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

20 A. 1. a. Any person or entity who makes any material false
21 statement or representation, who willfully and
22 knowingly omits or conceals any material information,
23 or who employs any device, scheme, or artifice, or who
24 aids and abets any person for the purpose of:

1 (1) obtaining any benefit or payment,
2 (2) increasing any claim for benefit or payment, or
3 (3) obtaining workers' compensation coverage under
4 this act,
5 shall be guilty of a felony.

6 b. A material false statement or representation includes,
7 but is not limited to, attempting to obtain treatment
8 or compensation for body parts that were not injured
9 in the course and scope of employment.

10 c. Fifty percent (50%) of any criminal fine imposed and
11 collected under this section shall be paid and
12 allocated in accordance with applicable law to the
13 Workers' Compensation Fund administered by the
14 Commission.

15 2. Any person or entity with whom any person identified in
16 division (1) of subparagraph a of paragraph 1 of this subsection has
17 conspired to achieve the proscribed ends shall, by reason of such
18 conspiracy, be guilty as a principal of a felony.

19 B. A copy of division (1) of subparagraph a of paragraph 1 of
20 subsection A of this section shall be included on all forms
21 prescribed by the Commission for the use of injured employees
22 claiming benefits and for the use of employers in responding to
23 employees' claims under this act.
24

1 C. Where the Commission or the Attorney General finds that a
2 violation of division (1) of subparagraph a of paragraph 1 of
3 subsection A of this section has been committed, or that any other
4 criminal violations in furtherance of this act were committed, the
5 chair of the Commission or the Attorney General shall refer the
6 matter for appropriate action to the prosecuting attorney having
7 criminal jurisdiction over the matter.

8 D. 1. a. There shall be established within the Office of the
9 Attorney General a Workers' Compensation Fraud
10 Investigation Unit, funded by the Commission. The
11 Attorney General shall appoint a Director of the
12 Workers' Compensation Fraud Investigation Unit, who
13 may also serve as the director of any other designated
14 insurance fraud investigation division within the
15 Attorney General's office.

16 b. (1) The unit shall investigate workers' compensation
17 fraud, any additional criminal violations that
18 may be related to workers' compensation fraud,
19 and any other insurance fraud matters as may be
20 assigned at the discretion of the Attorney
21 General.

22 (2) The Attorney General shall designate the
23 personnel assigned to the unit, who, on meeting
24 the qualifications established by the Oklahoma

1 Council on Law Enforcement Education and
2 Training, shall have the powers of specialized
3 law enforcement officers of the State of Oklahoma
4 for the purpose of conducting investigations
5 under this subparagraph. Personnel hired as
6 specialized law enforcement officers shall have a
7 minimum of three (3) years of certified law
8 enforcement experience or its equivalent in
9 national or military law enforcement experience
10 as approved by the Oklahoma Council on Law
11 Enforcement Education and Training.

12 2. The Attorney General and his or her deputies and assistants
13 and the fraud director and his or her deputies and assistants shall
14 be vested with the power of enforcing the requirements of this
15 section.

16 3. It shall be the duty of the unit to assist the Attorney
17 General in the performance of his or her duties. The Unit shall
18 determine the identity of employees in this state who have violated
19 division (1) of subparagraph a of paragraph 1 of subsection A of
20 this section and report the violation to the office of the Attorney
21 General and the Commission. The Attorney General shall report the
22 violation to the prosecuting attorney having jurisdiction over the
23 matter.
24

- 1 4. a. In the course of any investigation being conducted by
2 the unit, the Attorney General and his or her deputies
3 and assistants and the fraud director and his or her
4 deputies and assistants shall have the power of
5 subpoena and may:
- 6 (1) subpoena witnesses,
7 (2) administer oaths or affirmations and examine any
8 individual under oath, and
9 (3) require and compel the production of records,
10 books, papers, contracts, and other documents.
- 11 b. The issuance of subpoenas for witnesses shall be
12 served in the same manner as if issued by a district
13 court.
- 14 c. (1) Upon application by the commissioner or the
15 Director of the Unit, the district court located
16 in the county where a subpoena was served may
17 issue an order compelling an individual to comply
18 with the subpoena to testify.
- 19 (2) Any failure to obey the order of the court may be
20 punished as contempt.
- 21 d. If any person has refused in connection with an
22 investigation by the fraud director to be examined
23 under oath concerning his or her affairs, then the
24 fraud director is authorized to conduct and enforce by

1 all appropriate and available means any examination
2 under oath in any state or territory of the United
3 States in which any officer, director, or manager may
4 then presently be to the full extent permitted by the
5 laws of the state or territory.

6 e. In addition to the punishments described in paragraph
7 2 of subsection A of this section, any person
8 providing false testimony under oath or affirmation in
9 this state as to any matter material to any
10 investigation or hearing conducted under this
11 subparagraph, or any workers' compensation hearing,
12 shall upon conviction be guilty of perjury.

13 5. Fees and mileage of the officers serving the subpoenas and
14 of the witnesses in answer to subpoenas shall be as provided by law.

15 6. a. Every carrier or employer who has reason to suspect
16 that a violation of division (1) of subparagraph a of
17 paragraph 1 of subsection A of this section has
18 occurred shall be required to report all pertinent
19 matters to the unit.

20 b. No carrier or employer who makes a report for a
21 suspected violation of division (1) of subparagraph a
22 of paragraph 1 of subsection A of this section by an
23 employee shall be liable to the employee unless the
24

1 carrier or employer knowingly and intentionally
2 included false information in the report.

3 c. (1) Any carrier or employer who willfully and
4 knowingly fails to report a violation under
5 division (1) of subparagraph a of paragraph 1 of
6 subsection A of this section shall be guilty of a
7 misdemeanor and on conviction shall be punished
8 by a fine not to exceed One Thousand Dollars
9 (\$1,000.00).

10 (2) Fifty percent (50%) of any criminal fine imposed
11 and collected under this subparagraph shall be
12 paid and allocated in accordance with applicable
13 law to the fund administered by the Commission.

14 d. Any employee may report suspected violations of
15 division (1) of subparagraph a of paragraph 1 of
16 subsection A of this section. No employee who makes a
17 report shall be liable to the employee whose suspected
18 violations have been reported.

19 E. 1. For the purpose of imposing criminal sanctions or a fine
20 for violation of the duties of this act, the prosecuting attorney
21 shall have the right and discretion to proceed against any person or
22 organization responsible for such violations, both corporate and
23 individual liability being intended by this act.

1 2. The prosecuting attorney of the district to whom a suspected
2 violation of subsection A of this section, or any other criminal
3 violations that may be related thereto, has been referred shall, for
4 the purpose of assisting him or her in such prosecutions, have the
5 authority to appoint as special deputy prosecuting attorneys
6 licensed attorneys at law in the employment of the unit or any other
7 designated insurance fraud investigation division within the
8 Attorney General's office. Such special deputy prosecuting
9 attorneys shall, for the purpose of the prosecutions to which they
10 are assigned, be responsible to and report to the prosecuting
11 attorney.

12 F. Notwithstanding any other provision of law, investigatory
13 files as maintained by the Attorney General's office and by the unit
14 shall be deemed confidential and privileged. The files may be made
15 open to the public once the investigation is closed by the fraud
16 director with the consent of the Attorney General.

17 G. The Attorney General, with the cooperation and assistance of
18 the Commission, is authorized to establish rules as may be necessary
19 to carry out the provisions of this section.

20 H. Nothing in this section shall be deemed to create a civil
21 cause of action.

22 I. If an injured employee is charged with workers' compensation
23 fraud, any pending workers' compensation proceeding, including
24 benefits, shall be stayed after the preliminary hearing is concluded

1 and the claimant is bound over and shall remain stayed until the
2 final disposition of the criminal case. All notice requirements
3 shall continue during the stay.

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

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

9 1. Filed a claim under this act;

10 2. Retained a lawyer for representation regarding a claim under
11 this act;

12 3. Instituted or caused to be instituted any proceeding under
13 the provisions of this act; or

14 4. Testified or is about to testify in any proceeding under the
15 provisions of this act;

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

18 C. If the Commission determines that the defendant violated
19 subsection A of this section, the Commission may award the employee
20 back pay up to a maximum of Twenty Thousand Dollars (\$20,000.00).
21 Interim earnings or amounts earnable with reasonable diligence by
22 the person discriminated against shall reduce the back pay otherwise
23 allowable.
24

1 D. The prevailing party shall be entitled to recover costs and
2 a reasonable attorney fee.

3 E. Notwithstanding any other provision of this section, an
4 employer shall not be required to rehire or retain an employee who,
5 after temporary total disability has been exhausted, is determined
6 by a physician to be physically unable to perform his or her
7 assigned duties, or whose position is no longer available.

8 F. This section shall not be construed as establishing an
9 exception to the employment at will doctrine.

10 G. The remedies provided for in this section shall be exclusive
11 with respect to any claim arising out of the conduct described in
12 subsection A of this section. Any case law inconsistent with this
13 section is hereby annulled.

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

17 A. No agreement by an employee to waive his or her right to
18 compensation shall be valid. No contract, regulation, or device
19 shall operate to relieve the employer or carrier, in whole or in
20 part, from any liability created by this act, except as specifically
21 provided in this act.

22 B. 1. Any officer of a corporation, sole proprietor, partner
23 of a partnership, member of a limited liability company, member of a
24 professional association, or self-employed employer who is not a

1 subcontractor and who owns and operates his or her own business may,
2 by agreement or contract, exclude himself or herself from coverage
3 or waive his or her right to coverage or compensation under this
4 act.

5 2. If the exclusion from coverage of the officer of a
6 corporation, sole proprietor, partner of a partnership, member of a
7 limited liability company, member of a professional association, or
8 self-employed employer reduces the number of employees of the
9 business to fewer than three, the employer shall continue to provide
10 workers' compensation coverage for the employees.

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

14 No agreement by an employee to pay any portion of the premium
15 paid by his or her employer to a carrier or a benefit fund or
16 department maintained by the employer for the purpose of providing
17 compensation or medical services and supplies as required by this
18 act shall be valid. Any employer who makes a deduction for such
19 purposes from the pay of any employee entitled to the benefits of
20 this act shall be guilty of a felony.

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

24

1 The right to any claim, benefit or compensation is not
2 assignable and is not subject to garnishment, attachment, levy,
3 execution, or any other legal process. Money compensation to
4 dependents of a deceased employee shall not constitute assets of the
5 estate of the deceased employee and shall be payable to and for the
6 benefit of the dependents alone. Any amount withheld under the
7 provisions of this section shall be treated as if it were paid to
8 the employee as workers' compensation and paid by the employee to
9 the person or agency to whom the obligation is payable.

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

13 A. Compensation to alien nonresidents of the United States or
14 Canada shall be the same in amount as provided for residents, except
15 that alien nonresident dependents in any foreign country shall be
16 limited to the surviving spouse or children or, if there is no
17 surviving spouse or children, to the surviving father or mother whom
18 the employee has supported, either wholly or in part, for the period
19 of one (1) year before the date of the injury.

20 B. On its own motion or on application of an interested party,
21 the Commission may order the payment of all future compensation to
22 be paid in one lump sum, which shall be equal to one-half of the
23 face value of all future installments of compensation.

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

4 Compensation due an injured employee or his or her dependents
5 shall have the same preference as is allowed by law to an employee
6 for unpaid wages.

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

10 A. 1. A mental injury or illness is not a compensable injury
11 unless caused by a physical injury to the employee, and shall not be
12 considered an injury arising out of and in the course and scope of
13 employment or compensable unless demonstrated by a preponderance of
14 the evidence; provided, however, that this physical injury
15 limitation shall not apply to any victim of a crime of violence.

16 2. No mental injury or illness under this section shall be
17 compensable unless it is also diagnosed by a licensed psychiatrist
18 or psychologist and unless the diagnosis of the condition meets the
19 criteria established in the most current issue of the Diagnostic and
20 Statistical Manual of Mental Disorders.

21 B. 1. Notwithstanding any other provision of this act, where a
22 claim is for mental injury or illness, the employee shall be limited
23 to twenty-six (26) weeks of disability benefits.
24

1 2. a. In cases where death results directly from the mental
2 injury or illness within a period of one (1) year,
3 compensation shall be paid the dependents as provided
4 in other death cases under this act.

5 b. Death directly or indirectly related to the mental
6 injury or illness occurring one (1) year or more from
7 the incident resulting in the mental injury or illness
8 shall not be a compensable injury.

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

12 A. A cardiovascular, coronary, pulmonary, respiratory, or
13 cerebrovascular accident or myocardial infarction causing injury,
14 illness, or death is a compensable injury only if, in relation to
15 other factors contributing to the physical harm, the course and
16 scope of employment was the major cause.

17 B. 1. An injury or disease included in subsection A of this
18 section shall not be deemed to be a compensable injury unless it is
19 shown that the exertion of the work necessary to precipitate the
20 disability or death was extraordinary and unusual in comparison to
21 the employee's usual work in the course of the employee's regular
22 employment, or that some unusual and unpredicted incident occurred
23 which is found to have been the major cause of the physical harm.

1 2. Physical or mental stress shall not be considered in
2 determining whether the employee or claimant has met his or her
3 burden of proof.

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

7 A. 1. One month before the beginning of any fiscal quarter,
8 the Attorney General shall provide to the Commission the estimated
9 funding need of the Workers' Compensation Fraud Investigation Unit
10 of the Attorney General for the ensuing quarter.

11 2. The funding report shall itemize each position to be
12 utilized in the Unit and funded by the Commission and make estimates
13 of all other budgetary line items necessary to provide support to
14 the Unit.

15 3. The report shall deduct unexpended and unencumbered balances
16 of the Unit from the previous quarter. Only the current need,
17 excluding unexpended and unencumbered funds, shall be certified for
18 a fund transfer authorized in this section.

19 B. On or before the first day of each fiscal quarter, the
20 Commission shall certify to the State Treasurer that funds are
21 available for transfer, on which certification the Treasurer and
22 Auditor of the State shall transfer those funds from the Workers'
23 Compensation Fund of the Commission to the Fund account used for the
24 maintenance, operation, and support of the Unit.

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

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

16 B. Physicians providing care to an employee shall prescribe for
17 the employee any necessary prescription drugs and over-the-counter
18 alternatives to prescription medicine as clinically appropriate and
19 as recommended under the Official Disability Guidelines.
20 Prescriptions and nonprescription drugs that are not preferred,
21 exceed or are not addressed by ODG require preauthorization and the
22 preauthorization request shall include the prescribing doctor's drug
23 regimen plan of care and the anticipated dosage or range of dosages.

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

4 A. There is hereby created a Physician Advisory Committee
5 comprised of nine (9) members to be appointed as follows:

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

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

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

23 The terms of members serving on the effective date of this act
24 shall end on the effective date of this act. Thereafter, each

1 position will be filled by the appointing official for a term of
2 three (3) years. Members shall be subject to reappointment, with
3 any new appointee to serve out the remainder of the unexpired term
4 of the Committee member so replaced.

5 B. The Committee shall:

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

17 2. Assist the Commission in reviewing medical practices of
18 health care providers, including evaluations of permanent impairment
19 provided by health care providers. The Committee shall review and
20 make findings and recommendations to the Commission with respect to
21 charges of abusive practices by health care providers providing
22 medical services or evaluations of permanent impairment through the
23 workers' compensation system;

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

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

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

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

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

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

22 9. Assist the Commission in accessing medical information from
23 scientific literature; and
24

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

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

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

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

20 F. The Commission shall provide office supplies and personnel
21 of the Commission to assist the Committee in the performance of its
22 duties.

23 G. Upon written request, the Insurance Commissioner, CompSource
24 Oklahoma, and every approved self-insured employer in Oklahoma shall

1 provide the Committee with data necessary to the performance of its
2 duties.

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

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

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

23 B. The notice shall include:

24 1. The name of the employer;

1 2. The name of the insurer, if known;

2 3. The name of the employee receiving the services;

3 4. The general nature of the injury, if known; and

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

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

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

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

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

23 A. The Commission shall consist of three full-time
24 commissioners appointed by the Governor and confirmed by the Senate

1 for terms of six (6) years to administer the provisions of this act.
2 However, the initial commissioners shall serve staggered terms of
3 two (2), four (4), and six (6) years, respectively, as determined by
4 the Governor.

5 B. Each commissioner shall receive a salary equal to that paid
6 to a district judge of this state, and shall devote full time to his
7 or her duties and shall not engage in the private practice of law
8 during the term in office.

9 C. When any commissioner of the Commission is disqualified for
10 any reason to hear and participate in the determination of any
11 matter pending before the Commission, the Governor shall appoint a
12 qualified person to hear and participate in the decision on the
13 particular matter. The special commissioner so appointed shall have
14 all authority and responsibility with respect to the particular
15 matter before the Commission as if the person were a regular
16 commissioner of the Commission but shall have no authority or
17 responsibility with respect to any other matter before the
18 Commission. A person appointed as a special commissioner of the
19 Commission under the provisions of this subsection shall be entitled
20 to receive a per diem equal to the annual salary of the
21 commissioners pro-rated for the number of days he or she serves in
22 the capacity of a special commissioner of the Commission.

23 D. The Governor shall appoint one of the commissioners to be
24 chair of the Commission. The chair shall be an attorney licensed in

1 this state with at least five (5) years of experience practicing
2 law. In addition to other duties, the chair of the Commission shall
3 have the following powers and duties:

4 1. To organize, direct and develop the administrative work of
5 the administrative law judges, including but not limited to,
6 docketing, clerical, technical and financial work and establishment
7 of hours of operation;

8 2. To employ administrative staff for the Commission, within
9 budgetary limitation; and

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

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

15 A. In addition to its other duties and powers, the Commission
16 is given and granted full power and authority:

17 1. To appoint administrative law judges to hear all claims for
18 compensation, including claims based on injuries which occurred
19 outside this state for which compensation is payable under this act;

20 2. To set the salary of the judges, which shall be consistent
21 with the salary range of a lawyer working for the State of Oklahoma
22 with similar experience and level of responsibility;

23 3. To hear appeals of decisions by the administrative law
24 judges;

1 4. The Commission may remand any case to an administrative law
2 judge for the purpose of taking additional evidence;

3 5. To assess penalties;

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

7 7. To make available all records in connection with all cases
8 of personal injury to the Oklahoma Department of Labor. The
9 director may propose rules for the prevention of injuries and
10 transmit the rules to the Commission. The Commission may recommend
11 proposed rules for prevention of injuries to the director; and

12 8. To have and exercise all other powers and duties conferred
13 or imposed by this act.

14 B. 1. In addition to the other powers and duties granted to
15 the Commission in this section and otherwise provided by law, the
16 Commission is authorized to establish and impose reasonable fees to
17 recover the cost of preparation of various informative materials
18 distributed by the Commission.

19 2. The fees shall be established by regulation of the
20 Commission.

21 3. Funds derived from fees shall be deposited into the Workers'
22 Compensation Fund to be used to defray expenses incurred in
23 preparation and distribution of materials.

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

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

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

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

15 C. 1. The Commission shall maintain and keep open, during
16 reasonable business hours, an office in Oklahoma City, for the
17 transaction of business, at which office its official records and
18 papers shall be kept.

19 2. The Commission or any commissioner of the Commission may
20 hold sessions and conduct hearings in Oklahoma City or Tulsa.

21 D. The Commission shall have a seal for authentication of its
22 judgments, awards, and proceedings, on which shall be inscribed the
23 words: "Workers' Compensation Commission, State of Oklahoma".
24

1 E. Except with respect to the Commission's authority to hear
2 appeals of decisions from administrative law judges, any reference
3 in this act to the Commission's ability to hear and decide the
4 rights of interested parties under this act shall not prevent it
5 from delegating that responsibility to an administrative law judge.

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

9 A. 1. For the purpose of administering the provisions of this
10 act, the Commission is authorized:

- 11 a. to make necessary rules,
- 12 b. to appoint and fix the compensation of temporary
13 technical assistants, medical and legal advisers,
14 clerical assistants and other officers and employees,
15 and
- 16 c. to make such expenditures, including those for
17 personal service, rent, books, periodicals, office
18 equipment, and supplies, and for printing and binding
19 as may be necessary.

- 20 2. a. Before the adoption, prescription, amendment,
21 modification, or repeal of any rule, regulation, or
22 form, the Commission shall give at least forty-five
23 (45) days' notice of its intended action.

1 b. The notice shall include a statement of the terms or
2 substance of the intended action or description of the
3 subjects and issues involved, and the time, place, and
4 manner in which interested persons may present their
5 views thereon.

6 c. The notice shall be mailed to any person specified by
7 law or who shall have requested advance notice of
8 rule-making proceedings.

9 3. The Commission shall afford all interested persons a
10 reasonable opportunity to submit written data, views, or arguments,
11 and, if the Commission in its discretion shall so direct, oral
12 testimony or argument.

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

16 5. All expenditures of the Commission in the administration of
17 this act shall be allowed and paid from the Workers' Compensation
18 Fund on the presentation of itemized vouchers approved by the
19 Commission.

20 B. 1. The Commission may appoint as many persons as may be
21 necessary to be administrative law judges and in addition may
22 appoint such examiners, investigators, medical examiners, clerks,
23 and other employees as it deems necessary to effectuate the
24 provisions of this act.

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

3 C. It shall be the duty of an administrative law judge, under
4 the rules adopted by the Commission, to hear and determine claims
5 for compensation and to conduct hearings and investigations and to
6 make such judgments, decisions, and determinations as may be
7 required by any rule or judgment of the Commission

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

11 Any commissioner or employee of the Commission shall be entitled
12 to receive his or her necessary traveling expenses actually incurred
13 and for meals while traveling on official business and away from his
14 or her designated station. The expenses shall be certified by the
15 person who incurred them and shall be allowed and paid on
16 presentation of vouchers approved by the Commission.

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

20 On or before the first day of the regular session of the
21 Legislature, the Commission shall submit to the Governor and the
22 Legislature a report of the administration of this act for the
23 preceding biennial period, together with such recommendations as the
24 Commission may deem advisable.

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

4 The Commission shall publish annually, on an aggregate basis,
5 information pertaining to the distribution of workers' compensation
6 insurance premiums, losses, expenses, and net income to be compiled
7 from reports required to be filed with the Insurance Commissioner or
8 any similar information required to be filed by the Insurance
9 Commissioner regarding workers' compensation insurance. The
10 Commission shall also publish in the annual report information
11 regarding aggregate workers' compensation benefit distribution to
12 claimants, medical providers, and attorneys, if available.

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

16 The Governor may, at any time, remove any commissioner of the
17 Commission for inefficiency, neglect of duty, or misconduct in
18 office, giving him or her in advance a copy of the charges preferred
19 and an opportunity to be heard by a three person panel consisting of
20 the Insurance Commissioner, the Lieutenant Governor, and the State
21 Treasurer on not less than ten (10) days' notice. A representative
22 of the Attorney General's office shall attend the proceedings and on
23 the Governor's request shall advise or assist him or her in such
24 proceedings. Either party may procure the attendance and testimony

1 of witnesses as provided by the Code of Civil Procedure of this
2 state. If a commissioner is removed, the Governor shall file in the
3 office of the Secretary of State a complete statement of all charges
4 made against the commissioner and his or her findings, together with
5 a complete record of the proceeding and a transcript of the
6 testimony, which shall constitute a public record of the state.

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

10 Administrative law judges shall have the following duties and
11 powers:

12 1. To hear and determine claims for compensation and to conduct
13 hearings and investigations and to make such judgments, decisions,
14 and determinations as may be required by any rule or judgment of the
15 Commission;

16 2. To hear and determine challenges to an agreement to
17 arbitrate under the Workers' Compensation Arbitration Act; and

18 3. To have and exercise all other powers and duties conferred
19 or imposed by the Commission.

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

23 A. The "Multiple Injury Trust Fund" shall be derived from the
24 following sources:

1 1. As soon as practicable after January 1 of each year, the
2 Commissioners of the Workers' Compensation Commission shall
3 establish an assessment rate applicable to each mutual or
4 interinsurance association, stock company, CompSource Oklahoma, or
5 other insurance carrier writing workers' compensation insurance in
6 this state, each employer carrying its own risk, and each group
7 self-insurance association, for amounts for purposes of computing
8 the assessment authorized by this section necessary to pay the
9 annual obligations of the Multiple Injury Trust Fund determined on
10 or before December 31 of each year by the Board of Managers of
11 CompSource Oklahoma to be outstanding for the next calendar year,
12 and to pay the allocations provided for in subsection I of this
13 section. The rate shall be equal for all parties required to pay
14 the assessment. The rate in effect on the effective date of this
15 act shall remain effective through June 30, 2014;

16 2. The Oklahoma Tax Commission shall assess and collect from
17 any uninsured employer a temporary assessment at the rate of five
18 percent (5%) of the total compensation for permanent total
19 disability awards, permanent partial impairment awards, and death
20 benefits paid out during each quarter of the calendar year by the
21 employers;

22 3. The assessments shall be paid to the Tax Commission.
23 Insurance carriers, self-insurers, group self-insurance associations
24 and CompSource Oklahoma shall pay the assessment in four equal

installments not later than the fifteenth day of the month following the close of each quarter of the calendar year of the assessment. Assessments shall be determined based upon gross direct written premiums, normal premiums or actual paid losses of the paying party, as applicable, during the calendar quarter for which the assessment is due. Uninsured employers shall pay the assessment not later than the fifteenth day of the month following the close of each quarter of the calendar year of the assessment. For purposes of this section, "uninsured employer" means an employer required by law to carry workers' compensation insurance but who has failed or neglected to do so. Only one-third (1/3) of assessments against insurance carriers and CompSource Oklahoma may be charged to policyholders and shall not be considered in determining whether any rate is excessive. The remaining two-thirds (2/3) of assessments against insurance carriers and CompSource Oklahoma may not be included in any rate, premium, charge, fee, assessment or other amount to be collected from a policyholder. Insurance carriers and CompSource Oklahoma shall not separately state the amount of the assessment on any invoice or billing assessment.

- a. The assessment authorized in this section shall be determined using a rate equal to the proportion that the sum of the outstanding obligations of the Multiple Injury Trust Fund as determined pursuant to paragraph 1 of this subsection and the allocations provided for

1 in subsection I of this section bear to the combined
2 gross direct written premiums of all such insurers;
3 all actual paid losses of all individual self-
4 insureds; and the normal premium of all group self-
5 insurance associations, for the year period from
6 January 1 to December 31 preceding the assessment.

7 b. For purposes of this subsection:

8 (1) "actual paid losses" means all medical and
9 indemnity payments, including temporary
10 disability, permanent disability, and death
11 benefits, and excluding loss adjustment expenses
12 and reserves, and

13 (2) "normal premium" means a standard premium less
14 any discounts;

15 4. By April 15 of each year, the Insurance Commissioner, Board
16 of Managers of CompSource Oklahoma and each individual and group
17 self-insured shall provide the Commission with such information as
18 the Commission may determine is necessary to effectuate the purposes
19 of this section;

20 5. Each mutual or interinsurance association, stock company,
21 CompSource Oklahoma, or other insurance carrier writing workers'
22 compensation insurance in this state, and each employer carrying its
23 own risk, including each group self-insurance association, shall be
24 notified by the Commission in writing of the rate for the assessment

1 on or before May 1 of each year in which a rate is determined. The
2 rate determined by the Commission shall be in effect for four
3 calendar quarters beginning July 1 following determination by the
4 Commission;

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

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

15 c. No group self-insurance association may be assessed in
16 any year an amount greater than six percent (6%) of
17 the normal premium of that group self-insurance
18 association.

19 d. If the maximum assessment does not provide in any one
20 year an amount sufficient to make all necessary
21 payments for obligations of the Multiple Injury Trust
22 Fund and for the allocations provided for in
23 subsection I of this section, the unpaid portion shall
24 be paid as soon thereafter as funds become available.

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

3 C. It shall be the duty of the Tax Commission to collect the
4 payments provided for in this act. The Tax Commission is hereby
5 authorized to bring an action for the recovery of any delinquent or
6 unpaid payments required in this section.

7 D. Any mutual or interinsurance association, stock company, or
8 other insurance company, which is subject to regulation by the
9 Insurance Commissioner, or CompSource Oklahoma, failing to make
10 payments required in this act promptly and correctly, and failing to
11 report payment of the same to the Insurance Commission within ten
12 (10) days of payment shall be subject to administrative penalties as
13 allowed by law, including but not limited to a fine in the amount of
14 Five Hundred Dollars (\$500.00) or an amount equal to one percent
15 (1%) of the unpaid amount, whichever is greater, to be paid to the
16 Insurance Commissioner.

17 E. Any employer carrying its own risk, or group self-insurance
18 association failing to make payments required in this act promptly
19 and correctly, and failing to report payment of the same to the
20 Commission within ten (10) days of payment shall be subject to
21 administrative penalties as allowed by law, including but not
22 limited to a fine in the amount of Five Hundred Dollars (\$500.00) or
23 an amount equal to one percent (1%) of the unpaid amount, whichever
24 is greater, to be paid to the Administrator.

1 F. On or before the first day of April of each year, the State
2 Treasurer shall advise the Commission, the Board of Managers of
3 CompSource Oklahoma and the Tax Commission of the amount of money
4 held as of March 1 of that year by the State Treasurer to the credit
5 of the Multiple Injury Trust Fund. On or before the first day of
6 November of each year, the State Treasurer shall advise the
7 Administrator, the Board of Managers of CompSource Oklahoma and the
8 Tax Commission of the amount of money held as of October 1 of that
9 year by the State Treasurer to the credit of the Multiple Injury
10 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 CompSource Oklahoma President and Chief Executive Officer, with the
14 approval of the Board of Managers of CompSource Oklahoma, be
15 invested in or loaned on the pledge of any of the securities in
16 which a state bank may invest the monies deposited therein by the
17 State Treasurer; or may be deposited in state or national banks or
18 trust companies upon insured time deposit bearing interest at a rate
19 no less than currently being paid upon insured savings accounts in
20 the institutions. As used in this section, "insured" means
21 insurance as provided by an agency of the federal government. All
22 such securities or evidence of indebtedness shall be placed in the
23 hands of the State Treasurer, who shall be the custodian thereof,
24 who shall collect the principal and interest when due, and pay the

1 same into the Multiple Injury Trust Fund. The State Treasurer shall
2 pay by vouchers drawn on the Multiple Injury Trust Fund for the
3 making of such investments, when signed by the CompSource Oklahoma
4 President and Chief Executive Officer and approved by the Board of
5 Managers of CompSource Oklahoma, upon delivery of such securities or
6 evidence of indebtedness to the State Treasurer. The CompSource
7 Oklahoma President and Chief Executive Officer may, upon like
8 approval of the Board of Managers of CompSource Oklahoma, sell any
9 of such securities, the proceeds thereof to be paid over to the
10 State Treasurer for the Multiple Injury Trust Fund.

11 H. The refund provisions of Sections 227 through 229 of Title
12 68 of the Oklahoma Statutes shall be applicable to any payments made
13 to the Multiple Injury Trust Fund. Refunds shall be paid from and
14 out of the Multiple Injury Trust Fund.

15 I. The Tax Commission shall pay, monthly, to the State
16 Treasurer to the credit of the Multiple Injury Trust Fund all monies
17 collected pursuant to the provisions of this section, less the
18 annual sum of Two Million Five Hundred Fifty Thousand Dollars
19 (\$2,550,000.00), of which One Million Two Hundred Seventy-five
20 Thousand Dollars (\$1,275,000.00) shall be payable by the Tax
21 Commission to the State Treasurer in equal monthly installments to
22 the credit of the Department of Labor, Six Hundred Thirty-seven
23 Thousand Five Hundred Dollars (\$637,500.00) shall be payable in
24 equal monthly installments to the credit of the Office of the

1 Attorney General, and Six Hundred Thirty-seven Thousand Five Hundred
2 Dollars (\$637,500.00) shall be payable in equal monthly installments
3 to the credit of the Oklahoma Department of Career and Technology
4 Education. Monies received by the Department of Labor under this
5 section shall be used for safety consultation and the regulation of
6 the safety of public employees through the Occupational Safety and
7 Health Act of 1970. Monies received by the Office of the Attorney
8 General shall be deposited to the credit of the Attorney General's
9 Workers' Compensation Fraud Unit Revolving Fund created pursuant to
10 Section 19.2 of Title 74 of the Oklahoma Statutes. Monies received
11 by the Oklahoma Department of Career and Technology Education shall
12 supplement other funding to the Department for purposes of
13 implementing the provisions of subsection B of Section 414 of Title
14 40 of the Oklahoma Statutes. The State Treasurer shall pay out of
15 the Multiple Injury Trust Fund only upon the order and direction of
16 the Workers' Compensation Commission acting under the provisions
17 hereof.

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

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

24

1 L. The Multiple Injury Trust Fund may enter into any agreement
2 with CompSource Oklahoma for the purpose of fulfilling all of its
3 payment obligations.

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

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

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

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

22 O. 1. The Commission is hereby authorized to fund financial
23 obligations of the Multiple Injury Trust Fund through the purchase
24 of structured annuity contracts. Provided, the Commission shall

1 purchase the annuity contracts only when the Commission determines
2 that it is financially advantageous to the trust fund involved.

3 2. Structured annuity contracts shall be purchased only from
4 insurance companies:

- 5 a. licensed to do business in Oklahoma and authorized to
6 write annuities as regulated by the Insurance
7 Department,
- 8 b. experienced in the business of writing and
9 administering structured annuities,
- 10 c. determined to be financially sound and having an A.M.
11 Best rating of A+ and category size VIII or greater,
12 or equivalent independent industry rating, and
- 13 d. be rated AA+ or better by Standard and Poor's,
14 Moody's, or an equivalent rating by an equivalent
15 rating service.

16 3. Structured annuity contracts purchased by the Commission
17 shall:

- 18 a. include a separate contract for each claimant or
19 beneficiary covered,
- 20 b. require that the payments to the claimant or
21 beneficiary be sent to the Commission so that it can
22 maintain administrative control over the payments, and
23 the Commission shall distribute the payments in full
24 to the claimants or beneficiaries, and

1 c. provide for return of principal to the appropriate
2 fund if the obligations of the Multiple Injury Trust
3 Fund to any claimant or beneficiary cease before the
4 end of the period certain guarantee in the contract.

5 P. The Commission shall adopt such appropriate rules consistent
6 with the provisions of this section as it deems necessary to enable
7 it to efficiently and effectively administer the provisions of this
8 section and any structured annuity arrangement it may enter into
9 under the authority granted in this act.

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

13 A. There are established on the books of the Treasurer,
14 Auditor, and Comptroller of Oklahoma three separate funds:

- 15 1. The "Workers' Compensation Fund";
- 16 2. The "Multiple Injury Trust Fund"; and
- 17 3. The "Self-Insured Guaranty Fund".

18 B. No money shall be appropriated from these funds for any
19 purpose except for the use and benefit, or at the direction of the
20 Commission.

21 C. All funds established under this section shall be
22 administered, disbursed, and invested under the direction of the
23 Commission and the State Treasurer.

1 D. All incomes derived through investment of the Workers'
2 Compensation Fund and the Multiple Injury Trust Fund shall be
3 credited as investment income to the fund that participated in the
4 investment.

5 E. No moneys deposited to these funds shall be subject to any
6 deduction, tax, levy, or any other type of assessment.

7 F. If the balance in the Multiple Injury Trust Fund becomes
8 insufficient to fully compensate those employees to whom it is
9 obligated, payment shall be suspended until such time as the
10 Multiple Injury Trust Fund is capable of meeting its obligations,
11 paying all arrearages, and restoring normal benefit payments.

12 G. On the effective maturity dates of each investment, the
13 investment shall be transferred to the State Treasurer for deposit
14 into the Multiple Injury Trust Fund created in this section.

15 H. The Workers' Compensation Fund shall be used to fund the
16 activities of the Commission in administering this act and for any
17 other purposes related to this act that the Commission deems
18 appropriate.

19 I. Unless provided otherwise in this act, all fines and
20 penalties assessed under this act shall be deposited into the
21 Workers' Compensation Fund.

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

1 A. Each carrier writing compensation insurance in this state
2 shall pay to the Commission at the time of securing a license to
3 transact business in this state One Thousand Dollars (\$1,000.00) for
4 the privilege of qualifying with the Commission for the writing of
5 compensation insurance.

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

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

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

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

16 A. 1. Every employer shall secure compensation as provided
17 under this act to its employees for compensable injuries without
18 regard to fault.

19 2. There shall be no liability for compensation under this act
20 where the injury or death was substantially occasioned by the
21 willful intention of the injured employee to bring about such
22 compensable injury or death.

23 B. The primary obligation to pay compensation is on the
24 employer, and the procurement of a policy of insurance by an

1 employer to cover the obligation in respect to this act shall not
2 relieve the employer of the obligation.

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

6 A. Where a subcontractor fails to secure compensation required
7 by this act, the prime contractor shall be liable for compensation
8 to the employees of the subcontractor unless there is an
9 intermediate subcontractor who has workers' compensation coverage.

10 B. 1. Any contractor or the contractor's insurance carrier who
11 shall become liable for the payment of compensation on account of
12 injury to or death of an employee of his or her subcontractor may
13 recover from the subcontractor the amount of the compensation paid
14 or for which liability is incurred.

15 2. The claim for the recovery shall constitute a lien against
16 any moneys due or to become due to the subcontractor from the prime
17 contractor.

18 3. A claim for recovery shall not affect the right of the
19 injured employee or the dependents of the deceased employee to
20 recover compensation due from the prime contractor or his or her
21 insurance carrier.

22 C. 1. a. When a sole proprietorship or partnership fails to
23 elect to cover the sole proprietor or partners under
24 this act, the prime contractor is not liable under

1 this act for injuries sustained by the sole proprietor
2 or partners if the sole proprietor or partners are not
3 employees of the prime contractor.

- 4 b. (1) A sole proprietor or the partners of a
5 partnership who do not elect to be covered by
6 this act and be deemed employees thereunder and
7 who deliver to the prime contractor a current
8 certification of noncoverage issued by the
9 Commission shall be conclusively presumed not to
10 be covered by the law or to be employees of the
11 prime contractor during the term of his or her
12 certification or any renewals thereof.
- 13 (2) A certificate of noncoverage may not be presented
14 to a subcontractor who does not have workers'
15 compensation coverage.
- 16 (3) This provision shall not affect the rights or
17 coverage of any employees of the sole proprietor
18 or of the partnership.

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

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

7 b. Any prime contractor who compels a sole proprietor or
8 partnership to obtain a certification of noncoverage
9 when the sole proprietor or partnership does not
10 desire to do so shall be guilty of a felony.

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

14 D. 1. A certification of noncoverage issued by the Commission
15 shall be valid for two (2) years after the effective date stated
16 thereon. Both the effective date and the expiration date shall be
17 listed on the face of the certificate by the Commission. The
18 certificate shall expire at midnight two (2) years from its issue
19 date, as noted on the face of the certificate.

20 2. The Commission may assess a fee not to exceed Fifty Dollars
21 (\$50.00) with each application for a certification of noncoverage or
22 any renewals thereof.

23 3. Any certification of noncoverage issued by the Commission
24 shall contain the social security number and notarized signature of

1 the applicant. The notarization shall be in a form and manner
2 prescribed by the Commission.

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

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

8 A. Any employer engaging in any exempted or excepted employment
9 may at any time waive the exemptions or exceptions as to any
10 employee or all employees engaged in the employment as the employer
11 may elect by giving notice of waiver of the exemptions or exceptions
12 as provided in subsection B of this section.

13 B. Notice of waiver of exclusion or exemption referred to in
14 subsection A of this section shall be given in accordance with the
15 following provisions:

16 1. Every employer who waives the exclusion or exemption shall
17 post, and keep posted, in and about the employer's place of business
18 typewritten or printed notices to that effect in accordance with a
19 form to be prescribed by the Commission, and the employer shall file
20 a duplicate of the notice with the Commission.

21 2. The notice shall be given at least thirty (30) days before
22 any injury. However, if the injury occurs less than thirty (30)
23 days after the date of employment, the notice, if given at the time
24 of employment, shall be sufficient notice.

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

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

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

2. By obtaining and keeping in force guaranty insurance with any company authorized to do guaranty business in this state. Each company that issues workers' compensation guaranty insurance shall file a copy of the contract with the Commission within thirty (30) days after the effective date of the contract. Any company that does not file a copy of the contract as required by this paragraph

1 shall be subject to a fine by the Commission of not more than One
2 Thousand Dollars (\$1,000.00);

3 3. By furnishing satisfactory proof to the Commission of the
4 employer's financial ability to pay the compensation. The
5 Commission, under rules adopted by the Insurance Department, shall
6 require any employer that has:

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

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

15 (2) provide proof of excess coverage with such terms
16 and conditions as is commensurate with their
17 ability to pay the benefits required by the
18 provisions of this act.

19 b. one hundred or more employees and One Million Dollars
20 (\$1,000,000.00) or more in net assets to:

21 (1) secure a surety bond payable to the state, or an
22 irrevocable letter of credit, in an amount
23 determined by the Commission which shall be at
24

1 least an average of the yearly claims for the
2 last three (3) years, or

3 (2) provide proof of excess coverage with terms and
4 conditions that are commensurate with their
5 ability to pay the benefits required by the
6 provisions of this act; or

7 4. By any other security as may be approved by the Commission
8 and the Insurance Department.

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

12 Irrevocable letters of credit required by this subsection shall
13 contain such terms as may be prescribed by the Commission and shall
14 be issued for the benefit of the state by a financial institution
15 whose deposits are insured by the Federal Deposit Insurance
16 Corporation.

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

23 D. Failure on the part of any employer to secure the payment of
24 compensation provided in this act shall have the effect of enabling

1 the Commission to assert the rights of an injured employee against
2 the employer.

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

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

10 A. In order that the liability for compensation may be
11 effectively administered, the employer's carrier may discharge the
12 obligations and duties of the employer under this act if the
13 employer is not a self-insurer.

14 B. For the purpose of an employer's carrier discharging the
15 obligation and duties of the employer:

16 1. An employer's knowledge of an injury shall constitute the
17 carrier's knowledge of the injury;

18 2. The Commission shall have jurisdiction over the carrier to
19 the same extent it has over the employer under this act; and

20 3. Any determinations by the Commission shall be binding on the
21 carrier to the same extent as they are on the employer.

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

1 A. 1. Any employer who fails to secure compensation required
2 under this act shall be guilty of a felony and subject to a fine of
3 up to Ten Thousand Dollars (\$10,000.00) to be deposited in the
4 Workers' Compensation Fund as determined by the Attorney General.

5 2. This subsection shall not affect any other liability of the
6 employer under this act.

7 B. 1. Whenever the Commission has reason to believe that any
8 employer required to secure the payment of compensation under this
9 act has failed to do so, the Commission shall serve on the employer
10 a proposed judgment declaring the employer to be in violation of
11 this act and containing the amount, if any, of the civil penalty to
12 be assessed against the employer under paragraph 5 of this
13 subsection.

14 2. a. An employer may contest a proposed judgment of the
15 Commission issued under paragraph 1 of this subsection
16 by filing with the Commission, within twenty (20) days
17 of receipt of the proposed judgment, a written request
18 for a hearing.

19 b. The request for a hearing does not need to be in any
20 particular form but shall specify the grounds on which
21 the person contests the proposed judgment, the
22 proposed assessment, or both.

23 c. If a written request for hearing is not filed with the
24 Commission within the time specified in subparagraph a

1 of this paragraph, the proposed judgment, the proposed
2 penalty, or both, shall be a final judgment of the
3 Commission and shall not be subject to further review
4 by any court, except if the employer shows good cause
5 why it did not timely contest the judgment or penalty.

6 d. A proposed judgment by the Commission under this
7 section shall be prima facie correct, and the burden
8 is on the employer to prove that the proposed judgment
9 is incorrect.

10 3. a. If the employer alleges that a carrier has contracted
11 to provide it workers' compensation insurance coverage
12 for the period in question, the employer shall include
13 the allegation in its request for hearing and shall
14 name the carrier.

15 b. The Commission shall promptly notify the carrier of
16 the employer's allegation and of the date of hearing.

17 c. The carrier shall promptly, and no later than five (5)
18 days before the hearing, respond in writing to the
19 employer's allegation by providing evidence of
20 coverage for the period in question or by
21 affirmatively denying the employer's allegation.

22 4. Hearings under this section shall be procedurally conducted
23 as provided in Sections 66 through 75 of this act.
24

1 5. The Commission may assess a fine against an employer who
2 fails to secure the payment of compensation in an amount up to One
3 Thousand Dollars (\$1,000.00) per day of violation payable to the
4 fund.

5 6. If an employer fails to secure the payment of compensation
6 or pay any civil penalty assessed against the employer after a
7 judgment issued under this section has become final by operation of
8 law or on appeal, the Commission may petition the Oklahoma County
9 District Court or the district court of the county where the
10 employer's principal place of business is located for an order
11 enjoining the employer from engaging in further employment until
12 such time as the employer secures the payment of compensation or
13 makes full payment of all civil penalties.

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

17 A. Every employer who has secured compensation under the
18 provisions of this act shall keep posted in a conspicuous place in
19 and about the employer's place of business typewritten or printed
20 notices in accordance with a form prescribed by the Commission. The
21 notices shall state that the employer has secured the payment of
22 compensation in accordance with the provisions of this act.

1 B. The notices shall contain the name and address of the
2 carrier, if any, with whom the employer has secured payment of
3 compensation and the date of the expiration of the policy.

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

7 A. Contents. Every policy or contract of insurance issued by a
8 carrier to an employer to secure the payment of compensation under
9 this act shall contain:

10 1. a. Provisions that identify the insured employer and
11 either identify each covered employee or describe
12 covered employees by class or type of labor performed
13 and the estimated number of employees of each such
14 class or type.

15 b. No single policy of workers' compensation insurance
16 may be issued to any group of employers who are
17 unaffiliated with one another in terms of ownership,
18 control, or right to participate in the profits of the
19 affiliated enterprises;

20 2. Provisions that insolvency or bankruptcy of the employer or
21 discharge therein shall not relieve the carrier from payment of
22 compensation for compensable injuries sustained by an employee
23 during the term of the policy or contract;
24

1 3. a. The agreement of the carrier that it shall promptly
2 pay to the person entitled to compensation every
3 installment of compensation that may be awarded or
4 agreed on and that this obligation shall not be
5 affected by any default of the employer or by any
6 default in the giving of any notice required by the
7 policy or otherwise.

8 b. The agreement shall be construed to be a direct
9 obligation by the carrier to the person entitled to
10 compensation, enforceable in that person's name; and

11 4. Such other provisions as the Insurance Department allows or
12 requires carriers to include in workers' compensation policies.

13 B. Cancellation.

14 1. An employer may cancel coverage with a carrier by giving the
15 carrier at least thirty (30) days' notice, unless a shorter period
16 is permitted under subparagraph b of this paragraph.

17 a. Cancellation of coverage is effective at 12:01 a.m.
18 thirty (30) days after the date the cancellation
19 notice is received by the carrier, unless a later date
20 is specified in the notice to the carrier.

21 b. (1) An employer may cancel coverage effective less
22 than thirty (30) days after written notice is
23 received by the carrier where the employer
24 obtains other coverage or becomes a self-insurer.

1 (2) A cancellation under this subsection is effective
2 immediately on the effective date of the other
3 coverage or on authorization as a self-insurer.

4 2. a. A notice of cancellation from the carrier shall state
5 the hour and date that cancellation is effective.

6 b. A carrier shall not cancel coverage issued to an
7 employer under this act before the date specified for
8 expiration in the policy or contract or until at least
9 thirty (30) days have elapsed after a notice of
10 cancellation has been mailed to the Commission and to
11 the employer, or until ten (10) days have elapsed
12 after the notice has been mailed to the employer and
13 to the Commission if the cancellation is for
14 nonpayment of premium.

15 c. If the employer procures other insurance within the
16 notice period, the effective date of the new policy
17 shall be the cancellation date of the old policy.

18 3. Cancellation of coverage by an employer or a carrier shall
19 in no way limit liability that was incurred under the policy or
20 contract before the effective date of cancellation.

21 C. Coverage.

22 1. No policy or contract of insurance shall be issued against
23 liability under this act unless the policy or contract covers the
24 entire liability of the employer. Split coverage whereby some

1 employees of an employer are insured by one carrier and other
2 employees are insured by another carrier, or a plan of self-
3 insurance, is expressly prohibited except for a policy issued
4 covering the liability of an employer or of multiple employers as to
5 specific jobs, ventures, contracts, or undertakings, but only if the
6 policy meets with the reasonable satisfaction and approval of the
7 Insurance Commissioner that the policy is in the best interest of
8 the employers and the employees concerned and does not unduly or
9 improperly affect the continuity of workers' compensation coverage
10 by seriously and negatively affecting other carriers and agents with
11 outstanding policies issued to any of the employers in issue.

12 2. The terms of the policy or contract shall govern any
13 questions of liability between the employer and the carrier.

14 D. Under such rules as may be adopted by the Insurance
15 Commissioner, and notwithstanding other provisions of this act, he
16 or she may certify five or more employers as an insurance group
17 which shall be considered an employer for the purposes of this act.

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

21 A. Liability Unaffected.

22 1. a. The making of a claim for compensation against any
23 employer or carrier for the injury or death of an
24 employee shall not affect the right of the employee,

1 or his or her dependents, to make a claim or maintain
2 an action in court against any third party for the
3 injury.

4 b. The employer or the employer's carrier shall be
5 entitled to reasonable notice and opportunity to join
6 in the action.

7 c. If the employer or employer's carrier join in the
8 action against a third party for injury or death, they
9 shall be entitled to a first lien on two-thirds (2/3)
10 of the net proceeds recovered in the action that
11 remain after the payment of the reasonable costs of
12 collection, for the payment to them of the amount paid
13 and to be paid by them as compensation to the injured
14 employee or his or her dependents.

15 2. The commencement of an action by an employee or his or her
16 dependents against a third party for damages by reason of an injury
17 to which this act is applicable, or the adjustment of any claim,
18 shall not affect the rights of the injured employee or his or her
19 dependents to recover compensation, but any amount recovered by the
20 injured employee or his or her dependents from a third party shall
21 be applied as follows:

22 a. reasonable fees and costs of collection shall be
23 deducted, not to exceed twenty percent (20%) of the
24 recovery,

- 1 b. the employer or carrier, as applicable, shall receive
2 three-fourths (3/4) of the remainder of the recovery
3 or the amount of the workers' compensation lien,
4 whichever is less, and
- 5 c. the remainder of the recovery shall go to the injured
6 employee or his or her dependents.

7 B. Subrogation.

8 1. An employer or carrier liable for compensation under this
9 act for the injury or death of an employee shall have the right to
10 maintain an action in tort against any third party responsible for
11 the injury or death. However, the employer or the carrier shall
12 notify the claimant in writing that the claimant has the right to
13 hire a private attorney to pursue any benefits to which the claimant
14 is entitled in addition to the subrogation interest against any
15 third party responsible for the injury or death.

16 2. After reasonable notice and opportunity to be represented in
17 the action has been given to the injured employee, the liability of
18 the third party to the compensation beneficiary shall be determined
19 in the action, as well as the third party's liability to the
20 employer and carrier.

21 3. If the employer recovers against the third party, by suit or
22 otherwise, the injured employee shall be entitled to any amount
23 recovered in excess of the amount that the employer and carrier have
24

1 paid or are liable for in compensation, after deducting reasonable
2 costs of collection.

3 4. An employer or carrier who is liable for compensation under
4 this act on account of injury or death of an employee shall be
5 entitled to maintain a third party action against the employer's
6 uninsured motorist coverage or underinsured motorist coverage.

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

10 A. 1. Any benefits payable to an injured employee under this
11 act shall be reduced in an amount equal to, dollar-for-dollar, the
12 amount of benefits the injured employee has previously received for
13 the same medical services or period of disability, whether those
14 benefits were paid under a group health care service plan, a group
15 disability policy, a group loss of income policy, a group accident,
16 health, or accident and health policy, a self-insured employee
17 health or welfare benefit plan, or a group hospital or medical
18 service contract; provided, however, such reduction does not apply
19 to any benefit received from a group policy for disability if the
20 injured employee has paid for the policy.

21 B. The claimant shall be required to disclose in a manner to be
22 determined by the Commission the identity, address, or phone number
23 of any person or entity which has paid benefits described in this
24 section in connection with any claim under this act.

1 C. 1. Before any final award or approval of a joint petition,
2 the claimant shall be required to furnish the respondent with
3 releases of all subrogation claims for the benefits described in
4 this section.

5 2. a. If the claimant is unable to produce releases required
6 by this section, the Commission shall determine the
7 amount of such potential subrogation claims and shall
8 direct the carrier or self-insured employer to hold in
9 reserve such sums for a period of five (5) years or
10 until the releases are provided.

11 b. If, after the expiration of five (5) years, no release
12 or final court judgment is presented otherwise
13 directing the payment of the sums, the carrier or
14 self-insured employer shall tender the sums to the
15 Workers' Compensation Fund.

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

19 A. Temporary Total Disability. If the injured employee is
20 temporarily unable to perform his or her job or any alternative work
21 offered by the employer, he or she shall be entitled to receive
22 compensation equal to seventy percent (70%) of the injured
23 employee's average weekly wage, but not to exceed seventy percent
24 (70%) of the state average weekly wage, for one hundred four (104)

1 weeks. Provided, there shall be no payment for the first three (3)
2 days of the initial period of temporary total disability.

3 B. Temporary Partial Disability.

4 1. If the injured employee is temporarily unable to perform his
5 or her job, but may perform alternative work offered by the
6 employer, he or she shall be entitled to receive compensation equal
7 to the greater of seventy percent (70%) of the difference between
8 the injured employee's average weekly wage before the injury and his
9 or her weekly wage for performing the alternative work after the
10 injury, but only if his or her weekly wage for performing the
11 alternative work is less than the temporary total disability rate.

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

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

17 C. Permanent Partial Disability.

18 1. On exhaustion of temporary total disability compensation or
19 reaching maximum medical improvement, whichever occurs first, if the
20 injured employee is unable to return to his or her pre-injury or
21 equivalent job because of permanent restrictions resulting from the
22 injury, but is not permanently totally disabled as described in
23 subsection D of this section, he or she shall be entitled to receive
24 a lump sum equal to seventy percent (70%) of the employee's average

1 weekly wage, but not to exceed Two Hundred Fifty Dollars (\$250.00),
2 for the number of weeks which the partial disability of the employee
3 bears to four hundred fifty (450) weeks. Disability shall be
4 determined under the current edition of the American Medical
5 Association's "Guides to the Evaluation of Permanent Impairment" for
6 objective loss of function or impairment.

7 2. The whole body shall represent a maximum of four hundred
8 fifty (450) weeks.

9 3. An award of compensation for permanent partial disability or
10 permanent total disability shall be reduced by the amount of
11 functional impairment determined to be preexisting. Any such
12 reduction shall not apply to temporary total disability, nor shall
13 it apply to compensation for medical treatment.

14 a. Where workers compensation benefits have previously
15 been awarded through settlement or judicial or
16 administrative determination in Oklahoma, the
17 percentage basis of the prior settlement or award
18 shall conclusively establish the amount of functional
19 impairment determined to be preexisting. Where
20 workers compensation benefits have not previously been
21 awarded through settlement or judicial or
22 administrative determination in Oklahoma, the amount
23 of preexisting functional impairment shall be
24 established by competent evidence.

1 b. In all cases, the applicable reduction shall be
2 calculated as follows:

3 (1) if the preexisting impairment is the result of
4 injury sustained while working for the employer
5 against whom workers compensation benefits are
6 currently being sought, any award of compensation
7 shall be reduced by the current dollar value
8 attributable under the workers compensation act
9 to the percentage of functional impairment
10 determined to be preexisting. The "current
11 dollar value" shall be calculated by multiplying
12 the percentage of preexisting impairment by the
13 compensation rate in effect on the date of the
14 accident or injury against which the reduction
15 will be applied, and

16 (2) in all other cases, the employer against whom
17 benefits are currently being sought shall be
18 entitled to a credit for the percentage of
19 preexisting impairment.

20 4. A permanent partial disability award or combination of
21 awards granted an injured worker may not exceed a permanent partial
22 disability rating of 100% to the body as a whole.

23 5. The permanent partial disability rate compensation for
24 amputation or permanent total loss of use of a scheduled member

1 specified in Section 42 of this act shall be the employee's total
2 disability rate as specified in subsection B of this section
3 multiplied by the number of weeks as set forth in Section 42 of this
4 act, regardless of whether the injured employee is able to return to
5 his or her pre-injury or equivalent job.

6 6. 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. On exhaustion of temporary
16 total disability compensation or reaching maximum medical
17 improvement, whichever occurs first, if it is determined by
18 objective findings that the injured employee is permanently totally
19 disabled under Section 56 of this act, he or she shall be entitled
20 to receive a lump sum equal to four hundred fifty (450) times the
21 lesser of seventy percent (70%) of the employee's average weekly
22 wage and the state average weekly wage.

23 E. Disfigurement.
24

1 1. If an injured employee incurs serious and permanent
2 disfigurement to the head or face, or, in the case of burns, to any
3 part of the body, the Commission may award compensation to the
4 injured employee in an amount not to exceed Fifty Thousand Dollars
5 (\$50,000.00).

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

8 3. An injured employee may not be entitled to compensation
9 under this subsection if he or she receives compensation under
10 paragraph 3 of subsection C of this section.

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

14 A. An injured employee who is entitled to receive permanent
15 partial disability compensation under paragraph 3 of subsection C of
16 Section 41 of this act shall receive compensation in accordance with
17 the number of weeks for the scheduled loss set forth below.

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

20 2. Arm amputated between the elbow and wrist, one hundred
21 eighty-three (183) weeks;

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

1 4. Leg amputated between the knee and the ankle, one hundred
2 eighty-four (184) 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. 1. Compensation for amputation of the first phalange of a
20 digit shall be one-half of the compensation for the amputation of
21 the entire digit.

22 2. Compensation for amputation of more than one phalange of a
23 digit shall be the same as for amputation of the entire digit.
24

1 C. 1. Compensation for the permanent loss of eighty percent
2 (80%) or more of the vision of an eye shall be the same as for the
3 loss of an eye.

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

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

12 E. Compensation for permanent total loss of use of a member
13 shall be the same as for amputation of the member.

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

17 A. Time of death. If death does not result within one (1) year
18 from the date of the accident or within the first three (3) years of
19 the period for compensation payments fixed by the compensation
20 judgment, a rebuttable presumption shall arise that the death did
21 not result from the injury.

22 B. Common law spouse. A common law spouse shall not be
23 entitled to benefits under this section unless he or she obtains an
24

1 order from a court with competent jurisdiction ruling that a common
2 law marriage existed between the decedent and the surviving spouse.

3 C. Beneficiaries - Amounts. If an injury or occupational
4 illness causes death, weekly income benefits shall be payable as
5 follows:

6 1. If there is a surviving spouse, a lump sum payment of One
7 Hundred Thousand Dollars (\$100,000.00) and seventy percent (70%) of
8 the lesser of the deceased employee's average weekly wage and the
9 state average weekly wage.

10 2. If there is a surviving spouse and a child or children, a
11 lump sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
12 fifteen percent (15%) of the lesser of the deceased employee's
13 average weekly and the state average weekly wage to each child. If
14 there are more than two children, each child shall receive a pro
15 rata share of Fifty Thousand Dollars (\$50,000.00) and thirty percent
16 (30%) of the deceased employee's average weekly wage.

17 3. If there is a child or children and no surviving spouse, a
18 lump sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
19 fifty percent (50%) of the lesser of the deceased employee's average
20 weekly wage and the state average weekly wage to each child. If
21 there are more than two children, each child shall receive a pro
22 rata share of one hundred percent (100%) of the lesser of the
23 deceased employee's average weekly wage and the state average weekly
24 wage. With respect to the lump sum payment, if there are more than

1 six children, each child shall receive a pro rata share of One
2 Hundred Fifty Thousand Dollars (\$150,000.00).

3 4. If there is no surviving spouse or children, each legal
4 guardian, if financially dependent on the employee at the time of
5 death, shall receive twenty-five percent (25%) of the lesser of the
6 deceased employee's average weekly wage and the state average weekly
7 wage until the earlier of death, becoming eligible for social
8 security, obtaining full-time employment, or five (5) years from the
9 date benefits under this section begin.

10 5. The employer shall pay the actual funeral expenses, not
11 exceeding the sum of Ten Thousand Dollars (\$10,000.00).

12 D. The weekly income benefits payable to the surviving spouse
13 under this section shall terminate on the earlier of death,
14 remarriage, or becoming eligible for social security. The weekly
15 income benefits payable to any child under this section shall
16 terminate on the earlier of death, marriage, or reaching the age of
17 eighteen (18). However, if the child turns eighteen (18) and is:

18 1. Enrolled as a full-time student in high school or is being
19 home-schooled in a high-school course approved by the Oklahoma
20 Department of Education;

21 2. Enrolled as a full-time student in any accredited
22 institution of higher education or vocational or technology
23 education; or

24 3. Physically or mentally incapable of self-support,

1 then he or she may continue to receive weekly income benefits
2 under this section until the earlier of reaching the age of twenty-
3 three (23) or, with respect to paragraphs 1 and 2 of this
4 subsection, no longer being enrolled as a student, and with respect
5 to paragraph 3 of this subsection, becoming capable of self-support.

6 E. If any member of the class of beneficiaries who receive a
7 pro rata share of weekly income benefits becomes ineligible to
8 continue to receive benefits, the remaining members of the class
9 shall receive adjusted weekly income benefits equal to the new class
10 size.

11 F. To receive benefits under this section, a beneficiary or his
12 or her guardian, if applicable, shall file a proof of loss form with
13 the Commission. All questions of dependency shall be determined as
14 of the time of the injury. The employer shall initiate payment of
15 benefits within fifteen (15) days of the Commission's determination
16 of the proper beneficiaries. The Commission shall appoint a
17 guardian ad litem to represent known and unknown minor children and
18 the guardian ad litem shall be paid a reasonable fee for his or her
19 services.

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

23 Where an injury or death is sustained by a minor employed in
24 violation of federal or state statutes relating to minimum ages for

1 employment of minors, disability or death benefits provided for by
2 this act shall be doubled; provided, however, such penalty shall not
3 apply when the minor misrepresents his or her age, in writing, to
4 the employer.

5 SECTION 45. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 45 of Title 85A, unless there is
7 created a duplication in numbering, reads as follows:

8 Notwithstanding any other provision of this act, no compensation
9 for temporary total disability shall be payable to an injured
10 employee for any week for which the injured employee receives
11 unemployment insurance benefits under the laws of this state or the
12 unemployment insurance law of any other state. If a claim for
13 temporary total disability is controverted and later determined to
14 be compensable, temporary total disability shall be payable to an
15 injured employee for any week for which the injured employee
16 receives unemployment benefits but only to the extent that the
17 temporary total disability otherwise payable exceeds the
18 unemployment benefits.

19 SECTION 46. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 46 of Title 85A, unless there is
21 created a duplication in numbering, reads as follows:

22 A. The employer shall promptly provide an injured employee with
23 medical, surgical, hospital, optometric, podiatric, and nursing
24 services, along any with medicine, crutches, ambulatory devices,

1 artificial limbs, eyeglasses, contact lenses, hearing aids, and
2 other apparatus as may be reasonably necessary in connection with
3 the injury received by the employee. The employer shall have the
4 right to choose the treating physician.

5 B. If the employer fails to provide the medical services
6 required pursuant to subsection A of this section within a
7 reasonable time after knowledge of the injury, the Commission may
8 direct that the injured employee obtain the medical service at the
9 expense of the employer, and any emergency treatment afforded the
10 injured employee shall be at the expense of the employer. In no
11 event may an employee, his or her family, or dependents, be billed
12 or charged for any portion of the cost of providing the benefits to
13 which he or she is entitled under this act.

14 C. Fee schedule.

15 1. The Commission shall conduct a review of the Fee Schedule
16 every two (2) years. The Fee Schedule shall establish the maximum
17 rates that medical providers shall be reimbursed for medical care
18 provided to injured employees, including, but not limited to,
19 charges by physicians, dentists, counselors, hospitals, ambulatory
20 and outpatient facilities, clinical laboratory services, diagnostic
21 testing services, and ambulance services, and charges for durable
22 medical equipment, prosthetics, orthotics, and supplies.

23 2. Reimbursement for medical care shall be prescribed and
24 limited by the Fee Schedule as adopted by the Commission, after

1 notice and public hearing. The director of the Oklahoma State
2 Employees Group Insurance Board shall provide the Commission such
3 information as may be relevant for the development of the Fee
4 Schedule. The Commission shall develop the Fee Schedule in a manner
5 in which quality of medical care is assured and maintained for
6 injured employees. The Commission shall give due consideration to
7 additional requirements for physicians treating an injured worker
8 under this act, including, but not limited to, communication with
9 claims representatives, case managers, attorneys, and
10 representatives of employers, and the additional time required to
11 complete forms for the Commission, insurance carriers, and
12 employers.

13 3. In making adjustments to the Fee Schedule, the Commission
14 shall use, as a benchmark, the reimbursement rate for each Current
15 Procedural Terminology (CPT) code provided for in the fee schedule
16 published by the Centers for Medicare and Medicaid Services of the
17 U.S. Department of Health and Human Services for use in Oklahoma
18 (Medicare Fee Schedule) on the effective date of this act. For
19 services not valued by CMS, the Commission shall establish values
20 based on the usual, customary and reasonable medical payments to
21 health care providers in the same trade area for comparable
22 treatment of a person with similar injuries.

23 a. No reimbursement shall be allowed for any magnetic
24 resonance imaging (MRI) unless the MRI is provided by

1 an entity that meets Medicare requirements for the
2 payment of MRI services or is accredited by the
3 American College of Radiology, the Intersocietal
4 Accreditation Commission or the Joint Commission on
5 Accreditation of Healthcare Organizations. For all
6 other radiology procedures, the reimbursement rate
7 shall be the lesser of the reimbursement rate allowed
8 by the 2010 Oklahoma Fee Schedule and one hundred
9 fifty percent (150%) of the Medicare Fee Schedule.

10 b. For reimbursement of medical services for Evaluation
11 and Management of injured employees as defined in the
12 Fee Schedule adopted by the Commission, the
13 reimbursement rate shall not be more than one hundred
14 fifty percent (150%) of the Medicare Fee Schedule.

15 c. Any entity providing durable medical equipment,
16 prosthetics, orthotics or supplies shall be accredited
17 by a CMS-approved accreditation organization. If a
18 physician provides durable medical equipment,
19 prosthetics, orthotics, prescription drugs, or
20 supplies to a patient ancillary to the patient visit,
21 reimbursement shall be no more than ten percent (10%)
22 above cost.

23 d. The Commission shall develop a reasonable stop loss
24 provision of the Fee Schedule to provide for adequate

1 reimbursement for treatment for major burns, severe
2 head and neurological injuries, multiple system
3 injuries, and other catastrophic injuries requiring
4 extended periods of intensive care.

5 4. The right to recover charges for every type of medical care
6 for injuries arising out of and in the course of covered employment
7 as defined in this act shall lie solely with the Commission. When a
8 medical care provider has brought a claim to the Commission to
9 obtain payment for services, a party who prevails in full on the
10 claim shall be entitled to reasonable attorney fees.

11 5. Nothing in this section shall prevent an employer, insurance
12 carrier, group self-insurance association, or certified workplace
13 medical plan from contracting with a provider of medical care for a
14 reimbursement rate that is greater than or less than limits
15 established by the Fee Schedule.

16 6. A treating physician may not charge more than Four Hundred
17 Dollars (\$400.00) per hour for preparation for or testimony at a
18 deposition or court appearance in connection with a claim covered by
19 the Administrative Workers' Compensation Act.

20 7. The Commission's review of medical and treatment charges
21 pursuant to this section shall be conducted pursuant to the Fee
22 Schedule in existence at the time the medical care or treatment was
23 provided. The judgment approving the medical and treatment charges
24 pursuant to this section shall be enforceable by the Commission in

1 the same manner as provided in this act for the enforcement of other
2 compensation payments.

3 8. Charges for prescription drugs dispensed by a pharmacy shall
4 be limited to ninety percent (90%) of the average wholesale price of
5 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per
6 prescription. "Average wholesale price" means the amount determined
7 from the latest publication designated by the Commission.

8 Physicians shall prescribe and pharmacies shall dispense generic
9 equivalent drugs when available. If the National Drug Code, or
10 "NDC", for the drug product dispensed is for a repackaged drug, then
11 the maximum reimbursement shall be the lesser of the original
12 labeler's NDC and the lowest cost therapeutic equivalent drug
13 product. Compounded medications shall be billed by the compounding
14 pharmacy at the ingredient level, with each ingredient identified
15 using the applicable NDC of the drug product, and the corresponding
16 quantity. Ingredients with no NDC area are not separately
17 reimbursable. Payment shall be based on a sum of the allowable fee
18 for each ingredient plus a dispensing fee of Five Dollars (\$5.00)
19 per prescription.

20 9. When medical care includes prescription drugs dispensed by a
21 physician or other medical care provider and the NDC for the drug
22 product dispensed is for a repackaged drug, then the maximum
23 reimbursement shall be the lesser of the original labeler's NDC and
24 the lowest cost therapeutic equivalent drug product. Payment shall

1 be based upon a sum of the allowable fee for each ingredient plus a
2 dispensing fee of five dollars (\$5.00) per prescription. Compounded
3 medications shall be billed by the compounding pharmacy.

4 10. Implantables are paid in addition to procedural
5 reimbursement paid for medical or surgical services. A
6 manufacturer's invoice for the actual cost to a physician, hospital
7 or other entity of an implantable device shall be adjusted by the
8 physician, hospital or other entity to reflect, at the time
9 implanted, all applicable discounts, rebates, considerations and
10 product replacement programs and shall be provided to the payer by
11 the physician or hospital as a condition of payment for the
12 implantable device. If the physician, or an entity in which the
13 physician has a financial interest other than an ownership interest
14 of less than five percent (5%) in a publicly traded company,
15 provides implantable devices, this relationship shall be disclosed
16 to patient, employer, insurance company, third party commission,
17 certified workplace medical plan, case managers, and attorneys
18 representing claimant and defendant. If the physician, or an entity
19 in which the physician has a financial interest other than an
20 ownership interest of less than five percent (5%) in a publicly
21 traded company, buys and resells implantable devices to the hospital
22 or another physician, that markup shall be limited to ten percent
23 (10%) above cost.

1 11. Payment for medical care as required by this act shall be
2 due within forty-five (45) days of the receipt by the employer or
3 insurance carrier of a complete and accurate invoice, unless the
4 employer or insurance carrier has a good faith reason to request
5 additional information about such invoice. Thereafter, the
6 Commission may assess a penalty up to twenty-five percent (25%) for
7 any amount due under the Fee Schedule that remains unpaid on the
8 finding by the Commission that no good faith reason existed for the
9 delay in payment. If the Commission finds a pattern of an employer
10 or insurance carrier willfully and knowingly delaying payments for
11 medical care, the Commission may assess a civil penalty of not more
12 than Five Thousand Dollars (\$5,000.00) per occurrence.

13 12. If an employee fails to appear for a scheduled appointment
14 with a physician, the employer or insurance company shall pay to the
15 physician a reasonable charge, to be determined by the Commission,
16 for the missed appointment. In the absence of a good faith reason
17 for missing the appointment, the Commission shall order the employee
18 to reimburse the employer or insurance company for the charge.

19 13. Physicians providing treatment under this act shall
20 disclose under penalty of perjury to the Commission, on a form
21 prescribed by the Commission, any ownership or interest in any
22 health care facility, business, or diagnostic center that is not the
23 physician's primary place of business. The disclosure shall include
24 any employee leasing arrangement between the physician and any

1 health care facility that is not the physician's primary place of
2 business. A physician's failure to disclose as required by this
3 section shall be grounds for the Commission to disqualify the
4 physician from providing treatment under this act.

5 D. Formulary. The commissioner by rule shall adopt a closed
6 formulary. Rules adopted by the commissioner shall allow an appeals
7 process for claims in which a treating doctor determines and
8 documents that a drug not included in the formulary is necessary to
9 treat an injured employee's compensable injury. The commission by
10 rule shall require the use of generic pharmaceutical medications and
11 clinically appropriate over-the-counter alternatives to prescription
12 medications unless otherwise specified by the prescribing doctor, in
13 accordance with applicable state law.

14 SECTION 47. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 47 of Title 85A, unless there is
16 created a duplication in numbering, reads as follows:

17 The employer shall pay one hundred percent (100%) of the medical
18 expenses with no maximum dollar or duration limits for all
19 compensable injuries.

20 SECTION 48. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 48 of Title 85A, unless there is
22 created a duplication in numbering, reads as follows:

1 The employer shall not be liable for any of the payments for
2 medical services and supplies under this act if the Commission
3 determines that there was not a compensable injury.

4 SECTION 49. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 49 of Title 85A, unless there is
6 created a duplication in numbering, reads as follows:

7 A. An injured employee claiming to be entitled to benefits
8 under this act shall submit to physical examination and treatment by
9 another qualified physician, designated or approved by the
10 Commission, as the Commission may require from time to time if
11 reasonable and necessary.

12 B. In cases where the Commission directs examination or
13 treatment, proceedings shall be suspended, and no compensation shall
14 be payable for any period during which the employee refuses to
15 submit to examination and treatment or otherwise obstructs the
16 examination or treatment.

17 C. Failure of the employee to obey a judgment of the Commission
18 for an examination or treatment for a period of one (1) month from
19 the date of the judgment shall bar the right of the claimant to
20 further compensation in respect to the injury.

21 SECTION 50. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 50 of Title 85A, unless there is
23 created a duplication in numbering, reads as follows:

1 Except in cases of hernia, which are specifically covered by
2 Section 57 of this act, where an injured employee unreasonably
3 refuses to submit to a surgical operation which has been advised by
4 at least two qualified physicians and where the recommended
5 operation does not involve unreasonable risk of life or additional
6 serious physical impairment, the Commission shall take the refusal
7 into consideration when determining compensation for permanent
8 partial or permanent total disability.

9 SECTION 51. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 51 of Title 85A, unless there is
11 created a duplication in numbering, reads as follows:

12 A. If an employer or carrier believes that a charge for medical
13 services or supplies under this act is unreasonable, it may submit
14 the charge to the Commission for review. If the Commission
15 determines that the charge is unreasonable, it may amend the charges
16 to reflect the Fee Schedule established under Section 46 of this
17 act, if applicable, or in accordance with reasonable market rates
18 for the services or supplies provided.

19 B. The provisions of this section relating to charges shall not
20 apply where a written contract exists between the employer and the
21 person who renders the medical service or supplies.

22 SECTION 52. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 52 of Title 85A, unless there is
24 created a duplication in numbering, reads as follows:

1 A. 1. If the employer has previously contracted with a
2 certified workplace medical plan, the employer shall select for the
3 injured employee a treating physician from the physicians listed
4 within the network of the certified workplace medical plan. The
5 employee may apply for a change of physician by utilizing the
6 dispute resolution process set out in the certified workplace
7 medical plan on file with the State Department of Health.

8 2. If the employer does not participate in a certified
9 workplace medical plan, the employee may petition the Commission one
10 time only for a change of physician upon a showing of good cause.
11 If the Commission approves the change, the Commission shall
12 determine the second physician and shall not be bound by
13 recommendations of claimant or respondent.

14 a. For purposes of this subsection, "good cause" means
15 proving beyond a preponderance of the evidence that
16 the treating physician is either not qualified to
17 treat the injury or is not treating the injury in a
18 way that is consistent with the ODG Treatment
19 Guidelines.

20 b. If the Commission grants the employee's petition for a
21 change of physician, the new physician shall be
22 appointed by the Commission.

23 c. A petition for a change of physician shall be
24 expedited by the Commission.

1 B. Except in the case of emergency care, the employee shall be
2 responsible for all expenses associated with treatment or services
3 furnished or prescribed by any physician not selected or appointed
4 in accordance with this act.

5 C. After being notified of an injury, the employer or insurance
6 carrier shall deliver to the employee, in person or by certified or
7 registered mail, return receipt requested, a copy of a notice,
8 approved or prescribed by the Commission, which explains the
9 employee's rights and responsibilities concerning a change of
10 physician.

11 D. A request for a hearing on a change of physician shall be
12 given preference on the Commission's docket.

13 E. Cooperation on the part of both the injured employee and the
14 employer in an effort to select another physician is encouraged.

15 F. When compensability is controverted, subsection B of this
16 section shall not apply if:

17 1. The employee requests medical assistance in writing before
18 seeking the same as a result of an alleged compensable injury;

19 2. The employer refuses to refer the employee to a medical
20 provider within forty-eight (48) hours after a written request as
21 provided above;

22 3. The alleged injury is later found to be a compensable
23 injury; and
24

1 4. The employer has not made a previous offer of medical
2 treatment.

3 G. The Commission shall by rule require the inclusion of the
4 information set forth in subsection F of this section on all notice
5 of injury forms.

6 SECTION 53. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 53 of Title 85A, unless there is
8 created a duplication in numbering, reads as follows:

9 A. If an injured employee misses two or more scheduled
10 appointments for treatment, he or she shall no longer be eligible to
11 receive benefits under this 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 54. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 54 of Title 85A, unless there is
21 created a duplication in numbering, reads as follows:

22 A. 1. Every hospital or other person furnishing the injured
23 employee with medical services shall permit its records to be copied
24 by and shall furnish full written information to the Commission, the

1 Workers' Compensation Fraud Investigation Unit, the employer, the
2 carrier, and the employee or the employee's dependents.

3 2. The reasonable cost of copies shall be paid by the requestor
4 to the health care or medical service provider furnishing them.

5 B. No person who in good faith under subsection A of this
6 section or under rules established by the Commission reports medical
7 information shall incur legal liability for the disclosure of the
8 information.

9 SECTION 55. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 55 of Title 85A, unless there is
11 created a duplication in numbering, reads as follows:

12 A. 1. Compensation under this act based on the employee's
13 average weekly wage shall be computed by dividing the employee's
14 gross earnings by the number of full weeks of employment with the
15 employer, up to a maximum of fifty-two (52) weeks.

16 2. Where the injured employee was working on a piece basis, the
17 average weekly wage shall be determined by dividing the earnings of
18 the employee by the number of hours required to earn the wages
19 during the period not to exceed fifty-two (52) weeks preceding the
20 week in which the accident occurred and by multiplying this hourly
21 wage by the number of hours in a full-time workweek in the
22 employment.

23 B. Overtime earnings are to be added to the regular weekly
24 wages and shall be computed by dividing the overtime earnings by the

1 number of weeks worked by the employee in the same employment under
2 the contract of hire in force at the time of the accident, not to
3 exceed a period of fifty-two (52) weeks preceding the accident.

4 C. If, because of exceptional circumstances, the average weekly
5 wage cannot be fairly and justly determined by the above formulas,
6 the Commission may determine the average weekly wage by a method
7 that is just and fair to all parties concerned.

8 SECTION 56. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 56 of Title 85A, unless there is
10 created a duplication in numbering, reads as follows:

11 A. Permanent Partial Disability.

12 1. The impairment rating shall be determined under the current
13 Edition of the American Medical Association's "Guides to the
14 Evaluation of Permanent Impairment" and apportioned to the body as a
15 whole, which shall have a value of four hundred fifty (450) weeks,
16 for the proportionate loss of use of the body as a whole resulting
17 from the injury.

18 2. The burden of proof shall be on the employee to prove
19 inability to return to his or her pre-injury or equivalent job.

20 3. In considering a claim for permanent partial disability, the
21 Commission and the courts shall not consider the odd-lot doctrine.

22 4. Pain may not be considered as a basis for impairment.

23 B. Permanent Total Disability.

1 1. "Permanent total disability" means inability, because of
2 compensable injury or occupational disease, to earn any meaningful
3 wages in the same or other employment.

4 2. The burden of proof shall be on the employee to prove
5 inability to earn any meaningful wage in the same or other
6 employment.

7 3. In considering a claim for permanent disability, the
8 Commission and the courts shall not consider the odd-lot doctrine.

9 4. Pain may not be considered as a basis for impairment.

10 SECTION 57. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 57 of Title 85A, unless there is
12 created a duplication in numbering, reads as follows:

13 A. A hernia is not a compensable injury unless the injured
14 employee can prove by a preponderance of the evidence that it meets
15 the definition of "compensable injury" under this act and:

16 1. The occurrence of the hernia immediately followed as the
17 result of sudden effort, severe strain, or the application of force
18 directly to the abdominal wall;

19 2. There was severe pain in the hernial region;

20 3. The pain caused the employee to cease work immediately;

21 4. Notice of the occurrence was given to the employer within
22 forty-eight (48) hours thereafter; and
23
24

1 5. The physical distress following the occurrence of the hernia
2 was such as to require the attendance of a licensed physician within
3 seventy-two (72) hours after the occurrence.

4 B. 1. Notwithstanding the provisions of Section 41 of this
5 act, if it is determined that a hernia is a compensable injury under
6 subsection A of this section, the injured employee shall be entitled
7 to temporary total disability for six (6) weeks.

8 2. If the injured employee refuses to permit the hernia
9 operation, he or she shall be entitled to temporary total disability
10 for thirteen (13) weeks.

11 C. If the injured employee dies within one (1) year as a direct
12 and sole result of the hernia or a radical operation of the hernia,
13 the deceased employee's dependents shall be entitled to death
14 compensation under Section 44 of this section.

15 SECTION 58. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 58 of Title 85A, unless there is
17 created a duplication in numbering, reads as follows:

18 A. Notwithstanding the provisions of Section 41 of this act, if
19 an employee suffers a nonsurgical soft tissue injury, temporary
20 total disability compensation shall not exceed eight (8) weeks,
21 regardless of the number of parts of the body to which there is a
22 nonsurgical soft tissue injury. An employee who has been
23 recommended by a treating physician for surgery for a soft tissue
24 injury may petition the Commission for one extension of temporary

1 total disability compensation and the Commission may order an
2 extension, not to exceed sixteen (16) additional weeks. If the
3 surgery is not performed within thirty (30) days of the approval of
4 the surgery by the employer, its insurance carrier, or an order of
5 the Commission authorizing the surgery, the benefits for the
6 extension period shall be terminated and the employee shall
7 reimburse the employer any temporary total disability compensation
8 he or she received beyond eight (8) weeks. An epidural steroid
9 injection, or any procedure of the same or similar physical
10 invasiveness, shall not be considered surgery. This section shall
11 apply to all cases coming before the Commission after the effective
12 date of this act, regardless of the date of injury.

13 B. For purposes of this section, "soft tissue injury" means
14 damage to one or more of the tissues that surround bones and joints.
15 Soft tissue injury includes, but is not limited to, sprains,
16 strains, contusions, tendonitis and muscle tears. Cumulative trauma
17 is to be considered a soft tissue injury. Soft tissue injury does
18 not include any of the following:

19 1. Injury to or disease of the spine, spinal discs, spinal
20 nerves or spinal cord, where corrective surgery is performed;

21 2. Brain or closed-head injury as evidenced by:

22 a. sensory or motor disturbances,

23 b. communication disturbances,

24 c. complex integrated disturbances of cerebral function,

1 d. episodic neurological disorders, or

2 e. other brain and closed-head injury conditions at least
3 as severe in nature as any condition provided in
4 subparagraphs a through d of this paragraph; or

5 3. Any joint replacement.

6 SECTION 59. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 59 of Title 85A, unless there is
8 created a duplication in numbering, reads as follows:

9 A. 1. The Multiple Injury Trust Fund established in this act
10 is designed to ensure that if an employee is hired with an pre-
11 existing disability and suffers a injury on the job, the employer
12 shall not be held liable for a greater disability or impairment than
13 actually occurred while the employee was in his or her employment.

14 2. The fund shall pay the injured employee the difference
15 between the employer's liability and the balance of his or her
16 disability or impairment that results from all disabilities or
17 impairments combined.

18 3. Latent conditions that are not known to the employee or
19 employer are not considered previous disabilities or impairments
20 which would give rise to a claim against the fund.

21 B. 1. All cases of permanent disability or impairment in which
22 there has been previous disability or impairment shall be
23 compensated as provided in this section.

1 2. Compensation shall be computed on the basis of the average
2 weekly wage at the time of the last injury.

3 3. If any employee who has a permanent partial disability or
4 impairment, whether from a compensable injury or otherwise, receives
5 a subsequent compensable injury resulting in additional permanent
6 partial disability or impairment so that the degree or percentage of
7 disability or impairment caused by the combined disabilities or
8 impairments is greater than that which would have resulted from the
9 last injury, considered alone and of itself, and if the employee is
10 entitled to receive compensation on the basis of combined
11 disabilities or impairments, then the employer at the time of the
12 last injury shall be liable only for the degree or percentage of
13 disability or impairment that would have resulted from the last
14 injury had there been no preexisting disability or impairment.

15 4. After the compensation liability of the employer for the
16 last injury, considered alone, which shall be no greater than the
17 actual anatomical impairment resulting from the last injury, has
18 been determined by an administrative law judge or the Commission,
19 the degree or percentage of employee's disability that is
20 attributable to all injuries or conditions existing at the time the
21 last injury was sustained shall then be determined by the
22 administrative law judge or the Commission, and the degree or
23 percentage of disability or impairment that existed before the last
24 injury plus the disability or impairment resulting from the combined

1 disability shall be determined, and compensation for that balance,
2 if any, shall be paid out of the fund.

3 5. If the previous disability or impairment, whether from
4 compensable injury or otherwise, and the last injury together result
5 in permanent total disability, the employer at the time of the last
6 injury shall be liable only for the actual anatomical impairment
7 resulting from the last injury considered alone and of itself.
8 However, if the compensation for which the employer at the time of
9 the last injury is liable is less than the compensation provided in
10 Section 41 of this act for permanent total disability, then, in
11 addition to the compensation for which the employer is liable and
12 after the completion of payment of compensation by the employer, the
13 employee shall be paid the remainder of the compensation that would
14 be due for permanent total disability under Section 41 of this act
15 out of the fund.

16 6. The State Treasurer shall be the custodian of the fund, and
17 any interest accruing shall be added thereto.

18 7. The Commission shall direct the distribution of the funds
19 from the fund.

20 C. 1. In all cases in which a recovery against the fund is
21 sought for permanent partial disability or for permanent total
22 disability, the State Treasurer as custodian shall be named as a
23 party and shall be entitled to defend against the claim.

1 2. The State Treasurer, with the advice and consent of the
2 Attorney General, may enter into settlements as contemplated by
3 Section 84 of this act.

4 3. All awards for permanent partial disability or for permanent
5 total disability affecting the fund shall be subject to the
6 provisions of this act governing review and appeal.

7 D. If more than one injury in the same employment causes
8 concurrent temporary disabilities, weekly benefits shall be payable
9 only for the longest and largest paying disability. If more than
10 one injury in the same employment causes concurrent and consecutive
11 permanent partial disability, weekly benefits for each subsequent
12 disability shall not begin until the end of the compensation period
13 for the prior disability.

14 SECTION 60. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 60 of Title 85A, unless there is
16 created a duplication in numbering, reads as follows:

17 A. Within ten (10) days after the date of receipt of notice or
18 of knowledge of injury or death, the employer shall send to the
19 Commission a report setting forth:

- 20 1. The name, address, and business of the employer;
- 21 2. The name, address, and occupation of the employee;
- 22 3. The cause and nature of the injury or death;
- 23 4. The year, month, day, approximately when, and the particular
24 locality where, the injury or death occurred; and

1 5. Such other information as the Commission may require.

2 B. Additional reports with respect to the injury and of the
3 condition of the employee shall be sent by the employer to the
4 Commission at such time and in such manner as the Commission may
5 prescribe. However, an employer may refuse to provide any
6 information that it deems privileged or confidential.

7 C. Any report provided for in subsection A or B of this section
8 shall not be evidence of any fact stated in the report in any
9 proceeding with respect to the injury or death on account of which
10 the report is made.

11 D. The mailing of any report in a stamped envelope, properly
12 addressed, within the time prescribed in subsection A or B of this
13 section, shall be in compliance with this section. In addition, the
14 Commission shall establish a means of electronic delivery of any
15 report or other information required by this section.

16 E. 1. Any employer who after notice refuses to send any report
17 required by this section shall be subject to a civil penalty in an
18 amount of Five Hundred Dollars (\$500.00) for each refusal.

19 2. Whenever the employer has failed or refused to comply as
20 provided in this section, the Commission may serve on the employer a
21 proposed judgment declaring the employer to be in violation of this
22 act and containing the amount, if any, of the civil penalty to be
23 assessed against the employer under this section.

1 F. An employer may contest a proposed judgment of the
2 Commission issued under subsection E of this section by filing with
3 the Commission, within twenty (20) days of receipt of the proposed
4 judgment, a written request for a hearing. If a written request for
5 hearing is not filed with the Commission within this time, the
6 proposed judgment, proposed penalty, or both, shall be a final
7 judgment of the Commission. The request for a hearing does not need
8 to be in any particular form but shall specify the grounds on which
9 the person contests the proposed judgment, the proposed assessment,
10 or both. A proposed judgment by the Commission under this section
11 shall be prima facie correct, and the burden is on the employer to
12 prove that the proposed judgment is incorrect.

13 G. Hearings conducted under this section shall proceed as
14 provided in Sections 66 through 75 of this act.

15 H. If an employer fails to pay any civil penalty assessed
16 against the employer after a judgment issued under this section has
17 become final by operation of law, the Commission may petition the
18 district court of the county where the employer's principal place of
19 business is located for an order enjoining the employer from
20 engaging in further employment or conduct of business until such
21 time as the employer makes all required reports and pays all civil
22 penalties.

SECTION 61. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 61 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. Any person or entity may make written application to the State Commissioner of Health to have a workplace medical plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under this act. Each application for certification shall be accompanied by a fee of One Thousand Five Hundred Dollars (\$1,500.00). A workplace medical plan may be certified to provide services to a limited geographic area. A certificate is valid for a five-year period, unless revoked or suspended. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed program for providing services as the State Commissioner of Health may prescribe. The information shall include, but not be limited to:

1. A list of the names of all medical providers who shall provide services under the plan, together with appropriate evidence of compliance with any licensing or certification requirements for those providers to practice in this state; and

2. A description of the places and manner of providing services under the plan.

B. The State Commissioner of Health shall not certify a plan unless he or she finds that the plan:

1 1. Proposes to provide quality services for all medical
2 services which:

- 3 a. may be required by this act in a manner that is
4 timely, effective and convenient for the employee, and
5 b. utilizes medical treatment guidelines and protocols
6 consistent with those established by the Official
7 Disability Guidelines.

8 2. Is reasonably geographically convenient to residents of the
9 area for which it seeks certification;

10 3. Provides appropriate financial incentives to reduce service
11 costs and utilization without sacrificing the quality of service;

12 4. Provides adequate methods of peer review, utilization review
13 and dispute resolution to prevent inappropriate, excessive or
14 medically unnecessary treatment, and excludes participation in the
15 plan by those providers who violate these treatment standards;

16 5. Provides aggressive case management for injured employees
17 and a program for early return to work;

18 6. Provides a timely and accurate method of reporting to the
19 State Commissioner of Health necessary information regarding medical
20 service costs and utilization to enable the State Commissioner of
21 Health to determine the effectiveness of the plan;

22 7. Authorizes necessary emergency medical treatment for an
23 injury provided by a provider of medical, surgical, and hospital
24 services who is not a part of the plan; and

1 8. Does not discriminate against or exclude from participation
2 in the plan any category of providers of medical, surgical, or
3 hospital services and includes an adequate number of each category
4 of providers of medical, surgical, and hospital services to give
5 participants access to all categories of providers and does not
6 discriminate against ethnic minority providers of medical services.

7 C. The State Commissioner of Health may accept findings,
8 licenses or certifications of other state agencies as satisfactory
9 evidence of compliance with a particular requirement of this
10 section.

11 D. Except for CompSource Oklahoma and self-insured employers,
12 if any insurer does not contract with or provide access to a
13 certified workplace medical plan, an insured, after sixty (60) days'
14 written notice to its insurance carrier, shall be authorized to
15 contract independently with a plan of his or her choice for a period
16 of one (1) year, to provide medical care under this act. The
17 insured shall be authorized to contract, after sixty (60) days'
18 written notice to its insurance carrier, for additional one-year
19 periods if the insurer has not contracted with or provided access to
20 a certified workplace medical plan.

21 E. If CompSource Oklahoma does not contract with at least three
22 certified workplace medical plans, each covering at least 50
23 counties, then the insured, after sixty (60) days' written notice to
24 CompSource Oklahoma, shall be authorized to contract independently

1 with a plan of the insured's choice for a period of one (1) year to
2 provide medical care under this act. The insured shall be
3 authorized to contract, after sixty (60) days' written notice to
4 CompSource Oklahoma, for additional one-year periods if CompSource
5 Oklahoma has not contracted with or fails to continue contracts with
6 at least three certified workplace medical plans covering at least
7 50 counties.

8 F. If an employer is not experience rated when it participates
9 in a certified workplace medical plan, its workers' compensation
10 insurer shall grant a ten-percent premium reduction.

11 G. The State Commissioner of Health shall refuse to certify or
12 shall revoke or suspend the certification of a plan if the State
13 Commissioner of Health finds that the program for providing medical
14 or health care services fails to meet the requirements of this
15 section, or service under the plan is not being provided in
16 accordance with the terms of the plan.

17 H. The State Commissioner of Health shall implement a site
18 visit protocol for employees of the State Department of Health to
19 perform an inspection of a certified workplace medical plan to
20 ensure that medical services to an employee and the medical
21 management of the employee's needs are adequately met in a timely
22 manner and that the certified workplace medical plan is complying
23 with all other applicable provisions of this act and the State
24

1 Department of Health. This protocol shall include, but not be
2 limited to:

3 1. A site visit shall be made to each certified workplace
4 medical plan not less often than once every year, but not later than
5 thirty (30) days following the anniversary date of issuance of the
6 initial or latest renewal certificate;

7 2. A site visit shall determine whether or not a certified
8 workplace medical plan is operating in accordance with its latest
9 application to the State Department of Health;

10 3. Compliant operations shall include, but not be limited to:

- 11 a. timely and effective medical services available with
12 reasonable geographic convenience,
- 13 b. treatment guidelines and protocols consistent with the
14 Official Disability Guidelines, and
- 15 c. effective programs for utilization review, case
16 management, grievances, and dispute resolution;

17 4. Performance of a site visit shall include:

- 18 a. inspection of organizational documentation,
 - 19 b. inspection of systems documentation and processes,
 - 20 c. random or systematic sampling of closed and open case
21 management cases,
 - 22 d. workplace medical plan employee and management
23 interviews, as appropriate;
- 24

1 5. An initial site visit may occur with an interval of less
2 than twelve (12) months to a recently certified plan, or a site
3 visit may occur more often than once in every twelve (12) months if
4 the State Commissioner of Health has reason to suspect that a plan
5 is not operating in accordance with its certification;

6 6. If a deficient practice is identified during a site visit,
7 the State Department of Health shall require a certified workplace
8 medical plan to submit a timely and acceptable written plan of
9 correction, and then may perform a follow-up visit or visits to
10 ensure that the deficient practice has been eliminated;

11 7. If a deficient practice is not remedied by a certified
12 workplace medical plan on a timely basis, the State Commissioner of
13 Health shall revoke or to suspend the certification of the plan;

14 8. In addition to the certification fee required pursuant to
15 subsection A of this section, certified workplace medical plans
16 shall pay the State Department of Health:

17 a. One Thousand Five Hundred Dollars (\$1,500.00) for an
18 initial annual site visit,

19 b. One Thousand Dollars (\$1,000.00) for each follow-up
20 visit, but only if less than two site visits occur in
21 a twelve-month period; and

22 9. In addition to the site visit fee required pursuant to
23 paragraph 8 of this subsection, employees of the State Department of
24 Health may charge to the certified workplace medical plan reasonable

1 travel and travel-related expenses for the site visit such as
2 overnight lodging and meals. A certified workplace medical plan
3 shall reimburse travel expenses to the State Department of Health at
4 rates equal to the amounts then currently allowed under the State
5 Travel Reimbursement Act.

6 I. The State Board of Health shall adopt such rules as may be
7 necessary to implement the provisions of this section. Such rules
8 shall authorize any person to petition the State Commissioner of
9 Health for decertification of a certified workplace medical plan for
10 a material violation of any rules promulgated pursuant to this
11 section.

12 SECTION 62. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 62 of Title 85A, unless there is
14 created a duplication in numbering, reads as follows:

15 A. Where an employee suffers from an occupational disease as
16 defined in this section and is disabled or dies as a result of the
17 disease, the employee, or, in case of death, his or her dependents,
18 shall be entitled to compensation as if the disability or death were
19 caused by injury, except as otherwise provided in this section.

20 B. No compensation shall be payable for an occupational disease
21 if the employee, at the time of entering into the employment of the
22 employer by whom the compensation would otherwise be payable,
23 falsely represented himself or herself in writing as not having
24

1 previously been disabled, laid off, or compensated in damages or
2 otherwise, because of the disease.

3 C. 1. Where an occupational disease is aggravated by any other
4 disease or infirmity, not itself compensable, or where disability or
5 death from any other cause, not itself compensable, is aggravated,
6 prolonged, accelerated, or in any way contributed to by an
7 occupational disease, the compensation payable shall be reduced and
8 limited to the proportion only of the compensation that would be
9 payable if the occupational disease were the sole cause of the
10 disability or death as the occupational disease, as a causative
11 factor, bears to all the causes of the disability or death.

12 2. The reduction in compensation is to be effected by reducing
13 the number of weekly or monthly payments or the amounts of the
14 payments, as under the circumstances of the particular case may be
15 for the best interest of the claimant.

16 D. No compensation for death from an occupational disease shall
17 be payable to any person whose relationship to the deceased arose
18 subsequent to the beginning of the first compensable disability
19 except to afterborn children of a marriage existing at the beginning
20 of the disability.

21 E. 1. "Occupational disease", as used in this act, unless the
22 context otherwise requires, means any disease that results in
23 disability or death and arises out of and in the course of the
24 occupation or employment of the employee or naturally follows or

1 unavavoidably results from an injury as that term is defined in this
2 act. A causal connection between the occupation or employment and
3 the occupational disease shall be established by a preponderance of
4 the evidence.

5 2. No compensation shall be payable for any contagious or
6 infectious disease unless contracted in the course and scope of
7 employment in or immediately connected with a hospital or sanatorium
8 in which persons suffering from that disease are cared for or
9 treated.

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

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

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

21 G. 1. An employer shall not be liable for any compensation for
22 an occupational disease unless:

23 a. the disease is due to the nature of an employment in
24 which the hazards of the disease actually exist and

1 are characteristic thereof and peculiar to the trade,
2 occupation, process, or employment and is actually
3 incurred in the course and scope of his or her
4 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 paragraph
19 1 of subsection G of this section and results within
20 seven (7) years after the 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.
24

1 SECTION 63. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 63 of Title 85A, unless there is
3 created a duplication in numbering, reads as follows:

4 A. As used in this act, unless the context otherwise requires:

5 1. "Asbestosis" means the characteristic fibrotic condition of
6 the lungs caused by the inhalation of asbestos dust; and

7 2. "Silicosis" means the characteristic fibrotic condition of
8 the lungs caused by the inhalation of silica dust.

9 B. In the absence of conclusive evidence in favor of the claim,
10 disability or death from silicosis or asbestosis shall be presumed
11 not to be due to the nature of any occupation within the provision
12 of this section unless during the ten (10) years immediately
13 preceding the date of disablement the employee has been exposed to
14 the inhalation of silica dust or asbestos dust over a period of not
15 less than five (5) years, two (2) years of which shall have been in
16 this state, under a contract of employment performed in this state.
17 However, if the employee has been employed by the same employer
18 during the entire five-year period, his or her right to compensation
19 against the employer shall not be affected by the fact that he or
20 she had been employed during any part of the period outside of this
21 state.

22 C. Except as otherwise provided in this section, compensation
23 for disability from uncomplicated silicosis or asbestosis shall be
24

1 payable in accordance with the provisions of Sections 41 and 43 of
2 this act.

3 D. 1. In case of disability or death from silicosis or
4 asbestosis complicated with tuberculosis of the lungs, compensation
5 shall be payable as for uncomplicated silicosis or asbestosis,
6 provided that the silicosis or asbestosis was an essential factor in
7 the causing of disability or death.

8 2. In case of disability or death from silicosis or asbestosis
9 complicated with any other disease, or from any other disease
10 complicated with silicosis or asbestosis, the compensation shall be
11 reduced as provided in subsection C of Section 62 of this act.

12 E. 1.

13 a. (1) Where an employee, though not actually disabled,
14 is found by the Commission to be affected by
15 silicosis or asbestosis to such a degree as to
16 make it unduly hazardous for him or her to
17 continue in an employment involving exposure to
18 the hazards of the disease, the Commission may
19 order that he or she be removed from his or her
20 employment. In such a case, or in case he or she
21 has already been discharged from the employment
22 and is unemployed, he or she shall be entitled to
23 compensation until he or she can obtain steady
24

1 employment in some other suitable occupation in
2 which there are no hazards of the disease.

3 (2) The compensation shall in no case be payable for
4 longer than twenty-six (26) weeks immediately
5 following the date of removal or discharge of the
6 injured employee and unless application for
7 compensation is made within the period.

8 b. If the employee obtains other suitable employment at
9 reduced wages, the payments of compensation during
10 that part of the twenty-six-week period shall be at
11 the rate prescribed in subsection B of Section 41 of
12 this act.

13 2. When in any case the forced change of employment shall, in
14 the opinion of the Commission, require that the
15 employee be given special training in order to qualify
16 him or her for another occupation, the employer liable
17 for compensation shall pay for the training and
18 incidental traveling expenses an additional sum, in no
19 case, however, to exceed Four Hundred Dollars
20 (\$400.00). The payment shall be made for the benefit
21 of the employee to such person as directed by the
22 Commission. No payment, however, shall be made unless
23 the employee accepts the special training directed by
24

1 the Commission, nor shall payment be made for a longer
2 period than the employee submits to the training.

3 3. If an employee has been compensated, whether specially
4 trained or not, and thereafter engages in any occupation which
5 exposes him or her to hazards of silicosis or asbestosis without
6 first having obtained the written approval of the Commission,
7 neither he nor she, his nor her dependents, personal representative,
8 nor any other person shall be entitled to compensation or damages
9 for his or her disablement or death from either of the diseases.

10 4. Neither a claim for nor receipt of compensation or benefits
11 under this subsection shall bar the employee from any right to
12 compensation for actual disability from silicosis or asbestosis that
13 does not fall within the timeframe described in subsection G of
14 Section 62 of this act.

15 SECTION 64. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 64 of Title 85A, unless there is
17 created a duplication in numbering, reads as follows:

18 A. 1. Except as otherwise provided in this section, notice of
19 disability resulting from an occupational disease or cumulative
20 trauma shall be the same as in cases of accidental injury.

21 2. Written notice shall be given to the employer of an
22 occupational disease or cumulative trauma by the employee, or a
23 representative of the employee in the case of incapacity or death,
24

1 within ninety (90) days after the first distinct manifestation of
2 the disease or cumulative trauma.

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

13 SECTION 65. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 65 of Title 85A, unless there is
15 created a duplication in numbering, reads as follows:

16 A. 1. Unless an injury either renders the employee physically
17 or mentally unable to do so, or other exceptional circumstances as
18 determined by the Commission make it impossible, the employee shall
19 report the injury to the employer in writing within three (3)
20 working days of the injury occurring, not including the day of
21 injury, except with respect to an occupational disease or cumulative
22 trauma.

23 2. If the employee does not report the injury in accordance
24 with paragraph 1 of this subsection, then he or she shall not be

1 entitled to benefits under this act, unless the employee shows good
2 cause why the employee did not follow the reporting requirements of
3 paragraph 1 of this subsection.

4 3. The employer shall not be responsible for disability,
5 medical, or other benefits before receipt of the employee's report
6 of injury.

7 4. The reporting requirements in paragraph 1 of this subsection
8 shall not apply when an employee requires emergency medical
9 treatment outside the employer's normal business hours; however, in
10 that event, the employee shall cause a report of the injury to be
11 made to the employer on the employer's next regular business day.

12 B. Failure to give the notice shall not bar any claim if the
13 employer had knowledge of the injury or death. Objection to failure
14 to give notice shall be made at or before the first hearing on the
15 claim.

16 SECTION 66. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 66 of Title 85A, unless there is
18 created a duplication in numbering, reads as follows:

19 A. Time for Filing.

20 1. A claim for benefits under this act, other than an
21 occupational disease, shall be barred unless it is filed with the
22 Commission within one (1) year from the date of the injury. If
23 during the one-year period following the filing of the claim the
24 employee receives no weekly benefit compensation and receives no

1 medical treatment resulting from the alleged injury, the claim shall
2 be barred thereafter. For purposes of this section, the date of the
3 injury shall be defined as the date an injury is caused by an
4 accident as set forth in paragraph 7 of Section 2 of this act.

5 2. a. A claim for compensation for disability on account of
6 injury which is either an occupational disease or
7 occupational infection shall be barred unless filed
8 with the Commission within two (2) years from the date
9 of the last injurious exposure to the hazards of the
10 disease or infection.

11 b. A claim for compensation for disability on account of
12 silicosis or asbestosis shall be filed with the
13 Commission within one (1) year after the time of
14 disablement, and the disablement shall occur within
15 three (3) years from the date of the last injurious
16 exposure to the hazard of silicosis or asbestosis.

17 c. A claim for compensation for disability on account of
18 a disease condition caused by exposure to X rays,
19 radioactive substances, or ionizing radiation only
20 shall be filed with the Commission within two (2)
21 years from the date the condition is made known to an
22 employee following examination and diagnosis by a
23 medical doctor.

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

4 4. If within six (6) months after the filing of a claim for
5 compensation no bona fide request for a hearing has been made with
6 respect to the claim, the claim may, on motion and after hearing, be
7 dismissed with prejudice.

8 B. Time for Filing Additional Compensation.

9 1. In cases in which any compensation, including disability or
10 medical, has been paid on account of injury, a claim for additional
11 compensation shall be barred unless filed with the Commission within
12 one (1) year from the date of the last payment of disability
13 compensation or two (2) years from the date of the injury, whichever
14 is greater.

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

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

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. Subsection 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 subsection 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 G. 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 67. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 67 of Title 85A, unless there is
10 created a duplication in numbering, reads as follows:

11 The Commission is authorized and directed to promulgate rules to
12 establish and implement a preliminary conference procedure designed
13 to accomplish the following objectives:

14 1. To provide the claimant an opportunity to confer with a
15 legal advisor on the staff of the Commission to be advised of his or
16 her rights under this act and to ensure that the rights are
17 protected. The conference shall be held in the county where the
18 accident occurred, if the accident occurred in this state, unless
19 otherwise agreed to by the parties, or otherwise directed by the
20 Commission;

21 2. To provide an opportunity for, but not compel, a binding
22 settlement of some or all the issues present at the time;

23 3. To facilitate the resolution of issues without the expense
24 of litigation or attorney fees for either party;

1 4. To authorize the legal advisor to approve compromise
2 settlements entered into while attending or as a result of the
3 preliminary conference and those joint petition settlements entered
4 into under Section 84 of this act. Provided, however, the same
5 legal advisors shall not both advise the claimant and approve the
6 joint petition.

7 SECTION 68. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 68 of Title 85A, unless there is
9 created a duplication in numbering, reads as follows:

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

13 B. Investigation - Hearing.

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

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

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

22 4. If a hearing on the claim is ordered, the administrative law
23 judge shall give the claimant and other interested parties ten (10)
24 days' notice of the hearing served personally on the claimant and

1 other parties, or by registered mail. The hearing shall be held in
2 Tulsa or Oklahoma County, as determined by the Commission.

3 5. The award, together with the statement of the findings of
4 fact and other matters pertinent to the issues, shall be filed with
5 the record of the proceedings, and a copy of the award shall
6 immediately be sent to the parties in or to counsels of record, if
7 any.

8 C. Evidence and Construction.

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

16 b. Any determination of the existence or extent of
17 physical impairment shall be supported by objective
18 and measurable physical or mental findings.

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

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

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

5 D. Judgment. The judgment denying the claim or making the
6 award shall be filed in the office of the Commission, and a copy
7 shall be sent by registered mail to the claimant and to the employer
8 or to their attorneys.

9 E. No compensation for disability of an injured employee shall
10 be payable for any period beyond his or her death; provided,
11 however, an award of compensation for disability may be made after
12 the death of the injured employee for the period of disability
13 preceding death.

14 SECTION 69. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 69 of Title 85A, unless there is
16 created a duplication in numbering, reads as follows:

17 A. Conduct of Hearing or Inquiry.

18 1. In making an investigation or inquiry or conducting a
19 hearing, the administrative law judges and the Commission shall not
20 be bound by technical or statutory rules of evidence or by technical
21 or formal rules of procedure, except as provided by this act. The
22 administrative law judges and the Commission may make such
23 investigation or inquiry, or conduct the hearing, in a manner as
24 shall best ascertain the rights of the parties.

1 2. Declarations of a deceased employee concerning the injury
2 may be received in evidence and may, if corroborated by other
3 evidence, be sufficient to establish the injury.

4 3. 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 the proof by a preponderance of evidence.

8 4. Administrative law judges are required to make specific, on-
9 the-record findings of ultimate facts responsive to the issues
10 shaped by the evidence as well as conclusions of law on which its
11 judgment is to be rested.

12 B. Hearings to be Public - Records.

13 1. a. Hearings before the Commission shall be open to the
14 public and shall be stenographically reported. The
15 Commission is authorized to contract for the reporting
16 of the hearings.

17 b. The Commission shall, by rule, provide for the
18 preparation of a record of all hearings and other
19 proceedings before it.

20 2. The Commission shall not be required to stenographically
21 report or prepare a record of joint petition hearings. The
22 administrative law judge or legal advisor shall record the hearing
23 at no cost to the parties.

24 C. Introduction of Evidence.

1 1. All oral evidence or documentary evidence shall be presented
2 to the designated representative of the Commission at the initial
3 hearing on a controverted claim. The oral evidence shall be
4 stenographically reported. Each party shall present all evidence at
5 the initial hearing. Further hearings for the purpose of
6 introducing additional evidence shall be granted only at the
7 discretion of the hearing officer or Commission. A request for a
8 hearing for the introduction of additional evidence shall show the
9 substance of the evidence desired to be presented.

10 2. a. Any party proposing to introduce medical reports or
11 testimony of physicians at the hearing of a
12 controverted claim shall, as a condition precedent to
13 the right to do so, furnish to the opposing party and
14 to the Commission copies of the written reports of the
15 physicians of their findings and opinions at least
16 seven (7) days before the date of the hearing. If no
17 written reports are available to a party, the party
18 shall notify in writing the opposing party and the
19 Commission of the name and address of the physicians
20 proposed to be used as witnesses and the substance of
21 their testimony at least seven (7) days before the
22 hearing.

23 b. If the opposing party desires to cross-examine the
24 physician, he or she should notify the party who

1 submits a medical report to him or her as soon as
2 practicable, in order that he or she may make every
3 effort to have the physician present for the hearing.

4 3. A party failing to observe the requirements of this
5 subsection may not be allowed to introduce medical reports or
6 testimony of physicians at a hearing, except in the discretion of
7 the hearing officer or the Commission.

8 4. The time periods may be waived by the consent of the
9 parties.

10 D. Expert testimony shall not be allowed unless it satisfies
11 the requirements of Federal Rule of Evidence 702 with annotations
12 and amendments.

13 SECTION 70. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 70 of Title 85A, unless there is
15 created a duplication in numbering, reads as follows:

16 A. The Commission shall have the power to preserve and enforce
17 order during any proceeding before it, to issue subpoenas for and
18 administer oaths to and compel the attendance and testimony of
19 witnesses, and require the production of books, papers, documents,
20 and other evidence.

21 B. If any person or party attending any proceeding before the
22 Commission disobeys or resists any lawful order or process,
23 obstructs the hearing, neglects to produce any book, paper or
24 document after having been ordered to do so, refuses to appear after

1 having been subpoenaed, refuses to take oath as a witness, refuses
2 to be examined according to law, refuses to comply with any final
3 judgment of an administrative law judge or the Commission or
4 willfully refuses to pay an uncontroverted medical or related
5 expense within forty-five (45) days after the respondent has
6 received the statement, the person or party, at the discretion of
7 the administrative law judge or the Commission, may be found to be
8 in contempt of the Commission and may be subject to a fine not to
9 exceed Ten Thousand Dollars (\$10,000.00).

10 SECTION 71. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 71 of Title 85A, unless there is
12 created a duplication in numbering, reads as follows:

13 In any proceeding for the enforcement of a claim for
14 compensation, there shall be a rebuttable presumption that:

- 15 1. The Commission has jurisdiction;
16 2. Sufficient notice was given; and
17 3. The injury was not occasioned by the willful intention of
18 the injured employee to bring about the injury to himself or herself
19 or another.

20 SECTION 72. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 72 of Title 85A, unless there is
22 created a duplication in numbering, reads as follows:

23 The Commission may cause depositions of witnesses to be taken in
24 such manner as it may direct.

1 SECTION 73. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 73 of Title 85A, unless there is
3 created a duplication in numbering, reads as follows:

4 Each witness who appears in obedience to a subpoena shall be
5 entitled to the same fees as witnesses in a civil action in the
6 district court.

7 SECTION 74. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 74 of Title 85A, unless there is
9 created a duplication in numbering, reads as follows:

10 If the Commission is a party to or is otherwise interested in a
11 court proceeding under this act, it may employ attorneys to appear
12 on its behalf. If requested by the Commission, it shall be the duty
13 of the Attorney General or the prosecuting attorneys of the
14 different districts to represent the Commission without extra
15 compensation.

16 SECTION 75. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 75 of Title 85A, unless there is
18 created a duplication in numbering, reads as follows:

19 A. Any party feeling aggrieved by the judgment, decision, or
20 award made by the administrative law judge may, within ten (10) days
21 of issuance, appeal to the Commission sitting en banc by filing with
22 the chair of the Commission a notice of appeal. After hearing
23 arguments, the Commission may reverse or modify the decision only if
24 it determines that the decision was against the clear weight of the

1 evidence or contrary to law. All proceedings of the Commission
2 shall be recorded by a court reporter of the Commission. Any
3 judgment of the Commission which reverses a decision of the
4 administrative law judge shall contain specific findings relating to
5 the reversal.

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

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

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

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

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

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

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

5 SECTION 76. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 76 of Title 85A, unless there is
7 created a duplication in numbering, reads as follows:

8 If any employer fails to comply with a final compensation
9 judgment or award, any beneficiary of the judgment or award, or the
10 Commission, may file a certified copy of the judgment or award in
11 the office of the district court clerk of any county in this state
12 where any property of the employer may be found. At that time, the
13 district court clerk shall enter the judgment or award in the
14 judgment record of the county, and the judgment or award so recorded
15 shall be a judgment and lien as are judgments of the district court,
16 and enforceable as such.

17 SECTION 77. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 77 of Title 85A, unless there is
19 created a duplication in numbering, reads as follows:

20 A. Except where a joint petition settlement has been approved,
21 the Commission may review any compensation judgment, award, or
22 decision. Such review may be done at any time within six (6) months
23 of termination of the compensation period fixed in the original
24 compensation judgment or award, on the Commission's own motion or on

1 the application of any party in interest, on the ground of a change
2 in physical condition or on proof of erroneous wage rate. On
3 review, the Commission may make a judgment or award terminating,
4 continuing, decreasing, or increasing for the future the
5 compensation previously awarded, subject to the maximum limits
6 provided for in this act.

7 B. The review and subsequent judgment or award shall be made in
8 accordance with the procedure prescribed in Sections 66 through 75
9 of this act. No review shall affect any compensation paid under a
10 prior order, judgment or award.

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

14 D. Aging and the effects of aging on a compensable injury are
15 not to be considered in determining whether there has been a change
16 in physical condition. Aging or the effect of aging on a
17 compensable injury shall not be considered in determining permanent
18 disability under this section or any other section in this act.

19 SECTION 78. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 78 of Title 85A, unless there is
21 created a duplication in numbering, reads as follows:

22 If the court having jurisdiction over the claim or compensation
23 judgment proceedings determines that the proceedings have been
24 commenced or continued without reasonable grounds, the cost of the

1 proceedings shall be assessed against the party who has commenced or
2 continued the proceedings.

3 SECTION 79. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 79 of Title 85A, unless there is
5 created a duplication in numbering, reads as follows:

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

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

22 (1) Attorney fees may not be collected for recovery
23 on noncontroverted claims.
24

1 (2) Attorney fees shall not be awarded on medical
2 benefits or services or vocational rehabilitation
3 services.

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

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

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 may not
15 recover fees for services except as expressly provided in this
16 section.

17 SECTION 80. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 80 of Title 85A, unless there is
19 created a duplication in numbering, reads as follows:

20 A. 1. Every claim, request for benefits, controversion of
21 benefits, request for a hearing, pleading, motion, and other paper
22 of a party represented by an attorney shall be signed by at least
23 one attorney of record in his or her individual name, whose address
24 shall be stated. A party who is not represented by an attorney

1 shall sign his or her claim, request for benefits, request for
2 additional benefits, controversion of benefits, request for a
3 hearing, pleading, motion, or other paper, and state his or her
4 address.

5 2. The signature of an attorney or party constitutes a
6 certificate by him or her that:

- 7 a. he or she has read the claim, request for benefits,
8 request for additional benefits, controversion of
9 benefits, request for a hearing, pleading, motion, or
10 other paper,
11 b. to the best of his or her knowledge, information, and
12 belief formed after reasonable inquiry, it is well
13 grounded in fact and is warranted by existing law or a
14 good faith argument for the extension, modification,
15 or reversal of existing law, and
16 c. it is not brought for any improper purpose, such as to
17 harass or to cause unnecessary delay or needless
18 increase in the cost of litigation.

19 3. If a claim, request for benefits, request for additional
20 benefits, controversion of benefits, request for a hearing,
21 pleading, motion, or other paper is not signed, it shall be stricken
22 unless it is signed promptly after the omission is called to the
23 attention of the pleader or movant.
24

1 4. If a claim, request for benefits, controversion of benefits,
2 request for a hearing, pleading, motion, or other paper is signed in
3 violation of this act, the Commission, including administrative law
4 judges, on motion or on their own initiative, shall impose on the
5 signatory, a represented party, or both, an appropriate sanction,
6 which may include a judgment to pay to the other party or parties
7 the amount of reasonable expenses incurred because of the filing of
8 a claim, request for benefits, request for additional benefits,
9 controversion of benefits, request for a hearing, pleading, motion,
10 or other paper, including a reasonable attorney fee.

11 B. Appropriate sanctions, including the amount of reasonable
12 expenses and attorney fees, may also be imposed against a party or
13 its attorney who, without good cause shown, fails to appear for a
14 hearing, deposition, or any other matter scheduled by the Commission
15 or administrative law judge, or who frivolously joins another party.

16 SECTION 81. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 81 of Title 85A, unless there is
18 created a duplication in numbering, reads as follows:

19 A. Compensation shall be paid by check, by electronic funds
20 transfer, or by state warrant. Payment shall be made payable to the
21 order of the person entitled to the compensation and paid directly
22 to the person entitled to the compensation.

23 B. If the compensation beneficiary is a mental incompetent or a
24 minor of tender years or immature judgment, the Commission, in the

1 exercise of its discretion, may direct that payment shall be made to
2 a legally appointed guardian of the estate of the incompetent or
3 minor.

4 SECTION 82. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 82 of Title 85A, unless there is
6 created a duplication in numbering, reads as follows:

7 Clean claims for services rendered under this act are payable
8 within thirty (30) days after receipt by the employer unless
9 disputed as to compensability or amount. "Clean claim" means a
10 claim that has no defect or impropriety, including a lack of any
11 required substantiating documentation, or particular circumstance
12 requiring special treatment that impedes prompt payment.

13 SECTION 83. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 83 of Title 85A, unless there is
15 created a duplication in numbering, reads as follows:

16 A. 1. Each employer desiring to controvert an employee's right
17 to compensation shall file with the Commission on or before the
18 fifteenth day following notice of the alleged injury or death a
19 statement on a form prescribed by the Commission that the right to
20 compensation is controverted and the grounds for the controversion,
21 the names of the claimant, employer, and carrier, if any, and the
22 date and place of the alleged injury or death.

23 2. Failure to file the statement of controversion shall not
24 preclude the employer's ability to controvert the claim or cause it

1 to waive any defenses. The employer can make additional defenses
2 not included in the initial notice at any time.

3 B. If an employer is unable to obtain sufficient medical
4 information as to the alleged injury or death within fifteen (15)
5 days following receipt of notice, although the employer has acted in
6 good faith and with all due diligence, the employer may apply in
7 writing for an extension of time for making payment of the first
8 installment or controverting the claim. This written application is
9 to be postmarked within the fifteen-day period. The Commission may,
10 in its discretion, grant the extension and fix the additional time
11 to be allowed. Filing of application for an extension shall not be
12 deemed to be a controversion of the claim.

13 C. The provisions in subsection B of this section shall not
14 apply in cases where the physician is an employee of, on retainer
15 with, or has a written contract to provide medical services for the
16 employer.

17 SECTION 84. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 84 of Title 85A, unless there is
19 created a duplication in numbering, reads as follows:

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

1 settled. No appeal shall lie from a judgment or award denying a
2 joint petition.

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

6 A. In any case where an employer changes insurance carriers or
7 where the employer having been self-insured, becomes insured or,
8 having been insured, is approved to be self-insured, and the only
9 dispute in a claim against that employer is the proper source of
10 payment of benefits, the Commission shall direct that the
11 appropriate compensation benefits be paid on an equal basis by the
12 carriers or self-insured employer.

13 B. Upon resolution of the issue, the prevailing respondent
14 shall be entitled to reimbursement from the other respondent of all
15 moneys paid together with interest from the date of payment pursuant
16 to Section 727.1 of Title 12 of the Oklahoma Statutes.

17 SECTION 86. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 86 of Title 85A, unless there is
19 created a duplication in numbering, reads as follows:

20 If the employer has made advance payments for compensation, the
21 employer shall be entitled to be reimbursed out of any unpaid
22 installment or installments of compensation due. If the injured
23 employee receives full wages during disability, he or she shall not
24 be entitled to compensation during the period.

1 SECTION 87. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 87 of Title 85A, unless there is
3 created a duplication in numbering, reads as follows:

4 The Commission may require any employer to make a deposit or
5 bond with the Commission to secure the prompt and convenient payment
6 of compensation, and payments shall be made on judgment of the
7 Commission.

8 SECTION 88. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 88 of Title 85A, unless there is
10 created a duplication in numbering, reads as follows:

11 Compensation shall bear interest pursuant to Section 727.1 of
12 Title 12 of Oklahoma Statutes from the day an award is made by
13 either an administrative law judge or the full Commission on all
14 accrued and unpaid compensation.

15 SECTION 89. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 89 of Title 85A, unless there is
17 created a duplication in numbering, reads as follows:

18 A. On making the first payment and on suspension of payment of
19 compensation, the employer shall notify the Commission of that fact
20 on a form prescribed by the Commission.

21 B. 1. Within thirty (30) days after the final payment of
22 compensation has been made, the employer shall notify the Commission
23 with a form prescribed by the Commission. This form shall state
24 that the final payment has been made, the total amount of

1 compensation paid, the name of the employee and of any other person
2 to whom compensation has been paid, and the date of the injury or
3 death.

4 2. If the employer fails to notify the Commission within thirty
5 (30) days, the Commission may assess against the employer a civil
6 penalty in an amount not to exceed One Hundred Dollars (\$100.00).
7 No penalty shall be assessed without notice to the employer and
8 giving the employer an opportunity to be heard by the Commission.

9 SECTION 90. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 90 of Title 85A, unless there is
11 created a duplication in numbering, reads as follows:

12 On its own initiative at any time where compensation payments
13 are being made without an award, the Commission may, and in any case
14 where the right to compensation has been controverted or where
15 payments of compensation have been suspended, or where an employer
16 seeks to suspend payments made under an award, or on application of
17 an interested party, the Commission shall make such investigation,
18 cause such medical examination to be made, hold such hearings, and
19 take such further action as the Commission deems proper for the
20 protection of the rights of all parties.

21 SECTION 91. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 91 of Title 85A, unless there is
23 created a duplication in numbering, reads as follows:

1 An employee who is incarcerated shall not be eligible to receive
2 medical or disability benefits under this act.

3 SECTION 92. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 92 of Title 85A, unless there is
5 created a duplication in numbering, reads as follows:

6 A. On approval by the Insurance Commissioner, and following the
7 adoption of such rules as the Insurance Commissioner deems
8 necessary, each insurer issuing a policy under this act shall offer,
9 as a part of the policy or as an optional endorsement to the policy,
10 deductibles optional to the policyholder for benefits payable under
11 this act. Deductible amounts offered shall be fully disclosed to
12 the prospective policyholder in writing. The policyholder
13 exercising the deductible option shall choose only one deductible
14 amount.

15 B. Optional deductibles shall be offered in each policy
16 insuring liability for workers' compensation that is issued,
17 delivered, issued for delivery, or renewed under this act on or
18 after approval by the Insurance Commissioner, unless an insured
19 employer and insurer agree to renegotiate a workers' compensation
20 policy in effect on that date so as to include a provision allowing
21 for a deductible.

22 C. If the policyholder exercises the option and chooses a
23 deductible, the insured employer shall be liable for the amount of
24 the deductible for benefits paid for each compensable claim of work

1 injury suffered by an employee. The insurer shall pay all or part
2 of the deductible amount, whichever is applicable to a compensable
3 claim, to the person or medical provider entitled to the benefits
4 conferred by this act and seek reimbursement from the insured
5 employer for the applicable deductible amount. The payment or
6 nonpayment of deductible amounts by the insured employer to the
7 insurer shall be treated under the policy insuring the liability for
8 workers' compensation in the same manner as payment or nonpayment of
9 premiums.

10 D. If the Insurance Commissioner determines it to be feasible,
11 and under such rules as he or she may adopt, premium reduction for
12 deductibles may be determined before the application of any
13 experience modification, premium surcharge, or premium discounts,
14 and, to the extent that an employer's experience rating or safety
15 record is based on benefits paid, money paid by the insured employer
16 under a deductible as provided in this section may not be included
17 as benefits paid so as to harm the experience rating of the
18 employer.

19 E. This section shall not apply to employers who are approved
20 to self-insure against liability for workers' compensation or group
21 self-insurance funds for workers' compensation.

22 SECTION 93. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 93 of Title 85A, unless there is
24 created a duplication in numbering, reads as follows:

1 A. The Self-insurance Guaranty Fund shall be administered,
2 supervised and protected by the Self-insurance Guaranty Fund Board.
3 All self-insurers under this act shall participate in the fund as a
4 condition of authority to self-insure in this state.

5 B. 1. The Self-insurance Guaranty Fund Board shall consist of
6 the commissioners and two additional members to be appointed by the
7 Governor.

8 2. The term of office for the two Governor appointees shall be
9 three (3) years, with the term of the initial appointees expiring on
10 November 1, 2014.

11 3. The chair and vice chair of the Board shall be elected by
12 the Board from among its members.

13 4. Members of the Board shall not receive compensation for
14 serving on the Board but shall be reimbursed from monies in the fund
15 for their necessary travel expenses incurred in the performance of
16 their duties in accordance with the State Travel Reimbursement Act.

17 C. Meetings of the Board shall be held at least quarterly. The
18 presence of a majority of the members constitutes a quorum. No
19 action shall be taken by the Board without the affirmative vote of
20 at least a majority of the members.

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

23 E. No member or personnel of the Workers' Compensation Self-
24 Insured Guaranty Fund Board, the Workers' Compensation Commissioners

1 or any employee of the Workers' Compensation Commission shall be
2 liable in a civil proceeding for any act performed in good faith in
3 the execution of that person's powers or duties pursuant to Sections
4 94 through 98 of the Administrative Workers' Compensation Act.

5 SECTION 94. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 94 of Title 85A, unless there is
7 created a duplication in numbering, reads as follows:

8 The Self-insurance Guaranty Fund shall be for the purpose of
9 continuation of workers' compensation benefits due and unpaid or
10 interrupted due to the inability of a self-insurer to meet its
11 compensation obligations because its financial resources, security
12 deposit, guaranty agreements, surety agreements and excess insurance
13 are either inadequate or not immediately accessible for the payment
14 of benefits. Monies in the fund, including interest, are not
15 subject to appropriation and shall be expended to compensate
16 employees for eligible benefits for a compensable injury under this
17 act, pay outstanding workers' compensation obligations of the
18 impaired self-insurer, and for all claims for related administrative
19 fees, operating costs of the Self-insurance Guaranty Fund Board,
20 attorney fees, and other costs reasonably incurred by the Board in
21 the performance of its duties. Expenditures from the fund shall be
22 made on warrants issued by the State Treasurer against claims as
23 prescribed by law. The Fund shall be subject to audit in the same
24 manner as state funds and accounts, the cost for which shall be paid

1 for from the fund. The Workers' Compensation Self-Insured Guaranty
2 Fund Board shall be responsible for all liabilities and obligations
3 of the entities that ceased existence.

4 SECTION 95. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 95 of Title 85A, unless there is
6 created a duplication in numbering, reads as follows:

7 The Workers' Compensation Self-Insured Guaranty Fund shall be
8 derived from the following sources:

9 1. Any unexpended funds, including interest thereon, held by
10 the State Treasurer in the Individual Self-Insured Guaranty Fund or
11 Group Self-Insurance Association Guaranty Fund transferred to the
12 Workers' Compensation Self-Insured Guaranty Fund;

13 2. Until the Workers' Compensation Self-Insured Guaranty Fund
14 contains Two Million Dollars (\$2,000,000.00) or in the event the
15 amount in the fund falls below One Million Dollars (\$1,000,000.00),
16 an assessment against each private self-insurer and group self-
17 insurance association based on an assessment rate to be determined
18 by the Commissioners, not exceeding one percent (1%) of actual paid
19 losses of the self-insurer during the preceding calendar year,
20 payable to the Tax Commission for deposit to the fund. The
21 assessment against private self-insurers shall be determined using a
22 rate equal to the proportion that the deficiency in the fund
23 attributable to private self-insurers bears to the actual paid
24 losses of all private self-insurers for the year period of January 1

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

15 a. The assessment shall be paid within thirty (30)
16 calendar days after the date the Commissioners notify
17 the self-insurer of the assessment.

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

23 c. Failure of a self-insurer to pay, or timely pay, an
24 assessment required by this paragraph, or to report

1 payment of the same to the Commission within ten (10)
2 days of payment, shall be grounds for revocation by
3 the Commission of the self-insurer's permit to self-
4 insure in this state, after notice and hearing. A
5 former self-insurer failing to make payments required
6 by this paragraph promptly and correctly, or failing
7 to report payment of the same to the Commissioner
8 within ten (10) days of payment, shall be subject to
9 administrative penalties as allowed by law, including
10 but not limited to, a fine in the amount of Five
11 Hundred Dollars (\$500.00) or an amount equal to one
12 percent (1%) of the unpaid amount, whichever is
13 greater, to be paid and deposited to the credit of the
14 Workers' Compensation Fund created in Section 29 of
15 this act. It shall be the duty of the Tax Commission
16 to collect the assessment provided for in this
17 paragraph. The Tax Commission is authorized to bring
18 an action for recovery of any delinquent or unpaid
19 assessments.

- 20 d. An impaired self-insurer shall be exempt from
21 assessments beginning on the date of the Commission's
22 designation until the Commissioner determines the
23 self-insurer is no longer impaired.
24

1 e. The Tax Commission shall determine the fund balance as
2 of March 1 and September 1 of each year, and when
3 otherwise requested by the Commission, and shall
4 advise the Administrator thereof in writing within
5 thirty (30) days of each such determination; and

6 3. Any interest accruing on monies paid into the fund.

7 SECTION 96. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 96 of Title 85A, unless there is
9 created a duplication in numbering, reads as follows:

10 On determination by the Commission that a self-insurer has
11 become an impaired self-insurer, the Commission shall secure release
12 of the security required by Section 34 of this act and advise the
13 Self-insurance Guaranty Fund Board of the impairment. Claims
14 administration, including processing, investigating and paying valid
15 claims against an impaired self-insurer under this act, may include
16 payment by the surety that issued the surety bond or be under a
17 contract between the Commission and an insurance carrier,
18 appropriate state governmental entity or an approved service
19 organization, as approved by the Commission.

20 SECTION 97. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 97 of Title 85A, unless there is
22 created a duplication in numbering, reads as follows:

23 A. The Self-insurance Guaranty Fund Board shall be a party in
24 interest in all proceedings involving compensation claims against an

1 impaired self-insurer whose compensation claims have been paid or
2 assumed by the Commission and shall have all rights of subrogation
3 of the impaired self-insurer. In such proceedings, the Board may
4 assume and exercise all rights and defenses of the impaired self-
5 insurer, including, but not limited to, the right to:

6 1. Appear, defend and appeal claims;

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

9 3. Investigate, handle and contest claims.

10 B. The Board may:

11 1. Retain such persons as are necessary to handle claims and
12 perform other duties of the Board;

13 2. Sue or be sued;

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

16 4. Exercise any other powers necessary to perform its duties
17 under this act as prescribed by the Commission.

18 SECTION 98. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 98 of Title 85A, unless there is
20 created a duplication in numbering, reads as follows:

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

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

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

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

22 SECTION 99. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 99 of Title 85A, unless there is
24 created a duplication in numbering, reads as follows:

1 A. There is hereby created and established a fund to be known
2 as "CompSource Oklahoma", to be administered by a President, without
3 liability on the part of the state beyond the amount of the fund,
4 for the purpose of providing workers' compensation insurance.
5 CompSource Oklahoma may also provide insurance for employers against
6 liability incurred as the result of injuries sustained by employees
7 engaged in employment subject to the Longshoremen's and Harbor
8 Workers' Compensation Act, 33 U.S.C., Section 901 et seq., or
9 employees engaged in employment subject to Title IV of the Federal
10 Coal Mine Health and Safety Act of 1969 as amended by the Black Lung
11 Benefits Act of 1972, as enacted or as may be amended by the
12 Congress of the United States.

13 B. CompSource Oklahoma shall be a revolving fund and shall
14 consist of all premiums received for insurance policies issued and
15 all property and securities acquired by and through the use of
16 monies belonging to the fund and all interest earned on monies
17 belonging to the fund and deposited or invested as herein provided.

18 C. CompSource Oklahoma shall report to the Insurance
19 Commissioner the amount of premium taxes and fees for which it would
20 be liable if it were operating as a private carrier no later than
21 the last day of February of each year.

22 SECTION 100. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 100 of Title 85A, unless there
24 is created a duplication in numbering, reads as follows:

1 A. There is hereby created a board of managers to be known as
2 the "CompSource Board", which shall have supervision over the
3 administration and operation of CompSource Oklahoma. The board
4 shall be composed of eight members as follows:

5 1. The Director of the Office of Management and Enterprise
6 Services or a designee;

7 2. The Lieutenant Governor or a designee;

8 3. The State Auditor and Inspector or a designee;

9 4. One member appointed by the Governor;

10 5. Two members appointed by the Speaker of the House of
11 Representatives, one of whom shall be representative of employers;
12 and

13 6. Two members appointed by the President Pro Tempore of the
14 Senate, one of whom shall be representative of employees.

15 B. The appointed members of the board shall serve at the
16 pleasure of the appointing authority.

17 C. The members of the board shall elect annually from their
18 number a chair and a secretary. The secretary shall keep true and
19 complete records of all proceedings of the board. The board shall
20 meet quarterly, and at all other times when a meeting is called by
21 the chair. The board shall consider the condition of CompSource
22 Oklahoma at each quarterly meeting and shall make a detailed
23 examination into the condition of its reserves, investments, and all
24 other matters relating to the administration of CompSource Oklahoma.

1 The time and place of the regular meetings and the manner in which
2 special meetings may be called shall be set forth in CompSource
3 Oklahoma's bylaws. Except as otherwise provided in this act or in
4 the bylaws, all actions shall be taken by the affirmative vote of a
5 majority of the board members present at a meeting.

6 D. Appointed members of the board may be reimbursed for
7 expenses as provided in the State Travel Reimbursement Act.
8 Expenses shall only be reimbursed if they are incurred while the
9 board is transacting official business and may not exceed thirty
10 (30) days in any calendar year unless approved by a majority of the
11 board. The board shall have access to all records and books of
12 account and shall have power to require the presence or appearance
13 of any officer or employee of CompSource Oklahoma. All information
14 obtained by the members of the board shall be confidential unless
15 disclosed by order of the Commission.

16 E. No person or organization in a position to influence
17 official action of members of the CompSource Board, the President,
18 or the employees of CompSource Oklahoma shall furnish presents,
19 gratuities, transportation, lodging, educational seminars,
20 conferences, meetings, or similar functions to the CompSource Board,
21 the President, or the employees of CompSource Oklahoma other than as
22 provided by law and the rules of the Ethics Commission.

23 F. The CompSource Board shall appoint a President who shall be
24 executive manager of CompSource Oklahoma.

1 SECTION 101. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 101 of Title 85A, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The CompSource Oklahoma President shall have full power and
5 authority to manage and conduct all business and affairs relating to
6 CompSource Oklahoma, all of which shall be conducted under the name
7 of CompSource Oklahoma. The President may conduct the following
8 business for CompSource Oklahoma:

9 1. Sue and be sued in all the courts of the state, in all
10 actions arising out of any act, deed, matter or things made,
11 omitted, entered into, done or suffered in connection with
12 CompSource Oklahoma, and administer, manage, or conduct all the
13 business and affairs relating thereto;

14 2. Make and enter into contracts of insurance as herein
15 provided, and such other contracts or obligations relating to
16 CompSource Oklahoma, as are authorized or permitted under the
17 provisions of this act, including contracting with or appointing
18 agents or brokers; provided the agents or brokers do not contract
19 with or have an appointment solely with CompSource Oklahoma;

20 3. Invest and reinvest the monies belonging to CompSource
21 Oklahoma as hereinafter provided;

22 4. Conduct all business and affairs, relating to CompSource
23 Oklahoma, whether herein specifically designated or in addition
24 thereto;

1 5. The CompSource Oklahoma President may delegate to any
2 officer of CompSource Oklahoma, under such rules, and subject to
3 such conditions as he or she may from time to time prescribe, any of
4 the powers, functions or duties conferred or imposed on the
5 CompSource Oklahoma President under the provisions of this act in
6 connection with CompSource Oklahoma, the administration, management
7 and conduct of the business or affairs relating thereto, and the
8 officer or officers to whom such delegation is made may exercise the
9 power and functions and perform the duties delegated with the same
10 force and effect as the CompSource Oklahoma President, but subject
11 to his or her approval; and

12 6. The CompSource Board shall not, nor shall the CompSource
13 Oklahoma President or any officer or employee of CompSource Oklahoma
14 be personally liable in his or her private capacity for or on
15 account of any act performed or contract or other obligation entered
16 into or undertaken in an official capacity in good faith and without
17 intent to defraud, in connection with the administration, management
18 or conduct of CompSource Oklahoma, its business or other affairs
19 relating thereto.

20 SECTION 102. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 102 of Title 85A, unless there
22 is created a duplication in numbering, reads as follows:

23 A. In conducting the business and affairs of CompSource
24 Oklahoma, the CompSource Oklahoma President and other officers to

1 | whom such power and authority may be delegated by the CompSource
2 | Board shall have full power and authority:

3 | 1. To enter into contracts of insurance, insuring employers
4 | against liability for compensation, and insuring to employees and
5 | other persons entitled thereto compensation as provided by this act;

6 | 2. To decline to insure any risk in which the minimum
7 | requirements of the law with regard to construction, equipment and
8 | operation are not observed, or which is beyond the safe carrying of
9 | CompSource Oklahoma, but shall not have power or authority, except
10 | as otherwise provided in this act to refuse to insure any
11 | compensation risk tendered with the premium therefor;

12 | 3. To enter into contracts of insurance insuring persons, firms
13 | and corporations against loss, expense or liability by reason of
14 | bodily injury, death by accident, occupational disability, or
15 | occupational disease suffered by employees for which the insured may
16 | be liable or have assumed liability, including, but not limited to,
17 | contracts of insurance or reinsurance for the purpose of insuring
18 | employers operating in this state and their employees who may work
19 | outside this state;

20 | 4. To purchase reinsurance for any risk or any portion of any
21 | risk of CompSource Oklahoma. The purchase of reinsurance may be
22 | made through intermediaries, exclusive of the provisions of The
23 | Oklahoma Central Purchasing Act;

1 5. To inspect and audit, cause to be inspected and audited, or
2 require production of the records of employers insured with or
3 applying for insurance with CompSource Oklahoma against liability
4 for compensation;

5 6. To contract with physicians, surgeons and hospitals for
6 medical and surgical treatment and care of injured persons entitled
7 to benefits under this act;

8 7. To incur reasonable expenses necessary to conduct the
9 business of CompSource Oklahoma; and

10 8. To produce a reasonable surplus to cover catastrophe hazard.

11 B. CompSource Oklahoma shall be funded through actuarially
12 sound rates and premiums charged to its policyholders.

13 C. CompSource Oklahoma shall establish and use rates and rating
14 plans to assure that it is self-funding while those rates are in
15 effect.

16 D. No later than September 1st of each year, CompSource
17 Oklahoma shall obtain an independent actuarial certification of the
18 results of its operations for prior years.

19 E. Any premium or assessments collected by CompSource Oklahoma
20 in excess of the amount necessary to fund its projected ultimate
21 incurred losses and expenses and not paid to policyholders insured
22 under CompSource Oklahoma in conjunction with dividend programs
23 shall be deposited with CompSource Oklahoma.
24

1 F. CompSource Oklahoma losses are the sole and exclusive
2 responsibility of CompSource Oklahoma, and payment for losses shall
3 be funded in accordance with this section and shall not come,
4 directly or indirectly, from insurers or any guaranty association
5 for such insurers, except for reinsurance purchased by CompSource
6 Oklahoma.

7 SECTION 103. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 103 of Title 85A, unless there
9 is created a duplication in numbering, reads as follows:

10 A. All receipts of money, with the exception of investment
11 income, shall be deposited in the CompSource Oklahoma fund with the
12 State Treasury. The CompSource Oklahoma President, subject to the
13 direction of the CompSource Board, shall have the responsibility for
14 the management of the CompSource Oklahoma fund, and may transfer
15 monies used for investment purposes from the CompSource Oklahoma
16 fund in the State Treasury to the custodian bank or trust company of
17 CompSource Oklahoma.

18 B. 1. All benefits, refunds of premiums, dividends, and
19 overpayments shall be paid from CompSource Oklahoma on warrants or
20 vouchers signed by two persons designated by the CompSource Oklahoma
21 President.

22 2. Every check, draft, warrant, or other instrument drawn for
23 the payment of temporary total disability benefits by CompSource
24

1 Oklahoma shall contain on its face in a contrasting color of ink the
2 following:

3 WARNING: It is a felony to knowingly receive money under false
4 pretenses by accepting temporary total disability benefits while
5 working at the same or a similar job. If you are employed or
6 receiving wages, you should consult CompSource Oklahoma or if you
7 are represented by an attorney you should consult your attorney
8 BEFORE presenting this instrument to any other person for payment.

9 3. The CompSource Oklahoma President may transfer monies from
10 the custodian bank or trust company of CompSource Oklahoma to the
11 CompSource Oklahoma fund in the State Treasury for the purposes
12 specified in this section.

13 SECTION 104. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 104 of Title 85A, unless there
15 is created a duplication in numbering, reads as follows:

16 There is hereby created a petty cash fund for the benefit of
17 CompSource Oklahoma. The petty cash fund shall be in the amounts as
18 are determined to be necessary by the Director of the Office of
19 Management and Enterprise Services and the CompSource Oklahoma
20 President. The petty cash fund may be expended only for the payment
21 of emergency purchases and bills and shall be reimbursed from the
22 revolving fund within ten (10) days of filing a claim with the
23 receipts showing the disbursements with the Director of the Office
24 of Management and Enterprise Services. The Director of the Office

1 of Management and Enterprise Services shall prescribe all forms,
2 systems and procedures for administering the petty cash fund.

3 SECTION 105. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 105 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 The CompSource Oklahoma President shall appoint, with the
7 approval of the CompSource Board, assistants, accountants, claim
8 adjusters, and other employees as may be necessary to conduct its
9 business.

10 SECTION 106. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 106 of Title 85A, unless there
12 is created a duplication in numbering, reads as follows:

13 A. 1. Ten percent (10%) of the premiums collected from all
14 persons, firms or corporations insured by CompSource Oklahoma shall
15 be set aside for the creation of surplus until it amounts to Two
16 Hundred Fifty Thousand Dollars (\$250,000.00). After the surplus
17 threshold is met, five percent (5%) of the premiums shall be set
18 aside until, in the judgment of the Insurance Department, the
19 surplus is large enough to cover the catastrophe hazard, and all
20 other unanticipated losses.

21 2. If the ratio of net premium-to-surplus exceeds 1:2 on July 1
22 of any year, the CompSource Board shall, within sixty (60) days,
23 declare a dividend of sufficient size to reduce the ratio of net
24 premium-to-surplus to no more than 1:2. The dividend may be

1 declared in the form of cash, cash equivalents, negotiable
2 instruments, or credits against past, present, or future premiums on
3 or before October 15 next following declaration of the dividend and
4 shall be payable to policyholders having policies in force when the
5 dividend is declared.

6 B. The CompSource Board is hereby vested with authority, in its
7 discretion, to transfer funds from a surplus to other funds of
8 CompSource Oklahoma when deemed necessary or advisable; provided,
9 that in no event shall such surplus be reduced to a sum less than
10 One Hundred Fifty Thousand Dollars (\$150,000.00).

11 C. Reserves shall be established and maintained adequate to
12 meet anticipated losses and to carry all claims and policies to
13 maturity, which reserves shall be computed in accordance with rules
14 adopted by the CompSource Board.

15 SECTION 107. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 107 of Title 85A, unless there
17 is created a duplication in numbering, reads as follows:

18 A. The CompSource Board shall discharge their duties for the
19 exclusive purpose of providing benefit to CompSource Oklahoma and
20 defraying reasonable expenses of administering CompSource Oklahoma
21 by:

22 1. Exercising care, skill, prudence, and diligence;

23 2. Diversifying the investments of CompSource Oklahoma so as to
24 minimize the risk of large losses; and

1 3. Acting in accordance with the laws, documents and
2 instruments governing CompSource Oklahoma.

3 B. The monies of CompSource Oklahoma shall be invested only in
4 assets eligible for the investment of funds of a domestic property
5 and casualty insurance company as provided for in the Oklahoma
6 Insurance Code, Title 36 of the Oklahoma Statutes. The term
7 admitted assets shall mean the amount of the monies of CompSource
8 Oklahoma and the provisions relating to limitation of investments as
9 a percentage of surplus as regards policyholders shall be
10 inapplicable with respect to investment of the monies of CompSource
11 Oklahoma. The monies of CompSource Oklahoma may be invested in
12 certificates of indebtedness or such other enforceable evidences of
13 obligation as may be utilized in the rights-of-way acquisitions by
14 the Department of Transportation. The monies of CompSource Oklahoma
15 may also be invested in bonds secured by first mortgages, pass-
16 through securities and insured participation certificates
17 representing interests in first mortgages or insured mortgage pass-
18 through certificates on one- to four-family residences located
19 within this state. CompSource Oklahoma may enter into agreements
20 with the Multiple Injury Trust Fund to fulfill any payment
21 obligation of the Multiple Injury Trust Fund, including all
22 Commission judgments and court orders for material increases and the
23 accrued interest thereon, and all judgments and orders for interest
24 on previously paid awards.

1 C. The CompSource Oklahoma President, with the approval of the
2 CompSource Board, is authorized to purchase any real estate deemed
3 necessary for the immediate and reasonably anticipated future
4 administrative office space needs of CompSource Oklahoma; and may
5 also sell, lease, rent, or sublet any real estate holdings of
6 CompSource Oklahoma. Any revenues from such transactions shall
7 accrue to the surplus or reserve fund of CompSource Oklahoma.

8 D. The CompSource Board may procure insurance indemnifying the
9 members of CompSource Oklahoma from personal loss or accountability
10 from liability resulting from a member's action or inaction.

11 E. The CompSource Board may establish an investment committee
12 composed of three members of the board appointed by the chair. The
13 committee shall make recommendations to the board on all matters
14 related to the choice of custodians and managers of the assets of
15 CompSource Oklahoma, on the establishment of investment and fund
16 management guidelines, and in planning future investment policy.
17 The committee shall have no authority to act on behalf of the
18 CompSource Board or CompSource Oklahoma in any circumstances
19 whatsoever. No recommendation of the committee shall have effect as
20 an action of the board nor take effect without the approval of the
21 board as provided by law.

22 F. The CompSource Board shall retain qualified investment
23 managers to provide for the investment of the monies of CompSource
24 Oklahoma. The investment managers shall be chosen by a solicitation

1 of proposals on a competitive bid basis pursuant to standards set by
2 the CompSource Board. Subject to the overall investment guidelines
3 set by the CompSource Board, the investment managers shall have full
4 discretion in the management of those monies of CompSource Oklahoma
5 allocated to the investment managers. The CompSource Board shall
6 manage those monies not specifically allocated to the investment
7 managers. The monies of CompSource Oklahoma allocated to the
8 investment managers shall be actively managed by the investment
9 managers, which may include selling investments and realizing losses
10 if such action is considered advantageous to longer term return
11 maximization. Because of the total return objective, no distinction
12 shall be made for management and performance evaluation purposes
13 between realized and unrealized capital gains and losses.

14 G. Funds and revenues for investment by the investment managers
15 or the CompSource Board shall be placed with a custodian selected by
16 the CompSource Board. The custodian shall be a bank or trust
17 company offering master custodial services. The custodian shall be
18 chosen by a solicitation of proposals on a competitive bid basis
19 pursuant to standards set by the CompSource Board. In compliance
20 with the investment policy guidelines of the CompSource Board, the
21 custodian bank or trust company shall be contractually responsible
22 for ensuring that all monies of CompSource Oklahoma are invested in
23 income-producing investment vehicles at all times. If a custodian
24 bank or trust company has not received direction from the investment

1 managers of CompSource Oklahoma as to the investment of the monies
2 in specific investment vehicles, the custodian bank or trust company
3 shall be contractually responsible to the CompSource Board for
4 investing the monies in appropriately collateralized short-term
5 interest-bearing investment vehicles.

6 H. Before August 1 of each year, the CompSource Board shall
7 develop and approve a written investment plan for CompSource
8 Oklahoma.

9 I. The CompSource Oklahoma President shall compile a quarterly
10 financial report of all the funds of CompSource Oklahoma. The
11 report shall be compiled and filed pursuant to uniform reporting
12 standards prescribed by the Insurance Commissioner for domestic
13 property and casualty insurance companies. The report shall include
14 several relevant measures of investment value, including acquisition
15 cost and current fair market value with appropriate summaries of
16 total holdings and returns. The report shall contain combined and
17 individual rate of returns of the investment managers by category of
18 investment, over periods of time. The report shall contain a list
19 of all investments made by CompSource Oklahoma and a list of any
20 commissions, fees or payments made for services regarding such
21 investments for that reporting period. The report shall be
22 distributed to the Governor, the Legislative Service Bureau and the
23 Cash Management and Investment Oversight Commission.

24

1 J. CompSource Oklahoma, on behalf of the Multiple Injury Trust
2 Fund, may enter into an agreement with any reinsurer licensed to
3 sell reinsurance by the State Insurance Commissioner selected
4 pursuant to a competitive process administered by the Director of
5 Central Purchasing in the Office of Management and Enterprise
6 Services.

7 SECTION 108. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 108 of Title 85A, unless there
9 is created a duplication in numbering, reads as follows:

10 A. A fiduciary with respect to CompSource Oklahoma shall not
11 cause it to engage in a transaction if the fiduciary knows or should
12 know that the transaction constitutes a direct or indirect:

13 1. Sale or exchange, or leasing of any property from CompSource
14 Oklahoma to a party in interest for less than adequate consideration
15 or from a party in interest to CompSource Oklahoma for more than
16 adequate consideration;

17 2. Lending of money or other extension of credit from
18 CompSource Oklahoma to a party in interest without the receipt of
19 adequate security and a reasonable rate of interest, or from a party
20 in interest to CompSource Oklahoma with provision of excessive
21 security or an unreasonably high rate of interest;

22 3. Furnishing of goods, services or facilities from CompSource
23 Oklahoma to a party in interest for less than adequate
24

1 consideration, or from a party in interest to CompSource Oklahoma
2 for more than adequate consideration; or

3 4. Transfer to, or use by or for the benefit of, a party in
4 interest of any assets of CompSource Oklahoma for less than adequate
5 consideration.

6 B. A fiduciary with respect to CompSource Oklahoma shall not:

7 1. Deal with the assets of CompSource Oklahoma in the
8 fiduciary's own interest or for the fiduciary's own account;

9 2. In the fiduciary's individual or any other capacity act in
10 any transaction involving CompSource Oklahoma on behalf of a party
11 whose interests are adverse to the interests of CompSource Oklahoma
12 or the interests of its participants or beneficiaries; or

13 3. Receive any consideration for the fiduciary's own personal
14 account from any party dealing with CompSource Oklahoma in
15 connection with a transaction involving the assets of CompSource
16 Oklahoma.

17 C. A fiduciary with respect to CompSource Oklahoma may:

18 1. Invest all or part of the assets of CompSource Oklahoma in
19 deposits which bear a reasonable interest rate in a bank or similar
20 financial institution supervised by the United States or a state, if
21 the bank or other institution is a fiduciary of such plan; or

22 2. Provide any ancillary service by a bank or similar financial
23 institution supervised by the United States or a state, if such bank
24 or other institution is a fiduciary of the plan.

1 D. A person or a financial institution is a fiduciary with
2 respect to CompSource Oklahoma to the extent that the person or the
3 financial institution:

4 1. Exercises any discretionary authority or discretionary
5 control respecting management of CompSource Oklahoma or exercises
6 any authority or control respecting management or disposition of the
7 assets of CompSource Oklahoma;

8 2. Renders investment advice for a fee or other compensation,
9 direct or indirect, with respect to any monies or other property of
10 CompSource Oklahoma, or has any authority or responsibility to do
11 so; or

12 3. Has any discretionary authority or discretionary
13 responsibility in the administration of CompSource Oklahoma.

14 SECTION 109. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 109 of Title 85A, unless there
16 is created a duplication in numbering, reads as follows:

17 A. The expenses of administering "CompSource Oklahoma" shall be
18 paid out of the fund on warrants issued by the State Treasurer
19 against claims filed as prescribed by law with the Director of the
20 Office of Management and Enterprise Services for approval and
21 payment. On or before June 1 of each year, or as soon thereafter as
22 possible, there shall be submitted to the CompSource Board for
23 approval, an estimated budget of expenses for the succeeding fiscal
24 year. The CompSource Oklahoma President may not spend funds

1 belonging to CompSource Oklahoma for purposes of administering any
2 sum in excess of the amount specified in such budget for any item of
3 expense therein set forth unless the expenditure is authorized by
4 the CompSource Board. The expenses of CompSource Oklahoma for any
5 year, including salaries and wages of its employees, may not exceed
6 twenty percent (20%) of the earned premiums of that year. The
7 CompSource Board may use present value discounting at a rate of four
8 percent (4%) for computing reserves. The CompSource Board shall
9 hire an independent certified public accountant to audit the books
10 of account and financial records of CompSource Oklahoma for each
11 fiscal year. No later than ninety (90) days after the end of the
12 fiscal year, the accountant shall file an audit report with the
13 Director of the Office of Management and Enterprise Services in
14 accordance with the requirements set forth for financial statement
15 audits in Section 212A of Title 74 of the Oklahoma Statutes.

16 B. CompSource Oklahoma shall submit to the Insurance
17 Commissioner an annual financial statement in the same manner as a
18 domestic insurance carrier. The Insurance Commissioner may audit
19 CompSource Oklahoma in the same manner as a domestic insurance
20 company if an audit does not conflict with any specific provision
21 contained herein. The CompSource Oklahoma President shall provide a
22 copy of the annual financial statement to the Governor and the
23 CompSource Board.

1 SECTION 110. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 110 of Title 85A, unless there
3 is created a duplication in numbering, reads as follows:

4 The CompSource Oklahoma President shall keep an account of the
5 money paid in premiums by each classification of persons, firms, or
6 corporations insured by CompSource Oklahoma, and the expense of
7 administering CompSource Oklahoma and the disbursements on account
8 of loss, expense or liability by reason of bodily injury, death by
9 accident, occupational disability, or occupational disease for which
10 CompSource Oklahoma was liable under this act, including the setting
11 up of reserves adequate to meet unanticipated and unexpected losses
12 and to carry the claims to maturity; and, also, an account of the
13 money received from such individual insured; and of the amount
14 disbursed from "CompSource Oklahoma", for expenses, and on account
15 of injuries, death by accident, sickness or disease, and disability
16 of persons to whom such insured was liable or had assumed liability,
17 including the reserves set up.

18 SECTION 111. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 111 of Title 85A, unless there
20 is created a duplication in numbering, reads as follows:

21 A. Premiums for any policy period shall be paid into CompSource
22 Oklahoma and adjusted according to the contract of insurance. If
23 the adjusted premium is more than the premium paid at the beginning
24 of the period, the employer shall pay the difference immediately on

1 notification of the amount of premium due. If such adjusted premium
2 is less than the premium paid at the beginning of the period, the
3 employer shall at the employer's option receive either refund of the
4 difference or a credit of the amount thereof on the employer's
5 account with CompSource Oklahoma.

6 B. Every person or entity insured by CompSource Oklahoma shall
7 receive a contract or policy of insurance to be approved by the
8 Insurance Department.

9 C. CompSource Oklahoma, in cooperation with the Department of
10 Labor, shall develop and implement an insurance premium credit
11 program for the insureds of CompSource Oklahoma which is consistent
12 with the provisions of this act.

13 SECTION 112. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 112 of Title 85A, unless there
15 is created a duplication in numbering, reads as follows:

16 If any persons, firm or corporation insured by CompSource
17 Oklahoma does not timely pay the premium due after notice and
18 reasonable opportunity to cure, CompSource Oklahoma may cancel the
19 policy and pursue a civil action against the insured for the monies
20 owed.

21 SECTION 113. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 113 of Title 85A, unless there
23 is created a duplication in numbering, reads as follows:

24

1 Every person or entity who is insured by CompSource Oklahoma
2 shall keep a true and accurate record of the number of employees and
3 the wages paid and shall furnish on demand a sworn statement of the
4 same. The record shall be open to inspection at any time, and as
5 often as may be necessary to verify the number of employees and the
6 amount of the payroll. Any person, firm, or corporation who shall
7 willfully fail to keep the required records or who shall willfully
8 falsify any such record, shall be guilty of a felony and subject to
9 a maximum fine of Ten Thousand Dollars (\$10,000.00).

10 SECTION 114. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 114 of Title 85A, unless there
12 is created a duplication in numbering, reads as follows:

13 Any person who intentionally misrepresents any fact in order to
14 obtain insurance with CompSource Oklahoma at less than the proper
15 rate shall be guilty of a felony and subject to fine not to exceed
16 Ten Thousand Dollars (\$10,000.00).

17 SECTION 115. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 115 of Title 85A, unless there
19 is created a duplication in numbering, reads as follows:

20 A. Information acquired by the CompSource Oklahoma from persons
21 or entities insured by CompSource Oklahoma shall not be open to
22 public inspection, and any officer or employee of the State of
23 Oklahoma, who without authority of the Commission or as otherwise
24 required by law, discloses the same, shall be guilty of a

1 misdemeanor and subject to a fine not to exceed Five Thousand
2 Dollars (\$5,000.00).

3 B. CompSource Oklahoma shall provide to the Commissioner of
4 Labor annually a listing of the insureds of CompSource Oklahoma with
5 the name, address and nature of business or occupation of the
6 insured.

7 SECTION 116. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 116 of Title 85A, unless there
9 is created a duplication in numbering, reads as follows:

10 A. CompSource Oklahoma shall, annually, on or before March 1st,
11 report under oath of the President of CompSource Oklahoma to the
12 State Treasurer, the total amount of direct written premiums and
13 membership, application, policy and registration fees charged by
14 CompSource Oklahoma during the preceding calendar year for insurance
15 covering one or more of the following:

16 1. Insuring employers against liability for compensation under
17 this act;

18 2. Insuring persons and entities against loss, expense or
19 liability by reason of bodily injury, death by accident,
20 occupational disability, or occupational disease suffered by
21 employees, for which the insured may be liable or have assumed
22 liability; and

23 3. Insuring employers against liability incurred as the result
24 of injuries sustained by employees engaged in employment subject to

1 the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.,
2 Section 901 et seq., or employees engaged in employment subject to
3 Title IV of the Federal Coal Mine Health and Safety Act of 1969 as
4 amended by the Black Lung Benefits Act of 1972, as enacted or as may
5 be amended by the Congress of the United States.

6 B. CompSource Oklahoma, at the time the report required by
7 subsection A of this section is filed, shall pay to the State
8 Treasury to the credit of the General Revenue Fund, an annual market
9 equalization assessment on all of the direct written premiums after
10 all returned premiums are deducted, on all membership, application,
11 policy and registration fees, and installment and finance fees or
12 charges collected by CompSource Oklahoma, relating to written,
13 continued and serviced insurance for purposes listed in subsection A
14 of this section; provided, no deduction shall be made from premiums
15 for dividends paid to policyholders. The rate of assessment shall
16 be two and one-fourth percent (2.25%). If CompSource Oklahoma fails
17 to remit the assessments in a timely manner, it shall remain liable
18 therefor together with interest thereon at an annual rate equal to
19 the average United States Treasury Bill rate of the preceding
20 calendar year as certified by the State Treasurer on the first
21 regular business day in January of each year, plus four (4)
22 percentage points.

1 SECTION 117. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 117 of Title 85A, unless there
3 is created a duplication in numbering, reads as follows:

4 No member or personnel of the Commission, the Self-insurance
5 Guaranty Fund Board, or administrative law judge shall be liable in
6 a civil proceeding for any act performed in good faith in the
7 performance of that person's powers or duties under this act.

8 SECTION 118. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 118 of Title 85A, unless there
10 is created a duplication in numbering, reads as follows:

11 A. The Workers' Compensation Court shall be renamed the
12 Workers' Compensation Court of Existing Claims for the purpose of
13 hearing disputes relating to claims that arise before January 1,
14 2014. The Court shall consist of four judges appointed by the
15 Governor to serve a four-year term.

16 B. Effective January 1, 2014, all existing positions of the
17 Workers' Compensation Court shall become vacant. No later than
18 February 1, 2014, the Governor shall appoint four judges from the
19 current judges appointed to the Workers' Compensation Court or from
20 a list of nominees provided by the Judicial Nominating Commission.
21 The Judicial Nominating Commission shall submit twelve (12) nominees
22 to the Governor, each of whom has previously notified the Commission
23 in writing that he or she shall serve as a judge if appointed. Each
24 nominee shall have been licensed to practice law in this state for a

1 period of not less than five (5) years and shall have not less than
2 five (5) years of workers' compensation experience prior to the
3 appointment.

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

8 D. The Court of Existing Claims is designated and confirmed as
9 a court of record, with respect to any matter within the limits of
10 its jurisdiction for all workers' compensation claims for which the
11 date of injury occurred prior to January 1, 2014, and within the
12 limits are the powers and prerogatives of the judges of the other
13 courts of record of this state, including the power to punish for
14 contempt those persons who disobey a subpoena, or refuse to be sworn
15 or to answer as a witness, when lawfully ordered to do so.

16 E. The principal office of the Court of Existing Claims shall
17 be situated in Oklahoma City in quarters assigned by the Office of
18 Management and Enterprise Services. The Court of Existing Claims
19 may hold hearings in Oklahoma City or Tulsa. The county
20 commissioners and presiding district judges in Oklahoma City and
21 Tulsa shall make quarters available for the conducting of hearings
22 by a judge of the Court of Existing Claims on request.

23 F. The Court shall be vested with jurisdiction over all claims
24 filed before January 1, 2014. The claims shall be heard by the

1 judge sitting without a jury in accordance with the laws and rules
2 existing under Title 85 of the Oklahoma Statutes at the time of the
3 injury. The Court, on application of either party, shall order a
4 hearing.

5 G. Any appeal of an order by the Court of Existing Claims shall
6 be heard by the Commission en banc. The Commission shall review the
7 decision using an abuse of discretion standard of review. Orders by
8 the Commission may be appealed in accordance with Section 75 of this
9 act.

10 H. If there are any open claims with the Court of Existing
11 Claims as of November 1, 2017, they shall be sent to the district
12 courts of Oklahoma or Tulsa counties for hearing without a jury and
13 final order in accordance with the laws existing under Title 85 of
14 the Oklahoma Statutes at the time of the injury.

15 I. All monies due to the Workers' Compensation Court shall be
16 transferred to the Court of Existing Claims until November 1, 2017,
17 at which time the remaining balance shall transfer to the
18 Administrative Office of the Courts for apportionment to Oklahoma
19 and Tulsa county district courts based upon the remaining cases sent
20 to each court. The Administrative Office of the Courts shall
21 reapportion the money annually based upon the remaining open cases
22 in either county.

SECTION 119. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 119 of Title 85A, unless there is created a duplication in numbering, reads as follows:

The provisions of the Administrative Workers' Compensation Act shall be strictly construed by the Workers' Compensation Commission and any appellate court reviewing a decision of the Workers' Compensation Commission.

SECTION 120. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 200 of Title 85A, unless there is created a duplication in numbering, reads as follows:

Sections 120 through 133 of this act shall be known and may be cited as the "Oklahoma Employee Injury Benefit Act".

SECTION 121. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 201 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. As used in the Oklahoma Employee Injury Benefit Act:

1. "Benefit plan" means a plan established by a qualified employer under the requirements of Section 123 of this act;

2. "Bona fide association" means an association that:

a. has been formed and maintained in good faith for purposes other than obtaining insurance, and

b. does not make insurance described in this act and offered through the bona fide association available

1 other than in connection with a member of the bona
2 fide association;

3 3. "Commission" means the Workers' Compensation Commission
4 under the Administrative Workers' Compensation Act;

5 4. "Commissioner" means the Insurance Commissioner of the State
6 of Oklahoma;

7 5. "Covered employee" means an employee whose employment with a
8 qualified employer is principally located within the state;

9 6. "Employee" means any person engaged in the employment of an
10 employer and receives his or her pay by means of a salary, wage, or
11 commission directly from the employer and for whom an employer files
12 a Form W-2 with the Internal Revenue Service. "Employee" does not
13 include an independent contractor or third-party agent;

14 7. "Employer", except when otherwise expressly stated, means a
15 person, partnership, association, limited liability company,
16 corporation, and the legal representatives of a deceased employer,
17 or the receiver or trustee of a person, partnership, association,
18 corporation, or limited liability company, employing a person
19 included within the term employee as defined in this act;

20 8. "Occupational injury" means an injury, including death, or
21 occupational illness, causing internal or external harm to the body,
22 which arises out of and in the course of employment;

23 9. "Qualified employer" means an employer otherwise subject to
24 the Administrative Workers' Compensation Act that voluntarily elects

1 to be exempt from such Act by satisfying the requirements under this
2 act; and

3 10. "Surviving spouse" means a spouse who was married to the
4 deceased covered employee at the time of the employee's death.

5 B. Unless otherwise defined in this section, defined terms in
6 the Administrative Workers' Compensation Act shall have the same
7 meaning in this act.

8 SECTION 122. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 202 of Title 85A, unless there
10 is created a duplication in numbering, reads as follows:

11 A. Any employer may voluntarily elect to be exempt from the
12 Administrative Workers' Compensation Act and become a qualified
13 employer if the employer:

14 1. Is in compliance with the notice requirements in subsections
15 B and H of this section; and

16 2. Has established a written benefit plan as described in
17 Section 123 of this act.

18 B. An employer that has elected to become a qualified employer
19 by satisfying the requirements of this section shall notify the
20 Commissioner in writing of the election and the date that the
21 election is to become effective, which may not be sooner than the
22 date that the qualified employer satisfies the employee notice
23 requirements in this section. Such qualified employer shall pay to
24 the Commissioner an annual nonrefundable fee of One Thousand Five

1 Hundred Dollars (\$1,500.00) on the date of filing written notice and
2 every year thereafter which shall be deposited in the Workers'
3 Compensation Fund.

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

17 D. Except as otherwise expressly provided in this act, neither
18 the Commission, the courts of this state, or any state
19 administrative agencies shall not promulgate rules or any procedures
20 related to design, documentation, implementation, administration or
21 funding of a qualified employer's benefit plan.

22 E. The Commissioner may designate an information collection
23 agent, implement an electronic reporting and public information
24

1 access program, and adopt rules as necessary to implement the
2 information collection requirements of this section.

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

13 G. The Commissioner may contract with the Oklahoma Employment
14 Security Commission, the State Treasurer or the Department of Labor
15 for assistance in collecting the notification required under this
16 section or otherwise fulfilling the Commissioner's responsibilities
17 under this act. Such agencies shall cooperate with the Commissioner
18 in enforcing the provisions of this section.

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

23 I. A bona fide association may, through such insurance carriers
24 and products approved by the Commissioner, offer benefit plans and

1 insurance coverage described in this act to a particular trade,
2 business, profession or industry or their subsidiaries.

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

12 SECTION 123. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 203 of Title 85A, unless there
14 is created a duplication in numbering, reads as follows:

15 A. An employer voluntarily electing to become a qualified
16 employer shall adopt a written benefit plan that complies with the
17 requirements of this section. Qualified-employer status is optional
18 for eligible employers. The benefit plan shall not become effective
19 until the date that the qualified employer first satisfies the
20 notice requirements in Section 122 of this act.

21 B. The benefit plan shall provide for payment of the same forms
22 of benefits included in the Administrative Workers' Compensation Act
23 for temporary total disability, temporary partial disability,
24 permanent partial disability, vocational rehabilitation, permanent

1 total disability, disfigurement, amputation or permanent total loss
2 of use of a scheduled member, death and medical benefits as a result
3 of an occupational injury, on a no-fault basis, with dollar,
4 percentage, and duration limits that are at least equal to or
5 greater than the dollar, percentage, and duration limits contained
6 in Sections 41, 42, 43, 47, 55 and 56 of this act. For this
7 purpose, the standards for determination of average weekly wage,
8 death beneficiaries, and disability under the Administrative
9 Workers' Compensation Act shall apply under the Oklahoma Employee
10 Injury Benefit Act; but no other provision of the Administrative
11 Workers' Compensation Act defining covered injuries, medical
12 management, dispute resolution or other process, funding, notices or
13 penalties shall apply or otherwise be controlling under the Oklahoma
14 Employee Injury Benefit Act, unless expressly incorporated.

15 C. The benefit plan may provide for lump sum payouts that are,
16 as reasonably determined by the administrator of such plan appointed
17 by the qualified employer, actuarially equivalent to expected future
18 payments. The benefit plan may also provide for settlement
19 agreements; provided, however, any settlement agreement by a covered
20 employee shall be voluntary, entered into not earlier than the tenth
21 business day after the date of the initial report of injury, and
22 signed after the covered employee has received a medical evaluation
23 from a nonemergency care doctor, with any waiver of rights being
24 conspicuous and on the face of the agreement. The benefit plan may

1 specify conditions and limitations on benefits, including but not
2 limited to additional criteria for covered and noncovered injuries
3 and medical charges, and continuation, suspension and termination of
4 benefits; provided, however, the benefit plan shall pay benefits
5 without regard to whether the covered employee, the qualified
6 employer, or a third party caused the occupational injury; and,
7 provided further, that the benefit plan shall provide eligibility to
8 participate in and provide the same forms and levels of benefits to
9 all Oklahoma employees of the qualified employer. The
10 Administrative Workers' Compensation Act shall not define, restrict,
11 expand or otherwise apply to a benefit plan.

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

14 E. The qualified employer shall provide to the Commissioner and
15 covered employees notice of the name, title, address, and telephone
16 number for the person to contact for injury benefit claims
17 administration, whether in-house at the qualified employer or a
18 third-party administrator.

19 SECTION 124. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 204 of Title 85A, unless there
21 is created a duplication in numbering, reads as follows:

22 A. A qualified employer may self-fund or insure benefits
23 payable under the benefit plan, employers' liability under this act,
24 and any other insurable risk related to its status as a qualified

1 employer with any insurance carrier authorized to do business in
2 this state.

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

9 1. Obtaining accidental insurance coverage in an amount of at
10 least Two Million Dollars (\$2,000,000.00) per occurrence, with
11 sublimits in at least the following amounts:

12 a. Five Hundred Thousand Dollars (\$500,000.00) per person
13 for medical expenses and coverage for at least one
14 hundred four (104) weeks,

15 b. the lesser of seventy percent (70%) of the covered
16 employee's average weekly wage and the state average
17 weekly wage for not less than one hundred four (104)
18 weeks of wage replacement for inability to work, and

19 c. Two Hundred Thousand Dollars (\$200,000.00) per person
20 for accidental death;

21 2. Furnishing satisfactory proof to the Commissioner of the
22 employer's financial ability to pay the compensation. The
23 Commissioner, under rules adopted by the Insurance Department or the
24

1 Commissioner for an individual self-insured employer, shall require
2 an employer that has:

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

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

11 (2) provide proof of excess coverage with such terms
12 and conditions as is commensurate with their
13 ability to pay the benefits required by the
14 provisions of this act,

15 b. one hundred or more employees and One Million Dollars
16 (\$1,000,000.00) or more in net assets to:

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

22 (2) provide proof of excess coverage with such terms
23 and conditions as is commensurate with their
24

1 ability to pay the benefits required by the
2 provisions of this act; or

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

4 C. The Commissioner may waive the requirements of this section
5 in an amount which is commensurate with the ability of the employer
6 to pay the benefits required by the provisions of this act.

7 Irrevocable letters of credit required by this section shall contain
8 such terms as may be prescribed by the Commissioner and shall be
9 issued for the benefit of the state by a financial institution whose
10 deposits are insured by the Federal Deposit Insurance Corporation;

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

18 E. Any bond shall be filed and held by the Commissioner and
19 shall be for the exclusive benefit of any covered employee of a
20 qualified employer;

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

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

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

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

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

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

21 I. The benefit plan shall provide some level of benefits for
22 sickness, injury or death not due to an occupational injury.

23 J. A qualified employer shall hold harmless any insurance agent
24 or broker who sold the employer a benefits program compliant with

1 the Oklahoma Employee Injury Benefit Act if the qualified employer
2 is sued in district court for an injury arising in the course and
3 scope of employment.

4 SECTION 125. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 205 of Title 85A, unless there
6 is created a duplication in numbering, reads as follows:

7 A. There is established on the books of the Treasurer, Auditor,
8 and Comptroller of Oklahoma two separate funds:

9 1. The Oklahoma Option Insured Guaranty Fund; and

10 2. The Oklahoma Option Self-insured Guaranty Fund.

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

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

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

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

14 1. Insured Guaranty Fund:

- 15 a. until the Insured Guaranty Fund contains Two Million
16 Dollars (\$2,000,000.00) or if the amount in the fund
17 falls below One Million Dollars (\$1,000,000.00), each
18 insurer shall be assessed a fee equal to two percent
19 (2%) of all gross direct premiums written during each
20 quarter of the calendar year for insurance covering a
21 benefit plan under this act after deducting from such
22 gross direct premiums, return premiums, unabsorbed
23 portions of any deposit premiums, policy dividends,
24 safety refunds, savings and other similar returns paid

1 or credited to policyholders. The assessment shall be
2 paid to the Insured Guaranty Fund, care of the
3 Insurance Department, no later than the fifteenth day
4 of the month following the close of each quarter of
5 the calendar year in which the gross direct premium is
6 collected or collectible. No insurer may be assessed
7 in any year an amount greater than two percent (2%) of
8 the net direct written premiums of that insurer or one
9 percent (1%) of that surplus of the insurer as regards
10 policyholders for the calendar year preceding the
11 assessment on the kinds of insurance in the account,
12 whichever is less.

13 2. Self-insured Guaranty Fund:

14 a. until the Self-insured Guaranty Fund contains One
15 Million Dollars (\$1,000,000.00) or if the amount in
16 the fund falls below Seven Hundred Fifty Thousand
17 Dollars (\$750,000.00), each self-insurer shall be
18 assessed a fee at the rate of one percent (1%) of the
19 total compensation for permanent partial impairment
20 awards paid out during each quarter of the calendar
21 year by the employers. The fee shall be paid to the
22 Self-insured Guaranty Fund, care of the Insurance
23 Department, no later than the fifteenth day of the
24 month following the close of each quarter of the

1 calendar year. The fee shall be determined using a
2 rate equal to the proportion that the deficiency in
3 the fund attributable to self-insurers bears to the
4 actual paid losses of all self-insurers for the
5 preceding calendar year. Each self-insurer shall
6 provide the Insurance Department with the information
7 necessary to determine the amount of the fee to be
8 assessed.

9 E. The Guaranty Association shall create a separate account for
10 each Fund which may not be co-mingled with any other account managed
11 by the Guaranty Association.

12 F. On determination by the Insurance Department that a self-
13 insurer has become an impaired insurer, the Commissioner shall
14 release the security required by paragraph 2 of subsection B of
15 Section 124 of this act and advise the Guaranty Association of the
16 impairment. Claims administration, including processing,
17 investigating and paying valid claims against an impaired self-
18 insurer under this act, may include payment by the surety that
19 issued the surety bond or be under a contract between the
20 Commissioner and an insurance carrier, appropriate state
21 governmental entity or an approved service organization, as approved
22 by the Insurance Department.

23 G. The Guaranty Association shall be a party in interest in all
24 proceedings involving any claims for benefits under this act with

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

- 6 1. Appear, defend and appeal claims;
- 7 2. Receive notice of, investigate, adjust, compromise, settle
8 and pay claims; and
- 9 3. Investigate, handle and contest claims.

10 B. The Guaranty Association may also:

- 11 1. Retain persons necessary to handle claims and perform other
12 duties of the Guaranty Association;
- 13 2. Sue or be sued;
- 14 3. Negotiate and become a party to such contracts as are
15 necessary to carry out the purposes of this act; and
- 16 4. Exercise any other powers necessary to perform its duties
17 under this act as prescribed by the Insurance Department.

18 F. No moneys deposited to the Funds shall be subject to any
19 deduction, tax, levy or any other type of assessment.

20 G. An impaired self-insurer shall be exempt from assessments
21 until it is no longer impaired.

22 H. Unless provided otherwise in this act, all fines and
23 penalties assessed under this act shall be paid to the Insurance
24

1 Department for deposit into the Funds established in this section in
2 equal amounts.

3 SECTION 126. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 206 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 A. In addition to the premium or surplus lines taxes collected
7 from carriers, the carriers shall pay annually to the Insurance
8 Department a fee, at the rate to be determined as provided in
9 Section 128 of this act but not to exceed three percent (3%), on all
10 written premiums resulting from the writing of insurance under this
11 act on risks within the state.

12 B. The fee required pursuant to subsection A of this section
13 shall be collected by the Commissioner from the carriers at the same
14 time and in the same manner as insurance premium taxes under Title
15 36 of the Oklahoma Statutes and deposited into the Oklahoma Option
16 Insured Guaranty Fund.

17 C. 1. Assessments on which premium taxes are based shall be
18 made on forms prescribed by the Commissioner and shall be paid to
19 the Insurance Department.

20 2. Absent a waiver obtained from the Insurance Department for
21 good cause, the failure of the carrier to pay the assessment when
22 due shall be referred to the Commissioner for appropriate
23 administrative action against the Oklahoma certificate of authority
24 of the delinquent insurer.

1 D. Payments shall be made by check payable to the Insurance
2 Department.

3 SECTION 127. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 207 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 A. It shall be the duty of the Insurance Department to collect
7 a fee from every self-insured employer at a rate to be determined as
8 provided by Section 128 of this act but not to exceed three percent
9 (3%) of the written premium which would have to be paid under
10 Section 126 of this act by a carrier if the self-insured employer
11 were insured by a carrier.

12 B. If the fee provided for under this section is not paid
13 within thirty (30) days of the date provided in Section 128 of this
14 act, there shall be assessed a penalty for each thirty (30) days the
15 amount so assessed remains unpaid which is equal to ten percent
16 (10%) of the unpaid amounts and which shall be collected at the same
17 time as a part of the fee assessed.

18 SECTION 128. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 208 of Title 85A, unless there
20 is created a duplication in numbering, reads as follows:

21 A. 1. The Insurance Department, on or before December 31 of
22 each year, shall determine the surplus, if any, in the Oklahoma
23 Option Insured Guaranty Fund, together with the additional amounts
24 necessary to properly administer this act for the ensuing year.

1 2. The Insurance Department shall determine the rate of
2 assessment for collections for that year on or before March 1 of the
3 following year.

4 B. 1. The Commission shall notify each insurance carrier of
5 the rate of assessment applicable to the Oklahoma Option Insured
6 Guaranty Fund for the preceding year, and fees shall be computed and
7 paid under the provisions of subsection B of Section 126 of this act
8 on or before April 1 of the following year.

9 2. The Commission shall notify each self-insured employer
10 subject to the fee of the rate of assessment applicable to the
11 Oklahoma Option Self-insured Fund for the preceding year, and fees
12 shall be computed by the Insurance Department and paid to the
13 Oklahoma Option Self-insured Guaranty Fund by the self-insurer
14 through payments made directly to the Insurance Department on or
15 before April 1 of the following year.

16 C. The Insurance Department shall have the authority to
17 promulgate rules for administration of the assessment and fee
18 collection process, including, but not limited to, rules applicable
19 to the funds established in Section 125 of this act.

20 SECTION 129. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 209 of Title 85A, unless there
22 is created a duplication in numbering, reads as follows:

23 A. A qualified employer's liability under the benefit plan and
24 otherwise prescribed in this act shall be exclusive and in place of

1 all other liability of the qualified employer and any of its
2 employees at common law or otherwise, for a covered employee's
3 occupational injury or loss of services, to the covered employee, or
4 the spouse, personal representative, parents, or dependents of the
5 covered employee, or any other person. The exclusive remedy
6 protections provided by this subsection shall be as broad as the
7 exclusive remedy protections of Section 5 of this act, and thus
8 preclude a covered employee's claim against a qualified employer,
9 its employees, and insurer for negligence or other causes of action.

10 B. Except as otherwise provided by its benefit plan, or
11 applicable federal law, a qualified employer is only subject to
12 liability in any action brought by a covered employee or his or her
13 dependent family members for injury resulting from an occupational
14 injury if the injury is the result of an intentional tort on the
15 part of the qualified employer. An intentional tort shall exist
16 only when the covered employee is injured because of willful,
17 deliberate, specific intent of the qualified employer to cause such
18 injury. Allegations or proof that the qualified employer had
19 knowledge that such injury was substantially certain to result from
20 its conduct shall not constitute an intentional tort. The issue of
21 whether an act is an intentional tort shall be a question of law for
22 the court or the duly appointed arbitrator, as applicable.

23 C. If an employee tests positive for intoxication, use of an
24 illegal controlled substance, or a legal controlled substance that

1 is used in contravention with a treating physician's orders within
2 twenty-four (24) hours of being injured or reporting an injury, he
3 or she shall not be eligible to receive benefits under a qualified
4 employer's benefit plan.

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

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

14 F. Enforcement of a limitation on available causes of action,
15 damages, or attorney fees with respect to a covered employee against
16 a qualified employer in accordance with this act shall not be an
17 appealable error.

18 SECTION 130. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 210 of Title 85A, unless there
20 is created a duplication in numbering, reads as follows:

21 A. A qualified employer or its insurers or other payment
22 sources shall be responsible for:

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

1 2. Any damage awarded against the qualified employer for
2 intentional tort under Section 129 of this act, including any pre-
3 and post-judgment interest on the award and reasonable court costs
4 as may be lawfully awarded in the action; and

5 3. Reasonable attorney fees awarded against a qualified
6 employer under Section 129 of this act; provided, however, that an
7 employee's attorney fees that are contingent on a recovery under the
8 terms of the benefit plan shall be payable by a qualified employer
9 as part of and not in addition to such recovery. An award of
10 attorney fees in favor of a covered employee against a qualified
11 employer on a claim for intentional tort, excluding death, shall be
12 limited to no more than twenty percent (20%) of any lost earnings
13 awarded to the covered employee or his or her spouse, personal
14 representative, parents, or dependents of the covered employee under
15 the benefit plan and such award. Nothing in this paragraph shall be
16 construed to restrict an award of fees and costs made under federal
17 law.

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

20 SECTION 131. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 211 of Title 85A, unless there
22 is created a duplication in numbering, reads as follows:

23 A. If an employer denies a covered employee's claim for
24 benefits under this act, it shall notify him or her in writing of

1 the decision within fifteen (15) days of receiving notice of the
2 injury. The adverse benefit determination letter shall contain an
3 explanation of why the claim was denied, including the plan
4 provisions that were the basis for the denial, and a detailed
5 description of how to appeal the determination.

6 B. The benefit plan shall provide the following minimum appeal
7 rights:

8 1. The appeal shall be heard by a committee consisting of at
9 least three people that were not involved in the original adverse
10 benefit determination;

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

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

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

20 5. If any part of an adverse benefit determination is upheld by
21 the committee, the covered employee may then file a petition for
22 review in a proper state or federal district court; and
23
24

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

4 C. The provisions of this section shall apply to the extent not
5 inconsistent with or preempted by any other applicable law or
6 regulation.

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

11 SECTION 132. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 212 of Title 85A, unless there
13 is created a duplication in numbering, reads as follows:

14 This act shall be liberally construed to give the fullest effect
15 of its provisions. Any conflict between this act and any other law
16 shall be resolved in favor of the operation of this act.

17 SECTION 133. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 213 of Title 85A, unless there
19 is created a duplication in numbering, reads as follows:

20 A. In any action brought to challenge, in whole or in part, the
21 constitutionality of this act, any party to such action may take a
22 direct appeal from the decision of any lower court to the Supreme
23 Court and the Supreme Court shall retain the appeal. The Supreme
24 Court on an expedited basis shall consider any such appeal.

1 B. To the extent this act, or any part thereof, is declared to
2 be unconstitutional or unenforceable, it is specifically intended
3 that:

4 1. For partial invalidity of this act, where any section of
5 this act is ruled to be unconstitutional or invalid, the same shall
6 not affect the validity of this act as a whole, or any part thereof
7 other than the part so decided to be unconstitutional or invalid;

8 2. Any employer that became a qualified employer under this act
9 shall not be deemed to have failed to secure workers' compensation
10 insurance;

11 3. The rights and obligations of a qualified employer and its
12 employees shall be subject to the exclusive remedy provisions of
13 Section 5 of this act and an employer that becomes a qualified
14 employer under this act shall be liable for injury to employees only
15 to the extent to which an employer that complied with the provisions
16 of the Administrative Workers' Compensation Act would be liable to
17 employees in compensation for such injuries under the Administrative
18 Workers' Compensation Act; and

19 4. A qualified employer shall have ninety (90) days from any
20 final decision declaring this act or any part thereof
21 unconstitutional to secure compliance with the Administrative
22 Workers' Compensation Act.

1 SECTION 134. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 220 of Title 85A, unless there
3 is created a duplication in numbering, reads as follows:

4 Sections 134 through 162 of this act shall be known and may be
5 cited as the "Workers' Compensation Arbitration Act".

6 SECTION 135. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 221 of Title 85A, unless there
8 is created a duplication in numbering, reads as follows:

9 All agreements to arbitrate claims for injuries covered by the
10 Administrative Workers' Compensation Act shall be valid and
11 enforceable in this state when:

12 1. The employer provides notice of the existence of an
13 agreement to arbitrate to both the employee and the employer's
14 workers' compensation insurance provider; and

15 2. The employer files an alternative dispute resolution program
16 with the Commission, as defined in the Administrative Workers'
17 Compensation Act;

18 3. The employers' Certified Medical Plan files an alternative
19 dispute resolution program with the Commission, as defined in the
20 Administrative Workers' Compensation Act; or

21 4. The agreement is subject to the Federal Arbitration Act.

22 SECTION 136. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 222 of Title 85A, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Except as otherwise provided in the Workers' Compensation
2 Arbitration Act, a person gives notice to another person by taking
3 action that is reasonably necessary to inform the other person in
4 ordinary course, whether or not the other person acquires knowledge
5 of the notice.

6 B. A person has notice if the person has knowledge of the
7 notice or has received notice.

8 C. A person shall be deemed to have received notice when it
9 comes to the person's attention or the notice is delivered at the
10 person's place of residence or place of business, or at another
11 location held out by the person as a place of delivery of the
12 communications.

13 SECTION 137. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 223 of Title 85A, unless there
15 is created a duplication in numbering, reads as follows:

16 The Workers' Compensation Arbitration Act governs an agreement
17 to arbitrate made on or after January 1, 2014. The Workers'
18 Compensation Arbitration Act governs an agreement to arbitrate made
19 before January 1, 2014, if all the parties to the agreement or to
20 the arbitration proceeding agree in writing.

21 SECTION 138. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 224 of Title 85A, unless there
23 is created a duplication in numbering, reads as follows:

1 A. Except as otherwise provided in subsections B and C of this
2 section and in the laws of this state outside of this act, a party
3 to an agreement to arbitrate or to an arbitration proceeding may
4 waive, or the parties may vary the effect of, the requirements of
5 this act to the extent permitted by law.

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

8 1. Waive or agree to vary the effect of the requirements of
9 subsection A of Section 139, subsection A of Section 140, Section
10 141, subsections A or B of Section 151, Section 160 or Section 162
11 of this act;

12 2. Agree to unreasonably restrict the right to notice of the
13 initiation of an arbitration proceeding under Section 143 of this
14 act;

15 3. Agree to unreasonably restrict the right to disclosure of
16 any facts by an arbitrator under Section 146 of this act; or

17 4. Waive the right of a party to an agreement to arbitrate to
18 be represented by a lawyer at any proceeding or hearing under
19 Section 150 of this act.

20 C. A party to an agreement to arbitrate or to an arbitration
21 proceeding may not waive, or the parties may not vary the effect of,
22 the requirements of this section or subsection A or C of Section
23 137, Section 141, Section 148, Section 152, subsection D or E of
24

1 Section 154, Section 156, 157, 158, or subsection A or B of Section
2 159 of this act.

3 SECTION 139. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 225 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Except as otherwise provided in Section 163, an application
7 for judicial relief under this act shall be made by application and
8 motion to the Commission and heard in the manner provided by law or
9 rule of the Commission for making and hearing motions.

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

17 SECTION 140. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 226 of Title 85A, unless there
19 is created a duplication in numbering, reads as follows:

20 A. A written agreement to submit any existing or subsequent
21 controversy arising between the parties to arbitration is valid,
22 enforceable, and irrevocable except on a ground that exists at law
23 or in equity for the revocation of a contract.

24

1 B. An arbitrator shall decide whether a condition precedent to
2 arbitration has been fulfilled and whether a contract containing a
3 valid agreement to arbitrate is enforceable.

4 C. If a party to a proceeding challenges the existence of, or
5 claims that a controversy is not subject to, an agreement to
6 arbitrate, the arbitration proceeding may continue pending final
7 resolution of the issue by the Commission, unless the Commission
8 otherwise orders.

9 SECTION 141. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 227 of Title 85A, unless there
11 is created a duplication in numbering, reads as follows:

12 A. On application and motion of a person showing an agreement
13 to arbitrate and alleging another person's refusal to arbitrate
14 under the agreement:

15 1. If the refusing party does not appear or does not oppose the
16 motion, the Commission shall order the parties to arbitrate; and

17 2. If the refusing party opposes the motion, the Commission
18 shall proceed summarily to decide the issue and order the parties to
19 arbitrate unless it finds that there is no enforceable agreement to
20 arbitrate. The Commission may also assess costs against the party
21 opposing the motion if it concludes the opposition was not brought
22 in good faith to be deposited in the Workers' Compensation Fund
23 created by the Administrative Workers' Compensation Act.

1 B. On motion of a person alleging that an arbitration
2 proceeding has been initiated or threatened but that there is no
3 agreement to arbitrate, the Commission shall proceed summarily to
4 decide the issue. If the Commission finds that there is an
5 enforceable agreement to arbitrate, it shall order the parties to
6 arbitrate. The Commission may also assess costs against the party
7 opposing the motion if the Commission concludes the opposition was
8 not brought in good faith to be deposited in the Workers'
9 Compensation Fund created by the Administrative Workers'
10 Compensation Act.

11 C. If the Commission finds that the parties have not entered
12 into an enforceable arbitration agreement, the dispute shall be
13 resolved under the Administrative Workers' Compensation Act.

14 D. If an action is initiated in district court to determine
15 whether an enforceable arbitration agreement exists, on motion by
16 the responding party, that proceeding shall be transferred to the
17 Commission for determination.

18 E. If a party challenges the enforceability of an arbitration
19 agreement, the underlying claim, including all benefits, shall be
20 stayed until the Commission determines whether an enforceable
21 arbitration agreement exists.

22 SECTION 142. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 228 of Title 85A, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Before an arbitrator is appointed and authorized to act, the
2 Commission, on application and motion of a party to an arbitration
3 proceeding and for good cause shown, may enter a judgment for
4 provisional remedies to protect the effectiveness of the arbitration
5 proceeding to the same extent and under the same conditions as if
6 the controversy were the subject of a civil action.

7 B. After an arbitrator is appointed and authorized to act:

8 1. The arbitrator may issue further or revised orders for
9 provisional remedies, including interim awards, as the arbitrator
10 finds necessary to protect the effectiveness of the arbitration
11 proceeding and to promote the fair and expeditious resolution of the
12 controversy, to the same extent and under the same conditions as if
13 the controversy were the subject of a civil action; and

14 2. A party to an arbitration proceeding may move the Commission
15 for a provisional remedy only if the matter is urgent and the
16 arbitrator is not able to act timely or the arbitrator cannot
17 provide an adequate remedy.

18 C. A party does not waive a right of arbitration by making an
19 application and motion under subsection A or B of this section.

20 SECTION 143. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 229 of Title 85A, unless there
22 is created a duplication in numbering, reads as follows:

23 A. A person shall initiate an arbitration proceeding by giving
24 written notice to the Commission and the other parties to the

1 arbitration agreement. Notice shall be served on the parties in the
2 manner prescribed by the arbitration agreement, or, if the
3 arbitration agreement does not address the method of notice, then by
4 the service of process for civil actions provided under Title 12 of
5 the Oklahoma Statutes.

6 B. Notice of an arbitration proceeding shall contain:

7 1. The general nature of the controversy;

8 2. The remedy and alleged damages sought; and

9 3. A copy of the arbitration agreement governing the
10 controversy.

11 C. An objection to the sufficiency of notice shall be made to
12 the Commission before the initial hearing with the appointed
13 arbitrator.

14 SECTION 144. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 230 of Title 85A, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Except as otherwise provided in subsection C of this
18 section, on application and motion of a party to an arbitration
19 agreement or arbitration proceeding, the Commission may order
20 consolidation of separate arbitration proceedings as to all or some
21 of the claims if:

22 1. There are separate agreements to arbitrate or separate
23 arbitration proceedings between the same persons or one of them is a
24

1 party to a separate agreement to arbitrate or a separate arbitration
2 proceeding with a third person;

3 2. The claims subject to the agreements to arbitrate arise in
4 substantial part from the same transaction or series of related
5 transactions;

6 3. The existence of a common issue of law or fact creates the
7 possibility of conflicting decisions in the separate arbitration
8 proceedings; and

9 4. Prejudice resulting from a failure to consolidate is not
10 outweighed by the risk of undue delay or prejudice to the rights of
11 or hardship to parties opposing consolidation.

12 B. The Commission may order consolidation of separate
13 arbitration proceedings as to some claims and allow other claims to
14 be resolved in separate arbitration proceedings.

15 C. The Commission may not order consolidation of the claims of
16 a party to an agreement to arbitrate if the agreement prohibits
17 consolidation.

18 SECTION 145. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 231 of Title 85A, unless there
20 is created a duplication in numbering, reads as follows:

21 A. If the parties to an arbitration agreement agree on a method
22 for appointing an arbitrator, that method shall be followed, unless
23 the method fails. If the parties have not agreed on a method, the
24 agreed method fails, or an arbitrator appointed fails or is unable

1 to act and a successor has not been appointed, the Commission, on
2 motion of a party to the arbitration proceeding, shall appoint the
3 arbitrator. An arbitrator appointed by the Commission has all the
4 powers of an arbitrator designated by the arbitration agreement.

5 B. An individual who has a known, direct, and material interest
6 in the outcome of the arbitration proceeding, or a known, existing,
7 and substantial relationship with a party to the arbitration
8 proceeding, may not serve as an arbitrator unless agreed to in
9 writing by the parties.

10 SECTION 146. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 232 of Title 85A, unless there
12 is created a duplication in numbering, reads as follows:

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

20 1. A financial or personal interest in the outcome of the
21 arbitration proceeding; and

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

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

6 C. If an arbitrator discloses a conflict under subsection A or
7 B of this section, any party to the arbitration agreement or the
8 arbitration proceeding may have the arbitrator removed by filing a
9 notice of conflict with the Commission. If a notice of conflict is
10 not filed within ten (10) days of disclosure of the conflict, the
11 parties waive their rights to have any order or award entered
12 vacated under Section 157 of this act.

13 SECTION 147. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 233 of Title 85A, unless there
15 is created a duplication in numbering, reads as follows:

16 If there is more than one arbitrator, the powers of an
17 arbitrator shall be exercised by a majority of the arbitrators, but
18 all of them shall conduct the hearing under Section 149 of this act.

19 SECTION 148. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 234 of Title 85A, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Arbitrators and arbitration organizations providing services
23 under this act are immune from civil liability to the same extent as
24 a judge of a court of this state acting in a judicial capacity.

1 B. The immunity afforded by this section supplements any
2 immunity under other law.

3 C. The failure of an arbitrator to make a disclosure required
4 by Section 146 of this act shall not cause any loss of immunity
5 under this section.

6 D. An arbitrator or representative of an arbitration
7 organization is not competent to testify in a judicial,
8 administrative, or similar proceeding and may not be required to
9 produce records as to any statement, conduct, decision, or ruling
10 occurring during the arbitration proceeding, to the same extent as a
11 judge of a court of this state acting in a judicial capacity. This
12 subsection shall not apply to:

13 1. The extent necessary to determine the claim of an
14 arbitrator, arbitration organization, or representative of the
15 arbitration organization against a party to the arbitration
16 proceeding; or

17 2. A hearing on an application and motion to vacate an award
18 under paragraphs 1 or 2 of subsection A of Section 157 of this act
19 if the movant establishes prima facie that a ground for vacating the
20 award exists.

21 E. If a person commences a civil action against an arbitrator,
22 arbitration organization, or representative of an arbitration
23 organization arising from the services of the arbitrator,
24 organization, or representative or if a person seeks to compel an

1 arbitrator or a representative of an arbitration organization to
2 testify or produce records in violation of subsection D of this
3 section, and the court decides that the arbitrator, arbitration
4 organization, or representative of an arbitration organization is
5 immune from civil liability or that the arbitrator or representative
6 of the organization is not competent to testify, the court shall
7 award to the arbitrator, organization, or representative reasonable
8 attorney fees and other reasonable expenses of litigation.

9 SECTION 149. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 235 of Title 85A, unless there
11 is created a duplication in numbering, reads as follows:

12 A. Arbitrations shall be conducted in a fair and expeditious
13 manner. The authority conferred on arbitrators includes, without
14 limitation, the power to hold conferences and hearings with the
15 parties, determine the admissibility, relevance, materiality and
16 weight of any evidence, as well as ask questions of any witnesses
17 during the proceedings.

18 B. An arbitrator may decide a request for summary disposition
19 of a claim or particular issue:

20 1. If all interested parties agree; or

21 2. On request of one party to the arbitration proceeding if
22 that party gives notice to all other parties to the proceeding and
23 the other parties have a reasonable opportunity to respond.

24

1 C. If an arbitrator orders a hearing, the arbitrator shall set
2 a time and place and give notice of the hearing not less than five
3 (5) days before the hearing begins. Unless a party to the
4 arbitration proceeding makes an objection to lack or insufficiency
5 of notice not later than the beginning of the hearing, the party's
6 appearance at the hearing waives the objection. On request of a
7 party to the arbitration proceeding and for good cause shown, or
8 upon the arbitrator's own initiative, the arbitrator may adjourn the
9 hearing from time to time as necessary but may not postpone the
10 hearing to a time later than that fixed by the agreement to
11 arbitrate for making the award unless the parties to the arbitration
12 proceeding consent to a later date. The arbitrator may hear and
13 decide the controversy on the evidence produced although a party who
14 was duly notified of the arbitration proceeding did not appear. The
15 Commission, on request, may direct the arbitrator to conduct the
16 hearing promptly and render a timely decision.

17 D. At a hearing under subsection C of this section, a party to
18 the arbitration proceeding has a right to be heard, to present
19 evidence material to the controversy, and to cross-examine witnesses
20 appearing at the hearing.

21 E. If an arbitrator ceases or is unable to act during the
22 arbitration proceeding, a replacement arbitrator shall be appointed
23 according to the rules of the arbitration organization through which
24

1 the arbitration is being conducted or, in the absence of such rules,
2 by application to the Commission.

3 SECTION 150. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 236 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 A. A party to an arbitration proceeding may be represented by a
7 lawyer.

8 B. Each party shall be responsible for payment of his or her
9 legal fees incurred during arbitration, except as provided for in
10 Section 155 of this act.

11 C. The employee's attorney may not recover legal fees in excess
12 of the limits described in Section 79 of this act.

13 SECTION 151. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 237 of Title 85A, unless there
15 is created a duplication in numbering, reads as follows:

16 A. An arbitrator may issue a subpoena for the attendance of a
17 witness and for the production of records and other evidence at any
18 hearing and may administer oaths. A subpoena shall be served in the
19 manner for service of subpoenas in a civil action and, upon
20 application and motion to the Commission by a party to the
21 arbitration proceeding or the arbitrator, enforced in the manner for
22 enforcement of subpoenas in a civil action. A witness may be
23 allowed to appear telephonically or by any other available means
24 that allows contemporaneous cross-examination.

1 B. In order to make the proceedings fair, expeditious, and
2 cost-effective, on request of a party or witness in an arbitration
3 proceeding, an arbitrator may permit a deposition of any witness to
4 be taken for use as evidence at the hearing, including a witness who
5 cannot be subpoenaed for or is unable to attend a hearing. The
6 arbitrator shall determine the conditions under which the deposition
7 is taken.

8 C. An arbitrator may permit such discovery as the arbitrator
9 decides is appropriate in the circumstances, taking into account the
10 needs of the parties to the arbitration proceeding and other
11 affected persons and the desirability of making the proceeding fair,
12 expeditious, and cost-effective.

13 D. If an arbitrator permits discovery under subsection C of
14 this section, the arbitrator may order a party to the arbitration
15 proceeding to comply with the arbitrator's discovery-related orders,
16 issue subpoenas for the attendance of a witness and for the
17 production of records and other evidence at a discovery proceeding,
18 and take action against a noncomplying party to the extent a court
19 could if the controversy were the subject of a civil action in this
20 state.

21 E. An arbitrator may issue a protective order to prevent the
22 disclosure of privileged information, confidential information,
23 trade secrets, and other information protected from disclosure to
24

1 the extent a court could if the controversy were the subject of a
2 civil action in this state.

3 F. All laws compelling a person under subpoena to testify and
4 all fees for attending a judicial proceeding, a deposition, or a
5 discovery proceeding as a witness apply to an arbitration proceeding
6 as if the controversy were the subject of a civil action in this
7 state.

8 G. The Commission may enforce a subpoena or discovery-related
9 order for the attendance of a witness within this state and for the
10 production of records and other evidence issued by an arbitrator in
11 connection with an arbitration proceeding in another state upon
12 conditions determined by the Commission so as to make the
13 arbitration proceeding fair, expeditious, and cost-effective.

14 SECTION 152. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 238 of Title 85A, unless there
16 is created a duplication in numbering, reads as follows:

17 If an arbitrator makes a pre-award ruling in favor of a party,
18 the party may request the arbitrator to incorporate the ruling into
19 an award under Section 153 of this act. A prevailing party may make
20 an application and motion to the Commission for an expedited
21 judgment to confirm the award under Section 156 of this act, in
22 which case the Commission shall summarily decide the motion. The
23 Commission shall issue a judgment to confirm the award unless the
24

1 court vacates, modifies, or corrects the award under Section 157 or
2 158 of this act.

3 SECTION 153. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 239 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 A. An arbitrator shall make a record of the award. The award
7 may contain the evidence and conclusion upon which the award was
8 based unless the agreement of the parties specifies the type of
9 award to be issued. The record shall be signed or otherwise
10 authenticated by any arbitrator who concurs with the award. The
11 arbitrator or the arbitration organization shall give notice of the
12 award, including a copy of the award, to each party to the
13 arbitration proceeding.

14 B. An award shall be made within the time specified by the
15 agreement to arbitrate or, if not specified therein, within the time
16 ordered by the Commission. The Commission may extend or the parties
17 to the arbitration proceeding may agree in a record to extend the
18 time. The Commission or the parties may do so within or after the
19 time specified or ordered. A party waives any objection that an
20 award was not timely made unless the party gives notice of the
21 objection to the arbitrator before receiving notice of the award.

22 SECTION 154. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 240 of Title 85A, unless there
24 is created a duplication in numbering, reads as follows:

1 A. On motion by a party to an arbitration proceeding, the
2 arbitrator may modify or correct an award:

3 1. On a ground stated in paragraphs 1 or 3 of subsection A of
4 Section 158 of this act;

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

8 3. To clarify the award.

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

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

15 D. If a motion to the Commission is pending under Section 157,
16 157 or 158 of this act, the Commission may submit the claim to the
17 arbitrator to consider whether to modify or correct the award:

18 1. On a ground stated in paragraphs 1 or 3 of subsection A of
19 Section 158 of this act;

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

23 3. To clarify the award.
24

1 E. An award modified or corrected under this section is subject
2 to Sections 156, 157 and 158 of this act.

3 SECTION 155. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 241 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 A. An arbitrator may award benefits set forth in Sections 41,
7 42, 43 and 47 of this act.

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

11 C. As to all remedies other than those authorized by
12 subsections A and B of this section, an arbitrator may order such
13 remedies as the arbitrator considers just and appropriate under the
14 circumstances of the arbitration proceeding. The fact that such a
15 remedy could not or would not be granted by the Commission is not a
16 ground for refusing to confirm an award under Section 156 of this
17 act or for vacating an award under Section 157 of this act.

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

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

1 SECTION 156. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 242 of Title 85A, unless there
3 is created a duplication in numbering, reads as follows:

4 After a party to an arbitration proceeding receives notice of an
5 award, the party may make an application and motion to the
6 Commission for a judgment confirming the award at which time the
7 Commission shall issue a confirming judgment unless the award is
8 modified or corrected under Section 154 or 158 of this act or is
9 vacated under Section 157 of this act.

10 SECTION 157. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 243 of Title 85A, unless there
12 is created a duplication in numbering, reads as follows:

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

16 1. The award was procured by corruption, fraud, or other undue
17 means;

18 2. There was:

19 a. evident partiality by an arbitrator appointed as a
20 neutral arbitrator,

21 b. corruption by an arbitrator, or

22 c. misconduct by an arbitrator prejudicing the rights of
23 a party to the arbitration proceeding;
24

1 3. An arbitrator refused to postpone the hearing upon showing
2 of sufficient cause for postponement, refused to consider evidence
3 material to the controversy, or otherwise conducted the hearing
4 contrary to Section 149 of this act, so as to prejudice
5 substantially the rights of a party to the arbitration proceeding;

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

7 5. The arbitration was conducted without proper notice of the
8 initiation of an arbitration as required in Section 143 of this act
9 so as to prejudice substantially the rights of a party to the
10 arbitration proceeding; or

11 6. It is determined that an arbitrator did not disclose a
12 conflict under Section 146 of this act.

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

21 C. If the Commission vacates an award it may order a rehearing.
22 If the award is vacated on a ground stated in paragraph 1, 2 or 6 of
23 subsection A of this section, the rehearing shall be before a new
24 arbitrator. If the award is vacated on a ground stated in paragraph

1 3, 4 or 5 of subsection A of this section, the rehearing may be
2 before the arbitrator who made the award or the arbitrator's
3 successor. The arbitrator shall render the decision in the
4 rehearing within the same time as that provided in subsection B of
5 Section 153 of this act for an award.

6 D. If the Commission denies a motion to vacate an award, it
7 shall confirm the award unless a motion to modify or correct the
8 award is pending.

9 SECTION 158. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 244 of Title 85A, unless there
11 is created a duplication in numbering, reads as follows:

12 A. On application and motion made within thirty (30) days after
13 movant receives notice of the award or within thirty (30) days after
14 the movant receives notice of a modified or corrected award, the
15 Commission shall modify or correct the award if:

16 1. There was an evident mathematical miscalculation or an
17 evident mistake in the description of a person, thing, or property
18 referred to in the award;

19 2. The arbitrator has made an award on a claim not submitted to
20 the arbitrator and the award may be corrected without affecting the
21 merits of the decision upon the claims submitted; or

22 3. The award is imperfect in a matter of form not affecting the
23 merits of the decision on the claims submitted.
24

1 B. If a motion made under subsection A of this section is
2 granted, the Commission shall modify or correct and confirm the
3 award as modified or corrected. Otherwise, unless a motion to
4 vacate is pending, the Commission shall confirm the award.

5 C. A motion to modify or correct an award under this section
6 may be joined with a motion to vacate the award.

7 SECTION 159. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 245 of Title 85A, unless there
9 is created a duplication in numbering, reads as follows:

10 A. On granting a motion to confirm or vacate an order, the
11 Commission shall enter a judgment in conformity therewith. The
12 judgment may be recorded, docketed and enforced as any other
13 judgment in its jurisdiction.

14 B. On application of a prevailing party, the Commission may
15 award reasonable attorney fees and other reasonable expenses of
16 litigation incurred in the proceeding.

17 SECTION 160. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 246 of Title 85A, unless there
19 is created a duplication in numbering, reads as follows:

20 The Commission has exclusive jurisdiction to enforce and enter
21 judgment confirming, vacating, correcting or modifying an award
22 under this act.
23
24

1 SECTION 161. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 247 of Title 85A, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A party may appeal the following actions to the district
5 court as provided in Section 162 of this act:

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

13 SECTION 162. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 248 of Title 85A, unless there
15 is created a duplication in numbering, reads as follows:

16 An application and motion under judicial review of a judgment or
17 award entered by the Commission under this act shall be made in the
18 district court in the county in which the agreement to arbitrate
19 specifies the arbitration hearing is to be held or, if the hearing
20 has been held, in the court in the county in which it was held.
21 Otherwise, the motion may be made in the district court in the
22 county in which an adverse party resides or has a place of business
23 or, if no adverse party has a residence or place of business in this
24 state, in the district court located either in Oklahoma City or

1 Tulsa. All subsequent motions shall be made in the court hearing
2 the initial motion unless the court otherwise directs.

3 SECTION 163. REPEALER Title 85 of the Oklahoma Statutes,
4 in its entirety, is hereby repealed.

5 SECTION 164. This act shall become effective January 1, 2014.

6 Passed the Senate the 4th day of March, 2013.

7

8

Presiding Officer of the Senate

9

10 Passed the House of Representatives the ____ day of _____,

11 2013.

12

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Presiding Officer of the House
of Representatives

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