

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1062
Page _____ Section _____ Lines _____
Of the printed Bill
Of the Engrossed Bill

On pages 193-222 and 223-225, by deleting Sections 102 through 122 and Section 125 from the bill and renumbering subsequent sections;

On pages 2-193, 223, 224 and 225-253, by deleting Sections 1 through 101, 123, 124 and 126 through 141 and inserting in lieu thereof the following and renumbering subsequent sections:

See attached req. 7975

On pages 253-255, by retaining Sections 142 and 143, which shall be renumbered as Sections 119 and 120;

On pages 255-317, by deleting Sections 144 through 194 and inserting in lieu thereof the following:

See attaché req. 7978; and

By restoring the title.

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: T.W. Shannon

Adopted: _____

Reading Clerk

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

4 Sections 1 through 106 and 150 through 168 of this act shall be
5 known and may be cited as the "Administrative Workers' Compensation
6 Act". The provisions of the Administrative Workers' Compensation
7 Act shall be strictly construed.

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

11 As used in the Administrative Workers' Compensation Act:

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

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

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

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

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

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

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

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

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

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

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

23 9. a. "Compensable injury" means damage or harm to the
24 physical structure of the body, or prosthetic

1 appliances, including eyeglasses, contact lenses, or
2 hearing aids, caused solely as the result of either an
3 accident, cumulative trauma or occupational disease
4 arising out of the course and scope of employment. An
5 "accident" means an event involving factors external
6 to the employee that:

7 (1) was unintended, unanticipated, unforeseen,
8 unplanned and unexpected,

9 (2) occurred at a specifically identifiable time and
10 place,

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

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

14 b. "Compensable injury" does not include:

15 (1) injury to any active participant in assaults or
16 combats which, although they may occur in the
17 workplace, are the result of non-employment-
18 related hostility or animus of one, both, or all
19 of the combatants and which assault or combat
20 amounts to a deviation from customary duties;
21 provided, however, injuries caused by horseplay
22 shall not be considered to be compensable
23 injuries, except for innocent victims,
24

- 1 (2) injury incurred while engaging in or performing
2 or as the result of engaging in or performing any
3 recreational or social activities for the
4 employee's personal pleasure,
- 5 (3) injury which was inflicted on the employee at a
6 time when employment services were not being
7 performed or before the employee was hired or
8 after the employment relationship was terminated,
- 9 (4) injury where the accident was caused by the use
10 of alcohol, illegal drugs, or prescription drugs
11 used in contravention of physician's orders. If,
12 within twenty-four (24) hours of being injured or
13 reporting an injury, an employee tests positive
14 for intoxication, an illegal controlled
15 substance, or a legal controlled substance used
16 in contravention to a treating physician's
17 orders, or refuses to undergo the drug and
18 alcohol testing, there shall be a rebuttable
19 presumption that the injury was caused by the use
20 of alcohol, illegal drugs, or prescription drugs
21 used in contravention of physician's orders.
22 This presumption may only be overcome if the
23 employee proves by clear and convincing evidence
24

1 that his or her state of intoxication had no
2 causal relationship to the injury,

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

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

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

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

24

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

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

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

- 22 a. an employee's transportation to and from his or her
23 place of employment,
24

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

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

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

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

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

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

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

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

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

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

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

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

(10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more 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 except for volunteers specifically provided for in subparagraph a of this paragraph,

(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

1 Act if the owner-operator elects to participate
2 as a sole proprietor,

3 (10) a person referred to as a drive-away owner-
4 operator who privately owns and utilizes a tow
5 vehicle in drive-away operations and operates
6 independently for hire, if the drive-away owner-
7 operator actually utilizes the tow vehicle and if
8 the person contracting with the drive-away owner-
9 operator is not the lessor of the tow vehicle.

10 Provided, however, a drive-away owner-operator
11 shall not be precluded from workers' compensation
12 coverage under the Administrative Workers'
13 Compensation Act if the drive-away owner-operator
14 elects to participate as a sole proprietor, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 30. "Misconduct" shall include the following:

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

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

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

1 the courts shall not consider complaints of
2 pain.

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

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

17 (b) Any difference in the baseline hearing
18 levels shall be confirmed by subsequent
19 testing; provided, however, such test shall
20 be given within four (4) weeks of the
21 initial baseline hearing level test but not
22 before five (5) days after being adjusted
23 for presbycusis.
24

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

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

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

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

19 35. "Permanent total disability" means, based on objective
20 findings, incapacity, based upon accidental injury or occupational
21 disease, to earn wages in any employment for which the employee may
22 become physically suited and reasonably fitted by education,
23 training, experience or vocational rehabilitation provided under
24

1 this act. Loss of both hands, both feet, both legs, or both eyes,
2 or any two thereof, shall constitute permanent total disability;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 A. Every employer and every employee, unless otherwise
15 specifically provided in this act, shall be subject and bound to the
16 provisions of the Administrative Workers' Compensation Act.
17 However, nothing in this act shall be construed to conflict with any
18 valid Act of Congress governing the liability of employers for
19 injuries received by their employees.

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

23 C. The Workers' Compensation Code in effect before the
24 effective date of this act shall govern all rights in respect to

1 claims for injuries and death based on accidents occurring before
2 the effective date of this act.

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

6 A. If any part of this act be decided by the courts to be
7 unconstitutional or invalid, the same shall not affect the validity
8 of this act as a whole, or any part thereof other than the part so
9 decided to be unconstitutional or invalid.

10 B. If the adjudication of unconstitutionality has the effect of
11 invalidating any payment of compensation under this act, the amount
12 of any compensation paid under this act on account of the injury
13 shall be deducted from the amount of damages awarded in the action
14 in respect to the injury.

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

18 A. The rights and remedies granted to an employee subject to
19 the provisions of the Administrative Workers' Compensation Act shall
20 be exclusive of all other rights and remedies of the employee, his
21 legal representative, dependents, next of kin, or anyone else
22 claiming rights to recovery on behalf of the employee against the
23 employer, or any principal, officer, director, employee,
24 stockholder, partner, or prime contractor of the employer on account

1 of injury, illness, or death. Negligent acts of a co-employee may
2 not be imputed to the employer. No role, capacity, or persona of
3 any employer, principal, officer, director, employee, or stockholder
4 other than that existing in the role of employer of the employee
5 shall be relevant for consideration for purposes of this act, and
6 the remedies and rights provided by this act shall be exclusive
7 regardless of the multiple roles, capacities, or personas the
8 employer may be deemed to have. For the purpose of extending the
9 immunity of this section, any operator or owner of an oil or gas
10 well or other operation for exploring for, drilling for, or
11 producing oil or gas shall be deemed to be an intermediate or
12 principal employer for services performed at a drill site or
13 location with respect to injured or deceased workers whose immediate
14 employer was hired by such operator or owner at the time of the
15 injury or death.

16 B. Exclusive remedy shall not apply if:

17 1. An employer fails to secure the payment of compensation due
18 to the employee as required by this act. An injured employee, or
19 his or her legal representative in case death results from the
20 injury, may, at his or her option, elect to claim compensation under
21 this act or to maintain a legal action in court for damages on
22 account of the injury or death; or

23 2. The injury was caused by an intentional tort committed by
24 the employer. An intentional tort shall exist only when the

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

9 C. The immunity from civil liability described in subsection A
10 of this section shall apply regardless of whether the injured
11 employee is denied compensation or deemed ineligible to receive
12 compensation under this act.

13 D. If an employer has failed to secure the payment of
14 compensation for his or her injured employee as provided for in this
15 act, an injured employee, or his or her legal representatives if
16 death results from the injury, may maintain an action in the
17 district court for damages on account of such injury.

18 E. The immunity created by the provisions of this section shall
19 not extend to action against another employer, or its employees, on
20 the same job as the injured or deceased worker where such other
21 employer does not stand in the position of an intermediate or
22 principal employer to the immediate employer of the injured or
23 deceased worker.

24

1 F. The immunity created by the provisions of this section shall
2 not extend to action against another employer, or its employees, on
3 the same job as the injured or deceased worker even though such
4 other employer may be considered as standing in the position of a
5 special master of a loaned servant where such special master neither
6 is the immediate employer of the injured or deceased worker nor
7 stands in the position of an intermediate or principal employer to
8 the immediate employer of the injured or deceased worker.

9 G. This section shall not be construed to abrogate the loaned
10 servant doctrine in any respect other than that described in
11 subsection F of this section. Nothing in this act shall be
12 construed to relieve the employer from any other penalty provided
13 for in this act for failure to secure the payment of compensation
14 under this act.

15 H. For the purpose of extending the immunity of this section,
16 any architect, professional engineer, or land surveyor shall be
17 deemed an intermediate or principal employer for services performed
18 at or on the site of a construction project, but this immunity shall
19 not extend to the negligent preparation of design plans and
20 specifications.

21 I. If the employer has failed to secure the payment of
22 compensation as provided in this act or in the case of an
23 intentional tort, the injured employee or his or her legal
24

1 representative may maintain an action either before the Commission
2 or in the district court, but not both.

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

6 A. 1. a. Any person or entity who makes any material false
7 statement or representation, who willfully and
8 knowingly omits or conceals any material information,
9 or who employs any device, scheme, or artifice, or who
10 aids and abets any person for the purpose of:

- 11 (1) obtaining any benefit or payment,
- 12 (2) increasing any claim for benefit or payment, or
- 13 (3) obtaining workers' compensation coverage under
- 14 this act,

15 shall be guilty of a felony.

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

20 c. Fifty percent (50%) of any criminal fine imposed and
21 collected under this section shall be paid and
22 allocated in accordance with applicable law to the
23 Workers' Compensation Fund administered by the
24 Commission.

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

5 B. A copy of division (1) of subparagraph a of paragraph 1 of
6 subsection A of this section shall be included on all forms
7 prescribed by the Commission for the use of injured employees
8 claiming benefits and for the use of employers in responding to
9 employees' claims under this act.

10 C. Where the Commission or the Attorney General finds that a
11 violation of division (1) of subparagraph a of paragraph 1 of
12 subsection A of this section has been committed, or that any other
13 criminal violations in furtherance of this act were committed, the
14 chair of the Commission or the Attorney General shall refer the
15 matter for appropriate action to the prosecuting attorney having
16 criminal jurisdiction over the matter.

17 D. 1. a. There shall be established within the Office of the
18 Attorney General a Workers' Compensation Fraud
19 Investigation Unit, funded by the Commission. The
20 Attorney General shall appoint a Director of the
21 Workers' Compensation Fraud Investigation Unit, who
22 may also serve as the director of any other designated
23 insurance fraud investigation division within the
24 Attorney General's office.

1 b. (1) The Unit shall investigate workers' compensation
2 fraud, any additional criminal violations that
3 may be related to workers' compensation fraud,
4 and any other insurance fraud matters as may be
5 assigned at the discretion of the Attorney
6 General.

7 (2) The Attorney General shall designate the
8 personnel assigned to the Unit, who, on meeting
9 the qualifications established by the Oklahoma
10 Council on Law Enforcement Education and
11 Training, shall have the powers of specialized
12 law enforcement officers of the State of Oklahoma
13 for the purpose of conducting investigations
14 under this subparagraph. Personnel hired as
15 specialized law enforcement officers shall have a
16 minimum of three (3) years of certified law
17 enforcement experience or its equivalent in
18 national or military law enforcement experience
19 as approved by the Oklahoma Council on Law
20 Enforcement Education and Training.

21 2. The Attorney General and his or her deputies and assistants
22 and the Director of the Workers' Compensation Fraud Investigation
23 Unit and his or her deputies and assistants shall be vested with the
24 power of enforcing the requirements of this section.

1 3. It shall be the duty of the Unit to assist the Attorney
2 General in the performance of his or her duties. The Unit shall
3 determine the identity of employees in this state who have violated
4 division (1) of subparagraph a of paragraph 1 of subsection A of
5 this section and report the violation to the Office of the Attorney
6 General and the Commission. The Attorney General shall report the
7 violation to the prosecuting attorney having jurisdiction over the
8 matter.

9 4. a. In the course of any investigation being conducted by
10 the Unit, the Attorney General and his or her deputies
11 and assistants and the Director and his or her
12 deputies and assistants shall have the power of
13 subpoena and may:

14 (1) subpoena witnesses,

15 (2) administer oaths or affirmations and examine any
16 individual under oath, and

17 (3) require and compel the production of records,
18 books, papers, contracts, and other documents.

19 b. The issuance of subpoenas for witnesses shall be
20 served in the same manner as if issued by a district
21 court.

22 c. (1) Upon application by the commissioner or the
23 Director of the Unit, the district court located
24 in the county where a subpoena was served may

1 issue an order compelling an individual to comply
2 with the subpoena to testify.

3 (2) Any failure to obey the order of the court may be
4 punished as contempt.

5 d. If any person has refused in connection with an
6 investigation by the Director to be examined under
7 oath concerning his or her affairs, then the Director
8 is authorized to conduct and enforce by all
9 appropriate and available means any examination under
10 oath in any state or territory of the United States in
11 which any officer, director, or manager may then
12 presently be to the full extent permitted by the laws
13 of the state or territory.

14 e. In addition to the punishments described in paragraph
15 1 of subsection A of this section, any person
16 providing false testimony under oath or affirmation in
17 this state as to any matter material to any
18 investigation or hearing conducted under this
19 subparagraph, or any workers' compensation hearing,
20 shall upon conviction be guilty of perjury.

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

23 6. a. Every carrier or employer who has reason to suspect
24 that a violation of division (1) of subparagraph a of

1 paragraph 1 of subsection A of this section has
2 occurred shall be required to report all pertinent
3 matters to the unit.

4 b. No carrier or employer who makes a report for a
5 suspected violation of division (1) of subparagraph a
6 of paragraph 1 of subsection A of this section by an
7 employee shall be liable to the employee unless the
8 carrier or employer knowingly and intentionally
9 included false information in the report.

10 c. (1) Any carrier or employer who willfully and
11 knowingly fails to report a violation under
12 division (1) of subparagraph a of paragraph 1 of
13 subsection A of this section shall be guilty of a
14 misdemeanor and on conviction shall be punished
15 by a fine not to exceed One Thousand Dollars
16 (\$1,000.00).

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

21 d. Any employee may report suspected violations of
22 division (1) of subparagraph a of paragraph 1 of
23 subsection A of this section. No employee who makes a
24

1 report shall be liable to the employee whose suspected
2 violations have been reported.

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

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

19 F. Notwithstanding any other provision of law, investigatory
20 files as maintained by the Attorney General's office and by the Unit
21 shall be deemed confidential and privileged. The files may be made
22 open to the public once the investigation is closed by the Director
23 of the Workers' Compensation Fraud Investigation Unit with the
24 consent of the Attorney General.

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

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

6 I. The Commission shall include a statement on all forms for
7 notices and instructions to employees, employers, carriers and
8 third-party administrators that any person who commits workers'
9 compensation fraud, upon conviction, shall be guilty of a felony
10 punishable by imprisonment, a fine or both.

11 J. If an injured employee is charged with workers' compensation
12 fraud, any pending workers' compensation proceeding, including
13 benefits, shall be stayed after the preliminary hearing is concluded
14 and the claimant is bound over and shall remain stayed until the
15 final disposition of the criminal case. All notice requirements
16 shall continue during the stay.

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

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

22 1. Filed a claim under this act;

23 2. Retained a lawyer for representation regarding a claim under
24 this act;

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

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

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

7 C. If the Commission determines that the defendant violated
8 subsection A of this section, the Commission may award the employee
9 back pay up to a maximum of One Hundred Thousand Dollars
10 (\$100,000.00). Interim earnings or amounts earnable with reasonable
11 diligence by the person discriminated against shall reduce the back
12 pay otherwise allowable.

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

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

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

1 G. This section shall not be construed as establishing an
2 exception to the employment at will doctrine.

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

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

9 A. No agreement by an employee to waive his or her right to
10 compensation shall be valid. No contract, regulation, or device
11 shall operate to relieve the employer or carrier, in whole or in
12 part, from any liability created by this act, except as specifically
13 provided in this act.

14 B. Any officer of a corporation, sole proprietor, partner of a
15 partnership, member of a limited liability company, member of a
16 professional association, or self-employed employer who is not a
17 subcontractor and who owns and operates his or her own business may,
18 by agreement or contract, exclude himself or herself from coverage
19 or waive his or her right to coverage or compensation under this
20 act.

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

24

1 No agreement by an employee to pay any portion of the premium
2 paid by his or her employer to a carrier or a benefit fund or
3 department maintained by the employer for the purpose of providing
4 compensation or medical services and supplies as required by this
5 act shall be valid. Any employer who makes a deduction for such
6 purposes from the pay of any employee entitled to the benefits of
7 this act shall be guilty of a misdemeanor.

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

11 A. The right to any claim, benefit or compensation shall not be
12 released or commuted except as provided by the Administrative
13 Workers' Compensation Act and, except for child support liens, is
14 not assignable and is not subject to garnishment, attachment, levy,
15 execution, or any other legal process. Money compensation to
16 dependents of a deceased employee shall not constitute assets of the
17 estate of the deceased employee and shall be payable to and for the
18 benefit of the dependents alone. Any amount withheld under the
19 provisions of this section shall be treated as if it were paid to
20 the employee as workers' compensation and paid by the employee to
21 the person or agency to whom the obligation is payable.

22 B. A lien against workers' compensation benefits is authorized
23 for the purpose of enforcing a judgment for child support. Child
24 support liens filed in accordance with Section 135 of Title 43 of

1 the Oklahoma Statutes are specifically authorized and shall be paid
2 in accordance with such statute without any order of the Commission.

3 C. Additionally, all income assignments or wage assignments for
4 child support issued pursuant to Section 1170 of Title 12 of the
5 Oklahoma Statutes or Section 237.7 of Title 56 of the Oklahoma
6 Statutes are specifically authorized and shall be paid in accordance
7 with such statutes without any order of the Commission.

8 D. In the event a child support lien is filed in a case before
9 the Commission, an administrative law judge of the Commission shall
10 recognize such lien in any award of monetary benefits and the
11 employer or insurance carrier shall include the name of the person
12 or government agency asserting the lien on any check for temporary
13 total disability, permanent partial disability or permanent and
14 total disability.

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

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

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 unless it is shown
24

1 by clear and convincing evidence that benefits should continue for a
2 set period of time, not to exceed a total of fifty-two (52) weeks.

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

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

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

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

19 B. 1. An injury or disease included in subsection A of this
20 section shall not be deemed to be a compensable injury unless it is
21 shown that the exertion of the work necessary to precipitate the
22 disability or death was extraordinary and unusual in comparison to
23 the employee's usual work in the course of the employee's regular
24

1 employment, or that some unusual and unpredicted incident occurred
2 which is found to have been the major cause of the physical harm.

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

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

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

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

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

21 B. On or before the first day of each fiscal year, the
22 Commission shall certify to the State Treasurer that funds are
23 available for transfer, on which certification the State Treasurer
24 shall transfer those funds from the Workers' Compensation Fund of

1 the Commission to the fund account used for the maintenance,
2 operation, and support of the Unit.

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

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

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

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

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

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

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

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

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

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

7 B. The Committee shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 B. The notice shall include:

2 1. The name of the employer;

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

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

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

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

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

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

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

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

1 A. There is hereby created the Oklahoma Workers' Compensation
2 Commission, an executive agency of the State of Oklahoma, which
3 shall have the exclusive responsibility and duty to carry out the
4 provisions of this act, except as otherwise provided.

5 B. The Commission shall consist of three (3) full-time
6 commissioners, each of whom must have been involved in the workers'
7 compensation field for at least three (3) years, appointed by the
8 Governor: one of whom is chosen from a slate of three selected by
9 the Speaker of the House of Representatives, with all three
10 confirmed by the Senate. The term of each appointee shall be six
11 (6) years to administer the provisions of this act. The Governor
12 may request a subsequent slate of nominees from the Speaker of the
13 House of Representatives if a suitable nominee is not found. Any or
14 all of the commissioners may be reappointed for additional six-year
15 terms upon reconfirmation by the Senate. However, the initial
16 commissioners shall serve staggered terms of two (2), four (4), and
17 six (6) years, respectively, as determined by the Governor. If the
18 Legislature is not in session at the time of appointment, the
19 appointment shall be subject to confirmation by the Senate upon
20 convening of the next regular session of the Legislature.
21 Membership on the Commission shall be a full-time position and no
22 commissioner shall have any other employment, unless authorized or
23 excused by law. Each commissioner shall receive a salary equal to
24 that paid to a district judge of this state.

1 C. The Commission shall have the authority to adopt reasonable
2 rules within its respective areas of responsibility including the
3 rules of procedure for administrative hearings, after notice and
4 public hearing, for effecting the purposes of this act, in
5 accordance with the Oklahoma Administrative Procedures Act. All
6 rules, upon adoption, shall be published and be made available to
7 the public and, if not inconsistent with the law, shall be binding
8 in the administration of this act.

9 D. The principal office of the Commission shall be situated in
10 the City of Oklahoma City in quarters assigned by the Office of
11 Management and Enterprise Services. The Commission shall maintain
12 and keep open, during reasonable business hours, the office in
13 Oklahoma City, for the transaction of business, at which office its
14 official records and papers shall be kept. The Commission or any
15 commissioner may hold hearings in any city of this state.

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

19 1. To organize, direct and develop the administrative work of
20 the administrative law judges, including but not limited to
21 docketing, clerical, technical and financial work and establishment
22 of hours of operation;

23 2. To employ administrative staff for the Commission, within
24 budgetary limitation; and

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

3 F. All appeals or disputes arising from actions of the
4 Commission shall be governed by provisions of this act and the
5 Commission shall not be subject to the provisions of the Oklahoma
6 Administrative Procedures Act, except as provided in this act.

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

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

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

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

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

15 3. To assess penalties;

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

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

1 6. To have and exercise all other powers and duties conferred
2 or imposed by this act.

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

8 2. The administrative fees shall be established by regulation
9 of the Commission.

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

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

16 A. Commissioners shall be considered officers and shall take
17 the oath prescribed by the Oklahoma Constitution and the laws of
18 this state.

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

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

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

8 D. Except with respect to the Commission's authority to hear
9 appeals of decisions from administrative law judges, any reference
10 in this act to the Commission's ability to hear and decide the
11 rights of interested parties under this act shall not prevent it
12 from delegating that responsibility to an administrative law judge.

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

16 A. 1. For the purpose of administering the provisions of this
17 act, the Workers' Compensation Commission is authorized:

18 a. to make rules necessary for the administration and
19 operation of the Commission,

20 b. to appoint and fix the compensation of temporary
21 technical assistants, medical and legal advisers,
22 clerical assistants and other officers and employees,
23 and
24

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

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

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

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

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

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

1 5. All expenditures of the Commission in the administration of
2 this act shall be allowed and paid from the Workers' Compensation
3 Fund on the presentation of itemized vouchers approved by the
4 Commission.

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

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

12 C. Additionally, the Commission shall have the following powers
13 and duties:

14 1. To hear and approve compromise settlements;

15 2. To review and approve own-risk applications and group self-
16 insurance association applications;

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

19 4. To contract with an appropriate state governmental entity,
20 insurance carrier or approved service organization to process,
21 investigate and pay valid claims against an impaired self-insurer
22 which fails, due to insolvency or otherwise, to pay its workers'
23 compensation obligations, charges for which shall be paid from the
24

proceeds of security posted with the Commission as provided in
Section 38 of this act;

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

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

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

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

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

10. Such other duties and responsibilities authorized by law.

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

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

Any commissioner or employee of the Commission shall be entitled
to receive his or her necessary traveling expenses as provided in
the State Travel Reimbursement Act. The expenses shall be certified

1 by the person who incurred them and shall be allowed and paid on
2 presentation of vouchers approved by the Commission.

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

6 On or before the first day of the regular session of the
7 Legislature, the Commission shall submit to the Governor and the
8 Legislature a report of the administration of this act for the
9 preceding biennial period, together with such recommendations as the
10 Commission may deem advisable.

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

14 The Commission shall publish annually, on an aggregate basis,
15 information pertaining to the distribution of workers' compensation
16 insurance premiums, losses, expenses, and net income to be compiled
17 from reports required to be filed with the Insurance Commissioner or
18 any similar information required to be filed by the Insurance
19 Commissioner regarding workers' compensation insurance. The
20 Commission shall also publish in the annual report information
21 regarding aggregate workers' compensation benefit distribution to
22 claimants, medical providers, and attorneys, if available.

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

4 The Governor may, at any time, remove any commissioner for
5 inefficiency, neglect of duty, or misconduct in office, giving him
6 or her in advance a copy of the charges preferred and an opportunity
7 to be heard by a three-person panel consisting of the Insurance
8 Commissioner, the Lieutenant Governor, and the State Treasurer on
9 not less than ten (10) days' notice. A representative of the
10 Attorney General's office shall attend the proceedings and on the
11 Governor's request shall advise or assist him or her in such
12 proceedings. Either party may procure the attendance and testimony
13 of witnesses as provided by the Code of Civil Procedure of this
14 state. If a commissioner is removed, the Governor shall file in the
15 office of the Secretary of State a complete statement of all charges
16 made against the commissioner and his or her findings, together with
17 a complete record of the proceeding and a transcript of the
18 testimony, which shall constitute a public record of the state.

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

22 A. The Workers' Compensation Commission shall be vested with
23 jurisdiction over all claims filed pursuant to the Administrative
24 Workers' Compensation Act. All claims so filed shall be heard by

1 the administrative law judge sitting without a jury. The Commission
2 shall have full power and authority to determine all questions in
3 relation to claims for compensation under the provisions of the
4 Administrative Workers' Compensation Act. The Commission, upon
5 application of either party, shall order a hearing. Upon a hearing,
6 either party may present evidence and be represented by counsel.
7 Except as provided in this act, the decision of the administrative
8 law judge shall be final as to all questions of fact and law. The
9 decision of the administrative law judge shall be issued within
10 thirty (30) days following the submission of the case by the
11 parties. The power and jurisdiction of the Commission over each
12 case shall be continuing and it may, from time to time, make such
13 modifications or changes with respect to former findings or orders
14 relating thereto if, in its opinion, it may be justified.

15 B. In addition to the duties set forth in this section, the
16 administrative law judges shall have the following duties and
17 powers:

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

22 2. To hear and determine challenges to an agreement to
23 arbitrate under the Workers' Compensation Arbitration Act;
24

1 3. To assume duties within the Workers' Compensation Court of
2 Existing Claims as assigned by the Commission; and

3 4. To have and exercise all other powers and duties conferred
4 or imposed by the Commission or this act.

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

8 A. There are established within the Office of the State
9 Treasurer three separate funds:

10 1. The "Workers' Compensation Fund";

11 2. The "Multiple Injury Trust Fund"; and

12 3. The "Self-Insured Guaranty Fund".

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

16 C. All funds established under this section shall be
17 administered, disbursed, and invested under the direction of the
18 Commission and the State Treasurer.

19 D. All incomes derived through investment of the Workers'
20 Compensation Fund and the Multiple Injury Trust Fund shall be
21 credited as investment income to the fund that participated in the
22 investment.

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

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

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

9 H. The Workers' Compensation Fund shall be used to fund the
10 activities of the Commission in administering this act and for any
11 other purposes related to this act that the Commission deems
12 appropriate, subject to the provisions of Section 165 of this act.

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

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

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

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

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

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

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

11 A. For the purposes of Sections 31 through 35 of this act, the
12 term "physically impaired person" means a person who, as a result of
13 accident, disease, birth, military action, or any other cause, has
14 suffered:

15 1. The loss of the sight of one eye;

16 2. The loss by amputation of the whole or a part of a member of
17 the body;

18 3. The loss of use or partial loss of use of a member such as
19 is obvious and apparent from observation or examination by a person
20 who is not skilled in the medical profession; or

21 4. Any previous adjudications of disability adjudged and
22 determined by the Workers' Compensation Court or the Workers'
23 Compensation Commission or any disability resulting from separately
24 adjudicated injuries and adjudicated occupational diseases even

1 though arising at the same time. Provided, that any adjudication of
2 preexisting disability to a part of the body shall not be combinable
3 for purposes of the Multiple Injury Trust Fund unless that part of
4 the body was deemed to have been injured in the claim being
5 adjudicated.

6 B. This section shall apply to all adjudications of Multiple
7 Injury Trust Fund claims heard by the Commission on or after the
8 effective date of this act.

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

12 A. The Multiple Injury Trust Fund shall be derived from the
13 following sources:

14 1. As soon as practicable after January 1 of each year, the
15 commissioners of the Workers' Compensation Commission shall
16 establish an assessment rate applicable to each mutual or
17 interinsurance association, stock company, CompSource Oklahoma, or
18 other insurance carrier writing workers' compensation insurance in
19 this state, each employer carrying its own risk, and each group
20 self-insurance association, for amounts for purposes of computing
21 the assessment authorized by this section necessary to pay the
22 annual obligations of the Multiple Injury Trust Fund determined on
23 or before December 31 of each year by the MITF Director, provided
24 for in subsection P of this section, to be outstanding for the next

1 calendar year, and to pay the allocations provided for in subsection
2 I of this section. The rate shall be equal for all parties required
3 to pay the assessment. If CompSource begins operating as a mutual
4 insurance company, the Board of Directors for CompSource Mutual
5 Insurance Company shall have the power to disapprove the rate
6 established by the MITF Director until the Multiple Injury Trust
7 Fund repays in full the amount due on any loan from CompSource
8 Mutual Insurance Company or its predecessor CompSource Oklahoma. If
9 the MITF Director and CompSource have not agreed on the assessment
10 rate within thirty (30) days, the Commission shall set an assessment
11 rate sufficient to cover all foreseeable obligations of the Multiple
12 Injury Trust Fund, including interest and principal owed by the Fund
13 on any loan. The rate in effect on the effective date of this act
14 shall remain effective through June 30, 2014;

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

21 3. The assessments shall be paid to the Tax Commission.
22 Insurance carriers, self-insurers, group self-insurance associations
23 and CompSource Oklahoma shall pay the assessment in four equal
24 installments not later than the fifteenth day of the month following

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

19 a. The assessment authorized in this section shall be
20 determined using a rate equal to the proportion that
21 the sum of the outstanding obligations of the Multiple
22 Injury Trust Fund as determined pursuant to paragraph
23 1 of this subsection and the allocations provided for
24 in subsection I of this section bear to the combined

gross direct written premiums of all such insurers;
all actual paid losses of all individual self-
insureds; and the normal premium of all group self-
insurance associations, for the year period from
January 1 to December 31 preceding the assessment.

b. For purposes of this subsection:

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

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

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

5. Each mutual or interinsurance association, stock company,
CompSource Oklahoma, or other insurance carrier writing workers'
compensation insurance in this state, and each employer carrying its
own risk, including each group self-insurance association, shall be
notified by the Commission in writing of the rate for the assessment
on or before May 1 of each year in which a rate is determined. The
rate determined by the Commission shall be in effect for four

1 calendar quarters beginning July 1 following determination by the
2 Commission; and

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

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

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

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

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

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

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

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

23 F. 1. On or before the first day of April of each year, the
24 State Treasurer shall advise the Commission, the MITF Director and

1 the Tax Commission of the amount of money held as of March 1 of that
2 year by the State Treasurer to the credit of the Multiple Injury
3 Trust Fund. On or before the first day of November of each year,
4 the State Treasurer shall advise the Commission, the MITF Director
5 and the Tax Commission of the amount of money held as of October 1
6 of that year by the State Treasurer to the credit of the Multiple
7 Injury Trust Fund.

8 2. Until such time as the Multiple Injury Trust Fund fully
9 satisfies any loan obligation payable to CompSource Mutual Insurance
10 Company or its predecessor CompSource Oklahoma, the State Treasurer
11 shall:

- 12 a. advise the Chief Executive Officer of CompSource on or
13 before the first day of April of the money held as of
14 March 1 of that year by the State Treasurer to the
15 credit of the Multiple Injury Trust Fund, and
- 16 b. advise the Chief Executive Officer of CompSource on or
17 before the first day of November of the money held as
18 of October 1 of that year by the State Treasurer to
19 the credit of the Multiple Injury Trust Fund.

20 G. Eighty percent (80%) of all sums held by the State Treasurer
21 to the credit of the Multiple Injury Trust Fund may by order of the
22 MITF Director be invested in or loaned on the pledge of any of the
23 securities in which a state bank may invest the monies deposited
24 therein by the State Treasurer; or may be deposited in state or

1 national banks or trust companies upon insured time deposit bearing
2 interest at a rate no less than currently being paid upon insured
3 savings accounts in the institutions. As used in this section,
4 "insured" means insurance as provided by an agency of the federal
5 government. All such securities or evidence of indebtedness shall
6 be placed in the hands of the State Treasurer, who shall be the
7 custodian thereof, who shall collect the principal and interest when
8 due, and pay the same into the Multiple Injury Trust Fund. The
9 State Treasurer shall pay by vouchers drawn on the Multiple Injury
10 Trust Fund for the making of such investments, when signed by the
11 MITF Director, upon delivery of such securities or evidence of
12 indebtedness to the State Treasurer. The MITF Director may sell any
13 of such securities, the proceeds thereof to be paid over to the
14 State Treasurer for the Multiple Injury Trust Fund.

15 H. The refund provisions of Sections 227 through 229 of Title
16 68 of the Oklahoma Statutes shall be applicable to any payments made
17 to the Multiple Injury Trust Fund. Refunds shall be paid from and
18 out of the Multiple Injury Trust Fund.

19 I. The Tax Commission shall pay, monthly, to the State
20 Treasurer to the credit of the Multiple Injury Trust Fund all monies
21 collected pursuant to the provisions of this section, less the
22 annual sum of Two Million Five Hundred Fifty Thousand Dollars
23 (\$2,550,000.00), of which One Million Two Hundred Seventy-five
24 Thousand Dollars (\$1,275,000.00) shall be payable by the Tax

1 Commission to the State Treasurer in equal monthly installments to
2 the credit of the Department of Labor, Six Hundred Thirty-seven
3 Thousand Five Hundred Dollars (\$637,500.00) shall be payable in
4 equal monthly installments to the credit of the Office of the
5 Attorney General, and Six Hundred Thirty-seven Thousand Five Hundred
6 Dollars (\$637,500.00) shall be payable in equal monthly installments
7 to the credit of the Oklahoma Department of Career and Technology
8 Education. Monies received by the Department of Labor under this
9 section shall be used for safety consultation and the regulation of
10 the safety of public employees through the Occupational Safety and
11 Health Act of 1970. Monies received by the Office of the Attorney
12 General shall be deposited to the credit of the Attorney General's
13 Workers' Compensation Fraud Unit Revolving Fund created pursuant to
14 Section 19.2 of Title 74 of the Oklahoma Statutes. Monies received
15 by the Oklahoma Department of Career and Technology Education shall
16 supplement other funding to the Department for purposes of
17 implementing the provisions of subsection B of Section 414 of Title
18 40 of the Oklahoma Statutes. The State Treasurer shall pay out of
19 the Multiple Injury Trust Fund only upon the order and direction of
20 the Workers' Compensation Commission acting under the provisions
21 hereof.

22 J. The Commission shall promulgate rules as the Commission
23 deems necessary to effectuate the provisions of this section.
24

1 K. The Insurance Commissioner shall promulgate rules relating
2 to insurers as defined in Title 36 of the Oklahoma Statutes, as the
3 Insurance Commissioner deems necessary to effectuate the provisions
4 of this section.

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

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

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

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

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

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

3 P. The person serving as the Administrator of the Multiple
4 Injury Trust Fund on the date of passage and approval of this act
5 shall serve as the initial MITF Director, provided such person is
6 serving as the Administrator of the Multiple Injury Trust Fund on
7 the effective date of this act. The MITF Director shall be
8 appointed by and serve at the pleasure of the Governor.

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

13 R. The State Treasurer shall allocate to the Commission out of
14 the Multiple Injury Trust Fund sufficient funds for administration
15 expenses thereof in amounts to be fixed and approved by the
16 Administrator for the Multiple Injury Trust Fund, unless rejected by
17 the Commission.

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

21 A. For actions in which the subsequent injury occurred on or
22 after November 1, 2005, if such combined disabilities constitute
23 permanent total disability, as defined in Section 2 of this act, the
24 employee shall receive full compensation as provided by law for the

1 disability resulting directly and specifically from the subsequent
2 injury. In addition, the employee shall receive compensation for
3 permanent total disability if the combination of injuries renders
4 the employee permanently and totally disabled. The employer shall
5 be liable only for the degree of percent of disability which would
6 have resulted from the subsequent injury if there had been no
7 preexisting impairment. The compensation rate for permanent total
8 disability awards from the Multiple Injury Trust Fund shall be the
9 compensation rate for permanent partial disability paid by the
10 employer in the last combinable compensable injury.

11 B. Permanent total disability awards from the Multiple Injury
12 Trust Fund shall be payable in periodic installments for a period of
13 fifteen (15) years or until the employee reaches sixty-five (65)
14 years of age, whichever period is longer.

15 C. Permanent total disability awards from the Multiple Injury
16 Trust Fund shall accrue from the file date of the order of the
17 Workers' Compensation Commission finding the claimant to be
18 permanently and totally disabled.

19 D. Awards under this section shall abate upon the death, from
20 any cause, of the employee.

21 E. Reopening any prior claim other than the last claim against
22 the employer shall not give a claimant the right to additional
23 Multiple Injury Trust Fund benefits.

24

1 F. The Multiple Injury Trust Fund shall have authority to
2 compromise a claim for less than the indicated amount of permanent
3 total disability. An order entered after the effective date of this
4 act may be paid in periodic installments beginning on the date of
5 the award, or may be commuted to a lump-sum payment or payments, by
6 agreement of the claimant and the Multiple Injury Trust Fund.

7 G. An attorney for a claimant against the Multiple Injury Trust
8 Fund shall be entitled to a fee equal to twenty percent (20%) of
9 permanent disability benefits awarded. For awards entered after the
10 effective date of this act, the attorney fee shall be paid in
11 periodic installments by the attorney receiving every fifth check.
12 All benefits awarded to the attorney shall be vested.

13 H. In the event a claimant receiving benefits for permanent and
14 total disability from the Multiple Injury Trust Fund dies as a
15 result of his or her injury before the award has been fully paid,
16 payments shall continue to the surviving spouse for five (5) years
17 or upon remarriage, whichever occurs first. In no event shall
18 payments to the surviving spouse extend beyond the period of
19 benefits awarded to the claimant.

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

23 A. The right to claim compensation for benefits from the
24 Multiple Injury Trust Fund shall be forever barred unless a Notice

1 of Claim, on a form prescribed by the Workers' Compensation
2 Commission, shall be filed with the Commission within two (2) years
3 of the date of the last order for permanent partial disability from
4 the latest claim against the employer.

5 B. When a claim for benefits from the Multiple Injury Trust
6 Fund is filed, unless claimant shall in good faith request a hearing
7 and final determination thereon within three (3) years of the filing
8 thereof, the same shall be barred.

9 C. An attorney who represents a respondent or insurance carrier
10 in a claim against the last employer shall not represent the
11 employee in a subsequent claim against the Multiple Injury Trust
12 Fund.

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

16 A. The MITF Director shall be charged with the administration
17 and protection of the Multiple Injury Trust Fund and shall be
18 notified by the Workers' Compensation Commission of all proceedings
19 which may affect such fund.

20 B. The MITF Director shall have standing and the authority to
21 appear in any case before the Commission in which the Commission is
22 considering an award from the Multiple Injury Trust Fund.

23 C. Any party interested shall have a right to bring a
24 proceeding in the Supreme Court to review an award of the Commission

1 affecting such Multiple Injury Trust Fund, in the same manner as is
2 now provided by law with reference to other awards by the
3 Commission.

4 D. The State Treasurer shall allocate to the MITF Director
5 sufficient funds for administration expenses thereof in amounts to
6 be fixed and approved by the Administrator for the Multiple Injury
7 Trust Fund, unless rejected by the Governor and Attorney General.

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

11 A. 1. Every employer shall secure compensation as provided
12 under this act to its employees for compensable injuries without
13 regard to fault.

14 2. There shall be no liability for compensation under this act
15 where the injury or death was substantially occasioned by the
16 willful intention of the injured employee to bring about such
17 compensable injury or death.

18 B. The primary obligation to pay compensation is on the
19 employer, and the procurement of a policy of insurance by an
20 employer to cover the obligation in respect to this act shall not
21 relieve the employer of the obligation.

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. If a subcontractor fails to secure compensation required by
2 this act, the prime contractor shall be liable for compensation to
3 the employees of the subcontractor unless there is an intermediate
4 subcontractor who has workers' compensation coverage.

5 B. 1. Any contractor or the contractor's insurance carrier who
6 shall become liable for the payment of compensation on account of
7 injury to or death of an employee of his or her subcontractor may
8 recover from the subcontractor the amount of the compensation paid
9 or for which liability is incurred.

10 2. The claim for the recovery shall constitute a lien against
11 any monies due or to become due to the subcontractor from the prime
12 contractor.

13 3. A claim for recovery shall not affect the right of the
14 injured employee or the dependents of the deceased employee to
15 recover compensation due from the prime contractor or his or her
16 insurance carrier.

17 C. 1. a. When a sole proprietorship or partnership fails to
18 elect to cover the sole proprietor or partners under
19 this act, the prime contractor is not liable under
20 this act for injuries sustained by the sole proprietor
21 or partners if the sole proprietor or partners are not
22 employees of the prime contractor.

23 b. (1) A sole proprietor or the partners of a
24 partnership who do not elect to be covered by

1 this act and be deemed employees thereunder and
2 who deliver to the prime contractor a current
3 certification of noncoverage issued by the
4 Commission shall be conclusively presumed not to
5 be covered by the law or to be employees of the
6 prime contractor during the term of his or her
7 certification or any renewals thereof.

8 (2) A certificate of noncoverage may not be presented
9 to a subcontractor who does not have workers'
10 compensation coverage.

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

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

20 3. a. Any prime contractor who after being presented with a
21 current certification of noncoverage by a sole
22 proprietor or partnership compels the sole proprietor
23 or partnership to pay or contribute to workers'
24

1 compensation coverage of that sole proprietor or
2 partnership shall be guilty of a misdemeanor.

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

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

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

16 2. The Commission may assess a fee not to exceed Fifty Dollars
17 (\$50.00) with each application for a certification of noncoverage or
18 any renewals thereof.

19 3. Any certification of noncoverage issued by the Commission
20 shall contain the social security number and notarized signature of
21 the applicant. The notarization shall be in a form and manner
22 prescribed by the Commission.

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

1 E. If work is performed by an independent contractor on a
2 single-family residential dwelling occupied by the owner, or the
3 premises of such dwelling, or for a farmer whose cash payroll for
4 wages, excluding supplies, materials and equipment, for the
5 preceding calendar year did not exceed One Hundred Thousand Dollars
6 (\$100,000.00), such owner or farmer shall not be liable for
7 compensation under this act for injuries to the independent
8 contractor or his or her employees.

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

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

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

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

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

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

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

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

23 2. By obtaining and keeping in force guaranty insurance with
24 any company authorized to do guaranty business in this state. Each

1 company that issues workers' compensation guaranty insurance shall
2 file a copy of the contract with the Commission within thirty (30)
3 days after the effective date of the contract. Any company that
4 does not file a copy of the contract as required by this paragraph
5 shall be subject to a fine by the Commission of not more than One
6 Thousand Dollars (\$1,000.00);

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

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

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

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

23 b. one hundred or more employees and One Million Dollars
24 (\$1,000,000.00) or more in net assets to:

- (1) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount determined by the Commission which shall be at least an average of the yearly claims for the last three (3) years, or
- (2) provide proof of excess coverage with terms and conditions that are commensurate with their ability to pay the benefits required by the provisions of this act;

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

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

B. The Commission may waive the requirements of this section in an amount which is commensurate with the ability of the employer to

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

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

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

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

21 SECTION 39. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 39 of Title 85A, unless there is
23 created a duplication in numbering, reads as follows:
24

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

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

7 1. An employer's knowledge of an injury shall constitute the
8 carrier's knowledge of the injury;

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

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

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

16 A. 1. Any employer who fails to secure compensation required
17 under this act, upon conviction, shall be guilty of a misdemeanor
18 and subject to a fine of up to Ten Thousand Dollars (\$10,000.00) to
19 be deposited in the Workers' Compensation Fund.

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

22 B. 1. Whenever the Commission has reason to believe that any
23 employer required to secure the payment of compensation under this
24 act has failed to do so, the Commission shall serve on the employer

1 a proposed judgment declaring the employer to be in violation of
2 this act and containing the amount, if any, of the civil penalty to
3 be assessed against the employer under paragraph 5 of this
4 subsection.

5 2. a. An employer may contest a proposed judgment of the
6 Commission issued under paragraph 1 of this subsection
7 by filing with the Commission, within twenty (20) days
8 of receipt of the proposed judgment, a written request
9 for a hearing.

10 b. The request for a hearing does not need to be in any
11 particular form but shall specify the grounds on which
12 the person contests the proposed judgment, the
13 proposed assessment, or both.

14 c. If a written request for hearing is not filed with the
15 Commission within the time specified in subparagraph a
16 of this paragraph, the proposed judgment, the proposed
17 penalty, or both, shall be a final judgment of the
18 Commission and shall not be subject to further review
19 by any court, except if the employer shows good cause
20 why it did not timely contest the judgment or penalty.

21 d. A proposed judgment by the Commission under this
22 section shall be prima facie correct, and the burden
23 is on the employer to prove that the proposed judgment
24 is incorrect.

1 3. a. If the employer alleges that a carrier has contracted
2 to provide it workers' compensation insurance coverage
3 for the period in question, the employer shall include
4 the allegation in its request for hearing and shall
5 name the carrier.

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

8 c. The carrier shall promptly, and no later than five (5)
9 days before the hearing, respond in writing to the
10 employer's allegation by providing evidence of
11 coverage for the period in question or by
12 affirmatively denying the employer's allegation.

13 4. Hearings under this section shall be procedurally conducted
14 as provided in Sections 69 through 78 of this act.

15 5. The Commission may assess a fine against an employer who
16 fails to secure the payment of compensation in an amount up to One
17 Thousand Dollars (\$1,000.00) per day of violation payable to the
18 Workers' Compensation Fund.

19 6. If an employer fails to secure the payment of compensation
20 or pay any civil penalty assessed against the employer after a
21 judgment issued under this section has become final by operation of
22 law or on appeal, the Commission may petition the Oklahoma County
23 District Court or the district court of the county where the
24 employer's principal place of business is located for an order

1 enjoining the employer from engaging in further employment until
2 such time as the employer secures the payment of compensation or
3 makes full payment of all civil penalties.

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

7 A. Every employer who has secured compensation under the
8 provisions of this act shall keep posted in a conspicuous place in
9 and about the employer's place of business typewritten or printed
10 notices in accordance with a form prescribed by the Commission. The
11 notices shall state that the employer has secured the payment of
12 compensation in accordance with the provisions of this act.

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

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

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

- 22 1. a. Provisions that identify the insured employer and
23 either identify each covered employee or describe
24 covered employees by class or type of labor performed

1 and the estimated number of employees of each such
2 class or type.

3 b. No single policy of workers' compensation insurance
4 may be issued to any group of employers who are
5 unaffiliated with one another in terms of ownership,
6 control, or right to participate in the profits of the
7 affiliated enterprises;

8 2. Provisions that insolvency or bankruptcy of the employer or
9 discharge therein shall not relieve the carrier from payment of
10 compensation for compensable injuries sustained by an employee
11 during the term of the policy or contract;

12 3. a. The agreement of the carrier that it shall promptly
13 pay to the person entitled to compensation every
14 installment of compensation that may be awarded or
15 agreed on and that this obligation shall not be
16 affected by any default of the employer or by any
17 default in the giving of any notice required by the
18 policy or otherwise.

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

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

24 B. Cancellation.

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

4 a. Cancellation of coverage is effective at 12:01 a.m.
5 thirty (30) days after the date the cancellation
6 notice is received by the carrier, unless a later date
7 is specified in the notice to the carrier.

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

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

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

17 b. A carrier shall not cancel coverage issued to an
18 employer under this act before the date specified for
19 expiration in the policy or contract or until at least
20 thirty (30) days have elapsed after a notice of
21 cancellation has been mailed to the Commission and to
22 the employer, or until ten (10) days have elapsed
23 after the notice has been mailed to the employer and
24

1 to the Commission if the cancellation is for
2 nonpayment of premium.

3 c. If the employer procures other insurance within the
4 notice period, the effective date of the new policy
5 shall be the cancellation date of the old policy.

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

9 C. Coverage.

10 1. No policy or contract of insurance shall be issued against
11 liability under this act unless the policy or contract covers the
12 entire liability of the employer. Split coverage whereby some
13 employees of an employer are insured by one carrier and other
14 employees are insured by another carrier, or a plan of self-
15 insurance, is expressly prohibited except for a policy issued
16 covering the liability of an employer or of multiple employers as to
17 specific jobs, ventures, contracts, or undertakings, but only if the
18 policy meets with the reasonable satisfaction and approval of the
19 Insurance Commissioner that the policy is in the best interest of
20 the employers and the employees concerned and does not unduly or
21 improperly affect the continuity of workers' compensation coverage
22 by seriously and negatively affecting other carriers and agents with
23 outstanding policies issued to any of the employers in issue.

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

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

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

10 A. Liability Unaffected.

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

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

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

1 collection, for the payment to them of the amount paid
2 and to be paid by them as compensation to the injured
3 employee or his or her dependents.

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

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

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

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

19 B. Subrogation.

20 1. An employer or carrier liable for compensation under this
21 act for the injury or death of an employee shall have the right to
22 maintain an action in tort against any third party responsible for
23 the injury or death. However, the employer or the carrier shall
24 notify the claimant in writing that the claimant has the right to

1 hire a private attorney to pursue any benefits to which the claimant
2 is entitled in addition to the subrogation interest against any
3 third party responsible for the injury or death.

4 2. After reasonable notice and opportunity to be represented in
5 the action has been given to the injured employee, the liability of
6 the third party to the compensation beneficiary shall be determined
7 in the action, as well as the third party's liability to the
8 employer and carrier.

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

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

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

21 A. Any benefits payable to an injured employee under this act
22 shall be reduced in an amount equal to, dollar-for-dollar, the
23 amount of benefits the injured employee has previously received for
24 the same medical services or period of disability, whether those

1 benefits were paid under a group health care service plan, a group
2 disability policy, a group loss of income policy, a group accident,
3 health, or accident and health policy, a self-insured employee
4 health or welfare benefit plan, or a group hospital or medical
5 service contract; provided, however, such reduction does not apply
6 to any benefit received from a group policy for disability if the
7 injured employee has paid for the policy.

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

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

15 A. Temporary Total Disability.

16 1. If the injured employee is temporarily unable to perform his
17 or her job or any alternative work offered by the employer, he or
18 she shall be entitled to receive compensation equal to seventy
19 percent (70%) of the injured employee's average weekly wage, but not
20 to exceed seventy percent (70%) of the state average weekly wage,
21 for one hundred four (104) weeks. Provided, there shall be no
22 payment for the first three (3) days of the initial period of
23 temporary total disability. If an administrative law judge finds
24 that a consequential injury has occurred and that additional time is

1 needed to reach maximum medical improvement, temporary total
2 disability may continue for a period of not more than an additional
3 fifty-two (52) weeks. Such finding shall be based upon a showing of
4 medical necessity by clear and convincing evidence.

5 2. When the injured employee is released from active medical
6 treatment by the treating physician for all body parts found by the
7 Commission to be injured, or in the event that the employee, without
8 a valid excuse, misses three consecutive medical treatment
9 appointments, fails to comply with medical orders of the treating
10 physician, or otherwise abandons medical care, the employer shall be
11 entitled to terminate temporary total disability by notifying the
12 employee, or if represented, his or her counsel. If, however, an
13 objection to the termination is filed by the employee within ten
14 (10) days of termination, the Commission shall set the matter within
15 twenty (20) days for a determination if temporary total disability
16 compensation shall be reinstated. The temporary total disability
17 shall remain terminated unless the employee proves the existence of
18 a valid excuse for his or her failure to comply with medical orders
19 of the treating physician or his or her abandonment of medical care.
20 The administrative law judge may appoint an independent medical
21 examiner to determine if further medical treatment is reasonable and
22 necessary. The independent medical examiner shall not provide
23 treatment to the injured worker, unless agreed upon by the parties.

24 B. Temporary Partial Disability.

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

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

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

14 C. Permanent Partial Disability.

15 1. A permanent partial disability award or combination of
16 awards granted an injured worker may not exceed a permanent partial
17 disability rating of one hundred percent (100%) to any body part or
18 to the body as a whole. The determination of permanent partial
19 disability shall be the responsibility of the Commission through its
20 administrative law judges. Any claim by an employee for
21 compensation for permanent partial disability must be supported by
22 competent medical testimony of a medical doctor, osteopathic
23 physician, or chiropractor, and shall be supported by objective
24 medical findings, as defined in this act. The opinion of the

1 physician shall include employee's percentage of permanent partial
2 disability and whether or not the disability is job-related and
3 caused by the accidental injury or occupational disease. A
4 physician's opinion of the nature and extent of permanent partial
5 disability to parts of the body other than scheduled members must be
6 based solely on criteria established by the current edition of the
7 American Medical Association's "Guides to the Evaluation of
8 Permanent Impairment". A copy of any written evaluation shall be
9 sent to both parties within seven (7) days of issuance. Medical
10 opinions addressing compensability and permanent disability must be
11 stated within a reasonable degree of medical certainty. Any party
12 may submit the report of an evaluating physician.

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

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

22 4. In cases of permanent partial disability, the compensation
23 shall be seventy percent (70%) of the employee's average weekly
24 wage, not to exceed Three Hundred Twenty-three Dollars (\$323.00) per

1 week, for a term not to exceed a total of three hundred fifty (350)
2 weeks for the body as a whole.

3 5. Except pursuant to settlement agreements entered into by the
4 employer and employee, payment of a permanent partial disability
5 award shall be deferred and held in reserve by the employer or
6 insurance company if the employee has reached maximum medical
7 improvement and has been released to return to work by his or her
8 treating physician, and then returns to his pre-injury or equivalent
9 job for a term of weeks determined by dividing the total dollar
10 value of the award by seventy percent (70%) of the employee's
11 average weekly wage.

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

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

1 c. If the employee refuses an offer to return to his pre-
2 injury or equivalent job, the permanent partial
3 disability award shall continue to be deferred and
4 shall be reduced by seventy percent (70%) of the
5 employee's average weekly wage for each week he
6 refuses to return to his pre-injury or equivalent job.

7 d. Attorney fees for permanent partial disability awards,
8 as approved by the Commission, shall be calculated
9 based upon the total permanent partial disability
10 award and paid in full at the time of the deferral.

11 e. Assessments pursuant to Sections 31, 98, 112 and 165
12 of this act shall be calculated based upon the amount
13 of the permanent partial disability award and shall be
14 paid at the time of the deferral.

15 6. Previous Disability: The fact that an employee has suffered
16 previous disability or received compensation therefor shall not
17 preclude the employee from compensation for a later accidental
18 personal injury or occupational disease. In the event there exists
19 a previous permanent partial disability, including a previous non-
20 work-related injury or condition which produced permanent partial
21 disability and the same is aggravated or accelerated by an
22 accidental personal injury or occupational disease, compensation for
23 permanent partial disability shall be only for such amount as was
24 caused by such accidental personal injury or occupational disease

1 and no additional compensation shall be allowed for the preexisting
2 disability or impairment. Any such reduction shall not apply to
3 temporary total disability, nor shall it apply to compensation for
4 medical treatment.

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

16 b. In all cases, the applicable reduction shall be
17 calculated as follows:

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

1 partial disability determined to be preexisting.
2 The current dollar value shall be calculated by
3 multiplying the percentage of preexisting
4 permanent partial disability by the compensation
5 rate in effect on the date of the accident or
6 injury against which the reduction will be
7 applied, and

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

12 7. No payments on any permanent partial disability order shall
13 begin until payments on any preexisting permanent partial disability
14 orders have been completed.

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

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

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

10 D. Permanent Total Disability.

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

1 disability and permanent total disability benefits, the permanent
2 total disability award shall not be due until the permanent partial
3 disability award is paid in full. If otherwise qualified according
4 to the provisions of this act, permanent total disability benefits
5 may be awarded to an employee who has exhausted the maximum period
6 of temporary total disability even though the employee has not
7 reached maximum medical improvement.

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

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

19 2. The Vocational Rehabilitation Director shall help injured
20 workers return to the work force. If the injured employee is unable
21 to return to his or her pre-injury or equivalent position due to
22 permanent restrictions as determined by the treating physician, upon
23 the request of either party, the Vocational Rehabilitation Director
24 shall determine if it is appropriate for a claimant to receive

1 vocational rehabilitation training or services, and will oversee
2 such training. If appropriate, the Vocational Rehabilitation
3 Director shall issue administrative orders, including, but not
4 limited to, an order for a vocational rehabilitation evaluation for
5 any injured employee unable to work for at least ninety (90) days.
6 In addition, the Vocational Rehabilitation Director may assign
7 injured workers to vocational rehabilitation counselors for
8 coordination of recommended services. The cost of the services
9 shall be paid by the employer. All administrative orders are
10 subject to appeal to the full Commission.

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

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

- e. if the employee's occupation is heavy laborer and the medical condition is myocardial infarction with congestive heart failure,
- f. if the employee's occupation is heavy manual laborer and the medical condition is multilevel neck or back fusions greater than two levels,
- g. if the employee's occupation is laborer performing overhead work and the medical condition is massive rotator cuff tears, with or without surgery,
- h. if the employee's occupation is heavy laborer and the medical condition is recurrent inguinal hernia following unsuccessful surgical repair,
- i. if the employee's occupation is heavy manual laborer and the medical condition is total knee replacement or total hip replacement,
- j. if the employee's occupation is roofer and the medical condition is calcaneal fracture, medically or surgically treated,
- k. if the employee's occupation is laborer of any kind and the medical condition is total shoulder replacement,
- l. if the employee's occupation is laborer and the medical condition is amputation of a hand, arm, leg, or foot,

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

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

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

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

24

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

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

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

1 insurer may deduct the amount paid for tuition from compensation
2 awarded to the employee.

3 F. Disfigurement.

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

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

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

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

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

23 A. An injured employee who is entitled to receive permanent
24 partial disability compensation under Section 45 of this act shall

1 receive compensation for each part of the body in accordance with
2 the number of weeks for the scheduled loss set forth below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 D. 1. Compensation for amputation of the first phalange of a
19 digit shall be one-half (1/2) of the compensation for the amputation
20 of the entire digit.

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

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

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

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

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

1 B. Common law spouse. A common law spouse shall not be
2 entitled to benefits under this section unless he or she obtains an
3 order from a court with competent jurisdiction ruling that a common
4 law marriage existed between the decedent and the surviving spouse.

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

8 1. If there is a surviving spouse, a lump-sum payment of One
9 Hundred Thousand Dollars (\$100,000.00) and seventy percent (70%) of
10 the lesser of the deceased employee's average weekly wage and the
11 state average weekly wage. In addition to the benefits theretofore
12 paid or due, two (2) years' indemnity benefit in one lump sum shall
13 be payable to a surviving spouse upon remarriage;

14 2. If there is a surviving spouse and a child or children, a
15 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
16 fifteen percent (15%) of the lesser of the deceased employee's
17 average weekly wage and the state average weekly wage to each child.
18 If there are more than two children, each child shall receive a pro
19 rata share of Fifty Thousand Dollars (\$50,000.00) and thirty percent
20 (30%) of the deceased employee's average weekly wage;

21 3. If there is a child or children and no surviving spouse, a
22 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
23 fifty percent (50%) of the lesser of the deceased employee's average
24 weekly wage and the state average weekly wage to each child. If

1 there are more than two children, each child shall receive a pro
2 rata share of one hundred percent (100%) of the lesser of the
3 deceased employee's average weekly wage and the state average weekly
4 wage. With respect to the lump-sum payment, if there are more than
5 six children, each child shall receive a pro rata share of One
6 Hundred Fifty Thousand Dollars (\$150,000.00);

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

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

16 D. The weekly income benefits payable to the surviving spouse
17 under this section shall continue while the surviving spouse remains
18 unmarried. In no event shall this spousal weekly income benefit be
19 diminished by the award to other beneficiaries. The weekly income
20 benefits payable to any child under this section shall terminate on
21 the earlier of death, marriage, or reaching the age of eighteen
22 (18). However, if the child turns eighteen (18) and is:

23 1. Enrolled as a full-time student in high school or is being
24 schooled by other means pursuant to the Oklahoma Constitution;

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

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

10 E. If any member of the class of beneficiaries who receive a
11 pro rata share of weekly income benefits becomes ineligible to
12 continue to receive benefits, the remaining members of the class
13 shall receive adjusted weekly income benefits equal to the new class
14 size.

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

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

4 When an injury or death is sustained by a minor employed in
5 violation of federal or state statutes relating to minimum ages for
6 employment of minors, disability or death benefits provided for by
7 this act shall be doubled; provided, however, such penalty shall not
8 apply when the minor misrepresents his or her age, in writing, to
9 the employer.

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

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

24

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

4 A. The employer shall promptly provide an injured employee with
5 medical, surgical, hospital, optometric, podiatric, and nursing
6 services, along any with medicine, crutches, ambulatory devices,
7 artificial limbs, eyeglasses, contact lenses, hearing aids, and
8 other apparatus as may be reasonably necessary in connection with
9 the injury received by the employee. The employer shall have the
10 right to choose the treating physician.

11 B. If the employer fails or neglects to provide medical
12 treatment within five (5) days after actual knowledge is received of
13 an injury, the injured employee may select a physician to provide
14 medical treatment at the expense of the employer; provided, however,
15 that the injured employee, or another in the employee's behalf, may
16 obtain emergency treatment at the expense of the employer where such
17 emergency treatment is not provided by the employer.

18 C. Diagnostic tests shall not be repeated sooner than six (6)
19 months from the date of the test unless agreed to by the parties or
20 ordered by the Commission for good cause shown.

21 D. Unless recommended by the treating doctor at the time
22 claimant reaches maximum medical improvement or by an independent
23 medical examiner, continuing medical maintenance shall not be
24 awarded by the Commission. The employer or insurance carrier shall

1 not be responsible for continuing medical maintenance or pain
2 management treatment that is outside the parameters established by
3 the Physician Advisory Committee or ODG. The employer or insurance
4 carrier shall not be responsible for continuing medical maintenance
5 or pain management treatment not previously ordered by the
6 Commission or approved in advance by the employer or insurance
7 carrier.

8 E. An employee claiming or entitled to benefits under this act,
9 shall, if ordered by the Commission or requested by the employer or
10 insurance carrier, submit himself or herself for medical
11 examination. If an employee refuses to submit himself or herself to
12 examination, his or her right to prosecute any proceeding under this
13 act shall be suspended, and no compensation shall be payable for the
14 period of such refusal.

15 F. For compensable injuries resulting in the use of a medical
16 device, ongoing service for the medical device shall be provided in
17 situations including, but not limited to, medical device battery
18 replacement, ongoing medication refills related to the medical
19 device, medical device repair, or medical device replacement.

20 G. The employer shall reimburse the employee for the actual
21 mileage in excess of twenty (20) miles round-trip to and from the
22 employee's home to the location of a medical service provider for
23 all reasonable and necessary treatment, for an evaluation of an
24 independent medical examiner and for any evaluation made at the

1 request of the employer or insurance carrier. The rate of
2 reimbursement for such travel expense shall be the official
3 reimbursement rate as established by the State Travel Reimbursement
4 Act. In no event shall the reimbursement of travel for medical
5 treatment or evaluation exceed six hundred (600) miles round trip.

6 H. Fee Schedule.

7 1. The Commission shall conduct a review of the Fee Schedule
8 every two (2) years. The Fee Schedule shall establish the maximum
9 rates that medical providers shall be reimbursed for medical care
10 provided to injured employees, including, but not limited to,
11 charges by physicians, dentists, counselors, hospitals, ambulatory
12 and outpatient facilities, clinical laboratory services, diagnostic
13 testing services, and ambulance services, and charges for durable
14 medical equipment, prosthetics, orthotics, and supplies. The most
15 current Fee Schedule established by the Administrator of the
16 Workers' Compensation Court prior to the effective date of this
17 section shall remain in effect, unless or until the Legislature
18 approves the Commission's proposed Fee Schedule.

19 2. Reimbursement for medical care shall be prescribed and
20 limited by the Fee Schedule as adopted by the Commission, after
21 notice and public hearing, and after approval by the Legislature by
22 joint resolution. The director of the Employees Group Insurance
23 Division of the Office of Management and Enterprise Services shall
24 provide the Commission such information as may be relevant for the

1 development of the Fee Schedule. The Commission shall develop the
2 Fee Schedule in a manner in which quality of medical care is assured
3 and maintained for injured employees. The Commission shall give due
4 consideration to additional requirements for physicians treating an
5 injured worker under this act, including, but not limited to,
6 communication with claims representatives, case managers, attorneys,
7 and representatives of employers, and the additional time required
8 to complete forms for the Commission, insurance carriers, and
9 employers.

10 3. In making adjustments to the Fee Schedule, the Commission
11 shall use, as a benchmark, the reimbursement rate for each Current
12 Procedural Terminology (CPT) code provided for in the fee schedule
13 published by the Centers for Medicare and Medicaid Services of the
14 U.S. Department of Health and Human Services for use in Oklahoma
15 (Medicare Fee Schedule) on the effective date of this section,
16 workers' compensation fee schedules employed by neighboring states,
17 the latest edition of "Relative Values for Physicians" (RVP), usual,
18 customary and reasonable medical payments to workers' compensation
19 health care providers in the same trade area for comparable
20 treatment of a person with similar injuries, and all other data the
21 Commission deems relevant. For services not valued by CMS, the
22 Commission shall establish values based on the usual, customary and
23 reasonable medical payments to health care providers in the same
24

1 trade area for comparable treatment of a person with similar
2 injuries.

3 a. No reimbursement shall be allowed for any magnetic
4 resonance imaging (MRI) unless the MRI is provided by
5 an entity that meets Medicare requirements for the
6 payment of MRI services or is accredited by the
7 American College of Radiology, the Intersocietal
8 Accreditation Commission or the Joint Commission on
9 Accreditation of Healthcare Organizations. For all
10 other radiology procedures, the reimbursement rate
11 shall be the lesser of the reimbursement rate allowed
12 by the 2010 Oklahoma Fee Schedule and two hundred
13 seven percent (207%) of the Medicare Fee Schedule.

14 b. For reimbursement of medical services for Evaluation
15 and Management of injured employees as defined in the
16 Fee Schedule adopted by the Commission, the
17 reimbursement rate shall not be less than one hundred
18 fifty percent (150%) of the Medicare Fee Schedule.

19 c. Any entity providing durable medical equipment,
20 prosthetics, orthotics or supplies shall be accredited
21 by a CMS-approved accreditation organization. If a
22 physician provides durable medical equipment,
23 prosthetics, orthotics, prescription drugs, or
24 supplies to a patient ancillary to the patient's

1 visit, reimbursement shall be no more than ten percent
2 (10%) above cost.

3 d. The Commission shall develop a reasonable stop-loss
4 provision of the Fee Schedule to provide for adequate
5 reimbursement for treatment for major burns, severe
6 head and neurological injuries, multiple system
7 injuries, and other catastrophic injuries requiring
8 extended periods of intensive care.

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

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

20 6. A treating physician may not charge more than Four Hundred
21 Dollars (\$400.00) per hour for preparation for or testimony at a
22 deposition or appearance before the Commission in connection with a
23 claim covered by the Administrative Workers' Compensation Act.
24

1 7. The Commission's review of medical and treatment charges
2 pursuant to this section shall be conducted pursuant to the Fee
3 Schedule in existence at the time the medical care or treatment was
4 provided. The judgment approving the medical and treatment charges
5 pursuant to this section shall be enforceable by the Commission in
6 the same manner as provided in this act for the enforcement of other
7 compensation payments.

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

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

1 9. When medical care includes prescription drugs dispensed by a
2 physician or other medical care provider and the NDC for the drug
3 product dispensed is for a repackaged drug, then the maximum
4 reimbursement shall be the lesser of the original labeler's NDC and
5 the lowest-cost therapeutic equivalent drug product. Payment shall
6 be based upon a sum of the allowable fee for each ingredient plus a
7 dispensing fee of Five Dollars (\$5.00) per prescription. Compounded
8 medications shall be billed by the compounding pharmacy.

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

ownership interest of less than five percent (5%) in a publically traded company, buys and resells implantable devices to a hospital or another physician, the markup shall be limited to ten percent (10%) above cost.

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

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

13. Physicians providing treatment under this act shall disclose under penalty of perjury to the Commission, on a form

1 prescribed by the Commission, any ownership or interest in any
2 health care facility, business, or diagnostic center that is not the
3 physician's primary place of business. The disclosure shall include
4 any employee leasing arrangement between the physician and any
5 health care facility that is not the physician's primary place of
6 business. A physician's failure to disclose as required by this
7 section shall be grounds for the Commission to disqualify the
8 physician from providing treatment under this act.

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

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

21 The employer shall pay one hundred percent (100%) of the medical
22 expenses, subject to the Fee Schedule, with no maximum dollar or
23 duration limits for all compensable injuries.

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

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

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

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

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

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

1 SECTION 54. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 54 of Title 85A, unless there is
3 created a duplication in numbering, reads as follows:

4 Except in cases of hernia, which are specifically covered by
5 Section 61 of this act, where an injured employee unreasonably
6 refuses to submit to a surgical operation which has been advised by
7 at least two qualified physicians and where the recommended
8 operation does not involve unreasonable risk of life or additional
9 serious physical impairment, the Commission shall take the refusal
10 into consideration when determining compensation for permanent
11 partial or permanent total disability.

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

15 A. If an employer or carrier believes that a charge for medical
16 services or supplies under this act is unreasonable, it may submit
17 the charge to the Commission for review. If the Commission
18 determines that the charge is unreasonable, it may amend the charges
19 to reflect the Fee Schedule established under Section 50 of this
20 act, if applicable, or in accordance with reasonable market rates
21 for the services or supplies provided.

22 B. The provisions of this section relating to charges shall not
23 apply if a written contract exists between the employer and the
24 person who renders the medical service or supplies.

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

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

11 B. If the employer is not covered by a certified workplace
12 medical plan, the employer shall select the treating physician. The
13 Commission on application of the employee shall order one change of
14 treating physician. Upon the Commission's granting of the
15 application, the employer shall provide a list of three physicians
16 from whom the employee may select the replacement.

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

20 A. If an injured employee misses two or more scheduled
21 appointments for treatment, he or she shall no longer be eligible to
22 receive benefits under this act, unless his or her absence was:

23 1. Caused by extraordinary circumstances beyond the employee's
24 control as determined by the Commission; or

1 2. The employee gave the employer at least two (2) hours prior
2 notice of the absence and had a valid excuse.

3 B. Inability to get transportation to or from the appointment
4 shall not be considered extraordinary circumstances nor a valid
5 excuse for the absence.

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

9 A. 1. Every hospital or other person furnishing the injured
10 employee with medical services shall permit its records to be copied
11 by and shall furnish full written information to the Commission, the
12 Workers' Compensation Fraud Investigation Unit, the employer, the
13 carrier, and the employee or the employee's dependents.

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

16 B. No person who in good faith under subsection A of this
17 section or under rules established by the Commission reports medical
18 information shall incur legal liability for the disclosure of the
19 information.

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

23 A. 1. Compensation under this act based on the employee's
24 average weekly wage shall be computed by dividing the employee's

1 gross earnings by the number of full weeks of employment with the
2 employer, up to a maximum of fifty-two (52) weeks.

3 2. If the injured employee was working on a piece basis, the
4 average weekly wage shall be determined by dividing the earnings of
5 the employee by the number of hours required to earn the wages
6 during the period not to exceed fifty-two (52) weeks preceding the
7 week in which the accident occurred and by multiplying this hourly
8 wage by the number of hours in a full-time workweek in the
9 employment.

10 B. Overtime earnings are to be added to the regular weekly
11 wages and shall be computed by dividing the overtime earnings by the
12 number of weeks worked by the employee in the same employment under
13 the contract of hire in force at the time of the accident, not to
14 exceed a period of fifty-two (52) weeks preceding the accident.

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

19 D. The benefit level for members of the National Guard and any
20 authorized voluntary or uncompensated worker rendering services as a
21 firefighter, peace officer or civil defense worker shall be
22 determined by using the wages of the employee in his or her regular
23 occupation.

24

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

4 The Physician Advisory Committee may recommend the adoption of a
5 method or system to evaluate permanent disability that shall deviate
6 from, or be used in place of or in combination with the Guides.
7 Such recommendation shall be made to the Commission which may adopt
8 the recommendation in part or in whole. The adopted method or
9 system shall be submitted by the Director to the Governor, the
10 Speaker of the House of Representatives and the President Pro
11 Tempore of the Senate within the first ten (10) legislative days of
12 a regular session of the Legislature. Such method or system so
13 submitted shall be subject to disapproval by joint or concurrent
14 resolution of the Legislature during the legislative session in
15 which submitted. If disapproved, the existing method of determining
16 permanent partial disability shall continue in effect. If the
17 Legislature takes no action on the method or system submitted by the
18 Director, the method or system shall become operative thirty (30)
19 days following the adjournment of the Legislature.

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

23
24

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

4 1. The occurrence of the hernia followed as the result of
5 sudden effort, severe strain, or the application of force directly
6 to the abdominal wall;

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

8 3. The pain caused the employee's work to be substantially
9 affected;

10 4. Notice of the occurrence was given to the employer within
11 five (5) days thereafter; and

12 5. The physical distress following the occurrence of the hernia
13 was such as to require the attendance of a licensed physician.

14 B. 1. Notwithstanding the provisions of Section 45 of this
15 act, if it is determined that a hernia is a compensable injury under
16 subsection A of this section, the injured employee shall be entitled
17 to temporary total disability for six (6) weeks.

18 2. If the injured employee refuses to permit the hernia
19 operation if recommended by a physician, he or she shall be entitled
20 to temporary total disability for thirteen (13) weeks in addition to
21 appropriate medical care.

22 C. If the injured employee dies within one (1) year as a direct
23 and sole result of the hernia or a radical operation of the hernia,
24

1 the deceased employee's dependents shall be entitled to death
2 compensation under Section 48 of this act.

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

6 A. Notwithstanding the provisions of Section 45 of this act, if
7 an employee suffers a nonsurgical soft tissue injury, temporary
8 total disability compensation shall not exceed eight (8) weeks,
9 regardless of the number of parts of the body to which there is a
10 nonsurgical soft tissue injury. An employee who is treated with an
11 injection or injections shall be entitled to an extension of an
12 additional eight (8) weeks. An employee who has been recommended by
13 a treating physician for surgery for a soft tissue injury may
14 petition the Workers' Compensation Commission for one extension of
15 temporary total disability compensation and the Commission may order
16 an extension, not to exceed sixteen (16) additional weeks. If the
17 surgery is not performed within thirty (30) days of the approval of
18 the surgery by the employer, its insurance carrier, or an order of
19 the Commission authorizing the surgery, and the delay is caused by
20 the employee acting in bad faith, the benefits for the extension
21 period shall be terminated and the employee shall reimburse the
22 employer any temporary total disability compensation he or she
23 received beyond eight (8) weeks. An epidural steroid injection, or
24

1 any procedure of the same or similar physical invasiveness, shall
2 not be considered surgery.

3 B. For purposes of this section, "soft tissue injury" means
4 damage to one or more of the tissues that surround bones and joints.
5 Soft tissue injury includes, but is not limited to, sprains,
6 strains, contusions, tendonitis and muscle tears. Cumulative trauma
7 is to be considered a soft tissue injury. Soft tissue injury does
8 not include any of the following:

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

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

12 a. sensory or motor disturbances,

13 b. communication disturbances,

14 c. complex integrated disturbances of cerebral function,

15 d. episodic neurological disorders, or

16 e. other brain and closed-head injury conditions at least
17 as severe in nature as any condition provided in

18 subparagraphs a through d of this paragraph; or

19 3. Any joint replacement.

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

23

24

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

4 1. The name, address, and business of the employer;

5 2. The name, address, and occupation of the employee;

6 3. The cause and nature of the injury or death;

7 4. The year, month, day, approximately when, and the particular
8 locality where, the injury or death occurred; and

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

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

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

19 D. The mailing of any report in a stamped envelope, properly
20 addressed, within the time prescribed in subsection A or B of this
21 section, shall be in compliance with this section. In addition, the
22 Commission shall establish a means of electronic delivery of any
23 report or other information required by this section.

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

4 2. Whenever the employer has failed or refused to comply as
5 provided in this section, the Commission may serve on the employer a
6 proposed judgment declaring the employer to be in violation of this
7 act and containing the amount, if any, of the civil penalty to be
8 assessed against the employer under this section.

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

21 G. Hearings conducted under this section shall proceed as
22 provided in Sections 69 through 78 of this act.

23 H. If an employer fails to pay any civil penalty assessed
24 against the employer after a judgment issued under this section has

1 become final by operation of law, the Commission may petition the
2 district court of the county where the employer's principal place of
3 business is located for an order enjoining the employer from
4 engaging in further employment or conduct of business until such
5 time as the employer makes all required reports and pays all civil
6 penalties.

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

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

23 1. A list of the names of all medical providers who shall
24 provide services under the plan, together with appropriate evidence

1 of compliance with any licensing or certification requirements for
2 those providers to practice in this state; and

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

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

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

9 a. may be required by this act in a manner that is
10 timely, effective and convenient for the employee, and

11 b. utilize medical treatment guidelines and protocols
12 consistent with those established by the Official
13 Disability Guidelines;

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

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

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

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

1 6. Provides a timely and accurate method of reporting to the
2 State Commissioner of Health necessary information regarding medical
3 service costs and utilization to enable the State Commissioner of
4 Health to determine the effectiveness of the plan;

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

8 8. Does not discriminate against or exclude from participation
9 in the plan any category of providers of medical, surgical, or
10 hospital services and includes an adequate number of each category
11 of providers of medical, surgical, and hospital services to give
12 participants access to all categories of providers and does not
13 discriminate against ethnic minority providers of medical services.

14 C. The State Commissioner of Health may accept findings,
15 licenses or certifications of other state agencies as satisfactory
16 evidence of compliance with a particular requirement of this
17 section.

18 D. Except for self-insured employers, if any insurer does not
19 contract with or provide access to a certified workplace medical
20 plan, an insured, after sixty (60) days' written notice to its
21 insurance carrier, shall be authorized to contract independently
22 with a plan of his or her choice for a period of one (1) year, to
23 provide medical care under this act. The insured shall be
24 authorized to contract, after sixty (60) days' written notice to its

1 insurance carrier, for additional one-year periods if the insurer
2 has not contracted with or provided access to a certified workplace
3 medical plan.

4 E. If an employer is not experience-rated when it participates
5 in a certified workplace medical plan, its workers' compensation
6 insurer shall grant a ten-percent premium reduction.

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

13 G. The State Commissioner of Health shall implement a site
14 visit protocol for employees of the State Department of Health to
15 perform an inspection of a certified workplace medical plan to
16 ensure that medical services to an employee and the medical
17 management of the employee's needs are adequately met in a timely
18 manner and that the certified workplace medical plan is complying
19 with all other applicable provisions of this act and the State
20 Department of Health. This protocol shall include, but not be
21 limited to:

22 1. A site visit shall be made to each certified workplace
23 medical plan not less often than once every year, but not later than
24

1 thirty (30) days following the anniversary date of issuance of the
2 initial or latest renewal certificate;

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

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

7 a. timely and effective medical services available with
8 reasonable geographic convenience,

9 b. treatment guidelines and protocols consistent with the
10 Official Disability Guidelines, and

11 c. effective programs for utilization review, case
12 management, grievances, and dispute resolution;

13 4. Performance of a site visit shall include:

14 a. inspection of organizational documentation,

15 b. inspection of systems documentation and processes,

16 c. random or systematic sampling of closed and open case
17 management cases,

18 d. workplace medical plan employee and management
19 interviews, as appropriate;

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

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

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

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

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

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

17 9. In addition to the site visit fee required pursuant to
18 paragraph 8 of this subsection, employees of the State Department of
19 Health may charge to the certified workplace medical plan reasonable
20 travel and travel-related expenses for the site visit such as
21 overnight lodging and meals. A certified workplace medical plan
22 shall reimburse travel expenses to the State Department of Health at
23 rates equal to the amounts then currently allowed under the State
24 Travel Reimbursement Act.

1 I. The State Board of Health shall adopt such rules as may be
2 necessary to implement the provisions of this section. Such rules
3 shall authorize any person to petition the State Commissioner of
4 Health for decertification of a certified workplace medical plan for
5 a material violation of any rules promulgated pursuant to this
6 section.

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

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

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

22 C. 1. If an occupational disease is aggravated by any other
23 disease or infirmity, not itself compensable, or if disability or
24 death from any other cause, not itself compensable, is aggravated,

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

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

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

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

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

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

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

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

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

23 b. disablement or death results within three (3) years in
24 case of silicosis or asbestosis, or one (1) year in

1 case of any other occupational disease, except a
2 diseased condition caused by exposure to X-rays,
3 radioactive substances, or ionizing radiation, after
4 the last injurious exposure to the disease in the
5 employment, or

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

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

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

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

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

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

23 B. In the absence of conclusive evidence in favor of the claim,
24 disability or death from silicosis or asbestosis shall be presumed

1 not to be due to the nature of any occupation within the provision
2 of this section unless during the ten (10) years immediately
3 preceding the date of disablement the employee has been exposed to
4 the inhalation of silica dust or asbestos dust over a period of not
5 less than five (5) years, two (2) years of which shall have been in
6 this state, under a contract of employment performed in this state.
7 However, if the employee has been employed by the same employer
8 during the entire five-year period, his or her right to compensation
9 against the employer shall not be affected by the fact that he or
10 she had been employed during any part of the period outside of this
11 state.

12 C. Except as otherwise provided in this section, compensation
13 for disability from uncomplicated silicosis or asbestosis shall be
14 payable in accordance with the provisions of Sections 45 and 48 of
15 this act.

16 D. 1. In case of disability or death from silicosis or
17 asbestosis complicated with tuberculosis of the lungs, compensation
18 shall be payable as for uncomplicated silicosis or asbestosis,
19 provided that the silicosis or asbestosis was an essential factor in
20 the causing of disability or death.

21 2. In case of disability or death from silicosis or asbestosis
22 complicated with any other disease, or from any other disease
23 complicated with silicosis or asbestosis, the compensation shall be
24 reduced as provided in subsection C of Section 65 of this act.

1 E. 1. When an employee, though not actually disabled, is found
2 by the Commission to be affected by silicosis or asbestosis to such
3 a degree as to make it unduly hazardous for him or her to continue
4 in an employment involving exposure to the hazards of the disease,
5 the Commission may order that he or she be removed from his or her
6 employment. In such a case, or in case he or she has already been
7 discharged from the employment and is unemployed, he or she shall be
8 entitled to compensation until he or she can obtain steady
9 employment in some other suitable occupation in which there are no
10 hazards of the disease.

11 2. When in any case the forced change of employment shall, in
12 the opinion of the Commission, require that the employee be given
13 special training in order to qualify him or her for another
14 occupation, the employer liable for compensation shall pay for the
15 vocational rehabilitation and training provided for in this act.

16 SECTION 67. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 67 of Title 85A, unless there is
18 created a duplication in numbering, reads as follows:

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

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

1 within six (6) months after the first distinct manifestation of the
2 disease or cumulative trauma or within six (6) months after death.

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

16 A. Unless an employee gives oral or written notice to the
17 employer within thirty (30) days of the date an injury occurs, the
18 rebuttable presumption shall be that the injury was not work-
19 related. Such presumption must be overcome by a preponderance of
20 the evidence.

21 B. Unless an employee gives oral or written notice to the
22 employer within thirty (30) days of the employee's separation from
23 employment, there shall be a rebuttable presumption that an
24 occupational disease or cumulative trauma injury did not arise out

1 of and in the course of employment. Such presumption must be
2 overcome by a preponderance of the evidence.

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

6 A. Time for Filing.

7 1. A claim for benefits under this act, other than an
8 occupational disease, shall be barred unless it is filed with the
9 Commission within one (1) year from the date of the injury. If
10 during the one-year period following the filing of the claim the
11 employee receives no weekly benefit compensation and receives no
12 medical treatment resulting from the alleged injury, the claim shall
13 be barred thereafter. For purposes of this section, the date of the
14 injury shall be defined as the date an injury is caused by an
15 accident as set forth in paragraph 9 of Section 2 of this act.

16 2. a. A claim for compensation for disability on account of
17 injury which is either an occupational disease or
18 occupational infection shall be barred unless filed
19 with the Commission within two (2) years from the date
20 of the last injurious exposure to the hazards of the
21 disease or infection.

22 b. A claim for compensation for disability on account of
23 silicosis or asbestosis shall be filed with the
24 Commission within one (1) year after the time of

1 disablement, and the disablement shall occur within
2 three (3) years from the date of the last injurious
3 exposure to the hazard of silicosis or asbestosis.

4 c. A claim for compensation for disability on account of
5 a disease condition caused by exposure to X-rays,
6 radioactive substances, or ionizing radiation only
7 shall be filed with the Commission within two (2)
8 years from the date the condition is made known to an
9 employee following examination and diagnosis by a
10 medical doctor.

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

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

18 B. Time for Filing Additional Compensation.

19 1. In cases in which any compensation, including disability or
20 medical, has been paid on account of injury, a claim for additional
21 compensation shall be barred unless filed with the Commission within
22 one (1) year from the date of the last payment of disability
23 compensation or two (2) years from the date of the injury, whichever
24 is greater.

1 2. The statute of limitations provided in this subsection shall
2 not apply to claims for the replacement of medicine, crutches,
3 ambulatory devices, artificial limbs, eyeglasses, contact lenses,
4 hearing aids, and other apparatus permanently or indefinitely
5 required as the result of a compensable injury, when the employer or
6 carrier previously furnished such medical supplies, but replacement
7 of such items shall not constitute payment of compensation so as to
8 toll the statute of limitations.

9 C. A claim for additional compensation shall specifically state
10 that it is a claim for additional compensation. Documents which do
11 not specifically request additional benefits shall not be considered
12 a claim for additional compensation.

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

18 E. Failure to File. Failure to file a claim within the period
19 prescribed in subsection A or B of this section shall not be a bar
20 to the right to benefits hereunder unless objection to the failure
21 is made at the first hearing on the claim in which all parties in
22 interest have been given a reasonable notice and opportunity to be
23 heard by the Commission.

24 F. Persons under Disability.

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

6 2. Subsections A and B of this section shall not apply to a
7 mental incompetent or minor so long as the person has no guardian or
8 similar legal representative. The limitations prescribed in
9 subsections A and B of this section shall apply to the mental
10 incompetent or minor from the date of the appointment of a guardian
11 or similar legal representative for that person, and when no
12 guardian or similar representative has been appointed, to a minor on
13 reaching the age of majority.

14 G. A latent injury or condition shall not delay or toll the
15 limitation periods specified in this section. This subsection shall
16 not apply to the limitation period for occupational diseases
17 specified in paragraph 2 of subsection A of this section.

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

21 The Commission is authorized and directed to promulgate rules to
22 establish and implement a preliminary conference procedure designed
23 to accomplish the following objectives:
24

1 1. To provide the claimant an opportunity to confer with a
2 legal advisor on the staff of the Commission to be advised of his or
3 her rights under this act and to ensure that the rights are
4 protected. The conference shall be held in the county where the
5 accident occurred, if the accident occurred in this state, unless
6 otherwise agreed to by the parties, or otherwise directed by the
7 Commission;

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

10 3. To facilitate the resolution of issues without the expense
11 of litigation or attorney fees for either party; and

12 4. To authorize the legal advisor to approve compromise
13 settlements entered into while attending or as a result of the
14 preliminary conference and those joint petition settlements entered
15 into under Section 87 of this act. Provided, however, the same
16 legal advisors shall not both advise the claimant and approve the
17 joint petition.

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

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

24 B. Investigation - Hearing.

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

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

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

9 4. If a hearing on the claim is ordered, the administrative law
10 judge shall give the claimant and other interested parties ten (10)
11 days' notice of the hearing served personally on the claimant and
12 other parties, or by registered mail. The hearing shall be held in
13 Tulsa or Oklahoma County, as determined by the Commission.

14 5. The award, together with the statement of the findings of
15 fact and other matters pertinent to the issues, shall be filed with
16 the record of the proceedings, and a copy of the award shall
17 immediately be sent to the parties in or to counsels of record, if
18 any.

19 C. Evidence and Construction.

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

1 may be warranted when considering all evidence in the
2 case.

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

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

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

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

16 D. Judgment. The judgment denying the claim or making the
17 award shall be filed in the office of the Commission, and a copy
18 shall be sent by registered mail to the claimant and to the employer
19 or to their attorneys.

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

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

4 A. Conduct of Hearing or Inquiry.

5 1. In making an investigation or inquiry or conducting a
6 hearing, the administrative law judges and the Commission shall not
7 be bound by technical or statutory rules of evidence or by technical
8 or formal rules of procedure, except as provided by this act. The
9 administrative law judges and the Commission may make such
10 investigation or inquiry, or conduct the hearing, in a manner as
11 shall best ascertain the rights of the parties.

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

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

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

23 B. Hearings to be Public - Records.
24

1 1. a. Hearings before the Commission shall be open to the
2 public and shall be stenographically reported. The
3 Commission is authorized to contract for the reporting
4 of the hearings.

5 b. The Commission shall, by rule, provide for the
6 preparation of a record of all hearings and other
7 proceedings before it.

8 2. The Commission shall not be required to stenographically
9 report or prepare a record of joint petition hearings. The
10 administrative law judge or legal advisor shall record the hearing
11 at no cost to the parties.

12 C. Introduction of Evidence.

13 1. All oral evidence or documentary evidence shall be presented
14 to the designated representative of the Commission at the initial
15 hearing on a controverted claim. The oral evidence shall be
16 stenographically reported. Each party shall present all evidence at
17 the initial hearing. Further hearings for the purpose of
18 introducing additional evidence shall be granted only at the
19 discretion of the hearing officer or Commission. A request for a
20 hearing for the introduction of additional evidence shall show the
21 substance of the evidence desired to be presented.

22 2. a. Any party proposing to introduce medical reports or
23 testimony of physicians at the hearing of a
24 controverted claim shall, as a condition precedent to

1 the right to do so, furnish to the opposing party and
2 to the Commission copies of the written reports of the
3 physicians of their findings and opinions at least
4 seven (7) days before the date of the hearing. If no
5 written reports are available to a party, the party
6 shall notify in writing the opposing party and the
7 Commission of the name and address of the physicians
8 proposed to be used as witnesses and the substance of
9 their testimony at least seven (7) days before the
10 hearing.

11 b. If the opposing party desires to cross-examine the
12 physician, he or she should notify the party who
13 submits a medical report to him or her as soon as
14 practicable, in order that he or she may make every
15 effort to have the physician present for the hearing.

16 3. A party failing to observe the requirements of this
17 subsection may not be allowed to introduce medical reports or
18 testimony of physicians at a hearing, except in the discretion of
19 the hearing officer or the Commission.

20 4. The time periods may be waived by the consent of the
21 parties.

22 D. Expert testimony shall not be allowed unless it satisfies
23 the requirements of Federal Rule of Evidence 702 with annotations
24 and amendments.

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

9 B. If any person or party attending any proceeding before the
10 Commission disobeys or resists any lawful order or process,
11 obstructs the hearing, neglects to produce any book, paper or
12 document after having been ordered to do so, refuses to appear after
13 having been subpoenaed, refuses to take oath as a witness, refuses
14 to be examined according to law, refuses to comply with any final
15 judgment of an administrative law judge or the Commission or
16 willfully refuses to pay an uncontroverted medical or related
17 expense within forty-five (45) days after the respondent has
18 received the statement, the person or party, at the discretion of
19 the administrative law judge or the Commission, may be found to be
20 in contempt of the Commission and may be subject to a fine not to
21 exceed Ten Thousand Dollars (\$10,000.00).

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

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

- 3 1. The Commission has jurisdiction;
- 4 2. Sufficient notice was given; and
- 5 3. The injury was not occasioned by the willful intention of
6 the injured employee to bring about the injury to himself or herself
7 or another.

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

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

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

16 Each witness who appears in obedience to a subpoena shall be
17 entitled to the same fees as witnesses in a civil action in the
18 district court.

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

22 If the Commission is a party to or is otherwise interested in a
23 court proceeding under this act, it may employ attorneys to appear
24 on its behalf. If requested by the Commission, it shall be the duty

1 of the Attorney General or the prosecuting attorneys of the
2 different districts to represent the Commission without extra
3 compensation.

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

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

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

21 C. The judgment, decision or award of the Commission shall be
22 final and conclusive on all questions within its jurisdiction
23 between the parties unless an action is commenced in the Supreme
24 Court of this state to review the judgment, decision or award within

1 twenty (20) days of being sent to the parties. Any judgment,
2 decision or award made by an administrative law judge shall be
3 stayed until all appeal rights have been waived or exhausted. The
4 Supreme Court may modify, reverse, remand for rehearing, or set
5 aside the judgment or award only if it was:

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

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

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

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

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

18 If any employer fails to comply with a final compensation
19 judgment or award, any beneficiary of the judgment or award, or the
20 Commission, may file a certified copy of the judgment or award in
21 the office of the district court clerk of any county in this state
22 where any property of the employer may be found. At that time, the
23 district court clerk shall enter the judgment or award in the
24 judgment record of the county, and the judgment or award so recorded

1 shall be a judgment and lien as are judgments of the district court,
2 and enforceable as such.

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

6 A. Except where a joint petition settlement has been approved,
7 the Commission may review any compensation judgment, award, or
8 decision. Such review may be done at any time within six (6) months
9 of termination of the compensation period fixed in the original
10 compensation judgment or award, on the Commission's own motion or on
11 the application of any party in interest, on the ground of a change
12 in physical condition or on proof of erroneous wage rate. On
13 review, the Commission may make a judgment or award terminating,
14 continuing, decreasing, or increasing for the future the
15 compensation previously awarded, subject to the maximum limits
16 provided for in this act.

17 B. The review and subsequent judgment or award shall be made in
18 accordance with the procedure prescribed in Sections 69 through 78
19 of this act. No review shall affect any compensation paid under a
20 prior order, judgment or award.

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

1 D. Aging and the effects of aging on a compensable injury are
2 not to be considered in determining whether there has been a change
3 in physical condition. Aging or the effect of aging on a
4 compensable injury shall not be considered in determining permanent
5 disability under this section or any other section in this act.

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

9 If the court having jurisdiction over the claim or compensation
10 judgment proceedings determines that the proceedings have been
11 commenced or continued without reasonable grounds, the cost of the
12 proceedings shall be assessed against the party who has commenced or
13 continued the proceedings.

14 SECTION 82. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 82 of Title 85A, unless there is
16 created a duplication in numbering, reads as follows:

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

19 b. An attorney representing an injured employee may only
20 recover attorney fees up to ten percent (10%) of any
21 temporary total disability or temporary partial
22 disability compensation and twenty percent (20%) of
23 any permanent partial disability, permanent total
24 disability, or death compensation awarded to an

1 injured employee by the Commission from a controverted
2 claim. If the employer makes a written offer to
3 settle permanent partial disability, permanent total
4 disability, or death compensation and that offer is
5 rejected, the employee's attorney may not recover
6 attorney fees in excess of thirty percent (30%) of the
7 difference between the amount of any award and the
8 settlement offer.

9 (1) Attorney fees may not be collected for recovery
10 on noncontroverted claims.

11 (2) Attorney fees shall not be awarded on medical
12 benefits or services.

13 (3) The fee for legal services rendered by an
14 attorney representing an employee in connection
15 with a change of physician requested by the
16 injured employee, controverted by the employer,
17 and awarded by the Commission, shall be Two
18 Hundred Dollars (\$200.00).

19 (4) Attorney fees may include not more than ten
20 percent (10%) of the value, or reasonable
21 estimate thereof, of vocational rehabilitation
22 services.

23 c. A "controverted claim" means that there has been a
24 contested hearing before the Commission over whether

1 there has been a compensable injury or whether the
2 employee is entitled to temporary total disability,
3 temporary partial disability, permanent partial
4 disability, permanent total disability, or death
5 compensation. A request for a change in physician
6 shall not trigger a controverted claim for purposes of
7 recovering any attorney fees except the fees under
8 division 3 of subparagraph b of this paragraph. A
9 controverted claim shall not exist if the employee or
10 his or her representative has withheld pertinent
11 information in his or her possession related to the
12 claim from the employer or has violated the provisions
13 of Section 6 of this act.

14 2. Any person who or entity that brings a controverted claim
15 against the State Treasurer, as a custodian of the Multiple Injury
16 Trust Fund, shall provide notice of the claim to the Commission.
17 Thereafter, the Commission shall direct fees for legal services be
18 paid from the Fund, in addition to any compensation award. The fees
19 shall be authorized only on the difference between the amount of
20 compensation controverted and the amount awarded from the Fund.

21 3. In any case where attorney fees are allowed by the
22 Commission, the limitations expressed in subparagraph b of paragraph
23 1 of this subsection shall apply.

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

4 B. An attorney representing an employee under this act may not
5 recover fees for services except as expressly provided in this
6 section.

7 SECTION 83. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 83 of Title 85A, unless there is
9 created a duplication in numbering, reads as follows:

10 A. 1. Every claim, request for benefits, controversion of
11 benefits, request for a hearing, pleading, motion, and other paper
12 of a party represented by an attorney shall be signed by at least
13 one attorney of record in his or her individual name, whose address
14 shall be stated. A party who is not represented by an attorney
15 shall sign his or her claim, request for benefits, request for
16 additional benefits, controversion of benefits, request for a
17 hearing, pleading, motion, or other paper, and state his or her
18 address.

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

21 a. he or she has read the claim, request for benefits,
22 request for additional benefits, controversion of
23 benefits, request for a hearing, pleading, motion, or
24 other paper,

1 b. to the best of his or her knowledge, information, and
2 belief formed after reasonable inquiry, it is well
3 grounded in fact and is warranted by existing law or a
4 good-faith argument for the extension, modification,
5 or reversal of existing law, and

6 c. it is not brought for any improper purpose, such as to
7 harass or to cause unnecessary delay or needless
8 increase in the cost of litigation.

9 3. If a claim, request for benefits, request for additional
10 benefits, controversion of benefits, request for a hearing,
11 pleading, motion, or other paper is not signed, it shall be stricken
12 unless it is signed promptly after the omission is called to the
13 attention of the pleader or movant.

14 4. If a claim, request for benefits, controversion of benefits,
15 request for a hearing, pleading, motion, or other paper is signed in
16 violation of this act, the Commission, including administrative law
17 judges, on motion or on their own initiative, shall impose on the
18 signatory, a represented party, or both, an appropriate sanction,
19 which may include a judgment to pay to the other party or parties
20 the amount of reasonable expenses incurred because of the filing of
21 a claim, request for benefits, request for additional benefits,
22 controversion of benefits, request for a hearing, pleading, motion,
23 or other paper, including a reasonable attorney fee.

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

6 SECTION 84. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 84 of Title 85A, unless there is
8 created a duplication in numbering, reads as follows:

9 A. Compensation shall be paid by check, by electronic funds
10 transfer, issuance of debit cards, or by state warrant. Payment
11 shall be made payable to the order of the person entitled to the
12 compensation and paid directly to the person entitled to the
13 compensation.

14 B. If the compensation beneficiary is a mental incompetent or a
15 minor of tender years or immature judgment, the Commission, in the
16 exercise of its discretion, may direct that payment shall be made to
17 a legally appointed guardian of the estate of the incompetent or
18 minor.

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

22 Clean claims for services rendered under this act are payable
23 within thirty (30) days after receipt by the employer unless
24 disputed as to compensability or amount. "Clean claim" means a

1 claim that has no defect or impropriety, including a lack of any
2 required substantiating documentation, or particular circumstance
3 requiring special treatment that impedes prompt payment.

4 SECTION 86. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 86 of Title 85A, unless there is
6 created a duplication in numbering, reads as follows:

7 A. 1. Each employer desiring to controvert an employee's right
8 to compensation shall file with the Commission on or before the
9 fifteenth day following notice of the alleged injury or death a
10 statement on a form prescribed by the Commission that the right to
11 compensation is controverted and the grounds for the controversion,
12 the names of the claimant, employer, and carrier, if any, and the
13 date and place of the alleged injury or death.

14 2. Failure to file the statement of controversion shall not
15 preclude the employer's ability to controvert the claim or cause it
16 to waive any defenses. The employer can make additional defenses
17 not included in the initial notice at any time.

18 B. If an employer is unable to obtain sufficient medical
19 information as to the alleged injury or death within fifteen (15)
20 days following receipt of notice, although the employer has acted in
21 good faith and with all due diligence, the employer may apply in
22 writing for an extension of time for making payment of the first
23 installment or controverting the claim. This written application is
24 to be postmarked within the fifteen-day period. The Commission may,

1 in its discretion, grant the extension and fix the additional time
2 to be allowed. Filing of application for an extension shall not be
3 deemed to be a controversion of the claim.

4 C. The provisions in subsection B of this section shall not
5 apply in cases where the physician is an employee of, on retainer
6 with, or has a written contract to provide medical services for the
7 employer.

8 SECTION 87. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 87 of Title 85A, unless there is
10 created a duplication in numbering, reads as follows:

11 If the employer or carrier and the injured employee desire to
12 settle the claim, they shall file a joint petition for settlement
13 with the Commission. After the joint petition has been filed, the
14 Commission shall order that all claims between the parties have been
15 settled. No appeal shall lie from a judgment or award denying a
16 joint petition.

17 SECTION 88. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 88 of Title 85A, unless there is
19 created a duplication in numbering, reads as follows:

20 A. In any case where an employer changes insurance carriers or
21 where the employer having been self-insured, becomes insured or,
22 having been insured, is approved to be self-insured, and the only
23 dispute in a claim against that employer is the proper source of
24 payment of benefits, the Commission shall direct that the

1 appropriate compensation benefits be paid on an equal basis by the
2 carriers or self-insured employer.

3 B. Upon resolution of the issue, the prevailing respondent
4 shall be entitled to reimbursement from the other respondent of all
5 monies paid together with interest from the date of payment pursuant
6 to Section 727.1 of Title 12 of the Oklahoma Statutes.

7 SECTION 89. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 89 of Title 85A, unless there is
9 created a duplication in numbering, reads as follows:

10 If the employer has made advance payments for compensation, the
11 employer shall be entitled to be reimbursed out of any unpaid
12 installment or installments of compensation due. If the injured
13 employee receives full wages during disability, he or she shall not
14 be entitled to compensation during the period. Any wages paid by
15 the employer, over the statutory temporary disability maximum, shall
16 be deducted from the permanent partial disability award. Such
17 deduction shall be made after any such applicable attorney fee and
18 any such assessment made pursuant to Sections 45 and 46 of this act
19 have been paid.

20 SECTION 90. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 90 of Title 85A, unless there is
22 created a duplication in numbering, reads as follows:

23 The Workers' Compensation Commission may require any employer to
24 make a deposit or bond with the Commission to secure the prompt and

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

3 SECTION 91. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 91 of Title 85A, unless there is
5 created a duplication in numbering, reads as follows:

6 Compensation shall bear interest pursuant to Section 727.1 of
7 Title 12 of the Oklahoma Statutes from the day an award is made by
8 either an administrative law judge or the full Workers' Compensation
9 Commission on all accrued and unpaid compensation.

10 SECTION 92. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 92 of Title 85A, unless there is
12 created a duplication in numbering, reads as follows:

13 A. On making the first payment and on suspension of payment of
14 compensation, if required by the Workers' Compensation Commission,
15 the employer shall notify the Commission of that fact on a form
16 prescribed by the Commission.

17 B. 1. Within thirty (30) days after the final payment of
18 compensation has been made, the employer shall notify the Commission
19 with a form prescribed by the Commission. This form shall state
20 that the final payment has been made, the total amount of
21 compensation paid, the name of the employee and of any other person
22 to whom compensation has been paid, and the date of the injury or
23 death.

1 2. If the employer fails to notify the Commission within thirty
2 (30) days, the Commission may assess against the employer a civil
3 penalty in an amount not to exceed One Hundred Dollars (\$100.00).
4 No penalty shall be assessed without notice to the employer and
5 giving the employer an opportunity to be heard by the Commission.

6 SECTION 93. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 93 of Title 85A, unless there is
8 created a duplication in numbering, reads as follows:

9 On its own initiative at any time that compensation payments are
10 being made without an award, the Workers' Compensation Commission
11 may, and in any case if the right to compensation has been
12 controverted, if payments of compensation have been suspended, or if
13 an employer seeks to suspend payments made under an award, or on
14 application of an interested party, the Commission shall make such
15 investigation, cause such medical examination to be made, hold such
16 hearings, and take such further action as the Commission deems
17 proper for the protection of the rights of all parties.

18 SECTION 94. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 94 of Title 85A, unless there is
20 created a duplication in numbering, reads as follows:

21 An employee who is incarcerated shall not be eligible to receive
22 medical or disability benefits under this act.
23
24

1 SECTION 95. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 95 of Title 85A, unless there is
3 created a duplication in numbering, reads as follows:

4 A. On approval by the Insurance Commissioner, and following the
5 adoption of such rules as the Insurance Commissioner deems
6 necessary, each insurer issuing a policy under this act shall offer,
7 as a part of the policy or as an optional endorsement to the policy,
8 deductibles optional to the policyholder for benefits payable under
9 this act. Deductible amounts offered shall be fully disclosed to
10 the prospective policyholder in writing. The policyholder
11 exercising the deductible option shall choose only one deductible
12 amount.

13 B. Optional deductibles shall be offered in each policy
14 insuring liability for workers' compensation that is issued,
15 delivered, issued for delivery, or renewed under this act on or
16 after approval by the Insurance Commissioner, unless an insured
17 employer and insurer agree to renegotiate a workers' compensation
18 policy in effect on that date so as to include a provision allowing
19 for a deductible.

20 C. If the policyholder exercises the option and chooses a
21 deductible, the insured employer shall be liable for the amount of
22 the deductible for benefits paid for each compensable claim of work
23 injury suffered by an employee. The insurer shall pay all or part
24 of the deductible amount, whichever is applicable to a compensable

1 claim, to the person or medical provider entitled to the benefits
2 conferred by this act and seek reimbursement from the insured
3 employer for the applicable deductible amount. The payment or
4 nonpayment of deductible amounts by the insured employer to the
5 insurer shall be treated under the policy insuring the liability for
6 workers' compensation in the same manner as payment or nonpayment of
7 premiums.

8 D. If the Insurance Commissioner determines it to be feasible,
9 and under such rules as he or she may adopt, premium reduction for
10 deductibles may be determined before the application of any
11 experience modification, premium surcharge, or premium discounts,
12 and, to the extent that an employer's experience rating or safety
13 record is based on benefits paid, money paid by the insured employer
14 under a deductible as provided in this section may not be included
15 as benefits paid so as to harm the experience rating of the
16 employer.

17 E. This section shall not apply to employers who are approved
18 to self-insure against liability for workers' compensation or group
19 self-insurance funds for workers' compensation.

20 SECTION 96. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 96 of Title 85A, unless there is
22 created a duplication in numbering, reads as follows:

23 A. The Self-insurance Guaranty Fund shall be administered,
24 supervised and protected by the Self-insurance Guaranty Fund Board.

1 All self-insurers under this act shall participate in the fund as a
2 condition of authority to self-insure in this state.

3 B. 1. The Self-insurance Guaranty Fund Board shall consist of
4 the commissioners and two additional members to be appointed by the
5 Governor.

6 2. The term of office for the two Governor appointees shall be
7 three (3) years, with the term of the initial appointees expiring on
8 November 1, 2014.

9 3. The chair and vice chair of the Board shall be elected by
10 the Board from among its members.

11 4. Members of the Board shall not receive compensation for
12 serving on the Board but shall be reimbursed from monies in the fund
13 for their necessary travel expenses incurred in the performance of
14 their duties in accordance with the State Travel Reimbursement Act.

15 C. Meetings of the Board shall be held at least quarterly. The
16 presence of a majority of the members constitutes a quorum. No
17 action shall be taken by the Board without the affirmative vote of
18 at least a majority of the members.

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

21 E. No member or personnel of the Self-insurance Guaranty Fund
22 Board, the Workers' Compensation commissioners or any employee of
23 the Workers' Compensation Commission shall be liable in a civil
24 proceeding for any act performed in good faith in the execution of

1 that person's powers or duties pursuant to Sections 97 through 101
2 of the Administrative Workers' Compensation Act.

3 SECTION 97. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 97 of Title 85A, unless there is
5 created a duplication in numbering, reads as follows:

6 The Self-insurance Guaranty Fund shall be for the purpose of
7 continuation of workers' compensation benefits due and unpaid or
8 interrupted due to the inability of a self-insurer to meet its
9 compensation obligations because its financial resources, security
10 deposit, guaranty agreements, surety agreements and excess insurance
11 are either inadequate or not immediately accessible for the payment
12 of benefits. Monies in the fund, including interest, are not
13 subject to appropriation and shall be expended to compensate
14 employees for eligible benefits for a compensable injury under this
15 act, pay outstanding workers' compensation obligations of the
16 impaired self-insurer, and for all claims for related administrative
17 fees, operating costs of the Self-insurance Guaranty Fund Board,
18 attorney fees, and other costs reasonably incurred by the Board in
19 the performance of its duties. Expenditures from the fund shall be
20 made on warrants issued by the State Treasurer against claims as
21 prescribed by law. The fund shall be subject to audit in the same
22 manner as state funds and accounts, the cost for which shall be paid
23 for from the fund. The Self-insurance Guaranty Fund Board shall be
24

1 responsible for all liabilities and obligations of the entities that
2 ceased existence.

3 SECTION 98. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 98 of Title 85A, unless there is
5 created a duplication in numbering, reads as follows:

6 The Self-insurance Guaranty Fund shall be derived from the
7 following sources:

8 1. Any unexpended funds, including interest thereon, held by
9 the State Treasurer in the Individual Self-Insured Guaranty Fund or
10 Group Self-Insurance Association Guaranty Fund transferred to the
11 Self-insurance Guaranty Fund;

12 2. Until the Self-insurance Guaranty Fund contains Two Million
13 Dollars (\$2,000,000.00) or in the event the amount in the fund falls
14 below One Million Dollars (\$1,000,000.00), an assessment against
15 each private self-insurer and group self-insurance association based
16 on an assessment rate to be determined by the commissioners, not
17 exceeding one percent (1%) of actual paid losses of the self-insurer
18 during the preceding calendar year, payable to the Tax Commission
19 for deposit to the fund. The assessment against private self-
20 insurers shall be determined using a rate equal to the proportion
21 that the deficiency in the fund attributable to private self-
22 insurers bears to the actual paid losses of all private self-
23 insurers for the year period of January 1 through December 31
24 preceding the assessment. The assessment against group self-

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

13 a. The assessment shall be paid within thirty (30)
14 calendar days after the date the commissioners notify
15 the self-insurer of the assessment.

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

21 c. Failure of a self-insurer to pay, or timely pay, an
22 assessment required by this paragraph, or to report
23 payment of the same to the Commission within ten (10)
24 days of payment, shall be grounds for revocation by

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

18 d. An impaired self-insurer shall be exempt from
19 assessments beginning on the date of the Commission's
20 designation until the Commission determines the self-
21 insurer is no longer impaired.

22 e. The Tax Commission shall determine the fund balance as
23 of March 1 and September 1 of each year, and when
24 otherwise requested by the Workers' Compensation

Commission, and shall advise the Workers' Compensation Commission in writing within thirty (30) days of each such determination; and

3. Any interest accruing on monies paid into the fund.

SECTION 99. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 99 of Title 85A, unless there is created a duplication in numbering, reads as follows:

On determination by the Commission that a self-insurer has become an impaired self-insurer, the Commission shall secure release of the security required by Section 38 of this act and advise the Self-insurance Guaranty Fund Board of the impairment. Claims administration, including processing, investigating and paying valid claims against an impaired self-insurer under this act, may include payment by the surety that issued the surety bond or be under a contract between the Commission and an insurance carrier, appropriate state governmental entity or an approved service organization, as approved by the Commission.

SECTION 100. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 100 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. The Self-insurance Guaranty Fund Board shall be a party in interest in all proceedings involving compensation claims against an impaired self-insurer whose compensation claims have been paid or assumed by the Commission and shall have all rights of subrogation

1 of the impaired self-insurer. In such proceedings, the Board may
2 assume and exercise all rights and defenses of the impaired self-
3 insurer, including, but not limited to, the right to:

4 1. Appear, defend and appeal claims;

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

7 3. Investigate, handle and contest claims.

8 B. The Board may:

9 1. Retain such persons as are necessary to handle claims and
10 perform other duties of the Board;

11 2. Sue or be sued;

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

14 4. Exercise any other powers necessary to perform its duties
15 under this act as prescribed by the Commission.

16 SECTION 101. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 101 of Title 85A, unless there
18 is created a duplication in numbering, reads as follows:

19 A. On or before the first day of July each year, the Commission
20 shall prepare, make public and submit a report for the prior
21 calendar year to the Governor, the President Pro Tempore of the
22 Senate, the Speaker of the House of Representatives, and each member
23 of the Legislature, containing a statement of the number of awards
24 made and the causes of the accidents leading to the injuries for

1 which the awards were made, total work load data of the
2 administrative law judges, including a detailed report of the work
3 load and judgments written by each judge, a detailed statement of
4 the expenses of the Commission, together with any other matter which
5 the Commission deems proper to report.

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

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

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. The Workers' Compensation Commission shall adopt rules
24 permitting two or more employers, not otherwise subject to the

1 provisions of Section 150 of this act, to pool together liabilities
2 under this act for the purpose of qualifying as a group self-insurer
3 and each such employer shall be classified as a self-insurer.

4 B. The Commission shall approve the distribution of all
5 undistributed policyholders' surplus of a Workers' Compensation
6 Self-Insurance Program if the Program complies with the following
7 criteria:

8 1. Has been in business for at least five (5) years;

9 2. Has its financial statements audited by a public accounting
10 firm which audits at least one corporate client which has assets in
11 excess of One Billion Dollars (\$1,000,000,000.00) and on which the
12 accounting firm has issued an unqualified opinion as to the fair
13 presentation of the financial position of the Program showing
14 adequate solvency and reserves; and

15 3. Is in compliance with the provisions of this act and all
16 other regulations as required by the Commission.

17 C. A group self-insurer created pursuant to this section either
18 prior to or after the effective date of this act shall not be
19 subject to the provisions of the Oklahoma Securities Act.

20 SECTION 103. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 103 of Title 85A, unless there
22 is created a duplication in numbering, reads as follows:

23 The Workers' Compensation Commission shall adopt rules
24 permitting two or more group self-insurance associations to pool

1 their liabilities under this act for the purpose of providing such
2 group self-insurance associations specific and aggregate excess
3 insurance.

4 SECTION 104. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 104 of Title 85A, unless there
6 is created a duplication in numbering, reads as follows:

7 No member or personnel of the Workers' Compensation Commission,
8 the Self-insurance Guaranty Fund Board, or administrative law judge
9 shall be liable in a civil proceeding for any act performed in good
10 faith in the performance of that person's powers or duties under
11 this act.

12 SECTION 105. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 105 of Title 85A, unless there
14 is created a duplication in numbering, reads as follows:

15 A. No employee of the Workers' Compensation Commission shall be
16 competent to testify on any matter concerning any information the
17 employee has received through the performance of the employee's
18 duties under the provisions of this act.

19 B. The commissioners and employees of the Commission shall not
20 solicit employment for any attorney or physician nor shall they
21 recommend or refer any claimant or employer to an attorney or
22 physician. If any employee of the Commission makes such a
23 solicitation, recommendation or reference, that person, upon
24 conviction, shall be guilty of a misdemeanor punishable, for each

1 offense, by a fine of not more than One Thousand Dollars (\$1,000.00)
2 or by imprisonment in the county jail not to exceed one (1) year, or
3 by both such fine and imprisonment. The Commission shall
4 immediately terminate the employment of any employee who is guilty
5 of such solicitation, recommendation or reference. A commissioner
6 guilty of such solicitation, recommendation or reference shall be
7 subject to removal from office.

8 C. No administrative law judge shall engage in any ex parte
9 communication with any party to an action pending before the
10 Commission or with any witness or medical provider regarding the
11 merits of a specific matter pending before the judge for resolution.
12 Any violation of this provision shall subject the judge to
13 disqualification from the action or matter upon presentation of an
14 application for disqualification.

15 SECTION 106. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 106 of Title 85A, unless there
17 is created a duplication in numbering, reads as follows:

18 The provisions of the Administrative Workers' Compensation Act
19 shall be strictly construed by the Workers' Compensation Commission
20 and any appellate court reviewing a decision of the Workers'
21 Compensation Commission.

22 SECTION 107. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 200 of Title 85A, unless there
24 is created a duplication in numbering, reads as follows:

1 Sections 107 through 120 of this act shall be known and may be
2 cited as the "Oklahoma Employee Injury Benefit Act".

3 SECTION 108. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 201 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 A. As used in the Oklahoma Employee Injury Benefit Act:

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

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

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

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

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

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

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

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

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

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

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

16 SECTION 109. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 202 of Title 85A, unless there
18 is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

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

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

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

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

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

16 SECTION 110. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 203 of Title 85A, unless there
18 is created a duplication in numbering, reads as follows:

19 A. An employer voluntarily electing to become a qualified
20 employer shall adopt a written benefit plan that complies with the
21 requirements of this section. Qualified-employer status is optional
22 for eligible employers. The benefit plan shall not become effective
23 until the date that the qualified employer first satisfies the
24 notice requirements in Section 109 of this act.

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

20 C. The benefit plan may provide for lump-sum payouts that are,
21 as reasonably determined by the administrator of such plan appointed
22 by the qualified employer, actuarially equivalent to expected future
23 payments. The benefit plan may also provide for settlement
24 agreements; provided, however, any settlement agreement by a covered

1 employee shall be voluntary, entered into not earlier than the tenth
2 business day after the date of the initial report of injury, and
3 signed after the covered employee has received a medical evaluation
4 from a nonemergency care doctor, with any waiver of rights being
5 conspicuous and on the face of the agreement. The benefit plan
6 shall pay benefits without regard to whether the covered employee,
7 the qualified employer, or a third party caused the occupational
8 injury; and provided further, that the benefit plan shall provide
9 eligibility to participate in and provide the same forms and levels
10 of benefits to all Oklahoma employees of the qualified employer.
11 The Administrative Workers' Compensation Act shall not define,
12 restrict, expand or otherwise apply to a benefit plan.

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

15 E. The qualified employer shall provide to the Commissioner and
16 covered employees notice of the name, title, address, and telephone
17 number for the person to contact for injury benefit claims
18 administration, whether in-house at the qualified employer or a
19 third-party administrator.

20 SECTION 111. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 204 of Title 85A, unless there
22 is created a duplication in numbering, reads as follows:

23 A. A qualified employer may self-fund or insure benefits
24 payable under the benefit plan, employers' liability under this act,

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

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

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

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

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

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

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

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

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

12 (2) provide proof of excess coverage with such terms
13 and conditions as is commensurate with their
14 ability to pay the benefits required by the
15 provisions of this act; or

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

17 C. The Commissioner may waive the requirements of this section
18 in an amount which is commensurate with the ability of the employer
19 to pay the benefits required by the provisions of this act.

20 Irrevocable letters of credit required by this section shall contain
21 such terms as may be prescribed by the Commissioner and shall be
22 issued for the benefit of the state by a financial institution whose
23 deposits are insured by the Federal Deposit Insurance Corporation.

1 D. An employer who does not fulfill the requirements of this
2 section is not relieved of the obligation for compensation to a
3 covered employee. The security required under this section,
4 including any interest thereon, shall be maintained by the
5 Commissioner as provided in this act until each claim for benefits
6 is paid, settled, or lapses under this act, and costs of
7 administration of such claims are paid.

8 E. Any bond shall be filed and held by the Commissioner and
9 shall be for the exclusive benefit of any covered employee of a
10 qualified employer.

11 F. Any security held by the Commissioner may be used to make a
12 payment to or on behalf of a covered employee provided the following
13 requirements are met:

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

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

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

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

6 G. The Commissioner shall promulgate rules to carry out the
7 provisions of this section including those establishing the
8 procedure by which a covered employee may request and receive
9 payment from the security held by the Commissioner.

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

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

17 SECTION 112. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 205 of Title 85A, unless there
19 is created a duplication in numbering, reads as follows:

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

22 1. The Oklahoma Option Insured Guaranty Fund; and

23 2. The Oklahoma Option Self-insured Guaranty Fund.

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

22 C. The funds established under this section shall be
23 administered, disbursed, and invested under the direction of the
24

Oklahoma Property and Casualty Insurance Guaranty Association
established by Section 2005 of Title 36 of the Oklahoma Statutes.

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

1. Insured Guaranty Fund:

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

2. Self-insured Guaranty Fund:

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

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

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

1 under a contract between the Commission and an insurance carrier,
2 appropriate state governmental entity or an approved service
3 organization.

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

- 11 1. Appear, defend and appeal claims;
- 12 2. Receive notice of, investigate, adjust, compromise, settle
13 and pay claims; and
- 14 3. Investigate, handle and contest claims.

15 H. The Guaranty Association may also:

- 16 1. Retain persons necessary to handle claims and perform other
17 duties of the Guaranty Association;
- 18 2. Sue or be sued;
- 19 3. Negotiate and become a party to such contracts as are
20 necessary to carry out the purposes of this act; and
- 21 4. Exercise any other powers necessary to perform its duties
22 under this act.

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

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

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

7 SECTION 113. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 206 of Title 85A, unless there
9 is created a duplication in numbering, reads as follows:

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

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

21 C. 1. Assessments on which premium taxes are based shall be
22 made on forms prescribed by the Commission and shall be paid to the
23 Commission.

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

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

7 SECTION 114. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 207 of Title 85A, unless there
9 is created a duplication in numbering, reads as follows:

10 A. It shall be the duty of the Workers' Compensation Commission
11 to collect a fee from every self-insured employer at a rate to be
12 determined as provided by Section 115 of this act but not to exceed
13 three percent (3%) of the written premium which would have to be
14 paid under Section 113 of this act by a carrier if the self-insured
15 employer were insured by a carrier.

16 B. If the fee provided for under this section is not paid
17 within thirty (30) days of the date provided in Section 115 of this
18 act, there shall be assessed a penalty for each thirty (30) days the
19 amount so assessed remains unpaid which is equal to ten percent
20 (10%) of the unpaid amounts and which shall be collected at the same
21 time as a part of the fee assessed.

22 SECTION 115. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 208 of Title 85A, unless there
24 is created a duplication in numbering, reads as follows:

1 A. 1. The Workers' Compensation Commission, on or before
2 December 31 of each year, shall determine the surplus, if any, in
3 the Oklahoma Option Insured Guaranty Fund, together with the
4 additional amounts necessary to properly administer this act for the
5 ensuing year.

6 2. The Commission shall determine the rate of assessment for
7 collections for that year on or before March 1 of the following
8 year.

9 B. 1. The Commission shall notify each insurance carrier of
10 the rate of assessment applicable to the Oklahoma Option Insured
11 Guaranty Fund for the preceding year, and fees shall be computed and
12 paid under the provisions of subsection B of Section 113 of this act
13 on or before April 1 of the following year.

14 2. The Commission shall notify each self-insured employer
15 subject to the fee of the rate of assessment applicable to the
16 Oklahoma Option Self-insured Fund for the preceding year, and fees
17 shall be computed by the Commission and paid to the Oklahoma Option
18 Self-insured Guaranty Fund by the self-insurer through payments made
19 directly to the Workers' Compensation Commission on or before April
20 1 of the following year.

21 C. The Commission shall have the authority to promulgate rules
22 for administration of the assessment and fee collection process,
23 including, but not limited to, rules applicable to the funds
24 established in Section 112 of this act.

1 SECTION 116. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 209 of Title 85A, unless there
3 is created a duplication in numbering, reads as follows:

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

15 B. Except as otherwise provided by its benefit plan, or
16 applicable federal law, a qualified employer is only subject to
17 liability in any action brought by a covered employee or his or her
18 dependent family members for injury resulting from an occupational
19 injury if the injury is the result of an intentional tort on the
20 part of the qualified employer. An intentional tort shall exist
21 only when the covered employee is injured because of willful,
22 deliberate, specific intent of the qualified employer to cause such
23 injury. Allegations or proof that the qualified employer had
24 knowledge that such injury was substantially certain to result from

1 its conduct shall not constitute an intentional tort. The issue of
2 whether an act is an intentional tort shall be a question of law for
3 the court or the duly appointed arbitrator, as applicable.

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

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

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

1 SECTION 117. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 210 of Title 85A, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A qualified employer or its insurers or other payment
5 sources shall be responsible for:

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

8 2. Any damage awarded against the qualified employer for
9 intentional tort under Section 116 of this act, including any pre-
10 and post-judgment interest on the award and reasonable court costs
11 as may be lawfully awarded in the action; and

12 3. Reasonable attorney fees awarded against a qualified
13 employer under Section 116 of this act; provided, however, that an
14 employee's attorney fees that are contingent on a recovery under the
15 terms of the benefit plan shall be payable by a qualified employer
16 as part of and not in addition to such recovery. An award of
17 attorney fees in favor of a covered employee against a qualified
18 employer on a claim for intentional tort, excluding death, shall be
19 limited to no more than twenty percent (20%) of any lost earnings
20 awarded to the covered employee or his or her spouse, personal
21 representative, parents, or dependents of the covered employee under
22 the benefit plan and such award. Nothing in this paragraph shall be
23 construed to restrict an award of fees and costs made under federal
24 law.

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

3 SECTION 118. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 211 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

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

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

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

1 not give any deference to the claimant's initial adverse benefit
2 determination in its review;

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

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

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

16 5. If any part of an adverse benefit determination is upheld by
17 the committee, the claimant may then file a petition for review with
18 the Commission sitting en banc within one (1) year after the date
19 the claimant receives notice that the adverse benefit determination,
20 or part thereof, was upheld. The Commission en banc shall act as
21 the court of competent jurisdiction under 29 U.S.C.A. Section
22 1132(e)(1), and shall possess adjudicative authority to render
23 decisions in individual proceedings by claimants to recover benefits
24 due to the claimant under the terms of the claimant's plan, to

1 enforce the claimant's rights under the terms of the plan, or to
2 clarify the claimant's rights to future benefits under the terms of
3 the plan;

4 6. The Commission shall rely on the record established by the
5 internal appeal process and use an objective standard of review that
6 is not arbitrary or capricious. Any award by the administrative law
7 judge or Commission shall be limited to benefits payable under the
8 terms of the benefit plan and, to the extent provided herein,
9 attorney fees and costs; and

10 7. If the claimant appeals to the Commission and any part of
11 the adverse benefit determination is upheld, he or she may appeal to
12 the Oklahoma Supreme Court by filing with the Clerk of the Supreme
13 Court a certified copy of the decision of the Commission attached to
14 a petition which shall specify why the decision is contrary to law
15 within twenty (20) days of the decision being issued. The Supreme
16 Court may modify, reverse, remand for rehearing, or set aside the
17 decision only if the decision was contrary to law.

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

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

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

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

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

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

20 5. If any part of an adverse benefit determination is upheld by
21 the committee, the claimant may then file a petition for review in a
22 proper state district court; and
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 D. The provisions of this section shall apply to the extent not
5 inconsistent with or preempted by any other applicable law or rule.

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

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1 "SECTION 121. NEW LAW A new section of law to be
2 codified in the Oklahoma Statutes as Section 300 of Title 85A,
3 unless there is created a duplication in numbering, reads as
4 follows:

5 Sections 121 through 149 of this act shall be known and may be
6 cited as the "Workers' Compensation Arbitration Act".

7 SECTION 122. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 301 of Title 85A, unless there
9 is created a duplication in numbering, reads as follows:

10 All agreements to arbitrate claims for injuries covered by the
11 Administrative Workers' Compensation Act shall be valid and
12 enforceable in this state when:

13 1. The employer provides notice of the existence of an
14 agreement to arbitrate to both the employee and the employer's
15 workers' compensation insurance provider;

16 2. The employer files an alternative dispute resolution program
17 with the Workers' Compensation Commission, as defined in the
18 Administrative Workers' Compensation Act;

19 3. The employers' Certified Medical Plan files an alternative
20 dispute resolution program with the Commission, as defined in the
21 Administrative Workers' Compensation Act; or

22 4. The agreement is subject to the Federal Arbitration Act and
23 contains a provision that requires that, in addition to other
24 remedies, any party to the arbitration be given the opportunity to

1 appeal any decision on any issue of the arbitrator to the Workers'
2 Compensation Commission.

3 SECTION 123. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 302 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Except as otherwise provided in the Workers' Compensation
7 Arbitration Act, a person gives notice to another person by taking
8 action that is reasonably necessary to inform the other person in
9 ordinary course, whether or not the other person acquires knowledge
10 of the notice.

11 B. A person has notice if the person has knowledge of the
12 notice or has received notice.

13 C. A person shall be deemed to have received notice when it
14 comes to the person's attention or the notice is delivered at the
15 person's place of residence or place of business, or at another
16 location held out by the person as a place of delivery of the
17 communications.

18 SECTION 124. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 303 of Title 85A, unless there
20 is created a duplication in numbering, reads as follows:

21 The Workers' Compensation Arbitration Act governs an agreement
22 to arbitrate made on or after February 1, 2014. The Workers'
23 Compensation Arbitration Act governs an agreement to arbitrate made
24

1 before February 1, 2014, if all the parties to the agreement or to
2 the arbitration proceeding agree in writing.

3 SECTION 125. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 304 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Except as otherwise provided in subsections B and C of this
7 section and in the laws of this state outside of this act, a party
8 to an agreement to arbitrate or to an arbitration proceeding may
9 waive, or the parties may vary the effect of, the requirements of
10 this act to the extent permitted by law.

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

13 1. Waive or agree to vary the effect of the requirements of
14 subsection A of Section 126, subsection A of Section 127, Section
15 128, subsection A or B of Section 138, Section 147 or Section 149 of
16 this act;

17 2. Agree to unreasonably restrict the right to notice of the
18 initiation of an arbitration proceeding under Section 130 of this
19 act;

20 3. Agree to unreasonably restrict the right to disclosure of
21 any facts by an arbitrator under Section 133 of this act;

22 4. Waive the right of a party to an agreement to arbitrate to
23 be represented by a lawyer at any proceeding or hearing under
24 Section 137 of this act; or

1 5. Agree to conduct arbitration proceedings outside of this
2 state.

3 C. A party to an agreement to arbitrate or to an arbitration
4 proceeding may not waive, or the parties may not vary the effect of,
5 the requirements of this section or subsection A or C of Section
6 124, Sections 128, 135 and 139, subsection D or E of Section 141,
7 Sections 143, 144 and 145, or subsection A or B of Section 146 of
8 this act.

9 SECTION 126. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 305 of Title 85A, unless there
11 is created a duplication in numbering, reads as follows:

12 A. Except as otherwise provided in Section 150 of this act, an
13 application for judicial relief under this act shall be made by
14 application and motion to the Commission and heard in the manner
15 provided by law or rule of the Commission for making and hearing
16 motions.

17 B. Unless a civil action involving the agreement to arbitrate
18 is pending, notice of an initial application and motion to the
19 Commission under this act shall be served in the manner provided by
20 law for the service of a summons in the filing of a civil action.
21 Otherwise, notice of the motion shall be given in the manner
22 provided by law or rule of court for serving motions in pending
23 cases.

1 SECTION 127. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 306 of Title 85A, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A written agreement to submit any existing or subsequent
5 controversy arising between the parties to arbitration is valid,
6 enforceable, and irrevocable except on a ground that exists at law
7 or in equity for the revocation of a contract.

8 B. An arbitrator shall decide whether a condition precedent to
9 arbitration has been fulfilled and whether a contract containing a
10 valid agreement to arbitrate is enforceable.

11 C. If a party to a proceeding challenges the existence of, or
12 claims that a controversy is not subject to, an agreement to
13 arbitrate, the arbitration proceeding may continue pending final
14 resolution of the issue by the Commission, unless the Commission
15 otherwise orders.

16 SECTION 128. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 307 of Title 85A, unless there
18 is created a duplication in numbering, reads as follows:

19 A. On application and motion of a person showing an agreement
20 to arbitrate and alleging another person's refusal to arbitrate
21 under the agreement:

22 1. If the refusing party does not appear or does not oppose the
23 motion, the Commission shall order the parties to arbitrate; and
24

1 2. If the refusing party opposes the motion, the Commission
2 shall proceed summarily to decide the issue and order the parties to
3 arbitrate unless it finds that there is no enforceable agreement to
4 arbitrate. The Commission may also assess costs against the party
5 opposing the motion if it concludes the opposition was not brought
6 in good faith to be deposited in the Workers' Compensation Fund
7 created by the Administrative Workers' Compensation Act.

8 B. On motion of a person alleging that an arbitration
9 proceeding has been initiated or threatened but that there is no
10 agreement to arbitrate, the Commission shall proceed summarily to
11 decide the issue. If the Commission finds that there is an
12 enforceable agreement to arbitrate, it shall order the parties to
13 arbitrate. The Commission may also assess costs against the party
14 opposing the motion if the Commission concludes the opposition was
15 not brought in good faith to be deposited in the Workers'
16 Compensation Fund created by the Administrative Workers'
17 Compensation Act.

18 C. If the Commission finds that the parties have not entered
19 into an enforceable arbitration agreement, the dispute shall be
20 resolved under the Administrative Workers' Compensation Act.

21 D. If an action is initiated in district court to determine
22 whether an enforceable arbitration agreement exists, on motion by
23 the responding party, that proceeding shall be transferred to the
24 Commission for determination.

1 E. If a party challenges the enforceability of an arbitration
2 agreement, the underlying claim, including all benefits, shall be
3 stayed until the Commission determines whether an enforceable
4 arbitration agreement exists.

5 SECTION 129. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 308 of Title 85A, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Before an arbitrator is appointed and authorized to act, the
9 Commission, on application and motion of a party to an arbitration
10 proceeding and for good cause shown, may enter a judgment for
11 provisional remedies to protect the effectiveness of the arbitration
12 proceeding to the same extent and under the same conditions as if
13 the controversy were the subject of a civil action.

14 B. After an arbitrator is appointed and authorized to act:

15 1. The arbitrator may issue further or revised orders for
16 provisional remedies, including interim awards, as the arbitrator
17 finds necessary to protect the effectiveness of the arbitration
18 proceeding and to promote the fair and expeditious resolution of the
19 controversy, to the same extent and under the same conditions as if
20 the controversy were the subject of a civil action; and

21 2. A party to an arbitration proceeding may move the Commission
22 for a provisional remedy only if the matter is urgent and the
23 arbitrator is not able to act timely or the arbitrator cannot
24 provide an adequate remedy.

1 C. A party does not waive a right of arbitration by making an
2 application and motion under subsection A or B of this section.

3 SECTION 130. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 309 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 A. A person shall initiate an arbitration proceeding by giving
7 written notice to the Commission and the other parties to the
8 arbitration agreement. Notice shall be served on the parties in the
9 manner prescribed by the arbitration agreement, or, if the
10 arbitration agreement does not address the method of notice, then by
11 the service of process for civil actions provided under Title 12 of
12 the Oklahoma Statutes.

13 B. Notice of an arbitration proceeding shall contain:

- 14 1. The general nature of the controversy;
15 2. The remedy and alleged damages sought; and
16 3. A copy of the arbitration agreement governing the
17 controversy.

18 C. An objection to the sufficiency of notice shall be made to
19 the Commission before the initial hearing with the appointed
20 arbitrator.

21 SECTION 131. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 310 of Title 85A, unless there
23 is created a duplication in numbering, reads as follows:

1 A. Except as otherwise provided in subsection C of this
2 section, on application and motion of a party to an arbitration
3 agreement or arbitration proceeding, the Commission may order
4 consolidation of separate arbitration proceedings as to all or some
5 of the claims if:

6 1. There are separate agreements to arbitrate or separate
7 arbitration proceedings between the same persons or one of them is a
8 party to a separate agreement to arbitrate or a separate arbitration
9 proceeding with a third person;

10 2. The claims subject to the agreements to arbitrate arise in
11 substantial part from the same transaction or series of related
12 transactions;

13 3. The existence of a common issue of law or fact creates the
14 possibility of conflicting decisions in the separate arbitration
15 proceedings; and

16 4. Prejudice resulting from a failure to consolidate is not
17 outweighed by the risk of undue delay or prejudice to the rights of
18 or hardship to parties opposing consolidation.

19 B. The Commission may order consolidation of separate
20 arbitration proceedings as to some claims and allow other claims to
21 be resolved in separate arbitration proceedings.

22 C. The Commission may not order consolidation of the claims of
23 a party to an agreement to arbitrate if the agreement prohibits
24 consolidation.

1 SECTION 132. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 311 of Title 85A, unless there
3 is created a duplication in numbering, reads as follows:

4 A. If the parties to an arbitration agreement agree on a method
5 for appointing an arbitrator, that method shall be followed, unless
6 the method fails. If the parties have not agreed on a method, the
7 agreed method fails, or an arbitrator appointed fails or is unable
8 to act and a successor has not been appointed, the Commission, on
9 motion of a party to the arbitration proceeding, shall appoint the
10 arbitrator. An arbitrator appointed by the Commission has all the
11 powers of an arbitrator designated by the arbitration agreement.

12 B. An individual who has a known, direct, and material interest
13 in the outcome of the arbitration proceeding, or a known, existing,
14 and substantial relationship with a party to the arbitration
15 proceeding, may not serve as an arbitrator unless agreed to in
16 writing by the parties.

17 SECTION 133. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 312 of Title 85A, unless there
19 is created a duplication in numbering, reads as follows:

20 A. Before accepting appointment, an individual who is requested
21 to serve as an arbitrator, after making a reasonable inquiry, shall
22 disclose to the parties to the arbitration agreement, the parties to
23 the arbitration proceeding, and any other arbitrators any known
24 facts that a reasonable person would consider likely to affect the

1 impartiality of the arbitrator in the arbitration proceeding,
2 including but not limited to:

3 1. A financial or personal interest in the outcome of the
4 arbitration proceeding; and

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

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

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

20 SECTION 134. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 313 of Title 85A, unless there
22 is created a duplication in numbering, reads as follows:

23

24

1 If there is more than one arbitrator, the powers of an
2 arbitrator shall be exercised by a majority of the arbitrators, but
3 all of them shall conduct the hearing under Section 136 of this act.

4 SECTION 135. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 314 of Title 85A, unless there
6 is created a duplication in numbering, reads as follows:

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

10 B. The immunity afforded by this section supplements any
11 immunity under other law.

12 C. The failure of an arbitrator to make a disclosure required
13 by Section 133 of this act shall not cause any loss of immunity
14 under this section.

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

22 1. The extent necessary to determine the claim of an
23 arbitrator, arbitration organization, or representative of the
24

1 arbitration organization against a party to the arbitration
2 proceeding; or

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

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

19 SECTION 136. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 315 of Title 85A, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Arbitrations shall be conducted in a fair and expeditious
23 manner. The authority conferred on arbitrators includes, without
24 limitation, the power to hold conferences and hearings with the

1 parties, determine the admissibility, relevance, materiality and
2 weight of any evidence, as well as ask questions of any witnesses
3 during the proceedings.

4 B. An arbitrator may decide a request for summary disposition
5 of a claim or particular issue:

6 1. If all interested parties agree; or

7 2. On request of one party to the arbitration proceeding if
8 that party gives notice to all other parties to the proceeding and
9 the other parties have a reasonable opportunity to respond.

10 C. If an arbitrator orders a hearing, the arbitrator shall set
11 a time and place and give notice of the hearing not less than five
12 (5) days before the hearing begins. Unless a party to the
13 arbitration proceeding makes an objection to lack or insufficiency
14 of notice not later than the beginning of the hearing, the party's
15 appearance at the hearing waives the objection. On request of a
16 party to the arbitration proceeding and for good cause shown, or
17 upon the arbitrator's own initiative, the arbitrator may adjourn the
18 hearing from time to time as necessary but may not postpone the
19 hearing to a time later than that fixed by the agreement to
20 arbitrate for making the award unless the parties to the arbitration
21 proceeding consent to a later date. The arbitrator may hear and
22 decide the controversy on the evidence produced although a party who
23 was duly notified of the arbitration proceeding did not appear. The
24

1 Commission, on request, may direct the arbitrator to conduct the
2 hearing promptly and render a timely decision.

3 D. At a hearing under subsection C of this section, a party to
4 the arbitration proceeding has a right to be heard, to present
5 evidence material to the controversy, and to cross-examine witnesses
6 appearing at the hearing.

7 E. If an arbitrator ceases or is unable to act during the
8 arbitration proceeding, a replacement arbitrator shall be appointed
9 according to the rules of the arbitration organization through which
10 the arbitration is being conducted or, in the absence of such rules,
11 by application to the Commission.

12 SECTION 137. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 316 of Title 85A, unless there
14 is created a duplication in numbering, reads as follows:

15 A. A party to an arbitration proceeding may be represented by a
16 lawyer.

17 B. Each party shall be responsible for payment of his or her
18 legal fees incurred during arbitration, except as provided for in
19 Section 142 of this act.

20 C. The employee's attorney may not recover legal fees in excess
21 of the limits described in Section 82 of this act.

22 SECTION 138. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 317 of Title 85A, unless there
24 is created a duplication in numbering, reads as follows:

1 A. An arbitrator may issue a subpoena for the attendance of a
2 witness and for the production of records and other evidence at any
3 hearing and may administer oaths. A subpoena shall be served in the
4 manner for service of subpoenas in a civil action and, upon
5 application and motion to the Commission by a party to the
6 arbitration proceeding or the arbitrator, enforced in the manner for
7 enforcement of subpoenas in a civil action. A witness may be
8 allowed to appear telephonically or by any other available means
9 that allows contemporaneous cross-examination.

10 B. In order to make the proceedings fair, expeditious, and
11 cost-effective, on request of a party or witness in an arbitration
12 proceeding, an arbitrator may permit a deposition of any witness to
13 be taken for use as evidence at the hearing, including a witness who
14 cannot be subpoenaed for or is unable to attend a hearing. The
15 arbitrator shall determine the conditions under which the deposition
16 is taken.

17 C. An arbitrator may permit such discovery as the arbitrator
18 decides is appropriate in the circumstances, taking into account the
19 needs of the parties to the arbitration proceeding and other
20 affected persons and the desirability of making the proceeding fair,
21 expeditious, and cost-effective.

22 D. If an arbitrator permits discovery under subsection C of
23 this section, the arbitrator may order a party to the arbitration
24 proceeding to comply with the arbitrator's discovery-related orders,

1 issue subpoenas for the attendance of a witness and for the
2 production of records and other evidence at a discovery proceeding,
3 and take action against a noncomplying party to the extent a court
4 could if the controversy were the subject of a civil action in this
5 state.

6 E. An arbitrator may issue a protective order to prevent the
7 disclosure of privileged information, confidential information,
8 trade secrets, and other information protected from disclosure to
9 the extent a court could if the controversy were the subject of a
10 civil action in this state.

11 F. All laws compelling a person under subpoena to testify and
12 all fees for attending a judicial proceeding, a deposition, or a
13 discovery proceeding as a witness apply to an arbitration proceeding
14 as if the controversy were the subject of a civil action in this
15 state.

16 G. The Commission may enforce a subpoena or discovery-related
17 order for the attendance of a witness within this state and for the
18 production of records and other evidence issued by an arbitrator in
19 connection with an arbitration proceeding in another state upon
20 conditions determined by the Commission so as to make the
21 arbitration proceeding fair, expeditious, and cost-effective.

22 SECTION 139. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 318 of Title 85A, unless there
24 is created a duplication in numbering, reads as follows:

1 If an arbitrator makes a pre-award ruling in favor of a party,
2 the party may request the arbitrator to incorporate the ruling into
3 an award under Section 140 of this act. A prevailing party may make
4 an application and motion to the Commission for an expedited
5 judgment to confirm the award under Section 143 of this act, in
6 which case the Commission shall summarily decide the motion. The
7 Commission shall issue a judgment to confirm the award unless the
8 court vacates, modifies, or corrects the award under Section 144 or
9 145 of this act.

10 SECTION 140. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 319 of Title 85A, unless there
12 is created a duplication in numbering, reads as follows:

13 A. An arbitrator shall make a record of the award. The award
14 may contain the evidence and conclusion upon which the award was
15 based unless the agreement of the parties specifies the type of
16 award to be issued. The record shall be signed or otherwise
17 authenticated by any arbitrator who concurs with the award. The
18 arbitrator or the arbitration organization shall give notice of the
19 award, including a copy of the award, to each party to the
20 arbitration proceeding.

21 B. An award shall be made within the time specified by the
22 agreement to arbitrate or, if not specified therein, within the time
23 ordered by the Commission. The Commission may extend or the parties
24 to the arbitration proceeding may agree in a record to extend the

1 time. The Commission or the parties may do so within or after the
2 time specified or ordered. A party waives any objection that an
3 award was not timely made unless the party gives notice of the
4 objection to the arbitrator before receiving notice of the award.

5 SECTION 141. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 320 of Title 85A, unless there
7 is created a duplication in numbering, reads as follows:

8 A. On motion by a party to an arbitration proceeding, the
9 arbitrator may modify or correct an award:

10 1. On a ground stated in paragraph 1 or 3 of subsection A of
11 Section 145 of this act;

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

15 3. To clarify the award.

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

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

22 D. If a motion to the Commission is pending under Section 144
23 or 145 of this act, the Commission may submit the claim to the
24 arbitrator to consider whether to modify or correct the award:

1 1. On a ground stated in paragraph 1 or 3 of subsection A of
2 Section 145 of this act;

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

6 3. To clarify the award.

7 E. An award modified or corrected under this section is subject
8 to Sections 143, 144 and 145 of this act.

9 SECTION 142. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 321 of Title 85A, unless there
11 is created a duplication in numbering, reads as follows:

12 A. An arbitrator may award benefits set forth in Sections 45,
13 46, 47 and 51 of this act.

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

17 C. As to all remedies other than those authorized by
18 subsections A and B of this section, an arbitrator may order such
19 remedies as the arbitrator considers just and appropriate under the
20 circumstances of the arbitration proceeding. The fact that such a
21 remedy could not or would not be granted by the Commission is not a
22 ground for refusing to confirm an award under Section 143 of this
23 act or for vacating an award under Section 144 of this act.

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

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

6 SECTION 143. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 322 of Title 85A, unless there
8 is created a duplication in numbering, reads as follows:

9 After a party to an arbitration proceeding receives notice of an
10 award, the party may make an application and motion to the
11 Commission for a judgment confirming the award at which time the
12 Commission shall issue a confirming judgment unless the award is
13 modified or corrected under Section 141 or 145 of this act or is
14 vacated under Section 144 of this act.

15 SECTION 144. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 323 of Title 85A, unless there
17 is created a duplication in numbering, reads as follows:

18 A. On an application and motion to the court by a party to an
19 arbitration proceeding, the Commission shall vacate an award made in
20 the arbitration proceeding if:

21 1. The award was procured by corruption, fraud, or other undue
22 means;

23 2. There was:
24

- a. evident partiality by an arbitrator appointed as a neutral arbitrator,
- b. corruption by an arbitrator, or
- c. misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

3. An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to Section 136 of this act, so as to prejudice substantially the rights of a party to the arbitration proceeding;

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

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

6. It is determined that an arbitrator did not disclose a conflict under Section 133 of this act.

B. An application and motion under this section shall be filed within thirty (30) days after the movant receives notice of the award or within thirty (30) days after the movant receives notice of a modified or corrected award, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within ninety (90) days after

1 the ground is known or by the exercise of reasonable care would have
2 been known by the movant.

3 C. If the Commission vacates an award it may order a rehearing.
4 If the award is vacated on a ground stated in paragraph 1, 2 or 6 of
5 subsection A of this section, the rehearing shall be before a new
6 arbitrator. If the award is vacated on a ground stated in paragraph
7 3, 4 or 5 of subsection A of this section, the rehearing may be
8 before the arbitrator who made the award or the arbitrator's
9 successor. The arbitrator shall render the decision in the
10 rehearing within the same time as that provided in subsection B of
11 Section 140 of this act for an award.

12 D. If the Commission denies a motion to vacate an award, it
13 shall confirm the award unless a motion to modify or correct the
14 award is pending.

15 SECTION 145. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 324 of Title 85A, unless there
17 is created a duplication in numbering, reads as follows:

18 A. On application and motion made within thirty (30) days after
19 movant receives notice of the award or within thirty (30) days after
20 the movant receives notice of a modified or corrected award, the
21 Commission shall modify or correct the award if:

22 1. There was an evident mathematical miscalculation or an
23 evident mistake in the description of a person, thing, or property
24 referred to in the award;

1 2. The arbitrator has made an award on a claim not submitted to
2 the arbitrator and the award may be corrected without affecting the
3 merits of the decision upon the claims submitted; or

4 3. The award is imperfect in a matter of form not affecting the
5 merits of the decision on the claims submitted.

6 B. If a motion made under subsection A of this section is
7 granted, the Commission shall modify or correct and confirm the
8 award as modified or corrected. Otherwise, unless a motion to
9 vacate is pending, the Commission shall confirm the award.

10 C. A motion to modify or correct an award under this section
11 may be joined with a motion to vacate the award.

12 SECTION 146. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 325 of Title 85A, unless there
14 is created a duplication in numbering, reads as follows:

15 A. On granting a motion to confirm or vacate an order, the
16 Commission shall enter a judgment in conformity therewith. The
17 judgment may be recorded, docketed and enforced as any other
18 judgment in its jurisdiction.

19 B. On application of a prevailing party, the Commission may
20 award reasonable attorney fees and other reasonable expenses of
21 litigation incurred in the proceeding.

22 SECTION 147. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 326 of Title 85A, unless there
24 is created a duplication in numbering, reads as follows:

1 The Commission has exclusive jurisdiction to enforce and enter
2 judgment confirming, vacating, correcting or modifying an award
3 under this act.

4 SECTION 148. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 327 of Title 85A, unless there
6 is created a duplication in numbering, reads as follows:

7 A. A party may appeal the following actions to the district
8 court as provided in Section 149 of this act:

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

16 SECTION 149. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 328 of Title 85A, unless there
18 is created a duplication in numbering, reads as follows:

19 An application and motion under judicial review of a judgment or
20 award entered by the Commission under this act shall be made in the
21 district court in the county in which the agreement to arbitrate
22 specifies the arbitration hearing is to be held or, if the hearing
23 has been held, in the court in the county in which it was held.
24 Otherwise, the motion may be made in the district court in the

1 county in which an adverse party resides or has a place of business
2 or, if no adverse party has a residence or place of business in this
3 state, in the district court located either in Oklahoma City or
4 Tulsa. All subsequent motions shall be made in the court hearing
5 the initial motion unless the court otherwise directs.

6 SECTION 150. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 107 of Title 85A, unless there
8 is created a duplication in numbering, reads as follows:

9 A. 1. All public entities of this state, their agencies and
10 instrumentalities, authorities, and public trusts of which they are
11 beneficiaries shall provide workers' compensation to their employees
12 and elected officials engaged in either governmental or proprietary
13 functions in accordance with this section. Compensation or
14 indemnification for compensation shall be paid out of the funds of
15 the public entities.

16 2. Except as otherwise provided, the state and all its
17 institutions of higher education, departments, instrumentalities,
18 institutions, and public trusts of which it or they are
19 beneficiaries shall insure against liability for workers'
20 compensation with CompSource Oklahoma and shall not be permitted to
21 insure with any other insurance carrier unless:

- 22 a. CompSource Oklahoma refuses to accept the risk when
- 23 the application for insurance is made,
- 24 b. specifically authorized by law,

- 1 c. the state entity can obtain workers' compensation
2 insurance coverage at the same cost or at a lower cost
3 from another insurance carrier licensed in this state,
4 or
5 d. CompSource Oklahoma begins operating as a mutual
6 insurance company.

7 3. a. The state, all state institutions of higher education
8 except comprehensive universities, and all state
9 departments, instrumentalities, institutions, and
10 public trusts of which the state is a beneficiary, may
11 self-insure. Self-insurance administration may only
12 be obtained through CompSource Oklahoma, unless
13 CompSource Oklahoma begins operating as a mutual
14 insurance company.

15 b. If CompSource Oklahoma begins operating as a mutual
16 insurance company:

- 17 (1) the state, all state institutions of higher
18 education except comprehensive universities, and
19 all state departments, instrumentalities,
20 institutions, and public trusts so electing to
21 self-insure shall pay premiums set by CompSource
22 Oklahoma which shall collect premiums, pay claims
23 and provide for excess insurance, and
24

1 (2) all dividends or profits accumulating from a
2 self-insurance program shall be refunded to the
3 participants on a formula devised by CompSource
4 Oklahoma.

5 B. All counties, cities and towns, their instrumentalities and
6 public trusts of which they are beneficiaries shall insure against
7 their liability for workers' compensation with CompSource Oklahoma
8 or, through any combination of the following, may:

9 1. Insure with an insurance carrier licensed in this state;

10 2. Self-insure and make any appropriation of funds to cover
11 their risk;

12 3. Secure reinsurance or excess insurance over and above a
13 self-insurance retention in any manner authorized by subsections B
14 and C of Section 167 of Title 51 of the Oklahoma Statutes; or

15 4. Secure compensation for their employees in the manner
16 provided in The Governmental Tort Claims Act, subsection C of
17 Section 167 of Title 51 of the Oklahoma Statutes.

18 C. Boards of education, their instrumentalities and public
19 trusts of which they are beneficiaries shall insure against their
20 liability for workers' compensation through any combination of the
21 following:

22 1. Insure with an insurance carrier licensed in Oklahoma;

23 2. Self-insure and make any appropriation of funds to cover
24 their risk; or

1 3. Secure reinsurance or excess insurance over and above a
2 self-insurance retention in any manner authorized by subsection B of
3 Section 168 of Title 51 of the Oklahoma Statutes.

4 D. Comprehensive universities shall insure against their
5 liability for workers' compensation with CompSource Oklahoma or, if
6 it can be demonstrated to the Board of Regents of the comprehensive
7 university prior to the inception date of a workers' compensation
8 policy that the policy will result in a lower cost than one with
9 CompSource Oklahoma or if CompSource Oklahoma begins operating as a
10 mutual insurance company, through any combination of the following:

- 11 1. Insure with an insurance carrier licensed in Oklahoma; or
12 2. Self-insurance, making any appropriation of funds to cover
13 their risk.

14 E. In addition to any other provision of this section, city,
15 county, city-county, and public trust hospitals may insure with
16 other insurance carriers licensed in this state if it can be
17 demonstrated to the governing body of the hospital prior to the
18 inception date of a workers' compensation policy each year that the
19 policy will result in a lower cost than one with CompSource Oklahoma
20 or if CompSource Oklahoma begins operating as a mutual insurance
21 company.

22 F. For purposes of this act, all contracts of employment for
23 state, county, municipal, and state-funded educational entities and
24

1 public trusts will be considered to have been entered into in this
2 state regardless of where the work is performed.

3 G. When a person is employed by the state, a municipality, a
4 county, or by any political subdivision thereof, and, while off-duty
5 from the employment, is employed by a private employer, the private
6 employer alone shall be liable for compensation under this act for
7 any injury or death of the person arising out of and in the course
8 of employment which occurs during the hours of actual employment by
9 the private employer. The provisions of this subsection shall not
10 relieve the state, a municipality or a county, or any political
11 subdivision thereof, from providing disability benefits to which a
12 person may be entitled pursuant to a pension or retirement plan.
13 The provisions of this subsection shall not preclude an employee or
14 group of employees so employed from providing separate compensation
15 coverage for off-duty employment by a private employer.

16 SECTION 151. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 108 of Title 85A, unless there
18 is created a duplication in numbering, reads as follows:

19 Any claimant may, upon the payment of the Workers' Compensation
20 Commission's filing fee, dismiss any claim brought by the claimant
21 at any time before final submission of the case to the Commission
22 for decision. Such dismissal shall be without prejudice unless the
23 words "with prejudice" are included in the order. If any claim that
24 is filed within the statutory time permitted by Section 18 of this

1 act is dismissed without prejudice, a new claim may be filed within
2 one (1) year after the entry of the order dismissing the first claim
3 even if the statutory time for filing has expired.

4 SECTION 152. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 109 of Title 85A, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The Workers' Compensation Commission shall establish a
8 workers' compensation counselor or ombudsman program to assist
9 injured workers, employers and persons claiming death benefits in
10 obtaining benefits under this act. A special effort shall be made
11 to equip counselors or ombudsmen with sufficient resources to assist
12 injured workers through the system without the necessity of
13 retaining legal representation.

14 B. Workers' compensation counselors or ombudsmen shall provide
15 information to injured workers; investigate complaints; communicate
16 with employers, insurance carriers, self-insurers, and health care
17 providers; provide informational seminars and workshops on workers'
18 compensation for medical providers, insurance adjustors, and
19 employee and employer groups; and develop informational materials
20 for employees, employers and medical providers.

21 C. The Commission shall mail a notice to the injured worker
22 within ten (10) days of the filing of an Employer's First Notice of
23 Injury. The notice shall advise the injured worker of the
24 availability of the services of the Commission's counselor or

1 ombudsman program and of the availability of mediation and other
2 forms of alternative dispute resolution to assist the injured
3 worker. The Commission shall provide additional information as the
4 Commission may determine necessary.

5 D. The Commission shall develop a program that provides for
6 annual training for own-risk employers and claims representatives
7 handling workers' compensation claims in Oklahoma. The training
8 shall include information about the alternative dispute resolution
9 program, including counselor and ombudsman programs, mediation, and
10 other services provided by the Commission.

11 SECTION 153. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 110 of Title 85A, unless there
13 is created a duplication in numbering, reads as follows:

14 A. The Workers' Compensation Commission shall develop an
15 alternative dispute resolution program which affords an injured
16 employee the opportunity to obtain benefits by request or informal
17 procedure. The program shall include an increased emphasis on
18 making mediation and other alternative dispute resolution programs
19 affordable and convenient to an injured employee not represented by
20 counsel.

21 B. Participation in an alternative dispute resolution program
22 is not a prerequisite to the commencement of a claim for benefits
23 under this act. A request for alternative dispute resolution or a
24

1 consent to participate in such program does not invoke the
2 jurisdiction of the Commission.

3 C. Mediation shall be voluntary, informal, and nonbinding in
4 any claim arising pursuant to the provisions of this act, except for
5 claims against the Multiple Injury Trust Fund and medical treatment
6 issues subject to a certified workplace medical plan. Provided,
7 however, the parties may waive mediation and proceed directly to an
8 administrative hearing.

9 D. A Commission mediator, appointed by the Commission, shall
10 conduct an informal mediation between the parties in regard to
11 claims for a closed period of lost time where the employee has
12 returned to work, for medical benefits only, for reimbursement of
13 travel expenses and medical treatment, in cases in which the
14 employee is not represented by an attorney, or there is no record of
15 insurance coverage. Such mediation shall be conducted by the
16 Commission mediator within thirty (30) days of the filing of a
17 request for any such benefit.

18 E. Upon the filing of a request for an administrative hearing
19 on issues not specifically listed in subsection D of this section,
20 the Commission shall set the case for prehearing before the assigned
21 judge within fifteen (15) days. At the prehearing, the
22 administrative law judge shall accept a waiver of mediation by the
23 parties or appoint a mediator and issue an order reflecting such
24 appointment. The mediator shall contact the parties and schedule a

1 mediation session within thirty (30) days of such order, unless
2 otherwise agreed to by the parties.

3 F. Mediation is confidential and no part of the proceeding
4 shall be considered a matter of public record. Recommendations of
5 the mediator are not binding unless the parties enter into a
6 settlement agreement. If an agreement is not reached, the results
7 and statements made during the mediation are not admissible in any
8 following proceeding.

9 G. The Commission shall be responsible for certifying those
10 persons who are eligible and qualified to serve as mediators. An
11 individual may be certified as a mediator if the applicant meets the
12 qualifications as required by the Commission. A certified mediator
13 may be an attorney or nonattorney who has worked in the area of
14 Oklahoma workers' compensation benefits for at least five (5) years.
15 Mediators serving as Commission-certified mediators on the effective
16 date of this section shall serve the remainder of their respective
17 five-year certification periods and may reapply for successive
18 certification periods.

19 H. Each certified mediator shall remain on the list for five
20 (5) years, unless removed. Mediators shall be required to complete
21 at least six (6) hours of continuing education per two-year period
22 in the areas of mediation and workers' compensation. Proof of
23 compliance with this requirement shall be submitted to the
24 Commission. This continuing education requirement shall be in

1 addition to any other such general requirement which may be required
2 by the Oklahoma State Bar Association. Cost of continuing education
3 is to be borne by the applicant.

4 I. Mediators shall be compensated at the rate or fee as
5 determined by the mediator; provided, however, the rate or fee shall
6 not exceed a maximum rate to be established by the Commission by
7 rule. The cost of mediation shall be paid by the respondent or its
8 insurance carrier. A mediator must schedule mediations for a
9 minimum two-hour block of time, and may not schedule more than one
10 mediation to take place at a time.

11 J. At the time of a mediation, the claimant shall be in
12 attendance unless all parties agree, and all parties shall be
13 represented during the entire mediation session by a person with
14 full settlement authority to settle any issue of the claim. If a
15 party does not have full settlement authority, or does not
16 participate in good faith in the mediation process, the mediator
17 shall report to the assigned administrative law judge of the
18 Commission who may for good cause shown assess costs, attorney fees,
19 and sanctions.

20 K. To encourage early resolution of claims, an injured employee
21 may participate in mediation without counsel. Upon compromise
22 settlement of the claim, the parties may submit the settlement
23 agreement to any administrative law judge for final approval.

1 SECTION 154. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 111 of Title 85A, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Any claim for any benefit under this act shall be commenced
5 with the filing of an Employee's First Notice of Claim for
6 Compensation by the employee with the Workers' Compensation
7 Commission. The claim shall contain a statement that all matters
8 stated therein are true and accurate and shall be signed by the
9 claimant and the claimant's agent, if any. Any person who signs
10 this statement or causes another to sign this statement knowing the
11 statement to be false shall be guilty of perjury. An individual who
12 signs on behalf of a claimant may be presumed to have the
13 authorization of the claimant and to be acting at the claimant's
14 direction.

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

1 perjury. An individual who signs on behalf of a respondent, its
2 insurer, or its agent may be presumed to have the authorization of
3 the respondent, its insurer or agent and to be acting at their
4 direction.

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

13 SECTION 155. 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 A. The Workers' Compensation Commission shall create, maintain
17 and review a list of licensed physicians who shall serve as
18 independent medical examiners from a list of licensed physicians who
19 have completed such course study as the Commission may require. An
20 independent medical examiner must agree to examine an employee
21 within forty-five (45) days of appointment. The Commission shall,
22 to the best of its ability, include the most experienced and
23 competent physicians in the specific fields of expertise utilized
24 most often in the treatment of injured employees. The period of

1 qualification shall be two (2) years. Physicians may be qualified
2 for successive two-year periods. Physicians serving as independent
3 medical examiners on the effective date of this act shall serve the
4 remainder of their respective two-year qualification periods and may
5 reapply for successive qualification periods. The Commission may
6 remove an independent medical examiner from the list for cause.

7 B. An administrative law judge may appoint an independent
8 medical examiner to assist in determining any issue before the
9 Commission. In the event surgery is recommended by a treating
10 physician, upon request of the employer, an independent medical
11 examiner shall be appointed to determine the reasonableness and
12 necessity of the recommended surgery. Such independent medical
13 examiner shall be qualified to perform the type of surgery
14 recommended.

15 C. An independent medical examiner shall be selected from the
16 list of independent medical examiners within ten (10) days when the
17 employer or the employee petitions the Commission for the selection
18 of an independent medical examiner. The independent medical
19 examiner shall be certified by a recognized specialty board in the
20 area or areas appropriate to the condition under review.

21 D. The Commission shall, to the best of its ability, maintain a
22 geographic balance of independent medical examiners.
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1 E. Counsel for the employee and employer are responsible for
2 transmittal of the employee's medical records to the independent
3 medical examiner within ten (10) days of appointment.

4 F. After a physical examination and review of medical records
5 and other appropriate information, including depositions and
6 surveillance video, the independent medical examiner shall submit a
7 verified written report to the Commission and to the parties. In
8 the event the independent medical examiner determines that more
9 medical treatment is necessary, the employer shall designate a
10 treating physician to provide the indicated treatment.

11 G. Any independent medical examiner selected pursuant to the
12 provisions of this section shall be reimbursed for the medical
13 examination, reports and fees in a reasonable and customary amount
14 set by the Commission, and these costs shall be borne by the
15 employer.

16 H. The Commission shall create a review process to oversee on a
17 continuing basis the quality of performance and the timeliness of
18 the submission of medical findings by independent medical examiners.

19 I. If the Commission does not follow the opinion of the
20 independent medical examiner on any issue, the administrative law
21 judge or member of the Board of Review shall set out its reasons for
22 deviating from the opinion of the independent medical examiner. The
23 opinion of the independent medical examiner shall be followed unless
24 there is clear and convincing evidence to the contrary.

1 J. Upon receipt of an independent medical examiner's report,
2 any party shall have the right to object to the introduction of the
3 report into evidence. The objection must be made by giving written
4 notification to all parties and to the Commission within ten (10)
5 days after receipt of the report. The employer shall be responsible
6 for the reasonable charges of the physician for such testimony,
7 preparation time, and the expense of the deposition.

8 SECTION 156. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 113 of Title 85A, unless there
10 is created a duplication in numbering, reads as follows:

11 For cases not covered by a certified workplace medical plan, and
12 where the employer, insurance company, or own-risk employer do not
13 provide case management, case management may be granted by the
14 Workers' Compensation Commission on the request of any party, or
15 when the Commission determines that case management is appropriate.
16 The administrative law judge shall appoint a case manager from a
17 list of qualified case managers developed, maintained and
18 periodically reviewed by the Commission. The period of
19 qualification shall be two (2) years. Case managers may be
20 qualified for successive two-year periods. Case managers serving as
21 qualified case managers on the effective date of this act shall
22 serve the remainder of their respective two-year qualification
23 periods and may reapply for successive qualification periods. The
24 reasonable and customary charges of a medical case manager appointed

1 by the Commission shall be borne by the employer or insurance
2 carrier. One change of case manager per party shall be made upon
3 application of any party.

4 SECTION 157. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 114 of Title 85A, unless there
6 is created a duplication in numbering, reads as follows:

7 When a compensable injury results in the loss of one or more
8 eyes, teeth, or members of the body, or the replacement of a joint,
9 the employer shall furnish such prosthetic devices as may be
10 necessary as determined by the Workers' Compensation Commission in
11 the treatment and rehabilitation of the injured worker for the
12 lifetime of the worker. When a worker sustains a compensable
13 injury, arising out of and in the course of his or her employment,
14 which results in damage to a prosthetic device with which such
15 worker is equipped, the employer shall repair or replace such
16 device. Provided, that a subsequent injury to the part of the body
17 for which a prosthetic device is provided shall terminate the
18 obligation of the employer to provide such prosthetic device.

19 SECTION 158. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 115 of Title 85A, unless there
21 is created a duplication in numbering, reads as follows:

22 A. If the employee and employer shall reach an agreement for
23 the full, final and complete settlement of any issue of a claim
24 pursuant to this act, a form designated as "Joint Petition" shall be

1 signed by both the employer and employee, or representatives
2 thereof, and shall be approved by the Workers' Compensation
3 Commission or an administrative law judge, and filed with the
4 Commission. In cases in which the employee is not represented by
5 legal counsel, the Commission or an administrative law judge shall
6 have jurisdiction to approve a full, final and complete settlement
7 of any issue upon the filing of an Employer's First Notice of
8 Injury. There shall be no requirement for the filing of an
9 Employee's First Notice of Claim for Compensation to effect such
10 settlement in cases in which the employee is not represented by
11 legal counsel.

12 B. In the event all issues of a claim are not fully, finally
13 and completely settled by a Joint Petition, the issues not settled
14 by the parties and subject to the Commission's continuing
15 jurisdiction must be noted by appendix to the Joint Petition or on a
16 form created for such purpose by the Commission. The appendix must
17 be signed by the parties and approved by the Commission as set forth
18 herein.

19 C. In the absence of fraud, a Joint Petition shall be deemed
20 binding upon the parties thereto and a final adjudication of all
21 rights pursuant to this act or the workers' compensation law in
22 effect at the time of the injury or final order of the Workers'
23 Compensation Court. An official record shall be made by an official
24

1 Commission reporter of the testimony taken to effect the Joint
2 Petition.

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

13 SECTION 159. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 116 of Title 85A, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Awards for permanent partial disability shall be made
17 pursuant to Sections 45 and 46 of this act, less any sums previously
18 paid which the Workers' Compensation Commission may find to be a
19 proper credit thereon. When the award becomes final, the whole sum
20 or any unpaid portion thereof shall operate as a final adjudicated
21 obligation and payment thereof may be enforced by the claimant or in
22 case of the claimant's death, by the surviving beneficiary entitled
23 to the proceeds as provided in Section 47 of this act.

24

1 B. Awards for permanent total disability shall entitle the
2 claimant to receive weekly income benefits for the period prescribed
3 in this act. When an award for permanent total disability becomes
4 final, the accrued portion thereof shall operate as a final
5 adjudicated obligation and payment thereof may be enforced by the
6 claimant or in case of the claimant's death, by the surviving
7 beneficiary entitled to the proceeds as provided in this act.
8 Permanent total disability awards shall not be commuted to a lump-
9 sum payment.

10 SECTION 160. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 117 of Title 85A, unless there
12 is created a duplication in numbering, reads as follows:

13 Every employer and insurance carrier who schedules any employee
14 as a person employed by the employer for the purpose of paying or
15 collecting insurance premiums on a workers' compensation insurance
16 policy or who pays, receives or collects any premiums upon any
17 insurance policy covering the liability of such employer under the
18 workers' compensation law by reason of or upon the basis of the
19 employment of any such employee shall be estopped to deny that such
20 employee was employed by the employer.

21 SECTION 161. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 118 of Title 85A, unless there
23 is created a duplication in numbering, reads as follows:

1 A. A fee of One Hundred Forty Dollars (\$140.00) per case,
2 including any Joint Petition authorized by this act, shall be
3 collected by the Workers' Compensation Commission and assessed as
4 costs to be paid by the party against whom any award becomes final,
5 to be deposited as follows:

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

8 2. Ten Dollars (\$10.00) to the credit of the Attorney General's
9 Workers' Compensation Fraud Unit Revolving Fund created by Section
10 19.2 of Title 74 of the Oklahoma Statutes; and

11 3. Twenty-five Dollars (\$25.00) to the credit of the Workers'
12 Compensation Fund for purposes of implementing the provisions of
13 this act, including strengthening and providing additional funding
14 for the Attorney General's Workers' Compensation Fraud Unit,
15 providing counseling services pursuant to the workers' compensation
16 counselor or ombudsman program and safety in the workplace.

17 B. A fee of One Hundred Thirty Dollars (\$130.00) per action to
18 reopen any case pursuant to Section 32 of this act shall be
19 collected by the Commission and assessed as costs to be paid by the
20 party that reopens the case. The fee collected pursuant to this
21 subsection shall be deposited to the credit of the Workers'
22 Compensation Fund for purposes of implementing the provisions of
23 this act, including strengthening and providing additional funding
24 for the Attorney General's Workers' Compensation Fraud Unit,

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

3 SECTION 162. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 119 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Persons requesting and receiving copies of documents on file
7 with the Workers' Compensation Commission shall pay a fee to the
8 Commission of One Dollar (\$1.00) for each page copied. All fees so
9 collected shall be deposited in the State Treasury in the Workers'
10 Compensation Fund.

11 B. All penalties and fines imposed by the Commission, upon
12 collection, shall be deposited to the credit of the Workers'
13 Compensation Fund.

14 SECTION 163. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 120 of Title 85A, unless there
16 is created a duplication in numbering, reads as follows:

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

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

21 2. This subsection shall not apply:

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

- 1 his or her duties on behalf of a governmental entity
2 or as may be allowed by law,
- 3 b. to requests for claims information made by an insurer,
4 self-insured employer, third-party claims
5 administrator, or a legal representative thereof, when
6 necessary to process or defend a workers' compensation
7 claim,
- 8 c. when a worker or the worker's representative requests
9 review of the worker's claims information,
- 10 d. when the disclosure is made for educational or
11 research purposes and in such a manner that the
12 disclosed information cannot be used to identify any
13 worker who is the subject of a claim,
- 14 e. to requests for claims information made by a health
15 care or rehabilitation provider or the provider's
16 legal representative when necessary to process payment
17 of health care or rehabilitation services rendered to
18 a worker, and
- 19 f. to requests for claims information made by an employer
20 or personnel service company, including but not
21 limited to an individual or entity, where the worker
22 executes a written authorization permitting the search
23 and designating the employer or personnel service
24 company as the worker's representative for that

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

5 SECTION 164. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 121 of Title 85A, unless there
7 is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 K. In addition to other duties required by this section, the
23 Advisory Council shall consult with the Court regarding oversight of
24 independent medical examiners as provided in Section 45 of this act.

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

5 SECTION 165. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 122 of Title 85A, unless there
7 is created a duplication in numbering, reads as follows:

8 A. The Workers' Compensation Fund established by Section 28 of
9 this act shall be used for the costs of administering this act and
10 for other purposes pursuant to legislative appropriation.

11 B. For the purpose of providing funds for the Workers'
12 Compensation Fund, each mutual or interinsurance association, stock
13 company, CompSource Oklahoma or other insurance carrier writing
14 workers' compensation insurance in this state shall pay to the
15 Oklahoma Tax Commission an assessment at a rate of one percent (1%)
16 of all gross direct premiums written during each quarter of the
17 calendar year for workers' compensation insurance on risks located
18 in this state after deducting from such gross direct premiums,
19 return premiums, unabsorbed portions of any deposit premiums, policy
20 dividends, safety refunds, savings and other similar returns paid or
21 credited to policyholders. Such payments to the Tax Commission
22 shall be made not later than the fifteenth day of the month
23 following the close of each quarter of the calendar year in which
24 such gross direct premium is collected or collectible.

1 Contributions made by insurance carriers and CompSource Oklahoma,
2 under the provisions of this section, shall be considered for the
3 purpose of computing workers' compensation rates.

4 C. When an employer is authorized to become a self-insurer, the
5 Commission shall so notify the Tax Commission, giving the effective
6 date of such authorization. The Tax Commission shall then assess
7 and collect from the employers carrying their own risk an assessment
8 at the rate of two percent (2%) of the total compensation for
9 permanent total disability awards, permanent partial disability
10 awards and death benefits paid out during each quarter of the
11 calendar year by the employers. Such assessment shall be payable by
12 the employers and collected by the Tax Commission according to the
13 provisions of this section regarding payment and collection of the
14 assessment created in subsection C of this section.

15 D. It shall be the duty of the Tax Commission to collect the
16 payments provided for in this act. The Tax Commission is hereby
17 authorized to bring an action for the recovery of any delinquent or
18 unpaid payments required in this section. The Tax Commission may
19 also enforce payments by proceeding in accordance with the
20 provisions of Section 98 of this act.

21 E. The Tax Commission shall pay monthly to the State Treasurer
22 to the credit of the General Revenue Fund all monies collected under
23 the provisions of this section.

1 F. The refund provisions of Sections 227 through 229 of Title
2 68 of the Oklahoma Statutes shall be applicable to any payments made
3 pursuant to this section.

4 SECTION 166. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 123 of Title 85A, unless there
6 is created a duplication in numbering, reads as follows:

7 Any form, claim, answer or report to be filed by any person with
8 the Workers' Compensation Commission pursuant to this act shall
9 contain or be verified by a written declaration that such form,
10 claim, answer or report is true and made under the penalty of
11 perjury.

12 SECTION 167. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 124 of Title 85A, unless there
14 is created a duplication in numbering, reads as follows:

15 A. 1. All unexpended funds, assets, property, records,
16 personnel and any outstanding financial obligations and encumbrances
17 of the Workers' Compensation Court before the effective date of this
18 section are hereby transferred to the Workers' Compensation
19 Commission. The personnel transferred shall retain leave, sick and
20 annual time earned and any retirement and longevity benefits which
21 have accrued during their employment with the state. The salaries
22 of employees who are transferred shall not be reduced as a direct
23 and immediate result of the transfer. There shall be no reduction-
24 in-force as a result of the transfer.

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

12 B. 1. All unexpended funds, assets, property, and records and
13 any outstanding financial obligations and encumbrances of the
14 Individual Self-Insured Guaranty Fund Board before the effective
15 date of this act are hereby transferred to the Individual Self-
16 Insured Guaranty Fund Board created in this act.

17 2. Any unexpended funds, including interest thereon, held by
18 the State Treasurer in the Individual Self-Insured Guaranty Fund
19 before the effective date of this act, shall be transferred to the
20 Individual Self-Insured Guaranty Fund Board created by this act.
21 Such funds shall be expended by the Board only as authorized in this
22 act.

23 C. 1. All unexpended funds, assets, property, and records and
24 any outstanding financial obligations and encumbrances of the Group

1 Self-Insurance Association Board before the effective date of this
2 act are hereby transferred to the Group Self-Insurance Association
3 Guaranty Fund Board created in this act.

4 2. Any unexpended funds, including interest thereon, held by
5 the State Treasurer in the Group Self-Insurance Association Guaranty
6 Fund before the effective date of this act, shall be transferred to
7 the Group Self-Insurance Association Guaranty Fund Board created by
8 this act. Such funds shall be expended by the Board only as
9 authorized in this act.

10 D. All property and records of the Physician Advisory Committee
11 before the effective date of this act are hereby transferred to the
12 Physician Advisory Committee created in this act.

13 E. All property and records of the Advisory Council on Workers'
14 Compensation before the effective date of this act are hereby
15 transferred to the Advisory Council on Workers' Compensation created
16 in this act.

17 F. All unexpended funds, assets, property, records, personnel
18 and any outstanding financial obligations and encumbrances of the
19 Multiple Injury Trust Fund before the effective date of this act are
20 hereby transferred to the Multiple Injury Trust Fund created in this
21 act. The personnel transferred shall retain leave, sick and annual
22 time earned and any retirement and longevity benefits which have
23 accrued during their employment with the state. The salaries of
24 employees who are transferred shall not be reduced as a direct and

1 immediate result of the transfer. There shall be no reduction-in-
2 force as a result of the transfer.

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

9 SECTION 168. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 125 of Title 85A, unless there
11 is created a duplication in numbering, reads as follows:

12 The time within which an act is to be done, as provided for in
13 this act, shall be computed by excluding the first day and including
14 the last day. If the last day is a legal holiday as defined by
15 Section 82.1 of Title 25 of the Oklahoma Statutes, it shall be
16 excluded.

17 SECTION 169. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 400 of Title 85A, unless there
19 is created a duplication in numbering, reads as follows:

20 A. The Workers' Compensation Court shall be renamed the
21 Workers' Compensation Court of Existing Claims for the purpose of
22 hearing disputes relating to claims that arise before February 1,
23 2014. The Court shall consist of the existing judges for the
24 remainder of his or her term. Each judge of the Court shall

1 continue to serve as the appointment to a designated numbered
2 position on the Court. The positions shall be numbered one through
3 ten. The terms of the judges by position number shall expire on the
4 following dates:

5 Position 1 shall expire 7-1-14.

6 Position 2 shall expire 7-1-14.

7 Position 3 shall expire 7-1-14.

8 Position 4 shall expire 7-1-20.

9 Position 5 shall expire 7-1-20.

10 Position 6 shall expire 7-1-16.

11 Position 7 shall expire 7-1-16.

12 Position 8 shall expire 7-1-20.

13 Position 9 shall expire 7-1-20.

14 Position 10 shall expire 7-1-14.

15 Provided, judges who are serving unexpired terms on the Workers'
16 Compensation Court on the effective date of this section shall serve
17 on the Court created by this section until their respective terms
18 expire as provided in this act. Thereafter, each position shall be
19 dissolved. After a judge serves this term, such judge shall be
20 eligible to reapply for an administrative law judge with the
21 Workers' Compensation Commission.

22 When a vacancy on the Court occurs or is certain to occur, the
23 Workers' Compensation Commission shall assign administrative law
24

1 judges from the Commission to assist in the duties of the Workers'
2 Compensation Court of Existing Claims.

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

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

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

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

18 F. The principal office of the Court shall be situated in the
19 City of Oklahoma City in quarters assigned by the Office of
20 Management and Enterprise Services. The Court may hold hearings in
21 any city of this state.

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

1 H. Judges of the Workers' Compensation Court of Existing Claims
2 may punish for direct contempt pursuant to Sections 565, 565.1 and
3 566 of Title 21 of the Oklahoma Statutes.

4 I. The Court shall be vested with jurisdiction over all claims
5 filed pursuant to the Workers' Compensation Code. All claims so
6 filed shall be heard by the judge sitting without a jury. The Court
7 shall have full power and authority to determine all questions in
8 relation to payment of claims for compensation under the provisions
9 of the Workers' Compensation Code. The Court, upon application of
10 either party, shall order a hearing. Upon a hearing, either party
11 may present evidence and be represented by counsel. The decision of
12 the Court shall be final as to all questions of fact and law;
13 provided, the decision of the Court may be appealed to the
14 Commission. The decision of the Court shall be issued within sixty
15 (60) days following the submission of the case by the parties. The
16 power and jurisdiction of the Court over each case shall be
17 continuing and it may, from time to time, make such modifications or
18 changes with respect to former findings or orders relating thereto
19 if, in its opinion, it may be justified.

20 J. Any appeal of an order by the Workers' Compensation Court of
21 Existing Claims shall be heard by the Commission en banc. The
22 Commission shall review the decision using an abuse of discretion
23 standard of review. Orders by the Commission may be appealed in
24 accordance with Section 78 of this act.

1 K. To protect the integrity of the transition from the Workers'
2 Compensation Court to the administrative system created by this act,
3 and to protect all rights and privileges of parties to claims
4 adjudicated by the Workers' Compensation Court, the Commission shall
5 retain all remedies and responsibilities of the Workers'
6 Compensation Court for as long as cases involving claims for
7 compensation accruing before the effective date of this act but
8 filed thereafter or which were pending before or adjudicated by the
9 Workers' Compensation Court shall remain open.

10 L. For an injury occurring before the effective date of this
11 act, all benefits and procedures to obtain benefits shall be
12 determined by the workers' compensation law of this state in effect
13 on the date of the injury. Administrative law judges of the
14 Commission shall enforce all final orders of the Workers'
15 Compensation Court in a manner to secure for all parties the due
16 process and equal protection guarantees of the Constitution of the
17 State of Oklahoma.

18 M. All accrued rights and penalties incurred pursuant to a
19 final order of the Workers' Compensation Court shall be preserved.
20 Administrative law judges of the Commission shall be authorized to
21 issue orders and conduct legal proceedings to enforce all such
22 accrued rights and penalties incurred. No accrued right, penalty
23 incurred, or proceeding begun by virtue of a statute repealed by
24 this act shall be abrogated by the terms of this act.

1 SECTION 170. REPEALER 74 O.S. 2011, Sections 18m-1 and
2 18m-2, are hereby repealed.

3 SECTION 171. REPEALER 85 O.S. 2011, Sections 301, 302
4 303, as amended by Section 1074, Chapter 304, O.S.L. 2012, 304, 305,
5 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318,
6 319, 320, 321, 322, 323, 324, 325, 326, 327, as amended by Section 1
7 of Enrolled Senate Bill No. 250 of the 1st Session of the 54th
8 Oklahoma Legislature, 328, 329, 330, 331, 332, 333, 334, 335, 336,
9 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349,
10 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, as
11 amended by Section 1075, Chapter 304, O.S.L. 2012, 362, 363, 364,
12 365, as amended by Section 1076, Chapter 304, O.S.L. 2012, 366, 367,
13 368, 369, 370, as amended by Section 1077, Chapter 304, O.S.L. 2012,
14 371, 372, 373, 374, 402, 403, as amended by Section 1082, Chapter
15 304, O.S.L. 2012, 404, 405, 406, 407, 408, 409, 410, as last amended
16 by Section 1, Chapter 254, O.S.L. 2012, 411, 412, as amended by
17 Section 1083, Chapter 304, O.S.L. 2012 and 413 (85 O.S. Supp. 2012,
18 Sections 303, 361, 365, 370, 403, 410 and 412), are hereby repealed.

19 SECTION 172. Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
20 15, 16, 17, 18, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37,
21 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55,
22 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71, 72, 73,
23 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90,
24 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105,

1 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118,
2 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 130, 131, 132,
3 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145,
4 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158,
5 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170 and 171
6 of this act shall become effective February 1, 2014."

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8 54-1-7978 SD 04/22/13

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