HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1062

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

and

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

COMMITTEE SUBSTITUTE

[Administrative Workers' Compensation Act - providing strict construction - effective date]

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

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

Sections 1 through 128 of this act shall be known and may be cited as the "Administrative Workers' Compensation Act". The provisions of the Administrative Workers' Compensation Act shall be strictly construed.

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

As used in the Administrative Workers' Compensation Act:

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

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

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

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

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

a. Certified Disability Management Specialist (CDMS),

b. Certified Case Manager (CCM),

c. Certified Rehabilitation Registered Nurse (CRRN),

d. Case Manager - Certified (CMC),

e. Certified Occupational Health Nurse (COHN), or

f. Certified Occupational Health Nurse Specialist (COHN-S);

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

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

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

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

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

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

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

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

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

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

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

b. "Compensable injury" does not include:

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

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

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

(4) injury where the accident was caused by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders. If, within twenty-four (24) hours of being injured or reporting an injury, an employee tests positive for intoxication, an illegal controlled substance, or a legal controlled substance used in contravention to a treating physician's orders, or refuses to undergo the drug and alcohol testing, there shall be a rebuttable presumption that the injury was caused by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders. This presumption may only be overcome if the employee proves by clear and convincing evidence

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

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

(6) any preexisting condition except to the limited extent, if any, that a treating physician clearly confirms an identifiable and significant aggravation incurred in the course and scope of employment.

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

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

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

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

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

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

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

12. "Continuing medical maintenance" means medical treatment that is reasonable and necessary to maintain claimant's condition resulting from the compensable injury or illness after reaching maximum medical improvement. Continuing medical maintenance shall not include diagnostic tests, surgery, injections, counseling, physical therapy, or pain management devices or equipment, unless specifically authorized by the Commission in advance of such treatment;

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

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

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

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

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

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

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

16. "Disability" means incapacity because of compensable injury to earn, in the same or any other employment, substantially the same amount of wages the employee was receiving at the time of the compensable injury. No disability shall exist to a part of the body without competent objective medical evidence to prove the existence of an anatomical abnormality to that part of the body;

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

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

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

b. The term "employee" shall not include:

(1) any person for whom an employer is liable under any Act of Congress for providing compensation to employees for injuries, disease or death arising out of and in the course of employment including, but not limited to, the Federal Employees' Compensation Act, the Federal Employers' Liability Act, the Longshore and Harbor Workers' Compensation Act and the Jones Act, to the extent his or her employees are subject to such acts,

(2) any person who is employed in agriculture or horticulture by an employer who had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars ($100,000.00) wages for agricultural or

horticultural workers, or any person who is employed in agriculture or horticulture who is not engaged in operation of motorized machines,

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

(4) any person who is providing services in a medical care or social services program, or who is a participant in a work or training program, administered by the Department of Human Services, unless the Department is required by federal law or regulations to provide workers' compensation for such person. This division shall not be construed to include nursing homes,

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

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

(7) sole proprietors, members of a partnership, individuals who are party to a franchise agreement as set out by the Federal Trade Commission franchise disclosure rule, 16 CFR 436.1 through 436.11, members of a limited 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 Act if the owner-operator elects to participate as a sole proprietor,

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

(11) any person who is employed as a domestic servant or as a casual worker in and about a private home or household, which private home or household had a gross annual payroll in the preceding calendar

year of less than Fifty Thousand Dollars ($50,000.00) for such workers;

19. "Employer" means a person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, corporation, or limited liability company, departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof, employing a person included within the term "employee" as defined in this section. Employer may also mean the employer's workers' compensation insurance carrier, if applicable. Except as provided otherwise, this act applies to all public and private entities and institutions. Employer shall not include a qualified employer with an employee benefit plan as provided under the Oklahoma Employee Injury Benefit Act in Sections 129 through 142 of this act;

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

21. "Evidence-based" means expert-based, literature-supported and outcomes validated by well-designed randomized trials when such

information is available and which uses the best available evidence to support medical decision making;

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

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

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

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

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

27. "Judgment" as used in this act shall have the same meaning given to it in Section 361 of Title 62 of the Oklahoma Statutes;

28. "Major cause" means more than fifty percent (50%) of the resulting injury, disease or illness. A finding of major cause

shall be established by a preponderance of the evidence. A finding that the workplace was not a major cause of the injury, disease or illness shall not adversely affect the exclusive remedy provisions of this act and shall not create a separate cause of action outside this act;

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

30. "Medical services" means those services specified in Section 50 of this act;

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

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

(b) For the purpose of making physical or anatomical impairment ratings to the spine, physicians shall use criteria established by the American Medical Association "Guides to the Evaluation of Permanent Impairment" or modifications thereto as approved by the Legislature.

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

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

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

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

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

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

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

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

37. "Private self-insurer" means a private employer that has been authorized to self-insure its workers' compensation obligations

pursuant to this act, but does not include group self-insurance associations authorized by this act, or any public employer that self-insures pursuant to this act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The rights and remedies granted to an employee subject to the provisions of the Administrative Workers' Compensation Act shall be exclusive of all other rights and remedies of the employee, his legal representative, dependents, next of kin, or anyone else claiming rights to recovery on behalf of the employee against the employer, or any principal, officer, director, employee, stockholder, partner, or prime contractor of the employer on account of injury, illness, or death. Negligent acts of a co-employee may not be imputed to the employer. No role, capacity, or persona of any employer, principal, officer, director, employee, or stockholder other than that existing in the role of employer of the employee shall be relevant for consideration for purposes of this act, and the remedies and rights provided by this act shall be exclusive regardless of the multiple roles, capacities, or personas the employer may be deemed to have. For the purpose of extending the immunity of this section, any operator or owner of an oil or gas well or other operation for exploring for, drilling for, or producing oil or gas shall be deemed to be an intermediate or principal employer for services performed at a drill site or location with respect to injured or deceased workers whose immediate employer was hired by such operator or owner at the time of the injury or death.

B. Exclusive remedy shall not apply if:

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

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

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

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

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

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

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

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

I. If the employer has failed to secure the payment of compensation as provided in this act or in the case of an intentional tort, the injured employee or his or her legal representative may maintain an action either before the Commission or in the district court, but not both.

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

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

(1) obtaining any benefit or payment,

(2) increasing any claim for benefit or payment, or

(3) obtaining workers' compensation coverage under this act,

shall be guilty of a felony.

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

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

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

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

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

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

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

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

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

3. It shall be the duty of the Unit to assist the Attorney General in the performance of his or her duties. The Unit shall determine the identity of employees in this state who have violated division (1) of subparagraph a of paragraph 1 of subsection A of this section and report the violation to the Office of the Attorney General and the Commission. The Attorney General shall report the

violation to the prosecuting attorney having jurisdiction over the matter.

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

(1) subpoena witnesses,

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

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

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

c. (1) Upon application by the commissioner or the Director of the Unit, the district court located in the county where a subpoena was served may issue an order compelling an individual to comply with the subpoena to testify.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Filed a claim under this act;

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

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

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

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

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

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

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

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

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

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

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

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

B. 1. Any officer of a corporation, sole proprietor, partner of a partnership, member of a limited liability company, member of a professional association, or self-employed employer who is not a subcontractor and who owns and operates his or her own business may, by agreement or contract, exclude himself or herself from coverage or waive his or her right to coverage or compensation under this act.

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

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

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

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

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

B. A lien against workers' compensation benefits is authorized for the purpose of enforcing a judgment for child support. Child support liens filed in accordance with Section 135 of Title 43 of the Oklahoma Statutes are specifically authorized and shall be paid in accordance with such statute without any order of the Commission.

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

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

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

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

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

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

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

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

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

B. 1. Notwithstanding any other provision of this act, where a claim is for mental injury or illness, the employee shall be limited to twenty-six (26) weeks of disability benefits unless it is shown by clear and convincing evidence that benefits should continue for a set period of time, not to exceed a total of fifty-two (52) weeks.

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

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

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

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

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

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

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

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

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

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

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

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

A. The Official Disability Guidelines - Treatment in Workers Compensation (ODG), published by the Work Loss Data Institute, is to be recognized as the primary standard of reference, at the time of treatment, in determining the frequency and extent of services presumed to be medically necessary and appropriate for compensable injuries under this act, or in resolving such matters in the event a dispute arises. The medical treatment guidelines are not requirements, nor are they mandates or standards; they provide advice by identifying the care most likely to benefit injured workers. The guidelines shall be evidence-based, scientifically valid, outcome-focused, and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Nothing in this act shall interfere with a treating professional's professional obligations under his or her applicable licensing authority.

B. Physicians providing care to an employee shall prescribe for the employee any necessary prescription drugs and over-the-counter alternatives to prescription medicine as clinically appropriate and as recommended under the Official Disability Guidelines.

Prescriptions and nonprescription drugs that are not preferred, exceed or are not addressed by ODG require preauthorization and the preauthorization request shall include the prescribing doctor's drug regimen plan of care and the anticipated dosage or range of dosages.

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

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

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

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

3. The Speaker of the House of Representatives shall appoint three members, one of whom shall be licensed in this state as an osteopathic physician, one of whom shall be licensed in this state either as a doctor of medicine or a doctor of osteopathy and shall

be engaged in the practice of occupational medicine, and one of whom shall be licensed in this state as a chiropractic physician.

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

B. The Committee shall:

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

2. Assist the Commission in reviewing medical practices of health care providers, including evaluations of permanent partial disability provided by health care providers. The Committee shall review and make findings and recommendations to the Commission with

respect to charges of abusive practices by health care providers providing medical services or evaluations of permanent partial disability through the workers' compensation system;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The notice shall include:

1. The name of the employer;

2. The name of the insurer, if known;

3. The name of the employee receiving the services;

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

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

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

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

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

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

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

B. The Commission shall consist of three (3) full-time commissioners, each of whom must have been involved in the workers' compensation field for at least three (3) years, appointed by the Governor, with the advice and consent of the House of Representatives and the Senate: one of whom is chosen from a slate of three selected by the Speaker of the House of Representatives; one of whom is chosen from a slate of three selected by the President Pro Tempore of the Senate, with all three confirmed by the Senate for terms of six (6) years to administer the provisions of this act. However, the initial commissioners shall serve staggered terms of two (2), four (4), and six (6) years, respectively, as determined by the Governor. If the Legislature is not in session at the time of appointment, the appointment shall be subject to the advice and consent of the House of Representatives and the Senate upon convening of the next regular session of the Legislature. Membership on the Commission shall be a full-time position and no commissioner shall have any other employment, unless authorized or excused by law. Each commissioner shall receive a salary equal to that paid to a district judge of this state.

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

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

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

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

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

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

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

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

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

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

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

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

3. To assess penalties;

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

5. To make available all records in connection with all cases of personal injury to the Oklahoma Department of Labor. The Commissioner of Labor may propose rules for the prevention of injuries and transmit the rules to the Commission. The Commission

may recommend proposed rules for prevention of injuries to the Commissioner of Labor; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. To hear and approve compromise settlements;

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

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

4. To contract with an appropriate state governmental entity, insurance carrier or approved service organization to process, investigate and pay valid claims against an impaired self-insurer

which fails, due to insolvency or otherwise, to pay its workers' compensation obligations, charges for which shall be paid from the 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 by the person who incurred them and shall be allowed and paid on presentation of vouchers approved by the Commission.

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

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

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

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

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

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

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

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

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

1. To hear and determine claims for compensation, 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;

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

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

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

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

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

1. The "Workers' Compensation Fund";

2. The "Multiple Injury Trust Fund"; and

3. The "Self-Insured Guaranty Fund".

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

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

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

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

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

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

H. The Workers' Compensation Fund shall be used to fund the activities of the Commission in administering this act and for any other purposes related to this act that the Commission deems appropriate, subject to the provisions of Section 187 of this act.

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

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

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

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

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

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

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

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

1. The loss of the sight of one eye;

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

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

4. Any previous adjudications of disability adjudged and determined by the Workers' Compensation Court or the Workers’

Compensation Commission or any disability resulting from separately adjudicated injuries and adjudicated occupational diseases even though arising at the same time. Provided, that any adjudication of preexisting disability to a part of the body shall not be combinable for purposes of the Multiple Injury Trust Fund unless that part of the body was deemed to have been injured in the claim being adjudicated.

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

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

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

1. As soon as practicable after January 1 of each year, the commissioners of the Workers' Compensation Commission shall establish an assessment rate applicable to each mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state, each employer carrying its own risk, and each group self-insurance association, for amounts for purposes of computing the assessment authorized by this section necessary to pay the annual obligations of the Multiple Injury Trust Fund determined on

or before December 31 of each year by the Board of Managers of CompSource Oklahoma to be outstanding for the next calendar year, and to pay the allocations provided for in subsection I of this section. The rate shall be equal for all parties required to pay the assessment. The rate in effect on the effective date of this act shall remain effective through June 30, 2014;

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

3. The assessments shall be paid to the Tax Commission. Insurance carriers, self-insurers, group self-insurance associations and CompSource Oklahoma shall pay the assessment in four equal installments not later than the fifteenth day of the month following the close of each quarter of the calendar year of the assessment. Assessments shall be determined based upon gross direct written premiums, normal premiums or actual paid losses of the paying party, as applicable, during the calendar quarter for which the assessment is due. Uninsured employers shall pay the assessment not later than the fifteenth day of the month following the close of each quarter of the calendar year of the assessment. For purposes of this section, "uninsured employer" means an employer required by law to

carry workers' compensation insurance but who has failed or neglected to do so. Only one-third (1/3) of assessments against insurance carriers and CompSource Oklahoma may be charged to policyholders and shall not be considered in determining whether any rate is excessive. The remaining two-thirds (2/3) of assessments against insurance carriers and CompSource Oklahoma may not be included in any rate, premium, charge, fee, assessment or other amount to be collected from a policyholder. Insurance carriers and CompSource Oklahoma shall not separately state the amount of the assessment on any invoice or billing assessment.

a. The assessment authorized in this section shall be determined using a rate equal to the proportion that the sum of the outstanding obligations of the Multiple Injury Trust Fund as determined pursuant to paragraph 1 of this subsection and the allocations provided for 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, Board of Managers of CompSource Oklahoma 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 calendar quarters beginning July 1 following determination by the Commission; and

6. a. No mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state may be assessed in any year an amount

greater than six percent (6%) of the gross direct written premiums of that insurer.

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

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

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

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

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

D. Any mutual or interinsurance association, stock company, or other insurance company, which is subject to regulation by the

Insurance Commissioner, or CompSource Oklahoma, failing to make payments required in this act promptly and correctly, and failing to report payment of the same to the Insurance Commission within ten (10) days of payment shall be subject to administrative penalties as allowed by law, including but not limited to a fine in the amount of Five Hundred Dollars ($500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater, to be paid to the Insurance Commissioner.

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

F. On or before the first day of April of each year, the State Treasurer shall advise the Commission, the Board of Managers of CompSource Oklahoma and the Tax Commission of the amount of money held as of March 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund. On or before the first day of November of each year, the State Treasurer shall advise the Commission, the Board of Managers of CompSource Oklahoma and the Tax Commission of the amount of money held as of October 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund.

G. Eighty percent (80%) of all sums held by the State Treasurer to the credit of the Multiple Injury Trust Fund may by order of the CompSource Oklahoma President and Chief Executive Officer, with the approval of the Board of Managers of CompSource Oklahoma, be invested in or loaned on the pledge of any of the securities in which a state bank may invest the monies deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in the institutions. As used in this section, "insured" means insurance as provided by an agency of the federal government. All such securities or evidence of indebtedness shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, who shall collect the principal and interest when due, and pay the same into the Multiple Injury Trust Fund. The State Treasurer shall pay by vouchers drawn on the Multiple Injury Trust Fund for the making of such investments, when signed by the CompSource Oklahoma President and Chief Executive Officer and approved by the Board of Managers of CompSource Oklahoma, upon delivery of such securities or evidence of indebtedness to the State Treasurer. The CompSource Oklahoma President and Chief Executive Officer may, upon like approval of the Board of Managers of CompSource Oklahoma, sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for the Multiple Injury Trust Fund.

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

I. The Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Multiple Injury Trust Fund all monies collected pursuant to the provisions of this section, less the annual sum of Two Million Five Hundred Fifty Thousand Dollars ($2,550,000.00), of which One Million Two Hundred Seventy-five Thousand Dollars ($1,275,000.00) shall be payable by the Tax Commission to the State Treasurer in equal monthly installments to the credit of the Department of Labor, Six Hundred Thirty-seven Thousand Five Hundred Dollars ($637,500.00) shall be payable in equal monthly installments to the credit of the Office of the Attorney General, and Six Hundred Thirty-seven Thousand Five Hundred Dollars ($637,500.00) shall be payable in equal monthly installments to the credit of the Oklahoma Department of Career and Technology Education. Monies received by the Department of Labor under this section shall be used for safety consultation and the regulation of the safety of public employees through the Occupational Safety and Health Act of 1970. Monies received by the Office of the Attorney General shall be deposited to the credit of the Attorney General's

Workers' Compensation Fraud Unit Revolving Fund created pursuant to Section 19.2 of Title 74 of the Oklahoma Statutes. Monies received by the Oklahoma Department of Career and Technology Education shall supplement other funding to the Department for purposes of implementing the provisions of subsection B of Section 414 of Title 40 of the Oklahoma Statutes. The State Treasurer shall pay out of the Multiple Injury Trust Fund only upon the order and direction of the Workers' Compensation Commission acting under the provisions hereof.

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

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

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

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

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

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

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

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

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

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

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

A. For actions in which the subsequent injury occurred on or after November 1, 2005, if such combined disabilities constitute permanent total disability, as defined in Section 2 of this act, the employee shall receive full compensation as provided by law for the disability resulting directly and specifically from the subsequent injury. In addition, the employee shall receive compensation for permanent total disability if the combination of injuries renders the employee permanently and totally disabled. The employer shall be liable only for the degree of percent of disability which would have resulted from the subsequent injury if there had been no preexisting impairment. The compensation rate for permanent total disability awards from the Multiple Injury Trust Fund shall be the compensation rate for permanent partial disability paid by the employer in the last combinable compensable injury.

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

C. Permanent total disability awards from the Multiple Injury Trust Fund shall accrue from the file date of the order of the

Workers' Compensation Commission finding the claimant to be permanently and totally disabled.

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

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

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

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

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

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

A. The right to claim compensation for benefits from the Multiple Injury Trust Fund shall be forever barred unless a Notice of Claim, on a form prescribed by the Workers' Compensation Commission, shall be filed with the Commission within two (2) years of the date of the last order for permanent partial disability from the latest claim against the employer.

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

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

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

A. CompSource Oklahoma shall be charged with the administration and protection of the Multiple Injury Trust Fund and shall be notified by the Workers' Compensation Commission of all proceedings which may affect such fund.

B. CompSource Oklahoma shall have standing and the authority to appear in any case before the Commission in which the Commission is considering an award from the Multiple Injury Trust Fund.

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

D. The State Treasurer shall allocate to CompSource Oklahoma out of the Multiple Injury Trust Fund, sufficient funds for administration expenses thereof in amounts to be fixed and approved by the Administrator for the Multiple Injury Trust Fund, unless rejected by the Governor and Attorney General.

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

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

2. There shall be no liability for compensation under this act where the injury or death was substantially occasioned by the

willful intention of the injured employee to bring about such compensable injury or death.

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

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

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

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

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

3. A claim for recovery shall not affect the right of the injured employee or the dependents of the deceased employee to

recover compensation due from the prime contractor or his or her insurance carrier.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. By insuring and keeping insured the payment of compensation with any stock corporation, mutual association, or other concerns authorized to transact the business of workers' compensation insurance in this state. When an insurer issues a policy to provide workers' compensation benefits under the provisions of this act, it

shall file a notice with the Commission containing the name, address, and principal occupation of the employer, the number, effective date, and expiration date of the policy, and such other information as may be required by the Commission. The notice shall be filed by the insurer within thirty (30) days after the effective date of the policy. Any insurer who does not file the notice required by this paragraph shall be subject to a fine by the Commission of not more than One Thousand Dollars ($1,000.00);

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

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

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

(1) deposit with the Commission securities, an irrevocable letter of credit or a surety bond

payable to the state, 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 such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of this act, and

b. one hundred or more employees and One Million Dollars ($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 pay the benefits required by the provisions of this act. Irrevocable letters of credit required by this subsection shall contain such terms as may be prescribed by the Commission and shall be issued for the benefit of the state by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Cancellation.

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

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

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

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

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

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

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

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

C. Coverage.

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

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

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

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

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

A. Liability Unaffected.

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

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

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

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

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

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

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

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

B. Subrogation.

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

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

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

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

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

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

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

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

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

A. Temporary Total Disability.

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

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

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

B. Temporary Partial Disability.

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

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

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

C. Permanent Partial Disability.

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

stated within a reasonable degree of medical certainty. Any party may submit the report of an evaluating physician.

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

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

4. In cases of permanent partial disability, the compensation shall be seventy percent (70%) of the employee's average weekly wage, not to exceed Three Hundred Twenty-three Dollars ($323.00) per week, for a term not to exceed a total of three hundred seventy-five (375) weeks for the body as a whole.

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

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

b. If, for any reason, the employer terminates the employee or the position offered is not the pre-injury or equivalent job, the remaining permanent partial disability award shall be paid in a lump sum.

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

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

e. Assessments pursuant to Sections 31, 98, 134 and 187 of this act shall be calculated based upon the amount of the permanent partial disability award and shall be paid at the time of the deferral.

6. Previous Disability: The fact that an employee has suffered previous disability or received compensation therefor shall not

preclude the employee from compensation for a later accidental personal injury or occupational disease. In the event there exists a previous permanent partial disability, including a previous non-work-related injury or condition which produced permanent partial disability and the same is aggravated or accelerated by an accidental personal injury or occupational disease, compensation for permanent partial disability shall be only for such amount as was caused by such accidental personal injury or occupational disease and no additional compensation shall be allowed for the preexisting disability or impairment. Any such reduction shall not apply to temporary total disability, nor shall it apply to compensation for medical treatment.

a. If workers' compensation benefits have previously been awarded through settlement or judicial or administrative determination in Oklahoma, the percentage basis of the prior settlement or award shall conclusively establish the amount of permanent partial disability determined to be preexisting. If workers' compensation benefits have not previously been awarded through settlement or judicial or administrative determination in Oklahoma, the amount of preexisting permanent partial disability shall be established by competent evidence.

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

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

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

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

8. The whole body shall represent a maximum of three hundred seventy-five (375) weeks.

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

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

D. Permanent Total Disability.

1. In case of total disability adjudged to be permanent, seventy percent (70%) of the employee's average weekly wages, but not in excess of the state's average weekly wage, shall be paid to the employee during the continuance of the disability until such

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

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

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

E. 1. The Workers' Compensation Commission shall hire or contract for a Vocational Rehabilitation Director to oversee the vocational rehabilitation program of the Commission. The job of the Vocational Rehabilitation Director is to help injured workers return to the work force through the encouragement of light-duty work or retraining.

2. The Vocational Rehabilitation Director shall help injured workers return to the work force through the encouragement of light-duty work or retraining. Upon the request of either party, the Vocational Rehabilitation Director shall determine if it is appropriate for a claimant to receive vocational rehabilitation training or services, and will oversee such training. If appropriate, the Vocational Rehabilitation Director shall issue administrative orders, including, but not limited to, an order for a vocational rehabilitation evaluation for any injured employee unable to work for at least ninety (90) days. In addition, the Vocational Rehabilitation Director may assign injured workers to vocational rehabilitation counselors for coordination of recommended services. The cost of the services shall be paid by the employer. If possible, vocational rehabilitation services shall begin concurrently with medical treatment, while the injured employee is temporarily totally disabled and receiving benefits. The Vocational

Rehabilitation Director may order an evaluation for any injured worker receiving medical case management services. All such administrative orders are subject to appeal to the full Commission.

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

a. if the employee's occupation is truck driver or laborer and the medical condition is traumatic brain injury, stroke or uncontrolled vertigo,

b. if the employee's occupation is truck driver or laborer performing high-risk tasks and the medical condition is seizures,

c. if the employee's occupation is manual laborer and the medical condition is bilateral wrist fusions,

d. if the employee's occupation is assembly-line worker and the medical condition is radial head fracture with 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 the vocational rehabilitation training ordered by the administrative law judge, then the cost of the evaluation and services or training rendered may, in the discretion of the administrative law judge, be deducted from any award of benefits to the employee which remains unpaid by the employer. Upon receipt of such report, and after

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

5. Whenever it is apparent to the administrative law judge that the employee's injury will prevent the employee from returning to his or her former employment, the Workers' Compensation Commission may order vocational rehabilitation services, even though the employee remains temporarily totally disabled and under active medical care. In granting early benefits for vocational rehabilitation, the Commission shall consider temporary restrictions and the likelihood that such rehabilitation will return the employee to gainful employment earlier than if such benefits are granted after the permanent partial disability hearing in the claim.

6. Vocational rehabilitation services or training shall not extend for a period of more than fifty-two (52) weeks. This period may be extended for an additional fifty-two (52) weeks or portion thereof by special order of the Commission, after affording the interested parties an opportunity to be heard. A request for

vocational rehabilitation services or training may be filed with the Commission by an interested party at any time after the date of injury but not later than sixty (60) days from the date of the final determination that permanent partial disability benefits are payable to the employee.

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

8. During the period when an employee is actively and in good faith being evaluated or participating in a retraining or job placement program for purposes of evaluating permanent total disability status, the employee shall be entitled to receive benefits at the same rate as the employee's temporary total disability benefits for a period of fifty-two (52) weeks, which may be extended by the Commission or Court for up to a maximum of an additional fifty-two (52) weeks. All tuition related to vocational rehabilitation services shall be paid by the employer or the employer's insurer on a periodic basis directly to the facility providing the vocational rehabilitation services or training to the

employee. The employer or employer's insurer may deduct the amount paid for tuition from compensation awarded to the employee.

F. Disfigurement.

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

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

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

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

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

A. An injured employee who is entitled to receive permanent partial disability compensation under Section 45 of this act shall receive compensation for each part of the body in accordance with the number of weeks for the scheduled loss set forth below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Other cases: In cases in which the Commission finds an injury to a part of the body not specifically covered by the foregoing provisions of this section, the employee may be entitled to compensation for permanent partial disability. The compensation ordered paid shall be seventy percent (70%) of the employee's average weekly wage, not to exceed Three Hundred Twenty-three Dollars ($323.00) for the number of weeks which the partial disability of the employee bears to three hundred seventy-five (375) weeks.

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

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

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

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

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

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

H. The sum of all permanent partial disability awards, excluding awards against the Multiple Injury Trust Fund, shall not exceed three hundred seventy-five (375) weeks.

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Physically or mentally incapable of self-support,

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

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

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

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

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

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

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

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

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

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

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

D. Unless recommended by the treating doctor at the time claimant reaches maximum medical improvement or by an independent medical examiner, continuing medical maintenance shall not be awarded by the Commission. At the request of any party, the administrative law judge may appoint an independent medical examiner to determine the nature and extent of continuing medical maintenance. The issue of continuing medical maintenance may be reviewed by the Commission at any time. The employer or insurance carrier shall not be responsible for continuing medical maintenance or pain management treatment that is outside the parameters established by the Physician Advisory Committee or ODG. The employer or insurance carrier shall not be responsible for continuing medical maintenance or pain management treatment not previously ordered by the Commission or approved in advance by the employer or insurance carrier.

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

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

G. The employer shall reimburse the employee for the actual mileage in excess of twenty (20) miles round-trip to and from the employee's home to the location of a medical service provider for all reasonable and necessary treatment, for an evaluation of an independent medical examiner and for any evaluation made at the request of the employer or insurance carrier. The rate of reimbursement for such travel expense shall be the official reimbursement rate as established by the State Travel Reimbursement Act. In no event shall the reimbursement of travel for medical treatment or evaluation exceed six hundred (600) miles round trip.

H. Fee Schedule.

1. The Commission shall conduct a review of the Fee Schedule every two (2) years. The Fee Schedule shall establish the maximum rates that medical providers shall be reimbursed for medical care provided to injured employees, including, but not limited to, charges by physicians, dentists, counselors, hospitals, ambulatory and outpatient facilities, clinical laboratory services, diagnostic testing services, and ambulance services, and charges for durable medical equipment, prosthetics, orthotics, and supplies. The most current Fee Schedule established by the Administrator of the Workers' Compensation Court prior to the effective date of this

section shall remain in effect, unless or until the Legislature approves the Commission's proposed Fee Schedule.

2. Reimbursement for medical care shall be prescribed and limited by the Fee Schedule as adopted by the Commission, after notice and public hearing, and after approval by the Legislature by joint resolution. The director of the Employees Group Insurance Division of the Office of Management and Enterprise Services shall provide the Commission such information as may be relevant for the development of the Fee Schedule. The Commission shall develop the Fee Schedule in a manner in which quality of medical care is assured and maintained for injured employees. The Commission shall give due consideration to additional requirements for physicians treating an injured worker under this act, including, but not limited to, communication with claims representatives, case managers, attorneys, and representatives of employers, and the additional time required to complete forms for the Commission, insurance carriers, and employers.

3. In making adjustments to the Fee Schedule, the Commission shall use, as a benchmark, the reimbursement rate for each Current Procedural Terminology (CPT) code provided for in the fee schedule published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services for use in Oklahoma (Medicare Fee Schedule) on the effective date of this section, workers' compensation fee schedules employed by neighboring states,

the latest edition of "Relative Values for Physicians" (RVP), usual, customary and reasonable medical payments to workers' compensation health care providers in the same trade area for comparable treatment of a person with similar injuries, and all other data the Commission deems relevant. For services not valued by CMS, the Commission shall establish values based on the usual, customary and reasonable medical payments to health care providers in the same trade area for comparable treatment of a person with similar injuries.

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

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

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

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

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

5. Nothing in this section shall prevent an employer, insurance carrier, group self-insurance association, or certified workplace

medical plan from contracting with a provider of medical care for a reimbursement rate that is greater than or less than limits established by the Fee Schedule.

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

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

8. Charges for prescription drugs dispensed by a pharmacy shall be limited to ninety percent (90%) of the average wholesale price of the prescription, plus a dispensing fee of Five Dollars ($5.00) per prescription. "Average wholesale price" means the amount determined from the latest publication designated by the Commission. Physicians shall prescribe and pharmacies shall dispense generic equivalent drugs when available. If the National Drug Code, or "NDC", for the drug product dispensed is for a repackaged drug, then the maximum reimbursement shall be the lesser of the original labeler's NDC and the lowest-cost therapeutic equivalent drug

product. Compounded medications shall be billed by the compounding pharmacy at the ingredient level, with each ingredient identified using the applicable NDC of the drug product, and the corresponding quantity. Ingredients with no NDC area are not separately reimbursable. Payment shall be based on a sum of the allowable fee for each ingredient plus a dispensing fee of Five Dollars ($5.00) per prescription.

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

10. Implantables are paid in addition to procedural reimbursement paid for medical or surgical services. A manufacturer's invoice for the actual cost to a physician, hospital or other entity of an implantable device shall be adjusted by the physician, hospital or other entity to reflect, at the time implanted, all applicable discounts, rebates, considerations and product replacement programs and shall be provided to the payer by the physician or hospital as a condition of payment for the implantable device. If the physician, or an entity in which the

physician has a financial interest other than an ownership interest of less than five percent (5%) in a publically traded company, provides implantable devices, this relationship shall be disclosed to patient, employer, insurance company, third-party commission, certified workplace medical plan, case managers, and attorneys representing claimant and defendant. If the physician, or an entity 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 prescribed by the Commission, any ownership or interest in any health care facility, business, or diagnostic center that is not the physician's primary place of business. The disclosure shall include any employee leasing arrangement between the physician and any health care facility that is not the physician's primary place of business. A physician's failure to disclose as required by this section shall be grounds for the Commission to disqualify the physician from providing treatment under this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. If an injured employee, after reaching maximum medical improvement, returns to the same employment earning the same or higher wage, the employee shall not be entitled to permanent partial disability unless there is objective medical evidence of an anatomical abnormality to the part of the body for which permanent partial disability is requested. Permanent partial disability shall not be allowed for a part of the body for which no medical treatment has been received.

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

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

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

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

2. There was severe pain in the hernial region;

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

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

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

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

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

C. If the injured employee dies within one (1) year as a direct and sole result of the hernia or a radical operation of the hernia, the deceased employee's dependents shall be entitled to death compensation under Section 48 of this act.

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

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

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

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

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

a. sensory or motor disturbances,

b. communication disturbances,

c. complex integrated disturbances of cerebral function,

d. episodic neurological disorders, or

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

3. Any joint replacement.

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

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

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

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

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

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

5. Such other information as the Commission may require.

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

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

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

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

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

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

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

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

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

A. Any person or entity may make written application to the State Commissioner of Health to have a workplace medical plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under this act.

Each application for certification shall be accompanied by a fee of One Thousand Five Hundred Dollars ($1,500.00). A workplace medical plan may be certified to provide services to a limited geographic area. A certificate is valid for a five-year period, unless revoked or suspended. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed program for providing services as the State Commissioner of Health may prescribe. The information shall include, but not be limited to:

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

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

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

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

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

b. utilize medical treatment guidelines and protocols consistent with those established by the Official Disability Guidelines; provided, nothing in this act shall interfere with a treating professional's professional obligations under his or her applicable licensing authority;

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

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

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

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

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

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

8. Does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and hospital services to give

participants access to all categories of providers and does not discriminate against ethnic minority providers of medical services.

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

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

E. If CompSource Oklahoma does not contract with at least three certified workplace medical plans, each covering at least fifty counties, then the insured, after sixty (60) days' written notice to CompSource Oklahoma, shall be authorized to contract independently with a plan of the insured's choice for a period of one (1) year to provide medical care under this act. The insured shall be authorized to contract, after sixty (60) days' written notice to CompSource Oklahoma, for additional one-year periods if CompSource

Oklahoma has not contracted with or fails to continue contracts with at least three certified workplace medical plans covering at least fifty counties.

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

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

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

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

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

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

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

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

b. treatment guidelines and protocols consistent with the Official Disability Guidelines; provided, nothing in this act shall interfere with a treating professional's professional obligations under his or her applicable licensing authority, and

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

4. Performance of a site visit shall include:

a. inspection of organizational documentation,

b. inspection of systems documentation and processes,

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

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

5. An initial site visit may occur with an interval of less than twelve (12) months to a recently certified plan, or a site

visit may occur more often than once in every twelve (12) months if the State Commissioner of Health has reason to suspect that a plan is not operating in accordance with its certification;

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

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

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

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

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

9. In addition to the site visit fee required pursuant to paragraph 8 of this subsection, employees of the State Department of Health may charge to the certified workplace medical plan reasonable travel and travel-related expenses for the site visit such as overnight lodging and meals. A certified workplace medical plan

shall reimburse travel expenses to the State Department of Health at rates equal to the amounts then currently allowed under the State Travel Reimbursement Act.

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

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

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

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

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

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

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

2. No compensation shall be payable for any contagious or infectious disease unless contracted in the course and scope of employment in or immediately connected with a hospital or sanatorium

in which persons suffering from that disease are cared for or treated.

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

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

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

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

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

b. disablement or death results within three (3) years in case of silicosis or asbestosis, or one (1) year in case of any other occupational disease, except a diseased condition caused by exposure to X-rays, radioactive substances, or ionizing radiation, after the last injurious exposure to the disease in the employment, or

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

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

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

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

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

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

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

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

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

2. In case of disability or death from silicosis or asbestosis complicated with any other disease, or from any other disease

complicated with silicosis or asbestosis, the compensation shall be reduced as provided in subsection C of Section 65 of this act.

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

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

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

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

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

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

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

A. Unless an employee gives oral or written notice to the employer within thirty (30) days of the date an injury occurs, or the employee receives medical attention from a licensed physician during the thirty-day period from the date a single-event injury occurred, the rebuttable presumption shall be that the injury was not work-related. Such presumption must be overcome by a preponderance of the evidence.

B. Unless an employee gives oral or written notice to the employer within thirty (30) days of the employee's separation from employment, there shall be a rebuttable presumption that an occupational disease or cumulative trauma injury did not arise out of and in the course of employment. Such presumption must be overcome by a preponderance of the evidence.

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

A. Time for Filing.

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

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

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

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

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

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

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

B. Time for Filing Additional Compensation.

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

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

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

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

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

F. Persons under Disability.

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

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

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

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

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

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

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

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

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

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

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

B. Investigation - Hearing.

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

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

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

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

5. The award, together with the statement of the findings of fact and other matters pertinent to the issues, shall be filed with the record of the proceedings, and a copy of the award shall

immediately be sent to the parties in or to counsels of record, if any.

C. Evidence and Construction.

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

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

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

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

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

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

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

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

A. Conduct of Hearing or Inquiry.

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

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

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

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

B. Hearings to be Public - Records.

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

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

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

C. Introduction of Evidence.

1. All oral evidence or documentary evidence shall be presented to the designated representative of the Commission at the initial hearing on a controverted claim. The oral evidence shall be

stenographically reported. Each party shall present all evidence at the initial hearing. Further hearings for the purpose of introducing additional evidence shall be granted only at the discretion of the hearing officer or Commission. A request for a hearing for the introduction of additional evidence shall show the substance of the evidence desired to be presented.

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

b. If the opposing party desires to cross-examine the physician, he or she should notify the party who submits a medical report to him or her as soon as practicable, in order that he or she may make every effort to have the physician present for the hearing.

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

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

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

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

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

B. If any person or party attending any proceeding before the Commission disobeys or resists any lawful order or process, obstructs the hearing, neglects to produce any book, paper or document after having been ordered to do so, refuses to appear after having been subpoenaed, refuses to take oath as a witness, refuses to be examined according to law, refuses to comply with any final judgment of an administrative law judge or the Commission or willfully refuses to pay an uncontroverted medical or related expense within forty-five (45) days after the respondent has received the statement, the person or party, at the discretion of the administrative law judge or the Commission, may be found to be in contempt of the Commission and may be subject to a fine not to exceed Ten Thousand Dollars ($10,000.00).

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

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

1. The Commission has jurisdiction;

2. Sufficient notice was given; and

3. The injury was not occasioned by the willful intention of the injured employee to bring about the injury to himself or herself or another.

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

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

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

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

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

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

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

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

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

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

1. In violation of constitutional provisions;

2. In excess of the statutory authority or jurisdiction of the Commission;

3. Made on unlawful procedure;

4. Affected by other error of law;

5. Clearly erroneous in view of the reliable, material, probative and substantial competent evidence;

6. Arbitrary or capricious;

7. Procured by fraud; or

8. Missing findings of fact on issues essential to the decision.

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

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

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

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

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

A. Except where a joint petition settlement has been approved, the Commission may review any compensation judgment, award, or decision. Such review may be done at any time within six (6) months of termination of the compensation period fixed in the original compensation judgment or award, on the Commission's own motion or on the application of any party in interest, on the ground of a change in physical condition or on proof of erroneous wage rate. On review, the Commission may make a judgment or award terminating, continuing, decreasing, or increasing for the future the compensation previously awarded, subject to the maximum limits provided for in this act.

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

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

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

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

If the court having jurisdiction over the claim or compensation judgment proceedings determines that the proceedings have been commenced or continued without reasonable grounds, the cost of the proceedings shall be assessed against the party who has commenced or continued the proceedings.

SECTION 82. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 82 of Title 85A, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

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

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

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

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

SECTION 83. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 83 of Title 85A, unless there is created a duplication in numbering, reads as follows:

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

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

a. he or she has read the claim, request for benefits, request for additional benefits, controversion of benefits, request for a hearing, pleading, motion, or other paper,

b. to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and

c. it is not brought for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

3. If a claim, request for benefits, request for additional benefits, controversion of benefits, request for a hearing, pleading, motion, or other paper is not signed, it shall be stricken

unless it is signed promptly after the omission is called to the attention of the pleader or movant.

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

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

SECTION 84. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 84 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. Compensation shall be paid by check, by electronic funds transfer, issuance of debit cards, or by state warrant. Payment shall be made payable to the order of the person entitled to the compensation and paid directly to the person entitled to the compensation.

B. If the compensation beneficiary is a mental incompetent or a minor of tender years or immature judgment, the Commission, in the exercise of its discretion, may direct that payment shall be made to a legally appointed guardian of the estate of the incompetent or minor.

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

Clean claims for services rendered under this act are payable within thirty (30) days after receipt by the employer unless disputed as to compensability or amount. "Clean claim" means a claim that has no defect or impropriety, including a lack of any required substantiating documentation, or particular circumstance requiring special treatment that impedes prompt payment.

SECTION 86. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 86 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. 1. Each employer desiring to controvert an employee's right to compensation shall file with the Commission on or before the fifteenth day following notice of the alleged injury or death a statement on a form prescribed by the Commission that the right to compensation is controverted and the grounds for the controversion, the names of the claimant, employer, and carrier, if any, and the date and place of the alleged injury or death.

2. Failure to file the statement of controversion shall not preclude the employer's ability to controvert the claim or cause it to waive any defenses. The employer can make additional defenses not included in the initial notice at any time.

B. If an employer is unable to obtain sufficient medical information as to the alleged injury or death within fifteen (15) days following receipt of notice, although the employer has acted in good faith and with all due diligence, the employer may apply in writing for an extension of time for making payment of the first installment or controverting the claim. This written application is to be postmarked within the fifteen-day period. The Commission may, in its discretion, grant the extension and fix the additional time to be allowed. Filing of application for an extension shall not be deemed to be a controversion of the claim.

C. The provisions in subsection B of this section shall not apply in cases where the physician is an employee of, on retainer with, or has a written contract to provide medical services for the employer.

SECTION 87. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 87 of Title 85A, unless there is created a duplication in numbering, reads as follows:

If the employer or carrier and the injured employee desire to settle the claim, they shall file a joint petition for settlement with the Commission. After the joint petition has been filed, the Commission shall order that all claims between the parties have been settled. No appeal shall lie from a judgment or award denying a joint petition.

SECTION 88. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 88 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. In any case where an employer changes insurance carriers or where the employer having been self-insured, becomes insured or, having been insured, is approved to be self-insured, and the only dispute in a claim against that employer is the proper source of payment of benefits, the Commission shall direct that the appropriate compensation benefits be paid on an equal basis by the carriers or self-insured employer.

B. Upon resolution of the issue, the prevailing respondent shall be entitled to reimbursement from the other respondent of all monies paid together with interest from the date of payment pursuant to Section 727.1 of Title 12 of the Oklahoma Statutes.

SECTION 89. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 89 of Title 85A, unless there is created a duplication in numbering, reads as follows:

If the employer has made advance payments for compensation, the employer shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due. If the injured employee receives full wages during disability, he or she shall not be entitled to compensation during the period. Any wages paid by the employer, over the statutory temporary disability maximum, shall be deducted from the permanent partial disability award.

SECTION 90. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 90 of Title 85A, unless there is created a duplication in numbering, reads as follows:

The Workers' Compensation Commission may require any employer to make a deposit or bond with the Commission to secure the prompt and convenient payment of compensation, and payments shall be made on judgment of the Commission.

SECTION 91. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 91 of Title 85A, unless there is created a duplication in numbering, reads as follows:

Compensation shall bear interest pursuant to Section 727.1 of Title 12 of the Oklahoma Statutes from the day an award is made by either an administrative law judge or the full Workers' Compensation Commission on all accrued and unpaid compensation.

SECTION 92. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 92 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. On making the first payment and on suspension of payment of compensation, if required by the Workers' Compensation Commission, the employer shall notify the Commission of that fact on a form prescribed by the Commission.

B. 1. Within thirty (30) days after the final payment of compensation has been made, the employer shall notify the Commission with a form prescribed by the Commission. This form shall state that the final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, and the date of the injury or death.

2. If the employer fails to notify the Commission within thirty (30) days, the Commission may assess against the employer a civil penalty in an amount not to exceed One Hundred Dollars ($100.00). No penalty shall be assessed without notice to the employer and giving the employer an opportunity to be heard by the Commission.

SECTION 93. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 93 of Title 85A, unless there is created a duplication in numbering, reads as follows:

On its own initiative at any time that compensation payments are being made without an award, the Workers' Compensation Commission may, and in any case if the right to compensation has been controverted, if payments of compensation have been suspended, or if an employer seeks to suspend payments made under an award, or on application of an interested party, the Commission shall make such investigation, cause such medical examination to be made, hold such hearings, and take such further action as the Commission deems proper for the protection of the rights of all parties.

SECTION 94. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 94 of Title 85A, unless there is created a duplication in numbering, reads as follows:

An employee who is incarcerated shall not be eligible to receive medical or disability benefits under this act.

SECTION 95. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 95 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. On approval by the Insurance Commissioner, and following the adoption of such rules as the Insurance Commissioner deems necessary, each insurer issuing a policy under this act shall offer, as a part of the policy or as an optional endorsement to the policy, deductibles optional to the policyholder for benefits payable under this act. Deductible amounts offered shall be fully disclosed to the prospective policyholder in writing. The policyholder exercising the deductible option shall choose only one deductible amount.

B. Optional deductibles shall be offered in each policy insuring liability for workers' compensation that is issued, delivered, issued for delivery, or renewed under this act on or after approval by the Insurance Commissioner, unless an insured employer and insurer agree to renegotiate a workers' compensation policy in effect on that date so as to include a provision allowing for a deductible.

C. If the policyholder exercises the option and chooses a deductible, the insured employer shall be liable for the amount of the deductible for benefits paid for each compensable claim of work injury suffered by an employee. The insurer shall pay all or part of the deductible amount, whichever is applicable to a compensable claim, to the person or medical provider entitled to the benefits conferred by this act and seek reimbursement from the insured employer for the applicable deductible amount. The payment or nonpayment of deductible amounts by the insured employer to the insurer shall be treated under the policy insuring the liability for workers' compensation in the same manner as payment or nonpayment of premiums.

D. If the Insurance Commissioner determines it to be feasible, and under such rules as he or she may adopt, premium reduction for deductibles may be determined before the application of any experience modification, premium surcharge, or premium discounts, and, to the extent that an employer's experience rating or safety record is based on benefits paid, money paid by the insured employer under a deductible as provided in this section may not be included as benefits paid so as to harm the experience rating of the employer.

E. This section shall not apply to employers who are approved to self-insure against liability for workers' compensation or group self-insurance funds for workers' compensation.

SECTION 96. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 96 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. The Self-insurance Guaranty Fund shall be administered, supervised and protected by the Self-insurance Guaranty Fund Board. All self-insurers under this act shall participate in the fund as a condition of authority to self-insure in this state.

B. 1. The Self-insurance Guaranty Fund Board shall consist of the commissioners and two additional members to be appointed by the Governor.

2. The term of office for the two Governor appointees shall be three (3) years, with the term of the initial appointees expiring on November 1, 2014.

3. The chair and vice chair of the Board shall be elected by the Board from among its members.

4. Members of the Board shall not receive compensation for serving on the Board but shall be reimbursed from monies in the fund for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

C. Meetings of the Board shall be held at least quarterly. The presence of a majority of the members constitutes a quorum. No action shall be taken by the Board without the affirmative vote of at least a majority of the members.

D. The Office of the Attorney General shall provide legal counsel to assist the Board in the performance of its duties.

E. No member or personnel of the Self-insurance Guaranty Fund Board, the Workers' Compensation commissioners or any employee of the Workers' Compensation Commission shall be liable in a civil proceeding for any act performed in good faith in the execution of that person's powers or duties pursuant to Sections 97 through 101 of the Administrative Workers' Compensation Act.

SECTION 97. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 97 of Title 85A, unless there is created a duplication in numbering, reads as follows:

The Self-insurance Guaranty Fund shall be for the purpose of continuation of workers' compensation benefits due and unpaid or interrupted due to the inability of a self-insurer to meet its compensation obligations because its financial resources, security deposit, guaranty agreements, surety agreements and excess insurance are either inadequate or not immediately accessible for the payment of benefits. Monies in the fund, including interest, are not subject to appropriation and shall be expended to compensate employees for eligible benefits for a compensable injury under this act, pay outstanding workers' compensation obligations of the impaired self-insurer, and for all claims for related administrative fees, operating costs of the Self-insurance Guaranty Fund Board, attorney fees, and other costs reasonably incurred by the Board in the performance of its duties. Expenditures from the fund shall be made on warrants issued by the State Treasurer against claims as prescribed by law. The fund shall be subject to audit in the same manner as state funds and accounts, the cost for which shall be paid for from the fund. The Self-insurance Guaranty Fund Board shall be responsible for all liabilities and obligations of the entities that ceased existence.

SECTION 98. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 98 of Title 85A, unless there is created a duplication in numbering, reads as follows:

The Self-insurance Guaranty Fund shall be derived from the following sources:

1. Any unexpended funds, including interest thereon, held by the State Treasurer in the Individual Self-Insured Guaranty Fund or Group Self-Insurance Association Guaranty Fund transferred to the Self-insurance Guaranty Fund;

2. Until the Self-insurance Guaranty Fund contains Two Million Dollars ($2,000,000.00) or in the event the amount in the fund falls below One Million Dollars ($1,000,000.00), an assessment against each private self-insurer and group self-insurance association based

on an assessment rate to be determined by the commissioners, not exceeding one percent (1%) of actual paid losses of the self-insurer during the preceding calendar year, payable to the Tax Commission for deposit to the fund. The assessment against private self-insurers shall be determined using a rate equal to the proportion that the deficiency in the fund attributable to private self-insurers bears to the actual paid losses of all private self-insurers for the year period of January 1 through December 31 preceding the assessment. The assessment against group self-insurance associations shall be determined using a rate equal to the proportion that the deficiency in excess of the surplus of the Group Self-Insurance Association Guaranty Fund at the date of the transfer attributable to group self-insurance associations bears to the actual paid losses of all group self-insurance associations cumulatively for any calendar year preceding the assessment. Each self-insurer shall provide the Workers' Compensation Commission with such information as the Commission may determine is necessary to effectuate the purposes of this paragraph. For purposes of this paragraph, "actual paid losses" means all medical and indemnity payments, including temporary disability, permanent disability, and death benefits, and excluding loss adjustment expenses and reserves.

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

b. A private employer or group self-insurance association which ceases to be a self-insurer shall remain liable for any and all assessments of the self-insurer as provided in this paragraph based on actual paid losses for the calendar year period preceding the assessment.

c. Failure of a self-insurer to pay, or timely pay, an assessment required by this paragraph, or to report payment of the same to the Commission within ten (10) days of payment, shall be grounds for revocation by the Commission of the self-insurer's permit to self-insure in this state, after notice and hearing. A former self-insurer failing to make payments required by this paragraph promptly and correctly, or failing to report payment of the same to the Commission within ten (10) days of payment, shall be subject to administrative penalties as allowed by law, including but not limited to, a fine in the amount of Five Hundred Dollars ($500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater, to be paid and deposited to the credit of the Workers' Compensation Fund created in Section 28 of this act. It shall be the duty of the Tax Commission to collect the assessment provided for in this paragraph. The Tax Commission is authorized to bring an action for recovery of any delinquent or unpaid assessments.

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

e. The Tax Commission shall determine the fund balance as of March 1 and September 1 of each year, and when 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 of the impaired self-insurer. In such proceedings, the Board may assume and exercise all rights and defenses of the impaired self-insurer, including, but not limited to, the right to:

1. Appear, defend and appeal claims;

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

3. Investigate, handle and contest claims.

B. The Board may:

1. Retain such persons as are necessary to handle claims and perform other duties of the Board;

2. Sue or be sued;

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

4. Exercise any other powers necessary to perform its duties under this act as prescribed by the Commission.

SECTION 101. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. On or before the first day of July each year, the Commission shall prepare, make public and submit a report for the prior calendar year to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and each member of the Legislature, containing a statement of the number of awards made and the causes of the accidents leading to the injuries for which the awards were made, total work load data of the administrative law judges, including a detailed report of the work load and judgments written by each judge, a detailed statement of the expenses of the Commission, together with any other matter which the Commission deems proper to report.

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

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

SECTION 102. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 102 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created and established a fund to be known as "CompSource Oklahoma", to be administered by a President and Chief Executive Officer, without liability on the part of the state beyond the amount of said fund, for the purpose of insuring employers against liability for compensation under this act, and for assuring for the persons entitled thereto compensation provided by workers’ compensation law, and for the further purpose of insuring persons, firms and corporations against loss, expense or liability by reason of bodily injury, death by accident, occupational disability, or occupational disease suffered by employees, for which the insured may be liable or have assumed liability. Said fund may further provide insurance for employers against liability incurred as the result of injuries sustained by employees engaged in employment subject to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C., Section 901 et seq., or employees engaged in employment subject to Title IV of the Federal Coal Mine Health and Safety Act of 1969 as amended by the Black Lung Benefits Act of

1972, as enacted or as may be amended by the Congress of the United States.

B. CompSource Oklahoma shall be a revolving fund and shall consist of all premiums received and paid into said fund for insurance issued, all property and securities acquired by and through the use of monies belonging to the fund and all interest earned on monies belonging to the fund and deposited or invested as herein provided.

C. Said fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of expenses in the manner provided in this act.

D. Said fund shall be fairly competitive with other insurance carriers and it is the intent of the Legislature that said fund shall become neither more nor less than self-supporting.

E. CompSource Oklahoma shall report to the Insurance Commissioner no later than the last day of February of each year the amount of premium taxes and fees for which it would be liable if it were operating as a private carrier.

F. Any references in the Oklahoma Statutes to the State Insurance Fund shall be deemed references to CompSource Oklahoma.

SECTION 103. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 103 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a board to be known as the "Board of Managers of CompSource Oklahoma", which Board shall have supervision over the administration and operation of CompSource Oklahoma, and shall be composed of eight (8) members as follows:

1. The Director of the Office of Management and Enterprise Services or a designee;

2. The Lieutenant Governor or a designee;

3. The State Auditor and Inspector or a designee;

4. One member appointed by the Governor;

5. Two members appointed by the Speaker of the House of Representatives, one of whom shall be representative of employers; and

6. Two members appointed by the President Pro Tempore of the Senate, one of whom shall be representative of employees.

B. The appointed members of the Board shall serve at the pleasure of the appointing authority.

C. The members of the Board shall elect annually from their number a Chair and a Secretary. The Secretary shall keep true and complete records of all proceedings of the Board. The Board shall meet quarterly, and at all other times when a meeting is called by the Chair, and at such meetings the Board shall consider the condition of CompSource Oklahoma and quarterly shall make a detailed examination into the condition of its reserves and investments, and at each meeting may examine all other matters relating to the administration of CompSource Oklahoma. The time and place of the regular meetings and the manner in which special meetings may be called shall be set forth in CompSource Oklahoma's bylaws. Except as otherwise provided in this act or in the bylaws, all actions shall be taken by the affirmative vote of a majority of the Board members present at a meeting, except that no investment policy and no amendment of bylaws shall be valid unless authorized or ratified by the affirmative vote of at least four Board members.

D. Appointed members of the Board may be reimbursed for expenses as provided in the State Travel Reimbursement Act. Said reimbursement, not to exceed thirty (30) days in any calendar year, shall be paid only when the Board is transacting official business. Any reimbursement in excess of thirty (30) days in any calendar year shall be approved by a majority of the Board. The Board shall have access to all records and books of account and shall have power to require the presence or appearance of any officer or employee of CompSource Oklahoma. All information obtained by the members of the Board shall be confidential unless disclosed by order of the Board.

E. No person or organization in a position to influence official action of members of the Board of Managers of CompSource Oklahoma, the President and Chief Executive Officer, and the employees of CompSource Oklahoma shall furnish presents, gratuities, transportation, lodging, educational seminars, conferences, meetings, or similar functions to the Board, the President and Chief

Executive Officer, and the employees of CompSource Oklahoma other than as provided by law and the rules of the Ethics Commission.

F. Any references in the Oklahoma Statutes to the Board of Managers of the State Insurance Fund shall be deemed to be references to the Board of Managers of CompSource Oklahoma.

SECTION 104. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 104 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. The Board of Managers of CompSource Oklahoma shall appoint a President and Chief Executive Officer who shall be executive manager of CompSource Oklahoma.

B. All references in the Oklahoma Statutes to the State Insurance Fund Commissioner or the Commissioner of the State Insurance Fund shall be deemed references to the CompSource Oklahoma President and Chief Executive Officer.

SECTION 105. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105 of Title 85A, unless there is created a duplication in numbering, reads as follows:

The CompSource Oklahoma President and Chief Executive Officer is hereby vested with full power, authority and jurisdiction over CompSource Oklahoma. He or she shall perform any duties which are necessary or convenient in the exercise of any power, authority, or jurisdiction over the fund in the administration thereof, or in connection with the insurance business to be carried on by him or her under the provisions of this act as fully and completely as a governing body of a private insurance carrier might or could do including the acquisition, operation and maintenance of an electronic data processing facility.

The Board of Managers of CompSource Oklahoma shall have full power and authority to fix and determine the rates to be charged by CompSource Oklahoma for insurance.

SECTION 106. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 106 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. 1. Volunteer fire departments organized pursuant to state law may obtain workers' compensation insurance for volunteer firefighters through the Volunteer Firefighter Group Insurance Pool pursuant to requirements established by CompSource Oklahoma which shall administer the Pool. For the premium set by CompSource Oklahoma, the state shall provide Fifty-five Dollars ($55.00) per firefighter per year. Except as otherwise provided by subsection D of this section, the total amount paid by the state shall not exceed Three Hundred Twenty Thousand Three Hundred Thirty-eight Dollars ($320,338.00) per year or so much thereof as may be necessary to fund the Volunteer Firefighter Group Insurance Pool.

2. CompSource Oklahoma shall collect the premium from state agencies, public trusts and other instrumentalities of the state. Any funds received by CompSource Oklahoma from any state agency,

public trust, or other instrumentality for purposes of workers' compensation insurance pursuant to this section shall be deposited to the credit of the Volunteer Firefighter Group Insurance Pool. CompSource Oklahoma shall collect premiums, pay claims, and provide for excess insurance as needed.

B. CompSource Oklahoma shall report, annually, to the Governor, the Speaker of the Oklahoma House of Representatives, and the President Pro Tempore of the State Senate the number of enrollees in the Volunteer Firefighter Group Insurance Pool, and the amount of any anticipated surplus or deficiency of the Pool; and shall also provide to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the State Senate sixty (60) days advance notice of any proposed change in rates for the Volunteer Firefighter Group Insurance Pool.

C. The amount of claims paid, claim expenses, underwriting losses, loss ratio, or any other financial aspect of the Volunteer Firefighter Group Insurance Pool shall not be considered when determining or considering bids for the amount of any premiums, rates, or expenses owed by, or any discounts, rebates, dividends, or other financial benefits owed to any other policyholder of CompSource Oklahoma.

D. Except as otherwise provided by law, any increase in the state payment rate for volunteer firefighters under the Volunteer Firefighter Group Insurance Pool shall not exceed five percent (5%)

per annum. Any proposed change in rates for the Volunteer Firefighter Group Insurance Pool must be approved by the Board of Managers of CompSource Oklahoma with notice provided pursuant to subsection B of this section. CompSource Oklahoma shall not increase premiums for the Volunteer Firefighter Group Insurance Pool more than once per annum.

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

SECTION 107. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 107 of Title 85A, unless there is created a duplication in numbering, reads as follows:

The CompSource Oklahoma President and Chief Executive Officer shall have full power and authority to manage and conduct all business and affairs relating to CompSource Oklahoma, all of which business and affairs shall be conducted under the name of CompSource Oklahoma, and in that name and without any other name or title, the President may conduct the following business for CompSource Oklahoma:

1. Sue and be sued in all the courts of the state, in all actions arising out of any act, deed, matter or things made, omitted, entered into, done or suffered in connection with CompSource Oklahoma, and administer, manage, or conduct all the business and affairs relating thereto;

2. Make and enter into contracts of insurance as herein provided, and such other contracts or obligations relating to CompSource Oklahoma as are authorized or permitted under the provisions of this act, including contracting with or appointing agents or brokers; provided the agents or brokers do not contract with or have an appointment solely with CompSource Oklahoma;

3. Invest and reinvest the monies belonging to CompSource Oklahoma as hereinafter provided;

4. Conduct all business and affairs relating to CompSource Oklahoma, whether herein specifically designated or in addition thereto; and

5. Delegate to any officer of CompSource Oklahoma, under such rules, and subject to such conditions as he or she may from time to time prescribe, any of the powers, functions or duties conferred or imposed on the CompSource Oklahoma President and Chief Executive Officer under the provisions of this act in connection with CompSource Oklahoma, the administration, management and conduct of the business or affairs relating thereto, and the officer or officers to whom such delegation is made may exercise the power and

functions and perform the duties delegated with the same force and effect as the CompSource Oklahoma President, but subject to his or her approval.

The Board of Managers of CompSource Oklahoma shall not, nor shall the CompSource Oklahoma President and Chief Executive Officer or any officer or employee of CompSource Oklahoma be personally liable in his or her private capacity for or on account of any act performed or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud, in connection with the administration, management or conduct of CompSource Oklahoma, its business or other affairs relating thereto.

SECTION 108. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 108 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. In conducting the business and affairs of CompSource Oklahoma, the CompSource Oklahoma President and Chief Executive Officer and other officers to whom such power and authority may be delegated by the Board of Managers of CompSource Oklahoma shall have full power and authority:

1. To enter into contracts of insurance, insuring employers against liability for compensation, and insuring to employees and other persons entitled thereto compensation as provided by this act;

2. To decline to insure any risk in which the minimum requirements of the law with regard to construction, equipment and

operation are not observed, or which is beyond the safe carrying of CompSource Oklahoma, but shall not have power or authority, except as otherwise provided in this act, to refuse to insure any compensation risk tendered with the premium therefor;

3. To enter into contracts of insurance insuring persons, firms and corporations against loss, expense or liability by reason of bodily injury, death by accident, occupational disability, or occupational disease suffered by employees for which the insured may be liable or have assumed liability, including, but not limited to, contracts of insurance or reinsurance for the purpose of insuring employers operating in this state and their employees who may work outside this state;

4. To purchase reinsurance for any risk or any portion of any risk of CompSource Oklahoma. The purchase of reinsurance may be made through intermediaries, exclusive of the provisions of The Oklahoma Central Purchasing Act;

5. To inspect and audit, cause to be inspected and audited, or require production of the records of employers insured with or applying for insurance with CompSource Oklahoma against liability for compensation;

6. To contract with physicians, surgeons and hospitals for medical and surgical treatment and the care and nursing of injured persons entitled to benefits;

7. To meet the reasonable expenses of conducting the business of CompSource Oklahoma;

8. To produce a reasonable surplus to cover catastrophe hazard; and

9. To administer a program in compliance with Section 924.3 of Title 36 of the Oklahoma Statutes, whereby employers may appeal rating classification decisions which are disputed. CompSource Oklahoma shall notify employers of the availability of the program.

B. CompSource Oklahoma shall be funded through actuarially sound rates and premiums charged to its policyholders.

C. CompSource Oklahoma shall establish and use rates and rating plans to assure that it is self-funding while those rates are in effect.

D. No later than September 1 of each year, CompSource Oklahoma shall obtain an independent actuarial certification of the results of its operations for prior years.

E. Any premium or assessments collected by CompSource Oklahoma in excess of the amount necessary to fund its projected ultimate incurred losses and expenses and not paid to policyholders insured under CompSource Oklahoma in conjunction with dividend programs shall be deposited with CompSource Oklahoma.

F. CompSource Oklahoma losses are the sole and exclusive responsibility of CompSource Oklahoma, and payment for losses shall be funded in accordance with this section and shall not come, directly or indirectly, from insurers or any guaranty association for such insurers, except for reinsurance purchased by CompSource Oklahoma.

SECTION 109. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 109 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. All receipts of money, with the exception of investment income, shall be deposited in the CompSource Oklahoma fund with the State Treasury. The CompSource Oklahoma President and Chief Executive Officer, subject to the direction of the Board of Managers of CompSource Oklahoma, shall have the responsibility for the management of the CompSource Oklahoma fund, and may transfer monies used for investment purposes from the CompSource Oklahoma fund in the State Treasury to the custodian bank or trust company of CompSource Oklahoma.

B. 1. All benefits payable pursuant to the provisions of the bylaws of CompSource Oklahoma and refunds of premiums and overpayments shall be paid from CompSource Oklahoma on warrants or vouchers signed by two persons designated by the CompSource Oklahoma President.

2. Every check, draft, warrant, or other instrument drawn for the payment of temporary total disability benefits by CompSource Oklahoma shall contain on its face in a contrasting color of ink the following:

WARNING: It is a felony to knowingly receive money under false pretenses by accepting temporary total disability benefits while working at the same or a similar job. If you are employed or receiving wages, you should consult CompSource Oklahoma or if you are represented by an attorney you should consult your attorney BEFORE presenting this instrument to any other person for payment.

3. The CompSource Oklahoma President and Chief Executive Officer may transfer monies from the custodian bank or trust company of CompSource Oklahoma to the CompSource Oklahoma fund in the State Treasury for the purposes specified in this section.

SECTION 110. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110 of Title 85A, unless there is created a duplication in numbering, reads as follows:

There is hereby created a petty cash fund within CompSource Oklahoma. The petty cash fund shall be in the amounts as are determined to be necessary by the Director of the Office of Management and Enterprise Services and the CompSource Oklahoma President and Chief Executive Officer. The petty cash fund may be expended for the payment of emergency purchases and bills. Said fund may be reimbursed by the Director of the Office of Management and Enterprise Services upon the filing of a claim with the receipts showing the disbursements therefrom, reimbursement to be made from the revolving fund. The Director of the Office of Management and

Enterprise Services shall prescribe all forms, systems and procedures for administering the petty cash fund.

SECTION 111. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 111 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. The CompSource Oklahoma President and Chief Executive Officer shall appoint, with the approval of the Board of Managers of CompSource Oklahoma, such assistants, accountants, claim adjusters, and other employees as may be necessary to conduct the business and carry out the provisions of this act or to perform the duties imposed on the President and Chief Executive Officer by this act; provided, that in no event shall the salaries of such employees, together with all other expenses of CompSource Oklahoma, exceed twenty percent (20%) of the earned premiums.

B. The chief attorney for the Board shall receive a salary equal to that paid to an administrative law judge of the Workers' Compensation Commission.

SECTION 112. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 112 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. 1. Ten percent (10%) of the premiums collected from all persons, firms or corporations insured by CompSource Oklahoma shall be set aside by the CompSource Oklahoma President and Chief Executive Officer for the creation of surplus until the surplus shall amount to the sum of Two Hundred Fifty Thousand Dollars ($250,000.00), and thereafter five percent (5%) of the premiums shall be set aside until such time as, in the judgment of the Insurance Department, the surplus shall be sufficiently large to cover the catastrophe hazard, and all other unanticipated losses.

2. If the ratio of net premium-to-surplus exceeds 1:2 on July 1 of any year, the Board of Managers of CompSource Oklahoma shall, within sixty (60) days, declare a dividend of sufficient size to reduce the ratio of net premium-to-surplus to no more than 1:2. The dividend may be declared in the form of cash, cash equivalents, negotiable instruments, or credits against past, present, or future premiums on or before October 15 next following declaration of the dividend and shall be payable to policyholders having policies in force when the dividend is declared.

B. The Board is hereby vested with authority, in its discretion, to transfer funds from a surplus to other funds of CompSource Oklahoma when deemed necessary or advisable; provided, that in no event shall such surplus be reduced to a sum less than One Hundred Fifty Thousand Dollars ($150,000.00).

C. Reserves shall be established and maintained adequate to meet anticipated losses and to carry all claims and policies to maturity, which reserves shall be computed in accordance with rules adopted by the Board.

SECTION 113. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 113 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. The Board of Managers of CompSource Oklahoma shall discharge their duties with respect to CompSource Oklahoma solely in the interest of CompSource Oklahoma and:

1. For the exclusive purpose of:

   a. providing benefit to CompSource Oklahoma, and

   b. defraying reasonable expenses of administering CompSource Oklahoma;

2. With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

3. By diversifying the investments of CompSource Oklahoma so as to minimize the risk of large losses unless under the circumstance it is clearly prudent not to do so; and

4. In accordance with the laws, documents and instruments governing CompSource Oklahoma.

B. The monies of CompSource Oklahoma shall be invested only in assets eligible for the investment of funds of a domestic property and casualty insurance company as provided for in the Oklahoma Insurance Code, Title 36 of the Oklahoma Statutes. The term "admitted assets" shall mean the amount of the monies of CompSource

Oklahoma and the provisions relating to limitation of investments as a percentage of surplus as regards policyholders shall be inapplicable with respect to investment of the monies of CompSource Oklahoma. The monies of CompSource Oklahoma may be invested in certificates of indebtedness or such other enforceable evidences of obligation as may be utilized in the rights-of-way acquisitions by the Department of Transportation. The monies of CompSource Oklahoma may also be invested in bonds secured by first mortgages, pass-through securities and insured participation certificates representing interests in first mortgages or insured mortgage pass-through certificates on one- to four-family residences located within this state. CompSource Oklahoma may enter into agreements with the Multiple Injury Trust Fund to fulfill any payment obligation of the Multiple Injury Trust Fund, including all Commission orders for material increases and the accrued interest thereon, and all orders for interest on previously paid awards.

C. 1. The CompSource Oklahoma President and Chief Executive Officer, with the approval of the Board of Managers of CompSource Oklahoma, is authorized to purchase any real estate deemed necessary for the immediate and reasonably anticipated future administrative office space needs of CompSource Oklahoma. The CompSource President and Chief Executive Officer, with the approval of the Board, may also sell, lease, rent, or sublet any real estate holdings of

CompSource Oklahoma. Any revenues from such transactions shall accrue to the surplus or reserve fund of CompSource Oklahoma.

2. In any lease, rental, sublease or other agreement for the use or occupation of real estate holdings of CompSource Oklahoma, no state agency may enter into an agreement which has a gross effective rental rate which is greater than the gross effective rental rate for which the agency can continue to occupy the premises which is currently rented at the time the agency proposes to move. For a period of two (2) years after the first use or occupation by the state agency, subsequent agreements, whether new agreements or continuations of a prior agreement, shall not contain a gross effective rental rate which is greater than that of the original agreement.

D. The Board of Managers of CompSource Oklahoma may procure insurance indemnifying the members of CompSource Oklahoma from personal loss or accountability from liability resulting from a member's action or inaction as a member of the Board.

E. The Board may establish an investment committee composed of not more than three members of the Board appointed by the Chair of the Board. The committee shall make recommendations to the full Board on all matters related to the choice of custodians and managers of the assets of CompSource Oklahoma, on the establishment of investment and fund management guidelines, and in planning future investment policy. The committee shall have no authority to act on behalf of the Board or CompSource Oklahoma in any circumstances whatsoever. No recommendation of the committee shall have effect as an action of the Board nor take effect without the approval of the Board as provided by law.

F. The Board of Managers of CompSource Oklahoma shall retain qualified investment managers to provide for the investment of the monies of CompSource Oklahoma. The investment managers shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Board. Subject to the overall investment guidelines set by the Board, the investment managers shall have full discretion in the management of those monies of CompSource Oklahoma allocated to the investment managers. The Board shall manage those monies not specifically allocated to the investment managers. The monies of CompSource Oklahoma allocated to the investment managers shall be actively managed by the investment managers, which may include selling investments and realizing losses if such action is considered advantageous to longer-term return maximization. Because of the total return objective, no distinction shall be made for management and performance evaluation purposes between realized and unrealized capital gains and losses.

G. Funds and revenues for investment by the investment managers or the Board shall be placed with a custodian selected by the Board. The custodian shall be a bank or trust company offering master custodial services. The custodian shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Board. In compliance with the investment policy guidelines of the Board, the custodian bank or trust company shall be contractually responsible for ensuring that all monies of CompSource Oklahoma are invested in income-producing investment vehicles at all times. If a custodian bank or trust company has not received direction from the investment managers of CompSource Oklahoma as to the investment of the monies in specific investment vehicles, the custodian bank or trust company shall be contractually responsible to the Board for investing the monies in appropriately collateralized short-term interest-bearing investment vehicles.

H. Prior to August 1 of each year, the Board of Managers of CompSource Oklahoma shall develop and approve a written investment plan for CompSource Oklahoma.

I. The CompSource Oklahoma President and Chief Executive Officer shall compile a quarterly financial report of all the funds of CompSource Oklahoma. The report shall be compiled and filed pursuant to uniform reporting standards prescribed by the Insurance Commissioner for domestic property and casualty insurance companies. The report shall include several relevant measures of investment value, including acquisition cost and current fair market value with appropriate summaries of total holdings and returns. The report shall contain combined and individual rate of returns of the investment managers by category of investment, over periods of time.

The report shall contain a list of all investments made by CompSource Oklahoma and a list of any commissions, fees or payments made for services regarding such investments for that reporting period. The report shall be distributed to the Governor, the Legislative Service Bureau and the Cash Management and Investment Oversight Commission.

J. CompSource Oklahoma, on behalf of the Multiple Injury Trust Fund, may enter into an agreement with any reinsurer licensed to sell reinsurance by the State Insurance Commissioner selected pursuant to a competitive process administered by the Director of Central Purchasing in the Office of Management and Enterprise Services.

SECTION 114. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 114 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. A fiduciary with respect to CompSource Oklahoma shall not cause it to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect:

1. Sale or exchange, or leasing of any property from CompSource Oklahoma to a party in interest for less than adequate consideration or from a party in interest to CompSource Oklahoma for more than adequate consideration;

2. Lending of money or other extension of credit from CompSource Oklahoma to a party in interest without the receipt of

adequate security and a reasonable rate of interest, or from a party in interest to CompSource Oklahoma with provision of excessive security or an unreasonably high rate of interest;

3. Furnishing of goods, services or facilities from CompSource Oklahoma to a party in interest for less than adequate consideration, or from a party in interest to CompSource Oklahoma for more than adequate consideration; or

4. Transfer to, or use by or for the benefit of, a party in interest of any assets of CompSource Oklahoma for less than adequate consideration.

B. A fiduciary with respect to CompSource Oklahoma shall not:

1. Deal with the assets of CompSource Oklahoma in the fiduciary's own interest or for the fiduciary's own account;

2. In the fiduciary's individual or any other capacity act in any transaction involving CompSource Oklahoma on behalf of a party whose interests are adverse to the interests of CompSource Oklahoma or the interests of its participants or beneficiaries; or

3. Receive any consideration for the fiduciary's own personal account from any party dealing with CompSource Oklahoma in connection with a transaction involving the assets of CompSource Oklahoma.

C. A fiduciary with respect to CompSource Oklahoma may:

1. Invest all or part of the assets of CompSource Oklahoma in deposits which bear a reasonable interest rate in a bank or similar

financial institution supervised by the United States or a state, if the bank or other institution is a fiduciary of such plan; or

2. Provide any ancillary service by a bank or similar financial institution supervised by the United States or a state, if such bank or other institution is a fiduciary of the plan.

D. A person or a financial institution is a fiduciary with respect to CompSource Oklahoma to the extent that the person or the financial institution:

1. Exercises any discretionary authority or discretionary control respecting management of CompSource Oklahoma or exercises any authority or control respecting management or disposition of the assets of CompSource Oklahoma;

2. Renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of CompSource Oklahoma, or has any authority or responsibility to do so; or

3. Has any discretionary authority or discretionary responsibility in the administration of CompSource Oklahoma.

SECTION 115. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 115 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. The entire expenses of administering CompSource Oklahoma shall be paid out of the fund on warrants issued by the State Treasurer against claims filed as prescribed by law with the

Director of the Office of Management and Enterprise Services for approval and payment. On or before the first day of June of each year, or as soon thereafter as possible, there shall be submitted to the Board of Managers of CompSource Oklahoma for approval an estimated budget of expenses for the succeeding fiscal year. The CompSource Oklahoma President and Chief Executive Officer may not spend funds belonging to CompSource Oklahoma for purposes of administering any sum in excess of the amount specified in such budget for any item of expense therein set forth unless the expenditure is authorized by the Board. In no event shall the entire expenses of administration of CompSource Oklahoma, as authorized for the entire year, exceed twenty percent (20%) of the earned premiums of that year. The Board may use present value discounting at a rate of four percent (4%) for computing reserves. The Board shall cause to be made, within ninety (90) days after the end of each calendar year, an audit of the books of account and financial records of CompSource Oklahoma for each such calendar year, such audit to be made by an independent certified public accountant, a licensed public accountant, a firm of certified public accountants, or an accounting firm or individual holding a permit to practice accounting in this state. The audit shall be filed with the Director of the Office of Management and Enterprise Services in accordance with the requirements set forth for financial statement audits in Section 212A of Title 74 of the Oklahoma Statutes.

B. CompSource Oklahoma shall submit to the Insurance Commissioner an annual financial statement in the same manner as a domestic insurance carrier. The Insurance Commissioner may audit CompSource Oklahoma in the same manner as a domestic insurance company if an audit does not conflict with any specific provision contained herein. The CompSource Oklahoma President and Chief Executive Officer shall provide a copy of the annual financial statement to the Governor and the Board.

SECTION 116. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 116 of Title 85A, unless there is created a duplication in numbering, reads as follows:

The CompSource Oklahoma President and Chief Executive Officer shall keep an account of the money paid in premiums by each classification of persons, firms, or corporations insured by CompSource Oklahoma, and the expense of administering CompSource Oklahoma and the disbursements on account of loss, expense or liability by reason of bodily injury, death by accident, occupational disability, or occupational disease for which CompSource Oklahoma was liable under this act, including the setting up of reserves adequate to meet unanticipated and unexpected losses and to carry the claims to maturity; and also an account of the money received from such individual insured; and of the amount disbursed from CompSource Oklahoma for expenses, and on account of injuries, death by accident, sickness or disease, and disability of persons to whom such insured was liable or had assumed liability, including the reserves set up.

SECTION 117. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 117 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. Premiums for any policy period shall be paid into CompSource Oklahoma and adjusted according to the contract of insurance. If the adjusted premium is more than the premium paid at the beginning of the period, the employer shall pay the difference immediately on notification of the amount of premium due. If such adjusted premium is less than the premium paid at the beginning of the period, the employer shall at the employer's option receive either refund of the difference or a credit of the amount thereof on the employer's account with CompSource Oklahoma.

B. CompSource Oklahoma, in cooperation with the Department of Labor, shall develop and implement an insurance premium credit program for the insureds of CompSource Oklahoma which is consistent with the provisions of this act.

SECTION 118. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 118 of Title 85A, unless there is created a duplication in numbering, reads as follows:

If any persons, firm or corporation insured by CompSource Oklahoma defaults in the payment required to be made to CompSource Oklahoma, after due notice the insurance policy with CompSource

Oklahoma may be canceled and the amount due collected by a civil action against the insured in the name of CompSource Oklahoma, and the same when collected shall be paid into CompSource Oklahoma, and such insured's compliance with the provisions of this act requiring payments to be made to CompSource Oklahoma shall date from the time of the payment of such money so collected to the State Treasurer to the credit of CompSource Oklahoma.

SECTION 119. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 119 of Title 85A, unless there is created a duplication in numbering, reads as follows:

Every person or entity who is insured by CompSource Oklahoma shall keep a true and accurate record of the number of employees and the wages paid and shall furnish on demand a sworn statement of the same. The record shall be open to inspection at any time, and as often as may be necessary to verify the number of employees and the amount of the payroll. Any person, firm, or corporation who shall willfully fail to keep the required records or who shall willfully falsify any such record shall be guilty of a felony.

SECTION 120. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120 of Title 85A, unless there is created a duplication in numbering, reads as follows:

Any person who willfully misrepresents any fact in order to obtain insurance with CompSource Oklahoma at less than the proper rate for such insurance or in order to obtain payment from CompSource Oklahoma shall be guilty of a felony.

SECTION 121. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 121 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. Information acquired by the CompSource Oklahoma President and Chief Executive Officer or the officers or employees of CompSource Oklahoma from persons or entities insured by CompSource Oklahoma or from employees of such persons or entities shall not be open to public inspection, and any officer or employee of the State of Oklahoma, who without authority of the Workers' Compensation Commission, or pursuant to the rules prescribed by the CompSource Oklahoma President and Chief Executive Officer, or as otherwise required by law, discloses the same shall be guilty of a misdemeanor.

B. The CompSource Oklahoma President and Chief Executive Officer shall provide to the Commissioner of Labor annually, upon request, a listing of the insureds of CompSource Oklahoma with the name, address and nature of business or occupation of the insured.

SECTION 122. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 122 of Title 85A, unless there is created a duplication in numbering, reads as follows:

Every person or entity insuring in CompSource Oklahoma shall receive from CompSource Oklahoma a contract or policy of insurance to be approved by the State Insurance Commissioner.

Except as otherwise provided in this act all premiums shall be paid by every person, firm, or corporation who elects to insure with CompSource Oklahoma to the CompSource Oklahoma President and Chief Executive Officer semiannually, or at such times as may be prescribed by general rule applicable to all insurers alike by the Insurance Commissioner. Receipts shall be given for such payment and the money shall be paid over to the credit of CompSource Oklahoma.

SECTION 123. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 123 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. The Workers' Compensation Commission shall adopt rules permitting two or more employers, not otherwise subject to the provisions of Section 172 of this act, to pool together liabilities under this act for the purpose of qualifying as a group self-insurer and each such employer shall be classified as a self-insurer.

B. The Commission shall approve the distribution of all undistributed policyholders' surplus of a Workers' Compensation Self-Insurance Program if the Program complies with the following criteria:

1. Has been in business for at least five (5) years;

2. Has its financial statements audited by a public accounting firm which audits at least one corporate client which has assets in excess of One Billion Dollars ($1,000,000,000.00) and on which the accounting firm has issued an unqualified opinion as to the fair presentation of the financial position of the Program showing adequate solvency and reserves; and

3. Is in compliance with the provisions of this act and all other regulations as required by the Commission.

C. A group self-insurer created pursuant to this section either prior to or after the effective date of this act shall not be subject to the provisions of the Oklahoma Securities Act.

SECTION 124. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 124 of Title 85A, unless there is created a duplication in numbering, reads as follows:

The Workers' Compensation Commission shall adopt rules permitting two or more group self-insurance associations to pool their liabilities under this act for the purpose of providing such group self-insurance associations specific and aggregate excess insurance.

SECTION 125. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 125 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. CompSource Oklahoma shall, annually, on or before the first day of March, report under oath of the President and Chief Executive

Officer of CompSource Oklahoma to the State Treasurer, the total amount of direct written premiums and membership, application, policy and registration fees charged by CompSource Oklahoma during the preceding calendar year for insurance covering one or more of the following:

1. Insuring employers against liability for compensation under this act;

2. Assuring for the persons entitled thereto compensation provided by this act;

3. Insuring persons and entities against loss, expense or liability by reason of bodily injury, death by accident, occupational disability, or occupational disease suffered by employees, for which the insured may be liable or have assumed liability; and

4. Insuring employers against liability incurred as the result of injuries sustained by employees engaged in employment subject to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C., Section 901 et seq., or employees engaged in employment subject to Title IV of the Federal Coal Mine Health and Safety Act of 1969 as amended by the Black Lung Benefits Act of 1972, as enacted or as may be amended by the Congress of the United States.

B. CompSource Oklahoma, at the time the report required by subsection A of this section is filed, shall pay to the State Treasury to the credit of the General Revenue Fund, an annual market equalization assessment on all of the direct written premiums after all returned premiums are deducted, on all membership, application, policy and registration fees, and installment and finance fees or charges collected by CompSource Oklahoma, relating to written, continued and serviced insurance for purposes listed in subsection A of this section; provided, no deduction shall be made from premiums for dividends paid to policyholders. The rate of assessment shall be two and twenty-five one-hundredths percent (2.25%). If CompSource Oklahoma fails to remit the assessments in a timely manner, it shall remain liable therefor together with interest thereon at an annual rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified by the State Treasurer on the first regular business day in January of each year, plus four (4) percentage points.

SECTION 126. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 126 of Title 85A, unless there is created a duplication in numbering, reads as follows:

No member or personnel of the Workers' Compensation Commission, the Self-insurance Guaranty Fund Board, or administrative law judge shall be liable in a civil proceeding for any act performed in good faith in the performance of that person's powers or duties under this act.

SECTION 127. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 127 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. No employee of the Workers' Compensation Commission shall be competent to testify on any matter concerning any information the employee has received through the performance of the employee's duties under the provisions of this act.

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

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

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

SECTION 128. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 128 of Title 85A, unless there is created a duplication in numbering, reads as follows:

The provisions of the Administrative Workers' Compensation Act shall be strictly construed by the Workers' Compensation Commission and any appellate court reviewing a decision of the Workers' Compensation Commission.

SECTION 129. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 200 of Title 85A, unless there is created a duplication in numbering, reads as follows:

Sections 129 through 142 of this act shall be known and may be cited as the "Oklahoma Employee Injury Benefit Act".

SECTION 130. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 201 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. As used in the Oklahoma Employee Injury Benefit Act:

1. "Benefit plan" means a plan established by a qualified employer under the requirements of Section 132 of this act;

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

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

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

5. "Employee" means any person engaged in the employment of an employer and receives his or her pay by means of a salary, wage, or commission directly from the employer and for whom an employer files a Form W-2 with the Internal Revenue Service. "Employee" does not include an independent contractor or third-party agent;

6. "Employer", except when otherwise expressly stated, means a person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, corporation, or limited liability company, department, instrumentality or institution of this state, counties and other political subdivisions of this state, public trusts employing a person included within the term employee as defined in this act;

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

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

9. "Surviving spouse" means a spouse who was married to the deceased covered employee at the time of the employee's death.

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

SECTION 131. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 202 of Title 85A, unless there is created a duplication in numbering, reads as follows:

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

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

2. Has established a written benefit plan as described in Section 132 of this act.

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

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

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

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

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

G. The Commissioner may contract with the Oklahoma Employment Security Commission, the State Treasurer or the Department of Labor for assistance in collecting the notification required under this section or otherwise fulfilling the Commissioner's responsibilities under this act. Such agencies shall cooperate with the Commissioner in enforcing the provisions of this section.

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

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

SECTION 132. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 203 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. An employer voluntarily electing to become a qualified employer shall adopt a written benefit plan that complies with the requirements of this section. Qualified-employer status is optional for eligible employers. The benefit plan shall not become effective until the date that the qualified employer first satisfies the notice requirements in Section 131 of this act.

B. The benefit plan shall provide for payment of the same forms of benefits included in the Administrative Workers' Compensation Act for temporary total disability, temporary partial disability, permanent partial disability, vocational rehabilitation, permanent total disability, disfigurement, amputation or permanent total loss of use of a scheduled member, death and medical benefits as a result of an occupational injury, on a no-fault basis, with the same statute of limitations, and with dollar, percentage, and duration limits that are at least equal to or greater than the dollar, percentage, and duration limits contained in Sections 45 and 46 of this act. For this purpose, the standards for determination of average weekly wage, death beneficiaries, and disability under the

Administrative Workers' Compensation Act shall apply under the Oklahoma Employee Injury Benefit Act; but no other provision of the Administrative Workers' Compensation Act defining covered injuries, medical management, dispute resolution or other process, funding, notices or penalties shall apply or otherwise be controlling under the Oklahoma Employee Injury Benefit Act, unless expressly incorporated.

C. The benefit plan may provide for lump-sum payouts that are, as reasonably determined by the administrator of such plan appointed by the qualified employer, actuarially equivalent to expected future payments. The benefit plan may also provide for settlement agreements; provided, however, any settlement agreement by a covered employee shall be voluntary, entered into not earlier than the tenth business day after the date of the initial report of injury, and signed after the covered employee has received a medical evaluation from a nonemergency care doctor, with any waiver of rights being conspicuous and on the face of the agreement. The benefit plan may specify conditions and limitations on benefits, including but not limited to additional criteria for covered and noncovered injuries and medical charges, and continuation, suspension and termination of benefits; provided, however, the benefit plan shall pay benefits without regard to whether the covered employee, the qualified employer, or a third party caused the occupational injury; and provided further, that the benefit plan shall provide eligibility to participate in and provide the same forms and levels of benefits to all Oklahoma employees of the qualified employer. The Administrative Workers' Compensation Act shall not define, restrict, expand or otherwise apply to a benefit plan.

D. No fee or cost to an employee shall apply to a qualified employer's benefit plan.

E. The qualified employer shall provide to the Commissioner and covered employees notice of the name, title, address, and telephone number for the person to contact for injury benefit claims administration, whether in-house at the qualified employer or a third-party administrator.

SECTION 133. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 204 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. A qualified employer may self-fund or insure benefits payable under the benefit plan, employers' liability under this act, and any other insurable risk related to its status as a qualified employer with any insurance carrier authorized to do business in this state.

B. Insurance coverage or surety bond obtained by a qualified employer shall be from an admitted or surplus lines insurer with an AM Best Rating of B+ or better. The Insurance Department has no duty to approve insurance rates charged for this coverage. A qualified employer shall secure compensation to covered employees in one of the following ways:

1. Obtaining accidental insurance coverage in an amount of at least Two Million Dollars ($2,000,000.00) per occurrence, with sublimits in at least the following amounts:

a. Five Hundred Thousand Dollars ($500,000.00) per person for medical expenses and coverage for at least one hundred four (104) weeks,

b. the lesser of seventy percent (70%) of the covered employee's average weekly wage and the state average weekly wage for not less than one hundred four (104) weeks of wage replacement for inability to work, and

c. Two Hundred Thousand Dollars ($200,000.00) per person for accidental death;

2. Furnishing satisfactory proof to the Commissioner of the employer's financial ability to pay the compensation. The Commissioner, under rules adopted by the Insurance Department or the Commissioner for an individual self-insured employer, shall require an employer that has:

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

(1) deposit with the Commissioner securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by

the Commissioner 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 such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of this act,

b. one hundred or more employees and One Million Dollars ($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 Commissioner 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 such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of this act; or

3. Any other security as may be approved by the Commissioner.

C. The Commissioner may waive the requirements of this section in an amount which is commensurate with the ability of the employer to pay the benefits required by the provisions of this act. Irrevocable letters of credit required by this section shall contain such terms as may be prescribed by the Commissioner and shall be issued for the benefit of the state by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

D. An employer who does not fulfill the requirements of this section is not relieved of the obligation for compensation to a covered employee. The security required under this section, including any interest thereon, shall be maintained by the Commissioner as provided in this act until each claim for benefits is paid, settled, or lapses under this act, and costs of administration of such claims are paid.

E. Any bond shall be filed and held by the Commissioner and shall be for the exclusive benefit of any covered employee of a qualified employer.

F. Any security held by the Commissioner may be used to make a payment to or on behalf of a covered employee provided the following requirements are met:

1. The covered employee sustained an occupational injury that is covered by the qualified employer's benefit plan;

2. The covered employee's claim for payment of a specific medical or wage replacement benefit amount has been accepted by the plan administrator of the benefit plan or acknowledged in a final judgment or court order assessing a specific dollar figure for benefits payable under the benefit plan;

3. The covered employee is unable to receive payment from the benefit plan or collect on such judgment or court order because the

qualified employer has filed for bankruptcy or the benefit plan has become insolvent; and

4. The covered employee is listed as an unsecured creditor of the qualified employer because of the acceptance of such claim by the plan administrator of the benefit plan or judgment or court order assessing a specific dollar figure for benefits payable under the benefit plan.

G. The Commissioner shall promulgate rules to carry out the provisions of this section including those establishing the procedure by which a covered employee may request and receive payment from the security held by the Commissioner.

H. The benefit plan may provide some level of benefits for sickness, injury or death not due to an occupational injury.

I. A qualified employer shall hold harmless any insurance agent or broker who sold the employer a benefits program compliant with the Oklahoma Employee Injury Benefit Act if the qualified employer is sued in district court for an injury arising in the course and scope of employment.

SECTION 134. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 205 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. There are established within the Office of the State Treasurer two separate funds:

1. The Oklahoma Option Insured Guaranty Fund; and

2. The Oklahoma Option Self-insured Guaranty Fund.

B. The funds established pursuant to subsection A of this section shall be for the purpose of continuation of benefits under this act for covered claims that are due and unpaid or interrupted due to the inability of the insurer or sponsor of a self-insured plan, as applicable, to meet its compensation obligations because its financial resources, security deposit, guaranty agreements, surety agreements and excess insurance are either inadequate or not immediately accessible for the payment of benefits. Monies in such funds, including interest, are not subject to appropriation and shall be expended to compensate employees for eligible benefits for a compensable injury under this act, pay outstanding workers' compensation obligations of the impaired insurer, and for all claims for related administrative fees, operating costs, attorney fees, and other costs reasonably incurred by the Workers' Compensation Commission in the performance of its duties. Expenditures from such funds shall be made on warrants issued by the State Treasurer against claims as prescribed by law. Such funds shall be subject to audit the same as state funds and accounts, the cost for which shall be paid for from the funds. A "covered claim" has the meaning given to it pursuant to paragraph 7 of Section 2004 of Title 36 of the Oklahoma Statutes.

C. The funds established under this section shall be administered, disbursed, and invested under the direction of the

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:

a. 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.

2. Self-insured Guaranty Fund:

a. until the Self-insured Guaranty Fund contains One Million Dollars ($1,000,000.00) or if the amount in the fund falls below Seven Hundred Fifty Thousand Dollars ($750,000.00), each self-insurer shall be assessed a fee at the rate of one percent (1%) of the total compensation for permanent partial disability awards paid out during each quarter of the calendar year by the employers. The fee shall be paid to the Self-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. The fee shall be determined using a rate equal to the proportion that the deficiency in the fund attributable to self-insurers bears to the actual paid losses of all self-insurers for the preceding calendar year. Each self-insurer shall provide the Commission with the information necessary to determine the amount of the fee to be assessed.

E. The Commission shall create a separate account for each fund which may not be commingled with any other account managed by the Commission.

F. On determination by the Commission that a self-insurer has become an impaired insurer, the Commission shall release the security required by paragraph 2 of subsection B of Section 133 of this act. 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.

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

1. Appear, defend and appeal claims;

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

3. Investigate, handle and contest claims.

H. The Commission may also:

1. Retain persons necessary to handle claims and perform other duties of the Commission;

2. Sue or be sued;

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

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

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

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

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

SECTION 135. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 206 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. In addition to the premium or surplus lines taxes collected from carriers, the carriers shall pay annually to the Workers' Compensation Commission a fee, at the rate to be determined as provided in Section 137 of this act but not to exceed three percent (3%), on all written premiums resulting from the writing of insurance under this act on risks within the state.

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

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

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

D. Payments shall be made by check payable to the Commission.

SECTION 136. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 207 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. It shall be the duty of the Workers' Compensation Commission to collect a fee from every self-insured employer at a rate to be determined as provided by Section 137 of this act but not to exceed three percent (3%) of the written premium which would have to be paid under Section 135 of this act by a carrier if the self-insured employer were insured by a carrier.

B. If the fee provided for under this section is not paid within thirty (30) days of the date provided in Section 137 of this act, there shall be assessed a penalty for each thirty (30) days the amount so assessed remains unpaid which is equal to ten percent (10%) of the unpaid amounts and which shall be collected at the same time as a part of the fee assessed.

SECTION 137. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 208 of Title 85A, unless there is created a duplication in numbering, reads as follows:

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

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

B. 1. The Commission shall notify each insurance carrier of the rate of assessment applicable to the Oklahoma Option Insured Guaranty Fund for the preceding year, and fees shall be computed and paid under the provisions of subsection B of Section 135 of this act on or before April 1 of the following year.

2. The Commission shall notify each self-insured employer subject to the fee of the rate of assessment applicable to the

Oklahoma Option Self-insured Fund for the preceding year, and fees shall be computed by the Commission and paid to the Oklahoma Option Self-insured Guaranty Fund by the self-insurer through payments made directly to the Workers' Compensation Commission on or before April 1 of the following year.

C. The Commission shall have the authority to promulgate rules for administration of the assessment and fee collection process, including, but not limited to, rules applicable to the funds established in Section 134 of this act.

SECTION 138. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 209 of Title 85A, unless there is created a duplication in numbering, reads as follows:

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

B. Except as otherwise provided by its benefit plan, or applicable federal law, a qualified employer is only subject to liability in any action brought by a covered employee or his or her dependent family members for injury resulting from an occupational injury if the injury is the result of an intentional tort on the part of the qualified employer. An intentional tort shall exist only when the covered employee is injured because of willful, deliberate, specific intent of the qualified employer to cause such injury. Allegations or proof that the qualified employer had knowledge that such injury was substantially certain to result from its conduct shall not constitute an intentional tort. The issue of whether an act is an intentional tort shall be a question of law for the court or the duly appointed arbitrator, as applicable.

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

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

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

SECTION 139. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 210 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. A qualified employer or its insurers or other payment sources shall be responsible for:

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

2. Any damage awarded against the qualified employer for intentional tort under Section 138 of this act, including any pre- and post-judgment interest on the award and reasonable court costs as may be lawfully awarded in the action; and

3. Reasonable attorney fees awarded against a qualified employer under Section 138 of this act; provided, however, that an employee's attorney fees that are contingent on a recovery under the terms of the benefit plan shall be payable by a qualified employer

as part of and not in addition to such recovery. An award of attorney fees in favor of a covered employee against a qualified employer on a claim for intentional tort, excluding death, shall be limited to no more than twenty percent (20%) of any lost earnings awarded to the covered employee or his or her spouse, personal representative, parents, or dependents of the covered employee under the benefit plan and such award. Nothing in this paragraph shall be construed to restrict an award of fees and costs made under federal law.

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

SECTION 140. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 211 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. If an employer denies a covered employee's claim for benefits under this act, it shall notify him or her in writing of the decision within fifteen (15) days of receiving notice of the injury. Unless otherwise provided by law, the adverse benefit determination letter shall contain an explanation of why the claim was denied, including the plan provisions that were the basis for the denial, and a detailed description of how to appeal the determination.

B. The benefit plan shall provide the following minimum appeal rights:

1. The appeal shall be heard by a committee consisting of at least three people that were not involved in the original adverse benefit determination;

2. The committee may request any additional information it deems necessary to make a decision, including having the covered employee submit to a medical exam;

3. The committee shall notify the covered employee in writing of its decision, including an explanation of the decision and his or her right to judicial review;

4. The committee shall review the determination and issue a decision no later than forty-five (45) days from the date the notice of contest is received;

5. If any part of an adverse benefit determination is upheld by the committee, the covered employee may then file a petition for review with the Commission sitting en banc, which shall act as the court of competent jurisdiction under 29 U.S.C.A. Section 1132(e)(1), and shall possess adjudicative authority to render decisions in individual proceedings by covered employees to recover benefits due to the covered employee under the terms of the covered employee's plan, to enforce the covered employee's rights under the terms of the plan, or to clarify the covered employee's rights to future benefits under the terms of the plan;

6. The Commission shall rely on the record established by the internal appeal process and use a deferential standard of review; and

7. If the covered employee appeals to the Commission and any part of the adverse benefit determination is upheld, he or she may appeal to the Supreme Court by filing with the Clerk of the Supreme Court a certified copy of the decision of the Commission attached to a petition which shall specify why the decision is erroneous or illegal within twenty (20) days of the decision being issued. The Supreme Court may modify, reverse, remand for rehearing, or set aside the decision only if it was:

a. in violation of constitutional provisions,

b. in excess of the statutory authority or jurisdiction of the Commission,

c. made on unlawful procedure,

d. affected by other error of law,

e. clearly erroneous in view of the reliable, material, probative and substantial competent evidence,

f. arbitrary or capricious,

g. procured by fraud, or

h. missing findings of fact on issues essential to the decision.

The Supreme Court shall require the covered employee to file within forty-five (45) days from the date of the filing of an appeal a transcript of the record of the proceedings before the Commission, or such later time as may be granted by the Supreme Court on application and for good cause shown. The action shall be subject to the law and practice applicable to other civil actions cognizable in the Supreme Court.

C. If any of the provisions in paragraphs 5 through 9 of subsection B of this section are determined to be unconstitutional or otherwise unenforceable by the final nonappealable ruling of a court of competent jurisdiction, then the following minimal appeal procedures will go into effect:

1. The appeal shall be heard by a committee consisting of at least three people that were not involved in the original adverse benefit determination;

2. The committee may request any additional information it deems necessary to make a decision, including having the covered employee submit to a medical exam;

3. The committee shall notify the covered employee in writing of its decision, including an explanation of the decision and his or her right to judicial review;

4. The committee shall review the determination and issue a decision no later than forty-five (45) days from the date the notice of contest is received;

5. If any part of an adverse benefit determination is upheld by the committee, the covered employee may then file a petition for review in a proper state district court; and

6. The district court shall rely on the record established by the internal appeal process and use a deferential standard of review.

D. The provisions of this section shall apply to the extent not inconsistent with or preempted by any other applicable law or regulation.

E. All intentional tort or other employers' liability claims may proceed through the appropriate state courts of Oklahoma, mediation, arbitration, or any other form of alternative dispute resolution or settlement process available by law.

SECTION 141. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 212 of Title 85A, unless there is created a duplication in numbering, reads as follows:

This act shall be liberally construed to give the fullest effect of its provisions. Any conflict between this act and any other law shall be resolved in favor of the operation of this act.

SECTION 142. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 213 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. In any action brought to challenge, in whole or in part, the constitutionality of this act, any party to such action may take a direct appeal from the decision of any lower court to the Supreme Court and the Supreme Court shall retain the appeal. The Supreme Court on an expedited basis shall consider any such appeal.

B. To the extent this act, or any part thereof, is declared to be unconstitutional or unenforceable, it is specifically intended that:

1. For partial invalidity of this act, where any section of this act is ruled to be unconstitutional or invalid, the same shall not affect the validity of this act as a whole, or any part thereof other than the part so decided to be unconstitutional or invalid;

2. Any employer that became a qualified employer under this act shall not be deemed to have failed to secure workers' compensation insurance;

3. The rights and obligations of a qualified employer and its employees shall be subject to the exclusive remedy provisions of Section 5 of this act and an employer that becomes a qualified employer under this act shall be liable for injury to employees only to the extent to which an employer that complied with the provisions of the Administrative Workers' Compensation Act would be liable to employees in compensation for such injuries under the Administrative Workers' Compensation Act; and

4. A qualified employer shall have ninety (90) days from any final decision declaring this act or any part thereof

unconstitutional to secure compliance with the Administrative Workers' Compensation Act.

SECTION 143. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 220 of Title 85A, unless there is created a duplication in numbering, reads as follows:

Sections 143 through 171 of this act shall be known and may be cited as the "Workers' Compensation Arbitration Act".

SECTION 144. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 221 of Title 85A, unless there is created a duplication in numbering, reads as follows:

All agreements to arbitrate claims for injuries covered by the Administrative Workers' Compensation Act shall be valid and enforceable in this state when:

1. The employer provides notice of the existence of an agreement to arbitrate to both the employee and the employer's workers' compensation insurance provider;

2. The employer files an alternative dispute resolution program with the Workers' Compensation Commission, as defined in the Administrative Workers' Compensation Act;

3. The employers’ Certified Medical Plan files an alternative dispute resolution program with the Commission, as defined in the Administrative Workers’ Compensation Act; or

4. The agreement is subject to the Federal Arbitration Act and contains a provision that requires that, in addition to other

remedies, any party to the arbitration be given the opportunity to appeal any decision on any issue of the arbitrator to the Workers' Compensation Commission.

SECTION 145. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 222 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in the Workers' Compensation Arbitration Act, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

B. A person has notice if the person has knowledge of the notice or has received notice.

C. A person shall be deemed to have received notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of the communications.

SECTION 146. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 223 of Title 85A, unless there is created a duplication in numbering, reads as follows:

The Workers' Compensation Arbitration Act governs an agreement to arbitrate made on or after January 1, 2014. The Workers' Compensation Arbitration Act governs an agreement to arbitrate made before January 1, 2014, if all the parties to the agreement or to the arbitration proceeding agree in writing.

SECTION 147. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 224 of Title 85A, unless there is created a duplication in numbering, reads as follows:

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

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

1. Waive or agree to vary the effect of the requirements of subsection A of Section 148, subsection A of Section 149, Section 150, subsection A or B of Section 160, Section 169 or Section 171 of this act;

2. Agree to unreasonably restrict the right to notice of the initiation of an arbitration proceeding under Section 152 of this act;

3. Agree to unreasonably restrict the right to disclosure of any facts by an arbitrator under Section 155 of this act;

4. Waive the right of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under Section 159 of this act; or

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

C. A party to an agreement to arbitrate or to an arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or subsection A or C of Section 146, Sections 150, 157 and 161, subsection D or E of Section 163, Sections 165, 166 and 167, or subsection A or B of Section 168 of this act.

SECTION 148. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 225 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in Section 172 of this act, an application for judicial relief under this act shall be made by application and motion to the Commission and heard in the manner provided by law or rule of the Commission for making and hearing motions.

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

SECTION 149. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 226 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. A written agreement to submit any existing or subsequent controversy arising between the parties to arbitration is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.

B. An arbitrator shall decide whether a condition precedent to arbitration has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

C. If a party to a proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the Commission, unless the Commission otherwise orders.

SECTION 150. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 227 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. On application and motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate under the agreement:

1. If the refusing party does not appear or does not oppose the motion, the Commission shall order the parties to arbitrate; and

2. If the refusing party opposes the motion, the Commission shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate. The Commission may also assess costs against the party opposing the motion if it concludes the opposition was not brought in good faith to be deposited in the Workers' Compensation Fund created by the Administrative Workers' Compensation Act.

B. On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the Commission shall proceed summarily to decide the issue. If the Commission finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate. The Commission may also assess costs against the party opposing the motion if the Commission concludes the opposition was not brought in good faith to be deposited in the Workers' Compensation Fund created by the Administrative Workers' Compensation Act.

C. If the Commission finds that the parties have not entered into an enforceable arbitration agreement, the dispute shall be resolved under the Administrative Workers' Compensation Act.

D. If an action is initiated in district court to determine whether an enforceable arbitration agreement exists, on motion by the responding party, that proceeding shall be transferred to the Commission for determination.

E. If a party challenges the enforceability of an arbitration agreement, the underlying claim, including all benefits, shall be stayed until the Commission determines whether an enforceable arbitration agreement exists.

SECTION 151. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 228 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. Before an arbitrator is appointed and authorized to act, the Commission, on application and motion of a party to an arbitration proceeding and for good cause shown, may enter a judgment for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

B. After an arbitrator is appointed and authorized to act:

1. The arbitrator may issue further or revised orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

2. A party to an arbitration proceeding may move the Commission for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

C. A party does not waive a right of arbitration by making an application and motion under subsection A or B of this section.

SECTION 152. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 229 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. A person shall initiate an arbitration proceeding by giving written notice to the Commission and the other parties to the arbitration agreement. Notice shall be served on the parties in the manner prescribed by the arbitration agreement, or, if the arbitration agreement does not address the method of notice, then by the service of process for civil actions provided under Title 12 of the Oklahoma Statutes.

B. Notice of an arbitration proceeding shall contain:

1. The general nature of the controversy;

2. The remedy and alleged damages sought; and

3. A copy of the arbitration agreement governing the controversy.

C. An objection to the sufficiency of notice shall be made to the Commission before the initial hearing with the appointed arbitrator.

SECTION 153. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 230 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in subsection C of this section, on application and motion of a party to an arbitration agreement or arbitration proceeding, the Commission may order consolidation of separate arbitration proceedings as to all or some of the claims if:

1. There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

2. The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

3. The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

4. Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

B. The Commission may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

C. The Commission may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

SECTION 154. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 231 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. If the parties to an arbitration agreement agree on a method for appointing an arbitrator, that method shall be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the Commission, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator appointed by the Commission has all the powers of an arbitrator designated by the arbitration agreement.

B. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding, or a known, existing, and substantial relationship with a party to the arbitration proceeding, may not serve as an arbitrator unless agreed to in writing by the parties.

SECTION 155. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 232 of Title 85A, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

C. If an arbitrator discloses a conflict under subsection A or B of this section, any party to the arbitration agreement or the arbitration proceeding may have the arbitrator removed by filing a notice of conflict with the Commission. If a notice of conflict is not filed within ten (10) days of disclosure of the conflict, the parties waive their rights to have any order or award entered vacated under Section 166 of this act.

SECTION 156. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 233 of Title 85A, unless there is created a duplication in numbering, reads as follows:

If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under Section 158 of this act.

SECTION 157. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 234 of Title 85A, unless there is created a duplication in numbering, reads as follows:

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

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

C. The failure of an arbitrator to make a disclosure required by Section 155 of this act shall not cause any loss of immunity under this section.

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

1. The extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the

arbitration organization against a party to the arbitration proceeding; or

2. A hearing on an application and motion to vacate an award under paragraphs 1 or 2 of subsection A of Section 166 of this act if the movant establishes prima facie that a ground for vacating the award exists.

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

SECTION 158. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 235 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. Arbitrations shall be conducted in a fair and expeditious manner. The authority conferred on arbitrators includes, without limitation, the power to hold conferences and hearings with the parties, determine the admissibility, relevance, materiality and weight of any evidence, as well as ask questions of any witnesses during the proceedings.

B. An arbitrator may decide a request for summary disposition of a claim or particular issue:

1. If all interested parties agree; or

2. On request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

C. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five (5) days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. On request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy on the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The

Commission, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

D. At a hearing under subsection C of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

E. If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed according to the rules of the arbitration organization through which the arbitration is being conducted or, in the absence of such rules, by application to the Commission.

SECTION 159. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 236 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. A party to an arbitration proceeding may be represented by a lawyer.

B. Each party shall be responsible for payment of his or her legal fees incurred during arbitration, except as provided for in Section 164 of this act.

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

SECTION 160. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 237 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon application and motion to the Commission by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action. A witness may be allowed to appear telephonically or by any other available means that allows contemporaneous cross-examination.

B. In order to make the proceedings fair, expeditious, and cost-effective, on request of a party or witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

C. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

D. If an arbitrator permits discovery under subsection C of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

E. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

F. All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

G. The Commission may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the Commission so as to make the arbitration proceeding fair, expeditious, and cost-effective.

SECTION 161. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 238 of Title 85A, unless there is created a duplication in numbering, reads as follows:

If an arbitrator makes a pre-award ruling in favor of a party, the party may request the arbitrator to incorporate the ruling into an award under Section 162 of this act. A prevailing party may make an application and motion to the Commission for an expedited judgment to confirm the award under Section 165 of this act, in which case the Commission shall summarily decide the motion. The Commission shall issue a judgment to confirm the award unless the court vacates, modifies, or corrects the award under Section 166 or 167 of this act.

SECTION 162. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 239 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. An arbitrator shall make a record of the award. The award may contain the evidence and conclusion upon which the award was based unless the agreement of the parties specifies the type of award to be issued. The record shall be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

B. An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the Commission. The Commission may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The Commission or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

SECTION 163. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240 of Title 85A, unless there is created a duplication in numbering, reads as follows:

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

1. On a ground stated in paragraph 1 or 3 of subsection A of Section 167 of this act;

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

3. To clarify the award.

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

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

D. If a motion to the Commission is pending under Section 166 or 167 of this act, the Commission may submit the claim to the arbitrator to consider whether to modify or correct the award:

1. On a ground stated in paragraph 1 or 3 of subsection A of Section 167 of this act;

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

3. To clarify the award.

E. An award modified or corrected under this section is subject to Sections 165, 166 and 167 of this act.

SECTION 164. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 241 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. An arbitrator may award benefits set forth in Sections 45, 46, 47 and 51 of this act.

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

C. As to all remedies other than those authorized by subsections A and B of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the Commission is not a ground for refusing to confirm an award under Section 165 of this act or for vacating an award under Section 166 of this act.

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

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

SECTION 165. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 242 of Title 85A, unless there is created a duplication in numbering, reads as follows:

After a party to an arbitration proceeding receives notice of an award, the party may make an application and motion to the Commission for a judgment confirming the award at which time the Commission shall issue a confirming judgment unless the award is modified or corrected under Section 163 or 167 of this act or is vacated under Section 166 of this act.

SECTION 166. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 243 of Title 85A, unless there is created a duplication in numbering, reads as follows:

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

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

2. There was:

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 158 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 152 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 155 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 the ground is known or by the exercise of reasonable care would have been known by the movant.

C. If the Commission vacates an award it may order a rehearing. If the award is vacated on a ground stated in paragraph 1, 2 or 6 of subsection A of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in paragraph 3, 4 or 5 of subsection A of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as that provided in subsection B of Section 162 of this act for an award.

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

SECTION 167. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 244 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. On application and motion made within thirty (30) days after movant receives notice of the award or within thirty (30) days after the movant receives notice of a modified or corrected award, the Commission shall modify or correct the award if:

1. There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

2. The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

3. The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

B. If a motion made under subsection A of this section is granted, the Commission shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the Commission shall confirm the award.

C. A motion to modify or correct an award under this section may be joined with a motion to vacate the award.

SECTION 168. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 245 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. On granting a motion to confirm or vacate an order, the Commission shall enter a judgment in conformity therewith. The judgment may be recorded, docketed and enforced as any other judgment in its jurisdiction.

B. On application of a prevailing party, the Commission may award reasonable attorney fees and other reasonable expenses of litigation incurred in the proceeding.

SECTION 169. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 246 of Title 85A, unless there is created a duplication in numbering, reads as follows:

The Commission has exclusive jurisdiction to enforce and enter judgment confirming, vacating, correcting or modifying an award under this act.

SECTION 170. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 247 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. A party may appeal the following actions to the district court as provided in Section 171 of this act:

1. An order denying a motion to compel arbitration;

2. An order granting a motion to stay arbitration;

3. An order confirming or denying confirmation of an award;

4. An order modifying or correcting an award;

5. An order vacating an award without directing a rehearing; or

6. A final judgment entered under the Workers' Compensation Arbitration Act.

SECTION 171. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 248 of Title 85A, unless there is created a duplication in numbering, reads as follows:

An application and motion under judicial review of a judgment or award entered by the Commission under this act shall be made in the district court in the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court in the county in which it was held. Otherwise, the motion may be made in the district court in the county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the district court located either in Oklahoma City or Tulsa. All subsequent motions shall be made in the court hearing the initial motion unless the court otherwise directs.

SECTION 172. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 249 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. 1. All public entities of this state, their agencies and instrumentalities, authorities, and public trusts of which they are beneficiaries shall provide workers' compensation to their employees and elected officials engaged in either governmental or proprietary functions in accordance with this section. Compensation or indemnification for compensation shall be paid out of the funds of the public entities.

2. Except as otherwise provided, the state and all its institutions of higher education, departments, instrumentalities, institutions, and public trusts of which it or they are beneficiaries shall insure against liability for workers' compensation with CompSource Oklahoma and shall not insure with any other insurance carrier unless:

a. CompSource Oklahoma refuses to accept the risk when the application for insurance is made,

b. specifically authorized by law, or

c. the state entity can obtain workers' compensation insurance coverage at the same cost or at a lower cost from another insurance carrier licensed in this state.

3. The state, all state institutions of higher education except comprehensive universities, and all state departments, instrumentalities, institutions, and public trusts of which the state is a beneficiary, may self-insure under rules promulgated by CompSource Oklahoma. Self-insurance administration may only be obtained through CompSource Oklahoma. The state, all state institutions of higher education except comprehensive universities, and all state departments, instrumentalities, institutions, and public trusts so electing to self-insure shall pay premiums set by CompSource Oklahoma which shall collect premiums, pay claims and provide for excess insurance. All dividends or profits accumulating from a self-insurance program shall be refunded to the participants on a formula devised by CompSource Oklahoma.

B. All counties, cities and towns, their instrumentalities and public trusts of which they are beneficiaries shall insure against their liability for workers' compensation with CompSource Oklahoma or, through any combination of the following, may:

1. Self-insure and make any appropriation of funds to cover their risk;

2. Secure reinsurance or excess insurance over and above a self-insurance retention in any manner authorized by subsections B and C of Section 167 of Title 51 of the Oklahoma Statutes;

3. Secure compensation for their employees in the manner provided in The Governmental Tort Claims Act, subsection C of Section 167 of Title 51 of the Oklahoma Statutes; or

4. Insure with other insurance carriers licensed in the State of Oklahoma.

C. Boards of education, their instrumentalities and public trusts of which they are beneficiaries shall insure against their liability for workers' compensation with CompSource Oklahoma or, through any combination of the following, may:

1. Self-insure and make any appropriation of funds to cover their risk;

2. Secure reinsurance or excess insurance over and above a self-insurance retention in any manner authorized by subsection B of Section 168 of Title 51 of the Oklahoma Statutes; or

3. Insure with other insurance carriers licensed in the State of Oklahoma.

D. Comprehensive universities shall insure against their liability for workers' compensation with CompSource Oklahoma or, if it can be demonstrated to the Board of Regents of the comprehensive university prior to the inception date of a workers' compensation policy that the policy will result in a lower cost than one with CompSource Oklahoma, through any combination of the following:

1. Self-insurance, making any appropriation of funds to cover their risk; or

2. Insurance with other insurance carriers licensed in the State of Oklahoma.

E. In addition to any other provision of this section, city, county, city-county, and public trust hospitals may insure with other insurance carriers licensed in this state if it can be demonstrated to the governing body of the hospital prior to the inception date of a workers' compensation policy each year that the policy will result in a lower cost than one with CompSource Oklahoma.

F. For purposes of this act, all contracts of employment for state, county, municipal, and state-funded educational entities and public trusts will be considered to have been entered into in this state regardless of where the work is performed.

G. When a person is employed by the state, a municipality, a county, or by any political subdivision thereof, and, while off-duty from the employment, is employed by a private employer, the private employer alone shall be liable for compensation under this act for any injury or death of the person arising out of and in the course of employment which occurs during the hours of actual employment by the private employer. The provisions of this subsection shall not relieve the state, a municipality or a county, or any political subdivision thereof, from providing disability benefits to which a person may be entitled pursuant to a pension or retirement plan. The provisions of this subsection shall not preclude an employee or group of employees so employed from providing separate compensation coverage for off-duty employment by a private employer.

SECTION 173. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 250 of Title 85A, unless there is created a duplication in numbering, reads as follows:

Any claimant may, upon the payment of the Workers' Compensation Commission's filing fee, dismiss any claim brought by the claimant at any time before final submission of the case to the Commission for decision. Such dismissal shall be without prejudice unless the words "with prejudice" are included in the order. If any claim that is filed within the statutory time permitted by Section 18 of this act is dismissed without prejudice, a new claim may be filed within one (1) year after the entry of the order dismissing the first claim even if the statutory time for filing has expired.

SECTION 174. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 251 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. The Workers' Compensation Commission shall establish a workers' compensation counselor or ombudsman program to assist injured workers, employers and persons claiming death benefits in obtaining benefits under this act. A special effort shall be made to equip counselors or ombudsmen with sufficient resources to assist injured workers through the system without the necessity of retaining legal representation.

B. Workers' compensation counselors or ombudsmen shall provide information to injured workers; investigate complaints; communicate with employers, insurance carriers, self-insurers, and health care providers; provide informational seminars and workshops on workers' compensation for medical providers, insurance adjustors, and employee and employer groups; and develop informational materials for employees, employers and medical providers.

C. The Commission shall mail a notice to the injured worker within ten (10) days of the filing of an Employer’s First Notice of Injury. The notice shall advise the injured worker of the availability of the services of the Commission's counselor or ombudsman program and of the availability of mediation and other forms of alternative dispute resolution to assist the injured worker. The Commission shall provide additional information as the Commission may determine necessary.

D. The Commission shall develop a program that provides for annual training for own-risk employers and claims representatives handling workers’ compensation claims in Oklahoma. The training shall include information about the alternative dispute resolution program, including counselor and ombudsman programs, mediation, and other services provided by the Commission.

SECTION 175. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 252 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. The Workers' Compensation Commission shall develop an alternative dispute resolution program which affords an injured employee the opportunity to obtain benefits by request or informal procedure. The program shall include an increased emphasis on making mediation and other alternative dispute resolution programs affordable and convenient to an injured employee not represented by counsel.

B. Participation in an alternative dispute resolution program is not a prerequisite to the commencement of a claim for benefits under this act. A request for alternative dispute resolution or a consent to participate in such program does not invoke the jurisdiction of the Commission.

C. Mediation shall be voluntary, informal, and nonbinding in any claim arising pursuant to the provisions of this act, except for claims against the Multiple Injury Trust Fund and medical treatment issues subject to a certified workplace medical plan. Provided, however, the parties may waive mediation and proceed directly to an administrative hearing.

D. A Commission mediator, appointed by the Commission, shall conduct an informal mediation between the parties in regard to claims for a closed period of lost time where the employee has returned to work, for medical benefits only, for reimbursement of travel expenses and medical treatment, in cases in which the employee is not represented by an attorney, or there is no record of insurance coverage. Such mediation shall be conducted by the Commission mediator within thirty (30) days of the filing of a request for any such benefit.

E. Upon the filing of a request for an administrative hearing on issues not specifically listed in subsection D of this section, the Commission shall set the case for prehearing before the assigned judge within fifteen (15) days. At the prehearing, the administrative law judge shall accept a waiver of mediation by the parties or appoint a mediator and issue an order reflecting such appointment. The mediator shall contact the parties and schedule a mediation session within thirty (30) days of such order, unless otherwise agreed to by the parties.

F. Mediation is confidential and no part of the proceeding shall be considered a matter of public record. Recommendations of the mediator are not binding unless the parties enter into a settlement agreement. If an agreement is not reached, the results and statements made during the mediation are not admissible in any following proceeding.

G. The Commission shall be responsible for certifying those persons who are eligible and qualified to serve as mediators. An individual may be certified as a mediator if the applicant meets the qualifications as required by the Commission. A certified mediator may be an attorney or nonattorney who has worked in the area of Oklahoma workers’ compensation benefits for at least five (5) years. Mediators serving as Commission-certified mediators on the effective date of this section shall serve the remainder of their respective five-year certification periods and may reapply for successive certification periods.

H. Each certified mediator shall remain on the list for five (5) years, unless removed. Mediators shall be required to complete at least six (6) hours of continuing education per two-year period in the areas of mediation and workers' compensation. Proof of compliance with this requirement shall be submitted to the Commission. This continuing education requirement shall be in addition to any other such general requirement which may be required by the Oklahoma State Bar Association. Cost of continuing education is to be borne by the applicant.

I. Mediators shall be compensated at the rate or fee as determined by the mediator; provided, however, the rate or fee shall not exceed a maximum rate to be established by the Commission by rule. The cost of mediation shall be paid by the respondent or its insurance carrier. A mediator must schedule mediations for a minimum two-hour block of time, and may not schedule more than one mediation to take place at a time.

J. At the time of a mediation, the claimant shall be in attendance unless all parties agree, and all parties shall be represented during the entire mediation session by a person with full settlement authority to settle any issue of the claim. If a party does not have full settlement authority, or does not participate in good faith in the mediation process, the mediator shall report to the assigned administrative law judge of the Commission who may for good cause shown assess costs, attorney fees, and sanctions.

K. To encourage early resolution of claims, an injured employee may participate in mediation without counsel. Upon compromise settlement of the claim, the parties may submit the settlement agreement to any administrative law judge for final approval.

SECTION 176. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 253 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. Any claim for any benefit under this act shall be commenced with the filing of an Employee's First Notice of Claim for Compensation by the employee with the Workers' Compensation Commission. The claim shall contain a statement that all matters stated therein are true and accurate and shall be signed by the claimant and the claimant's agent, if any. Any person who signs this statement or causes another to sign this statement knowing the statement to be false shall be guilty of perjury. An individual who signs on behalf of a claimant may be presumed to have the authorization of the claimant and to be acting at the claimant's direction.

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

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

SECTION 177. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 254 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. The Workers' Compensation Commission shall create, maintain and review a list of licensed physicians who shall serve as independent medical examiners from a list of licensed physicians who have completed such course study as the Commission may require. An independent medical examiner must agree to examine an employee within forty-five (45) days of appointment. The Commission shall, to the best of its ability, include the most experienced and competent physicians in the specific fields of expertise utilized most often in the treatment of injured employees. The period of qualification shall be two (2) years. Physicians may be qualified for successive two-year periods. Physicians serving as independent medical examiners on the effective date of this act shall serve the remainder of their respective two-year qualification periods and may reapply for successive qualification periods. The Commission may remove an independent medical examiner from the list for cause.

B. An administrative law judge may appoint an independent medical examiner to assist in determining any issue before the Commission. In the event surgery is recommended by a treating physician, upon request of the employer, an independent medical examiner shall be appointed to determine the reasonableness and necessity of the recommended surgery. Such independent medical examiner shall be qualified to perform the type of surgery recommended.

C. An independent medical examiner shall be selected from the list of independent medical examiners within ten (10) days when the employer or the employee petitions the Commission for the selection of an independent medical examiner. The independent medical examiner shall be certified by a recognized specialty board in the area or areas appropriate to the condition under review.

D. The Commission shall, to the best of its ability, maintain a geographic balance of independent medical examiners.

E. Counsel for the employee and employer are responsible for transmittal of the employee's medical records to the independent medical examiner within ten (10) days of appointment.

F. After a physical examination and review of medical records and other appropriate information, including depositions and surveillance video, the independent medical examiner shall submit a verified written report to the Commission and to the parties. In the event the independent medical examiner determines that more medical treatment is necessary, the employer shall designate a treating physician to provide the indicated treatment.

G. Any independent medical examiner selected pursuant to the provisions of this section shall be reimbursed for the medical examination, reports and fees in a reasonable and customary amount set by the Commission, and these costs shall be borne by the employer.

H. The Commission, in consultation with the Advisory Council on Workers' Compensation, shall create a review process to oversee on a continuing basis the quality of performance and the timeliness of the submission of medical findings by independent medical examiners.

I. If the Commission does not follow the opinion of the independent medical examiner on any issue, the administrative law judge or member of the Board of Review shall set out its reasons for deviating from the opinion of the independent medical examiner. The opinion of the independent medical examiner shall be followed unless there is clear and convincing evidence to the contrary.

J. Upon receipt of an independent medical examiner's report, any party shall have the right to object to the introduction of the report into evidence. The objection must be made by giving written notification to all parties and to the Commission within ten (10) days after receipt of the report. The employer shall be responsible for the reasonable charges of the physician for such testimony, preparation time, and the expense of the deposition.

SECTION 178. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 255 of Title 85A, unless there is created a duplication in numbering, reads as follows:

For cases not covered by a certified workplace medical plan, and where the employer, insurance company, or own-risk employer do not provide case management, case management may be granted by the Workers' Compensation Commission on the request of any party, or when the Commission determines that case management is appropriate. The administrative law judge shall appoint a case manager from a list of qualified case managers developed, maintained and periodically reviewed by the Commission. The period of qualification shall be two (2) years. Case managers may be qualified for successive two-year periods. Case managers serving as qualified case managers on the effective date of this act shall serve the remainder of their respective two-year qualification periods and may reapply for successive qualification periods. The reasonable and customary charges of a medical case manager appointed by the Commission shall be borne by the employer or insurance carrier. One change of case manager per party shall be made upon application of any party.

SECTION 179. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 256 of Title 85A, unless there is created a duplication in numbering, reads as follows:

When a compensable injury results in the loss of one or more eyes, teeth, or members of the body, or the replacement of a joint, the employer shall furnish such prosthetic devices as may be necessary as determined by the Workers' Compensation Commission in the treatment and rehabilitation of the injured worker for the lifetime of the worker. When a worker sustains a compensable injury, arising out of and in the course of his or her employment, which results in damage to a prosthetic device with which such worker is equipped, the employer shall repair or replace such device. Provided, that a subsequent injury to the part of the body for which a prosthetic device is provided shall terminate the obligation of the employer to provide such prosthetic device.

SECTION 180. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 257 of Title 85A, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

SECTION 181. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 258 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. Awards for permanent partial disability shall be made for the total number of weeks of compensation which the Workers' Compensation Commission shall find the claimant will be entitled to receive, less any sums previously paid which the Commission may find to be a proper credit thereon. When the award becomes final, the whole sum or any unpaid portion thereof shall operate as a final adjudicated obligation and payment thereof may be enforced by the claimant or in case of the claimant's death, by the surviving beneficiary entitled to the proceeds as provided in Section 43 of this act. All awards shall be paid by periodic installments as determined by the Commission. Whenever an injured person receives an award for permanent partial disability, the injured employee or claimant, for good cause shown, may have the award commuted to a lump-sum payment by permission of the Commission. The lump-sum payment shall not exceed twenty-five percent (25%) of the total award. The balance of the total award shall be paid in periodic installments.

B. Awards for permanent total disability shall entitle the claimant to receive weekly income benefits for the period prescribed in this act. When an award for permanent total disability becomes final, the accrued portion thereof shall operate as a final adjudicated obligation and payment thereof may be enforced by the claimant or in case of the claimant's death, by the surviving beneficiary entitled to the proceeds as provided in this act. Permanent total disability awards shall not be commuted to a lump-sum payment.

SECTION 182. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 259 of Title 85A, unless there is created a duplication in numbering, reads as follows:

Every employer and insurance carrier who schedules any employee as a person employed by the employer for the purpose of paying or collecting insurance premiums on a workers' compensation insurance policy or who pays, receives or collects any premiums upon any insurance policy covering the liability of such employer under the workers' compensation law by reason of or upon the basis of the employment of any such employee shall be estopped to deny that such employee was employed by the employer.

SECTION 183. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 260 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. A fee of One Hundred Forty Dollars ($140.00) per case, including any Joint Petition authorized by this act, shall be collected by the Workers' Compensation Commission and assessed as costs to be paid by the party against whom any award becomes final, to be deposited as follows:

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

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

3. Twenty-five Dollars ($25.00) to the credit of the Workers' Compensation Fund for purposes of implementing the provisions of this act, including strengthening and providing additional funding for the Attorney General's Workers' Compensation Fraud Unit, providing counseling services pursuant to the workers' compensation counselor or ombudsman program and safety in the workplace.

B. A fee of One Hundred Thirty Dollars ($130.00) per action to reopen any case pursuant to Section 32 of this act shall be collected by the Commission and assessed as costs to be paid by the party that reopens the case. The fee collected pursuant to this subsection shall be deposited to the credit of the Workers'

Compensation Fund for purposes of implementing the provisions of this act, including strengthening and providing additional funding for the Attorney General's Workers' Compensation Fraud Unit, providing counseling services pursuant to the workers' compensation counselor or ombudsman program and safety in the workplace.

SECTION 184. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 261 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. Persons requesting and receiving copies of documents on file with the Workers' Compensation Commission shall pay a fee to the Commission of One Dollar ($1.00) for each page copied. All fees so collected shall be deposited in the State Treasury in the Workers' Compensation Fund.

B. All penalties and fines imposed by the Commission, upon collection, shall be deposited to the credit of the Workers' Compensation Fund.

SECTION 185. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 262 of Title 85A, unless there is created a duplication in numbering, reads as follows:

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

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

2. This subsection shall not apply:

a. to requests for claims information made by a public officer or by a public employee in the performance of his or her duties on behalf of a governmental entity or as may be allowed by law,

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

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

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

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

f. to requests for claims information made by an employer or personnel service company, including but not limited to an individual or entity, where the worker executes a written authorization permitting the search and designating the employer or personnel service company as the worker's representative for that purpose; however, nothing in this subparagraph shall relieve the employer or personnel service company from complying with the requirements of utilizing the form set forth in paragraph 1 of this subsection.

SECTION 186. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 263 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created an Advisory Council on Workers' Compensation.

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

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

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

3. The President Pro Tempore of the Senate shall appoint three members, two who are attorneys representing the legal profession in this state, one of whom shall be an attorney who practices primarily in the area of defense of workers' compensation claims, and one of whom shall be an attorney who primarily represents claimants, and a medical doctor or doctor of osteopathy actively engaged in the treatment of injured workers.

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

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

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

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

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

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

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

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

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

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

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

K. In addition to other duties required by this section, the Advisory Council shall consult with the Court regarding oversight of independent medical examiners as provided in Section 45 of this act.

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

SECTION 187. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 264 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. The Workers' Compensation Fund established by Section 28 of this act shall be used for the costs of administering this act and for other purposes pursuant to legislative appropriation.

B. For the purpose of providing funds for the Workers' Compensation Fund, each mutual or interinsurance association, stock company, CompSource Oklahoma or other insurance carrier writing workers' compensation insurance in this state shall pay to the Oklahoma Tax Commission an assessment at a rate of one percent (1%) of all gross direct premiums written during each quarter of the calendar year for workers' compensation insurance on risks located in this state 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. Such payments to the Tax Commission shall be made not later than the fifteenth day of the month following the close of each quarter of the calendar year in which such gross direct premium is collected or collectible. Contributions made by insurance carriers and CompSource Oklahoma, under the provisions of this section, shall be considered for the purpose of computing workers' compensation rates.

C. When an employer is authorized to become a self-insurer, the Commission shall so notify the Tax Commission, giving the effective date of such authorization. The Tax Commission shall then assess and collect from the employers carrying their own risk an assessment at the rate of two percent (2%) of the total compensation for permanent total disability awards, permanent partial disability awards and death benefits paid out during each quarter of the calendar year by the employers. Such assessment shall be payable by the employers and collected by the Tax Commission according to the provisions of this section regarding payment and collection of the assessment created in subsection C of this section.

D. It shall be the duty of the Tax Commission to collect the payments provided for in this act. The Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section. The Tax Commission may also enforce payments by proceeding in accordance with the provisions of Section 98 of this act.

E. The Tax Commission shall pay monthly to the State Treasurer to the credit of the General Revenue Fund all monies collected under the provisions of this section.

F. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made pursuant to this section.

SECTION 188. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 265 of Title 85A, unless there is created a duplication in numbering, reads as follows:

Any form, claim, answer or report to be filed by any person with the Workers' Compensation Commission pursuant to this act shall contain or be verified by a written declaration that such form, claim, answer or report is true and made under the penalty of perjury.

SECTION 189. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 266 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. 1. All unexpended funds, assets, property, records, personnel and any outstanding financial obligations and encumbrances of the Workers' Compensation Court before the effective date of this section are hereby transferred to the Workers' Compensation Commission. The personnel transferred shall retain leave, sick and annual time earned and any retirement and longevity benefits which have accrued during their employment with the state. The salaries of employees who are transferred shall not be reduced as a direct and immediate result of the transfer. There shall be no reduction-in-force as a result of the transfer.

2. Any unexpended funds, including interest thereon, held by the State Treasurer in an interest-bearing division special account maintained by the Workers' Compensation Court before the effective date of this act from which a self-insured employer's workers' compensation obligations are paid following nonpayment by the self-insured employer for any reason, including insolvency, shall be transferred to the Workers' Compensation Commission. Such funds shall be expended by the Commission only for the purpose of paying workers' compensation obligations of the self-insured employer, and costs related to the administration of such obligations, to the extent of the availability of such funds.

B. 1. All unexpended funds, assets, property, and records and any outstanding financial obligations and encumbrances of the Individual Self-Insured Guaranty Fund Board before the effective date of this act are hereby transferred to the Individual Self-Insured Guaranty Fund Board created in this act.

2. Any unexpended funds, including interest thereon, held by the State Treasurer in the Individual Self-Insured Guaranty Fund before the effective date of this act, shall be transferred to the Individual Self-Insured Guaranty Fund Board created by this act.

Such funds shall be expended by the Board only as authorized in this act.

3. All unexpended funds, assets, property, records, personnel and any outstanding financial obligations and encumbrances of CompSource Oklahoma before the effective date of this act are hereby transferred to CompSource Oklahoma created by Section 102 of this act. The personnel transferred shall retain leave, sick and annual time earned and any retirement and longevity benefits which have accrued during their employment with the state. The salaries of employees who are transferred shall not be reduced as a direct and immediate result of the transfer. There shall be no reduction-in-force as a result of the transfer.

C. 1. All unexpended funds, assets, property, and records and any outstanding financial obligations and encumbrances of the Group Self-Insurance Association Board before the effective date of this act are hereby transferred to the Group Self-Insurance Association Guaranty Fund Board created in this act.

2. Any unexpended funds, including interest thereon, held by the State Treasurer in the Group Self-Insurance Association Guaranty Fund before the effective date of this act, shall be transferred to the Group Self-Insurance Association Guaranty Fund Board created by this act. Such funds shall be expended by the Board only as authorized in this act.

D. All property and records of the Physician Advisory Committee before the effective date of this act are hereby transferred to the Physician Advisory Committee created in this act.

E. All property and records of the Advisory Council on Workers' Compensation before the effective date of this act are hereby transferred to the Advisory Council on Workers' Compensation created in this act.

F. All unexpended funds, assets, property, records, personnel and any outstanding financial obligations and encumbrances of the Multiple Injury Trust Fund before the effective date of this act are hereby transferred to the Multiple Injury Trust Fund created in this act. The personnel transferred shall retain leave, sick and annual time earned and any retirement and longevity benefits which have accrued during their employment with the state. The salaries of employees who are transferred shall not be reduced as a direct and immediate result of the transfer. There shall be no reduction-in-force as a result of the transfer.

G. The Director of the Office of Management and Enterprise Services is hereby directed to coordinate the transfer of funds, allotments, purchase orders, outstanding financial obligations or encumbrances provided for in subsections A and F of this section, and the transfer of funds, outstanding financial obligations or encumbrances provided for in subsections B and C of this section.

SECTION 190. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 267 of Title 85A, unless there is created a duplication in numbering, reads as follows:

The time within which an act is to be done, as provided for in this act, shall be computed by excluding the first day and including the last day. If the last day is a legal holiday as defined by Section 82.1 of Title 25 of the Oklahoma Statutes, it shall be excluded.

SECTION 191. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 268 of Title 85A, unless there is created a duplication in numbering, reads as follows:

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

Position 1 shall expire 7-1-14.

Position 2 shall expire 7-1-14.

Position 3 shall expire 7-1-14.

Position 4 shall expire 7-1-18.

Position 5 shall expire 7-1-18.

Position 6 shall expire 7-1-16.

Position 7 shall expire 7-1-16.

Position 8 shall expire 7-1-18.

Position 9 shall expire 7-1-18.

Position 10 shall expire 7-1-14.

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

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

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

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

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

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

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

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

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

I. The Court shall be vested with jurisdiction over all claims filed pursuant to the Workers' Compensation Code. All claims so filed shall be heard by the judge sitting without a jury. The Court shall have full power and authority to determine all questions in relation to payment of claims for compensation under the provisions of the Workers' Compensation Code. The Court, upon application of either party, shall order a hearing. Upon a hearing, either party may present evidence and be represented by counsel. The decision of the Court shall be final as to all questions of fact and law; provided, the decision of the Court may be appealed to the Commission. The decision of the Court shall be issued within sixty (60) days following the submission of the case by the parties. The power and jurisdiction of the Court over each case shall be continuing and it may, from time to time, make such modifications or changes with respect to former findings or orders relating thereto if, in its opinion, it may be justified.

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

K. To protect the integrity of the transition from the Workers' Compensation Court to the administrative system created by this act, and to protect all rights and privileges of parties to claims adjudicated by the Workers' Compensation Court, the Commission shall retain all remedies and responsibilities of the Workers' Compensation Court for as long as cases involving claims for compensation accruing before the effective date of this act but filed thereafter or which were pending before or adjudicated by the Workers' Compensation Court shall remain open.

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

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

SECTION 192. REPEALER 74 O.S. 2011, Sections 18m-1 and 18m-2, are hereby repealed.

SECTION 193. REPEALER Title 85 of the Oklahoma Statutes, in its entirety, is hereby repealed.

SECTION 194. Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192 and 193 of this act shall become effective January 1, 2014.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/10/2013 - DO PASS, As Amended and Coauthored.