SENATE FLOOR VERSION
April 5, 2016

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2205 By: Echols of the House

and

Sykes of the Senate

COMMITTEE SUBSTITUTE

[workers' compensation - Volunteer Firefighters Group Insurance Pool - competitive bid - discrimination, disability, soft tissue injury, rebuttable presumption, the Oklahoma Employee Injury Benefit Act, qualified employers, benefit plans, compensation, Oklahoma Option Insured and Self-insured Guaranty Funds, fees and appellate rights - effective date]

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

SECTION 1. AMENDATORY 85 O.S. 2011, Section 380, as amended by Section 45, Chapter 254, O.S.L. 2013 (85 O.S. Supp. 2015, Section 380), is amended to read as follows:

Section 380. 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 Mutual Insurance Company~~ an insurance company selected by the Office of Management and Enterprise Services through a competitive bid which shall administer the Pool. For the premium set by ~~CompSource Mutual Insurance Company~~ the insurance company, 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 Mutual Insurance Company~~ The Office of Management and Enterprise Services shall collect all appropriations for the ~~premium from~~ premiums that were provided to state agencies, public trusts and other instrumentalities of the state prior to the effective date of this act. Any funds received by ~~CompSource Mutual Insurance Company~~ the insurance company from ~~any state agency, public trust, or other instrumentality~~ the Office of Management and Enterprise Services for purposes of workers' compensation insurance pursuant to this section shall be deposited to the credit of the Volunteer Firefighter Group Insurance Pool. ~~CompSource Mutual Insurance Company~~ The insurance company shall collect premiums, pay claims, and provide for excess insurance as needed.

B. ~~CompSource Mutual Insurance Company~~ The Office of Management and Enterprise Services 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 as determined by the insurance company.

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 Mutual Insurance Company~~ the insurance company.

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~~ shall be approved by the ~~Board of Directors of CompSource Mutual Insurance Company~~ Office of Management and Enterprise Services with notice provided pursuant to subsection B of this section. ~~CompSource Mutual Insurance Company~~ The insurance company 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 2. AMENDATORY Section 2, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 2), is amended to read as follows:

Section 2. 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 <u>objective,</u> 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 when the 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;

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 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;

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, 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 107 through 120 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. "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;

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

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

30. "Misconduct" shall include the following:

a. unexplained absenteeism or tardiness,

b. willful or wanton indifference to or neglect of the duties required,

c. willful or wanton breach of any duty required by the employer,

d. the mismanagement of a position of employment by action or inaction,

e. actions or omissions that place in jeopardy the health, life, or property of self or others,

f. dishonesty,

g. wrongdoing,

h. violation of a law, or

i. a violation of a policy or rule adopted to ensure orderly work or the safety of self or others;

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

(2) (a) When determining permanent 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 permanent disability ratings to the spine, physicians shall use criteria established by the ~~most current~~ sixth edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment".

(3) (a) Objective evidence necessary to prove permanent disability 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 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 disability" means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the current edition of the American Medical Association guides to the evaluation of impairment, if the impairment is contained therein;

34. "Permanent partial disability" means a permanent disability 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 findings;

35. "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;

36. "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;

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

38. "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;

39. "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;

40. "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~~ the body parts listed in Section 46 of this title which are amputated or have permanent loss of use;

41. "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;

42. "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;

43. "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;

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

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

46. "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;

47. "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

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

Section 7. 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)~~ If a district court of this state determines that an employer violated a provision of this section, such employer shall be liable for reasonable compensatory damages suffered by an employee as a result of the violation. The employee shall have the burden of proof to show such violation by a preponderance of the evidence. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against shall reduce the ~~back pay~~ compensatory damages otherwise allowable.

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

~~E.~~ D. 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.~~ E. 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.~~ F. This section shall not be construed as establishing an exception to the employment at will doctrine.

~~H.~~ G. 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.

SECTION 4. AMENDATORY Section 45, Chapter 208, O.S.L. 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S. Supp. 2015, Section 45), is amended to read as follows:

Section 45. 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~~ two or

more appointments as prescribed under Section 57 of this title, 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. However, the injured employee's actual earnings plus temporary partial disability shall not exceed 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~~ employer, 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~~ sixth 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, doctor of osteopathy, chiropractor 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 fifty (350) 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 and held in reserve by the employer or insurance company 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 other than misconduct as defined in Section 2 of this act, 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. If the employee is discharged for misconduct, the employer shall have the burden to prove that the employee engaged in misconduct.~~

~~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, 112 and 165 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.~~ <u>6.</u> No payments on any permanent partial disability order shall begin until payments on any preexisting permanent partial disability orders have been completed.

~~8.~~ <u>7.</u> The whole body shall represent a maximum of three hundred fifty (350) weeks.

~~9.~~ <u>8.</u> 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.~~ <u>9.</u> 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.

2. The Vocational Rehabilitation Director shall help injured workers return to the work force. If the injured employee is unable to return to his or her pre-injury or equivalent position due to permanent restrictions as determined by the treating physician, 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. All 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 for an eligible 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. The administrative law judge may order vocational rehabilitation before the injured employee reaches maximum medical improvement, if the treating physician believes that it is likely that the employee's injury will prevent the employee from returning to his or her former employment. 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. A request for vocational rehabilitation services or training shall be filed with the Commission by an interested party not later than sixty (60)

days from the date of receiving permanent restrictions that prevent the injured employee from returning to his or her pre-injury or equivalent position.

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 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 5. AMENDATORY Section 46, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 46), is amended to read as follows:

Section 46. A. ~~An~~ In lieu of compensation provided pursuant to paragraph 4 of subsection C of Section 45 of this title, an injured employee who ~~is entitled to receive permanent partial disability compensation under Section 45 of this act~~ suffers amputation or permanent loss of use of a scheduled member shall receive compensation for each part of the body ~~in accordance with~~ equal to 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 for the scheduled ~~loss~~ member set forth ~~below.~~ as follows:

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 fifty (350) 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 fifty (350) weeks.

SECTION 6. AMENDATORY Section 62, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 62), is amended to read as follows:

Section 62. 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 epidural steroid injection ~~or injections~~ shall be entitled to an extension of an additional eight (8) weeks total, regardless of the number of injections. 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 7. AMENDATORY Section 68, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 68), is amended to read as follows:

Section 68. A. Unless an employee gives oral or written notice to the employer within ~~thirty (30)~~ fifteen (15) days of the date an injury occurs, the rebuttable presumption shall be that the injury was not work-related. Such presumption ~~must~~ may be overcome by a preponderance of the evidence. If the notice of injury is not timely given but the employee overcomes the presumption, no compensation shall be due for the time period prior to the date notice was given. In no event shall compensation be allowed if notice is not given within one hundred twenty (120) days after the date of the injury.

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~~ may be overcome by a preponderance of the evidence.

SECTION 8. AMENDATORY Section 108, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 201), is amended to read as follows:

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

1. "Benefit plan" means a written plan established by a qualified employer under the requirements of ~~Section 110 of this act~~ the Employee Injury Benefit 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~~ "Claimant" means a covered employee or his or her representative or beneficiary who claims benefits under the Employee Injury Benefit Act;

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

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

6. "Employee" means any person defined as an employee pursuant to Section 2 of this act;

~~6.~~ 7. "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 and divisions thereof, counties and divisions thereof and other political subdivisions of this state and public trusts employing a person included within the term employee as defined in this section;

8. "Fully insured plan" means insurance coverage of one hundred percent (100%) of an employer's statutory benefit liability, which may include a self-insured retention of up to Twenty-five Thousand Dollars ($25,000.00) per person, per occurrence;

~~7.~~ 9. "Occupational ~~injury~~ disease" ~~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~~ shall have the same meaning provided pursuant to Section 65 of this title;

~~8.~~ 10. "Qualified employer" means an employer ~~otherwise subject to the Administrative Workers' Compensation Act~~ that ~~voluntarily elects~~ is approved to be exempt from ~~such act~~ the Administrative

Workers' Compensation Act by satisfying the requirements under ~~this act~~ the Employee Injury Benefit Act; and

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

B. Unless otherwise defined in this section, defined terms in the Administrative Workers' Compensation Act shall have the same meaning in ~~this act~~ the Employee Injury Benefit Act.

SECTION 9. AMENDATORY Section 109, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 202), is amended to read as follows:

Section 202. A. Any employer may ~~voluntarily elect~~ apply to ~~be exempt from the Administrative Workers' Compensation Act and~~ become a qualified employer ~~if the employer~~ by submitting to the Department:

1. ~~Is in compliance with the notice requirements in subsections B and H of this section~~ A qualified employer election form published by the Department; ~~and~~

2. ~~Has established a written~~ A benefit plan ~~as described in Section 110 of this act~~ and its proposed effective date, subject to the Department's approval;

3. An annual nonrefundable fee of One Thousand Five Hundred Dollars ($1,500.00);

4. The notice to employees required by subsection G of this section; and

5. Any additional information required pursuant to rules promulgated by the Department.

B. ~~An employer that has elected~~ The Department shall notify an employer whether it has met the requirements to become a qualified employer ~~by satisfying the~~. If such 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~~ have been met, the Department shall issue a certificate of qualified employer to the employer. If such requirements have not been met, the notice shall contain a description of the deficiencies and how such deficiencies may be resolved.

C. The ~~Commissioner~~ Department shall collect and maintain the information required under this section and shall monitor compliance with the requirements of this section. The ~~Commissioner~~ Department may ~~also~~ require ~~an~~ a qualified employer to provide information periodically to confirm ~~its qualified-employer status. Subject to subsection D of this section, the Commissioner~~ that it is still in compliance with the requirements of a qualified employer. The Department shall adopt rules designating the methods and procedures for confirming whether an employer ~~is~~ has met and continues to meet the requirements to become a qualified employer, notifying an employer of any ~~qualifying~~ deficiencies, and the consequences ~~thereof~~ of noncompliance with the requirements of the Employee Injury Benefit Act. The ~~Commissioner~~ Department shall record the date ~~and time each notice of qualified-employer~~ that an employer is approved as a qualified employer and the date that such status ~~is received and the~~ becomes effective ~~date of qualified-employer election~~. The ~~Commissioner~~ Department shall maintain a list on its official website accessible by the public of all qualified employers and the date ~~and time~~ that such ~~exemption~~ status 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~~ If the Department determines that a qualified employer is deficient in any requirements, it shall provide written notice of the deficiency to the employer. Within ten (10) days, the qualified employer shall provide proof to the Department that it has cured the deficiency or it shall automatically lose status as a qualified employer and become subject to the provisions of the Administrative Workers'

Compensation Act. An employer that has lost status as a qualified employer may reapply for such status.

E. The ~~Commissioner~~ Department 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~~ A qualified employer ~~to~~ shall provide ~~its~~ the Department with:

1. Its name, address, contact person and phone number, federal tax identification number, number of persons employed in this state as of a specified date~~,~~;

2. The name, title, address and telephone number of the person to contact for claim administration ~~contact information,~~; and ~~a~~

3. A listing of all covered business locations in the state. The ~~Commissioner~~ Department shall notify the ~~Commissioner~~ Workers' Compensation Commission and the Department 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~~ A qualified employer shall provide written notification to covered employees ~~as required by this section~~ that it does not carry workers' compensation coverage at the time the covered employee is hired or at least five (5) days before the effective time of ~~designation as a qualified employer~~ the benefit plan, as applicable. The notice shall contain the name, title, address and telephone number of the person to contact for claim administration. A 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 covered employees. The ~~Commissioner~~ Department may adopt rules relating to the form, content, and method of delivery of the employee notification required by this section.

H. Two or more employers who are members of a controlled group may apply to the Department for approval as a single qualified employer and be listed on a single qualified employer certificate. The first member of the controlled group shall pay to the Department an annual nonrefundable fee as required by paragraph 3 of subsection

A of this section. Each additional participating member of the controlled group shall:

1. If the controlled group is fully insured, pay to the Department an annual nonrefundable fee of Two Hundred Fifty Dollars ($250.00) on the date of filing written notice of election and every year thereafter; or

2. If the controlled group is self-insured, pay to the Department an annual nonrefundable fee of Seven Hundred Fifty Dollars ($750.00) on the date of filing written notice of election and every year thereafter.

SECTION 10. AMENDATORY Section 110, Chapter 208, O.S.L. 2013, as amended by Section 4, Chapter 390, O.S.L. 2015 (85A O.S. Supp. 2015, Section 203), is amended to read as follows:

Section 203. 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 202 of this title.~~

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~~ compensable injury, on a no-fault basis, with the same statute of limitations, notice of injury reporting, 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, 46 and 47 of this title. 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~~ such Act. Benefit plans shall not be subject to other ~~provision~~ requirements 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 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.~~ Regardless of whether such provisions are incorporated into a benefit plan, qualified employers and their covered employees shall be subject to the provisions of the Administrative Workers' Compensation Act related to:

1. Compensable injury, as defined pursuant to paragraph 9 of Section 2 of this title;

2. Course and scope of employment, as defined pursuant to paragraph 13 of Section 2 of this title;

3. Fraud, pursuant to Section 6 of this title;

4. Discrimination or retaliation, pursuant to Section 7 of this title;

5. Liability other than immediate employer, pursuant to Section 36 of this title; and

6. Failure to appear for scheduled appointments, pursuant to Section 57 of this title.

D. ~~No~~ A qualified employer shall not charge any fee or cost to an employee ~~shall apply~~ related 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.~~

~~F.~~ Information submitted to the ~~Commissioner~~ Department as part of the application for approval as a qualified employer, to confirm eligibility for continuing status as a qualified employer, or as otherwise required by the Oklahoma Employee Injury Benefit Act may not be made public by the ~~Commissioner or by an agent or employee of the Commissioner~~ Department without the written consent of the applicant or qualified employer, as applicable, except that:

1. The information may be discoverable by a party in a civil action or contested case to which the employer that submitted the information is a party, upon a showing by the party seeking to discover the information that:

a. the information sought is relevant to and necessary for the furtherance of the action or case,

b. the information sought is unavailable ~~for~~ from other non-confidential sources, and

c. a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the ~~Commissioner~~ Department; ~~and~~

2. The ~~Commissioner~~ Department may disclose the information to a public officer having jurisdiction over the regulation of insurance in another state if:

a. the public officer agrees in writing to maintain the confidentiality of the information, and

b. the laws of the state in which the public officer serves require the information to be kept confidential; and

3. A qualified employer's benefit plan and employee notice shall be open to the public.

F. A qualified employer's insurance coverage pertains only to covered employees in this state. An employer with employees in other states shall obtain insurance coverage in compliance with the laws of that state; provided:

1. A qualified employer's benefit plan and insurance coverage may apply to an employee who is employed outside of this state on temporary assignment;

2. A qualified employer's insurance policy may include an endorsement that provides coverage for employees working in other states in compliance with the laws of such states; and

3. If an employee is not principally employed in this state but is injured in this state, the employee shall be subject to the provisions of the Act under this title under which the employer provides coverage.

SECTION 11. AMENDATORY Section 111, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 204), is amended to read as follows:

Section 204. 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 equal to the compensation obligation;

2. Furnishing satisfactory proof to the ~~Commissioner~~ Department of the employer's financial ability to pay the compensation. ~~The Commissioner, under~~ Under rules adopted by the ~~Insurance~~ Department

~~or the Commissioner~~ for an individual self-insured employer, the Department 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~~ Department securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the ~~Commissioner~~ Department 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~~ Department 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~~ Department.

C. The ~~Commissioner~~ Department 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~~ Department 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~~ Department 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~~ Department and shall be for the exclusive benefit of any covered employee of a qualified employer.

F. Any security held by the ~~Commissioner~~ Department 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~~ Department 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~~ Department.

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

Section 205. 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 Oklahoma Property and Casualty Guaranty Association in the performance of its duties under this act. 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:

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

2. Self-insured Guaranty Fund:

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

F. On determination by the ~~Commissioner~~ Department that a self-insurer has become an impaired insurer, the ~~Commissioner~~ Department shall release the security required by paragraph 2 of subsection B of Section 111 of this ~~act~~ title and advise the Guaranty Association 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 ~~Commissioner~~ Department and an insurance carrier, appropriate state governmental entity or an approved service organization.

G. The Guaranty Association 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 Guaranty Association 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 Guaranty Association may also:

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

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

Section 206. 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 115 of this ~~act~~ title 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~~ Department 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 14. AMENDATORY Section 118, Chapter 208, O.S.L. 2013, as amended by Section 6, Chapter 390, O.S.L. 2015 (85A O.S. Supp. 2015, Section 211), is amended to read as follows:

Section 211. A. If ~~an~~ a qualified employer denies a claimant's claim for benefits under ~~this act~~ the Employee Injury Benefit Act, the qualified employer shall notify him or her in writing of the decision ~~or the need for additional information~~ within fifteen (15) days after receipt of the claim, subject to a reasonable extension if the qualified employer requests additional information. Unless otherwise provided by law, the adverse benefit determination letter shall contain an explanation of why the claim was denied, including the benefit plan provision or provisions that were the basis for the denial, and a detailed description of how to appeal the determination. The letter shall also inform the claimant of the right to testify at the hearing, produce witnesses in person or by written statement and submit expert reports. Additional claim procedures consistent with this section may be specified in the benefit plan.

B. ~~The benefit plan~~ Qualified employers and claimants shall ~~provide~~ be subject to the following ~~minimum~~ appeal rights:

1. The claimant may appeal in writing an initial adverse benefit determination to an appeals committee within one hundred eighty (180) days following his or her receipt of the adverse benefit determination. The ~~appeal~~ appeals committee shall ~~be heard by a committee consisting~~ consist of at least three people, none of whom are employees of the qualified employer, ~~that~~ were ~~not~~ involved in the original adverse benefit determination or have any pecuniary interest in the outcome of the appeal. The appeals committee shall conduct a full and fair hearing including, but not limited to, the opportunity to present live testimony, witness statements, briefs,

expert reports and oral argument on the merits. The appeals committee shall not give any deference to the claimant's initial adverse benefit determination in its review;

2. The appeals committee may request any additional information it deems necessary to make a decision, including having the claimant submit to a medical exam. The committee shall create a comprehensive record of the hearing and maintain such record for no less than two (2) years from the date the decision on appeal is issued;

3. ~~The committee shall notify the claimant in writing of its decision, including an explanation of the decision and his or her right to judicial review;~~

~~4.~~ Subject to the need for a reasonable extension of time due to matters beyond the control of the benefit plan, the appeals 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. The committee shall provide written notice of its decision to the claimant and the qualified employer. Such notice shall include a detailed explanation of the decision, analysis of evidence presented and instruction for seeking judicial review of the decision. No legal action may be brought by or with respect to a claimant to recover benefits under the benefit plan before the foregoing claim procedures have been exhausted;

~~5. If any part of an adverse benefit determination is upheld by the committee, the~~ 4. The qualified employer or claimant may ~~then file~~ appeal the decision of the appeals committee by filing a petition for review with the Commission within one (1) year after the date the ~~claimant receives~~ notice ~~that~~ of the ~~adverse benefit~~ determination~~, or part thereof, was upheld~~ is received. The appeals committee shall provide the record of the hearing to the Commission within seven (7) days of notice from the Commission. If the Commission determines in its sole discretion that the record is deficient, it shall provide written notice to the appeals committee of the defect or defects, after which the committee shall have three (3) days to submit a cured record. If the record is not cured, the administrative law judge shall presume that the defect or defects are unfavorable to the qualified employer. The Commission shall appoint an administrative law judge to hear ~~any~~ the appeal ~~of an adverse benefit determination~~ as a trial de novo. The Commission shall prescribe additional rules governing the authority and responsibility of the parties, the administrative law judge and the Commission during the appeal processes. The administrative law judge and Commission 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 claimants ~~to recover benefits due to the claimant~~ or employers under the terms of the ~~claimant's~~ applicable plan, including the authority to award or deny benefits and otherwise enforce ~~the claimant's~~ rights under the terms of the benefit plan~~, or to clarify the claimant's rights to future benefits under the terms of the plan~~;

~~6.~~ 5. The ~~Commission~~ administrative law judge shall ~~rely on the record established by the internal appeal process and use an objective standard of~~ review ~~that is not arbitrary or capricious~~ the claim de novo. Any party aggrieved by the judgment, decision, or award made by an administrative law judge may, within ten (10) days of issuance, appeal to the Commission. After hearing, the Commission may reverse or modify the decision of the administrative law judge only if it determines that the decision was against the clear weight of evidence or contrary to law. All such proceedings of the Commission shall be recorded by a court reporter. Any judgment of the Commission which reverses a decision of the administrative law judge shall contain specific findings relating to the reversal. Any award by the administrative law judge or Commission shall be limited to benefits payable under the terms of the benefit plan and, to the extent provided herein, attorney fees and costs; and

~~7.~~ 6. If the claimant appeals to the Commission and any part of the adverse benefit determination is upheld, he or she may appeal to the Oklahoma Supreme Court. 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, decision or award 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.

Such 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 a petition which shall specify why the judgment, decision or award is erroneous or illegal.

The Supreme Court shall require the appealing party 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 comparable civil actions cognizable in the Supreme Court.

~~C. If any of the provisions in paragraphs 5 through 7 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. The appeals committee shall not give any deference to the claimant's initial adverse benefit determination in its review;~~

~~2. The committee may request any additional information it deems necessary to make a decision, including having the claimant submit to a medical exam;~~

~~3. The committee shall notify the claimant 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 claimant 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 rule.~~

~~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.~~

A fee of One Hundred Dollars ($100.00) per appeal to the Supreme Court shall be paid by the party filing the appeal to the Commission and deposited to the credit of the Workers' Compensation Fund as costs for preparing, assembling, indexing and transmitting the record for appellate review. 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 15. This act shall become effective in accordance with the provisions of Section 58 of Article V of the Oklahoma Constitution.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
April 5, 2016 - DO PASS AS AMENDED