

BILL SUMMARY
1st Session of the 55th Legislature

Bill No.:	HB2205
Version:	CCR 2 (B)
Request Number:	10130
Author:	Rep. Echols
Date:	5/26/2015
Impact:	Please see previous summary of this measure

Research Analysis

The following a section by section summary of the substantives changes proposed by CCR 2 (B) of HB2205.

Section 1:

Page 7: Modifies the definition of compensable injury by requiring that an employee under the influence of alcohol or drugs at the time of injury be required to prove by objective, clear and convincing evidence that his or her state of intoxication had no causal relationship to the injury;

Page 20: Modifies the definition of *permanent partial disability (PPD)* to mean a permanent disability after maximum medical improvement has been reach. Currently, PPD is defined as a permanent disability or loss of use that prevents the injured employee from returning to his or her pre-injury or equivalent job.

Page 23: Defines *total loss of use* as 100 percent PPD rating to the specific body part.

Section 2:

Page 24: Prohibits duplicative benefits if the injured employees files an action in two separate jurisdictions and provides that an employee is precluded from the right of action under the Administrative Workers' Compensation Act (AWCA) if he or she makes a claim for an injury in another jurisdiction and a final adjudication is entered in the case.

Page 24: Clarifies that the AWCA applies if the injury occurred on federal facilities or on Indian trust land.

Section 3:

Page 26: Transfer authority to determine if an employer engaged in retaliatory actions against an employee to the district courts and allows the court to award up to \$100,000 in reasonable compensatory damages to an affected employee. The employee will have the burden of proof to show such violations by a preponderance of the evidence.

Section 4:

Page 28: allows the WCC to provide notice to providers by fax, email or other electronic means with receipt of confirmation.

Section 5:

Page 31: Strike a section that provides for the Governor to appoint a special commissioner when any commissioner of the WCC is disqualified for any reason to hear and participate in the determination of any matter pending before the Commission. Clarifies that the WCC's authority to decide issues of fact does not include the power to determine matters relating to the constitutionality of the AWCA.

Section 6: clarifies references.

Section 7:

Page 34: Requires the WCC to comply with the Administrative Procedures Act for rule changes and require the WCC to vote on any substantive changes to a form and the effective date of those changes.

Section 8:

Page 37: Provides that persons not required to be covered under a workers' compensation insurance policy may execute an affidavit of exempt status, which will be form developed by the WCC. Execution of affidavit will serve as a rebuttable presumption that the executor is not an employee for the purposes of the AWCA and is not eligible to seek workers' compensation benefits.

Section 9: clarifies references.

Section 10:

Page 43: Reduces the number of consecutive medical appointments that may be missed from three to two before temporary total disability (TTD) benefits may be terminated by the employer.

Page 44: Provides that an injured employee's actual earnings plus temporary partial disability benefits may not exceed the TTD rate.

Page 46: Simplifies the procedure for determining PPD benefits by striking language relating to settlement agreements, lump-sum payments, attorney fees and assessments.

Page 48: Removes references of impairment when discussing a previous disability.

Page 50: Strikes language outlining compensation for amputation or permanent total loss of use of a scheduled member.

Section 11:

Page 58: Outlines the compensation for amputation or permanent total loss of use of a schedule member as equal to 70 percent of injured employee's average weekly wage, up to \$323, multiplied by a set number of weeks currently outlined in law.

Section 12:

Page 61: Upon a request for change of physician by the employee, the employer may provide a list of three physicians from whom the employee may select the replacement. The measure

provides that the only requirement for a qualified replacement physician is that they be licensed and accredited to perform the necessary treatment.

Section 13:

Page 62: Clarifies that an injured employee is limited to an eight week maximum extension of benefits if the employee is treated with injections for a soft tissue injury.

Section 14:

Page 64: Reduces the notice period for an employee to report an injury from 30 days to 15 days. After 15 days, there is a rebuttable presumption that the injury was not work-related. The measure also sets an absolute deadline of 120 days to report a compensable injury.

Section 15:

Page 65: Allows notice of a hearing or notice of judgements to be delivered via fax, email or other electronic means with confirmation of receipt.

Page 67: Gives the chair of the WCC authority to appoint an ALJ to the en banc panel under certain circumstances provided the appointed judge has not presided over any of the previous hearings on the claim. Currently, this authority lies with the Governor.

Section 16:

Page 69: Provides that payment for any prescription drugs prescribed by the treating physician will continue while an appeal is pending and will be reimbursed by the employee if the appeal finds the employee liable for these costs.

Section 17:

Page 70: Modifies the conditions and time frame for reopening a claim. A review can be conducted on the basis of a change of physical condition within six months from the date of the last order in which monetary benefits or active medical treatment was provided. Furthermore, the measure clarifies failure to comply with a medical treatment plan ordered by the WCC will bar a claimant from reopening a claim.

Section 18: modifies definitions relating to the Oklahoma Employee Injury Benefit Act (EIBA). *Defines fully insured plan* as insurance coverage of 100 percent of an employer's statutory benefit liability.

Section 19:

Page 74: Currently, to become qualified employer exempt from the AWCA, an employer is not required to obtain permission from the Insurance Department (OID). The measure changes this by requiring that employers apply for qualified employer status, submit a written benefit plan and pay an annual nonrefundable \$1500 fee to the OID. The measure provides additional guidance for the OID to regulate qualified employers.

Pages 75-77: Outlines various notice requirements for the OID.

Page 78: Allows two or more employers who are members of the same controlled group to apply for approval as a single qualified employer. For each additional participating member of the controlled group, there will be annual \$250 fees for fully insured groups or \$750 for self-insured groups.

Section 20:

Page 79: Clarifies language to say that benefits, statutes of limitations and notice of injury reporting requirements under the EIBA will mirror those provided by the AWCA. Qualified employers and their cover employees will also be subject to the provision of the AWCA related to compensable injury, course and scope of employment, fraud, discrimination or retaliation, liability other than immediate employer and failure to appear for schedule appointments.

Section 21:

Page 84: Removes reference of surplus lines insurers' ability to sell option plans. According to the OID, Surplus lines carriers are not subject to guaranty funds. In the event of insurer insolvency, injured workers covered under an option plan could be greatly harmed.

Page 85: Current law requires a self-insured qualified employer to get excess coverage or deposit security with OID. The measure requires a combination of excess coverage and security.

Page 86: Adds a process by which the OID can determine that a self-insurer is impaired, notify the Oklahoma Option Self-Insured Guaranty Fund of the impairment, and send the balance of the self-insured employer's security to the guaranty fund for payment of claims. The measure also clarifies that the guaranty fund, not the OID, is responsible for making payments to or on behalf of a covered employee.

Page 87: Modifies a rulemaking directive to allow for rules governing OID approval of self-insured qualified employers, instead of the current provision that allows OID rules for paying injured workers.

Section 22:

Page 88: Requires an adverse benefit determination letter to include a disclaimer of the claimant's right to testify at the hearing, produce witnesses and submit expert reports.

Page 89: Outlines new procedures and requirements for the appeals committee. The committee must provide written notice of its decision to the claimant and the qualified employer. The notice must include a detailed explanation of the decision, analysis of evidence presented and instruction for seeking judicial review of the decision.

Page 95: Establishes a \$100 fee per appeal to the Supreme Court. The fee will be paid by the party filing the appeal and will be deposited in the Workers' Compensation Fund.

Prepared By: Quyen Do

Fiscal Analysis

Upon review of the measure, it has been determined to have no measureable revenue or fiscal considerations.

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Other Considerations

None.

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