

**2nd**

<DateSubmitted>

HOUSE OF REPRESENTATIVES  
CONFERENCE COMMITTEE REPORT

Mr. President:  
Mr. Speaker:

The Conference Committee, to which was referred

**HB2205**

By: Echols of the House and Sykes of the Senate

Title: Workers' Compensation; Administrative Workers' Compensation Act; Employee Injury Benefit Act; violations; disability; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

**SENATE CONFEREES**

|         |       |
|---------|-------|
| Sykes   | _____ |
| Bingman | _____ |
| Jolley  | _____ |
| Marlatt | _____ |
| Treat   | _____ |
| Floyd   | _____ |
| Sparks  | _____ |

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 2ND CONFERENCE COMMITTEE

4 SUBSTITUTE

5 FOR ENGROSSED

6 HOUSE BILL NO. 2205

By: Echols of the House

and

Sykes of the Senate

7  
8  
9  
10 2ND CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to workers' compensation; amending  
12 Sections 2, 3, 7, 18, 19, as amended by Section 4,  
13 H.J.R. No. 1096, p. 1745, O.S.L. 2014, 21, 22, 38,  
45, as amended by Section 2, Chapter 390, O.S.L.  
2015, 46, 56, 62, 68, 71, 78, 80, 108, 109, 110, as  
14 amended by Section 4, Chapter 390, O.S.L. 2015, 111  
and 118, as amended by Section 6, Chapter 390, O.S.L.  
2015, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015,  
15 Sections 2, 3, 7, 18, 19, 21, 22, 38, 45, 46, 56, 62,  
68, 71, 78, 80, 201, 202, 203, 204 and 211), which  
16 relate to the Administrative Workers' Compensation  
Act and the Oklahoma Employee Injury Benefit Act;  
17 modifying definitions; clarifying applicability of  
act; modifying jurisdictional requirement for certain  
18 claims; establishing liability for damages for  
certain violations; specifying burden of proof for  
19 certain violations; limiting certain exemplary or  
punitive damage awards; expanding methods of  
20 providing certain notice; modifying procedure for  
replacement of disqualified Commissioners; modifying  
21 certain powers of the Commission; modifying duties of  
the Commission; providing procedure for Affidavit of  
22 Exempt Status; requiring issuance of certain  
certificate; modifying procedures for confirmation of  
23 certain status; modifying procedures for certain  
notification; modifying grounds for termination of  
24 temporary total disability awards; modifying

1 compensation for temporary partial disability awards;  
2 modifying requirements for award of permanent partial  
3 disability; modifying calculation for specified  
4 permanent partial disability; providing employer  
5 options regarding treating physicians; clarifying  
6 time limit on injections; modifying time limit for  
7 certain notice; providing for appointment of  
8 administrative law judge to en banc panel under  
9 certain circumstances; providing for payment for  
10 prescription drugs during appeal process; providing  
11 for reimbursement under certain circumstances;  
12 modifying procedure and requirements for case review  
13 by the Workers' Compensation Commission; modifying  
14 definitions; modifying procedures for application for  
15 certain employer status; requiring certain notice;  
16 specifying fee schedule for certain groups; modifying  
17 requirements for certain benefit plans; clarifying  
18 applicability of certain insurance coverage;  
19 conforming language; modifying procedures for appeal  
20 of denial of certain claims; requiring maintenance of  
21 certain records; requiring certain notice;  
22 establishing filing fee for certain appeals;  
23 providing for codification; and providing an  
24 effective date.

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

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

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

9        3. "Case management" means the ongoing coordination, by a case  
10 manager, of health care services provided to an injured or disabled  
11 worker, including but not limited to systematically monitoring the  
12 treatment rendered and the medical progress of the injured or  
13 disabled worker; ensuring that any treatment plan follows all  
14 appropriate treatment protocols, utilization controls and practice  
15 parameters; assessing whether alternative health care services are  
16 appropriate and delivered in a cost-effective manner based upon  
17 acceptable medical standards; and ensuring that the injured or  
18 disabled worker is following the prescribed health care plan;

19        4. "Case manager" means a person who is a registered nurse with  
20 a current, active unencumbered license from the Oklahoma Board of  
21 Nursing, or possesses one or more of the following certifications  
22 which indicate the individual has a minimum number of years of case  
23 management experience, has passed a national competency test and  
24

1 regularly obtains continuing education hours to maintain  
2 certification:

- 3 a. Certified Disability Management Specialist (CDMS),
- 4 b. Certified Case Manager (CCM),
- 5 c. Certified Rehabilitation Registered Nurse (CRRN),
- 6 d. Case Manager - Certified (CMC),
- 7 e. Certified Occupational Health Nurse (COHN), or
- 8 f. Certified Occupational Health Nurse Specialist (COHN-  
9 S);

10 5. "Certified workplace medical plan" means an organization of  
11 health care providers or any other entity, certified by the State  
12 Commissioner of Health, that is authorized to enter into a  
13 contractual agreement with an employer, group self-insurance  
14 association plan, an employer's workers' compensation insurance  
15 carrier, third-party administrator or an insured to provide medical  
16 care under the Administrative Workers' Compensation Act. Certified  
17 plans shall only include plans which provide medical services and  
18 payment for services on a fee-for-service basis to medical  
19 providers;

20 6. "Child" means a natural or adopted son or daughter of the  
21 employee under eighteen (18) years of age; or a natural or adopted  
22 son or daughter of an employee eighteen (18) years of age or over  
23 who is physically or mentally incapable of self-support; or any  
24 natural or adopted son or daughter of an employee eighteen (18)

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

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

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

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

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

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

- 1 (3) occurred by chance or from unknown causes, and  
2 (4) was independent of sickness, mental incapacity,  
3 bodily infirmity or any other cause.

4 b. "Compensable injury" does not include:

- 5 (1) injury to any active participant in assaults or  
6 combats which, although they may occur in the  
7 workplace, are the result of non-employment-  
8 related hostility or animus of one, both, or all  
9 of the combatants and which assault or combat  
10 amounts to a deviation from customary duties;  
11 provided, however, injuries caused by horseplay  
12 shall not be considered to be compensable  
13 injuries, except for innocent victims,  
14 (2) injury incurred while engaging in or performing  
15 or as the result of engaging in or performing any  
16 recreational or social activities for the  
17 employee's personal pleasure,  
18 (3) injury which was inflicted on the employee at a  
19 time when employment services were not being  
20 performed or before the employee was hired or  
21 after the employment relationship was terminated,  
22 (4) injury where the accident was caused by the use  
23 of alcohol, illegal drugs, or prescription drugs  
24 used in contravention of physician's orders. If,

1 within twenty-four (24) hours of being injured or  
2 reporting an injury, an employee tests positive  
3 for intoxication, an illegal controlled  
4 substance, or a legal controlled substance used  
5 in contravention to a treating physician's  
6 orders, or refuses to undergo the drug and  
7 alcohol testing, there shall be a rebuttable  
8 presumption that the injury was caused by the use  
9 of alcohol, illegal drugs, or prescription drugs  
10 used in contravention of physician's orders.  
11 This presumption may only be overcome if the  
12 employee proves by objective, clear and  
13 convincing evidence that his or her state of  
14 intoxication had no causal relationship to the  
15 injury,

- 16 (5) any strain, degeneration, damage or harm to, or  
17 disease or condition of, the eye or  
18 musculoskeletal structure or other body part  
19 resulting from the natural results of aging,  
20 osteoarthritis, arthritis, or degenerative  
21 process including, but not limited to,  
22 degenerative joint disease, degenerative disc  
23 disease, degenerative  
24

1 spondylosis/spondylolisthesis and spinal  
2 stenosis, or

3 (6) any preexisting condition except when the  
4 treating physician clearly confirms an  
5 identifiable and significant aggravation incurred  
6 in the course and scope of employment.

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

14 d. A compensable injury shall be established by medical  
15 evidence supported by objective findings as defined in  
16 paragraph ~~30~~ 31 of this section.

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

20 f. Benefits shall not be payable for a condition which  
21 results from a non-work-related independent  
22 intervening cause following a compensable injury which  
23 causes or prolongs disability, aggravation, or  
24 requires treatment. A non-work-related independent

1           intervening cause does not require negligence or  
2           recklessness on the part of a claimant.

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

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

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

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

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

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

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

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

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

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

22        18. a. "Employee" means any person, including a minor, in the  
23                service of an employer under any contract of hire or  
24                apprenticeship, written or oral, expressed or implied,

1 but excluding one whose employment is casual and not  
2 in the course of the trade, business, profession, or  
3 occupation of his or her employer and excluding one  
4 who is required to perform work for a municipality or  
5 county or the state or federal government on having  
6 been convicted of a criminal offense or while  
7 incarcerated. "Employee" shall also include a member  
8 of the Oklahoma National Guard while in the  
9 performance of duties only while in response to state  
10 orders and any authorized voluntary or uncompensated  
11 worker, rendering services as a firefighter, peace  
12 officer or emergency management worker. Travel by a  
13 policeman, fireman, or a member of a first aid or  
14 rescue squad, in responding to and returning from an  
15 emergency, shall be deemed to be in the course of  
16 employment.

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

18 (1) any person for whom an employer is liable under  
19 any Act of Congress for providing compensation to  
20 employees for injuries, disease or death arising  
21 out of and in the course of employment including,  
22 but not limited to, the Federal Employees'  
23 Compensation Act, the Federal Employers'  
24 Liability Act, the Longshore and Harbor Workers'

1 Compensation Act and the Jones Act, to the extent  
2 his or her employees are subject to such acts,

3 (2) any person who is employed in agriculture or  
4 horticulture by an employer who had a gross  
5 annual payroll in the preceding calendar year of  
6 less than One Hundred Thousand Dollars

7 (\$100,000.00) wages for agricultural or  
8 horticultural workers, or any person who is  
9 employed in agriculture or horticulture who is  
10 not engaged in operation of motorized machines,

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

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

21 (5) any person employed by an employer with five or  
22 fewer total employees, all of whom are related by  
23 blood or marriage to the employer, if the  
24 employer is a natural person or a general or

- 1                   limited partnership, or an incorporator of a  
2                   corporation if the corporation is the employer,  
3       (6)   any person employed by an employer which is a  
4                   youth sports league which qualifies for exemption  
5                   from federal income taxation pursuant to federal  
6                   law,  
7       (7)   sole proprietors, members of a partnership,  
8                   individuals who are party to a franchise  
9                   agreement as set out by the Federal Trade  
10                  Commission franchise disclosure rule, 16 CFR  
11                  436.1 through 436.11, members of a limited  
12                  liability company who own at least ten percent  
13                  (10%) of the capital of the limited liability  
14                  company or any stockholder-employees of a  
15                  corporation who own ten percent (10%) or more  
16                  stock in the corporation, unless they elect to be  
17                  covered by a policy of insurance covering  
18                  benefits under the Administrative Workers'  
19                  Compensation Act,  
20       (8)   any person providing or performing voluntary  
21                  service who receives no wages for the services  
22                  other than meals, drug or alcohol rehabilitative  
23                  therapy, transportation, lodging or reimbursement  
24                  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'

1 Compensation Act if the drive-away owner-operator  
2 elects to participate as a sole proprietor, and  
3 (11) any person who is employed as a domestic servant  
4 or as a casual worker in and about a private home  
5 or household, which private home or household had  
6 a gross annual payroll in the preceding calendar  
7 year of less than Fifty Thousand Dollars  
8 (\$50,000.00) for such workers;

9 19. "Employer" means a person, partnership, association,  
10 limited liability company, corporation, and the legal  
11 representatives of a deceased employer, or the receiver or trustee  
12 of a person, partnership, association, corporation, or limited  
13 liability company, departments, instrumentalities and institutions  
14 of this state and divisions thereof, counties and divisions thereof,  
15 public trusts, boards of education and incorporated cities or towns  
16 and divisions thereof, employing a person included within the term  
17 "employee" as defined in this section. Employer may also mean the  
18 employer's workers' compensation insurance carrier, if applicable.  
19 Except as provided otherwise, this act applies to all public and  
20 private entities and institutions. Employer shall not include a  
21 qualified employer with an employee benefit plan as provided under  
22 the Oklahoma Employee Injury Benefit Act in Sections ~~107~~ 200 through  
23 ~~120~~ 213 of this ~~act~~ title;

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

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

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

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

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

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

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

3        27. "Major cause" means more than fifty percent (50%) of the  
4 resulting injury, disease or illness. A finding of major cause  
5 shall be established by a preponderance of the evidence. A finding  
6 that the workplace was not a major cause of the injury, disease or  
7 illness shall not adversely affect the exclusive remedy provisions  
8 of this act and shall not create a separate cause of action outside  
9 this act;

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

13       29. "Medical services" means those services specified in  
14 Section 50 of this ~~act~~ title;

15       30. "Misconduct" shall include the following:

- 16           a. unexplained absenteeism or tardiness,
- 17           b. willful or wanton indifference to or neglect of the  
18              duties required,
- 19           c. willful or wanton breach of any duty required by the  
20              employer,
- 21           d. the mismanagement of a position of employment by  
22              action or inaction,
- 23           e. actions or omissions that place in jeopardy the  
24              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 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

1 to, audiological tests that measure air and  
2 bone conduction thresholds and speech  
3 discrimination ability.

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

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

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

17 33. "Permanent disability" means the extent, expressed as a  
18 percentage, of the loss of a portion of the total physiological  
19 capabilities of the human body as established by competent medical  
20 evidence and based on the current edition of the American Medical  
21 Association guides to the evaluation of impairment, if the  
22 impairment is contained therein;

23 34. "Permanent partial disability" means a permanent disability  
24 ~~or loss of use~~ after maximum medical improvement has been reached

1 ~~which prevents the injured employee, who has been released to return~~  
2 ~~to work by the treating physician, from returning to his or her pre-~~  
3 ~~injury or equivalent job.~~ All evaluations of permanent partial  
4 disability must be supported by objective findings;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13       48. "Total loss of use" means a one-hundred-percent permanent  
14 partial disability rating to the specific body part; and

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

22       SECTION 2.        AMENDATORY        Section 3, Chapter 208, O.S.L.  
23 2013 (85A O.S. Supp. 2015, Section 3), is amended to read as  
24 follows:

1       Section 3. A. Every employer ~~and every employee, unless~~  
2 ~~otherwise specifically provided in this act,~~ shall be subject and  
3 bound to the provisions of the Administrative Workers' Compensation  
4 Act shall pay or provide benefits according to the provisions of  
5 this act for the accidental injury or death of an employee arising  
6 out of and in the course of his or her employment, without regard to  
7 fault for such injury, if the employee's contract of employment was  
8 made or if the injury occurred within this state. If an employee  
9 makes claim for an injury in another jurisdiction and a final  
10 adjudication is entered in the case, the employee is precluded from  
11 his or her right of action under the Administrative Workers'  
12 Compensation Act of this state. If the employee brings an action in  
13 this state prior to a final adjudication in another jurisdiction,  
14 any receipt of benefits in the other jurisdiction shall not bar the  
15 action in this state; provided, however, in no event shall the  
16 Workers' Compensation Commission grant benefits that duplicate those  
17 paid by the employer or insurance carrier in the other jurisdiction.  
18 ~~However, nothing~~ Nothing in this act shall be construed to conflict  
19 with any valid Act of Congress governing the liability of employers  
20 for injuries received by their employees.

21       B. The State of Oklahoma accepts the provisions of the Acts of  
22 Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C.,  
23 Section 290, and hereby extends the territorial jurisdiction of the  
24 Administrative Workers' Compensation Act to all lands and premises

1 within the exterior boundaries of this state which the Government of  
2 the United States of America owns or holds by deed or act of  
3 cession, and to all purchases, projects, buildings, constructions,  
4 improvements and property within the exterior boundaries of this  
5 state belonging to the Government of the United States of America,  
6 in the same way and to the same extent as if the premises were under  
7 the exclusive jurisdiction of this state, subject only to the  
8 limitations placed thereon by the Acts of Congress.

9 C. This act shall apply only to claims for injuries and death  
10 based on accidents which occur on or after ~~the effective date of~~  
11 ~~this act~~ February 1, 2014.

12 ~~C. D.~~ D. The Workers' Compensation Code in effect before ~~the~~  
13 ~~effective date of this act~~ February 1, 2014, shall govern all rights  
14 in respect to claims for injuries and death based on accidents  
15 occurring before ~~the effective date of this act~~ February 1, 2014.

16 SECTION 3. AMENDATORY Section 7, Chapter 208, O.S.L.  
17 2013 (85A O.S. Supp. 2015, Section 7), is amended to read as  
18 follows:

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

- 21 1. Filed a claim under this act;
- 22 2. Retained a lawyer for representation regarding a claim under
- 23 this act;

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

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

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

7 ~~C. If the Commission determines that the defendant violated~~  
8 ~~subsection A of this section, the Commission may award the employee~~  
9 ~~back pay up to a maximum of One Hundred Thousand Dollars~~

10 ~~(\$100,000.00)~~ If a district court of this state determines that an  
11 employer violated a provision of this section, such employer shall  
12 be liable for reasonable compensatory damages suffered by an  
13 employee as a result of the violation. The employee shall have the  
14 burden of proof to show such violation by a preponderance of the  
15 evidence. Interim earnings or amounts earnable with reasonable  
16 diligence by the person discriminated against shall reduce the ~~back~~  
17 ~~pay~~ compensatory damages otherwise allowable. Exemplary or punitive  
18 damage awards made pursuant to this section shall not exceed One  
19 Hundred Thousand Dollars (\$100,000.00).

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

22 ~~E. D.~~ No employer may discharge an employee during a period of  
23 temporary total disability for the sole reason of being absent from  
24

1 work or for the purpose of avoiding payment of temporary total  
2 disability benefits to the injured employee.

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

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

10 ~~H.~~ G. The remedies provided for in this section shall be  
11 exclusive with respect to any claim arising out of the conduct  
12 described in subsection A of this section.

13 SECTION 4. AMENDATORY Section 18, Chapter 208, O.S.L.  
14 2013 (85A O.S. Supp. 2015, Section 18), is amended to read as  
15 follows:

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

1 (5) days after mailing by certified mail or sending by facsimile,  
2 electronic mail or other electronic means with confirmation of  
3 receipt by the employee or his or her representative to the  
4 hospital, physician, or health care provider.

5 B. The notice shall include:

- 6 1. The name of the employer;
- 7 2. The name of the insurer, if known;
- 8 3. The name of the employee receiving the services;
- 9 4. The general nature of the injury, if known; and
- 10 5. Where a claim has been filed, the claim number, if known.

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

22 D. This section shall not ~~avoid~~ void, modify, or amend any  
23 other section or subsection of this ~~act~~ title.

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

3 SECTION 5. AMENDATORY Section 19, Chapter 208, O.S.L.  
4 2013, as amended by Section 4, H.J.R. No. 1096, p. 1745, O.S.L. 2014  
5 (85A O.S. Supp. 2015, Section 19), is amended to read as follows:

6 Section 19. A. There is hereby created the Oklahoma Workers'  
7 Compensation Commission, an executive agency of the State of  
8 Oklahoma, which shall have the exclusive responsibility and duty to  
9 carry out the provisions of this act, except as otherwise provided.

10 B. The Commission shall consist of three (3) full-time  
11 commissioners, each of whom must have been involved in the workers'  
12 compensation field for at least three (3) years, appointed by the  
13 Governor: one of whom is chosen from a slate of three selected by  
14 the Speaker of the House of Representatives, with all three  
15 confirmed by the Senate. The term of each appointee shall be six  
16 (6) years to administer the provisions of this act. The Governor  
17 may request a subsequent slate of nominees from the Speaker of the  
18 House of Representatives if a suitable nominee is not found. Any or  
19 all of the commissioners may be reappointed for additional six-year  
20 terms upon reconfirmation by the Senate. However, the initial  
21 commissioners shall serve staggered terms of two (2), four (4), and  
22 six (6) years, respectively, as determined by the Governor. If the  
23 Legislature is not in session at the time of appointment, the  
24 appointment shall be subject to confirmation by the Senate upon

1 convening of the next regular session of the Legislature.  
2 Membership on the Commission shall be a full-time position and no  
3 commissioner shall have any other employment, unless authorized or  
4 excused by law. Each commissioner shall receive a salary equal to  
5 that paid to a district judge of this state; provided however, the  
6 commissioners shall not receive any increase in salary as a result  
7 of the provisions of Section 1 of ~~this resolution~~ House Joint  
8 Resolution No. 1096 of the 2nd Session of the 54th Oklahoma  
9 Legislature.

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

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

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

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

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

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

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

16 G. ~~When any commissioner of the Commission is disqualified for~~  
17 ~~any reason to hear and participate in the determination of any~~  
18 ~~matter pending before the Commission, the Governor shall appoint a~~  
19 ~~qualified person to hear and participate in the decision on the~~  
20 ~~particular matter. The special commissioner so appointed shall have~~  
21 ~~all authority and responsibility with respect to the particular~~  
22 ~~matter before the Commission as if the person were a regular~~  
23 ~~commissioner of the Commission but shall have no authority or~~  
24 ~~responsibility with respect to any other matter before the~~

~~Commission. A person appointed as a special commissioner of the~~  
~~Commission under the provisions of this subsection shall be entitled~~  
~~to receive a per diem equal to the annual salary of the~~  
~~commissioners prorated for the number of days he or she serves in~~  
~~the capacity of a special commissioner of the Commission.~~  
~~Furthermore, when a vacancy on the Commission occurs or is certain~~  
~~to occur, the position shall be filled pursuant to the provisions of~~  
~~this section~~ The power of the Commission to decide issues of fact  
does not include the power to determine the constitutionality of  
provisions of this title or the constitutionality of application of  
the provisions of this title.

SECTION 6. AMENDATORY Section 21, Chapter 208, O.S.L.  
2013 (85A O.S. Supp. 2015, Section 21), is amended to read as  
follows:

Section 21. A. Commissioners shall be considered officers and  
shall take the oath prescribed by the Oklahoma Constitution and the  
laws of this state.

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

2. Any investigation, inquiry, or hearing which the Commission  
is authorized to hold or undertake may be held or undertaken by or

1 before any one commissioner of the Commission, or appointee acting  
2 for him or her, under authorization of the Commission.

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

6 D. Except with respect to the Commission's authority to hear  
7 appeals of decisions from administrative law judges other than as  
8 provided pursuant to subsection B of Section 78 of this title, any  
9 reference in this ~~act~~ title to the Commission's ability to hear and  
10 decide the rights of interested parties under this ~~act~~ title shall  
11 not prevent it from delegating that responsibility to an  
12 administrative law judge.

13 SECTION 7. AMENDATORY Section 22, Chapter 208, O.S.L.  
14 2013 (85A O.S. Supp. 2015, Section 22), is amended to read as  
15 follows:

16 Section 22. A. 1. For the purpose of administering the  
17 provisions of this ~~act~~ title, the Workers' Compensation Commission  
18 is authorized:

- 19 a. to make rules necessary for the administration and  
20 operation of the Commission,
- 21 b. to appoint and fix the compensation of temporary  
22 technical assistants, medical and legal advisers,  
23 clerical assistants and other officers and employees,  
24 and

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

5 2. a. ~~Before~~ The Commission shall vote on any substantive  
6 change to any form and the effective date of such  
7 substantive change.

8 b. The Commission shall comply with the provisions of the  
9 Administrative Procedures Act applicable to the filing  
10 and publication requirements for rules before the  
11 adoption, prescription, amendment, modification, or  
12 repeal of any rule, ~~regulation, or form, the~~  
13 ~~Commission shall give at least thirty (30) days'~~  
14 ~~notice of its intended action.~~

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

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

23 ~~3. The Commission shall afford all interested persons a~~  
24 ~~reasonable opportunity to submit written data, views, or arguments,~~

1 ~~and, if the Commission in its discretion shall so direct, oral~~  
2 ~~testimony or argument.~~

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

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

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

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

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

19 1. To hear and approve compromise settlements;

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

22 3. To monitor own-risk, self-insurer and group self-insurance  
23 programs, in accordance with the rules of the Commission;  
24

1       4. To contract with an appropriate state governmental entity,  
2 insurance carrier or approved service organization to process,  
3 investigate and pay valid claims against an impaired self-insurer  
4 which fails, due to insolvency or otherwise, to pay its workers'  
5 compensation obligations, charges for which shall be paid from the  
6 proceeds of security posted with the Commission as provided in  
7 Section 38 of this ~~act~~ title;

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

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

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

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

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

19       10. Such other duties and responsibilities authorized by law.

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

1       SECTION 8.       NEW LAW       A new section of law to be codified

2 in the Oklahoma Statutes as Section 36.1 of Title 85A, unless there  
3 is created a duplication in numbering, reads as follows:

4       A. Any person who is not required to be covered under a  
5 workers' compensation insurance policy or other plan for the payment  
6 of workers' compensation may execute an Affidavit of Exempt Status  
7 under the Administrative Workers' Compensation Act. The affidavit  
8 shall be a form prescribed by the Workers' Compensation Commission  
9 and will be available on the Commission's website.

10       B. Execution of the affidavit shall establish a rebuttable  
11 presumption that the executor is not an employee for purposes of the  
12 Administrative Workers' Compensation Act and therefore shall not be  
13 eligible to seek workers' compensation benefits against any  
14 contractor.

15       C. The execution of an affidavit shall not affect the rights or  
16 coverage of any employee of the individual executing the affidavit.

17       D. The lack of an executed affidavit under this section shall  
18 not prejudice any defense by an employer to a claim for workers'  
19 compensation benefits.

20       E. 1. Knowingly providing false information on a notarized  
21 Affidavit of Exempt Status under the Administrative Workers'  
22 Compensation Act shall constitute a misdemeanor punishable by a fine  
23 not to exceed One Thousand Dollars (\$1,000.00).  
24

1        2. Affidavits shall conspicuously state on the front thereof in  
2 at least ten-point, bold-faced print that it is a crime to falsify  
3 information on the form.

4        3. The Commission shall immediately notify the Workers'  
5 Compensation Fraud Unit in the Office of the Attorney General of any  
6 violations or suspected violations of this section. The Commission  
7 shall cooperate with the Fraud Unit in any investigation involving  
8 affidavits executed pursuant to this section.

9        F. The Commission may assess a fee not to exceed Fifty Dollars  
10 (\$50.00) for an Affidavit of Exempt Status Application. Fees  
11 collected pursuant to this section shall be deposited in the State  
12 Treasury to the credit of the Workers' Compensation Commission  
13 Revolving Fund.

14        G. If an employer relies in good faith on proof of a valid  
15 workers' compensation insurance policy issued to a contractor of any  
16 tier or on proof of an Affidavit of Exempt Status under this  
17 section, the employer shall not be liable for injuries of any  
18 employees of the contractor.

19        SECTION 9.        AMENDATORY        Section 38, Chapter 208, O.S.L.  
20 2013 (85A O.S. Supp. 2015, Section 38), is amended to read as  
21 follows:

22        Section 38. A. An employer shall secure compensation to  
23 employees under this ~~act~~ title in one of the following ways:

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

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

23        3. By furnishing satisfactory proof to the Commission of the  
24 employer's financial ability to pay the compensation. The

1 Commission, under rules adopted by the ~~Insurance Department~~  
2 Commission, shall require any employer that has:

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

5 (1) deposit with the Commission securities, an  
6 irrevocable letter of credit or a surety bond  
7 payable to the state, in an amount determined by  
8 the Commission which shall be at least an average  
9 of the yearly claims for the last three (3)  
10 years, or

11 (2) provide proof of excess coverage with such terms  
12 and conditions as is commensurate with their  
13 ability to pay the benefits required by the  
14 provisions of this act, and

15 b. one hundred or more employees and One Million Dollars  
16 (\$1,000,000.00) or more in net assets to:

17 (1) secure a surety bond payable to the state, or an  
18 irrevocable letter of credit, in an amount  
19 determined by the Commission which shall be at  
20 least an average of the yearly claims for the  
21 last three (3) years, or

22 (2) provide proof of excess coverage with terms and  
23 conditions that are commensurate with their  
24

1 ability to pay the benefits required by the  
2 provisions of this act;

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

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

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

19 Irrevocable letters of credit required by this subsection shall  
20 contain such terms as may be prescribed by the Commission and shall  
21 be issued for the benefit of the state by a financial institution  
22 whose deposits are insured by the Federal Deposit Insurance  
23 Corporation.

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

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

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

16 SECTION 10. AMENDATORY Section 45, Chapter 208, O.S.L.  
17 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.  
18 Supp. 2015, Section 45), is amended to read as follows:

19 Section 45. A. Temporary Total Disability.

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

1 for one hundred four (104) weeks. Provided, there shall be no  
2 payment for the first three (3) days of the initial period of  
3 temporary total disability. If an administrative law judge finds  
4 that a consequential injury has occurred and that additional time is  
5 needed to reach maximum medical improvement, temporary total  
6 disability may continue for a period of not more than an additional  
7 fifty-two (52) weeks. Such finding shall be based upon a showing of  
8 medical necessity by clear and convincing evidence.

9 2. When the injured employee is released from active medical  
10 treatment by the treating physician for all body parts found by the  
11 Commission to be injured, or in the event that the employee, without  
12 a valid excuse, misses ~~three~~ two consecutive medical treatment  
13 appointments as prescribed under Section 57 of this title, fails to  
14 comply with medical orders of the treating physician, or otherwise  
15 abandons medical care, the employer shall be entitled to terminate  
16 temporary total disability by notifying the employee, or if  
17 represented, his or her counsel. If, however, an objection to the  
18 termination is filed by the employee within ten (10) days of  
19 termination, the Commission shall set the matter within twenty (20)  
20 days for a determination if temporary total disability compensation  
21 shall be reinstated. The temporary total disability shall remain  
22 terminated unless the employee proves the existence of a valid  
23 excuse for his or her failure to comply with medical orders of the  
24 treating physician or his or her abandonment of medical care. The

1 administrative law judge may appoint an independent medical examiner  
2 to determine if further medical treatment is reasonable and  
3 necessary. The independent medical examiner shall not provide  
4 treatment to the injured worker, unless agreed upon by the parties.

5 B. Temporary Partial Disability.

6 1. If the injured employee is temporarily unable to perform his  
7 or her job, but may perform alternative work offered by the  
8 employer, he or she shall be entitled to receive compensation equal  
9 to ~~the greater of~~ seventy percent (70%) of the difference between  
10 the injured employee's average weekly wage before the injury and his  
11 or her weekly wage for performing alternative work after the injury,  
12 but only if his or her weekly wage for performing the alternative  
13 work is less than the temporary total disability rate. However, the  
14 injured employee's actual earnings plus temporary partial disability  
15 shall not exceed the temporary total disability rate.

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

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

21 C. Permanent Partial Disability.

22 1. A permanent partial disability award or combination of  
23 awards granted an injured worker may not exceed a permanent partial  
24 disability rating of one hundred percent (100%) to any body part or

1 to the body as a whole. The determination of permanent partial  
2 disability shall be the responsibility of the Commission through its  
3 administrative law judges. Any claim by an employee for  
4 compensation for permanent partial disability must be supported by  
5 competent medical testimony of a medical doctor, osteopathic  
6 physician, or chiropractor, and shall be supported by objective  
7 ~~medical~~ findings, as defined in ~~this act~~ Section 2 of this title.  
8 The opinion of the physician shall include employee's percentage of  
9 permanent partial disability and whether or not the disability is  
10 job-related and caused by the accidental injury or occupational  
11 disease. A physician's opinion of the nature and extent of  
12 permanent partial disability to parts of the body other than  
13 scheduled members must be based solely on criteria established by  
14 the current edition of the American Medical Association's "Guides to  
15 the Evaluation of Permanent Impairment". A copy of any written  
16 evaluation shall be sent to both parties within seven (7) days of  
17 issuance. Medical opinions addressing compensability and permanent  
18 disability must be stated within a reasonable degree of medical  
19 certainty. Any party may submit the report of an evaluating  
20 physician.

21 2. Permanent partial disability shall not be allowed to a part  
22 of the body for which no medical treatment has been received. A  
23 determination of permanent partial disability made by the Commission  
24 or administrative law judge which is not supported by objective

1 ~~medical~~ findings provided by a treating physician who is a medical  
2 doctor, doctor of osteopathy, chiropractor or a qualified  
3 independent medical examiner shall be considered an abuse of  
4 discretion.

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

7 4. In cases of permanent partial disability, the compensation  
8 shall be seventy percent (70%) of the employee's average weekly  
9 wage, not to exceed Three Hundred Twenty-three Dollars (\$323.00) per  
10 week, for a term not to exceed a total of three hundred fifty (350)  
11 weeks for the body as a whole.

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

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

1       ~~b. If, for any reason other than misconduct as defined in~~  
2       ~~Section 2 of this act, the employer terminates the~~  
3       ~~employee or the position offered is not the pre-injury~~  
4       ~~or equivalent job, the remaining permanent partial~~  
5       ~~disability award shall be paid in a lump sum. If the~~  
6       ~~employee is discharged for misconduct, the employer~~  
7       ~~shall have the burden to prove that the employee~~  
8       ~~engaged in misconduct.~~

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

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

19       ~~e. Assessments pursuant to Sections 31, 98, 112 and 165~~  
20       ~~of this act shall be calculated based upon the amount~~  
21       ~~of the permanent partial disability award and shall be~~  
22       ~~paid at the time of the deferral.~~

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

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

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

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

(1) if the preexisting ~~impairment~~ disability 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.~~ 6. No payments on any permanent partial disability order shall begin until payments on any preexisting permanent partial disability orders have been completed.

1       ~~8.~~ 7. The whole body shall represent a maximum of three hundred  
2 fifty (350) weeks.

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

11       ~~10.~~ 8. An injured employee who is eligible for permanent  
12 partial disability under this subsection shall be entitled to  
13 receive vocational rehabilitation services provided by a technology  
14 center or public secondary school offering vocational-technical  
15 education courses, or a member institution of The Oklahoma State  
16 System of Higher Education, which shall include retraining and job  
17 placement to restore the employee to gainful employment. Vocational  
18 rehabilitation services or training shall not extend for a period of  
19 more than fifty-two (52) weeks.

20       D. Permanent Total Disability.

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

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

18 2. The Commission shall annually review the status of any  
19 employee receiving benefits for permanent total disability against  
20 the last employer. The Commission shall require the employee to  
21 annually file an affidavit under penalty of perjury stating that he  
22 or she is not and has not been gainfully employed and is not capable  
23 of gainful employment. Failure to file such affidavit shall result  
24

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

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

6 2. The Vocational Rehabilitation Director shall help injured  
7 workers return to the work force. If the injured employee is unable  
8 to return to his or her pre-injury or equivalent position due to  
9 permanent restrictions as determined by the treating physician, upon  
10 the request of either party, the Vocational Rehabilitation Director  
11 shall determine if it is appropriate for a claimant to receive  
12 vocational rehabilitation training or services, and will oversee  
13 such training. If appropriate, the Vocational Rehabilitation  
14 Director shall issue administrative orders, including, but not  
15 limited to, an order for a vocational rehabilitation evaluation for  
16 any injured employee unable to work for at least ninety (90) days.  
17 In addition, the Vocational Rehabilitation Director may assign  
18 injured workers to vocational rehabilitation counselors for  
19 coordination of recommended services. The cost of the services  
20 shall be paid by the employer. All administrative orders are  
21 subject to appeal to the full Commission.

22 3. There shall be a presumption in favor of ordering vocational  
23 rehabilitation services or training for an eligible injured employee  
24 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.

1        4. Upon the request of either party, or by order of an  
2 administrative law judge, the Vocational Rehabilitation Director  
3 shall assist the Workers' Compensation Commission in determining if  
4 it is appropriate for a claimant to receive vocational  
5 rehabilitation training or services. If appropriate, the  
6 administrative law judge shall refer the employee to a qualified  
7 expert for evaluation of the practicability of, need for and kind of  
8 rehabilitation services or training necessary and appropriate in  
9 order to restore the employee to gainful employment. The cost of  
10 the evaluation shall be paid by the employer. Following the  
11 evaluation, if the employee refuses the services or training ordered  
12 by the administrative law judge, or fails to complete in good faith  
13 the vocational rehabilitation training ordered by the administrative  
14 law judge, then the cost of the evaluation and services or training  
15 rendered may, in the discretion of the administrative law judge, be  
16 deducted from any award of benefits to the employee which remains  
17 unpaid by the employer. Upon receipt of such report, and after  
18 affording all parties an opportunity to be heard, the administrative  
19 law judge shall order that any rehabilitation services or training,  
20 recommended in the report, or such other rehabilitation services or  
21 training as the administrative law judge may deem necessary,  
22 provided the employee elects to receive such services, shall be  
23 provided at the expense of the employer. Except as otherwise  
24 provided in this subsection, refusal to accept rehabilitation

1 services by the employee shall in no way diminish any benefits  
2 allowable to an employee.

3 5. The administrative law judge may order vocational  
4 rehabilitation before the injured employee reaches maximum medical  
5 improvement, if the treating physician believes that it is likely  
6 that the employee's injury will prevent the employee from returning  
7 to his or her former employment. In granting early benefits for  
8 vocational rehabilitation, the Commission shall consider temporary  
9 restrictions and the likelihood that such rehabilitation will return  
10 the employee to gainful employment earlier than if such benefits are  
11 granted after the permanent partial disability hearing in the claim.

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

19 7. If rehabilitation requires residence at or near the facility  
20 or institution which is away from the employee's customary  
21 residence, reasonable cost of the employee's board, lodging, travel,  
22 tuition, books and necessary equipment in training shall be paid for  
23 by the insurer in addition to weekly compensation benefits to which  
24

1 the employee is otherwise entitled under the Administrative Workers'  
2 Compensation Act.

3 8. During the period when an employee is actively and in good  
4 faith being evaluated or participating in a retraining or job  
5 placement program for purposes of evaluating permanent total  
6 disability status, the employee shall be entitled to receive  
7 benefits at the same rate as the employee's temporary total  
8 disability benefits for an additional fifty-two (52) weeks. All  
9 tuition related to vocational rehabilitation services shall be paid  
10 by the employer or the employer's insurer on a periodic basis  
11 directly to the facility providing the vocational rehabilitation  
12 services or training to the employee. The employer or employer's  
13 insurer may deduct the amount paid for tuition from compensation  
14 awarded to the employee.

15 F. Disfigurement.

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

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

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

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

8 SECTION 11. AMENDATORY Section 46, Chapter 208, O.S.L.  
9 2013 (85A O.S. Supp. 2015, Section 46), is amended to read as  
10 follows:

11 Section 46. A. ~~An~~ In lieu of compensation provided pursuant to  
12 paragraph 4 of subsection C of Section 45 of this title, an injured  
13 employee who is entitled to receive permanent partial disability  
14 compensation under Section 45 of this act suffers amputation or  
15 permanent total loss of use of a scheduled member shall receive  
16 compensation for each part of the body ~~in accordance with~~ equal to  
17 seventy percent (70%) of the employee's average weekly wage, not to  
18 exceed Three Hundred Twenty-three Dollars (\$323.00) multiplied by  
19 the number of weeks for the scheduled ~~loss~~ member set forth below.  
20 as follows:

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

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

- 1        3. Leg amputated at the knee, or between the knee and the hip,  
2 two hundred seventy-five (275) weeks;
- 3        4. Leg amputated between the knee and the ankle, two hundred  
4 twenty (220) weeks;
- 5        5. Hand amputated, two hundred twenty (220) weeks;
- 6        6. Thumb amputated, sixty-six (66) weeks;
- 7        7. First finger amputated, thirty-nine (39) weeks;
- 8        8. Second finger amputated, thirty-three (33) weeks;
- 9        9. Third finger amputated, twenty-two (22) weeks;
- 10       10. Fourth finger amputated, seventeen (17) weeks;
- 11       11. Foot amputated, two hundred twenty (220) weeks;
- 12       12. Great toe amputated, thirty-three (33) weeks;
- 13       13. Toe other than great toe amputated, eleven (11) weeks;
- 14       14. Eye enucleated, in which there was useful vision, two  
15 hundred seventy-five (275) weeks;
- 16       15. Loss of hearing of one ear, one hundred ten (110) weeks;
- 17       16. Loss of hearing of both ears, three hundred thirty (330)  
18 weeks; and
- 19       17. Loss of one testicle, fifty-three (53) weeks; loss of both  
20 testicles, one hundred fifty-eight (158) weeks.

21       B. The permanent partial disability rate of compensation for  
22 amputation or permanent total loss of use of a scheduled member  
23 specified in this section shall be seventy percent (70%) of the  
24 employee's average weekly wage, not to exceed Three Hundred Twenty-

1 three Dollars (\$323.00), multiplied by the number of weeks as set  
2 forth in this section, regardless of whether or not the injured  
3 employee is able to return to his or her pre-injury job.

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

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

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

17 E. 1. Compensation for the permanent loss of eighty percent  
18 (80%) or more of the vision of an eye shall be the same as for the  
19 loss of an eye.

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

23 F. Compensation for amputation or loss of use of two or more  
24 digits or one or more phalanges of two or more digits of a hand or a

1 foot may be proportioned to the total loss of use of the hand or the  
2 foot occasioned thereby but shall not exceed the compensation for  
3 total loss of a hand or a foot.

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

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

9 SECTION 12. AMENDATORY Section 56, Chapter 208, O.S.L.  
10 2013 (85A O.S. Supp. 2015, Section 56), is amended to read as  
11 follows:

12 Section 56. A. If the employer has previously contracted with  
13 a certified workplace medical plan, the employer shall select for  
14 the injured employee a treating physician from the physicians listed  
15 within the network of the certified workplace medical plan. The  
16 employee may apply for a change of physician by utilizing the  
17 dispute resolution process set out in the certified workplace  
18 medical plan on file with the State Department of Health.

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

1 identify physicians within the same practice, facility or hospital  
2 as the treating physician. The only requirement for the list of  
3 three physicians is that they be licensed and accredited to perform  
4 the necessary treatment.

5 SECTION 13. AMENDATORY Section 62, Chapter 208, O.S.L.  
6 2013 (85A O.S. Supp. 2015, Section 62), is amended to read as  
7 follows:

8 Section 62. A. Notwithstanding the provisions of Section 45 of  
9 this ~~act~~ title, if an employee suffers a nonsurgical soft tissue  
10 injury, temporary total disability compensation shall not exceed  
11 eight (8) weeks, regardless of the number of parts of the body to  
12 which there is a nonsurgical soft tissue injury. An employee who is  
13 treated with an injection ~~or injections~~ shall be entitled to an  
14 extension of an additional eight (8) weeks total, regardless of the  
15 number of injections. An employee who has been recommended by a  
16 treating physician for surgery for a soft tissue injury may petition  
17 the Workers' Compensation Commission for one extension of temporary  
18 total disability compensation and the Commission may order an  
19 extension, not to exceed sixteen (16) additional weeks. If the  
20 surgery is not performed within thirty (30) days of the approval of  
21 the surgery by the employer, its insurance carrier, or an order of  
22 the Commission authorizing the surgery, and the delay is caused by  
23 the employee acting in bad faith, the benefits for the extension  
24 period shall be terminated and the employee shall reimburse the

1 employer any temporary total disability compensation he or she  
2 received beyond eight (8) weeks. An epidural steroid injection, or  
3 any procedure of the same or similar physical invasiveness, shall  
4 not be considered surgery.

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

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

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

14 a. sensory or motor disturbances,

15 b. communication disturbances,

16 c. complex integrated disturbances of cerebral function,

17 d. episodic neurological disorders, or

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

21 3. Any joint replacement.

22 SECTION 14. AMENDATORY Section 68, Chapter 208, O.S.L.  
23 2013 (85A O.S. Supp. 2015, Section 68), is amended to read as  
24 follows:

1       Section 68. A. Unless an employee gives oral or written notice  
2 to the employer within ~~thirty (30)~~ fifteen (15) days of the date an  
3 injury occurs, the rebuttable presumption shall be that the injury  
4 was not work-related. Such presumption ~~must~~ may be overcome by a  
5 preponderance of the evidence. In no event shall compensation be  
6 allowed if notice is not given within one hundred twenty (120) days  
7 after the date of the injury.

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

14       SECTION 15.       AMENDATORY       Section 71, Chapter 208, O.S.L.  
15 2013 (85A O.S. Supp. 2015, Section 71), is amended to read as  
16 follows:

17       Section 71. A. Notice. Within ten (10) days after a claim for  
18 compensation has been filed, the Commission shall notify the  
19 employer and any other interested person of the filing of the claim.

20       B. Investigation - Hearing.

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

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

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

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

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

18        C. Evidence and Construction.

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

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

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

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

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

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

16          D.   Judgment.   The judgment denying the claim or making the  
17   award shall be filed in the office of the Commission, and a copy  
18   shall be sent by registered mail, facsimile, electronic mail or by  
19   other electronic means with confirmation of receipt to the claimant  
20   and to the employer or to their attorneys.

21          E.   No compensation for disability of an injured employee shall  
22   be payable for any period beyond his or her death; provided,  
23   however, an award of compensation for disability may be made after  
24

1 the death of the injured employee for the period of disability  
2 preceding death.

3 SECTION 16. AMENDATORY Section 78, Chapter 208, O.S.L.  
4 2013 (85A O.S. Supp. 2015, Section 78), is amended to read as  
5 follows:

6 Section 78. A. Any party feeling aggrieved by the judgment,  
7 decision, or award made by the administrative law judge may, within  
8 ten (10) days of issuance, appeal to the Workers' Compensation  
9 Commission. After hearing arguments, the Commission may reverse or  
10 modify the decision only if it determines that the decision was  
11 against the clear weight of the evidence or contrary to law. All  
12 such proceedings of the Commission shall be recorded by a court  
13 reporter, if requested by any party. Any judgment of the Commission  
14 which reverses a decision of the administrative law judge shall  
15 contain specific findings relating to the reversal.

16 B. The chair of the Commission shall have the authority to  
17 appoint an administrative law judge to the en banc panel when any  
18 Commissioner of the Commission is disqualified for any reason, to  
19 fill a vacancy, or in the absence of a Commissioner; provided, the  
20 appointed administrative law judge shall not have presided over any  
21 of the previous hearings on the claim.

22 C. The appellant shall pay a filing fee of One Hundred Seventy-  
23 five Dollars (\$175.00) to the Commission at the time of filing his  
24

1 or her appeal. The fee shall be deposited in the Workers'  
2 Compensation Fund.

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

- 12 1. In violation of constitutional provisions;
- 13 2. In excess of the statutory authority or jurisdiction of the  
14 Commission;
- 15 3. Made on unlawful procedure;
- 16 4. Affected by other error of law;
- 17 5. Clearly erroneous in view of the reliable, material,  
18 probative and substantial competent evidence;
- 19 6. Arbitrary or capricious;
- 20 7. Procured by fraud; or
- 21 8. Missing findings of fact on issues essential to the  
22 decision.

23 This action shall be commenced by filing with the Clerk of the  
24 Supreme Court a certified copy of the judgment, decision or award of

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

13 ~~D.~~ E. A fee of One Hundred Dollars (\$100.00) per appeal to the  
14 Supreme Court shall be paid to the Commission and deposited in the  
15 Workers' Compensation Fund as costs for preparing, assembling,  
16 indexing and transmitting the record for appellate review. This fee  
17 shall be paid by the party taking the appeal. If more than one  
18 party to the action files an appeal from the same judgment, decision  
19 or award, the fee shall be paid by the party whose petition in error  
20 commences the principal appeal.

21 F. During the pendency of an appeal filed by an employer or the  
22 employer's insurance carrier pursuant to this section, payment for  
23 any prescription drugs prescribed by the treating physician shall be  
24 continued. If payment for prescription drugs is an issue on appeal,

1 and the employer is held not to be liable for payment for the  
2 prescription drugs, the employee shall reimburse the employer or the  
3 employer's insurance carrier for the cost of prescriptions filled  
4 during the time of the appeals process.

5 SECTION 17. AMENDATORY Section 80, Chapter 208, O.S.L.  
6 2013 (85A O.S. Supp. 2015, Section 80), is amended to read as  
7 follows:

8 Section 80. A. Except ~~where~~ when a joint petition settlement  
9 has been approved, the Commission may reopen for review any  
10 compensation judgment, award, or decision. Such review based on a  
11 change of physical condition may be done at any time within six (6)  
12 ~~months of termination of the compensation period fixed in the~~  
13 ~~original compensation judgment or award~~ from the date of the last  
14 order in which monetary benefits or active medical treatment was  
15 provided, on the Commission's own motion or on the application of  
16 any party in interest, ~~on the ground of a change in physical~~  
17 ~~condition or on proof of erroneous wage rate~~ and unless filed within  
18 such period of time, shall be forever barred. On review, the  
19 Commission may make a judgment or award terminating, continuing,  
20 decreasing, or increasing for the future the compensation previously  
21 awarded, subject to the maximum limits provided for in this ~~act~~  
22 title. An order denying an application to reopen a claim shall not  
23 extend the period of time set out in this title for reopening the  
24

1 case. A failure to comply with a medical treatment plan ordered by  
2 the Commission shall bar reopening of a claim.

3 B. The review and subsequent judgment or award shall be made in  
4 accordance with the procedure prescribed in Sections 69 through 78  
5 of this ~~act~~ title. No review shall affect any compensation paid  
6 under a prior order, judgment or award.

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

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

16 SECTION 18. AMENDATORY Section 108, Chapter 208, O.S.L.  
17 2013 (85A O.S. Supp. 2015, Section 201), is amended to read as  
18 follows:

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

21 1. "Benefit plan" means a written plan established by a  
22 qualified employer under the requirements of ~~Section 110 of this act~~  
23 the Oklahoma Employee Injury Benefit Act;  
24

1        2. "Commission" means the Workers' Compensation Commission  
2 under the Administrative Workers' Compensation Act;

3        3. ~~"Commissioner" means the Insurance Commissioner of the State~~  
4 ~~of Oklahoma~~ "Claimant" means a covered employee or his or her  
5 representative or beneficiary who claims benefits under the Oklahoma  
6 Employee Injury Benefit Act;

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

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

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

13        ~~6.~~ 7. "Employer", except when otherwise expressly stated, means  
14 a person, partnership, association, limited liability company,  
15 corporation, and the legal representatives of a deceased employer,  
16 or the receiver or trustee of a person, partnership, association,  
17 corporation, or limited liability company, department,  
18 instrumentality or institution of this state and divisions thereof,  
19 counties and divisions thereof and other political subdivisions of  
20 this state and public trusts employing a person included within the  
21 term employee as defined in this section;

22        ~~7.~~ 8. "Fully insured plan" means insurance coverage of one  
23 hundred percent (100%) of an employer's statutory benefit liability;  
24

1        9. "Occupational injury disease" ~~means an injury, including~~  
2 ~~death, or occupational illness, causing internal or external harm to~~  
3 ~~the body, which arises out of and in the course of employment shall~~  
4 have the same meaning provided pursuant to Section 65 of this title;

5        ~~8. 10.~~ "Qualified employer" means an employer ~~otherwise subject~~  
6 ~~to the Administrative Workers' Compensation Act that voluntarily~~  
7 ~~elects~~ is approved to be exempt from ~~such act~~ the Administrative  
8 Workers' Compensation Act by satisfying the requirements under ~~this~~  
9 ~~act~~ the Oklahoma Employee Injury Benefit Act; and

10        ~~9. 11.~~ "Surviving spouse" means the covered employee's spouse  
11 by reason of a legal marriage recognized by the State of Oklahoma or  
12 under the requirements of a common law marriage in this state.

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

16        SECTION 19.        AMENDATORY        Section 109, Chapter 208, O.S.L.  
17 2013 (85A O.S. Supp. 2015, Section 202), is amended to read as  
18 follows:

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

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

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

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

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

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

13       B. ~~An employer that has elected~~ The Department shall notify an  
14 employer whether it has met the requirements to become a qualified  
15 employer by satisfying the. ~~If such~~ requirements of this section  
16 ~~shall notify the Insurance Commissioner in writing of the election~~  
17 ~~and the date that the election is to become effective, which may not~~  
18 ~~be sooner than the date that the qualified employer satisfies the~~  
19 ~~employee notice requirements in this section. Such qualified~~  
20 ~~employer shall pay to the Commissioner an annual nonrefundable fee~~  
21 ~~of One Thousand Five Hundred Dollars (\$1,500.00) on the date of~~  
22 ~~filing written notice and every year thereafter~~ have been met, the  
23 Department shall issue a certificate of qualified employer to the  
24 employer. If such requirements have not been met, the notice shall

1 contain a description of the deficiencies and how such deficiencies  
2 may be resolved.

3 C. The ~~Commissioner~~ Department shall collect and maintain the  
4 information required under this section and shall monitor compliance  
5 with the requirements of this section. The ~~Commissioner~~ Department  
6 may ~~also~~ require ~~an~~ a qualified employer to provide information  
7 periodically to confirm its qualified employer status. ~~Subject to~~  
8 ~~subsection D of this section, the Commissioner that it is still in~~  
9 compliance with the requirements of a qualified employer. The  
10 Department shall adopt rules designating the methods and procedures  
11 for confirming whether an employer ~~is~~ has met and continues to meet  
12 the requirements to become a qualified employer, notifying an  
13 employer of any qualifying deficiencies, and the consequences  
14 ~~thereof~~ of noncompliance with the requirements of the Oklahoma  
15 Employee Injury Benefit Act. The ~~Commissioner~~ Department shall  
16 record the date ~~and time each notice of qualified employer that an~~  
17 employer is approved as a qualified employer and the date that such  
18 status is received and the becomes effective date of qualified-  
19 employer election. The ~~Commissioner~~ Department shall maintain a  
20 list on its official website accessible by the public of all  
21 qualified employers and the date ~~and time that~~ such exemption status  
22 became effective.

23 D. ~~Except as otherwise expressly provided in this act, neither~~  
24 ~~the Workers' Compensation Commission, the courts of this state, or~~

1 ~~any state administrative agencies shall promulgate rules or any~~  
2 ~~procedures related to design, documentation, implementation,~~  
3 ~~administration or funding of a qualified employer's benefit plan~~ If  
4 the Department determines that a qualified employer is deficient in  
5 any requirements, it shall provide written notice of the deficiency  
6 to the employer. Within ten (10) days, the qualified employer shall  
7 provide proof to the Department that it has cured the deficiency or  
8 it shall automatically lose status as a qualified employer and  
9 become subject to the provisions of the Administrative Workers'  
10 Compensation Act. An employer that has lost status as a qualified  
11 employer may reapply for such status.

12 E. ~~The Commissioner~~ Department may designate an information  
13 collection agent, implement an electronic reporting and public  
14 information access program, and adopt rules as necessary to  
15 implement the information collection requirements of this section.

16 F. ~~The Commissioner may prescribe rules and forms to be used~~  
17 ~~for the qualified employer notification and shall require the A~~  
18 qualified employer to shall provide its the Department with:

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

22 2. The name, title, address and telephone number of the person  
23 to contact for claim administration ~~contact information;~~ and a  
24

1        3. A listing of all covered business locations in the state.

2        ~~The Commissioner Department shall notify the Commissioner Workers'~~  
3        ~~Compensation Commission and the Department of Labor of all~~  
4        ~~qualified-employer notifications. The Department of Labor shall~~  
5        ~~provide such notifications to other governmental agencies as it~~  
6        ~~deems necessary.~~

7        ~~G. The Commissioner may contract with the Oklahoma Employment~~  
8        ~~Security Commission, the State Treasurer or the Department of Labor~~  
9        ~~for assistance in collecting the notification required under this~~  
10       ~~section or otherwise fulfilling the Commissioner's responsibilities~~  
11       ~~under this act. Such agencies shall cooperate with the Commissioner~~  
12       ~~in enforcing the provisions of this section.~~

13       ~~H. A qualified employer shall notify each of its employees in~~  
14       ~~the manner provided in this section that it is a qualified employer,~~  
15       ~~that it does not carry workers' compensation insurance coverage and~~  
16       ~~that such coverage has terminated or been cancelled.~~

17       ~~I. The~~ A qualified employer shall provide written notification  
18       to covered employees ~~as required by this section~~ that it does not  
19       carry workers' compensation coverage at the time the covered  
20       employee is hired or at least five (5) days before the effective  
21       time of ~~designation as a qualified employer~~ the benefit plan, as  
22       applicable. The notice shall contain the name, title, address and  
23       telephone number of the person to contact for claim administration.

24       A qualified employer shall post the employee notification required

1 by this section at conspicuous locations at the qualified employer's  
2 places of business as necessary to provide reasonable notice to all  
3 covered employees. The ~~Commissioner~~ Department may adopt rules  
4 relating to the form, content, and method of delivery of the  
5 employee notification required by this section.

6 H. Two or more employers who are members of a controlled group  
7 may apply to the Department for approval as a single qualified  
8 employer and be listed on a single qualified-employer certificate.  
9 The first member of the controlled group shall pay to the Department  
10 an annual nonrefundable fee as required by paragraph 3 of subsection  
11 A of this section. Each additional participating member of the  
12 controlled group shall:

13 1. If the controlled group is fully insured, pay to the  
14 Department an annual nonrefundable fee of Two Hundred Fifty Dollars  
15 (\$250.00) on the date of filing written notice of election and every  
16 year thereafter; or

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

21 SECTION 20. AMENDATORY Section 110, Chapter 208, O.S.L.  
22 2013, as amended by Section 4, Chapter 390, O.S.L. 2015 (85A O.S.  
23 Supp. 2015, Section 203), is amended to read as follows:  
24

1       Section 203. A. An employer ~~voluntarily~~ electing to become a  
2 qualified employer shall adopt a ~~written~~ benefit plan that complies  
3 with the requirements of this section. ~~Qualified employer status is~~  
4 ~~optional for eligible employers. The benefit plan shall not become~~  
5 ~~effective until the date that the qualified employer first satisfies~~  
6 ~~the notice requirements in Section 202 of this title.~~

7       B. The benefit plan shall provide for payment of the same forms  
8 of benefits included in the Administrative Workers' Compensation Act  
9 for ~~temporary total disability, temporary partial disability,~~  
10 ~~permanent partial disability, vocational rehabilitation, permanent~~  
11 ~~total disability, disfigurement, amputation or permanent total loss~~  
12 ~~of use of a scheduled member, death and medical benefits as a result~~  
13 ~~of an occupational compensable injury, on a no-fault basis, with the~~  
14 ~~same statute of limitations, notice of injury reporting, and with~~  
15 dollar, percentage, and duration limits that are at least equal to  
16 ~~or greater than~~ the dollar, percentage, and duration limits  
17 contained in ~~Sections 45, 46 and 47 of this title. For this~~  
18 ~~purpose, the standards for determination of average weekly wage,~~  
19 ~~death beneficiaries, and disability under the Administrative~~  
20 ~~Workers' Compensation Act shall apply under the Oklahoma Employee~~  
21 ~~Injury Benefit Act; but no the Administrative Workers' Compensation~~  
22 ~~Act. Benefit plans shall not be subject to other provision~~  
23 ~~requirements of the Administrative Workers' Compensation Act~~  
24 ~~defining covered injuries, medical management, dispute resolution or~~

1 ~~other process, funding, notices or penalties shall apply or~~  
2 ~~otherwise be controlling under the Oklahoma Employee Injury Benefit~~  
3 ~~Act, unless expressly incorporated.~~

4 C. ~~The benefit plan may provide for lump-sum payouts that are,~~  
5 ~~as reasonably determined by the administrator of such plan appointed~~  
6 ~~by the qualified employer, actuarially equivalent to expected future~~  
7 ~~payments. The benefit plan may also provide for settlement~~  
8 ~~agreements; provided, however, any settlement agreement by a covered~~  
9 ~~employee shall be voluntary, entered into not earlier than the tenth~~  
10 ~~business day after the date of the initial report of injury, and~~  
11 ~~signed after the covered employee has received a medical evaluation~~  
12 ~~from a nonemergency care doctor, with any waiver of rights being~~  
13 ~~conspicuous and on the face of the agreement. The benefit plan~~  
14 ~~shall pay benefits without regard to whether the covered employee,~~  
15 ~~the qualified employer, or a third party caused the occupational~~  
16 ~~injury; and provided further, that the benefit plan shall provide~~  
17 ~~eligibility to participate in and provide the same forms and levels~~  
18 ~~of benefits to all Oklahoma employees of the qualified employer.~~  
19 ~~The Administrative Workers' Compensation Act shall not define,~~  
20 ~~restrict, expand or otherwise apply to a benefit plan~~ Regardless of  
21 whether such provisions are incorporated into a benefit plan,  
22 qualified employers and their covered employees shall be subject to  
23 the provisions of the Administrative Workers' Compensation Act  
24 related to:

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

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

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

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

8        5. Liability other than immediate employer, pursuant to Section  
9        36 of this title; and

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

12       D. ~~No~~ A qualified employer shall not charge any fee or cost to  
13       an employee shall apply related to a qualified employer's benefit  
14       plan.

15       E. ~~The qualified employer shall provide to the Commissioner and~~  
16       ~~covered employees notice of the name, title, address, and telephone~~  
17       ~~number for the person to contact for injury benefit claims~~  
18       ~~administration, whether in-house at the qualified employer or a~~  
19       ~~third-party administrator.~~

20       F. Information submitted to the ~~Commissioner~~ Department as part  
21       of the application for approval as a qualified employer, to confirm  
22       eligibility for continuing status as a qualified employer, or as  
23       otherwise required by the Oklahoma Employee Injury Benefit Act may  
24       not be made public by the ~~Commissioner or by an agent or employee of~~

1 ~~the Commissioner~~ Department without the written consent of the  
2 applicant or qualified employer, as applicable, except that:

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

- 7 a. the information sought is relevant to and necessary  
8 for the furtherance of the action or case,
- 9 b. the information sought is unavailable ~~for~~ from other  
10 ~~non-confidential~~ nonconfidential sources, and
- 11 c. a subpoena issued by a judicial or administrative  
12 officer of competent jurisdiction has been submitted  
13 to the ~~Commissioner~~ Department; and

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

- 17 a. the public officer agrees in writing to maintain the  
18 confidentiality of the information, and
- 19 b. the laws of the state in which the public officer  
20 serves require the information to be kept  
21 confidential; and

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

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

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

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

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

15       SECTION 21.       AMENDATORY       Section 111, Chapter 208, O.S.L.  
16 2013 (85A O.S. Supp. 2015, Section 204), is amended to read as  
17 follows:

18       Section 204. A. A qualified employer may self-fund or insure  
19 benefits payable under the benefit plan, employers' liability under  
20 this act, and any other insurable risk related to its status as a  
21 qualified employer with any insurance carrier authorized to do  
22 business in this state.

23       B. Insurance coverage or surety bond obtained by a qualified  
24 employer shall be from an admitted ~~or surplus lines~~ insurer ~~with an~~

1 ~~AM Best Rating of B+ or better.~~ The Insurance Department has no  
2 duty to approve insurance rates charged for this coverage. A  
3 qualified employer shall secure compensation to covered employees in  
4 one of the following ways:

5 1. Obtaining ~~accidental~~ insurance coverage in an amount equal  
6 to the compensation obligation;

7 2. Furnishing satisfactory proof to the ~~Commissioner~~ Department  
8 of the employer's financial ability to pay the compensation (self-  
9 insure). ~~The Commissioner, under~~ Under rules adopted by the  
10 Insurance Department ~~or the Commissioner for an individual self-~~  
11 ~~insured employer,~~ the Department shall require ~~an~~ a self-insured  
12 employer that has:

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

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

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

1           (3) provide a combination of the requirements of  
2           divisions (1) and (2) of this subparagraph, as  
3           may be approved by the Department,

4           b.    one hundred or more employees and One Million Dollars  
5               (\$1,000,000.00) or more in net assets to:

6               (1)   secure a surety bond payable to the state, or an  
7               irrevocable letter of credit, in an amount  
8               determined by the ~~Commissioner~~ Department which  
9               shall be at least an average of the yearly claims  
10              for the last three (3) years, ~~or~~

11              (2)   provide proof of excess coverage with such terms  
12              and conditions as is commensurate with their  
13              ability to pay the benefits required by the  
14              provisions of this act, or

15              (3) provide a combination of the requirements of  
16              divisions (1) and (2) of this subparagraph, as  
17              may be approved by the Department; or

18           3.   Any other security as may be approved by the ~~Commissioner~~  
19           Department.

20           C.   The ~~Commissioner~~ Department may waive the requirements of  
21           this section in an amount which is commensurate with the ability of  
22           the employer to pay the benefits required by the provisions of this  
23           act. Irrevocable letters of credit required by this section shall  
24           contain such terms as may be prescribed by the ~~Commissioner~~

1 Department and shall be issued for the benefit of the state by a  
2 financial institution whose deposits are insured by the Federal  
3 Deposit Insurance Corporation.

4 D. An employer who does not fulfill the requirements of this  
5 section is not relieved of the obligation for compensation to a  
6 covered employee. The security required under this section,  
7 including any interest thereon, shall be maintained by the  
8 ~~Commissioner~~ Department as provided in this act until each:

9 1. Each claim for benefits is paid, settled, or lapses under  
10 this act, and costs of administration of such claims are paid; or

11 2. The Department has determined that the self-insured  
12 qualified employer is impaired and has advised the Oklahoma Option  
13 Self-insured Guaranty Fund of the impairment and released the  
14 balance of any security required by this section to the Oklahoma  
15 Option Self-insured Guaranty Fund. Claims administration, including  
16 processing, investigating, and paying valid claims against an  
17 impaired qualified employer's benefit plan under this act may  
18 include claim upon the surety that issued any bond, a draw upon the  
19 bank that issued any letter of credit, or liquidation of other  
20 security.

21 E. Any ~~bond~~ security shall be ~~filed~~ deposited with and held by  
22 the ~~Commissioner~~ Department and shall be for the exclusive benefit  
23 of any covered employee of a qualified employer.

1 F. Any security ~~held~~ released by the ~~Commissioner~~ Department to  
2 the Oklahoma Option Self-insured Guaranty Fund may be used to make a  
3 payment to or on behalf of a covered employee provided the following  
4 requirements are met:

5 1. The covered employee sustained an occupational injury that  
6 is covered by the qualified employer's benefit plan;

7 2. The covered employee's claim for payment of a specific  
8 medical or wage replacement benefit amount has been accepted by the  
9 plan administrator of the benefit plan or acknowledged in a final  
10 judgment or court order assessing a specific dollar figure for  
11 benefits payable under the benefit plan;

12 3. The covered employee is unable to receive payment from the  
13 benefit plan or collect on such judgment or court order because the  
14 qualified employer has filed for bankruptcy or the benefit plan has  
15 become insolvent; and

16 4. The covered employee is listed as an unsecured creditor of  
17 the qualified employer because of the acceptance of such claim by  
18 the plan administrator of the benefit plan or judgment or court  
19 order assessing a specific dollar figure for benefits payable under  
20 the benefit plan.

21 G. The ~~Commissioner~~ Department shall promulgate rules to carry  
22 out the provisions of this section including those establishing the  
23 procedure by which ~~a covered employee may request and receive~~  
24 ~~payment from the security held by the Commissioner~~ an employer may

1 be approved to self-insure all or part of the employer's liability  
2 under the Oklahoma Employee Injury Benefit Act.

3 H. The benefit plan may provide some level of benefits for  
4 sickness, injury or death not due to ~~an occupational~~ a compensable  
5 injury.

6 I. A qualified employer shall hold harmless any insurance agent  
7 or broker who sold the employer a benefits program compliant with  
8 the Oklahoma Employee Injury Benefit Act if the qualified employer  
9 is sued in district court for an injury arising in the course and  
10 scope of employment.

11 SECTION 22. AMENDATORY Section 118, Chapter 208, O.S.L.  
12 2013, as amended by Section 6, Chapter 390, O.S.L. 2015 (85A O.S.  
13 Supp. 2015, Section 211), is amended to read as follows:

14 Section 211. A. If ~~an~~ a qualified employer denies a claimant's  
15 claim for benefits under ~~this act~~ the Oklahoma Employee Injury  
16 Benefit Act, the qualified employer shall notify him or her in  
17 writing of the decision ~~or the need for additional information~~  
18 within fifteen (15) days after receipt of the claim, subject to a  
19 reasonable extension if the qualified employer requests additional  
20 information. Unless otherwise provided by law, the adverse benefit  
21 determination letter shall contain an explanation of why the claim  
22 was denied, including the benefit plan provision or provisions that  
23 were the basis for the denial, and a detailed description of how to  
24 appeal the determination. The letter shall also inform the claimant

1 of the right to testify at the hearing, produce witnesses in person  
2 or by written statement and submit expert reports. Additional claim  
3 procedures consistent with this section may be specified in the  
4 benefit plan.

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

7 1. The claimant may appeal in writing an initial adverse  
8 benefit determination to an appeals committee within one hundred  
9 eighty (180) days following his or her receipt of the adverse  
10 benefit determination. The ~~appeal~~ appeals committee shall ~~be heard~~  
11 ~~by a committee consisting~~ consist of at least three people ~~that,~~  
12 none of whom are employees of the qualified employer, were ~~not~~  
13 involved in the original adverse benefit determination or have any  
14 pecuniary interest in the outcome of the appeal. The appeals  
15 committee shall conduct a full and fair hearing including, but not  
16 limited to, the opportunity to present live testimony, witness  
17 statements, briefs, expert reports and oral argument on the merits.  
18 The appeals committee shall not give any deference to the claimant's  
19 initial adverse benefit determination in its review;

20 2. The appeals committee may request any additional information  
21 it deems necessary to make a decision, including having the claimant  
22 submit to a medical exam. The committee shall create a  
23 comprehensive record of the hearing and maintain such record for no  
24

1 less than two (2) years from the date the decision on appeal is  
2 issued;

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

6 ~~4.~~ Subject to the need for a reasonable extension of time due  
7 to matters beyond the control of the benefit plan, the appeals  
8 committee shall review the determination and issue a decision no  
9 later than forty-five (45) days from the date the notice of contest  
10 is received. The committee shall provide written notice of its  
11 decision to the claimant and the qualified employer. Such notice  
12 shall include a detailed explanation of the decision, analysis of  
13 evidence presented and instruction for seeking judicial review of  
14 the decision. No legal action may be brought by or with respect to  
15 a claimant to recover benefits under the benefit plan before the  
16 foregoing claim procedures have been exhausted;

17 ~~5. If any part of an adverse benefit determination is upheld by~~  
18 ~~the committee, the~~ 4. The qualified employer or claimant may then  
19 file appeal the decision of the appeals committee by filing a  
20 petition for review with the Commission within one (1) year after  
21 the date the claimant receives notice that of the adverse benefit  
22 determination, or part thereof, was upheld is received. The appeals  
23 committee shall provide the record of the hearing to the Commission  
24 within seven (7) days of notice from the Commission. If the

1 Commission determines in its sole discretion that the record is  
2 deficient, it shall provide written notice to the appeals committee  
3 of the defect or defects, after which the committee shall have three  
4 (3) days to submit a cured record. If the record is not cured, the  
5 administrative law judge shall presume that the defect or defects  
6 are unfavorable to the qualified employer. The Commission shall  
7 appoint an administrative law judge to hear ~~any~~ the appeal ~~of an~~  
8 ~~adverse benefit determination~~ as a trial de novo. The Commission  
9 shall prescribe additional rules governing the authority and  
10 responsibility of the parties, the administrative law judge and the  
11 Commission during the appeal processes. The administrative law  
12 judge and Commission shall act as the court of competent  
13 jurisdiction under 29 U.S.C.A. Section 1132(e)(1), and shall possess  
14 adjudicative authority to render decisions in individual proceedings  
15 by claimants ~~to recover benefits due to the claimant~~ or employers  
16 under the terms of the ~~claimant's~~ applicable plan, including the  
17 authority to award or deny benefits and otherwise enforce ~~the~~  
18 ~~claimant's~~ rights under the terms of the benefit plan, ~~or to clarify~~  
19 ~~the claimant's rights to future benefits under the terms of the~~  
20 ~~plan;~~

21 ~~6.~~ 5. The ~~Commission~~ administrative law judge shall ~~rely on the~~  
22 ~~record established by the internal appeal process and use an~~  
23 ~~objective standard of review that is not arbitrary or capricious~~ the  
24 claim de novo. Any party aggrieved by the judgment, decision, or

1 award made by an administrative law judge may, within ten (10) days  
2 of issuance, appeal to the Commission. After hearing, the  
3 Commission may reverse or modify the decision of the administrative  
4 law judge only if it determines that the decision was against the  
5 clear weight of evidence or contrary to law. All such proceedings  
6 of the Commission shall be recorded by a court reporter. Any  
7 judgment of the Commission which reverses a decision of the  
8 administrative law judge shall contain specific findings relating to  
9 the reversal. Any award by the administrative law judge or  
10 Commission shall be limited to benefits payable under the terms of  
11 the benefit plan and, to the extent provided herein, attorney fees  
12 and costs; and

13 ~~7.~~ 6. If the claimant appeals to the Commission and any part of  
14 the adverse benefit determination is upheld, he or she may appeal to  
15 the Oklahoma Supreme Court. The judgment, decision or award of the  
16 Commission shall be final and conclusive on all questions within its  
17 jurisdiction between the parties unless an action is commenced in  
18 the Supreme Court of this state to review the judgment, decision or  
19 award within twenty (20) days of being sent to the parties. Any  
20 judgment, decision or award made by an administrative law judge  
21 shall be stayed until all appeal rights have been waived or  
22 exhausted. The Supreme Court may modify, reverse, remand for  
23 rehearing, or set aside the judgment, decision or award only if it  
24 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.~~

1       ~~D. The provisions of this section shall apply to the extent not~~  
2 ~~inconsistent with or preempted by any other applicable law or rule.~~

3       ~~E. All intentional tort or other employers' liability claims~~  
4 ~~may proceed through the appropriate state courts of Oklahoma,~~  
5 ~~mediation, arbitration, or any other form of alternative dispute~~  
6 ~~resolution or settlement process available by law.~~

7       A fee of One Hundred Dollars (\$100.00) per appeal to the Supreme  
8 Court shall be paid by the party filing the appeal to the Commission  
9 and deposited to the credit of the Workers' Compensation Fund as  
10 costs for preparing, assembling, indexing and transmitting the  
11 record for appellate review. If more than one party to the action  
12 files an appeal from the same judgment, decision or award, the fee  
13 shall be paid by the party whose petition in error commences the  
14 principal appeal.

15       SECTION 23. This act shall become effective in accordance with  
16 the provisions of Section 58 of Article V of the Oklahoma  
17 Constitution.

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