

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE  
FOR

SENATE BILL 737

By: Sykes

COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending 85 O.S. 2011, Section 380, as amended by Section 45, Chapter 254, O.S.L. 2013 (85 O.S. Supp. 2016, Section 380), which relates to volunteer firefighters; modifying entity to establish requirements for workers' compensation insurance coverage; increasing state contribution for certain premium; requiring appropriation for specified purpose; conforming language; amending Sections 2, 3, 7, 14, 16, 17, 18, 19, as amended by Section 4, House Joint Resolution No. 1096, O.S.L. 2014, 20, 21, 22, 31, 43, 45, as amended by Section 2, Chapter 390, O.S.L. 2015, 46, 56, 57, 62, 65, as amended by Section 3, Chapter 390, O.S.L. 2015, 68, 69, 71, 78, 82, 87, 98, as amended by Section 4, Chapter 169, O.S.L. 2014, 99, as amended by Section 5, Chapter 169, O.S.L. 2014, 154 and 158 (85A O.S. Supp. 2016, Sections 2, 3, 7, 14, 16, 17, 18, 19, 20, 21, 22, 31, 43, 45, 46, 56, 57, 62, 65, 68, 69, 71, 78, 82, 87, 98, 99, 111 and 115), which relate to the Administrative Workers' Compensation Act; modifying definitions; prohibiting eligibility for benefits under certain circumstances; modifying certain jurisdiction; establishing burden of proof to show certain violation; limiting certain damage awards; modifying requirements for certain compensable injury; modifying requirements for usage of certain guidelines; clarifying usage of certain guide; authorizing certain notice by electronic means; modifying required qualifications for certain commissioners; removing authority for appointment of special commissioner; prohibiting Commission from making determinations on constitutionality; modifying required qualifications for certain administrative

1 law judges; modifying authority to hear certain  
2 appeals; modifying certain rulemaking procedures;  
3 requiring compliance with the Administrative  
4 Procedures Act; removing certain contract authority;  
5 modifying certain advisory responsibilities of State  
6 Treasurer; establishing procedures for Affidavit of  
7 Exempt Status; creating misdemeanor offense; imposing  
8 fine for certain offense; authorizing assessment of  
9 certain fee; limiting liability for injury to certain  
10 employees upon certain good faith reliance; modifying  
11 procedures for certain third party claims;  
12 establishing lien rights for certain recovery;  
13 modifying requirements for recovery of benefits for  
14 temporary total disability; placing cap on recovery  
15 for temporary partial disability; modifying  
16 requirements for recovery of benefits for permanent  
17 partial disability; prohibiting dual award of certain  
18 benefits; authorizing commutation of certain benefit  
19 awards; modifying requirements for recovery of  
20 benefits for permanent total disability; establishing  
21 guidelines for certain vocational rehabilitation;  
22 modifying requirements for recovery of benefits for  
23 amputation or permanent loss of use; modifying  
24 requirements for change of physician; increasing  
number of missed appointments required for loss of  
certain eligibility; modifying requirements for  
recovery of benefits for nonsurgical soft tissue  
injury; modifying requirements for recovery of  
benefits for occupational disease; deleting certain  
definition; modifying certain notice requirements;  
modifying statutes of limitation for certain claims;  
modifying requirements for claims for additional  
compensation; deleting certain exception; modifying  
procedures for certain claims for compensation;  
authorizing appointment of administrative law judge  
to en banc panel under certain circumstances;  
decreasing percentage of allowable recovery for  
certain attorney fees; modifying definition;  
prohibiting approval of certain settlements;  
modifying sources for the Self-insurance Guaranty  
Fund; modifying threshold for certain assessment;  
modifying certain assessment rate; providing for  
transfer of excess funds; modifying procedures for  
transfer of certain proceeds and unexpended funds;  
requiring certain information for filing of certain  
claim; modifying procedures for certain appeals;  
conforming language; updating statutory references;

clarifying certain effective dates; repealing Sections 36, 60, 61, 63, 67, 80, 159 and 160, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2016, Sections 36, 60, 61, 63, 67, 80, 116 and 117), which relate to the Administrative Workers' Compensation Act; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 2011, Section 380, as amended by Section 45, Chapter 254, O.S.L. 2013 (85 O.S. Supp. 2016, Section 380), is amended to read as follows:

Section 380. A. 1. Volunteer fire departments organized pursuant to state law may obtain workers' compensation insurance for volunteer firefighters through the Volunteer Firefighter Group Insurance Pool pursuant to requirements established by ~~CompSource Mutual Insurance Company~~ an insurance company selected by the Office of Management and Enterprise Services through a competitive bid which shall administer the Pool. For the premium set by ~~CompSource Mutual Insurance Company~~ the insurance company, the state shall provide ~~Fifty-five Dollars (\$55.00)~~ Eighty-five Dollars and thirty-two cents (\$85.32) per firefighter per year. Except as otherwise provided by subsection D of this section, the total amount paid by the state shall not exceed ~~Three Hundred Twenty Thousand Three Hundred Thirty-eight Dollars (\$320,338.00)~~ Eight Hundred Ninety-eight Thousand Six Hundred Seventy-five Dollars and fifty-six cents

1 (\$898,675.56) per year or so much thereof as may be necessary to  
2 fund the Volunteer Firefighter Group Insurance Pool.

3 2. ~~CompSource Mutual Insurance Company~~ The Legislature shall  
4 ~~collect the premium from state agencies, public trusts and other~~  
5 ~~instrumentalities of the state~~ appropriate adequate funding to the  
6 Office of Management and Enterprise Services for the purpose of  
7 providing workers' compensation insurance pursuant to this section.

8 Any funds received by ~~CompSource Mutual Insurance Company~~ the  
9 insurance company from ~~any state agency, public trust, or other~~  
10 ~~instrumentality~~ the Office of Management and Enterprise Services for  
11 purposes of workers' compensation insurance pursuant to this section  
12 shall be deposited to the credit of the Volunteer Firefighter Group  
13 Insurance Pool. ~~CompSource Mutual Insurance Company~~ The insurance  
14 company shall collect premiums, pay claims, and provide for excess  
15 insurance as needed.

16 B. ~~CompSource Mutual Insurance Company~~ The Office of Management  
17 and Enterprise Services shall report, annually, to the Governor, the  
18 Speaker of the Oklahoma House of Representatives, and the President  
19 Pro Tempore of the State Senate the number of enrollees in the  
20 Volunteer Firefighter Group Insurance Pool, and the amount of any  
21 anticipated surplus or deficiency of the Pool; and shall also  
22 provide to the Governor, the Speaker of the Oklahoma House of  
23 Representatives and the President Pro Tempore of the State Senate  
24 sixty (60) days advance notice of any proposed change in rates for

1 the Volunteer Firefighter Group Insurance Pool as determined by the  
2 insurance company.

3 C. The amount of claims paid, claim expenses, underwriting  
4 losses, loss ratio, or any other financial aspect of the Volunteer  
5 Firefighter Group Insurance Pool shall not be considered when  
6 determining or considering bids for the amount of any premiums,  
7 rates, or expenses owed by, or any discounts, rebates, dividends, or  
8 other financial benefits owed to any other policyholder of  
9 ~~CompSource Mutual Insurance Company~~ the insurance company.

10 D. Except as otherwise provided by law, any increase in the  
11 state payment rate for volunteer firefighters under the Volunteer  
12 Firefighter Group Insurance Pool shall not exceed five percent (5%)  
13 per annum. Any proposed change in rates for the Volunteer  
14 Firefighter Group Insurance Pool ~~must~~ shall be approved by the ~~Board~~  
15 ~~of Directors of CompSource Mutual Insurance Company~~ Office of  
16 Management and Enterprise Services with notice provided pursuant to  
17 subsection B of this section. ~~CompSource Mutual Insurance Company~~  
18 The insurance company shall not increase premiums for the Volunteer  
19 Firefighter Group Insurance Pool more than once per annum.

20 E. For purposes of this section, the term "volunteer fire  
21 departments" includes those volunteer fire departments which have  
22 authorized voluntary or uncompensated workers rendering services as  
23 firefighters and are created by statute pursuant to Section 592 of  
24 Title 18 of the Oklahoma Statutes, Sections 29-201 through 29-204 of

1 Title 11 of the Oklahoma Statutes, and those defined by Section 351  
2 of Title 19 of the Oklahoma Statutes.

3 SECTION 2. AMENDATORY Section 2, Chapter 208, O.S.L.  
4 2013 (85A O.S. Supp. 2016, Section 2), is amended to read as  
5 follows:

6 Section 2. As used in the Administrative Workers' Compensation  
7 Act:

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

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

16 3. "Case management" means the ongoing coordination, by a case  
17 manager, of health care services provided to an injured or disabled  
18 worker, including but not limited to systematically monitoring the  
19 treatment rendered and the medical progress of the injured or  
20 disabled worker; ensuring that any treatment plan follows all  
21 appropriate treatment protocols, utilization controls and practice  
22 parameters; assessing whether alternative health care services are  
23 appropriate and delivered in a cost-effective manner based upon  
24

1 acceptable medical standards; and ensuring that the injured or  
2 disabled worker is following the prescribed health care plan;

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

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

17 5. "Certified workplace medical plan" means an organization of  
18 health care providers or any other entity, certified by the State  
19 Commissioner of Health, that is authorized to enter into a  
20 contractual agreement with an employer, group self-insurance  
21 association plan, an employer's workers' compensation insurance  
22 carrier, third-party administrator or an insured to provide medical  
23 care under the Administrative Workers' Compensation Act. Certified  
24 plans shall only include plans which provide medical services and

1 payment for services on a fee-for-service basis to medical  
2 providers;

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

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

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

20 9. a. "Compensable injury" means damage or harm to the  
21 physical structure of the body, or prosthetic  
22 appliances, including eyeglasses, contact lenses, or  
23 hearing aids, caused solely as the result of either an  
24 accident, cumulative trauma or occupational disease



1            arising out of the course and scope of employment. ~~An~~  
2            ~~"accident" means an event involving factors external~~  
3            ~~to the employee that:~~  
4            ~~(1) was unintended, unanticipated, unforeseen,~~  
5            ~~unplanned and unexpected,~~  
6            ~~(2) occurred at a specifically identifiable time and~~  
7            ~~place,~~  
8            ~~(3) occurred by chance or from unknown causes, and~~  
9            ~~(4) was independent of sickness, mental incapacity,~~  
10           ~~bodily infirmity or any other cause.~~

11           b.    "Compensable injury" does not include:

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

- 1 (3) injury which was inflicted on the employee at a  
2 time when employment services were not being  
3 performed or before the employee was hired or  
4 after the employment relationship was terminated,
- 5 (4) injury where the accident was caused by the use  
6 of alcohol, illegal drugs, or prescription drugs  
7 used in contravention of physician's orders. If,  
8 within twenty-four (24) hours of being injured or  
9 reporting an injury, an employee tests positive  
10 for intoxication, an illegal controlled  
11 substance, or a legal controlled substance used  
12 in contravention to a treating physician's  
13 orders, or refuses to undergo the drug and  
14 alcohol testing, there shall be a rebuttable  
15 presumption that the injury was caused by the use  
16 of alcohol, illegal drugs, or prescription drugs  
17 used in contravention of physician's orders.  
18 This presumption may only be overcome if the  
19 employee proves by objective, clear and  
20 convincing evidence that his or her state of  
21 intoxication had no causal relationship to the  
22 injury,
- 23 (5) any strain, degeneration, damage or harm to, or  
24 disease or condition of, the eye or

1           musculoskeletal structure or other body part  
2           resulting from the natural results of aging,  
3           osteoarthritis, arthritis, or degenerative  
4           process including, but not limited to,  
5           degenerative joint disease, degenerative disc  
6           disease, degenerative  
7           spondylosis/spondylolisthesis and spinal  
8           stenosis, or

9           (6) any injury that is related to a preexisting  
10          condition except ~~when~~ if the treating physician  
11          ~~clearly confirms~~ determines by objective findings  
12          that the injury is an identifiable and  
13          significant aggravation ~~incurred~~ of the pre-  
14          existing condition that:

15          (a) occurred in the course and scope of  
16          employment,

17          (b) is not only a recurrence of symptoms  
18          inherent in the etiology of the pre-existing  
19          condition, and

20          (c) is substantially caused by the work-related  
21          accident.

22          c. The definition of "compensable injury" shall not be  
23          construed to limit or abrogate the right to recover  
24          for mental injuries as described in Section 13 of this

1       ~~act~~ title, heart or lung injury or illness as  
2       described in Section 14 of this ~~act~~ title, or  
3       occupational diseases as described in Section 65 of  
4       this ~~act~~ title.

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

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

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

18      g.   An employee who suffers a compensable injury shall be  
19      entitled to receive compensation as prescribed in ~~this~~  
20      ~~act~~ the Administrative Workers' Compensation Act.

21      Notwithstanding other provisions of law, if it is  
22      determined that a compensable injury did not occur,  
23      the employee shall not be entitled to compensation  
24

1                   under ~~this act~~ the Administrative Workers'  
2                   Compensation Act;

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

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

13          ~~12.~~   "Continuing medical maintenance" means medical treatment  
14 that is reasonable and necessary to maintain ~~claimant's~~ the  
15 employee's condition resulting from the compensable injury or  
16 illness after reaching maximum medical improvement. Continuing  
17 medical maintenance shall not include diagnostic tests, surgery,  
18 injections, counseling, physical therapy, or pain management devices  
19 or equipment;

20          ~~13.~~ 12.   "Course and scope of employment" means an activity of  
21 any kind or character for which the employee was hired and that  
22 relates to and derives from the work, business, trade or profession  
23 of an employer, and is performed by an employee in the furtherance  
24 of the affairs or business of an employer. The term includes

1 activities conducted on the premises of an employer or at other  
2 locations designated by an employer and travel by an employee in  
3 furtherance of the affairs of an employer that is specifically  
4 directed by the employer. This term does not include:

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

19 ~~14.~~ 13. "Cumulative trauma" means an injury to an employee that  
20 is caused by the combined effect of repetitive physical activities  
21 extending over a period of time in the course and scope of  
22 employment. Cumulative trauma shall not mean fatigue, soreness or  
23 general aches and pain that may have been caused, aggravated,  
24 exacerbated or accelerated by the employee's course and scope of

1 employment. Cumulative trauma shall have resulted directly and  
2 independently of all other causes ~~and the employee shall have~~  
3 ~~completed at least one hundred eighty (180) days of continuous~~  
4 ~~active employment with the employer;~~

5 ~~15.~~ 14. "Death" means only death resulting from compensable  
6 injury as defined in paragraph 9 of this section;

7 ~~16.~~ 15. "Disability" means ~~incapacity because of compensable~~  
8 ~~injury to earn, in the same or any other employment, substantially~~  
9 ~~the same amount of wages the employee was receiving at the time of~~  
10 ~~the, based on objective findings, impairment of a portion of the~~  
11 total physiological capabilities of the human body caused by a  
12 compensable injury;

13 ~~17.~~ 16. "Drive-away operations" includes every person engaged  
14 in the business of transporting and delivering new or used vehicles  
15 by driving, either singly or by towbar, saddle-mount or full-mount  
16 method, or any combination thereof, with or without towing a  
17 privately owned vehicle;

18 ~~18.~~

19 17. a. "Employee" means any person, including a minor, in the  
20 service of an employer under any contract of hire or  
21 apprenticeship, written or oral, expressed or implied,  
22 but excluding one whose employment is casual and not  
23 in the course of the trade, business, profession, or  
24 occupation of his or her employer and excluding one

1 who is required to perform work for a municipality or  
2 county or the state or federal government on having  
3 been convicted of a criminal offense or while  
4 incarcerated. "Employee" shall also include a member  
5 of the Oklahoma National Guard while in the  
6 performance of duties only while in response to state  
7 orders and any authorized voluntary or uncompensated  
8 worker, rendering services as a firefighter, peace  
9 officer or emergency management worker. Travel by a  
10 policeman, fireman, or a member of a first aid or  
11 rescue squad, in responding to and returning from an  
12 emergency, shall be deemed to be in the course of  
13 employment.

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

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



- 1 (2) any person who is employed in agriculture or  
2 horticulture by an employer who had a gross  
3 annual payroll in the preceding calendar year of  
4 less than One Hundred Thousand Dollars  
5 (\$100,000.00) wages for agricultural or  
6 horticultural workers, or any person who is  
7 employed in agriculture or horticulture who is  
8 not engaged in operation of motorized machines,
- 9 (3) any person who is a licensed real estate sales  
10 associate or broker, paid on a commission basis,
- 11 (4) any person who is providing services in a medical  
12 care or social services program, or who is a  
13 participant in a work or training program,  
14 administered by the Department of Human Services,  
15 unless the Department is required by federal law  
16 or regulations to provide workers' compensation  
17 for such person. This division shall not be  
18 construed to include nursing homes,
- 19 (5) any person employed by an employer with five or  
20 fewer total employees, all of whom are related  
21 within the second degree by blood or marriage to  
22 the employer, or a dependent living in the  
23 household of the employer, if the employer is a  
24 natural person or a general or limited

1 partnership, or an incorporator of a corporation  
2 or limited liability company if the corporation  
3 or limited liability company is the employer,

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

8 (7) sole proprietors, members of a partnership,  
9 individuals who are party to a franchise  
10 agreement as set out by the Federal Trade  
11 Commission franchise disclosure rule, 16 CFR  
12 436.1 through 436.11, members of a limited  
13 liability company who own at least ten percent  
14 (10%) of the capital of the limited liability  
15 company or any stockholder-employees of a  
16 corporation who own ten percent (10%) or more  
17 stock in the corporation, unless they elect to be  
18 covered by a policy of insurance covering  
19 benefits under the Administrative Workers'  
20 Compensation Act,

21 (8) any person providing or performing voluntary  
22 service who receives no wages for the services  
23 other than meals, drug or alcohol rehabilitative  
24 therapy, transportation, lodging or reimbursement

1 for incidental expenses except for volunteers  
2 specifically provided for in subparagraph a of  
3 this paragraph,

- 4 (9) a person, commonly referred to as an owner-  
5 operator, who owns or leases a truck-tractor or  
6 truck for hire, if the owner-operator actually  
7 operates the truck-tractor or truck and if the  
8 person contracting with the owner-operator is not  
9 the lessor of the truck-tractor or truck.

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

- 15 (10) a person referred to as a drive-away owner-  
16 operator who privately owns and utilizes a tow  
17 vehicle in drive-away operations and operates  
18 independently for hire, if the drive-away owner-  
19 operator actually utilizes the tow vehicle and if  
20 the person contracting with the drive-away owner-  
21 operator is not the lessor of the tow vehicle.

22 Provided, however, a drive-away owner-operator  
23 shall not be precluded from workers' compensation  
24 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.~~ 18. "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~~ the Administrative Workers'  
20 Compensation Act applies to all public and private entities and  
21 institutions. ~~Employer shall not include a qualified employer with~~  
22 ~~an employee benefit plan as provided under the Oklahoma Employee~~  
23 ~~Injury Benefit Act in Sections 107 through 120 of this act;~~

1       ~~20.~~ 19. "Employment" includes work or labor in a trade,  
2 business, occupation or activity carried on by an employer or any  
3 authorized 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.~~ 20. "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       21. "Impairment" means a loss of, or loss of the function of, a  
22 body part, organ or system;

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

1       ~~25.~~ 22. "Insurance Commissioner" means the ~~Insurance~~  
2 Commissioner of the ~~State of Oklahoma~~ Insurance Department;

3       ~~26.~~ 23. "Insurance Department" means the Insurance Department  
4 of the State of Oklahoma;

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

12       ~~28.~~ 24. "Maximum medical improvement" means that no further  
13 material improvement would reasonably be expected from medical  
14 treatment or the passage of time;

15       ~~29.~~ 25. "Medical services" means those services specified in  
16 Section 50 of this ~~act~~ title;

17       ~~30.~~ 26. "Misconduct" shall include the following:

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

- e. actions or omissions that place in jeopardy the health, life, or property of self or others,
- f. dishonesty,
- g. wrongdoing,
- h. violation of a law, or
- i. a violation of a policy or rule adopted to ensure orderly work or the safety of self or others;

~~31.~~

27. a. (1) "Objective findings" ~~are those~~ means findings based on objective medical evidence 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~~ Sixth Edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment".

(3) (a) Objective evidence necessary to prove permanent disability in occupational hearing

1 loss cases may be established by medically  
2 recognized and accepted clinical diagnostic  
3 methodologies, including, but not limited  
4 to, audiological tests that measure air and  
5 bone conduction thresholds and speech  
6 discrimination ability.

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

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

17 ~~32.~~ 28. "Occupational disease" means a disease arising out of  
18 and in the course and scope of employment that causes damage or harm  
19 to the physical structure of the body. The term includes a disease  
20 or infection that naturally results from the work-related disease.  
21 The term does not include an ordinary disease of life to which the  
22 general public is exposed outside of employment, unless that disease  
23 is an incident to a compensable injury or occupational disease;  
24



1        29. "Official Disability Guidelines" ~~or "ODG"~~ means the current  
2 edition of the Official Disability Guidelines ~~and the ODG Treatment~~  
3 in Workers' ~~Comp~~ Compensation as published by the Work Loss Data  
4 Institute;

5        ~~33.~~ 30. "Permanent disability" means the ~~extent, expressed as a~~  
6 ~~percentage, of the~~ permanent loss of a portion of the total  
7 physiological capabilities of the human body ~~as established by~~  
8 ~~competent medical evidence and~~ caused by a compensable injury based  
9 on the ~~current edition~~ Sixth Edition of the American Medical  
10 Association guides to the evaluation of impairment, ~~if the~~  
11 ~~impairment is contained therein;~~

12        ~~34.~~ 31. "Permanent partial disability" means a permanent  
13 disability ~~or loss of use~~ after maximum medical improvement has been  
14 reached ~~which prevents the injured employee, who has been released~~  
15 ~~to return to work by the treating physician, from returning to his~~  
16 ~~or her pre-injury or equivalent job.~~ All evaluations of permanent  
17 partial disability must be supported by objective findings;

18        ~~35.~~ 32. "Permanent total disability" means, based on objective  
19 findings, incapacity, based upon accidental injury or occupational  
20 disease, to earn wages in any employment for which the employee may  
21 become physically suited and reasonably fitted by education,  
22 training, experience or vocational rehabilitation provided under  
23 ~~this act~~ the Administrative Workers' Compensation Act. Loss of both  
24

1 hands, both feet, both legs, or both eyes, or any two thereof, shall  
2 constitute permanent total disability;

3 ~~36.~~ 33. "Preexisting condition" means any illness, injury,  
4 disease, or other physical or mental condition, whether or not work-  
5 related, for which medical advice, diagnosis, care or treatment was  
6 recommended or received preceding the date of injury;

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

12 ~~38.~~ 34. "Private self-insurer" means a private employer that  
13 has been authorized to self-insure its workers' compensation  
14 obligations pursuant to ~~this act~~ the Administrative Workers'  
15 Compensation Act, but does not include group self-insurance  
16 associations authorized by ~~this act~~ the Administrative Workers'  
17 Compensation Act, or any public employer that self-insures pursuant  
18 to ~~this act~~ the Administrative Workers' Compensation Act;

19 ~~39.~~ 35. "Prosthetic" means an artificial device used to replace  
20 a part or joint of the body that is lost or injured in an accident  
21 or illness covered by ~~this act~~ the Administrative Workers'  
22 Compensation Act;

23 ~~40.~~ ~~"Scheduled member" or "member" means hands, fingers, arms,~~  
24 ~~legs, feet, toes, and eyes. In addition, for purposes of the~~

~~Multiple Injury Trust Fund only, "scheduled member" means hearing impairment;~~

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

~~42.~~ 36. "State average weekly wage" means the state average weekly wage determined by the Oklahoma Employment Security Commission in the preceding calendar year. If such determination is not available, the Commission shall determine the wage annually after reasonable investigation;

~~43.~~ 37. "Subcontractor" means a person, firm, corporation or other legal entity hired by the general or prime contractor to perform a specific task for the completion of a work-related activity;

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

~~45.~~ 38. "Surviving spouse" means the employee's spouse by reason of a legal marriage recognized by the State of Oklahoma or under the requirements of a common law marriage in this state, as determined by the Workers' Compensation Commission;

1       ~~46.~~ 39. "Temporary partial disability" means an injured  
2 employee who is temporarily unable to perform his or her job, but  
3 may perform alternative work offered by the employer;

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

7       ~~48.~~ 40. "Total loss of use" means a one-hundred-percent  
8 permanent partial disability rating to the specific body part; and

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

16       SECTION 3.       AMENDATORY       Section 3, Chapter 208, O.S.L.  
17 2013 (85A O.S. Supp. 2016, Section 3), is amended to read as  
18 follows:

19       Section 3. A. Every employer and every employee, unless  
20 otherwise specifically provided in ~~this act~~ the Administrative  
21 Workers' Compensation Act, shall be subject and bound to the  
22 provisions of the Administrative Workers' Compensation Act.  
23 However, nothing in ~~this act~~ the Administrative Workers'  
24 Compensation Act shall be construed to conflict with any valid Act

1 of Congress governing the liability of employers for injuries  
2 received by their employees.

3 B. ~~This act~~ the Administrative Workers' Compensation Act shall  
4 apply only to claims for injuries and death based on accidents which  
5 occur on or after ~~the effective date of this act~~ February 1, 2014.

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

10 D. If an employee files a workers' compensation claim or  
11 receives benefits in another jurisdiction, the employee shall not be  
12 eligible to receive benefits under this act for the same injury.

13 SECTION 4. AMENDATORY Section 7, Chapter 208, O.S.L.  
14 2013 (85A O.S. Supp. 2016, Section 7), is amended to read as  
15 follows:

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

18 1. Filed a claim under ~~this act~~ the Administrative Workers'  
19 Compensation Act;

20 2. Retained a lawyer for representation regarding a claim under  
21 ~~this act~~ the Administrative Workers' Compensation Act;

22 3. Instituted or caused to be instituted any proceeding under  
23 the provisions of ~~this act~~ the Administrative Workers' Compensation  
24 Act; or

1        4.    Testified or is about to testify in any proceeding under the  
2 provisions of ~~this act~~ the Administrative Workers' Compensation Act.

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

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

8 ~~(\$100,000.00)~~ If a district court of this state determines that an

9 employer violated a provision of this section, such employer shall

10 be liable for reasonable compensatory damages suffered by an

11 employee as a result of the violation. The employee shall have the

12 burden of proof to show such violation by a preponderance of the

13 evidence. Interim earnings or amounts earnable with reasonable

14 diligence by the person discriminated against shall reduce the ~~back~~

15 ~~pay~~ compensatory damages otherwise allowable. Exemplary or punitive

16 damage awards made pursuant to this section shall not exceed One

17 Hundred Thousand Dollars (\$100,000.00).

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

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

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

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

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

11       SECTION 5.       AMENDATORY       Section 14, Chapter 208, O.S.L.  
12 2013 (85A O.S. Supp. 2016, Section 14), is amended to read as  
13 follows:

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

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

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

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

6 1. It occurred at a definite time and place;

7 2. It was caused by a specific event occurring in the course  
8 and scope of employment;

9 3. The preponderance of the evidence indicates that the  
10 employee's work was the main contributing factor, rather than the  
11 natural progression of a preexisting condition; and

12 4. It was not triggered by physical or mental stress.

13 SECTION 6. AMENDATORY Section 16, Chapter 208, O.S.L.  
14 2013 (85A O.S. Supp. 2016, Section 16), is amended to read as  
15 follows:

16 Section 16. A. The Official Disability Guidelines ~~Treatment~~  
17 ~~in Workers Compensation (ODG), published by the Work Loss Data~~  
18 ~~Institute, is to~~ shall ~~be recognized as the primary~~ standard of  
19 reference, at the time of treatment, in determining the frequency  
20 and extent of services presumed to be medically necessary and  
21 appropriate for compensable injuries under ~~this act~~ the  
22 Administrative Workers' Compensation Act, or in resolving such  
23 matters in the event a dispute arises. ~~The medical treatment~~  
24 ~~guidelines are not requirements, nor are they mandates or standards;~~



1 ~~they provide advice by identifying the care most likely to benefit~~  
2 ~~injured workers. The guidelines shall be evidence-based,~~  
3 ~~scientifically valid, outcome-focused, and designed to reduce~~  
4 ~~excessive or inappropriate medical care while safeguarding necessary~~  
5 ~~medical care.~~

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

10 Prescriptions and nonprescription drugs that are not preferred,  
11 exceed or are not addressed by ~~ODG~~ the Official Disability  
12 Guidelines require preauthorization and the preauthorization request  
13 shall include the prescribing doctor's drug regimen plan of care and  
14 the anticipated dosage or range of dosages.

15 SECTION 7. AMENDATORY Section 17, Chapter 208, O.S.L.  
16 2013 (85A O.S. Supp. 2016, Section 17), is amended to read as  
17 follows:

18 Section 17. A. There is hereby created a Physician Advisory  
19 Committee comprised of nine (9) members to be appointed as follows:

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

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

7        3. The Speaker of the House of Representatives shall appoint  
8 three members, one of whom shall be licensed in this state as an  
9 osteopathic physician, one of whom shall be licensed in this state  
10 either as a doctor of medicine or a doctor of osteopathy and shall  
11 be engaged in the practice of occupational medicine, and one of whom  
12 shall be licensed in this state as a chiropractic physician.

13        Any member serving on the ~~effective date of this section~~  
14 February 1, 2014, shall serve the remainder of his or her term.

15        Thereafter, each position will be filled by the appointing official  
16 for a term of three (3) years. Members shall be subject to  
17 reappointment, with any new appointee to serve out the remainder of  
18 the unexpired term of the Committee member so replaced.

19        B. The Committee shall:

20        1. Assist and advise the Workers' Compensation Commission  
21 regarding utilization review as it relates to the medical practice  
22 and treatment of work-related injuries. Such utilization review  
23 shall include a review of reasonable and necessary medical  
24 treatment; abusive practices; needless treatments, testing, or

1 procedures; or a pattern of billing in excess of or in violation of  
2 the Schedule of Medical Fees. The Physician Advisory Committee  
3 shall review and make findings and recommendations to the Commission  
4 with respect to charges of inappropriate or unnecessary treatment or  
5 procedures, abusive practices, or excessive billing disclosed  
6 through utilization review;

7 2. Assist the Commission in reviewing medical practices of  
8 health care providers, including evaluations of permanent disability  
9 provided by health care providers. The Committee shall review and  
10 make findings and recommendations to the Commission with respect to  
11 charges of abusive practices by health care providers providing  
12 medical services or evaluations of permanent partial disability  
13 through the workers' compensation system;

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

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

21 5. After public hearing, adopt Physician Advisory Committee  
22 Guidelines for the prescription and dispensing of any controlled  
23 substance included in Schedule II of the Uniform Controlled  
24

1 Dangerous Substances Act if not addressed by the current edition of  
2 the Official Disability Guidelines;

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

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

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

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

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

17 C. The Commission shall recognize the latest edition of the  
18 Official Disability Guidelines as the primary standard of reference,  
19 at the time of treatment, in determining the frequency and extent of  
20 services presumed to be medically necessary and appropriate for  
21 compensable injuries ~~under this act~~ the Administrative Workers'  
22 Compensation Act, or in resolving such matters in the event a  
23 dispute arises.  
24

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

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

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

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

18 H. Any health care provider acting in good faith and within the  
19 scope of the provider's duties as a member of the Physician Advisory  
20 Committee shall be immune from civil liability for making any report  
21 or other information available to the judges of the Commission or to  
22 the Commission or for assisting in the origination, investigation,  
23 or preparation of the report or other information so provided.  
24

1       SECTION 8.       AMENDATORY       Section 18, Chapter 208, O.S.L.

2       2013 (85A O.S. Supp. 2016, Section 18), is amended to read as

3       follows:

4       Section 18.   A.   No hospital, physician, or other health care  
5       provider shall bill or attempt to collect any fee or any portion of  
6       a fee for services rendered to an employee due to a work-related  
7       injury or report to any credit-reporting agency any failure of the  
8       employee to make the payment, when a claim for compensation has been  
9       filed under ~~this act~~ the Administrative Workers' Compensation Act  
10      and the hospital, physician, or health care provider has received  
11      actual notice given in writing by the employee or the employee's  
12      representative.   Actual notice shall be deemed received by the  
13      hospital, physician, or health care provider five (5) days after  
14      mailing by certified mail or sending by facsimile, electronic mail  
15      or other electronic means with confirmation of receipt by the  
16      employee or his or her representative to the hospital, physician, or  
17      health care provider.

18      B.   The notice shall include:

- 19      1.   The name of the employer;
- 20      2.   The name of the insurer, if known;
- 21      3.   The name of the employee receiving the services;
- 22      4.   The general nature of the injury, if known; and
- 23      5.   Where a claim has been filed, the claim number, if known.
- 24

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

13 D. This section shall not ~~avoid~~ void, modify, or amend any  
14 other section or subsection of ~~this act~~ the Administrative Workers'  
15 Compensation Act.

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

18 SECTION 9. AMENDATORY Section 19, Chapter 208, O.S.L.  
19 2013, as amended by Section 4, House Joint Resolution No. 1096,  
20 O.S.L. 2014 (85A O.S. Supp. 2016, Section 19), is amended to read as  
21 follows:

22 Section 19. A. There is hereby created the Oklahoma Workers'  
23 Compensation Commission, an executive agency of the State of  
24 Oklahoma, which shall have the exclusive responsibility and duty to

1 carry out the provisions of ~~this act~~ the Administrative Workers'  
2 Compensation Act, except as otherwise provided.

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



1 of the provisions of Section 1 of ~~this resolution~~ House Joint  
2 Resolution No. 1096 of the 2nd Session of the 54th Oklahoma  
3 Legislature.

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

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

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

23 1. To organize, direct and develop the administrative work of  
24 the administrative law judges, including but not limited to

1 docketing, clerical, technical and financial work and establishment  
2 of hours of operation;

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

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

7 F. All appeals or disputes arising from actions of the  
8 Commission shall be governed by provisions of ~~this act~~ the  
9 Administrative Workers' Compensation Act and the Commission shall  
10 not be subject to the provisions of the Oklahoma Administrative  
11 Procedures Act, except as provided in ~~this act~~ the Administrative  
12 Workers' Compensation Act.

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

SECTION 10. AMENDATORY Section 20, Chapter 208, O.S.L.  
2013 (85A O.S. Supp. 2016, Section 20), is amended to read as  
follows:

Section 20. A. In addition to its other duties and powers, the  
Commission is given and granted full power and authority:

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

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

3. To assess penalties;

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

4        5. To make available all records in connection with all cases  
5 of personal injury to the Oklahoma Department of Labor. The  
6 Commissioner of Labor may propose rules for the prevention of  
7 injuries and transmit the rules to the Commission. The Commission  
8 may recommend proposed rules for prevention of injuries to the  
9 Commissioner of Labor; and

10       6. To have and exercise all other powers and duties conferred  
11 or imposed by ~~this act~~ the Administrative Workers' Compensation Act.

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

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

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

22       SECTION 11.        AMENDATORY        Section 21, Chapter 208, O.S.L.  
23 2013 (85A O.S. Supp. 2016, Section 21), is amended to read as  
24 follows:

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

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

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

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

16       D. Except with respect to the Commission's authority to hear  
17 appeals of decisions from administrative law judges other than as  
18 provided pursuant to subsection B of Section 78 of this title, any  
19 reference in ~~this act~~ the Administrative Workers' Compensation Act  
20 to the Commission's ability to hear and decide the rights of  
21 interested parties under ~~this act~~ the Administrative Workers'  
22 Compensation Act shall not prevent it from delegating that  
23 responsibility to an administrative law judge.  
24

1       SECTION 12.       AMENDATORY       Section 22, Chapter 208, O.S.L.  
2 2013 (85A O.S. Supp. 2016, Section 22), is amended to read as  
3 follows:

4       Section 22.   A.   1.   For the purpose of administering the  
5 provisions of ~~this act~~ the Administrative Workers' Compensation Act,  
6 the Workers' Compensation Commission is authorized:

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

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

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

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

21       ~~b.   The notice shall include a statement of the terms or~~  
22           ~~substance of the intended action or description of the~~  
23           ~~subjects and issues involved, and the time, place, and~~  
24

1 ~~manner in which interested persons may present their~~  
2 ~~views thereon.~~

3 e. ~~The notice shall be mailed to any person specified by~~  
4 ~~law or who shall have requested advance notice of~~  
5 ~~rule-making proceedings.~~

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

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

13 ~~5. All expenditures of the Commission in the administration of~~  
14 ~~this act shall be allowed and paid from the Workers' Compensation~~  
15 ~~Fund on the presentation of itemized vouchers approved by the~~  
16 ~~Commission~~ The Commission shall comply with the provisions of the  
17 Administrative Procedures Act applicable to the filing and  
18 publication requirements for rules.

19 B. 1. The Commission may appoint as many persons as may be  
20 necessary to be administrative law judges and in addition may  
21 appoint such examiners, investigators, medical examiners, clerks,  
22 and other employees as it deems necessary to effectuate the  
23 provisions of ~~this act~~ the Administrative Workers' Compensation Act.  
24

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

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

5            1. To hear and approve compromise settlements;

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

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

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

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

19          ~~6.~~ 5. To hear and determine claims concerning disputed medical  
20 bills;

21          ~~7.~~ 6. To promulgate necessary rules for administering ~~this act~~  
22 the Administrative Workers' Compensation Act and develop uniform  
23 forms and procedures for use by administrative law judges. Such  
24 rules shall be reviewable by the Legislature;



1       ~~8.~~ 7. To invest funds on behalf of the Multiple Injury Trust  
2 Fund;

3       ~~9.~~ 8. To appoint a Commission Mediator to conduct informal  
4 sessions to attempt to resolve assigned disputes; and

5       ~~10.~~ 9. Such other duties and responsibilities authorized by  
6 law.

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

12       SECTION 13.       AMENDATORY       Section 31, Chapter 208, O.S.L.  
13 2013, as amended by Section 3, Chapter 344, O.S.L. 2015 (85A O.S.  
14 Supp. 2016, Section 31), is amended to read as follows:

15       Section 31. A. The Multiple Injury Trust Fund shall be derived  
16 from the following additional sources:

17       1. As soon as practicable after January 1 of each year, the  
18 ~~commissioners of the~~ Workers' Compensation Commission shall  
19 establish an assessment rate applicable to each mutual or  
20 interinsurance association, stock company, CompSource Oklahoma, or  
21 other insurance carrier writing workers' compensation insurance in  
22 this state, each employer carrying its own risk, and each group  
23 self-insurance association, for amounts for purposes of computing  
24 the assessment authorized by this section necessary to pay the

1 annual obligations of the Multiple Injury Trust Fund determined on  
2 or before December 31 of each year by the MITF Director, provided  
3 for in subsection P of this section, to be outstanding for the next  
4 calendar year, and to pay the allocations provided for in subsection  
5 I of this section. The rate shall be equal for all parties required  
6 to pay the assessment. If CompSource begins operating as a mutual  
7 insurance company, the Board of Directors for CompSource Mutual  
8 Insurance Company shall have the power to disapprove the rate  
9 established by the MITF Director until the Multiple Injury Trust  
10 Fund repays in full the amount due on any loan from CompSource  
11 Mutual Insurance Company or its predecessor CompSource Oklahoma. If  
12 the MITF Director and CompSource have not agreed on the assessment  
13 rate within thirty (30) days, the Commission shall set an assessment  
14 rate sufficient to cover all foreseeable obligations of the Multiple  
15 Injury Trust Fund, including interest and principal owed by the Fund  
16 on any loan. The rate in effect on the ~~effective date of this act~~  
17 February 1, 2014, shall remain effective through June 30, 2014;

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

24

1       3. The assessments shall be paid to the Tax Commission.

2 Insurance carriers, self-insurers, group self-insurance associations  
3 and CompSource Oklahoma shall pay the assessment in four equal  
4 installments not later than the fifteenth day of the month following  
5 the close of each quarter of the calendar year of the assessment.  
6 Assessments shall be determined based upon gross direct written  
7 premiums, normal premiums or actual paid losses of the paying party,  
8 as applicable, during the calendar quarter for which the assessment  
9 is due. Uninsured employers shall pay the assessment not later than  
10 the fifteenth day of the month following the close of each quarter  
11 of the calendar year of the assessment. For purposes of this  
12 section, "uninsured employer" means an employer required by law to  
13 carry workers' compensation insurance but who has failed or  
14 neglected to do so.

15           a. The assessment authorized in this section shall be  
16               determined using a rate equal to the proportion that  
17               the sum of the outstanding obligations of the Multiple  
18               Injury Trust Fund as determined pursuant to paragraph  
19               1 of this subsection and the allocations provided for  
20               in subsection I of this section bear to the combined  
21               gross direct written premiums of all such insurers;  
22               all actual paid losses of all individual self-  
23               insureds; and the normal premium of all group self-  
24

1 insurance associations, for the year period from  
2 January 1 to December 31 preceding the assessment.

3 b. For purposes of this subsection:

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

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

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

15 5. Each mutual or interinsurance association, stock company,  
16 CompSource Oklahoma, or other insurance carrier writing workers'  
17 compensation insurance in this state, and each employer carrying its  
18 own risk, including each group self-insurance association, shall be  
19 notified by the Commission in writing of the rate for the assessment  
20 on or before May 1 of each year in which a rate is determined. The  
21 rate determined by the Commission shall be in effect for four  
22 calendar quarters beginning July 1 following determination by the  
23 Commission; and  
24

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

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

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

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

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

23      C.   It shall be the duty of the Tax Commission to collect the  
24      payments provided for in ~~this act~~ the Administrative Workers'

1 Compensation Act. The Tax Commission is hereby authorized to bring  
2 an action for the recovery of any delinquent or unpaid payments  
3 required in this section.

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

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

24

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

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

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

18 ~~b. advise the Chief Executive Officer of CompSource on or~~  
19 ~~before the first day of November of the money held as~~  
20 ~~of October 1 of that year by the State Treasurer to~~  
21 ~~the credit of the Multiple Injury Trust Fund.~~

22 G. Eighty percent (80%) of all sums held by the State Treasurer  
23 to the credit of the Multiple Injury Trust Fund may by order of the  
24 MITF Director be invested in or loaned on the pledge of any of the

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

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

21 I. The Tax Commission shall pay, monthly, to the State  
22 Treasurer to the credit of the Multiple Injury Trust Fund all monies  
23 collected pursuant to the provisions of this section. The State  
24 Treasurer shall pay out of the Multiple Injury Trust Fund only upon



1 the order and direction of the Workers' Compensation Commission  
2 acting under the provisions hereof.

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

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

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

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

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

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

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

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

7        P. The person serving as the Administrator of the Multiple  
8 Injury Trust Fund on the date of passage and approval of ~~this act~~  
9 the Administrative Workers' Compensation Act shall serve as the  
10 initial MITF Director, provided such person is serving as the  
11 Administrator of the Multiple Injury Trust Fund on the ~~effective~~  
12 ~~date of this act~~ February 1, 2014. The MITF Director shall be  
13 appointed by and serve at the pleasure of the Governor.

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

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

1       SECTION 14.       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 15.        AMENDATORY        Section 43, Chapter 208, O.S.L.  
20 2013 (85A O.S. Supp. 2016, Section 43), is amended to read as  
21 follows:

22        Section 43. A. ~~Liability Unaffected.~~

23        1. ~~a. The making of a claim for compensation against any~~  
24        ~~employer or carrier for the injury or death of an~~

~~employee shall not affect the right of the employee,  
or his or her dependents, to make a claim or maintain  
an action in court against any third party for the  
injury.~~

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

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

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

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

1           ~~b. the employer or carrier, as applicable, shall receive~~  
2           ~~two-thirds (2/3) of the remainder of the recovery or~~  
3           ~~the amount of the workers' compensation lien,~~  
4           ~~whichever is less, and~~  
5           ~~c. the remainder of the recovery shall go to the injured~~  
6           ~~employee or his or her dependents~~

7           The acceptance of compensation benefits from or the making of a  
8           claim for compensation against an employer or insurer for the injury  
9           or death of an employee shall not affect the right of the employee  
10           or his dependents to sue any other party at law for such injury or  
11           death. The employer and the carrier shall have an automatic first  
12           lien on the amount recovered by the injured employee or his  
13           dependents or legal representative from a third party, which shall  
14           be applied as follows:

15           1. Reasonable costs of collection as approved and allowed by  
16           the court in which such action is pending, or by the Workers'  
17           Compensation Commission in case of settlement without suit, shall be  
18           deducted;

19           2. The employer and carrier shall receive the remainder of the  
20           recovery or the amount of the workers' compensation lien, whichever  
21           is less; and

22           3. Any excess shall belong to the injured employee or his  
23           dependents.

24           B. Subrogation.

1        1. An employer or carrier liable for compensation under ~~this~~  
2 ~~act~~ the Administrative Workers' Compensation Act for the injury or  
3 death of an employee shall have the right to maintain an action in  
4 tort against any third party responsible for the injury or death.  
5 However, the employer or the carrier shall notify the claimant in  
6 writing that the claimant has the right to hire a private attorney  
7 to pursue any benefits to which the claimant is entitled in addition  
8 to the subrogation interest against any third party responsible for  
9 the injury or death.

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

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

20       4. An employer or carrier who is liable for compensation under  
21 ~~this act~~ the Administrative Workers' Compensation Act on account of  
22 injury or death of an employee shall be entitled to maintain a  
23 third-party action against the employer's uninsured motorist  
24 coverage or underinsured motorist coverage.

SECTION 16. AMENDATORY Section 45, Chapter 208, O.S.L. 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S. Supp. 2016, Section 45), is amended to read as follows:

Section 45. A. Temporary Total Disability. 1. If the injured employee is temporarily unable to perform his or her job or any alternative work offered by the employer because of a disability, he or she shall be entitled to receive compensation equal to seventy percent (70%) of the injured employee's average weekly wage per week, but not to exceed ~~seventy percent (70%)~~ of the state average weekly wage, for up to one hundred four (104) weeks. Provided, there shall be no payment for the first three (3) days of the initial period of temporary total disability. If an administrative law judge finds that a ~~consequential~~ subsequent injury has occurred as a direct result of the injury or medical treatment to the part of the body originally injured and that additional time is needed to reach maximum medical improvement, temporary total disability may continue for a period of not more than an additional fifty-two (52) weeks. Such finding shall be based upon a showing of medical necessity by clear and convincing evidence.

2. When the injured employee is released from active medical treatment by the treating physician for all body parts found by the Commission to be injured, or in the event that the employee, ~~without a valid excuse, misses three consecutive medical treatment appointments,~~ fails to comply with medical orders of the treating



1 physician, or otherwise abandons medical care, the employer shall be  
2 entitled to terminate temporary total disability by notifying the  
3 employee, or if represented, his or her counsel. If, however, an  
4 objection to the termination of temporary total disability is filed  
5 by the employee within ten (10) days of termination, the Commission  
6 shall set the matter within twenty (20) days for a determination if  
7 temporary total disability compensation shall be reinstated. The  
8 temporary total disability shall remain terminated unless the  
9 employee proves the existence of a valid excuse for his or her  
10 failure to comply with medical orders of the treating physician or  
11 his or her abandonment of medical care. The administrative law  
12 judge may appoint an independent medical examiner to determine if  
13 further medical treatment is reasonable and necessary. The  
14 independent medical examiner shall not provide treatment to the  
15 injured ~~worker~~ employee, unless agreed upon by the parties.

16 B. Temporary Partial Disability.

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

1 disability rate. However, the injured employee's actual earnings  
2 plus temporary partial disability shall not exceed the temporary  
3 total disability rate.

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

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

9 C. Permanent Partial Disability.

10 1. If the injured employee has a permanent disability after  
11 reaching maximum medical improvement, he or she shall be entitled to  
12 receive compensation equal to seventy percent (70%) of the  
13 employee's average weekly wage per week, not to exceed Three Hundred  
14 Fifty Dollars (\$350.00) per week, for three and a half weeks for  
15 each percentage point of impairment, but not to exceed the earlier  
16 of three hundred fifty (350) weeks or the date of the injured  
17 employee's death.

18 2. A permanent partial disability award or combination of  
19 awards granted an injured ~~worker~~ employee may not exceed a permanent  
20 partial disability rating of one hundred percent (100%) to any body  
21 part or to the body as a whole. The determination of permanent  
22 partial disability shall be the responsibility of the Commission  
23 through its administrative law judges. Any claim by an employee for  
24 compensation for permanent partial disability must be supported by

1 competent medical testimony of a medical doctor, osteopathic  
2 physician, or chiropractor, and shall be supported by objective  
3 ~~medical~~ findings, as defined in ~~this act~~ Section 2 of this title.

4 The opinion of the physician shall include employee's percentage of  
5 permanent partial disability and whether or not the disability is  
6 job-related and caused by the accidental injury or occupational  
7 disease. A physician's opinion of the nature and extent of  
8 permanent partial disability to parts of the body other than  
9 ~~scheduled members must~~ those listed in Section 46 of this title  
10 shall be based solely on criteria established by the ~~current edition~~  
11 Sixth Edition of the American Medical Association's "Guides to the  
12 Evaluation of Permanent Impairment". A copy of any written  
13 evaluation shall be sent to both parties within seven (7) days of  
14 issuance. Medical opinions addressing compensability and permanent  
15 disability must be stated within a reasonable degree of medical  
16 certainty. Any party may submit the report of an evaluating  
17 physician.

18 ~~2.~~ 3. Permanent partial disability shall not be allowed to a  
19 part of the body for which no medical treatment has been received.  
20 A determination of permanent partial disability made by the  
21 Commission or administrative law judge which is not supported by  
22 objective ~~medical~~ findings provided by a treating physician who is a  
23 medical doctor, doctor of osteopathy, chiropractor or a qualified  
24

1 independent medical examiner shall be considered an abuse of  
2 discretion.

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

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

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

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

23 ~~b. If, for any reason other than misconduct as defined in~~  
24 ~~Section 2 of this act, the employer terminates the~~

~~employee or the position offered is not the pre-injury or equivalent job, the remaining permanent partial disability award shall be paid in a lump sum. If the employee is discharged for misconduct, the employer shall have the burden to prove that the employee engaged in misconduct.~~

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

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

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

~~6. If an employee is eligible to receive permanent total disability benefits, he or she may not also receive permanent partial disability benefits.~~

1        5. An employee may elect to commute the remainder of the  
2 permanent partial disability award to which the employee is  
3 entitled, including under Section 46 of this title, if the employee  
4 has returned to work for at least six months and is earning at least  
5 seventy percent (70%) of the employee's average weekly wage at the  
6 time of the injury. An employee who elects to commute the permanent  
7 partial disability award is not entitled to additional benefits for  
8 the injury.

9        6. Previous Disability: The fact that an employee has suffered  
10 previous disability or received compensation therefor shall not  
11 preclude the employee from compensation for a later accidental  
12 personal injury or occupational disease. In the event there exists  
13 a previous permanent partial disability, including a previous non-  
14 work-related injury or condition which produced permanent partial  
15 disability and the same is aggravated or accelerated by an  
16 accidental personal injury or occupational disease, compensation for  
17 permanent partial disability shall be only for such amount as was  
18 caused by such accidental personal injury or occupational disease  
19 and no additional compensation shall be allowed for the preexisting  
20 disability ~~or impairment~~. Any such reduction shall not apply to  
21 temporary total disability, nor shall it apply to compensation for  
22 medical treatment.

23            a. If workers' compensation benefits have previously been  
24            awarded through settlement or judicial or

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

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

12 (1) if the preexisting ~~impairment~~ disability is the  
13 result of injury sustained while working for the  
14 employer against whom workers' compensation  
15 benefits are currently being sought, any award of  
16 compensation shall be reduced by the current  
17 dollar value attributable under the  
18 Administrative Workers' Compensation Act to the  
19 percentage of permanent partial disability  
20 determined to be preexisting. The current dollar  
21 value shall be calculated by multiplying the  
22 percentage of preexisting permanent partial  
23 disability by the compensation rate in effect on  
24

1 the date of the accident or injury against which  
2 the reduction will be applied, and

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

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

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

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

20 ~~10. An injured employee who is eligible for permanent partial~~  
21 ~~disability under this subsection shall be entitled to receive~~  
22 ~~vocational rehabilitation services provided by a technology center~~  
23 ~~or public secondary school offering vocational technical education~~  
24 ~~courses, or a member institution of The Oklahoma State System of~~



1 ~~Higher Education, which shall include retraining and job placement~~  
2 ~~to restore the employee to gainful employment. Vocational~~  
3 ~~rehabilitation services or training shall not extend for a period of~~  
4 ~~more than fifty-two (52) weeks.~~

5 D. Permanent Total Disability.

6 ~~1. In case of total disability adjudged to be permanent, If the~~  
7 injured employee is incapable of earning wages in any employment for  
8 which the employee may become physically suited and reasonably  
9 fitted by education, training, experience or vocational  
10 rehabilitation provided under this act because of a disability, he  
11 or she shall be entitled to receive compensation equal to seventy  
12 percent (70%) of the employee's average weekly wages per week, but  
13 not in excess of the state's average weekly wage, shall be paid to  
14 the employee during for the continuance duration of the disability  
15 until such time as the employee reaches the age of maximum Social  
16 Security retirement benefits or for a period of fifteen (15) years,  
17 whichever is longer. In the event the claimant employee dies of  
18 causes unrelated to the injury or illness, benefits shall cease on  
19 the date of death. Provided, however, any person entitled to revive  
20 the action shall receive a one-time lump-sum payment equal to  
21 twenty-six (26) weeks of weekly benefits for permanent total  
22 disability awarded the claimant. If more than one person is  
23 entitled to revive the claim, the lump-sum payment shall be evenly  
24 divided between or among such persons. In the event the Commission

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

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

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

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

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

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

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

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

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

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

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

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

~~the evaluation shall be paid by the employer. Following the evaluation, if the employee refuses the services or training ordered by the administrative law judge, or fails to complete in good faith the vocational rehabilitation training ordered by the administrative law judge, then the cost of the evaluation and services or training rendered may, in the discretion of the administrative law judge, be deducted from any award of benefits to the employee which remains unpaid by the employer. Upon receipt of such report, and after affording all parties an opportunity to be heard, the administrative law judge shall order that any rehabilitation services or training, recommended in the report, or such other rehabilitation services or training as the administrative law judge may deem necessary, provided the employee elects to receive such services, shall be provided at the expense of the employer. Except as otherwise provided in this subsection, refusal to accept rehabilitation services by the employee shall in no way diminish any benefits allowable to an employee.~~

~~5. The administrative law judge may order vocational rehabilitation before the injured employee reaches maximum medical improvement, if the treating physician believes that it is likely that the employee's injury will prevent the employee from returning to his or her former employment. In granting early benefits for vocational rehabilitation, the Commission shall consider temporary restrictions and the likelihood that such rehabilitation will return~~

1 ~~the employee to gainful employment earlier than if such benefits are~~  
2 ~~granted after the permanent partial disability hearing in the claim.~~

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

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

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

1 ~~directly to the facility providing the vocational rehabilitation~~  
2 ~~services or training to the employee. The employer or employer's~~  
3 ~~insurer may deduct the amount paid for tuition from compensation~~  
4 ~~awarded to the employee~~ Vocational Rehabilitation.

5 1. If the injured employee has a permanent disability after  
6 reaching maximum medical improvement and, as a result, is unable to  
7 return to his or her pre-injury job or another job that pays at  
8 least eighty percent (80%) of the injured employee's pre-injury  
9 wages, the injured employee shall be entitled to vocational  
10 rehabilitation services provided by a technology center or public  
11 secondary school offering vocational-technical education courses, or  
12 a member institution of The Oklahoma State System of Higher  
13 Education, which shall include retraining and job placement to  
14 restore the employee to full-time employment. Vocational  
15 rehabilitation services or training shall not extend for a period of  
16 more than fifty-two (52) weeks.

17 2. An administrative law judge may order vocational  
18 rehabilitation before the injured employee reaches maximum medical  
19 improvement if the treating physician believes that it is likely  
20 that the employee will ultimately be eligible.

21 3. If vocational rehabilitation requires residence at or near  
22 the facility or institution which is away from the employee's  
23 customary residence, reasonable cost of the employee's board,  
24 lodging, travel, tuition, books and necessary equipment in training



1 shall be paid by the employer in addition to weekly compensation  
2 benefits to which the employee is otherwise entitled.

3 F. Disfigurement.

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

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

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

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

20 SECTION 17. AMENDATORY Section 46, Chapter 208, O.S.L.  
21 2013 (85A O.S. Supp. 2016, Section 46), is amended to read as  
22 follows:

23 Section 46. A. ~~An~~ In lieu of compensation provided pursuant to  
24 paragraph 1 of subsection C of Section 45 of this title, an injured

1 employee who ~~is entitled to receive permanent partial disability~~  
2 ~~compensation under Section 45 of this act~~ suffers amputation or  
3 permanent total loss of use as described in this subsection shall  
4 receive compensation ~~for each part of the body in accordance with~~  
5 equal to seventy percent (70%) of the employee's average weekly wage  
6 per week, not to exceed Three Hundred Fifty Dollars (\$350.00) per  
7 week, for the number of weeks ~~for the scheduled loss~~ set forth  
8 ~~below.~~ as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6     ~~E.~~ C. 1. Compensation for the permanent loss of eighty percent  
7 (80%) or more of the vision of an eye shall be the same as for the  
8 loss of an eye.

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

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

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

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

22     SECTION 18.       AMENDATORY       Section 56, Chapter 208, O.S.L.  
23 2013 (85A O.S. Supp. 2016, Section 56), is amended to read as  
24 follows:

1       Section 56. A. If the employer has previously contracted with  
2 a certified workplace medical plan, the employer shall select for  
3 the injured employee a treating physician from the physicians listed  
4 within the network of the certified workplace medical plan. The  
5 employee may apply for a change of physician by utilizing the  
6 dispute resolution process set out in the certified workplace  
7 medical plan on file with the State Department of Health.

8       B. If the employer is not covered by a certified workplace  
9 medical plan, the employer shall select the treating physician. The  
10 Commission on application of the employee shall order one change of  
11 treating physician, regardless of the number of body parts being  
12 treated. Upon the Commission's granting of the application, the  
13 employer shall provide a list of three physicians from whom the  
14 employee may select the replacement. The employer may identify  
15 physicians within the same practice, facility or hospital as the  
16 treating physician. The only requirement for the three physicians  
17 on the list is that they be licensed and accredited to perform the  
18 necessary treatment.

19       SECTION 19.       AMENDATORY       Section 57, Chapter 208, O.S.L.  
20 2013 (85A O.S. Supp. 2016, Section 57), is amended to read as  
21 follows:

22       Section 57. A. If an injured employee misses ~~two~~ three or more  
23 scheduled appointments for treatment, he or she shall no longer be  
24

1 eligible to receive benefits under ~~this act~~ the Administrative  
2 Workers' Compensation Act, unless his or her absence was:

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

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

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

10 SECTION 20. AMENDATORY Section 62, Chapter 208, O.S.L.  
11 2013 (85A O.S. Supp. 2016, Section 62), is amended to read as  
12 follows:

13 Section 62. A. Notwithstanding the provisions of Section 45 of  
14 this ~~act~~ title, if an employee suffers a nonsurgical soft tissue  
15 injury, temporary total disability compensation shall not exceed  
16 ~~eight (8)~~ twelve (12) weeks, regardless of the number of parts of  
17 the body to which there is a nonsurgical soft tissue injury. An  
18 employee who is treated with an epidural steroid injection ~~or~~  
19 ~~injections~~ shall be entitled to an extension of an additional eight  
20 (8) weeks, regardless of the number of injections received. An  
21 employee who has been recommended by a treating physician for  
22 surgery for a soft tissue injury may petition the Workers'  
23 Compensation Commission for one extension of temporary total  
24 disability compensation and the Commission may order an extension,

1 not to exceed sixteen (16) additional weeks. If the surgery is not  
2 performed within thirty (30) days of the approval of the surgery by  
3 the employer, its insurance carrier, or an order of the Commission  
4 authorizing the surgery, and the delay is caused by the employee  
5 acting in bad faith, the benefits for the extension period shall be  
6 terminated and the employee shall reimburse the employer any  
7 temporary total disability compensation he or she received beyond  
8 eight (8) weeks. An epidural steroid injection, or any procedure of  
9 the same or similar physical invasiveness, shall not be considered  
10 surgery.

11 B. For purposes of this section~~7~~:

12 1. "~~soft~~ Soft tissue injury" means damage to one or more of the  
13 tissues that surround bones and joints. Soft tissue injury  
14 includes, but is not limited to, sprains, strains, contusions,  
15 tendonitis and muscle tears. Cumulative trauma is to be considered  
16 a soft tissue injury. Soft tissue injury does not include any of  
17 the following:

18 ~~1.~~ a. ~~Injury~~ injury to or disease of the spine, spinal  
19 discs, spinal nerves or spinal cord, where corrective  
20 surgery is performed~~7~~, 1

21 ~~2.~~ b. ~~Brain~~ brain or closed-head injury as evidenced by:

22 ~~a.~~ (1) sensory or motor disturbances,

23 ~~b.~~ (2) communication disturbances,

24

e. (3) complex integrated disturbances of cerebral function,

~~d.~~ (4) episodic neurological disorders, or

~~e.~~ (5) other brain and closed-head injury conditions at least as severe in nature as any condition provided in subparagraphs a through d of this paragraph~~7~~, or

~~3. c. Any~~ any joint replacement; and

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

SECTION 21. AMENDATORY Section 65, Chapter 208, O.S.L.  
2013, as amended by Section 3, Chapter 390, O.S.L. 2015 (85A O.S.  
Supp. 2016, Section 65), is amended to read as follows:

Section 65. A. If an employee suffers from an occupational disease as defined in this section and is disabled or dies as a result of the disease, the employee, or, in case of death, his or her dependents, shall be entitled to compensation as if the disability or death were caused by injury arising out of work activities within the scope of employment, except as otherwise provided in this section.

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



1 previously been disabled, laid off, or compensated in damages or  
2 otherwise, because of the disease.

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

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

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

1        2. No compensation shall be payable for any contagious or  
2 infectious disease unless contracted in the course and scope of  
3 employment.

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

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

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

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

17            a. the disease is due to the nature of an employment in  
18                which the hazards of the disease actually exist and is  
19                actually incurred in the course and scope of his or  
20                her employment. This includes any disease due to or  
21                attributable to exposure to or contact with any  
22                radioactive material by an employee in the course and  
23                scope of his or her employment,  
24

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

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

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

17           SECTION 22.        AMENDATORY        Section 68, Chapter 208, O.S.L.  
18   2013 (85A O.S. Supp. 2016, Section 68), is amended to read as  
19   follows:

20           Section 68.   A.   ~~Unless an~~ An employee ~~gives oral or written~~  
21   shall give notice of an injury to the employer within ~~thirty (30)~~  
22   fifteen (15) days of the date ~~an~~ on which the injury occurs or, if  
23   ~~the rebuttable presumption shall be that the injury was not work-~~  
24   ~~related. Such presumption must be overcome by a preponderance of~~

1 ~~the evidence~~ is an occupational disease or cumulative trauma, the  
2 date on which the employee knew or should have known that the injury  
3 may be related to the employment.

4 B. ~~Unless an~~ If the employee ~~gives oral or written~~ does not  
5 give timely notice of an injury to the employer ~~within thirty (30)~~  
6 ~~days of the employee's separation from employment,~~ there shall be a  
7 rebuttable presumption that ~~an occupational disease or cumulative~~  
8 ~~trauma~~ the injury did not arise out of and in the course of  
9 ~~employment~~ is not a compensable injury. Such presumption ~~must~~ may  
10 be overcome by a preponderance of the evidence. If notice is not  
11 timely given but the employee overcomes the presumption that the  
12 injury is not compensable, the employee shall not be entitled to  
13 receive benefits for the time period before the date on which the  
14 employee reported the injury.

15 C. For purposes of this section, if the injury is an  
16 occupational disease or cumulative trauma, the employer is the  
17 person who employed the employee on the date of the last injurious  
18 exposure to the hazards of the disease.

19 SECTION 23. AMENDATORY Section 69, Chapter 208, O.S.L.  
20 2013 (85A O.S. Supp. 2016, Section 69), is amended to read as  
21 follows:

22 Section 69. A. Time for Filing.  
23  
24

1        1. A claim for benefits under ~~this act~~ the Administrative  
2 Workers' Compensation Act, ~~other than an occupational disease~~, shall  
3 be ~~barred unless it is~~ filed with the Commission within:

4        a.    one (1) year from the date of the injury. ~~If during~~  
5                ~~the one-year period following the filing of the claim~~  
6                ~~the employee receives no weekly benefit compensation~~  
7                ~~and receives no medical treatment resulting from the~~  
8                ~~alleged injury, the claim shall be barred thereafter.~~  
9                ~~For purposes of this section, the date of the injury~~  
10               ~~shall be defined as the date an injury is caused by an~~  
11               ~~accident as set forth in paragraph 9 of Section 2 of~~  
12               ~~this act.~~

13        b.    two (2) years from the date of injury for an  
14               occupational disease or cumulative trauma, or

15        c.    two (2) years from the date of death;

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

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

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

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

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

14          ~~4. If within six (6) months after the filing of a claim for~~  
15          ~~compensation no bona fide request for a hearing has been made with~~  
16          ~~respect to the claim, the claim may, on motion and after hearing, be~~  
17          ~~dismissed with prejudice~~ For purposes of this section, the date of  
18          injury for an occupational disease or cumulative trauma shall be the  
19          date the employee knew or should have known that the injury may be  
20          related to the employment.

21          B. Time for Filing Additional Compensation.

22          ~~1. In cases in which any compensation, including disability or~~  
23          ~~medical, has been paid on account of injury, a claim for additional~~  
24          ~~compensation shall be barred unless filed with the Commission within~~

~~one (1) year from the date of the last payment of disability compensation or two (2) years from the date of the injury, whichever is greater~~ If a claim for benefits under this act has been timely filed with the Commission, any claim for additional compensation shall be filed within ninety (90) days of the date that the last benefit was received, except as otherwise prescribed by the treating physician at the time of the last appointment.

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

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

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

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

7       ~~F. Persons under Disability.~~

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

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

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



1       SECTION 24.       AMENDATORY       Section 71, Chapter 208, O.S.L.  
2       2013 (85A O.S. Supp. 2015, Section 71), is amended to read as  
3       follows:

4       Section 71. A. ~~Notice.~~ Within ten (10) days after a an  
5       Employee's Notice of Claim for Compensation or other claim for  
6       ~~compensation~~ benefits has been filed, the Commission shall notify  
7       the employer and any other interested person of the filing of the  
8       claim.

9       B. ~~Investigation—Hearing.~~

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

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

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

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

23      ~~5.~~ The award, together with the statement of the findings of  
24      ~~fact and other matters pertinent to the issues, shall be filed with~~

1 ~~the record of the proceedings, and a copy of the award shall~~  
2 ~~immediately be sent to the parties in or to counsels of record, if~~  
3 any pre-hearing conference within seven (7) days of filing of the  
4 Employee's Notice of Claim for Compensation or other claim for  
5 benefits. At the pre-hearing conference, the claim shall be set for  
6 trial at a date no later than sixty (60) days from the date of the  
7 pre-hearing conference.

8 C. Hearings and trials shall not be continued absent  
9 extraordinary circumstances as determined by the Commission.

10 D. Evidence and Construction.

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

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

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

1        3. Administrative law judges, the Commission, and any reviewing  
2 courts shall strictly construe the provisions of ~~this act~~ the  
3 Administrative Workers' Compensation Act.

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

8        ~~D.~~ E. Judgment. The judgment denying the claim or making the  
9 award shall be filed in the office of the Commission, and a copy  
10 shall be sent by registered mail, facsimile, electronic mail or by  
11 other electronic means with confirmation of receipt to the claimant  
12 and to the employer or to their attorneys.

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

18        SECTION 25.        AMENDATORY        Section 78, Chapter 208, O.S.L.  
19 2013 (85A O.S. Supp. 2015, Section 78), is amended to read as  
20 follows:

21        Section 78. A. Any party feeling aggrieved by the judgment,  
22 decision, or award made by the administrative law judge may, within  
23 ten (10) days of issuance, appeal to the Workers' Compensation  
24 Commission. After hearing arguments, the Commission may reverse or

1 modify the decision only if it determines that the decision was  
2 against the clear weight of the evidence or contrary to law. All  
3 such proceedings of the Commission shall be recorded by a court  
4 reporter, if requested by any party. Any judgment of the Commission  
5 which reverses a decision of the administrative law judge shall  
6 contain specific findings relating to the reversal.

7 B. The chair of the Commission shall have the authority to  
8 appoint an administrative law judge to the en banc panel when any  
9 Commissioner of the Commission is disqualified for any reason, to  
10 fill a vacancy, or in the absence of a Commissioner; provided, the  
11 appointed administrative law judge shall not have presided over any  
12 of the previous hearings on the claim.

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

17 ~~E.~~ D. The judgment, decision or award of the Commission shall  
18 be final and conclusive on all questions within its jurisdiction  
19 between the parties unless an action is commenced in the Supreme  
20 Court of this state to review the judgment, decision or award within  
21 twenty (20) days of being sent to the parties. Any judgment,  
22 decision or award made by an administrative law judge shall be  
23 stayed until all appeal rights have been waived or exhausted. The  
24

1 Supreme Court may modify, reverse, remand for rehearing, or set  
2 aside the judgment or award only if it was:

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

14 This action shall be commenced by filing with the Clerk of the  
15 Supreme Court a certified copy of the judgment, decision or award of  
16 the Commission attached to the petition by the complaint which shall  
17 specify why the judgment, decision or award is erroneous or illegal.  
18 The proceedings shall be heard in a summary manner and shall have  
19 precedence over all other civil cases in the Supreme Court, except  
20 preferred Corporation Commission appeals. The Supreme Court shall  
21 require the appealing party to file within forty-five (45) days from  
22 the date of the filing of an appeal or a judgment appealed from, a  
23 transcript of the record of the proceedings before the Commission,  
24 or such later time as may be granted by the Supreme Court on

1 application and for good cause shown. The action shall be subject  
2 to the law and practice applicable to other civil actions cognizable  
3 in the Supreme Court.

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

12 SECTION 26. AMENDATORY Section 82, Chapter 208, O.S.L.  
13 2013 (85A O.S. Supp. 2016, Section 82), is amended to read as  
14 follows:

15 Section 82.

16 A. 1. a. Fees for legal services rendered in a claim shall not  
17 be valid unless approved by the Commission.

18 b. An attorney representing an injured employee may only  
19 recover attorney fees up to ten percent (10%) of any  
20 temporary total disability or temporary partial  
21 disability compensation and ~~twenty percent (20%)~~  
22 fifteen percent (15%) of any permanent partial  
23 disability, permanent total disability, or death  
24 compensation awarded to an injured employee by the

1 Commission from a controverted claim. If the employer  
2 makes a written offer to settle permanent partial  
3 disability, permanent total disability, or death  
4 compensation and that offer is rejected, the  
5 employee's attorney may not recover attorney fees in  
6 excess of thirty percent (30%) of the difference  
7 between the amount of any award and the settlement  
8 offer.

9 (1) Attorney fees may not be collected for recovery  
10 on noncontroverted claims.

11 (2) Attorney fees shall not be awarded on medical  
12 benefits or services.

13 (3) The fee for legal services rendered by an  
14 attorney representing an employee in connection  
15 with a change of physician requested by the  
16 injured employee, controverted by the employer,  
17 and awarded by the Commission, shall be Two  
18 Hundred Dollars (\$200.00).

19 ~~(4) Attorney fees may include not more than ten~~  
20 ~~percent (10%) of the value, or reasonable~~  
21 ~~estimate thereof, of vocational rehabilitation~~  
22 ~~services.~~

23 c. A "controverted claim" means ~~that there has been a~~  
24 ~~contested hearing before the Commission over whether~~

1 ~~there has been a compensable injury or whether the~~  
2 ~~employee is entitled to~~ a claim where the employer has  
3 denied compensability or denied the payment of  
4 temporary total disability, temporary partial  
5 disability, permanent partial disability, permanent  
6 total disability, or death compensation. A request  
7 for a change in physician shall not trigger a  
8 controverted claim for purposes of recovering any  
9 attorney fees except the fees under division 3 of  
10 subparagraph b of this paragraph. A controverted  
11 claim shall not exist if the employee or his or her  
12 representative has withheld pertinent information in  
13 his or her possession related to the claim from the  
14 employer or has violated the provisions of Section 6  
15 of this ~~act~~ title.

16 2. Any person who or entity that brings a controverted claim  
17 against the ~~State Treasurer, as a custodian of the~~ Multiple Injury  
18 Trust Fund, shall provide notice of the claim to the Commission.  
19 Thereafter, the Commission shall direct fees for legal services be  
20 paid from the Fund, in addition to any compensation award. The fees  
21 shall be authorized only on the difference between the amount of  
22 compensation controverted and the amount awarded from the Fund.



1        3. In any case where attorney fees are allowed by the  
2 Commission, the limitations expressed in subparagraph b of paragraph  
3 1 of this subsection shall apply.

4        4. Medical providers may voluntarily contract with the attorney  
5 for the employee to recover disputed charges, and the provider may  
6 charge a reasonable fee for the cost of collection.

7        B. An attorney representing an employee under ~~this act~~ the  
8 Administrative Workers' Compensation Act may not recover fees for  
9 services except as expressly provided in this section.

10       SECTION 27.        AMENDATORY        Section 87, Chapter 208, O.S.L.  
11 2013 (85A O.S. Supp. 2016, Section 87), is amended to read as  
12 follows:

13       Section 87.    A. If the employer or carrier and the injured  
14 employee desire to settle the claim, they shall file a joint  
15 petition for settlement with the Commission. After the joint  
16 petition has been filed, the Commission shall order that all claims  
17 between the parties have been settled. No appeal shall lie from a  
18 judgment or award denying a joint petition.

19       B. The Commission shall not approve a joint petition or other  
20 settlement that provides for the payment of benefits in a lump sum  
21 except as provided in paragraph 5 of subsection C of Section 45 of  
22 this title.

SECTION 28. AMENDATORY Section 98, Chapter 208, O.S.L.

2013, as amended by Section 4, Chapter 169, O.S.L. 2014 (85A O.S. Supp. 2016, Section 98), is amended to read as follows:

Section 98. The Self-insurance Guaranty Fund shall be derived from the following sources:

1. Any unexpended funds, including interest thereon, held by the State Treasurer in the Workers' Compensation Self-insurance Guaranty Fund transferred to the Self-insurance Guaranty Fund as provided in Section 124 of this title;

2. ~~Until~~ In the event the Self-insurance Guaranty Fund ~~contains~~ ~~Two Million Dollars (\$2,000,000.00) or in the event the amount in the fund falls below One Million Dollars (\$1,000,000.00)~~ Eight Hundred Thousand Dollars (\$800,000.00), an assessment levied by the Commission against each private self-insurer and group self-insurance association based on an assessment rate to be determined by the commissioners, not exceeding ~~one percent (1%)~~ two percent (2%) per annum of actual paid losses of the self-insurer during the preceding calendar year, payable to the Tax Commission for deposit to the fund. The assessment against private self-insurers shall be determined using a rate equal to the proportion that the deficiency in the fund attributable to private self-insurers bears to the actual paid losses of all private self-insurers for the year period of January 1 through December 31 preceding the assessment. The assessment against group self-insurance associations shall be

1 determined using a rate equal to the proportion that the deficiency  
2 in excess of the surplus of the Group Self-Insurance Association  
3 Guaranty Fund at the date of the transfer attributable to group  
4 self-insurance associations bears to the actual paid losses of all  
5 group self-insurance associations cumulatively for any calendar year  
6 preceding the assessment. Each self-insurer shall provide the  
7 Workers' Compensation Commission with such information as the  
8 Commission may determine is necessary to effectuate the purposes of  
9 this paragraph. For purposes of this paragraph, "actual paid  
10 losses" means all medical and indemnity payments, including  
11 temporary disability, permanent disability, and death benefits, and  
12 excluding loss adjustment expenses and reserves.

13       a. The assessment shall be paid within thirty (30)  
14       calendar days after the date the commissioners notify  
15       the self-insurer of the assessment.

16       b. A private employer or group self-insurance association  
17       which ceases to be a self-insurer shall remain liable  
18       for any and all assessments of the self-insurer as  
19       provided in this paragraph based on actual paid losses  
20       for the calendar year period preceding the assessment.

21       c. Failure of a self-insurer to pay, or timely pay, an  
22       assessment required by this paragraph, or to report  
23       payment of the same to the Commission within ten (10)  
24       days of payment, shall be grounds for revocation by

1 the Commission of the self-insurer's permit to self-  
2 insure in this state, after notice and hearing. A  
3 former self-insurer failing to make payments required  
4 by this paragraph promptly and correctly, or failing  
5 to report payment of the same to the Commission within  
6 ten (10) days of payment, shall be subject to  
7 administrative penalties as allowed by law, including  
8 but not limited to, a fine in the amount of Five  
9 Hundred Dollars (\$500.00) or an amount equal to one  
10 percent (1%) of the unpaid amount, whichever is  
11 greater, to be paid and deposited to the credit of the  
12 Workers' Compensation Fund created in Section 28 of  
13 this title. It shall be the duty of the Tax  
14 Commission to collect the assessment provided for in  
15 this paragraph. The Tax Commission is authorized to  
16 bring an action for recovery of any delinquent or  
17 unpaid assessments, and may enforce payment of the  
18 assessment by proceeding in accordance with Section 79  
19 of this title.

- 20 d. An impaired self-insurer shall be exempt from  
21 assessments beginning on the date of the Commission's  
22 designation until the Commission determines the self-  
23 insurer is no longer impaired.

1 e. The Tax Commission shall determine the fund balance as  
2 of March 1 and September 1 of each year, and when  
3 otherwise requested by the Workers' Compensation  
4 Commission, and shall advise the Workers' Compensation  
5 Commission in writing within thirty (30) days of each  
6 such determination; and

7 3. Any excess funds, including interest thereon, transferred to  
8 the Self-insurance Guaranty Fund as provided in subsection D of  
9 Section 99 of this title; and

10 4. Any interest accruing on monies paid into the fund.

11 SECTION 29. AMENDATORY Section 99, Chapter 208, O.S.L.  
12 2013, as amended by Section 5, Chapter 169, O.S.L. 2014 (85A O.S.  
13 Supp. 2016, Section 99), is amended to read as follows:

14 Section 99. A. On determination by the Workers' Compensation  
15 Commission that a self-insurer has become an impaired self-insurer,  
16 the Commission shall promptly secure release of the security  
17 required by Section 38 of this title ~~and~~, advise the Self-insurance  
18 Guaranty Fund Board of the impairment. ~~Claims administration,~~  
19 ~~including processing, investigating and paying valid claims against~~  
20 ~~an impaired self-insurer under the Administrative Workers'~~  
21 ~~Compensation Act, may include payment by the surety that issued the~~  
22 ~~surety bond or be under a contract between the Commission and an~~  
23 ~~insurance carrier, appropriate state governmental entity or an~~  
24 ~~approved service organization, as approved by the Commission and~~

1 transfer the proceeds of the security to the Self-insurance Guaranty  
2 Fund Board to be maintained in a segregated interest-bearing  
3 division special agency account for administering workers'  
4 compensation obligations of the impaired self-insurer. The Self-  
5 insurance Guaranty Fund Board shall be the fiduciary of the account.

6 B. Proceeds from the released security, including interest  
7 thereon, shall be used by the Board to administer the workers'  
8 compensation obligations of the impaired self-insurer. Claims  
9 administration includes, but is not limited to, processing,  
10 investigating and paying claims, actuarial studies, attorney fees  
11 incurred for filing a proof of claim in the bankruptcy of the  
12 impaired self-insurer and a pro rata portion of the staff expenses  
13 of the Self-insurance Guaranty Fund Board.

14 C. Any unexpended funds, including interest thereon, held by  
15 the State Treasurer in an interest-bearing account maintained by the  
16 Commission before the effective date of this act from which an  
17 impaired self-insurer's workers' compensation obligations are paid,  
18 shall be transferred to the Board. Such funds shall be expended by  
19 the Board only for the purpose of administering the workers'  
20 compensation obligations of the impaired self-insurer and as  
21 otherwise authorized in subsection D of this section.

22 D. Except as otherwise provided by law or by agreement of the  
23 parties, excess proceeds from the security remaining after each  
24 claim for benefits of an impaired self-insurer has been paid,

1 settled or lapsed under the Administrative Workers' Compensation  
2 Act, and costs of administration of such claims have been paid, as  
3 determined by the Self-insurance Guaranty Fund Board, shall be  
4 transferred to the Self-insurance Guaranty Fund by the Board.

5 SECTION 30. AMENDATORY Section 154, Chapter 208, O.S.L.  
6 2013 (85A O.S. Supp. 2016, Section 111), is amended to read as  
7 follows:

8 Section 111. A. ~~Any claim for any benefit under this act shall~~  
9 ~~be commenced with the~~ If any claimant is denied any rights under  
10 this act, the claimant may challenge the denial by filing of an  
11 Employee's First Notice of Claim for Compensation by the employee  
12 with the Workers' Compensation Commission. The ~~claim~~ Notice of  
13 Claim for Compensation shall contain a be on a form prescribed by  
14 the Commission and shall require:

15 1. A description of the alleged injury, including the affected  
16 body parts;

17 2. A description of the claim for benefits, including the  
18 rights denied by the employer;

19 3. The section of this act which is the basis for the claim;  
20 and

21 4. A statement that all matters stated therein are true and  
22 accurate and shall be signed by the claimant and the claimant's  
23 agent, if any.  
24

1 Any person who signs this statement or causes another to sign  
2 this statement knowing the statement to be false shall be guilty of  
3 perjury. An individual who signs on behalf of a claimant may be  
4 presumed to have the authorization of the claimant and to be acting  
5 at the claimant's direction. If the Notice of Claim for  
6 Compensation does not contain the information required by this  
7 subsection, it shall be rejected by the Commission.

8 B. If an employer controverts any issue related to the  
9 Employee's First Notice of Claim for Compensation, the employer  
10 shall file a Notice of Contested Issues on a form prescribed by the  
11 Commission. All answers and defenses to claims or other documents  
12 filed on behalf of a respondent or the respondent's insurer in a  
13 workers' compensation case shall contain a statement that all  
14 matters stated therein are true and accurate and shall be signed by  
15 the respondent, the insurer, or their respective agents, if any.  
16 Any person who signs such a statement or causes another to sign such  
17 a statement, knowing the statement to be false, shall be guilty of  
18 perjury. An individual who signs on behalf of a respondent, its  
19 insurer, or its agent may be presumed to have the authorization of  
20 the respondent, its insurer or agent and to be acting at their  
21 direction.

22 ~~C. Any party shall have the right to request a prehearing~~  
23 ~~conference or administrative hearing before the Commission on any~~  
24 ~~issue. The Commission shall, within seven (7) days of the receipt~~



1 ~~of such notification, set the matter for prehearing conference or~~  
2 ~~administrative hearing at the earliest available time. In the event~~  
3 ~~the compensability of a claim is contested, the respondent shall~~  
4 ~~complete discovery and secure a medical evaluation of the claimant~~  
5 ~~within sixty (60) days of the filing of a request for benefits.~~

6 SECTION 31. AMENDATORY Section 158, Chapter 208, O.S.L.  
7 2013 (85A O.S. Supp. 2016, Section 115), is amended to read as  
8 follows:

9 Section 115. A. If the employee and employer shall reach an  
10 agreement for the full, final and complete settlement of any issue  
11 of a claim pursuant to ~~this act~~ the Administrative Workers'  
12 Compensation Act, a form designated as "Joint Petition" shall be  
13 signed by both the employer and employee, or representatives  
14 thereof, and shall be approved by the Workers' Compensation  
15 Commission or an administrative law judge, and filed with the  
16 Commission. In cases in which the employee is not represented by  
17 legal counsel, the Commission or an administrative law judge shall  
18 have jurisdiction to approve a full, final and complete settlement  
19 of any issue upon the filing of an ~~Employer's First Notice of Injury~~  
20 Employee's Notice of Claim for Compensation. There shall be no  
21 requirement for the filing of an Employee's First Notice of Claim  
22 for Compensation to effect such settlement in cases in which the  
23 employee is not represented by legal counsel.

1       B. In the event all issues of a claim are not fully, finally  
2 and completely settled by a Joint Petition, the issues not settled  
3 by the parties and subject to the Commission's continuing  
4 jurisdiction must be noted by appendix to the Joint Petition or on a  
5 form created for such purpose by the Commission. The appendix must  
6 be signed by the parties and approved by the Commission as set forth  
7 herein.

8       C. In the absence of fraud, a Joint Petition shall be deemed  
9 binding upon the parties thereto and a final adjudication of all  
10 rights pursuant to ~~this act~~ the Administrative Workers' Compensation  
11 Act or the workers' compensation law in effect at the time of the  
12 injury or final order of the Workers' Compensation Court. An  
13 official record shall be made by an official Commission reporter of  
14 the testimony taken to effect the Joint Petition.

15       D. A good-faith effort shall be made on the part of any  
16 insurance carrier, CompSource Oklahoma, or group self-insured plan  
17 to notify an insured employer of the possibility of and terms of any  
18 settlement of a workers' compensation case pursuant to this section.  
19 Written comments or objections to settlements shall be filed with  
20 the Commission and periodically shared with the management of the  
21 applicable insurer. A written notice shall be made to all  
22 policyholders of their right to a good-faith effort by their insurer  
23 to notify them of any proposed settlement, if the policyholder so  
24 chooses.

1       SECTION 32.       REPEALER       Sections 36, 60, 61, 63, 67, 80,  
2 159 and 160, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2016, Sections  
3 36, 60, 61, 63, 67, 80, 116 and 117), are hereby repealed.

4       SECTION 33.   This act shall become effective November 1, 2017.

5  
6       56-1-1441       TEK       7/17/2018 10:01:27 AM

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