

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3277

By: Kannady

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to workers' compensation; amending
10 Sections 2, 3 and 5, Chapter 208, O.S.L. 2013 (85A
11 O.S. Supp. 2017, Sections 2, 3 and 5), which relate
12 to the Administrative Workers' Compensation Act;
13 modifying definitions; specifying application of the
14 Administrative Workers' Compensation Act; modifying
15 scope of immunity; amending Section 6, Chapter 208,
16 O.S.L. 2013, as amended by Section 1, Chapter 390,
17 O.S.L. 2015 (85A O.S. Supp. 2017, Section 6), which
18 relates to crimes in violation of the Administrative
19 Workers' Compensation Act; eliminating certain notice
20 requirement; amending Section 7, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2017, Section 7), which relates
22 to discrimination or retaliation; modifying procedure
23 for determination of discrimination or retaliation;
24 amending Sections 13, 14 and 16, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2017, Sections 13, 14 and 16),
which relate to specific types of injury or illness;
modifying compensation for employees with mental
injury or illness; prohibiting consideration of
physical or mental stress in determining if burden of
proof is met in certain circumstances; making use of
Official Disability Guidelines mandatory; amending
Section 18, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
2017, Section 18), which relates to billing and
collection of fees for services; expanding methods of
providing notice; amending Section 19, Chapter 208,
O.S.L. 2013, as amended by Section 4, House Joint
Resolution No. 1096, page 1745, O.S.L. 2014 and
Section 21, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
2017, Sections 19 and 21), which relate to the

1 Workers' Compensation Commission; providing for
2 private meetings; specifying purposes and
3 requirements; clarifying scope of authority; amending
4 Sections 22 and 27, Chapter 208, O.S.L. 2013 (85A
5 O.S. Supp. 2017, Sections 22 and 27), which relate to
6 administration of the Administrative Workers'
7 Compensation Act; modifying powers and duties of the
8 Workers' Compensation Commission; amending Section
9 29, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2017,
10 Section 29), which relates to certain fees;
11 clarifying that fees are annual fees; expanding
12 authority of the Commission to assess fees;
13 authorizing execution of Affidavit of Exempt Status;
14 providing procedure and requirements for Affidavit of
15 Exempt Status; requiring Affidavit to contain
16 specific language; providing that Affidavit
17 established rebuttable presumption; providing
18 criminal penalty for providing false information on
19 an Affidavit; requiring the Commission to notify the
20 Workers' Compensation Fraud Unit of fraudulent or
21 suspected fraudulent activity; authorizing the
22 Commission to assess a fee for Affidavits; exempting
23 employer from liability in certain circumstances;
24 amending Sections 38, 40 and 43, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2017, Sections 38, 40 and 43),
which relate to securing workers' compensation for
employees; changing certain rule-making authority;
authorizing the Commission to award compensation in
certain instances in which an employer has failed to
secure compensation; modifying scope of actions
against third parties; modifying lien and subrogation
rights; amending Sections 45, Chapter 208, O.S.L.
2013, as amended by Section 2, Chapter 390, O.S.L.
2015 and 46, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
2017, Sections 45 and 46), which relate to
disability; modifying temporary total and temporary
partial disability compensation and permanent partial
disability compensation rates; authorizing employers
to recover overpayment of temporary total disability
payments; modifying termination period for certain
temporary total disability payments; authorizing the
Commission to select alternative evaluation method
for determination of permanent partial disability;
modifying what constitutes objective medical findings
in certain circumstances; making hiring or
contracting for a Vocational Rehabilitation Director
discretionary; eliminating specified duties of the

1 Vocational Rehabilitation Director; eliminating
2 authorization to deduct vocational rehabilitation
3 tuition for compensation award; providing exception
4 to waiting period for disfigurement awards; amending
5 Sections 50, 53 and 57, Chapter 208, O.S.L. 2013 (85A
6 O.S. Supp. 2017, Sections 50, 53 and 57), which
7 relate to medical treatment; authorizing
8 administrative law judges to order employers to
9 provide detoxification treatment; providing
10 consequences if employee refused detoxification
11 treatment; providing that employers and insurance
12 carriers have right to audit or question medical
13 treatment for which they are billed; modifying
14 limitation on charges for drugs; prohibiting
15 physicians from dispensing prescription drugs from
16 physician's office; modifying circumstances which bar
17 the right to receive temporary total disability
18 payments or terminate such payments; providing for
19 certain surgeries; amending Section 60, Chapter 208,
20 O.S.L. 2013 (85A O.S. Supp. 2017, Section 60), which
21 relates to evaluation of permanent disability;
22 modifying reference to title of the director of the
23 Commission; amending Section 62, Chapter 208, O.S.L.
24 2013 (85A O.S. Supp. 2017, Section 62), which relates
to soft tissue injuries; modifying what constitutes
injections and soft tissue injuries; amending
Sections 63, 65, as amended by Section 3, Chapter
390, O.S.L. 2015, 66, 67, 69, 71, 78, 80, 82, 86 and
87, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2017,
Sections 63, 65, 66, 67, 69, 71, 78, 80, 82, 86 and
87), which relate to procedure after injury; making
certain reports confidential and not subject to the
Oklahoma Open Records Act; modifying circumstances
for which an employer is liable for compensation for
an occupational disease; modifying standard of
evidence silicosis and asbestosis claims; eliminating
certain authority of the Commission regarding
employees affected by silicosis or asbestosis;
eliminating certain review and compensation
modification; modifying times for filing; providing
for dismissals; expanding methods for certain notice;
modifying allowable venue for hearings; providing for
continuation of prescribed drugs during appeal
process; providing for reimbursement to employer in
certain circumstances; modifying procedure and
requirements for review of compensation rulings;
placing limitations on review; providing

1 responsibility for payment of legal fees and
2 litigation expenses; modifying definition; modifying
3 authority of attorney to recover fees for services;
4 making employer's filing to controvert claim
5 discretionary; clarifying result filing of joint
6 petition; amending Section 90, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2017, Section 90), which relates
8 to bond or other deposit requirements; limiting
9 Supreme Court review unless certain requirements are
10 met; exempting political subdivisions from certain
11 bond requirements; amending Section 94, Chapter 208,
12 O.S.L. 2013 (85A O.S. Supp. 2017, Section 94), which
13 relates to incarcerated employees; clarifying benefit
14 that the employees are not eligible for; amending
15 Section 101, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
16 2017, Section 101), which relates to certain reports
17 and electronic data; modifying time for
18 implementation of electronic data interchange system;
19 amending Section 105, Chapter 208, O.S.L. 2013 (85A
20 O.S. Supp. 2017, Section 105), which relates to
21 testimony by employees of the Commission; providing
22 exceptions to prohibition against employee testimony;
23 amending Section 152, Chapter 208, O.S.L. 2013 (85A
24 O.S. Supp. 2017, Section 109), which relates to the
workers' compensation counselor or ombudsman program;
modifying method of notification of program;
eliminating the authority of the Commission to
provide additional information regarding program;
amending Section 158, Chapter 208, O.S.L. 2013 (85A
O.S. Supp. 2017, Section 115), which relates to joint
petitions for settlement; correcting references;
requiring filing of memorandum of agreement; amending
Section 161, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
2017, Section 118), which relates to fees; modifying
scope of fee requirement; correcting statutory
references; amending Section 163, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2017, Section 120), which
relates to inquiries about compensation claims;
modifying scope of certain requests; correcting
statutory reference; amending Section 164, Chapter
208, O.S.L. 2013 (85A O.S. Supp. 2017, Section 121),
which relates to the Advisory Council on Workers'
Compensation; modifying duties of the Council;
amending Section 165, Chapter 208, O.S.L. 2013, as
amended by Section 4, Chapter 344, O.S.L. 2015 (85A
O.S. Supp. 2017, Section 122), which relates to tax
rates and distribution of certain funds; modifying

1 certain apportionment and funding amounts; amending
2 Section 167, Chapter 208, O.S.L. 2013, as amended by
3 Section 7, Chapter 169, O.S.L. 2014 (85A O.S. Supp.
4 2017, Section 124), which relates to transfers from
5 the Workers' Compensation Court; modifying transfer;
6 requiring the Workers' Compensation Court of Existing
7 Claims to pay certain expenses; amending Sections
8 121, 125, 126, 133, 134, 135, 137, 139, 141, 142,
9 143, 144 and 148, Chapter 208, O.S.L. 2013 (85A O.S.
10 Supp. 2017, Sections 300, 304, 305, 312, 313, 314,
11 316, 318, 320, 321, 322, 323 and 327), which relate
12 to the Workers' Compensation Arbitration Act;
13 updating statutory references; amending Section 169,
14 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2017,
15 Section 400), which relates to the Workers'
16 Compensation Court of Existing Claims; modifying
17 procedure for filling vacancies; eliminating the
18 authority of the Workers' Compensation Commission to
19 appoint administrative law judges to assist the Court
20 when vacancies occur on the Court; eliminating
21 procedure whereby rulings of the Court are appealable
22 to the Commission; providing appeal procedure;
23 eliminating certain duties of administrative law
24 judges; amending 25 O.S. 2011, Section 307, as
amended by Section 1, Chapter 109, O.S.L. 2015 (25
O.S. Supp. 2017, Section 307), which relates to the
Oklahoma Open Meeting Act; authorizing the Workers'
Compensation Commission to hold executive sessions
for specified purposes; repealing Section 15, Chapter
208, O.S.L. 2013 (85A O.S. Supp. 2017, Section 15),
which relates to reports regarding funding needs for
the Workers' Compensation Fraud Investigation Unit;
repealing Section 36, Chapter 208, O.S.L. 2013 (85A
O.S. Supp. 2017, Section 36), which relates to
liability other than that of an immediate employer;
repealing Sections 107, 108, 109, 111, 113, 114, 115,
116, 117, 119 and 120, Chapter 208, O.S.L. 2013, and
Sections 110, 112 and 118, Chapter 208, O.S.L. 2013,
as amended by Sections 4, 5 and 6, Chapter 390,
O.S.L. 2015 (85A O.S. Supp. 2017, Sections 200, 201,
202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212
and 213), which relate to the Oklahoma Employee
Injury Benefit Act; providing for codification;
and providing an effective date.

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

2 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
3 2013 (85A O.S. Supp. 2017, Section 2), is amended to read as
4 follows:

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

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

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

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

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

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

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

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

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

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

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

1 "accident" means an event involving factors external
2 to the employee that:

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

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

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

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

10 b. "Compensable injury" does not include:

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

20 (2) injury incurred while engaging in or performing
21 or as the result of engaging in or performing any
22 recreational or social activities for the
23 employee's personal pleasure,
24

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 a biological specimen is collected within twenty-
9 four (24) hours of the employee being injured or
10 reporting an injury, ~~an~~ or if at any time after
11 the injury a biological specimen is collected by
12 the Office of the Oklahoma State Chief Medical
13 Examiner if the injured employee does not survive
14 at least twenty-four (24) hours after the
15 accident, the employee tests positive for
16 intoxication, an illegal controlled substance, or
17 a legal controlled substance used in
18 contravention to a treating physician's orders,
19 or refuses to undergo the drug and alcohol
20 testing, there shall be a rebuttable presumption
21 that the injury was caused by the use of alcohol,
22 illegal drugs, or prescription drugs used in
23 contravention of physician's orders. This
24 presumption may only be overcome if the employee

1 proves by clear and convincing evidence that his
2 or her state of intoxication had no causal
3 relationship to the injury,

- 4 (5) any strain, degeneration, damage or harm to, or
5 disease or condition of, the eye or
6 musculoskeletal structure or other body part
7 resulting from the natural results of aging,
8 osteoarthritis, arthritis, or degenerative
9 process including, but not limited to,
10 degenerative joint disease, degenerative disc
11 disease, degenerative
12 spondylosis/spondylolisthesis and spinal
13 stenosis, or
14 (6) any preexisting condition except when the
15 treating physician clearly confirms an
16 identifiable and significant aggravation incurred
17 in the course and scope of employment.

- 18 c. The definition of "compensable injury" shall not be
19 construed to limit or abrogate the right to recover
20 for mental injuries as described in Section 13 of this
21 ~~act~~ title, heart or lung injury or illness as
22 described in Section 14 of this ~~act~~ title, or
23 occupational diseases as described in Section 65 of
24 this ~~act~~ title.

- 1 d. A compensable injury shall be established by medical
2 evidence supported by objective findings as defined in
3 paragraph ~~30~~ 31 of this section.
- 4 e. The injured employee shall prove by a preponderance of
5 the evidence that he or she has suffered a compensable
6 injury.
- 7 f. Benefits shall not be payable for a condition which
8 results from a non-work-related independent
9 intervening cause following a compensable injury which
10 causes or prolongs disability, aggravation, or
11 requires treatment. A non-work-related independent
12 intervening cause does not require negligence or
13 recklessness on the part of a claimant.
- 14 g. An employee who suffers a compensable injury shall be
15 entitled to receive compensation as prescribed in this
16 act. Notwithstanding other provisions of law, if it
17 is determined that a compensable injury did not occur,
18 the employee shall not be entitled to compensation
19 under this act;

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

24

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

7 12. "Continuing medical maintenance" means medical treatment
8 that is reasonable and necessary to maintain claimant's condition
9 resulting from the compensable injury or illness after reaching
10 maximum medical improvement. Continuing medical maintenance shall
11 not include diagnostic tests, surgery, injections, counseling,
12 physical therapy, or pain management devices or equipment unless the
13 Commission finds it in the best interest of the employee;

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

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

- 1 b. travel by an employee in furtherance of the affairs of
2 an employer if the travel is also in furtherance of
3 personal or private affairs of the employee,
4 c. any injury occurring in a parking lot or other common
5 area adjacent to an employer's place of business
6 before the employee clocks in or otherwise begins work
7 for the employer or after the employee clocks out or
8 otherwise stops work for the employer unless the
9 employer owns or maintains exclusive control over the
10 area, or
11 d. any injury occurring while an employee is on a work
12 break, unless the injury occurs while the employee is
13 on a work break inside the employer's facility or in
14 an area owned by or exclusively controlled by the
15 employer and the work break is authorized by the
16 employee's supervisor;

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

1 ~~completed at least one hundred eighty (180) days of continuous~~
2 ~~active employment with the employer;~~

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

5 16. "Disability" means ~~incapacity because of compensable injury~~
6 ~~to earn, in the same or any other employment, substantially the same~~
7 ~~amount of wages the employee was receiving at the time of the~~
8 ~~compensable injury~~ the loss of use of a part of the body which must
9 be proved by objective findings, as defined in paragraph 31 of this
10 section;

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

16 18. a. "Employee" means any person, including a minor, in the
17 service of an employer under any contract of hire or
18 apprenticeship, written or oral, expressed or implied,
19 but excluding one whose employment is casual and not
20 in the course of the trade, business, profession, or
21 occupation of his or her employer and excluding one
22 who is required to perform work for a municipality or
23 county or the state or federal government on having
24 been convicted of a criminal offense or while

1 incarcerated. "Employee" shall also include a member
2 of the Oklahoma National Guard while in the
3 performance of duties only while in response to state
4 orders and any authorized voluntary or uncompensated
5 worker, rendering services as a firefighter, peace
6 officer or emergency management worker. Travel by a
7 policeman, fireman, or a member of a first aid or
8 rescue squad, in responding to and returning from an
9 emergency, shall be deemed to be in the course of
10 employment.

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

- 12 (1) any person for whom an employer is liable under
13 any Act of Congress for providing compensation to
14 employees for injuries, disease or death arising
15 out of and in the course of employment including,
16 but not limited to, the Federal Employees'
17 Compensation Act, the Federal Employers'
18 Liability Act, the Longshore and Harbor Workers'
19 Compensation Act and the Jones Act, to the extent
20 his or her employees are subject to such acts,
21 (2) any person who is employed in agriculture or
22 horticulture by an employer who had a gross
23 annual payroll in the preceding calendar year of
24 less than One Hundred Thousand Dollars

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

household of the owner of the employer if the
employer is not a natural person,

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

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

(8) any person providing or performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitative therapy, transportation, lodging or reimbursement for incidental expenses except for volunteers

specifically provided for in subparagraph a of
this paragraph,

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

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

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

Provided, however, a drive-away owner-operator shall not be precluded from workers' compensation coverage under the Administrative Workers'

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

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

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

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

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

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

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

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

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

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

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

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

15 30. "Misconduct" shall include the following:

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

- f. dishonesty,
- g. wrongdoing,
- h. violation of a law, or
- i. a violation of a policy or rule adopted to ensure orderly work or the safety of self or others;

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

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

(b) For the purpose of making permanent disability ratings to the spine, physicians shall use criteria established by the most current edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment".

(3) (a) Objective evidence necessary to prove permanent disability in occupational hearing loss cases may be established by medically recognized and accepted clinical diagnostic methodologies, including, but not limited

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

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

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

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

17 33. "Permanent disability" means the extent, expressed as a
18 percentage, of the loss of a portion of the total physiological
19 capabilities of the human body as established by competent medical
20 evidence and based on the current edition of the American Medical
21 Association guides to the evaluation of impairment, if the
22 impairment is contained therein. Loss of earning capacity directly
23 related to the permanent loss of use of a part of the body shall be
24

1 considered when determining permanent disability, but shall not
2 constitute a separate remedy under this act;

3 34. "Permanent partial disability" means a permanent disability
4 or loss of use of a part of the body after maximum medical
5 improvement has been reached ~~which prevents the injured employee,~~
6 ~~who has been released to return to work by the treating physician,~~
7 ~~from returning to his or her pre-injury or equivalent job~~ and loss
8 of earning capacity directly related to the disability. All
9 evaluations of permanent partial disability must be supported by
10 objective findings as defined in paragraph 31 of this section and
11 competent evidence of loss of earning capacity;

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

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

23 37. "Pre-injury or equivalent job" means the job that the
24 claimant was working for the employer at the time the injury

1 occurred or any other employment offered by the claimant's employer
2 that pays at least one hundred percent (100%) of the employee's
3 average weekly wage;

4 38. "Private self-insurer" means a private employer that has
5 been authorized to self-insure its workers' compensation obligations
6 pursuant to this act, but does not include group self-insurance
7 associations authorized by this act, or any public employer that
8 self-insures pursuant to this act;

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

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

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

23 42. "State average weekly wage" means the state average weekly
24 wage determined by the Oklahoma Employment Security Commission in

1 the preceding calendar year. If such determination is not
2 available, the Commission shall determine the wage annually after
3 reasonable investigation;

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

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

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

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

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

19 48. "Wages" means money compensation received for employment at
20 the time of the accident, including the reasonable value of board,
21 rent, housing, lodging, or similar advantage received from the
22 employer and includes the amount of tips required to be reported by
23 the employer under Section 6053 of the Internal Revenue Code and the
24

1 regulations promulgated pursuant thereto or the amount of actual
2 tips reported, whichever amount is greater.

3 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2017, Section 3), is amended to read as
5 follows:

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

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

3 B. ~~This act~~ The State of Oklahoma accepts the provisions of the
4 Acts of Congress designated as 40 U.S.C., Section 3172, formerly 40
5 U.S.C., Section 290, and hereby extends the territorial jurisdiction
6 of the Administrative Workers' Compensation Act of this state to all
7 lands and premises within the exterior boundaries of this state
8 which the federal government of the United States of America owns or
9 holds by deed or act of cession, and to all purchases, projects,
10 buildings, constructions, improvements and property within the
11 exterior boundaries of this state belonging to the federal
12 government of the United States of America, in the same manner and
13 to the same extent as if the premises were under the exclusive
14 jurisdiction of this state, subject only to the limitations placed
15 thereon by the Acts of Congress.

16 C. The Administrative Workers' Compensation Act shall apply
17 only to claims for injuries and death based on accidents which occur
18 on or after ~~the effective date of this act~~ February 1, 2014.

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

1 SECTION 3. AMENDATORY Section 5, Chapter 208, O.S.L.

2 2013 (85A O.S. Supp. 2017, Section 5), is amended to read as
3 follows:

4 Section 5. A. The rights and remedies granted to an employee
5 subject to the provisions of the Administrative Workers'
6 Compensation Act shall be exclusive of all other rights and remedies
7 of the employee, his legal representative, dependents, next of kin,
8 or anyone else claiming rights to recovery on behalf of the employee
9 against the employer, or any principal, officer, director, employee,
10 stockholder, partner, or prime contractor of the employer on account
11 of injury, illness, or death. Negligent acts of a co-employee may
12 not be imputed to the employer. No role, capacity, or persona of
13 any employer, principal, officer, director, employee, or stockholder
14 other than that existing in the role of employer of the employee
15 shall be relevant for consideration for purposes of this act, and
16 the remedies and rights provided by this act shall be exclusive
17 regardless of the multiple roles, capacities, or personas the
18 employer may be deemed to have. ~~For the purpose of extending the~~
19 ~~immunity of this section, any operator or owner of an oil or gas~~
20 ~~well or other operation for exploring for, drilling for, or~~
21 ~~producing oil or gas shall be deemed to be an intermediate or~~
22 ~~principal employer for services performed at a drill site or~~
23 ~~location with respect to injured or deceased workers whose immediate~~

1 ~~employer was hired by such operator or owner at the time of the~~
2 ~~injury or death.~~

3 B. Exclusive remedy shall not apply if:

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

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

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

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

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

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

20 G. This section shall not be construed to abrogate the loaned
21 servant doctrine in any respect other than that described in
22 subsection F of this section. Nothing in this act shall be
23 construed to relieve the employer from any other penalty provided
24

1 for in this act for failure to secure the payment of compensation
2 under this act.

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

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

14 SECTION 4. AMENDATORY Section 6, Chapter 208, O.S.L.
15 2013, as amended by Section 1, Chapter 390, O.S.L. 2015 (85A O.S.
16 Supp. 2017, Section 6), is amended to read as follows:

17 Section 6.

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

23 (1) obtaining any benefit or payment,

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

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

3 shall be guilty of a felony punishable pursuant to
4 Section 1663 of Title 21 of the Oklahoma Statutes.

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

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

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

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

23 C. Where the Commission or the Attorney General finds that a
24 violation of division (1) of subparagraph a of paragraph 1 of

1 subsection A of this section has been committed, or that any other
2 criminal violations in furtherance of this act were committed, the
3 chair of the Commission or the Attorney General shall refer the
4 matter for appropriate action to the prosecuting attorney having
5 criminal jurisdiction over the matter.

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

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

20 (2) The Attorney General shall designate the
21 personnel assigned to the Unit, who, on meeting
22 the qualifications established by the Oklahoma
23 Council on Law Enforcement Education and
24 Training, shall have the powers of specialized

1 law enforcement officers of the State of Oklahoma
2 for the purpose of conducting investigations
3 under this subparagraph. Personnel hired as
4 specialized law enforcement officers shall have a
5 minimum of three (3) years of certified law
6 enforcement experience or its equivalent in
7 national or military law enforcement experience
8 as approved by the Oklahoma Council on Law
9 Enforcement Education and Training.

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

14 3. It shall be the duty of the Unit to assist the Attorney
15 General in the performance of his or her duties. The Unit shall
16 determine the identity of employees in this state who have violated
17 division (1) of subparagraph a of paragraph 1 of subsection A of
18 this section and report the violation to the Office of the Attorney
19 General and the Commission. The Attorney General shall report the
20 violation to the prosecuting attorney having jurisdiction over the
21 matter.

22 4. a. In the course of any investigation being conducted by
23 the Unit, the Attorney General and his or her deputies
24 and assistants and the Director and his or her

1 deputies and assistants shall have the power of
2 subpoena and may:

- 3 (1) subpoena witnesses,
- 4 (2) administer oaths or affirmations and examine any
5 individual under oath, and
- 6 (3) require and compel the production of records,
7 books, papers, contracts, and other documents.

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

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

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

18 d. If any person has refused in connection with an
19 investigation by the Director to be examined under
20 oath concerning his or her affairs, then the Director
21 is authorized to conduct and enforce by all
22 appropriate and available means any examination under
23 oath in any state or territory of the United States in
24 which any officer, director, or manager may then

1 presently be to the full extent permitted by the laws
2 of the state or territory.

3 e. In addition to the punishments described in paragraph
4 1 of subsection A of this section, any person
5 providing false testimony under oath or affirmation in
6 this state as to any matter material to any
7 investigation or hearing conducted under this
8 subparagraph, or any workers' compensation hearing,
9 shall upon conviction be guilty of perjury.

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

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

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

23 c. (1) Any carrier or employer who willfully and
24 knowingly fails to report a violation under

1 division (1) of subparagraph a of paragraph 1 of
2 subsection A of this section shall be guilty of a
3 misdemeanor and on conviction shall be punished
4 by a fine not to exceed One Thousand Dollars
5 (\$1,000.00).

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

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

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

20 2. The prosecuting attorney of the district to whom a suspected
21 violation of subsection A of this section, or any other criminal
22 violations that may be related thereto, have been referred shall,
23 for the purpose of assisting him or her in such prosecutions, have
24 the authority to appoint as special deputy prosecuting attorneys

1 licensed attorneys-at-law in the employment of the Unit or any other
2 designated insurance fraud investigation division within the
3 Attorney General's office. Such special deputy prosecuting
4 attorneys shall, for the purpose of the prosecutions to which they
5 are assigned, be responsible to and report to the prosecuting
6 attorney.

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

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

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

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

23 ~~J.~~ If an injured employee is charged with workers' compensation
24 fraud, any pending workers' compensation proceeding, including

1 benefits, shall be stayed after the preliminary hearing is concluded
2 and the claimant is bound over and shall remain stayed until the
3 final disposition of the criminal case. All notice requirements
4 shall continue during the stay.

5 ~~K.~~ J. If the Attorney General's Office is in compliance with
6 the discovery provisions of Section 258 of Title 22 of the Oklahoma
7 Statutes, medical records created for the purpose of treatment and
8 medical opinions obtained during the investigation shall be
9 admissible at the preliminary hearing without the appearance of the
10 medical professional creating such records or opinions. However,
11 when material evidence dispositive to the issues of whether there
12 was probable cause the crime was committed and whether the defendant
13 committed the crime, was not included in a report or opinion
14 admitted at preliminary hearing, but might be presented at a
15 pretrial hearing by a medical professional who created such report
16 or opinion, the judge may, upon the motion of either party, order
17 the appearance of the medical professional creating such report or
18 opinion. Questions of fact regarding the conduct of the defendant
19 that conflict with the findings of the medical professional
20 evaluating the defendant shall not constitute material evidence. In
21 the event of such motion, notice shall be given to the Attorney
22 General's Workers Compensation Fraud and Investigation and
23 Prosecution Unit. A hearing shall be held and, if the motion is
24

1 granted, the evidence shall not be presented fewer than five (5)
2 days later.

3 ~~H.~~ K. Any person or entity who, in good faith and exercising
4 due care, reports suspected workers' compensation fraud or insurance
5 fraud, or who allows access to medical records or other information
6 pertaining to suspected workers' compensation or insurance fraud, by
7 persons authorized to investigate a report concerning the workers'
8 compensation and insurance fraud, shall have immunity from any civil
9 or criminal liability for such report or access. Any such person or
10 entity shall have the same immunity with respect to participation in
11 any judicial proceeding resulting from such reports. For purposes
12 of any civil or criminal proceeding, there shall be a presumption of
13 good faith of any person making a report, providing medical records
14 or providing information pertaining to a workers' compensation or
15 insurance fraud investigation by the Attorney General, and
16 participating in a judicial proceeding resulting from a subpoena or
17 a report.

18 SECTION 5. AMENDATORY Section 7, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2017, Section 7), is amended to read as
20 follows:

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

23 1. Filed a claim under this act;
24

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

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

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

7 B. The ~~Commission~~ district courts shall have exclusive
8 jurisdiction to hear and decide claims based on ~~subsection A of this~~
9 section.

10 C. ~~If the Commission determines that the defendant violated~~
11 ~~subsection A of this section, the Commission may award the employee~~
12 ~~back pay up to a maximum of One Hundred Thousand Dollars~~
13 ~~(\$100,000.00). Interim earnings or amounts earnable with reasonable~~
14 ~~diligence by the person discriminated against shall reduce the back~~
15 ~~pay otherwise allowable.~~

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

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

22 ~~F.~~ E. Notwithstanding any other provision of this section, an
23 employer shall not be required to rehire or retain an employee who,
24 after temporary total disability has been exhausted, is determined

1 by a physician to be physically unable to perform his or her
2 assigned duties, or whose position is no longer available.

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

5 ~~H. The remedies provided for in this section shall be exclusive~~
6 ~~with respect to any claim arising out of the conduct described in~~
7 ~~subsection A of this section.~~

8 SECTION 6. AMENDATORY Section 13, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2017, Section 13), is amended to read as
10 follows:

11 Section 13. A. 1. A mental injury or illness is not a
12 compensable injury unless caused by a physical injury to the
13 employee, and shall not be considered an injury arising out of and
14 in the course and scope of employment or compensable unless
15 demonstrated by a preponderance of the evidence; provided, however,
16 that this physical injury limitation shall not apply to any victim
17 of a crime of violence.

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

23 B. ~~1. Notwithstanding any other provision of this act, where a~~
24 ~~claim is for mental injury or illness, the employee shall be limited~~

1 ~~to twenty-six (26) weeks of disability benefits unless it is shown~~
2 ~~by clear and convincing evidence that benefits should continue for a~~
3 ~~set period of time, not to exceed a total of fifty-two (52) weeks.~~

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

8 b. ~~Death directly or indirectly related to the mental~~
9 ~~injury or illness occurring one (1) year or more from~~
10 ~~the incident resulting in the mental injury or illness~~
11 ~~shall not be a compensable injury~~ An employee with a
12 compensable mental injury or illness shall be entitled
13 to compensation in the same manner as cases provided
14 for in subsection C of Section 46 of this title.

15 SECTION 7. AMENDATORY Section 14, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2017, Section 14), is amended to read as
17 follows:

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

23 B. ~~1.~~ An injury or disease included in subsection A of this
24 section shall not be deemed to be a compensable injury unless it is

1 shown that the exertion of the work necessary to precipitate the
2 disability or death was extraordinary and unusual in comparison to
3 the employee's usual work in the course of the employee's regular
4 employment, or that some unusual and unpredicted incident occurred
5 which is found to have been the major cause of the physical harm.

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

9 SECTION 8. AMENDATORY Section 16, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2017, Section 16), is amended to read as
11 follows:

12 Section 16. A. The Official Disability Guidelines - Treatment
13 in Workers Compensation (ODG), published by the Work Loss Data
14 Institute, ~~is to be recognized as the primary standard of reference,~~
15 at the time of treatment, shall be mandatory in determining the
16 frequency and extent of services presumed to be medically necessary
17 and appropriate for compensable injuries under this act, or in
18 resolving such matters in the event a dispute arises, unless the
19 Workers' Compensation Commission makes a specific finding that a
20 deviation from the guidelines is in the best interest of the
21 employee. ~~The medical treatment guidelines are not requirements,~~
22 ~~nor are they mandates or standards; they provide advice by~~
23 ~~identifying the care most likely to benefit injured workers. The~~
24 ~~guidelines shall be evidence-based, scientifically valid, outcome-~~

~~focused, and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care.~~

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

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

SECTION 9. AMENDATORY Section 18, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2017, Section 18), is amended to read as follows:

Section 18. A. No hospital, physician, or other health care provider shall bill or attempt to collect any fee or any portion of a fee for services rendered to an employee due to a work-related injury or report to any credit-reporting agency any failure of the employee to make the payment, when a claim for compensation has been filed under this act and the hospital, physician, or health care provider has received actual notice given in writing by the employee or the employee's representative. Actual notice shall be deemed received by the hospital, physician, or health care provider five (5) days after mailing by certified mail or sending by facsimile, electronic mail or other electronic means with receipt of

1 confirmation by the employee or his or her representative to the
2 hospital, physician, or health care provider.

3 B. The notice shall include:

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

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

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

22 E. An order by the Workers' Compensation Commission under this
23 section shall stay all proceedings for collection.

1 SECTION 10. AMENDATORY Section 19, Chapter 208, O.S.L.
2 2013, as amended by Section 4, House Joint Resolution No. 1096, page
3 1745, O.S.L. 2014 (85A O.S. Supp. 2017, Section 19), is amended to
4 read as follows:

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

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

1 Membership on the Commission shall be a full-time position and no
2 commissioner shall have any other employment, unless authorized or
3 excused by law. Each commissioner shall receive a salary equal to
4 that paid to a district judge of this state; provided however, the
5 commissioners shall not receive any increase in salary as a result
6 of the provisions of Section 1 of this resolution.

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

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

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

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

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

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

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

1 commissioners prorated for the number of days he or she serves in
2 the capacity of a special commissioner of the Commission.
3 Furthermore, when a vacancy on the Commission occurs or is certain
4 to occur, the position shall be filled pursuant to the provisions of
5 this section.

6 H. As authorized by Section 307 of Title 25 of the Oklahoma
7 Statutes, the members of the Commission may meet in private to
8 discuss policy, personnel and staffing administration and other
9 matters related to the state's workers' compensation system.
10 Provided, however, all three members must be present at the private
11 meeting and no official action shall be taken in the meeting.

12 SECTION 11. AMENDATORY Section 21, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2017, Section 21), is amended to read as
14 follows:

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

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

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

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

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

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

12 SECTION 12. AMENDATORY Section 22, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2017, Section 22), is amended to read as
14 follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 1. To hear and approve compromise settlements;

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

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

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

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

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

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

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

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

19 10. To establish a petty cash fund in an amount not to exceed
20 Five Hundred Dollars (\$500.00) to be used for the purpose of making
21 change for persons purchasing printed or electronic materials from
22 the Commission, paying fees and fines, and transacting other such
23 business with the Commission. The fund shall be established and
24 replenished from any monies available to the Commission for

1 operating expenses and it shall be administered pursuant to the
2 requirements of Section 195 of Title 62 of the Oklahoma Statutes;
3 and

4 ~~10.~~ 11. Such other duties and responsibilities authorized by
5 law.

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

11 SECTION 13. AMENDATORY Section 27, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2017, Section 27), is amended to read as
13 follows:

14 Section 27. A. The Workers' Compensation Commission shall be
15 vested with jurisdiction over all claims filed pursuant to the
16 Administrative Workers' Compensation Act. All claims so filed shall
17 be heard by the administrative law judge sitting without a jury.
18 The Commission shall have full power and authority to determine all
19 questions in relation to claims for compensation under the
20 provisions of the Administrative Workers' Compensation Act. The
21 Commission, upon application of either party, shall order a hearing.
22 Upon a hearing, either party may present evidence and be represented
23 by counsel. Except as provided in this act, the decision of the
24 administrative law judge shall be final as to all questions of fact

1 and law. The decision of the administrative law judge shall be
2 issued within thirty (30) days following the submission of the case
3 by the parties. The power and jurisdiction of the Commission over
4 each case shall be continuing and it may, from time to time, make
5 such modifications or changes with respect to former findings or
6 orders relating thereto if, in its opinion, it may be justified.

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

10 1. To hear and determine claims for compensation, to conduct
11 hearings and investigations, and to make such judgments, decisions,
12 and determinations as may be required by any rule or judgment of the
13 Commission;

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

16 ~~3. To assume duties within the Workers' Compensation Court of~~
17 ~~Existing Claims as assigned by the Commission; and~~

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

20 SECTION 14. AMENDATORY Section 29, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2017, Section 29), is amended to read as
22 follows:

23 Section 29. A. Each carrier writing compensation insurance in
24 this state shall pay to the Workers' Compensation Commission ~~at the~~

1 ~~time of securing a license to transact business in this state an~~
2 ~~annual fee of One Thousand Dollars (\$1,000.00) for the privilege of~~
3 ~~qualifying with the Commission for the writing of compensation~~
4 ~~insurance.~~

5 B. Each self-insurer shall pay to the Commission an annual fee
6 of One Thousand Dollars (\$1,000.00) ~~at the time it is approved to~~
7 ~~self-insure the obligations under this act.~~

8 C. The Commission may assess third-party administrators and
9 marketing firms an annual fee of One Thousand Dollars (\$1,000.00).

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

12 SECTION 15. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 36.1 of Title 85A, unless there
14 is created a duplication in numbering, reads as follows:

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

21 B. The affidavit shall contain the following statement, under
22 oath:

23 "(1) I operate as a separate entity and am not an employee of
24 any individual or entity; (2) No individual or entity directs my

1 hours of employment or methods employed in performance of my job or
2 provides tools for the performance of my job; (3) I do not hire any
3 worker or workers for which I direct hours of employment or methods
4 employed in performance of a job or provide tools for the completion
5 of a job. If I do hire any employees, I will purchase a standard
6 workers' compensation insurance policy; and (4) The employer
7 accepting this affidavit in lieu of a standard insurance certificate
8 acknowledges that this affidavit does not constitute insurance and
9 that if an individual offering this affidavit hires an employee, the
10 affidavit is invalid for such employee and any liability falls on
11 the employer accepting the affidavit".

12 C. Execution of the affidavit shall establish a rebuttable
13 presumption that the executor is not an employee for purposes of the
14 Administrative Workers' Compensation Act and therefore shall not be
15 eligible to seek workers' compensation benefits against any
16 contractor and that an individual or company possessing the
17 affidavit is in compliance with the provisions of this section and
18 shall not be responsible for workers' compensation claims made by
19 the executor. Any employer has the right to reject an Affidavit of
20 Exempt Status and require a certificate of coverage from an
21 insurance carrier that is licensed to provide worker's compensation
22 insurance coverage in this state.

23 D. The execution of an affidavit shall not affect the rights or
24 coverage of any employee of the individual executing the affidavit.

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

5 2. Affidavits shall conspicuously state on the front thereof in
6 at least ten-point, boldface print that it is a crime to falsify
7 information on the form.

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

13 F. The Commission may assess a fee not to exceed Fifty Dollars
14 (\$50.00) for an Affidavit of Exempt Status application. Fees
15 collected pursuant to this section shall be deposited in the State
16 Treasury to the credit of the Workers' Compensation Commission
17 Revolving Fund.

18 G. If an employer relies in good faith on proof of a valid
19 workers' compensation insurance policy issued to a contractor of any
20 tier or on proof of an Affidavit of Exempt Status under this
21 section, the employer shall not be liable for injuries of any
22 employees of the contractor, unless the employer knew, or with the
23 exercise of reasonable care, should have known that no workers'

1 compensation insurance policy was in force or that the Affidavit of
2 Exempt Status was false, in whole or in part.

3 SECTION 16. AMENDATORY Section 38, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2017, Section 38), is amended to read as
5 follows:

6 Section 38. A. An employer shall secure compensation to
7 employees under this act in one of the following ways:

8 1. By insuring and keeping insured the payment of compensation
9 with any stock corporation, mutual association, or other concerns
10 authorized to transact the business of workers' compensation
11 insurance in this state. When an insurer issues a policy to provide
12 workers' compensation benefits under the provisions of this act, it
13 shall file a notice with the Workers' Compensation Commission
14 containing the name, address, and principal occupation of the
15 employer, the number, effective date, and expiration date of the
16 policy, and such other information as may be required by the
17 Commission. The notice shall be filed by the insurer within thirty
18 (30) days after the effective date of the policy. Any insurer who
19 does not file the notice required by this paragraph shall be subject
20 to a fine by the Commission of not more than One Thousand Dollars
21 (\$1,000.00);

22 2. By obtaining and keeping in force guaranty insurance with
23 any company authorized to do guaranty business in this state. Each
24 company that issues workers' compensation guaranty insurance shall

1 file a copy of the contract with the Commission within thirty (30)
2 days after the effective date of the contract. Any company that
3 does not file a copy of the contract as required by this paragraph
4 shall be subject to a fine by the Commission of not more than One
5 Thousand Dollars (\$1,000.00);

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

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

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

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

22 b. one hundred or more employees and One Million Dollars
23 (\$1,000,000.00) or more in net assets to:
24

- (1) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount determined by the Commission which shall be at least an average of the yearly claims for the last three (3) years, or
- (2) provide proof of excess coverage with terms and conditions that are commensurate with their ability to pay the benefits required by the provisions of this act;

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

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

B. The Commission may waive the requirements of this section in an amount which is commensurate with the ability of the employer to

1 pay the benefits required by the provisions of this act.
2 Irrevocable letters of credit required by this subsection shall
3 contain such terms as may be prescribed by the Commission and shall
4 be issued for the benefit of the state by a financial institution
5 whose deposits are insured by the Federal Deposit Insurance
6 Corporation.

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

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

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

21 SECTION 17. AMENDATORY Section 40, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2017, Section 40), is amended to read as
23 follows:
24

1 Section 40. A. 1. Any employer who fails to secure
2 compensation required under this act, upon conviction, shall be
3 guilty of a misdemeanor and subject to a fine of up to Ten Thousand
4 Dollars (\$10,000.00) to be deposited in the Workers' Compensation
5 Commission Revolving Fund.

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

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

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

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

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

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

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

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

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

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

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

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

16 C. If an employee injury occurs during a period when an
17 employer has failed to secure the payment of compensation and the
18 employer has paid a civil penalty assessed pursuant to this section,
19 the Commission may, upon application of the injured employee and
20 hearing before an administrative law judge, award as compensation to
21 the injured employee an amount from the proceeds of the civil
22 penalty not to exceed the amount of the civil penalty paid.
23
24

1 SECTION 18. AMENDATORY Section 43, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2017, Section 43), is amended to read as
3 follows:

4 Section 43. A. Liability Unaffected.

5 1. a. The making of a claim for compensation against any
6 employer or carrier for the injury ~~or death~~ of an
7 employee shall not affect the right of the employee,
8 or his or her dependents, to make a claim or maintain
9 an action in court against any third party for the
10 injury.

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

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

22 2. The commencement of an action by an employee or his or her
23 dependents against a third party for damages by reason of an injury
24 to which this act is applicable, or the adjustment of any claim,

1 shall not affect the rights of the injured employee or his or her
2 dependents to recover compensation, but any amount recovered by the
3 injured employee or his or her dependents from a third party shall
4 be applied as follows:

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

7 b. the employer or carrier, as applicable, shall receive
8 ~~two-thirds (2/3) of the remainder of the recovery or~~
9 ~~the amount of the workers' compensation lien,~~
10 ~~whichever is less~~ an equitable sum, and

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

13 B. Determination of equitable sum.

14 The equitable sum due the employer to satisfy the employer's
15 subrogation lien shall be determined by the district court after
16 consideration of the amount of compensation paid on behalf of the
17 employee, the total amount of the third-party recovery, and the
18 adequacy of the settlement to fairly compensate the employee for the
19 employee's disability and loss of earning capacity.

20 C. Subrogation.

21 1. An employer or carrier liable for compensation under this
22 act for the injury ~~or death~~ of an employee shall have the right to
23 maintain an action in tort against any third party responsible for
24 the injury ~~or death~~. However, the employer or the carrier shall

1 notify the claimant in writing that the claimant has the right to
2 hire a private attorney to pursue any benefits to which the claimant
3 is entitled in addition to the subrogation interest against any
4 third party responsible for the injury ~~or death~~.

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

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

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

19 SECTION 19. AMENDATORY Section 45, Chapter 208, O.S.L.
20 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
21 Supp. 2017, Section 45), is amended to read as follows:

22 Section 45. A. Temporary Total Disability.

23 1. If the injured employee is temporarily unable to perform his
24 or her job or any alternative work offered by the employer, he or

1 she shall be entitled to receive compensation equal to seventy
2 percent (70%) of the injured employee's average weekly wage, but not
3 to exceed ~~seventy percent (70%)~~ of the state average weekly wage,
4 for one hundred four (104) weeks unless the Workers' Compensation
5 Commission by clear and convincing evidence finds that the employee
6 remains temporarily disabled and under active medical treatment.

7 Provided, there shall be no payment for the first three (3) days of
8 the initial period of temporary total disability. If an
9 administrative law judge finds that a consequential injury has
10 occurred and that additional time is needed to reach maximum medical
11 improvement, temporary total disability may continue for a period of
12 not more than an additional fifty-two (52) weeks. Such finding
13 shall be based upon a showing of medical necessity by clear and
14 convincing evidence. An employer shall have the right to recover
15 any overpayment of temporary total disability payments from a
16 subsequent permanent partial disability award if the overpayment is
17 deemed justified.

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

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

14 B. Temporary Partial Disability.

15 1. If the injured employee is temporarily unable to perform his
16 or her job, but may perform alternative work offered by the
17 employer, he or she shall be entitled to receive compensation equal
18 to ~~the greater of~~ seventy percent (70%) of the difference between
19 the injured employee's average weekly wage before the injury and his
20 or her weekly wage for performing alternative work after the injury,
21 but only if his or her weekly wage for performing the alternative
22 work is less than the temporary total disability rate. The injured
23 employee's actual earnings plus temporary partial disability
24 compensation shall not exceed the temporary total disability rate.

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

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

6 C. Permanent Partial Disability.

7 1. A permanent partial disability award or combination of
8 awards granted an injured worker may not exceed a permanent partial
9 disability rating of one hundred percent (100%) to any body part or
10 to the body as a whole. The determination of permanent partial
11 disability shall be the responsibility of the Commission through its
12 administrative law judges. Any claim by an employee for
13 compensation for permanent partial disability must be supported by
14 competent medical testimony of a medical doctor, osteopathic
15 physician, or chiropractor, and shall be supported by objective
16 medical findings, as defined in this act. The opinion of the
17 physician shall include employee's percentage of permanent partial
18 disability and whether or not the disability is job-related and
19 caused by the accidental injury or occupational disease. A
20 physician's opinion of the nature and extent of permanent partial
21 disability to parts of the body other than scheduled members must be
22 based solely on criteria established by the current edition of the
23 American Medical Association's "Guides to the Evaluation of
24 Permanent Impairment" or an alternative evaluation method approved

1 by the Commission. A copy of any written evaluation shall be sent
2 to both parties within seven (7) days of issuance. Medical opinions
3 addressing compensability and permanent disability must be stated
4 within a reasonable degree of medical certainty. Any party may
5 submit the report of an evaluating physician.

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

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

16 4. In cases of permanent partial disability, the compensation
17 shall be seventy percent (70%) of the employee's average weekly
18 wage, not to exceed ~~Three Hundred Twenty-three Dollars (\$323.00)~~
19 Three Hundred Ninety-one Dollars (\$391.00) per week, for a term not
20 to exceed a total of three hundred fifty (350) weeks for the body as
21 a whole.

22 5. ~~Except pursuant to settlement agreements entered into by the~~
23 ~~employer and employee, payment of a permanent partial disability~~
24 ~~award shall be deferred and held in reserve by the employer or~~

1 ~~insurance company if the employee has reached maximum medical~~
2 ~~improvement and has been released to return to work by his or her~~
3 ~~treating physician, and then returns to his pre-injury or equivalent~~
4 ~~job for a term of weeks determined by dividing the total dollar~~
5 ~~value of the award by seventy percent (70%) of the employee's~~
6 ~~average weekly wage.~~

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

11 b. ~~If, for any reason other than misconduct as defined in~~
12 ~~Section 2 of this act, the employer terminates the~~
13 ~~employee or the position offered is not the pre-injury~~
14 ~~or equivalent job, the remaining permanent partial~~
15 ~~disability award shall be paid in a lump sum. If the~~
16 ~~employee is discharged for misconduct, the employer~~
17 ~~shall have the burden to prove that the employee~~
18 ~~engaged in misconduct.~~

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

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

5 ~~e.~~

6 4. Assessments pursuant to Sections 31, 98, ~~112 and 165~~ 122 and
7 205 of this ~~act~~ title shall be calculated based upon the amount of
8 the permanent partial disability award and shall be paid at the time
9 of the deferral.

10 ~~6.~~ 5. Previous Disability: The fact that an employee has
11 suffered previous disability or received compensation therefor shall
12 not preclude the employee from compensation for a later accidental
13 personal injury or occupational disease. In the event there exists
14 a previous permanent partial disability, including a previous non-
15 work-related injury or condition which produced permanent partial
16 disability and the same is aggravated or accelerated by an
17 accidental personal injury or occupational disease, compensation for
18 permanent partial disability shall be only for such amount as was
19 caused by such accidental personal injury or occupational disease
20 and no additional compensation shall be allowed for the preexisting
21 disability or impairment. Any such reduction shall not apply to
22 temporary total disability, nor shall it apply to compensation for
23 medical treatment.

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

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

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

1 rate in effect on the date of the accident or
2 injury against which the reduction will be
3 applied, and

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

8 ~~7.~~ 6. No payments on any permanent partial disability order
9 shall begin until payments on any preexisting permanent partial
10 disability orders have been completed.

11 ~~8.~~ 7. The whole body shall represent a maximum of three hundred
12 fifty (350) weeks.

13 ~~9.~~ 8. The permanent partial disability rate of compensation for
14 amputation or permanent total loss of use of a scheduled member
15 specified in Section 46 of this ~~act~~ title shall be seventy percent
16 (70%) of the employee's average weekly wage, not to exceed ~~Three~~
17 ~~Hundred Twenty-three Dollars (\$323.00)~~ Three Hundred Ninety-one
18 Dollars (\$391.00), multiplied by the number of weeks set forth for
19 the member in Section 46 of this ~~act~~ title, regardless of whether
20 the injured employee is able to return to his or her pre-injury or
21 equivalent job.

22 ~~10.~~ 9. An injured employee who is eligible for permanent
23 partial disability under this subsection shall be entitled to
24 receive vocational rehabilitation services provided by a technology

1 center or public secondary school offering vocational-technical
2 education courses, or a member institution of The Oklahoma State
3 System of Higher Education, which shall include retraining and job
4 placement to restore the employee to gainful employment. Vocational
5 rehabilitation services or training shall not extend for a period of
6 more than ~~fifty-two (52)~~ one hundred four (104) weeks.

7 D. Permanent Total Disability.

8 1. In case of total disability adjudged to be permanent,
9 seventy percent (70%) of the employee's average weekly wages, but
10 not in excess of the state's average weekly wage, shall be paid to
11 the employee during the continuance of the disability until such
12 time as the employee reaches the age of maximum Social Security
13 retirement benefits or for a period of fifteen (15) years, whichever
14 is longer. In the event the claimant dies of causes unrelated to
15 the injury or illness, benefits shall cease on the date of death.
16 Provided, however, any person entitled to revive the action shall
17 receive a one-time lump-sum payment equal to twenty-six (26) weeks
18 of weekly benefits for permanent total disability awarded the
19 claimant. If more than one person is entitled to revive the claim,
20 the lump-sum payment shall be evenly divided between or among such
21 persons. In the event the Commission awards both permanent partial
22 disability and permanent total disability benefits, the permanent
23 total disability award shall not be due until the permanent partial
24 disability award is paid in full. If otherwise qualified according

1 to the provisions of this act, permanent total disability benefits
2 may be awarded to an employee who has exhausted the maximum period
3 of temporary total disability even though the employee has not
4 reached maximum medical improvement.

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

14 E. 1. The Workers' Compensation Commission ~~shall~~ may hire or
15 contract for a Vocational Rehabilitation Director to oversee the
16 vocational rehabilitation program of the Commission.

17 ~~2. The Vocational Rehabilitation Director shall help injured~~
18 ~~workers return to the work force. If the injured employee is unable~~
19 ~~to return to his or her pre-injury or equivalent position due to~~
20 ~~permanent restrictions as determined by the treating physician, upon~~
21 ~~the request of either party, the Vocational Rehabilitation Director~~
22 ~~shall determine if it is appropriate for a claimant to receive~~
23 ~~vocational rehabilitation training or services, and will oversee~~
24 ~~such training. If appropriate, the Vocational Rehabilitation~~

~~Director shall issue administrative orders, including, but not limited to, an order for a vocational rehabilitation evaluation for any injured employee unable to work for at least ninety (90) days. In addition, the Vocational Rehabilitation Director may assign injured workers to vocational rehabilitation counselors for coordination of recommended services. The cost of the services shall be paid by the employer. All administrative orders are subject to appeal to the full Commission.~~

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

- ~~a. if the employee's occupation is truck driver or laborer and the medical condition is traumatic brain injury, stroke or uncontrolled vertigo,~~
- ~~b. if the employee's occupation is truck driver or laborer performing high-risk tasks and the medical condition is seizures,~~
- ~~c. if the employee's occupation is manual laborer and the medical condition is bilateral wrist fusions,~~
- ~~d. if the employee's occupation is assembly-line worker and the medical condition is radial head fracture with surgical excision,~~

- 1 ~~e. if the employee's occupation is heavy laborer and the~~
2 ~~medical condition is myocardial infarction with~~
3 ~~congestive heart failure,~~
- 4 ~~f. if the employee's occupation is heavy manual laborer~~
5 ~~and the medical condition is multilevel neck or back~~
6 ~~fusions greater than two levels,~~
- 7 ~~g. if the employee's occupation is laborer performing~~
8 ~~overhead work and the medical condition is massive~~
9 ~~rotator cuff tears, with or without surgery,~~
- 10 ~~h. if the employee's occupation is heavy laborer and the~~
11 ~~medical condition is recurrent inguinal hernia~~
12 ~~following unsuccessful surgical repair,~~
- 13 ~~i. if the employee's occupation is heavy manual laborer~~
14 ~~and the medical condition is total knee replacement or~~
15 ~~total hip replacement,~~
- 16 ~~j. if the employee's occupation is roofer and the medical~~
17 ~~condition is calcaneal fracture, medically or~~
18 ~~surgically treated,~~
- 19 ~~k. if the employee's occupation is laborer of any kind~~
20 ~~and the medical condition is total shoulder~~
21 ~~replacement,~~
- 22 ~~l. if the employee's occupation is laborer and the~~
23 ~~medical condition is amputation of a hand, arm, leg,~~
24 ~~or foot,~~

- 1 m. ~~if the employee's occupation is laborer and the~~
2 ~~medical condition is tibial plateau fracture, pilon~~
3 ~~fracture,~~
4 n. ~~if the employee's occupation is laborer and the~~
5 ~~medical condition is ankle fusion or knee fusion,~~
6 o. ~~if the employee's occupation is driver or heavy~~
7 ~~equipment operator and the medical condition is~~
8 ~~unilateral industrial blindness, or~~
9 p. ~~if the employee's occupation is laborer and the~~
10 ~~medical condition is 3-, 4-, or 5-level positive~~
11 ~~discogram of the cervical spine or lumbar spine,~~
12 ~~medically treated.~~

13 4. Upon the request of either party, ~~or by order of an~~
14 ~~administrative law judge, the Vocational Rehabilitation Director~~
15 ~~shall assist the Workers' Compensation Commission in determining~~
16 determine if it is appropriate for a claimant to receive vocational
17 rehabilitation training or services. If appropriate, the
18 administrative law judge shall refer the employee to a qualified
19 expert for evaluation of the practicability of, need for and kind of
20 rehabilitation services or training necessary and appropriate in
21 order to restore the employee to gainful employment. The cost of
22 the evaluation shall be paid by the employer. ~~Following the~~
23 ~~evaluation, if the employee refuses the services or training ordered~~
24 ~~by the administrative law judge, or fails to complete in good faith~~

1 ~~the vocational rehabilitation training ordered by the administrative~~
2 ~~law judge, then the cost of the evaluation and services or training~~
3 ~~rendered may, in the discretion of the administrative law judge, be~~
4 ~~deducted from any award of benefits to the employee which remains~~
5 ~~unpaid by the employer.~~

6 3. Upon receipt of such report, and after affording all parties
7 an opportunity to be heard, the administrative law judge shall order
8 that any rehabilitation services or training, recommended in the
9 report, or such other rehabilitation services or training as the
10 administrative law judge may deem necessary, provided the employee
11 elects to receive such services, shall be provided at the expense of
12 the employer. Except as otherwise provided in this subsection,
13 refusal to accept rehabilitation services by the employee shall in
14 no way diminish any benefits allowable to an employee.

15 ~~5.~~ 4. The administrative law judge may order vocational
16 rehabilitation before the injured employee reaches maximum medical
17 improvement, if the treating physician believes that it is likely
18 that the employee's injury will prevent the employee from returning
19 to his or her former employment. In granting early benefits for
20 vocational rehabilitation, the Commission shall consider temporary
21 restrictions and the likelihood that such rehabilitation will return
22 the employee to gainful employment earlier than if such benefits are
23 granted after the permanent partial disability hearing in the claim.

1 ~~6.~~ 5. Vocational rehabilitation services or training shall not
2 extend for a period of more than fifty-two (52) weeks. A request
3 for vocational rehabilitation services or training shall be filed
4 with the Commission by an interested party not later than sixty (60)
5 days from the date of receiving permanent restrictions that prevent
6 the injured employee from returning to his or her pre-injury or
7 equivalent position.

8 ~~7.~~ 6. If rehabilitation requires residence at or near the
9 facility or institution which is away from the employee's customary
10 residence, reasonable cost of the employee's board, lodging, travel,
11 tuition, books and necessary equipment in training shall be paid for
12 by the insurer in addition to weekly compensation benefits to which
13 the employee is otherwise entitled under the Administrative Workers'
14 Compensation Act.

15 ~~8.~~ 7. During the period when an employee is actively and in
16 good faith being evaluated or participating in a retraining or job
17 placement program for purposes of evaluating permanent total
18 disability status, the employee shall be entitled to receive
19 benefits at the same rate as the employee's temporary total
20 disability benefits for an additional fifty-two (52) weeks. All
21 tuition related to vocational rehabilitation services shall be paid
22 by the employer or the employer's insurer on a periodic basis
23 directly to the facility providing the vocational rehabilitation
24 services or training to the employee. ~~The employer or employer's~~

~~insurer may deduct the amount paid for tuition from compensation awarded to the employee.~~

F. Disfigurement.

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

2. No award for disfigurement shall be entered until twelve (12) months after the injury unless the treating physician deems the wound or incision to be fully healed.

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

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

SECTION 20. AMENDATORY Section 46, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2017, Section 46), is amended to read as follows:

1 Section 46. A. An injured employee who is entitled to receive
2 permanent partial disability compensation under Section 45 of this
3 ~~act~~ title shall receive compensation for each part of the body in
4 accordance with the number of weeks for the scheduled loss set forth
5 below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 B. The permanent partial disability rate of compensation for
7 amputation or permanent total loss of use of a scheduled member
8 specified in this section shall be seventy percent (70%) of the
9 employee's average weekly wage, not to exceed ~~Three Hundred Twenty-~~
10 ~~three Dollars (\$323.00)~~ Three Hundred Ninety-one Dollars (\$391.00),
11 multiplied by the number of weeks as set forth in this section,
12 regardless of whether or not the injured employee is able to return
13 to his or her pre-injury job.

14 C. Other cases: In cases in which the Workers' Compensation
15 Commission finds an injury to a part of the body not specifically
16 covered by the foregoing provisions of this section, the employee
17 may be entitled to compensation for permanent partial disability.
18 The compensation ordered paid shall be seventy percent (70%) of the
19 employee's average weekly wage, not to exceed ~~Three Hundred Twenty-~~
20 ~~three Dollars (\$323.00)~~ Three Hundred Ninety-one Dollars (\$391.00)
21 for the number of weeks which the partial disability of the employee
22 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. 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. 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 21. AMENDATORY Section 50, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2017, Section 50), is amended to read as
24 follows:

1 Section 50. A. The employer shall promptly provide an injured
2 employee with medical, surgical, hospital, optometric, podiatric,
3 and nursing services, along any with medicine, crutches, ambulatory
4 devices, artificial limbs, eyeglasses, contact lenses, hearing aids,
5 and other apparatus as may be reasonably necessary in connection
6 with the injury received by the employee. The employer shall have
7 the right to choose the treating physician.

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

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

18 D. Unless recommended by the treating doctor at the time
19 claimant reaches maximum medical improvement or by an independent
20 medical examiner, continuing medical maintenance shall not be
21 awarded by the Commission. The employer or insurance carrier shall
22 not be responsible for continuing medical maintenance or pain
23 management treatment that is outside the parameters established by
24 the Physician Advisory Committee or ODG. The employer or insurance

1 carrier shall not be responsible for continuing medical maintenance
2 or pain management treatment not previously ordered by the
3 Commission or approved in advance by the employer or insurance
4 carrier. An administrative law judge may order an employer to
5 provide detoxification treatment for employees who are prescribed
6 opioids or other narcotics. If an employee refuses such
7 detoxification treatment, the administrative law judge may terminate
8 pain management after reasonable notice and hearing.

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

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

21 G. The employer shall reimburse the employee for the actual
22 mileage in excess of twenty (20) miles round-trip to and from the
23 employee's home to the location of a medical service provider for
24 all reasonable and necessary treatment, for an evaluation of an

1 independent medical examiner and for any evaluation made at the
2 request of the employer or insurance carrier. The rate of
3 reimbursement for such travel expense shall be the official
4 reimbursement rate as established by the State Travel Reimbursement
5 Act. In no event shall the reimbursement of travel for medical
6 treatment or evaluation exceed six hundred (600) miles round trip.

7 H. Fee Schedule.

8 1. The Commission shall conduct a review of the Fee Schedule
9 every two (2) years. The Fee Schedule shall establish the maximum
10 rates that medical providers shall be reimbursed for medical care
11 provided to injured employees, including, but not limited to,
12 charges by physicians, dentists, counselors, hospitals, ambulatory
13 and outpatient facilities, clinical laboratory services, diagnostic
14 testing services, and ambulance services, and charges for durable
15 medical equipment, prosthetics, orthotics, and supplies. The most
16 current Fee Schedule established by the Administrator of the
17 Workers' Compensation Court prior to the effective date of this
18 section shall remain in effect, unless or until the Legislature
19 approves the Commission's proposed Fee Schedule.

20 2. Reimbursement for medical care shall be prescribed and
21 limited by the Fee Schedule as adopted by the Commission, after
22 notice and public hearing, and after approval by the Legislature by
23 joint resolution. The director of the Employees Group Insurance
24 Division of the Office of Management and Enterprise Services shall

1 provide the Commission such information as may be relevant for the
2 development of the Fee Schedule. The Commission shall develop the
3 Fee Schedule in a manner in which quality of medical care is assured
4 and maintained for injured employees. The Commission shall give due
5 consideration to additional requirements for physicians treating an
6 injured worker under this act, including, but not limited to,
7 communication with claims representatives, case managers, attorneys,
8 and representatives of employers, and the additional time required
9 to complete forms for the Commission, insurance carriers, and
10 employers.

11 3. In making adjustments to the Fee Schedule, the Commission
12 shall use, as a benchmark, the reimbursement rate for each Current
13 Procedural Terminology (CPT) code provided for in the fee schedule
14 published by the Centers for Medicare and Medicaid Services of the
15 U.S. Department of Health and Human Services for use in Oklahoma
16 (Medicare Fee Schedule) on the effective date of this section,
17 workers' compensation fee schedules employed by neighboring states,
18 the latest edition of "Relative Values for Physicians" (RVP), usual,
19 customary and reasonable medical payments to workers' compensation
20 health care providers in the same trade area for comparable
21 treatment of a person with similar injuries, and all other data the
22 Commission deems relevant. For services not valued by CMS, the
23 Commission shall establish values based on the usual, customary and
24 reasonable medical payments to health care providers in the same

1 trade area for comparable treatment of a person with similar
2 injuries.

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

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

19 c. Any entity providing durable medical equipment,
20 prosthetics, orthotics or supplies shall be accredited
21 by a CMS-approved accreditation organization. If a
22 physician provides durable medical equipment,
23 prosthetics, orthotics, prescription drugs, or
24 supplies to a patient ancillary to the patient's

1 visit, reimbursement shall be no more than ten percent
2 (10%) above cost.

3 d. The Commission shall develop a reasonable stop-loss
4 provision of the Fee Schedule to provide for adequate
5 reimbursement for treatment for major burns, severe
6 head and neurological injuries, multiple system
7 injuries, and other catastrophic injuries requiring
8 extended periods of intensive care. An employer or
9 insurance carrier has the right to audit or question
10 the reasonableness and necessity of medical treatment
11 contained in a bill for treatment covered by the stop-
12 loss provision.

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

19 5. Nothing in this section shall prevent an employer, insurance
20 carrier, group self-insurance association, or certified workplace
21 medical plan from contracting with a provider of medical care for a
22 reimbursement rate that is greater than or less than limits
23 established by the Fee Schedule.

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

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

12 8. Charges for prescription drugs and compounded medications
13 dispensed by a pharmacy shall be limited to ~~ninety percent (90%) of~~
14 ~~the average wholesale price of the prescription, plus a dispensing~~
15 ~~fee of Five Dollars (\$5.00) per prescription. "Average wholesale~~
16 ~~price" means the amount determined from the latest publication~~
17 ~~designated by the Commission~~ one hundred twenty-five percent (125%)
18 of the reimbursement rate established by the Centers for Medicare
19 and Medicaid Services (CMS) for use in Oklahoma. Physicians shall
20 prescribe and pharmacies shall dispense generic equivalent drugs
21 when available. ~~If the National Drug Code, or "NDC", for the drug~~
22 ~~product dispensed is for a repackaged drug, then the maximum~~
23 ~~reimbursement shall be the lesser of the original labeler's NDC and~~
24 ~~the lowest-cost therapeutic equivalent drug product. Compounded~~

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

9. ~~When medical care includes prescription drugs dispensed by a physician or other medical care provider and the NDC for the drug product dispensed is for a repackaged drug, then the maximum reimbursement shall be the lesser of the original labeler's NDC and the lowest-cost therapeutic equivalent drug product~~ A physician shall not be allowed to dispense prescription drugs from his or her office. Payment for compounded medications or repackaged drugs shall be based upon a sum of the allowable fee for each ingredient plus a dispensing fee of Five Dollars (\$5.00) per prescription. Compounded medications shall be billed by the compounding pharmacy.

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

1 the physician or hospital as a condition of payment for the
2 implantable device. If the physician, or an entity in which the
3 physician has a financial interest other than an ownership interest
4 of less than five percent (5%) in a publically traded company,
5 provides implantable devices, this relationship shall be disclosed
6 to patient, employer, insurance company, third-party commission,
7 certified workplace medical plan, case managers, and attorneys
8 representing claimant and defendant. If the physician, or an entity
9 in which the physician has a financial interest other than an
10 ownership interest of less than five percent (5%) in a publically
11 traded company, buys and resells implantable devices to a hospital
12 or another physician, the markup shall be limited to ten percent
13 (10%) above cost.

14 11. Payment for medical care as required by this act shall be
15 due within forty-five (45) days of the receipt by the employer or
16 insurance carrier of a complete and accurate invoice, unless the
17 employer or insurance carrier has a good-faith reason to request
18 additional information about such invoice. Thereafter, the
19 Commission may assess a penalty up to twenty-five percent (25%) for
20 any amount due under the Fee Schedule that remains unpaid on the
21 finding by the Commission that no good-faith reason existed for the
22 delay in payment. If the Commission finds a pattern of an employer
23 or insurance carrier willfully and knowingly delaying payments for
24

1 medical care, the Commission may assess a civil penalty of not more
2 than Five Thousand Dollars (\$5,000.00) per occurrence.

3 12. If an employee fails to appear for a scheduled appointment
4 with a physician, the employer or insurance company shall pay to the
5 physician a reasonable charge, to be determined by the Commission,
6 for the missed appointment. In the absence of a good-faith reason
7 for missing the appointment, the Commission shall order the employee
8 to reimburse the employer or insurance company for the charge.

9 13. Physicians providing treatment under this act shall
10 disclose under penalty of perjury to the Commission, on a form
11 prescribed by the Commission, any ownership or interest in any
12 health care facility, business, or diagnostic center that is not the
13 physician's primary place of business. The disclosure shall include
14 any employee leasing arrangement between the physician and any
15 health care facility that is not the physician's primary place of
16 business. A physician's failure to disclose as required by this
17 section shall be grounds for the Commission to disqualify the
18 physician from providing treatment under this act.

19 I. Formulary. The Commission by rule shall adopt a closed
20 formulary. Rules adopted by the Commission shall allow an appeals
21 process for claims in which a treating doctor determines and
22 documents that a drug not included in the formulary is necessary to
23 treat an injured employee's compensable injury. The Commission by
24 rule shall require the use of generic pharmaceutical medications and

1 clinically appropriate over-the-counter alternatives to prescription
2 medications unless otherwise specified by the prescribing doctor, in
3 accordance with applicable state law.

4 SECTION 22. AMENDATORY Section 53, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2017, Section 53), is amended to read as
6 follows:

7 Section 53. A. An injured employee claiming to be entitled to
8 benefits under this act shall submit to physical examination and
9 treatment by another qualified physician, designated or approved by
10 the Commission, as the Commission may require from time to time if
11 reasonable and necessary.

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

17 C. Failure of the employee to obey a judgment of the Commission
18 for an examination or treatment ~~for a period of one (1) month from~~
19 ~~the date of the judgment~~ shall bar the right of the claimant to
20 further temporary total disability compensation in respect to the
21 injury.

22 SECTION 23. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 54.1 of Title 85A, unless there
24 is created a duplication in numbering, reads as follows:

1 A. If a treating physician recommends a surgery that is subject
2 to choice, and does not involve medical urgency or emergency, the
3 Workers' Compensation Commission, upon request by any party, shall
4 appoint an Independent Medical Examiner to determine the
5 reasonableness and necessity of such surgery.

6 B. The Commission shall either approve, deny or modify the
7 request for surgery within sixty (60) days of the receipt of the
8 report of the Independent Medical Examiner.

9 SECTION 24. AMENDATORY Section 57, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2017, Section 57), is amended to read as
11 follows:

12 Section 57. ~~A.~~ If an injured employee misses two or more
13 consecutive scheduled appointments for treatment without a valid
14 reason, he or she shall no longer be eligible to receive temporary
15 total disability benefits under this act title, ~~unless his or her~~
16 ~~absence was:~~

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

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

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

1 SECTION 25. AMENDATORY Section 60, Chapter 208, O.S.L.

2 2013 (85A O.S. Supp. 2017, Section 60), is amended to read as

3 follows:

4 Section 60. The Physician Advisory Committee may recommend the
5 adoption of a method or system to evaluate permanent disability that
6 shall deviate from, or be used in place of or in combination with
7 the Guides. Such recommendation shall be made to the Workers'
8 Compensation Commission which may adopt the recommendation in part
9 or in whole. The adopted method or system shall be submitted by the
10 Executive Director of the Commission to the Governor, the Speaker of
11 the House of Representatives and the President Pro Tempore of the
12 Senate within the first ten (10) legislative days of a regular
13 session of the Legislature. Such method or system so submitted
14 shall be subject to disapproval by joint or concurrent resolution of
15 the Legislature during the legislative session in which submitted.
16 If disapproved, the existing method of determining permanent partial
17 disability shall continue in effect. If the Legislature takes no
18 action on the method or system submitted by the Executive Director,
19 the method or system shall become operative thirty (30) days
20 following the adjournment of the Legislature.

21 SECTION 26. AMENDATORY Section 62, Chapter 208, O.S.L.

22 2013 (85A O.S. Supp. 2017, Section 62), is amended to read as

23 follows:

1 Section 62. A. Notwithstanding the provisions of Section 45 of
2 this act, if an employee suffers a nonsurgical soft tissue injury,
3 temporary total disability compensation shall not exceed eight (8)
4 weeks, regardless of the number of parts of the body to which there
5 is a nonsurgical soft tissue injury. An employee who is treated
6 with an injection or injections shall be entitled to an extension of
7 an additional eight (8) weeks. For purposes of this section, an
8 injection shall not include facet injections or intravenous
9 injections. An employee who has been recommended by a treating
10 physician for surgery for a soft tissue injury may petition the
11 Workers' Compensation Commission for one extension of temporary
12 total disability compensation and the Commission may order an
13 extension, not to exceed sixteen (16) additional weeks. If the
14 surgery is not performed within thirty (30) days of the approval of
15 the surgery by the employer, its insurance carrier, or an order of
16 the Commission authorizing the surgery, and the delay is caused by
17 the employee acting in bad faith, the benefits for the extension
18 period shall be terminated and the employee shall reimburse the
19 employer any temporary total disability compensation he or she
20 received beyond eight (8) weeks. An epidural steroid injection, or
21 any procedure of the same or similar physical invasiveness, shall
22 not be considered surgery.

23 B. For purposes of this section, "soft tissue injury" means
24 damage to one or more of the tissues that surround bones and joints.

1 Soft tissue injury includes, but is not limited to, sprains,
2 strains, contusions, tendonitis and muscle tears. Cumulative trauma
3 is to be considered a soft tissue injury unless corrective surgery
4 is necessary. Soft tissue injury does not include any of the
5 following:

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

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

9 a. sensory or motor disturbances,

10 b. communication disturbances,

11 c. complex integrated disturbances of cerebral function,

12 d. episodic neurological disorders, or

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

16 3. Any joint replacement.

17 SECTION 27. AMENDATORY Section 63, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2017, Section 63), is amended to read as
19 follows:

20 Section 63. A. Within ten (10) days after the date of receipt
21 of notice or of knowledge of injury or death, the employer shall
22 send to the Workers' Compensation Commission a report setting forth:

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

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

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

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

4 5. Such other information as the Commission may require.

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

10 C. Any report provided for in subsection A or B of this section
11 shall not be evidence of any fact stated in the report in any
12 proceeding with respect to the injury or death on account of which
13 the report is made. Any such report shall not be made public
14 without authorization for a specific purpose as approved by the
15 Commission and any such report shall be exempt from the provisions
16 of Section 24A.5 of Title 51 of the Oklahoma Statutes as provided by
17 paragraph 1 of that section.

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

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

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

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

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

23 H. If an employer fails to pay any civil penalty assessed
24 against the employer after a judgment issued under this section has

1 become final by operation of law, the Commission may petition the
2 district court of the county where the employer's principal place of
3 business is located for an order enjoining the employer from
4 engaging in further employment or conduct of business until such
5 time as the employer makes all required reports and pays all civil
6 penalties.

7 SECTION 28. AMENDATORY Section 65, Chapter 208, O.S.L.
8 2013, as amended by Section 3, Chapter 390, O.S.L. 2015 (85A O.S.
9 Supp. 2017, Section 65), is amended to read as follows:

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

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

23 C. 1. If an occupational disease is aggravated by any other
24 disease or infirmity, not itself compensable, or if disability or

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

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

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

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

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

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

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

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

12 ~~a. the disease is due to the nature of an employment in~~
13 ~~which the hazards of the disease actually exist and is~~
14 ~~actually incurred in the course and scope of his or~~
15 ~~her employment. This includes any disease due to or~~
16 ~~attributable to exposure to or contact with any~~
17 ~~radioactive material by an employee in the course and~~
18 ~~scope of his or her employment,~~

19 ~~b. disablement or death results within three (3) years in~~
20 ~~case of silicosis or asbestosis, or one (1) year in~~
21 ~~case of any other occupational disease, except a~~
22 ~~diseased condition caused by exposure to X-rays,~~
23 ~~radioactive substances, or ionizing radiation, after~~
24

1 ~~the last injurious exposure to the disease in the~~
2 ~~employment, or~~

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

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

12 SECTION 29. AMENDATORY Section 66, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2017, Section 66), is amended to read as
14 follows:

15 Section 66. A. As used in this act, unless the context
16 otherwise requires:

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

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

21 B. In the absence of conclusive evidence in favor of the claim,
22 disability or death from silicosis or asbestosis shall be presumed
23 not to be due to the nature of any occupation within the provision
24 of this section unless during the ten (10) years immediately

1 preceding the date of disablement the employee has been exposed to
2 the inhalation of silica dust or asbestos dust over a period of not
3 less than five (5) years, two (2) years of which shall have been in
4 this state, under a contract of employment performed in this state.
5 However, if the employee has been employed by the same employer
6 during the entire five-year period, his or her right to compensation
7 against the employer shall not be affected by the fact that he or
8 she had been employed during any part of the period outside of this
9 state.

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

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

19 2. In case of disability or death from silicosis or asbestosis
20 complicated with any other disease, or from any other disease
21 complicated with silicosis or asbestosis, the compensation shall be
22 reduced as provided in subsection C of Section 65 of this ~~act~~ title.

23 ~~E. 1. When an employee, though not actually disabled, is found~~
24 ~~by the Commission to be affected by silicosis or asbestosis to such~~

1 ~~a degree as to make it unduly hazardous for him or her to continue~~
2 ~~in an employment involving exposure to the hazards of the disease,~~
3 ~~the Commission may order that he or she be removed from his or her~~
4 ~~employment. In such a case, or in case he or she has already been~~
5 ~~discharged from the employment and is unemployed, he or she shall be~~
6 ~~entitled to compensation until he or she can obtain steady~~
7 ~~employment in some other suitable occupation in which there are no~~
8 ~~hazards of the disease.~~

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

14 SECTION 30. AMENDATORY Section 67, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2017, Section 67), is amended to read as
16 follows:

17 Section 67. A. ~~1.~~ Except as otherwise provided in this
18 section, notice of disability resulting from an occupational disease
19 or cumulative trauma shall be the same as in cases of accidental
20 injury.

21 ~~2.~~ B. Written notice shall be given to the employer of an
22 occupational disease or cumulative trauma by the employee, or a
23 representative of the employee in the case of incapacity or death,
24

1 within six (6) months after the first distinct manifestation of the
2 disease or cumulative trauma or within six (6) months after death.

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

13 SECTION 31. AMENDATORY Section 69, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2017, Section 69), is amended to read as
15 follows:

16 Section 69. A. Time for Filing.

17 1. A claim for benefits under this act, other than an
18 occupational disease, shall be barred unless it is filed with the
19 Commission within one (1) year from the date of the injury. ~~If~~
20 ~~during the one-year period following the filing of the claim the~~
21 ~~employee receives no weekly benefit compensation and receives no~~
22 ~~medical treatment resulting from the alleged injury, the claim shall~~
23 ~~be barred thereafter.~~ When a claim for compensation has been filed,
24 unless the employee shall in good faith request a hearing for

1 benefits, with competent medical evidence to support the request,
2 within one (1) year from the date of the filing thereof, or within
3 one (1) year from the date of last payment of compensation or wages
4 in lieu thereof, or the date of the last authorized medical
5 appointment attended by the employee, the claim shall be dismissed
6 with prejudice for want of prosecution. For purposes of this
7 section, the date of the injury shall be defined as the date an
8 injury is caused by an accident as set forth in paragraph 9 of
9 Section 2 of this ~~act~~ title.

10 2. a. A claim for compensation for disability on account of
11 injury which is either an occupational disease or
12 occupational infection shall be barred unless filed
13 with the Workers' Compensation Commission within two
14 (2) years from the date of the last injurious exposure
15 to the hazards of the disease or infection.

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

22 c. A claim for compensation for disability on account of
23 a disease condition caused by exposure to X-rays,
24 radioactive substances, or ionizing radiation only

1 shall be filed with the Commission within two (2)
2 years from the date the condition is made known to an
3 employee following examination and diagnosis by a
4 medical doctor.

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

8 4. If within ~~six (6) months~~ one (1) year after the filing of a
9 controverted claim for compensation no bona fide request for a
10 hearing has been made with respect to the claim, the claim may, on
11 motion and after hearing, be dismissed ~~with~~ without prejudice.

12 B. Time for Filing Additional Compensation.

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

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

1 of such items shall not constitute payment of compensation so as to
2 toll the statute of limitations.

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

7 D. If within ~~six (6) months~~ one (1) year after the filing of a
8 claim for additional compensation no bona fide request for a hearing
9 has been made with respect to the claim, the claim shall be
10 dismissed without prejudice to the refiling of the claim within the
11 limitation period specified in subsection B of this section.

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

18 F. Persons under Disability.

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

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

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

13 SECTION 32. AMENDATORY Section 71, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2017, Section 71), is amended to read as
15 follows:

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

20 B. Investigation - Hearing.

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

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

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

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

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

18 C. Evidence and Construction.

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

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

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

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

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

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

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

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

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

3 SECTION 33. AMENDATORY Section 78, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2017, Section 78), is amended to read as
5 follows:

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

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

20 C. The judgment, decision or award of the Commission shall be
21 final and conclusive on all questions within its jurisdiction
22 between the parties unless an action is commenced in the Supreme
23 Court of this state to review the judgment, decision or award within
24 twenty (20) days of being sent to the parties. Any judgment,

1 decision or award made by an administrative law judge shall be
2 stayed until all appeal rights have been waived or exhausted. The
3 Supreme Court may modify, reverse, remand for rehearing, or set
4 aside the judgment or award only if it was:

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

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

1 transcript of the record of the proceedings before the Commission,
2 or such later time as may be granted by the Supreme Court on
3 application and for good cause shown. The action shall be subject
4 to the law and practice applicable to other civil actions cognizable
5 in the Supreme Court.

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

14 E. During the pendency of an appeal filed by an employer or the
15 employer's insurance carrier pursuant to this section, payment for
16 any prescription drugs prescribed by the treating physician shall be
17 continued. If payment for prescription drugs is an issue on appeal,
18 and the employer is held not to be liable for payment for the
19 prescription drugs, the employee shall reimburse the employer or the
20 employer's insurance carrier for the cost of prescriptions filled
21 during the time of the appeals process.

22 SECTION 34. AMENDATORY Section 80, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2017, Section 80), is amended to read as
24 follows:

1 Section 80. A. Except where a joint petition settlement has
2 been approved, the Workers' Compensation Commission may reopen for
3 review any compensation judgment, award, or decision. Such review
4 based on a change of physical condition may be done at any time
5 within six (6) months ~~of termination of the compensation period~~
6 ~~fixed in the original compensation judgment or award~~ from the date
7 of the last order in which monetary benefits were awarded or active
8 medical treatment was provided, on the Commission's own motion or on
9 the application of any party in interest, ~~on the ground of a change~~
10 ~~in physical condition or on proof of erroneous wage rate~~ and unless
11 filed within such period of time shall be forever barred. A change
12 of condition shall be proved with objective findings, as defined in
13 paragraph 31 of Section 2 of this title. On review, the Commission
14 may make a judgment or award terminating, continuing, decreasing, or
15 increasing for the future the compensation previously awarded,
16 subject to the maximum limits provided for in this act. An order
17 denying an application to reopen a claim shall not extend the period
18 of time set out in this title for reopening the case. A failure to
19 comply with a medical treatment plan ordered by the Commission shall
20 bar the reopening of a claim.

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

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

4 D. Aging and the effects of aging on a compensable injury are
5 not to be considered in determining whether there has been a change
6 in physical condition. Aging or the effect of aging on a
7 compensable injury shall not be considered in determining permanent
8 disability under this section or any other section in this act.

9 SECTION 35. AMENDATORY Section 82, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2017, Section 82), is amended to read as
11 follows:

12 Section 82.

13 A. 1. a. Each party shall be responsible for its legal services
14 and litigation expenses. Fees for legal services
15 ~~rendered in a claim shall not be valid unless approved~~
16 may be reviewed by the Workers' Compensation
17 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%) of
22 any permanent partial disability, permanent total
23 disability, or death compensation awarded to an
24 injured employee by the Commission from a controverted

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

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

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

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

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

22 c. A "controverted claim" means that ~~there has been a~~
23 ~~contested hearing before the Commission over the~~
24 employer or the employer's insurance carrier has

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

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

22 3. In any case where attorney fees are allowed by the
23 Commission, the limitations expressed in subparagraph b of paragraph
24 1 of this subsection shall apply.

1 4. 3. Medical providers may voluntarily contract with the
2 attorney for the employee to recover disputed charges, and the
3 ~~provider~~ attorney may charge a reasonable fee for the cost of
4 collection.

5 B. An attorney representing an employee under this act may not
6 recover fees for services except as expressly provided in this
7 section or for good cause shown.

8 SECTION 36. AMENDATORY Section 86, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2017, Section 86), is amended to read as
10 follows:

11 Section 86. A. 1. Each employer desiring to controvert an
12 employee's right to compensation ~~shall~~ may file with the Workers'
13 Compensation Commission on or before the fifteenth day following
14 notice of the alleged injury or death a statement on a form
15 prescribed by the Commission that the right to compensation is
16 controverted and the grounds for the controversion, the names of the
17 claimant, employer, and carrier, if any, and the date and place of
18 the alleged injury or death.

19 2. Failure to file the statement of controversion shall not
20 preclude the employer's ability to controvert the claim or cause it
21 to waive any defenses. The employer can make additional defenses
22 not included in the initial notice at any time.

23 B. If an employer is unable to obtain sufficient medical
24 information as to the alleged injury or death within fifteen (15)

1 days following receipt of notice, although the employer has acted in
2 good faith and with all due diligence, the employer may apply in
3 writing for an extension of time for making payment of the first
4 installment or controverting the claim. This written application is
5 to be postmarked within the fifteen-day period. The Commission may,
6 in its discretion, grant the extension and fix the additional time
7 to be allowed. Filing of application for an extension shall not be
8 deemed to be a controversion of the claim.

9 C. The provisions in subsection B of this section shall not
10 apply in cases where the physician is an employee of, on retainer
11 with, or has a written contract to provide medical services for the
12 employer.

13 SECTION 37. AMENDATORY Section 87, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2017, Section 87), is amended to read as
15 follows:

16 Section 87. If the employer or carrier and the injured employee
17 desire to settle the claim, they shall file a joint petition for
18 settlement with the Workers' Compensation Commission. After the
19 joint petition has been filed, the Commission shall order that all
20 workers' compensation claims between the parties covered by the
21 joint petition have been settled. No appeal shall lie from a
22 judgment or award denying a joint petition.

23

24

1 SECTION 38. AMENDATORY Section 90, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2017, Section 90), is amended to read as
3 follows:

4 Section 90. A. The Workers' Compensation Commission may
5 require any employer to make a deposit or bond with the Commission
6 to secure the prompt and convenient payment of compensation, and
7 payments shall be made on judgment of the Commission.

8 B. No proceeding to reverse, vacate or modify any order,
9 decision or award of the Commission en banc or administrative law
10 judge of the Commission wherein compensation has been awarded to an
11 injured employee shall be entertained by the Supreme Court unless
12 the Executive Director of the Commission shall take a written
13 undertaking to the claimant executed on the part of the respondent
14 or insurance carrier, or both the respondent and insurance carrier,
15 with one or more sureties to be approved by the Executive Director,
16 to the effect that the appellant shall pay the amount of the award
17 rendered therein, together with interest thereon from the date of
18 the award by the administrative law judge of the Commission and all
19 costs of the proceeding, or on the further order of the Commission
20 en banc or administrative law judge of the Commission after the
21 appeal has been decided by the Supreme Court. Municipalities and
22 other political subdivisions of this state are exempt from making
23 such written undertakings.

1 SECTION 39. AMENDATORY Section 94, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2017, Section 94), is amended to read as
3 follows:

4 Section 94. An employee who is incarcerated shall not be
5 eligible to receive ~~medical or~~ temporary total disability benefits
6 under this ~~act~~ title.

7 SECTION 40. AMENDATORY Section 101, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2017, Section 101), is amended to read as
9 follows:

10 Section 101. A. On or before the first day of July each year,
11 the Workers' Compensation Commission shall prepare, make public and
12 submit a report for the prior calendar year to the Governor, the
13 President Pro Tempore of the Senate, the Speaker of the House of
14 Representatives, and each member of the Legislature, containing a
15 statement of the number of awards made and the causes of the
16 accidents leading to the injuries for which the awards were made,
17 total work load data of the administrative law judges, including a
18 detailed report of the work load and judgments written by each
19 judge, a detailed statement of the expenses of the Commission,
20 together with any other matter which the Commission deems proper to
21 report.

22 B. After public hearing and consultation with representatives
23 of employers, insurance carriers, and employees, the Commission
24 shall implement, with the assistance of the Insurance Commissioner,

1 ~~by July 1, 2014,~~ an electronic data interchange (EDI) system that
2 provides relevant data concerning the Oklahoma workers' compensation
3 system and the delivery of benefits to injured workers on a time
4 frame to be reasonably determined by the Commission.

5 C. To assist the Commission in developing and implementing the
6 EDI system, there is hereby created the Oklahoma Workers'
7 Compensation Electronic Data Interchange Advisory Committee. ~~Within~~
8 ~~thirty (30) days of the effective date of this act, the~~ The Governor
9 shall appoint five persons to serve as members of the advisory
10 committee, one of whom shall be selected by the Governor as chair.
11 The chair shall provide adequate notice of meetings of the advisory
12 committee and public hearings as required by law.

13 SECTION 41. AMENDATORY Section 105, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2017, Section 105), is amended to read as
15 follows:

16 Section 105. A. No employee of the Workers' Compensation
17 Commission shall be competent to testify on any matter concerning
18 any information the employee has received through the performance of
19 the employee's duties under the provisions of this act, except for
20 employees of the Compliance Division of the Commission regarding
21 their investigations, custodians of the Commission's records or if
22 the Commission or any employees of the Commission are named as
23 parties in the matter.

1 B. The commissioners and employees of the Commission shall not
2 solicit employment for any attorney or physician nor shall they
3 recommend or refer any claimant or employer to an attorney or
4 physician. If any employee of the Commission makes such a
5 solicitation, recommendation or reference, that person, upon
6 conviction, shall be guilty of a misdemeanor punishable, for each
7 offense, by a fine of not more than One Thousand Dollars (\$1,000.00)
8 or by imprisonment in the county jail not to exceed one (1) year, or
9 by both such fine and imprisonment. The Commission shall
10 immediately terminate the employment of any employee who is guilty
11 of such solicitation, recommendation or reference. A commissioner
12 guilty of such solicitation, recommendation or reference shall be
13 subject to removal from office.

14 C. No administrative law judge shall engage in any ex parte
15 communication with any party to an action pending before the
16 Commission or with any witness or medical provider regarding the
17 merits of a specific matter pending before the judge for resolution.
18 Any violation of this provision shall subject the judge to
19 disqualification from the action or matter upon presentation of an
20 application for disqualification.

21 SECTION 42. AMENDATORY Section 152, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2017, Section 109), is amended to read as
23 follows:
24

1 Section 109. A. The Workers' Compensation Commission shall
2 establish a workers' compensation counselor or ombudsman program to
3 assist injured workers, employers and persons claiming death
4 benefits in obtaining benefits under this act. A special effort
5 shall be made to equip counselors or ombudsmen with sufficient
6 resources to assist injured workers through the system without the
7 necessity of retaining legal representation.

8 B. Workers' compensation counselors or ombudsmen shall provide
9 information to injured workers; investigate complaints; communicate
10 with employers, insurance carriers, self-insurers, and health care
11 providers; provide informational seminars and workshops on workers'
12 compensation for medical providers, insurance adjustors, and
13 employee and employer groups; and develop informational materials
14 for employees, employers and medical providers.

15 C. The Commission shall ~~mail a notice to the injured worker~~
16 ~~within ten (10) days of the filing of an Employer's First Notice of~~
17 ~~Injury. The notice shall advise the injured worker of~~ publish on
18 the Commission's website the availability of the services of the
19 Commission's counselor or ombudsman program and of the availability
20 of mediation and other forms of alternative dispute resolution to
21 assist the injured worker. ~~The Commission shall provide additional~~
22 ~~information as the Commission may determine necessary.~~

23 D. The Commission shall develop a program that provides for
24 annual training for own-risk employers and claims representatives

1 handling workers' compensation claims in Oklahoma. The training
2 shall include information about the alternative dispute resolution
3 program, including counselor and ombudsman programs, mediation, and
4 other services provided by the Commission.

5 SECTION 43. AMENDATORY Section 158, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2017, Section 115), is amended to read as
7 follows:

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

22 B. In the event all issues of a claim are not fully, finally
23 and completely settled by a Joint Petition, the issues not settled
24 by the parties and subject to the Commission's continuing

1 jurisdiction must be noted by appendix to the Joint Petition or on a
2 form created for such purpose by the Commission. The appendix must
3 be signed by the parties and approved by the Commission as set forth
4 herein.

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

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

22 E. If an employee has not filed a claim for compensation and
23 the employer and the injured employee reach a final agreement as to
24 the facts with relation to an injury and the resulting disability

1 for which compensation is claimed under the Administrative Workers'
2 Compensation Act, a memorandum of such agreement in a form
3 prescribed by the Commission shall be filed with the Commission by
4 the employer. The memorandum shall be signed by both the employer
5 and the employee and approved by an administrative law judge of the
6 Commission.

7 SECTION 44. AMENDATORY Section 161, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2017, Section 118), is amended to read as
9 follows:

10 Section 118. A. A fee of One Hundred Forty Dollars (\$140.00)
11 per case, including any Joint Petition, medical fee dispute, claim
12 for discrimination or retaliation, or claim for benefits under the
13 Multiple Injury Trust Fund authorized by this ~~act~~ title, shall be
14 collected by the Workers' Compensation Commission and assessed as
15 costs to be paid by the party against whom any award becomes final,
16 to be deposited as follows:

17 1. One Hundred Five Dollars (\$105.00) to the credit of the
18 Workers' Compensation Commission Revolving Fund ~~created by this act;~~

19 2. Ten Dollars (\$10.00) to the credit of the Attorney General's
20 Workers' Compensation Fraud Unit Revolving Fund created by Section
21 19.2 of Title 74 of the Oklahoma Statutes; and

22 3. Twenty-five Dollars (\$25.00) to the credit of the Workers'
23 Compensation Commission Revolving Fund for purposes of implementing
24 the provisions of this ~~act~~ title, including strengthening and

1 providing additional funding for the Attorney General's Workers'
2 Compensation Fraud Unit, providing counseling services pursuant to
3 the workers' compensation counselor or ombudsman program and safety
4 in the workplace.

5 B. A fee of One Hundred Thirty Dollars (\$130.00) per action to
6 reopen any case pursuant to Section 32 of this ~~act~~ title shall be
7 collected by the Commission and assessed as costs to be paid by the
8 party that reopens the case. The fee collected pursuant to this
9 subsection shall be deposited to the credit of the Workers'
10 Compensation Commission Revolving Fund for purposes of implementing
11 the provisions of this ~~act~~ title, including strengthening and
12 providing additional funding for the Attorney General's Workers'
13 Compensation Fraud Unit, providing counseling services pursuant to
14 the workers' compensation counselor or ombudsman program and safety
15 in the workplace.

16 SECTION 45. AMENDATORY Section 163, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2017, Section 120), is amended to read as
18 follows:

19 Section 120. A. Except as otherwise provided by state or
20 federal law and subject to the provisions of this section, an
21 employer may inquire about previous workers' compensation claims
22 paid to an employee while the employee was employed by a previous
23 employer. If the employee fails to answer truthfully about any
24 previous permanent partial disability awards made pursuant to

workers' compensation claims, the employee shall be subject to discharge by the employer.

B. 1. All requests made to the Workers' Compensation Commission for information on ~~prior~~ workers' compensation claims involving a worker, including written inquiries about prior claims and requests to access a worker's compensation claim file, must be in writing, on a form prescribed by the Commission, and accompanied by a fee of One Dollar (\$1.00) per search request, not to exceed One Dollar (\$1.00) per claims record of a particular worker. The fee shall be deposited to the credit of the Workers' Compensation Commission Revolving Fund. The form shall require identification of the person requesting the information, and the person for whom a search is being made if different from the requester. The form must contain an affidavit signed by the requester under penalty of perjury that the information sought is not requested for a purpose in violation of state or federal law. The form must be used by all repositories of archived Court claim files. All request forms shall be maintained by the Commission as a public record, together with a record of a worker's written authorization permitting a search indexed by the worker's social security number as required by Section 3113 of Title 74 of the Oklahoma Statutes. The request forms and authorizations shall be indexed alphabetically by the last name of the worker.

2. This subsection shall not apply:

- 1 a. to requests for claims information made by a public
2 officer or by a public employee in the performance of
3 his or her duties on behalf of a governmental entity
4 or as may be allowed by law,
- 5 b. to requests for claims information made by an insurer,
6 self-insured employer, third-party claims
7 administrator, or a legal representative thereof, when
8 necessary to process or defend a workers' compensation
9 claim,
- 10 c. when a worker or the worker's representative requests
11 review of the worker's claims information,
- 12 d. when the disclosure is made for educational or
13 research purposes and in such a manner that the
14 disclosed information cannot be used to identify any
15 worker who is the subject of a claim,
- 16 e. to requests for claims information made by a health
17 care or rehabilitation provider or the provider's
18 legal representative when necessary to process payment
19 of health care or rehabilitation services rendered to
20 a worker, and
- 21 f. to requests for claims information made by an employer
22 or personnel service company, including but not
23 limited to an individual or entity, where the worker
24 executes a written authorization permitting the search

1 and designating the employer or personnel service
2 company as the worker's representative for that
3 purpose; however, nothing in this subparagraph shall
4 relieve the employer or personnel service company from
5 complying with the requirements of utilizing the form
6 set forth in paragraph 1 of this subsection.

7 SECTION 46. AMENDATORY Section 164, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2017, Section 121), is amended to read as
9 follows:

10 Section 121. A. There is hereby created an Advisory Council on
11 Workers' Compensation.

12 B. The voting membership of the Advisory Council shall consist
13 of nine (9) members. Any member serving on the effective date of
14 this section shall serve the remainder of his or her term. The
15 chair of the Workers' Compensation Commission shall be an ex officio
16 nonvoting member.

17 1. The Governor shall appoint three members representing
18 employers in this state, one of whom shall be from a list of
19 nominees provided by the predominant statewide broad-based business
20 organization.

21 2. The Speaker of the House of Representatives shall appoint
22 three members representing employees in this state, one of whom
23 shall be from a list of nominees provided by the most representative
24 labor organization in the state.

1 3. The President Pro Tempore of the Senate shall appoint three
2 members, two who are attorneys representing the legal profession in
3 this state, one of whom shall be an attorney who practices primarily
4 in the area of defense of workers' compensation claims, and one of
5 whom shall be an attorney who primarily represents claimants, and a
6 medical doctor or doctor of osteopathy actively engaged in the
7 treatment of injured workers.

8 C. The term of office for appointees shall be as follows:

9 1. The term of office for three positions, one each appointed
10 by the Governor, the President Pro Tempore of the Senate and the
11 Speaker of the House of Representatives shall expire on January 1,
12 2015;

13 2. The term of office for three positions, one each appointed
14 by the Governor, the President Pro Tempore of the Senate and the
15 Speaker of the House of Representatives shall expire on January 1,
16 2016; and

17 3. The term of office for three positions, one each appointed
18 by the Governor, the President Pro Tempore of the Senate and the
19 Speaker of the House of Representatives shall expire on January 1,
20 2017.

21 D. Thereafter, successors in office shall be appointed for a
22 three-year term. Members shall be eligible to succeed themselves in
23 office.
24

1 E. Any person appointed to fill a vacancy shall be appointed
2 for the unexpired portion of the term.

3 F. The chair and the vice-chair of the Advisory Council shall
4 be appointed by the Governor.

5 G. Members shall receive their traveling and other necessary
6 expenses incurred in the performance of their duties as provided in
7 the State Travel Reimbursement Act.

8 H. Meetings of the Advisory Council shall be quarterly or as
9 called by the chair or upon petition by a majority of the voting
10 members. The presence of five voting members constitutes a quorum.
11 No action shall be taken by the Advisory Council without the
12 affirmative vote of at least five members.

13 I. The Commission shall provide office supplies and personnel
14 of the Commission to carry out any of the duties that have been
15 entrusted to the Advisory Council.

16 J. The Advisory Council shall analyze and review the workers'
17 compensation system, the reports of the Commission, and trends in
18 the field of workers' compensation. The Advisory Council may
19 recommend improvements and proper responses to developing trends.
20 The Advisory Council shall report its findings annually to the
21 Governor, the Chief Justice of the Supreme Court, the President Pro
22 Tempore of the Senate, and the Speaker of the House of
23 Representatives.

1 K. In addition to other duties required by this section, the
2 Advisory Council shall consult with the ~~Court~~ Commission regarding
3 oversight of independent medical examiners as provided in Section 45
4 of this ~~act~~ title.

5 ~~L. The Advisory Council shall review the Oklahoma Treatment~~
6 ~~Guidelines as provided in the Workers' Compensation Code, and report~~
7 ~~the findings of such review to the Commission as provided in this~~
8 ~~act.~~

9 SECTION 47. AMENDATORY Section 165, Chapter 208, O.S.L.
10 2013, as amended by Section 4, Chapter 344, O.S.L. 2015 (85A O.S.
11 Supp. 2017, Section 122), is amended to read as follows:

12 Section 122. A. The Workers' Compensation Commission Revolving
13 Fund established by Section ~~2~~ 28.1 of this ~~act~~ title shall be used
14 for the costs of administering this act and for other purposes as
15 authorized by law.

16 B. For the purpose of providing funds for the Workers'
17 Compensation Commission Revolving Fund, for the Workers'
18 Compensation Administrative Fund created in Section ~~5~~ 401.1 of this
19 ~~act~~ title, for the Multiple Injury Trust Fund created in Section 28
20 of this title, and to fund other provisions within this title, the
21 following tax rates shall apply:

22 1. Each mutual or interinsurance association, stock company,
23 CompSource Oklahoma or other insurance carrier writing workers'
24 compensation insurance in this state shall pay to the Oklahoma Tax

1 Commission an assessment at a rate of one percent (1%) of all gross
2 direct premiums written during each quarter of the calendar year for
3 workers' compensation insurance on risks located in this state after
4 deducting from such gross direct premiums, return premiums,
5 unabsorbed portions of any deposit premiums, policy dividends,
6 safety refunds, savings and other similar returns paid or credited
7 to policyholders. Such payments to the Tax Commission shall be made
8 not later than the fifteenth day of the month following the close of
9 each quarter of the calendar year in which such gross direct premium
10 is collected or collectible. Contributions made by insurance
11 carriers and CompSource Oklahoma, under the provisions of this
12 section, shall be considered for the purpose of computing workers'
13 compensation rates; and

14 2. When an employer is authorized to become a self-insurer, the
15 Commission shall so notify the Tax Commission, giving the effective
16 date of such authorization. The Tax Commission shall then assess
17 and collect from the employers carrying their own risk an assessment
18 at the rate of two percent (2%) of the total compensation for
19 permanent total disability awards, permanent partial disability
20 awards and death benefits paid out during each quarter of the
21 calendar year by the employers. Such assessment shall be payable by
22 the employers and collected by the Tax Commission according to the
23 provisions of this section regarding payment and collection of the
24 assessment created in paragraph 1 of this subsection.

1 C. It shall be the duty of the Tax Commission to collect the
2 payments provided for in this title. The Tax Commission is hereby
3 authorized to bring an action for the recovery of any delinquent or
4 unpaid payments required in this section. The Tax Commission may
5 also enforce payments by proceeding in accordance with the
6 provisions of Section 98 of this title.

7 D. The Tax Commission shall pay monthly to the State Treasurer
8 to the credit of the Multiple Injury Trust Fund all monies collected
9 under the provisions of this section less the annual amounts which
10 shall be apportioned by the Oklahoma Tax Commission as follows:

11 1. To be fulfilled first, Five Million Dollars (\$5,000,000.00)
12 shall be payable in equal monthly installments to the credit of the
13 Workers' Compensation Commission Revolving Fund established in
14 Section ~~2~~ 28.1 of this ~~act for the fiscal year ending June 30, 2016,~~
15 ~~and Three Million Dollars (\$3,000,000.00) title~~ for the fiscal year
16 ending June 30, ~~2017~~ 2019, and for all subsequent years to be used
17 to implement the provisions of this title; and

18 2. Four Million Dollars (\$4,000,000.00) shall be payable in
19 equal monthly installments to the credit of the Workers'
20 Compensation Administrative Fund established in Section ~~5~~ 401.1 of
21 this ~~act~~ title for the fiscal year ending June 30, ~~2016,~~ Three
22 ~~Million Five Hundred Thousand Dollars (\$3,500,000.00) for the fiscal~~
23 ~~year ending June 30, 2017, Three Million Five Hundred Thousand~~
24 ~~Dollars (\$3,500,000.00) for the fiscal year ending June 30, 2018,~~

1 ~~Three Million Dollars (\$3,000,000.00) for the fiscal year ending~~
2 ~~June 30, 2019, and Two Million Five Hundred Thousand Dollars~~
3 ~~(\$2,500,000.00) for the fiscal year ending June 30, 2020~~ 2019.

4 Monies deposited in the Workers' Compensation Administrative Fund
5 shall be used by the Workers' Compensation Court of Existing Claims
6 to implement provisions provided for in this title.

7 E. The refund provisions of Sections 227 through 229 of Title
8 68 of the Oklahoma Statutes shall be applicable to any payments made
9 pursuant to this section.

10 SECTION 48. AMENDATORY Section 167, Chapter 208, O.S.L.
11 2013, as amended by Section 7, Chapter 169, O.S.L. 2014 (85A O.S.
12 Supp. 2017, Section 124), is amended to read as follows:

13 Section 124. A. 1. All unexpended funds, assets, property,
14 records, personnel and any outstanding financial obligations and
15 encumbrances of the Workers' Compensation Court ~~before February 1,~~
16 ~~2014,~~ are hereby transferred to the Workers' Compensation
17 Commission, except for personnel transferred to the Workers'
18 Compensation Court of Existing Claims on July 9, 2014. The
19 personnel transferred to the Commission and retained by the
20 Commission shall retain leave, sick and annual time earned and any
21 retirement and longevity benefits which have accrued during their
22 employment with the state. The salaries of employees who are
23 transferred shall not be reduced as a direct and immediate result of
24 the transfer. There shall be no reduction-in-force as a result of

1 the transfer. The Workers' Compensation Court of Existing Claims
2 shall pay the expense of maintaining the records of the Court for as
3 long as the Legislature appropriates funding to the Court
4 independent of funding for the Commission.

5 2. Any unexpended funds, including interest thereon, held by
6 the State Treasurer in an interest-bearing division special account
7 maintained by the Workers' Compensation Court before February 1,
8 2014, from which a self-insured employer's workers' compensation
9 obligations are paid following nonpayment by the self-insured
10 employer for any reason, including insolvency, shall be transferred
11 to the Workers' Compensation Commission. Such funds shall be
12 expended by the Commission only for the purpose of paying workers'
13 compensation obligations of the self-insured employer, and costs
14 related to the administration of such obligations, to the extent of
15 the availability of such funds.

16 B. 1. All unexpended funds, assets, property, and records and
17 any outstanding financial obligations and encumbrances of the
18 Workers' Compensation Self-insurance Guaranty Fund Board before
19 February 1, 2014, are hereby transferred to the Self-insurance
20 Guaranty Fund Board created in the Administrative Workers'
21 Compensation Act.

22 2. Any unexpended funds, including interest thereon, held by
23 the State Treasurer in the Workers' Compensation Self-insurance
24 Guaranty Fund before February 1, 2014, shall be transferred to the

1 Self-insurance Guaranty Fund Board created by the Administrative
2 Workers' Compensation Act. Such funds shall be expended by the
3 Board only as authorized in the Administrative Workers' Compensation
4 Act.

5 3. Any claim existing or action or proceeding pending by,
6 against or before the Workers' Compensation Self-insurance Guaranty
7 Fund Board when the Board ceased existence may be continued as if
8 the Self-insurance Guaranty Fund Board was not created, or the Self-
9 insurance Guaranty Fund Board may be substituted in the matter. The
10 Self-insurance Guaranty Fund Board shall be responsible and liable
11 for all liabilities and obligations of the Workers' Compensation
12 Self-insurance Guaranty Fund Board.

13 C. All property and records of the Physician Advisory Committee
14 before February 1, 2014, are hereby transferred to the Physician
15 Advisory Committee created in the Administrative Workers'
16 Compensation Act.

17 D. All property and records of the Advisory Council on Workers'
18 Compensation before February 1, 2014, are hereby transferred to the
19 Advisory Council on Workers' Compensation created in the
20 Administrative Workers' Compensation Act.

21 E. All unexpended funds, assets, property, records, personnel
22 and any outstanding financial obligations and encumbrances of the
23 Multiple Injury Trust Fund before February 1, 2014, are hereby
24 transferred to the Multiple Injury Trust Fund created in the

1 Administrative Workers' Compensation Act. The personnel transferred
2 shall retain leave, sick and annual time earned and any retirement
3 and longevity benefits which have accrued during their employment
4 with the state. The salaries of employees who are transferred shall
5 not be reduced as a direct and immediate result of the transfer.
6 There shall be no reduction-in-force as a result of the transfer.

7 F. The Director of the Office of Management and Enterprise
8 Services is hereby directed to coordinate the transfer of funds,
9 allotments, purchase orders, outstanding financial obligations or
10 encumbrances provided for in subsections A and E of this section,
11 and the transfer of funds, outstanding financial obligations or
12 encumbrances provided for in subsection B of this section.

13 SECTION 49. AMENDATORY Section 121, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2017, Section 300), is amended to read as
15 follows:

16 Section 300. Sections ~~121~~ 300 through ~~149~~ 328 of this ~~act~~ title
17 shall be known and may be cited as the "Workers' Compensation
18 Arbitration Act".

19 SECTION 50. AMENDATORY Section 125, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2017, Section 304), is amended to read as
21 follows:

22 Section 304. A. Except as otherwise provided in subsections B
23 and C of this section and in the laws of this state outside of this
24 ~~act~~ title, a party to an agreement to arbitrate or to an arbitration

1 proceeding may waive, or the parties may vary the effect of, the
2 requirements of this act to the extent permitted by law.

3 B. Before a controversy arises that is subject to an agreement
4 to arbitrate, a party to the agreement may not:

5 1. Waive or agree to vary the effect of the requirements of
6 subsection A of Section ~~126~~ 305, subsection A of Section ~~127~~ 306,
7 Section ~~128~~ 307, subsection A or B of Section ~~138~~ 317, Section ~~147~~
8 326 or Section ~~149~~ 328 of this ~~act~~ title;

9 2. Agree to unreasonably restrict the right to notice of the
10 initiation of an arbitration proceeding under Section ~~130~~ 309 of
11 this ~~act~~ title;

12 3. Agree to unreasonably restrict the right to disclosure of
13 any facts by an arbitrator under Section ~~133~~ 312 of this ~~act~~ title;

14 4. Waive the right of a party to an agreement to arbitrate to
15 be represented by a lawyer at any proceeding or hearing under
16 Section ~~137~~ 316 of this ~~act~~ title; or

17 5. Agree to conduct arbitration proceedings outside of this
18 state.

19 C. A party to an agreement to arbitrate or to an arbitration
20 proceeding may not waive, or the parties may not vary the effect of,
21 the requirements of this section or subsection A or C of Section ~~124~~
22 304, Sections ~~128, 135 and 139~~ 307, 314 and 318, subsection D or E
23 of Section ~~141~~ 320, Sections ~~143, 144 and 145~~ 322, 323 and 324, or
24 subsection A or B of Section ~~146~~ 325 of this ~~act~~ title.

SECTION 51. AMENDATORY Section 126, Chapter 208, O.S.L.

2013 (85A O.S. Supp. 2017, Section 305), is amended to read as follows:

Section 305. A. Except as otherwise provided in Section ~~150~~
107 of this ~~act~~ title, an application for judicial relief under this
act shall be made by application and motion to the Workers'
Compensation Commission and heard in the manner provided by law or
rule of the Commission for making and hearing motions.

B. Unless a civil action involving the agreement to arbitrate
is pending, notice of an initial application and motion to the
Commission under this act shall be served in the manner provided by
law for the service of a summons in the filing of a civil action.
Otherwise, notice of the motion shall be given in the manner
provided by law or rule of court for serving motions in pending
cases.

SECTION 52. AMENDATORY Section 133, Chapter 208, O.S.L.

2013 (85A O.S. Supp. 2017, Section 312), is amended to read as follows:

Section 312. A. Before accepting appointment, an individual
who is requested to serve as an arbitrator, after making a
reasonable inquiry, shall disclose to the parties to the arbitration
agreement, the parties to the arbitration proceeding, and any other
arbitrators any known facts that a reasonable person would consider

likely to affect the impartiality of the arbitrator in the arbitration proceeding, including but not limited to:

1. A financial or personal interest in the outcome of the arbitration proceeding; and

2. An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

B. An arbitrator has a continuing obligation to disclose to the parties to the arbitration agreement, the arbitration proceeding, and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

C. If an arbitrator discloses a conflict under subsection A or B of this section, any party to the arbitration agreement or the arbitration proceeding may have the arbitrator removed by filing a notice of conflict with the Workers' Compensation Commission. If a notice of conflict is not filed within ten (10) days of disclosure of the conflict, the parties waive their rights to have any order or award entered vacated under Section ~~144~~ 323 of this ~~act~~ title.

SECTION 53. AMENDATORY Section 134, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2017, Section 313), is amended to read as follows:

Section 313. If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the

1 arbitrators, but all of them shall conduct the hearing under Section
2 ~~136~~ 315 of this ~~act~~ title.

3 SECTION 54. AMENDATORY Section 135, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2017, Section 314), is amended to read as
5 follows:

6 Section 314. A. Arbitrators and arbitration organizations
7 providing services under this act are immune from civil liability to
8 the same extent as a judge of a court of this state acting in a
9 judicial capacity.

10 B. The immunity afforded by this section supplements any
11 immunity under other law.

12 C. The failure of an arbitrator to make a disclosure required
13 by Section ~~133~~ 312 of this ~~act~~ title shall not cause any loss of
14 immunity under this section.

15 D. An arbitrator or representative of an arbitration
16 organization is not competent to testify in a judicial,
17 administrative, or similar proceeding and may not be required to
18 produce records as to any statement, conduct, decision, or ruling
19 occurring during the arbitration proceeding, to the same extent as a
20 judge of a court of this state acting in a judicial capacity. This
21 subsection shall not apply to:

22 1. The extent necessary to determine the claim of an
23 arbitrator, arbitration organization, or representative of the
24

1 arbitration organization against a party to the arbitration
2 proceeding; or

3 2. A hearing on an application and motion to vacate an award
4 under paragraphs 1 or 2 of subsection A of Section ~~144~~ 323 of this
5 ~~act~~ title if the movant establishes prima facie that a ground for
6 vacating the award exists.

7 E. If a person commences a civil action against an arbitrator,
8 arbitration organization, or representative of an arbitration
9 organization arising from the services of the arbitrator,
10 organization, or representative or if a person seeks to compel an
11 arbitrator or a representative of an arbitration organization to
12 testify or produce records in violation of subsection D of this
13 section, and the court decides that the arbitrator, arbitration
14 organization, or representative of an arbitration organization is
15 immune from civil liability or that the arbitrator or representative
16 of the organization is not competent to testify, the court shall
17 award to the arbitrator, organization, or representative reasonable
18 attorney fees and other reasonable expenses of litigation.

19 SECTION 55. AMENDATORY Section 137, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2017, Section 316), is amended to read as
21 follows:

22 Section 316. A. A party to an arbitration proceeding may be
23 represented by a lawyer.

1 B. Each party shall be responsible for payment of his or her
2 legal fees incurred during arbitration, except as provided for in
3 Section ~~142~~ 321 of this ~~act~~ title.

4 C. The employee's attorney may not recover legal fees in excess
5 of the limits described in Section 82 of this ~~act~~ title.

6 SECTION 56. AMENDATORY Section 139, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2017, Section 318), is amended to read as
8 follows:

9 Section 318. If an arbitrator makes a pre-award ruling in favor
10 of a party, the party may request the arbitrator to incorporate the
11 ruling into an award under Section ~~140~~ 319 of this ~~act~~ title. A
12 prevailing party may make an application and motion to the
13 Commission for an expedited judgment to confirm the award under
14 Section ~~143~~ 322 of this ~~act~~ title, in which case the Workers'
15 Compensation Commission shall summarily decide the motion. The
16 Commission shall issue a judgment to confirm the award unless the
17 ~~court~~ Commission vacates, modifies, or corrects the award under
18 Section ~~144 or 145~~ 323 or 324 of this ~~act~~ title.

19 SECTION 57. AMENDATORY Section 141, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2017, Section 320), is amended to read as
21 follows:

22 Section 320. A. On motion by a party to an arbitration
23 proceeding, the arbitrator may modify or correct an award:
24

1 1. On a ground stated in paragraph 1 or 3 of subsection A of
2 Section ~~145~~ 324 of this ~~act~~ title;

3 2. Because the arbitrator has not made a final and definite
4 award upon a claim submitted by the parties to the arbitration
5 proceeding; or

6 3. To clarify the award.

7 B. A motion under subsection A of this section shall be made
8 and notice given to all parties within twenty (20) days after the
9 award is issued to the parties.

10 C. A party to the arbitration proceeding shall give notice of
11 any objection to the motion within ten (10) days after receipt of
12 the motion.

13 D. If a motion to the Workers' Compensation Commission is
14 pending under Section ~~144 or 145~~ 323 or 324 of this ~~act~~ title, the
15 Commission may submit the claim to the arbitrator to consider
16 whether to modify or correct the award:

17 1. On a ground stated in paragraph 1 or 3 of subsection A of
18 Section ~~145~~ 324 of this ~~act~~ title;

19 2. Because the arbitrator has not made a final and definite
20 award upon a claim submitted by the parties to the arbitration
21 proceeding; or

22 3. To clarify the award.

23 E. An award modified or corrected under this section is subject
24 to Sections ~~143, 144 and 145~~ 322, 323 and 324 of this ~~act~~ title.

1 SECTION 58. AMENDATORY Section 142, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2017, Section 321), is amended to read as
3 follows:

4 Section 321. A. An arbitrator may award benefits set forth in
5 Sections 45, 46, 47 and 51 of this ~~act~~ title.

6 B. An arbitrator may award reasonable attorney fees and other
7 reasonable expenses of arbitration if the arbitrator finds that a
8 party was not acting in good faith throughout the arbitration.

9 C. As to all remedies other than those authorized by
10 subsections A and B of this section, an arbitrator may order such
11 remedies as the arbitrator considers just and appropriate under the
12 circumstances of the arbitration proceeding. The fact that such a
13 remedy could not or would not be granted by the Workers'
14 Compensation Commission is not a ground for refusing to confirm an
15 award under Section ~~143~~ 322 of this ~~act~~ title or for vacating an
16 award under Section ~~144~~ 323 of this ~~act~~ title.

17 D. An arbitrator's expenses and fees, together with other
18 expenses, shall be paid by the employer.

19 E. If an arbitrator awards relief under subsection A of this
20 section, the arbitrator shall specify in the award the basis in fact
21 justifying and the basis in law authorizing the award.

22 SECTION 59. AMENDATORY Section 143, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2017, Section 322), is amended to read as
24 follows:

1 Section 322. After a party to an arbitration proceeding
2 receives notice of an award, the party may make an application and
3 motion to the Workers' Compensation Commission for a judgment
4 confirming the award at which time the Commission shall issue a
5 confirming judgment unless the award is modified or corrected under
6 Section ~~141 or 145~~ 320 or 324 of this ~~act~~ title or is vacated under
7 Section ~~144~~ 323 of this ~~act~~ title.

8 SECTION 60. AMENDATORY Section 144, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2017, Section 323), is amended to read as
10 follows:

11 Section 323. A. On an application and motion to the court by a
12 party to an arbitration proceeding, the Workers' Compensation
13 Commission shall vacate an award made in the arbitration proceeding
14 if:

15 1. The award was procured by corruption, fraud, or other undue
16 means;

17 2. There was:

18 a. evident partiality by an arbitrator appointed as a
19 neutral arbitrator,

20 b. corruption by an arbitrator, or

21 c. misconduct by an arbitrator prejudicing the rights of
22 a party to the arbitration proceeding;

23 3. An arbitrator refused to postpone the hearing upon showing
24 of sufficient cause for postponement, refused to consider evidence

1 material to the controversy, or otherwise conducted the hearing
2 contrary to Section ~~136~~ 315 of this ~~act~~ title, so as to prejudice
3 substantially the rights of a party to the arbitration proceeding;

4 4. An arbitrator exceeded his or her powers under this act;

5 5. The arbitration was conducted without proper notice of the
6 initiation of an arbitration as required in Section ~~130~~ 309 of this
7 ~~act~~ title so as to prejudice substantially the rights of a party to
8 the arbitration proceeding; or

9 6. It is determined that an arbitrator did not disclose a
10 conflict under Section ~~133~~ 312 of this ~~act~~ title.

11 B. An application and motion under this section shall be filed
12 within thirty (30) days after the movant receives notice of the
13 award or within thirty (30) days after the movant receives notice of
14 a modified or corrected award, unless the movant alleges that the
15 award was procured by corruption, fraud, or other undue means, in
16 which case the motion shall be made within ninety (90) days after
17 the ground is known or by the exercise of reasonable care would have
18 been known by the movant.

19 C. If the Commission vacates an award it may order a rehearing.
20 If the award is vacated on a ground stated in paragraph 1, 2 or 6 of
21 subsection A of this section, the rehearing shall be before a new
22 arbitrator. If the award is vacated on a ground stated in paragraph
23 3, 4 or 5 of subsection A of this section, the rehearing may be
24 before the arbitrator who made the award or the arbitrator's

1 successor. The arbitrator shall render the decision in the
2 rehearing within the same time as that provided in subsection B of
3 Section ~~140~~ 319 of this ~~act~~ title for an award.

4 D. If the Commission denies a motion to vacate an award, it
5 shall confirm the award unless a motion to modify or correct the
6 award is pending.

7 SECTION 61. AMENDATORY Section 148, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2017, Section 327), is amended to read as
9 follows:

10 Section 327. ~~A.~~ A party may appeal the following actions to
11 the district court as provided in Section ~~149~~ 328 of this ~~act~~ title:

- 12 1. An order denying a motion to compel arbitration;
- 13 2. An order granting a motion to stay arbitration;
- 14 3. An order confirming or denying confirmation of an award;
- 15 4. An order modifying or correcting an award;
- 16 5. An order vacating an award without directing a rehearing; or
- 17 6. A final judgment entered under the Workers' Compensation
18 Arbitration Act.

19 SECTION 62. AMENDATORY Section 169, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2017, Section 400), is amended to read as
21 follows:

22 Section 400. A. The Workers' Compensation Court shall be
23 renamed the Workers' Compensation Court of Existing Claims for the
24 purpose of hearing disputes relating to claims that arise before

1 February 1, 2014. The Court shall consist of the existing judges
2 for the remainder of his or her term. Each judge of the Court shall
3 continue to serve as the appointment to a designated numbered
4 position on the Court. The positions shall be numbered one through
5 ten. The terms of the judges by position number shall expire on the
6 following dates:

7 Position 1 shall expire 7-1-14.

8 Position 2 shall expire 7-1-14.

9 Position 3 shall expire 7-1-14.

10 Position 4 shall expire 7-1-20.

11 Position 5 shall expire 7-1-20.

12 Position 6 shall expire 7-1-16.

13 Position 7 shall expire 7-1-16.

14 Position 8 shall expire 7-1-20.

15 Position 9 shall expire 7-1-20.

16 Position 10 shall expire 7-1-14.

17 Provided, judges who are serving unexpired terms on the Workers'
18 Compensation Court on the effective date of this section shall serve
19 on the Court created by this section until their respective terms
20 expire as provided in this act. Thereafter, each position shall be
21 dissolved. After a judge serves this term, such judge shall be
22 eligible to reapply for an administrative law judge with the
23 Workers' Compensation Commission.

24

1 B. When a vacancy on the Court occurs or is certain to occur,
2 ~~the Workers' Compensation Commission shall assign administrative law~~
3 ~~judges from the Commission to assist in the duties of the Workers'~~
4 ~~Compensation Court of Existing Claims~~ the Governor shall appoint a
5 judge to serve the remainder of the term from a list of three
6 applicants submitted to the Governor by the Judicial Nominating
7 Commission. The Governor shall appoint from among the judges of the
8 Court of Existing Claims a Presiding Judge who shall serve for a
9 three-year term beginning on November 1, 2018. The Presiding Judge
10 serving on the effective date of this act shall serve the remainder
11 of the term. If a Presiding Judge resigns the office during the
12 term, the Governor shall appoint a new Presiding Judge to serve the
13 remainder of the term. The Presiding Judge shall perform
14 supervisory duties as the needs of the Court may require and
15 supervise the work of all employees of the Court and handle,
16 oversee, and be responsible for all administrative affairs of the
17 Court. In addition, the Presiding Judge shall be authorized to
18 contract with the Workers' Compensation Commission or other
19 individuals or entities for services and shared services.

20 ~~B.~~ C. A judge may be removed for cause by the Court on the
21 Judiciary prior to the expiration of his or her term.

22 ~~C.~~ D. Each judge shall receive a salary equal to that paid to a
23 district judge of this state, and shall devote full time to his or
24

1 her duties and shall not engage in the private practice of law
2 during the term in office.

3 ~~D.~~ E. The Court shall operate by the rules adopted by the
4 Workers' Compensation Court prior to the effective date of this act.

5 ~~E.~~ F. The Court is hereby designated and confirmed as a court
6 of record, with respect to any matter within the limits of its
7 jurisdiction, and within such limits the judges thereof shall
8 possess the powers and prerogatives of the judges of the other
9 courts of record of this state, including the power to punish for
10 contempt those persons who disobey a subpoena, or refuse to be sworn
11 or to answer as a witness, when lawfully ordered to do so.

12 ~~F.~~ G. The principal office of the Court shall be situated in
13 the City of Oklahoma City in quarters assigned by the Office of
14 Management and Enterprise Services. The Court may hold hearings in
15 any city of this state.

16 ~~G.~~ H. All county commissioners and presiding district judges of
17 this state shall make quarters available for the conducting of
18 hearings by a judge of the Court upon request by the Court.

19 ~~H.~~ I. Judges of the Workers' Compensation Court of Existing
20 Claims may punish for direct contempt pursuant to Sections 565,
21 565.1 and 566 of Title 21 of the Oklahoma Statutes.

22 ~~I.~~ J. The Court shall be vested with jurisdiction over all
23 claims filed pursuant to the Workers' Compensation Code or previous
24 statute in effect on the date of an injury that occurred before

1 February 1, 2014. All claims so filed shall be heard by the judge
2 sitting without a jury. The Court shall have full power and
3 authority to determine all questions in relation to payment of
4 claims for compensation under the provisions of the Workers'
5 Compensation Code. The Court, upon application of either party,
6 shall order a hearing. Upon a hearing, either party may present
7 evidence and be represented by counsel. The decision of the Court
8 shall be final as to all questions of fact and law; provided, the
9 decision of the Court may be appealed to the ~~Commission~~ Court en
10 banc or the Supreme Court as provided by the Workers' Compensation
11 Code. In the event that an insufficient number of active judges are
12 available to comprise the three-judge en banc panel, retired or
13 former judges of the district court or Workers' Compensation Court
14 may be designated by the Presiding Judge to serve on such panel.
15 The decision of the Court shall be issued within sixty (60) days
16 following the submission of the case by the parties. The power and
17 jurisdiction of the Court over each case shall be continuing and it
18 may, from time to time, make such modifications or changes with
19 respect to former findings or orders relating thereto if, in its
20 opinion, it may be justified.

21 ~~J. Any appeal of an order by the Workers' Compensation Court of~~
22 ~~Existing Claims shall be heard by the Commission en banc. The~~
23 ~~Commission shall review the decision using an abuse of discretion~~
24

1 ~~standard of review. Orders by the Commission may be appealed in~~
2 ~~accordance with Section 78 of this act.~~

3 K. ~~To protect the integrity of the transition from the Workers'~~
4 ~~Compensation Court to the administrative system created by this act,~~
5 ~~and to protect all rights and privileges of parties to claims~~
6 ~~adjudicated by the Workers' Compensation Court, the Commission shall~~
7 ~~retain all remedies and responsibilities of the Workers'~~
8 ~~Compensation Court for as long as cases involving claims for~~
9 ~~compensation accruing before the effective date of this act but~~
10 ~~filed thereafter or which were pending before or adjudicated by the~~
11 ~~Workers' Compensation Court shall remain open.~~

12 L. ~~For an injury occurring before the effective date of this~~
13 ~~act February 1, 2014, all benefits and procedures to obtain benefits~~
14 ~~shall be determined by the workers' compensation law of this state~~
15 ~~in effect on the date of the injury. Administrative law judges of~~
16 ~~the Commission shall enforce all final orders of the Workers'~~
17 ~~Compensation Court in a manner to secure for all parties the due~~
18 ~~process and equal protection guarantees of the Constitution of the~~
19 ~~State of Oklahoma.~~

20 M. L. All accrued rights and penalties incurred pursuant to a
21 final order of the Workers' Compensation Court shall be preserved.
22 ~~Administrative law judges of the Commission shall be authorized to~~
23 ~~issue orders and conduct legal proceedings to enforce all such~~
24 ~~accrued rights and penalties incurred. No accrued right, penalty~~

1 incurred, or proceeding begun by virtue of a statute repealed by
2 this act shall be abrogated by the terms of this act.

3 SECTION 63. AMENDATORY 25 O.S. 2011, Section 307, as
4 amended by Section 1, Chapter 109, O.S.L. 2015 (25 O.S. Supp. 2017,
5 Section 307), is amended to read as follows:

6 Section 307. A. No public body shall hold executive sessions
7 unless otherwise specifically provided in this section.

8 B. Executive sessions of public bodies will be permitted only
9 for the purpose of:

10 1. Discussing the employment, hiring, appointment, promotion,
11 demotion, disciplining or resignation of any individual salaried
12 public officer or employee;

13 2. Discussing negotiations concerning employees and
14 representatives of employee groups;

15 3. Discussing the purchase or appraisal of real property;

16 4. Confidential communications between a public body and its
17 attorney concerning a pending investigation, claim, or action if the
18 public body, with the advice of its attorney, determines that
19 disclosure will seriously impair the ability of the public body to
20 process the claim or conduct a pending investigation, litigation, or
21 proceeding in the public interest;

22 5. Permitting district boards of education to hear evidence and
23 discuss the expulsion or suspension of a student when requested by
24

1 the student involved or the student's parent, attorney or legal
2 guardian;

3 6. Discussing matters involving a specific handicapped child;

4 7. Discussing any matter where disclosure of information would
5 violate confidentiality requirements of state or federal law;

6 8. Engaging in deliberations or rendering a final or
7 intermediate decision in an individual proceeding pursuant to
8 Article II of the Administrative Procedures Act; or

9 9. Discussing the following:

10 a. the investigation of a plan or scheme to commit an act
11 of terrorism,

12 b. assessments of the vulnerability of government
13 facilities or public improvements to an act of
14 terrorism,

15 c. plans for deterrence or prevention of or protection
16 from an act of terrorism,

17 d. plans for response or remediation after an act of
18 terrorism,

19 e. information technology of the public body but only if
20 the discussion specifically identifies:

21 (1) design or functional schematics that demonstrate
22 the relationship or connections between devices
23 or systems,

24 (2) system configuration information,

- (3) security monitoring and response equipment placement and configuration,
 - (4) specific location or placement of systems, components or devices,
 - (5) system identification numbers, names, or connecting circuits,
 - (6) business continuity and disaster planning, or response plans, or
 - (7) investigation information directly related to security penetrations or denial of services, or
- f. the investigation of an act of terrorism that has already been committed.

For the purposes of this subsection, the term "terrorism" means any act encompassed by the definitions set forth in Section 1268.1 of Title 21 of the Oklahoma Statutes.

C. Notwithstanding the provisions of subsection B of this section, the following public bodies may hold executive sessions:

1. The State Banking Board, as provided for under Section 306.1 of Title 6 of the Oklahoma Statutes;

2. The Oklahoma Industrial Finance Authority, as provided for in Section 854 of Title 74 of the Oklahoma Statutes;

3. The Oklahoma Development Finance Authority, as provided for in Section 5062.6 of Title 74 of the Oklahoma Statutes;

1 4. The Oklahoma Center for the Advancement of Science and
2 Technology, as provided for in Section 5060.7 of Title 74 of the
3 Oklahoma Statutes;

4 ~~5. The Oklahoma Savings and Loan Board, as provided for under~~
5 ~~subsection A of Section 381.74 of Title 18 of the Oklahoma Statutes;~~

6 ~~6.~~ The Oklahoma Health Research Committee for purposes of
7 conferring on matters pertaining to research and development of
8 products, if public disclosure of the matter discussed would
9 interfere with the development of patents, copyrights, products, or
10 services;

11 6. The Workers' Compensation Commission for the purposes
12 specified in Section 19 of Title 85A of the Oklahoma Statutes;

13 7. A review committee, as provided for in Section 855 of Title
14 62 of the Oklahoma Statutes;

15 8. The Child Death Review Board for purposes of receiving and
16 conferring on matters pertaining to materials declared confidential
17 by law;

18 9. The Domestic Violence Fatality Review Board as provided in
19 Section 1601 of Title 22 of the Oklahoma Statutes;

20 10. All nonprofit foundations, boards, bureaus, commissions,
21 agencies, trusteeships, authorities, councils, committees, public
22 trusts, task forces or study groups supported in whole or part by
23 public funds or entrusted with the expenditure of public funds for
24 purposes of conferring on matters pertaining to economic

1 development, including the transfer of property, financing, or the
2 creation of a proposal to entice a business to remain or to locate
3 within their jurisdiction if public disclosure of the matter
4 discussed would interfere with the development of products or
5 services or if public disclosure would violate the confidentiality
6 of the business;

7 11. The Oklahoma Indigent Defense System Board for purposes of
8 discussing negotiating strategies in connection with making possible
9 counteroffers to offers to contract to provide legal representation
10 to indigent criminal defendants and indigent juveniles in cases for
11 which the System must provide representation pursuant to the
12 provisions of the Indigent Defense System Act; and

13 12. The Quality Investment Committee for purposes of discussing
14 applications and confidential materials pursuant to the terms of the
15 Oklahoma Quality Investment Act.

16 D. Except as otherwise specified in this subsection, an
17 executive session for the purpose of discussing the purchase or
18 appraisal of real property shall be limited to members of the public
19 body, the attorney for the public body and the immediate staff of
20 the public body. No landowner, real estate salesperson, broker,
21 developer or any other person who may profit directly or indirectly
22 by a proposed transaction concerning real property which is under
23 consideration may be present or participate in the executive
24

1 session, unless they are operating under an existing agreement to
2 represent the public body.

3 E. No public body may go into an executive session unless the
4 following procedures are strictly complied with:

5 1. The proposed executive session is noted on the agenda as
6 provided in Section 311 of this title;

7 2. The executive session is authorized by a majority vote of a
8 quorum of the members present and the vote is a recorded vote; and

9 3. Except for matters considered in executive sessions of the
10 State Banking Board and the Oklahoma Savings and Loan Board, and
11 which are required by state or federal law to be confidential, any
12 vote or action on any item of business considered in an executive
13 session shall be taken in public meeting with the vote of each
14 member publicly cast and recorded.

15 F. A willful violation of the provisions of this section shall:

16 1. Subject each member of the public body to criminal sanctions
17 as provided in Section 314 of this title; and

18 2. Cause the minutes and all other records of the executive
19 session, including tape recordings, to be immediately made public.

20 SECTION 64. REPEALER Sections 15 and 36, Chapter 208,
21 O.S.L. 2013 (85A O.S. Supp. 2017, Sections 15 and 36), are hereby
22 repealed.

23 SECTION 65. REPEALER Sections 107, 108, 109, 111, 113,
24 114, 115, 116, 117, 119 and 120, Chapter 208, O.S.L. 2013, and

1 Sections 110, 112 and 118, Chapter 208, O.S.L. 2013, as amended by
2 Sections 4, 5 and 6, Chapter 390, O.S.L. 2015 (85A O.S. Supp. 2017,
3 Sections 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211,
4 212 and 213), are hereby repealed.

5 SECTION 66. This act shall become effective November 1, 2018.

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7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03/01/2018 - DO
8 PASS, As Amended.

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