

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 1510

By: Sykes

AS INTRODUCED

An Act relating to workers' compensation; amending Sections 19, as amended by Section 4, House Joint Resolution No. 1096, p. 1745, O.S.L. 2014, 21 and 22, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2017, Sections 19, 21 and 22), which relate to the Workers' Compensation Commission; updating statutory reference; modifying procedure for replacement of disqualified Commissioners; modifying certain powers of the Commission; modifying duties of the Commission; providing procedure for Affidavit of Exempt Status; establishing misdemeanor offense for certain fraud; authorizing assessment of certain fee; prohibiting liability for certain injuries under specified circumstances; providing for codification; and providing an effective date.

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

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

Section 19. A. There is hereby created the Oklahoma Workers' Compensation Commission, an executive agency of the State of

1 Oklahoma, which shall have the exclusive responsibility and duty to
2 carry out the provisions of this act, except as otherwise provided.

3 B. The Commission shall consist of three (3) full-time
4 commissioners, each of whom must have been involved in the workers'
5 compensation field for at least three (3) years, appointed by the
6 Governor: one of whom is chosen from a slate of three selected by
7 the Speaker of the House of Representatives, with all three
8 confirmed by the Senate. The term of each appointee shall be six
9 (6) years to administer the provisions of this act. The Governor
10 may request a subsequent slate of nominees from the Speaker of the
11 House of Representatives if a suitable nominee is not found. Any or
12 all of the commissioners may be reappointed for additional six-year
13 terms upon reconfirmation by the Senate. However, the initial
14 commissioners shall serve staggered terms of two (2), four (4), and
15 six (6) years, respectively, as determined by the Governor. If the
16 Legislature is not in session at the time of appointment, the
17 appointment shall be subject to confirmation by the Senate upon
18 convening of the next regular session of the Legislature.
19 Membership on the Commission shall be a full-time position and no
20 commissioner shall have any other employment, unless authorized or
21 excused by law. Each commissioner shall receive a salary equal to
22 that paid to a district judge of this state; provided however, the
23 commissioners shall not receive any increase in salary as a result
24 of the provisions of Section 1 of ~~this resolution~~ House Joint

1 Resolution No. 1096 of the 2nd Session of the 54th Oklahoma
2 Legislature.

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

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

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

21 1. To organize, direct and develop the administrative work of
22 the administrative law judges, including but not limited to
23 docketing, clerical, technical and financial work and establishment
24 of hours of operation;

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

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

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

9 ~~G. When any commissioner of the Commission is disqualified for
10 any reason to hear and participate in the determination of any
11 matter pending before the Commission, the Governor shall appoint a
12 qualified person to hear and participate in the decision on the
13 particular matter. The special commissioner so appointed shall have
14 all authority and responsibility with respect to the particular
15 matter before the Commission as if the person were a regular
16 commissioner of the Commission but shall have no authority or
17 responsibility with respect to any other matter before the
18 Commission. A person appointed as a special commissioner of the
19 Commission under the provisions of this subsection shall be entitled
20 to receive a per diem equal to the annual salary of the
21 commissioners prorated for the number of days he or she serves in
22 the capacity of a special commissioner of the Commission.
23 Furthermore, when a vacancy on the Commission occurs or is certain
24 to occur, the position shall be filled pursuant to the provisions of~~

1 ~~this section~~ The power of the Commission to decide issues of fact
2 does not include the power to determine the constitutionality of
3 provisions of this title or the constitutionality of application of
4 the provisions of this title.

5 SECTION 2. AMENDATORY Section 21, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2017, Section 21), is amended to read as
7 follows:

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

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

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

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

23 D. Except with respect to the Commission's authority to hear
24 appeals of decisions from administrative law judges other than as

1 provided pursuant to subsection B of Section 78 of this title, any
2 reference in this ~~act~~ title to the Commission's ability to hear and
3 decide the rights of interested parties under this ~~act~~ title shall
4 not prevent it from delegating that responsibility to an
5 administrative law judge.

6 SECTION 3. AMENDATORY Section 22, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2017, Section 22), is amended to read as
8 follows:

9 Section 22. A. 1. For the purpose of administering the
10 provisions of this ~~act~~ title, the Workers' Compensation Commission
11 is authorized:

- 12 a. to make rules necessary for the administration and
13 operation of the Commission,
- 14 b. to appoint and fix the compensation of temporary
15 technical assistants, medical and legal advisers,
16 clerical assistants and other officers and employees,
17 and
- 18 c. to make such expenditures, including those for
19 personal service, rent, books, periodicals, office
20 equipment, and supplies, and for printing and binding
21 as may be necessary.

- 22 2. a. ~~Before~~ The Commission shall vote on any substantive
23 change to any form and the effective date of such
24 substantive change.

1 b. The Commission shall comply with the provisions of the
2 Administrative Procedures Act applicable to the filing
3 and publication requirements for rules before the
4 adoption, prescription, amendment, modification, or
5 repeal of any rule, regulation, or form, the
6 ~~Commission shall give at least thirty (30) days'~~
7 ~~notice of its intended action.~~

8 ~~b. The notice shall include a statement of the terms or~~
9 ~~substance of the intended action or description of the~~
10 ~~subjects and issues involved, and the time, place, and~~
11 ~~manner in which interested persons may present their~~
12 ~~views thereon.~~

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

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

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

23 ~~5. All expenditures of the Commission in the administration of~~
24 ~~this act shall be allowed and paid from the Workers' Compensation~~

1 ~~Fund on the presentation of itemized vouchers approved by the~~
2 ~~Commission.~~

3 B. 1. The Commission may appoint as many persons as may be
4 necessary to be administrative law judges and in addition may
5 appoint such examiners, investigators, medical examiners, clerks,
6 and other employees as it deems necessary to effectuate the
7 provisions of this ~~act~~ title.

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

10 C. Additionally, the Commission shall have the following powers
11 and duties:

12 1. To hear and approve compromise settlements;

13 2. To review and approve own-risk applications and group self-
14 insurance association applications;

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

17 4. ~~To contract with an appropriate state governmental entity,~~
18 ~~insurance carrier or approved service organization to process,~~
19 ~~investigate and pay valid claims against an impaired self-insurer~~
20 ~~which fails, due to insolvency or otherwise, to pay its workers'~~
21 ~~compensation obligations, charges for which shall be paid from the~~
22 ~~proceeds of security posted with the Commission as provided in~~
23 ~~Section 38 of this act;~~
24

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

3 ~~6.~~ 5. To hear and determine claims concerning disputed medical
4 bills;

5 ~~7.~~ 6. To promulgate necessary rules for administering this ~~act~~
6 title and develop uniform forms and procedures for use by
7 administrative law judges. Such rules shall be reviewable by the
8 Legislature;

9 ~~8.~~ 7. To invest funds on behalf of the Multiple Injury Trust
10 Fund;

11 ~~9.~~ 8. To appoint a Commission Mediator to conduct informal
12 sessions to attempt to resolve assigned disputes; and

13 ~~10.~~ 9. Such other duties and responsibilities authorized by
14 law.

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

20 SECTION 4. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 36.1 of Title 85A, unless there
22 is created a duplication in numbering, reads as follows:

23 A. Any person who is not required to be covered under a
24 workers' compensation insurance policy or other plan for the payment

1 of workers' compensation may execute an Affidavit of Exempt Status
2 under the Administrative Workers' Compensation Act. The affidavit
3 shall be a form prescribed by the Workers' Compensation Commission
4 and will be available on the Commission's website.

5 B. Execution of the affidavit shall establish a rebuttable
6 presumption that the executor is not an employee for purposes of the
7 Administrative Workers' Compensation Act and therefore shall not be
8 eligible to seek workers' compensation benefits against any
9 contractor.

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

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

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

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

22 3. The Commission shall immediately notify the Workers'
23 Compensation Fraud Unit in the Office of the Attorney General of any
24 violations or suspected violations of this section. The Commission

1 shall cooperate with the Fraud Unit in any investigation involving
2 affidavits executed pursuant to this section.

3 F. The Commission may assess a fee not to exceed Fifty Dollars
4 (\$50.00) for an Affidavit of Exempt Status Application. Fees
5 collected pursuant to this section shall be deposited in the State
6 Treasury to the credit of the Workers' Compensation Commission
7 Revolving Fund.

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

13 SECTION 5. This act shall become effective November 1, 2018.

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