

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 777

By: Sykes

6 AS INTRODUCED

7 An Act relating to workers' compensation; amending
8 Sections 19, as amended by Section 4, H.J.R. No.
1096, p. 1745, O.S.L. 2014, 21 and 22, Chapter 208,
9 O.S.L. 2013 (85A O.S. Supp. 2016, Sections 19, 21 and
22), which relate to the Workers' Compensation
Commission; updating statutory reference; modifying
10 procedure for replacement of disqualified
Commissioners; modifying certain powers of the
11 Commission; modifying duties of the Commission;
providing procedure for Affidavit of Exempt Status;
12 establishing misdemeanor offense for certain fraud;
authorizing assessment of certain fee; prohibiting
13 liability for certain injuries under specified
circumstances; providing for codification; and
14 providing an effective date.

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

18 SECTION 1. AMENDATORY Section 19, Chapter 208, O.S.L.
19 2013, as amended by Section 4, H.J.R. No. 1096, p. 1745, O.S.L. 2014
20 (85A O.S. Supp. 2016, Section 19), is amended to read as follows:

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

1 B. The Commission shall consist of three (3) full-time
2 commissioners, each of whom must have been involved in the workers'
3 compensation field for at least three (3) years, appointed by the
4 Governor: one of whom is chosen from a slate of three selected by
5 the Speaker of the House of Representatives, with all three
6 confirmed by the Senate. The term of each appointee shall be six
7 (6) years to administer the provisions of this act. The Governor
8 may request a subsequent slate of nominees from the Speaker of the
9 House of Representatives if a suitable nominee is not found. Any or
10 all of the commissioners may be reappointed for additional six-year
11 terms upon reconfirmation by the Senate. However, the initial
12 commissioners shall serve staggered terms of two (2), four (4), and
13 six (6) years, respectively, as determined by the Governor. If the
14 Legislature is not in session at the time of appointment, the
15 appointment shall be subject to confirmation by the Senate upon
16 convening of the next regular session of the Legislature.
17 Membership on the Commission shall be a full-time position and no
18 commissioner shall have any other employment, unless authorized or
19 excused by law. Each commissioner shall receive a salary equal to
20 that paid to a district judge of this state; provided however, the
21 commissioners shall not receive any increase in salary as a result
22 of the provisions of Section 1 of ~~this resolution~~ House Joint
23 Resolution No. 1096 of the 2nd Session of the 54th Oklahoma
24 Legislature.

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

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

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

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

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

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

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

7 G. ~~When any commissioner of the Commission is disqualified for~~
8 ~~any reason to hear and participate in the determination of any~~
9 ~~matter pending before the Commission, the Governor shall appoint a~~
10 ~~qualified person to hear and participate in the decision on the~~
11 ~~particular matter. The special commissioner so appointed shall have~~
12 ~~all authority and responsibility with respect to the particular~~
13 ~~matter before the Commission as if the person were a regular~~
14 ~~commissioner of the Commission but shall have no authority or~~
15 ~~responsibility with respect to any other matter before the~~
16 ~~Commission. A person appointed as a special commissioner of the~~
17 ~~Commission under the provisions of this subsection shall be entitled~~
18 ~~to receive a per diem equal to the annual salary of the~~
19 ~~commissioners prorated for the number of days he or she serves in~~
20 ~~the capacity of a special commissioner of the Commission.~~
21 ~~Furthermore, when a vacancy on the Commission occurs or is certain~~
22 ~~to occur, the position shall be filled pursuant to the provisions of~~
23 ~~this section~~ The power of the Commission to decide issues of fact
24 does not include the power to determine the constitutionality of

1 provisions of this title or the constitutionality of application of
2 the provisions of this title.

3 SECTION 2. AMENDATORY Section 21, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 21), is amended to read as
5 follows:

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

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

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

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

21 D. Except with respect to the Commission's authority to hear
22 appeals of decisions from administrative law judges other than as
23 provided pursuant to subsection B of Section 78 of this title, any
24 reference in this ~~act~~ title to the Commission's ability to hear and

1 decide the rights of interested parties under this ~~act~~ title shall
2 not prevent it from delegating that responsibility to an
3 administrative law judge.

4 SECTION 3. AMENDATORY Section 22, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2016, Section 22), is amended to read as
6 follows:

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

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

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

23 b. The Commission shall comply with the provisions of the
24 Administrative Procedures Act applicable to the filing

1 ~~and publication requirements for rules before the~~
2 ~~adoption, prescription, amendment, modification, or~~
3 ~~repeal of any rule, regulation, or form, the~~
4 ~~Commission shall give at least thirty (30) days'~~
5 ~~notice of its intended action.~~

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

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

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

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

21 ~~5. All expenditures of the Commission in the administration of~~
22 ~~this act shall be allowed and paid from the Workers' Compensation~~
23 ~~Fund on the presentation of itemized vouchers approved by the~~
24 ~~Commission.~~

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

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

8 C. Additionally, the Commission shall have the following powers
9 and duties:

10 1. To hear and approve compromise settlements;

11 2. To review and approve own-risk applications and group self-
12 insurance association applications;

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

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

22 5. To establish a toll-free telephone number in order to
23 provide information and answer questions about the Commission;
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1 ~~6.~~ 5. To hear and determine claims concerning disputed medical
2 bills;

3 ~~7.~~ 6. To promulgate necessary rules for administering this ~~act~~
4 title and develop uniform forms and procedures for use by
5 administrative law judges. Such rules shall be reviewable by the
6 Legislature;

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

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

11 ~~10.~~ 9. Such other duties and responsibilities authorized by
12 law.

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

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

21 A. Any person who is not required to be covered under a
22 workers' compensation insurance policy or other plan for the payment
23 of workers' compensation may execute an Affidavit of Exempt Status
24 under the Administrative Workers' Compensation Act. The affidavit

1 shall be a form prescribed by the Workers' Compensation Commission
2 and will be available on the Commission's website.

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

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

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

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

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

20 3. The Commission shall immediately notify the Workers'
21 Compensation Fraud Unit in the Office of the Attorney General of any
22 violations or suspected violations of this section. The Commission
23 shall cooperate with the Fraud Unit in any investigation involving
24 affidavits executed pursuant to this section.

1 F. The Commission may assess a fee not to exceed Fifty Dollars
2 (\$50.00) for an Affidavit of Exempt Status Application. Fees
3 collected pursuant to this section shall be deposited in the State
4 Treasury to the credit of the Workers' Compensation Commission
5 Revolving Fund.

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

11 SECTION 5. This act shall become effective November 1, 2017.

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