

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 3717

By: Wallace and Casey of the
House

and

David and Fields of the
Senate

AS INTRODUCED

An Act relating to workers' compensation; creating the Multiple Injury Trust Fund Recovery Act; stating purpose; amending Section 30, Chapter 208, O.S.L. 2013, Section 31, Chapter 208, O.S.L. 2013, as amended by Section 3, Chapter 344, O.S.L. 2015, Sections 32, 33, 34 and 82, Chapter 208, O.S.L. 2013, and Section 165, Chapter 208, O.S.L. 2013, as amended by Section 4, Chapter 344, O.S.L. 2015 (85A O.S. Supp. 2017, Sections 30, 31, 32, 33, 34, 82 and 122), which relate to the Administrative Workers' Compensation Act; modifying definition of physically impaired person; modifying application to certain adjudications; modifying assessment procedure for the Multiple Injury Trust Fund; providing definitions; modifying maximum amount of certain assessments; requiring the Oklahoma Tax Commission to assess and collect certain assessments; modifying fine; establishing interest rate for accrued and unpaid compensation from the Multiple Injury Trust Fund; modifying appointment authority for MITF Director; providing for permanent total disability awards from the Multiple Injury Trust Fund for physically impaired persons; providing certain requirements; requiring offers to be conveyed within a certain time; prohibiting subsequent claims in certain circumstances; clarifying when attorney awards vest; modifying statute of limitations; modifying authority of the MITF Director; modifying administration of the

1 Multiple Injury Trust Fund; modifying definition of
2 controverted claim; modifying procedure required for
3 payment of legal fees; modifying apportionments from
4 the Multiple Injury Trust Fund; amending Section 169,
5 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2017,
6 Section 400), which relates to the Workers'
7 Compensation Court of Existing Claims; modifying
8 certain terms of office; changing manner in which
9 vacancies are filled; providing duties and
10 responsibilities of the Presiding Judge; clarifying
11 scope of jurisdiction of the Court; changing appeal
12 process; eliminating certain duties and powers of
13 administrative law judges; providing for
14 noncodification; and declaring an emergency.

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

16 SECTION 1. NEW LAW A new section of law not to be
17 codified in the Oklahoma Statutes reads as follows:

18 Sections 1 through 7 of this act shall be known and may be cited
19 as the "Multiple Injury Trust Fund Recovery Act". The purpose of
20 this act is to change eligibility criteria for claims against the
21 Multiple Injury Trust Fund, and to provide additional funding for
22 said Fund from nongovernment sources to minimize legislative
23 appropriation to secure the Fund as a general obligation of the
24 State of Oklahoma.

SECTION 2. AMENDATORY Section 30, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2017, Section 30), is amended to read as
follows:

1 Section 30. A. For the purposes of Sections 31 through 35 of
2 this ~~act~~ title, the term "physically impaired person" means a person
3 who, as a result of accident, disease, birth, military action, or
4 any other cause, has suffered:

5 1. The loss of the sight of one eye;

6 2. The loss by amputation of the whole or a part of a member of
7 the body; or

8 ~~3. The loss of use or partial loss of use of a member such as
9 is obvious and apparent from observation or examination by a person
10 who is not skilled in the medical profession; or~~

11 ~~4. Any previous adjudications of compensable permanent partial
12 disability adjudged and determined by the Workers' Compensation
13 Court, the Workers' Compensation Court of Existing Claims, or the
14 Workers' Compensation Commission ~~or any disability resulting from
15 separately adjudicated injuries and adjudicated occupational
16 diseases even though arising at the same time. Provided, that any
17 adjudication of preexisting disability to a part of the body shall
18 not be combinable for purposes of the Multiple Injury Trust Fund
19 unless that part of the body was deemed to have been injured in the
20 claim being adjudicated.~~~~

21 B. This section shall apply to all adjudications of Multiple
22 Injury Trust Fund claims ~~heard by the Commission on or after the
23 effective date of this act~~ in which the last injury occurred on or
24 after the effective date of this act.

1 SECTION 3. AMENDATORY Section 31, Chapter 208, O.S.L.
2 2013, as amended by Section 3, Chapter 344, O.S.L. 2015 (85A O.S.
3 Supp. 2017, Section 31), is amended to read as follows:

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

6 1. As soon as practicable after January 1 of each year, the
7 commissioners of the Workers' Compensation Commission shall
8 establish an assessment rate applicable to each mutual or
9 interinsurance association, stock company, ~~CompSource Oklahoma~~, or
10 other insurance carrier writing workers' compensation insurance in
11 this state, each employer carrying its own risk, and each group
12 self-insurance association, including the Consolidated Workers'
13 Compensation Program authorized by Section 85.58A of Title 74 of the
14 Oklahoma Statutes, and operated by the Office of Management and
15 Enterprise Services, for amounts for purposes of computing the
16 assessment authorized by this section necessary to pay the annual
17 obligations of the Multiple Injury Trust Fund determined on or
18 before December 31 of each year by the MITF Director, provided for
19 in subsection P of this section, to be outstanding for the next
20 calendar year, ~~and to pay the allocations provided for in subsection~~
21 ~~I of this section.~~ The rate shall be equal for all parties required
22 to pay the assessment. ~~If CompSource begins operating as a mutual~~
23 ~~insurance company, the~~ The Board of Directors for CompSource Mutual
24 Insurance Company shall have the power to disapprove the rate

1 established by the MITF Director until the Multiple Injury Trust
2 Fund repays in full the amount due on any loan from CompSource
3 Mutual Insurance Company or its predecessor CompSource Oklahoma. If
4 the MITF Director and CompSource Mutual Insurance Company have not
5 agreed on the assessment rate within thirty (30) days, the Workers'
6 Compensation Commission shall set an assessment rate sufficient to
7 cover all foreseeable obligations of the Multiple Injury Trust Fund,
8 including interest and principal owed by the Fund on any loan.—The
9 ~~rate in effect on the effective date of this act shall remain~~
10 ~~effective through June 30, 2014;~~

11 2. ~~The Oklahoma Tax Commission shall assess and collect from~~
12 ~~any uninsured employer a temporary assessment at the rate of five~~
13 ~~percent (5%) of the total compensation for permanent total~~
14 ~~disability awards, permanent partial disability awards, and death~~
15 ~~benefits paid out during each quarter of the calendar year by the~~
16 ~~employers;~~

17 3. The assessments shall be paid to the Oklahoma Tax
18 Commission. Insurance carriers, self-insurers, and group self-
19 insurance associations ~~and CompSource Oklahoma~~ shall pay the
20 assessment in four equal installments not later than the fifteenth
21 day of the month following the close of each quarter of the calendar
22 year of the assessment. Assessments shall be determined based upon
23 gross direct written premiums before deductible credits are applied,
24 normal premiums or actual paid losses of the paying party, as

1 applicable, during the calendar quarter for which the assessment is
2 due. Uninsured employers shall pay the assessment not later than
3 the fifteenth day of the month following the close of each quarter
4 of the calendar year of the assessment. For purposes of this
5 section, "uninsured employer" means an employer required by law to
6 carry workers' compensation insurance but who has failed or
7 neglected to do so.

8 a. The assessment authorized in this section shall be
9 determined using a rate equal to the proportion that
10 the sum of the outstanding obligations of the Multiple
11 Injury Trust Fund as determined pursuant to paragraph
12 1 of this subsection ~~and the allocations provided for~~
13 ~~in subsection I of this section~~ bear to the combined
14 gross direct written premiums of all such insurers;
15 all actual paid losses of all individual self-
16 insureds; and the normal premium of all group self-
17 insurance associations, for the year period from
18 January 1 to December 31 preceding the assessment.

19 b. For purposes of this subsection:

20 (1) "actual paid losses" means all medical and
21 indemnity payments, including temporary
22 disability, permanent disability, and death
23 benefits, and excluding loss adjustment expenses
24 and reserves, ~~and~~

1 (2) "direct gross written premium" for insurance
2 companies means all consideration, whether
3 designated as premium or otherwise, for workers'
4 compensation insurance paid to an insurance
5 company or its representative, including on
6 insurance policies with provisions for
7 deductibles, the calculated cost for coverage,
8 including experience modification and premium
9 surcharge or discount prior to any reduction for
10 deductibles, and

11 (3) "normal premium" means a standard premium less
12 any discounts;

13 ~~4.~~ 3. By April 15 of each year, the Insurance Commissioner, the
14 MITF Director and each individual and group self-insured shall
15 provide the Workers' Compensation Commission with such information,
16 including annual deductible recoveries received, as the Commission
17 may determine is necessary to effectuate the purposes of this
18 section;

19 ~~5.~~ 4. Each mutual or interinsurance association, stock company,
20 ~~CompSource Oklahoma,~~ or other insurance carrier writing workers'
21 compensation insurance in this state, and each employer carrying its
22 own risk, including each group self-insurance association, shall be
23 notified by the Workers' Compensation Commission in writing of the
24 rate for the assessment on or before May 1 of each year in which a

1 rate is determined. The rate determined by the Commission shall be
2 in effect for four calendar quarters beginning July 1 following
3 determination by the Commission. The Commission may amend its
4 previously determined rate on or after the effective date of this
5 act. Parties affected by the amended rate shall be notified by the
6 Commission in writing as is reasonable. The amended rate shall be
7 in effect beginning September 1, 2018, for the remainder of fiscal
8 year 2019; and

9 ~~6.~~ 5. a. No mutual or interinsurance association, stock
10 company, ~~CompSource Oklahoma,~~ or other insurance
11 carrier writing workers' compensation insurance in
12 this state may be assessed in any year an amount
13 greater than ~~six percent (6%)~~ seven percent (7%) of
14 the gross direct written premiums of that insurer.

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

19 c. No group self-insurance association may be assessed in
20 any year an amount greater than ~~six percent (6%)~~ seven
21 percent (7%) of the normal premium of that group self-
22 insurance association;

23 6. The Oklahoma Tax Commission shall assess and collect from
24 any uninsured employer a temporary assessment at the rate of five

1 percent (5%) of the total compensation for permanent total
2 disability awards, permanent partial disability awards, and death
3 benefits paid out during each quarter of the calendar year by
4 employers. For the purpose of this paragraph, "uninsured employer"
5 means an employer required by law to secure its workers'
6 compensation obligations but who has failed or neglected to do so;

7 7. The Oklahoma Tax Commission shall assess and collect from
8 claimants a temporary assessment as follows:

9 a. if an award has been made by the Workers' Compensation
10 Court of Existing Claims or the Workers' Compensation
11 Commission for permanent partial disability or
12 permanent total disability, or if a Compromise
13 Settlement or Joint Petition has been approved, the
14 employer or insurance carrier shall pay to such
15 employee the amount of the award less the assessment.
16 The assessment shall be paid to the Oklahoma Tax
17 Commission no later than the fifteenth day of the
18 month following the close of each quarter of the
19 calendar year in which compensation is paid or became
20 payable,

21 b. the payments provided for in this subsection shall be
22 payable at the time the award becomes final,
23 regardless of whether or not the award made to the
24 claimant is paid, and

1 c. in making and entering awards for compensation for
2 permanent total disability or permanent partial
3 disability, the Workers' Compensation Commission and
4 the Workers' Compensation Court of Existing Claims
5 shall determine and fix the amounts that shall be paid
6 to the Tax Commission under paragraph 8 of this
7 subsection. The total amount of the deduction so
8 determined and fixed shall have the same force and
9 effect as an award for compensation and all provisions
10 relating to the collection of awards shall apply to
11 such judgments; and

12 d.

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

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

21 C. It shall be the duty of the Tax Commission to collect the
22 payments provided for in this act. The Tax Commission is hereby
23 authorized to bring an action for the recovery of any delinquent or
24 unpaid payments required in this section.

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

11 E. Any employer carrying its own risk, or group self-insurance
12 association failing to make payments required in this act promptly
13 and correctly, and failing to report payment of the same to the
14 Commission within ten (10) days of payment shall be subject to
15 administrative penalties as allowed by law, including but not
16 limited to a fine in the amount of Five Hundred Dollars (\$500.00)
17 for each day following the due date for which payment is not paid or
18 an amount equal to one percent (1%) of the unpaid amount, whichever
19 is greater, to be paid to the Commission.

20 F. 1. On or before the first day of April of each year, the
21 State Treasurer shall advise the Commission, the MITF Director and
22 the Tax Commission of the amount of money held as of March 1 of that
23 year by the State Treasurer to the credit of the Multiple Injury
24 Trust Fund. On or before the first day of November of each year,

1 the State Treasurer shall advise the Commission, the MITF Director
2 and the Tax Commission of the amount of money held as of October 1
3 of that year by the State Treasurer to the credit of the Multiple
4 Injury Trust Fund.

5 2. Until such time as the Multiple Injury Trust Fund fully
6 satisfies any loan obligation payable to CompSource Mutual Insurance
7 Company or its predecessor CompSource Oklahoma, the State Treasurer
8 shall:

- 9 a. advise the Chief Executive Officer of CompSource
10 Mutual Insurance Company on or before the first day of
11 April of the money held as of March 1 of that year by
12 the State Treasurer to the credit of the Multiple
13 Injury Trust Fund, and
14 b. advise the Chief Executive Officer of CompSource
15 Mutual Insurance Company on or before the first day of
16 November of the money held as of October 1 of that
17 year by the State Treasurer to the credit of the
18 Multiple Injury Trust Fund.

19 G. Eighty percent (80%) of all sums held by the State Treasurer
20 to the credit of the Multiple Injury Trust Fund may by order of the
21 MITF Director be invested in or loaned on the pledge of any of the
22 securities in which a state bank may invest the monies deposited
23 therein by the State Treasurer; or may be deposited in state or
24 national banks or trust companies upon insured time deposit bearing

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

14 H. The refund provisions of Sections 227 through 229 of Title
15 68 of the Oklahoma Statutes shall be applicable to any payments made
16 to the Multiple Injury Trust Fund. Refunds shall be paid from and
17 out of the Multiple Injury Trust Fund.

18 I. The Tax Commission shall pay, monthly, to the State
19 Treasurer to the credit of the Multiple Injury Trust Fund all monies
20 collected pursuant to the provisions of this section. The State
21 Treasurer shall pay out of the Multiple Injury Trust Fund only upon
22 the order and direction of the Workers' Compensation Commission
23 acting under the provisions hereof.

24

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

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

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

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

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

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

23 2. Otherwise, all future dividends made by ~~CompSource Oklahoma~~
24 ~~or~~ any workers' compensation insurance carrier, on behalf of state

1 agencies, shall be deposited to the credit of the General Revenue
2 Fund of the State Treasury.

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

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

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

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

22 S. On or after the effective date of this act, accrued and
23 unpaid compensation from the Multiple Injury Trust Fund shall bear
24 simple interest only at the percentage rate applicable under Section

1 727.1 of Title 12 of the Oklahoma Statutes from the day an award is
2 made by the Workers' Compensation Court of Existing Claims or the
3 Workers' Compensation Commission.

4 SECTION 4. AMENDATORY Section 32, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2017, Section 32), is amended to read as
6 follows:

7 Section 32. A. ~~For actions in which the subsequent injury~~
8 ~~occurred on or after November 1, 2005, if~~ If an employee who is a
9 "physically impaired person" and who receives an accidental personal
10 injury compensable under the Workers' Compensation Act, the Workers'
11 Compensation Code, or the Administrative Workers' Compensation Act
12 which results in additional permanent disability so that the degree
13 of disability caused by the combination of both disabilities results
14 in disability materially greater than that which would have resulted
15 from the subsequent injury alone, the employee may proceed against
16 the Multiple Injury Trust Fund for permanent total disability. Only
17 disability due to an injury to the body as a whole at a subsequent
18 employer shall be combinable with a prior body disability, except
19 that disability to a member may be combined with disability to the
20 body as a whole. If such combined disabilities constitute permanent
21 total disability, as defined in Section 2 of this act title, the
22 employee shall receive full compensation as provided by law for the
23 disability resulting directly and specifically from the subsequent
24 injury. In addition, the employee shall receive compensation for

1 permanent total disability if the combination of injuries renders
2 the employee permanently and totally disabled. The employer shall
3 be liable only for the degree of percent of disability which would
4 have resulted from the subsequent injury if there had been no
5 preexisting impairment. The compensation rate for permanent total
6 disability awards from the Multiple Injury Trust Fund shall be the
7 compensation rate for permanent partial disability paid by the
8 employer in the last combinable compensable injury.

9 B. Permanent total disability awards from the Multiple Injury
10 Trust Fund shall be payable in periodic installments for a period of
11 fifteen (15) years or until the employee reaches sixty-five (65)
12 years of age, whichever period is longer.

13 C. Permanent total disability awards from the Multiple Injury
14 Trust Fund shall accrue from the file date of the order of the
15 Workers' Compensation Commission finding the claimant to be
16 permanently and totally disabled.

17 D. Before a physically impaired person can proceed against the
18 Multiple Injury Trust Fund, the previously adjudicated compensable
19 permanent partial disability adjudged and determined by the Workers'
20 Compensation Court, the Workers' Compensation Court of Existing
21 Claims, or Workers' Compensation Commission, and the permanent
22 partial disability from the last injury must exceed fifty percent
23 (50%) to the body as a whole. However, amputations and loss of use
24 of a scheduled member qualifying as previous impairment under

1 paragraph 2 of subsection A of Section 30 of this title shall be
2 considered in lieu of previously adjudicated compensable permanent
3 partial disability. Awards under this section shall abate upon the
4 death, from any cause, of the employee.

5 E. Awards under this section shall abate upon the death, from
6 any cause, of the employee.

7 ~~E.~~ F. Reopening any prior claim other than the last injury
8 claim against the employer shall not give a claimant the right to
9 additional Multiple Injury Trust Fund benefits.

10 ~~F.~~ G. The Multiple Injury Trust Fund shall have authority to
11 compromise a claim for less than the indicated amount of permanent
12 total disability. ~~An order entered after the effective date of this~~
13 ~~act may~~ Orders shall be paid in periodic installments beginning on
14 the date of the award, ~~or may be~~ unless commuted to a lump-sum
15 payment or payments, by agreement of the claimant and the Multiple
16 Injury Trust Fund. All offers made by the Multiple Injury Trust
17 Fund pursuant to this section shall be conveyed by the claimant's
18 attorney to the claimant within five (5) days of receipt of the
19 offer.

20 G. H. If an order is entered finding an employee to be
21 permanently totally disabled as a result of combined disability, and
22 such order is compromised, the employee is thereafter prohibited
23 from making an additional claim against the MITF. An attorney for a
24 claimant against the Multiple Injury Trust Fund shall be entitled to

1 a fee equal to twenty percent (20%) of permanent disability benefits
2 awarded. ~~For awards entered after the effective date of this act,~~
3 ~~the~~ The attorney fee shall be paid in periodic installments by the
4 attorney receiving every fifth check. All benefits awarded to the
5 attorney shall be vested at the time the award becomes final.

6 ~~H. In the event a claimant receiving benefits for permanent and~~
7 ~~total disability from the Multiple Injury Trust Fund dies as a~~
8 ~~result of his or her injury before the award has been fully paid,~~
9 ~~payments shall continue to the surviving spouse for five (5) years~~
10 ~~or upon remarriage, whichever occurs first. In no event shall~~
11 ~~payments to the surviving spouse extend beyond the period of~~
12 ~~benefits awarded to the claimant.~~

13 SECTION 5. AMENDATORY Section 33, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2017, Section 33), is amended to read as
15 follows:

16 Section 33. A. The right to claim compensation for benefits
17 from the Multiple Injury Trust Fund shall be forever barred unless a
18 Notice of Claim, on a form prescribed by the Workers' Compensation
19 Commission, shall be filed with the Commission within two (2) years
20 of the date of the last order for permanent partial disability
21 arising from the latest claim against the last employer.

22 B. When a claim for benefits from the Multiple Injury Trust
23 Fund is filed, unless claimant shall in good faith request a hearing
24

1 and final determination thereon within ~~three (3)~~ two (2) years of
2 the filing thereof, the same shall be barred.

3 C. An attorney who represents a respondent or insurance carrier
4 in a claim against the last employer shall not represent the
5 employee in a subsequent claim against the Multiple Injury Trust
6 Fund.

7 SECTION 6. AMENDATORY Section 34, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2017, Section 34), is amended to read as
9 follows:

10 Section 34. A. The MITF Director shall be charged with the
11 administration and protection of the Multiple Injury Trust Fund and
12 shall be notified by the Workers' Compensation Commission of all
13 proceedings which may affect such fund.

14 B. The MITF Director shall have authority to conduct all
15 business affairs relating to administration of the Multiple Injury
16 Trust Fund, including, but not limited to, appointment of
17 assistants, accountants, attorneys and other employees as may be
18 necessary.

19 C. The MITF Director shall have standing and the authority to
20 appear in any case before the Commission in which the Commission is
21 considering an award from the Multiple Injury Trust Fund.

22 ~~C.~~ D. Any party interested shall have a right to bring a
23 proceeding in the Supreme Court to review an award of the Commission
24 affecting such Multiple Injury Trust Fund, in the same manner as is

1 now provided by law with reference to other awards by the
2 Commission.

3 ~~D. The State Treasurer shall allocate to the MITF Director~~
4 ~~sufficient funds for administration expenses thereof in amounts to~~
5 ~~be fixed and approved by the Administrator for the Multiple Injury~~
6 ~~Trust Fund, unless rejected by the Governor and Attorney General.~~

7 SECTION 7. AMENDATORY Section 82, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2017, Section 82), is amended to read as
9 follows:

10 Section 82.

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

13 b. An attorney representing an injured employee may only
14 recover attorney fees up to ten percent (10%) of any
15 temporary total disability or temporary partial
16 disability compensation and twenty percent (20%) of
17 any permanent partial disability, permanent total
18 disability, or death compensation awarded to an
19 injured employee by the Commission from a controverted
20 claim. If the employer makes a written offer to
21 settle permanent partial disability, permanent total
22 disability, or death compensation and that offer is
23 rejected, the employee's attorney may not recover
24 attorney fees in excess of thirty percent (30%) of the

1 difference between the amount of any award and the
2 settlement offer.

3 (1) Attorney fees may not be collected for recovery
4 on noncontroverted claims.

5 (2) Attorney fees shall not be awarded on medical
6 benefits or services.

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

13 (4) Attorney fees may include not more than ten
14 percent (10%) of the value, or reasonable
15 estimate thereof, of vocational rehabilitation
16 services.

17 c. A "controverted claim" means that ~~there has been a~~
18 ~~contested hearing before the Commission over the~~
19 employer or its insurance carrier has controverted
20 whether there has been a compensable injury or whether
21 the employee is entitled to temporary total
22 disability, temporary partial disability, permanent
23 partial disability, permanent total disability, or
24 death compensation. A request for a change in

1 physician shall not trigger a controverted claim for
2 purposes of recovering any attorney fees except the
3 fees under division 3 of subparagraph b of this
4 paragraph. A controverted claim shall not exist if
5 the employee or his or her representative has withheld
6 pertinent information in his or her possession related
7 to the claim from the employer or has violated the
8 provisions of Section 6 of this ~~act~~ title.

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

16 ~~3.~~ In any case where attorney fees are allowed by the
17 Commission, the limitations expressed in subparagraph b of paragraph
18 1 of this subsection shall apply.

19 ~~4.~~ 3. Medical providers may voluntarily contract with the
20 attorney for the employee to recover disputed charges, and the
21 provider may charge a reasonable fee for the cost of collection.

22 B. An attorney representing an employee under this act may not
23 recover fees for services except as expressly provided in this
24 section.

1 SECTION 8. AMENDATORY Section 165, Chapter 208, O.S.L.
2 2013, as amended by Section 4, Chapter 344, O.S.L. 2015 (85A O.S.
3 Supp. 2017, Section 122), is amended to read as follows:

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

8 B. For the purpose of providing funds for the Workers'
9 Compensation Commission Revolving Fund, for the Workers'
10 Compensation Administrative Fund created in Section ~~5~~ 401.1 of this
11 ~~act~~ title, for the Multiple Injury Trust Fund created in Section 28
12 of this title, and to fund other provisions within this title, the
13 following tax rates shall apply:

14 1. Each mutual or interinsurance association, stock company,
15 CompSource Oklahoma or other insurance carrier writing workers'
16 compensation insurance in this state shall pay to the Oklahoma Tax
17 Commission an assessment at a rate of one percent (1%) of all gross
18 direct premiums written during each quarter of the calendar year for
19 workers' compensation insurance on risks located in this state after
20 deducting from such gross direct premiums, return premiums,
21 unabsorbed portions of any deposit premiums, policy dividends,
22 safety refunds, savings and other similar returns paid or credited
23 to policyholders. Such payments to the Tax Commission shall be made
24 not later than the fifteenth day of the month following the close of

1 each quarter of the calendar year in which such gross direct premium
2 is collected or collectible. Contributions made by insurance
3 carriers and CompSource Oklahoma, under the provisions of this
4 section, shall be considered for the purpose of computing workers'
5 compensation rates; and

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

17 C. It shall be the duty of the Tax Commission to collect the
18 payments provided for in this title. The Tax Commission is hereby
19 authorized to bring an action for the recovery of any delinquent or
20 unpaid payments required in this section. The Tax Commission may
21 also enforce payments by proceeding in accordance with the
22 provisions of Section 98 of this title.

23 D. The Tax Commission shall pay monthly to the State Treasurer
24 to the credit of the Multiple Injury Trust Fund all monies collected

1 under the provisions of this section less the annual amounts which
2 shall be apportioned by the Oklahoma Tax Commission as follows:

3 1. Five Million Dollars (\$5,000,000.00) shall be payable in
4 equal monthly installments to the credit of the Workers'
5 Compensation Commission Revolving Fund established in Section ~~2~~ 28.1
6 of this act ~~for the fiscal year ending June 30, 2016, and Three~~
7 ~~Million Dollars (\$3,000,000.00)~~ title for the fiscal year ending
8 June 30, ~~2017~~ 2019, and for all subsequent years to be used to
9 implement the provisions of this title; and

10 2. ~~Four Million Dollars (\$4,000,000.00)~~ Three Million Five
11 Hundred Thousand Dollars (\$3,500,000.00) shall be payable in equal
12 monthly installments to the credit of the Workers' Compensation
13 Administrative Fund established in Section ~~5~~ 401.1 of this ~~act~~ title
14 ~~for the fiscal year ending June 30, 2016, Three Million Five Hundred~~
15 ~~Thousand Dollars (\$3,500,000.00) for the fiscal year ending June 30,~~
16 ~~2017, Three Million Five Hundred Thousand Dollars (\$3,500,000.00)~~
17 ~~for the fiscal year ending June 30, 2018, Three Million Dollars~~
18 ~~(\$3,000,000.00) for the fiscal year ending June 30, 2019, and Two~~
19 ~~Million Five Hundred Thousand Dollars (\$2,500,000.00) for the fiscal~~
20 ~~year ending June 30, 2020~~ Three Million Dollars (\$3,000,000.00) for
21 all subsequent years as long as the Workers' Compensation Court of
22 Existing Claims is authorized by the Legislature. Monies deposited
23 in the Workers' Compensation Administrative Fund shall be used by
24

1 the Workers' Compensation Court of Existing Claims to implement
2 provisions provided for in this title.

3 E. The refund provisions of Sections 227 through 229 of Title
4 68 of the Oklahoma Statutes shall be applicable to any payments made
5 pursuant to this section.

6 SECTION 9. AMENDATORY Section 169, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2017, Section 400), is amended to read as
8 follows:

9 Section 400. A. The Workers' Compensation Court shall be
10 renamed the Workers' Compensation Court of Existing Claims for the
11 purpose of hearing disputes relating to claims that arise before
12 February 1, 2014. The Court shall consist of the existing judges
13 for the remainder of his or her term. Each judge of the Court shall
14 continue to serve as the appointment to a designated numbered
15 position on the Court. The positions shall be numbered one through
16 ten. The terms of the judges by position number shall expire on the
17 following dates:

18 Position 1 shall expire 7-1-14.

19 Position 2 shall expire 7-1-14.

20 Position 3 shall expire 7-1-14.

21 Position 4 shall expire 7-1-~~20~~ 28.

22 Position 5 shall expire 7-1-~~20~~ 23.

23 Position 6 shall expire 7-1-16.

24 Position 7 shall expire 7-1-16.

1 Position 8 shall expire 7-1-20 23.

2 Position 9 shall expire 7-1-20 23.

3 Position 10 shall expire 7-1-14.

4 Provided, judges who are serving unexpired terms on the Workers'
5 Compensation Court on the effective date of this section shall serve
6 on the Court created by this section until their respective terms
7 expire as provided in this act. Thereafter, each position shall be
8 dissolved. After a judge serves this term, such judge shall be
9 eligible to reapply for an administrative law judge with the
10 Workers' Compensation Commission.

11 B. When a vacancy on the Court occurs or is certain to occur,
12 ~~the Workers' Compensation Commission shall assign administrative law~~
13 ~~judges from the Commission to assist in the duties of the Workers'~~
14 ~~Compensation Court of Existing Claims~~ Governor shall appoint a judge
15 to serve the remainder of the term from a list of three applicants
16 submitted to the Governor by the Judicial Nominating Commission.
17 The Presiding Judge of the Court on the effective date of this act
18 shall continue to serve for the duration of the Court and shall
19 perform supervisory duties as the needs of the Court may require and
20 supervise the work of all employees of the Court and handle,
21 oversee, and be responsible for all administrative affairs of the
22 Court. In addition, the Presiding Judge shall be authorized to
23 contract with the Workers' Compensation Commission or other
24 individuals or entities for services and shared services.

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

3 ~~C.~~ D. Each judge shall receive a salary equal to that paid to a
4 district judge of this state, and shall devote full time to his or
5 her duties and shall not engage in the private practice of law
6 during the term in office.

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

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

16 ~~F.~~ G. The principal office of the Court shall be situated in
17 the City of Oklahoma City in quarters assigned by the Office of
18 Management and Enterprise Services. The Court may hold hearings in
19 any city of this state.

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

23
24

1 ~~H.~~ I. Judges of the Workers' Compensation Court of Existing
2 Claims may punish for direct contempt pursuant to Sections 565,
3 565.1 and 566 of Title 21 of the Oklahoma Statutes.

4 ~~F.~~ J. The Court shall be vested with jurisdiction over all
5 claims filed pursuant to the Workers' Compensation Code or previous
6 statute in effect on the date of an injury that occurred before
7 February 1, 2014. All claims so filed shall be heard by the judge
8 sitting without a jury. The Court shall have full power and
9 authority to determine all questions in relation to payment of
10 claims for compensation under the provisions of the Workers'
11 Compensation Code. The Court, upon application of either party,
12 shall order a hearing. Upon a hearing, either party may present
13 evidence and be represented by counsel. The decision of the Court
14 shall be final as to all questions of fact and law; provided, the
15 decision of the Court may be appealed to the ~~Commission~~ Court en
16 Banc or the Supreme Court as provided by the Workers' Compensation
17 Code. In the event that an insufficient number of active judges are
18 available to comprise the three-judge en Banc panel, retired or
19 former judges of the district court, Workers' Compensation Court, or
20 Workers' Compensation Court of Existing Claims may be designated by
21 the Presiding Judge to serve on such panel. ~~The~~ Any decision of the
22 Court shall be issued within sixty (60) days following the
23 submission of the case by the parties. The power and jurisdiction
24 of the Court over each case shall be continuing and it may, from

1 time to time, make such modifications or changes with respect to
2 former findings or orders relating thereto if, in its opinion, it
3 may be justified.

4 ~~J. Any appeal of an order by the Workers' Compensation Court of~~
5 ~~Existing Claims shall be heard by the Commission en banc. The~~
6 ~~Commission shall review the decision using an abuse of discretion~~
7 ~~standard of review. Orders by the Commission may be appealed in~~
8 ~~accordance with Section 78 of this act.~~

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

18 ~~L. For an injury occurring before the effective date of this~~
19 ~~act, all benefits and procedures to obtain benefits shall be~~
20 ~~determined by the workers' compensation law of this state in effect~~
21 ~~on the date of the injury. Administrative law judges of the~~
22 ~~Commission shall enforce all final orders of the Workers'~~
23 ~~Compensation Court in a manner to secure for all parties the due~~
24

1 ~~process and equal protection guarantees of the Constitution of the~~
2 ~~State of Oklahoma.~~

3 M. L. All accrued rights and penalties incurred pursuant to a
4 final order of the Workers' Compensation Court shall be preserved.
5 ~~Administrative law judges of the Commission shall be authorized to~~
6 ~~issue orders and conduct legal proceedings to enforce all such~~
7 ~~accrued rights and penalties incurred.~~ No accrued right, penalty
8 incurred, or proceeding begun by virtue of a statute repealed by
9 this act shall be abrogated by the terms of this act.

10 SECTION 10. It being immediately necessary for the preservation
11 of the public peace, health or safety, an emergency is hereby
12 declared to exist, by reason whereof this act shall take effect and
13 be in full force from and after its passage and approval.

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