

BILL SUMMARY
1st Session of the 56th Legislature

Bill No.:	HB 1921
Version:	CS
Request Number:	7188
Author:	Rep. Kannady
Date:	3/13/2017
Impact: Broadens fee base for WCC, increases annual statutory appropriation from \$3 million to \$5 million from the Multiple Injury Trust Fund	

Research Analysis

The committee substitute for HB1921 modifies various provisions relating to workers' compensation. The measure:

- Amends numerous definitions of the Administrative Workers' Compensation Act (AWCA). Notably, the definition of *cumulative trauma* is modified to allow claims for cumulative trauma to be valid regardless of an employee's tenure. The current definition requires an employee to have completed at least 180 days of continuous active employment with the employer to be eligible for benefits relating to cumulative trauma. This provision was ruled unconstitutional by the Oklahoma Supreme Court in *Torres v. Seaboard Foods LLC*;
- Clarifies the applicability of the Administrative Workers' Compensation Act (AWCA) by stating that every employer subject to the act must pay or provide benefits for injuries without regard to fault if an injury arose out of and in the course of employment;
- Bars any claim for compensation under the AWCA if a final decision has been entered for the same claim in another jurisdiction;
- Bars duplication of benefits or compensation to an injured employee when a claim has been brought in two or more jurisdictions;
- Clarifies the applicability of the AWCA to injuries occurring on lands and premises outside the state that belong to the U.S. government;
- Transfers authority to hear retaliation claims from the Workers' Compensation Commission (WCC) to any district court in the state and strikes language allowing recovery of court costs and attorney fees to the prevailing party;
- Provides that compensation provided to an alien nonresident dependent be paid only if the individual had been supported by the injured employee for at least 1 year before the date of the injury;
- Reduces the emphasis of the Office of Disability Guidelines –Treatment in Workers' Compensation as a reference for determining medically necessary services;
- Strikes language that provides for the replacement and substitution of disqualified commissioners;
- Provides that the WCC does not have the power to determine the constitutionality of workers' compensation laws;
- Strikes existing language that outlines the notice procedure for changes to rules, regulations and forms established by the WCC. Instead, the WCC is directed to vote on substantive changes to forms and comply with the Administrative Procedures Act for rulemaking;

- Establishes a \$1000 annual fee payable to the WCC for each insurer writing workers' compensation policies and also allows the WCC to subject pharmacy benefit managers and marketing firms to the fee;
- Excludes persons with the loss of use or partial loss of use a scheduled member from being considered a *physically impaired person*;
- Allows a temporary surcharge, up to 10 percent, to be assessed by the WCC to cover foreseeable obligations of the Multiple Injury Trust Fund (MITF);
- Allow a physically impaired person with combinable injuries to proceed against the MITF under certain circumstances;
- Reduces, from 15 to 10, the number of years that installment payments from the MITF may be paid out;
- Limits attorney fees for claims against the MITF by only allowing fees to be calculated based on a maximum of 400 weeks of compensation;
- Changes the statutes of limitation for a claim against the MITF from 2 years to 1;
- Authorizes the director of the MITF to conduct all business affairs relating to the administration of the fund and to appoint any necessary employees;
- Allows persons exempt from being covered under the AWCA to execute an Affidavit of Exempt Status. Execution of the affidavit establishes a rebuttable presumption that the executor is not an employee and therefore is not eligible to seek workers' compensation benefits against any contractor;
- Authorizes the WCC to decide disputes in the determining net proceeds from a third party suit;
- Increases the monetary threshold for temporary total disability (TTD) benefits to the state average weekly wage (SAWW). Currently, the threshold is 70 percent of the SAWW;
- Allows an employer to recover any overpayment of TTD benefits from a subsequent PPD award;
- Modifies how compensation for temporary partial disability (TPD) is determined and limits total compensation for TPD to no more than the TTD rate;
- Changes the monetary threshold for permanent partial disability (PPD) benefits to 50 percent of the state average weekly wage (SAWW). Currently, the threshold is \$323;
- Strikes languages that allows for deferral of PPD awards when an injured employee returns back to work. This provision was ruled unconstitutional by the Oklahoma Supreme Court in *Maxwell v. Sprint PCS*;
- Strikes language that allows an employer to deduct the amount paid for tuition to a vocational rehab program from compensation awarded to the employee;
- Modifies reimbursement rates for certain medical products and services;
- Modifies reimbursement rates for prescription drugs and requires employers to choose a prescribing pharmacy with a physician location in Oklahoma;
- Prohibits a prescribing doctor from receiving any fees, rebates, or other financial gain from prescribing any drug;
- Directs the WCC to work with the OID to develop rules to license pharmacy benefit managers (PBM);
- Excludes facet injection or intravenous injections from those allowed to treat soft tissue injuries;
- Strikes guidelines used to determine whether or not an occupation disease is compensable;
- Strikes language that allows the WCC to order the discharge of employees affected by silicosis or asbestosis;

- Allows administrative law judges (ALJ) to provide notice of a hearing or judgment by fax, e-mail or other electronic means with confirmation of receipt;
- Requires continued payment for any drugs prescribed by the treating physician during an appeal;
- Modifies the procedure and requirements for a case review by the WCC. A request for review based on a change in physical condition must be done within 6 months from the date of the last order in which benefits or treatment was provided;
- Strikes language that requires a person bringing a claim against the MITF to notify the WCC;
- Prohibits the Supreme Court from taking up an appeal unless the Executive Director of the WCC has obtained a guaranty from the claimant that any prior compensation awarded with interest can be repaid;
- Modifies the date in which an electronic data interchange system on workers compensation benefits is to be implemented;
- Allows certain employees of the WCC to testify on issues related to their job duties;
- Establishes timelines for the appointment of an independent medical examiner and evaluation of an injured employee when surgery has been recommended by the treating physician;
- Requires a memorandum of understanding to be signed by the employer, employee and an ALJ when an employee has not filed a claim and the employer and employee reaches a final agree as to the facts of the injury;
- Establishes a \$140 fee for medical fee dispute or claim for benefits under the MITF;
- Increases, from \$3 to \$5 million, annual appropriations to the Workers' Compensation Commission Revolving Fund;
- Requires the Workers' Compensation Court of Existing Claims (CEC) to pay its own court record expenses as long as the court receives appropriations from the Legislature;
- Changes the procedure for vacancies on the CEC by directing the Governor to appoint a replacement from a list of three names provided by the Judicial Nominating Commission;
- Provides that appeals of rulings by the CEC are to be heard by the Court en banc or the Supreme Court;
- Modifies the powers and duties of ALJ's;
- Provides that no cause of action may be commenced unless the employer denies a benefit provided by the AWCA in writing; and
- Repeals several sections of law relating to workers' compensation.

Prepared By: Quyen Do

Fiscal Analysis

The CS on HB 1921 deals with the Workers' Compensation Commission (WCC) and the Court of Existing Claims. From the bill summary, possible fiscal portions have been bulleted and commentary is underneath. The bill:

- Transfers authority to hear retaliation claims from the Workers' Compensation Commission (WCC) to any district court in the state and strikes language allowing recovery of court costs and attorney fees to the prevailing party
 - This will reduce WCC workload- \$0 impact for the state

- Establishes a \$1000 annual fee payable to the WCC for each insurer writing workers' compensation policies and also allows the WCC to subject pharmacy benefit managers and marketing firms to the fee;
 - This fee historically is an annual fee, this is just language clarification.
- Directs the WCC to work with the OID to develop rules to license pharmacy benefit managers (PBM)
 - Minimal to zero impact for the state
- Establishes a \$140 fee for medical fee dispute or claim for benefits under the MITF;
 - Will increase WCC revenue, exact impact TBD.
- **Increases, from \$3 to \$5 million, annual appropriation to the Workers' Compensation Commission Revolving Fund;**
 - **This is the WCC's main source of funding. This would increase operational funding from the Multiple Injury Trust Fund by \$2 million every year hereafter in statute.**
- Requires the Workers' Compensation Court of Existing Claims (CEC) to pay its own court record expenses as long as the court receives appropriations from the Legislature;
 - Minimal impact

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Other Considerations

None.