

BILL SUMMARY
2nd Session of the 56th Legislature

Bill No.:	HB 3277
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Author:	Rep. Kannady
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Impact:	Increases statutory appropriation for the Workers' Compensation Commission and the Court of Existing Claims

Research Analysis

The committee substitute for HB3277 modifies various provisions relating to workers' compensation. The measure:

- Modifies the definition of *compensable injury* as it relates to alcohol and drug testing employees within 24 hours after an injury;
- Modifies the definition of *continuing medical maintenance* by allowing the use of the following treatments if the Workers' Compensation Commission (WCC) finds it in the best interest of the employee: diagnostic test, surgery, injections, counseling, physical therapy or pain management devices or equipment;
- Modifies the definition of *course and scope of employment* by clarifying that injuries occurring in a parking lot or while the employee is on a work break are compensable if the area where the injury occurred is owned by or exclusively controlled by the employer;
- Modifies the definition of *cumulative trauma* by striking language that required the employee to have completed at least 180 days of continuous active employment with the employer in order to make a cumulative trauma claim;
- Redefines *disability* as the loss of use of a part of the body which must be proved by objective findings;
- Modifies the definition of *employee* as it relates to an exemption from workers compensation coverage for family member employees and dependent employees living in the household of the employer;
- Modifies the definition of *permanent disability* to allow loss of earning capacity directly related to the permanent loss of use of a part of body to be considered when determining benefits for permanent disability;
- Redefines *permanent partial disability* as a permanent disability or loss of use of a body part after maximum medical improvement has been reached and loss of earning capacity directly related to the disability;
- Reiterates that all employers subject to the Administrative Workers' Compensation Act (AWCA) are required to pay or provide benefits to injured employees regardless of fault;
- Bars duplicate claims for compensation under the AWCA when a claim has been brought in another jurisdiction and a final adjudication is entered in the case for the same injury;
- Prohibits the WCC from granting benefits that duplicate benefits paid by the employer or the employer's insurance carrier in another jurisdiction;
- Extends the territorial jurisdiction of the AWCA to include all lands and premise within the exterior boundaries of the state which are owned by the federal government;
- Strikes language that provides immunity from a tort liability claim to an operator or owner of an oil or gas well or other operation for exploring, drilling, or producing oil and gas;

- Clarifies that a portion of the criminal fines obtained from workers' compensation fraud investigations are to be deposited into the Workers' Compensation Commission Revolving Fund instead of the Workers' Compensation Fund;
- Strikes language that requires a statement about workers' compensation fraud being a felony crime be posted on all WCC related forms for notices and instructions;
- Transfers authority to hear and decide retaliation claims from the WCC to the district courts;
- Sets the compensation for any mental injury or illness at the same level of compensation for permanent partial disability;
- Strikes language that prohibits physical or mental stress to be considered in determining whether the employee has met his or her burden of proof when the injury is a cardiovascular, coronary, pulmonary, respiratory or cerebrovascular accident or myocardial infarction;
- Provides that adherence to the Office of Disability Guidelines-Treatment in Workers' Compensation is mandatory unless the WCC makes a specific finding that a deviation from the guidelines is in the best interest of the employee;
- Allows notice to a health care provider to be delivered by fax, e-mail or any other electronic means with confirmation of receipt. The notice tells the provider that an injury is work-related and payment for the services should not be billed to the injured employee;
- Allows the WCC to hold executive sessions to meet in private to discuss policy, personnel and staffing administration and other related matters provided all three commissioners are present and no official action is taken at the meeting;
- Modifies the procedure for changing rules and forms established by the WCC by requiring a vote on any substantive changes to a form and compliance with the Administrative Procedures Act for rulemaking;
- Authorizes the WCC to establish a petty cash fund with a \$500 cap;
- Modifies the powers and duties of administrative law judges by striking language that allows an ALJ to assume duties within the Workers' Compensation Court of Existing Claims;
- Clarifies language relating to the current practice of insurers paying the WCC an annual fee of \$1000 and allows the WCC to levy the annual fee against marketing firms;
- 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 for the purposes of the AWCA and therefore is not eligible to seek workers' compensation benefits against any contractor;
- Caps the application fee for an Affidavit of Exempt Status at \$50 and establishes penalties for knowingly providing false information on a notarized affidavit;
- Clarifies that fines collected in connection with an employer's failure to obtain workers' compensation coverage are to be deposited into the WCC Revolving Fund, not the Workers' Compensation Fund and allows an injured employee of the delinquent employer to petition an ALJ to award benefits from the proceeds of the fine;
- Modifies a provision relating to third party liability claims by removing death as a possible reason to bring an action against a third party;
- Makes it the responsibility of a district court to determine the amount that an employer can claim on the net proceeds recovered from a third party liability lawsuit. Currently, the amount is set in statute as two-thirds of the recovery or the amount of the employer's subrogation lien, whichever is less;
- Increases the cap on temporary total disability (TTD) benefits to 100 percent of the state average weekly wage (SAWW) and allows benefits to continue past the 104 week limit if

the WCC finds by clear and convincing evidence that the employee remains temporarily disabled and under active medical treatment;

- Gives the employer the right to recover any overpayment of TTD benefit from a subsequent permanent partial disability (PPD) award if the overpayment is deemed justified;
- Allows medical treatment for TTD to be reinstated when the employee complies with the medical orders of the treating physician;
- Provides that an injured employee's actual earnings plus temporary partial disability (TPD) compensation cannot exceed the TTD rate;
- Allows a physician to use an alternate evaluation method approved by the WCC to determine the extent of a PPD;
- Increases the cap on weekly PPD compensation, including PPD compensation for amputation or permanent total loss of use of a scheduled member, from \$323 to \$391 per week;
- Strikes language that allows for deferral of PPD awards when an injured employee reaches maximum medical improvement and returns back to work;
- Strikes language relating to the role of the Vocational Rehabilitation Director and increases the maximum amount of weeks that vocation rehabilitation services or training may be extended from 52 weeks to 104 weeks;
- Strikes language that allows the cost of vocational rehabilitation training ordered by an ALJ to be deducted from any unpaid award or benefit of the employee if the employee refuses ordered services or training;
- Strikes language that allows the employer or employer's insurer to deduct from compensation awarded to the employee any amount paid as tuition for vocational rehabilitation services;
- Allows awards for disfigurement to be entered earlier than 12 months after the injury if the treating physician deems the wound or incision to be fully healed;
- Allows an ALJ to order an employer to provide detoxification treatment for employees who are prescribed opioids or other narcotics;
- Strikes language that suspends an employee's right to prosecute under the AWCA if an employee refuses to submit to a medical examination that is ordered by the WCC or requested by the employer or insurance carrier;
- Allow an employer or insurance carrier to audit or question the reasonableness and necessity of medical treatment contained in a bill for treatment covered by the stop-loss provision developed by the WCC;
- Changes the maximum reimbursement rate for prescription drugs and compounded medications to 125 percent of the reimbursement rate established by the Center for Medicare and Medicaid Services for use in Oklahoma plus an existing \$5 dispensing fee per prescription;
- Prohibits any physician from dispensing prescription drugs from his or office;
- Clarifies that an employee's failure to obey a judgment of the WCC for an examination or treatment bars the right of the employee to further TTD compensation;
- Directs the WCC, upon the request of any party, to appoint an independent medical examiner to determine the reasonableness and necessity of any optional surgery recommended by a treating physician and either approve, deny or modify the request for surgery within 60 days of receiving a report from the independent medical examiner;
- Ends TTD benefits if an employee misses two or more consecutive scheduled appointments for medical treatment without a valid reason;

- Prohibits facet injections or intravenous injections for the treatment of nonsurgical soft tissue injuries and provides that cumulative trauma that requires corrective surgery is not to be considered a soft tissue injury;
- Exempts injury reports submitted by an employer from being considered an open and confidential record under the Oklahoma Open Records Act and requires approval from the WCC for public disclosure of these records;
- Modifies the criteria for determining whether an occupational disease is compensable;
- Clarifies the one year statutes of limitation for filing a claim for benefits by requiring the employee to at least in good faith request a hearing for benefits with competent medical evidence to support the request within the one year timeframe;
- Increases the amount of time that a request for hearing or additional compensation must be made for the case not be automatically dismissed by a court from six months to one year;
- Allows notice of a hearing or judgment to be delivered by fax, email or other electronic means with receipt of confirmation and allows a hearing to be held in any county of the state;
- Requires payment for any prescription drugs prescribed by a treatment physician to be continued during the pendency of an appeal filed by an employer or the employer's insurance carrier;
- Authorizes the WCC to reopen cases for review, including those based on a change of physical condition within six month from the date of the last order in which monetary benefits were awarded or active medical treatment was provided;
- Removes the role of the WCC in approving fees for legal service;
- Strikes language that requires the WCC to be notified of any party's intent to bring a claim against the Multiple Injury Trust Fund (MITF) including the requirement for direct legal fees to be paid from the fund;
- Makes it permissive for employers to file a statement of controversion with the WCC instead of mandatory;
- Clarifies that only claims covered by a joint petition to settle are covered under the settlement agreement;
- Prohibits the Oklahoma Supreme Court (OCS) from entertaining any proceeding to reverse, vacate or modify any decision or award of the Commission banc or an ALJ unless the executive director of the WCC receives proof, in the form of a written undertaking, that the appellant will pay the amount of any award rendered along with associated interest and all of the costs of the proceedings after the appeal has been decided by the OCS. Municipalities and other political subdivisions of the state are exempt from the making these written undertakings;
- Clarifies that incarcerated individuals are not eligible for TTD benefits through the AWCA;
- Changes the deadline for implementation of an electronic data interchange system from July 1, 2014 to a time frame to be reasonably determined by the WCC;
- Authorizes certain employees of the WCC to testify on matters relating to the performance of the employee's duties if the employee in certain cases;
- Strikes language that requires the WCC to mail a notice about the services provided by the counselor or ombudsman program to injured workers. Instead, this information can be published on the WCC's website;
- Requires an employer to submit a signed memorandum of understanding and the facts with the WCC if an injured employee has not filed a claim for compensation and there is an understanding of the facts regarding the injury between the employee and the employer. Both parties must sign the form and it must be approved by an ALJ;

- Provides that a fee of \$140 is to be paid to the WCC for each case involving a medical fee dispute, claim for discrimination or retaliation or claim for benefits under the MITF;
- Replaces references to the Workers' Compensation Fund with the Workers' Compensation Commission Revolving Fund;
- Modifies the duties of the Advisory Council on Workers' Compensation by requiring the council to consult with the WCC instead of the OCS regarding oversight of independent medical examiners and removing the requirement for the council to review the Oklahoma Treatment Guidelines;
- Appropriates the first \$5 million of monies deposited into the MITF to the Workers' Compensation Commission Revolving Fund for fiscal year 2019 and the next \$4 million to the Workers' Compensation Administrative Fund for fiscal year 2019;
- Transfers all unexpended funds, assets, property, records, personnel and any other outstanding financial obligations of the Workers' Compensation Court to the WCC except for personnel transferred to the Workers' Compensation Court of Existing Claims (CEC) on July 9, 2014;
- Direct the CEC to pay the expense of maintaining records of the court for as long as the Legislature appropriate funding to the court;
- Transfer the responsibility for filling a vacancy of the CEC from the WCC to the Governor and directs the Governor to select an existing member of the CEC as the presiding judge to serve a three year term beginning on November 1, 2018;
- Transfers the responsibility to hear an appeal of a decision of the CEC from the WCC to the Court en banc or the OCS and provides that retired or former judges of the district court or Workers' Compensation Court may be designated to serve on the panel if there is an insufficient number of active judges available to make up the three-judge en banc panel; and
- Repeals the Oklahoma Employee Injury Benefit Act and numerous other statutes in Title 85A within the AWCA.

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Fiscal Analysis

HB 3277 increases the statutory "appropriation" from the Multiple Injury Trust Fund for the following entities:

Workers' Compensation Commission

FY-18: \$3,000,000

Proposed FY-19: \$5,000,000

Court of Existing Claims

FY-18: \$3,500,000

Proposed FY-19: \$4,000,000

These payments do not come out of the General Revenue Fund and therefore are not considered "appropriations." However, it is within the Legislature's powers to amend statute and change the amounts of revenue received every year by these entities from the Multiple Injury Trust Fund (state entity).

The Oklahoma Multiple Injury Trust Fund (MITF) was created by the Oklahoma Legislature in 1943. The intended purpose of the MITF was to encourage hiring of workers with prior injuries

by relieving their employers of indemnity liabilities associated with such prior injuries. The MITF primarily funds its obligations through an assessment on workers compensation insurance companies, self-insured groups, individually self-insured employers, and uninsured employers.

These “appropriations” to the two entities come off the top of the MITF before claims are paid out.

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Other Considerations

None.