

OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 15, 2017

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB 737

By: Sykes of the Senate and Echols of the House

Title: Workers' compensation; modifying provisions. Effective date.

together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.
2. By restoring the title.

Respectfully submitted,

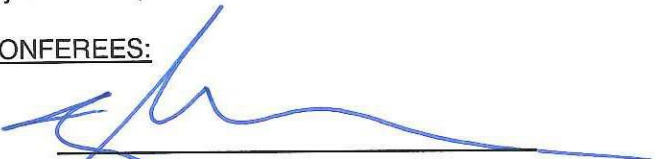
SENATE CONFEREES:


Sykes


Dahm


Holt

David


Newhouse


Floyd

Sparks

HOUSE CONFEREES:

Conference Committee on Judiciary - Civil and Environmental

Senate Action _____ Date _____ House Action _____ Date _____

TK
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STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED

SENATE BILL NO. 737

By: Sykes of the Senate

and

Echols of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending Sections 2, 3, 7, 14, 16, 17, 18, 19, as amended by Section 4, House Joint Resolution No. 1096, O.S.L. 2014, 20, 21, 22, 31, 43, 45, as amended by Section 2, Chapter 390, O.S.L. 2015, 46, 56, 57, 62, 65, as amended by Section 3, Chapter 390, O.S.L. 2015, 68, 69, 71, 78, 82, 98, as amended by Section 4, Chapter 169, O.S.L. 2014, 99, as amended by Section 5, Chapter 169, O.S.L. 2014, 152, 154, 155, 158 and 163 (85A O.S. Supp. 2016, Sections 2, 3, 7, 14, 16, 17, 18, 19, 20, 21, 22, 31, 43, 45, 46, 56, 57, 62, 65, 68, 69, 71, 78, 82, 98, 99, 109, 111, 112, 115 and 120), which relate to the Administrative Workers' Compensation Act; modifying definitions; prohibiting eligibility for benefits under certain circumstances; modifying certain jurisdiction; establishing burden of proof to show certain violation; limiting certain damage awards; modifying requirements for certain compensable injury; clarifying requirements for usage of certain guidelines; clarifying usage of certain guide; authorizing certain notice by electronic means; modifying required qualifications for certain commissioners; removing authority for appointment of special commissioner; prohibiting Commission from making determinations on constitutionality; modifying required qualifications for certain administrative law judges; modifying authority to hear certain appeals; modifying certain rulemaking procedures; requiring compliance with the Administrative

1 Procedures Act; removing certain contract authority;
2 modifying certain advisory responsibilities of State
3 Treasurer; establishing procedures for Affidavit of
4 Exempt Status; creating misdemeanor offense; imposing
5 fine for certain offense; authorizing assessment of
6 certain fee; limiting liability for injury to certain
7 employees upon certain good faith reliance; modifying
8 procedures for certain third party claims;
9 establishing lien rights for certain recovery;
10 modifying requirements for recovery of benefits for
11 temporary total disability; placing cap on recovery
12 for temporary partial disability; modifying
13 requirements for recovery of benefits for permanent
14 partial disability; modifying maximum compensation;
15 prohibiting dual award of certain benefits;
16 authorizing commutation of certain benefit awards;
17 modifying requirements for recovery of benefits for
18 permanent total disability; establishing guidelines
19 for certain vocational rehabilitation; modifying
20 requirements for recovery of benefits for amputation
21 or permanent loss of use; modifying maximum
22 compensation; modifying requirements for change of
23 physician; increasing number of missed appointments
24 required for loss of certain eligibility; modifying
requirements for recovery of benefits for nonsurgical
soft tissue injury; modifying requirements for
recovery of benefits for occupational disease;
deleting certain definition; modifying certain notice
requirements; modifying statutes of limitation for
certain claims; modifying requirements for claims for
additional compensation; deleting certain exception;
modifying procedures for certain claims for
compensation; authorizing appointment of
administrative law judge to en banc panel under
certain circumstances; modifying definition;
modifying sources for the Self-insurance Guaranty
Fund; modifying threshold for certain assessment;
modifying certain assessment rate; providing for
transfer of excess funds; modifying procedures for
transfer of certain proceeds and unexpended funds;
requiring certain information for filing of certain
claim; modifying procedures for certain appeals;
conforming language; updating statutory references;
clarifying certain effective dates; repealing
Sections 36, 60, 61, 63, 67, 80, 159 and 160, Chapter
208, O.S.L. 2013 (85A O.S. Supp. 2016, Sections 36,
60, 61, 63, 67, 80, 116 and 117), which relate to the

1 Administrative Workers' Compensation Act; providing
2 for codification; and providing an effective date.

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2016, Section 2), is amended to read as
7 follows:

8 Section 2. As used in the Administrative Workers' Compensation
9 Act:

10 1. "Actually dependent" means a surviving spouse, a child or
11 any other person who receives one-half (1/2) or more of his or her
12 support from the employee;

13 2. "Carrier" means any stock company, mutual company, or
14 reciprocal or interinsurance exchange authorized to write or carry
15 on the business of workers' compensation insurance in this state.
16 Whenever required by the context, the term "carrier" shall be deemed
17 to include duly qualified self-insureds or self-insured groups;

18 3. "Case management" means the ongoing coordination, by a case
19 manager, of health care services provided to an injured or disabled
20 worker, including but not limited to systematically monitoring the
21 treatment rendered and the medical progress of the injured or
22 disabled worker; ensuring that any treatment plan follows all
23 appropriate treatment protocols, utilization controls and practice
24 parameters; assessing whether alternative health care services are

1 appropriate and delivered in a cost-effective manner based upon
2 acceptable medical standards; and ensuring that the injured or
3 disabled worker is following the prescribed health care plan;

4 4. "Case manager" means a person who is a registered nurse with
5 a current, active unencumbered license from the Oklahoma Board of
6 Nursing, or possesses one or more of the following certifications
7 which indicate the individual has a minimum number of years of case
8 management experience, has passed a national competency test and
9 regularly obtains continuing education hours to maintain
10 certification:

- 11 a. Certified Disability Management Specialist (CDMS),
- 12 b. Certified Case Manager (CCM),
- 13 c. Certified Rehabilitation Registered Nurse (CRRN),
- 14 d. Case Manager - Certified (CMC),
- 15 e. Certified Occupational Health Nurse (COHN), or
- 16 f. Certified Occupational Health Nurse Specialist (COHN-
17 S);

18 5. "Certified workplace medical plan" means an organization of
19 health care providers or any other entity, certified by the State
20 Commissioner of Health, that is authorized to enter into a
21 contractual agreement with an employer, group self-insurance
22 association plan, an employer's workers' compensation insurance
23 carrier, third-party administrator or an insured to provide medical
24 care under the Administrative Workers' Compensation Act. Certified

1 plans shall only include plans which provide medical services and
2 payment for services on a fee-for-service basis to medical
3 providers;

4 6. "Child" means a natural or adopted son or daughter of the
5 employee under eighteen (18) years of age; or a natural or adopted
6 son or daughter of an employee eighteen (18) years of age or over
7 who is physically or mentally incapable of self-support; or any
8 natural or adopted son or daughter of an employee eighteen (18)
9 years of age or over who is actually dependent; or any natural or
10 adopted son or daughter of an employee between eighteen (18) and
11 twenty-three (23) years of age who is enrolled as a full-time
12 student in any accredited educational institution. The term "child"
13 includes a posthumous child, a child legally adopted or one for whom
14 adoption proceedings are pending at the time of death, an actually
15 dependent stepchild or an actually dependent acknowledged child born
16 out of wedlock;

17 7. ~~"Claimant" means a person who claims benefits for an injury~~
18 ~~or occupational disease pursuant to the provisions of the~~
19 ~~Administrative Workers' Compensation Act;~~

20 ~~8.~~ "Commission" means the Workers' Compensation Commission;

21 ~~9.~~ 8. a. "Compensable injury" means damage or harm to the
22 physical structure of the body, or prosthetic
23 appliances, including eyeglasses, contact lenses, or
24 hearing aids, caused solely as the result of either an

1 accident, cumulative trauma or occupational disease
2 arising out of the course and scope of employment. An
3 ~~"accident" means an event involving factors external~~
4 ~~to the employee that:~~
5 ~~(1) was unintended, unanticipated, unforeseen,~~
6 ~~unplanned and unexpected,~~
7 ~~(2) occurred at a specifically identifiable time and~~
8 ~~place,~~
9 ~~(3) occurred by chance or from unknown causes, and~~
10 ~~(4) was independent of sickness, mental incapacity,~~
11 ~~bodily infirmity or any other cause.~~

12 b. "Compensable injury" does not include:

- 13 (1) injury to any active participant in assaults or
14 combats which, although they may occur in the
15 workplace, are the result of non-employment-
16 related hostility or animus of one, both, or all
17 of the combatants and which assault or combat
18 amounts to a deviation from customary duties;
19 provided, however, injuries caused by horseplay
20 shall not be considered to be compensable
21 injuries, except for innocent victims,
22 (2) injury incurred while engaging in or performing
23 or as the result of engaging in or performing any
24

1 recreational or social activities for the
2 employee's personal pleasure,

3 (3) injury which was inflicted on the employee at a
4 time when employment services were not being
5 performed or before the employee was hired or
6 after the employment relationship was terminated,

7 (4) injury where the accident was caused by the use
8 of alcohol, illegal drugs, or prescription drugs
9 used in contravention of physician's orders. If,
10 within twenty-four (24) hours of being injured or
11 reporting an injury, an employee tests positive
12 for intoxication, an illegal controlled
13 substance, or a legal controlled substance used
14 in contravention to a treating physician's
15 orders, or refuses to undergo the drug and
16 alcohol testing, there shall be a rebuttable
17 presumption that the injury was caused by the use
18 of alcohol, illegal drugs, or prescription drugs
19 used in contravention of physician's orders.
20 This presumption may only be overcome if the
21 employee proves by objective, clear and
22 convincing evidence that his or her state of
23 intoxication had no causal relationship to the
24 injury,

1 (5) any strain, degeneration, damage or harm to, or
2 disease or condition of, the eye or
3 musculoskeletal structure or other body part
4 resulting from the natural results of aging,
5 osteoarthritis, arthritis, or degenerative
6 process including, but not limited to,
7 degenerative joint disease, degenerative disc
8 disease, degenerative
9 spondylosis/spondylolisthesis and spinal
10 stenosis, or

11 (6) any injury that is related to a preexisting
12 condition except ~~when~~ if the treating physician
13 ~~clearly confirms~~ determines by objective findings
14 that the injury is an identifiable and
15 significant aggravation ~~incurred~~ of the
16 preexisting condition that:

17 (a) occurred in the course and scope of
18 employment,

19 (b) is not only a recurrence of symptoms
20 inherent in the etiology of the preexisting
21 condition, and

22 (c) is substantially caused by the work-related
23 accident.
24

- 1 c. The definition of "compensable injury" shall not be
2 construed to limit or abrogate the right to recover
3 for mental injuries as described in Section 13 of this
4 ~~act~~ title, heart or lung injury or illness as
5 described in Section 14 of this ~~act~~ title, or
6 occupational diseases as described in Section 65 of
7 this ~~act~~ title.
- 8 d. A compensable injury shall be established by medical
9 evidence supported by objective findings as defined in
10 paragraph ~~30~~ 26 of this section.
- 11 e. The injured employee shall prove by a preponderance of
12 the evidence that he or she has suffered a compensable
13 injury.
- 14 f. Benefits shall not be payable for a condition which
15 results from a non-work-related independent
16 intervening cause following a compensable injury which
17 causes or prolongs disability, aggravation, or
18 requires treatment. A non-work-related independent
19 intervening cause does not require negligence or
20 recklessness on the part of ~~a claimant~~ an employee.
- 21 g. An employee who suffers a compensable injury shall be
22 entitled to receive compensation as prescribed in ~~this~~
23 ~~act~~ the Administrative Workers' Compensation Act.
24 Notwithstanding other provisions of law, if it is

determined that a compensable injury did not occur,
the employee shall not be entitled to compensation
under ~~this act~~ the Administrative Workers'
Compensation Act;

~~10.~~ 9. "Compensation" means the money allowance payable to the
employee or to his or her dependents and includes the medical
services and supplies provided for in Section 50 of this ~~act~~ title
and funeral expenses;

~~11.~~ "Consequential injury" means injury or harm to a part of
the body that is a direct result of the injury or medical treatment
to the part of the body originally injured in the claim. The
Commission shall not make a finding of a consequential injury unless
it is established by objective medical evidence that medical
treatment for such part of the body is required;

~~12.~~ 10. "Continuing medical maintenance" means medical
treatment that is reasonable and necessary to maintain ~~claimant's~~
the employee's condition resulting from the compensable injury or
illness after reaching maximum medical improvement. Continuing
medical maintenance shall not include diagnostic tests, surgery,
injections, counseling, physical therapy, or pain management devices
or equipment;

~~13.~~ 11. "Course and scope of employment" means an activity of
any kind or character for which the employee was hired and that
relates to and derives from the work, business, trade or profession

1 of an employer, and is performed by an employee in the furtherance
2 of the affairs or business of an employer. The term includes
3 activities conducted on the premises of an employer or at other
4 locations designated by an employer and travel by an employee in
5 furtherance of the affairs of an employer that is specifically
6 directed by the employer. This term does not include:

7 a. an employee's transportation to and from his or her
8 place of employment,

9 b. travel by an employee in furtherance of the affairs of
10 an employer if the travel is also in furtherance of
11 personal or private affairs of the employee,

12 c. any injury occurring in a parking lot or other common
13 area ~~adjacent to an employer's place of business~~
14 within or outside the premises or place of business of
15 the employer, regardless of whether maintained or
16 owned by the employer, before the employee clocks in
17 or otherwise begins work for the employer or after the
18 employee clocks out or otherwise stops work for the
19 employer, or

20 d. any injury occurring while an employee is on a work
21 break, unless the injury occurs while the employee is
22 on a work break inside the employer's facility and the
23 work break is authorized by the employee's supervisor;
24

1 ~~14.~~ 12. "Cumulative trauma" means an injury to an employee that
2 is caused by the combined effect of repetitive physical activities
3 extending over a period of time in the course and scope of
4 employment. Cumulative trauma shall not mean fatigue, soreness or
5 general aches and pain that may have been caused, aggravated,
6 exacerbated or accelerated by the employee's course and scope of
7 employment. Cumulative trauma shall have resulted directly and
8 independently of all other causes ~~and the employee shall have~~
9 ~~completed at least one hundred eighty (180) days of continuous~~
10 ~~active employment with the employer;~~

11 ~~15.~~ 13. "Death" means only death resulting from compensable
12 injury as defined in paragraph ~~9~~ 8 of this section;

13 ~~16.~~ 14. "Disability" means ~~incapacity because of compensable~~
14 ~~injury to earn, in the same or any other employment, substantially~~
15 ~~the same amount of wages the employee was receiving at the time of~~
16 ~~the,~~ based on objective findings, impairment of a portion of the
17 total physiological capabilities of the human body caused by a
18 compensable injury;

19 ~~17.~~ 15. "Drive-away ~~operations~~ owner-operator" includes every
20 person engaged in the business of transporting and delivering new or
21 used vehicles by driving, either singly or by towbar, saddle-mount
22 or full-mount method, or any combination thereof, with or without
23 towing a privately owned vehicle;

24 ~~18.~~

1 16. a. "Employee" means any person, including a minor, in the
2 service of an employer under any contract of hire or
3 apprenticeship, written or oral, expressed or implied,
4 but excluding one whose employment is casual and not
5 in the course of the trade, business, profession, or
6 occupation of his or her employer and excluding one
7 who is required to perform work for a municipality or
8 county or the state or federal government on having
9 been convicted of a criminal offense or while
10 incarcerated. "Employee" shall also include a member
11 of the Oklahoma National Guard while in the
12 performance of duties only while in response to state
13 orders and any authorized voluntary or uncompensated
14 worker, rendering services as a firefighter, peace
15 officer or emergency management worker. Travel by a
16 policeman, fireman, or a member of a first aid or
17 rescue squad, in responding to and returning from an
18 emergency, shall be deemed to be in the course of
19 employment.

20 b. The term "employee" shall not include:

21 (1) any person for whom an employer is liable under
22 any Act of Congress for providing compensation to
23 employees for injuries, disease or death arising
24 out of and in the course of employment including,

1 but not limited to, the Federal Employees'
2 Compensation Act, the Federal Employers'
3 Liability Act, the Longshore and Harbor Workers'
4 Compensation Act and the Jones Act, to the extent
5 his or her employees are subject to such acts,

6 (2) any person who is employed in agriculture or
7 horticulture by an employer who had a gross
8 annual payroll in the preceding calendar year of
9 less than One Hundred Thousand Dollars
10 (\$100,000.00) wages for agricultural or
11 horticultural workers, or any person who is
12 employed in agriculture or horticulture who is
13 not engaged in operation of motorized machines,

14 (3) any person who is a licensed real estate sales
15 associate or broker, paid on a commission basis,

16 (4) any person who is providing services in a medical
17 care or social services program, or who is a
18 participant in a work or training program,
19 administered by the Department of Human Services,
20 unless the Department is required by federal law
21 or regulations to provide workers' compensation
22 for such person. This division shall not be
23 construed to include nursing homes,
24

- 1 (5) any person employed by an employer with five or
2 fewer total employees, all of whom are related
3 within the second degree by blood or marriage to
4 the employer, or a dependent living in the
5 household of the employer, if the employer is a
6 natural person or a general or limited
7 partnership, or an incorporator of a corporation
8 or limited liability company if the corporation
9 or limited liability company is the employer,
- 10 (6) any person employed by an employer which is a
11 youth sports league which qualifies for exemption
12 from federal income taxation pursuant to federal
13 law,
- 14 (7) sole proprietors, members of a partnership,
15 individuals who are party to a franchise
16 agreement as set out by the Federal Trade
17 Commission franchise disclosure rule, 16 CFR
18 436.1 through 436.11, members of a limited
19 liability company who own at least ten percent
20 (10%) of the capital of the limited liability
21 company or any stockholder-employees of a
22 corporation who own ten percent (10%) or more
23 stock in the corporation, unless they elect to be
24 covered by a policy of insurance covering

benefits under the Administrative Workers'
Compensation Act,

(8) any person providing or performing voluntary
service who receives no wages for the services
other than meals, drug or alcohol rehabilitative
therapy, transportation, lodging or reimbursement
for incidental expenses except for volunteers
specifically provided for in subparagraph a of
this paragraph,

(9) a person, commonly referred to as an owner-
operator, who owns or leases a truck-tractor or
truck for hire, if the owner-operator actually
operates the truck-tractor or truck and if the
person contracting with the owner-operator is not
the lessor of the truck-tractor or truck.

Provided, however, an owner-operator shall not be
precluded from workers' compensation coverage
under the Administrative Workers' Compensation
Act if the owner-operator elects to participate
as a sole proprietor,

(10) a person referred to as a drive-away owner-
operator who privately owns and utilizes a tow
vehicle in drive-away operations and operates
independently for hire, if the drive-away owner-

1 operator actually utilizes the tow vehicle and if
2 the person contracting with the drive-away owner-
3 operator is not the lessor of the tow vehicle.

4 Provided, however, a drive-away owner-operator
5 shall not be precluded from workers' compensation
6 coverage under the Administrative Workers'

7 Compensation Act if the drive-away owner-operator
8 elects to participate as a sole proprietor, and

9 (11) any person who is employed as a domestic servant
10 or as a casual worker in and about a private home
11 or household, which private home or household had
12 a gross annual payroll in the preceding calendar
13 year of less than Fifty Thousand Dollars
14 (\$50,000.00) for such workers;

15 ~~19.~~ 17. "Employer" means a person, partnership, association,
16 limited liability company, corporation, and the legal
17 representatives of a deceased employer, or the receiver or trustee
18 of a person, partnership, association, corporation, or limited
19 liability company, departments, instrumentalities and institutions
20 of this state and divisions thereof, counties and divisions thereof,
21 public trusts, boards of education and incorporated cities or towns
22 and divisions thereof, employing a person included within the term
23 "employee" as defined in this section. Employer may also mean the
24 employer's workers' compensation insurance carrier, if applicable.

1 Except as provided otherwise, ~~this act~~ the Administrative Workers'
2 Compensation Act applies to all public and private entities and
3 institutions. ~~Employer shall not include a qualified employer with~~
4 ~~an employee benefit plan as provided under the Oklahoma Employee~~
5 ~~Injury Benefit Act in Sections 107 through 120 of this act;~~

6 ~~20.~~ 18. "Employment" includes work or labor in a trade,
7 business, occupation or activity carried on by an employer or any
8 authorized voluntary or uncompensated worker rendering services as a
9 firefighter, peace officer or emergency management worker;

10 ~~21.~~ ~~"Evidence-based" means expert-based, literature-supported~~
11 ~~and outcomes validated by well-designed randomized trials when such~~
12 ~~information is available and which uses the best available evidence~~
13 ~~to support medical decision making;~~

14 ~~22.~~ ~~"Gainful employment" means the capacity to perform~~
15 ~~employment for wages for a period of time that is not part-time,~~
16 ~~occasional or sporadic;~~

17 ~~23.~~ 19. "Impaired self-insurer" means a private self-insurer or
18 group self-insurance association that fails to pay its workers'
19 compensation obligations, or is financially unable to do so and is
20 the subject of any proceeding under the Federal Bankruptcy Reform
21 Act of 1978, and any subsequent amendments or is the subject of any
22 proceeding in which a receiver, custodian, liquidator,
23 rehabilitator, trustee or similar officer has been appointed by a
24

1 court of competent jurisdiction to act in lieu of or on behalf of
2 the self-insurer;

3 ~~24. "Incapacity" means inadequate strength or ability to~~
4 ~~perform a work-related task;~~

5 ~~25.~~ 20. "Impairment" means a loss of, or loss of the function
6 of, a body part, organ or system;

7 21. "Insurance Commissioner" means the ~~Insurance~~ Commissioner
8 of the ~~State of Oklahoma~~ Insurance Department;

9 ~~26.~~ 22. "Insurance Department" means the Insurance Department
10 of the State of Oklahoma;

11 ~~27. "Major cause" means more than fifty percent (50%) of the~~
12 ~~resulting injury, disease or illness. A finding of major cause~~
13 ~~shall be established by a preponderance of the evidence. A finding~~
14 ~~that the workplace was not a major cause of the injury, disease or~~
15 ~~illness shall not adversely affect the exclusive remedy provisions~~
16 ~~of this act and shall not create a separate cause of action outside~~
17 ~~this act;~~

18 ~~28.~~ 23. "Maximum medical improvement" means that no further
19 material improvement would reasonably be expected from medical
20 treatment or the passage of time;

21 ~~29.~~ 24. "Medical services" means those services specified in
22 Section 50 of this ~~act~~ title;

23 ~~30.~~ 25. "Misconduct" shall include the following:

24 a. unexplained absenteeism or tardiness,

- b. willful or wanton indifference to or neglect of the duties required,
- c. willful or wanton breach of any duty required by the employer,
- d. the mismanagement of a position of employment by action or inaction,
- e. actions or omissions that place in jeopardy the health, life, or property of self or others,
- f. dishonesty,
- g. wrongdoing,
- h. violation of a law, or
- i. a violation of a policy or rule adopted to ensure orderly work or the safety of self or others;

~~31.~~

26. a. (1) "Objective findings" ~~are those~~ means findings based on objective medical evidence which cannot come under the voluntary control of the patient.
- (2) (a) When determining permanent disability, a physician, any other medical provider, an administrative law judge, the Commission or the courts shall not consider complaints of pain.
- (b) For the purpose of making permanent disability ratings ~~to the spine~~, physicians

1 shall use criteria established by the ~~most~~
2 ~~current edition~~ Sixth Edition of the
3 American Medical Association "Guides to the
4 Evaluation of Permanent Impairment".

5 (3) (a) Objective evidence necessary to prove
6 permanent disability in occupational hearing
7 loss cases may be established by medically
8 recognized and accepted clinical diagnostic
9 methodologies, including, but not limited
10 to, audiological tests that measure air and
11 bone conduction thresholds and speech
12 discrimination ability.

13 (b) Any difference in the baseline hearing
14 levels shall be confirmed by subsequent
15 testing; provided, however, such test shall
16 be given within four (4) weeks of the
17 initial baseline hearing level test but not
18 before five (5) days after being adjusted
19 for presbycusis.

20 b. Medical opinions addressing compensability and
21 permanent disability shall be stated within a
22 reasonable degree of medical certainty;

23 ~~32-~~ 27. "Occupational disease" means a disease arising out of
24 and in the course and scope of employment that causes damage or harm

1 to the physical structure of the body. The term includes a disease
2 or infection that naturally results from the work-related disease.
3 The term does not include an ordinary disease of life to which the
4 general public is exposed outside of employment, unless that disease
5 is an incident to a compensable injury or occupational disease;

6 28. "Official Disability Guidelines" or "ODG" means the current
7 edition of the Official Disability Guidelines and the ODG Treatment
8 in Workers' Comp Compensation as published by the Work Loss Data
9 Institute;

10 ~~33.~~ 29. "Permanent disability" means the extent, expressed as a
11 percentage, of the permanent loss of a portion of the total
12 physiological capabilities of the human body as established by
13 competent medical evidence and caused by a compensable injury based
14 on the current edition Sixth Edition of the American Medical
15 Association guides to the evaluation of impairment, if the
16 impairment is contained therein;

17 ~~34. "Permanent partial disability" means a permanent disability~~
18 ~~or loss of use after maximum medical improvement has been reached~~
19 ~~which prevents the injured employee, who has been released to return~~
20 ~~to work by the treating physician, from returning to his or her pre-~~
21 ~~injury or equivalent job. All evaluations of permanent partial~~
22 ~~disability must be supported by objective findings;~~

23 ~~35. "Permanent total disability" means, based on objective~~
24 ~~findings, incapacity, based upon accidental injury or occupational~~

1 ~~disease, to earn wages in any employment for which the employee may~~
2 ~~become physically suited and reasonably fitted by education,~~
3 ~~training, experience or vocational rehabilitation provided under~~
4 ~~this act. Loss of both hands, both feet, both legs, or both eyes,~~
5 ~~or any two thereof, shall constitute permanent total disability;~~

6 ~~36.~~ 30. "Preexisting condition" means any illness, injury,
7 disease, or other physical or mental condition, whether or not work-
8 related, for which medical advice, diagnosis, care or treatment was
9 recommended or received preceding the date of injury, or is
10 determined by objective findings to have existed before the date of
11 injury;

12 ~~37.~~ ~~"Pre-injury or equivalent job" means the job that the~~
13 ~~claimant was working for the employer at the time the injury~~
14 ~~occurred or any other employment offered by the claimant's employer~~
15 ~~that pays at least one hundred percent (100%) of the employee's~~
16 ~~average weekly wage;~~

17 ~~38.~~ 31. "Private self-insurer" means a private employer that
18 has been authorized to self-insure its workers' compensation
19 obligations pursuant to ~~this act~~ the Administrative Workers'
20 Compensation Act, but does not include group self-insurance
21 associations authorized by ~~this act~~ the Administrative Workers'
22 Compensation Act, or any public employer that self-insures pursuant
23 to ~~this act~~ the Administrative Workers' Compensation Act;
24

1 ~~39.~~ 32. "Prosthetic" means an artificial device used to replace
2 a part or joint of the body that is lost or injured in an accident
3 or illness covered by ~~this act~~ the Administrative Workers'
4 Compensation Act;

5 ~~40.~~ ~~"Scheduled member" or "member" means hands, fingers, arms,~~
6 ~~legs, feet, toes, and eyes. In addition, for purposes of the~~
7 ~~Multiple Injury Trust Fund only, "scheduled member" means hearing~~
8 ~~impairment;~~

9 ~~41.~~ ~~"Scientifically based" involves the application of~~
10 ~~rigorous, systematic, and objective procedures to obtain reliable~~
11 ~~and valid knowledge relevant to medical testing, diagnoses and~~
12 ~~treatment; is adequate to justify the general conclusions drawn; and~~
13 ~~has been accepted by a peer review journal or approved by a panel of~~
14 ~~independent experts through a comparably rigorous, objective, and~~
15 ~~scientific review;~~

16 ~~42.~~ 33. "State average weekly wage" means the state average
17 weekly wage determined by the Oklahoma Employment Security
18 Commission in the preceding calendar year. If such determination is
19 not available, the Commission shall determine the wage annually
20 after reasonable investigation;

21 ~~43.~~ 34. "Subcontractor" means a person, firm, corporation or
22 other legal entity hired by the general or prime contractor to
23 perform a specific task for the completion of a work-related
24 activity;

1 ~~44. "Surgery" does not include an injection, or the forcing of~~
2 ~~fluids beneath the skin, for treatment or diagnosis;~~

3 ~~45.~~ 35. "Surviving spouse" means the employee's spouse by
4 reason of a legal marriage recognized by the State of Oklahoma or
5 under the requirements of a common law marriage in this state, as
6 determined by the Workers' Compensation Commission;

7 ~~46. "Temporary partial disability" means an injured employee~~
8 ~~who is temporarily unable to perform his or her job, but may perform~~
9 ~~alternative work offered by the employer;~~

10 ~~47. "Time of accident" or "date of accident" means the time or~~
11 ~~date of the occurrence of the accidental incident from which~~
12 ~~compensable injury, disability, or death results; and~~

13 ~~48.~~ 36. "Total loss of use" means a one-hundred-percent
14 permanent partial disability rating to the specific body part; and

15 37. "Wages" means money compensation received for employment at
16 the time of the accident, including the reasonable value of board,
17 rent, housing, lodging, or similar advantage received from the
18 employer and includes the amount of tips required to be reported by
19 the employer under Section 6053 of the Internal Revenue Code and the
20 regulations promulgated pursuant thereto or the amount of actual
21 tips reported, whichever amount is greater.

22 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2016, Section 3), is amended to read as
24 follows:

1 Section 3. A. Every employer and every employee, unless
2 otherwise specifically provided in ~~this act~~ the Administrative
3 Workers' Compensation Act, shall be subject and bound to the
4 provisions of the Administrative Workers' Compensation Act.
5 However, nothing in ~~this act~~ the Administrative Workers'
6 Compensation Act shall be construed to conflict with any valid Act
7 of Congress governing the liability of employers for injuries
8 received by their employees.

9 B. ~~This act~~ The Administrative Workers' Compensation Act shall
10 apply only to claims for injuries and death based on accidents which
11 occur on or after ~~the effective date of this act~~ February 1, 2014.

12 C. The Workers' Compensation Code in effect before ~~the~~
13 ~~effective date of this act~~ February 1, 2014, shall govern all rights
14 in respect to claims for injuries and death based on accidents
15 occurring before ~~the effective date of this act~~ February 1, 2014.

16 D. If an employee files a workers' compensation claim or
17 receives benefits in another jurisdiction, the employee shall not be
18 eligible to receive benefits under this act for the same injury.

19 SECTION 3. AMENDATORY Section 7, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2016, Section 7), is amended to read as
21 follows:

22 Section 7. A. An employer may not discriminate or retaliate
23 against an employee when the employee has in good faith:
24

1 1. Filed a claim under ~~this act~~ the Administrative Workers'
2 Compensation Act;

3 2. Retained a lawyer for representation regarding a claim under
4 ~~this act~~ the Administrative Workers' Compensation Act;

5 3. Instituted or caused to be instituted any proceeding under
6 the provisions of ~~this act~~ the Administrative Workers' Compensation
7 Act; or

8 4. Testified or is about to testify in any proceeding under the
9 provisions of ~~this act~~ the Administrative Workers' Compensation Act.

10 B. ~~The Commission shall have exclusive jurisdiction to hear and~~
11 ~~decide claims based on subsection A of this section.~~

12 C. ~~If the Commission determines that the defendant violated~~
13 ~~subsection A of this section, the Commission may award the employee~~
14 ~~back pay up to a maximum of One Hundred Thousand Dollars~~

15 ~~(\$100,000.00)~~ If a district court of this state determines that an
16 employer violated a provision of this section, such employer shall

17 be liable for reasonable compensatory damages suffered by an
18 employee as a result of the violation. The employee shall have the

19 burden of proof to show such violation by a preponderance of the
20 evidence. Interim earnings or amounts earnable with reasonable

21 diligence by the person discriminated against shall reduce the ~~back~~
22 ~~pay~~ compensatory damages otherwise allowable. Exemplary or punitive

23 damage awards made pursuant to this section shall not exceed One
24 Hundred Thousand Dollars (\$100,000.00).

1 ~~D.~~ C. The prevailing party shall be entitled to recover costs
2 and a reasonable attorney fee.

3 ~~E.~~ D. No employer may discharge an employee during a period of
4 temporary total disability for the sole reason of being absent from
5 work or for the purpose of avoiding payment of temporary total
6 disability benefits to the injured employee.

7 ~~F.~~ E. Notwithstanding any other provision of this section, an
8 employer shall not be required to rehire or retain an employee who,
9 after temporary total disability has been exhausted, is determined
10 by a physician to be physically unable to perform his or her
11 assigned duties, or whose position is no longer available.

12 ~~G.~~ F. This section shall not be construed as establishing an
13 exception to the employment at will doctrine.

14 ~~H.~~ G. The remedies provided for in this section shall be
15 exclusive with respect to any claim arising out of the conduct
16 described in subsection A of this section.

17 SECTION 4. AMENDATORY Section 14, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2016, Section 14), is amended to read as
19 follows:

20 Section 14. ~~A.~~ A cardiovascular, coronary, pulmonary,
21 respiratory, or cerebrovascular accident or myocardial infarction
22 causing injury, illness, or death is a compensable injury only if,
23 ~~in relation to other factors contributing to the physical harm, the~~
24 ~~course and scope of employment was the major cause.~~

1 ~~B. 1. An injury or disease included in subsection A of this~~
2 ~~section shall not be deemed to be a compensable injury unless it is~~
3 ~~shown that the exertion of the work necessary to precipitate the~~
4 ~~disability or death was extraordinary and unusual in comparison to~~
5 ~~the employee's usual work in the course of the employee's regular~~
6 ~~employment, or that some unusual and unpredicted incident occurred~~
7 ~~which is found to have been the major cause of the physical harm.~~

8 ~~2. Physical or mental stress shall not be considered in~~
9 ~~determining whether the employee or claimant has met his or her~~
10 ~~burden of proof:~~

11 1. It occurred at a definite time and place;

12 2. It was caused by a specific event occurring in the course
13 and scope of employment;

14 3. The preponderance of the evidence indicates that the
15 employee's work was the main contributing factor, rather than the
16 natural progression of a preexisting condition; and

17 4. It was not triggered by physical or mental stress.

18 SECTION 5. AMENDATORY Section 16, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2016, Section 16), is amended to read as
20 follows:

21 Section 16. A. The Official Disability Guidelines ~~—Treatment~~
22 ~~in Workers Compensation (ODG), published by the Work Loss Data~~
23 ~~Institute,~~ is to be recognized as the ~~primary~~ standard of reference,
24 at the time of treatment, in determining the frequency and extent of

1 services presumed to be medically necessary and appropriate for
2 compensable injuries under ~~this act~~ the Administrative Workers'
3 Compensation Act, or in resolving such matters in the event a
4 dispute arises. The ~~medical treatment guidelines~~ Official
5 Disability Guidelines are not requirements, nor are they mandates or
6 standards; ~~they provide advice by identifying the care most likely~~
7 ~~to benefit injured workers. The guidelines shall be evidence based,~~
8 ~~scientifically valid, outcome-focused, and designed to reduce~~
9 ~~excessive or inappropriate medical care while safeguarding necessary~~
10 ~~medical care.~~

11 B. Physicians providing care to an employee shall prescribe for
12 the employee any necessary prescription drugs and over-the-counter
13 alternatives to prescription medicine as clinically appropriate and
14 as recommended under the Official Disability Guidelines.
15 Prescriptions and nonprescription drugs that are not preferred,
16 exceed or are not addressed by ~~ODG~~ the Official Disability
17 Guidelines require preauthorization and the preauthorization request
18 shall include the prescribing doctor's drug regimen plan of care and
19 the anticipated dosage or range of dosages.

20 SECTION 6. AMENDATORY Section 17, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2016, Section 17), is amended to read as
22 follows:

23 Section 17. A. There is hereby created a Physician Advisory
24 Committee comprised of nine (9) members to be appointed as follows:

1 1. The Governor shall appoint three members, one of whom shall
2 be licensed in this state as a doctor of medicine and surgery, one
3 of whom shall be engaged in the practice of family medicine in a
4 rural community of the state, and one of whom shall be an
5 osteopathic physician;

6 2. The President Pro Tempore of the Senate shall appoint three
7 members, one of whom shall be licensed in this state as a doctor of
8 medicine and orthopedic surgery, one of whom shall be licensed in
9 this state either as a doctor of medicine or a doctor of osteopathy
10 and a neurosurgeon, and one of whom shall be licensed in this state
11 as a podiatric physician; and

12 3. The Speaker of the House of Representatives shall appoint
13 three members, one of whom shall be licensed in this state as an
14 osteopathic physician, one of whom shall be licensed in this state
15 either as a doctor of medicine or a doctor of osteopathy and shall
16 be engaged in the practice of occupational medicine, and one of whom
17 shall be licensed in this state as a chiropractic physician.

18 Any member serving on ~~the effective date of this section~~
19 February 1, 2014, shall serve the remainder of his or her term.
20 Thereafter, each position will be filled by the appointing official
21 for a term of three (3) years. Members shall be subject to
22 reappointment, with any new appointee to serve out the remainder of
23 the unexpired term of the Committee member so replaced.

24 B. The Committee shall:

1 1. Assist and advise the Workers' Compensation Commission
2 regarding utilization review as it relates to the medical practice
3 and treatment of work-related injuries. Such utilization review
4 shall include a review of reasonable and necessary medical
5 treatment; abusive practices; needless treatments, testing, or
6 procedures; or a pattern of billing in excess of or in violation of
7 the Schedule of Medical Fees. The Physician Advisory Committee
8 shall review and make findings and recommendations to the Commission
9 with respect to charges of inappropriate or unnecessary treatment or
10 procedures, abusive practices, or excessive billing disclosed
11 through utilization review;

12 2. Assist the Commission in reviewing medical practices of
13 health care providers, including evaluations of permanent disability
14 provided by health care providers. The Committee shall review and
15 make findings and recommendations to the Commission with respect to
16 charges of abusive practices by health care providers providing
17 medical services or evaluations of permanent partial disability
18 through the workers' compensation system;

19 3. After public hearing, review and make recommendations for
20 acceptable deviations from the Sixth Edition of the American Medical
21 Association's "Guides to the Evaluation of Permanent Impairment";

22 4. After public hearing, adopt Physician Advisory Committee
23 Guidelines (PACG) and protocols for only medical treatment not
24

1 addressed by the latest edition of the Official Disability
2 Guidelines;

3 5. After public hearing, adopt Physician Advisory Committee
4 Guidelines for the prescription and dispensing of any controlled
5 substance included in Schedule II of the Uniform Controlled
6 Dangerous Substances Act if not addressed by the current edition of
7 the Official Disability Guidelines;

8 6. Review utilization on cases or of providers when requested
9 by any employer, injured employee or insurer. The Committee may
10 issue a public or private censure to any provider for utilization
11 which is excessive or inadequate, or recommend the Commission order
12 treatment within the treatment guidelines;

13 7. Provide general recommendations to the Commission on the
14 issues of injury causation and apportionment;

15 8. Conduct educational seminars for the Commission, employers,
16 employees, and other interested parties;

17 9. Assist the Commission in accessing medical information from
18 scientific literature; ~~and~~

19 10. Report its progress annually to the Governor, the President
20 Pro Tempore of the Senate, and the Speaker of the House of
21 Representatives; and

22 11. Provide an annual report, available to the public,
23 summarizing its activities and recommendations to the Commission for
24 the preceding year.

1 C. The Commission shall recognize the latest edition of the
2 Official Disability Guidelines as the primary standard of reference,
3 at the time of treatment, in determining the frequency and extent of
4 services presumed to be medically necessary and appropriate for
5 compensable injuries ~~under this act~~ the Administrative Workers'
6 Compensation Act, or in resolving such matters in the event a
7 dispute arises.

8 D. Members of the Physician Advisory Committee shall receive no
9 compensation for serving on the Committee but shall be reimbursed by
10 the Commission for their necessary travel expenses incurred in the
11 performance of their duties in accordance with the State Travel
12 Reimbursement Act.

13 E. Meetings of the Physician Advisory Committee shall be called
14 by the Commission but held at least quarterly. The presence of a
15 majority of the members shall constitute a quorum. No action shall
16 be taken by the Physician Advisory Committee without the affirmative
17 vote of at least a majority of the members.

18 F. The Commission shall provide office supplies and personnel
19 of the Commission to assist the Committee in the performance of its
20 duties.

21 G. Upon written request, the Insurance Commissioner, CompSource
22 Oklahoma, and every approved self-insured employer in Oklahoma shall
23 provide the Committee with data necessary to the performance of its
24 duties.

1 H. Any health care provider acting in good faith and within the
2 scope of the provider's duties as a member of the Physician Advisory
3 Committee shall be immune from civil liability for making any report
4 or other information available to the judges of the Commission or to
5 the Commission or for assisting in the origination, investigation,
6 or preparation of the report or other information so provided.

7 SECTION 7. AMENDATORY Section 18, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2016, Section 18), is amended to read as
9 follows:

10 Section 18. A. No hospital, physician, or other health care
11 provider shall bill or attempt to collect any fee or any portion of
12 a fee for services rendered to an employee due to a work-related
13 injury or report to any credit-reporting agency any failure of the
14 employee to make the payment, when a claim for compensation has been
15 filed under ~~this act~~ the Administrative Workers' Compensation Act
16 and the hospital, physician, or health care provider has received
17 actual notice given in writing by the employee or the employee's
18 representative. Actual notice shall be deemed received by the
19 hospital, physician, or health care provider five (5) days after
20 mailing by certified mail or sending by facsimile, electronic mail
21 or other electronic means with confirmation of receipt by the
22 employee or his or her representative to the hospital, physician, or
23 health care provider.

24 B. The notice shall include:

- 1 1. The name of the employer;
- 2 2. The name of the insurer, if known;
- 3 3. The name of the employee receiving the services;
- 4 4. The general nature of the injury, if known; and
- 5 5. Where a claim has been filed, the claim number, if known.

6 C. When an injury or bill is found to be noncompensable under
7 ~~this act~~ the Administrative Workers' Compensation Act, the hospital,
8 physician, or other health care provider shall be entitled to pursue
9 the employee for any unpaid portion of the fee or other charges for
10 authorized services provided to the employee. Any applicable
11 statute of limitations for an action for the fees or other charges
12 shall be tolled from the time notice is given to the hospital,
13 physician, or other health care provider until a determination of
14 noncompensability in regard to the injury which is the basis of the
15 services is made, or if there is an appeal, until a final
16 determination of noncompensability is rendered and all appeal
17 deadlines have passed.

18 D. This section shall not ~~avoid~~ void, modify, or amend any
19 other section or subsection of ~~this act~~ the Administrative Workers'
20 Compensation Act.

21 E. An order by the Commission under this section shall stay all
22 proceedings for collection.

23 SECTION 8. AMENDATORY Section 19, Chapter 208, O.S.L.
24 2013, as amended by Section 4, House Joint Resolution No. 1096,

1 O.S.L. 2014 (85A O.S. Supp. 2016, Section 19), is amended to read as
2 follows:

3 Section 19. A. There is hereby created the Oklahoma Workers'
4 Compensation Commission, an executive agency of the State of
5 Oklahoma, which shall have the exclusive responsibility and duty to
6 carry out the provisions of ~~this act~~ the Administrative Workers'
7 Compensation Act, except as otherwise provided.

8 B. The Commission shall consist of three (3) full-time
9 commissioners, ~~each two~~ of whom ~~must~~ shall have been involved in the
10 workers' compensation field for at least three (3) years, appointed
11 by the Governor: ~~one of whom is chosen from a slate of three~~
12 ~~selected by the Speaker of the House of Representatives~~, with all
13 three confirmed by the Senate. The term of each appointee shall be
14 six (6) years to administer the provisions of ~~this act~~ the
15 Administrative Workers' Compensation Act. ~~The Governor may request~~
16 ~~a subsequent slate of nominees from the Speaker of the House of~~
17 ~~Representatives if a suitable nominee is not found.~~ Any or all of
18 the commissioners may be reappointed for additional six-year terms
19 upon reconfirmation by the Senate. However, the initial
20 commissioners shall serve staggered terms of two (2), four (4), and
21 six (6) years, respectively, as determined by the Governor. If the
22 Legislature is not in session at the time of appointment, the
23 appointment shall be subject to confirmation by the Senate upon
24 convening of the next regular session of the Legislature.

1 Membership on the Commission shall be a full-time position and no
2 commissioner shall have any other employment, unless authorized or
3 excused by law. Each commissioner shall receive a salary equal to
4 that paid to a district judge of this state; provided however, the
5 commissioners shall not receive any increase in salary as a result
6 of the provisions of Section 1 of ~~this resolution~~ House Joint
7 Resolution No. 1096 of the 2nd Session of the 54th Oklahoma
8 Legislature.

9 C. The Commission shall have the authority to adopt reasonable
10 rules within its respective areas of responsibility including the
11 rules of procedure for administrative hearings, after notice and
12 public hearing, for effecting the purposes of ~~this act~~ the
13 Administrative Workers' Compensation Act, in accordance with the
14 Oklahoma Administrative Procedures Act. All rules, upon adoption,
15 shall be published and be made available to the public and, if not
16 inconsistent with the law, shall be binding in the administration of
17 ~~this act~~ the Administrative Workers' Compensation Act.

18 D. The principal office of the Commission shall be situated in
19 the City of Oklahoma City in quarters assigned by the Office of
20 Management and Enterprise Services. The Commission shall maintain
21 and keep open, during reasonable business hours, the office in
22 Oklahoma City, for the transaction of business, at which office its
23 official records and papers shall be kept. The Commission or any
24 commissioner may hold hearings in any city of this state.

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

4 1. To organize, direct and develop the administrative work of
5 the administrative law judges, including but not limited to
6 docketing, clerical, technical and financial work and establishment
7 of hours of operation;

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

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

12 F. All appeals or disputes arising from actions of the
13 Commission shall be governed by provisions of ~~this act~~ the
14 Administrative Workers' Compensation Act and the Commission shall
15 not be subject to the provisions of the Oklahoma Administrative
16 Procedures Act, except as provided in ~~this act~~ the Administrative
17 Workers' Compensation Act.

18 G. ~~When any commissioner of the Commission is disqualified for~~
19 ~~any reason to hear and participate in the determination of any~~
20 ~~matter pending before the Commission, the Governor shall appoint a~~
21 ~~qualified person to hear and participate in the decision on the~~
22 ~~particular matter. The special commissioner so appointed shall have~~
23 ~~all authority and responsibility with respect to the particular~~
24 ~~matter before the Commission as if the person were a regular~~

~~commissioner of the Commission but shall have no authority or responsibility with respect to any other matter before the Commission. A person appointed as a special commissioner of the Commission under the provisions of this subsection shall be entitled to receive a per diem equal to the annual salary of the commissioners prorated for the number of days he or she serves in the capacity of a special commissioner of the Commission. Furthermore, when a vacancy on the Commission occurs or is certain to occur, the position shall be filled pursuant to the provisions of this section~~ The power of the Commission to decide issues of fact does not include the power to determine the constitutionality of the provisions of this act or the constitutionality of application of the provisions of this act.

SECTION 9. AMENDATORY Section 20, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2016, Section 20), is amended to read as follows:

Section 20. A. In addition to its other duties and powers, the Commission is given and granted full power and authority:

1. To appoint administrative law judges to hear all claims for compensation, including claims based on injuries which occurred outside this state for which compensation is payable under ~~this act~~ the Administrative Workers' Compensation Act. An administrative law judge shall have been licensed to practice law in this state for a period of not less than three (3) years and shall have not less than

1 three (3) years of workers' compensation or other beneficial
2 experience prior to appointment;

3 2. To review the performance of an administrative law judge;
4 provided, however, the Commissioners shall not discuss any case with
5 an administrative law judge until all remedies have been exhausted
6 with the Commission;

7 3. To remand any case to an administrative law judge for the
8 purpose of taking additional evidence;

9 ~~3.~~ 4. To assess penalties;

10 ~~4.~~ 5. To prescribe rules governing the representation of
11 employees, employers, and carriers in respect to claims before the
12 Commission;

13 ~~5.~~ 6. To make available all records in connection with all
14 cases of personal injury to the Oklahoma Department of Labor. The
15 Commissioner of Labor may propose rules for the prevention of
16 injuries and transmit the rules to the Commission. The Commission
17 may recommend proposed rules for prevention of injuries to the
18 Commissioner of Labor; and

19 ~~6.~~ 7. To have and exercise all other powers and duties
20 conferred or imposed by ~~this act~~ the Administrative Workers'
21 Compensation Act.

22 B. 1. In addition to the other powers and duties granted to
23 the Commission in this section and otherwise provided by law, the
24 Commission is authorized to establish and impose reasonable

1 administrative fees to recover the cost of preparation of various
2 informative materials distributed by the Commission.

3 2. The administrative fees shall be established by regulation
4 of the Commission.

5 3. Funds derived from administrative fees shall be deposited
6 into the Workers' Compensation Fund to be used to defray expenses
7 incurred in preparation and distribution of materials.

8 SECTION 10. AMENDATORY Section 21, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2016, Section 21), is amended to read as
10 follows:

11 Section 21. A. Commissioners shall be considered officers and
12 shall take the oath prescribed by the Oklahoma Constitution and the
13 laws of this state.

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

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

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

4 D. Except with respect to the Commission's authority to hear
5 appeals of decisions from administrative law judges other than as
6 provided pursuant to subsection B of Section 78 of this title, any
7 reference in ~~this act~~ the Administrative Workers' Compensation Act
8 to the Commission's ability to hear and decide the rights of
9 interested parties under ~~this act~~ the Administrative Workers'
10 Compensation Act shall not prevent it from delegating that
11 responsibility to an administrative law judge.

12 SECTION 11. AMENDATORY Section 22, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2016, Section 22), is amended to read as
14 follows:

15 Section 22. A. 1. For the purpose of administering the
16 provisions of ~~this act~~ the Administrative Workers' Compensation Act,
17 the Workers' Compensation Commission is authorized:

- 18 a. to make rules necessary for the administration and
19 operation of the Commission,
- 20 b. to appoint and fix the compensation of temporary
21 technical assistants, medical and legal advisers,
22 clerical assistants and other officers and employees,
23 and
24

1 c. to make such expenditures, including those for
2 personal service, rent, books, periodicals, office
3 equipment, and supplies, and for printing and binding
4 as may be necessary.

5 2. a. ~~Before the adoption, prescription, amendment,~~
6 ~~modification, or repeal of any rule, regulation, or~~
7 ~~form, the Commission shall give at least thirty (30)~~
8 ~~days' notice of its intended action.~~

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

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

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

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

1 ~~5. All expenditures of the Commission in the administration of~~
2 ~~this act shall be allowed and paid from the Workers' Compensation~~
3 ~~Fund on the presentation of itemized vouchers approved by the~~
4 ~~Commission~~ The Commission shall comply with the provisions of the
5 Administrative Procedures Act applicable to the filing and
6 publication requirements for rules.

7 B. 1. The Commission may appoint as many persons as may be
8 necessary to be administrative law judges and in addition may
9 appoint such examiners, investigators, medical examiners, clerks,
10 and other employees as it deems necessary to effectuate the
11 provisions of ~~this act~~ the Administrative Workers' Compensation Act.

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

14 C. Additionally, the Commission shall have the following powers
15 and duties:

16 1. To hear and approve compromise settlements;

17 2. To review and approve own-risk applications and group self-
18 insurance association applications;

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

21 ~~4. To contract with an appropriate state governmental entity,~~
22 ~~insurance carrier or approved service organization to process,~~
23 ~~investigate and pay valid claims against an impaired self-insurer~~
24 ~~which fails, due to insolvency or otherwise, to pay its workers'~~

1 ~~compensation obligations, charges for which shall be paid from the~~
2 ~~proceeds of security posted with the Commission as provided in~~
3 ~~Section 38 of this act;~~

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

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

8 ~~7.~~ 6. To promulgate necessary rules for administering ~~this act~~
9 the Administrative Workers' Compensation Act and develop uniform
10 forms and procedures for use by administrative law judges. Such
11 rules shall be reviewable by the Legislature;

12 ~~8.~~ 7. To invest funds on behalf of the Multiple Injury Trust
13 Fund;

14 ~~9.~~ 8. To appoint a Commission Mediator to conduct informal
15 sessions to attempt to resolve assigned disputes; and

16 ~~10.~~ 9. Such other duties and responsibilities authorized by
17 law.

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

1 SECTION 12. 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. 2016, 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, for amounts for purposes of computing
13 the assessment authorized by this section necessary to pay the
14 annual obligations of the Multiple Injury Trust Fund determined on
15 or before December 31 of each year by the MITF Director, provided
16 for in subsection P of this section, to be outstanding for the next
17 calendar year, and to pay the allocations provided for in subsection
18 I of this section. The rate shall be equal for all parties required
19 to pay the assessment. If CompSource begins operating as a mutual
20 insurance company, the Board of Directors for CompSource Mutual
21 Insurance Company shall have the power to disapprove the rate
22 established by the MITF Director until the Multiple Injury Trust
23 Fund repays in full the amount due on any loan from CompSource
24 Mutual Insurance Company or its predecessor CompSource Oklahoma. If

1 the MITF Director and CompSource have not agreed on the assessment
2 rate within thirty (30) days, the Commission shall set an assessment
3 rate sufficient to cover all foreseeable obligations of the Multiple
4 Injury Trust Fund, including interest and principal owed by the Fund
5 on any loan. The rate in effect on the ~~effective date of this act~~
6 February 1, 2014, shall remain effective through June 30, 2014;

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

13 3. The assessments shall be paid to the Tax Commission.
14 Insurance carriers, self-insurers, group self-insurance associations
15 and CompSource Oklahoma shall pay the assessment in four equal
16 installments not later than the fifteenth day of the month following
17 the close of each quarter of the calendar year of the assessment.
18 Assessments shall be determined based upon gross direct written
19 premiums, normal premiums or actual paid losses of the paying party,
20 as applicable, during the calendar quarter for which the assessment
21 is due. Uninsured employers shall pay the assessment not later than
22 the fifteenth day of the month following the close of each quarter
23 of the calendar year of the assessment. For purposes of this
24 section, "uninsured employer" means an employer required by law to

1 carry workers' compensation insurance but who has failed or
2 neglected to do so.

3 a. The assessment authorized in this section shall be
4 determined using a rate equal to the proportion that
5 the sum of the outstanding obligations of the Multiple
6 Injury Trust Fund as determined pursuant to paragraph
7 1 of this subsection and the allocations provided for
8 in subsection I of this section bear to the combined
9 gross direct written premiums of all such insurers;
10 all actual paid losses of all individual self-
11 insureds; and the normal premium of all group self-
12 insurance associations, for the year period from
13 January 1 to December 31 preceding the assessment.

14 b. For purposes of this subsection:

15 (1) "actual paid losses" means all medical and
16 indemnity payments, including temporary
17 disability, permanent disability, and death
18 benefits, and excluding loss adjustment expenses
19 and reserves, and

20 (2) "normal premium" means a standard premium less
21 any discounts;

22 4. By April 15 of each year, the Insurance Commissioner, the
23 MITF Director and each individual and group self-insured shall
24

1 provide the Commission with such information as the Commission may
2 determine is necessary to effectuate the purposes of this section;

3 5. Each mutual or interinsurance association, stock company,
4 CompSource Oklahoma, or other insurance carrier writing workers'
5 compensation insurance in this state, and each employer carrying its
6 own risk, including each group self-insurance association, shall be
7 notified by the Commission in writing of the rate for the assessment
8 on or before May 1 of each year in which a rate is determined. The
9 rate determined by the Commission shall be in effect for four
10 calendar quarters beginning July 1 following determination by the
11 Commission; and

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

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

22 c. No group self-insurance association may be assessed in
23 any year an amount greater than six percent (6%) of
24

1 the normal premium of that group self-insurance
2 association.

3 d. If the maximum assessment does not provide in any one
4 year an amount sufficient to make all necessary
5 payments for obligations of the Multiple Injury Trust
6 Fund and for the allocations provided for in
7 subsection I of this section, the unpaid portion shall
8 be paid as soon thereafter as funds become available.

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

11 C. It shall be the duty of the Tax Commission to collect the
12 payments provided for in ~~this act~~ the Administrative Workers'
13 Compensation Act. The Tax Commission is hereby authorized to bring
14 an action for the recovery of any delinquent or unpaid payments
15 required in this section.

16 D. Any mutual or interinsurance association, stock company, or
17 other insurance company, which is subject to regulation by the
18 Insurance Commissioner, or CompSource Oklahoma, failing to make
19 payments required in ~~this act~~ the Administrative Workers'
20 Compensation Act promptly and correctly, and failing to report
21 payment of the same to the Insurance Commission within ten (10) days
22 of payment shall be subject to administrative penalties as allowed
23 by law, including but not limited to a fine in the amount of Five
24 Hundred Dollars (\$500.00) or an amount equal to one percent (1%) of

1 the unpaid amount, whichever is greater, to be paid to the Insurance
2 Commissioner.

3 E. Any employer carrying its own risk, or group self-insurance
4 association failing to make payments required in ~~this act~~ the
5 Administrative Workers' Compensation Act promptly and correctly, and
6 failing to report payment of the same to the Commission within ten
7 (10) days of payment shall be subject to administrative penalties as
8 allowed by law, including but not limited to a fine in the amount of
9 Five Hundred Dollars (\$500.00) or an amount equal to one percent
10 (1%) of the unpaid amount, whichever is greater, to be paid to the
11 Commission.

12 F. ~~1.~~ On or before the first day of April of each year, the
13 State Treasurer shall advise the Commission, the MITF Director and
14 the Tax Commission of the amount of money held as of March 1 of that
15 year by the State Treasurer to the credit of the Multiple Injury
16 Trust Fund. On or before the first day of November of each year,
17 the State Treasurer shall advise the Commission, the MITF Director
18 and the Tax Commission of the amount of money held as of October 1
19 of that year by the State Treasurer to the credit of the Multiple
20 Injury Trust Fund.

21 ~~2. Until such time as the Multiple Injury Trust Fund fully~~
22 ~~satisfies any loan obligation payable to CompSource Mutual Insurance~~
23 ~~Company or its predecessor CompSource Oklahoma, the State Treasurer~~
24 ~~shall:~~

- 1 a. ~~advise the Chief Executive Officer of CompSource on or~~
2 ~~before the first day of April of the money held as of~~
3 ~~March 1 of that year by the State Treasurer to the~~
4 ~~credit of the Multiple Injury Trust Fund, and~~
5 b. ~~advise the Chief Executive Officer of CompSource on or~~
6 ~~before the first day of November of the money held as~~
7 ~~of October 1 of that year by the State Treasurer to~~
8 ~~the credit of the Multiple Injury Trust Fund.~~

9 G. Eighty percent (80%) of all sums held by the State Treasurer
10 to the credit of the Multiple Injury Trust Fund may by order of the
11 MITF Director be invested in or loaned on the pledge of any of the
12 securities in which a state bank may invest the monies deposited
13 therein by the State Treasurer; or may be deposited in state or
14 national banks or trust companies upon insured time deposit bearing
15 interest at a rate no less than currently being paid upon insured
16 savings accounts in the institutions. As used in this section,
17 "insured" means insurance as provided by an agency of the federal
18 government. All such securities or evidence of indebtedness shall
19 be placed in the hands of the State Treasurer, who shall be the
20 custodian thereof, who shall collect the principal and interest when
21 due, and pay the same into the Multiple Injury Trust Fund. The
22 State Treasurer shall pay by vouchers drawn on the Multiple Injury
23 Trust Fund for the making of such investments, when signed by the
24 MITF Director, upon delivery of such securities or evidence of

1 indebtedness to the State Treasurer. The MITF Director may sell any
2 of such securities, the proceeds thereof to be paid over to the
3 State Treasurer for the Multiple Injury Trust Fund.

4 H. The refund provisions of Sections 227 through 229 of Title
5 68 of the Oklahoma Statutes shall be applicable to any payments made
6 to the Multiple Injury Trust Fund. Refunds shall be paid from and
7 out of the Multiple Injury Trust Fund.

8 I. The Tax Commission shall pay, monthly, to the State
9 Treasurer to the credit of the Multiple Injury Trust Fund all monies
10 collected pursuant to the provisions of this section. The State
11 Treasurer shall pay out of the Multiple Injury Trust Fund only upon
12 the order and direction of the Workers' Compensation Commission
13 acting under the provisions hereof.

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

16 K. The Insurance Commissioner shall promulgate rules relating
17 to insurers as defined in Title 36 of the Oklahoma Statutes, as the
18 Insurance Commissioner deems necessary to effectuate the provisions
19 of this section.

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

22 M. The Multiple Injury Trust Fund may enter into an agreement
23 with any reinsurer licensed to sell reinsurance by the Insurance
24 Commissioner pursuant to a competitive process administered by the

1 Director of Central Purchasing in the Office of Management and
2 Enterprise Services.

3 N. Any dividend, rebate, or other distribution, payable by
4 CompSource Oklahoma or any other workers' compensation insurance
5 carrier, to a state agency policyholder shall be paid to the State
6 Treasurer, and shall be credited as follows:

7 1. In the event of failure of the Multiple Injury Trust Fund to
8 meet all lawful obligations, the monies shall be credited to the
9 Multiple Injury Trust Fund and shall be used by the Multiple Injury
10 Trust Fund to meet all lawful obligations of the Multiple Injury
11 Trust Fund; and

12 2. Otherwise, all future dividends made by CompSource Oklahoma
13 or any workers' compensation insurance carrier, on behalf of state
14 agencies, shall be deposited to the credit of the General Revenue
15 Fund of the State Treasury.

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

18 P. The person serving as the Administrator of the Multiple
19 Injury Trust Fund on the date of passage and approval of ~~this act~~
20 the Administrative Workers' Compensation Act shall serve as the
21 initial MITF Director, provided such person is serving as the
22 Administrator of the Multiple Injury Trust Fund on ~~the effective~~
23 ~~date of this act~~ February 1, 2014. The MITF Director shall be
24 appointed by and serve at the pleasure of the Governor.

1 Q. Any party interested shall have a right to bring a
2 proceeding in the Supreme Court to review an award of the Commission
3 affecting such Multiple Injury Trust Fund, in the same manner as is
4 provided by law with reference to other awards by the Commission.

5 R. The State Treasurer shall allocate to the Commission out of
6 the Multiple Injury Trust Fund sufficient funds for administration
7 expenses thereof in amounts to be fixed and approved by the
8 Administrator for the Multiple Injury Trust Fund, unless rejected by
9 the Commission.

10 SECTION 13. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 36.1 of Title 85A, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Any person who is not required to be covered under a
14 workers' compensation insurance policy or other plan for the payment
15 of workers' compensation may execute an Affidavit of Exempt Status
16 under the Administrative Workers' Compensation Act. The affidavit
17 shall be a form prescribed by the Workers' Compensation Commission
18 and will be available on the Commission's website.

19 B. Execution of the affidavit shall establish a rebuttable
20 presumption that the executor is not an employee for purposes of the
21 Administrative Workers' Compensation Act and therefore shall not be
22 eligible to seek workers' compensation benefits against any
23 contractor.
24

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

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

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

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

13 3. The Commission shall immediately notify the Workers'
14 Compensation Fraud Unit in the Office of the Attorney General of any
15 violations or suspected violations of this section. The Commission
16 shall cooperate with the Fraud Unit in any investigation involving
17 affidavits executed pursuant to this section.

18 F. The Commission may assess a fee not to exceed Fifty Dollars
19 (\$50.00) for an Affidavit of Exempt Status Application. Fees
20 collected pursuant to this section shall be deposited in the State
21 Treasury to the credit of the Workers' Compensation Commission
22 Revolving Fund.

23 G. If an employer relies in good faith on proof of a valid
24 workers' compensation insurance policy issued to a contractor of any

1 tier or on proof of an Affidavit of Exempt Status under this
2 section, the employer shall not be liable for injuries of any
3 employees of the contractor.

4 SECTION 14. AMENDATORY Section 43, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2016, Section 43), is amended to read as
6 follows:

7 Section 43. A. ~~Liability Unaffected.~~ 1. a. ~~The making of~~
8 ~~a claim for compensation against any employer or carrier for the~~
9 ~~injury or death of an employee shall not affect the right of the~~
10 ~~employee, or his or her dependents, to make a claim or maintain an~~
11 ~~action in court against any third party for the injury.~~

12 b. ~~The employer or the employer's carrier shall be~~
13 ~~entitled to reasonable notice and opportunity to join~~
14 ~~in the action.~~

15 c. ~~If the employer or employer's carrier join in the~~
16 ~~action against a third party for injury or death, they~~
17 ~~shall be entitled to a first lien on two-thirds (2/3)~~
18 ~~of the net proceeds recovered in the action that~~
19 ~~remain after the payment of the reasonable costs of~~
20 ~~collection, for the payment to them of the amount paid~~
21 ~~and to be paid by them as compensation to the injured~~
22 ~~employee or his or her dependents.~~

23 2. ~~The commencement of an action by an employee or his or her~~
24 ~~dependents against a third party for damages by reason of an injury~~

1 ~~to which this act is applicable, or the adjustment of any claim,~~
2 ~~shall not affect the rights of the injured employee or his or her~~
3 ~~dependents to recover compensation, but any amount recovered by the~~
4 ~~injured employee or his or her dependents from a third party shall~~
5 ~~be applied as follows:~~

6 a. ~~reasonable fees and costs of collection shall be~~
7 ~~deducted,~~

8 b. ~~the employer or carrier, as applicable, shall receive~~
9 ~~two thirds (2/3) of the remainder of the recovery or~~
10 ~~the amount of the workers' compensation lien,~~
11 ~~whichever is less, and~~

12 c. ~~the remainder of the recovery shall go to the injured~~
13 ~~employee or his or her dependents~~

14 The acceptance of compensation benefits from or the making of a
15 claim for compensation against an employer or insurer for the
16 injury, illness or death of an employee shall not affect the right
17 of the employee or his or her dependents to sue any other party at
18 law for such injury, illness or death. The employer and the carrier
19 shall have an automatic first lien on the amount recovered by the
20 injured employee or his or her dependents or legal representative
21 from a third party, which shall be applied as follows:

22 1. Reasonable costs of collection as approved and allowed by
23 the court in which such action is pending, or by the Workers'
24

1 Compensation Commission in case of settlement without suit, shall be
2 deducted;

3 2. The employer and carrier shall receive the remainder of the
4 recovery or the amount of the workers' compensation lien, whichever
5 is less; and

6 3. Any excess shall belong to the injured employee or his or
7 her dependents.

8 B. Subrogation.

9 1. An employer or carrier liable for compensation under ~~this~~
10 ~~act~~ the Administrative Workers' Compensation Act for the injury or
11 death of an employee shall have the right to maintain an action in
12 tort against any third party responsible for the injury or death.
13 However, the employer or the carrier shall notify the claimant in
14 writing that the claimant has the right to hire a private attorney
15 to pursue any benefits to which the claimant is entitled in addition
16 to the subrogation interest against any third party responsible for
17 the injury or death.

18 2. After reasonable notice and opportunity to be represented in
19 the action has been given to the injured employee, the liability of
20 the third party to the compensation beneficiary shall be determined
21 in the action, as well as the third party's liability to the
22 employer and carrier.

23 3. If the employer recovers against the third party, by suit or
24 otherwise, the injured employee shall be entitled to any amount

1 recovered in excess of the amount that the employer and carrier have
2 paid or are liable for in compensation, after deducting reasonable
3 costs of collection.

4 4. An employer or carrier who is liable for compensation under
5 ~~this act~~ the Administrative Workers' Compensation Act on account of
6 injury or death of an employee shall be entitled to maintain a
7 third-party action against the employer's uninsured motorist
8 coverage or underinsured motorist coverage.

9 SECTION 15. AMENDATORY Section 45, Chapter 208, O.S.L.
10 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
11 Supp. 2016, Section 45), is amended to read as follows:

12 Section 45. A. Temporary Total Disability. 1. If the injured
13 employee is temporarily unable to perform his or her job or any
14 alternative work offered by the employer because of a disability, he
15 or she shall be entitled to receive compensation equal to seventy
16 percent (70%) of the injured employee's average weekly wage per
17 week, but not to exceed ~~seventy percent (70%)~~ of the state average
18 weekly wage, for up to one hundred four (104) weeks. Provided,
19 there shall be no payment for the first three (3) days of the
20 initial period of temporary total disability. If an administrative
21 law judge finds that a ~~consequential~~ subsequent injury has occurred
22 as a direct result of the injury or medical treatment to the part of
23 the body originally injured and that additional time is needed to
24 reach maximum medical improvement, temporary total disability may

1 continue for a period of not more than an additional fifty-two (52)
2 weeks. Such finding shall be based upon a showing of medical
3 necessity by clear and convincing evidence.

4 2. When the injured employee is released from active medical
5 treatment by the treating physician for all body parts found by the
6 Commission to be injured, or in the event that the employee, ~~without~~
7 ~~a valid excuse, misses three consecutive medical treatment~~
8 ~~appointments,~~ fails to comply with medical orders of the treating
9 physician, or otherwise abandons medical care, the employer shall be
10 entitled to terminate temporary total disability by notifying the
11 employee, or if represented, his or her counsel. If, however, an
12 objection to the termination of temporary total disability is filed
13 by the employee within ten (10) days of termination, the Commission
14 shall set the matter within twenty (20) days for a determination if
15 temporary total disability compensation shall be reinstated. The
16 temporary total disability shall remain terminated unless the
17 employee proves the existence of a valid excuse for his or her
18 failure to comply with medical orders of the treating physician or
19 his or her abandonment of medical care. The administrative law
20 judge may appoint an independent medical examiner to determine if
21 further medical treatment is reasonable and necessary. The
22 independent medical examiner shall not provide treatment to the
23 injured ~~worker~~ employee, unless agreed upon by the parties.

24 B. Temporary Partial Disability.

1 1. If the injured employee is temporarily unable to perform his
2 or her job because of a disability, but may perform alternative work
3 offered by the employer, he or she shall be entitled to receive
4 compensation equal to ~~the greater of~~ seventy percent (70%) of the
5 difference between the injured employee's average weekly wage before
6 the injury and his or her weekly wage for performing alternative
7 work after the injury, but only if his or her weekly wage for
8 performing the alternative work is less than the temporary total
9 disability rate. However, the injured employee's actual earnings
10 plus temporary partial disability shall not exceed the temporary
11 total disability rate.

12 2. Compensation under this subsection may not exceed fifty-two
13 (52) weeks.

14 3. If the employee refuses to perform the alternative work
15 offered by the ~~employee~~ employer, he or she shall not be entitled to
16 benefits under ~~subsection A of this section or under~~ this section.

17 C. Permanent Partial Disability.

18 1. If the injured employee has a permanent disability after
19 reaching maximum medical improvement, he or she shall be entitled to
20 receive compensation equal to seventy percent (70%) of the
21 employee's average weekly wage per week, not to exceed Three Hundred
22 Seventy Dollars (\$370.00) per week, for three and one-half (3 1/2)
23 weeks for each percentage point of impairment, but not to exceed the
24

1 earlier of three hundred fifty (350) weeks or the date of the
2 injured employee's death.

3 2. A permanent partial disability award or combination of
4 awards granted an injured ~~worker~~ employee may not exceed a permanent
5 partial disability rating of one hundred percent (100%) to any body
6 part or to the body as a whole. The determination of permanent
7 partial disability shall be the responsibility of the Commission
8 through its administrative law judges. Any claim by an employee for
9 compensation for permanent partial disability must be supported by
10 competent medical testimony of a medical doctor, osteopathic
11 physician, or chiropractor, and shall be supported by objective
12 ~~medical~~ findings, as defined in ~~this act~~ Section 2 of this title.

13 The opinion of the physician shall include employee's percentage of
14 permanent partial disability and whether or not the disability is
15 job-related and caused by the accidental injury or occupational
16 disease. A physician's opinion of the nature and extent of
17 permanent partial disability to parts of the body other than
18 ~~scheduled members must~~ those listed in Section 46 of this title
19 shall be based solely on criteria established by the ~~current edition~~
20 Sixth Edition of the American Medical Association's "Guides to the
21 Evaluation of Permanent Impairment". A copy of any written
22 evaluation shall be sent to both parties within seven (7) days of
23 issuance. Medical opinions addressing compensability and permanent
24 disability must be stated within a reasonable degree of medical

1 certainty. Any party may submit the report of an evaluating
2 physician.

3 ~~2.~~ 3. Permanent partial disability shall not be allowed to a
4 part of the body for which no medical treatment has been received.
5 A determination of permanent partial disability made by the
6 Commission or administrative law judge which is not supported by
7 objective ~~medical~~ findings provided by a treating physician who is a
8 medical doctor, doctor of osteopathy, chiropractor or a qualified
9 independent medical examiner shall be considered an abuse of
10 discretion.

11 ~~3. The examining physician shall not deviate from the Guides~~
12 ~~except as may be specifically provided for in the Guides.~~

13 ~~4. In cases of permanent partial disability, the compensation~~
14 ~~shall be seventy percent (70%) of the employee's average weekly~~
15 ~~wage, not to exceed Three Hundred Twenty-three Dollars (\$323.00) per~~
16 ~~week, for a term not to exceed a total of three hundred fifty (350)~~
17 ~~weeks for the body as a whole.~~

18 ~~5. Except pursuant to settlement agreements entered into by the~~
19 ~~employer and employee, payment of a permanent partial disability~~
20 ~~award shall be deferred and held in reserve by the employer or~~
21 ~~insurance company if the employee has reached maximum medical~~
22 ~~improvement and has been released to return to work by his or her~~
23 ~~treating physician, and then returns to his pre injury or equivalent~~
24 ~~job for a term of weeks determined by dividing the total dollar~~

1 ~~value of the award by seventy percent (70%) of the employee's~~
2 ~~average weekly wage.~~

3 a. ~~The amount of the permanent partial disability award~~
4 ~~shall be reduced by seventy percent (70%) of the~~
5 ~~employee's average weekly wage for each week he works~~
6 ~~in his pre-injury or equivalent job.~~

7 b. ~~If, for any reason other than misconduct as defined in~~
8 ~~Section 2 of this act, the employer terminates the~~
9 ~~employee or the position offered is not the pre-injury~~
10 ~~or equivalent job, the remaining permanent partial~~
11 ~~disability award shall be paid in a lump sum. If the~~
12 ~~employee is discharged for misconduct, the employer~~
13 ~~shall have the burden to prove that the employee~~
14 ~~engaged in misconduct.~~

15 c. ~~If the employee refuses an offer to return to his pre-~~
16 ~~injury or equivalent job, the permanent partial~~
17 ~~disability award shall continue to be deferred and~~
18 ~~shall be reduced by seventy percent (70%) of the~~
19 ~~employee's average weekly wage for each week he~~
20 ~~refuses to return to his pre-injury or equivalent job.~~

21 d. ~~Attorney fees for permanent partial disability awards,~~
22 ~~as approved by the Commission, shall be calculated~~
23 ~~based upon the total permanent partial disability~~
24 ~~award and paid in full at the time of the deferral.~~

1 e. ~~Assessments pursuant to Sections 31, 98, 112 and 165~~
2 ~~of this act shall be calculated based upon the amount~~
3 ~~of the permanent partial disability award and shall be~~
4 ~~paid at the time of the deferral.~~

5 6. If an employee is eligible to receive permanent total
6 disability benefits, he or she may not also receive permanent
7 partial disability benefits.

8 5. An employee may elect to commute the remainder of the
9 permanent partial disability award to which the employee is
10 entitled, including under Section 46 of this title, if the employee
11 has returned to work for at least six months and is earning at least
12 seventy percent (70%) of the employee's average weekly wage at the
13 time of the injury. An employee who elects to commute the permanent
14 partial disability award is not entitled to additional benefits for
15 the injury.

16 6. Previous Disability: The fact that an employee has suffered
17 previous disability or received compensation therefor shall not
18 preclude the employee from compensation for a later accidental
19 personal injury or occupational disease. In the event there exists
20 a previous permanent partial disability, including a previous non-
21 work-related injury or condition which produced permanent partial
22 disability and the same is aggravated or accelerated by an
23 accidental personal injury or occupational disease, compensation for
24 permanent partial disability shall be only for such amount as was

1 caused by such accidental personal injury or occupational disease
2 and no additional compensation shall be allowed for the preexisting
3 disability ~~or impairment~~. Any such reduction shall not apply to
4 temporary total disability, nor shall it apply to compensation for
5 medical treatment.

6 a. If workers' compensation benefits have previously been
7 awarded through settlement or judicial or
8 administrative determination in Oklahoma, the
9 percentage basis of the prior settlement or award
10 shall conclusively establish the amount of permanent
11 partial disability determined to be preexisting. If
12 workers' compensation benefits have not previously
13 been awarded through settlement or judicial or
14 administrative determination in Oklahoma, the amount
15 of preexisting permanent partial disability shall be
16 established by competent evidence.

17 b. In all cases, the applicable reduction shall be
18 calculated as follows:

19 (1) if the preexisting ~~impairment~~ disability is the
20 result of injury sustained while working for the
21 employer against whom workers' compensation
22 benefits are currently being sought, any award of
23 compensation shall be reduced by the current
24 dollar value attributable under the

1 Administrative Workers' Compensation Act to the
2 percentage of permanent partial disability
3 determined to be preexisting. The current dollar
4 value shall be calculated by multiplying the
5 percentage of preexisting permanent partial
6 disability by the compensation rate in effect on
7 the date of the accident or injury against which
8 the reduction will be applied, and

9 (2) in all other cases, the employer against whom
10 benefits are currently being sought shall be
11 entitled to a credit for the percentage of
12 preexisting permanent partial disability.

13 7. No payments on any permanent partial disability order shall
14 begin until payments on any preexisting permanent partial disability
15 orders have been completed.

16 8. The whole body shall represent a maximum of three hundred
17 fifty (350) weeks.

18 ~~9. The permanent partial disability rate of compensation for~~
19 ~~amputation or permanent total loss of use of a scheduled member~~
20 ~~specified in Section 46 of this act shall be seventy percent (70%)~~
21 ~~of the employee's average weekly wage, not to exceed Three Hundred~~
22 ~~Twenty-three Dollars (\$323.00), multiplied by the number of weeks~~
23 ~~set forth for the member in Section 46 of this act, regardless of~~

1 ~~whether the injured employee is able to return to his or her pre-~~
2 ~~injury or equivalent job.~~

3 ~~10. An injured employee who is eligible for permanent partial~~
4 ~~disability under this subsection shall be entitled to receive~~
5 ~~vocational rehabilitation services provided by a technology center~~
6 ~~or public secondary school offering vocational-technical education~~
7 ~~courses, or a member institution of The Oklahoma State System of~~
8 ~~Higher Education, which shall include retraining and job placement~~
9 ~~to restore the employee to gainful employment. Vocational~~
10 ~~rehabilitation services or training shall not extend for a period of~~
11 ~~more than fifty two (52) weeks.~~

12 D. Permanent Total Disability.

13 ~~1. In case of total disability adjudged to be permanent, If the~~
14 ~~injured employee is incapable of earning wages in any employment for~~
15 ~~which the employee may become physically suited and reasonably~~
16 ~~fitted by education, training, experience or vocational~~
17 ~~rehabilitation provided under this act because of a disability, he~~
18 ~~or she shall be entitled to receive compensation equal to seventy~~
19 ~~percent (70%) of the employee's average weekly wages per week, but~~
20 ~~not in excess of the state's average weekly wage, shall be paid to~~
21 ~~the employee during for the continuance duration of the disability~~
22 ~~until such time as the employee reaches the age of maximum Social~~
23 ~~Security retirement benefits or for a period of fifteen (15) years,~~
24 ~~whichever is longer. In the event the ~~claimant~~ employee dies of~~

1 causes unrelated to the injury or illness, benefits shall cease on
2 the date of death. ~~Provided, however, any person entitled to revive~~
3 ~~the action shall receive a one-time lump-sum payment equal to~~
4 ~~twenty-six (26) weeks of weekly benefits for permanent total~~
5 ~~disability awarded the claimant. If more than one person is~~
6 ~~entitled to revive the claim, the lump-sum payment shall be evenly~~
7 ~~divided between or among such persons. In the event the Commission~~
8 ~~awards both permanent partial disability and permanent total~~
9 ~~disability benefits, the permanent total disability award shall not~~
10 ~~be due until the permanent partial disability award is paid in full.~~
11 If otherwise qualified according to the provisions of ~~this act~~ the
12 Administrative Workers' Compensation Act, permanent total disability
13 benefits may be awarded to an employee who has exhausted the maximum
14 period of temporary total disability even though the employee has
15 not reached maximum medical improvement.

16 ~~2. The Commission shall annually review the status of any~~
17 ~~employee receiving benefits for permanent total disability against~~
18 ~~the last employer. The Commission shall require the employee to~~
19 ~~annually file an affidavit under penalty of perjury stating that he~~
20 ~~or she is not and has not been gainfully employed and is not capable~~
21 ~~of gainful employment. Failure to file such affidavit shall result~~
22 ~~in suspension of benefits; provided, however, reinstatement of~~
23 ~~benefits may occur after proper hearing before the Commission.~~

1 E. ~~1. The Workers' Compensation Commission shall hire or~~
2 ~~contract for a Vocational Rehabilitation Director to oversee the~~
3 ~~vocational rehabilitation program of the Commission.~~

4 ~~2. The Vocational Rehabilitation Director shall help injured~~
5 ~~workers return to the work force. If the injured employee is unable~~
6 ~~to return to his or her pre-injury or equivalent position due to~~
7 ~~permanent restrictions as determined by the treating physician, upon~~
8 ~~the request of either party, the Vocational Rehabilitation Director~~
9 ~~shall determine if it is appropriate for a claimant to receive~~
10 ~~vocational rehabilitation training or services, and will oversee~~
11 ~~such training. If appropriate, the Vocational Rehabilitation~~
12 ~~Director shall issue administrative orders, including, but not~~
13 ~~limited to, an order for a vocational rehabilitation evaluation for~~
14 ~~any injured employee unable to work for at least ninety (90) days.~~
15 ~~In addition, the Vocational Rehabilitation Director may assign~~
16 ~~injured workers to vocational rehabilitation counselors for~~
17 ~~coordination of recommended services. The cost of the services~~
18 ~~shall be paid by the employer. All administrative orders are~~
19 ~~subject to appeal to the full Commission.~~

20 ~~3. There shall be a presumption in favor of ordering vocational~~
21 ~~rehabilitation services or training for an eligible injured employee~~
22 ~~under the following circumstances:~~
23
24

- a. ~~if the employee's occupation is truck driver or laborer and the medical condition is traumatic brain injury, stroke or uncontrolled vertigo,~~
- b. ~~if the employee's occupation is truck driver or laborer performing high-risk tasks and the medical condition is seizures,~~
- c. ~~if the employee's occupation is manual laborer and the medical condition is bilateral wrist fusions,~~
- d. ~~if the employee's occupation is assembly-line worker and the medical condition is radial head fracture with surgical excision,~~
- e. ~~if the employee's occupation is heavy laborer and the medical condition is myocardial infarction with congestive heart failure,~~
- f. ~~if the employee's occupation is heavy manual laborer and the medical condition is multilevel neck or back fusions greater than two levels,~~
- g. ~~if the employee's occupation is laborer performing overhead work and the medical condition is massive rotator cuff tears, with or without surgery,~~
- h. ~~if the employee's occupation is heavy laborer and the medical condition is recurrent inguinal hernia following unsuccessful surgical repair,~~

- ~~i. if the employee's occupation is heavy manual laborer and the medical condition is total knee replacement or total hip replacement,~~
- ~~j. if the employee's occupation is roofer and the medical condition is calcaneal fracture, medically or surgically treated,~~
- ~~k. if the employee's occupation is laborer of any kind and the medical condition is total shoulder replacement,~~
- ~~l. if the employee's occupation is laborer and the medical condition is amputation of a hand, arm, leg, or foot,~~
- ~~m. if the employee's occupation is laborer and the medical condition is tibial plateau fracture, pilon fracture,~~
- ~~n. if the employee's occupation is laborer and the medical condition is ankle fusion or knee fusion,~~
- ~~o. if the employee's occupation is driver or heavy equipment operator and the medical condition is unilateral industrial blindness, or~~
- ~~p. if the employee's occupation is laborer and the medical condition is 3-, 4-, or 5-level positive discogram of the cervical spine or lumbar spine, medically treated.~~

~~4. Upon the request of either party, or by order of an administrative law judge, the Vocational Rehabilitation Director shall assist the Workers' Compensation Commission in determining if it is appropriate for a claimant to receive vocational rehabilitation training or services. If appropriate, the administrative law judge shall refer the employee to a qualified expert for evaluation of the practicability of, need for and kind of rehabilitation services or training necessary and appropriate in order to restore the employee to gainful employment. The cost of the evaluation shall be paid by the employer. Following the evaluation, if the employee refuses the services or training ordered by the administrative law judge, or fails to complete in good faith the vocational rehabilitation training ordered by the administrative law judge, then the cost of the evaluation and services or training rendered may, in the discretion of the administrative law judge, be deducted from any award of benefits to the employee which remains unpaid by the employer. Upon receipt of such report, and after affording all parties an opportunity to be heard, the administrative law judge shall order that any rehabilitation services or training, recommended in the report, or such other rehabilitation services or training as the administrative law judge may deem necessary, provided the employee elects to receive such services, shall be provided at the expense of the employer. Except as otherwise provided in this subsection, refusal to accept rehabilitation~~

1 ~~services by the employee shall in no way diminish any benefits~~
2 ~~allowable to an employee.~~

3 ~~5. The administrative law judge may order vocational~~
4 ~~rehabilitation before the injured employee reaches maximum medical~~
5 ~~improvement, if the treating physician believes that it is likely~~
6 ~~that the employee's injury will prevent the employee from returning~~
7 ~~to his or her former employment. In granting early benefits for~~
8 ~~vocational rehabilitation, the Commission shall consider temporary~~
9 ~~restrictions and the likelihood that such rehabilitation will return~~
10 ~~the employee to gainful employment earlier than if such benefits are~~
11 ~~granted after the permanent partial disability hearing in the claim.~~

12 ~~6. Vocational rehabilitation services or training shall not~~
13 ~~extend for a period of more than fifty-two (52) weeks. A request~~
14 ~~for vocational rehabilitation services or training shall be filed~~
15 ~~with the Commission by an interested party not later than sixty (60)~~
16 ~~days from the date of receiving permanent restrictions that prevent~~
17 ~~the injured employee from returning to his or her pre-injury or~~
18 ~~equivalent position.~~

19 ~~7. If rehabilitation requires residence at or near the facility~~
20 ~~or institution which is away from the employee's customary~~
21 ~~residence, reasonable cost of the employee's board, lodging, travel,~~
22 ~~tuition, books and necessary equipment in training shall be paid for~~
23 ~~by the insurer in addition to weekly compensation benefits to which~~
24

1 ~~the employee is otherwise entitled under the Administrative Workers'~~
2 ~~Compensation Act.~~

3 ~~8. During the period when an employee is actively and in good~~
4 ~~faith being evaluated or participating in a retraining or job~~
5 ~~placement program for purposes of evaluating permanent total~~
6 ~~disability status, the employee shall be entitled to receive~~
7 ~~benefits at the same rate as the employee's temporary total~~
8 ~~disability benefits for an additional fifty-two (52) weeks. All~~
9 ~~tuition related to vocational rehabilitation services shall be paid~~
10 ~~by the employer or the employer's insurer on a periodic basis~~
11 ~~directly to the facility providing the vocational rehabilitation~~
12 ~~services or training to the employee. The employer or employer's~~
13 ~~insurer may deduct the amount paid for tuition from compensation~~
14 ~~awarded to the employee~~ Vocational Rehabilitation.

15 1. If the injured employee has a permanent disability after
16 reaching maximum medical improvement and, as a result, is unable to
17 return to his or her pre-injury job or another job that pays at
18 least eighty percent (80%) of the injured employee's pre-injury
19 wages, the injured employee may receive, upon written request no
20 later than thirty (30) days following maximum medical improvement,
21 vocational rehabilitation services provided by a technology center
22 or public secondary school offering vocational-technical education
23 courses, or a member institution of The Oklahoma State System of
24 Higher Education, which shall include retraining and job placement

1 to restore the employee to full-time employment. Vocational
2 rehabilitation services or training shall not extend for a period of
3 more than fifty-two (52) weeks; provided, however, vocational
4 rehabilitation benefits may be extended for an additional fifty-two
5 (52) weeks for good cause shown that additional weeks are necessary
6 to complete training.

7 2. An administrative law judge may order vocational
8 rehabilitation before the injured employee reaches maximum medical
9 improvement if the treating physician believes that it is likely
10 that the employee will ultimately be eligible.

11 3. If vocational rehabilitation requires residence at or near
12 the facility or institution which is away from the employee's
13 customary residence, reasonable cost of the employee's board,
14 lodging, travel, tuition, books and necessary equipment in training
15 shall be paid by the employer in addition to weekly compensation
16 benefits to which the employee is otherwise entitled.

17 F. Disfigurement.

18 1. If an injured employee incurs serious and permanent
19 disfigurement to any part of the body, the Commission may award
20 compensation to the injured employee in an amount not to exceed
21 Fifty Thousand Dollars (\$50,000.00).

22 2. No award for disfigurement shall be entered until twelve
23 (12) months after the injury.
24

1 3. An injured employee shall not be entitled to compensation
2 under this subsection if he or she receives an award for permanent
3 partial disability to the same part of the body.

4 ~~G. Benefits for a single-event injury shall be determined by~~
5 ~~the law in effect at the time of injury. Benefits for a cumulative~~
6 ~~trauma injury or occupational disease or illness shall be determined~~
7 ~~by the law in effect at the time the employee knew or reasonably~~
8 ~~should have known that the injury, occupational disease or illness~~
9 ~~was related to work activity. Benefits for death shall be~~
10 ~~determined by the law in effect at the time of death.~~

11 SECTION 16. AMENDATORY Section 46, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2016, Section 46), is amended to read as
13 follows:

14 Section 46. A. ~~An~~ In lieu of compensation provided pursuant to
15 paragraph 1 of subsection C of Section 45 of this title, an injured
16 employee who is entitled to receive permanent partial disability
17 compensation under Section 45 of this act suffers amputation or
18 permanent total loss of use as described in this subsection shall
19 receive compensation for each part of the body in accordance with
20 equal to seventy percent (70%) of the employee's average weekly wage
21 per week, not to exceed Three Hundred Seventy Dollars (\$370.00) per
22 week, for the number of weeks for the scheduled loss set forth
23 below. as follows:

- 1 1. Arm amputated at the elbow, or between the elbow and
2 shoulder, two hundred seventy-five (275) weeks;
- 3 2. Arm amputated between the elbow and wrist, two hundred
4 twenty (220) weeks;
- 5 3. Leg amputated at the knee, or between the knee and the hip,
6 two hundred seventy-five (275) weeks;
- 7 4. Leg amputated between the knee and the ankle, two hundred
8 twenty (220) weeks;
- 9 5. Hand amputated, two hundred twenty (220) weeks;
- 10 6. Thumb amputated, sixty-six (66) weeks;
- 11 7. First finger amputated, thirty-nine (39) weeks;
- 12 8. Second finger amputated, thirty-three (33) weeks;
- 13 9. Third finger amputated, twenty-two (22) weeks;
- 14 10. Fourth finger amputated, seventeen (17) weeks;
- 15 11. Foot amputated, two hundred twenty (220) weeks;
- 16 12. Great toe amputated, thirty-three (33) weeks;
- 17 13. Toe other than great toe amputated, eleven (11) weeks;
- 18 14. Eye enucleated, in which there was useful vision, two
19 hundred seventy-five (275) weeks;
- 20 15. Loss of hearing of one ear, one hundred ten (110) weeks;
- 21 16. Loss of hearing of both ears, three hundred thirty (330)
22 weeks; and
- 23 17. Loss of one testicle, fifty-three (53) weeks; loss of both
24 testicles, one hundred fifty-eight (158) weeks.

1 ~~B. The permanent partial disability rate of compensation for~~
2 ~~amputation or permanent total loss of use of a scheduled member~~
3 ~~specified in this section shall be seventy percent (70%) of the~~
4 ~~employee's average weekly wage, not to exceed Three Hundred Twenty-~~
5 ~~three Dollars (\$323.00), multiplied by the number of weeks as set~~
6 ~~forth in this section, regardless of whether or not the injured~~
7 ~~employee is able to return to his or her pre-injury job.~~

8 ~~C. Other cases: In cases in which the Commission finds an~~
9 ~~injury to a part of the body not specifically covered by the~~
10 ~~foregoing provisions of this section, the employee may be entitled~~
11 ~~to compensation for permanent partial disability. The compensation~~
12 ~~ordered paid shall be seventy percent (70%) of the employee's~~
13 ~~average weekly wage, not to exceed Three Hundred Twenty-three~~
14 ~~Dollars (\$323.00) for the number of weeks which the partial~~
15 ~~disability of the employee bears to three hundred fifty (350) weeks.~~

16 ~~D.~~ 1. Compensation for amputation of the first phalange of a
17 digit shall be one-half (1/2) of the compensation for the amputation
18 of the entire digit.

19 2. Compensation for amputation of more than one phalange of a
20 digit shall be the same as for amputation of the entire digit.

21 ~~E.~~ C. 1. Compensation for the permanent loss of eighty percent
22 (80%) or more of the vision of an eye shall be the same as for the
23 loss of an eye.

1 2. In all cases of permanent loss of vision, the use of
2 corrective lenses may be taken into consideration in evaluating the
3 extent of loss of vision.

4 ~~F.~~ D. Compensation for amputation or loss of use of two or more
5 digits or one or more phalanges of two or more digits of a hand or a
6 foot may be proportioned to the total loss of use of the hand or the
7 foot occasioned thereby but shall not exceed the compensation for
8 total loss of a hand or a foot.

9 ~~G. Compensation for permanent total loss of use of a member~~
10 ~~shall be the same as for amputation of the member.~~

11 ~~H. The sum of all permanent partial disability awards,~~
12 ~~excluding awards against the Multiple Injury Trust Fund, shall not~~
13 ~~exceed three hundred fifty (350) weeks.~~

14 SECTION 17. AMENDATORY Section 56, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2016, Section 56), is amended to read as
16 follows:

17 Section 56. A. If the employer has previously contracted with
18 a certified workplace medical plan, the employer shall select for
19 the injured employee a treating physician from the physicians listed
20 within the network of the certified workplace medical plan. The
21 employee may apply for a change of physician by utilizing the
22 dispute resolution process set out in the certified workplace
23 medical plan on file with the State Department of Health.

1 B. If the employer is not covered by a certified workplace
2 medical plan, the employer shall select the treating physician. The
3 Commission, on application of the employee ~~shall~~ and finding of good
4 cause, may order one change of treating physician, regardless of the
5 number of body parts being treated. An application for change of
6 physician shall not be considered after maximum medical improvement
7 has been reached, or if the employee has not received authorized
8 medical treatment within one hundred and eighty (180) days of the
9 date of the application. Upon the Commission's granting of the
10 application, the employer shall provide a list of three physicians
11 from whom the employee may select the replacement. The employer may
12 identify physicians within the same practice, facility or hospital
13 as the treating physician. The only requirement for the three
14 physicians on the list is that they be licensed and accredited to
15 perform the necessary treatment.

16 SECTION 18. AMENDATORY Section 57, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2016, Section 57), is amended to read as
18 follows:

19 Section 57. A. If an injured employee misses ~~two~~ three or more
20 scheduled appointments for treatment, he or she shall no longer be
21 eligible to receive benefits under ~~this act~~ the Administrative
22 Workers' Compensation Act, unless his or her absence was:

23 1. Caused by extraordinary circumstances beyond the employee's
24 control as determined by the Commission; or

1 2. The employee gave the employer at least two (2) hours prior
2 notice of the absence and had a valid excuse.

3 B. Inability to get transportation to or from the appointment
4 shall not be considered extraordinary circumstances nor a valid
5 excuse for the absence.

6 SECTION 19. AMENDATORY Section 62, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2016, Section 62), is amended to read as
8 follows:

9 Section 62. A. Notwithstanding the provisions of Section 45 of
10 this ~~act~~ title, if an employee suffers a nonsurgical soft tissue
11 injury, temporary total disability compensation shall not exceed
12 ~~eight (8)~~ twelve (12) weeks, regardless of the number of parts of
13 the body to which there is a nonsurgical soft tissue injury. An
14 employee who is treated with an epidural steroid injection ~~or~~
15 ~~injections~~ shall be entitled to an extension of an additional eight
16 (8) weeks, regardless of the number of injections received. An
17 employee who has been recommended by a treating physician for
18 surgery for a soft tissue injury may petition the Workers'
19 Compensation Commission for one extension of temporary total
20 disability compensation and the Commission may order an extension,
21 not to exceed sixteen (16) additional weeks. If the surgery is not
22 performed within thirty (30) days of the approval of the surgery by
23 the employer, its insurance carrier, or an order of the Commission
24 authorizing the surgery, and the delay is caused by the employee

1 acting in bad faith, the benefits for the extension period shall be
2 terminated and the employee shall reimburse the employer any
3 temporary total disability compensation he or she received beyond
4 eight (8) weeks. An epidural steroid injection, or any procedure of
5 the same or similar physical invasiveness, shall not be considered
6 surgery.

7 B. For purposes of this section, ~~"soft:~~ "soft:

8 1. "Soft tissue injury" means damage to one or more of the
9 tissues that surround bones and joints. Soft tissue injury
10 includes, but is not limited to, sprains, strains, contusions,
11 tendonitis and muscle tears. Cumulative trauma is to be considered
12 a soft tissue injury. Soft tissue injury does not include any of
13 the following:

14 ~~1. Injury~~

15 a. injury to or disease of the spine, spinal discs,
16 spinal nerves or spinal cord, where corrective surgery
17 is performed~~+~~ ,

18 ~~2. Brain~~

19 b. brain or closed-head injury as evidenced by:

20 ~~a.~~ (1) sensory or motor disturbances,

21 ~~b.~~ (2) communication disturbances,

22 ~~c.~~ (3) complex integrated disturbances of cerebral
23 function,

24 ~~d.~~ (4) episodic neurological disorders, or

~~e.~~ (5) other brain and closed-head injury conditions at least as severe in nature as any condition provided in subparagraphs a through d of this paragraph~~7,~~ or

~~3. Any~~

c. any joint replacement; and

2. "Surgery" does not include an injection, or the forcing of fluids beneath the skin, for treatment or diagnosis.

SECTION 20. AMENDATORY Section 65, Chapter 208, O.S.L. 2013, as amended by Section 3, Chapter 390, O.S.L. 2015 (85A O.S. Supp. 2016, Section 65), is amended to read as follows:

Section 65. A. If an employee suffers from an occupational disease as defined in this section and is disabled or dies as a result of the disease, the employee, or, in case of death, his or her dependents, shall be entitled to compensation as if the disability or death were caused by injury arising out of work activities within the scope of employment, except as otherwise provided in this section.

B. No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represented himself or herself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise, because of the disease.

1 C. 1. If an occupational disease is aggravated by any other
2 disease or infirmity, not itself compensable, or if disability or
3 death from any other cause, not itself compensable, is aggravated,
4 prolonged, accelerated, or in any way contributed to by an
5 occupational disease, the compensation payable shall be reduced and
6 limited to the proportion ~~only of the compensation that would be~~
7 ~~payable if the occupational disease were the major cause of the~~
8 ~~disability or death as the occupational disease, as a causative~~
9 ~~factor, bears to all the causes of the disability or death~~ that is a
10 compensable injury.

11 2. The reduction in compensation is to be effected by reducing
12 the number of weekly or monthly payments or the amounts of the
13 payments, as under the circumstances of the particular case may be
14 for the best interest of the claimant.

15 D. 1. ~~"Occupational disease", as used in this act, unless the~~
16 ~~context otherwise requires, means any disease that results in~~
17 ~~disability or death and arises out of and in the course of the~~
18 ~~occupation or employment of the employee or naturally follows or~~
19 ~~unavoidably results from an injury as that term is defined in this~~
20 ~~act.~~ A causal connection between the occupation or employment and
21 the occupational disease shall be established by a preponderance of
22 the evidence.

1 2. No compensation shall be payable for any contagious or
2 infectious disease unless contracted in the course and scope of
3 employment.

4 3. No compensation shall be payable for any ordinary disease of
5 life to which the general public is exposed.

6 E. 1. When compensation is payable for an occupational
7 disease, the employer in whose employment the employee was last
8 injuriously exposed to the hazards of the disease and the carrier,
9 if any, on the risk when the employee was last injuriously exposed
10 under the employer shall be liable.

11 2. The amount of the compensation shall be based on the average
12 weekly wage of the employee when last injuriously exposed under the
13 employer, and the notice of injury and claim for compensation shall
14 be given and made to that employer.

15 F. 1. An employer shall not be liable for any compensation for
16 an occupational disease unless:

17 a. the disease is due to the nature of an employment in
18 which the hazards of the disease actually exist and is
19 actually incurred in the course and scope of his or
20 her employment. This includes any disease due to or
21 attributable to exposure to or contact with any
22 radioactive material by an employee in the course and
23 scope of his or her employment,
24

1 b. disablement or death results within three (3) years in
2 case of silicosis or asbestosis, or one (1) year in
3 case of any other occupational disease, except a
4 diseased condition caused by exposure to X-rays,
5 radioactive substances, or ionizing radiation, after
6 the last injurious exposure to the disease in the
7 employment, or

8 c. in case of death, death follows continuous disability
9 from the disease, commencing within the period, for
10 which compensation has been paid or awarded or timely
11 claim made as provided in subparagraph b of this
12 paragraph and results within seven (7) years after the
13 last exposure.

14 2. However, in case of a diseased condition caused by exposure
15 to X-rays, radioactive substances, or ionizing radiation only, the
16 limitations expressed do not apply.

17 SECTION 21. AMENDATORY Section 68, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2016, Section 68), is amended to read as
19 follows:

20 Section 68. A. ~~Unless an~~ An employee ~~gives oral or written~~
21 shall give notice of an injury to the employer within ~~thirty (30)~~
22 fifteen (15) days of the date ~~an~~ on which the injury occurs or, if
23 ~~the rebuttable presumption shall be that the injury was not work-~~
24 ~~related. Such presumption must be overcome by a preponderance of~~

1 ~~the evidence~~ is an occupational disease or cumulative trauma, the
2 date on which the employee knew or should have known that the injury
3 may be related to the employment.

4 B. ~~Unless an~~ If the employee ~~gives oral or written~~ does not
5 give timely notice of an injury to the employer ~~within thirty (30)~~
6 ~~days of the employee's separation from employment,~~ there shall be a
7 rebuttable presumption that ~~an occupational disease or cumulative~~
8 ~~trauma~~ the injury did not arise out of and in the course of
9 ~~employment~~ is not a compensable injury. Such presumption ~~must~~ may
10 be overcome by a preponderance of the evidence. If notice is not
11 timely given but the employee overcomes the presumption that the
12 injury is not compensable, the employee shall not be entitled to
13 receive benefits for the time period before the date on which the
14 employee reported the injury.

15 C. For purposes of this section, if the injury is an
16 occupational disease or cumulative trauma, the employer is the
17 person who employed the employee on the date of the last injurious
18 exposure to the hazards of the disease.

19 SECTION 22. AMENDATORY Section 69, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2016, Section 69), is amended to read as
21 follows:

22 Section 69. A. Time for Filing. 1. A claim for benefits
23 under ~~this act, other than an occupational disease,~~ the
24

1 Administrative Workers' Compensation Act shall be ~~barred unless it~~
2 ~~is~~ filed with the Commission within:

3 a. one (1) year from the date of the injury. ~~If during~~
4 ~~the one-year period following the filing of the claim~~
5 ~~the employee receives no weekly benefit compensation~~
6 ~~and receives no medical treatment resulting from the~~
7 ~~alleged injury, the claim shall be barred thereafter.~~
8 ~~For purposes of this section, the date of the injury~~
9 ~~shall be defined as the date an injury is caused by an~~
10 ~~accident as set forth in paragraph 9 of Section 2 of~~
11 ~~this act.~~

12 b. two (2) years from the date of injury for an
13 occupational disease or cumulative trauma, or

14 c. two (2) years from the date of death;

15 2. ~~a. A claim for compensation for disability on account of~~
16 ~~injury which is either an occupational disease or~~
17 ~~occupational infection shall be barred unless filed~~
18 ~~with the Commission within two (2) years from the date~~
19 ~~of the last injurious exposure to the hazards of the~~
20 ~~disease or infection.~~

21 ~~b. A claim for compensation for disability on account of~~
22 ~~silicosis or asbestosis shall be filed with the~~
23 ~~Commission within one (1) year after the time of~~
24 ~~disablement, and the disablement shall occur within~~

~~three (3) years from the date of the last injurious exposure to the hazard of silicosis or asbestosis.~~

~~e. A claim for compensation for disability on account of a disease condition caused by exposure to X-rays, radioactive substances, or ionizing radiation only shall be filed with the Commission within two (2) years from the date the condition is made known to an employee following examination and diagnosis by a medical doctor.~~

~~3. A claim for compensation on account of death shall be barred unless filed with the Commission within two (2) years of the date of such a death.~~

~~4. If within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim may, on motion and after hearing, be dismissed with prejudice~~ For purposes of this section, the date of injury for an occupational disease or cumulative trauma shall be the date the employee knew or should have known that the injury may be related to the employment.

B. Time for Filing Additional Compensation.

~~1. In cases in which any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the Commission within one (1) year from the date of the last payment of disability~~

1 ~~compensation or two (2) years from the date of the injury, whichever~~
2 ~~is greater~~ If a claim for benefits under this act has been timely
3 filed with the Commission, any claim for additional compensation
4 shall be filed within ninety (90) days of the date that the last
5 benefit was received, except as otherwise prescribed by the treating
6 physician at the time of the last appointment.

7 2. The statute of limitations provided in paragraph 1 of this
8 subsection shall not apply to claims for the replacement of
9 medicine, crutches, ambulatory devices, artificial limbs,
10 eyeglasses, contact lenses, hearing aids, and other apparatus
11 permanently or indefinitely required as the result of a compensable
12 injury, when the employer or carrier previously furnished such
13 medical supplies, but replacement of such items shall not constitute
14 payment of compensation so as to toll the statute of limitations.

15 C. ~~A claim for additional compensation shall specifically state~~
16 ~~that it is a claim for additional compensation. Documents which do~~
17 ~~not specifically request additional benefits shall not be considered~~
18 ~~a claim for additional compensation.~~

19 D. ~~If within six (6) months after the filing of a claim for~~
20 ~~additional compensation no bona fide request for a hearing has been~~
21 ~~made with respect to the claim, the claim shall be dismissed without~~
22 ~~prejudice to the refiling of the claim within the limitation period~~
23 ~~specified in subsection B of this section.~~

1 ~~E. Failure to File. Failure to file a claim within the period~~
2 ~~prescribed in subsection A or B of this section shall not be a bar~~
3 ~~to the right to benefits hereunder unless objection to the failure~~
4 ~~is made at the first hearing on the claim in which all parties in~~
5 ~~interest have been given a reasonable notice and opportunity to be~~
6 ~~heard by the Commission.~~

7 ~~F. Persons under Disability.~~

8 ~~1. Notwithstanding any statute of limitation provided for in~~
9 ~~this act, when it is established that failure to file a claim by an~~
10 ~~injured employee or his or her dependents was induced by fraud, the~~
11 ~~claim may be filed within one (1) year from the time of the~~
12 ~~discovery of the fraud.~~

13 ~~2.~~ Subsections A and B of this section shall not apply to a
14 mental incompetent or minor so long as the person has no guardian or
15 similar legal representative. The limitations prescribed in
16 subsections A and B of this section shall apply to the mental
17 incompetent or minor from the date of the appointment of a guardian
18 or similar legal representative for that person, and when no
19 guardian or similar representative has been appointed, to a minor on
20 reaching the age of majority.

21 ~~G. A latent injury or condition shall not delay or toll the~~
22 ~~limitation periods specified in this section. This subsection shall~~
23 ~~not apply to the limitation period for occupational diseases~~
24 ~~specified in paragraph 2 of subsection A of this section.~~

1 SECTION 23. AMENDATORY Section 71, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 71), is amended to read as
3 follows:

4 Section 71. A. ~~Notice.~~ Within ten (10) days after a an
5 Employee's Notice of Claim for Compensation or other claim for
6 ~~compensation~~ benefits has been filed, the Commission shall notify
7 the employer and any other interested person of the filing of the
8 claim.

9 B. ~~Investigation — Hearing.~~

10 ~~1.~~ The Commission shall assign the claim to an administrative
11 law judge who shall hold a ~~hearing on application of any interested~~
12 ~~party, or on its own motion.~~

13 ~~2.~~ An application for a hearing shall clearly set forth the
14 ~~specific issues of fact or law in controversy and the contentions of~~
15 ~~the party applying for the hearing.~~

16 ~~3.~~ If any party is not represented by a lawyer, the
17 ~~administrative law judge shall define the issues to be heard.~~

18 ~~4.~~ If a hearing on the claim is ordered, the administrative law
19 ~~judge shall give the claimant and other interested parties ten (10)~~
20 ~~days' notice of the hearing served personally on the claimant and~~
21 ~~other parties, or by registered mail. The hearing shall be held in~~
22 ~~Tulsa or Oklahoma County, as determined by the Commission.~~

23 ~~5.~~ The award, together with the statement of the findings of
24 ~~fact and other matters pertinent to the issues, shall be filed with~~

1 ~~the record of the proceedings, and a copy of the award shall~~
2 ~~immediately be sent to the parties in or to counsels of record, if~~
3 any prehearing conference within seven (7) days of filing of the
4 Employee's Notice of Claim for Compensation or other claim for
5 benefits. At the prehearing conference, the claim shall be set for
6 trial at a date no later than sixty (60) days from the date of the
7 prehearing conference.

8 C. Hearings and trials shall not be continued absent
9 extraordinary circumstances as determined by the Commission.

10 D. Evidence and Construction.

11 1. a. At the hearing the claimant and the employer may each
12 present evidence relating to the claim. Evidence may
13 be presented by any person authorized in writing for
14 such purpose. The evidence may include verified
15 medical reports which shall be accorded such weight as
16 may be warranted when considering all evidence in the
17 case.

18 b. Any determination of the existence or extent of
19 physical impairment shall be supported by objective
20 ~~and measurable physical or mental~~ findings.

21 2. When deciding any issue, administrative law judges and the
22 Commission shall determine, on the basis of the record as a whole,
23 whether the party having the burden of proof on the issue has
24 established it by a preponderance of the evidence.

1 3. Administrative law judges, the Commission, and any reviewing
2 courts shall strictly construe the provisions of ~~this act~~ the
3 Administrative Workers' Compensation Act.

4 4. In determining whether a party has met the burden of proof
5 on an issue, administrative law judges and the Commission shall
6 weigh the evidence impartially and without giving the benefit of the
7 doubt to any party.

8 ~~D.~~ E. Judgment. The judgment denying the claim or making the
9 award shall be filed in the office of the Commission, and a copy
10 shall be sent by registered mail, facsimile, electronic mail or by
11 other electronic means with confirmation of receipt to the claimant
12 and to the employer or to their attorneys.

13 ~~E.~~ F. No compensation for disability of an injured employee
14 shall be payable for any period beyond his or her death; provided,
15 however, an award of compensation for disability may be made after
16 the death of the injured employee for the period of disability
17 preceding death.

18 SECTION 24. AMENDATORY Section 78, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2016, Section 78), is amended to read as
20 follows:

21 Section 78. A. Any party feeling aggrieved by the judgment,
22 decision, or award made by the administrative law judge may, within
23 ten (10) days of issuance, appeal to the Workers' Compensation
24 Commission. After hearing arguments, the Commission may reverse or

1 modify the decision only if it determines that the decision was
2 against the clear weight of the evidence or contrary to law. All
3 such proceedings of the Commission shall be recorded by a court
4 reporter, if requested by any party. Any judgment of the Commission
5 which reverses a decision of the administrative law judge shall
6 contain specific findings relating to the reversal.

7 B. The chair of the Commission shall have the authority to
8 appoint an administrative law judge to the en banc panel when any
9 Commissioner of the Commission is disqualified for any reason, to
10 fill a vacancy, or in the absence of a Commissioner. The
11 appointment of an administrative law judge shall be made based on a
12 rotation of administrative law judges, excluding any judge who
13 presided over any of the previous hearings on the claim.

14 C. The appellant shall pay a filing fee of One Hundred Seventy-
15 five Dollars (\$175.00) to the Commission at the time of filing his
16 or her appeal. The fee shall be deposited in the Workers'
17 Compensation Fund.

18 ~~C.~~ D. The judgment, decision or award of the Commission shall
19 be final and conclusive on all questions within its jurisdiction
20 between the parties unless an action is commenced in the Supreme
21 Court of this state to review the judgment, decision or award within
22 twenty (20) days of being sent to the parties. Any judgment,
23 decision or award made by an administrative law judge shall be
24 stayed until all appeal rights have been waived or exhausted. The

1 Supreme Court may modify, reverse, remand for rehearing, or set
2 aside the judgment or award only if it was:

3 1. In violation of constitutional provisions;

4 2. In excess of the statutory authority or jurisdiction of the
5 Commission;

6 3. Made on unlawful procedure;

7 4. Affected by other error of law;

8 5. Clearly erroneous in view of the reliable, material,
9 probative and substantial competent evidence;

10 6. Arbitrary or capricious;

11 7. Procured by fraud; or

12 8. Missing findings of fact on issues essential to the
13 decision.

14 This action shall be commenced by filing with the Clerk of the
15 Supreme Court a certified copy of the judgment, decision or award of
16 the Commission attached to the petition by the complaint which shall
17 specify why the judgment, decision or award is erroneous or illegal.
18 The proceedings shall be heard in a summary manner and shall have
19 precedence over all other civil cases in the Supreme Court, except
20 preferred Corporation Commission appeals. The Supreme Court shall
21 require the appealing party to file within forty-five (45) days from
22 the date of the filing of an appeal or a judgment appealed from, a
23 transcript of the record of the proceedings before the Commission,
24 or such later time as may be granted by the Supreme Court on

1 application and for good cause shown. The action shall be subject
2 to the law and practice applicable to other civil actions cognizable
3 in the Supreme Court.

4 ~~D.~~ E. A fee of One Hundred Dollars (\$100.00) per appeal to the
5 Supreme Court shall be paid to the Commission and deposited in the
6 Workers' Compensation Fund as costs for preparing, assembling,
7 indexing and transmitting the record for appellate review. This fee
8 shall be paid by the party taking the appeal. If more than one
9 party to the action files an appeal from the same judgment, decision
10 or award, the fee shall be paid by the party whose petition in error
11 commences the principal appeal.

12 SECTION 25. AMENDATORY Section 82, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2016, Section 82), is amended to read as
14 follows:

15 Section 82. A. 1. a. Fees for legal services rendered in a
16 claim shall not be valid unless approved by the Commission.

17 b. An attorney representing an injured employee may only
18 recover attorney fees up to ten percent (10%) of any
19 temporary total disability or temporary partial
20 disability compensation and twenty percent (20%) of
21 any permanent partial disability, permanent total
22 disability, or death compensation awarded to an
23 injured employee by the Commission from a controverted
24 claim. If the employer makes a written offer to

1 settle permanent partial disability, permanent total
2 disability, or death compensation and that offer is
3 rejected, the employee's attorney may not recover
4 attorney fees in excess of thirty percent (30%) of the
5 difference between the amount of any award and the
6 settlement offer.

7 (1) Attorney fees may not be collected for recovery
8 on noncontroverted claims.

9 (2) Attorney fees shall not be awarded on medical
10 benefits or services.

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

17 ~~(4) Attorney fees may include not more than ten~~
18 ~~percent (10%) of the value, or reasonable~~
19 ~~estimate thereof, of vocational rehabilitation~~
20 ~~services.~~

21 c. A "controverted claim" means ~~that there has been a~~
22 ~~contested hearing before the Commission over whether~~
23 ~~there has been a compensable injury or whether the~~
24 ~~employee is entitled to~~ a claim where the employer has

1 denied compensability or denied the payment of
2 temporary total disability, temporary partial
3 disability, permanent partial disability, permanent
4 total disability, or death compensation. A request
5 for a change in physician shall not trigger a
6 controverted claim for purposes of recovering any
7 attorney fees except the fees under division 3 of
8 subparagraph b of this paragraph. A controverted
9 claim shall not exist if the employee or his or her
10 representative has withheld pertinent information in
11 his or her possession related to the claim from the
12 employer or has violated the provisions of Section 6
13 of this ~~act~~ title.

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

21 3. In any case where attorney fees are allowed by the
22 Commission, the limitations expressed in subparagraph b of paragraph
23 1 of this subsection shall apply.

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

4 B. An attorney representing an employee under ~~this act~~ the
5 Administrative Workers' Compensation Act may not recover fees for
6 services except as expressly provided in this section.

7 SECTION 26. AMENDATORY Section 98, Chapter 208, O.S.L.
8 2013, as amended by Section 4, Chapter 169, O.S.L. 2014 (85A O.S.
9 Supp. 2016, Section 98), is amended to read as follows:

10 Section 98. The Self-insurance Guaranty Fund shall be derived
11 from the following sources:

12 1. Any unexpended funds, including interest thereon, held by
13 the State Treasurer in the Workers' Compensation Self-insurance
14 Guaranty Fund transferred to the Self-insurance Guaranty Fund as
15 provided in Section 124 of this title;

16 2. ~~Until~~ In the event the Self-insurance Guaranty Fund ~~contains~~
17 ~~Two Million Dollars (\$2,000,000.00) or in the event the amount in~~
18 ~~the fund falls below One Million Dollars (\$1,000,000.00)~~ Eight
19 Hundred Thousand Dollars (\$800,000.00), an assessment levied by the
20 Commission against each private self-insurer and group self-
21 insurance association based on an assessment rate to be determined
22 by the commissioners, not exceeding ~~one percent (1%)~~ two percent
23 (2%) per annum of actual paid losses of the self-insurer during the
24 preceding calendar year, payable to the Tax Commission for deposit

1 to the fund. The assessment against private self-insurers shall be
2 determined using a rate equal to the proportion that the deficiency
3 in the fund attributable to private self-insurers bears to the
4 actual paid losses of all private self-insurers for the year period
5 of January 1 through December 31 preceding the assessment. The
6 assessment against group self-insurance associations shall be
7 determined using a rate equal to the proportion that the deficiency
8 in excess of the surplus of the Group Self-Insurance Association
9 Guaranty Fund at the date of the transfer attributable to group
10 self-insurance associations bears to the actual paid losses of all
11 group self-insurance associations cumulatively for any calendar year
12 preceding the assessment. Each self-insurer shall provide the
13 Workers' Compensation Commission with such information as the
14 Commission may determine is necessary to effectuate the purposes of
15 this paragraph. For purposes of this paragraph, "actual paid
16 losses" means all medical and indemnity payments, including
17 temporary disability, permanent disability, and death benefits, and
18 excluding loss adjustment expenses and reserves.

19 a. The assessment shall be paid within thirty (30)
20 calendar days after the date the commissioners notify
21 the self-insurer of the assessment.

22 b. A private employer or group self-insurance association
23 which ceases to be a self-insurer shall remain liable
24 for any and all assessments of the self-insurer as

1 provided in this paragraph based on actual paid losses
2 for the calendar year period preceding the assessment.

3 c. Failure of a self-insurer to pay, or timely pay, an
4 assessment required by this paragraph, or to report
5 payment of the same to the Commission within ten (10)
6 days of payment, shall be grounds for revocation by
7 the Commission of the self-insurer's permit to self-
8 insure in this state, after notice and hearing. A
9 former self-insurer failing to make payments required
10 by this paragraph promptly and correctly, or failing
11 to report payment of the same to the Commission within
12 ten (10) days of payment, shall be subject to
13 administrative penalties as allowed by law, including
14 but not limited to, a fine in the amount of Five
15 Hundred Dollars (\$500.00) or an amount equal to one
16 percent (1%) of the unpaid amount, whichever is
17 greater, to be paid and deposited to the credit of the
18 Workers' Compensation Fund created in Section 28 of
19 this title. It shall be the duty of the Tax
20 Commission to collect the assessment provided for in
21 this paragraph. The Tax Commission is authorized to
22 bring an action for recovery of any delinquent or
23 unpaid assessments, and may enforce payment of the
24

1 assessment by proceeding in accordance with Section 79
2 of this title.

3 d. An impaired self-insurer shall be exempt from
4 assessments beginning on the date of the Commission's
5 designation until the Commission determines the self-
6 insurer is no longer impaired.

7 e. The Tax Commission shall determine the fund balance as
8 of March 1 and September 1 of each year, and when
9 otherwise requested by the Workers' Compensation
10 Commission, and shall advise the Workers' Compensation
11 Commission in writing within thirty (30) days of each
12 such determination; ~~and~~

13 3. Any excess funds, including interest thereon, transferred to
14 the Self-insurance Guaranty Fund as provided in subsection D of
15 Section 99 of this title; and

16 4. Any interest accruing on monies paid into the fund.

17 SECTION 27. AMENDATORY Section 99, Chapter 208, O.S.L.
18 2013, as amended by Section 5, Chapter 169, O.S.L. 2014 (85A O.S.
19 Supp. 2016, Section 99), is amended to read as follows:

20 Section 99. A. On determination by the Workers' Compensation
21 Commission that a self-insurer has become an impaired self-insurer,
22 the Commission shall promptly secure release of the security
23 required by Section 38 of this title ~~and~~, advise the Self-insurance
24 Guaranty Fund Board of the impairment. ~~Claims administration,~~

1 ~~including processing, investigating and paying valid claims against~~
2 ~~an impaired self-insurer under the Administrative Workers'~~
3 ~~Compensation Act, may include payment by the surety that issued the~~
4 ~~surety bond or be under a contract between the Commission and an~~
5 ~~insurance carrier, appropriate state governmental entity or an~~
6 ~~approved service organization, as approved by the Commission and~~
7 transfer the proceeds of the security to the Self-insurance Guaranty
8 Fund Board to be maintained in a segregated interest-bearing
9 division special agency account for administering workers'
10 compensation obligations of the impaired self-insurer. The Self-
11 insurance Guaranty Fund Board shall be the fiduciary of the account.

12 B. Proceeds from the released security, including interest
13 thereon, shall be used by the Board to administer the workers'
14 compensation obligations of the impaired self-insurer. Claims
15 administration includes, but is not limited to, processing,
16 investigating and paying claims, actuarial studies, attorney fees
17 incurred for filing a proof of claim in the bankruptcy of the
18 impaired self-insurer and a pro rata portion of the staff expenses
19 of the Self-insurance Guaranty Fund Board.

20 C. Any unexpended funds, including interest thereon, held by
21 the State Treasurer in an interest-bearing account maintained by the
22 Commission before the effective date of this act from which an
23 impaired self-insurer's workers' compensation obligations are paid,
24 shall be transferred to the Board. Such funds shall be expended by

1 the Board only for the purpose of administering the workers'
2 compensation obligations of the impaired self-insurer and as
3 otherwise authorized in subsection D of this section.

4 D. Except as otherwise provided by law or by agreement of the
5 parties, excess proceeds from the security remaining after each
6 claim for benefits of an impaired self-insurer has been paid,
7 settled or lapsed under the Administrative Workers' Compensation
8 Act, and costs of administration of such claims have been paid, as
9 determined by the Self-insurance Guaranty Fund Board, shall be
10 transferred to the Self-insurance Guaranty Fund by the Board.

11 SECTION 28. AMENDATORY Section 152, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2016, Section 109), is amended to read as
13 follows:

14 Section 109. A. The Workers' Compensation Commission shall
15 establish a workers' compensation counselor or ombudsman program to
16 assist injured workers, employers and persons claiming death
17 benefits in obtaining benefits under this act. A special effort
18 shall be made to equip counselors or ombudsmen with sufficient
19 resources to assist injured workers through the system without the
20 necessity of retaining legal representation.

21 B. Workers' compensation counselors or ombudsmen shall provide
22 information to injured workers; investigate complaints; communicate
23 with employers, insurance carriers, self-insurers, and health care
24 providers; provide informational seminars and workshops on workers'

1 compensation for medical providers, insurance adjustors, and
2 employee and employer groups; and develop informational materials
3 for employees, employers and medical providers.

4 C. The Commission shall ~~mail a notice to the injured worker~~
5 ~~within ten (10) days of the filing of an Employer's First Notice of~~
6 ~~Injury. The notice shall advise the injured worker of~~ publish on
7 its website information on the availability of the services of the
8 Commission's counselor or ombudsman program and of the availability
9 of mediation and other forms of alternative dispute resolution to
10 assist the injured worker. ~~The Commission shall provide additional~~
11 ~~information as the Commission may determine necessary.~~

12 D. The Commission shall develop a program that provides for
13 annual training for own-risk employers and claims representatives
14 handling workers' compensation claims in Oklahoma. The training
15 shall include information about the alternative dispute resolution
16 program, including counselor and ombudsman programs, mediation, and
17 other services provided by the Commission.

18 SECTION 29. AMENDATORY Section 154, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2016, Section 111), is amended to read as
20 follows:

21 Section 111. A. ~~Any claim for any benefit under this act shall~~
22 ~~be commenced with the~~ If any claimant is denied any rights under
23 this act, the claimant may challenge the denial by filing of an
24 Employee's First Notice of Claim for Compensation ~~by the employee~~

1 with the Workers' Compensation Commission. The ~~claim~~ Notice of
2 Claim for Compensation shall ~~contain a~~ be on a form prescribed by
3 the Commission and shall require:

4 1. A description of the alleged injury, including the affected
5 body parts;

6 2. A description of the claim for benefits, including the
7 rights denied by the employer;

8 3. The section of this act which is the basis for the claim;
9 and

10 4. A statement that all matters stated therein are true and
11 accurate and shall be signed by the claimant and the claimant's
12 agent, if any.

13 Any person who signs this statement or causes another to sign
14 this statement knowing the statement to be false shall be guilty of
15 perjury. An individual who signs on behalf of a claimant may be
16 presumed to have the authorization of the claimant and to be acting
17 at the claimant's direction. If the Notice of Claim for
18 Compensation does not contain the information required by this
19 subsection, it shall be rejected by the Commission.

20 B. If an employer controverts any issue related to the
21 Employee's First Notice of Claim for Compensation, the employer
22 shall file a Notice of Contested Issues on a form prescribed by the
23 Commission. All answers and defenses to claims or other documents
24 filed on behalf of a respondent or the respondent's insurer in a

1 workers' compensation case shall contain a statement that all
2 matters stated therein are true and accurate and shall be signed by
3 the respondent, the insurer, or their respective agents, if any.
4 Any person who signs such a statement or causes another to sign such
5 a statement, knowing the statement to be false, shall be guilty of
6 perjury. An individual who signs on behalf of a respondent, its
7 insurer, or its agent may be presumed to have the authorization of
8 the respondent, its insurer or agent and to be acting at their
9 direction.

10 ~~C. Any party shall have the right to request a prehearing~~
11 ~~conference or administrative hearing before the Commission on any~~
12 ~~issue. The Commission shall, within seven (7) days of the receipt~~
13 ~~of such notification, set the matter for prehearing conference or~~
14 ~~administrative hearing at the earliest available time. In the event~~
15 ~~the compensability of a claim is contested, the respondent shall~~
16 ~~complete discovery and secure a medical evaluation of the claimant~~
17 ~~within sixty (60) days of the filing of a request for benefits.~~

18 SECTION 30. AMENDATORY Section 155, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2016, Section 112), is amended to read as
20 follows:

21 Section 112. A. The Workers' Compensation Commission shall
22 create, maintain and review a list of licensed physicians who shall
23 serve as independent medical examiners from a list of licensed
24 physicians who have completed such course study as the Commission

1 may require. An independent medical examiner must agree to examine
2 an employee within forty-five (45) days of appointment. The
3 Commission shall, to the best of its ability, include the most
4 experienced and competent physicians in the specific fields of
5 expertise utilized most often in the treatment of injured employees.
6 The period of qualification shall be two (2) years. Physicians may
7 be qualified for successive two-year periods. Physicians serving as
8 independent medical examiners on the effective date of this act
9 shall serve the remainder of their respective two-year qualification
10 periods and may reapply for successive qualification periods. The
11 Commission may remove an independent medical examiner from the list
12 for cause.

13 B. An administrative law judge may appoint an independent
14 medical examiner to assist in determining any issue before the
15 Commission. In the event surgery is recommended by a treating
16 physician, upon request of the employer, an independent medical
17 examiner shall be appointed to determine the reasonableness and
18 necessity of the recommended surgery. Such independent medical
19 examiner shall be qualified to perform the type of surgery
20 recommended.

21 C. An independent medical examiner shall be selected from ~~the a~~
22 ~~list of independent medical examiners within ten (10) days when the~~
23 ~~employer or the employee petitions the Commission for the selection~~
24 ~~of an independent medical examiner. The independent medical~~

1 ~~examiner shall be certified by a recognized specialty board in the~~
2 ~~area or areas appropriate to the condition under review. Each~~
3 ~~independent medical examiner shall be added to a list from which~~
4 ~~assignments for independent reviews are made in order of the date of~~
5 ~~registration of the physician with the Commission as an independent~~
6 ~~medical examiner. Upon order from the administrative law judge, the~~
7 ~~Commission shall assign independent medical examiners~~
8 ~~chronologically from the list of independent medical examiners, with~~
9 ~~assignment to the first physician on the list who is certified by a~~
10 ~~recognized specialty board in the area or areas appropriate to the~~
11 ~~condition under review and who has no apparent conflicts of~~
12 ~~interest. Upon assignment, the independent medical examiner's name~~
13 ~~shall move to the end of the list. If an independent medical~~
14 ~~examiner is not selected for a specific case because of lack of~~
15 ~~proper certification or existence of a conflict of interest, the~~
16 ~~independent medical examiner's name shall not move to the end of the~~
17 ~~list.~~

18 D. The Commission shall, to the best of its ability, maintain a
19 geographic balance of independent medical examiners.

20 E. Counsel for the employee and employer are responsible for
21 transmittal of the employee's medical records to the independent
22 medical examiner within ten (10) days of appointment.

23 F. After a physical examination and review of medical records
24 and other appropriate information, including depositions and

1 surveillance video, the independent medical examiner shall submit a
2 verified written report to the Commission and to the parties. In
3 the event the independent medical examiner determines that more
4 medical treatment is necessary, the employer shall designate a
5 treating physician to provide the indicated treatment.

6 G. Any independent medical examiner selected pursuant to the
7 provisions of this section shall be reimbursed for the medical
8 examination, reports and fees in a reasonable and customary amount
9 set by the Commission, and these costs shall be borne by the
10 employer.

11 H. The Commission shall create a review process to oversee on a
12 continuing basis the quality of performance and the timeliness of
13 the submission of medical findings by independent medical examiners.

14 I. If the Commission does not follow the opinion of the
15 independent medical examiner on any issue, the administrative law
16 judge or member of the Board of Review shall set out its reasons for
17 deviating from the opinion of the independent medical examiner. The
18 opinion of the independent medical examiner shall be followed unless
19 there is clear and convincing evidence to the contrary.

20 J. Upon receipt of an independent medical examiner's report,
21 any party shall have the right to object to the introduction of the
22 report into evidence. The objection must be made by giving written
23 notification to all parties and to the Commission within ten (10)
24 days after receipt of the report. The employer shall be responsible

1 for the reasonable charges of the physician for such testimony,
2 preparation time, and the expense of the deposition.

3 SECTION 31. AMENDATORY Section 158, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 115), is amended to read as
5 follows:

6 Section 115. A. If the employee and employer shall reach an
7 agreement for the full, final and complete settlement of any issue
8 of a claim pursuant to ~~this act~~ the Administrative Workers'
9 Compensation Act, a form designated as "Joint Petition" shall be
10 signed by both the employer and employee, or representatives
11 thereof, and shall be approved by the Workers' Compensation
12 Commission or an administrative law judge, and filed with the
13 Commission. In cases in which the employee is not represented by
14 legal counsel, the Commission or an administrative law judge shall
15 have jurisdiction to approve a full, final and complete settlement
16 of any issue upon the filing of an ~~Employer's First Notice of Injury~~
17 Employee's Notice of Claim for Compensation. There shall be no
18 requirement for the filing of an Employee's First Notice of Claim
19 for Compensation to effect such settlement in cases in which the
20 employee is not represented by legal counsel.

21 B. In the event all issues of a claim are not fully, finally
22 and completely settled by a Joint Petition, the issues not settled
23 by the parties and subject to the Commission's continuing
24 jurisdiction must be noted by appendix to the Joint Petition or on a

1 form created for such purpose by the Commission. The appendix must
2 be signed by the parties and approved by the Commission as set forth
3 herein.

4 C. In the absence of fraud, a Joint Petition shall be deemed
5 binding upon the parties thereto and a final adjudication of all
6 rights pursuant to ~~this act~~ the Administrative Workers' Compensation
7 Act or the workers' compensation law in effect at the time of the
8 injury or final order of the Workers' Compensation Court. An
9 official record shall be made by an official Commission reporter of
10 the testimony taken to effect the Joint Petition.

11 D. A good-faith effort shall be made on the part of any
12 insurance carrier, CompSource Oklahoma, or group self-insured plan
13 to notify an insured employer of the possibility of and terms of any
14 settlement of a workers' compensation case pursuant to this section.
15 Written comments or objections to settlements shall be filed with
16 the Commission and periodically shared with the management of the
17 applicable insurer. A written notice shall be made to all
18 policyholders of their right to a good-faith effort by their insurer
19 to notify them of any proposed settlement, if the policyholder so
20 chooses.

21 SECTION 32. AMENDATORY Section 163, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2016, Section 120), is amended to read as
23 follows:
24

1 Section 120. A. Except as otherwise provided by state or
2 federal law and subject to the provisions of this section, an
3 employer may inquire about previous workers' compensation claims
4 paid to an employee while the employee was employed by a previous
5 employer. If the employee fails to answer truthfully about any
6 previous permanent partial disability awards made pursuant to
7 workers' compensation claims, the employee shall be subject to
8 discharge by the employer.

9 B. 1. All requests made ~~to the Workers' Compensation~~
10 ~~Commission~~ for information on prior workers' compensation claims
11 involving a worker, including written inquiries about prior claims
12 and requests to access a worker's compensation claim file, must be
13 in writing, on a form prescribed by the Commission, and accompanied
14 by a fee of One Dollar (\$1.00) per search request, not to exceed One
15 Dollar (\$1.00) per claims record of a particular worker. The fee
16 shall be deposited to the credit of the Workers' Compensation
17 Commission Revolving Fund. The form shall require identification of
18 the person requesting the information, and the person for whom a
19 search is being made if different from the requester. The form must
20 contain an affidavit signed by the requester under penalty of
21 perjury that the information sought is not requested for a purpose
22 in violation of state or federal law. The form must be used by all
23 repositories of archived Court claim files. All request forms shall
24 be maintained by the Commission as a public record, together with a

1 record of a worker's written authorization permitting a search
2 indexed by the worker's social security number as required by
3 Section 3113 of Title 74 of the Oklahoma Statutes. The request
4 forms and authorizations shall be indexed alphabetically by the last
5 name of the worker.

6 2. This subsection shall not apply:

- 7 a. to requests for claims information made by a public
8 officer or by a public employee in the performance of
9 his or her duties on behalf of a governmental entity
10 or as may be allowed by law,
- 11 b. to requests for claims information made by an insurer,
12 self-insured employer, third-party claims
13 administrator, or a legal representative thereof, when
14 necessary to process or defend a workers' compensation
15 claim,
- 16 c. when a worker or the worker's representative requests
17 review of the worker's claims information,
- 18 d. when the disclosure is made for educational or
19 research purposes and in such a manner that the
20 disclosed information cannot be used to identify any
21 worker who is the subject of a claim,
- 22 e. to requests for claims information made by a health
23 care or rehabilitation provider or the provider's
24 legal representative when necessary to process payment

1 of health care or rehabilitation services rendered to
2 a worker, and

3 f. to requests for claims information made by an employer
4 or personnel service company, including but not
5 limited to an individual or entity, where the worker
6 executes a written authorization permitting the search
7 and designating the employer or personnel service
8 company as the worker's representative for that
9 purpose; however, nothing in this subparagraph shall
10 relieve the employer or personnel service company from
11 complying with the requirements of utilizing the form
12 set forth in paragraph 1 of this subsection.

13 SECTION 33. REPEALER Sections 36, 60, 61, 63, 67, 80,
14 159 and 160, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2016, Sections
15 36, 60, 61, 63, 67, 80, 116 and 117), are hereby repealed.

16 SECTION 34. This act shall become effective November 1, 2017.
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