

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 2367

By: Kannady

COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending Section 2, Chapter 208, O.S.L. 2013, as amended by Section 1, Chapter 150, O.S.L. 2018 (85A O.S. Supp. 2018, Section 2), which relates to definitions in the Administrative Workers' Compensation Act; modifying definitions; amending Sections 3 and 5, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 3 and 5), which relate to the Administrative Workers' Compensation Act; specifying application of the Administrative Workers' Compensation Act; modifying scope of immunity; amending Section 6, Chapter 208, O.S.L. 2013, as amended by Section 1, Chapter 390, O.S.L. 2015 (85A O.S. Supp. 2018, Section 6), which relates to crimes in violation of the Administrative Workers' Compensation Act; eliminating certain notice requirement; amending Section 7, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 7), which relates to discrimination or retaliation; modifying procedure for determination of discrimination or retaliation; amending Sections 13 and 14, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 13 and 14), which relate to specific types of injury or illness; modifying scope of certain exception related to mental illness; modifying compensation for employees with mental injury or illness; eliminating prohibition against consideration of physical or mental stress in determining if burden of proof is met in certain circumstances; amending Section 16, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 16), which relates to Official Disability Guidelines; making Guidelines mandatory; authorizing deviation in certain circumstances; amending Section 18, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018,

1 Section 18), which relates to billing and collection
2 of fees for services; expanding methods of providing
3 notice; amending Sections 19, as amended by Section
4 4, House Joint Resolution No. 1096, page 1745, O.S.L.
5 2014, 20 and 21, Chapter 208, O.S.L. 2013 (85A O.S.
6 Supp. 2018, Sections 19, 20 and 21), which relate to
7 the Workers' Compensation Commission; eliminating
8 salary restriction; providing for private meetings;
9 specifying purposes and requirements; correcting name
10 of certain fund; clarifying scope of authority;
11 amending Sections 22 and 27, Chapter 208, O.S.L. 2013
12 (85A O.S. Supp. 2018, Sections 22 and 27), which
13 relate to administration of the Administrative
14 Workers' Compensation Act; modifying powers and
15 duties of the Workers' Compensation Commission;
16 amending Section 29, Chapter 208, O.S.L. 2013 (85A
17 O.S. Supp. 2018, Section 29), which relates to
18 certain fees; clarifying that fees are annual fees;
19 expanding authority of the Commission to assess fees;
20 providing requirements for case management services,
21 stenographic services and language interpreter
22 services; providing scope of authority for certain
23 court reporters; amending Sections 38, 40 and 43,
24 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018,
Sections 38, 40 and 43), which relate to securing
workers' compensation for employees; changing certain
rule-making authority; authorizing the Commission to
award compensation in certain instances in which an
employer has failed to secure compensation; modifying
scope of actions against third parties; modifying
lien and subrogation rights; amending Sections 45, as
amended by Section 2, Chapter 390, O.S.L. 2015 and
46, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018,
Sections 45 and 46), which relate to disability;
modifying temporary total and temporary partial
disability compensation and permanent partial
disability compensation rates; authorizing employers
to recover overpayment of temporary total disability
payments; modifying termination period for certain
temporary total disability payments; providing that
actual earnings plus temporary partial disability
compensation shall not exceed temporary total
disability rate; authorizing the Commission to select
alternative evaluation method for determination of
permanent partial disability; modifying what
constitutes objective medical findings in certain
circumstances; making hiring or contracting for a

1 Vocational Rehabilitation Director discretionary;
2 eliminating specified duties of the Vocational
3 Rehabilitation Director; increasing maximum time
4 allowed for vocational rehabilitation or training;
5 eliminating authorization to deduct vocational
6 rehabilitation tuition for compensation award;
7 providing exception to waiting period for
8 disfigurement awards; amending Section 47, Chapter
9 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 47),
10 which relates to beneficiaries after death of injured
11 employee; changing entity making determination of
12 common law spouse; amending Sections 50, 53 and 57,
13 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018,
14 Sections 50, 53 and 57), which relate to medical
15 treatment; authorizing administrative law judges to
16 order employers to provide detoxification treatment;
17 providing consequences if employee refuses
18 detoxification treatment; providing procedure for
19 travel reimbursement; authorizing penalty for failure
20 to reimburse; requiring approval of new Fee Schedule
21 by a certain date; providing requirement for new Fee
22 Schedule; providing that employers and insurance
23 carriers have right to audit or question medical
24 treatment for which they are billed; clarifying basis
for charges for drugs and compounded medications;
providing for certain surgeries; modifying process
for selecting physician in certain circumstances;
modifying circumstances which bar the right to
receive temporary total disability payments or
terminate such payments; amending Section 60, Chapter
208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 60),
which relates to evaluation of permanent disability;
modifying reference to title of the Director of the
Commission; amending Section 62, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2018, Section 62), which relates
to soft tissue injuries; modifying what constitutes
injections and soft tissue injuries; amending
Sections 63, 65, as amended by Section 3, Chapter
390, O.S.L. 2015, 66, 67, 69, 71, 78, 80, 82, 86, 87
and 89, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
2018, Sections 63, 65, 66, 67, 69, 71, 78, 80, 82,
86, 87 and 89), which relate to procedure after
injury; making certain reports confidential;
modifying circumstances for which an employer is
liable for compensation for an occupational disease;
modifying standard of evidence for silicosis and
asbestosis claims; eliminating certain authority of

1 the Commission regarding employees affected by
2 silicosis or asbestosis; eliminating certain review
3 and compensation modification; modifying times for
4 filing; providing for dismissals; expanding methods
5 for certain notice; providing for certain reviver
6 action after death of injured employee; clarifying
7 name of certain fund; providing for continuation of
8 prescribed drugs during appeals process; providing
9 for reimbursement to employer in certain
10 circumstances; modifying procedure and requirements
11 for review of compensation rulings; placing
12 limitations on review; providing responsibility for
13 payment of legal fees and litigation expenses;
14 modifying definition; modifying authority of attorney
15 to recover fees for services; making employer's
16 filing to controvert claim discretionary; clarifying
17 result of filing of joint petition; prohibiting
18 deduction of certain wages from benefits; amending
19 Section 90, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
20 2018, Section 90), which relates to bond or other
21 deposit requirements; limiting Supreme Court review
22 unless certain requirements are met; exempting
23 political subdivisions from certain bond
24 requirements; amending Section 94, Chapter 208,
O.S.L. 2013 (85A O.S. Supp. 2018, Section 94), which
relates to incarcerated employees; clarifying benefit
that the employees are not eligible for; amending
Section 101, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
2018, Section 101), which relates to certain reports
and electronic data; modifying time for
implementation of electronic data interchange system;
amending Section 105, Chapter 208, O.S.L. 2013 (85A
O.S. Supp. 2018, Section 105), which relates to
prohibited activities for the Commission and
Commission personnel; authorizing certain testimony;
amending Section 152, Chapter 208, O.S.L. 2013 (85A
O.S. Supp. 2018, Section 109), which relates to the
workers' compensation counselor or ombudsman program;
modifying method of notification of program;
eliminating the authority of the Commission to
provide additional information regarding program;
amending Section 158, Chapter 208, O.S.L. 2013 (85A
O.S. Supp. 2018, Section 115), which relates to joint
petitions for settlement; correcting references;
requiring filing of memorandum of agreement; amending
Sections 161 and 162, Chapter 208, O.S.L. 2013 (85A
O.S. Supp. 2018, Sections 118 and 119), which relate

1 to fees; modifying scope of fee requirement;
2 correcting statutory references to certain fund;
3 amending Section 163, Chapter 208, O.S.L. 2013 (85A
4 O.S. Supp. 2018, Section 120), which relates to
5 inquiries about compensation claims; modifying scope
6 of certain requests; correcting statutory reference
7 to certain fund; amending Section 164, Chapter 208,
8 O.S.L. 2013 (85A O.S. Supp. 2018, Section 121), which
9 relates to the Advisory Council on Workers'
10 Compensation; modifying duties of the Council;
11 amending Section 165, Chapter 208, O.S.L. 2013, as
12 amended by Section 4, Chapter 344, O.S.L. 2015 (85A
13 O.S. Supp. 2018, Section 122), which relates to tax
14 rates and distribution of certain funds; modifying
15 certain funding amounts; amending Section 167,
16 Chapter 208, O.S.L. 2013, as amended by Section 7,
17 Chapter 169, O.S.L. 2014 (85A O.S. Supp. 2018,
18 Section 124), which relates to transfers from the
19 Workers' Compensation Court; modifying transfer;
20 requiring the Workers' Compensation Court of Existing
21 Claims to pay certain expenses; amending Sections
22 121, 125, 126, 128, 133, 134, 135, 137, 139, 141,
23 142, 143, 144 and 148, Chapter 208, O.S.L. 2013 (85A
24 O.S. Supp. 2018, Sections 300, 304, 305, 307, 312,
313, 314, 316, 318, 320, 321, 322, 323 and 327),
which relate to the Workers' Compensation Arbitration
Act; updating statutory references; amending Section
169, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018,
Section 400), which relates to the Workers'
Compensation Court of Existing Claims; modifying
certain terms of office; modifying procedure for
filling vacancies; eliminating the authority of the
Workers' Compensation Commission to appoint
administrative law judges to assist the Court when
vacancies occur on the Court; providing duties and
authority of Presiding Judge; eliminating procedure
whereby rulings of the Court are appealable to the
Commission; providing appeal procedure; eliminating
certain duties of administrative law judges; amending
25 O.S. 2011, Section 307, as last amended by Section
1, Chapter 252, O.S.L. 2018 (25 O.S. Supp. 2018,
Section 307), which relates to the Oklahoma Open
Meeting Act; authorizing the Workers' Compensation
Commission to hold executive sessions for specified
purposes; repealing Section 15, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2018, Section 15), which relates
to reports regarding funding needs for the Workers'

1 Compensation Fraud Investigation Unit; repealing
2 Sections 107, 108, 109, 110, as amended by Section 4,
3 Chapter 390, O.S.L. 2015, 111, 112, as amended by
4 Section 5, Chapter 390, O.S.L. 2015, 113, 114, 115,
5 116, 117, 118, as amended by Section 6, Chapter 390,
6 O.S.L. 2015, 119 and 120, Chapter 208, O.S.L. 2013
7 (85A O.S. Supp. 2018, Sections 200, 201, 202, 203,
8 204, 205, 206, 207, 208, 209, 210, 211, 212 and 213),
9 which relate to the Oklahoma Employee Injury Benefit
10 Act; providing for codification; and declaring an
11 emergency.

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

13 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
14 2013, as amended by Section 1, Chapter 150, O.S.L. 2018 (85A O.S.
15 Supp. 2018, Section 2), is amended to read as follows:

16 Section 2. As used in the Administrative Workers' Compensation
17 Act:

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

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

3. "Case management" means the ongoing coordination, by a case
manager, of health care services provided to an injured or disabled
worker, including but not limited to systematically monitoring the

1 treatment rendered and the medical progress of the injured or
2 disabled worker; ensuring that any treatment plan follows all
3 appropriate treatment protocols, utilization controls and practice
4 parameters; assessing whether alternative health care services are
5 appropriate and delivered in a cost-effective manner based upon
6 acceptable medical standards; and ensuring that the injured or
7 disabled worker is following the prescribed health care plan;

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

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

22 5. "Certified workplace medical plan" means an organization of
23 health care providers or any other entity, certified by the State
24 Commissioner of Health, that is authorized to enter into a

1 contractual agreement with an employer, group self-insurance
2 association plan, an employer's workers' compensation insurance
3 carrier, third-party administrator or an insured to provide medical
4 care under the Administrative Workers' Compensation Act. Certified
5 plans shall only include plans which provide medical services and
6 payment for services on a fee-for-service basis to medical
7 providers;

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

21 7. "Claimant" means a person who claims benefits for an injury
22 or occupational disease pursuant to the provisions of the
23 Administrative Workers' Compensation Act;

24 8. "Commission" means the Workers' Compensation Commission;

1 9. a. "Compensable injury" means damage or harm to the
2 physical structure of the body, mental injury, as
3 limited by Section 13 of this title, or damage or harm
4 to prosthetic appliances, including eyeglasses,
5 contact lenses, or hearing aids, ~~caused solely as the~~
6 ~~result~~ of which the major cause is either an accident,
7 cumulative trauma or occupational disease arising out
8 of the course and scope of employment. An "accident"
9 means an event involving factors external to the
10 employee that:

- 11 (1) was unintended, unanticipated, unforeseen,
12 unplanned and unexpected,
13 (2) occurred at a specifically identifiable time and
14 place,
15 (3) occurred by chance or from unknown causes, ~~and~~ or
16 (4) was independent of sickness, mental incapacity,
17 bodily infirmity or any other cause.

18 b. "Compensable injury" does not include:

- 19 (1) injury to any active participant in assaults or
20 combats which, although they may occur in the
21 workplace, are the result of non-employment-
22 related hostility or animus of one, both, or all
23 of the combatants and which assault or combat
24 amounts to a deviation from customary duties;

provided, however, injuries caused by horseplay shall not be considered to be compensable injuries, except for innocent victims,

(2) injury incurred while engaging in or performing or as the result of engaging in or performing any recreational or social activities for the employee's personal pleasure,

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

(4) injury where the accident was caused by the use of alcohol, an illegal ~~drugs~~ controlled substance, ~~or~~ prescription drugs used in contravention of physician's orders, a legal controlled substance used in contravention of a physician's orders or marijuana used without possession of a state-issued medical marijuana license. If, within twenty-four (24) hours of an employee being injured or reporting an injury which is not fatal, or at any time after a fatal injury when the employee does not survive at least twenty-four (24) hours after an accident, a biological specimen is collected by the Office of

1 the Chief Medical Examiner, and an employee tests
2 positive for ~~intoxication~~ alcohol, an illegal
3 controlled substance, ~~or~~ prescription drugs used
4 in contravention of a physician's orders, a legal
5 controlled substance used in contravention ~~to~~ of
6 a treating physician's orders or marijuana used
7 without possession of a state-issued marijuana
8 license, or refuses to undergo the drug and
9 alcohol testing, there shall be a rebuttable
10 presumption that the injury was caused by the use
11 of alcohol, an illegal ~~drugs~~ drug, ~~or~~
12 prescription ~~drugs~~ drug used in contravention of
13 physician's orders or a legal controlled
14 substance used in contravention of a physician's
15 orders. This presumption may only be overcome if
16 the employee proves by clear and convincing
17 evidence that his or her state of intoxication
18 had no causal relationship to the injury,
19 (5) any strain, degeneration, damage or harm to, or
20 disease or condition of, the eye or
21 musculoskeletal structure or other body part
22 resulting from the natural results of aging,
23 osteoarthritis, arthritis, or degenerative
24 process including, but not limited to,

1 degenerative joint disease, degenerative disc
2 disease, degenerative
3 spondylosis/spondylolisthesis and spinal
4 stenosis, or

5 (6) any preexisting condition except when the
6 treating physician clearly confirms an
7 identifiable and significant aggravation incurred
8 in the course and scope of employment.

9 ~~c. The definition of "compensable injury" shall not be~~
10 ~~construed to limit or abrogate the right to recover~~
11 ~~for mental injuries as described in Section 13 of this~~
12 ~~title, heart or lung injury or illness as described in~~
13 ~~Section 14 of this title, or occupational diseases as~~
14 ~~described in Section 65 of this title.~~

15 ~~d.~~ A compensable injury shall be established by medical
16 evidence supported by objective findings as defined in
17 paragraph 31 of this section.

18 ~~e.~~ d. The injured employee shall prove by a preponderance of
19 the evidence that he or she has suffered a compensable
20 injury.

21 ~~f.~~ e. Benefits shall not be payable for a condition which
22 results from a non-work-related independent
23 intervening cause following a compensable injury which
24 causes or prolongs disability, aggravation, or

1 requires treatment. A non-work-related independent
2 intervening cause does not require negligence or
3 recklessness on the part of a claimant.

4 ~~g.~~ f. An employee who suffers a compensable injury shall be
5 entitled to receive compensation as prescribed in this
6 act. Notwithstanding other provisions of law, if it
7 is determined that a compensable injury did not occur,
8 the employee shall not be entitled to compensation
9 under this act;

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

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

20 12. "Continuing medical maintenance" means medical treatment
21 that is reasonable and necessary to maintain claimant's condition
22 resulting from the compensable injury or illness after reaching
23 maximum medical improvement. Continuing medical maintenance shall
24 not be awarded by the Commission for more than one (1) year from the

date of the permanent disability hearing unless there is clear and
convincing evidence that such treatment should continue for more
than one (1) year. The award of continuing medical maintenance
shall be reviewed by the Commission upon request by any party at any
time. Continuing medical maintenance shall not include diagnostic
tests, surgery, injections, counseling, physical therapy, or pain
management devices or equipment unless the Commission finds it in
the best interest of the employee;

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

- a. an employee's transportation to and from his or her
place of employment,
- b. travel by an employee in furtherance of the affairs of
an employer if the travel is also in furtherance of
personal or private affairs of the employee,
- c. any injury occurring in a parking lot or other common
area adjacent to an employer's place of business

1 before the employee clocks in or otherwise begins work
2 for the employer or after the employee clocks out or
3 otherwise stops work for the employer unless the
4 employer owns or maintains exclusive control over the
5 area, or

6 d. any injury occurring while an employee is on a work
7 break, unless the injury occurs while the employee is
8 on a work break inside the employer's facility or in
9 an area owned by or exclusively controlled by the
10 employer and the work break is authorized by the
11 employee's supervisor;

12 14. "Cumulative trauma" means an injury to an employee that is
13 caused by the combined effect of repetitive physical activities
14 extending over a period of time in the course and scope of
15 employment. Cumulative trauma shall not mean fatigue, soreness or
16 general aches and pain that may have been caused, aggravated,
17 exacerbated or accelerated by the employee's course and scope of
18 employment. Cumulative trauma shall have resulted directly and
19 independently of all other causes ~~and the employee shall have~~
20 ~~completed at least one hundred eighty (180) days of continuous~~
21 ~~active employment with the employer~~ If compensation is payable for
22 an injury resulting from cumulative trauma, the last employer in
23 whose employment the employee was last injuriously exposed to the
24 trauma during a period of at least ninety (90) days, and the

insurance carrier, if any, covering the risk when the employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier. If there is no employer in whose employment the employee was injuriously exposed to the trauma for a period of at least ninety (90) days, then the last employer in whose employment the employee was last injuriously exposed to the trauma and the insurance carrier, if any, covering the risk when such employee was last so exposed under such employer, shall be liable therefor, with right to contribution from any prior employer or insurance carrier;

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

16. "Disability" means ~~incapacity because of compensable injury to earn, in the same or any other employment, substantially the same amount of wages the employee was receiving at the time of the compensable injury~~ the loss of use or function of a part of the body which must be proven by objective findings, as defined in paragraph 31 of this section;

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

1 18. 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~~ law
15 enforcement officer or emergency management worker.
16 Travel by a ~~police~~ police officer, fireman, or a
17 member of a first aid or rescue squad, in responding
18 to and returning from an emergency, shall be deemed to
19 be in the course of 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,
7 ranching or horticulture by an employer who had a
8 gross annual payroll in the preceding calendar
9 year of less than One Hundred Thousand Dollars
10 (\$100,000.00) wages for agricultural, ranching or
11 horticultural workers, or any person who is
12 employed in agriculture, ranching or horticulture
13 who is not engaged in operation of motorized
14 machines. This exemption applies to any period
15 of time for which such employment exists,
16 irrespective of whether or not the person is
17 employed in other activities for which the
18 exemption does not apply. If the person is
19 employed for part of a year in exempt activities
20 and for part of a year in nonexempt activities,
21 the employer shall be responsible for providing
22 workers' compensation only for the period of time
23 for which the person is employed in nonexempt
24 activities,

- 1 (3) any person who is a licensed real estate sales
2 associate or broker, paid on a commission basis,
- 3 (4) any person who is providing services in a medical
4 care or social services program, or who is a
5 participant in a work or training program,
6 administered by the Department of Human Services,
7 unless the Department is required by federal law
8 or regulations to provide workers' compensation
9 for such person. This division shall not be
10 construed to include nursing homes,
- 11 (5) any person employed by an employer with five or
12 fewer total employees, all of whom are related
13 within the second degree by blood or marriage to
14 the employer, are dependents living in the
15 household of the employer, or are a combination
16 of such relatives and dependents, if the employer
17 is a natural person or ~~a general or limited~~
18 ~~partnership, or an incorporator of a corporation~~
19 ~~if the corporation is the employer~~ in the
20 household of the owner of the employer if the
21 employer is not a natural person and the owner
22 owns fifty percent (50%) or more of the employer,
- 23 (6) any person employed by an employer which is a
24 youth sports league which qualifies for exemption

1 from federal income taxation pursuant to federal
2 law,

3 (7) sole proprietors, members of a partnership,
4 individuals who are party to a franchise
5 agreement as set out by the Federal Trade
6 Commission franchise disclosure rule, 16 CFR
7 436.1 through 436.11, members of a limited
8 liability company who own at least ten percent
9 (10%) of the capital of the limited liability
10 company or any stockholder-employees of a
11 corporation who own ten percent (10%) or more
12 stock in the corporation, unless they elect to be
13 covered by a policy of insurance covering
14 benefits under the Administrative Workers'
15 Compensation Act,

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

23 (9) a person, commonly referred to as an owner-
24 operator, who owns or leases a truck-tractor or

1 truck for hire, if the owner-operator actually
2 operates the truck-tractor or truck and if the
3 person contracting with the owner-operator is not
4 the lessor of the truck-tractor or truck.

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

10 (10) a person referred to as a drive-away owner-
11 operator who privately owns and utilizes a tow
12 vehicle in drive-away operations and operates
13 independently for hire, if the drive-away owner-
14 operator actually utilizes the tow vehicle and if
15 the person contracting with the drive-away owner-
16 operator is not the lessor of the tow vehicle.
17 Provided, however, a drive-away owner-operator
18 shall not be precluded from workers' compensation
19 coverage under the Administrative Workers'
20 Compensation Act if the drive-away owner-operator
21 elects to participate as a sole proprietor, and

22 (11) any person who is employed as a domestic servant
23 or as a casual worker in and about a private home
24 or household, which private home or household had

1 a gross annual payroll in the preceding calendar
2 year of less than Fifty Thousand Dollars
3 (\$50,000.00) for such workers;

4 19. "Employer" means a person, partnership, association,
5 limited liability company, corporation, and the legal
6 representatives of a deceased employer, or the receiver or trustee
7 of a person, partnership, association, corporation, or limited
8 liability company, departments, instrumentalities and institutions
9 of this state and divisions thereof, counties and divisions thereof,
10 public trusts, boards of education and incorporated cities or towns
11 and divisions thereof, employing a person included within the term
12 "employee" as defined in this section. Employer may also mean the
13 employer's workers' compensation insurance carrier, if applicable.
14 Except as provided otherwise, this act applies to all public and
15 private entities and institutions. ~~Employer shall not include a~~
16 ~~qualified employer with an employee benefit plan as provided under~~
17 ~~the Oklahoma Employee Injury Benefit Act in Sections 200 through 213~~
18 ~~of this title;~~

19 20. "Employment" includes work or labor in a trade, business,
20 occupation or activity carried on by an employer or any authorized
21 voluntary or uncompensated worker rendering services as a
22 firefighter, peace officer or emergency management worker;

23 21. "Evidence-based" means expert-based, literature-supported
24 and outcomes validated by well-designed randomized trials when such

1 information is available and which uses the best available evidence
2 to support medical decision making;

3 22. "Gainful employment" means the capacity to perform
4 employment for wages for a period of time that is not part-time,
5 occasional or sporadic;

6 23. "Impaired self-insurer" means a private self-insurer or
7 group self-insurance association that fails to pay its workers'
8 compensation obligations, or is financially unable to do so and is
9 the subject of any proceeding under the Federal Bankruptcy Reform
10 Act of 1978, and any subsequent amendments or is the subject of any
11 proceeding in which a receiver, custodian, liquidator,
12 rehabilitator, trustee or similar officer has been appointed by a
13 court of competent jurisdiction to act in lieu of or on behalf of
14 the self-insurer;

15 24. "Incapacity" means inadequate strength or ability to
16 perform a work-related task;

17 25. "Insurance Commissioner" means the Insurance Commissioner
18 of the State of Oklahoma;

19 26. "Insurance Department" means the Insurance Department of
20 the State of Oklahoma;

21 27. "Major cause" means more than fifty percent (50%) of the
22 resulting injury, disease or illness. A finding of major cause
23 shall be established by a preponderance of the evidence. A finding
24 that the workplace was not a major cause of the injury, disease or

1 illness shall not adversely affect the exclusive remedy provisions
2 of this act and shall not create a separate cause of action outside
3 this act;

4 28. "Maximum medical improvement" means that no further
5 material improvement would reasonably be expected from medical
6 treatment or the passage of time;

7 29. "Medical services" means those services specified in
8 Section 50 of this title;

9 30. "Misconduct" shall include the following:

- 10 a. unexplained absenteeism or tardiness,
- 11 b. willful or wanton indifference to or neglect of the
12 duties required,
- 13 c. willful or wanton breach of any duty required by the
14 employer,
- 15 d. the mismanagement of a position of employment by
16 action or inaction,
- 17 e. actions or omissions that place in jeopardy the
18 health, life, or property of self or others,
- 19 f. dishonesty,
- 20 g. wrongdoing,
- 21 h. violation of a law, or
- 22 i. a violation of a policy or rule adopted to ensure
23 orderly work or the safety of self or others;

31. a. (1) "Objective findings" are those findings 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 shall use criteria established by the most current edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment".

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

(b) Any difference in the baseline hearing levels shall be confirmed by subsequent

1 testing; provided, however, such test shall
2 be given within four (4) weeks of the
3 initial baseline hearing level test but not
4 before five (5) days after being adjusted
5 for presbycusis.

6 b. Medical opinions addressing compensability and
7 permanent disability shall be stated within a
8 reasonable degree of medical certainty;

9 32. "Official Disability Guidelines" or "ODG" means the current
10 edition of the Official Disability Guidelines and the ODG Treatment
11 in Workers' Comp as published by the Work Loss Data Institute;

12 33. "Permanent disability" means the extent, expressed as a
13 percentage, of the loss of a portion of the total physiological
14 capabilities of the human body as established by competent medical
15 evidence and based on the current edition of the American Medical
16 Association guides to the evaluation of impairment, if the
17 impairment is contained therein. Loss of earning capacity directly
18 related to the permanent loss of use of a part of the body shall be
19 considered when determining permanent disability, but shall not
20 constitute a separate remedy under this act;

21 34. "Permanent partial disability" means a permanent disability
22 or loss of use of a part of the body after maximum medical
23 improvement has been reached ~~which prevents the injured employee,~~
24 ~~who has been released to return to work by the treating physician,~~

1 ~~from returning to his or her pre-injury or equivalent job.~~ All
2 evaluations of permanent partial disability must be supported by
3 objective findings, and shall be determined pursuant to the
4 definition of parts of the body contained in the current edition of
5 the AMA Guides;

6 35. "Permanent total disability" means, based on objective
7 findings, incapacity, based upon accidental injury or occupational
8 disease, to earn wages in any employment for which the employee may
9 become physically suited and reasonably fitted by education,
10 training, experience or vocational rehabilitation provided under
11 this act. Loss of both hands, both feet, both legs, or both eyes,
12 or any two thereof, shall constitute permanent total disability;

13 36. "Preexisting condition" means any illness, injury, disease,
14 or other physical or mental condition, whether or not work-related,
15 for which medical advice, diagnosis, care or treatment was
16 recommended or received preceding the date of injury;

17 37. "Pre-injury or equivalent job" means the job that the
18 claimant was working for the employer at the time the injury
19 occurred or any other employment offered by the claimant's employer
20 that pays at least one hundred percent (100%) of the employee's
21 average weekly wage;

22 38. "Private self-insurer" means a private employer that has
23 been authorized to self-insure its workers' compensation obligations
24 pursuant to this act, but does not include group self-insurance

1 associations authorized by this act, or any public employer that
2 self-insures pursuant to this act;

3 39. "Prosthetic" means an artificial device used to replace a
4 part or joint of the body that is lost or injured in an accident or
5 illness covered by this act;

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

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

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

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

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

3 45. "Surviving spouse" means the employee's spouse by reason of
4 a legal marriage recognized by the State of Oklahoma or under the
5 requirements of a common law marriage in this state, as determined
6 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. "Wages" means money compensation received for employment at
14 the time of the accident, including the reasonable value of board,
15 rent, housing, lodging, or similar advantage received from the
16 employer and includes the amount of tips required to be reported by
17 the employer under Section 6053 of the Internal Revenue Code and the
18 regulations promulgated pursuant thereto or the amount of actual
19 tips reported, whichever amount is greater.

20 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2018, Section 3), is amended to read as
22 follows:

23 Section 3. A. Every employer ~~and every employee, unless~~
24 ~~otherwise specifically provided in this act, shall be~~ subject and

1 bound to the provisions of the Administrative Workers' Compensation
2 Act. ~~However, nothing~~ shall pay or provide benefits according to
3 the provisions of this act for the accidental injury or death of an
4 employee arising out of and in the course of his or her employment,
5 without regard to fault for such injury, if the employee's contract
6 of employment was made or if the injury occurred within this state.
7 If an employee makes a claim for an injury in another jurisdiction
8 and a final adjudication is entered in the case, the employee is
9 precluded from his or her right of action under the Administrative
10 Workers' Compensation Act. If the employee makes a claim or brings
11 an action in this state prior to a final adjudication in another
12 jurisdiction, any receipt of benefits in the other jurisdiction
13 shall not bar the claim or action in this state; provided however,
14 in no event shall the Workers' Compensation Commission grant
15 benefits that duplicate benefits paid by the employer or the
16 employer's insurance carrier in the other jurisdiction. Nothing in
17 this act shall be construed to conflict with any valid Act of
18 Congress governing the liability of employers for injuries received
19 by their employees.

20 B. ~~This act~~ The State of Oklahoma accepts the provisions of the
21 Acts of Congress designated as 40 U.S.C., Section 3172, formerly 40
22 U.S.C., Section 290, and hereby extends the territorial jurisdiction
23 of the Administrative Workers' Compensation Act of this state to all
24 lands and premises within the exterior boundaries of this state

1 which the Government of the United States of America owns or holds
2 by deed or act of cession, and to all purchases, projects,
3 buildings, constructions, improvements and property within the
4 exterior boundaries of this state belonging to the Government of the
5 United States of America, in the same manner and to the same extent
6 as if the premises were under the exclusive jurisdiction of this
7 state, subject only to the limitations placed thereon by the Acts of
8 Congress.

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

12 ~~C. D.~~ D. 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 SECTION 3. AMENDATORY Section 5, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2018, Section 5), is amended to read as
18 follows:

19 Section 5. A. The rights and remedies granted to an employee
20 subject to the provisions of the Administrative Workers'
21 Compensation Act shall be exclusive of all other rights and remedies
22 of the employee, his legal representative, dependents, next of kin,
23 or anyone else claiming rights to recovery on behalf of the employee
24 against the employer, or any principal, officer, director, employee,

1 stockholder, partner, or prime contractor of the employer on account
2 of injury, illness, or death. Negligent acts of a co-employee may
3 not be imputed to the employer. No role, capacity, or persona of
4 any employer, principal, officer, director, employee, or stockholder
5 other than that existing in the role of employer of the employee
6 shall be relevant for consideration for purposes of this act, and
7 the remedies and rights provided by this act shall be exclusive
8 regardless of the multiple roles, capacities, or personas the
9 employer may be deemed to have. ~~For the purpose of extending the~~
10 ~~immunity of this section, any operator or owner of an oil or gas~~
11 ~~well or other operation for exploring for, drilling for, or~~
12 ~~producing oil or gas shall be deemed to be an intermediate or~~
13 ~~principal employer for services performed at a drill site or~~
14 ~~location with respect to injured or deceased workers whose immediate~~
15 ~~employer was hired by such operator or owner at the time of the~~
16 ~~injury or death.~~

17 B. Exclusive remedy shall not apply if:

18 1. An employer fails to secure the payment of compensation due
19 to the employee as required by this act. An injured employee, or
20 his or her legal representative in case death results from the
21 injury, may, at his or her option, elect to claim compensation under
22 this act or to maintain a legal action in court for damages on
23 account of the injury or death; or

1 2. The injury was caused by an intentional tort committed by
2 the employer. An intentional tort shall exist only when the
3 employee is injured as a result of willful, deliberate, specific
4 intent of the employer to cause such injury. Allegations or proof
5 that the employer had knowledge that the injury was substantially
6 certain to result from the employer's conduct shall not constitute
7 an intentional tort. The employee shall plead facts that show it is
8 at least as likely as it is not that the employer acted with the
9 purpose of injuring the employee. The issue of whether an act is an
10 intentional tort shall be a question of law.

11 C. The immunity from civil liability described in subsection A
12 of this section shall apply regardless of whether the injured
13 employee is denied compensation or deemed ineligible to receive
14 compensation under this act.

15 D. If an employer has failed to secure the payment of
16 compensation for his or her injured employee as provided for in this
17 act, an injured employee, or his or her legal representative if
18 death results from the injury, may maintain an action in the
19 district court for damages on account of such injury.

20 E. The immunity created by the provisions of this section shall
21 not extend to action against another employer, or its employees, on
22 the same job as the injured or deceased worker where such other
23 employer does not stand in the position of an intermediate or
24

1 principal employer to the immediate employer of the injured or
2 deceased worker.

3 F. The immunity created by the provisions of this section shall
4 not extend to action against another employer, or its employees, on
5 the same job as the injured or deceased worker even though such
6 other employer may be considered as standing in the position of a
7 special master of a loaned servant where such special master neither
8 is the immediate employer of the injured or deceased worker nor
9 stands in the position of an intermediate or principal employer to
10 the immediate employer of the injured or deceased worker.

11 G. This section shall not be construed to abrogate the loaned
12 servant doctrine in any respect other than that described in
13 subsection F of this section. Nothing in this act shall be
14 construed to relieve the employer from any other penalty provided
15 for in this act for failure to secure the payment of compensation
16 under this act.

17 H. For the purpose of extending the immunity of this section,
18 any architect, professional engineer, or land surveyor shall be
19 deemed an intermediate or principal employer for services performed
20 at or on the site of a construction project, but this immunity shall
21 not extend to the negligent preparation of design plans and
22 specifications.

23 I. If the employer has failed to secure the payment of
24 compensation as provided in this act or in the case of an

1 intentional tort, the injured employee or his or her legal
2 representative may maintain an action either before the Commission
3 or in the district court, but not both.

4 SECTION 4. AMENDATORY Section 6, Chapter 208, O.S.L.
5 2013, as amended by Section 1, Chapter 390, O.S.L. 2015 (85A O.S.
6 Supp. 2018, Section 6), is amended to read as follows:

7 Section 6.

8 A. 1. a. Any person or entity who makes any material false
9 statement or representation, who willfully and
10 knowingly omits or conceals any material information,
11 or who employs any device, scheme, or artifice, or who
12 aids and abets any person for the purpose of:

- 13 (1) obtaining any benefit or payment,
14 (2) increasing any claim for benefit or payment, or
15 (3) obtaining workers' compensation coverage under
16 this act,

17 shall be guilty of a felony punishable pursuant to
18 Section 1663 of Title 21 of the Oklahoma Statutes.

19 b. A material false statement or representation includes,
20 but is not limited to, attempting to obtain treatment
21 or compensation for body parts that were not injured
22 in the course and scope of employment.

23 c. Fifty percent (50%) of any criminal fine imposed and
24 collected under this section shall be paid and

1 allocated in accordance with applicable law to the
2 Workers' Compensation Commission Revolving Fund
3 ~~administered by the Commission.~~

4 2. Any person or entity with whom any person identified in
5 division (1) of subparagraph a of paragraph 1 of this subsection has
6 conspired to achieve the proscribed ends shall, by reason of such
7 conspiracy, be guilty as a principal of a felony.

8 B. A copy of division (1) of subparagraph a of paragraph 1 of
9 subsection A of this section shall be included on all forms
10 prescribed by the Commission for the use of injured employees
11 claiming benefits and for the use of employers in responding to
12 employees' claims under this act.

13 C. Where the Commission or the Attorney General finds that a
14 violation of division (1) of subparagraph a of paragraph 1 of
15 subsection A of this section has been committed, or that any other
16 criminal violations in furtherance of this act were committed, the
17 chair of the Commission or the Attorney General shall refer the
18 matter for appropriate action to the prosecuting attorney having
19 criminal jurisdiction over the matter.

20 D. 1. a. There shall be established within the Office of the
21 Attorney General a Workers' Compensation Fraud
22 Investigation Unit, funded by the Commission. The
23 Attorney General shall appoint a Director of the
24 Workers' Compensation Fraud Investigation Unit, who

1 may also serve as the director of any other designated
2 insurance fraud investigation division within the
3 Attorney General's office.

4 b. (1) The Unit shall investigate workers' compensation
5 fraud, any additional criminal violations that
6 may be related to workers' compensation fraud,
7 and any other insurance fraud matters as may be
8 assigned at the discretion of the Attorney
9 General.

10 (2) The Attorney General shall designate the
11 personnel assigned to the Unit, who, on meeting
12 the qualifications established by the Oklahoma
13 Council on Law Enforcement Education and
14 Training, shall have the powers of specialized
15 law enforcement officers of the State of Oklahoma
16 for the purpose of conducting investigations
17 under this subparagraph. Personnel hired as
18 specialized law enforcement officers shall have a
19 minimum of three (3) years of certified law
20 enforcement experience or its equivalent in
21 national or military law enforcement experience
22 as approved by the Oklahoma Council on Law
23 Enforcement Education and Training.

1 2. The Attorney General and his or her deputies and assistants
2 and the Director of the Workers' Compensation Fraud Investigation
3 Unit and his or her deputies and assistants shall be vested with the
4 power of enforcing the requirements of this section.

5 3. It shall be the duty of the Unit to assist the Attorney
6 General in the performance of his or her duties. The Unit shall
7 determine the identity of employees in this state who have violated
8 division (1) of subparagraph a of paragraph 1 of subsection A of
9 this section and report the violation to the Office of the Attorney
10 General and the Commission. The Attorney General shall report the
11 violation to the prosecuting attorney having jurisdiction over the
12 matter.

13 4. a. In the course of any investigation being conducted by
14 the Unit, the Attorney General and his or her deputies
15 and assistants and the Director and his or her
16 deputies and assistants shall have the power of
17 subpoena and may:

- 18 (1) subpoena witnesses,
19 (2) administer oaths or affirmations and examine any
20 individual under oath, and
21 (3) require and compel the production of records,
22 books, papers, contracts, and other documents.

- 1 b. The issuance of subpoenas for witnesses shall be
2 served in the same manner as if issued by a district
3 court.
- 4 c. (1) Upon application by the commissioner or the
5 Director of the Unit, the district court located
6 in the county where a subpoena was served may
7 issue an order compelling an individual to comply
8 with the subpoena to testify.
- 9 (2) Any failure to obey the order of the court may be
10 punished as contempt.
- 11 d. If any person has refused in connection with an
12 investigation by the Director to be examined under
13 oath concerning his or her affairs, then the Director
14 is authorized to conduct and enforce by all
15 appropriate and available means any examination under
16 oath in any state or territory of the United States in
17 which any officer, director, or manager may then
18 presently be to the full extent permitted by the laws
19 of the state or territory.
- 20 e. In addition to the punishments described in paragraph
21 1 of subsection A of this section, any person
22 providing false testimony under oath or affirmation in
23 this state as to any matter material to any
24 investigation or hearing conducted under this

1 subparagraph, or any workers' compensation hearing,
2 shall upon conviction be guilty of perjury.

3 5. Fees and mileage of the officers serving the subpoenas and
4 of the witnesses in answer to subpoenas shall be as provided by law.

5 6. a. Every carrier or employer who has reason to suspect
6 that a violation of division (1) of subparagraph a of
7 paragraph 1 of subsection A of this section has
8 occurred shall be required to report all pertinent
9 matters to the unit.

10 b. No carrier or employer who makes a report for a
11 suspected violation of division (1) of subparagraph a
12 of paragraph 1 of subsection A of this section by an
13 employee shall be liable to the employee unless the
14 carrier or employer knowingly and intentionally
15 included false information in the report.

16 c. (1) Any carrier or employer who willfully and
17 knowingly fails to report a violation under
18 division (1) of subparagraph a of paragraph 1 of
19 subsection A of this section shall be guilty of a
20 misdemeanor and on conviction shall be punished
21 by a fine not to exceed One Thousand Dollars
22 (\$1,000.00).

23 (2) Fifty percent (50%) of any criminal fine imposed
24 and collected under this subparagraph shall be

1 paid and allocated in accordance with applicable
2 law to the fund administered by the Commission.

3 d. Any employee may report suspected violations of
4 division (1) of subparagraph a of paragraph 1 of
5 subsection A of this section. No employee who makes a
6 report shall be liable to the employee whose suspected
7 violations have been reported.

8 E. 1. For the purpose of imposing criminal sanctions or a fine
9 for violation of the duties of this act, the prosecuting attorney
10 shall have the right and discretion to proceed against any person or
11 organization responsible for such violations, both corporate and
12 individual liability being intended by this act.

13 2. The prosecuting attorney of the district to whom a suspected
14 violation of subsection A of this section, or any other criminal
15 violations that may be related thereto, have been referred shall,
16 for the purpose of assisting him or her in such prosecutions, have
17 the authority to appoint as special deputy prosecuting attorneys
18 licensed attorneys-at-law in the employment of the Unit or any other
19 designated insurance fraud investigation division within the
20 Attorney General's office. Such special deputy prosecuting
21 attorneys shall, for the purpose of the prosecutions to which they
22 are assigned, be responsible to and report to the prosecuting
23 attorney.

1 F. Notwithstanding any other provision of law, investigatory
2 files as maintained by the Attorney General's office and by the Unit
3 shall be deemed confidential and privileged. The files may be made
4 open to the public once the investigation is closed by the Director
5 of the Workers' Compensation Fraud Investigation Unit with the
6 consent of the Attorney General.

7 G. The Attorney General, with the cooperation and assistance of
8 the Commission, is authorized to establish rules as may be necessary
9 to carry out the provisions of this section.

10 H. Nothing in this section shall be deemed to create a civil
11 cause of action.

12 ~~I. The Commission shall include a statement on all forms for~~
13 ~~notices and instructions to employees, employers, carriers and~~
14 ~~third-party administrators that any person who commits workers'~~
15 ~~compensation fraud, upon conviction, shall be guilty of a felony~~
16 ~~punishable by imprisonment, a fine or both.~~

17 ~~J.~~ If an injured employee is charged with workers' compensation
18 fraud, any pending workers' compensation proceeding, including
19 benefits, shall be stayed after the preliminary hearing is concluded
20 and the claimant is bound over and shall remain stayed until the
21 final disposition of the criminal case. All notice requirements
22 shall continue during the stay.

23 ~~K.~~ J. If the Attorney General's Office is in compliance with
24 the discovery provisions of Section 258 of Title 22 of the Oklahoma

1 Statutes, medical records created for the purpose of treatment and
2 medical opinions obtained during the investigation shall be
3 admissible at the preliminary hearing without the appearance of the
4 medical professional creating such records or opinions. However,
5 when material evidence dispositive to the issues of whether there
6 was probable cause the crime was committed and whether the defendant
7 committed the crime, was not included in a report or opinion
8 admitted at preliminary hearing, but might be presented at a
9 pretrial hearing by a medical professional who created such report
10 or opinion, the judge may, upon the motion of either party, order
11 the appearance of the medical professional creating such report or
12 opinion. Questions of fact regarding the conduct of the defendant
13 that conflict with the findings of the medical professional
14 evaluating the defendant shall not constitute material evidence. In
15 the event of such motion, notice shall be given to the Attorney
16 General's Workers Compensation Fraud and Investigation and
17 Prosecution Unit. A hearing shall be held and, if the motion is
18 granted, the evidence shall not be presented fewer than five (5)
19 days later.

20 ~~L.~~ K. Any person or entity who, in good faith and exercising
21 due care, reports suspected workers' compensation fraud or insurance
22 fraud, or who allows access to medical records or other information
23 pertaining to suspected workers' compensation or insurance fraud, by
24 persons authorized to investigate a report concerning the workers'

1 compensation and insurance fraud, shall have immunity from any civil
2 or criminal liability for such report or access. Any such person or
3 entity shall have the same immunity with respect to participation in
4 any judicial proceeding resulting from such reports. For purposes
5 of any civil or criminal proceeding, there shall be a presumption of
6 good faith of any person making a report, providing medical records
7 or providing information pertaining to a workers' compensation or
8 insurance fraud investigation by the Attorney General, and
9 participating in a judicial proceeding resulting from a subpoena or
10 a report.

11 SECTION 5. AMENDATORY Section 7, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 7), is amended to read as
13 follows:

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

- 16 1. Filed a claim under this act;
 - 17 2. Retained a lawyer for representation regarding a claim under
18 this act;
 - 19 3. Instituted or caused to be instituted any proceeding under
20 the provisions of this act; or
 - 21 4. Testified or is about to testify in any proceeding under the
22 provisions of this act.
- 23
24

1 B. The ~~Commission~~ district courts shall have exclusive
2 jurisdiction to hear and decide claims based on ~~subsection A of this~~
3 section.

4 C. ~~If the Commission determines that the defendant violated~~
5 ~~subsection A of this section, the Commission may award the employee~~
6 ~~back pay up to a maximum of One Hundred Thousand Dollars~~
7 ~~(\$100,000.00). Interim earnings or amounts earnable with reasonable~~
8 ~~diligence by the person discriminated against shall reduce the back~~
9 ~~pay otherwise allowable.~~

10 ~~D.~~ The prevailing party shall be entitled to recover costs and
11 a reasonable attorney fee.

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

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

21 ~~G.~~ F. This section shall not be construed as establishing an
22 exception to the employment at will doctrine.
23
24

1 ~~H. The remedies provided for in this section shall be exclusive~~
2 ~~with respect to any claim arising out of the conduct described in~~
3 ~~subsection A of this section.~~

4 SECTION 6. AMENDATORY Section 13, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2018, Section 13), is amended to read as
6 follows:

7 Section 13. A. 1. A mental injury or illness is not a
8 compensable injury unless caused by a physical injury to the
9 employee, and shall not be considered an injury arising out of and
10 in the course and scope of employment or compensable unless
11 demonstrated by a preponderance of the evidence; provided, however,
12 that this physical injury limitation shall not apply to any victim
13 of a crime of violence or to a law enforcement officer, firefighter,
14 emergency medical technician, or any other employee of an emergency
15 service who is likely to be among the first people to arrive at and
16 assist at the scene of an emergency and who suffers a mental injury
17 related to duties performed responding to the emergency.

18 2. No mental injury or illness under this section shall be
19 compensable unless it is also diagnosed by a licensed psychiatrist
20 or psychologist and unless the diagnosis of the condition meets the
21 criteria established in the most current issue of the Diagnostic and
22 Statistical Manual of Mental Disorders.

23 B. 1. ~~Notwithstanding any other provision of this act, where a~~
24 ~~claim is for mental injury or illness, the employee shall be limited~~

1 ~~to twenty-six (26) weeks of disability benefits unless it is shown~~
2 ~~by clear and convincing evidence that benefits should continue for a~~
3 ~~set period of time, not to exceed a total of fifty-two (52) weeks.~~

4 2. a. ~~In cases where death results directly from the mental~~
5 ~~injury or illness within a period of one (1) year,~~
6 ~~compensation shall be paid the dependents as provided~~
7 ~~in other death cases under this act.~~

8 b.

9 1. An employee with a compensable mental injury or illness
10 shall be entitled to compensation in the same manner as cases
11 designated as "other cases" pursuant to subsection C of Section 46
12 of this title.

13 2. Death directly or indirectly related to the mental injury or
14 illness occurring ~~one (1) year~~ three (3) years or more from the
15 incident resulting in the mental injury or illness shall not be a
16 compensable injury.

17 SECTION 7. AMENDATORY Section 14, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, 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 SECTION 8. AMENDATORY Section 16, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 16), is amended to read as
13 follows:

14 Section 16. A. The Official Disability Guidelines - Treatment
15 in Workers Compensation (ODG), published by the Work Loss Data
16 Institute, ~~is to be recognized as the primary standard of reference,~~
17 shall be mandatory at the time of treatment, in determining the
18 frequency and extent of services presumed to be medically necessary
19 and appropriate for compensable injuries under this act, or in
20 resolving such matters in the event a dispute arises, unless the
21 Workers' Compensation Commission makes a specific finding that a
22 deviation from said guidelines is necessary under the circumstances
23 to avoid an unreasonable risk to the health or life of the employee.
24 ~~The medical treatment guidelines are not requirements, nor are they~~

1 ~~mandates or standards; they provide advice by identifying the care~~
2 ~~most likely to benefit injured workers. The guidelines shall be~~
3 ~~evidence-based, scientifically valid, outcome-focused, and designed~~
4 ~~to reduce excessive or inappropriate medical care while safeguarding~~
5 ~~necessary medical care.~~

6 B. Physicians providing care to an employee shall prescribe for
7 the employee any necessary prescription drugs and over-the-counter
8 alternatives to prescription medicine as clinically appropriate and
9 as recommended under the Official Disability Guidelines.

10 Prescriptions and nonprescription drugs that are not preferred,
11 exceed or are not addressed by ODG require preauthorization and the
12 preauthorization request shall include the prescribing doctor's drug
13 regimen plan of care and the anticipated dosage or range of dosages.

14 SECTION 9. AMENDATORY Section 18, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 18), is amended to read as
16 follows:

17 Section 18. A. No hospital, physician, or other health care
18 provider shall bill or attempt to collect any fee or any portion of
19 a fee for services rendered to an employee due to a work-related
20 injury or report to any credit-reporting agency any failure of the
21 employee to make the payment, when a claim for compensation has been
22 filed under this act and the hospital, physician, or health care
23 provider has received actual notice given in writing by the employee
24 or the employee's representative. Actual notice shall be deemed

1 received by the hospital, physician, or health care provider five
2 (5) days after mailing by certified mail or sending by facsimile,
3 electronic mail or other electronic means with receipt of
4 confirmation by the employee or his or her representative to the
5 hospital, physician, or health care provider.

6 B. The notice shall include:

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

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

23 D. This section shall not ~~avoid~~ void, modify, or amend any
24 other section or subsection of this act.

1 E. An order by the Workers' Compensation Commission under this
2 section shall stay all proceedings for collection.

3 SECTION 10. AMENDATORY Section 19, Chapter 208, O.S.L.
4 2013, as amended by Section 4, House Joint Resolution No. 1096, Page
5 1745, O.S.L. 2014 (85A O.S. Supp. 2018, Section 19), is amended to
6 read as follows:

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

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

1 appointment shall be subject to confirmation by the Senate upon
2 convening of the next regular session of the Legislature.
3 Membership on the Commission shall be a full-time position and no
4 commissioner shall have any other employment, unless authorized or
5 excused by law. Each commissioner shall receive a salary equal to
6 that paid to a district judge of this state; ~~provided however, the~~
7 ~~commissioners shall not receive any increase in salary as a result~~
8 ~~of the provisions of Section 1 of this resolution.~~

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, in
13 accordance with the Oklahoma Administrative Procedures Act. All
14 rules, upon adoption, shall be published and be made available to
15 the public and, if not inconsistent with the law, shall be binding
16 in the administration of this act.

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

24

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 and the
14 Commission shall not be subject to the provisions of the Oklahoma
15 Administrative Procedures Act, except as provided in this act.

16 G. When any commissioner of the Commission is disqualified for
17 any reason to hear and participate in the determination of any
18 matter pending before the Commission, the Governor shall appoint a
19 qualified person to hear and participate in the decision on the
20 particular matter. The special commissioner so appointed shall have
21 all authority and responsibility with respect to the particular
22 matter before the Commission as if the person were a regular
23 commissioner of the Commission but shall have no authority or
24 responsibility with respect to any other matter before the

1 Commission. A person appointed as a special commissioner of the
2 Commission under the provisions of this subsection shall be entitled
3 to receive a per diem equal to the annual salary of the
4 commissioners prorated for the number of days he or she serves in
5 the capacity of a special commissioner of the Commission.
6 Furthermore, when a vacancy on the Commission occurs or is certain
7 to occur, the position shall be filled pursuant to the provisions of
8 this section.

9 H. As authorized by Section 307 of Title 25 of the Oklahoma
10 Statutes, the members of the Commission may meet in private to
11 discuss policy, personnel and staffing administration and other
12 matters related to the state's workers' compensation system.
13 Provided, however, all three members must be present at the private
14 meeting and no official action shall be taken in the meeting.

15 SECTION 11. AMENDATORY Section 20, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2018, Section 20), is amended to read as
17 follows:

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

21 1. To appoint administrative law judges to hear all claims for
22 compensation, including claims based on injuries which occurred
23 outside this state for which compensation is payable under this act.
24 An administrative law judge shall have been licensed to practice law

1 in this state for a period of not less than three (3) years and
2 shall have not less than three (3) years of workers' compensation
3 experience prior to appointment;

4 2. To remand any case to an administrative law judge for the
5 purpose of taking additional evidence;

6 3. To assess penalties;

7 4. To prescribe rules governing the representation of
8 employees, employers, and carriers in respect to claims before the
9 Commission;

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

16 6. To have and exercise all other powers and duties conferred
17 or imposed by this act.

18 B. 1. In addition to the other powers and duties granted to
19 the Commission in this section and otherwise provided by law, the
20 Commission is authorized to establish and impose reasonable
21 administrative fees to recover the cost of preparation of various
22 informative materials distributed by the Commission.

23 2. The administrative fees shall be established by regulation
24 of the Commission.

1 3. Funds derived from administrative fees shall be deposited
2 into the Workers' Compensation Commission Revolving Fund to be used
3 to defray expenses incurred in preparation and distribution of
4 materials.

5 SECTION 12. AMENDATORY Section 21, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2018, Section 21), is amended to read as
7 follows:

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

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

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

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

23 D. Except with respect to the Commission's authority to hear
24 appeals of decisions from administrative law judges, any reference

1 in this ~~act~~ title to the Commission's ability to hear and decide the
2 rights of interested parties under this ~~act~~ title shall not prevent
3 it from delegating that responsibility to an administrative law
4 judge.

5 SECTION 13. AMENDATORY Section 22, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2018, Section 22), is amended to read as
7 follows:

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

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

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

24

1 b. The Commission shall comply with the provisions of the
2 Administrative Procedures Act applicable to the filing
3 and publication requirements for rules before the
4 adoption, prescription, amendment, modification, or
5 repeal of any rule, regulation, or form, the
6 ~~Commission shall give at least thirty (30) days'~~
7 ~~notice of its intended action.~~

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

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

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

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

23 ~~5. All expenditures of the Commission in the administration of~~
24 ~~this act shall be allowed and paid from the Workers' Compensation~~

1 ~~Fund on the presentation of itemized vouchers approved by the~~
2 ~~Commission.~~

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

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

10 C. Additionally, the Commission shall have the following powers
11 and duties:

12 1. To hear and approve compromise settlements;

13 2. To review and approve own-risk applications and group self-
14 insurance association applications;

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

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

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

3 6. To hear and determine claims concerning disputed medical
4 bills;

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

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

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

12 10. To establish a petty cash fund in an amount not to exceed
13 Five Hundred Dollars (\$500.00) to be used for the purpose of making
14 change for persons purchasing printed or electronic materials from
15 the Commission, paying fees and fines, and transacting other such
16 business with the Commission. The fund shall be established and
17 replenished from any monies available to the Commission for
18 operating expenses and it shall be administered pursuant to the
19 requirements of Section 195 of Title 62 of the Oklahoma Statutes;
20 and

21 11. Such other duties and responsibilities authorized by law.

22 D. It shall be the duty of an administrative law judge, under
23 the rules adopted by the Commission, to hear and determine claims
24 for compensation and to conduct hearings and investigations and to

1 make such judgments, decisions, and determinations as may be
2 required by any rule or judgment of the Commission.

3 SECTION 14. AMENDATORY Section 27, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 27), is amended to read as
5 follows:

6 Section 27. A. The Workers' Compensation Commission shall be
7 vested with jurisdiction over all claims filed pursuant to the
8 Administrative Workers' Compensation Act. All claims so filed shall
9 be heard by the administrative law judge sitting without a jury.
10 The Commission shall have full power and authority to determine all
11 questions in relation to claims for compensation under the
12 provisions of the Administrative Workers' Compensation Act. The
13 Commission, upon application of either party, shall order a hearing.
14 Upon a hearing, either party may present evidence and be represented
15 by counsel. Except as provided in this act, the decision of the
16 administrative law judge shall be final as to all questions of fact
17 and law. The decision of the administrative law judge shall be
18 issued within thirty (30) days following the submission of the case
19 by the parties. The power and jurisdiction of the Commission over
20 each case shall be continuing and it may, from time to time, make
21 such modifications or changes with respect to former findings or
22 orders relating thereto if, in its opinion, it may be justified.

1 B. In addition to the duties set forth in this section, the
2 administrative law judges shall have the following duties and
3 powers:

4 1. To hear and determine claims for compensation, to conduct
5 hearings and investigations, and to make such judgments, decisions,
6 and determinations as may be required by any rule or judgment of the
7 Commission;

8 2. To hear and determine challenges to an agreement to
9 arbitrate under the Workers' Compensation Arbitration Act; and

10 ~~3. To assume duties within the Workers' Compensation Court of~~
11 ~~Existing Claims as assigned by the Commission; and~~

12 ~~4. To have and exercise all other powers and duties conferred~~
13 ~~or imposed by the Commission or this act.~~

14 SECTION 15. AMENDATORY Section 29, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 29), is amended to read as
16 follows:

17 Section 29. A. Each carrier writing compensation insurance in
18 this state shall pay to the Workers' Compensation Commission ~~at the~~
19 ~~time of securing a license to transact business in this state an~~
20 annual fee of One Thousand Dollars (\$1,000.00) ~~for the privilege of~~
21 ~~qualifying with the Commission for the writing of compensation~~
22 ~~insurance.~~

1 B. Each self-insurer shall pay to the Commission an annual fee
2 of One Thousand Dollars (\$1,000.00) ~~at the time it is approved to~~
3 ~~self-insure the obligations under this act.~~

4 C. The Commission may assess third-party administrators and
5 marketing firms an annual fee of One Thousand Dollars (\$1,000.00).

6 D. Fees required pursuant to this section shall be deposited
7 ~~into~~ to the credit of the Workers' Compensation Commission Revolving
8 Fund.

9 SECTION 16. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 35.1 of Title 85A, unless there
11 is created a duplication in numbering, reads as follows:

12 A. Case management services for an injured employee shall be
13 provided by a case manager, as defined by paragraph 4 of Section 2
14 of Title 85A of the Oklahoma Statutes, whose principal place of
15 business is in the State of Oklahoma. Provided, however, an
16 insurance carrier may provide case management services by telephone
17 through its own employees.

18 B. An employer or insurance carrier shall contract for
19 stenographic services, including but not limited to depositions,
20 directly with a reporting firm whose principal place of business is
21 in the State of Oklahoma. The charge for such service shall be
22 limited to the actual fee of the court reporter.

23 C. An employer or insurance carrier shall contract for language
24 interpreter services for medical appointments, depositions,

1 statements, mediations and hearings directly with a language
2 interpreter whose principal place of business is in the State of
3 Oklahoma. The charge for such service shall be limited to the
4 actual fee of the interpreter.

5 D. A court reporter employed by or contracted by the Workers'
6 Compensation Commission shall be authorized to stenographically
7 report both joint petition settlements and compromise settlements in
8 the Court of Existing Claims. A court reporter employed by or
9 contracted by the Court of Existing Claims shall be authorized to
10 stenographically report both compromise settlements and joint
11 petition settlements under the jurisdiction of the Commission.

12 SECTION 17. AMENDATORY Section 38, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2018, Section 38), is amended to read as
14 follows:

15 Section 38. A. An employer shall secure compensation to
16 employees under this act in one of the following ways:

17 1. By insuring and keeping insured the payment of compensation
18 with any stock corporation, mutual association, or other concerns
19 authorized to transact the business of workers' compensation
20 insurance in this state. When an insurer issues a policy to provide
21 workers' compensation benefits under the provisions of this act, it
22 shall file a notice with the Workers' Compensation Commission
23 containing the name, address, and principal occupation of the
24 employer, the number, effective date, and expiration date of the

1 policy, and such other information as may be required by the
2 Commission. The notice shall be filed by the insurer within thirty
3 (30) days after the effective date of the policy. Any insurer who
4 does not file the notice required by this paragraph shall be subject
5 to a fine by the Commission of not more than One Thousand Dollars
6 (\$1,000.00);

7 2. By obtaining and keeping in force guaranty insurance with
8 any company authorized to do guaranty business in this state. Each
9 company that issues workers' compensation guaranty insurance shall
10 file a copy of the contract with the Commission within thirty (30)
11 days after the effective date of the contract. Any company that
12 does not file a copy of the contract as required by this paragraph
13 shall be subject to a fine by the Commission of not more than One
14 Thousand Dollars (\$1,000.00);

15 3. By furnishing satisfactory proof to the Commission of the
16 employer's financial ability to pay the compensation. ~~The~~
17 ~~Commission, under~~ Under rules adopted by the ~~Insurance Department~~
18 Commission, the Commission shall require any employer that has:

19 a. less than one hundred employees or less than One
20 Million Dollars (\$1,000,000.00) in net assets to:

21 (1) deposit with the Commission securities, an
22 irrevocable letter of credit or a surety bond
23 payable to the state, in an amount determined by
24 the Commission which shall be at least an average

1 of the yearly claims for the last three (3)
2 years, or

3 (2) provide proof of excess coverage with such terms
4 and conditions as is commensurate with their
5 ability to pay the benefits required by the
6 provisions of this act, and

7 b. one hundred or more employees and One Million Dollars
8 (\$1,000,000.00) or more in net assets to:

9 (1) secure a surety bond payable to the state, or an
10 irrevocable letter of credit, in an amount
11 determined by the Commission which shall be at
12 least an average of the yearly claims for the
13 last three (3) years, or

14 (2) provide proof of excess coverage with terms and
15 conditions that are commensurate with their
16 ability to pay the benefits required by the
17 provisions of this act;

18 4. By forming a group self-insurance association consisting of
19 two or more employers which shall have a common interest and which
20 shall have entered into an agreement to pool their liabilities under
21 the Administrative Workers' Compensation Act. Such agreement shall
22 be subject to rules of the Commission. Any employer, upon
23 application to become a member of a group self-insurance
24 association, shall file with the Commission a notice, in such form

1 as prescribed by the Commission, acknowledging that the employer
2 accepts joint and several liability. Upon approval by the
3 Commission of such application for membership, said member shall be
4 a qualified self-insured employer; or

5 5. By any other security as may be approved by the Commission
6 and the Insurance Department.

7 B. The Commission may waive the requirements of this section in
8 an amount which is commensurate with the ability of the employer to
9 pay the benefits required by the provisions of this act.

10 Irrevocable letters of credit required by this subsection shall
11 contain such terms as may be prescribed by the Commission and shall
12 be issued for the benefit of the state by a financial institution
13 whose deposits are insured by the Federal Deposit Insurance
14 Corporation.

15 C. An employer who does not fulfill the requirements of this
16 section is not relieved of the obligation to pay compensation under
17 this act. The security required under this section, including any
18 interest, shall be maintained by the Commission as provided in this
19 act until each claim for benefits is paid, settled, or lapses under
20 this act, and costs of administration of such claims are paid.

21 D. Failure on the part of any employer to secure the payment of
22 compensation provided in this act shall have the effect of enabling
23 the Commission to assert the rights of an injured employee against
24 the employer.

1 E. Any employer that knowingly provides false information to
2 the Commission for purposes of securing or maintaining a self-
3 insurance permit shall be guilty of a felony and subject to a
4 maximum fine of Ten Thousand Dollars (\$10,000.00).

5 SECTION 18. AMENDATORY Section 40, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2018, Section 40), is amended to read as
7 follows:

8 Section 40. A. 1. Any employer who fails to secure
9 compensation required under this act, upon conviction, shall be
10 guilty of a misdemeanor and subject to a fine of up to Ten Thousand
11 Dollars (\$10,000.00) to be deposited in the Workers' Compensation
12 Commission Revolving Fund.

13 2. This subsection shall not affect any other liability of the
14 employer under this act.

15 B. 1. Whenever the Workers' Compensation Commission has reason
16 to believe that any employer required to secure the payment of
17 compensation under this act has failed to do so, the Commission
18 shall serve on the employer a proposed judgment declaring the
19 employer to be in violation of this act and containing the amount,
20 if any, of the civil penalty to be assessed against the employer
21 under paragraph 5 of this subsection.

22 2. a. An employer may contest a proposed judgment of the
23 Commission issued under paragraph 1 of this subsection
24 by filing with the Commission, within twenty (20) days

1 of receipt of the proposed judgment, a written request
2 for a hearing.

3 b. The request for a hearing does not need to be in any
4 particular form but shall specify the grounds on which
5 the person contests the proposed judgment, the
6 proposed assessment, or both.

7 c. If a written request for hearing is not filed with the
8 Commission within the time specified in subparagraph a
9 of this paragraph, the proposed judgment, the proposed
10 penalty, or both, shall be a final judgment of the
11 Commission and shall not be subject to further review
12 by any court, except if the employer shows good cause
13 why it did not timely contest the judgment or penalty.

14 d. A proposed judgment by the Commission under this
15 section shall be prima facie correct, and the burden
16 is on the employer to prove that the proposed judgment
17 is incorrect.

18 3. a. If the employer alleges that a carrier has contracted
19 to provide it workers' compensation insurance coverage
20 for the period in question, the employer shall include
21 the allegation in its request for hearing and shall
22 name the carrier.

23 b. The Commission shall promptly notify the carrier of
24 the employer's allegation and of the date of hearing.

1 c. The carrier shall promptly, and no later than five (5)
2 days before the hearing, respond in writing to the
3 employer's allegation by providing evidence of
4 coverage for the period in question or by
5 affirmatively denying the employer's allegation.

6 4. Hearings under this section shall be procedurally conducted
7 as provided in Sections 69 through 78 of this ~~act~~ title.

8 5. The Commission may assess a fine against an employer who
9 fails to secure the payment of compensation in an amount up to One
10 Thousand Dollars (\$1,000.00) per day of violation payable to the
11 Workers' Compensation Commission Revolving Fund.

12 6. If an employer fails to secure the payment of compensation
13 or pay any civil penalty assessed against the employer after a
14 judgment issued under this section has become final by operation of
15 law or on appeal, the Commission may petition the Oklahoma County
16 District Court or the district court of the county where the
17 employer's principal place of business is located for an order
18 enjoining the employer from engaging in further employment until
19 such time as the employer secures the payment of compensation or
20 makes full payment of all civil penalties.

21 C. If an employee injury occurs during a period when an
22 employer has failed to secure the payment of compensation and the
23 employer has paid a civil penalty assessed pursuant to this section,
24 the Commission may, upon application of the injured employee and

1 hearing before an administrative law judge, award as compensation to
2 the injured employee an amount from the proceeds of the civil
3 penalty not to exceed the amount of the civil penalty.

4 SECTION 19. AMENDATORY Section 43, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2018, Section 43), is amended to read as
6 follows:

7 Section 43. A. Liability Unaffected.

- 8 1. a. The making of a claim for compensation against any
9 employer or carrier for the injury ~~or death~~ of an
10 employee shall not affect the right of the employee,
11 or his or her dependents, to make a claim or maintain
12 an action in court against any third party for the
13 injury.
- 14 b. The employer or the employer's carrier shall be
15 entitled to reasonable notice and opportunity to join
16 in the action.
- 17 c. If the employer or employer's carrier join in the
18 action against a third party for injury ~~or death~~, they
19 shall be entitled to a first lien on two-thirds (2/3)
20 of the net proceeds recovered in the action that
21 remain after the payment of the reasonable costs of
22 collection, for the payment to them of the amount paid
23 and to be paid by them as compensation to the injured
24 employee or his or her dependents.

1 2. The commencement of an action by an employee or his or her
2 dependents against a third party for damages by reason of an injury
3 to which this act is applicable, or the adjustment of any claim,
4 shall not affect the rights of the injured employee or his or her
5 dependents to recover compensation, but any amount recovered by the
6 injured employee or his or her dependents from a third party shall
7 be applied as follows:

8 a. reasonable fees and costs of collection shall be
9 deducted,

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

14 c. the remainder of the recovery shall go to the injured
15 employee or his or her dependents.

16 B. Subrogation.

17 1. An employer or carrier liable for compensation under this
18 act for the injury ~~or death~~ of an employee shall have the right to
19 maintain an action in tort against any third party responsible for
20 the injury ~~or death~~. However, the employer or the carrier shall
21 notify the claimant in writing that the claimant has the right to
22 hire a private attorney to pursue any benefits to which the claimant
23 is entitled in addition to the subrogation interest against any
24 third party responsible for the injury ~~or death~~.

1 2. After reasonable notice and opportunity to be represented in
2 the action has been given to the injured employee, the liability of
3 the third party to the compensation beneficiary shall be determined
4 in the action, as well as the third party's liability to the
5 employer and carrier.

6 3. If the employer recovers against the third party, by suit or
7 otherwise, the injured employee shall be entitled to any amount
8 recovered in excess of the amount that the employer and carrier have
9 paid or are liable for in compensation, after deducting reasonable
10 costs of collection.

11 4. An employer or carrier who is liable for compensation under
12 this act on account of injury ~~or death~~ of an employee shall be
13 entitled to maintain a third-party action against the employer's
14 uninsured motorist coverage or underinsured motorist coverage.

15 SECTION 20. AMENDATORY Section 45, Chapter 208, O.S.L.
16 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
17 Supp. 2018, Section 45), is amended to read as follows:

18 Section 45. A. Temporary Total Disability.

19 1. If the injured employee is temporarily unable to perform his
20 or her job or any alternative work offered by the employer, he or
21 she shall be entitled to receive compensation equal to seventy
22 percent (70%) of the injured employee's average weekly wage, but not
23 to exceed ~~seventy percent (70%) of~~ the state average weekly wage,
24 for one hundred four (104) weeks unless the Workers' Compensation

1 Commission by clear and convincing evidence finds that the employee
2 remains temporarily disabled and under active medical treatment.
3 The original and extended periods of temporary total disability
4 shall not exceed three hundred (300) weeks. Provided, there shall
5 be no payment for the first three (3) days of the initial period of
6 temporary total disability. If an administrative law judge finds
7 that a consequential injury has occurred and that additional time is
8 needed to reach maximum medical improvement, temporary total
9 disability may continue for a period of not more than an additional
10 fifty-two (52) weeks. Such finding shall be based upon a showing of
11 medical necessity by clear and convincing evidence. An employer
12 shall have the right to recover any overpayment of temporary total
13 disability payments from a subsequent permanent partial disability
14 award if the offset is deemed justified.

15 2. When the injured employee is released from active medical
16 treatment by the treating physician for all body parts found by the
17 Commission to be injured, or in the event that the employee, without
18 a valid excuse, misses three consecutive medical treatment
19 appointments, fails to comply with medical orders of the treating
20 physician, or otherwise abandons medical care, the employer shall be
21 entitled to terminate temporary total disability by notifying the
22 employee, or if represented, his or her counsel. If, however, an
23 objection to the termination is filed by the employee within ten
24 (10) days of termination, the Commission shall set the matter within

1 twenty (20) days for a determination if temporary total disability
2 compensation shall be reinstated. The temporary total disability
3 shall remain terminated ~~unless the employee proves the existence of~~
4 ~~a valid excuse for his or her failure to comply~~ until such time as
5 the employee complies with medical orders of the treating physician
6 ~~or his or her abandonment of medical care.~~ The administrative law
7 judge may appoint an independent medical examiner to determine if
8 further medical treatment is reasonable and necessary. The
9 independent medical examiner shall not provide treatment to the
10 injured worker, unless agreed upon by the parties.

11 B. Temporary Partial Disability.

12 1. If the injured employee is temporarily unable to perform his
13 or her job, but may perform alternative work offered by the
14 employer, he or she shall be entitled to receive compensation equal
15 to ~~the greater of~~ seventy percent (70%) of the difference between
16 the injured employee's average weekly wage before the injury and his
17 or her weekly wage for performing alternative work after the injury,
18 but only if his or her weekly wage for performing the alternative
19 work is less than the temporary total disability rate. The injured
20 employee's actual earnings plus temporary partial disability
21 compensation shall not exceed the temporary total disability rate.

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

24

1 3. If the employee refuses to perform the alternative work
2 offered by the employee, he or she shall not be entitled to benefits
3 under subsection A of this section or under this section.

4 C. Permanent Partial Disability.

5 1. A permanent partial disability award or combination of
6 awards granted an injured worker may not exceed a permanent partial
7 disability rating of one hundred percent (100%) to any body part or
8 to the body as a whole. The determination of permanent partial
9 disability shall be the responsibility of the Commission through its
10 administrative law judges. Any claim by an employee for
11 compensation for permanent partial disability must be supported by
12 competent medical testimony of a medical doctor, osteopathic
13 physician, or chiropractor, and shall be supported by objective
14 medical findings, as defined in this act. The opinion of the
15 physician shall include employee's percentage of permanent partial
16 disability and whether or not the disability is job-related and
17 caused by the accidental injury or occupational disease. A
18 physician's opinion of the nature and extent of permanent partial
19 disability to parts of the body other than scheduled members must be
20 based solely on criteria established by the current edition of the
21 American Medical Association's "Guides to the Evaluation of
22 Permanent Impairment" or an alternative evaluation method approved
23 by the Commission. A copy of any written evaluation shall be sent
24 to both parties within seven (7) days of issuance. Medical opinions

1 addressing compensability and permanent disability must be stated
2 within a reasonable degree of medical certainty. Any party may
3 submit the report of an evaluating physician.

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

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

14 4. In cases of permanent partial disability, the compensation
15 shall be seventy percent (70%) of the employee's average weekly
16 wage, not to exceed ~~Three Hundred Twenty-three Dollars (\$323.00)~~
17 Three Hundred Ninety-one Dollars (\$391.00) per week, for a term not
18 to exceed a total of ~~three hundred fifty (350)~~ four hundred (400)
19 weeks for the body as a whole.

20 ~~5. Except pursuant to settlement agreements entered into by the~~
21 ~~employer and employee, payment of a permanent partial disability~~
22 ~~award shall be deferred and held in reserve by the employer or~~
23 ~~insurance company if the employee has reached maximum medical~~
24 ~~improvement and has been released to return to work by his or her~~

1 ~~treating physician, and then returns to his pre-injury or equivalent~~
2 ~~job for a term of weeks determined by dividing the total dollar~~
3 ~~value of the award by seventy percent (70%) of the employee's~~
4 ~~average weekly wage.~~

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

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

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

23 d. ~~Attorney fees for permanent partial disability awards,~~
24 ~~as approved by the Commission, shall be calculated~~

~~based upon the total permanent partial disability
award and paid in full at the time of the deferral.~~

~~e.~~

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

6. Previous Disability: The fact that an employee has suffered
previous disability or received compensation therefor shall not
preclude the employee from compensation for a later accidental
personal injury or occupational disease. In the event there exists
a previous permanent partial disability, including a previous non-
work-related injury or condition which produced permanent partial
disability and the same is aggravated or accelerated by an
accidental personal injury or occupational disease, compensation for
permanent partial disability shall be only for such amount as was
caused by such accidental personal injury or occupational disease
and no additional compensation shall be allowed for the preexisting
disability or impairment. Any such reduction shall not apply to
temporary total disability, nor shall it apply to compensation for
medical treatment.

~~a.~~

If workers' compensation benefits have previously been awarded
through settlement or judicial or administrative determination in

1 Oklahoma, the percentage basis of the prior settlement or award
2 shall conclusively establish the amount of permanent partial
3 disability determined to be preexisting. If workers' compensation
4 benefits have not previously been awarded through settlement or
5 judicial or administrative determination in Oklahoma, the amount of
6 preexisting permanent partial disability shall be established by
7 competent evidence and determined by the Commission.

8 ~~b. In all cases, the applicable reduction shall be~~
9 ~~calculated as follows:~~

10 ~~(1) if the preexisting impairment is the result of~~
11 ~~injury sustained while working for the employer~~
12 ~~against whom workers' compensation benefits are~~
13 ~~currently being sought, any award of compensation~~
14 ~~shall be reduced by the current dollar value~~
15 ~~attributable under the Administrative Workers'~~
16 ~~Compensation Act to the percentage of permanent~~
17 ~~partial disability determined to be preexisting.~~
18 ~~The current dollar value shall be calculated by~~
19 ~~multiplying the percentage of preexisting~~
20 ~~permanent partial disability by the compensation~~
21 ~~rate in effect on the date of the accident or~~
22 ~~injury against which the reduction will be~~
23 ~~applied, and~~

1 ~~(2) in all other cases, the employer against whom~~
2 ~~benefits are currently being sought shall be~~
3 ~~entitled to a credit for the percentage of~~
4 ~~preexisting permanent partial disability.~~

5 7. No payments on any permanent partial disability order shall
6 begin until payments on any preexisting permanent partial disability
7 orders have been completed.

8 8. The whole body shall represent a maximum of ~~three hundred~~
9 ~~fifty (350)~~ four hundred (400) weeks.

10 9. The permanent partial disability rate of compensation for
11 amputation or permanent total loss of use of a scheduled member
12 specified in Section 46 of this ~~act~~ title shall be seventy percent
13 (70%) of the employee's average weekly wage, not to exceed ~~Three~~
14 ~~Hundred Twenty-three Dollars (\$323.00)~~ Three Hundred Ninety-one
15 Dollars (\$391.00), multiplied by the number of weeks set forth for
16 the member in Section 46 of this ~~act~~ title, regardless of whether
17 the injured employee is able to return to his or her pre-injury or
18 equivalent job.

19 10. An injured employee who is eligible for permanent partial
20 disability under this subsection shall be entitled to receive
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 gainful employment. Vocational
2 rehabilitation services or training shall not extend for a period of
3 more than ~~fifty-two (52)~~ one hundred four (104) weeks.

4 D. Permanent Total Disability.

5 1. In case of total disability adjudged to be permanent,
6 seventy percent (70%) of the employee's average weekly wages, but
7 not in excess of the state's average weekly wage, shall be paid to
8 the employee during the continuance of the disability until such
9 time as the employee reaches the age of maximum Social Security
10 retirement benefits or for a period of fifteen (15) years, whichever
11 is longer. In the event the claimant dies of causes unrelated to
12 the injury or illness, benefits shall cease on the date of death.
13 Provided, however, any person entitled to revive the action shall
14 receive a one-time lump-sum payment equal to twenty-six (26) weeks
15 of weekly benefits for permanent total disability awarded the
16 claimant. If more than one person is entitled to revive the claim,
17 the lump-sum payment shall be evenly divided between or among such
18 persons. In the event the Commission awards both permanent partial
19 disability and permanent total disability benefits, the permanent
20 total disability award shall not be due until the permanent partial
21 disability award is paid in full. If otherwise qualified according
22 to the provisions of this act, permanent total disability benefits
23 may be awarded to an employee who has exhausted the maximum period
24

1 of temporary total disability even though the employee has not
2 reached maximum medical improvement.

3 2. The Workers' Compensation Commission shall annually review
4 the status of any employee receiving benefits for permanent total
5 disability against the last employer. The Commission shall require
6 the employee to annually file an affidavit under penalty of perjury
7 stating that he or she is not and has not been gainfully employed
8 and is not capable of gainful employment. Failure to file such
9 affidavit shall result in suspension of benefits; provided, however,
10 reinstatement of benefits may occur after proper hearing before the
11 Commission.

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

15 2. ~~The Vocational Rehabilitation Director shall help injured~~
16 ~~workers return to the work force. If the injured employee is unable~~
17 ~~to return to his or her pre-injury or equivalent position due to~~
18 ~~permanent restrictions as determined by the treating physician, upon~~
19 ~~the request of either party, the Vocational Rehabilitation Director~~
20 ~~shall determine if it is appropriate for a claimant to receive~~
21 ~~vocational rehabilitation training or services, and will oversee~~
22 ~~such training. If appropriate, the Vocational Rehabilitation~~
23 ~~Director shall issue administrative orders, including, but not~~
24 ~~limited to, an order for a vocational rehabilitation evaluation for~~

1 ~~any injured employee unable to work for at least ninety (90) days.~~

2 ~~In addition, the Vocational Rehabilitation Director may assign~~
3 ~~injured workers to vocational rehabilitation counselors for~~
4 ~~coordination of recommended services. The cost of the services~~
5 ~~shall be paid by the employer. All administrative orders are~~
6 ~~subject to appeal to the full Commission.~~

7 ~~3. There shall be a presumption in favor of ordering vocational~~
8 ~~rehabilitation services or training for an eligible injured employee~~
9 ~~under the following circumstances:~~

- 10 ~~a. if the employee's occupation is truck driver or~~
11 ~~laborer and the medical condition is traumatic brain~~
12 ~~injury, stroke or uncontrolled vertigo,~~
- 13 ~~b. if the employee's occupation is truck driver or~~
14 ~~laborer performing high-risk tasks and the medical~~
15 ~~condition is seizures,~~
- 16 ~~c. if the employee's occupation is manual laborer and the~~
17 ~~medical condition is bilateral wrist fusions,~~
- 18 ~~d. if the employee's occupation is assembly-line worker~~
19 ~~and the medical condition is radial head fracture with~~
20 ~~surgical excision,~~
- 21 ~~e. if the employee's occupation is heavy laborer and the~~
22 ~~medical condition is myocardial infarction with~~
23 ~~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~~
determine 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~~

1 ~~deducted from any award of benefits to the employee which remains~~
2 ~~unpaid by the employer.~~

3 3. Upon receipt of such report, and after affording all parties
4 an opportunity to be heard, the administrative law judge shall order
5 that any rehabilitation services or training, recommended in the
6 report, or such other rehabilitation services or training as the
7 administrative law judge may deem necessary, provided the employee
8 elects to receive such services, shall be provided at the expense of
9 the employer. Except as otherwise provided in this subsection,
10 refusal to accept rehabilitation services by the employee shall in
11 no way diminish any benefits allowable to an employee.

12 ~~5.~~ 4. The administrative law judge may order vocational
13 rehabilitation before the injured employee reaches maximum medical
14 improvement, if the treating physician believes that it is likely
15 that the employee's injury will prevent the employee from returning
16 to his or her former employment. In granting early benefits for
17 vocational rehabilitation, the Commission shall consider temporary
18 restrictions and the likelihood that such rehabilitation will return
19 the employee to gainful employment earlier than if such benefits are
20 granted after the permanent partial disability hearing in the claim.

21 ~~6.~~ 5. Vocational rehabilitation services or training shall not
22 extend for a period of more than ~~fifty-two (52)~~ one hundred four
23 (104) weeks. A request for vocational rehabilitation services or
24 training shall be filed with the Commission by an interested party

1 not later than sixty (60) days from the date of receiving permanent
2 ~~restrictions~~ disability that ~~prevent~~ prevents the injured employee
3 from returning to his or her pre-injury or equivalent position.

4 ~~7.~~ 6. If rehabilitation requires residence at or near the
5 facility or institution which is away from the employee's customary
6 residence, reasonable cost of the employee's board, lodging, travel,
7 tuition, books and necessary equipment in training shall be paid for
8 by the insurer in addition to weekly compensation benefits to which
9 the employee is otherwise entitled under the Administrative Workers'
10 Compensation Act.

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

23 F. Disfigurement.
24

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

5 2. No award for disfigurement shall be entered until twelve
6 (12) months after the injury unless the treating physician deems the
7 wound or incision to be fully healed.

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

11 G. Benefits for a single-event injury shall be determined by
12 the law in effect at the time of injury. Benefits for a cumulative
13 trauma injury or occupational disease or illness shall be determined
14 by the law in effect at the time the employee knew or reasonably
15 should have known that the injury, occupational disease or illness
16 was related to work activity. Benefits for death shall be
17 determined by the law in effect at the time of death.

18 SECTION 21. AMENDATORY Section 46, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 46), is amended to read as
20 follows:

21 Section 46. A. An injured employee who is entitled to receive
22 permanent partial disability compensation under Section 45 of this
23 ~~act~~ title shall receive compensation for each part of the body in
24

1 accordance with the number of weeks for the scheduled loss set forth
2 below.

3 1. Arm amputated at the elbow, or between the elbow and
4 shoulder, two hundred seventy-five (275) weeks;

5 2. Arm amputated between the elbow and wrist, two hundred
6 twenty (220) weeks;

7 3. Leg amputated at the knee, or between the knee and the hip,
8 two hundred seventy-five (275) weeks;

9 4. Leg amputated between the knee and the ankle, two hundred
10 twenty (220) weeks;

11 5. Hand amputated, two hundred twenty (220) weeks;

12 6. Thumb amputated, sixty-six (66) weeks;

13 7. First finger amputated, thirty-nine (39) weeks;

14 8. Second finger amputated, thirty-three (33) weeks;

15 9. Third finger amputated, twenty-two (22) weeks;

16 10. Fourth finger amputated, seventeen (17) weeks;

17 11. Foot amputated, two hundred twenty (220) weeks;

18 12. Great toe amputated, thirty-three (33) weeks;

19 13. Toe other than great toe amputated, eleven (11) weeks;

20 14. Eye enucleated, in which there was useful vision, two
21 hundred seventy-five (275) weeks;

22 15. Loss of hearing of one ear, one hundred ten (110) weeks;

23 16. Loss of hearing of both ears, three hundred thirty (330)
24 weeks; and

1 17. Loss of one testicle, fifty-three (53) weeks; loss of both
2 testicles, one hundred fifty-eight (158) weeks;

3 18. Shoulder, three hundred (300) weeks; and

4 19. Hip, three hundred (300) weeks.

5 B. The permanent partial disability rate of compensation for
6 amputation or permanent total loss of use of a scheduled member
7 specified in this section shall be seventy percent (70%) of the
8 employee's average weekly wage, not to exceed ~~Three Hundred Twenty-~~
9 ~~three Dollars (\$323.00)~~ Three Hundred Ninety-one Dollars (\$391.00),
10 multiplied by the number of weeks as set forth in this section,
11 regardless of whether or not the injured employee is able to return
12 to his or her pre-injury job.

13 C. Other cases: In cases in which the Workers' Compensation
14 Commission finds an injury to a part of the body not specifically
15 covered by the foregoing provisions of this section, the employee
16 may be entitled to compensation for permanent partial disability.
17 The compensation ordered paid shall be seventy percent (70%) of the
18 employee's average weekly wage, not to exceed ~~Three Hundred Twenty-~~
19 ~~three Dollars (\$323.00)~~ Three Hundred Ninety-one Dollars (\$391.00)
20 for the number of weeks which the partial disability of the employee
21 bears to ~~three hundred fifty (350)~~ four hundred (400) weeks.

22 D. 1. Compensation for amputation of the first phalange of a
23 digit shall be one-half (1/2) of the compensation for the amputation
24 of the entire digit.

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

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

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

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

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

H. The sum of all permanent partial disability awards, excluding awards against the Multiple Injury Trust Fund, shall not exceed ~~three hundred fifty (350)~~ four hundred (400) weeks.

SECTION 22. AMENDATORY Section 47, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 47), is amended to read as follows:

Section 47. A. Time of death. If death does not result within one (1) year from the date of the accident or within the first three (3) years of the period for compensation payments fixed by the

1 compensation judgment, a rebuttable presumption shall arise that the
2 death did not result from the injury.

3 B. Common law spouse. A common law spouse shall not be
4 entitled to benefits under this section unless he or she obtains an
5 order from ~~a court with competent jurisdiction~~ the Workers'
6 Compensation Commission ruling that a common law marriage existed
7 between the decedent and the surviving spouse.

8 C. Beneficiaries - Amounts. If an injury or occupational
9 illness causes death, weekly income benefits shall be payable as
10 follows:

11 1. If there is a surviving spouse, a lump-sum payment of One
12 Hundred Thousand Dollars (\$100,000.00) and seventy percent (70%) of
13 the lesser of the deceased employee's average weekly wage and the
14 state average weekly wage. In addition to the benefits theretofore
15 paid or due, two (2) years' indemnity benefit in one lump sum shall
16 be payable to a surviving spouse upon remarriage;

17 2. If there is a surviving spouse and a child or children, a
18 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
19 fifteen percent (15%) of the lesser of the deceased employee's
20 average weekly wage and the state average weekly wage to each child.
21 If there are more than two children, each child shall receive a pro
22 rata share of Fifty Thousand Dollars (\$50,000.00) and thirty percent
23 (30%) of the deceased employee's average weekly wage;

1 3. If there is a child or children and no surviving spouse, a
2 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
3 fifty percent (50%) of the lesser of the deceased employee's average
4 weekly wage and the state average weekly wage to each child. If
5 there are more than two children, each child shall receive a pro
6 rata share of one hundred percent (100%) of the lesser of the
7 deceased employee's average weekly wage and the state average weekly
8 wage. With respect to the lump-sum payment, if there are more than
9 six children, each child shall receive a pro rata share of One
10 Hundred Fifty Thousand Dollars (\$150,000.00);

11 4. If there is no surviving spouse or children, each legal
12 guardian, if financially dependent on the employee at the time of
13 death, shall receive twenty-five percent (25%) of the lesser of the
14 deceased employee's average weekly wage and the state average weekly
15 wage until the earlier of death, becoming eligible for social
16 security, obtaining full-time employment, or five (5) years from the
17 date benefits under this section begin; and

18 5. The employer shall pay the actual funeral expenses, not
19 exceeding the sum of Ten Thousand Dollars (\$10,000.00).

20 D. The weekly income benefits payable to the surviving spouse
21 under this section shall continue while the surviving spouse remains
22 unmarried. In no event shall this spousal weekly income benefit be
23 diminished by the award to other beneficiaries. The weekly income
24 benefits payable to any child under this section shall terminate on

1 the earlier of death, marriage, or reaching the age of eighteen
2 (18). However, if the child turns eighteen (18) and is:

3 1. Enrolled as a full-time student in high school or is being
4 schooled by other means pursuant to the Oklahoma Constitution;

5 2. Enrolled as a full-time student in any accredited
6 institution of higher education or vocational or technology
7 education; or

8 3. Physically or mentally incapable of self-support,
9 then he or she may continue to receive weekly income benefits under
10 this section until the earlier of reaching the age of twenty-three
11 (23) or, with respect to paragraphs 1 and 2 of this subsection, no
12 longer being enrolled as a student, and with respect to paragraph 3
13 of this subsection, becoming capable of self-support.

14 E. If any member of the class of beneficiaries who receive a
15 pro rata share of weekly income benefits becomes ineligible to
16 continue to receive benefits, the remaining members of the class
17 shall receive adjusted weekly income benefits equal to the new class
18 size.

19 F. To receive benefits under this section, a beneficiary or his
20 or her guardian, if applicable, shall file a proof of loss form with
21 the Commission. All questions of dependency shall be determined as
22 of the time of the injury. The employer shall initiate payment of
23 benefits within fifteen (15) days of the Commission's determination
24 of the proper beneficiaries. The Commission shall appoint a

1 guardian ad litem to represent known and unknown minor children and
2 the guardian ad litem shall be paid a reasonable fee for his or her
3 services.

4 SECTION 23. AMENDATORY Section 50, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2018, Section 50), is amended to read as
6 follows:

7 Section 50. A. The employer shall promptly provide an injured
8 employee with medical, surgical, hospital, optometric, podiatric,
9 and nursing services, along ~~any~~ with any medicine, crutches,
10 ambulatory devices, artificial limbs, eyeglasses, contact lenses,
11 hearing aids, and other apparatus as may be reasonably necessary in
12 connection with the injury received by the employee. The employer
13 shall have the right to choose the treating physician.

14 B. If the employer fails or neglects to provide medical
15 treatment within five (5) days after actual knowledge is received of
16 an injury, the injured employee may select a physician to provide
17 medical treatment at the expense of the employer; provided, however,
18 that the injured employee, or another in the employee's behalf, may
19 obtain emergency treatment at the expense of the employer where such
20 emergency treatment is not provided by the employer.

21 C. Diagnostic tests shall not be repeated sooner than six (6)
22 months from the date of the test unless agreed to by the parties or
23 ordered by the Commission for good cause shown.

1 D. Unless recommended by the treating doctor at the time
2 claimant reaches maximum medical improvement or by an independent
3 medical examiner, continuing medical maintenance shall not be
4 awarded by the Commission. The employer or insurance carrier shall
5 not be responsible for continuing medical maintenance or pain
6 management treatment that is outside the parameters established by
7 the Physician Advisory Committee or ODG. The employer or insurance
8 carrier shall not be responsible for continuing medical maintenance
9 or pain management treatment not previously ordered by the
10 Commission or approved in advance by the employer or insurance
11 carrier. An administrative law judge may order an employer to
12 provide detoxification treatment for employees who are prescribed
13 opioids or other narcotics. If an employee refuses such
14 detoxification treatment, the administrative law judge may terminate
15 pain management after reasonable notice and hearing.

16 E. An employee claiming or entitled to benefits under this act,
17 shall, if ordered by the Commission or requested by the employer or
18 insurance carrier, submit himself or herself for medical
19 examination. If an employee refuses to submit himself or herself to
20 examination, ~~his or her right to prosecute any proceeding under this~~
21 ~~act shall be suspended, and~~ no compensation shall be payable for the
22 period of such refusal.

23 F. For compensable injuries resulting in the use of a medical
24 device, ongoing service for the medical device shall be provided in

1 situations including, but not limited to, medical device battery
2 replacement, ongoing medication refills related to the medical
3 device, medical device repair, or medical device replacement.

4 G. The employer shall reimburse the employee for the actual
5 mileage in excess of twenty (20) miles round-trip to and from the
6 employee's home to the location of a medical service provider for
7 all reasonable and necessary treatment, for an evaluation of an
8 independent medical examiner and for any evaluation made at the
9 request of the employer or insurance carrier. The rate of
10 reimbursement for such travel expense shall be the official
11 reimbursement rate as established by the State Travel Reimbursement
12 Act. In no event shall the reimbursement of travel for medical
13 treatment or evaluation exceed six hundred (600) miles round trip.
14 After the employee submits a documented travel expense reimbursement
15 request in regard to medical treatment of an admitted or adjudicated
16 part of the body, the employer shall pay such expense within sixty
17 (60) days. If the employer does not reimburse the employee within
18 that time, the employer is subject to a penalty, paid to the
19 employee, of up to fifty percent (50%) of the requested amount, to
20 be determined by the administrative law judge. Proper documentation
21 shall include the date the request is filed, the date of each trip,
22 the name and city or town of each medical provider, and the round-
23 trip mileage between the home of the employee and medical service
24

1 provider. The Commission shall develop a form for submitting a
2 travel expense reimbursement request pursuant to this subsection.

3 H. Fee Schedule.

4 1. The Commission shall conduct a review of the Fee Schedule
5 every two (2) years. The Fee Schedule shall establish the maximum
6 rates that medical providers shall be reimbursed for medical care
7 provided to injured employees, including, but not limited to,
8 charges by physicians, dentists, counselors, hospitals, ambulatory
9 and outpatient facilities, clinical laboratory services, diagnostic
10 testing services, and ambulance services, and charges for durable
11 medical equipment, prosthetics, orthotics, and supplies. The most
12 current Fee Schedule established by the Administrator of the
13 Workers' Compensation Court prior to the effective date of this
14 section shall remain in effect, unless or until the Legislature
15 approves the Commission's proposed Fee Schedule.

16 2. Reimbursement for medical care shall be prescribed and
17 limited by the Fee Schedule as adopted by the Commission, after
18 notice and public hearing, and after approval by the Legislature by
19 joint resolution. A new Fee Schedule, with updated codes, shall be
20 approved by the Commission no later than December 31, 2019, and
21 shall include a five-percent increase for each reimbursement code.

22 The director of the Employees Group Insurance Division of the Office
23 of Management and Enterprise Services shall provide the Commission
24 such information as may be relevant for the development of the Fee

1 Schedule. The Commission shall develop the Fee Schedule in a manner
2 in which quality of medical care is assured and maintained for
3 injured employees. The Commission shall give due consideration to
4 additional requirements for physicians treating an injured worker
5 under this act, including, but not limited to, communication with
6 claims representatives, case managers, attorneys, and
7 representatives of employers, and the additional time required to
8 complete forms for the Commission, insurance carriers, and
9 employers.

10 3. In making adjustments to the Fee Schedule, the Commission
11 shall use, as a benchmark, the reimbursement rate for each Current
12 Procedural Terminology (CPT) code provided for in the fee schedule
13 published by the Centers for Medicare and Medicaid Services of the
14 U.S. Department of Health and Human Services for use in Oklahoma
15 (Medicare Fee Schedule) on the effective date of this section,
16 workers' compensation fee schedules employed by neighboring states,
17 the latest edition of "Relative Values for Physicians" (RVP), usual,
18 customary and reasonable medical payments to workers' compensation
19 health care providers in the same trade area for comparable
20 treatment of a person with similar injuries, and all other data the
21 Commission deems relevant. For services not valued by CMS, the
22 Commission shall establish values based on the usual, customary and
23 reasonable medical payments to health care providers in the same
24

1 trade area for comparable treatment of a person with similar
2 injuries.

3 a. No reimbursement shall be allowed for any magnetic
4 resonance imaging (MRI) unless the MRI is provided by
5 an entity that meets Medicare requirements for the
6 payment of MRI services or is accredited by the
7 American College of Radiology, the Intersocietal
8 Accreditation Commission or the Joint Commission on
9 Accreditation of Healthcare Organizations. For all
10 other radiology procedures, the reimbursement rate
11 shall be the lesser of the reimbursement rate allowed
12 by the 2010 Oklahoma Fee Schedule and two hundred
13 seven percent (207%) of the Medicare Fee Schedule.

14 b. For reimbursement of medical services for Evaluation
15 and Management of injured employees as defined in the
16 Fee Schedule adopted by the Commission, the
17 reimbursement rate shall not be less than one hundred
18 fifty percent (150%) of the Medicare Fee Schedule.

19 c. Any entity providing durable medical equipment,
20 prosthetics, orthotics or supplies shall be accredited
21 by a CMS-approved accreditation organization. If a
22 physician provides durable medical equipment,
23 prosthetics, orthotics, prescription drugs, or
24 supplies to a patient ancillary to the patient's

1 visit, reimbursement shall be no more than ten percent
2 (10%) above cost.

3 d. The Commission shall develop a reasonable stop-loss
4 provision of the Fee Schedule to provide for adequate
5 reimbursement for treatment for major burns, severe
6 head and neurological injuries, multiple system
7 injuries, and other catastrophic injuries requiring
8 extended periods of intensive care. An employer or
9 insurance carrier has the right to audit or question
10 the reasonableness and necessity of medical treatment
11 contained in a bill for treatment covered by the stop-
12 loss provision.

13 4. The right to recover charges for every type of medical care
14 for injuries arising out of and in the course of covered employment
15 as defined in this act shall lie solely with the Commission. When a
16 medical care provider has brought a claim to the Commission to
17 obtain payment for services, a party who prevails in full on the
18 claim shall be entitled to reasonable attorney fees.

19 5. Nothing in this section shall prevent an employer, insurance
20 carrier, group self-insurance association, or certified workplace
21 medical plan from contracting with a provider of medical care for a
22 reimbursement rate that is greater than or less than limits
23 established by the Fee Schedule.

1 6. A treating physician may not charge more than Four Hundred
2 Dollars (\$400.00) per hour for preparation for or testimony at a
3 deposition or appearance before the Commission in connection with a
4 claim covered by the Administrative Workers' Compensation Act.

5 7. The Commission's review of medical and treatment charges
6 pursuant to this section shall be conducted pursuant to the Fee
7 Schedule in existence at the time the medical care or treatment was
8 provided. The judgment approving the medical and treatment charges
9 pursuant to this section shall be enforceable by the Commission in
10 the same manner as provided in this act for the enforcement of other
11 compensation payments.

12 8. Charges for prescription drugs dispensed by a pharmacy shall
13 be limited to ninety percent (90%) of the average wholesale price of
14 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per
15 prescription. "Average wholesale price" means the amount determined
16 from the latest publication designated by the Commission.
17 Physicians shall prescribe and pharmacies shall dispense generic
18 equivalent drugs when available. If the National Drug Code, or
19 "NDC", for the drug product dispensed is for a repackaged drug, then
20 the maximum reimbursement shall be the lesser of the original
21 labeler's NDC and the lowest-cost therapeutic equivalent drug
22 product. Compounded medications shall be billed by the compounding
23 pharmacy at the ingredient level, with each ingredient identified
24 using the applicable NDC of the drug product, and the corresponding

1 quantity. Ingredients with no NDC area are not separately
2 reimbursable. Payment shall be based on a sum of the allowable fee
3 for each ingredient plus a dispensing fee of Five Dollars (\$5.00)
4 per prescription.

5 9. When medical care includes prescription drugs dispensed by a
6 physician or other medical care provider and the NDC for the drug
7 product dispensed is for a repackaged drug, then the maximum
8 reimbursement shall be the lesser of the original labeler's NDC and
9 the lowest-cost therapeutic equivalent drug product. Payment for
10 compounded medications or repackaged drugs shall be based upon a sum
11 of the allowable fee for each ingredient plus a dispensing fee of
12 Five Dollars (\$5.00) per prescription. Compounded medications shall
13 be billed by the compounding pharmacy.

14 10. Implantables are paid in addition to procedural
15 reimbursement paid for medical or surgical services. A
16 manufacturer's invoice for the actual cost to a physician, hospital
17 or other entity of an implantable device shall be adjusted by the
18 physician, hospital or other entity to reflect, at the time
19 implanted, all applicable discounts, rebates, considerations and
20 product replacement programs and shall be provided to the payer by
21 the physician or hospital as a condition of payment for the
22 implantable device. If the physician, or an entity in which the
23 physician has a financial interest other than an ownership interest
24 of less than five percent (5%) in a publically traded company,

1 provides implantable devices, this relationship shall be disclosed
2 to patient, employer, insurance company, third-party commission,
3 certified workplace medical plan, case managers, and attorneys
4 representing claimant and defendant. If the physician, or an entity
5 in which the physician has a financial interest other than an
6 ownership interest of less than five percent (5%) in a ~~publically~~
7 publicly traded company, buys and resells implantable devices to a
8 hospital or another physician, the markup shall be limited to ten
9 percent (10%) above cost.

10 11. Payment for medical care as required by this act shall be
11 due within forty-five (45) days of the receipt by the employer or
12 insurance carrier of a complete and accurate invoice, unless the
13 employer or insurance carrier has a good-faith reason to request
14 additional information about such invoice. Thereafter, the
15 Commission may assess a penalty up to twenty-five percent (25%) for
16 any amount due under the Fee Schedule that remains unpaid on the
17 finding by the Commission that no good-faith reason existed for the
18 delay in payment. If the Commission finds a pattern of an employer
19 or insurance carrier willfully and knowingly delaying payments for
20 medical care, the Commission may assess a civil penalty of not more
21 than Five Thousand Dollars (\$5,000.00) per occurrence.

22 12. If an employee fails to appear for a scheduled appointment
23 with a physician, the employer or insurance company shall pay to the
24 physician a reasonable charge, to be determined by the Commission,

1 for the missed appointment. In the absence of a good-faith reason
2 for missing the appointment, the Commission shall order the employee
3 to reimburse the employer or insurance company for the charge.

4 13. Physicians providing treatment under this act shall
5 disclose under penalty of perjury to the Commission, on a form
6 prescribed by the Commission, any ownership or interest in any
7 health care facility, business, or diagnostic center that is not the
8 physician's primary place of business. The disclosure shall include
9 any employee leasing arrangement between the physician and any
10 health care facility that is not the physician's primary place of
11 business. A physician's failure to disclose as required by this
12 section shall be grounds for the Commission to disqualify the
13 physician from providing treatment under this act.

14 I. Formulary. The Commission by rule shall adopt a closed
15 formulary. Rules adopted by the Commission shall allow an appeals
16 process for claims in which a treating doctor determines and
17 documents that a drug not included in the formulary is necessary to
18 treat an injured employee's compensable injury. The Commission by
19 rule shall require the use of generic pharmaceutical medications and
20 clinically appropriate over-the-counter alternatives to prescription
21 medications unless otherwise specified by the prescribing doctor, in
22 accordance with applicable state law.

1 SECTION 24. AMENDATORY Section 53, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 53), is amended to read as
3 follows:

4 Section 53. A. An injured employee claiming to be entitled to
5 benefits under this act shall submit to physical examination and
6 treatment by another qualified physician, designated or approved by
7 the Commission, as the Commission may require from time to time if
8 reasonable and necessary.

9 B. In cases where the Commission directs examination or
10 treatment, proceedings shall be suspended, and no compensation shall
11 be payable for any period during which the employee refuses to
12 submit to examination and treatment or otherwise obstructs the
13 examination or treatment.

14 C. Failure of the employee to obey a judgment of the Commission
15 for an examination or treatment ~~for a period of one (1) month from~~
16 ~~the date of the judgment~~ shall bar the right of the claimant to
17 further temporary total disability compensation in respect to the
18 injury.

19 SECTION 25. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 54.1 of Title 85A, unless there
21 is created a duplication in numbering, reads as follows:

22 A. If a treating physician recommends a surgery that is subject
23 to choice, and does not involve medical urgency or emergency, the
24 Workers' Compensation Commission, upon request by the employer,

1 shall appoint an Independent Medical Examiner to determine the
2 reasonableness and necessity of such surgery.

3 B. The Commission shall either approve, deny or modify the
4 request for surgery within sixty (60) days of the receipt of the
5 report of the Independent Medical Examiner.

6 SECTION 26. AMENDATORY Section 57, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2018, Section 57), is amended to read as
8 follows:

9 Section 57. ~~A.~~ If an injured employee misses two or more
10 consecutive scheduled appointments for treatment without a valid
11 reason, he or she shall no longer be eligible to receive temporary
12 total disability benefits under this act title, ~~unless his or her~~
13 ~~absence was:~~

14 ~~1. Caused by extraordinary circumstances beyond the employee's~~
15 ~~control as determined by the Commission; or~~

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

18 ~~B. Inability to get transportation to or from the appointment~~
19 ~~shall not be considered extraordinary circumstances nor a valid~~
20 ~~excuse for the absence.~~

21 SECTION 27. AMENDATORY Section 60, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2018, Section 60), is amended to read as
23 follows:

1 Section 60. The Physician Advisory Committee may recommend the
2 adoption of a method or system to evaluate permanent disability that
3 shall deviate from, or be used in place of or in combination with
4 the Guides. Such recommendation shall be made to the Workers'
5 Compensation Commission which may adopt the recommendation in part
6 or in whole. The adopted method or system shall be submitted by the
7 Executive Director of the Commission to the Governor, the Speaker of
8 the House of Representatives and the President Pro Tempore of the
9 Senate within the first ten (10) legislative days of a regular
10 session of the Legislature. Such method or system so submitted
11 shall be subject to disapproval by joint or concurrent resolution of
12 the Legislature during the legislative session in which submitted.
13 If disapproved, the existing method of determining permanent partial
14 disability shall continue in effect. If the Legislature takes no
15 action on the method or system submitted by the Executive Director,
16 the method or system shall become operative thirty (30) days
17 following the adjournment of the Legislature.

18 SECTION 28. AMENDATORY Section 62, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 62), is amended to read as
20 follows:

21 Section 62. A. Notwithstanding the provisions of Section 45 of
22 this ~~act~~ title, if an employee suffers a nonsurgical soft tissue
23 injury, temporary total disability compensation shall not exceed
24 eight (8) weeks, regardless of the number of parts of the body to

1 which there is a nonsurgical soft tissue injury. An employee who is
2 treated with an injection or injections shall be entitled to an
3 extension of an additional eight (8) weeks. For purposes of this
4 section, an injection shall not include facet injections or
5 intravenous injections. An employee who has been recommended by a
6 treating physician for surgery for a soft tissue injury may petition
7 the Workers' Compensation Commission for one extension of temporary
8 total disability compensation and the Commission may order an
9 extension, not to exceed sixteen (16) additional weeks. If the
10 surgery is not performed within thirty (30) days of the approval of
11 the surgery by the employer, its insurance carrier, or an order of
12 the Commission authorizing the surgery, and the delay is caused by
13 the employee acting in bad faith, the benefits for the extension
14 period shall be terminated and the employee shall reimburse the
15 employer any temporary total disability compensation he or she
16 received beyond eight (8) weeks. An epidural steroid injection, or
17 any procedure of the same or similar physical invasiveness, shall
18 not be considered surgery.

19 B. For purposes of this section, "soft tissue injury" means
20 damage to one or more of the tissues that surround bones and joints.
21 Soft tissue injury includes, but is not limited to, sprains,
22 strains, contusions, tendonitis and muscle tears. Cumulative trauma
23 is to be considered a soft tissue injury unless corrective surgery
24

1 is necessary. Soft tissue injury does not include any of the
2 following:

3 1. Injury to or disease of the spine, spinal discs, spinal
4 nerves or spinal cord, where corrective surgery is performed;

5 2. Brain or closed-head injury as evidenced by:

6 a. sensory or motor disturbances,

7 b. communication disturbances,

8 c. complex integrated disturbances of cerebral function,

9 d. episodic neurological disorders, or

10 e. other brain and closed-head injury conditions at least
11 as severe in nature as any condition provided in
12 subparagraphs a through d of this paragraph; or

13 3. Any joint replacement.

14 SECTION 29. AMENDATORY Section 63, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 63), is amended to read as
16 follows:

17 Section 63. A. Within ten (10) days after the date of receipt
18 of notice or of knowledge of injury or death, the employer shall
19 send to the Workers' Compensation Commission a report setting forth:

20 1. The name, address, and business of the employer;

21 2. The name, address, and occupation of the employee;

22 3. The cause and nature of the injury or death;

23 4. The year, month, day, approximately when, and the particular
24 locality where, the injury or death occurred; and

1 5. Such other information as the Commission may require.

2 B. Additional reports with respect to the injury and of the
3 condition of the employee shall be sent by the employer to the
4 Commission at such time and in such manner as the Commission may
5 prescribe. However, an employer may refuse to provide any
6 information that it deems privileged or confidential.

7 C. Any report provided for in subsection A or B of this section
8 shall not be evidence of any fact stated in the report in any
9 proceeding with respect to the injury or death on account of which
10 the report is made. Any such report shall not be made available to
11 the public without authorization for a specific purpose as approved
12 by the Commission, and any such report shall be exempt from the
13 provisions of Section 24A.5 of Title 51 of the Oklahoma Statutes.

14 D. The mailing of any report in a stamped envelope, properly
15 addressed, within the time prescribed in subsection A or B of this
16 section, shall be in compliance with this section. In addition, the
17 Commission shall establish a means of electronic delivery of any
18 report or other information required by this section.

19 E. 1. Any employer who after notice refuses to send any report
20 required by this section shall be subject to a civil penalty in an
21 amount of Five Hundred Dollars (\$500.00) for each refusal.

22 2. Whenever the employer has failed or refused to comply as
23 provided in this section, the Commission may serve on the employer a
24 proposed judgment declaring the employer to be in violation of this

1 act and containing the amount, if any, of the civil penalty to be
2 assessed against the employer under this section.

3 F. An employer may contest a proposed judgment of the
4 Commission issued under subsection E of this section by filing with
5 the Commission, within twenty (20) days of receipt of the proposed
6 judgment, a written request for a hearing. If a written request for
7 hearing is not filed with the Commission within this time, the
8 proposed judgment, proposed penalty, or both, shall be a final
9 judgment of the Commission. The request for a hearing does not need
10 to be in any particular form but shall specify the grounds on which
11 the person contests the proposed judgment, the proposed assessment,
12 or both. A proposed judgment by the Commission under this section
13 shall be prima facie correct, and the burden is on the employer to
14 prove that the proposed judgment is incorrect.

15 G. Hearings conducted under this section shall proceed as
16 provided in Sections 69 through 78 of this ~~act~~ title.

17 H. If an employer fails to pay any civil penalty assessed
18 against the employer after a judgment issued under this section has
19 become final by operation of law, the Commission may petition the
20 district court of the county where the employer's principal place of
21 business is located for an order enjoining the employer from
22 engaging in further employment or conduct of business until such
23 time as the employer makes all required reports and pays all civil
24 penalties.

1 SECTION 30. AMENDATORY Section 65, Chapter 208, O.S.L.
2 2013, as amended by Section 3, Chapter 390, O.S.L. 2015 (85A O.S.
3 Supp. 2018, Section 65), is amended to read as follows:

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

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

17 C. 1. If an occupational disease is aggravated by any other
18 disease or infirmity, not itself compensable, or if disability or
19 death from any other cause, not itself compensable, is aggravated,
20 prolonged, accelerated, or in any way contributed to by an
21 occupational disease, the compensation payable shall be reduced and
22 limited to the proportion only of the compensation that would be
23 payable if the occupational disease were the major cause of the
24

1 disability or death as the occupational disease, as a causative
2 factor, bears to all the causes of the disability or death.

3 2. The reduction in compensation is to be effected by reducing
4 the number of weekly or monthly payments or the amounts of the
5 payments, as under the circumstances of the particular case may be
6 for the best interest of the claimant.

7 D. 1. "Occupational disease", as used in this act, unless the
8 context otherwise requires, means any disease that results in
9 disability or death and arises out of and in the course of the
10 occupation or employment of the employee or naturally follows or
11 unavoidably results from an injury as that term is defined in this
12 act. A causal connection between the occupation or employment and
13 the occupational disease shall be established by a preponderance of
14 the evidence.

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

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

20 E. 1. When compensation is payable for an occupational
21 disease, the employer in whose employment the employee was last
22 injuriously exposed to the hazards of the disease and the carrier,
23 if any, on the risk when the employee was last injuriously exposed
24 under the employer shall be liable.

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

5 F. ~~1-~~ An employer shall not be liable for any compensation for
6 an occupational disease unless:

7 a. ~~the disease is due to the nature of an employment in~~
8 ~~which the hazards of the disease actually exist and is~~
9 ~~actually incurred in the course and scope of his or~~
10 ~~her employment. This includes any disease due to or~~
11 ~~attributable to exposure to or contact with any~~
12 ~~radioactive material by an employee in the course and~~
13 ~~scope of his or her employment,~~

14 b. ~~disablement or death results within three (3) years in~~
15 ~~case of silicosis or asbestosis, or one (1) year in~~
16 ~~case of any other occupational disease, except a~~
17 ~~diseased condition caused by exposure to X-rays,~~
18 ~~radioactive substances, or ionizing radiation, after~~
19 ~~the last injurious exposure to the disease in the~~
20 ~~employment, or~~

21 c. ~~in case of death, death follows continuous disability~~
22 ~~from the disease, commencing within the period, for~~
23 ~~which compensation has been paid or awarded or timely~~
24 ~~claim made as provided in subparagraph b of this~~

1 ~~paragraph and results within seven (7) years after the~~
2 ~~last exposure.~~

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

6 SECTION 31. AMENDATORY Section 66, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2018, Section 66), is amended to read as
8 follows:

9 Section 66. A. As used in this act, unless the context
10 otherwise requires:

11 1. "Asbestosis" means the characteristic fibrotic condition of
12 the lungs caused by the inhalation of asbestos dust; and

13 2. "Silicosis" means the characteristic fibrotic condition of
14 the lungs caused by the inhalation of silica dust.

15 B. In the absence of ~~conclusive~~ a preponderance of the evidence
16 in favor of the claim, disability or death from silicosis or
17 asbestosis shall be presumed not to be due to the nature of any
18 occupation within the provision of this section unless during the
19 ten (10) years immediately preceding the date of disablement the
20 employee has been exposed to the inhalation of silica dust or
21 asbestos dust over a period of not less than five (5) years, two (2)
22 years of which shall have been in this state, under a contract of
23 employment performed in this state. However, if the employee has
24 been employed by the same employer during the entire five-year

1 period, his or her right to compensation against the employer shall
2 not be affected by the fact that he or she had been employed during
3 any part of the period outside of this state.

4 C. Except as otherwise provided in this section, compensation
5 for disability from uncomplicated silicosis or asbestosis shall be
6 payable in accordance with the provisions of Sections 45 and 48 of
7 this ~~act~~ title.

8 D. 1. In case of disability or death from silicosis or
9 asbestosis complicated with tuberculosis of the lungs, compensation
10 shall be payable as for uncomplicated silicosis or asbestosis,
11 provided that the silicosis or asbestosis was an essential factor in
12 the causing of disability or death.

13 2. In case of disability or death from silicosis or asbestosis
14 complicated with any other disease, or from any other disease
15 complicated with silicosis or asbestosis, the compensation shall be
16 reduced as provided in subsection C of Section 65 of this ~~act~~ title.

17 ~~E. 1. When an employee, though not actually disabled, is found~~
18 ~~by the Commission to be affected by silicosis or asbestosis to such~~
19 ~~a degree as to make it unduly hazardous for him or her to continue~~
20 ~~in an employment involving exposure to the hazards of the disease,~~
21 ~~the Commission may order that he or she be removed from his or her~~
22 ~~employment. In such a case, or in case he or she has already been~~
23 ~~discharged from the employment and is unemployed, he or she shall be~~
24 ~~entitled to compensation until he or she can obtain steady~~

1 ~~employment in some other suitable occupation in which there are no~~
2 ~~hazards of the disease.~~

3 ~~2. When in any case the forced change of employment shall, in~~
4 ~~the opinion of the Commission, require that the employee be given~~
5 ~~special training in order to qualify him or her for another~~
6 ~~occupation, the employer liable for compensation shall pay for the~~
7 ~~vocational rehabilitation and training provided for in this act.~~

8 SECTION 32. AMENDATORY Section 67, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2018, Section 67), is amended to read as
10 follows:

11 Section 67. A. ~~1.~~ Except as otherwise provided in this
12 section, notice of disability resulting from an occupational disease
13 or cumulative trauma shall be the same as in cases of accidental
14 injury.

15 ~~2.~~ B. Written notice shall be given to the employer of an
16 occupational disease or cumulative trauma by the employee, or a
17 representative of the employee in the case of incapacity or death,
18 within six (6) months after the first distinct manifestation of the
19 disease or cumulative trauma or within six (6) months after death.

20 ~~B. An award or denial of award of compensation for an~~
21 ~~occupational disease or cumulative trauma may be reviewed and~~
22 ~~compensation increased, reduced, or terminated where previously~~
23 ~~awarded, or awarded where previously denied, only on proof of fraud~~
24 ~~or undue influence or of change of condition, and then only on~~

1 ~~application by a party in interest made not later than one (1) year~~
2 ~~after the denial of award or, where compensation has been awarded,~~
3 ~~after the award or the date when the last payment was made under the~~
4 ~~award, except in cases of silicosis or asbestosis, where the statute~~
5 ~~of limitations shall be two (2) years.~~

6 SECTION 33. AMENDATORY Section 69, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2018, Section 69), is amended to read as
8 follows:

9 Section 69. A. Time for Filing.

10 1. A claim for benefits under this act, other than an
11 occupational disease, shall be barred unless it is filed with the
12 Workers' Compensation Commission within one (1) year from the date
13 of the injury. If during the one-year period following the filing
14 of the claim the employee receives no weekly benefit compensation
15 and receives no medical treatment resulting from the alleged injury,
16 the claim shall be barred thereafter Provided, however, a claim may
17 be filed with the Commission within one (1) year of the date of the
18 last payment of compensation or wages in lieu thereof, or the date
19 of the last authorized medical appointment attended by the employee,
20 whichever is later. When a claim for compensation has been filed,
21 unless the employee shall in good faith request a hearing for
22 benefits within one (1) year from the date of the filing thereof, or
23 within one (1) year from the date of last payment of compensation or
24 wages in lieu thereof, or the date of the last authorized medical

1 appointment attended by the employee, the claim shall be dismissed
2 with prejudice for want of prosecution. For purposes of this
3 section, the date of the injury shall be defined as the date an
4 injury is caused by an accident as set forth in paragraph 9 of
5 Section 2 of this ~~act~~ title.

6 2. a. A claim for compensation for disability on account of
7 injury which is either an occupational disease or
8 occupational infection shall be barred unless filed
9 with the Commission within two (2) years from the date
10 of the last injurious exposure to the hazards of the
11 disease or infection.

12 b. A claim for compensation for disability on account of
13 silicosis or asbestosis shall be filed with the
14 Commission within one (1) year after the time of
15 disablement, and the disablement shall occur within
16 three (3) years from the date of the last injurious
17 exposure to the hazard of silicosis or asbestosis.

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

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

4 4. If within ~~six (6) months~~ one (1) year after the filing of a
5 controverted claim for compensation no bona fide request for a
6 hearing has been made with respect to the claim, the claim may, on
7 motion and after hearing, be dismissed ~~with~~ without prejudice.

8 B. Time for Filing Additional Compensation.

9 1. In cases in which any compensation, including disability or
10 medical, has been paid on account of injury, a claim for additional
11 compensation shall be barred unless filed with the Commission within
12 one (1) year from the date of the last payment of ~~disability~~
13 compensation or two (2) years from the date of the injury, whichever
14 is greater.

15 2. The statute of limitations provided in this subsection shall
16 not apply to claims for the replacement of medicine, crutches,
17 ambulatory devices, artificial limbs, eyeglasses, contact lenses,
18 hearing aids, and other apparatus permanently or indefinitely
19 required as the result of a compensable injury, when the employer or
20 carrier previously furnished such medical supplies, but replacement
21 of such items shall not constitute payment of compensation so as to
22 toll the statute of limitations.

23 C. A claim for additional compensation shall specifically state
24 that it is a claim for additional compensation. Documents which do

1 not specifically request additional benefits shall not be considered
2 a claim for additional compensation.

3 D. If within ~~six (6) months~~ one (1) year after the filing of a
4 claim for additional compensation no bona fide request for a hearing
5 has been made with respect to the claim, the claim shall be
6 dismissed without prejudice to the refiling of the claim within the
7 limitation period specified in subsection B of this section.

8 E. Failure to File. Failure to file a claim within the period
9 prescribed in subsection A or B of this section shall not be a bar
10 to the right to benefits hereunder unless objection to the failure
11 is made at the first hearing on the claim in which all parties in
12 interest have been given a reasonable notice and opportunity to be
13 heard by the Commission.

14 F. Persons under Disability.

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

20 2. Subsections A and B of this section shall not apply to a
21 mental incompetent or minor so long as the person has no guardian or
22 similar legal representative. The limitations prescribed in
23 subsections A and B of this section shall apply to the mental
24 incompetent or minor from the date of the appointment of a guardian

1 or similar legal representative for that person, and when no
2 guardian or similar representative has been appointed, to a minor on
3 reaching the age of majority.

4 G. A latent injury or condition shall not delay or toll the
5 limitation periods specified in this section. This subsection shall
6 not apply to the limitation period for occupational diseases
7 specified in paragraph 2 of subsection A of this section.

8 SECTION 34. AMENDATORY Section 71, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2018, Section 71), is amended to read as
10 follows:

11 Section 71. A. Notice. Within ten (10) days after a claim for
12 compensation has been filed, the Workers' Compensation Commission
13 shall notify the employer and any other interested person of the
14 filing of the claim.

15 B. Investigation - Hearing.

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

19 2. An application for a hearing shall clearly set forth the
20 specific issues of fact or law in controversy and the contentions of
21 the party applying for the hearing.

22 3. If any party is not represented by a lawyer, the
23 administrative law judge shall define the issues to be heard.
24

1 4. If a hearing on the claim is ordered, the administrative law
2 judge shall give the claimant and other interested parties ten (10)
3 days' notice of the hearing served personally on the claimant and
4 other parties, or by registered mail, facsimile, electronic mail or
5 by other electronic means with receipt of confirmation. The hearing
6 ~~shall~~ may be held in ~~Tulsa or Oklahoma County~~ any county of this
7 state, as determined by the Commission.

8 5. The award, together with the statement of the findings of
9 fact and other matters pertinent to the issues, shall be filed with
10 the record of the proceedings, and a copy of the award shall
11 immediately be sent to the parties in or to counsels of record, if
12 any.

13 C. Evidence and Construction.

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

21 b. Any determination of the existence or extent of
22 physical impairment shall be supported by objective
23 and measurable physical or mental findings.
24

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

5 3. Administrative law judges, the Commission, and any reviewing
6 courts shall strictly construe the provisions of this act.

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

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

16 E. No compensation for disability of an injured employee shall
17 be payable for any period beyond his or her death; provided,
18 however, an award of compensation for permanent partial disability
19 may be made after the death of the injured employee ~~for the period~~
20 ~~of disability preceding death.~~ Such reviver action may be brought
21 only by the injured employee's spouse, minor children or children
22 under a disability as defined by Section 67 of this title.
23
24

1 SECTION 35. AMENDATORY Section 78, Chapter 208, O.S.L.

2 2013 (85A O.S. Supp. 2018, Section 78), is amended to read as
3 follows:

4 Section 78. A. Any party feeling aggrieved by the judgment,
5 decision, or award made by the administrative law judge may, within
6 ten (10) days of issuance, appeal to the Workers' Compensation
7 Commission. After hearing arguments, the Commission may reverse or
8 modify the decision only if it determines that the decision was
9 against the clear weight of the evidence or contrary to law. All
10 such proceedings of the Commission shall be recorded by a court
11 reporter, if requested by any party. Any judgment of the Commission
12 which reverses a decision of the administrative law judge shall
13 contain specific findings relating to the reversal.

14 B. 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~~ to the credit of the
17 Workers' Compensation Commission Revolving Fund.

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

13 E. During the pendency of an appeal filed by an employer or the
14 employer's insurance carrier pursuant to this section, payment for
15 any prescription drugs prescribed by the treating physician shall be
16 continued. If payment for prescription drugs is an issue on appeal,
17 and the employer is held not to be liable for payment for the
18 prescription drugs, the employee shall reimburse the employer or the
19 employer's insurance carrier for the cost of prescriptions filled
20 during the time of the appeals process.

21 SECTION 36. AMENDATORY Section 80, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2018, Section 80), is amended to read as
23 follows:
24

1 Section 80. A. A final order for permanent disability is a
2 final adjudication of all issues pending in the claim unless
3 reserved in the order or by operation of law. Except where a joint
4 petition settlement has been approved, the Workers' Compensation
5 Commission may reopen for review any compensation judgment, award,
6 or decision. Such review ~~may be done at any time~~ based on a change
7 of physical condition must be requested by the filing of a Request
8 for Rehearing within six (6) months ~~of termination of the~~
9 ~~compensation period fixed in the original compensation judgment or~~
10 ~~award~~ from the date of the last order in which monetary benefits
11 were awarded or active medical treatment was provided, on the
12 Commission's own motion or on the application of any party in
13 interest, ~~on the ground of a change in physical condition or on~~
14 ~~proof of erroneous wage rate~~ and unless filed within such period of
15 time shall be forever barred. A change of condition shall be proved
16 with objective medical evidence which must be filed within thirty
17 (30) days of the filing of the Request for Rehearing. On review,
18 the Commission may ~~make a judgment or award terminating, continuing,~~
19 ~~decreasing, or increasing for the future the~~ additional compensation
20 ~~previously awarded~~ and medical treatment, subject to the maximum
21 limits provided for in this act. An order denying an application to
22 reopen a claim shall not extend the period of time set out in this
23 title for reopening the claim. A failure to comply with a medical

1 treatment plan ordered by the Commission shall bar the reopening of
2 a claim.

3 B. The review and subsequent ~~judgment or~~ award shall be made in
4 accordance with the procedure prescribed in Sections 69 through 78
5 of this ~~act~~ title. No review shall affect any compensation paid
6 under a prior order, judgment or award.

7 C. The Commission may correct any clerical error in any
8 compensation judgment or award within one (1) year from the date of
9 its issuance.

10 D. Aging and the effects of aging on a compensable injury are
11 not to be considered in determining whether there has been a change
12 in physical condition. Aging or the effect of aging on a
13 compensable injury shall not be considered in determining permanent
14 disability under this section or any other section in this act.

15 SECTION 37. AMENDATORY Section 82, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2018, Section 82), is amended to read as
17 follows:

18 Section 82.

19 A. 1. a. Each party shall be responsible for its legal services
20 and litigation expenses. Fees for legal services
21 ~~rendered in a claim shall not be valid unless approved~~
22 may be reviewed by the Workers' Compensation
23 Commission.
24

1 b. An attorney representing an injured employee may only
2 recover attorney fees up to ten percent (10%) of any
3 temporary total disability or temporary partial
4 disability compensation and twenty percent (20%) of
5 any permanent partial disability, permanent total
6 disability, or death compensation awarded to an
7 injured employee by the Commission from a controverted
8 claim. If the employer makes a written offer to
9 settle permanent partial disability, permanent total
10 disability, or death compensation and that offer is
11 rejected, the employee's attorney may not recover
12 attorney fees in excess of thirty percent (30%) of the
13 difference between the amount of any award and the
14 settlement offer.

15 (1) Attorney fees may not be collected for recovery
16 on noncontroverted claims.

17 (2) Attorney fees shall not be awarded on medical
18 benefits or services.

19 (3) The fee for legal services rendered by an
20 attorney representing an employee in connection
21 with a change of physician requested by the
22 injured employee, controverted by the employer,
23 and awarded by the Commission, shall be Two
24 Hundred Dollars (\$200.00).

1 (4) Attorney fees may include not more than ten
2 percent (10%) of the value, or reasonable
3 estimate thereof, of vocational rehabilitation
4 services.

5 c. A "controverted claim" means that ~~there has been a~~
6 ~~contested hearing before the Commission over the~~
7 employer or the employer's insurance carrier has
8 controverted whether there has been a compensable
9 injury or whether the employee is entitled to
10 temporary total disability, temporary partial
11 disability, permanent partial disability, permanent
12 total disability, or death compensation. A request
13 for a change in physician shall not trigger a
14 controverted claim for purposes of recovering any
15 attorney fees except the fees under division 3 of
16 subparagraph b of this paragraph. A controverted
17 claim shall not exist if the employee or his or her
18 representative has withheld pertinent information in
19 his or her possession related to the claim from the
20 employer or has violated the provisions of Section 6
21 of this ~~act~~ title.

22 2. ~~Any person who or entity that brings a controverted claim~~
23 ~~against the State Treasurer, as a custodian of the Multiple Injury~~
24 ~~Trust Fund, shall provide notice of the claim to the Commission.~~

1 ~~Thereafter, the Commission shall direct fees for legal services be~~
2 ~~paid from the Fund, in addition to any compensation award. The fees~~
3 ~~shall be authorized only on the difference between the amount of~~
4 ~~compensation controverted and the amount awarded from the Fund.~~

5 3. In any case where attorney fees are allowed by the
6 Commission, the limitations expressed in subparagraph b of paragraph
7 1 of this subsection shall apply.

8 4. 3. Medical providers may voluntarily contract with the
9 attorney for the employee to recover disputed charges, and the
10 ~~provider~~ attorney may charge a reasonable fee for the cost of
11 collection.

12 B. An attorney representing an employee under this act may not
13 recover fees for services except as expressly provided in this
14 section or for good cause shown.

15 SECTION 38. AMENDATORY Section 86, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2018, Section 86), is amended to read as
17 follows:

18 Section 86. A. 1. Each employer desiring to controvert an
19 employee's right to compensation ~~shall~~ may file with the Workers'
20 Compensation Commission on or before the fifteenth day following
21 notice of the alleged injury or death a statement on a form
22 prescribed by the Commission that the right to compensation is
23 controverted and the grounds for the controversion, the names of the
24

1 claimant, employer, and carrier, if any, and the date and place of
2 the alleged injury or death.

3 2. Failure to file the statement of controversion shall not
4 preclude the employer's ability to controvert the claim or cause it
5 to waive any defenses. The employer can make additional defenses
6 not included in the initial notice at any time.

7 B. If an employer is unable to obtain sufficient medical
8 information as to the alleged injury or death within fifteen (15)
9 days following receipt of notice, although the employer has acted in
10 good faith and with all due diligence, the employer may apply in
11 writing for an extension of time for making payment of the first
12 installment or controverting the claim. This written application is
13 to be postmarked within the fifteen-day period. The Commission may,
14 in its discretion, grant the extension and fix the additional time
15 to be allowed. Filing of application for an extension shall not be
16 deemed to be a controversion of the claim.

17 C. The provisions in subsection B of this section shall not
18 apply in cases where the physician is an employee of, on retainer
19 with, or has a written contract to provide medical services for the
20 employer.

21 SECTION 39. AMENDATORY Section 87, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2018, Section 87), is amended to read as
23 follows:
24

1 Section 87. If the employer or carrier and the injured employee
2 desire to settle the claim, they shall file a joint petition for
3 settlement with the Workers' Compensation Commission. After the
4 joint petition has been filed, the Commission shall order that all
5 workers' compensation claims between the parties covered by the
6 joint petition have been settled. No appeal shall lie from a
7 judgment or award denying a joint petition.

8 SECTION 40. AMENDATORY Section 89, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2018, Section 89), is amended to read as
10 follows:

11 Section 89. If the employer has made advance payments for
12 compensation, the employer shall be entitled to be reimbursed out of
13 any unpaid installment or installments of compensation due. If the
14 injured employee receives full wages during disability, he or she
15 shall not be entitled to compensation during the period. Any wages
16 paid by the employer, over the statutory temporary disability
17 maximum, shall be deducted from the permanent partial disability
18 award. Such deduction shall be made after any such applicable
19 attorney fee and any such assessment made pursuant to Sections 45
20 and 46 of this ~~act~~ title have been paid. Provided, however, no
21 wages paid by the employer in excess of the statutory temporary
22 disability maximum, pursuant to a collective bargaining agreement,
23 shall be deducted from any benefit otherwise available under this
24 title.

1 SECTION 41. AMENDATORY Section 90, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 90), is amended to read as
3 follows:

4 Section 90. A. The Workers' Compensation Commission may
5 require any employer to make a deposit or bond with the Commission
6 to secure the prompt and convenient payment of compensation, and
7 payments shall be made on judgment of the Commission.

8 B. No proceeding to reverse, vacate or modify any order,
9 decision or award of the Commission en banc or administrative law
10 judge of the Commission wherein compensation has been awarded to an
11 injured employee shall be entertained by the Supreme Court unless
12 the Executive Director of the Commission shall take a written
13 undertaking to the claimant executed on the part of the respondent
14 or insurance carrier, or both the respondent and insurance carrier,
15 with one or more sureties to be approved by the Executive Director,
16 to the effect that the appellant shall pay the amount of the award
17 rendered therein, together with interest thereon from the date of
18 the award by the administrative law judge of the Commission and all
19 costs of the proceeding, or on the further order of the Commission
20 en banc or administrative law judge of the Commission after the
21 appeal has been decided by the Supreme Court. Municipalities and
22 other political subdivisions of this state are exempt from making
23 such written undertakings.

1 SECTION 42. AMENDATORY Section 94, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 94), is amended to read as
3 follows:

4 Section 94. An employee who is incarcerated shall not be
5 eligible to receive ~~medical or~~ temporary total disability benefits
6 under this ~~act~~ title.

7 SECTION 43. AMENDATORY Section 101, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 101), is amended to read as
9 follows:

10 Section 101. A. On or before the first day of July each year,
11 the Workers' Compensation Commission shall prepare, make public and
12 submit a report for the prior calendar year to the Governor, the
13 President Pro Tempore of the Senate, the Speaker of the House of
14 Representatives, and each member of the Legislature, containing a
15 statement of the number of awards made and the causes of the
16 accidents leading to the injuries for which the awards were made,
17 total work load data of the administrative law judges, including a
18 detailed report of the work load and judgments written by each
19 judge, a detailed statement of the expenses of the Commission,
20 together with any other matter which the Commission deems proper to
21 report.

22 B. After public hearing and consultation with representatives
23 of employers, insurance carriers, and employees, the Commission
24 shall implement, with the assistance of the Insurance Commissioner,

1 ~~by July 1, 2014,~~ an electronic data interchange (EDI) system that
2 provides relevant data concerning the Oklahoma workers' compensation
3 system and the delivery of benefits to injured workers on a
4 timetable to be reasonably determined by the Commission.

5 C. To assist the Commission in developing and implementing the
6 EDI system, there is hereby created the Oklahoma Workers'
7 Compensation Electronic Data Interchange Advisory Committee. ~~Within~~
8 ~~thirty (30) days of the effective date of this act, the~~ The Governor
9 shall appoint five persons to serve as members of the advisory
10 committee, one of whom shall be selected by the Governor as chair.
11 The chair shall provide adequate notice of meetings of the advisory
12 committee and public hearings as required by law.

13 SECTION 44. AMENDATORY Section 105, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2018, Section 105), is amended to read as
15 follows:

16 Section 105. A. No employee of the Workers' Compensation
17 Commission shall be competent to testify on any matter concerning
18 any information the employee has received through the performance of
19 the employee's duties under the provisions of this act, except for
20 employees in the Compliance Division regarding their investigations,
21 custodians of the Commission's records, or if the Commission or any
22 of its employees are a named party in the matter.

23 B. The commissioners and employees of the Commission shall not
24 solicit employment for any attorney or physician nor shall they

1 recommend or refer any claimant or employer to an attorney or
2 physician. If any employee of the Commission makes such a
3 solicitation, recommendation or reference, that person, upon
4 conviction, shall be guilty of a misdemeanor punishable, for each
5 offense, by a fine of not more than One Thousand Dollars (\$1,000.00)
6 or by imprisonment in the county jail not to exceed one (1) year, or
7 by both such fine and imprisonment. The Commission shall
8 immediately terminate the employment of any employee who is guilty
9 of such solicitation, recommendation or reference. A commissioner
10 guilty of such solicitation, recommendation or reference shall be
11 subject to removal from office.

12 C. No administrative law judge shall engage in any ex parte
13 communication with any party to an action pending before the
14 Commission or with any witness or medical provider regarding the
15 merits of a specific matter pending before the judge for resolution.
16 Any violation of this provision shall subject the judge to
17 disqualification from the action or matter upon presentation of an
18 application for disqualification.

19 SECTION 45. AMENDATORY Section 152, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2018, Section 109), is amended to read as
21 follows:

22 Section 109. A. The Workers' Compensation Commission shall
23 establish a workers' compensation counselor or ombudsman program to
24 assist injured workers, employers and persons claiming death

1 benefits in obtaining benefits under this act. A special effort
2 shall be made to equip counselors or ombudsmen with sufficient
3 resources to assist injured workers through the system without the
4 necessity of retaining legal representation.

5 B. Workers' compensation counselors or ombudsmen shall provide
6 information to injured workers; investigate complaints; communicate
7 with employers, insurance carriers, self-insurers, and health care
8 providers; provide informational seminars and workshops on workers'
9 compensation for medical providers, insurance adjustors, and
10 employee and employer groups; and develop informational materials
11 for employees, employers and medical providers.

12 C. The Commission shall ~~mail a notice to the injured worker~~
13 ~~within ten (10) days of the filing of an Employer's First Notice of~~
14 ~~Injury. The notice shall advise the injured worker of~~ publish on
15 the Commission's website the availability of the services of the
16 Commission's counselor or ombudsman program and of the availability
17 of mediation and other forms of alternative dispute resolution to
18 assist the injured worker. ~~The Commission shall provide additional~~
19 ~~information as the Commission may determine necessary.~~

20 D. The Commission shall develop a program that provides for
21 annual training for own-risk employers and claims representatives
22 handling workers' compensation claims in Oklahoma. The training
23 shall include information about the alternative dispute resolution
24

1 program, including counselor and ombudsman programs, mediation, and
2 other services provided by the Commission.

3 SECTION 46. AMENDATORY Section 158, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, 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, a form designated as "Joint
9 Petition" shall be signed by both the employer and employee, or
10 representatives thereof, and shall be approved by the Workers'
11 Compensation Commission or an administrative law judge, and filed
12 with the Workers' Compensation Commission. In cases in which the
13 employee is not represented by legal counsel, the Commission or an
14 administrative law judge shall have jurisdiction to approve a full,
15 final and complete settlement of any issue upon the filing of an
16 Employer's First Notice of Injury. There shall be no requirement
17 for the filing of an Employee's First Notice of Claim for
18 Compensation to effect such settlement in cases in which the
19 employee is not represented by legal counsel.

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

1 be signed by the parties and approved by the Commission as set forth
2 herein.

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

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

20 E. If an employee has not filed a claim for compensation and
21 the employer and the injured employee reach a final agreement as to
22 the facts with relation to an injury and the resulting disability
23 for which compensation is claimed under the Administrative Workers'
24 Compensation Act, a memorandum of such agreement in a form

1 prescribed by the Commission shall be filed with the Commission by
2 the employer. The memorandum shall be signed by both the employer
3 and the employee and approved by an administrative law judge.

4 SECTION 47. AMENDATORY Section 161, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2018, Section 118), is amended to read as
6 follows:

7 Section 118. A. A filing fee of One Hundred Forty Dollars
8 (\$140.00) per case, including any Joint Petition, medical fee
9 dispute, claim for discrimination or retaliation, or claim for
10 benefits under the Multiple Injury Trust Fund authorized by this ~~act~~
11 title, shall be collected by the Workers' Compensation Commission
12 and assessed as costs to be paid by the party against whom any award
13 becomes final, to be deposited as follows:

14 1. One Hundred Five Dollars (\$105.00) to the credit of the
15 Workers' Compensation Commission Revolving Fund ~~created by this act~~;

16 2. Ten Dollars (\$10.00) to the credit of the Attorney General's
17 Workers' Compensation Fraud Unit Revolving Fund created by Section
18 19.2 of Title 74 of the Oklahoma Statutes; and

19 3. Twenty-five Dollars (\$25.00) to the credit of the Workers'
20 Compensation Commission Revolving Fund for purposes of implementing
21 the provisions of this ~~act~~ title, including strengthening and
22 providing additional funding for the Attorney General's Workers'
23 Compensation Fraud Unit, providing counseling services pursuant to
24

1 the workers' compensation counselor or ombudsman program and safety
2 in the workplace.

3 B. A fee of One Hundred Thirty Dollars (\$130.00) per action to
4 reopen any case pursuant to Section 32 of this ~~act~~ title shall be
5 collected by the Commission and assessed as costs to be paid by the
6 party that reopens the case. The fee collected pursuant to this
7 subsection shall be deposited to the credit of the Workers'
8 Compensation Commission Revolving Fund for purposes of implementing
9 the provisions of this ~~act~~ title, including strengthening and
10 providing additional funding for the Attorney General's Workers'
11 Compensation Fraud Unit, providing counseling services pursuant to
12 the workers' compensation counselor or ombudsman program and safety
13 in the workplace.

14 SECTION 48. AMENDATORY Section 162, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 119), is amended to read as
16 follows:

17 Section 119. A. Persons requesting and receiving copies of
18 documents on file with the Workers' Compensation Commission shall
19 pay a fee to the Commission of One Dollar (\$1.00) for each page
20 copied. All fees so collected shall be deposited in the State
21 Treasury in the Workers' Compensation Commission Revolving Fund.

22 B. All penalties and fines imposed by the Commission, upon
23 collection, shall be deposited to the credit of the Workers'
24 Compensation Commission Revolving Fund.

1 SECTION 49. AMENDATORY Section 163, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 120), is amended to read as
3 follows:

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

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

1 in violation of state or federal law. The form must be used by all
2 repositories of archived Court claim files. All request forms shall
3 be maintained by the Commission as a public record, together with a
4 record of a worker's written authorization permitting a search
5 indexed by the worker's social security number as required by
6 Section 3113 of Title 74 of the Oklahoma Statutes. The request
7 forms and authorizations shall be indexed alphabetically by the last
8 name of the worker.

9 2. This subsection shall not apply:

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

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

16 SECTION 50. AMENDATORY Section 164, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2018, Section 121), is amended to read as
18 follows:

19 Section 121. A. There is hereby created an Advisory Council on
20 Workers' Compensation.

21 B. The voting membership of the Advisory Council shall consist
22 of nine (9) members. Any member serving on the effective date of
23 this section shall serve the remainder of his or her term. The
24

1 chair of the Workers' Compensation Commission shall be an ex officio
2 nonvoting member.

3 1. The Governor shall appoint three members representing
4 employers in this state, one of whom shall be from a list of
5 nominees provided by the predominant statewide broad-based business
6 organization.

7 2. The Speaker of the House of Representatives shall appoint
8 three members representing employees in this state, one of whom
9 shall be from a list of nominees provided by the most representative
10 labor organization in the state.

11 3. The President Pro Tempore of the Senate shall appoint three
12 members, two who are attorneys representing the legal profession in
13 this state, one of whom shall be an attorney who practices primarily
14 in the area of defense of workers' compensation claims, and one of
15 whom shall be an attorney who primarily represents claimants, and a
16 medical doctor or doctor of osteopathy actively engaged in the
17 treatment of injured workers.

18 C. The term of office for appointees shall be as follows:

19 1. The term of office for three positions, one each appointed
20 by the Governor, the President Pro Tempore of the Senate and the
21 Speaker of the House of Representatives shall expire on January 1,
22 2015;

23 2. The term of office for three positions, one each appointed
24 by the Governor, the President Pro Tempore of the Senate and the

1 Speaker of the House of Representatives shall expire on January 1,
2 2016; and

3 3. The term of office for three positions, one each appointed
4 by the Governor, the President Pro Tempore of the Senate and the
5 Speaker of the House of Representatives shall expire on January 1,
6 2017.

7 D. Thereafter, successors in office shall be appointed for a
8 three-year term. Members shall be eligible to succeed themselves in
9 office.

10 E. Any person appointed to fill a vacancy shall be appointed
11 for the unexpired portion of the term.

12 F. The chair and the vice-chair of the Advisory Council shall
13 be appointed by the Governor.

14 G. Members shall receive their traveling and other necessary
15 expenses incurred in the performance of their duties as provided in
16 the State Travel Reimbursement Act.

17 H. Meetings of the Advisory Council shall be quarterly or as
18 called by the chair or upon petition by a majority of the voting
19 members. The presence of five voting members constitutes a quorum.
20 No action shall be taken by the Advisory Council without the
21 affirmative vote of at least five members.

22 I. The Commission shall provide office supplies and personnel
23 of the Commission to carry out any of the duties that have been
24 entrusted to the Advisory Council.

1 J. The Advisory Council shall analyze and review the workers'
2 compensation system, the reports of the Commission, and trends in
3 the field of workers' compensation. The Advisory Council may
4 recommend improvements and proper responses to developing trends.
5 The Advisory Council shall report its findings annually to the
6 Governor, the Chief Justice of the Supreme Court, the President Pro
7 Tempore of the Senate, and the Speaker of the House of
8 Representatives.

9 K. In addition to other duties required by this section, the
10 Advisory Council shall consult with the ~~Court~~ Commission regarding
11 oversight of independent medical examiners as provided in Section 45
12 of this ~~act~~ title.

13 ~~L. The Advisory Council shall review the Oklahoma Treatment~~
14 ~~Guidelines as provided in the Workers' Compensation Code, and report~~
15 ~~the findings of such review to the Commission as provided in this~~
16 ~~act.~~

17 SECTION 51. AMENDATORY Section 165, Chapter 208, O.S.L.
18 2013, as amended by Section 4, Chapter 344, O.S.L. 2015 (85A O.S.
19 Supp. 2018, Section 122), is amended to read as follows:

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

1 B. For the purpose of providing funds for the Workers'
2 Compensation Commission Revolving Fund, for the Workers'
3 Compensation Administrative Fund created in Section ~~5~~ 401.1 of this
4 ~~act~~ title, for the Multiple Injury Trust Fund created in Section 28
5 of this title, and to fund other provisions within this title, the
6 following tax rates shall apply:

7 1. Each mutual or interinsurance association, stock company,
8 CompSource Oklahoma or other insurance carrier writing workers'
9 compensation insurance in this state shall pay to the Oklahoma Tax
10 Commission an assessment at a rate of one percent (1%) of all gross
11 direct premiums written during each quarter of the calendar year for
12 workers' compensation insurance on risks located in this state after
13 deducting from such gross direct premiums, return premiums,
14 unabsorbed portions of any deposit premiums, policy dividends,
15 safety refunds, savings and other similar returns paid or credited
16 to policyholders. Such payments to the Tax Commission shall be made
17 not later than the fifteenth day of the month following the close of
18 each quarter of the calendar year in which such gross direct premium
19 is collected or collectible. Contributions made by insurance
20 carriers and CompSource Oklahoma, under the provisions of this
21 section, shall be considered for the purpose of computing workers'
22 compensation rates; and

23 2. When an employer is authorized to become a self-insurer, the
24 Workers' Compensation Commission shall so notify the Tax Commission,

1 giving the effective date of such authorization. The Tax Commission
2 shall then assess and collect from the employers carrying their own
3 risk an assessment at the rate of two percent (2%) of the total
4 compensation for permanent total disability awards, permanent
5 partial disability awards and death benefits paid out during each
6 quarter of the calendar year by the employers. Such assessment
7 shall be payable by the employers and collected by the Tax
8 Commission according to the provisions of this section regarding
9 payment and collection of the assessment created in paragraph 1 of
10 this subsection.

11 C. It shall be the duty of the Tax Commission to collect the
12 payments provided for in this title. The Tax Commission is hereby
13 authorized to bring an action for the recovery of any delinquent or
14 unpaid payments required in this section. The Tax Commission may
15 also enforce payments by proceeding in accordance with the
16 provisions of Section 98 of this title.

17 D. The Tax Commission shall pay monthly to the State Treasurer
18 to the credit of the Multiple Injury Trust Fund all monies collected
19 under the provisions of this section less the annual amounts which
20 shall be apportioned by the Oklahoma Tax Commission as follows:

21 1. Five Million Dollars (\$5,000,000.00) shall be payable in
22 equal monthly installments to the credit of the Workers'
23 Compensation Commission Revolving Fund established in Section ~~2~~ 28.1
24 of this ~~act for the fiscal year ending June 30, 2016, and Three~~

1 ~~Million Dollars (\$3,000,000.00)~~ title for the fiscal year ending
2 June 30, ~~2017~~ 2020, and for all subsequent years to be used to
3 implement the provisions of this title; and

4 2. Four Million Dollars (\$4,000,000.00) shall be payable in
5 equal monthly installments to the credit of the Workers'
6 Compensation Administrative Fund established in Section ~~5~~ 401.1 of
7 this ~~act~~ title for the fiscal year ending ~~June 30, 2016, Three~~
8 ~~Million Five Hundred Thousand Dollars (\$3,500,000.00) for the fiscal~~
9 ~~year ending June 30, 2017, Three Million Five Hundred Thousand~~
10 ~~Dollars (\$3,500,000.00) for the fiscal year ending June 30, 2018,~~
11 ~~Three Million Dollars (\$3,000,000.00) for the fiscal year ending~~
12 ~~June 30, 2019, and Two Million Five Hundred Thousand Dollars~~
13 ~~(\$2,500,000.00) for the fiscal year ending June 30, 2020 and all~~
14 subsequent years through the fiscal year ending June 30, 2024.

15 Monies deposited in the Workers' Compensation Administrative Fund
16 shall be used by the Workers' Compensation Court of Existing Claims
17 to implement provisions provided for in this title.

18 E. The refund provisions of Sections 227 through 229 of Title
19 68 of the Oklahoma Statutes shall be applicable to any payments made
20 pursuant to this section.

21 SECTION 52. AMENDATORY Section 167, Chapter 208, O.S.L.
22 2013, as amended by Section 7, Chapter 169, O.S.L. 2014 (85A O.S.
23 Supp. 2018, Section 124), is amended to read as follows:
24

1 Section 124. A. 1. All unexpended funds, assets, property,
2 records, personnel and any outstanding financial obligations and
3 encumbrances of the Workers' Compensation Court before February 1,
4 2014, are hereby transferred to the Workers' Compensation
5 Commission, except for personnel transferred to the Workers'
6 Compensation Court of Existing Claims on July 9, 2014. The
7 personnel transferred to the Commission and retained by the
8 Commission shall retain leave, sick and annual time earned and any
9 retirement and longevity benefits which have accrued during their
10 employment with the state. The salaries of employees who are
11 transferred shall not be reduced as a direct and immediate result of
12 the transfer. There shall be no reduction-in-force as a result of
13 the transfer. The Workers' Compensation Court of Existing Claims
14 shall pay the expense of maintaining the records of the Court and
15 the records of the former Workers' Compensation Court for as long as
16 the Legislature appropriates funding to the Court independent of
17 funding for the Commission. Thereafter, all such records shall be
18 transferred to the Commission.

19 2. Any unexpended funds, including interest thereon, held by
20 the State Treasurer in an interest-bearing division special account
21 maintained by the Workers' Compensation Court before February 1,
22 2014, from which a self-insured employer's workers' compensation
23 obligations are paid following nonpayment by the self-insured
24 employer for any reason, including insolvency, shall be transferred

1 to the Workers' Compensation Commission. Such funds shall be
2 expended by the Commission only for the purpose of paying workers'
3 compensation obligations of the self-insured employer, and costs
4 related to the administration of such obligations, to the extent of
5 the availability of such funds.

6 B. 1. All unexpended funds, assets, property, and records and
7 any outstanding financial obligations and encumbrances of the
8 Workers' Compensation Self-insurance Guaranty Fund Board before
9 February 1, 2014, are hereby transferred to the Self-insurance
10 Guaranty Fund Board created ~~in the Administrative Workers'~~
11 ~~Compensation Act~~ by this title.

12 2. Any unexpended funds, including interest thereon, held by
13 the State Treasurer in the Workers' Compensation Self-insurance
14 Guaranty Fund before February 1, 2014, shall be transferred to the
15 Self-insurance Guaranty Fund Board created by the Administrative
16 Workers' Compensation Act. Such funds shall be expended by the
17 Board only as authorized in the Administrative Workers' Compensation
18 Act.

19 3. Any claim existing or action or proceeding pending by,
20 against or before the Workers' Compensation Self-insurance Guaranty
21 Fund Board when the Board ceased existence may be continued as if
22 the Self-insurance Guaranty Fund Board was not created, or the Self-
23 insurance Guaranty Fund Board may be substituted in the matter. The
24 Self-insurance Guaranty Fund Board shall be responsible and liable

1 for all liabilities and obligations of the Workers' Compensation
2 Self-insurance Guaranty Fund Board.

3 C. All property and records of the Physician Advisory Committee
4 before February 1, 2014, are hereby transferred to the Physician
5 Advisory Committee created in the Administrative Workers'
6 Compensation Act.

7 D. All property and records of the Advisory Council on Workers'
8 Compensation before February 1, 2014, are hereby transferred to the
9 Advisory Council on Workers' Compensation created in the
10 Administrative Workers' Compensation Act.

11 E. All unexpended funds, assets, property, records, personnel
12 and any outstanding financial obligations and encumbrances of the
13 Multiple Injury Trust Fund before February 1, 2014, are hereby
14 transferred to the Multiple Injury Trust Fund created in the
15 Administrative Workers' Compensation Act. The personnel transferred
16 shall retain leave, sick and annual time earned and any retirement
17 and longevity benefits which have accrued during their employment
18 with the state. The salaries of employees who are transferred shall
19 not be reduced as a direct and immediate result of the transfer.
20 There shall be no reduction-in-force as a result of the transfer.

21 F. The Director of the Office of Management and Enterprise
22 Services is hereby directed to coordinate the transfer of funds,
23 allotments, purchase orders, outstanding financial obligations or
24 encumbrances provided for in subsections A and E of this section,

1 and the transfer of funds, outstanding financial obligations or
2 encumbrances provided for in subsection B of this section.

3 SECTION 53. AMENDATORY Section 121, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 300), is amended to read as
5 follows:

6 Section 300. Sections ~~121~~ 300 through ~~149~~ 328 of this ~~act~~ title
7 shall be known and may be cited as the "Workers' Compensation
8 Arbitration Act".

9 SECTION 54. AMENDATORY Section 125, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2018, Section 304), is amended to read as
11 follows:

12 Section 304. A. Except as otherwise provided in subsections B
13 and C of this section and in the laws of this state outside of this
14 ~~act~~ title, a party to an agreement to arbitrate or to an arbitration
15 proceeding may waive, or the parties may vary the effect of, the
16 requirements of this act to the extent permitted by law.

17 B. Before a controversy arises that is subject to an agreement
18 to arbitrate, a party to the agreement may not:

19 1. Waive or agree to vary the effect of the requirements of
20 subsection A of Section ~~126~~ 305, subsection A of Section ~~127~~ 306,
21 Section ~~128~~ 307, subsection A or B of Section ~~138~~ 317, Section ~~147~~
22 326 or Section ~~149~~ 328 of this ~~act~~ title;

1 2. Agree to unreasonably restrict the right to notice of the
2 initiation of an arbitration proceeding under Section ~~130~~ 309 of
3 this ~~act~~ title;

4 3. Agree to unreasonably restrict the right to disclosure of
5 any facts by an arbitrator under Section ~~133~~ 312 of this ~~act~~ title;

6 4. Waive the right of a party to an agreement to arbitrate to
7 be represented by a lawyer at any proceeding or hearing under
8 Section ~~137~~ 316 of this ~~act~~ title; or

9 5. Agree to conduct arbitration proceedings outside of this
10 state.

11 C. A party to an agreement to arbitrate or to an arbitration
12 proceeding may not waive, or the parties may not vary the effect of,
13 the requirements of this section or subsection A or C of Section ~~124~~
14 304, Sections ~~128, 135 and 139~~ 307, 314 and 318, subsection D or E
15 of Section ~~141~~ 320, Sections ~~143, 144 and 145~~ 322, 323 and 324, or
16 subsection A or B of Section ~~146~~ 325 of this ~~act~~ title.

17 SECTION 55. AMENDATORY Section 126, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, Section 305), is amended to read as
19 follows:

20 Section 305. A. Except as otherwise provided in Section ~~150~~
21 107 of this ~~act~~ title, an application for judicial relief under this
22 act shall be made by application and motion to the Workers'
23 Compensation Commission and heard in the manner provided by law or
24 rule of the Commission for making and hearing motions.

1 B. Unless a civil action involving the agreement to arbitrate
2 is pending, notice of an initial application and motion to the
3 Commission under this act shall be served in the manner provided by
4 law for the service of a summons in the filing of a civil action.
5 Otherwise, notice of the motion shall be given in the manner
6 provided by law or rule of court for serving motions in pending
7 cases.

8 SECTION 56. AMENDATORY Section 128, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2018, Section 307), is amended to read as
10 follows:

11 Section 307. A. On application and motion of a person showing
12 an agreement to arbitrate and alleging another person's refusal to
13 arbitrate under the agreement:

14 1. If the refusing party does not appear or does not oppose the
15 motion, the Workers' Compensation Commission shall order the parties
16 to arbitrate; and

17 2. If the refusing party opposes the motion, the Commission
18 shall proceed summarily to decide the issue and order the parties to
19 arbitrate unless it finds that there is no enforceable agreement to
20 arbitrate. The Commission may also assess costs against the party
21 opposing the motion if it concludes the opposition was not brought
22 in good faith to be deposited in the Workers' Compensation
23 Commission Revolving Fund created ~~by the Administrative Workers'~~
24 ~~Compensation Act~~ in Section 28.1 of this title.

1 B. On motion of a person alleging that an arbitration
2 proceeding has been initiated or threatened but that there is no
3 agreement to arbitrate, the Commission shall proceed summarily to
4 decide the issue. If the Commission finds that there is an
5 enforceable agreement to arbitrate, it shall order the parties to
6 arbitrate. The Commission may also assess costs against the party
7 opposing the motion if the Commission concludes the opposition was
8 not brought in good faith to be deposited in the Workers'
9 Compensation Fund created by the Administrative Workers'
10 Compensation Act.

11 C. If the Commission finds that the parties have not entered
12 into an enforceable arbitration agreement, the dispute shall be
13 resolved under the Administrative Workers' Compensation Act.

14 D. If an action is initiated in district court to determine
15 whether an enforceable arbitration agreement exists, on motion by
16 the responding party, that proceeding shall be transferred to the
17 Commission for determination.

18 E. If a party challenges the enforceability of an arbitration
19 agreement, the underlying claim, including all benefits, shall be
20 stayed until the Commission determines whether an enforceable
21 arbitration agreement exists.

22 SECTION 57. AMENDATORY Section 133, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 312), is amended to read as
24 follows:

1 Section 312. A. Before accepting appointment, an individual
2 who is requested to serve as an arbitrator, after making a
3 reasonable inquiry, shall disclose to the parties to the arbitration
4 agreement, the parties to the arbitration proceeding, and any other
5 arbitrators any known facts that a reasonable person would consider
6 likely to affect the impartiality of the arbitrator in the
7 arbitration proceeding, including but not limited to:

8 1. A financial or personal interest in the outcome of the
9 arbitration proceeding; and

10 2. An existing or past relationship with any of the parties to
11 the agreement to arbitrate or the arbitration proceeding, their
12 counsel or representatives, a witness, or another arbitrator.

13 B. An arbitrator has a continuing obligation to disclose to the
14 parties to the arbitration agreement, the arbitration proceeding,
15 and to any other arbitrators any facts that the arbitrator learns
16 after accepting appointment which a reasonable person would consider
17 likely to affect the impartiality of the arbitrator.

18 C. If an arbitrator discloses a conflict under subsection A or
19 B of this section, any party to the arbitration agreement or the
20 arbitration proceeding may have the arbitrator removed by filing a
21 notice of conflict with the Workers' Compensation Commission. If a
22 notice of conflict is not filed within ten (10) days of disclosure
23 of the conflict, the parties waive their rights to have any order or
24 award entered vacated under Section ~~144~~ 323 of this ~~act~~ title.

1 SECTION 58. AMENDATORY Section 134, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 313), is amended to read as
3 follows:

4 Section 313. If there is more than one arbitrator, the powers
5 of an arbitrator shall be exercised by a majority of the
6 arbitrators, but all of them shall conduct the hearing under Section
7 ~~136~~ 315 of this ~~act~~ title.

8 SECTION 59. AMENDATORY Section 135, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2018, Section 314), is amended to read as
10 follows:

11 Section 314. A. Arbitrators and arbitration organizations
12 providing services under this act are immune from civil liability to
13 the same extent as a judge of a court of this state acting in a
14 judicial capacity.

15 B. The immunity afforded by this section supplements any
16 immunity under other law.

17 C. The failure of an arbitrator to make a disclosure required
18 by Section ~~133~~ 312 of this ~~act~~ title shall not cause any loss of
19 immunity under this section.

20 D. An arbitrator or representative of an arbitration
21 organization is not competent to testify in a judicial,
22 administrative, or similar proceeding and may not be required to
23 produce records as to any statement, conduct, decision, or ruling
24 occurring during the arbitration proceeding, to the same extent as a

1 judge of a court of this state acting in a judicial capacity. This
2 subsection shall not apply to:

3 1. The extent necessary to determine the claim of an
4 arbitrator, arbitration organization, or representative of the
5 arbitration organization against a party to the arbitration
6 proceeding; or

7 2. A hearing on an application and motion to vacate an award
8 under paragraphs 1 or 2 of subsection A of Section ~~144~~ 323 of this
9 ~~act~~ title if the movant establishes prima facie that a ground for
10 vacating the award exists.

11 E. If a person commences a civil action against an arbitrator,
12 arbitration organization, or representative of an arbitration
13 organization arising from the services of the arbitrator,
14 organization, or representative or if a person seeks to compel an
15 arbitrator or a representative of an arbitration organization to
16 testify or produce records in violation of subsection D of this
17 section, and the court decides that the arbitrator, arbitration
18 organization, or representative of an arbitration organization is
19 immune from civil liability or that the arbitrator or representative
20 of the organization is not competent to testify, the court shall
21 award to the arbitrator, organization, or representative reasonable
22 attorney fees and other reasonable expenses of litigation.

SECTION 60. AMENDATORY Section 137, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 316), is amended to read as follows:

Section 316. A. A party to an arbitration proceeding may be represented by a lawyer.

B. Each party shall be responsible for payment of his or her legal fees incurred during arbitration, except as provided for in Section ~~142~~ 321 of this ~~act~~ title.

C. The employee's attorney may not recover legal fees in excess of the limits described in Section 82 of this ~~act~~ title.

SECTION 61. AMENDATORY Section 139, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 318), is amended to read as follows:

Section 318. If an arbitrator makes a pre-award ruling in favor of a party, the party may request the arbitrator to incorporate the ruling into an award under Section ~~140~~ 319 of this ~~act~~ title. A prevailing party may make an application and motion to the Commission for an expedited judgment to confirm the award under Section ~~143~~ 322 of this ~~act~~ title, in which case the Workers' Compensation Commission shall summarily decide the motion. The Commission shall issue a judgment to confirm the award unless the ~~court~~ Commission vacates, modifies, or corrects the award under Section ~~144 or 145~~ 323 or 324 of this ~~act~~ title.

SECTION 62. AMENDATORY Section 141, Chapter 208, O.S.L.

2013 (85A O.S. Supp. 2018, Section 320), is amended to read as follows:

Section 320. A. On motion by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

1. On a ground stated in paragraph 1 or 3 of subsection A of Section ~~145~~ 324 of this ~~act~~ title;

2. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

3. To clarify the award.

B. A motion under subsection A of this section shall be made and notice given to all parties within twenty (20) days after the award is issued to the parties.

C. A party to the arbitration proceeding shall give notice of any objection to the motion within ten (10) days after receipt of the motion.

D. If a motion to the Workers' Compensation Commission is pending under Section ~~144 or 145~~ 323 or 324 of this ~~act~~ title, the Commission may submit the claim to the arbitrator to consider whether to modify or correct the award:

1. On a ground stated in paragraph 1 or 3 of subsection A of Section ~~145~~ 324 of this ~~act~~ title;

1 2. Because the arbitrator has not made a final and definite
2 award upon a claim submitted by the parties to the arbitration
3 proceeding; or

4 3. To clarify the award.

5 E. An award modified or corrected under this section is subject
6 to Sections ~~143, 144 and 145~~ 322, 323 and 324 of this ~~act~~ title.

7 SECTION 63. AMENDATORY Section 142, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 321), is amended to read as
9 follows:

10 Section 321. A. An arbitrator may award benefits set forth in
11 Sections 45, 46, 47 and 51 of this ~~act~~ title.

12 B. An arbitrator may award reasonable attorney fees and other
13 reasonable expenses of arbitration if the arbitrator finds that a
14 party was not acting in good faith throughout the arbitration.

15 C. As to all remedies other than those authorized by
16 subsections A and B of this section, an arbitrator may order such
17 remedies as the arbitrator considers just and appropriate under the
18 circumstances of the arbitration proceeding. The fact that such a
19 remedy could not or would not be granted by the Workers'
20 Compensation Commission is not a ground for refusing to confirm an
21 award under Section ~~143~~ 322 of this ~~act~~ title or for vacating an
22 award under Section ~~144~~ 323 of this ~~act~~ title.

23 D. An arbitrator's expenses and fees, together with other
24 expenses, shall be paid by the employer.

1 E. If an arbitrator awards relief under subsection A of this
2 section, the arbitrator shall specify in the award the basis in fact
3 justifying and the basis in law authorizing the award.

4 SECTION 64. AMENDATORY Section 143, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2018, Section 322), is amended to read as
6 follows:

7 Section 322. After a party to an arbitration proceeding
8 receives notice of an award, the party may make an application and
9 motion to the Workers' Compensation Commission for a judgment
10 confirming the award at which time the Commission shall issue a
11 confirming judgment unless the award is modified or corrected under
12 Section ~~141 or 145~~ 320 or 324 of this ~~act~~ title or is vacated under
13 Section ~~144~~ 323 of this ~~act~~ title.

14 SECTION 65. AMENDATORY Section 144, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 323), is amended to read as
16 follows:

17 Section 323. A. On an application and motion to the court by a
18 party to an arbitration proceeding, the Workers' Compensation
19 Commission shall vacate an award made in the arbitration proceeding
20 if:

21 1. The award was procured by corruption, fraud, or other undue
22 means;

23 2. There was:
24

- a. evident partiality by an arbitrator appointed as a neutral arbitrator,
- b. corruption by an arbitrator, or
- c. misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

3. An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to Section ~~136~~ 315 of this ~~act~~ title, so as to prejudice substantially the rights of a party to the arbitration proceeding;

4. An arbitrator exceeded his or her powers under this act;

5. The arbitration was conducted without proper notice of the initiation of an arbitration as required in Section ~~130~~ 309 of this ~~act~~ title so as to prejudice substantially the rights of a party to the arbitration proceeding; or

6. It is determined that an arbitrator did not disclose a conflict under Section ~~133~~ 312 of this ~~act~~ title.

B. An application and motion under this section shall be filed within thirty (30) days after the movant receives notice of the award or within thirty (30) days after the movant receives notice of a modified or corrected award, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within ninety (90) days after

1 the ground is known or by the exercise of reasonable care would have
2 been known by the movant.

3 C. If the Commission vacates an award it may order a rehearing.
4 If the award is vacated on a ground stated in paragraph 1, 2 or 6 of
5 subsection A of this section, the rehearing shall be before a new
6 arbitrator. If the award is vacated on a ground stated in paragraph
7 3, 4 or 5 of subsection A of this section, the rehearing may be
8 before the arbitrator who made the award or the arbitrator's
9 successor. The arbitrator shall render the decision in the
10 rehearing within the same time as that provided in subsection B of
11 Section ~~140~~ 319 of this ~~act~~ title for an award.

12 D. If the Commission denies a motion to vacate an award, it
13 shall confirm the award unless a motion to modify or correct the
14 award is pending.

15 SECTION 66. AMENDATORY Section 148, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2018, Section 327), is amended to read as
17 follows:

18 Section 327. ~~A.~~ A party may appeal the following actions to
19 the district court as provided in Section ~~149~~ 328 of this ~~act~~ title:

- 20 1. An order denying a motion to compel arbitration;
- 21 2. An order granting a motion to stay arbitration;
- 22 3. An order confirming or denying confirmation of an award;
- 23 4. An order modifying or correcting an award;
- 24 5. An order vacating an award without directing a rehearing; or

1 6. A final judgment entered under the Workers' Compensation
2 Arbitration Act.

3 SECTION 67. AMENDATORY Section 169, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 400), is amended to read as
5 follows:

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

15 Position 1 shall expire 7-1-14.

16 Position 2 shall expire 7-1-14.

17 Position 3 shall expire 7-1-14.

18 Position 4 shall expire ~~7-1-20~~ 7-1-24.

19 Position 5 shall expire 7-1-20.

20 Position 6 shall expire 7-1-16.

21 Position 7 shall expire 7-1-16.

22 Position 8 shall expire 7-1-20.

23 Position 9 shall expire ~~7-1-20~~ 7-1-24.

24 Position 10 shall expire 7-1-14.

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

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

1 Commission or other individuals or entities for services and shared
2 services.

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

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

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

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

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

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

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

4 ~~I.~~ J. The Court shall be vested with jurisdiction over all
5 claims filed pursuant to the Workers' Compensation Code or previous
6 statute in effect on the date of an injury that occurred before
7 February 1, 2014. All claims so filed shall be heard by the judge
8 sitting without a jury. The Court shall have full power and
9 authority to determine all questions in relation to payment of
10 claims for compensation under the provisions of the Workers'
11 Compensation Code. The Court, upon application of either party,
12 shall order a hearing. Upon a hearing, either party may present
13 evidence and be represented by counsel. The decision of the Court
14 shall be final as to all questions of fact and law; provided, the
15 decision of the Court may be appealed to the ~~Commission~~ Court en
16 banc or the Supreme Court as provided by the Workers' Compensation
17 Code. In the event that an insufficient number of active judges are
18 available to comprise the three-judge en banc panel, retired or
19 former judges of the district court, Workers' Compensation Court or
20 Workers' Compensation Court of Existing Claims shall be designated
21 by the Chief Justice of the Supreme Court as eligible to serve on
22 such panel. Such designation shall be made annually by the Chief
23 Justice by November 15 each year for the selection of panels by the
24 administrative officer of the Court of Existing Claims for the

1 following year. The decision of the Court shall be issued within
2 sixty (60) days following the submission of the case by the parties.
3 The power and jurisdiction of the Court over each case shall be
4 continuing and it may, from time to time, make such modifications or
5 changes with respect to former findings or orders relating thereto
6 if, in its opinion, it may be justified.

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

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

21 ~~L.~~ For an injury occurring before ~~the effective date of this~~
22 ~~act~~ February 1, 2014, all benefits and procedures to obtain benefits
23 shall be determined by the workers' compensation law of this state
24 in effect on the date of the injury. ~~Administrative law judges of~~

~~the Commission shall enforce all final orders of the Workers' Compensation Court in a manner to secure for all parties the due process and equal protection guarantees of the Constitution of the State of Oklahoma.~~

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

SECTION 68. AMENDATORY 25 O.S. 2011, Section 307, as last amended by Section 1, Chapter 252, O.S.L. 2018 (25 O.S. Supp. 2018, Section 307), is amended to read as follows:

Section 307. A. No public body shall hold executive sessions unless otherwise specifically provided in this section.

B. Executive sessions of public bodies will be permitted only for the purpose of:

1. Discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee;

2. Discussing negotiations concerning employees and representatives of employee groups;

3. Discussing the purchase or appraisal of real property;

1 4. Confidential communications between a public body and its
2 attorney concerning a pending investigation, claim, or action if the
3 public body, with the advice of its attorney, determines that
4 disclosure will seriously impair the ability of the public body to
5 process the claim or conduct a pending investigation, litigation, or
6 proceeding in the public interest;

7 5. Permitting district boards of education to hear evidence and
8 discuss the expulsion or suspension of a student when requested by
9 the student involved or the student's parent, attorney or legal
10 guardian;

11 6. Discussing matters involving a specific handicapped child;

12 7. Discussing any matter where disclosure of information would
13 violate confidentiality requirements of state or federal law;

14 8. Engaging in deliberations or rendering a final or
15 intermediate decision in an individual proceeding pursuant to
16 Article II of the Administrative Procedures Act;

17 9. Discussing matters involving safety and security at state
18 penal institutions or correctional facilities used to house state
19 inmates;

20 10. Discussing contract negotiations involving contracts
21 requiring approval of the Board of Corrections, which shall be
22 limited to members of the public body, the attorney for the public
23 body, and the immediate staff of the public body. No person who may
24 profit directly or indirectly by a proposed transaction which is

1 under consideration may be present or participate in the executive
2 session; or

3 11. Discussing the following:

- 4 a. the investigation of a plan or scheme to commit an act
5 of terrorism,
- 6 b. assessments of the vulnerability of government
7 facilities or public improvements to an act of
8 terrorism,
- 9 c. plans for deterrence or prevention of or protection
10 from an act of terrorism,
- 11 d. plans for response or remediation after an act of
12 terrorism,
- 13 e. information technology of the public body but only if
14 the discussion specifically identifies:
 - 15 (1) design or functional schematics that demonstrate
16 the relationship or connections between devices
17 or systems,
 - 18 (2) system configuration information,
 - 19 (3) security monitoring and response equipment
20 placement and configuration,
 - 21 (4) specific location or placement of systems,
22 components or devices,
 - 23 (5) system identification numbers, names, or
24 connecting circuits,

- 1 (6) business continuity and disaster planning, or
2 response plans, or
3 (7) investigation information directly related to
4 security penetrations or denial of services, or
5 f. the investigation of an act of terrorism that has
6 already been committed.

7 For the purposes of this subsection, the term "terrorism" means
8 any act encompassed by the definitions set forth in Section 1268.1
9 of Title 21 of the Oklahoma Statutes.

10 C. Notwithstanding the provisions of subsection B of this
11 section, the following public bodies may hold executive sessions:

12 1. The State Banking Board, as provided for under Section 306.1
13 of Title 6 of the Oklahoma Statutes;

14 2. The Oklahoma Industrial Finance Authority, as provided for
15 in Section 854 of Title 74 of the Oklahoma Statutes;

16 3. The Oklahoma Development Finance Authority, as provided for
17 in Section 5062.6 of Title 74 of the Oklahoma Statutes;

18 4. The Oklahoma Center for the Advancement of Science and
19 Technology, as provided for in Section 5060.7 of Title 74 of the
20 Oklahoma Statutes;

21 5. ~~The Oklahoma Savings and Loan Board, as provided for under~~
22 ~~subsection A of Section 381.74 of Title 18 of the Oklahoma Statutes;~~

23 ~~6.~~ The Oklahoma Health Research Committee for purposes of
24 conferring on matters pertaining to research and development of

1 products, if public disclosure of the matter discussed would
2 interfere with the development of patents, copyrights, products, or
3 services;

4 6. The Workers' Compensation Commission for the purposes
5 specified in Section 19 of Title 85A of the Oklahoma Statutes;

6 7. A review committee, as provided for in Section 855 of Title
7 62 of the Oklahoma Statutes;

8 8. The Child Death Review Board for purposes of receiving and
9 conferring on matters pertaining to materials declared confidential
10 by law;

11 9. The Domestic Violence Fatality Review Board as provided in
12 Section 1601 of Title 22 of the Oklahoma Statutes;

13 10. The Opioid Overdose Fatality Review Board, as provided in
14 Section ~~2~~ 2-1001 of ~~this act~~ Title 63 of the Oklahoma Statutes;

15 11. All nonprofit foundations, boards, bureaus, commissions,
16 agencies, trusteeships, authorities, councils, committees, public
17 trusts, task forces or study groups supported in whole or part by
18 public funds or entrusted with the expenditure of public funds for
19 purposes of conferring on matters pertaining to economic
20 development, including the transfer of property, financing, or the
21 creation of a proposal to entice a business to remain or to locate
22 within their jurisdiction if public disclosure of the matter
23 discussed would interfere with the development of products or
24

1 services or if public disclosure would violate the confidentiality
2 of the business;

3 12. The Oklahoma Indigent Defense System Board for purposes of
4 discussing negotiating strategies in connection with making possible
5 counteroffers to offers to contract to provide legal representation
6 to indigent criminal defendants and indigent juveniles in cases for
7 which the System must provide representation pursuant to the
8 provisions of the Indigent Defense System Act; and

9 13. The Quality Investment Committee for purposes of discussing
10 applications and confidential materials pursuant to the terms of the
11 Oklahoma Quality Investment Act.

12 D. Except as otherwise specified in this subsection, an
13 executive session for the purpose of discussing the purchase or
14 appraisal of real property shall be limited to members of the public
15 body, the attorney for the public body and the immediate staff of
16 the public body. No landowner, real estate salesperson, broker,
17 developer or any other person who may profit directly or indirectly
18 by a proposed transaction concerning real property which is under
19 consideration may be present or participate in the executive
20 session, unless they are operating under an existing agreement to
21 represent the public body.

22 E. No public body may go into an executive session unless the
23 following procedures are strictly complied with:
24

1 1. The proposed executive session is noted on the agenda as
2 provided in Section 311 of this title;

3 2. The executive session is authorized by a majority vote of a
4 quorum of the members present and the vote is a recorded vote; and

5 3. Except for matters considered in executive sessions of the
6 State Banking Board and the Oklahoma Savings and Loan Board, and
7 which are required by state or federal law to be confidential, any
8 vote or action on any item of business considered in an executive
9 session shall be taken in public meeting with the vote of each
10 member publicly cast and recorded.

11 F. A willful violation of the provisions of this section shall:

12 1. Subject each member of the public body to criminal sanctions
13 as provided in Section 314 of this title; and

14 2. Cause the minutes and all other records of the executive
15 session, including tape recordings, to be immediately made public.

16 SECTION 69. REPEALER Section 15, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2018, Section 15), is hereby repealed.

18 SECTION 70. REPEALER Sections 107, 108, 109, 110, as
19 amended by Section 4, Chapter 390, O.S.L. 2015, 111, 112, as amended
20 by Section 5, Chapter 390, O.S.L. 2015, 113, 114, 115, 116, 117,
21 118, as amended by Section 6, Chapter 390, O.S.L. 2015, 119 and 120,
22 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 200, 201,
23 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212 and 213), are
24 hereby repealed.

1 SECTION 71. It being immediately necessary for the preservation
2 of the public peace, health or safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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