

BILL SUMMARY
1st Session of the 57th Legislature

Bill No.:	HB 2367
Version:	CS
Request Number:	8286
Author:	Rep. Kannady
Date:	3/13/2019
Impact:	Increases Statutory Appropriations for the Commission and the Court of Existing Claims; adds mental illness as a compensable injury

Research Analysis

HB2367, as committee substitute, modifies numerous components of the Administrative Workers' Compensation Act.

Section 1: Modifies definitions, including compensable injury, continuing medical maintenance, course and scope of employment, cumulative trauma, disability, employee, employer, permanent disability, and permanent partial disability.

Section 2: Specifies that every employer subject to this act shall provide benefits for employment-related injury without regard to fault. Clarifies guidelines for cases occurring in other jurisdictions, and specifying that claimant with case in multiple jurisdictions shall not receive duplicate benefits. States that this act shall apply to federally-owned lands beyond state territory.

Section 3: Removes stipulation that the owner or operator of an oil and gas operation shall be considered the principal employer when the immediate employer was also hired by the owner or operator.

Section 4: Specifies that portion of criminal fines for false representation be deposited into the Workers' Compensation Commission Revolving Fund.

Section 5: Shifts exclusive jurisdiction of discrimination or retaliation cases from Workers' Compensation Commission to district courts and that the remedies of this act are exclusive remedies.

Section 6: Allows first-responders to claim mental injury or illness as a compensable injury without evidence of a physical, employment-related injury causing the mental injury or illness. Removes time limit and other guidelines for mental illness disability benefits. Mental injury or illness shall be treated as "other cases."

Section 7: Removes stipulation that mental or physical stress not be considered when determining heart or lung injury.

Section 8: Allows for notice of workers' compensation claim to health care provider to be delivered by copy, email, or other electronic means, in addition to mail. Allows for any party in hearing to employ interpreter or court reporter.

Section 9: Allows Commission to meet privately to discuss matters related to operations. However, no official actions can be taken during private meetings.

Sections 10-11: Language for clean-up, consistency, and clarification.

Section 12: Removes multiple responsibilities of the Workers' Compensation Commission, including 30-day notice for any rule change, and adds other responsibilities, including requiring the establishment of a petty cash fund.

Section 13: Removes language about administrative law judges assuming duties as assigned by Workers' Compensation Commission.

Section 14: Modifies fee paid to Commission by insurance carrier or self-insurer from at time of securing license to annually.

Section 15: Establishes procedure of filing Affidavit of Exempt Status including content on form, repercussions for providing false information on form, and filing fee.

Section 16: Shifts rulemaking responsibility for securing compensation from Insurance Department to Workers' Compensation Commission.

Section 17: Adds that if employer pays a civil penalty for failure to provide compensation for injury, employee is eligible for portion of proceeds from civil penalty.

Section 18: Changes first lien amount entitled by employer or insurance carrier if they join in action against third party from two-thirds of proceeds to equitable sum of proceeds. Defines determination of equitable sum.

Section 19: Modifies guidelines for disability compensation. For temporary total disability benefits, changes maximum compensation available from seventy-percent of weekly wage to state average weekly wage. Allows for employer to receive overpayment of temporary total disability benefits from subsequent permanent partial disability benefits if offset is deemed justified. Allows for alternative evaluation method for physicians when determining permanent partial disability. Raises maximum rate of permanent partial disability compensation from \$323 per week to \$391 per week. Makes hiring of Vocational Rehabilitation Director by Commission optional rather than required and removes subsequent duties. Removes ability of employer or insurance carrier to deduct tuition costs of retraining program from benefits.

Section 20: Language for clean-up, consistency, and clarification.

Section 21: Adds that employer may be ordered to provide detoxification treatment for employee prescribed opioids or other narcotics. Changes maximum charge for prescription drugs and compounded medications from ninety-percent of average wholesale price to one-hundred twenty-five-percent of reimbursement rate established by Centers for Medicare and Medicaid Services. States that physicians may not dispense prescription drugs from office. Provides employer right to designate pharmacy to provide prescription drugs.

Section 22: Adds clarifications regarding failure to comply with physical examination.

Section 23: Adds that if physician recommends surgery, the Commission shall appoint an Independent Medical Examiner to determine necessity of surgery.

Section 24: Allows employee, rather than employer, to select replacement physician.

Section 25: Provides further guidelines for handling cases of employee missing multiple scheduled medical appointments, including providing greater flexibility in valid excuses for missing appointments.

Section 26: Language for clean-up, consistency, and clarification.

Section 27: Specifies types of injections eligible for extension of benefits. Adds health, electrical, radiation, or chemical burns to list of covered soft tissue injuries.

Section 28: Add confidentiality of reports sent to the Commission, but can be made available upon request.

Section 29: Removes restrictions to occupational diseases eligible for compensation, including stipulations for silicosis and asbestosis.

Section 30: Removes guidelines for cases in which non-disabled employee is affected by silicosis or asbestosis.

Section 31: Removes guidelines for cases in which a change in decision for occupational disease or cumulative trauma cases may occur on proof of fraud, undue influence, or change of condition.

Section 32: Modifies timeline for filing claim for injury. Creates timeline that within one year from date of injury to filing, last payment of compensation or wages, or last medical appointment date, claim must be filed or else dismissed with prejudice. Increases timeline for filing of controverted claim or additional benefits from six months to one year.

Section 33: Allows for notice of claims and judgments to employer by means of copy, email, or other electronic means, in addition to mail.

Section 34: Requires that employer pay for prescription drugs during appeals process period. Adds that if claim is appealed, employee or carrier will reimburse employer for costs of prescription drugs during appeals process period.

Section 35: Clarifies reopening of compensation judgment by Commission. Changes timeline for reopening judgments. Adds that unless reopened within timeline, case will be permanently barred. Stipulates that noncompliance with medical treatment plan will bar reopening of case.

Section 36: Clarifies controverted claims. Removes case in which controverted claim is filed against State Treasurer. Shifts collector of fees for collection costs of disputed charges from medical provider to attorney.

Sections 37-38: Language for clean-up, consistency, and clarification.

Section 39: States procedure for hearing to change award compensation before Supreme Court, including requiring written undertakings.

Section 40: Exempts incarcerated individuals from receiving temporary total disability benefits.

Section 41: Removes timeline for Commission to implement electronic data interchange system.

Section 42: Removes requirement of Commission to notice injured employee of available services such as ombudsman program. Directs Commission to provide information on website.

Section 43: Requires that agreements between employer and employee regarding injury and disability be filed as a memorandum of agreement with the Commission.

Section 44: Specifies filing fees.

Section 45-46: Language for clean-up, consistency, and clarification.

Section 47: Removes requirement of Advisory Council on Workers' Compensation to review Oklahoma Treatment Guidelines and report findings to the Commission.

Section 48: Specifies that Tax Commission must firstly fulfill \$5 million contribution to Multiple Injury Trust Fund. Removes previous fiscal year requirements. Lowers contribution to Administrative Fund from \$4 million to \$2.5 million for fiscal year 2020. Provides that contribution to Administrative Fund for subsequent years be \$3 million so long as Workers' Compensation Court of Existing Claims is authorized by the Legislature.

Section 50: States that Workers' Compensation Court of Existing Claims shall pay the expenses associated with maintaining current and past records, so long as the Legislature appropriates funding to the Court separate from Commission funding. Otherwise, records shall be transferred to the Commission.

Sections 51-64: Language for clean-up, consistency, and clarification.

Section 65: States that vacancy in Workers' Compensation Court of Existing Appeals be appointed by Governor from list of three applicants provided by Judicial Nominating Commission. Allows Governor to appoint Presiding Judge.

Section 66: Repeals guidelines regarding annual reports by the Attorney General to the Workers' Compensation Commission for a fraud investigation unit unit, by the Workers' Compensation Commission to the Legislature and Governor for evaluation of administration of act. Repeals stipulation that contractor shall be liable for a subcontractor's employees.

Section 67: Repeals Oklahoma Employee Injury Benefit Act

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Fiscal Analysis

HB 2367 increases statutory appropriations for the following:

- Workers' Compensation Commission: from \$3 million (FY-19) to \$5 million (FY-20 and all subsequent years).
- Workers' Compensation Court of Existing Claims: from \$3 million (FY-19) to \$4 million (FY-20 until FY-2024).

Increasing these appropriations which are funded off-the-top from the insurance premium tax, reduces the amount of funds remaining in the Multiple Injury Trust Fund.

The measure also adds mental illness or injury as a compensable injury and could increase the number of claims for state employees who are first responders (highway patrol, OSBI agents). The exact impact is contingent upon how many claims are made.

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Other Considerations

None.