

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 2367

By: Kannady of the House

and

Daniels of the Senate

[workers' compensation - amending various statutes
relating to workers' compensation -
emergency]

AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause
and entire bill and insert

"[workers' compensation - amending various statutes
relating to workers' compensation - codification -
emergency]

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

SECTION 1. AMENDATORY 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), is amended to read as follows:

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

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

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

9 3. "Case management" means the ongoing coordination, by a case
10 manager, of health care services provided to an injured or disabled
11 worker, including but not limited to systematically monitoring the
12 treatment rendered and the medical progress of the injured or
13 disabled worker; ensuring that any treatment plan follows all
14 appropriate treatment protocols, utilization controls and practice
15 parameters; assessing whether alternative health care services are
16 appropriate and delivered in a cost-effective manner based upon
17 acceptable medical standards; and ensuring that the injured or
18 disabled worker is following the prescribed health care plan;

19 4. "Case manager" means a person who is a registered nurse with
20 a current, active unencumbered license from the Oklahoma Board of
21 Nursing, or possesses one or more of the following certifications
22 which indicate the individual has a minimum number of years of case
23 management experience, has passed a national competency test and
24

1 regularly obtains continuing education hours to maintain
2 certification:

- 3 a. Certified Disability Management Specialist (CDMS),
- 4 b. Certified Case Manager (CCM),
- 5 c. Certified Rehabilitation Registered Nurse (CRRN),
- 6 d. Case Manager - Certified (CMC),
- 7 e. Certified Occupational Health Nurse (COHN), or
- 8 f. Certified Occupational Health Nurse Specialist (COHN-
9 S);

10 5. "Certified workplace medical plan" means an organization of
11 health care providers or any other entity, certified by the State
12 Commissioner of Health, that is authorized to enter into a
13 contractual agreement with an employer, group self-insurance
14 association plan, an employer's workers' compensation insurance
15 carrier, third-party administrator or an insured to provide medical
16 care under the Administrative Workers' Compensation Act. Certified
17 plans shall only include plans which provide medical services and
18 payment for services on a fee-for-service basis to medical
19 providers;

20 6. "Child" means a natural or adopted son or daughter of the
21 employee under eighteen (18) years of age; or a natural or adopted
22 son or daughter of an employee eighteen (18) years of age or over
23 who is physically or mentally incapable of self-support; or any
24 natural or adopted son or daughter of an employee eighteen (18)

1 years of age or over who is actually dependent; or any natural or
2 adopted son or daughter of an employee between eighteen (18) and
3 twenty-three (23) years of age who is enrolled as a full-time
4 student in any accredited educational institution. The term "child"
5 includes a posthumous child, a child legally adopted or one for whom
6 adoption proceedings are pending at the time of death, an actually
7 dependent stepchild or an actually dependent acknowledged child born
8 out of wedlock;

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

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

13 9. a. "Compensable injury" means damage or harm to the
14 physical structure of the body, or damage or harm to
15 prosthetic appliances, including eyeglasses, contact
16 lenses, or hearing aids, ~~caused solely as the result~~
17 of which the major cause is either an accident,
18 cumulative trauma or occupational disease arising out
19 of the course and scope of employment. An "accident"
20 means an event involving factors external to the
21 employee that:

22 (1) was unintended, unanticipated, unforeseen,
23 unplanned and unexpected,

24

1 (2) occurred at a specifically identifiable time and
2 place,

3 (3) occurred by chance or from unknown causes, ~~and~~ or

4 (4) was independent of sickness, mental incapacity,
5 bodily infirmity or any other cause.

6 b. "Compensable injury" does not include:

7 (1) injury to any active participant in assaults or
8 combats which, although they may occur in the
9 workplace, are the result of non-employment-
10 related hostility or animus of one, both, or all
11 of the combatants and which assault or combat
12 amounts to a deviation from customary duties;
13 provided, however, injuries caused by horseplay
14 shall not be considered to be compensable
15 injuries, except for innocent victims,

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

20 (3) injury which was inflicted on the employee at a
21 time when employment services were not being
22 performed or before the employee was hired or
23 after the employment relationship was terminated,
24

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

18 (5) any strain, degeneration, damage or harm to, or
19 disease or condition of, the eye or
20 musculoskeletal structure or other body part
21 resulting from the natural results of aging,
22 osteoarthritis, arthritis, or degenerative
23 process including, but not limited to,
24 degenerative joint disease, degenerative disc

1 disease, degenerative

2 spondylosis/spondylolisthesis and spinal

3 stenosis, or

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

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

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

17 ~~e.~~

18 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.~~

22 e. Benefits shall not be payable for a condition which
23 results from a non-work-related independent
24 intervening cause following a compensable injury which

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

5 ~~g.~~

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

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

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

22 12. "Continuing medical maintenance" means medical treatment
23 that is reasonable and necessary to maintain claimant's condition
24 resulting from the compensable injury or illness after reaching

1 maximum medical improvement, but in no event shall such treatment
2 continue for longer than one (1) year from the date of maximum
3 medical improvement. Continuing medical maintenance shall not
4 include diagnostic tests, surgery, injections, counseling, physical
5 therapy, or pain management devices or equipment;

6 13. "Course and scope of employment" means an activity of any
7 kind or character for which the employee was hired and that relates
8 to and derives from the work, business, trade or profession of an
9 employer, and is performed by an employee in the furtherance of the
10 affairs or business of an employer. The term includes activities
11 conducted on the premises of an employer or at other locations
12 designated by an employer and travel by an employee in furtherance
13 of the affairs of an employer that is specifically directed by the
14 employer. This term does not include:

- 15 a. an employee's transportation to and from his or her
16 place of employment,
- 17 b. travel by an employee in furtherance of the affairs of
18 an employer if the travel is also in furtherance of
19 personal or private affairs of the employee,
- 20 c. any injury occurring in a parking lot or other common
21 area adjacent to an employer's place of business
22 before the employee clocks in or otherwise begins work
23 for the employer or after the employee clocks out or
24 otherwise stops work for the employer unless the

1 employer owns or maintains exclusive control over the
2 area, or

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

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

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

21 16. "Disability" means incapacity because of compensable injury
22 to earn, in the same or any other employment, substantially the same
23 amount of wages the employee was receiving at the time of the
24 compensable injury;

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

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

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

2 (1) any person for whom an employer is liable under
3 any Act of Congress for providing compensation to
4 employees for injuries, disease or death arising
5 out of and in the course of employment including,
6 but not limited to, the Federal Employees'
7 Compensation Act, the Federal Employers'
8 Liability Act, the Longshore and Harbor Workers'
9 Compensation Act and the Jones Act, to the extent
10 his or her employees are subject to such acts,

11 (2) any person who is employed in agriculture,
12 ranching or horticulture by an employer who had a
13 gross annual payroll in the preceding calendar
14 year of less than One Hundred Thousand Dollars
15 (\$100,000.00) wages for agricultural, ranching or
16 horticultural workers, or any person who is
17 employed in agriculture, ranching or horticulture
18 who is not engaged in operation of motorized
19 machines. This exemption applies to any period
20 of time for which such employment exists,
21 irrespective of whether or not the person is
22 employed in other activities for which the
23 exemption does not apply. If the person is
24 employed for part of a year in exempt activities

1 and for part of a year in nonexempt activities,
2 the employer shall be responsible for providing
3 workers' compensation only for the period of time
4 for which the person is employed in nonexempt
5 activities,

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

8 (4) any person who is providing services in a medical
9 care or social services program, or who is a
10 participant in a work or training program,
11 administered by the Department of Human Services,
12 unless the Department is required by federal law
13 or regulations to provide workers' compensation
14 for such person. This division shall not be
15 construed to include nursing homes,

16 (5) any person employed by an employer with five or
17 fewer total employees, all of whom are related
18 within the second degree by blood or marriage to
19 the employer, are dependents living in the
20 household of the employer, or are a combination
21 of such relatives and dependents, if the employer
22 is a natural person or ~~a general or limited~~
23 ~~partnership, or an incorporator of a corporation~~
24 ~~if the corporation is the employer~~ in the

1 household of the owner of the employer if the
2 employer is not a natural person and the owner
3 owns fifty percent (50%) or more of the employer,

4 (6) any person employed by an employer which is a
5 youth sports league which qualifies for exemption
6 from federal income taxation pursuant to federal
7 law,

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

21 (8) any person providing or performing voluntary
22 service who receives no wages for the services
23 other than meals, drug or alcohol rehabilitative
24 therapy, transportation, lodging or reimbursement

1 for incidental expenses except for volunteers
2 specifically provided for in subparagraph a of
3 this paragraph,

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

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

15 (10) a person referred to as a drive-away owner-
16 operator who privately owns and utilizes a tow
17 vehicle in drive-away operations and operates
18 independently for hire, if the drive-away owner-
19 operator actually utilizes the tow vehicle and if
20 the person contracting with the drive-away owner-
21 operator is not the lessor of the tow vehicle.

22 Provided, however, a drive-away owner-operator
23 shall not be precluded from workers' compensation
24 coverage under the Administrative Workers'

1 Compensation Act if the drive-away owner-operator
2 elects to participate as a sole proprietor, and
3 (11) any person who is employed as a domestic servant
4 or as a casual worker in and about a private home
5 or household, which private home or household had
6 a gross annual payroll in the preceding calendar
7 year of less than Fifty Thousand Dollars
8 (\$50,000.00) for such workers;

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

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

5 21. "Evidence-based" means expert-based, literature-supported
6 and outcomes validated by well-designed randomized trials when such
7 information is available and which uses the best available evidence
8 to support medical decision making;

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

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

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

23 25. "Insurance Commissioner" means the Insurance Commissioner
24 of the State of Oklahoma;

1 26. "Insurance Department" means the Insurance Department of
2 the State of Oklahoma;

3 27. "Major cause" means more than fifty percent (50%) of the
4 resulting injury, disease or illness. A finding of major cause
5 shall be established by a preponderance of the evidence. A finding
6 that the workplace was not a major cause of the injury, disease or
7 illness shall not adversely affect the exclusive remedy provisions
8 of this act and shall not create a separate cause of action outside
9 this act;

10 28. "Maximum medical improvement" means that no further
11 material improvement would reasonably be expected from medical
12 treatment or the passage of time;

13 29. "Medical services" means those services specified in
14 Section 50 of this title;

15 30. "Misconduct" shall include the following:

- 16 a. unexplained absenteeism or tardiness,
- 17 b. willful or wanton indifference to or neglect of the
18 duties required,
- 19 c. willful or wanton breach of any duty required by the
20 employer,
- 21 d. the mismanagement of a position of employment by
22 action or inaction,
- 23 e. actions or omissions that place in jeopardy the
24 health, life, or property of self or others,

- f. dishonesty,
- g. wrongdoing,
- h. violation of a law, or
- i. a violation of a policy or rule adopted to ensure orderly work or the safety of self or others;

31. 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~~ Sixth 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

1 to, audiological tests that measure air and
2 bone conduction thresholds and speech
3 discrimination ability.

4 (b) Any difference in the baseline hearing
5 levels shall be confirmed by subsequent
6 testing; provided, however, such test shall
7 be given within four (4) weeks of the
8 initial baseline hearing level test but not
9 before five (5) days after being adjusted
10 for presbycusis.

11 b. Medical opinions addressing compensability and
12 permanent disability shall be stated within a
13 reasonable degree of medical certainty;

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

17 33. "Permanent disability" means the extent, expressed as a
18 percentage, of the loss of a portion of the total physiological
19 capabilities of the human body as established by competent medical
20 evidence and based on the ~~current edition~~ Sixth Edition of the
21 American Medical Association guides to the evaluation of impairment,
22 if the impairment is contained therein;

23 34. "Permanent partial disability" means a permanent disability
24 or loss of use after maximum medical improvement has been reached

1 which prevents the injured employee, who has been released to return
2 to work by the treating physician, from returning to his or her pre-
3 injury or equivalent job. All evaluations of permanent partial
4 disability must be supported by objective findings;

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

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

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

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

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, and eyes. In addition, for purposes of the
8 Multiple Injury Trust Fund only, "scheduled member" means hearing
9 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 the employee is precluded from his or her right of action under the
9 Administrative Workers' Compensation Act. Nothing in this act shall
10 be construed to conflict with any valid Act of Congress governing
11 the liability of employers for injuries received by their employees.

12 B. ~~This act~~ The State of Oklahoma accepts the provisions of the
13 Acts of Congress designated as 40 U.S.C., Section 3172, formerly 40
14 U.S.C., Section 290, and hereby extends the territorial jurisdiction
15 of the Administrative Workers' Compensation Act of this state to all
16 lands and premises within the exterior boundaries of this state
17 which the Government of the United States of America owns or holds
18 by deed or act of cession, and to all purchases, projects,
19 buildings, constructions, improvements and property within the
20 exterior boundaries of this state belonging to the Government of the
21 United States of America, in the same manner and to the same extent
22 as if the premises were under the exclusive jurisdiction of this
23 state, subject only to the limitations placed thereon by the Acts of
24 Congress.

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

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

8 SECTION 3. AMENDATORY Section 5, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2018, Section 5), is amended to read as
10 follows:

11 Section 5. A. The rights and remedies granted to an employee
12 subject to the provisions of the Administrative Workers'
13 Compensation Act shall be exclusive of all other rights and remedies
14 of the employee, his legal representative, dependents, next of kin,
15 or anyone else claiming rights to recovery on behalf of the employee
16 against the employer, or any principal, officer, director, employee,
17 stockholder, partner, or prime contractor of the employer on account
18 of injury, illness, or death. Negligent acts of a co-employee may
19 not be imputed to the employer. No role, capacity, or persona of
20 any employer, principal, officer, director, employee, or stockholder
21 other than that existing in the role of employer of the employee
22 shall be relevant for consideration for purposes of this act, and
23 the remedies and rights provided by this act shall be exclusive
24 regardless of the multiple roles, capacities, or personas the

1 employer may be deemed to have. ~~For the purpose of extending the~~
2 ~~immunity of this section, any operator or owner of an oil or gas~~
3 ~~well or other operation for exploring for, drilling for, or~~
4 ~~producing oil or gas shall be deemed to be an intermediate or~~
5 ~~principal employer for services performed at a drill site or~~
6 ~~location with respect to injured or deceased workers whose immediate~~
7 ~~employer was hired by such operator or owner at the time of the~~
8 ~~injury or death.~~

9 B. Exclusive remedy shall not apply if:

10 1. An employer fails to secure the payment of compensation due
11 to the employee as required by this act. An injured employee, or
12 his or her legal representative in case death results from the
13 injury, may, at his or her option, elect to claim compensation under
14 this act or to maintain a legal action in court for damages on
15 account of the injury or death; or

16 2. The injury was caused by an intentional tort committed by
17 the employer. An intentional tort shall exist only when the
18 employee is injured as a result of willful, deliberate, specific
19 intent of the employer to cause such injury. Allegations or proof
20 that the employer had knowledge that the injury was substantially
21 certain to result from the employer's conduct shall not constitute
22 an intentional tort. The employee shall plead facts that show it is
23 at least as likely as it is not that the employer acted with the
24

1 purpose of injuring the employee. The issue of whether an act is an
2 intentional tort shall be a question of law.

3 C. The immunity from civil liability described in subsection A
4 of this section shall apply regardless of whether the injured
5 employee is denied compensation or deemed ineligible to receive
6 compensation under this act.

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

12 E. The immunity created by the provisions of this section shall
13 not extend to action against another employer, or its employees, on
14 the same job as the injured or deceased worker where such other
15 employer does not stand in the position of an intermediate or
16 principal employer to the immediate employer of the injured or
17 deceased worker.

18 F. The immunity created by the provisions of this section shall
19 not extend to action against another employer, or its employees, on
20 the same job as the injured or deceased worker even though such
21 other employer may be considered as standing in the position of a
22 special master of a loaned servant where such special master neither
23 is the immediate employer of the injured or deceased worker nor
24

1 stands in the position of an intermediate or principal employer to
2 the immediate employer of the injured or deceased worker.

3 G. This section shall not be construed to abrogate the loaned
4 servant doctrine in any respect other than that described in
5 subsection F of this section. Nothing in this act shall be
6 construed to relieve the employer from any other penalty provided
7 for in this act for failure to secure the payment of compensation
8 under this act.

9 H. For the purpose of extending the immunity of this section,
10 any architect, professional engineer, or land surveyor shall be
11 deemed an intermediate or principal employer for services performed
12 at or on the site of a construction project, but this immunity shall
13 not extend to the negligent preparation of design plans and
14 specifications.

15 I. If the employer has failed to secure the payment of
16 compensation as provided in this act or in the case of an
17 intentional tort, the injured employee or his or her legal
18 representative may maintain an action either before the Commission
19 or in the district court, but not both.

20 SECTION 4. AMENDATORY Section 6, Chapter 208, O.S.L.
21 2013, as amended by Section 1, Chapter 390, O.S.L. 2015 (85A O.S.
22 Supp. 2018, Section 6), is amended to read as follows:

23 Section 6.
24

1 A. 1. a. Any person or entity who makes any material false
2 statement or representation, who willfully and
3 knowingly omits or conceals any material information,
4 or who employs any device, scheme, or artifice, or who
5 aids and abets any person for the purpose of:

6 (1) obtaining any benefit or payment,

7 (2) increasing any claim for benefit or payment, or

8 (3) obtaining workers' compensation coverage under
9 this act,

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

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

16 c. Fifty percent (50%) of any criminal fine imposed and
17 collected under this section shall be paid and
18 allocated in accordance with applicable law to the
19 Workers' Compensation Commission Revolving Fund
20 ~~administered by the Commission.~~

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

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

6 C. Where the Commission or the Attorney General finds that a
7 violation of division (1) of subparagraph a of paragraph 1 of
8 subsection A of this section has been committed, or that any other
9 criminal violations in furtherance of this act were committed, the
10 chair of the Commission or the Attorney General shall refer the
11 matter for appropriate action to the prosecuting attorney having
12 criminal jurisdiction over the matter.

13 D. 1. a. There shall be established within the Office of the
14 Attorney General a Workers' Compensation Fraud
15 Investigation Unit, funded by the Commission. The
16 Attorney General shall appoint a Director of the
17 Workers' Compensation Fraud Investigation Unit, who
18 may also serve as the director of any other designated
19 insurance fraud investigation division within the
20 Attorney General's office.

21 b. (1) The Unit shall investigate workers' compensation
22 fraud, any additional criminal violations that
23 may be related to workers' compensation fraud,
24 and any other insurance fraud matters as may be

1 assigned at the discretion of the Attorney
2 General.

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

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

21 3. It shall be the duty of the Unit to assist the Attorney
22 General in the performance of his or her duties. The Unit shall
23 determine the identity of employees in this state who have violated
24 division (1) of subparagraph a of paragraph 1 of subsection A of

1 this section and report the violation to the Office of the Attorney
2 General and the Commission. The Attorney General shall report the
3 violation to the prosecuting attorney having jurisdiction over the
4 matter.

5 4. a. In the course of any investigation being conducted by
6 the Unit, the Attorney General and his or her deputies
7 and assistants and the Director and his or her
8 deputies and assistants shall have the power of
9 subpoena and may:

10 (1) subpoena witnesses,

11 (2) administer oaths or affirmations and examine any
12 individual under oath, and

13 (3) require and compel the production of records,
14 books, papers, contracts, and other documents.

15 b. The issuance of subpoenas for witnesses shall be
16 served in the same manner as if issued by a district
17 court.

18 c. (1) Upon application by the commissioner or the
19 Director of the Unit, the district court located
20 in the county where a subpoena was served may
21 issue an order compelling an individual to comply
22 with the subpoena to testify.

23 (2) Any failure to obey the order of the court may be
24 punished as contempt.

1 d. If any person has refused in connection with an
2 investigation by the Director to be examined under
3 oath concerning his or her affairs, then the Director
4 is authorized to conduct and enforce by all
5 appropriate and available means any examination under
6 oath in any state or territory of the United States in
7 which any officer, director, or manager may then
8 presently be to the full extent permitted by the laws
9 of the state or territory.

10 e. In addition to the punishments described in paragraph
11 1 of subsection A of this section, any person
12 providing false testimony under oath or affirmation in
13 this state as to any matter material to any
14 investigation or hearing conducted under this
15 subparagraph, or any workers' compensation hearing,
16 shall upon conviction be guilty of perjury.

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

19 6. a. Every carrier or employer who has reason to suspect
20 that a violation of division (1) of subparagraph a of
21 paragraph 1 of subsection A of this section has
22 occurred shall be required to report all pertinent
23 matters to the ~~unit~~ Unit.

1 b. No carrier or employer who makes a report for a
2 suspected violation of division (1) of subparagraph a
3 of paragraph 1 of subsection A of this section by an
4 employee shall be liable to the employee unless the
5 carrier or employer knowingly and intentionally
6 included false information in the report.

7 c. (1) Any carrier or employer who willfully and
8 knowingly fails to report a violation under
9 division (1) of subparagraph a of paragraph 1 of
10 subsection A of this section shall be guilty of a
11 misdemeanor and on conviction shall be punished
12 by a fine not to exceed One Thousand Dollars
13 (\$1,000.00).

14 (2) Fifty percent (50%) of any criminal fine imposed
15 and collected under this subparagraph shall be
16 paid and allocated in accordance with applicable
17 law to the fund administered by the Commission.

18 d. Any employee may report suspected violations of
19 division (1) of subparagraph a of paragraph 1 of
20 subsection A of this section. No employee who makes a
21 report shall be liable to the employee whose suspected
22 violations have been reported.

23 E. 1. For the purpose of imposing criminal sanctions or a fine
24 for violation of the duties of this act, the prosecuting attorney

1 shall have the right and discretion to proceed against any person or
2 organization responsible for such violations, both corporate and
3 individual liability being intended by this act.

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

15 F. Notwithstanding any other provision of law, investigatory
16 files as maintained by the Attorney General's office and by the Unit
17 shall be deemed confidential and privileged. The files may be made
18 open to the public once the investigation is closed by the Director
19 of the Workers' Compensation Fraud Investigation Unit with the
20 consent of the Attorney General.

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

24

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

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

8 J. If an injured employee is charged with workers' compensation
9 fraud, any pending workers' compensation proceeding, including
10 benefits, shall be stayed after the preliminary hearing is concluded
11 and the claimant is bound over and shall remain stayed until the
12 final disposition of the criminal case. All notice requirements
13 shall continue during the stay.

14 K. If the Attorney General's Office is in compliance with the
15 discovery provisions of Section 258 of Title 22 of the Oklahoma
16 Statutes, medical records created for the purpose of treatment and
17 medical opinions obtained during the investigation shall be
18 admissible at the preliminary hearing without the appearance of the
19 medical professional creating such records or opinions. However,
20 when material evidence dispositive to the issues of whether there
21 was probable cause the crime was committed and whether the defendant
22 committed the crime, was not included in a report or opinion
23 admitted at preliminary hearing, but might be presented at a
24 pretrial hearing by a medical professional who created such report

1 or opinion, the judge may, upon the motion of either party, order
2 the appearance of the medical professional creating such report or
3 opinion. Questions of fact regarding the conduct of the defendant
4 that conflict with the findings of the medical professional
5 evaluating the defendant shall not constitute material evidence. In
6 the event of such motion, notice shall be given to the Attorney
7 General's Workers' Compensation Fraud and Investigation and
8 Prosecution Unit. A hearing shall be held and, if the motion is
9 granted, the evidence shall not be presented fewer than five (5)
10 days later.

11 L. Any person or entity who, in good faith and exercising due
12 care, reports suspected workers' compensation fraud or insurance
13 fraud, or who allows access to medical records or other information
14 pertaining to suspected workers' compensation or insurance fraud, by
15 persons authorized to investigate a report concerning the workers'
16 compensation and insurance fraud, shall have immunity from any civil
17 or criminal liability for such report or access. Any such person or
18 entity shall have the same immunity with respect to participation in
19 any judicial proceeding resulting from such reports. For purposes
20 of any civil or criminal proceeding, there shall be a presumption of
21 good faith of any person making a report, providing medical records
22 or providing information pertaining to a workers' compensation or
23 insurance fraud investigation by the Attorney General, and

24

1 participating in a judicial proceeding resulting from a subpoena or
2 a report.

3 SECTION 5. AMENDATORY Section 7, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 7), is amended to read as
5 follows:

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

- 8 1. Filed a claim under this act;
- 9 2. Retained a lawyer for representation regarding a claim under
10 this act;
- 11 3. Instituted or caused to be instituted any proceeding under
12 the provisions of this act; or
- 13 4. Testified or is about to testify in any proceeding under the
14 provisions of this act.

15 B. ~~The Commission~~ district courts shall have exclusive
16 jurisdiction to hear and decide claims based on ~~subsection A of this~~
17 section.

18 C. ~~If the Commission determines that the defendant violated~~
19 ~~subsection A of this section, the Commission may award the employee~~
20 ~~back pay up to a maximum of One Hundred Thousand Dollars~~
21 ~~(\$100,000.00). Interim earnings or amounts earnable with reasonable~~
22 ~~diligence by the person discriminated against shall reduce the back~~
23 ~~pay otherwise allowable~~ An employer which violates any provision of
24 this section shall be liable in a district court action for

1 reasonable damages, actual and punitive if applicable, suffered by
2 an employee as a result of the violation. Exemplary or punitive
3 damage awards made pursuant to this section shall not exceed One
4 Hundred Thousand Dollars (\$100,000.00). The employee shall have the
5 burden of proof by a preponderance of the evidence.

6 D. The prevailing party shall be entitled to recover costs and
7 a reasonable attorney fee.

8 E. No employer may discharge an employee during a period of
9 temporary total disability for the sole reason of being absent from
10 work or for the purpose of avoiding payment of temporary total
11 disability benefits to the injured employee.

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

17 G. This section shall not be construed as establishing an
18 exception to the employment_at_will doctrine.

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

22 SECTION 6. AMENDATORY Section 14, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 14), is amended to read as
24 follows:

1 Section 14. A. A cardiovascular, coronary, pulmonary,
2 respiratory, or cerebrovascular accident or myocardial infarction
3 causing injury, illness, or death is a compensable injury only if,
4 in relation to other factors contributing to the physical harm, the
5 course and scope of employment was the major cause.

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

13 ~~2. Physical or mental stress shall not be considered in~~
14 ~~determining whether the employee or claimant has met his or her~~
15 ~~burden of proof.~~

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

19 Section 16. A. The Official Disability Guidelines - Treatment
20 in Workers' Compensation (ODG), published by the Work Loss Data
21 Institute, ~~is to be recognized as the primary standard of reference,~~
22 shall be mandatory at the time of treatment, in determining the
23 frequency and extent of services presumed to be medically necessary
24 and appropriate for compensable injuries under this act, or in

1 resolving such matters in the event a dispute arises. ~~The medical~~
2 ~~treatment guidelines are not requirements, nor are they mandates or~~
3 ~~standards; they provide advice by identifying the care most likely~~
4 ~~to benefit injured workers. The guidelines shall be evidence-based,~~
5 ~~scientifically valid, outcome-focused, and designed to reduce~~
6 ~~excessive or inappropriate medical care while safeguarding necessary~~
7 ~~medical care.~~

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

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

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

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

1 provider has received actual notice given in writing by the employee
2 or the employee's representative. Actual notice shall be deemed
3 received by the hospital, physician, or health care provider five
4 (5) days after mailing by certified mail or sending by facsimile,
5 electronic mail or other electronic means with receipt of
6 confirmation by the employee or his or her representative to the
7 hospital, physician, or health care provider.

8 B. The notice shall include:

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

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

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

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

5 SECTION 9. AMENDATORY Section 19, Chapter 208, O.S.L.
6 2013, as amended by Section 4, House Joint Resolution No. 1096, Page
7 1745, O.S.L. 2014 (85A O.S. Supp. 2018, Section 19), is amended to
8 read as follows:

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

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

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

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

19 D. The principal office of the Commission shall be situated in
20 the City of Oklahoma City in quarters assigned by the Office of
21 Management and Enterprise Services. The Commission shall maintain
22 and keep open, during reasonable business hours, the office in
23 Oklahoma City, for the transaction of business, at which office its
24

1 official records and papers shall be kept. The Commission or any
2 commissioner may hold hearings in any city of this state.

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

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

10 2. To employ administrative staff for the Commission, within
11 budgetary limitation; and

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

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

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

1 commissioner of the Commission but shall have no authority or
2 responsibility with respect to any other matter before the
3 Commission. A person appointed as a special commissioner of the
4 Commission under the provisions of this subsection shall be entitled
5 to receive a per diem equal to the annual salary of the
6 commissioners prorated for the number of days he or she serves in
7 the capacity of a special commissioner of the Commission.
8 Furthermore, when a vacancy on the Commission occurs or is certain
9 to occur, the position shall be filled pursuant to the provisions of
10 this section.

11 SECTION 10. AMENDATORY Section 20, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 20), is amended to read as
13 follows:

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

17 1. To appoint administrative law judges to hear all claims for
18 compensation, including claims based on injuries which occurred
19 outside this state for which compensation is payable under this act.
20 An administrative law judge shall have been licensed to practice law
21 in this state for a period of not less than three (3) years and
22 shall have not less than three (3) years of workers' compensation
23 experience prior to appointment;

24

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

3 3. To assess penalties;

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

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

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

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

20 2. The administrative fees shall be established by regulation
21 of the Commission.

22 3. Funds derived from administrative fees shall be deposited
23 into the Workers' Compensation Commission Revolving Fund to be used
24

1 to defray expenses incurred in preparation and distribution of
2 materials.

3 SECTION 11. AMENDATORY Section 21, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 21), is amended to read as
5 follows:

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

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

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

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

21 D. Except with respect to the Commission's authority to hear
22 appeals of decisions from administrative law judges, any reference
23 in this ~~act~~ title to the Commission's ability to hear and decide the
24 rights of interested parties under this ~~act~~ title shall not prevent

1 it from delegating that responsibility to an administrative law
2 judge.

3 SECTION 12. AMENDATORY Section 22, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 22), is amended to read as
5 follows:

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

9 a. to make rules necessary for the administration and
10 operation of the Commission,

11 b. to appoint and fix the compensation of temporary
12 technical assistants, medical and legal advisers,
13 clerical assistants and other officers and employees,
14 and

15 c. to make such expenditures, including those for
16 personal service, rent, books, periodicals, office
17 equipment, and supplies, and for printing and binding
18 as may be necessary.

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

22 b. The Commission shall comply with the provisions of the
23 Administrative Procedures Act applicable to the filing
24 and publication requirements for rules before the

1 adoption, prescription, amendment, modification, or
2 repeal of any rule, regulation, or form, the
3 Commission shall give at least thirty (30) days'
4 notice of its intended action.

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

10 c. The notice shall be mailed to any person specified by
11 law or who shall have requested advance notice of
12 rule-making proceedings.

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

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

20 5. All expenditures of the Commission in the administration of
21 this act shall be allowed and paid from the Workers' Compensation
22 Fund on the presentation of itemized vouchers approved by the
23 Commission.

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

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

8 C. Additionally, the Commission shall have the following powers
9 and duties:

10 1. To hear and approve compromise settlements;

11 2. To review and approve own-risk applications and group self-
12 insurance association applications;

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

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

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

1 6. To hear and determine claims concerning disputed medical
2 bills;

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

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

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

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

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

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

1 SECTION 13. AMENDATORY Section 27, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 27), is amended to read as
3 follows:

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

21 B. In addition to the duties set forth in this section, the
22 administrative law judges shall have the following duties and
23 powers:
24

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

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

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

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

11 SECTION 14. AMENDATORY Section 29, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 29), is amended to read as
13 follows:

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

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

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

1 D. Fees required pursuant to this section shall be deposited
2 ~~into~~ to the credit of the Workers' Compensation Commission Revolving
3 Fund.

4 SECTION 15. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 35.1 of Title 85A, unless there
6 is created a duplication in numbering, reads as follows:

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

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

18 C. An employer or insurance carrier shall contract for language
19 interpreter services for medical appointments, depositions,
20 statements, mediations and hearings directly with a language
21 interpreter whose principal place of business is in the State of
22 Oklahoma. The charge for such service shall be limited to the
23 actual fee of the interpreter.

24

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

9 SECTION 16. AMENDATORY Section 38, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2018, Section 38), is amended to read as
11 follows:

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

14 1. By insuring and keeping insured the payment of compensation
15 with any stock corporation, mutual association, or other concerns
16 authorized to transact the business of workers' compensation
17 insurance in this state. When an insurer issues a policy to provide
18 workers' compensation benefits under the provisions of this act, it
19 shall file a notice with the Workers' Compensation Commission
20 containing the name, address, and principal occupation of the
21 employer, the number, effective date, and expiration date of the
22 policy, and such other information as may be required by the
23 Commission. The notice shall be filed by the insurer within thirty
24 (30) days after the effective date of the policy. Any insurer who

1 does not file the notice required by this paragraph shall be subject
2 to a fine by the Commission of not more than One Thousand Dollars
3 (\$1,000.00);

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

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

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

18 (1) deposit with the Commission securities, an
19 irrevocable letter of credit or a surety bond
20 payable to the state, in an amount determined by
21 the Commission which shall be at least an average
22 of the yearly claims for the last three (3)
23 years, or

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

5 b. one hundred or more employees and One Million Dollars
6 (\$1,000,000.00) or more in net assets to:

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

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

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

1 Commission of such application for membership, said member shall be
2 a qualified self-insured employer; or

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

5 B. The Commission may waive the requirements of this section in
6 an amount which is commensurate with the ability of the employer to
7 pay the benefits required by the provisions of this act.
8 Irrevocable letters of credit required by this subsection shall
9 contain such terms as may be prescribed by the Commission and shall
10 be issued for the benefit of the state by a financial institution
11 whose deposits are insured by the Federal Deposit Insurance
12 Corporation.

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

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

23 E. Any employer that knowingly provides false information to
24 the Commission for purposes of securing or maintaining a self-

1 insurance permit shall be guilty of a felony and subject to a
2 maximum fine of Ten Thousand Dollars (\$10,000.00).

3 SECTION 17. AMENDATORY Section 40, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 40), is amended to read as
5 follows:

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

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

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

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

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

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

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

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

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

23 c. The carrier shall promptly, and no later than five (5)
24 days before the hearing, respond in writing to the

1 employer's allegation by providing evidence of
2 coverage for the period in question or by
3 affirmatively denying the employer's allegation.

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

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

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

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

1 the injured employee an amount from the proceeds of the civil
2 penalty not to exceed the amount of the civil penalty.

3 SECTION 18. AMENDATORY Section 45, Chapter 208, O.S.L.
4 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
5 Supp. 2018, Section 45), is amended to read as follows:

6 Section 45. A. Temporary Total Disability.

7 1. If the injured employee is temporarily unable to perform his
8 or her job or any alternative work offered by the employer, he or
9 she shall be entitled to receive compensation equal to seventy
10 percent (70%) of the injured employee's average weekly wage, but not
11 to exceed ~~seventy percent (70%)~~ of the state average weekly wage,
12 for ~~one hundred four (104)~~ one hundred fifty-six (156) weeks.

13 Provided, there shall be no payment for the first three (3) days of
14 the initial period of temporary total disability. If an
15 administrative law judge finds that a consequential injury has
16 occurred and that additional time is needed to reach maximum medical
17 improvement, temporary total disability may continue for a period of
18 not more than an additional fifty-two (52) weeks. Such finding
19 shall be based upon a showing of medical necessity by clear and
20 convincing evidence. An employer shall have the right to recover
21 any overpayment of temporary total disability payments from a
22 subsequent permanent partial disability award if the offset is
23 deemed justified.

24

1 2. When the injured employee is released from active medical
2 treatment by the treating physician for all body parts found by the
3 Commission to be injured, or in the event that the employee, without
4 a valid excuse, misses three consecutive medical treatment
5 appointments, fails to comply with medical orders of the treating
6 physician, or otherwise abandons medical care, the employer shall be
7 entitled to terminate temporary total disability by notifying the
8 employee, or if represented, his or her counsel. If, however, an
9 objection to the termination is filed by the employee within ten
10 (10) days of termination, the Commission shall set the matter within
11 twenty (20) days for a determination if temporary total disability
12 compensation shall be reinstated. The temporary total disability
13 shall remain terminated ~~unless the employee proves the existence of~~
14 ~~a valid excuse for his or her failure to comply~~ until such time as
15 the employee complies with medical orders of the treating physician
16 ~~or his or her abandonment of medical care.~~ Notwithstanding the
17 provisions of this paragraph, benefits under this subsection shall
18 be permanently terminated by order of the Commission if the employee
19 is non-compliant or abandons treatment for sixty (60) days, or if
20 benefits under this subsection have been suspended under this
21 paragraph at least two times. The administrative law judge may
22 appoint an independent medical examiner to determine if further
23 medical treatment is reasonable and necessary. The independent
24

1 medical examiner shall not provide treatment to the injured worker,
2 unless agreed upon by the parties.

3 B. Temporary Partial Disability.

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

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

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

19 C. Permanent Partial Disability.

20 1. A permanent partial disability award or combination of
21 awards granted an injured worker may not exceed a permanent partial
22 disability rating of one hundred percent (100%) to any body part or
23 to the body as a whole. The determination of permanent partial
24 disability shall be the responsibility of the Commission through its

1 administrative law judges. Any claim by an employee for
2 compensation for permanent partial disability must be supported by
3 competent medical testimony of a medical doctor, osteopathic
4 physician, or chiropractor, and shall be supported by objective
5 medical findings, as defined in this act. The opinion of the
6 physician shall include employee's percentage of permanent partial
7 disability and whether or not the disability is job-related and
8 caused by the accidental injury or occupational disease. A
9 physician's opinion of the nature and extent of permanent partial
10 disability to parts of the body other than scheduled members must be
11 based solely on criteria established by the ~~current edition~~ Sixth
12 Edition of the American Medical Association's "Guides to the
13 Evaluation of Permanent Impairment". A copy of any written
14 evaluation shall be sent to both parties within seven (7) days of
15 issuance. Medical opinions addressing compensability and permanent
16 disability must be stated within a reasonable degree of medical
17 certainty. Any party may submit the report of an evaluating
18 physician.

19 2. Permanent partial disability shall not be allowed to a part
20 of the body for which no medical treatment has been received. A
21 determination of permanent partial disability made by the Commission
22 or administrative law judge which is not supported by objective
23 medical findings provided by a treating physician who is a medical
24 doctor, doctor of osteopathy, chiropractor or a qualified

1 independent medical examiner shall be considered an abuse of
2 discretion.

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

5 4. In cases of permanent partial disability, the compensation
6 shall be seventy percent (70%) of the employee's average weekly
7 wage, not to exceed ~~Three Hundred Twenty-three Dollars (\$323.00)~~
8 Three Hundred Fifty Dollars (\$350.00) per week, for a term not to
9 exceed a total of three hundred fifty (350) weeks for the body as a
10 whole.

11 5. ~~Except pursuant to settlement agreements entered into by the~~
12 ~~employer and employee, payment of a permanent partial disability~~
13 ~~award shall be deferred and held in reserve by the employer or~~
14 ~~insurance company if the employee has reached maximum medical~~
15 ~~improvement and has been released to return to work by his or her~~
16 ~~treating physician, and then returns to his pre-injury or equivalent~~
17 ~~job for a term of weeks determined by dividing the total dollar~~
18 ~~value of the award by seventy percent (70%) of the employee's~~
19 ~~average weekly wage.~~

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

24

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

9 ~~e. If the employee refuses an offer to return to his pre-~~
10 ~~injury or equivalent job, the permanent partial~~
11 ~~disability award shall continue to be deferred and~~
12 ~~shall be reduced by seventy percent (70%) of the~~
13 ~~employee's average weekly wage for each week he~~
14 ~~refuses to return to his pre-injury or equivalent job.~~

15 ~~d. Attorney fees for permanent partial disability awards,~~
16 ~~as approved by the Commission, shall be calculated~~
17 ~~based upon the total permanent partial disability~~
18 ~~award and paid in full at the time of the deferral.~~

19 ~~e. Assessments pursuant to Sections 31, 98, ~~112~~ 205 and~~
20 ~~~~165~~ 122 of this act ~~title~~ shall be calculated based~~
21 ~~upon the amount of the permanent partial disability~~
22 ~~award and shall be paid at the time of the deferral.~~

23 6. Previous Disability: The fact that an employee has suffered
24 previous disability or received compensation therefor shall not

1 preclude the employee from compensation for a later accidental
2 personal injury or occupational disease. In the event there exists
3 a previous permanent partial disability, including a previous non-
4 work-related injury or condition which produced permanent partial
5 disability and the same is aggravated or accelerated by an
6 accidental personal injury or occupational disease, compensation for
7 permanent partial disability shall be only for such amount as was
8 caused by such accidental personal injury or occupational disease
9 and no additional compensation shall be allowed for the preexisting
10 disability or impairment. Any such reduction shall not apply to
11 temporary total disability, nor shall it apply to compensation for
12 medical treatment.

13 ~~a.~~ If workers' compensation benefits have previously been
14 awarded through settlement or judicial or
15 administrative determination in Oklahoma, the
16 percentage basis of the prior settlement or award
17 shall conclusively establish the amount of permanent
18 partial disability determined to be preexisting. If
19 workers' compensation benefits have not previously
20 been awarded through settlement or judicial or
21 administrative determination in Oklahoma, the amount
22 of preexisting permanent partial disability shall be
23 established by competent evidence and determined by
24 the Commission.

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

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

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

21 7. No payments on any permanent partial disability order shall
22 begin until payments on any preexisting permanent partial disability
23 orders have been completed.

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

3 9. The permanent partial disability rate of compensation for
4 amputation or permanent total loss of use of a scheduled member
5 specified in Section 46 of this ~~act~~ title shall be seventy percent
6 (70%) of the employee's average weekly wage, not to exceed ~~Three~~
7 ~~Hundred Twenty-three Dollars (\$323.00)~~ Three Hundred Fifty Dollars
8 (\$350.00), multiplied by the number of weeks set forth for the
9 member in Section 46 of this ~~act~~ title, regardless of whether the
10 injured employee is able to return to his or her pre-injury or
11 equivalent job.

12 10. An injured employee who is eligible for permanent partial
13 disability under this subsection shall be entitled to receive
14 vocational rehabilitation services provided by a technology center
15 or public secondary school offering vocational-technical education
16 courses, or a member institution of The Oklahoma State System of
17 Higher Education, which shall include retraining and job placement
18 to restore the employee to gainful employment. Vocational
19 rehabilitation services or training shall not extend for a period of
20 more than fifty-two (52) weeks.

21 D. Permanent Total Disability.

22 1. In case of total disability adjudged to be permanent,
23 seventy percent (70%) of the employee's average weekly wages, but
24 not in excess of the state's average weekly wage, shall be paid to

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

19 2. The Workers' Compensation Commission shall annually review
20 the status of any employee receiving benefits for permanent total
21 disability against the last employer. The Commission shall require
22 the employee to annually file an affidavit under penalty of perjury
23 stating that he or she is not and has not been gainfully employed
24 and is not capable of gainful employment. Failure to file such

1 affidavit shall result in suspension of benefits; provided, however,
2 reinstatement of benefits may occur after proper hearing before the
3 Commission.

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

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

23
24

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

- 4 ~~a. if the employee's occupation is truck driver or~~
5 ~~laborer and the medical condition is traumatic brain~~
6 ~~injury, stroke or uncontrolled vertigo,~~
- 7 ~~b. if the employee's occupation is truck driver or~~
8 ~~laborer performing high-risk tasks and the medical~~
9 ~~condition is seizures,~~
- 10 ~~c. if the employee's occupation is manual laborer and the~~
11 ~~medical condition is bilateral wrist fusions,~~
- 12 ~~d. if the employee's occupation is assembly-line worker~~
13 ~~and the medical condition is radial head fracture with~~
14 ~~surgical excision,~~
- 15 ~~e. if the employee's occupation is heavy laborer and the~~
16 ~~medical condition is myocardial infarction with~~
17 ~~congestive heart failure,~~
- 18 ~~f. if the employee's occupation is heavy manual laborer~~
19 ~~and the medical condition is multilevel neck or back~~
20 ~~fusions greater than two levels,~~
- 21 ~~g. if the employee's occupation is laborer performing~~
22 ~~overhead work and the medical condition is massive~~
23 ~~rotator cuff tears, with or without surgery,~~

- 1 ~~h. if the employee's occupation is heavy laborer and the~~
2 ~~medical condition is recurrent inguinal hernia~~
3 ~~following unsuccessful surgical repair,~~
- 4 ~~i. if the employee's occupation is heavy manual laborer~~
5 ~~and the medical condition is total knee replacement or~~
6 ~~total hip replacement,~~
- 7 ~~j. if the employee's occupation is roofer and the medical~~
8 ~~condition is calcaneal fracture, medically or~~
9 ~~surgically treated,~~
- 10 ~~k. if the employee's occupation is laborer of any kind~~
11 ~~and the medical condition is total shoulder~~
12 ~~replacement,~~
- 13 ~~l. if the employee's occupation is laborer and the~~
14 ~~medical condition is amputation of a hand, arm, leg,~~
15 ~~or foot,~~
- 16 ~~m. if the employee's occupation is laborer and the~~
17 ~~medical condition is tibial plateau fracture, pilon~~
18 ~~fracture,~~
- 19 ~~n. if the employee's occupation is laborer and the~~
20 ~~medical condition is ankle fusion or knee fusion,~~
- 21 ~~o. if the employee's occupation is driver or heavy~~
22 ~~equipment operator and the medical condition is~~
23 ~~unilateral industrial blindness, or~~
- 24

1 p. ~~if the employee's occupation is laborer and the~~
2 ~~medical condition is 3-, 4-, or 5-level positive~~
3 ~~diseogram of the cervical spine or lumbar spine,~~
4 ~~medically treated.~~

5 4. Upon the request of either party, ~~or by order of an~~
6 administrative law judge, ~~the Vocational Rehabilitation Director~~
7 shall ~~assist the Workers' Compensation Commission in determining~~
8 determine if it is appropriate for a claimant to receive vocational
9 rehabilitation training or services. If appropriate, the
10 administrative law judge shall refer the employee to a qualified
11 expert for evaluation of the practicability of, need for and kind of
12 rehabilitation services or training necessary and appropriate in
13 order to restore the employee to gainful employment. The cost of
14 the evaluation shall be paid by the employer. ~~Following the~~
15 ~~evaluation, if the employee refuses the services or training ordered~~
16 ~~by the administrative law judge, or fails to complete in good faith~~
17 ~~the vocational rehabilitation training ordered by the administrative~~
18 ~~law judge, then the cost of the evaluation and services or training~~
19 ~~rendered may, in the discretion of the administrative law judge, be~~
20 ~~deducted from any award of benefits to the employee which remains~~
21 ~~unpaid by the employer.~~

22 3. Upon receipt of such report, and after affording all parties
23 an opportunity to be heard, the administrative law judge shall order
24 that any rehabilitation services or training, recommended in the

1 report, or such other rehabilitation services or training as the
2 administrative law judge may deem necessary, provided the employee
3 elects to receive such services, shall be provided at the expense of
4 the employer. Except as otherwise provided in this subsection,
5 refusal to accept rehabilitation services by the employee shall in
6 no way diminish any benefits allowable to an employee.

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

16 ~~6.~~ 5. Vocational rehabilitation services or training shall not
17 extend for a period of more than fifty-two (52) weeks. A request
18 for vocational rehabilitation services or training shall be filed
19 with the Commission by an interested party not later than sixty (60)
20 days from the date of receiving permanent ~~restrictions~~ disability
21 that ~~prevent~~ prevents the injured employee from returning to his or
22 her pre-injury or equivalent position.

23 ~~7.~~ 6. If rehabilitation requires residence at or near the
24 facility or institution which is away from the employee's customary

1 residence, reasonable cost of the employee's board, lodging, travel,
2 tuition, books and necessary equipment in training shall be paid for
3 by the insurer in addition to weekly compensation benefits to which
4 the employee is otherwise entitled under the Administrative Workers'
5 Compensation Act.

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

18 F. Disfigurement.

19 1. If an injured employee incurs serious and permanent
20 disfigurement to any part of the body, the Commission may award
21 compensation to the injured employee in an amount not to exceed
22 Fifty Thousand Dollars (\$50,000.00).
23
24

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

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

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

14 SECTION 19. AMENDATORY Section 46, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 46), is amended to read as
16 follows:

17 Section 46. A. An injured employee who is entitled to receive
18 permanent partial disability compensation under Section 45 of this
19 ~~act~~ title shall receive compensation for each part of the body in
20 accordance with the number of weeks for the scheduled loss set forth
21 below.

22 1. Arm amputated at the elbow, or between the elbow and
23 shoulder, two hundred seventy-five (275) weeks;
24

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

1 specified in this section shall be seventy percent (70%) of the
2 employee's average weekly wage, not to exceed ~~Three Hundred Twenty-~~
3 ~~three Dollars (\$323.00)~~ Three Hundred Fifty Dollars (\$350.00),
4 multiplied by the number of weeks as set forth in this section,
5 regardless of whether or not the injured employee is able to return
6 to his or her pre-injury job.

7 C. Other cases: In cases in which the Workers' Compensation
8 Commission finds an injury to a part of the body not specifically
9 covered by the foregoing provisions of this section, the employee
10 may be entitled to compensation for permanent partial disability.
11 The compensation ordered paid shall be seventy percent (70%) of the
12 employee's average weekly wage, not to exceed ~~Three Hundred Twenty-~~
13 ~~three Dollars (\$323.00)~~ Three Hundred Fifty Dollars (\$350.00) for
14 the number of weeks which the partial disability of the employee
15 bears to three hundred fifty (350) weeks.

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

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

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

24

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

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

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

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

14 SECTION 20. AMENDATORY Section 47, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 47), is amended to read as
16 follows:

17 Section 47. A. Time of death. If death does not result within
18 one (1) year from the date of the accident or within the first three
19 (3) years of the period for compensation payments fixed by the
20 compensation judgment, a rebuttable presumption shall arise that the
21 death did not result from the injury.

22 B. Common law spouse. A common law spouse shall not be
23 entitled to benefits under this section unless he or she obtains an
24

1 order from a court with competent jurisdiction ruling that a common
2 law marriage existed between the decedent and the surviving spouse.

3 C. Beneficiaries - Amounts. If an injury or occupational
4 illness causes death, weekly income benefits shall be payable as
5 follows:

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

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

19 3. If there is a child or children and no surviving spouse, a
20 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
21 fifty percent (50%) of the lesser of the deceased employee's average
22 weekly wage and the state average weekly wage to each child. If
23 there are more than two children, each child shall receive a pro
24 rata share of one hundred percent (100%) of the lesser of the

1 deceased employee's average weekly wage and the state average weekly
2 wage. With respect to the lump-sum payment, if there are more than
3 six children, each child shall receive a pro rata share of One
4 Hundred Fifty Thousand Dollars (\$150,000.00);

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

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

14 D. The weekly income benefits payable to the surviving spouse
15 under this section shall continue while the surviving spouse remains
16 unmarried. In no event shall this spousal weekly income benefit be
17 diminished by the award to other beneficiaries. The weekly income
18 benefits payable to any child under this section shall terminate on
19 the earlier of death, marriage, or reaching the age of eighteen
20 (18). However, if the child turns eighteen (18) and is:

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

23
24

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

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

10 E. If any member of the class of beneficiaries who receive a
11 pro rata share of weekly income benefits becomes ineligible to
12 continue to receive benefits, the remaining members of the class
13 shall receive adjusted weekly income benefits equal to the new class
14 size.

15 F. To receive benefits under this section, a beneficiary or his
16 or her guardian, if applicable, shall file a proof of loss form with
17 the Commission. All questions of dependency shall be determined as
18 of the time of the injury. The employer shall initiate payment of
19 benefits within fifteen (15) days of the Commission's determination
20 of the proper beneficiaries. The Commission shall appoint a
21 guardian ad litem to represent known and unknown minor children and
22 the guardian ad litem shall be paid a reasonable fee for his or her
23 services.

24

1 SECTION 21. AMENDATORY Section 50, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 50), is amended to read as
3 follows:

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

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

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

21 D. Unless recommended by the treating doctor at the time
22 claimant reaches maximum medical improvement or by an independent
23 medical examiner, continuing medical maintenance shall not be
24 awarded by the Commission. The employer or insurance carrier shall

1 not be responsible for continuing medical maintenance or pain
2 management treatment that is outside the parameters established by
3 the Physician Advisory Committee or ODG. The employer or insurance
4 carrier shall not be responsible for continuing medical maintenance
5 or pain management treatment not previously ordered by the
6 Commission or approved in advance by the employer or insurance
7 carrier.

8 E. An employee claiming or entitled to benefits under this act,
9 shall, if ordered by the Commission or requested by the employer or
10 insurance carrier, submit himself or herself for medical
11 examination. If an employee refuses to submit himself or herself to
12 examination, his or her right to prosecute any proceeding under this
13 act shall be suspended, and no compensation shall be payable for the
14 period of such refusal.

15 F. For compensable injuries resulting in the use of a medical
16 device, ongoing service for the medical device shall be provided in
17 situations including, but not limited to, medical device battery
18 replacement, ongoing medication refills related to the medical
19 device, medical device repair, or medical device replacement.

20 G. The employer shall reimburse the employee for the actual
21 mileage in excess of twenty (20) miles round-trip to and from the
22 employee's home to the location of a medical service provider for
23 all reasonable and necessary treatment, for an evaluation of an
24 independent medical examiner and for any evaluation made at the

1 request of the employer or insurance carrier. The rate of
2 reimbursement for such travel expense shall be the official
3 reimbursement rate as established by the State Travel Reimbursement
4 Act. In no event shall the reimbursement of travel for medical
5 treatment or evaluation exceed six hundred (600) miles round trip.

6 H. Fee Schedule.

7 1. ~~The Commission shall conduct a review of the Fee Schedule~~
8 ~~every two (2) years.~~ The Fee Schedule shall establish the maximum
9 rates that medical providers shall be reimbursed for medical care
10 provided to injured employees, including, but not limited to,
11 charges by physicians, dentists, counselors, hospitals, ambulatory
12 and outpatient facilities, clinical laboratory services, diagnostic
13 testing services, and ambulance services, and charges for durable
14 medical equipment, prosthetics, orthotics, and supplies. The most
15 current Fee Schedule established by the Administrator of the
16 Workers' Compensation Court prior to ~~the effective date of this~~
17 ~~section~~ February 1, 2014, shall remain in effect, unless or until
18 the Legislature approves the Commission's proposed Fee Schedule.

19 2. Reimbursement for medical care shall be prescribed and
20 limited by the Fee Schedule ~~as adopted by the Commission, after~~
21 ~~notice and public hearing, and after approval by the Legislature by~~
22 ~~joint resolution.~~ The director of the Employees Group Insurance
23 Division of the Office of Management and Enterprise Services shall
24 provide the Commission such information as may be relevant for the

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

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

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

20 6. A treating physician may not charge more than Four Hundred
21 Dollars (\$400.00) per hour for preparation for or testimony at a
22 deposition or appearance before the Commission in connection with a
23 claim covered by the Administrative Workers' Compensation Act.
24

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

8 8. Charges for prescription drugs dispensed by a pharmacy shall
9 be limited to ninety percent (90%) of the average wholesale price of
10 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per
11 prescription. "Average wholesale price" means the amount determined
12 from the latest publication designated by the Commission.
13 Physicians shall prescribe and pharmacies shall dispense generic
14 equivalent drugs when available. If the National Drug Code, or
15 "NDC", for the drug product dispensed is for a repackaged drug, then
16 the maximum reimbursement shall be the lesser of the original
17 labeler's NDC and the lowest-cost therapeutic equivalent drug
18 product. Compounded medications shall be billed by the compounding
19 pharmacy at the ingredient level, with each ingredient identified
20 using the applicable NDC of the drug product, and the corresponding
21 quantity. Ingredients with no NDC area are not separately
22 reimbursable. Payment shall be based on a sum of the allowable fee
23 for each ingredient plus a dispensing fee of Five Dollars (\$5.00)
24 per prescription.

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

9 10. Implantables are paid in addition to procedural
10 reimbursement paid for medical or surgical services. A
11 manufacturer's invoice for the actual cost to a physician, hospital
12 or other entity of an implantable device shall be adjusted by the
13 physician, hospital or other entity to reflect, at the time
14 implanted, all applicable discounts, rebates, considerations and
15 product replacement programs and shall be provided to the payer by
16 the physician or hospital as a condition of payment for the
17 implantable device. If the physician, or an entity in which the
18 physician has a financial interest other than an ownership interest
19 of less than five percent (5%) in a publically traded company,
20 provides implantable devices, this relationship shall be disclosed
21 to patient, employer, insurance company, third-party commission,
22 certified workplace medical plan, case managers, and attorneys
23 representing claimant and defendant. If the physician, or an entity
24 in which the physician has a financial interest other than an

1 ownership interest of less than five percent (5%) in a ~~publically~~
2 publicly traded company, buys and resells implantable devices to a
3 hospital or another physician, the markup shall be limited to ten
4 percent (10%) above cost.

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

17 12. If an employee fails to appear for a scheduled appointment
18 with a physician, the employer or insurance company shall pay to the
19 physician a reasonable charge, to be determined by the Commission,
20 for the missed appointment. In the absence of a good-faith reason
21 for missing the appointment, the Commission shall order the employee
22 to reimburse the employer or insurance company for the charge.

23 13. Physicians providing treatment under this act shall
24 disclose under penalty of perjury to the Commission, on a form

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

9 14. a. Beginning on the effective date of this act and
10 subject to the availability of Commission funding, the
11 Commission shall conduct an evaluation of the Fee
12 Schedule, which shall include and update of the list
13 of Current Procedural Terminology (CPT) codes, a line
14 item adjustment or renewal of all rates, and amendment
15 as needed to the rules applicable to the Fee Schedule.

16 b. The Commission shall contract with an external
17 consultant with knowledge of workers' compensation fee
18 schedules to review regional and nationwide
19 comparisons of Oklahoma's Fee Schedule rates and date
20 and market for medical services. The consultant shall
21 receive written and oral comment from employers,
22 workers' compensation medical service and insurance
23 providers, self-insureds, group self-insurance
24 associations of this state and the public. The

1 consultant shall submit a report of its findings and a
2 proposed amended Fee Schedule to the Commission.

3 c. The Commission shall adopt the proposed amended Fee
4 Schedule in whole or in part and make any additional
5 updates or adjustments. The Commission shall submit a
6 proposed updated and adjusted Fee Schedule to the
7 President Pro Tempore of the Senate, the Speaker of
8 the House of Representatives and the Governor. The
9 proposed Fee Schedule shall become effective on July 1
10 following the legislative session, unless disapproved
11 by Joint Resolution of the Legislature during the
12 session in which a proposed Fee Schedule is submitted.

13 d. Beginning on the effective date of this act and
14 subject to the availability of Commission funding, an
15 external evaluation shall be conducted and a proposed
16 amendment Fee Schedule shall be submitted to the
17 Legislature for approval during the 2020 legislative
18 session. Thereafter, an external evaluation shall be
19 conducted and a proposed amended Fee Schedule shall be
20 submitted to the Legislature every five (5) years.

21 I. Formulary. The Commission by rule shall adopt a closed
22 formulary. Rules adopted by the Commission shall allow an appeals
23 process for claims in which a treating doctor determines and
24 documents that a drug not included in the formulary is necessary to

1 treat an injured employee's compensable injury. The Commission by
2 rule shall require the use of generic pharmaceutical medications and
3 clinically appropriate over-the-counter alternatives to prescription
4 medications unless otherwise specified by the prescribing doctor, in
5 accordance with applicable state law.

6 SECTION 22. AMENDATORY Section 53, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2018, Section 53), is amended to read as
8 follows:

9 Section 53. A. An injured employee claiming to be entitled to
10 benefits under this act shall submit to physical examination and
11 treatment by another qualified physician, designated or approved by
12 the Commission, as the Commission may require from time to time if
13 reasonable and necessary.

14 B. In cases where the Commission directs examination or
15 treatment, proceedings shall be suspended, and no compensation shall
16 be payable for any period during which the employee refuses to
17 submit to examination and treatment or otherwise obstructs the
18 examination or treatment.

19 C. Failure of the employee to obey a judgment of the Commission
20 for an examination or treatment ~~for a period of one (1) month from~~
21 ~~the date of the judgment~~ shall bar the right of the claimant to
22 further temporary total disability compensation in respect to the
23 injury.

24

1 SECTION 23. AMENDATORY Section 60, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 60), is amended to read as
3 follows:

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

21 SECTION 24. AMENDATORY Section 62, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2018, Section 62), is amended to read as
23 follows:

24

1 Section 62. A. Notwithstanding the provisions of Section 45 of
2 this ~~act~~ title, if an employee suffers a nonsurgical soft tissue
3 injury, temporary total disability compensation shall not exceed
4 eight (8) weeks, regardless of the number of parts of the body to
5 which there is a nonsurgical soft tissue injury. An employee who is
6 treated with an injection or injections shall be entitled to an
7 extension of an additional eight (8) weeks. For purposes of this
8 section, an injection shall not include facet injections or
9 intravenous injections. An employee who has been recommended by a
10 treating physician for surgery for a soft tissue injury may petition
11 the Workers' Compensation Commission for one extension of temporary
12 total disability compensation and the Commission may order an
13 extension, not to exceed sixteen (16) additional weeks. If the
14 surgery is not performed within thirty (30) days of the approval of
15 the surgery by the employer, its insurance carrier, or an order of
16 the Commission authorizing the surgery, and the delay is caused by
17 the employee acting in bad faith, the benefits for the extension
18 period shall be terminated and the employee shall reimburse the
19 employer any temporary total disability compensation he or she
20 received beyond eight (8) weeks. An epidural steroid injection, or
21 any procedure of the same or similar physical invasiveness, shall
22 not be considered surgery.

23 B. For purposes of this section, "soft tissue injury" means
24 damage to one or more of the tissues that surround bones and joints.

1 Soft tissue injury includes, but is not limited to, sprains,
2 strains, contusions, tendonitis and muscle tears. Cumulative trauma
3 is to be considered a soft tissue injury unless corrective surgery
4 is necessary. Soft tissue injury does not include any of the
5 following:

- 6 1. Injury to or disease of the spine, spinal discs, spinal
7 nerves or spinal cord, where corrective surgery is performed;
- 8 2. Brain or closed-head injury as evidenced by:
 - 9 a. sensory or motor disturbances,
 - 10 b. communication disturbances,
 - 11 c. complex integrated disturbances of cerebral function,
 - 12 d. episodic neurological disorders, or
 - 13 e. other brain and closed-head injury conditions at least
14 as severe in nature as any condition provided in
15 subparagraphs a through d of this paragraph; or
- 16 3. Any joint replacement.

17 SECTION 25. AMENDATORY Section 63, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, Section 63), is amended to read as
19 follows:

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

- 23 1. The name, address, and business of the employer;
- 24 2. The name, address, and occupation of the employee;

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

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

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

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

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

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

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

1 2. Whenever the employer has failed or refused to comply as
2 provided in this section, the Commission may serve on the employer a
3 proposed judgment declaring the employer to be in violation of this
4 act and containing the amount, if any, of the civil penalty to be
5 assessed against the employer under this section.

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

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

20 H. If an employer fails to pay any civil penalty assessed
21 against the employer after a judgment issued under this section has
22 become final by operation of law, the Commission may petition the
23 district court of the county where the employer's principal place of
24 business is located for an order enjoining the employer from

1 engaging in further employment or conduct of business until such
2 time as the employer makes all required reports and pays all civil
3 penalties.

4 SECTION 26. AMENDATORY Section 66, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2018, Section 66), is amended to read as
6 follows:

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

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

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

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

24

1 not be affected by the fact that he or she had been employed during
2 any part of the period outside of this state.

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

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

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

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

24

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 27. 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 28. 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; or, if the employee has received benefits under this
14 title for the injury, six (6) months from the date of the last
15 issuance of such benefits. ~~If during the one-year period following~~
16 ~~the filing of the claim the employee receives no weekly benefit~~
17 ~~compensation and receives no medical treatment resulting from the~~
18 ~~alleged injury, the claim shall be barred thereafter.~~ For purposes
19 of this section, the date of the injury shall be defined as the date
20 an injury is caused by an accident as set forth in paragraph 9 of
21 Section 2 of this ~~act~~ title.

22 2. a. A claim for compensation for disability on account of
23 injury which is either an occupational disease or
24 occupational infection shall be barred unless filed

1 with the Commission within two (2) years from the date
2 of the last injurious exposure to the hazards of the
3 disease or infection.

4 b. A claim for compensation for disability on account of
5 silicosis or asbestosis shall be filed with the
6 Commission within one (1) year after the time of
7 disablement, and the disablement shall occur within
8 three (3) years from the date of the last injurious
9 exposure to the hazard of silicosis or asbestosis.

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

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

20 4. If ~~within six (6) months after the filing of a claim for~~
21 ~~compensation no bona fide request for a hearing has been made with~~
22 ~~respect to the claim~~ a claim for benefits has been timely filed
23 under paragraph 1 of this subsection and the employee does not:
24

1 a. make a good faith request for a hearing to resolve a
2 dispute regarding the right to receive benefits,
3 including medical treatment, under this title within
4 six (6) months of the date the claim is filed, or

5 b. receive or seek benefits, including medical treatment,
6 under this title for a period of six (6) months,

7 then on motion by the employer, the claim ~~may, on motion and after~~
8 ~~hearing,~~ shall be dismissed with prejudice.

9 ~~B. Time for Filing Additional Compensation.~~

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

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

1 ~~C. A claim for additional compensation shall specifically state~~
2 ~~that it is a claim for additional compensation. Documents which do~~
3 ~~not specifically request additional benefits shall not be considered~~
4 ~~a claim for additional compensation.~~

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

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

16 ~~F.~~ C. Persons under Disability.

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

22 2. ~~Subsections~~ Subsection A ~~and B~~ of this section shall not
23 apply to a mental incompetent or minor so long as the person has no
24 guardian or similar legal representative. The limitations

1 prescribed in ~~subsections~~ subsection A ~~and B~~ of this section shall
2 apply to the mental incompetent or minor from the date of the
3 appointment of a guardian or similar legal representative for that
4 person, and when no guardian or similar representative has been
5 appointed, to a minor on reaching the age of majority.

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

10 SECTION 29. AMENDATORY Section 71, Chapter 208, O.S.L.
11 2013 (85A O.S. Supp. 2018, Section 71), is amended to read as
12 follows:

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

17 B. ~~Investigation~~ - Hearing.

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

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

24

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

3 4. If a hearing on the claim is ordered, the administrative law
4 judge shall give the claimant and other interested parties ten (10)
5 days' notice of the hearing served personally on the claimant and
6 other parties, or by registered mail, facsimile, electronic mail or
7 by other electronic means with receipt of confirmation. The hearing
8 ~~shall~~ may be held in ~~Tulsa or Oklahoma County~~ any county of this
9 state, as determined by the Commission. No hearing or trial shall
10 be continued absent extraordinary circumstances as determined by the
11 Commission.

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

17 C. Evidence and Construction.

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

1 b. Any determination of the existence or extent of
2 physical impairment shall be supported by objective
3 and measurable physical or mental findings.

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

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

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

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

19 E. No compensation for disability of an injured employee shall
20 be payable for any period beyond his or her death; provided,
21 however, ~~an~~ if an injured employee is awarded compensation for
22 permanent partial disability by final order and then dies, a revivor
23 action may be brought by the injured employee's spouse, minor child
24 or children under a disability as defined by Section 67 of this

1 title, but limited to the number of weeks of disability awarded to
2 the injured employee minus the number of weeks of benefits paid for
3 the permanent partial disability to the injured worker at the time
4 of the death of the injured employee. An award of compensation for
5 permanent partial disability may be made after the death of the
6 injured employee for the period of disability preceding death. Such
7 revivor action may be brought only by the injured employee's spouse,
8 minor child or children under a disability as defined by Section 67
9 of this title.

10 SECTION 30. AMENDATORY Section 78, Chapter 208, O.S.L.
11 2013 (85A O.S. Supp. 2018, Section 78), is amended to read as
12 follows:

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

23 B. The appellant shall pay a filing fee of One Hundred Seventy-
24 five Dollars (\$175.00) to the Commission at the time of filing his

1 or her appeal. The fee shall be deposited ~~in~~ to the credit of the
2 Workers' Compensation Commission Revolving Fund.

3 C. The judgment, decision or award of the Commission shall be
4 final and conclusive on all questions within its jurisdiction
5 between the parties unless an action is commenced in the Supreme
6 Court of this state to review the judgment, decision or award within
7 twenty (20) days of being sent to the parties. Any judgment,
8 decision or award made by an administrative law judge shall be
9 stayed until all appeal rights have been waived or exhausted. The
10 Supreme Court may modify, reverse, remand for rehearing, or set
11 aside the judgment or award only if it was:

- 12 1. In violation of constitutional provisions;
- 13 2. In excess of the statutory authority or jurisdiction of the
14 Commission;
- 15 3. Made on unlawful procedure;
- 16 4. Affected by other error of law;
- 17 5. Clearly erroneous in view of the reliable, material,
18 probative and substantial competent evidence;
- 19 6. Arbitrary or capricious;
- 20 7. Procured by fraud; or
- 21 8. Missing findings of fact on issues essential to the
22 decision.

23 This action shall be commenced by filing with the Clerk of the
24 Supreme Court a certified copy of the judgment, decision or award of

1 the Commission attached to the petition by the complaint which shall
2 specify why the judgment, decision or award is erroneous or illegal.
3 The proceedings shall be heard in a summary manner and shall have
4 precedence over all other civil cases in the Supreme Court, except
5 preferred Corporation Commission appeals. The Supreme Court shall
6 require the appealing party to file within forty-five (45) days from
7 the date of the filing of an appeal or a judgment appealed from, a
8 transcript of the record of the proceedings before the Commission,
9 or such later time as may be granted by the Supreme Court on
10 application and for good cause shown. The action shall be subject
11 to the law and practice applicable to other civil actions cognizable
12 in the Supreme Court.

13 D. A fee of One Hundred Dollars (\$100.00) per appeal to the
14 Supreme Court shall be paid to the Commission and deposited ~~in~~ to
15 the credit of the Workers' Compensation Commission Revolving Fund as
16 costs for preparing, assembling, indexing and transmitting the
17 record for appellate review. This fee shall be paid by the party
18 taking the appeal. If more than one party to the action files an
19 appeal from the same judgment, decision or award, the fee shall be
20 paid by the party whose petition in error commences the principal
21 appeal.

22 SECTION 31. AMENDATORY Section 80, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 80), is amended to read as
24 follows:

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
24

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 32. 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.

15 SECTION 33. 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 34. 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 35. 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 36. 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 disability~~ indemnity benefits under
6 this ~~act~~ title. Any medical benefits available to an incarcerated
7 employee shall be limited by other provisions of this title in the
8 same manner as for all injured employees.

9 SECTION 37. AMENDATORY Section 101, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2018, Section 101), is amended to read as
11 follows:

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

24

1 B. After public hearing and consultation with representatives
2 of employers, insurance carriers, and employees, the Commission
3 shall implement, with the assistance of the Insurance Commissioner,
4 ~~by July 1, 2014,~~ an electronic data interchange (EDI) system that
5 provides relevant data concerning the Oklahoma workers' compensation
6 system and the delivery of benefits to injured workers on a
7 timetable to be reasonably determined by the Commission.

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

16 SECTION 38. AMENDATORY Section 105, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2018, Section 105), is amended to read as
18 follows:

19 Section 105. A. No employee of the Workers' Compensation
20 Commission shall be competent to testify on any matter concerning
21 any information the employee has received through the performance of
22 the employee's duties under the provisions of this act, except for
23 employees in the Compliance Division regarding their investigations,
24

1 custodians of the Commission's records, or if the Commission or any
2 of its employees are a named party in the matter.

3 B. The commissioners and employees of the Commission shall not
4 solicit employment for any attorney or physician nor shall they
5 recommend or refer any claimant or employer to an attorney or
6 physician. If any employee of the Commission makes such a
7 solicitation, recommendation or reference, that person, upon
8 conviction, shall be guilty of a misdemeanor punishable, for each
9 offense, by a fine of not more than One Thousand Dollars (\$1,000.00)
10 or by imprisonment in the county jail not to exceed one (1) year, or
11 by both such fine and imprisonment. The Commission shall
12 immediately terminate the employment of any employee who is guilty
13 of such solicitation, recommendation or reference. A commissioner
14 guilty of such solicitation, recommendation or reference shall be
15 subject to removal from office.

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

23
24

1 SECTION 39. AMENDATORY Section 152, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 109), is amended to read as
3 follows:

4 Section 109. A. The Workers' Compensation Commission shall
5 establish a workers' compensation counselor or ombudsman program to
6 assist injured workers, employers and persons claiming death
7 benefits in obtaining benefits under this act. A special effort
8 shall be made to equip counselors or ombudsmen with sufficient
9 resources to assist injured workers through the system without the
10 necessity of retaining legal representation.

11 B. Workers' compensation counselors or ombudsmen shall provide
12 information to injured workers; investigate complaints; communicate
13 with employers, insurance carriers, self-insurers, and health care
14 providers; provide informational seminars and workshops on workers'
15 compensation for medical providers, insurance adjustors, and
16 employee and employer groups; and develop informational materials
17 for employees, employers and medical providers.

18 C. The Commission shall ~~mail a notice to the injured worker~~
19 ~~within ten (10) days of the filing of an Employer's First Notice of~~
20 ~~Injury. The notice shall advise the injured worker of~~ publish on
21 the Commission's website the availability of the services of the
22 Commission's counselor or ombudsman program and of the availability
23 of mediation and other forms of alternative dispute resolution to
24

1 assist the injured worker. ~~The Commission shall provide additional~~
2 ~~information as the Commission may determine necessary.~~

3 D. The Commission shall develop a program that provides for
4 annual training for own-risk employers and claims representatives
5 handling workers' compensation claims in Oklahoma. The training
6 shall include information about the alternative dispute resolution
7 program, including counselor and ombudsman programs, mediation, and
8 other services provided by the Commission.

9 SECTION 40. AMENDATORY Section 158, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2018, Section 115), is amended to read as
11 follows:

12 Section 115. A. If the employee and employer shall reach an
13 agreement for the full, final and complete settlement of any issue
14 of a claim pursuant to this act, a form designated as "Joint
15 Petition" shall be signed by both the employer and employee, or
16 representatives thereof, and shall be approved by the Workers'
17 Compensation Commission or an administrative law judge, and filed
18 with the Workers' Compensation Commission. In cases in which the
19 employee is not represented by legal counsel, the Commission or an
20 administrative law judge shall have jurisdiction to approve a full,
21 final and complete settlement of any issue upon the filing of an
22 Employer's First Notice of Injury. There shall be no requirement
23 for the filing of an Employee's First Notice of Claim for
24

1 Compensation to effect such settlement in cases in which the
2 employee is not represented by legal counsel.

3 B. In the event all issues of a claim are not fully, finally
4 and completely settled by a Joint Petition, the issues not settled
5 by the parties and subject to the Commission's continuing
6 jurisdiction must be noted by appendix to the Joint Petition or on a
7 form created for such purpose by the Commission. The appendix must
8 be signed by the parties and approved by the Commission as set forth
9 herein.

10 C. In the absence of fraud, a Joint Petition shall be deemed
11 binding upon the parties thereto and a final adjudication of all
12 rights pursuant to this ~~act~~ title or the workers' compensation law
13 in effect at the time of the injury or final order of the Workers'
14 Compensation ~~Court~~ Commission. An official record shall be made by
15 an official Commission reporter of the testimony taken to effect the
16 Joint Petition.

17 D. A good-faith effort shall be made on the part of any
18 insurance carrier, ~~CompSource Oklahoma~~, or group self-insured plan
19 to notify an insured employer of the possibility of and terms of any
20 settlement of a workers' compensation case pursuant to this section.
21 Written comments or objections to settlements shall be filed with
22 the Commission and periodically shared with the management of the
23 applicable insurer. A written notice shall be made to all
24 policyholders of their right to a good-faith effort by their insurer

1 to notify them of any proposed settlement, if the policyholder so
2 chooses.

3 E. If an employee has not filed a claim for compensation and
4 the employer and the injured employee reach a final agreement as to
5 the facts with relation to an injury and the resulting disability
6 for which compensation is claimed under the Administrative Workers'
7 Compensation Act, a memorandum of such agreement in a form
8 prescribed by the Commission shall be filed with the Commission by
9 the employer.

10 SECTION 41. AMENDATORY Section 161, Chapter 208, O.S.L.
11 2013 (85A O.S. Supp. 2018, Section 118), is amended to read as
12 follows:

13 Section 118. A. A filing fee of One Hundred Forty Dollars
14 (\$140.00) per case, including any Joint Petition authorized by this
15 ~~act~~ title, shall be collected by the Workers' Compensation
16 Commission and assessed as costs to be paid by the party against
17 whom any award becomes final, to be deposited as follows:

- 18 1. One Hundred Five Dollars (\$105.00) to the credit of the
19 Workers' Compensation Commission Revolving Fund ~~created by this act~~;
- 20 2. Ten Dollars (\$10.00) to the credit of the Attorney General's
21 Workers' Compensation Fraud Unit Revolving Fund created by Section
22 19.2 of Title 74 of the Oklahoma Statutes; and
- 23 3. Twenty-five Dollars (\$25.00) to the credit of the Workers'
24 Compensation Commission Revolving Fund for purposes of implementing

1 the provisions of this ~~act~~ title, including strengthening and
2 providing additional funding for the Attorney General's Workers'
3 Compensation Fraud Unit, providing counseling services pursuant to
4 the workers' compensation counselor or ombudsman program and safety
5 in the workplace.

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

17 SECTION 42. AMENDATORY Section 162, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, Section 119), is amended to read as
19 follows:

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

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

4 SECTION 43. AMENDATORY Section 163, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2018, Section 120), is amended to read as
6 follows:

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

15 B. 1. All requests made to the Workers' Compensation
16 Commission for information on ~~prior~~ workers' compensation claims
17 involving a worker, including written inquiries about prior claims
18 and requests to access a worker's compensation claim file, must be
19 in writing, on a form prescribed by the Commission, and accompanied
20 by a fee of One Dollar (\$1.00) per search request, not to exceed One
21 Dollar (\$1.00) per claims record of a particular worker. The fee
22 shall be deposited to the credit of the Workers' Compensation
23 Commission Revolving Fund. The form shall require identification of
24 the person requesting the information, and the person for whom a

1 search is being made if different from the requester. The form must
2 contain an affidavit signed by the requester under penalty of
3 perjury that the information sought is not requested for a purpose
4 in violation of state or federal law. The form must be used by all
5 repositories of archived Court claim files. All request forms shall
6 be maintained by the Commission as a public record, together with a
7 record of a worker's written authorization permitting a search
8 indexed by the worker's Social Security number as required by
9 Section 3113 of Title 74 of the Oklahoma Statutes. The request
10 forms and authorizations shall be indexed alphabetically by the last
11 name of the worker.

12 2. This subsection shall not apply:

- 13 a. to requests for claims information made by a public
14 officer or by a public employee in the performance of
15 his or her duties on behalf of a governmental entity
16 or as may be allowed by law,
- 17 b. to requests for claims information made by an insurer,
18 self-insured employer, third-party claims
19 administrator, or a legal representative thereof, when
20 necessary to process or defend a workers' compensation
21 claim,
- 22 c. when a worker or the worker's representative requests
23 review of the worker's claims information,

24

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

20 SECTION 44. AMENDATORY Section 164, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2018, Section 121), is amended to read as
22 follows:

23 Section 121. A. There is hereby created an Advisory Council on
24 Workers' Compensation.

1 B. The voting membership of the Advisory Council shall consist
2 of nine (9) members. Any member serving on the effective date of
3 this section shall serve the remainder of his or her term. The
4 chair of the Workers' Compensation Commission shall be an ex officio
5 nonvoting member.

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

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

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

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

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

1 Speaker of the House of Representatives shall expire on January 1,
2 2015;

3 2. 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 2016; and

7 3. The term of office for three positions, one each appointed
8 by the Governor, the President Pro Tempore of the Senate and the
9 Speaker of the House of Representatives shall expire on January 1,
10 2017.

11 D. Thereafter, successors in office shall be appointed for a
12 three-year term. Members shall be eligible to succeed themselves in
13 office.

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

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

18 G. Members shall receive their traveling and other necessary
19 expenses incurred in the performance of their duties as provided in
20 the State Travel Reimbursement Act.

21 H. Meetings of the Advisory Council shall be quarterly or as
22 called by the chair or upon petition by a majority of the voting
23 members. The presence of five voting members constitutes a quorum.

24

1 No action shall be taken by the Advisory Council without the
2 affirmative vote of at least five members.

3 I. The Commission shall provide office supplies and personnel
4 of the Commission to carry out any of the duties that have been
5 entrusted to the Advisory Council.

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

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

18 ~~L. The Advisory Council shall review the Oklahoma Treatment~~
19 ~~Guidelines as provided in the Workers' Compensation Code, and report~~
20 ~~the findings of such review to the Commission as provided in this~~
21 ~~act.~~

22 SECTION 45. AMENDATORY Section 165, Chapter 208, O.S.L.
23 2013, as amended by Section 4, Chapter 344, O.S.L. 2015 (85A O.S.
24 Supp. 2018, Section 122), is amended to read as follows:

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

5 B. For the purpose of providing funds for the Workers'
6 Compensation Commission Revolving Fund established by Section 28.1
7 of this title, ~~for the Workers' Compensation Administrative Fund~~
8 ~~created in Section 5 of this act~~, for the Multiple Injury Trust Fund
9 ~~created in~~ established by Section 28 of this title, and to fund
10 other provisions within this title, the following tax rates shall
11 apply:

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

1 carriers and CompSource Oklahoma, under the provisions of this
2 section, shall be considered for the purpose of computing workers'
3 compensation rates; and

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

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

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

1 1. To be funded first, Five Million Dollars (\$5,000,000.00)
2 shall be payable in equal monthly installments to the credit of the
3 Workers' Compensation Commission Revolving Fund established in
4 Section ~~2~~ 28.1 of this ~~act~~ title for the fiscal year ending ~~June 30,~~
5 ~~2016,~~ and Three Million Dollars (\$3,000,000.00) for the fiscal year
6 ending June 30, ~~2017~~ 2020, and for all subsequent years to be used
7 to implement the provisions of this title; and

8 2. ~~Four Million Dollars (\$4,000,000.00)~~ Two Million Five
9 Hundred Thousand Dollars (\$2,500,000.00) shall be payable in equal
10 monthly installments to the credit of the Workers' Compensation
11 Administrative Fund established in Section ~~5~~ 401.1 of this ~~act~~ title
12 for the fiscal year ending ~~June 30, 2016,~~ ~~Three Million Five Hundred~~
13 ~~Thousand Dollars (\$3,500,000.00)~~ for the fiscal year ending June 30,
14 ~~2017,~~ ~~Three Million Five Hundred Thousand Dollars (\$3,500,000.00)~~
15 ~~for the fiscal year ending June 30, 2018,~~ ~~Three Million Dollars~~
16 ~~(\$3,000,000.00)~~ for the fiscal year ending June 30, 2019, and Two
17 ~~Million Five Hundred Thousand Dollars (\$2,500,000.00)~~ for the fiscal
18 ~~year ending~~ June 30, 2020. Monies deposited in the Workers'
19 Compensation Administrative Fund shall be used by the Workers'
20 Compensation Court of Existing Claims to implement provisions
21 provided for in this title.

22 E. The refund provisions of Sections 227 through 229 of Title
23 68 of the Oklahoma Statutes shall be applicable to any payments made
24 pursuant to this section.

1 SECTION 46. AMENDATORY Section 167, Chapter 208, O.S.L.
2 2013, as amended by Section 7, Chapter 169, O.S.L. 2014 (85A O.S.
3 Supp. 2018, Section 124), is amended to read as follows:

4 Section 124. A. 1. All unexpended funds, assets, property,
5 records, ~~personnel~~ and any outstanding contractual financial
6 obligations and encumbrances of the Workers' Compensation Court
7 ~~before February 1, 2014, are hereby~~ shall be deemed transferred to
8 the Workers' Compensation Commission at the close of business on
9 June 30, 2020. ~~The~~ All remaining personnel transferred of the
10 Workers' Compensation Court of Existing Claims shall, upon the
11 opening of business on July 1, 2020, become nonclassified employees
12 of the Workers' Compensation Commission. ~~retain~~ The transferred
13 employees shall be treated as new employees of the Workers'
14 Compensation Commission for the purpose of the transfer of leave,
15 sick and annual time earned and any retirement and longevity
16 benefits which have accrued during their employment with the state.
17 ~~The~~ Such transfers shall be subject to the laws of this state and
18 the policies of the Workers' Compensation Commission and the
19 salaries of employees who are transferred shall ~~not be reduced as a~~
20 ~~direct and immediate result of the transfer~~ be subject to increase
21 or decrease by the Commission. ~~There shall be no reduction in force~~
22 ~~as a result of the transfer~~ The Commission shall, at its discretion,
23 be authorized to implement a reduction in force of transferred
24 employees or offer voluntary buyouts to any of the Commission's

1 employees or the transferred employees from funds transferred
2 pursuant to Section 401.1 of this title.

3 2. Any unexpended funds, including interest thereon, held by
4 the State Treasurer in an interest-bearing division special account
5 maintained by the Workers' Compensation Court before February 1,
6 2014, from which a self-insured employer's workers' compensation
7 obligations are paid following nonpayment by the self-insured
8 employer for any reason, including insolvency, shall be transferred
9 to the Workers' Compensation Commission. Such funds shall be
10 expended by the Commission only for the purpose of paying workers'
11 compensation obligations of the self-insured employer, and costs
12 related to the administration of such obligations, to the extent of
13 the availability of such funds.

14 B. 1. All unexpended funds, assets, property, and records and
15 any outstanding financial obligations and encumbrances of the
16 Workers' Compensation Self-insurance Guaranty Fund Board before
17 February 1, 2014, are hereby transferred to the Self-insurance
18 Guaranty Fund Board created ~~in the Administrative Workers'~~
19 ~~Compensation Act~~ by this title.

20 2. Any unexpended funds, including interest thereon, held by
21 the State Treasurer in the Workers' Compensation Self-insurance
22 Guaranty Fund before February 1, 2014, shall be transferred to the
23 Self-insurance Guaranty Fund Board created by the Administrative
24 Workers' Compensation Act. Such funds shall be expended by the

1 Board only as authorized in the Administrative Workers' Compensation
2 Act.

3 3. Any claim existing or action or proceeding pending by,
4 against or before the Workers' Compensation Self-insurance Guaranty
5 Fund Board when the Board ceased existence may be continued as if
6 the Self-insurance Guaranty Fund Board was not created, or the Self-
7 insurance Guaranty Fund Board may be substituted in the matter. The
8 Self-insurance Guaranty Fund Board shall be responsible and liable
9 for all liabilities and obligations of the Workers' Compensation
10 Self-insurance Guaranty Fund Board.

11 C. All property and records of the Physician Advisory Committee
12 before February 1, 2014, are hereby transferred to the Physician
13 Advisory Committee created in the Administrative Workers'
14 Compensation Act.

15 D. All property and records of the Advisory Council on Workers'
16 Compensation before February 1, 2014, are hereby transferred to the
17 Advisory Council on Workers' Compensation created in the
18 Administrative Workers' Compensation Act.

19 E. All unexpended funds, assets, property, records, personnel
20 and any outstanding financial obligations and encumbrances of the
21 Multiple Injury Trust Fund before February 1, 2014, are hereby
22 transferred to the Multiple Injury Trust Fund created in the
23 Administrative Workers' Compensation Act. The personnel transferred
24 shall retain leave, sick and annual time earned and any retirement

1 and longevity benefits which have accrued during their employment
2 with the state. The salaries of employees who are transferred shall
3 not be reduced as a direct and immediate result of the transfer.
4 There shall be no reduction-in-force as a result of the transfer.

5 F. The Director of the Office of Management and Enterprise
6 Services is hereby directed to coordinate the transfer of funds,
7 allotments, purchase orders, outstanding financial obligations or
8 encumbrances provided for in subsections A and E of this section,
9 and the transfer of funds, outstanding financial obligations or
10 encumbrances provided for in subsection B of this section.

11 SECTION 47. AMENDATORY Section 121, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 300), is amended to read as
13 follows:

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

17 SECTION 48. AMENDATORY Section 125, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, Section 304), is amended to read as
19 follows:

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

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

3 1. Waive or agree to vary the effect of the requirements of
4 subsection A of Section ~~126~~ 305, subsection A of Section ~~127~~ 306,
5 Section ~~128~~ 307, subsection A or B of Section ~~138~~ 317, Section ~~147~~
6 326 or Section ~~149~~ 328 of this ~~act~~ title;

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

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

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

15 5. Agree to conduct arbitration proceedings outside of this
16 state.

17 C. A party to an agreement to arbitrate or to an arbitration
18 proceeding may not waive, or the parties may not vary the effect of,
19 the requirements of this section or subsection A or C of Section ~~124~~
20 304, Sections ~~128, 135 and 139~~ 307, 314 and 318, subsection D or E
21 of Section ~~141~~ 320, Sections ~~143, 144 and 145~~ 322, 323 and 324, or
22 subsection A or B of Section ~~146~~ 325 of this ~~act~~ title.

1 SECTION 49. AMENDATORY Section 126, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 305), is amended to read as
3 follows:

4 Section 305. A. Except as otherwise provided in Section ~~150~~
5 107 of this ~~act~~ title, an application for judicial relief under this
6 act shall be made by application and motion to the Workers'
7 Compensation Commission and heard in the manner provided by law or
8 rule of the Commission for making and hearing motions.

9 B. Unless a civil action involving the agreement to arbitrate
10 is pending, notice of an initial application and motion to the
11 Commission under this act shall be served in the manner provided by
12 law for the service of a summons in the filing of a civil action.
13 Otherwise, notice of the motion shall be given in the manner
14 provided by law or rule of court for serving motions in pending
15 cases.

16 SECTION 50. AMENDATORY Section 128, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2018, Section 307), is amended to read as
18 follows:

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

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

1 2. If the refusing party opposes the motion, the Commission
2 shall proceed summarily to decide the issue and order the parties to
3 arbitrate unless it finds that there is no enforceable agreement to
4 arbitrate. The Commission may also assess costs against the party
5 opposing the motion if it concludes the opposition was not brought
6 in good faith to be deposited in the Workers' Compensation
7 Commission Revolving Fund created by the Administrative Workers'
8 Compensation Act in Section 28.1 of this title.

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

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

22 D. If an action is initiated in district court to determine
23 whether an enforceable arbitration agreement exists, on motion by
24

1 the responding party, that proceeding shall be transferred to the
2 Commission for determination.

3 E. If a party challenges the enforceability of an arbitration
4 agreement, the underlying claim, including all benefits, shall be
5 stayed until the Commission determines whether an enforceable
6 arbitration agreement exists.

7 SECTION 51. AMENDATORY Section 133, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 312), is amended to read as
9 follows:

10 Section 312. A. Before accepting appointment, an individual
11 who is requested to serve as an arbitrator, after making a
12 reasonable inquiry, shall disclose to the parties to the arbitration
13 agreement, the parties to the arbitration proceeding, and any other
14 arbitrators any known facts that a reasonable person would consider
15 likely to affect the impartiality of the arbitrator in the
16 arbitration proceeding, including but not limited to:

17 1. A financial or personal interest in the outcome of the
18 arbitration proceeding; and

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

22 B. An arbitrator has a continuing obligation to disclose to the
23 parties to the arbitration agreement, the arbitration proceeding,
24 and to any other arbitrators any facts that the arbitrator learns

1 after accepting appointment which a reasonable person would consider
2 likely to affect the impartiality of the arbitrator.

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

10 SECTION 52. AMENDATORY Section 134, Chapter 208, O.S.L.
11 2013 (85A O.S. Supp. 2018, Section 313), is amended to read as
12 follows:

13 Section 313. If there is more than one arbitrator, the powers
14 of an arbitrator shall be exercised by a majority of the
15 arbitrators, but all of them shall conduct the hearing under Section
16 ~~136~~ 315 of this ~~act~~ title.

17 SECTION 53. AMENDATORY Section 135, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, Section 314), is amended to read as
19 follows:

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

24

1 B. The immunity afforded by this section supplements any
2 immunity under other law.

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

6 D. An arbitrator or representative of an arbitration
7 organization is not competent to testify in a judicial,
8 administrative, or similar proceeding and may not be required to
9 produce records as to any statement, conduct, decision, or ruling
10 occurring during the arbitration proceeding, to the same extent as a
11 judge of a court of this state acting in a judicial capacity. This
12 subsection shall not apply to:

13 1. The extent necessary to determine the claim of an
14 arbitrator, arbitration organization, or representative of the
15 arbitration organization against a party to the arbitration
16 proceeding; or

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

21 E. If a person commences a civil action against an arbitrator,
22 arbitration organization, or representative of an arbitration
23 organization arising from the services of the arbitrator,
24 organization, or representative or if a person seeks to compel an

1 arbitrator or a representative of an arbitration organization to
2 testify or produce records in violation of subsection D of this
3 section, and the court decides that the arbitrator, arbitration
4 organization, or representative of an arbitration organization is
5 immune from civil liability or that the arbitrator or representative
6 of the organization is not competent to testify, the court shall
7 award to the arbitrator, organization, or representative reasonable
8 attorney fees and other reasonable expenses of litigation.

9 SECTION 54. AMENDATORY Section 137, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2018, Section 316), is amended to read as
11 follows:

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

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

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

19 SECTION 55. AMENDATORY Section 139, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2018, Section 318), is amended to read as
21 follows:

22 Section 318. If an arbitrator makes a pre-award ruling in favor
23 of a party, the party may request the arbitrator to incorporate the
24 ruling into an award under Section ~~140~~ 319 of this ~~act~~ title. A

1 prevailing party may make an application and motion to the
2 Commission for an expedited judgment to confirm the award under
3 Section ~~143~~ 322 of this ~~act~~ title, in which case the Workers'
4 Compensation Commission shall summarily decide the motion. The
5 Commission shall issue a judgment to confirm the award unless the
6 ~~court~~ Commission vacates, modifies, or corrects the award under
7 Section ~~144 or 145~~ 323 or 324 of this ~~act~~ title.

8 SECTION 56. AMENDATORY Section 141, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2018, Section 320), is amended to read as
10 follows:

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

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

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

18 3. To clarify the award.

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

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

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

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

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

10 3. To clarify the award.

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

13 SECTION 57. AMENDATORY Section 142, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2018, Section 321), is amended to read as
15 follows:

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

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

21 C. As to all remedies other than those authorized by
22 subsections A and B of this section, an arbitrator may order such
23 remedies as the arbitrator considers just and appropriate under the
24 circumstances of the arbitration proceeding. The fact that such a

1 remedy could not or would not be granted by the Workers'
2 Compensation Commission is not a ground for refusing to confirm an
3 award under Section ~~143~~ 322 of this ~~act~~ title or for vacating an
4 award under Section ~~144~~ 323 of this ~~act~~ title.

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

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

10 SECTION 58. AMENDATORY Section 143, Chapter 208, O.S.L.
11 2013 (85A O.S. Supp. 2018, Section 322), is amended to read as
12 follows:

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

20 SECTION 59. AMENDATORY Section 144, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2018, Section 323), is amended to read as
22 follows:

23 Section 323. A. On an application and motion to the court by a
24 party to an arbitration proceeding, the Workers' Compensation

1 Commission shall vacate an award made in the arbitration proceeding
2 if:

3 1. The award was procured by corruption, fraud, or other undue
4 means;

5 2. There was:

6 a. evident partiality by an arbitrator appointed as a
7 neutral arbitrator,

8 b. corruption by an arbitrator, or

9 c. misconduct by an arbitrator prejudicing the rights of
10 a party to the arbitration proceeding;

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

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

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

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

23 B. An application and motion under this section shall be filed
24 within thirty (30) days after the movant receives notice of the

1 award or within thirty (30) days after the movant receives notice of
2 a modified or corrected award, unless the movant alleges that the
3 award was procured by corruption, fraud, or other undue means, in
4 which case the motion shall be made within ninety (90) days after
5 the ground is known or by the exercise of reasonable care would have
6 been known by the movant.

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

16 D. If the Commission denies a motion to vacate an award, it
17 shall confirm the award unless a motion to modify or correct the
18 award is pending.

19 SECTION 60. AMENDATORY Section 148, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2018, Section 327), is amended to read as
21 follows:

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

24 1. An order denying a motion to compel arbitration;

- 1 2. An order granting a motion to stay arbitration;
- 2 3. An order confirming or denying confirmation of an award;
- 3 4. An order modifying or correcting an award;
- 4 5. An order vacating an award without directing a rehearing; or
- 5 6. A final judgment entered under the Workers' Compensation
- 6 Arbitration Act.

7 SECTION 61. AMENDATORY Section 169, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 400), is amended to read as
9 follows:

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

- 19 Position 1 shall expire 7-1-14.
- 20 Position 2 shall expire 7-1-14.
- 21 Position 3 shall expire 7-1-14.
- 22 Position 4 shall expire 7-1-20.
- 23 Position 5 shall expire 7-1-20.
- 24 Position 6 shall expire 7-1-16.

1 Position 7 shall expire 7-1-16.

2 Position 8 shall expire 7-1-20.

3 Position 9 shall expire 7-1-20.

4 Position 10 shall expire 7-1-14.

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

12 B. When a vacancy on the Court occurs or is certain to occur,
13 the Workers' Compensation Commission shall assign administrative law
14 judges from the Commission to assist in the duties of the Workers'
15 Compensation Court of Existing Claims.

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

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

22 E. 1. The Governor shall appoint from among the judges of the
23 Court of Existing Claims a presiding judge who shall serve for a
24 two-year term ending June 30, 2020. The presiding judge serving on

1 the effective date of this act shall serve the remainder of the
2 term. If a presiding judge resigns the office during the term, the
3 Governor shall appoint a new presiding judge to serve the remainder
4 of the term.

5 2. The presiding judge shall:

6 a. preside at all meetings of the judges of the Court as
7 may be necessary,

8 b. perform supervisory duties as the needs of the Court
9 may require,

10 c. preside at all hearings before the Court en banc and
11 at all conferences at which appeals and other matters
12 are considered,

13 d. make all procedural rulings for the Court except those
14 to be made in the course of hearings before a single
15 judge,

16 e. assign or direct the assignment of cases to the
17 several judges for hearing at locations the presiding
18 judge shall designate,

19 f. direct and supervise the work of all Court employees,

20 g. provide oversight for all administrative affairs of
21 the Court including, but not limited to, personnel,
22 budget and financial management, and

23 h. perform other duties as may be necessary to operate
24 the Court in an efficient manner.

1 3. For any period during which the presiding judge is
2 disqualified, disabled or absent, the presiding judge may designate
3 another judge to act as presiding judge.

4 F. The chief administrative officer of the Court of Existing
5 Claims shall be the Administrator of the Court of Existing Claims,
6 who shall be subject to the general supervision of the presiding
7 judge of the Court, subject to the general administrative authority
8 of the Chief Justice of the Supreme Court. The Administrator shall
9 be appointed by the Governor with the advice and consent of the
10 Senate. The Administrator shall serve a term at the pleasure of the
11 Governor until June 30, 2020. The salary of the Administrator shall
12 be ninety percent (90%) of the authorized salary of a judge of the
13 Court.

14 ~~D.~~ G. The Court shall operate by the rules adopted by the
15 Workers' Compensation Court prior to the effective date of this act.

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

23 ~~F.~~ I. The principal office of the Court shall be situated in
24 the City of Oklahoma City in quarters assigned by the Office of

1 Management and Enterprise Services. The Court may hold hearings in
2 any city of this state.

3 ~~G.~~ J. All county commissioners and presiding district judges of
4 this state shall make quarters available for the conducting of
5 hearings by a judge of the Court upon request by the Court.

6 ~~H.~~ K. Judges of the Workers' Compensation Court of Existing
7 Claims may punish for direct contempt pursuant to Sections 565,
8 565.1 and 566 of Title 21 of the Oklahoma Statutes.

9 ~~I.~~ L. The Court shall be vested with jurisdiction over all
10 claims filed pursuant to the Workers' Compensation Code or previous
11 statute in effect on the date of an injury that occurred before
12 February 1, 2014. All claims so filed shall be heard by the judge
13 sitting without a jury. The Court shall have full power and
14 authority to determine all questions in relation to payment of
15 claims for compensation under the provisions of the Workers'
16 Compensation Code or previous statute in effect on the date of an
17 injury that occurred before February 1, 2014. The Court, upon
18 application of either party, shall order a hearing. Upon a hearing,
19 either party may present evidence and be represented by counsel.
20 The decision of the Court shall be final as to all questions of fact
21 and law; provided, the decision of the Court may be appealed to the
22 ~~Commission~~ Court en banc or the Supreme Court as provided by the
23 Workers' Compensation Code or previous statute in effect on the date
24 of an injury that occurred before February 1, 2014. In the event

1 that an insufficient number of active judges are available to
2 comprise the three-judge en banc panel, retired or former judges of
3 the district court, Workers' Compensation Court or Workers'
4 Compensation Court of Existing Claims may be designated by the Chief
5 Justice of the Supreme Court as eligible to serve on such panel.

6 The decision of the Court shall be issued within ~~sixty (60)~~ thirty
7 (30) days following the submission of the case by the parties. The
8 power and jurisdiction of the Court over each case shall be
9 continuing and it may, from time to time, make such modifications or
10 changes with respect to former findings or orders relating thereto
11 if, in its opinion, it may be justified.

12 ~~J. Any appeal of an order by the Workers' Compensation Court of~~
13 ~~Existing Claims shall be heard by the Commission en banc. The~~
14 ~~Commission shall review the decision using an abuse of discretion~~
15 ~~standard of review. Orders by the Commission may be appealed in~~
16 ~~accordance with Section 78 of this act.~~

17 ~~K. To protect the integrity of the transition from the Workers'~~
18 ~~Compensation Court to the administrative system created by this act,~~
19 ~~and to protect all rights and privileges of parties to claims~~
20 ~~adjudicated by the Workers' Compensation Court, the Commission shall~~
21 ~~retain all remedies and responsibilities of the Workers'~~
22 ~~Compensation Court for as long as cases involving claims for~~
23 ~~compensation accruing before the effective date of this act but~~
24

1 ~~filed thereafter or which were pending before or adjudicated by the~~
2 ~~Workers' Compensation Court shall remain open.~~

3 ~~L. M. For an injury occurring before the effective date of~~
4 ~~this act February 1, 2014, all benefits and procedures to obtain~~
5 ~~benefits shall be determined by the workers' compensation law of~~
6 ~~this state in effect on the date of the injury. Administrative law~~
7 ~~judges of the Commission shall enforce all final orders of the~~
8 ~~Workers' Compensation Court in a manner to secure for all parties~~
9 ~~the due process and equal protection guarantees of the Constitution~~
10 ~~of the State of Oklahoma.~~

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

18 ~~O. The Court of Existing Claims shall be deemed dissolved at~~
19 ~~the close of business on June 30, 2020.~~

20 SECTION 62. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 400.1 of Title 85A, unless there
22 is created a duplication in numbering, reads as follows:

23 A. Beginning July 1, 2020, there shall be created two Workers'
24 Compensation Magistrate Judge full-time positions.

1 B. The term of any Workers' Compensation Magistrate Judge shall
2 be two years with the first terms beginning on July 1, 2020 and
3 ending June 30, 2022. A judge may be removed for cause by the Court
4 on the Judiciary prior to the expiration of his or her term.

5 C. Beginning on or before July 1, 2021, and on or before July 1
6 of each odd numbered year thereafter, the Chief Justice shall review
7 the caseload of each Workers' Compensation Magistrate Judge and
8 shall authorize a number, not to exceed two (2) total, of additional
9 full-time or part-time Workers' Compensation Magistrate Judge
10 positions needed to timely handle the projected caseload for the
11 next two (2) fiscal years beginning July 1 of the following even
12 numbered year. At the time of authorization, the Chief Justice
13 shall provide written notice of such authorization to the Speaker of
14 the House of Representatives, the President Pro Tempore of the
15 Senate, and the Governor. The notice shall include the number of
16 positions authorized, the number of active case files that cause an
17 order to be issued before each existing judge for the preceding
18 year, any expected increase or decrease in such caseloads, and the
19 estimated yearly appropriation needed to pay for the compensation
20 and travel costs of any such Magistrate Judge and any three-judge en
21 banc panels set forth in subsection N of this section.

22 D. When a vacancy for a Workers' Compensation Magistrate Judge
23 occurs or is certain to occur, or for initial appointments, the
24 Judicial Nominating Commission shall choose and submit to the

1 Governor and the Chief Justice of the Supreme Court the names of
2 three (3) persons for each appointment, each of whom has previously
3 notified the Commission in writing that he or she will serve as a
4 judge if appointed. The Governor shall appoint one of the nominees
5 with the advice and consent of the Senate. If the Governor fails to
6 do so within sixty (60) days, the Chief Justice of the Supreme Court
7 shall appoint one of the nominees with the advice and consent of the
8 Senate, the appointment to be certified to the Secretary of State.
9 Appointments by the Governor to fill a position for a term
10 commencing July 1 shall be made by April 15. If the April 15
11 deadline cannot be met, the Governor shall notify the President Pro
12 Tempore of the Senate of the date when the appointment is expected
13 to be made. If the Senate fails to confirm within nine (90) days,
14 the Governor may select from the two remaining nominees or request
15 three additional nominees from the Judicial Nominating Commission.

16 E. A Workers' Compensation Magistrate Judge shall have been
17 licensed to practice law in this state for a period of not less than
18 five (5) years and shall have not less than five (5) years of
19 workers' compensation experience prior to appointment. Each judge,
20 before entering upon the duties of office, shall take and subscribe
21 to an oath of office and file the same with the Secretary of State.

22 F. Workers' Compensation Magistrate Judges shall be employees
23 of the Supreme Court. The salary for any full-time Workers'
24 Compensation Magistrate Judge shall be equal to that paid to a

1 District Judge. The compensation for any part-time Workers'
2 Compensation Magistrate Judge shall be commensurate with the time
3 worked. No Worker's Compensation Magistrate Judge shall engage in
4 the private practice of law during the term in office.

5 G. Any proceeding before a Workers' Compensation Magistrate
6 Judge shall operate by Rule 2 through Rule 66 as set forth in Title
7 85 of the Oklahoma Statutes as they existed on the date of the
8 Governor's signature upon passage of this act. After July 1, 2020,
9 such rules may be amended by the Supreme Court.

10 H. Any proceeding before a Workers' Compensation Magistrate
11 Judge shall be designated and confirmed as though before a court of
12 record, with respect to any matter within the limits of its
13 jurisdiction, and within such limits the judge shall possess the
14 powers and prerogatives of a judge of the other courts of record of
15 this state, including the power to punish for contempt a person who
16 disobeys a subpoena or refuses to be sworn or to answer as a witness
17 when lawfully ordered to do so.

18 I. The Workers' Compensation Commission shall, at no cost to
19 the Supreme Court, provide a designated courtroom for each Workers'
20 Compensation Magistrate Judge in either Oklahoma City or Tulsa where
21 hearings before the Magistrate Judge shall occur, and shall provide
22 use of a courtroom in Oklahoma City where hearings before the three-
23 judge en banc panel shall occur.

24

1 J. The Workers' Compensation Commission shall, at no cost to
2 the Supreme Court, provide for each Workers' Compensation Magistrate
3 Judge an office in either Oklahoma City or Tulsa and shall provide
4 to the Worker's Compensation Magistrate Judges and the three-judge
5 en banc panel assistance of the Commission's order writers, court
6 reports and other support personnel and office supplies, in a manner
7 sufficient for the Workers' Compensation Magistrate Judges and the
8 three-judge en banc panel to reasonably perform their duties.

9 Neither a Workers' Compensation Magistrate Judge nor the three-judge
10 en banc panel shall be authorized to employ administrative staff.

11 K. A Workers' Compensation Magistrate Judge may punish for
12 direct contempt pursuant to Sections 565, 565.1 and 566 of Title 21
13 of the Oklahoma Statutes.

14 L. The decision of a Workers' Compensation Magistrate Judge
15 shall be issued within thirty (30) days following the submission of
16 the case by the parties.

17 M. The Supreme Court shall through the Workers' Compensation
18 Magistrate Judges have jurisdiction over all claims arising under or
19 filed pursuant to the Workers' Compensation Code or previous statute
20 in effect on the date of an injury that occurred before February 1,
21 2014. All claims so filed shall be heard by a Workers' Compensation
22 Magistrate Judge without a jury. A Workers' Compensation Magistrate
23 Judge shall have full power and authority to determine all questions
24 in relation to payment of a claim for compensation under the

1 provisions of the Workers' Compensation Code or previous statute in
2 effect on the date of an injury that occurred before February 1,
3 2014. The Workers' Compensation Magistrate Judge, upon application
4 of either party, shall order a hearing at which either party may
5 present evidence and be represented by counsel. The decision of the
6 Workers' Compensation Magistrate Judge shall be final as to all
7 questions of fact and law; provided, the decision of the Workers'
8 Compensation Magistrate Judge may be appealed to a three-judge en
9 banc panel selected pursuant to subsection N of this section or the
10 Supreme Court as provided by the Workers' Compensation Code or
11 previous statute in effect on the date of an injury that occurred
12 before February 1, 2014.

13 N. The three-judge en banc review panel shall be made upon any
14 combination of the Senior Justice, Senior Judges or Active Retired
15 Judges as set forth in Section 1104B of Title 20 of the Oklahoma
16 Statutes, with preference among those given to Active Retired Judges
17 who are former judges of the Workers' Compensation Court or the
18 Court of Existing Claims and Workers' Compensation Magistrate
19 Judges; provided, however, in no event shall a Workers' Compensation
20 Magistrate Judge review his or her own decision. Compensation of
21 any en banc review panel member who is not a Workers' Compensation
22 Magistrate Judge shall be as set forth in Section 1104B of Title 20
23 of the Oklahoma Statutes. The Chief Justice of the Supreme Court
24 shall select judges to serve on such panel as needed.

1 O. The power and jurisdiction of the Workers' Compensation
2 Magistrate Judge over each case shall be continuing and the Judge
3 may make such modifications or changes with respect to former
4 findings or others relating thereto, if, in his or her opinion, it
5 may be justified.

6 P. Beginning on July 1, 2020, all pleadings, forms, filings or
7 applications and all orders arising from any cause of action under
8 the Workers' Compensation Code or which relate to any matter before
9 a Workers' Compensation Magistrate Judge or an en banc three-judge
10 panel shall be filed with the clerk of the Workers' Compensation
11 Commission and docketed before the appropriate judge or panel by the
12 Workers' Compensation docketing personnel. Each case shall be
13 assigned by the clerk of the Commission to a Workers' Compensation
14 Magistrate Judge by algorithm. Notices shall be given by the
15 Commission in accordance with notice requirements of the Workers'
16 Compensation Code. Any fee or other amount due to the Court of
17 Existing Claims regarding any claim shall be payable to the Workers'
18 Compensation Commission and deposited into the Worker's Compensation
19 Commission Revolving Fund. Any other support matters previously
20 handled by the Court of Existing Claims pursuant to the Workers'
21 Compensation Code shall be handled by the Workers' Compensation
22 Commission. The Workers' Compensation Commission shall be
23 authorized to promulgate administrative rules to further carry out
24 the terms of this subsection.

1 SECTION 63. AMENDATORY Section 5, Chapter 344, O.S.L.
2 2015 (85A O.S. Supp. 2018, Section 401.1), is amended to read as
3 follows:

4 Section 401.1. A. There is hereby created in the State
5 Treasury a revolving fund for the Workers' Compensation Court of
6 Existing Claims to be designated the "Workers' Compensation
7 Administrative Fund". The fund shall be a continuing fund, not
8 subject to fiscal year limitations, and shall consist of all monies
9 received by the Workers' Compensation Court of Existing Claims from
10 revenues apportioned pursuant to Section 122 of Title 85A of the
11 Oklahoma Statutes. All monies accruing to the credit of said fund
12 are hereby appropriated and may be budgeted and expended by the
13 Workers' Compensation Court of Existing Claims for the purpose of
14 funding the operations of the Court, for administering the
15 provisions of Titles 85 and 85A of the Oklahoma Statutes, and for
16 any other purpose related to the Administrative Workers'
17 Compensation Act that the Court deems appropriate. Expenditures
18 from said fund shall be made upon warrants issued by the State
19 Treasurer against claims filed as prescribed by law with the
20 Director of the Office of Management and Enterprise Services for
21 approval and payment.

22 B. On June 30, 2020, the Workers' Compensation Administrative
23 Fund created by subsection A of this section shall terminate and the
24

1 contents thereof shall be transferred to the Workers' Compensation
2 Commission Revolving Fund created by Section 28.1 of this title.

3 SECTION 64. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 401.2 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 There is hereby created in the State Treasury a revolving fund
7 for the Supreme Court to be designated the "Supreme Court Workers'
8 Compensation Administrative Fund". The fund shall be a continuing
9 fund, not subject to fiscal year limitations, and shall consist of
10 all monies received by the Supreme Court from revenues apportioned
11 are pursuant to Section 122 of Title 85A of the Oklahoma Statutes.
12 All monies accruing to the credit of said fund are hereby
13 appropriated and may be budgeted and expended by the Supreme Court
14 for the purpose of paying employment and travel expenses of Workers'
15 Compensation Magistrate Judges and compensation and travel expenses
16 of any three-judge en banc panel.

17 SECTION 65. AMENDATORY 25 O.S. 2011, Section 307, as
18 last amended by Section 1, Chapter 252, O.S.L. 2018 (25 O.S. Supp.
19 2018, Section 307), is amended to read as follows:

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

22 B. Executive sessions of public bodies will be permitted only
23 for the purpose of:
24

- 1 1. Discussing the employment, hiring, appointment, promotion,
2 demotion, disciplining or resignation of any individual salaried
3 public officer or employee;
- 4 2. Discussing negotiations concerning employees and
5 representatives of employee groups;
- 6 3. Discussing the purchase or appraisal of real property;
- 7 4. Confidential communications between a public body and its
8 attorney concerning a pending investigation, claim, or action if the
9 public body, with the advice of its attorney, determines that
10 disclosure will seriously impair the ability of the public body to
11 process the claim or conduct a pending investigation, litigation, or
12 proceeding in the public interest;
- 13 5. Permitting district boards of education to hear evidence and
14 discuss the expulsion or suspension of a student when requested by
15 the student involved or the student's parent, attorney or legal
16 guardian;
- 17 6. Discussing matters involving a specific handicapped child;
- 18 7. Discussing any matter where disclosure of information would
19 violate confidentiality requirements of state or federal law;
- 20 8. Engaging in deliberations or rendering a final or
21 intermediate decision in an individual proceeding pursuant to
22 Article II of the Administrative Procedures Act;

23
24

1 9. Discussing matters involving safety and security at state
2 penal institutions or correctional facilities used to house state
3 inmates;

4 10. Discussing contract negotiations involving contracts
5 requiring approval of the Board of Corrections, which shall be
6 limited to members of the public body, the attorney for the public
7 body, and the immediate staff of the public body. No person who may
8 profit directly or indirectly by a proposed transaction which is
9 under consideration may be present or participate in the executive
10 session; or

11 11. Discussing the following:

- 12 a. the investigation of a plan or scheme to commit an act
13 of terrorism,
- 14 b. assessments of the vulnerability of government
15 facilities or public improvements to an act of
16 terrorism,
- 17 c. plans for deterrence or prevention of or protection
18 from an act of terrorism,
- 19 d. plans for response or remediation after an act of
20 terrorism,
- 21 e. information technology of the public body but only if
22 the discussion specifically identifies:

23
24

- (1) design or functional schematics that demonstrate the relationship or connections between devices or systems,
 - (2) system configuration information,
 - (3) security monitoring and response equipment placement and configuration,
 - (4) specific location or placement of systems, components or devices,
 - (5) system identification numbers, names, or connecting circuits,
 - (6) business continuity and disaster planning, or response plans, or
 - (7) investigation information directly related to security penetrations or denial of services, or
- f. the investigation of an act of terrorism that has already been committed.

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

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

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

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

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

5 4. The Oklahoma Center for the Advancement of Science and
6 Technology, as provided for in Section 5060.7 of Title 74 of the
7 Oklahoma Statutes;

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

10 ~~6.~~ The Oklahoma Health Research Committee for purposes of
11 conferring on matters pertaining to research and development of
12 products, if public disclosure of the matter discussed would
13 interfere with the development of patents, copyrights, products, or
14 services;

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

17 7. A review committee, as provided for in Section 855 of Title
18 62 of the Oklahoma Statutes;

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

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

24

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

3 11. All nonprofit foundations, boards, bureaus, commissions,
4 agencies, trusteeships, authorities, councils, committees, public
5 trusts, task forces or study groups supported in whole or part by
6 public funds or entrusted with the expenditure of public funds for
7 purposes of conferring on matters pertaining to economic
8 development, including the transfer of property, financing, or the
9 creation of a proposal to entice a business to remain or to locate
10 within their jurisdiction if public disclosure of the matter
11 discussed would interfere with the development of products or
12 services or if public disclosure would violate the confidentiality
13 of the business;

14 12. The Oklahoma Indigent Defense System Board for purposes of
15 discussing negotiating strategies in connection with making possible
16 counteroffers to offers to contract to provide legal representation
17 to indigent criminal defendants and indigent juveniles in cases for
18 which the System must provide representation pursuant to the
19 provisions of the Indigent Defense System Act; and

20 13. The Quality Investment Committee for purposes of discussing
21 applications and confidential materials pursuant to the terms of the
22 Oklahoma Quality Investment Act.

23 D. Except as otherwise specified in this subsection, an
24 executive session for the purpose of discussing the purchase or

1 appraisal of real property shall be limited to members of the public
2 body, the attorney for the public body and the immediate staff of
3 the public body. No landowner, real estate salesperson, broker,
4 developer or any other person who may profit directly or indirectly
5 by a proposed transaction concerning real property which is under
6 consideration may be present or participate in the executive
7 session, unless they are operating under an existing agreement to
8 represent the public body.

9 E. No public body may go into an executive session unless the
10 following procedures are strictly complied with:

11 1. The proposed executive session is noted on the agenda as
12 provided in Section 311 of this title;

13 2. The executive session is authorized by a majority vote of a
14 quorum of the members present and the vote is a recorded vote; and

15 3. Except for matters considered in executive sessions of the
16 State Banking Board and the Oklahoma Savings and Loan Board, and
17 which are required by state or federal law to be confidential, any
18 vote or action on any item of business considered in an executive
19 session shall be taken in public meeting with the vote of each
20 member publicly cast and recorded.

21 F. A willful violation of the provisions of this section shall:

22 1. Subject each member of the public body to criminal sanctions
23 as provided in Section 314 of this title; and

24

1 ENGROSSED HOUSE
2 BILL NO. 2367

By: Kannady of the House

3 and

4 Daniels of the Senate

5
6
7 [workers' compensation - amending various statutes

8 relating to workers' compensation -

9 emergency]

10
11
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 69. 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.

1 Whenever required by the context, the term "carrier" shall be deemed
2 to include duly qualified self-insureds or self-insured groups;

3 3. "Case management" means the ongoing coordination, by a case
4 manager, of health care services provided to an injured or disabled
5 worker, including but not limited to systematically monitoring the
6 treatment rendered and the medical progress of the injured or
7 disabled worker; ensuring that any treatment plan follows all
8 appropriate treatment protocols, utilization controls and practice
9 parameters; assessing whether alternative health care services are
10 appropriate and delivered in a cost-effective manner based upon
11 acceptable medical standards; and ensuring that the injured or
12 disabled worker is following the prescribed health care plan;

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

- 20 a. Certified Disability Management Specialist (CDMS),
- 21 b. Certified Case Manager (CCM),
- 22 c. Certified Rehabilitation Registered Nurse (CRRN),
- 23 d. Case Manager - Certified (CMC),
- 24 e. Certified Occupational Health Nurse (COHN), or

1 f. Certified Occupational Health Nurse Specialist (COHN-
2 S);

3 5. "Certified workplace medical plan" means an organization of
4 health care providers or any other entity, certified by the State
5 Commissioner of Health, that is authorized to enter into a
6 contractual agreement with an employer, group self-insurance
7 association plan, an employer's workers' compensation insurance
8 carrier, third-party administrator or an insured to provide medical
9 care under the Administrative Workers' Compensation Act. Certified
10 plans shall only include plans which provide medical services and
11 payment for services on a fee-for-service basis to medical
12 providers;

13 6. "Child" means a natural or adopted son or daughter of the
14 employee under eighteen (18) years of age; or a natural or adopted
15 son or daughter of an employee eighteen (18) years of age or over
16 who is physically or mentally incapable of self-support; or any
17 natural or adopted son or daughter of an employee eighteen (18)
18 years of age or over who is actually dependent; or any natural or
19 adopted son or daughter of an employee between eighteen (18) and
20 twenty-three (23) years of age who is enrolled as a full-time
21 student in any accredited educational institution. The term "child"
22 includes a posthumous child, a child legally adopted or one for whom
23 adoption proceedings are pending at the time of death, an actually
24

1 dependent stepchild or an actually dependent acknowledged child born
2 out of wedlock;

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

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

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

17 (1) was unintended, unanticipated, unforeseen,
18 unplanned and unexpected,

19 (2) occurred at a specifically identifiable time and
20 place,

21 (3) occurred by chance or from unknown causes, ~~and~~ or

22 (4) was independent of sickness, mental incapacity,
23 bodily infirmity or any other cause.

24 b. "Compensable injury" does not include:

- 1 (1) injury to any active participant in assaults or
2 combats which, although they may occur in the
3 workplace, are the result of non-employment-
4 related hostility or animus of one, both, or all
5 of the combatants and which assault or combat
6 amounts to a deviation from customary duties;
7 provided, however, injuries caused by horseplay
8 shall not be considered to be compensable
9 injuries, except for innocent victims,
- 10 (2) injury incurred while engaging in or performing
11 or as the result of engaging in or performing any
12 recreational or social activities for the
13 employee's personal pleasure,
- 14 (3) injury which was inflicted on the employee at a
15 time when employment services were not being
16 performed or before the employee was hired or
17 after the employment relationship was terminated,
- 18 (4) injury where the accident was caused by the use
19 of alcohol, illegal drugs, or prescription drugs
20 used in contravention of physician's orders. If,
21 within twenty-four (24) hours of being injured or
22 reporting an injury, an employee tests positive
23 for intoxication, an illegal controlled
24 substance, or a legal controlled substance used

1 in contravention to a treating physician's
2 orders, or refuses to undergo the drug and
3 alcohol testing, there shall be a rebuttable
4 presumption that the injury was caused by the use
5 of alcohol, illegal drugs, or prescription drugs
6 used in contravention of physician's orders.
7 This presumption may only be overcome if the
8 employee proves by clear and convincing evidence
9 that his or her state of intoxication had no
10 causal relationship to the injury,

11 (5) any strain, degeneration, damage or harm to, or
12 disease or condition of, the eye or
13 musculoskeletal structure or other body part
14 resulting from the natural results of aging,
15 osteoarthritis, arthritis, or degenerative
16 process including, but not limited to,
17 degenerative joint disease, degenerative disc
18 disease, degenerative
19 spondylosis/spondylolisthesis and spinal
20 stenosis, or

21 (6) any preexisting condition except when the
22 treating physician clearly confirms an
23 identifiable and significant aggravation incurred
24 in the course and scope of employment.

1 c. ~~The definition of "compensable injury" shall not be~~
2 ~~construed to limit or abrogate the right to recover~~
3 ~~for mental injuries as described in Section 13 of this~~
4 ~~title, heart or lung injury or illness as described in~~
5 ~~Section 14 of this title, or occupational diseases as~~
6 ~~described in Section 65 of this title.~~

7 ~~d.~~ A compensable injury shall be established by medical
8 evidence supported by objective findings as defined in
9 paragraph 31 of this section.

10 ~~e.~~ d. The injured employee shall prove by a preponderance of
11 the evidence that he or she has suffered a compensable
12 injury.

13 ~~f.~~ e. Benefits shall not be payable for a condition which
14 results from a non-work-related independent
15 intervening cause following a compensable injury which
16 causes or prolongs disability, aggravation, or
17 requires treatment. A non-work-related independent
18 intervening cause does not require negligence or
19 recklessness on the part of a claimant.

20 ~~g.~~ f. An employee who suffers a compensable injury shall be
21 entitled to receive compensation as prescribed in this
22 act. Notwithstanding other provisions of law, if it
23 is determined that a compensable injury did not occur,
24

1 the employee shall not be entitled to compensation
2 under this act;

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

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

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

19 13. "Course and scope of employment" means an activity of any
20 kind or character for which the employee was hired and that relates
21 to and derives from the work, business, trade or profession of an
22 employer, and is performed by an employee in the furtherance of the
23 affairs or business of an employer. The term includes activities
24 conducted on the premises of an employer or at other locations

1 designated by an employer and travel by an employee in furtherance
2 of the affairs of an employer that is specifically directed by the
3 employer. This term does not include:

- 4 a. an employee's transportation to and from his or her
5 place of employment,
- 6 b. travel by an employee in furtherance of the affairs of
7 an employer if the travel is also in furtherance of
8 personal or private affairs of the employee,
- 9 c. any injury occurring in a parking lot or other common
10 area adjacent to an employer's place of business
11 before the employee clocks in or otherwise begins work
12 for the employer or after the employee clocks out or
13 otherwise stops work for the employer unless the
14 employer owns or maintains exclusive control over the
15 area, or
- 16 d. any injury occurring while an employee is on a work
17 break, unless the injury occurs while the employee is
18 on a work break inside the employer's facility or in
19 an area owned by or exclusively controlled by the
20 employer and the work break is authorized by the
21 employee's supervisor;

22 14. "Cumulative trauma" means an injury to an employee that is
23 caused by the combined effect of repetitive physical activities
24 extending over a period of time in the course and scope of

1 employment. Cumulative trauma shall not mean fatigue, soreness or
2 general aches and pain that may have been caused, aggravated,
3 exacerbated or accelerated by the employee's course and scope of
4 employment. Cumulative trauma shall have resulted directly and
5 independently of all other causes ~~and the employee shall have~~
6 ~~completed at least one hundred eighty (180) days of continuous~~
7 ~~active employment with the employer.~~ If compensation is payable for
8 an injury resulting from cumulative trauma, the last employer in
9 whose employment the employee was last injuriously exposed to the
10 trauma during a period of at least ninety (90) days, and the
11 insurance carrier, if any, covering the risk when the employee was
12 last so exposed under such employer, shall alone be liable therefor,
13 without right to contribution from any prior employer or insurance
14 carrier. If there is no employer in whose employment the employee
15 was injuriously exposed to the trauma for a period of at least
16 ninety (90) days, then the last employer in whose employment the
17 employee was last injuriously exposed to the trauma and the
18 insurance carrier, if any, covering the risk when such employee was
19 last so exposed under such employer, shall be liable therefor, with
20 right to contribution from any prior employer or insurance carrier;

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

23 16. "Disability" means incapacity because of compensable injury
24 to earn, in the same or any other employment, substantially the same

1 amount of wages the employee was receiving at the time of the
2 compensable injury;

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

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

1 to and returning from an emergency, shall be deemed to
2 be in the course of employment.

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

4 (1) any person for whom an employer is liable under
5 any Act of Congress for providing compensation to
6 employees for injuries, disease or death arising
7 out of and in the course of employment including,
8 but not limited to, the Federal Employees'
9 Compensation Act, the Federal Employers'
10 Liability Act, the Longshore and Harbor Workers'
11 Compensation Act and the Jones Act, to the extent
12 his or her employees are subject to such acts,

13 (2) any person who is employed in agriculture,
14 ranching or horticulture by an employer who had a
15 gross annual payroll in the preceding calendar
16 year of less than One Hundred Thousand Dollars
17 (\$100,000.00) wages for agricultural, ranching or
18 horticultural workers, or any person who is
19 employed in agriculture, ranching or horticulture
20 who is not engaged in operation of motorized
21 machines. This exemption applies to any period
22 of time for which such employment exists,
23 irrespective of whether or not the person is
24 employed in other activities for which the

1 exemption does not apply. If the person is
2 employed for part of a year in exempt activities
3 and for part of a year in nonexempt activities,
4 the employer shall be responsible for providing
5 workers' compensation only for the period of time
6 for which the person is employed in nonexempt
7 activities,

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

10 (4) any person who is providing services in a medical
11 care or social services program, or who is a
12 participant in a work or training program,
13 administered by the Department of Human Services,
14 unless the Department is required by federal law
15 or regulations to provide workers' compensation
16 for such person. This division shall not be
17 construed to include nursing homes,

18 (5) any person employed by an employer with five or
19 fewer total employees, all of whom are related
20 within the second degree by blood or marriage to
21 the employer, are dependents living in the
22 household of the employer, or are a combination
23 of such relatives and dependents, if the employer
24 is a natural person or ~~a general or limited~~

1 ~~partnership, or an incorporator of a corporation~~
2 ~~if the corporation is the employer in the~~
3 ~~household of the owner of the employer if the~~
4 ~~employer is not a natural person and the owner~~
5 ~~owns fifty percent (50%) or more of the employer,~~

6 (6) any person employed by an employer which is a
7 youth sports league which qualifies for exemption
8 from federal income taxation pursuant to federal
9 law,

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

23 (8) any person providing or performing voluntary
24 service who receives no wages for the services

1 other than meals, drug or alcohol rehabilitative
2 therapy, transportation, lodging or reimbursement
3 for incidental expenses except for volunteers
4 specifically provided for in subparagraph a of
5 this paragraph,

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

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

17 (10) a person referred to as a drive-away owner-
18 operator who privately owns and utilizes a tow
19 vehicle in drive-away operations and operates
20 independently for hire, if the drive-away owner-
21 operator actually utilizes the tow vehicle and if
22 the person contracting with the drive-away owner-
23 operator is not the lessor of the tow vehicle.

24 Provided, however, a drive-away owner-operator

1 shall not be precluded from workers' compensation
2 coverage under the Administrative Workers'
3 Compensation Act if the drive-away owner-operator
4 elects to participate as a sole proprietor, and
5 (11) any person who is employed as a domestic servant
6 or as a casual worker in and about a private home
7 or household, which private home or household had
8 a gross annual payroll in the preceding calendar
9 year of less than Fifty Thousand Dollars
10 (\$50,000.00) for such workers;

11 19. "Employer" means a person, partnership, association,
12 limited liability company, corporation, and the legal
13 representatives of a deceased employer, or the receiver or trustee
14 of a person, partnership, association, corporation, or limited
15 liability company, departments, instrumentalities and institutions
16 of this state and divisions thereof, counties and divisions thereof,
17 public trusts, boards of education and incorporated cities or towns
18 and divisions thereof, employing a person included within the term
19 "employee" as defined in this section. Employer may also mean the
20 employer's workers' compensation insurance carrier, if applicable.
21 Except as provided otherwise, this act applies to all public and
22 private entities and institutions. ~~Employer shall not include a~~
23 ~~qualified employer with an employee benefit plan as provided under~~
24

1 ~~the Oklahoma Employee Injury Benefit Act in Sections 200 through 213~~
2 ~~of this title;~~

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

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

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

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

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

1 25. "Insurance Commissioner" means the Insurance Commissioner
2 of the State of Oklahoma;

3 26. "Insurance Department" means the Insurance Department of
4 the State of Oklahoma;

5 27. "Major cause" means more than fifty percent (50%) of the
6 resulting injury, disease or illness. A finding of major cause
7 shall be established by a preponderance of the evidence. A finding
8 that the workplace was not a major cause of the injury, disease or
9 illness shall not adversely affect the exclusive remedy provisions
10 of this act and shall not create a separate cause of action outside
11 this act;

12 28. "Maximum medical improvement" means that no further
13 material improvement would reasonably be expected from medical
14 treatment or the passage of time;

15 29. "Medical services" means those services specified in
16 Section 50 of this title;

17 30. "Misconduct" shall include the following:

- 18 a. unexplained absenteeism or tardiness,
- 19 b. willful or wanton indifference to or neglect of the
20 duties required,
- 21 c. willful or wanton breach of any duty required by the
22 employer,
- 23 d. the mismanagement of a position of employment by
24 action or inaction,

- 1 e. actions or omissions that place in jeopardy the
2 health, life, or property of self or others,
3 f. dishonesty,
4 g. wrongdoing,
5 h. violation of a law, or
6 i. a violation of a policy or rule adopted to ensure
7 orderly work or the safety of self or others;

8 31. a. (1) "Objective findings" are those findings which
9 cannot come under the voluntary control of the
10 patient.

11 (2) (a) When determining permanent disability, a
12 physician, any other medical provider, an
13 administrative law judge, the Commission or
14 the courts shall not consider complaints of
15 pain.

16 (b) For the purpose of making permanent
17 disability ratings to the spine, physicians
18 shall use criteria established by the most
19 current edition of the American Medical
20 Association "Guides to the Evaluation of
21 Permanent Impairment".

22 (3) (a) Objective evidence necessary to prove
23 permanent disability in occupational hearing
24 loss cases may be established by medically

1 recognized and accepted clinical diagnostic
2 methodologies, including, but not limited
3 to, audiological tests that measure air and
4 bone conduction thresholds and speech
5 discrimination ability.

6 (b) Any difference in the baseline hearing
7 levels shall be confirmed by subsequent
8 testing; provided, however, such test shall
9 be given within four (4) weeks of the
10 initial baseline hearing level test but not
11 before five (5) days after being adjusted
12 for presbycusis.

13 b. Medical opinions addressing compensability and
14 permanent disability shall be stated within a
15 reasonable degree of medical certainty;

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

19 33. "Permanent disability" means the extent, expressed as a
20 percentage, of the loss of a portion of the total physiological
21 capabilities of the human body as established by competent medical
22 evidence and based on the current edition of the American Medical
23 Association guides to the evaluation of impairment, if the
24 impairment is contained therein;

1 34. "Permanent partial disability" means a permanent disability
2 or loss of use after maximum medical improvement has been reached
3 which prevents the injured employee, who has been released to return
4 to work by the treating physician, from returning to his or her pre-
5 injury or equivalent job. All evaluations of permanent partial
6 disability must be supported by objective findings;

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

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

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

23 38. "Private self-insurer" means a private employer that has
24 been authorized to self-insure its workers' compensation obligations

1 pursuant to this act, but does not include group self-insurance
2 associations authorized by this act, or any public employer that
3 self-insures pursuant to this act;

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

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

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

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

23
24

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

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

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

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

13 47. "Time of accident" or "date of accident" means the time or
14 date of the occurrence of the accidental incident from which
15 compensable injury, disability, or death results; and

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

1 SECTION 70. AMENDATORY Section 3, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 3), is amended to read as
3 follows:

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

1 B. ~~This act~~ The State of Oklahoma accepts the provisions of the
2 Acts of Congress designated as 40 U.S.C., Section 3172, formerly 40
3 U.S.C., Section 290, and hereby extends the territorial jurisdiction
4 of the Administrative Workers' Compensation Act of this state to all
5 lands and premises within the exterior boundaries of this state
6 which the Government of the United States of America owns or holds
7 by deed or act of cession, and to all purchases, projects,
8 buildings, constructions, improvements and property within the
9 exterior boundaries of this state belonging to the Government of the
10 United States of America, in the same manner and to the same extent
11 as if the premises were under the exclusive jurisdiction of this
12 state, subject only to the limitations placed thereon by the Acts of
13 Congress.

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

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

21 SECTION 71. AMENDATORY Section 5, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2018, Section 5), is amended to read as
23 follows:
24

1 Section 5. A. The rights and remedies granted to an employee
2 subject to the provisions of the Administrative Workers'
3 Compensation Act shall be exclusive of all other rights and remedies
4 of the employee, his legal representative, dependents, next of kin,
5 or anyone else claiming rights to recovery on behalf of the employee
6 against the employer, or any principal, officer, director, employee,
7 stockholder, partner, or prime contractor of the employer on account
8 of injury, illness, or death. Negligent acts of a co-employee may
9 not be imputed to the employer. No role, capacity, or persona of
10 any employer, principal, officer, director, employee, or stockholder
11 other than that existing in the role of employer of the employee
12 shall be relevant for consideration for purposes of this act, and
13 the remedies and rights provided by this act shall be exclusive
14 regardless of the multiple roles, capacities, or personas the
15 employer may be deemed to have. ~~For the purpose of extending the~~
16 ~~immunity of this section, any operator or owner of an oil or gas~~
17 ~~well or other operation for exploring for, drilling for, or~~
18 ~~producing oil or gas shall be deemed to be an intermediate or~~
19 ~~principal employer for services performed at a drill site or~~
20 ~~location with respect to injured or deceased workers whose immediate~~
21 ~~employer was hired by such operator or owner at the time of the~~
22 ~~injury or death.~~

23 B. Exclusive remedy shall not apply if:
24

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

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

17 C. The immunity from civil liability described in subsection A
18 of this section shall apply regardless of whether the injured
19 employee is denied compensation or deemed ineligible to receive
20 compensation under this act.

21 D. If an employer has failed to secure the payment of
22 compensation for his or her injured employee as provided for in this
23 act, an injured employee, or his or her legal representative if
24

1 death results from the injury, may maintain an action in the
2 district court for damages on account of such injury.

3 E. 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 where such other
6 employer does not stand in the position of an intermediate or
7 principal employer to the immediate employer of the injured or
8 deceased worker.

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

17 G. This section shall not be construed to abrogate the loaned
18 servant doctrine in any respect other than that described in
19 subsection F of this section. Nothing in this act shall be
20 construed to relieve the employer from any other penalty provided
21 for in this act for failure to secure the payment of compensation
22 under this act.

23 H. For the purpose of extending the immunity of this section,
24 any architect, professional engineer, or land surveyor shall be

1 deemed an intermediate or principal employer for services performed
2 at or on the site of a construction project, but this immunity shall
3 not extend to the negligent preparation of design plans and
4 specifications.

5 I. If the employer has failed to secure the payment of
6 compensation as provided in this act or in the case of an
7 intentional tort, the injured employee or his or her legal
8 representative may maintain an action either before the Commission
9 or in the district court, but not both.

10 SECTION 72. AMENDATORY Section 6, Chapter 208, O.S.L.
11 2013, as amended by Section 1, Chapter 390, O.S.L. 2015 (85A O.S.
12 Supp. 2018, Section 6), is amended to read as follows:

13 Section 6.

14 A. 1. a. Any person or entity who makes any material false
15 statement or representation, who willfully and
16 knowingly omits or conceals any material information,
17 or who employs any device, scheme, or artifice, or who
18 aids and abets any person for the purpose of:

19 (1) obtaining any benefit or payment,

20 (2) increasing any claim for benefit or payment, or

21 (3) obtaining workers' compensation coverage under
22 this act,

23 shall be guilty of a felony punishable pursuant to

24 Section 1663 of Title 21 of the Oklahoma Statutes.

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

5 c. Fifty percent (50%) of any criminal fine imposed and
6 collected under this section shall be paid and
7 allocated in accordance with applicable law to the
8 Workers' Compensation Commission Revolving Fund
9 ~~administered by the Commission.~~

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

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

19 C. Where the Commission or the Attorney General finds that a
20 violation of division (1) of subparagraph a of paragraph 1 of
21 subsection A of this section has been committed, or that any other
22 criminal violations in furtherance of this act were committed, the
23 chair of the Commission or the Attorney General shall refer the
24

1 matter for appropriate action to the prosecuting attorney having
2 criminal jurisdiction over the matter.

3 D. 1. a. There shall be established within the Office of the
4 Attorney General a Workers' Compensation Fraud
5 Investigation Unit, funded by the Commission. The
6 Attorney General shall appoint a Director of the
7 Workers' Compensation Fraud Investigation Unit, who
8 may also serve as the director of any other designated
9 insurance fraud investigation division within the
10 Attorney General's office.

11 b. (1) The Unit shall investigate workers' compensation
12 fraud, any additional criminal violations that
13 may be related to workers' compensation fraud,
14 and any other insurance fraud matters as may be
15 assigned at the discretion of the Attorney
16 General.

17 (2) The Attorney General shall designate the
18 personnel assigned to the Unit, who, on meeting
19 the qualifications established by the Oklahoma
20 Council on Law Enforcement Education and
21 Training, shall have the powers of specialized
22 law enforcement officers of the State of Oklahoma
23 for the purpose of conducting investigations
24 under this subparagraph. Personnel hired as

1 specialized law enforcement officers shall have a
2 minimum of three (3) years of certified law
3 enforcement experience or its equivalent in
4 national or military law enforcement experience
5 as approved by the Oklahoma Council on Law
6 Enforcement Education and Training.

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

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

19 4. a. In the course of any investigation being conducted by
20 the Unit, the Attorney General and his or her deputies
21 and assistants and the Director and his or her
22 deputies and assistants shall have the power of
23 subpoena and may:

24 (1) subpoena witnesses,

1 (2) administer oaths or affirmations and examine any
2 individual under oath, and

3 (3) require and compel the production of records,
4 books, papers, contracts, and other documents.

5 b. The issuance of subpoenas for witnesses shall be
6 served in the same manner as if issued by a district
7 court.

8 c. (1) Upon application by the commissioner or the
9 Director of the Unit, the district court located
10 in the county where a subpoena was served may
11 issue an order compelling an individual to comply
12 with the subpoena to testify.

13 (2) Any failure to obey the order of the court may be
14 punished as contempt.

15 d. If any person has refused in connection with an
16 investigation by the Director to be examined under
17 oath concerning his or her affairs, then the Director
18 is authorized to conduct and enforce by all
19 appropriate and available means any examination under
20 oath in any state or territory of the United States in
21 which any officer, director, or manager may then
22 presently be to the full extent permitted by the laws
23 of the state or territory.

24

1 e. In addition to the punishments described in paragraph
2 1 of subsection A of this section, any person
3 providing false testimony under oath or affirmation in
4 this state as to any matter material to any
5 investigation or hearing conducted under this
6 subparagraph, or any workers' compensation hearing,
7 shall upon conviction be guilty of perjury.

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

10 6. a. Every carrier or employer who has reason to suspect
11 that a violation of division (1) of subparagraph a of
12 paragraph 1 of subsection A of this section has
13 occurred shall be required to report all pertinent
14 matters to the ~~unit~~ Unit.

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

21 c. (1) Any carrier or employer who willfully and
22 knowingly fails to report a violation under
23 division (1) of subparagraph a of paragraph 1 of
24 subsection A of this section shall be guilty of a

1 misdemeanor and on conviction shall be punished
2 by a fine not to exceed One Thousand Dollars
3 (\$1,000.00).

4 (2) Fifty percent (50%) of any criminal fine imposed
5 and collected under this subparagraph shall be
6 paid and allocated in accordance with applicable
7 law to the fund administered by the Commission.

8 d. Any employee may report suspected violations of
9 division (1) of subparagraph a of paragraph 1 of
10 subsection A of this section. No employee who makes a
11 report shall be liable to the employee whose suspected
12 violations have been reported.

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

18 2. The prosecuting attorney of the district to whom a suspected
19 violation of subsection A of this section, or any other criminal
20 violations that may be related thereto, have been referred shall,
21 for the purpose of assisting him or her in such prosecutions, have
22 the authority to appoint as special deputy prosecuting attorneys
23 licensed attorneys-at-law in the employment of the Unit or any other
24 designated insurance fraud investigation division within the

1 Attorney General's office. Such special deputy prosecuting
2 attorneys shall, for the purpose of the prosecutions to which they
3 are assigned, be responsible to and report to the prosecuting
4 attorney.

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

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

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

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

21 ~~J.~~ If an injured employee is charged with workers' compensation
22 fraud, any pending workers' compensation proceeding, including
23 benefits, shall be stayed after the preliminary hearing is concluded
24 and the claimant is bound over and shall remain stayed until the

1 final disposition of the criminal case. All notice requirements
2 shall continue during the stay.

3 ~~K.~~ J. If the Attorney General's Office is in compliance with
4 the discovery provisions of Section 258 of Title 22 of the Oklahoma
5 Statutes, medical records created for the purpose of treatment and
6 medical opinions obtained during the investigation shall be
7 admissible at the preliminary hearing without the appearance of the
8 medical professional creating such records or opinions. However,
9 when material evidence dispositive to the issues of whether there
10 was probable cause the crime was committed and whether the defendant
11 committed the crime, was not included in a report or opinion
12 admitted at preliminary hearing, but might be presented at a
13 pretrial hearing by a medical professional who created such report
14 or opinion, the judge may, upon the motion of either party, order
15 the appearance of the medical professional creating such report or
16 opinion. Questions of fact regarding the conduct of the defendant
17 that conflict with the findings of the medical professional
18 evaluating the defendant shall not constitute material evidence. In
19 the event of such motion, notice shall be given to the Attorney
20 General's Workers' Compensation Fraud and Investigation and
21 Prosecution Unit. A hearing shall be held and, if the motion is
22 granted, the evidence shall not be presented fewer than five (5)
23 days later.

24

1 ~~H.~~ K. Any person or entity who, in good faith and exercising
2 due care, reports suspected workers' compensation fraud or insurance
3 fraud, or who allows access to medical records or other information
4 pertaining to suspected workers' compensation or insurance fraud, by
5 persons authorized to investigate a report concerning the workers'
6 compensation and insurance fraud, shall have immunity from any civil
7 or criminal liability for such report or access. Any such person or
8 entity shall have the same immunity with respect to participation in
9 any judicial proceeding resulting from such reports. For purposes
10 of any civil or criminal proceeding, there shall be a presumption of
11 good faith of any person making a report, providing medical records
12 or providing information pertaining to a workers' compensation or
13 insurance fraud investigation by the Attorney General, and
14 participating in a judicial proceeding resulting from a subpoena or
15 a report.

16 SECTION 73. AMENDATORY Section 7, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2018, Section 7), is amended to read as
18 follows:

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

- 21 1. Filed a claim under this act;
- 22 2. Retained a lawyer for representation regarding a claim under
23 this act;

24

1 3. Instituted or caused to be instituted any proceeding under
2 the provisions of this act; or

3 4. Testified or is about to testify in any proceeding under the
4 provisions of this act.

5 B. The ~~Commission~~ district courts shall have exclusive
6 jurisdiction to hear and decide claims based on ~~subsection A~~ of this
7 section.

8 C. ~~If the Commission determines that the defendant violated~~
9 ~~subsection A of this section, the Commission may award the employee~~
10 ~~back pay up to a maximum of One Hundred Thousand Dollars~~
11 ~~(\$100,000.00). Interim earnings or amounts earnable with reasonable~~
12 ~~diligence by the person discriminated against shall reduce the back~~
13 ~~pay otherwise allowable~~ An employer which violates any provision of
14 this section shall be liable in a district court action for
15 reasonable damages, actual and punitive if applicable, suffered by
16 an employee as a result of the violation. Exemplary or punitive
17 damage awards made pursuant to this section shall not exceed One
18 Hundred Thousand Dollars (\$100,000.00). The employee shall have the
19 burden of proof by a preponderance of the evidence.

20 D. The prevailing party shall be entitled to recover costs and
21 a reasonable attorney fee.

22 E. No employer may discharge an employee during a period of
23 temporary total disability for the sole reason of being absent from
24

1 work or for the purpose of avoiding payment of temporary total
2 disability benefits to the injured employee.

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

8 G. This section shall not be construed as establishing an
9 exception to the employment_at_will doctrine.

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

13 SECTION 74. AMENDATORY Section 14, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2018, Section 14), is amended to read as
15 follows:

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

21 B. ~~1-~~ An injury or disease included in subsection A of this
22 section shall not be deemed to be a compensable injury unless it is
23 shown that the exertion of the work necessary to precipitate the
24 disability or death was extraordinary and unusual in comparison to

1 the employee's usual work in the course of the employee's regular
2 employment, or that some unusual and unpredicted incident occurred
3 which is found to have been the major cause of the physical harm.

4 ~~2. Physical or mental stress shall not be considered in~~
5 ~~determining whether the employee or claimant has met his or her~~
6 ~~burden of proof.~~

7 SECTION 75. AMENDATORY Section 16, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 16), is amended to read as
9 follows:

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

24

1 ~~to reduce excessive or inappropriate medical care while safeguarding~~
2 ~~necessary medical care.~~

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

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

11 SECTION 76. AMENDATORY Section 18, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 18), is amended to read as
13 follows:

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

1 confirmation by the employee or his or her representative to the
2 hospital, physician, or health care provider.

3 B. The notice shall include:

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

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

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

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

24

1 SECTION 77. AMENDATORY Section 19, Chapter 208, O.S.L.
2 2013, as amended by Section 4, House Joint Resolution No. 1096, Page
3 1745, O.S.L. 2014 (85A O.S. Supp. 2018, Section 19), is amended to
4 read as follows:

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

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

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

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

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

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

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

5 2. To employ administrative staff for the Commission, within
6 budgetary limitation; and

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

9 F. All appeals or disputes arising from actions of the
10 Commission shall be governed by provisions of this act and the
11 Commission shall not be subject to the provisions of the Oklahoma
12 Administrative Procedures Act, except as provided in this act.

13 G. When any commissioner of the Commission is disqualified for
14 any reason to hear and participate in the determination of any
15 matter pending before the Commission, the Governor shall appoint a
16 qualified person to hear and participate in the decision on the
17 particular matter. The special commissioner so appointed shall have
18 all authority and responsibility with respect to the particular
19 matter before the Commission as if the person were a regular
20 commissioner of the Commission but shall have no authority or
21 responsibility with respect to any other matter before the
22 Commission. A person appointed as a special commissioner of the
23 Commission under the provisions of this subsection shall be entitled
24 to receive a per diem equal to the annual salary of the

1 commissioners prorated for the number of days he or she serves in
2 the capacity of a special commissioner of the Commission.
3 Furthermore, when a vacancy on the Commission occurs or is certain
4 to occur, the position shall be filled pursuant to the provisions of
5 this section.

6 SECTION 78. AMENDATORY Section 20, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2018, Section 20), is amended to read as
8 follows:

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

12 1. To appoint administrative law judges to hear all claims for
13 compensation, including claims based on injuries which occurred
14 outside this state for which compensation is payable under this act.
15 An administrative law judge shall have been licensed to practice law
16 in this state for a period of not less than three (3) years and
17 shall have not less than three (3) years of workers' compensation
18 experience prior to appointment;

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

21 3. To assess penalties;

22 4. To prescribe rules governing the representation of
23 employees, employers, and carriers in respect to claims before the
24 Commission;

1 5. To make available all records in connection with all cases
2 of personal injury to the Oklahoma Department of Labor. The
3 Commissioner of Labor may propose rules for the prevention of
4 injuries and transmit the rules to the Commission. The Commission
5 may recommend proposed rules for prevention of injuries to the
6 Commissioner of Labor; and

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

9 B. 1. In addition to the other powers and duties granted to
10 the Commission in this section and otherwise provided by law, the
11 Commission is authorized to establish and impose reasonable
12 administrative fees to recover the cost of preparation of various
13 informative materials distributed by the Commission.

14 2. The administrative fees shall be established by regulation
15 of the Commission.

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

20 SECTION 79. AMENDATORY Section 21, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2018, Section 21), is amended to read as
22 follows:
23
24

1 Section 21. A. Commissioners shall be considered officers and
2 shall take the oath prescribed by the Oklahoma Constitution and the
3 laws of this state.

4 B. 1. A majority of the Workers' Compensation Commission shall
5 constitute a quorum for the transaction of business, and vacancies
6 shall not impair the right of the remaining commissioners to
7 exercise all the powers of the full Commission, so long as a
8 majority remains.

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

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

16 D. Except with respect to the Commission's authority to hear
17 appeals of decisions from administrative law judges, any reference
18 in this ~~act~~ title to the Commission's ability to hear and decide the
19 rights of interested parties under this ~~act~~ title shall not prevent
20 it from delegating that responsibility to an administrative law
21 judge.

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

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

4 a. to make rules necessary for the administration and
5 operation of the Commission,

6 b. to appoint and fix the compensation of temporary
7 technical assistants, medical and legal advisers,
8 clerical assistants and other officers and employees,
9 and

10 c. to make such expenditures, including those for
11 personal service, rent, books, periodicals, office
12 equipment, and supplies, and for printing and binding
13 as may be necessary.

14 2. a. ~~Before~~ The Commission shall vote on any substantive
15 change to any form and the effective date of such
16 substantive change.

17 b. The Commission shall comply with the provisions of the
18 Administrative Procedures Act applicable to the filing
19 and publication requirements for rules before the
20 adoption, prescription, amendment, modification, or
21 repeal of any rule, ~~regulation, or form,~~ the
22 Commission shall give at least thirty (30) days'
23 notice of its intended action.

1 ~~b. The notice shall include a statement of the terms or~~
2 ~~substance of the intended action or description of the~~
3 ~~subjects and issues involved, and the time, place, and~~
4 ~~manner in which interested persons may present their~~
5 ~~views thereon.~~

6 ~~e. The notice shall be mailed to any person specified by~~
7 ~~law or who shall have requested advance notice of~~
8 ~~rule-making proceedings.~~

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

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

16 ~~5. All expenditures of the Commission in the administration of~~
17 ~~this act shall be allowed and paid from the Workers' Compensation~~
18 ~~Fund on the presentation of itemized vouchers approved by the~~
19 ~~Commission.~~

20 B. 1. The Commission may appoint as many persons as may be
21 necessary to be administrative law judges and in addition may
22 appoint such examiners, investigators, medical examiners, clerks,
23 and other employees as it deems necessary to effectuate the
24 provisions of this ~~act~~ title.

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

3 C. Additionally, the Commission shall have the following powers
4 and duties:

5 1. To hear and approve compromise settlements;

6 2. To review and approve own-risk applications and group self-
7 insurance association applications;

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

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

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

19 6. To hear and determine claims concerning disputed medical
20 bills;

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

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

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

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

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

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

19 SECTION 81. AMENDATORY Section 27, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2018, Section 27), is amended to read as
21 follows:

22 Section 27. A. The Workers' Compensation Commission shall be
23 vested with jurisdiction over all claims filed pursuant to the
24 Administrative Workers' Compensation Act. All claims so filed shall

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

15 B. In addition to the duties set forth in this section, the
16 administrative law judges shall have the following duties and
17 powers:

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

22 2. To hear and determine challenges to an agreement to
23 arbitrate under the Workers' Compensation Arbitration Act; and
24

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

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

5 SECTION 82. AMENDATORY Section 29, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2018, Section 29), is amended to read as
7 follows:

8 Section 29. A. Each carrier writing compensation insurance in
9 this state shall pay to the Workers' Compensation Commission ~~at the~~
10 ~~time of securing a license to transact business in this state an~~
11 annual fee of One Thousand Dollars (\$1,000.00) ~~for the privilege of~~
12 ~~qualifying with the Commission for the writing of compensation~~
13 ~~insurance.~~

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

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

19 D. Fees required pursuant to this section shall be deposited
20 ~~into~~ to the credit of the Workers' Compensation Commission Revolving
21 Fund.

22 SECTION 83. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 35.1 of Title 85A, unless there
24 is created a duplication in numbering, reads as follows:

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

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

12 C. An employer or insurance carrier shall contract for language
13 interpreter services for medical appointments, depositions,
14 statements, mediations and hearings directly with a language
15 interpreter whose principal place of business is in the State of
16 Oklahoma. The charge for such service shall be limited to the
17 actual fee of the interpreter.

18 D. A court reporter employed by or contracted by the Workers'
19 Compensation Commission shall be authorized to stenographically
20 report both joint petition settlements and compromise settlements in
21 the Workers' Compensation Court of Existing Claims. A court
22 reporter employed by or contracted by the Court of Existing Claims
23 shall be authorized to stenographically report both compromise
24

1 settlements and joint petition settlements under the jurisdiction of
2 the Commission.

3 SECTION 84. AMENDATORY Section 38, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 38), is amended to read as
5 follows:

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

8 1. By insuring and keeping insured the payment of compensation
9 with any stock corporation, mutual association, or other concerns
10 authorized to transact the business of workers' compensation
11 insurance in this state. When an insurer issues a policy to provide
12 workers' compensation benefits under the provisions of this act, it
13 shall file a notice with the Workers' Compensation Commission
14 containing the name, address, and principal occupation of the
15 employer, the number, effective date, and expiration date of the
16 policy, and such other information as may be required by the
17 Commission. The notice shall be filed by the insurer within thirty
18 (30) days after the effective date of the policy. Any insurer who
19 does not file the notice required by this paragraph shall be subject
20 to a fine by the Commission of not more than One Thousand Dollars
21 (\$1,000.00);

22 2. By obtaining and keeping in force guaranty insurance with
23 any company authorized to do guaranty business in this state. Each
24 company that issues workers' compensation guaranty insurance shall

1 file a copy of the contract with the Commission within thirty (30)
2 days after the effective date of the contract. Any company that
3 does not file a copy of the contract as required by this paragraph
4 shall be subject to a fine by the Commission of not more than One
5 Thousand Dollars (\$1,000.00);

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

- 10 a. less than one hundred employees or less than One
11 Million Dollars (\$1,000,000.00) in net assets to:
 - 12 (1) deposit with the Commission securities, an
13 irrevocable letter of credit or a surety bond
14 payable to the state, in an amount determined by
15 the Commission which shall be at least an average
16 of the yearly claims for the last three (3)
17 years, or
 - 18 (2) provide proof of excess coverage with such terms
19 and conditions as is commensurate with their
20 ability to pay the benefits required by the
21 provisions of this act, and
- 22 b. one hundred or more employees and One Million Dollars
23 (\$1,000,000.00) or more in net assets to:

24

- 1 (1) secure a surety bond payable to the state, or an
2 irrevocable letter of credit, in an amount
3 determined by the Commission which shall be at
4 least an average of the yearly claims for the
5 last three (3) years, or
- 6 (2) provide proof of excess coverage with terms and
7 conditions that are commensurate with their
8 ability to pay the benefits required by the
9 provisions of this act;

10 4. By forming a group self-insurance association consisting of
11 two or more employers which shall have a common interest and which
12 shall have entered into an agreement to pool their liabilities under
13 the Administrative Workers' Compensation Act. Such agreement shall
14 be subject to rules of the Commission. Any employer, upon
15 application to become a member of a group self-insurance
16 association, shall file with the Commission a notice, in such form
17 as prescribed by the Commission, acknowledging that the employer
18 accepts joint and several liability. Upon approval by the
19 Commission of such application for membership, said member shall be
20 a qualified self-insured employer; or

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

23 B. The Commission may waive the requirements of this section in
24 an amount which is commensurate with the ability of the employer to

1 pay the benefits required by the provisions of this act.
2 Irrevocable letters of credit required by this subsection shall
3 contain such terms as may be prescribed by the Commission and shall
4 be issued for the benefit of the state by a financial institution
5 whose deposits are insured by the Federal Deposit Insurance
6 Corporation.

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

13 D. Failure on the part of any employer to secure the payment of
14 compensation provided in this act shall have the effect of enabling
15 the Commission to assert the rights of an injured employee against
16 the employer.

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

21 SECTION 85. AMENDATORY Section 40, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2018, Section 40), is amended to read as
23 follows:
24

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

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

8 B. 1. Whenever the Workers' Compensation Commission has reason
9 to believe that any employer required to secure the payment of
10 compensation under this act has failed to do so, the Commission
11 shall serve on the employer a proposed judgment declaring the
12 employer to be in violation of this act and containing the amount,
13 if any, of the civil penalty to be assessed against the employer
14 under paragraph 5 of this subsection.

15 2. a. An employer may contest a proposed judgment of the
16 Commission issued under paragraph 1 of this subsection
17 by filing with the Commission, within twenty (20) days
18 of receipt of the proposed judgment, a written request
19 for a hearing.

20 b. The request for a hearing does not need to be in any
21 particular form but shall specify the grounds on which
22 the person contests the proposed judgment, the
23 proposed assessment, or both.

24

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

8 d. A proposed judgment by the Commission under this
9 section shall be prima facie correct, and the burden
10 is on the employer to prove that the proposed judgment
11 is incorrect.

12 3. a. If the employer alleges that a carrier has contracted
13 to provide it workers' compensation insurance coverage
14 for the period in question, the employer shall include
15 the allegation in its request for hearing and shall
16 name the carrier.

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

19 c. The carrier shall promptly, and no later than five (5)
20 days before the hearing, respond in writing to the
21 employer's allegation by providing evidence of
22 coverage for the period in question or by
23 affirmatively denying the employer's allegation.
24

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

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

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

16 C. If an employee injury occurs during a period when an
17 employer has failed to secure the payment of compensation and the
18 employer has paid a civil penalty assessed pursuant to this section,
19 the Commission may, upon application of the injured employee and
20 hearing before an administrative law judge, award as compensation to
21 the injured employee an amount from the proceeds of the civil
22 penalty not to exceed the amount of the civil penalty.

1 SECTION 86. AMENDATORY Section 45, Chapter 208, O.S.L.
2 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
3 Supp. 2018, Section 45), is amended to read as follows:

4 Section 45. A. Temporary Total Disability.

5 1. If the injured employee is temporarily unable to perform his
6 or her job or any alternative work offered by the employer, he or
7 she shall be entitled to receive compensation equal to seventy
8 percent (70%) of the injured employee's average weekly wage, but not
9 to exceed ~~seventy percent (70%)~~ of the state average weekly wage,
10 for one hundred four (104) weeks unless the Workers' Compensation
11 Commission by clear and convincing evidence finds that the employee
12 remains temporarily disabled and under active medical treatment.
13 The original and extended periods of temporary total disability
14 shall not exceed three hundred (300) weeks. Provided, there shall
15 be no payment for the first three (3) days of the initial period of
16 temporary total disability. If an administrative law judge finds
17 that a consequential injury has occurred and that additional time is
18 needed to reach maximum medical improvement, temporary total
19 disability may continue for a period of not more than an additional
20 fifty-two (52) weeks. Such finding shall be based upon a showing of
21 medical necessity by clear and convincing evidence. An employer
22 shall have the right to recover any overpayment of temporary total
23 disability payments from a subsequent permanent partial disability
24 award if the offset is deemed justified.

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

21 B. Temporary Partial Disability.

22 1. If the injured employee is temporarily unable to perform his
23 or her job, but may perform alternative work offered by the
24 employer, he or she shall be entitled to receive compensation equal

1 to ~~the greater of~~ seventy percent (70%) of the difference between
2 the injured employee's average weekly wage before the injury and his
3 or her weekly wage for performing alternative work after the injury,
4 but only if his or her weekly wage for performing the alternative
5 work is less than the temporary total disability rate. The injured
6 employee's actual earnings plus temporary partial disability
7 compensation shall not exceed the temporary total disability rate.

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

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

13 C. Permanent Partial Disability.

14 1. A permanent partial disability award or combination of
15 awards granted an injured worker may not exceed a permanent partial
16 disability rating of one hundred percent (100%) to any body part or
17 to the body as a whole. The determination of permanent partial
18 disability shall be the responsibility of the Commission through its
19 administrative law judges. Any claim by an employee for
20 compensation for permanent partial disability must be supported by
21 competent medical testimony of a medical doctor, osteopathic
22 physician, or chiropractor, and shall be supported by objective
23 medical findings, as defined in this act. The opinion of the
24 physician shall include employee's percentage of permanent partial

1 disability and whether or not the disability is job-related and
2 caused by the accidental injury or occupational disease. A
3 physician's opinion of the nature and extent of permanent partial
4 disability to parts of the body other than scheduled members must be
5 based solely on criteria established by the current edition of the
6 American Medical Association's "Guides to the Evaluation of
7 Permanent Impairment". A copy of any written evaluation shall be
8 sent to both parties within seven (7) days of issuance. Medical
9 opinions addressing compensability and permanent disability must be
10 stated within a reasonable degree of medical certainty. Any party
11 may submit the report of an evaluating physician.

12 2. Permanent partial disability shall not be allowed to a part
13 of the body for which no medical treatment has been received. A
14 determination of permanent partial disability made by the Commission
15 or administrative law judge which is not supported by objective
16 medical findings provided by a treating physician who is a medical
17 doctor, doctor of osteopathy, chiropractor or a qualified
18 independent medical examiner shall be considered an abuse of
19 discretion.

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

22 4. In cases of permanent partial disability, the compensation
23 shall be seventy percent (70%) of the employee's average weekly
24 wage, not to exceed ~~Three Hundred Twenty-three Dollars (\$323.00)~~

1 Three Hundred Ninety-one Dollars (\$391.00) per week, for a term not
2 to exceed a total of ~~three hundred fifty (350)~~ four hundred (400)
3 weeks for the body as a whole.

4 5. ~~Except pursuant to settlement agreements entered into by the~~
5 ~~employer and employee, payment of a permanent partial disability~~
6 ~~award shall be deferred and held in reserve by the employer or~~
7 ~~insurance company if the employee has reached maximum medical~~
8 ~~improvement and has been released to return to work by his or her~~
9 ~~treating physician, and then returns to his pre-injury or equivalent~~
10 ~~job for a term of weeks determined by dividing the total dollar~~
11 ~~value of the award by seventy percent (70%) of the employee's~~
12 ~~average weekly wage.~~

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

17 b. ~~If, for any reason other than misconduct as defined in~~
18 ~~Section 2 of this act, the employer terminates the~~
19 ~~employee or the position offered is not the pre-injury~~
20 ~~or equivalent job, the remaining permanent partial~~
21 ~~disability award shall be paid in a lump sum. If the~~
22 ~~employee is discharged for misconduct, the employer~~
23 ~~shall have the burden to prove that the employee~~
24 ~~engaged in misconduct.~~

1 e. ~~If the employee refuses an offer to return to his pre-~~
2 ~~injury or equivalent job, the permanent partial~~
3 ~~disability award shall continue to be deferred and~~
4 ~~shall be reduced by seventy percent (70%) of the~~
5 ~~employee's average weekly wage for each week he~~
6 ~~refuses to return to his pre-injury or equivalent job.~~

7 d. ~~Attorney fees for permanent partial disability awards,~~
8 ~~as approved by the Commission, shall be calculated~~
9 ~~based upon the total permanent partial disability~~
10 ~~award and paid in full at the time of the deferral.~~

11 e.

12 Assessments pursuant to Sections 31, 98, ~~112~~ 205 and ~~165~~ 122 of
13 this ~~act~~ title shall be calculated based upon the amount of the
14 permanent partial disability award ~~and shall be paid at the time of~~
15 ~~the deferral.~~

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

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

6 ~~a.~~

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

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

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

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

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

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

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

17 9. The permanent partial disability rate of compensation for
18 amputation or permanent total loss of use of a scheduled member
19 specified in Section 46 of this ~~act~~ title shall be seventy percent
20 (70%) of the employee's average weekly wage, not to exceed ~~Three~~
21 ~~Hundred Twenty-three Dollars (\$323.00)~~ Three Hundred Ninety-one
22 Dollars (\$391.00), multiplied by the number of weeks set forth for
23 the member in Section 46 of this ~~act~~ title, regardless of whether
24

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

3 10. An injured employee who is eligible for permanent partial
4 disability under this subsection shall be entitled to receive
5 vocational rehabilitation services provided by a technology center
6 or public secondary school offering vocational-technical education
7 courses, or a member institution of The Oklahoma State System of
8 Higher Education, which shall include retraining and job placement
9 to restore the employee to gainful employment. Vocational
10 rehabilitation services or training shall not extend for a period of
11 more than ~~fifty two (52)~~ one hundred four (104) weeks.

12 D. Permanent Total Disability.

13 1. In case of total disability adjudged to be permanent,
14 seventy percent (70%) of the employee's average weekly wages, but
15 not in excess of the state's average weekly wage, shall be paid to
16 the employee during the continuance of the disability until such
17 time as the employee reaches the age of maximum Social Security
18 retirement benefits or for a period of fifteen (15) years, whichever
19 is longer. In the event the claimant dies of causes unrelated to
20 the injury or illness, benefits shall cease on the date of death.
21 Provided, however, any person entitled to revive the action shall
22 receive a one-time lump-sum payment equal to twenty-six (26) weeks
23 of weekly benefits for permanent total disability awarded the
24 claimant. If more than one person is entitled to revive the claim,

1 the lump-sum payment shall be evenly divided between or among such
2 persons. In the event the Commission awards both permanent partial
3 disability and permanent total disability benefits, the permanent
4 total disability award shall not be due until the permanent partial
5 disability award is paid in full. If otherwise qualified according
6 to the provisions of this act, permanent total disability benefits
7 may be awarded to an employee who has exhausted the maximum period
8 of temporary total disability even though the employee has not
9 reached maximum medical improvement.

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

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

22 2. ~~The Vocational Rehabilitation Director shall help injured~~
23 ~~workers return to the work force. If the injured employee is unable~~
24 ~~to return to his or her pre-injury or equivalent position due to~~

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

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

- 17 ~~a. if the employee's occupation is truck driver or~~
18 ~~laborer and the medical condition is traumatic brain~~
19 ~~injury, stroke or uncontrolled vertigo,~~
- 20 ~~b. if the employee's occupation is truck driver or~~
21 ~~laborer performing high risk tasks and the medical~~
22 ~~condition is seizures,~~
- 23 ~~c. if the employee's occupation is manual laborer and the~~
24 ~~medical condition is bilateral wrist fusions,~~

- 1 ~~d. if the employee's occupation is assembly-line worker~~
2 ~~and the medical condition is radial head fracture with~~
3 ~~surgical excision,~~
- 4 ~~e. if the employee's occupation is heavy laborer and the~~
5 ~~medical condition is myocardial infarction with~~
6 ~~congestive heart failure,~~
- 7 ~~f. if the employee's occupation is heavy manual laborer~~
8 ~~and the medical condition is multilevel neck or back~~
9 ~~fusions greater than two levels,~~
- 10 ~~g. if the employee's occupation is laborer performing~~
11 ~~overhead work and the medical condition is massive~~
12 ~~rotator cuff tears, with or without surgery,~~
- 13 ~~h. if the employee's occupation is heavy laborer and the~~
14 ~~medical condition is recurrent inguinal hernia~~
15 ~~following unsuccessful surgical repair,~~
- 16 ~~i. if the employee's occupation is heavy manual laborer~~
17 ~~and the medical condition is total knee replacement or~~
18 ~~total hip replacement,~~
- 19 ~~j. if the employee's occupation is roofer and the medical~~
20 ~~condition is calcaneal fracture, medically or~~
21 ~~surgically treated,~~
- 22 ~~k. if the employee's occupation is laborer of any kind~~
23 ~~and the medical condition is total shoulder~~
24 ~~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

1 the evaluation shall be paid by the employer. ~~Following the~~
2 ~~evaluation, if the employee refuses the services or training ordered~~
3 ~~by the administrative law judge, or fails to complete in good faith~~
4 ~~the vocational rehabilitation training ordered by the administrative~~
5 ~~law judge, then the cost of the evaluation and services or training~~
6 ~~rendered may, in the discretion of the administrative law judge, be~~
7 ~~deducted from any award of benefits to the employee which remains~~
8 ~~unpaid by the employer.~~

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

18 ~~5.~~ 4. The administrative law judge may order vocational
19 rehabilitation before the injured employee reaches maximum medical
20 improvement, if the treating physician believes that it is likely
21 that the employee's injury will prevent the employee from returning
22 to his or her former employment. In granting early benefits for
23 vocational rehabilitation, the Commission shall consider temporary
24 restrictions and the likelihood that such rehabilitation will return

1 the employee to gainful employment earlier than if such benefits are
2 granted after the permanent partial disability hearing in the claim.

3 ~~6.~~ 5. Vocational rehabilitation services or training shall not
4 extend for a period of more than ~~fifty-two (52)~~ one hundred four
5 (104) weeks. A request for vocational rehabilitation services or
6 training shall be filed with the Commission by an interested party
7 not later than sixty (60) days from the date of receiving permanent
8 ~~restrictions~~ disability that ~~prevent~~ prevents the injured employee
9 from returning to his or her pre-injury or equivalent position.

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

17 ~~8.~~ 7. During the period when an employee is actively and in
18 good faith being evaluated or participating in a retraining or job
19 placement program for purposes of evaluating permanent total
20 disability status, the employee shall be entitled to receive
21 benefits at the same rate as the employee's temporary total
22 disability benefits for an additional fifty-two (52) weeks. All
23 tuition related to vocational rehabilitation services shall be paid
24 by the employer or the employer's insurer on a periodic basis

1 directly to the facility providing the vocational rehabilitation
2 services or training to the employee. ~~The employer or employer's~~
3 ~~insurer may deduct the amount paid for tuition from compensation~~
4 ~~awarded to the employee.~~

5 F. Disfigurement.

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

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

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

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

23

24

1 SECTION 87. AMENDATORY Section 46, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 46), is amended to read as
3 follows:

4 Section 46. A. An injured employee who is entitled to receive
5 permanent partial disability compensation under Section 45 of this
6 ~~act~~ title shall receive compensation for each part of the body in
7 accordance with the number of weeks for the scheduled loss set forth
8 below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 C. Other cases: In cases in which the Workers' Compensation
20 Commission finds an injury to a part of the body not specifically
21 covered by the foregoing provisions of this section, the employee
22 may be entitled to compensation for permanent partial disability.
23 The compensation ordered paid shall be seventy percent (70%) of the
24 employee's average weekly wage, not to exceed ~~Three Hundred Twenty-~~

1 ~~three Dollars (\$323.00)~~ Three Hundred Ninety-one Dollars (\$391.00)

2 for the number of weeks which the partial disability of the employee
3 bears to ~~three hundred fifty (350)~~ four hundred (400) weeks.

4 D. 1. Compensation for amputation of the first phalange of a
5 digit shall be one-half (1/2) of the compensation for the amputation
6 of the entire digit.

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

9 E. 1. Compensation for the permanent loss of eighty percent
10 (80%) or more of the vision of an eye shall be the same as for the
11 loss of an eye.

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

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

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

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

1 SECTION 88. AMENDATORY Section 47, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 47), is amended to read as
3 follows:

4 Section 47. A. Time of death. If death does not result within
5 one (1) year from the date of the accident or within the first three
6 (3) years of the period for compensation payments fixed by the
7 compensation judgment, a rebuttable presumption shall arise that the
8 death did not result from the injury.

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

14 C. Beneficiaries - Amounts. If an injury or occupational
15 illness causes death, weekly income benefits shall be payable as
16 follows:

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

23 2. If there is a surviving spouse and a child or children, a
24 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and

1 fifteen percent (15%) of the lesser of the deceased employee's
2 average weekly wage and the state average weekly wage to each child.
3 If there are more than two children, each child shall receive a pro
4 rata share of Fifty Thousand Dollars (\$50,000.00) and thirty percent
5 (30%) of the deceased employee's average weekly wage;

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

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

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

1 D. The weekly income benefits payable to the surviving spouse
2 under this section shall continue while the surviving spouse remains
3 unmarried. In no event shall this spousal weekly income benefit be
4 diminished by the award to other beneficiaries. The weekly income
5 benefits payable to any child under this section shall terminate on
6 the earlier of death, marriage, or reaching the age of eighteen
7 (18). However, if the child turns eighteen (18) and is:

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

10 2. Enrolled as a full-time student in any accredited
11 institution of higher education or vocational or technology
12 education; or

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

19 E. If any member of the class of beneficiaries who receive a
20 pro rata share of weekly income benefits becomes ineligible to
21 continue to receive benefits, the remaining members of the class
22 shall receive adjusted weekly income benefits equal to the new class
23 size.

1 F. To receive benefits under this section, a beneficiary or his
2 or her guardian, if applicable, shall file a proof of loss form with
3 the Commission. All questions of dependency shall be determined as
4 of the time of the injury. The employer shall initiate payment of
5 benefits within fifteen (15) days of the Commission's determination
6 of the proper beneficiaries. The Commission shall appoint a
7 guardian ad litem to represent known and unknown minor children and
8 the guardian ad litem shall be paid a reasonable fee for his or her
9 services.

10 SECTION 89. AMENDATORY Section 50, Chapter 208, O.S.L.
11 2013 (85A O.S. Supp. 2018, Section 50), is amended to read as
12 follows:

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

20 B. If the employer fails or neglects to provide medical
21 treatment within five (5) days after actual knowledge is received of
22 an injury, the injured employee may select a physician to provide
23 medical treatment at the expense of the employer; provided, however,
24 that the injured employee, or another in the employee's behalf, may

1 obtain emergency treatment at the expense of the employer where such
2 emergency treatment is not provided by the employer.

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

6 D. Unless recommended by the treating doctor at the time
7 claimant reaches maximum medical improvement or by an independent
8 medical examiner, continuing medical maintenance shall not be
9 awarded by the Commission. The employer or insurance carrier shall
10 not be responsible for continuing medical maintenance or pain
11 management treatment that is outside the parameters established by
12 the Physician Advisory Committee or ODG. The employer or insurance
13 carrier shall not be responsible for continuing medical maintenance
14 or pain management treatment not previously ordered by the
15 Commission or approved in advance by the employer or insurance
16 carrier.

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

24

1 F. For compensable injuries resulting in the use of a medical
2 device, ongoing service for the medical device shall be provided in
3 situations including, but not limited to, medical device battery
4 replacement, ongoing medication refills related to the medical
5 device, medical device repair, or medical device replacement.

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

1 trip mileage between the home of the employee and medical service
2 provider. The Commission shall develop a form for submitting a
3 travel expense reimbursement request pursuant to this subsection.

4 H. Fee Schedule.

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

17 2. Reimbursement for medical care shall be prescribed and
18 limited by the Fee Schedule as adopted by the Commission, after
19 notice and public hearing, and after approval by the Legislature by
20 joint resolution. A new Fee Schedule, with updated codes, shall be
21 approved by the Commission no later than December 31, 2020, and
22 shall include a five-percent increase for each reimbursement code.

23 The director of the Employees Group Insurance Division of the Office
24 of Management and Enterprise Services shall provide the Commission

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

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

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 90. 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 91. 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 92. 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 93. AMENDATORY Section 60, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2018, Section 60), is amended to read as
23 follows:

24

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 94. 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 95. 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 96. AMENDATORY Section 66, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 66), is amended to read as
3 follows:

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

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

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

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

23 C. Except as otherwise provided in this section, compensation
24 for disability from uncomplicated silicosis or asbestosis shall be

1 payable in accordance with the provisions of Sections 45 and 48 of
2 this ~~act~~ title.

3 D. 1. In case of disability or death from silicosis or
4 asbestosis complicated with tuberculosis of the lungs, compensation
5 shall be payable as for uncomplicated silicosis or asbestosis,
6 provided that the silicosis or asbestosis was an essential factor in
7 the causing of disability or death.

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

12 ~~E. 1. When an employee, though not actually disabled, is found~~
13 ~~by the Commission to be affected by silicosis or asbestosis to such~~
14 ~~a degree as to make it unduly hazardous for him or her to continue~~
15 ~~in an employment involving exposure to the hazards of the disease,~~
16 ~~the Commission may order that he or she be removed from his or her~~
17 ~~employment. In such a case, or in case he or she has already been~~
18 ~~discharged from the employment and is unemployed, he or she shall be~~
19 ~~entitled to compensation until he or she can obtain steady~~
20 ~~employment in some other suitable occupation in which there are no~~
21 ~~hazards of the disease.~~

22 ~~2. When in any case the forced change of employment shall, in~~
23 ~~the opinion of the Commission, require that the employee be given~~
24 ~~special training in order to qualify him or her for another~~

1 ~~occupation, the employer liable for compensation shall pay for the~~
2 ~~vocational rehabilitation and training provided for in this act.~~

3 SECTION 97. AMENDATORY Section 67, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 67), is amended to read as
5 follows:

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

10 ~~2.~~ B. Written notice shall be given to the employer of an
11 occupational disease or cumulative trauma by the employee, or a
12 representative of the employee in the case of incapacity or death,
13 within six (6) months after the first distinct manifestation of the
14 disease or cumulative trauma or within six (6) months after death.

15 ~~B. An award or denial of award of compensation for an~~
16 ~~occupational disease or cumulative trauma may be reviewed and~~
17 ~~compensation increased, reduced, or terminated where previously~~
18 ~~awarded, or awarded where previously denied, only on proof of fraud~~
19 ~~or undue influence or of change of condition, and then only on~~
20 ~~application by a party in interest made not later than one (1) year~~
21 ~~after the denial of award or, where compensation has been awarded,~~
22 ~~after the award or the date when the last payment was made under the~~
23 ~~award, except in cases of silicosis or asbestosis, where the statute~~
24 ~~of limitations shall be two (2) years.~~

1 SECTION 98. AMENDATORY Section 69, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 69), is amended to read as
3 follows:

4 Section 69. A. Time for Filing.

5 1. A claim for benefits under this act, other than an
6 occupational disease, shall be barred unless it is filed with the
7 Workers' Compensation Commission within one (1) year from the date
8 of the injury. ~~If during the one-year period following the filing~~
9 ~~of the claim the employee receives no weekly benefit compensation~~
10 ~~and receives no medical treatment resulting from the alleged injury,~~
11 ~~the claim shall be barred thereafter~~ Provided, however, a claim may
12 be filed with the Commission within one (1) year of the date of the
13 last payment of compensation or wages in lieu thereof, or the date
14 of the last authorized medical appointment attended by the employee,
15 whichever is later. When a claim for compensation has been filed,
16 unless the employee shall in good faith request a hearing for
17 benefits within one (1) year from the date of the filing thereof, or
18 within one (1) year from the date of last payment of compensation or
19 wages in lieu thereof, or the date of the last authorized medical
20 appointment attended by the employee, the claim shall be dismissed
21 with prejudice for want of prosecution. For purposes of this
22 section, the date of the injury shall be defined as the date an
23 injury is caused by an accident as set forth in paragraph 9 of
24 Section 2 of this ~~act~~ title.

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

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

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

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

23 4. If within six (6) months after the filing of a claim for
24 compensation no bona fide request for a hearing has been made with

1 respect to the claim, the claim may, on motion and after hearing, be
2 dismissed with prejudice.

3 B. Time for Filing Additional Compensation.

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

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

18 C. A claim for additional compensation shall specifically state
19 that it is a claim for additional compensation. Documents which do
20 not specifically request additional benefits shall not be considered
21 a claim for additional compensation.

22 D. If within six (6) months after the filing of a claim for
23 additional compensation no bona fide request for a hearing has been
24 made with respect to the claim, the claim shall be dismissed without

1 prejudice to the refiling of the claim within the limitation period
2 specified in subsection B of this section.

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

9 F. Persons under Disability.

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

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

23 G. A latent injury or condition shall not delay or toll the
24 limitation periods specified in this section. This subsection shall

1 not apply to the limitation period for occupational diseases
2 specified in paragraph 2 of subsection A of this section.

3 SECTION 99. AMENDATORY Section 71, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 71), is amended to read as
5 follows:

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

10 B. Investigation - Hearing.

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

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

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

19 4. If a hearing on the claim is ordered, the administrative law
20 judge shall give the claimant and other interested parties ten (10)
21 days' notice of the hearing served personally on the claimant and
22 other parties, or by registered mail, facsimile, electronic mail or
23 by other electronic means with receipt of confirmation. The hearing
24

1 ~~shall~~ may be held in ~~Tulsa or Oklahoma County~~ any county of this
2 state, as determined by the Commission.

3 5. The award, together with the statement of the findings of
4 fact and other matters pertinent to the issues, shall be filed with
5 the record of the proceedings, and a copy of the award shall
6 immediately be sent to the parties in or to counsels of record, if
7 any.

8 C. Evidence and Construction.

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

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

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

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

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

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

10 E. No compensation for disability of an injured employee shall
11 be payable for any period beyond his or her death; provided,
12 however, an award of compensation for permanent partial disability
13 may be made after the death of the injured employee ~~for the period~~
14 ~~of disability preceding death.~~ Such reviver action may be brought
15 only by the injured employee's spouse, minor children or children
16 under a disability as defined by Section 67 of this title.

17 SECTION 100. AMENDATORY Section 78, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, Section 78), is amended to read as
19 follows:

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

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

6 B. The appellant shall pay a filing fee of One Hundred Seventy-
7 five Dollars (\$175.00) to the Commission at the time of filing his
8 or her appeal. The fee shall be deposited ~~in~~ to the credit of the
9 Workers' Compensation Commission Revolving Fund.

10 C. The judgment, decision or award of the Commission shall be
11 final and conclusive on all questions within its jurisdiction
12 between the parties unless an action is commenced in the Supreme
13 Court of this state to review the judgment, decision or award within
14 twenty (20) days of being sent to the parties. Any judgment,
15 decision or award made by an administrative law judge shall be
16 stayed until all appeal rights have been waived or exhausted. The
17 Supreme Court may modify, reverse, remand for rehearing, or set
18 aside the judgment or award only if it was:

- 19 1. In violation of constitutional provisions;
- 20 2. In excess of the statutory authority or jurisdiction of the
21 Commission;
- 22 3. Made on unlawful procedure;
- 23 4. Affected by other error of law;

24

- 1 5. Clearly erroneous in view of the reliable, material,
- 2 probative and substantial competent evidence;
- 3 6. Arbitrary or capricious;
- 4 7. Procured by fraud; or
- 5 8. Missing findings of fact on issues essential to the
- 6 decision.

7 This action shall be commenced by filing with the Clerk of the
8 Supreme Court a certified copy of the judgment, decision or award of
9 the Commission attached to the petition by the complaint which shall
10 specify why the judgment, decision or award is erroneous or illegal.
11 The proceedings shall be heard in a summary manner and shall have
12 precedence over all other civil cases in the Supreme Court, except
13 preferred Corporation Commission appeals. The Supreme Court shall
14 require the appealing party to file within forty-five (45) days from
15 the date of the filing of an appeal or a judgment appealed from, a
16 transcript of the record of the proceedings before the Commission,
17 or such later time as may be granted by the Supreme Court on
18 application and for good cause shown. The action shall be subject
19 to the law and practice applicable to other civil actions cognizable
20 in the Supreme Court.

21 D. A fee of One Hundred Dollars (\$100.00) per appeal to the
22 Supreme Court shall be paid to the Commission and deposited ~~in~~ to
23 the credit of the Workers' Compensation Commission Revolving Fund as
24 costs for preparing, assembling, indexing and transmitting the

1 record for appellate review. This fee shall be paid by the party
2 taking the appeal. If more than one party to the action files an
3 appeal from the same judgment, decision or award, the fee shall be
4 paid by the party whose petition in error commences the principal
5 appeal.

6 E. During the pendency of an appeal filed by an employer or the
7 employer's insurance carrier pursuant to this section, payment for
8 any prescription drugs prescribed by the treating physician shall be
9 continued. If payment for prescription drugs is an issue on appeal,
10 and the employer is held not to be liable for payment for the
11 prescription drugs, the employee shall reimburse the employer or the
12 employer's insurance carrier for the cost of prescriptions filled
13 during the time of the appeals process.

14 SECTION 101. AMENDATORY Section 80, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 80), is amended to read as
16 follows:

17 Section 80. A. A final order for permanent disability is a
18 final adjudication of all issues pending in the claim unless
19 reserved in the order or by operation of law. Except where a joint
20 petition settlement has been approved, the Workers' Compensation
21 Commission may reopen for review any compensation judgment, award,
22 or decision. Such review ~~may be done at any time~~ based on a change
23 of physical condition must be requested by the filing of a Request
24 for Rehearing within six (6) months ~~of termination of the~~

1 ~~compensation period fixed in the original compensation judgment or~~
2 ~~award~~ from the date of the last order in which monetary benefits
3 were awarded or active medical treatment was provided, on the
4 Commission's own motion or on the application of any party in
5 interest, ~~on the ground of a change in physical condition or on~~
6 ~~proof of erroneous wage rate~~ and unless filed within such period of
7 time shall be forever barred. A change of condition shall be proved
8 with objective medical evidence which must be filed within thirty
9 (30) days of the filing of the Request for Rehearing. On review,
10 the Commission may ~~make a judgment or award terminating, continuing,~~
11 ~~decreasing, or increasing for the future the~~ additional compensation
12 ~~previously awarded~~ and medical treatment, subject to the maximum
13 limits provided for in this act. An order denying an application to
14 reopen a claim shall not extend the period of time set out in this
15 title for reopening the claim. A failure to comply with a medical
16 treatment plan ordered by the Commission shall bar the reopening of
17 a claim.

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

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

1 D. Aging and the effects of aging on a compensable injury are
2 not to be considered in determining whether there has been a change
3 in physical condition. Aging or the effect of aging on a
4 compensable injury shall not be considered in determining permanent
5 disability under this section or any other section in this act.

6 SECTION 102. AMENDATORY Section 82, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2018, Section 82), is amended to read as
8 follows:

9 Section 82.

10 A. 1. a. Each party shall be responsible for its legal services
11 and litigation expenses. Fees for legal services
12 ~~rendered in a claim shall not be valid unless approved~~
13 may be reviewed by the Workers' Compensation
14 Commission.

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

1 rejected, the employee's attorney may not recover
2 attorney fees in excess of thirty percent (30%) of the
3 difference between the amount of any award and the
4 settlement offer.

5 (1) Attorney fees may not be collected for recovery
6 on noncontroverted claims.

7 (2) Attorney fees shall not be awarded on medical
8 benefits or services.

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

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

19 c. A "controverted claim" means that ~~there has been a~~
20 ~~contested hearing before the Commission over the~~
21 employer or the employer's insurance carrier has
22 controverted whether there has been a compensable
23 injury or whether the employee is entitled to
24 temporary total disability, temporary partial

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

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

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

22 ~~4.~~ 3. Medical providers may voluntarily contract with the
23 attorney for the employee to recover disputed charges, and the
24

1 ~~provider~~ attorney may charge a reasonable fee for the cost of
2 collection.

3 B. An attorney representing an employee under this act may not
4 recover fees for services except as expressly provided in this
5 section.

6 SECTION 103. AMENDATORY Section 86, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2018, Section 86), is amended to read as
8 follows:

9 Section 86. A. 1. Each employer desiring to controvert an
10 employee's right to compensation ~~shall~~ may file with the Workers'
11 Compensation Commission on or before the fifteenth day following
12 notice of the alleged injury or death a statement on a form
13 prescribed by the Commission that the right to compensation is
14 controverted and the grounds for the controversion, the names of the
15 claimant, employer, and carrier, if any, and the date and place of
16 the alleged injury or death.

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

21 B. If an employer is unable to obtain sufficient medical
22 information as to the alleged injury or death within fifteen (15)
23 days following receipt of notice, although the employer has acted in
24 good faith and with all due diligence, the employer may apply in

1 writing for an extension of time for making payment of the first
2 installment or controverting the claim. This written application is
3 to be postmarked within the fifteen-day period. The Commission may,
4 in its discretion, grant the extension and fix the additional time
5 to be allowed. Filing of application for an extension shall not be
6 deemed to be a controversion of the claim.

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

11 SECTION 104. AMENDATORY Section 87, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 87), is amended to read as
13 follows:

14 Section 87. If the employer or carrier and the injured employee
15 desire to settle the claim, they shall file a joint petition for
16 settlement with the Workers' Compensation Commission. After the
17 joint petition has been filed, the Commission shall order that all
18 workers' compensation claims between the parties covered by the
19 joint petition have been settled. No appeal shall lie from a
20 judgment or award denying a joint petition.

21 SECTION 105. AMENDATORY Section 89, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2018, Section 89), is amended to read as
23 follows:

24

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

15 SECTION 106. AMENDATORY Section 94, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2018, Section 94), is amended to read as
17 follows:

18 Section 94. An employee who is incarcerated shall not be
19 eligible to receive ~~medical or~~ temporary total disability benefits
20 under this ~~act~~ title. Any other benefit available to an
21 incarcerated employee shall be limited by other provisions of this
22 title in the same manner as for all injured employees.
23
24

1 SECTION 107. AMENDATORY Section 101, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 101), is amended to read as
3 follows:

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

16 B. After public hearing and consultation with representatives
17 of employers, insurance carriers, and employees, the Commission
18 shall implement, with the assistance of the Insurance Commissioner,
19 ~~by July 1, 2014,~~ an electronic data interchange (EDI) system that
20 provides relevant data concerning the Oklahoma workers' compensation
21 system and the delivery of benefits to injured workers on a
22 timetable to be reasonably determined by the Commission.

23 C. To assist the Commission in developing and implementing the
24 EDI system, there is hereby created the Oklahoma Workers'

1 Compensation Electronic Data Interchange Advisory Committee. ~~Within~~
2 ~~thirty (30) days of the effective date of this act, the~~ The Governor
3 shall appoint five persons to serve as members of the advisory
4 committee, one of whom shall be selected by the Governor as chair.
5 The chair shall provide adequate notice of meetings of the advisory
6 committee and public hearings as required by law.

7 SECTION 108. AMENDATORY Section 105, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 105), is amended to read as
9 follows:

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

17 B. The commissioners and employees of the Commission shall not
18 solicit employment for any attorney or physician nor shall they
19 recommend or refer any claimant or employer to an attorney or
20 physician. If any employee of the Commission makes such a
21 solicitation, recommendation or reference, that person, upon
22 conviction, shall be guilty of a misdemeanor punishable, for each
23 offense, by a fine of not more than One Thousand Dollars (\$1,000.00)
24 or by imprisonment in the county jail not to exceed one (1) year, or

1 by both such fine and imprisonment. The Commission shall
2 immediately terminate the employment of any employee who is guilty
3 of such solicitation, recommendation or reference. A commissioner
4 guilty of such solicitation, recommendation or reference shall be
5 subject to removal from office.

6 C. No administrative law judge shall engage in any ex parte
7 communication with any party to an action pending before the
8 Commission or with any witness or medical provider regarding the
9 merits of a specific matter pending before the judge for resolution.
10 Any violation of this provision shall subject the judge to
11 disqualification from the action or matter upon presentation of an
12 application for disqualification.

13 SECTION 109. AMENDATORY Section 152, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2018, Section 109), is amended to read as
15 follows:

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

23 B. Workers' compensation counselors or ombudsmen shall provide
24 information to injured workers; investigate complaints; communicate

1 with employers, insurance carriers, self-insurers, and health care
2 providers; provide informational seminars and workshops on workers'
3 compensation for medical providers, insurance adjustors, and
4 employee and employer groups; and develop informational materials
5 for employees, employers and medical providers.

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

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

20 SECTION 110. AMENDATORY Section 158, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2018, Section 115), is amended to read as
22 follows:

23 Section 115. A. If the employee and employer shall reach an
24 agreement for the full, final and complete settlement of any issue

1 of a claim pursuant to this act, a form designated as "Joint
2 Petition" shall be signed by both the employer and employee, or
3 representatives thereof, and shall be approved by the Workers'
4 Compensation Commission or an administrative law judge, and filed
5 with the Workers' Compensation Commission. In cases in which the
6 employee is not represented by legal counsel, the Commission or an
7 administrative law judge shall have jurisdiction to approve a full,
8 final and complete settlement of any issue upon the filing of an
9 Employer's First Notice of Injury. There shall be no requirement
10 for the filing of an Employee's First Notice of Claim for
11 Compensation to effect such settlement in cases in which the
12 employee is not represented by legal counsel.

13 B. In the event all issues of a claim are not fully, finally
14 and completely settled by a Joint Petition, the issues not settled
15 by the parties and subject to the Commission's continuing
16 jurisdiction must be noted by appendix to the Joint Petition or on a
17 form created for such purpose by the Commission. The appendix must
18 be signed by the parties and approved by the Commission as set forth
19 herein.

20 C. In the absence of fraud, a Joint Petition shall be deemed
21 binding upon the parties thereto and a final adjudication of all
22 rights pursuant to this ~~act~~ title or the workers' compensation law
23 in effect at the time of the injury or final order of the Workers'
24 Compensation ~~Court~~ Commission. An official record shall be made by

1 an official Commission reporter of the testimony taken to effect the
2 Joint Petition.

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

13 E. If an employee has not filed a claim for compensation and
14 the employer and the injured employee reach a final agreement as to
15 the facts with relation to an injury and the resulting disability
16 for which compensation is claimed under the Administrative Workers'
17 Compensation Act, a memorandum of such agreement in a form
18 prescribed by the Commission shall be filed with the Commission by
19 the employer. The memorandum shall be signed by both the employer
20 and the employee and approved by an administrative law judge.

21 SECTION 111. AMENDATORY Section 161, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2018, Section 118), is amended to read as
23 follows:
24

1 Section 118. A. A filing fee of One Hundred Forty Dollars
2 (\$140.00) per case, including any Joint Petition, medical fee
3 dispute, claim for discrimination or retaliation, or claim for
4 benefits under the Multiple Injury Trust Fund authorized by this ~~act~~
5 title, shall be collected by the Workers' Compensation Commission
6 and assessed as costs to be paid by the party against whom any award
7 becomes final, to be deposited as follows:

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

10 2. Ten Dollars (\$10.00) to the credit of the Attorney General's
11 Workers' Compensation Fraud Unit Revolving Fund created by Section
12 19.2 of Title 74 of the Oklahoma Statutes; and

13 3. Twenty-five Dollars (\$25.00) to the credit of the Workers'
14 Compensation Commission Revolving Fund for purposes of implementing
15 the provisions of this ~~act~~ title, including strengthening and
16 providing additional funding for the Attorney General's Workers'
17 Compensation Fraud Unit, providing counseling services pursuant to
18 the workers' compensation counselor or ombudsman program and safety
19 in the workplace.

20 B. A fee of One Hundred Thirty Dollars (\$130.00) per action to
21 reopen any case pursuant to Section 32 of this ~~act~~ title shall be
22 collected by the Commission and assessed as costs to be paid by the
23 party that reopens the case. The fee collected pursuant to this
24 subsection shall be deposited to the credit of the Workers'

1 Compensation Commission Revolving Fund for purposes of implementing
2 the provisions of this ~~act~~ title, including strengthening and
3 providing additional funding for the Attorney General's Workers'
4 Compensation Fraud Unit, providing counseling services pursuant to
5 the workers' compensation counselor or ombudsman program and safety
6 in the workplace.

7 SECTION 112. AMENDATORY Section 162, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 119), is amended to read as
9 follows:

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

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

18 SECTION 113. AMENDATORY Section 163, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 120), is amended to read as
20 follows:

21 Section 120. A. Except as otherwise provided by state or
22 federal law and subject to the provisions of this section, an
23 employer may inquire about previous workers' compensation claims
24 paid to an employee while the employee was employed by a previous

1 employer. If the employee fails to answer truthfully about any
2 previous permanent partial disability awards made pursuant to
3 workers' compensation claims, the employee shall be subject to
4 discharge by the employer.

5 B. 1. All requests made to the Workers' Compensation
6 Commission for information on ~~prior~~ workers' compensation claims
7 involving a worker, including written inquiries about prior claims
8 and requests to access a worker's compensation claim file, must be
9 in writing, on a form prescribed by the Commission, and accompanied
10 by a fee of One Dollar (\$1.00) per search request, not to exceed One
11 Dollar (\$1.00) per claims record of a particular worker. The fee
12 shall be deposited to the credit of the Workers' Compensation
13 Commission Revolving Fund. The form shall require identification of
14 the person requesting the information, and the person for whom a
15 search is being made if different from the requester. The form must
16 contain an affidavit signed by the requester under penalty of
17 perjury that the information sought is not requested for a purpose
18 in violation of state or federal law. The form must be used by all
19 repositories of archived Court claim files. All request forms shall
20 be maintained by the Commission as a public record, together with a
21 record of a worker's written authorization permitting a search
22 indexed by the worker's Social Security number as required by
23 Section 3113 of Title 74 of the Oklahoma Statutes. The request
24

1 forms and authorizations shall be indexed alphabetically by the last
2 name of the worker.

3 2. This subsection shall not apply:

4 a. to requests for claims information made by a public
5 officer or by a public employee in the performance of
6 his or her duties on behalf of a governmental entity
7 or as may be allowed by law,

8 b. to requests for claims information made by an insurer,
9 self-insured employer, third-party claims
10 administrator, or a legal representative thereof, when
11 necessary to process or defend a workers' compensation
12 claim,

13 c. when a worker or the worker's representative requests
14 review of the worker's claims information,

15 d. when the disclosure is made for educational or
16 research purposes and in such a manner that the
17 disclosed information cannot be used to identify any
18 worker who is the subject of a claim,

19 e. to requests for claims information made by a health
20 care or rehabilitation provider or the provider's
21 legal representative when necessary to process payment
22 of health care or rehabilitation services rendered to
23 a worker, and
24

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

11 SECTION 114. AMENDATORY Section 164, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 121), is amended to read as
13 follows:

14 Section 121. A. There is hereby created an Advisory Council on
15 Workers' Compensation.

16 B. The voting membership of the Advisory Council shall consist
17 of nine (9) members. Any member serving on the effective date of
18 this section shall serve the remainder of his or her term. The
19 chair of the Workers' Compensation Commission shall be an ex officio
20 nonvoting member.

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

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

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

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

13 1. The term of office for three positions, one each appointed
14 by the Governor, the President Pro Tempore of the Senate and the
15 Speaker of the House of Representatives shall expire on January 1,
16 2015;

17 2. The term of office for three positions, one each appointed
18 by the Governor, the President Pro Tempore of the Senate and the
19 Speaker of the House of Representatives shall expire on January 1,
20 2016; and

21 3. The term of office for three positions, one each appointed
22 by the Governor, the President Pro Tempore of the Senate and the
23 Speaker of the House of Representatives shall expire on January 1,
24 2017.

1 D. Thereafter, successors in office shall be appointed for a
2 three-year term. Members shall be eligible to succeed themselves in
3 office.

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

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

8 G. Members shall receive their traveling and other necessary
9 expenses incurred in the performance of their duties as provided in
10 the State Travel Reimbursement Act.

11 H. Meetings of the Advisory Council shall be quarterly or as
12 called by the chair or upon petition by a majority of the voting
13 members. The presence of five voting members constitutes a quorum.
14 No action shall be taken by the Advisory Council without the
15 affirmative vote of at least five members.

16 I. The Commission shall provide office supplies and personnel
17 of the Commission to carry out any of the duties that have been
18 entrusted to the Advisory Council.

19 J. The Advisory Council shall analyze and review the workers'
20 compensation system, the reports of the Commission, and trends in
21 the field of workers' compensation. The Advisory Council may
22 recommend improvements and proper responses to developing trends.
23 The Advisory Council shall report its findings annually to the
24 Governor, the Chief Justice of the Supreme Court, the President Pro

1 Tempore of the Senate, and the Speaker of the House of
2 Representatives.

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

7 ~~E. The Advisory Council shall review the Oklahoma Treatment~~
8 ~~Guidelines as provided in the Workers' Compensation Code, and report~~
9 ~~the findings of such review to the Commission as provided in this~~
10 ~~act.~~

11 SECTION 115. AMENDATORY Section 167, Chapter 208, O.S.L.
12 2013, as amended by Section 7, Chapter 169, O.S.L. 2014 (85A O.S.
13 Supp. 2018, Section 124), is amended to read as follows:

14 Section 124. A. 1. All unexpended funds, assets, property,
15 records, personnel and any outstanding financial obligations and
16 encumbrances of the Workers' Compensation Court before February 1,
17 2014, are hereby transferred to the Workers' Compensation
18 Commission, except for personnel transferred to the Workers'
19 Compensation Court of Existing Claims on July 9, 2014. The
20 personnel transferred to the Commission and retained by the
21 Commission shall retain leave, sick and annual time earned and any
22 retirement and longevity benefits which have accrued during their
23 employment with the state. The salaries of employees who are
24 transferred shall not be reduced as a direct and immediate result of

1 the transfer. There shall be no reduction-in-force as a result of
2 the transfer. The Workers' Compensation Court of Existing Claims
3 shall pay the expense of maintaining the records of the Court and
4 the records of the former Workers' Compensation Court for as long as
5 the Legislature appropriates funding to the Court independent of
6 funding for the Commission. Thereafter, all such records shall be
7 transferred to the Commission.

8 2. Any unexpended funds, including interest thereon, held by
9 the State Treasurer in an interest-bearing division special account
10 maintained by the Workers' Compensation Court before February 1,
11 2014, from which a self-insured employer's workers' compensation
12 obligations are paid following nonpayment by the self-insured
13 employer for any reason, including insolvency, shall be transferred
14 to the Workers' Compensation Commission. Such funds shall be
15 expended by the Commission only for the purpose of paying workers'
16 compensation obligations of the self-insured employer, and costs
17 related to the administration of such obligations, to the extent of
18 the availability of such funds.

19 B. 1. All unexpended funds, assets, property, and records and
20 any outstanding financial obligations and encumbrances of the
21 Workers' Compensation Self-insurance Guaranty Fund Board before
22 February 1, 2014, are hereby transferred to the Self-insurance
23 Guaranty Fund Board created ~~in the Administrative Workers'~~
24 ~~Compensation Act~~ by this title.

1 2. Any unexpended funds, including interest thereon, held by
2 the State Treasurer in the Workers' Compensation Self-insurance
3 Guaranty Fund before February 1, 2014, shall be transferred to the
4 Self-insurance Guaranty Fund Board created by the Administrative
5 Workers' Compensation Act. Such funds shall be expended by the
6 Board only as authorized in the Administrative Workers' Compensation
7 Act.

8 3. Any claim existing or action or proceeding pending by,
9 against or before the Workers' Compensation Self-insurance Guaranty
10 Fund Board when the Board ceased existence may be continued as if
11 the Self-insurance Guaranty Fund Board was not created, or the Self-
12 insurance Guaranty Fund Board may be substituted in the matter. The
13 Self-insurance Guaranty Fund Board shall be responsible and liable
14 for all liabilities and obligations of the Workers' Compensation
15 Self-insurance Guaranty Fund Board.

16 C. All property and records of the Physician Advisory Committee
17 before February 1, 2014, are hereby transferred to the Physician
18 Advisory Committee created in the Administrative Workers'
19 Compensation Act.

20 D. All property and records of the Advisory Council on Workers'
21 Compensation before February 1, 2014, are hereby transferred to the
22 Advisory Council on Workers' Compensation created in the
23 Administrative Workers' Compensation Act.

24

1 E. All unexpended funds, assets, property, records, personnel
2 and any outstanding financial obligations and encumbrances of the
3 Multiple Injury Trust Fund before February 1, 2014, are hereby
4 transferred to the Multiple Injury Trust Fund created in the
5 Administrative Workers' Compensation Act. The personnel transferred
6 shall retain leave, sick and annual time earned and any retirement
7 and longevity benefits which have accrued during their employment
8 with the state. The salaries of employees who are transferred shall
9 not be reduced as a direct and immediate result of the transfer.
10 There shall be no reduction-in-force as a result of the transfer.

11 F. The Director of the Office of Management and Enterprise
12 Services is hereby directed to coordinate the transfer of funds,
13 allotments, purchase orders, outstanding financial obligations or
14 encumbrances provided for in subsections A and E of this section,
15 and the transfer of funds, outstanding financial obligations or
16 encumbrances provided for in subsection B of this section.

17 SECTION 116. AMENDATORY Section 121, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, Section 300), is amended to read as
19 follows:

20 Section 300. Sections ~~121~~ 300 through ~~149~~ 328 of this ~~act~~ title
21 shall be known and may be cited as the "Workers' Compensation
22 Arbitration Act".
23
24

1 SECTION 117. AMENDATORY Section 125, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 304), is amended to read as
3 follows:

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

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

11 1. Waive or agree to vary the effect of the requirements of
12 subsection A of Section ~~126~~ 305, subsection A of Section ~~127~~ 306,
13 Section ~~128~~ 307, subsection A or B of Section ~~138~~ 317, Section ~~147~~
14 326 or Section ~~149~~ 328 of this ~~act~~ title;

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

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

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

23 5. Agree to conduct arbitration proceedings outside of this
24 state.

1 C. A party to an agreement to arbitrate or to an arbitration
2 proceeding may not waive, or the parties may not vary the effect of,
3 the requirements of this section or subsection A or C of Section ~~124~~
4 304, Sections ~~128, 135 and 139~~ 307, 314 and 318, subsection D or E
5 of Section ~~141~~ 320, Sections ~~143, 144 and 145~~ 322, 323 and 324, or
6 subsection A or B of Section ~~146~~ 325 of this ~~act~~ title.

7 SECTION 118. AMENDATORY Section 126, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 305), is amended to read as
9 follows:

10 Section 305. A. Except as otherwise provided in Section ~~150~~
11 107 of this ~~act~~ title, an application for judicial relief under this
12 act shall be made by application and motion to the Workers'
13 Compensation Commission and heard in the manner provided by law or
14 rule of the Commission for making and hearing motions.

15 B. Unless a civil action involving the agreement to arbitrate
16 is pending, notice of an initial application and motion to the
17 Commission under this act shall be served in the manner provided by
18 law for the service of a summons in the filing of a civil action.
19 Otherwise, notice of the motion shall be given in the manner
20 provided by law or rule of court for serving motions in pending
21 cases.

22 SECTION 119. AMENDATORY Section 128, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 307), is amended to read as
24 follows:

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

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

7 2. If the refusing party opposes the motion, the Commission
8 shall proceed summarily to decide the issue and order the parties to
9 arbitrate unless it finds that there is no enforceable agreement to
10 arbitrate. The Commission may also assess costs against the party
11 opposing the motion if it concludes the opposition was not brought
12 in good faith to be deposited in the Workers' Compensation
13 Commission Revolving Fund created by the Administrative Workers'
14 Compensation Act in Section 28.1 of this title.

15 B. On motion of a person alleging that an arbitration
16 proceeding has been initiated or threatened but that there is no
17 agreement to arbitrate, the Commission shall proceed summarily to
18 decide the issue. If the Commission finds that there is an
19 enforceable agreement to arbitrate, it shall order the parties to
20 arbitrate. The Commission may also assess costs against the party
21 opposing the motion if the Commission concludes the opposition was
22 not brought in good faith to be deposited in the Workers'
23 Compensation Fund created by the Administrative Workers'
24 Compensation Act.

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

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

8 E. If a party challenges the enforceability of an arbitration
9 agreement, the underlying claim, including all benefits, shall be
10 stayed until the Commission determines whether an enforceable
11 arbitration agreement exists.

12 SECTION 120. AMENDATORY Section 133, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2018, Section 312), is amended to read as
14 follows:

15 Section 312. A. Before accepting appointment, an individual
16 who is requested to serve as an arbitrator, after making a
17 reasonable inquiry, shall disclose to the parties to the arbitration
18 agreement, the parties to the arbitration proceeding, and any other
19 arbitrators any known facts that a reasonable person would consider
20 likely to affect the impartiality of the arbitrator in the
21 arbitration proceeding, including but not limited to:

22 1. A financial or personal interest in the outcome of the
23 arbitration proceeding; and
24

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

4 B. An arbitrator has a continuing obligation to disclose to the
5 parties to the arbitration agreement, the arbitration proceeding,
6 and to any other arbitrators any facts that the arbitrator learns
7 after accepting appointment which a reasonable person would consider
8 likely to affect the impartiality of the arbitrator.

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

16 SECTION 121. AMENDATORY Section 134, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2018, Section 313), is amended to read as
18 follows:

19 Section 313. If there is more than one arbitrator, the powers
20 of an arbitrator shall be exercised by a majority of the
21 arbitrators, but all of them shall conduct the hearing under Section
22 ~~136~~ 315 of this ~~act~~ title.

1 SECTION 122. AMENDATORY Section 135, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 314), is amended to read as
3 follows:

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

8 B. The immunity afforded by this section supplements any
9 immunity under other law.

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

13 D. An arbitrator or representative of an arbitration
14 organization is not competent to testify in a judicial,
15 administrative, or similar proceeding and may not be required to
16 produce records as to any statement, conduct, decision, or ruling
17 occurring during the arbitration proceeding, to the same extent as a
18 judge of a court of this state acting in a judicial capacity. This
19 subsection shall not apply to:

20 1. The extent necessary to determine the claim of an
21 arbitrator, arbitration organization, or representative of the
22 arbitration organization against a party to the arbitration
23 proceeding; or
24

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

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

17 SECTION 123. AMENDATORY Section 137, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, Section 316), is amended to read as
19 follows:

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

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

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

3 SECTION 124. AMENDATORY Section 139, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 318), is amended to read as
5 follows:

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

16 SECTION 125. AMENDATORY Section 141, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2018, Section 320), is amended to read as
18 follows:

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

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

23
24

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

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

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

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

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

20 3. To clarify the award.

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

1 SECTION 126. AMENDATORY Section 142, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 321), is amended to read as
3 follows:

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

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

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

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

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

22 SECTION 127. AMENDATORY Section 143, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 322), is amended to read as
24 follows:

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

8 SECTION 128. AMENDATORY Section 144, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2018, Section 323), is amended to read as
10 follows:

11 Section 323. A. On an application and motion to the court by a
12 party to an arbitration proceeding, the Workers' Compensation
13 Commission shall vacate an award made in the arbitration proceeding
14 if:

15 1. The award was procured by corruption, fraud, or other undue
16 means;

17 2. There was:

18 a. evident partiality by an arbitrator appointed as a
19 neutral arbitrator,

20 b. corruption by an arbitrator, or

21 c. misconduct by an arbitrator prejudicing the rights of
22 a party to the arbitration proceeding;

23 3. An arbitrator refused to postpone the hearing upon showing
24 of sufficient cause for postponement, refused to consider evidence

1 material to the controversy, or otherwise conducted the hearing
2 contrary to Section ~~136~~ 315 of this ~~act~~ title, so as to prejudice
3 substantially the rights of a party to the arbitration proceeding;

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

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

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

11 B. An application and motion under this section shall be filed
12 within thirty (30) days after the movant receives notice of the
13 award or within thirty (30) days after the movant receives notice of
14 a modified or corrected award, unless the movant alleges that the
15 award was procured by corruption, fraud, or other undue means, in
16 which case the motion shall be made within ninety (90) days after
17 the ground is known or by the exercise of reasonable care would have
18 been known by the movant.

19 C. If the Commission vacates an award it may order a rehearing.
20 If the award is vacated on a ground stated in paragraph 1, 2 or 6 of
21 subsection A of this section, the rehearing shall be before a new
22 arbitrator. If the award is vacated on a ground stated in paragraph
23 3, 4 or 5 of subsection A of this section, the rehearing may be
24 before the arbitrator who made the award or the arbitrator's

1 successor. The arbitrator shall render the decision in the
2 rehearing within the same time as that provided in subsection B of
3 Section ~~140~~ 319 of this ~~act~~ title for an award.

4 D. If the Commission denies a motion to vacate an award, it
5 shall confirm the award unless a motion to modify or correct the
6 award is pending.

7 SECTION 129. AMENDATORY Section 148, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 327), is amended to read as
9 follows:

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

- 12 1. An order denying a motion to compel arbitration;
- 13 2. An order granting a motion to stay arbitration;
- 14 3. An order confirming or denying confirmation of an award;
- 15 4. An order modifying or correcting an award;
- 16 5. An order vacating an award without directing a rehearing; or
- 17 6. A final judgment entered under the Workers' Compensation
18 Arbitration Act.

19 SECTION 130. AMENDATORY Section 169, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2018, Section 400), is amended to read as
21 follows:

22 Section 400. A. The Workers' Compensation Court shall be
23 renamed the Workers' Compensation Court of Existing Claims for the
24 purpose of hearing disputes relating to claims that arise before

1 February 1, 2014. The Court shall consist of the existing judges
2 for the remainder of his or her term. Each judge of the Court shall
3 continue to serve as the appointment to a designated numbered
4 position on the Court. The positions shall be numbered one through
5 ten. The terms of the judges by position number shall expire on the
6 following dates:

7 Position 1 shall expire 7-1-14.

8 Position 2 shall expire 7-1-14.

9 Position 3 shall expire 7-1-14.

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

11 Position 5 shall expire 7-1-20.

12 Position 6 shall expire 7-1-16.

13 Position 7 shall expire 7-1-16.

14 Position 8 shall expire 7-1-20.

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

16 Position 10 shall expire 7-1-14.

17 Provided, judges who are serving unexpired terms on the Workers'
18 Compensation Court on the effective date of this section shall serve
19 on the Court created by this section until their respective terms
20 expire as provided in this act. Thereafter, each position shall be
21 dissolved. After a judge serves this term, such judge shall be
22 eligible to reapply for an administrative law judge with the
23 Workers' Compensation Commission.

24

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

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

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

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

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

10 ~~F.~~ G. The principal office of the Court shall be situated in
11 the City of Oklahoma City in quarters assigned by the Office of
12 Management and Enterprise Services. The Court may hold hearings in
13 any city of this state.

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

17 ~~H.~~ I. Judges of the Workers' Compensation Court of Existing
18 Claims may punish for direct contempt pursuant to Sections 565,
19 565.1 and 566 of Title 21 of the Oklahoma Statutes.

20 ~~I.~~ J. The Court shall be vested with jurisdiction over all
21 claims filed pursuant to the Workers' Compensation Code or previous
22 statute in effect on the date of an injury that occurred before
23 February 1, 2014. All claims so filed shall be heard by the judge
24 sitting without a jury. The Court shall have full power and

1 authority to determine all questions in relation to payment of
2 claims for compensation under the provisions of the Workers'
3 Compensation Code. The Court, upon application of either party,
4 shall order a hearing. Upon a hearing, either party may present
5 evidence and be represented by counsel. The decision of the Court
6 shall be final as to all questions of fact and law; provided, the
7 decision of the Court may be appealed to the ~~Commission~~ Court en
8 banc or the Supreme Court as provided by the Workers' Compensation
9 Code. In the event that an insufficient number of active judges are
10 available to comprise the three-judge en banc panel, retired or
11 former judges of the district court, Workers' Compensation Court or
12 Workers' Compensation Court of Existing Claims shall be designated
13 by the Chief Justice of the Supreme Court as eligible to serve on
14 such panel. Such designation shall be made annually by the Chief
15 Justice by November 15 each year for the selection of panels by the
16 administrative officer of the Court of Existing Claims for the
17 following year. The decision of the Court shall be issued within
18 sixty (60) days following the submission of the case by the parties.
19 The power and jurisdiction of the Court over each case shall be
20 continuing and it may, from time to time, make such modifications or
21 changes with respect to former findings or orders relating thereto
22 if, in its opinion, it may be justified.

23 ~~J. Any appeal of an order by the Workers' Compensation Court of~~
24 ~~Existing Claims shall be heard by the Commission en banc. The~~

1 ~~Commission shall review the decision using an abuse of discretion~~
2 ~~standard of review. Orders by the Commission may be appealed in~~
3 ~~accordance with Section 78 of this act.~~

4 K. ~~To protect the integrity of the transition from the Workers'~~
5 ~~Compensation Court to the administrative system created by this act,~~
6 ~~and to protect all rights and privileges of parties to claims~~
7 ~~adjudicated by the Workers' Compensation Court, the Commission shall~~
8 ~~retain all remedies and responsibilities of the Workers'~~
9 ~~Compensation Court for as long as cases involving claims for~~
10 ~~compensation accruing before the effective date of this act but~~
11 ~~filed thereafter or which were pending before or adjudicated by the~~
12 ~~Workers' Compensation Court shall remain open.~~

13 L. ~~For an injury occurring before the effective date of this~~
14 ~~act February 1, 2014, all benefits and procedures to obtain benefits~~
15 ~~shall be determined by the workers' compensation law of this state~~
16 ~~in effect on the date of the injury. Administrative law judges of~~
17 ~~the Commission shall enforce all final orders of the Workers'~~
18 ~~Compensation Court in a manner to secure for all parties the due~~
19 ~~process and equal protection guarantees of the Constitution of the~~
20 ~~State of Oklahoma.~~

21 M. L. All accrued rights and penalties incurred pursuant to a
22 final order of the Workers' Compensation Court shall be preserved.
23 ~~Administrative law judges of the Commission shall be authorized to~~
24 ~~issue orders and conduct legal proceedings to enforce all such~~

1 ~~accrued rights and penalties incurred.~~ No accrued right, penalty
2 incurred, or proceeding begun by virtue of a statute repealed by
3 this act shall be abrogated by the terms of this act.

4 SECTION 131. AMENDATORY 25 O.S. 2011, Section 307, as
5 last amended by Section 1, Chapter 252, O.S.L. 2018 (25 O.S. Supp.
6 2018, Section 307), is amended to read as follows:

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

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

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

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

16 3. Discussing the purchase or appraisal of real property;

17 4. Confidential communications between a public body and its
18 attorney concerning a pending investigation, claim, or action if the
19 public body, with the advice of its attorney, determines that
20 disclosure will seriously impair the ability of the public body to
21 process the claim or conduct a pending investigation, litigation, or
22 proceeding in the public interest;

23 5. Permitting district boards of education to hear evidence and
24 discuss the expulsion or suspension of a student when requested by

1 the student involved or the student's parent, attorney or legal
2 guardian;

3 6. Discussing matters involving a specific handicapped child;

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

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

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

12 10. Discussing contract negotiations involving contracts
13 requiring approval of the Board of Corrections, which shall be
14 limited to members of the public body, the attorney for the public
15 body, and the immediate staff of the public body. No person who may
16 profit directly or indirectly by a proposed transaction which is
17 under consideration may be present or participate in the executive
18 session; or

19 11. Discussing the following:

20 a. the investigation of a plan or scheme to commit an act
21 of terrorism,

22 b. assessments of the vulnerability of government
23 facilities or public improvements to an act of
24 terrorism,

- 1 c. plans for deterrence or prevention of or protection
2 from an act of terrorism,
- 3 d. plans for response or remediation after an act of
4 terrorism,
- 5 e. information technology of the public body but only if
6 the discussion specifically identifies:
- 7 (1) design or functional schematics that demonstrate
8 the relationship or connections between devices
9 or systems,
- 10 (2) system configuration information,
- 11 (3) security monitoring and response equipment
12 placement and configuration,
- 13 (4) specific location or placement of systems,
14 components or devices,
- 15 (5) system identification numbers, names, or
16 connecting circuits,
- 17 (6) business continuity and disaster planning, or
18 response plans, or
- 19 (7) investigation information directly related to
20 security penetrations or denial of services, or
- 21 f. the investigation of an act of terrorism that has
22 already been committed.
23
24

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

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

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

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

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

12 4. The Oklahoma Center for the Advancement of Science and
13 Technology, as provided for in Section 5060.7 of Title 74 of the
14 Oklahoma Statutes;

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

17 ~~6.~~ The Oklahoma Health Research Committee for purposes of
18 conferring on matters pertaining to research and development of
19 products, if public disclosure of the matter discussed would
20 interfere with the development of patents, copyrights, products, or
21 services;

22 6. The Workers' Compensation Commission for the purposes
23 specified in Section 19 of Title 85A of the Oklahoma Statutes;
24

1 7. A review committee, as provided for in Section 855 of Title
2 62 of the Oklahoma Statutes;

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

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

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

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

21 12. The Oklahoma Indigent Defense System Board for purposes of
22 discussing negotiating strategies in connection with making possible
23 counteroffers to offers to contract to provide legal representation
24 to indigent criminal defendants and indigent juveniles in cases for

1 which the System must provide representation pursuant to the
2 provisions of the Indigent Defense System Act; and

3 13. The Quality Investment Committee for purposes of discussing
4 applications and confidential materials pursuant to the terms of the
5 Oklahoma Quality Investment Act.

6 D. Except as otherwise specified in this subsection, an
7 executive session for the purpose of discussing the purchase or
8 appraisal of real property shall be limited to members of the public
9 body, the attorney for the public body and the immediate staff of
10 the public body. No landowner, real estate salesperson, broker,
11 developer or any other person who may profit directly or indirectly
12 by a proposed transaction concerning real property which is under
13 consideration may be present or participate in the executive
14 session, unless they are operating under an existing agreement to
15 represent the public body.

16 E. No public body may go into an executive session unless the
17 following procedures are strictly complied with:

18 1. The proposed executive session is noted on the agenda as
19 provided in Section 311 of this title;

20 2. The executive session is authorized by a majority vote of a
21 quorum of the members present and the vote is a recorded vote; and

22 3. Except for matters considered in executive sessions of the
23 State Banking Board and the Oklahoma Savings and Loan Board, and
24 which are required by state or federal law to be confidential, any

1 vote or action on any item of business considered in an executive
2 session shall be taken in public meeting with the vote of each
3 member publicly cast and recorded.

4 F. A willful violation of the provisions of this section shall:

5 1. Subject each member of the public body to criminal sanctions
6 as provided in Section 314 of this title; and

7 2. Cause the minutes and all other records of the executive
8 session, including tape recordings, to be immediately made public.

9 SECTION 132. REPEALER Section 15, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2018, Section 15), is hereby repealed.

11 SECTION 133. REPEALER Sections 107, 108, 109, 110, as
12 amended by Section 4, Chapter 390, O.S.L. 2015, 111, 112, as amended
13 by Section 5, Chapter 390, O.S.L. 2015, 113, 114, 115, 116, 117,
14 118, as amended by Section 6, Chapter 390, O.S.L. 2015, 119 and 120,
15 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 200, 201,
16 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212 and 213), are
17 hereby repealed.

18 SECTION 134. It being immediately necessary for the
19 preservation of the public peace, health or safety, an emergency is
20 hereby declared to exist, by reason whereof this act shall take
21 effect and be in full force from and after its passage and approval.

22
23
24

1 Passed the House of Representatives the 13th day of March, 2019.

2
3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2019.

6
7
8 _____
9 Presiding Officer of the Senate