

**COMMITTEE AMENDMENT**

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3897 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by  
inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Amendment submitted by: Chris Kannady

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

PROPOSED COMMITTEE  
SUBSTITUTE  
FOR  
HOUSE BILL NO. 3897

By: Kannady

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending 85A O.S. 2021, Sections 2, 3, 5, 13, 35, 45, 46, 47, 50, 69, 80 and 112, which relate to administration of the workers' compensation system; modifying definitions; modifying terms related to compensable injury; modifying terms related to accidents; modifying provisions related to exclusive nature of remedy; modifying reference to certain publication; modifying provisions related to liability for intentional acts; modifying provisions related to permanent partial disability; modifying provisions related to compensation for loss of certain scheduled members; modifying provisions related to computation of certain benefit amounts; modifying provisions related to computation of certain time periods; modifying provisions related to certain beneficiary payments; modifying provisions related to travel reimbursement process; imposing certain time limits; providing for computation of amounts; modifying provisions related to filing of claims; modifying provisions related to final order for permanent disability; authorizing review by Workers' Compensation Commission; authorizing process for independent medical examiner in certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 85A O.S. 2021, Section 2, is

amended to read as follows:

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

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

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

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

4. "Case manager" means a person who is a registered nurse with a current, active unencumbered license from the Oklahoma Board of

1 Nursing, or possesses one or more of the following certifications  
2 which indicate the individual has a minimum number of years of case  
3 management experience, has passed a national competency test and  
4 regularly obtains continuing education hours to maintain  
5 certification:

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

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

23 6. "Child" means a natural or adopted son or daughter of the  
24 employee under eighteen (18) years of age; or a natural or adopted

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

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

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

16 9. a. "Compensable injury" means damage or harm to the  
17 physical structure of the body, or damage or harm to  
18 prosthetic appliances, including eyeglasses, contact  
19 lenses, or hearing aids, of which the major cause is  
20 either an accident, cumulative trauma or occupational  
21 disease arising out of the course and scope of  
22 employment. An "accident" means an event involving  
23 factors external to the employee that:  
24

- (1) was unintended, unanticipated, unforeseen,  
unplanned and unexpected,
- (2) occurred at a specifically identifiable time and  
place,
- (3) occurred by chance or from unknown causes, ~~or~~
- (4) was independent of sickness, mental incapacity,  
bodily infirmity or any other cause, and
- (5) was not as the result of an intentional act.

b. "Compensable injury" does not include:

- (1) injury to any active participant in assaults or  
combats which, although they may occur in the  
workplace, are the result of non-employment-  
related hostility or animus of one, both, or all  
of the combatants and which assault or combat  
amounts to a deviation from customary duties;  
provided, however, injuries caused by horseplay  
shall not be considered to be compensable  
injuries, except for innocent victims,
- (2) injury incurred while engaging in or performing  
or as the result of engaging in or performing any  
recreational or social activities for the  
employee's personal pleasure,
- (3) injury which was inflicted on the employee at a  
time when employment services were not being

1 performed or before the employee was hired or  
2 after the employment relationship was terminated,  
3 (4) injury if the accident was caused by the use of  
4 alcohol, illegal drugs, or prescription drugs  
5 used in contravention of physician's orders. If  
6 a biological specimen is collected within twenty-  
7 four (24) hours of the employee being injured or  
8 reporting an injury, or if at any time after the  
9 injury a biological specimen is collected by the  
10 Oklahoma Office of the Chief Medical Examiner if  
11 the injured employee does not survive for at  
12 least twenty-four (24) hours after the injury and  
13 the employee tests positive for intoxication, an  
14 illegal controlled substance, or a legal  
15 controlled substance used in contravention to a  
16 treating physician's orders, or refuses to  
17 undergo the drug and alcohol testing, there shall  
18 be a rebuttable presumption that the injury was  
19 caused by the use of alcohol, illegal drugs, or  
20 prescription drugs used in contravention of  
21 physician's orders. This presumption may only be  
22 overcome if the employee proves by clear and  
23 convincing evidence that his or her state of  
24

1                   intoxication had no causal relationship to the  
2                   injury,

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

13          (6) any preexisting condition except when the  
14          treating physician clearly confirms an  
15          identifiable and significant aggravation incurred  
16          in the course and scope of employment,

17          (7) any injury resulting from an idiopathic injury or  
18          condition, or

19          (8) any injury resulting from an intentional act.

20          c. Where compensation is payable for an injury resulting  
21          from cumulative trauma, the last employer in whose  
22          employment the employee was last injuriously exposed  
23          to the trauma during a period of at least ninety (90)  
24          days or more, and the insurance carrier, if any, on



1        the risk when the employee was last so exposed under  
2        such employer, shall alone be liable therefor, without  
3        right to contribution from any prior employer or  
4        insurance carrier. If there is no employer in whose  
5        employment the employee was injuriously exposed to the  
6        trauma for a period of at least ninety (90) days, then  
7        the last employer in whose employment the employee was  
8        last injuriously exposed to the trauma and the  
9        insurance carrier, if any, on the risk when such  
10       employee was last so exposed under such employer,  
11       shall be liable therefor, with right to contribution  
12       from any prior employer or insurance carrier.

13       d.    A compensable injury shall be established by medical  
14       evidence supported by objective findings as defined in  
15       paragraph ~~34~~ 33 of this section.

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

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

1           intervening cause does not require negligence or  
2           recklessness on the part of a claimant.

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

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

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

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

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

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

1 an area owned by or exclusively controlled by the  
2 employer and the work break is authorized by the  
3 employee's supervisor;

4 14. "Cumulative trauma" means an injury to an employee that is  
5 caused by the combined effect of repetitive physical activities  
6 extending over a period of time in the course and scope of  
7 employment. Cumulative trauma shall not mean fatigue, soreness or  
8 general aches and pain that may have been caused, aggravated,  
9 exacerbated or accelerated by the employee's course and scope of  
10 employment. Cumulative trauma shall have resulted directly and  
11 independently of all other causes;

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

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

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

23 18. a. "Employee" means any person, including a minor, in the  
24 service of an employer under any contract of hire or

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

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

- 19 (1) any person for whom an employer is liable under  
20 any Act of Congress for providing compensation to  
21 employees for injuries, disease or death arising  
22 out of and in the course of employment including,  
23 but not limited to, the Federal Employees'  
24 Compensation Act, the Federal Employers'

Liability Act, the Longshore and Harbor Workers' Compensation Act and the Jones Act, to the extent his or her employees are subject to such acts,

(2) any person who is employed in agriculture, ranching or horticulture by an employer who had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars (\$100,000.00) wages for agricultural, ranching or horticultural workers, or any person who is employed in agriculture, ranching or horticulture who is not engaged in operation of motorized machines. This exemption applies to any period of time for which such employment exists, irrespective of whether or not the person is employed in other activities for which the exemption does not apply. If the person is employed for part of a year in exempt activities and for part of a year in nonexempt activities, the employer shall be responsible for providing workers' compensation only for the period of time for which the person is employed in nonexempt activities,

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

- 1 (4) any person employed by an employer with five or  
2 fewer total employees, all of whom are related  
3 within the second degree by blood or marriage to  
4 the employer, all of whom are dependents living  
5 in the household of the employer, or all of whom  
6 are a combination of such relatives and  
7 dependents. If the employer is not a natural  
8 person such relative shall be related within the  
9 second degree by blood or marriage to a person  
10 who owns fifty percent (50%) or more of the  
11 employer, or such dependent shall be in the  
12 household of a person who owns fifty percent  
13 (50%) or more of the employer,
- 14 (5) any person employed by an employer which is a  
15 youth sports league which qualifies for exemption  
16 from federal income taxation pursuant to federal  
17 law,
- 18 (6) sole proprietors, members of a partnership,  
19 individuals who are party to a franchise  
20 agreement as set out by the Federal Trade  
21 Commission franchise disclosure rule, 16 CFR  
22 436.1 through 436.11, members of a limited  
23 liability company who own at least ten percent  
24 (10%) of the capital of the limited liability

1 company or any stockholder-employees of a  
2 corporation who own ten percent (10%) or more  
3 stock in the corporation, unless they elect to be  
4 covered by a policy of insurance covering  
5 benefits under the Administrative Workers'  
6 Compensation Act,

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

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

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



- 1 (9) a person referred to as a drive-away owner-  
2 operator who privately owns and utilizes a tow  
3 vehicle in drive-away operations and operates  
4 independently for hire, if the drive-away owner-  
5 operator actually utilizes the tow vehicle and if  
6 the person contracting with the drive-away owner-  
7 operator is not the lessor of the tow vehicle.  
8 Provided, however, a drive-away owner-operator  
9 shall not be precluded from workers' compensation  
10 coverage under the Administrative Workers'  
11 Compensation Act if the drive-away owner-operator  
12 elects to participate as a sole proprietor, and  
13 (10) any person who is employed as a domestic servant  
14 or as a casual worker in and about a private home  
15 or household, which private home or household had  
16 a gross annual payroll in the preceding calendar  
17 year of less than Fifty Thousand Dollars  
18 (\$50,000.00) for such workers;

19 19. "Employer" means a natural person, partnership,  
20 association, limited liability company, corporation, and the legal  
21 representatives of a deceased employer, or the receiver or trustee  
22 of a person, partnership, association, corporation, or limited  
23 liability company, departments, instrumentalities and institutions  
24 of this state and divisions thereof, counties and divisions thereof,

1 public trusts, boards of education and incorporated cities or towns  
2 and divisions thereof, employing a person included within the term  
3 "employee" as defined in this section. Employer may also mean the  
4 employer's workers' compensation insurance carrier, if applicable.  
5 Except as provided otherwise, this act applies to all public and  
6 private entities and institutions;

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

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

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

18 23. "Idiopathic" means an injury or condition, where neither  
19 the cause, nor the resulting injury bears any special relation to  
20 the work or to the conditions under which the act was being  
21 performed and though it occurs in the course of the employment, does  
22 not arise out of the employment;

23 24. "Impaired self-insurer" means a private self-insurer or  
24 group self-insurance association that fails to pay its workers'

1 compensation obligations, or is financially unable to do so and is  
2 the subject of any proceeding under the Federal Bankruptcy Reform  
3 Act of 1978, and any subsequent amendments or is the subject of any  
4 proceeding in which a receiver, custodian, liquidator,  
5 rehabilitator, trustee or similar officer has been appointed by a  
6 court of competent jurisdiction to act in lieu of or on behalf of  
7 the self-insurer;

8 ~~24.~~ 25. "Incapacity" means inadequate strength or ability to  
9 perform a work-related task;

10 ~~25.~~ 26. "Insurance Commissioner" means the Insurance  
11 Commissioner of the State of Oklahoma;

12 ~~26.~~ 27. "Insurance Department" means the Insurance Department  
13 of the State of Oklahoma;

14 ~~27.~~ 28. "Intentional act" means an injury occurring only when  
15 the employee is injured as a result of a willful, deliberate, and  
16 specific intent to cause such injury and only when the act that was  
17 the proximate cause of the injury was not normally within the  
18 employer-employee relationship and was not an employment risk  
19 related to the business of the employer. Knowledge that the injury  
20 was substantially certain to result from the conduct shall not  
21 constitute an intentional act;

22 29. "Major cause" means more than fifty percent (50%) of the  
23 resulting injury, disease or illness. A finding of major cause  
24 shall be established by a preponderance of the evidence. A finding

1 that the workplace was not a major cause of the injury, disease or  
2 illness shall not adversely affect the exclusive remedy provisions  
3 of this act and shall not create a separate cause of action outside  
4 this act;

5 ~~28.~~ 30. "Maximum medical improvement" means that no further  
6 material improvement would reasonably be expected from medical  
7 treatment or the passage of time;

8 ~~29.~~ 31. "Medical services" means those services specified in  
9 Section 50 of this title;

10 ~~30.~~ 32. "Misconduct" shall include the following:

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

~~31.~~ 33.

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

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

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

~~32.~~ 34. "Official Disability Guidelines" or "ODG" means the current edition of the Official Disability Guidelines and the ODG Treatment in Workers' Comp as published by the Work Loss Data Institute;

~~33.~~ 35. "Permanent disability" means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the Sixth Edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment", if the impairment is contained therein;

~~34.~~ 36. "Permanent partial disability" means a permanent disability or loss of use after maximum medical improvement has been reached ~~which prevents the injured employee, who has been released to return to work by the treating physician, from returning to his~~

1 ~~or her pre-injury or equivalent job.~~ All evaluations of permanent  
2 partial disability must be supported by objective findings;

3 ~~35.~~ 37. "Permanent total disability" means, based on objective  
4 findings, incapacity, based upon accidental injury or occupational  
5 disease, to earn wages in any employment for which the employee may  
6 become physically suited and reasonably fitted by education,  
7 training, experience or vocational rehabilitation provided under  
8 this act. Loss of both hands, both feet, both legs, or both eyes,  
9 or any two thereof, shall constitute permanent total disability;

10 ~~36.~~ 38. "Preexisting condition" means any illness, injury,  
11 disease, or other physical or mental condition, whether or not work-  
12 related, for which medical advice, diagnosis, care or treatment was  
13 recommended or received preceding the date of injury;

14 ~~37.~~ 39. "Pre-injury or equivalent job" means the job that the  
15 claimant was working for the employer at the time the injury  
16 occurred or any other employment offered by the claimant's employer  
17 that pays at least one hundred percent (100%) of the employee's  
18 average weekly wage;

19 ~~38.~~ 40. "Private self-insurer" means a private employer that  
20 has been authorized to self-insure its workers' compensation  
21 obligations pursuant to this act, but does not include group self-  
22 insurance associations authorized by this act, or any public  
23 employer that self-insures pursuant to this act;

1       ~~39.~~ 41. "Prosthetic" means an artificial device used to replace  
2 a part or joint of the body that is lost or injured in an accident  
3 or illness covered by this act;

4       ~~40.~~ 42. "Scheduled member" or "member" means hands, fingers,  
5 arms, legs, feet, toes, and eyes. In addition, for purposes of the  
6 Multiple Injury Trust Fund only, "scheduled member" means hearing  
7 impairment;

8       ~~41.~~ 43. "Scientifically based" involves the application of  
9 rigorous, systematic, and objective procedures to obtain reliable  
10 and valid knowledge relevant to medical testing, diagnoses and  
11 treatment; is adequate to justify the general conclusions drawn; and  
12 has been accepted by a peer-review journal or approved by a panel of  
13 independent experts through a comparably rigorous, objective, and  
14 scientific review;

15       ~~42.~~ 44. "State average weekly wage" means the state average  
16 weekly wage determined by the Oklahoma Employment Security  
17 Commission in the preceding calendar year. If such determination is  
18 not available, the Commission shall determine the wage annually  
19 after reasonable investigation;

20       ~~43.~~ 45. "Subcontractor" means a person, firm, corporation or  
21 other legal entity hired by the general or prime contractor to  
22 perform a specific task for the completion of a work-related  
23 activity;



1       ~~44.~~ 46. "Surgery" does not include an injection, or the forcing  
2 of fluids beneath the skin, for treatment or diagnosis;

3       ~~45.~~ 47. "Surviving spouse" means the employee's spouse by  
4 reason of a legal marriage recognized by the State of Oklahoma or  
5 under the requirements of a common law marriage in this state, as  
6 determined by the Workers' Compensation Commission;

7       ~~46.~~ 48. "Temporary partial disability" means an injured  
8 employee who is temporarily unable to perform his or her job, but  
9 may perform alternative work offered by the employer;

10       ~~47.~~ 49. "Time of accident" or "date of accident" means the time  
11 or date of the occurrence of the accidental incident from which  
12 compensable injury, disability, or death results; and

13       ~~48.~~ 50. "Wages" means money compensation received for  
14 employment at the time of the accident, including the reasonable  
15 value of board, rent, housing, lodging, or similar advantage  
16 received from the employer and includes the amount of tips required  
17 to be reported by the employer under Section 6053 of the Internal  
18 Revenue Code and the regulations promulgated pursuant thereto or the  
19 amount of actual tips reported, whichever amount is greater.

20       SECTION 2.       AMENDATORY       85A O.S. 2021, Section 3, is  
21 amended to read as follows:

22       Section 3. A. Every employer and every employee, unless  
23 otherwise specifically provided in this act, shall be subject and  
24 bound to the provisions of the Administrative Workers' Compensation

1 Act and every employer shall pay or provide benefits according to  
2 the provisions of this act for the ~~accidental~~ compensable injury or  
3 death of an employee arising out of and in the course of his or her  
4 employment, without regard to fault for such injury, if the  
5 employee's contract of employment was made or if the injury occurred  
6 within this state. If an employee makes a claim for an injury in  
7 another jurisdiction, the employee is precluded from his or her  
8 right of action under the Administrative Workers' Compensation Act  
9 unless the Workers' Compensation Commission determines that there is  
10 a change in circumstances that creates a good cause to bring the  
11 claim under the Administrative Workers' Compensation Act; provided,  
12 however, that the employee may not receive duplicate benefits to  
13 those received in the foreign jurisdiction and the employee's right  
14 to bring a claim under this act shall be subject to the limitations  
15 period for bringing a claim pursuant to paragraph 1 of subsection A  
16 of Section 69 of this title. Nothing in this act shall be construed  
17 to conflict with any valid Act of Congress governing the liability  
18 of employers for injuries received by their employees.

19 B. The State of Oklahoma accepts the provisions of the Acts of  
20 Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C.,  
21 Section 290, and hereby extends the territorial jurisdiction of the  
22 Administrative Workers' Compensation Act of this state to all lands  
23 and premises within the exterior boundaries of this state which the  
24 Government of the United States of America owns or holds by deed or

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

8 C. The Administrative Workers' Compensation Act shall apply  
9 only to claims for injuries and death ~~based on accidents~~ which occur  
10 on or after February 1, 2014.

11 D. The Workers' Compensation Code in effect before February 1,  
12 2014, shall govern all rights in respect to claims for injuries and  
13 death ~~based on accidents~~ occurring before February 1, 2014.

14 SECTION 3. AMENDATORY 85A O.S. 2021, Section 5, is  
15 amended to read as follows:

16 Section 5. A. The rights and remedies granted to an employee  
17 subject to the provisions of the Administrative Workers'  
18 Compensation Act shall be exclusive of all other rights and remedies  
19 of the employee, his legal representative, dependents, next of kin,  
20 or anyone else claiming rights to recovery on behalf of the employee  
21 against the employer, or any principal, officer, director, employee,  
22 stockholder, partner, or prime contractor of the employer on account  
23 of injury, illness, or death. Negligent acts of a co-employee may  
24 not be imputed to the employer. No role, capacity, or persona of

1 any employer, principal, officer, director, employee, or stockholder  
2 other than that existing in the role of employer of the employee  
3 shall be relevant for consideration for purposes of this act, and  
4 the remedies and rights provided by this act shall be exclusive  
5 regardless of the multiple roles, capacities, or personas the  
6 employer may be deemed to have.

7 B. Exclusive remedy shall not apply if:

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

14 2. The injury was caused by an intentional ~~tort~~ act committed  
15 by the employer. ~~An intentional tort shall exist only when the~~  
16 ~~employee is injured as a result of willful, deliberate, specific~~  
17 ~~intent of the employer to cause such injury. Allegations or proof~~  
18 ~~that the employer had knowledge that the injury was substantially~~  
19 ~~certain to result from the employer's conduct shall not constitute~~  
20 ~~an intentional tort. The employee shall plead facts that show it is~~  
21 ~~at least as likely as it is not that the employer acted with the~~  
22 ~~purpose of injuring the employee~~ An intentional act shall exist only  
23 when an employer who owns at least ten percent (10%) of the business  
24 engages in or specifically directs the act that is the proximate

1 cause of the injury to the employee. An employee or owner of less  
2 than ten percent (10%) of the business shall not be released from  
3 liability pursuant to this section if he or she engaged in an  
4 intentional act that was the proximate cause of the injury. The  
5 issue of whether an act is ~~an~~ intentional ~~act~~ shall be a question  
6 of law.

7 C. The immunity from civil liability described in subsection A  
8 of this section shall apply regardless of whether the injured  
9 employee is denied compensation or deemed ineligible to receive  
10 compensation under this act.

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

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

22 F. The immunity created by the provisions of this section shall  
23 not extend to action against another employer, or its employees, on  
24 the same job as the injured or deceased worker even though such

1 other employer may be considered as standing in the position of a  
2 special master of a loaned servant where such special master neither  
3 is the immediate employer of the injured or deceased worker nor  
4 stands in the position of an intermediate or principal employer to  
5 the immediate employer of the injured or deceased worker.

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

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

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

23 SECTION 4. AMENDATORY 85A O.S. 2021, Section 13, is  
24 amended to read as follows:

1       Section 13. A. 1. A mental injury or illness is not a  
2 compensable injury unless caused by a physical injury to the  
3 employee, and shall not be considered an injury arising out of and  
4 in the course and scope of employment or compensable unless  
5 demonstrated by a preponderance of the evidence; provided, however,  
6 that this physical injury limitation shall not apply to any victim  
7 of a crime of violence.

8       2. No mental injury or illness under this section shall be  
9 compensable unless it is also diagnosed by a licensed psychiatrist  
10 or psychologist and unless the diagnosis of the condition meets the  
11 criteria established in the ~~most current issue of the~~ Diagnostic and  
12 Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).

13       B. 1. Notwithstanding any other provision of this act, where a  
14 claim is for mental injury or illness, the employee shall be limited  
15 to twenty-six (26) weeks of disability benefits unless it is shown  
16 by clear and convincing evidence that benefits should continue for a  
17 set period of time, not to exceed a total of fifty-two (52) weeks.

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

22       b. Death directly or indirectly related to the mental  
23 injury or illness occurring one (1) year or more from  
24

1           the incident resulting in the mental injury or illness  
2           shall not be a compensable injury.

3       SECTION 5.       AMENDATORY       85A O.S. 2021, Section 35, is  
4 amended to read as follows:

5       Section 35. A. 1. Every employer shall secure compensation as  
6 provided under this act to its employees for compensable injuries  
7 without regard to fault.

8       2. There shall be no liability for compensation under this act  
9 where the injury or death was ~~substantially occasioned by the~~  
10 ~~willful intention~~ as a result of an intentional act of the injured  
11 employee ~~to bring about such compensable injury or death.~~

12       B. The primary obligation to pay compensation is on the  
13 employer, and the procurement of a policy of insurance by an  
14 employer to cover the obligation in respect to this act shall not  
15 relieve the employer of the obligation.

16       SECTION 6.       AMENDATORY       85A O.S. 2021, Section 45, is  
17 amended to read as follows:

18       Section 45. A. Temporary Total Disability.

19       1. If the injured employee is temporarily unable to perform his  
20 or her job or any alternative work offered by the employer, he or  
21 she shall be entitled to receive compensation equal to seventy  
22 percent (70%) of the injured employee's average weekly wage, but not  
23 to exceed the state average weekly wage, for one hundred fifty-six  
24 (156) weeks. Provided, there shall be no payment for the first



1 three (3) days of the initial period of temporary total disability.  
2 If an administrative law judge finds that a consequential injury has  
3 occurred and that additional time is needed to reach maximum medical  
4 improvement, temporary total disability may continue for a period of  
5 not more than an additional fifty-two (52) weeks. Such finding  
6 shall be based upon a showing of medical necessity by clear and  
7 convincing evidence. An employer shall have the right to recover  
8 any overpayment of temporary total disability payments from a  
9 subsequent permanent partial disability award if the offset is  
10 deemed justified by the Workers' Compensation Commission.

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

1 provisions of this paragraph, benefits under this subsection shall  
2 be permanently terminated by order of the Commission if the employee  
3 is noncompliant or abandons treatment for sixty (60) days, or if  
4 benefits under this subsection have been suspended under this  
5 paragraph at least two times. The administrative law judge may  
6 appoint an independent medical examiner to determine if further  
7 medical treatment is reasonable and necessary. The independent  
8 medical examiner shall not provide treatment to the injured worker,  
9 unless agreed upon by the parties.

10 B. Temporary Partial Disability.

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

21 2. Compensation under this subsection may not exceed fifty-two  
22 (52) weeks.  
23  
24

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

4        C. Permanent Partial Disability.

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

1 stated within a reasonable degree of medical certainty. Any party  
2 may submit the report of an evaluating physician.

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

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

13 4. In cases of permanent partial disability, the compensation  
14 shall be seventy percent (70%) of the employee's average weekly  
15 wage, not to exceed Three Hundred Fifty Dollars (\$350.00) per week  
16 which shall increase to Three Hundred Sixty Dollars (\$360.00) per  
17 week on July 1, 2021, for a term not to exceed a total of three  
18 hundred sixty (360) weeks for the body as a whole. Beginning  
19 January 1, 2023, compensation for permanent partial disability shall  
20 be seventy percent (70%) of the employee's average weekly wage, not  
21 to exceed an amount equal to forty percent (40%) of the state's  
22 average weekly wage, rounded to the nearest dollar, to be adjusted  
23 annually for a term not to exceed a total of three hundred sixty  
24 (360) weeks for the body as a whole.

1        5. Assessments pursuant to Sections 31, 98 and 122 of this  
2 title shall be calculated based upon the amount of the permanent  
3 partial disability award.

4        6. Previous Disability: The fact that an employee has suffered  
5 previous disability or received compensation therefor shall not  
6 preclude the employee from compensation for a later accidental  
7 personal injury or occupational disease. In the event there exists  
8 a previous permanent partial disability, including a previous non-  
9 work-related injury or condition which produced permanent partial  
10 disability and the same is aggravated or accelerated by an  
11 accidental personal injury or occupational disease, compensation for  
12 permanent partial disability shall be only for such amount as was  
13 caused by such accidental personal injury or occupational disease  
14 and no additional compensation shall be allowed for the preexisting  
15 disability or impairment. Any such reduction shall not apply to  
16 temporary total disability, nor shall it apply to compensation for  
17 medical treatment. If workers' compensation benefits have  
18 previously been awarded through settlement or judicial or  
19 administrative determination in Oklahoma, the percentage basis of  
20 the prior settlement or award shall conclusively establish the  
21 amount of permanent partial disability determined to be preexisting.  
22 If workers' compensation benefits have not previously been awarded  
23 through settlement or judicial or administrative determination in  
24 Oklahoma, the amount of preexisting permanent partial disability

1 shall be established by competent evidence and determined by the  
2 Commission.

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

6 8. The whole body shall represent a maximum of three hundred  
7 sixty (360) weeks.

8 9. The permanent partial disability rate of compensation for  
9 amputation or permanent total loss of use of a scheduled member  
10 specified in Section 46 of this title shall be seventy percent (70%)  
11 of the employee's average weekly wage, not to exceed Three Hundred  
12 Fifty Dollars (\$350.00), with an increase to Three Hundred Sixty  
13 Dollars (\$360.00) on July 1, 2021, and beginning January 1, 2023, an  
14 amount equal to forty percent (40%) of the state's average weekly  
15 wage, rounded to the nearest dollar, to be adjusted annually,  
16 multiplied by the number of weeks set forth for the member in  
17 Section 46 of this title, regardless of whether the injured employee  
18 is able to return to his or her pre-injury or equivalent job.

19 10. An injured employee who is eligible for permanent partial  
20 disability under this subsection shall be entitled to receive  
21 vocational rehabilitation services provided by a technology center  
22 or public secondary school offering vocational-technical education  
23 courses, or a member institution of The Oklahoma State System of  
24 Higher Education, which shall include retraining and job placement

1 to restore the employee to gainful employment. Vocational  
2 rehabilitation services or training shall not extend for a period of  
3 more than fifty-two (52) weeks.

4 D. Permanent Total Disability.

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

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

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

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

15       2. Upon the request of either party, an administrative law  
16 judge shall determine if it is appropriate for a claimant to receive  
17 vocational rehabilitation training or services. If appropriate, the  
18 administrative law judge shall refer the employee to a qualified  
19 expert for evaluation of the practicability of, need for and kind of  
20 rehabilitation services or training necessary and appropriate in  
21 order to restore the employee to gainful employment. The cost of  
22 the evaluation shall be paid by the employer.

23       3. Upon receipt of such report, and after affording all parties  
24 an opportunity to be heard, the administrative law judge shall order



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

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

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

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

8        7. During the period when an employee is actively and in good  
9 faith being evaluated or participating in a retraining or job  
10 placement program for purposes of evaluating permanent total  
11 disability status, the employee shall be entitled to receive  
12 benefits at the same rate as the employee's temporary total  
13 disability benefits for an additional fifty-two (52) weeks. All  
14 tuition related to vocational rehabilitation services shall be paid  
15 by the employer or the employer's insurer on a periodic basis  
16 directly to the facility providing the vocational rehabilitation  
17 services or training 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 7.        AMENDATORY        85A O.S. 2021, Section 46, is  
15 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21       B. The permanent partial disability rate of compensation for  
22 amputation or permanent total loss of use of a scheduled member  
23 specified in this section shall be seventy percent (70%) of the  
24 employee's average weekly wage, not to exceed Three Hundred Fifty

1 Dollars (\$350.00) with an increase to Three Hundred Sixty Dollars  
2 (\$360.00) on July 1, 2021, and beginning January 1, 2023, an amount  
3 equal to forty percent (40%) of the state's average weekly wage,  
4 rounded to the nearest dollar, to be adjusted annually, multiplied  
5 by the number of weeks as set forth in this section, regardless of  
6 whether or not the injured employee is able to return to his or her  
7 pre-injury job.

8 C. Other cases: In cases in which the Workers' Compensation  
9 Commission finds an injury to a part of the body not specifically  
10 covered by the foregoing provisions of this section, the employee  
11 may be entitled to compensation for permanent partial disability.  
12 The compensation ordered paid shall be seventy percent (70%) of the  
13 employee's average weekly wage, not to exceed Three Hundred Fifty  
14 Dollars (\$350.00) with an increase to Three Hundred Sixty Dollars  
15 (\$360.00) on July 1, 2021, and beginning January 1, 2023, an amount  
16 equal to forty percent (40%) of the state's average weekly wage,  
17 rounded to the nearest dollar, to be adjusted annually, for the  
18 number of weeks which the partial disability of the employee bears  
19 to ~~three hundred fifty (350)~~ three hundred sixty (360) weeks.

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

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

1 E. 1. Compensation for the permanent loss of eighty percent  
2 (80%) or more of the vision of an eye shall be the same as for the  
3 loss of an eye.

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

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

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

14 H. The sum of all permanent partial disability awards,  
15 excluding awards against the Multiple Injury Trust Fund, shall not  
16 exceed ~~three hundred fifty (350)~~ three hundred sixty (360) weeks.

17 SECTION 8. AMENDATORY 85A O.S. 2021, Section 47, is  
18 amended to read as follows:

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

1       B. Common law spouse. A common law spouse shall not be  
2 entitled to benefits under this section unless he or she obtains an  
3 order from the Workers' Compensation Commission ruling that a common  
4 law marriage existed between the decedent and the surviving spouse.  
5 The ruling by the Commission shall be exclusive in regard to  
6 benefits under this section regardless of any district court  
7 decision regarding the probate of the decedent's estate.

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

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

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

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

11        4. ~~If there is no surviving spouse or children, each legal~~  
12 ~~guardian, if financially dependent on the employee at the time of~~  
13 ~~death, shall receive twenty-five percent (25%) of the lesser of the~~  
14 ~~deceased employee's average weekly wage and the state average weekly~~  
15 ~~wage until the earlier of death, becoming eligible for Social~~  
16 ~~Security, obtaining full-time employment, or five (5) years from the~~  
17 ~~date benefits under this section begin~~ If there is no surviving  
18 spouse or children, Five Thousand Dollars (\$5,000.00) shall be paid  
19 to the parents and shall be divided to share and share alike; and

20        5. If there is no surviving spouse, children, or parents, to  
21 the brothers, sisters, grandparents, and grandchildren shall be paid  
22 Five Thousand Dollars (\$5,000.00). If there should be more than one  
23 of such dependents, the total benefits payable for the benefit of  
24 such dependents shall be divided to share and share alike; and



1       6. The employer shall pay the actual funeral expenses, not  
2 exceeding the sum of Ten Thousand Dollars (\$10,000.00).

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

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

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

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

21       E. If any member of the class of beneficiaries who receive a  
22 pro rata share of weekly income benefits becomes ineligible to  
23 continue to receive benefits, the remaining members of the class  
24

1 shall receive adjusted weekly income benefits equal to the new class  
2 size.

3 F. To receive benefits under this section, a beneficiary ~~or his~~  
4 ~~or her guardian, if applicable,~~ shall file a proof of loss form with  
5 the Commission. All questions of dependency shall be determined as  
6 of the time of the injury. The employer shall initiate payment of  
7 benefits within fifteen (15) days of the Commission's determination  
8 of the proper beneficiaries. The Commission shall appoint a  
9 guardian ad litem to represent known and unknown minor children and  
10 the guardian ad litem shall be paid a reasonable fee for his or her  
11 services.

12 SECTION 9. AMENDATORY 85A O.S. 2021, Section 50, is  
13 amended to read as follows:

14 Section 50. A. The employer shall promptly provide an injured  
15 employee with medical, surgical, hospital, optometric, podiatric,  
16 chiropractic and nursing services, along with any medicine,  
17 crutches, ambulatory devices, artificial limbs, eyeglasses, contact  
18 lenses, hearing aids, and other apparatus as may be reasonably  
19 necessary in connection with the injury received by the employee.  
20 The employer shall have the right to choose the treating physician  
21 or chiropractor.

22 B. If the employer fails or neglects to provide medical  
23 treatment within five (5) days after actual knowledge is received of  
24 an injury, the injured employee may select a physician or

1 chiropractor to provide medical treatment at the expense of the  
2 employer; provided, however, that the injured employee, or another  
3 in the employee's behalf, may obtain emergency treatment at the  
4 expense of the employer where such emergency treatment is not  
5 provided by the employer.

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

9 D. Unless recommended by the treating doctor or chiropractor at  
10 the time claimant reaches maximum medical improvement or by an  
11 independent medical examiner, continuing medical maintenance shall  
12 not be awarded by the Commission. The employer or insurance carrier  
13 shall not be responsible for continuing medical maintenance or pain  
14 management treatment that is outside the parameters established by  
15 the Physician Advisory Committee or ODG. The employer or insurance  
16 carrier shall not be responsible for continuing medical maintenance  
17 or pain management treatment not previously ordered by the  
18 Commission or approved in advance by the employer or insurance  
19 carrier.

20 E. An employee claiming or entitled to benefits under the  
21 Administrative Workers' Compensation Act, shall, if ordered by the  
22 Commission or requested by the employer or insurance carrier, submit  
23 himself or herself for medical examination. If an employee refuses  
24 to submit himself or herself to examination, his or her right to

1 prosecute any proceeding under the Administrative Workers'  
2 Compensation Act shall be suspended, and no compensation shall be  
3 payable for the period of such refusal.

4 F. For compensable injuries resulting in the use of a medical  
5 device, ongoing service for the medical device shall be provided in  
6 situations including, but not limited to, medical device battery  
7 replacement, ongoing medication refills related to the medical  
8 device, medical device repair, or medical device replacement.

9 G. Travel Reimbursement.

10 1. The employer shall reimburse the employee for the actual  
11 mileage in excess of twenty (20) miles round trip to and from the  
12 employee's home to the location of a medical service provider for  
13 all reasonable and necessary treatment, for an evaluation of an  
14 independent medical examiner and for any evaluation made at the  
15 request of the employer or insurance carrier. The rate of  
16 reimbursement for such travel expense shall be the official  
17 reimbursement rate as established by the State Travel Reimbursement  
18 Act. In no event shall the reimbursement of travel for medical  
19 treatment or evaluation exceed six hundred (600) miles round trip.

20 2. A claim for travel reimbursement under this act shall be  
21 barred unless the request for reimbursement of travel is made within  
22 one (1) year of the date of travel for which reimbursement is being  
23 sought following a finding of compensable injury by the Commission  
24 or admission of injury to the Commission by the employer.

1       3. Reimbursement of travel shall be issued to the employee  
2 within sixty (60) days of receipt by employer of the request for  
3 reimbursement from employee following a finding of compensable  
4 injury by the Commission or admission of compensable injury to the  
5 Commission by the employer, and subject to paragraph 2 of this  
6 subsection. If payment for reimbursement is not issued as required,  
7 employer shall pay to the employee an additional amount equal to  
8 fifty percent (50%) of the request for reimbursement remaining to be  
9 paid provided the Commission orders the payment of mileage equal to  
10 the request for reimbursement by the employee and the amount for  
11 which the hearing was sought.

12       H. Fee Schedule.

13       1. The Commission shall conduct a review and update of the  
14 Current Procedural Terminology (CPT) in the Fee Schedule every two  
15 (2) years pursuant to the provisions of paragraph 14 of this  
16 subsection. The Fee Schedule shall establish the maximum rates that  
17 medical providers shall be reimbursed for medical care provided to  
18 injured employees including, but not limited to, charges by  
19 physicians, chiropractors, dentists, counselors, hospitals,  
20 ambulatory and outpatient facilities, clinical laboratory services,  
21 diagnostic testing services, and ambulance services, and charges for  
22 durable medical equipment, prosthetics, orthotics, and supplies.  
23 The most current Fee Schedule established by the Administrator of  
24 the Workers' Compensation Court prior to February 1, 2014, shall

1 remain in effect, unless or until the Legislature approves the  
2 Commission's proposed Fee Schedule.

3       2. Reimbursement for medical care shall be prescribed and  
4 limited by the Fee Schedule. The director of the Employees Group  
5 Insurance Division of the Office of Management and Enterprise  
6 Services shall provide the Commission such information as may be  
7 relevant for the development of the Fee Schedule. The Commission  
8 shall develop the Fee Schedule in a manner in which quality of  
9 medical care is assured and maintained for injured employees. The  
10 Commission shall give due consideration to additional requirements  
11 for physicians treating an injured worker under the Administrative  
12 Workers' Compensation Act, including, but not limited to,  
13 communication with claims representatives, case managers, attorneys,  
14 and representatives of employers, and the additional time required  
15 to complete forms for the Commission, insurance carriers, and  
16 employers.

17       3. In making adjustments to the Fee Schedule, the Commission  
18 shall use, as a benchmark, the reimbursement rate for each Current  
19 Procedural Terminology (CPT) code provided for in the fee schedule  
20 published by the Centers for Medicare and Medicaid Services of the  
21 U.S. Department of Health and Human Services for use in Oklahoma  
22 (Medicare Fee Schedule) on the effective date of this section,  
23 workers' compensation fee schedules employed by neighboring states,  
24 the latest edition of "Relative Values for Physicians" (RVP), usual,

1 customary and reasonable medical payments to workers' compensation  
2 health care providers in the same trade area for comparable  
3 treatment of a person with similar injuries, and all other data the  
4 Commission deems relevant. For services not valued by CMS, the  
5 Commission shall establish values based on the usual, customary and  
6 reasonable medical payments to health care providers in the same  
7 trade area for comparable treatment of a person with similar  
8 injuries.

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

20       b. For reimbursement of medical services for Evaluation  
21 and Management of injured employees as defined in the  
22 Fee Schedule adopted by the Commission, the  
23 reimbursement rate shall not be less than one hundred  
24 fifty percent (150%) of the Medicare Fee Schedule.

1           c. Any entity providing durable medical equipment,  
2           prosthetics, orthotics or supplies shall be accredited  
3           by a CMS-approved accreditation organization. If a  
4           physician provides durable medical equipment,  
5           prosthetics, orthotics, prescription drugs, or  
6           supplies to a patient ancillary to the patient's  
7           visit, reimbursement shall be no more than ten percent  
8           (10%) above cost.

9           d. The Commission shall develop a reasonable stop-loss  
10          provision of the Fee Schedule to provide for adequate  
11          reimbursement for treatment for major burns, severe  
12          head and neurological injuries, multiple system  
13          injuries, and other catastrophic injuries requiring  
14          extended periods of intensive care. An employer or  
15          insurance carrier shall have the right to audit the  
16          charges and question the reasonableness and necessity  
17          of medical treatment contained in a bill for treatment  
18          covered by the stop-loss provision.

19          4. The right to recover charges for every type of medical care  
20          for injuries arising out of and in the course of covered employment  
21          as defined in the Administrative Workers' Compensation Act shall lie  
22          solely with the Commission. When a medical care provider has  
23          brought a claim to the Commission to obtain payment for services, a  
24



1 party who prevails in full on the claim shall be entitled to  
2 reasonable attorney fees.

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

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

12 7. The Commission's review of medical and treatment charges  
13 pursuant to this section shall be conducted pursuant to the Fee  
14 Schedule in existence at the time the medical care or treatment was  
15 provided. The judgment approving the medical and treatment charges  
16 pursuant to this section shall be enforceable by the Commission in  
17 the same manner as provided in the Administrative Workers'  
18 Compensation Act for the enforcement of other compensation payments.

19 8. Charges for prescription drugs dispensed by a pharmacy shall  
20 be limited to ninety percent (90%) of the average wholesale price of  
21 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per  
22 prescription. "Average wholesale price" means the amount determined  
23 from the latest publication designated by the Commission.  
24 Physicians shall prescribe and pharmacies shall dispense generic

1 equivalent drugs when available. If the National Drug Code, or  
2 "NDC", for the drug product dispensed is for a repackaged drug, then  
3 the maximum reimbursement shall be the lesser of the original  
4 labeler's NDC and the lowest-cost therapeutic equivalent drug  
5 product. Compounded medications shall be billed by the compounding  
6 pharmacy at the ingredient level, with each ingredient identified  
7 using the applicable NDC of the drug product, and the corresponding  
8 quantity. Ingredients with no NDC area are not separately  
9 reimbursable. Payment shall be based on a sum of the allowable fee  
10 for each ingredient plus a dispensing fee of Five Dollars (\$5.00)  
11 per prescription.

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

20 10. Implantables are paid in addition to procedural  
21 reimbursement paid for medical or surgical services. A  
22 manufacturer's invoice for the actual cost to a physician, hospital  
23 or other entity of an implantable device shall be adjusted by the  
24 physician, hospital or other entity to reflect, at the time

1 implanted, all applicable discounts, rebates, considerations and  
2 product replacement programs and shall be provided to the payer by  
3 the physician or hospital as a condition of payment for the  
4 implantable device. If the physician, or an entity in which the  
5 physician has a financial interest other than an ownership interest  
6 of less than five percent (5%) in a publically traded company,  
7 provides implantable devices, this relationship shall be disclosed  
8 to patient, employer, insurance company, third-party commission,  
9 certified workplace medical plan, case managers, and attorneys  
10 representing claimant and defendant. If the physician, or an entity  
11 in which the physician has a financial interest other than an  
12 ownership interest of less than five percent (5%) in a publicly  
13 traded company, buys and resells implantable devices to a hospital  
14 or another physician, the markup shall be limited to ten percent  
15 (10%) above cost.

16 11. Payment for medical care as required by the Administrative  
17 Workers' Compensation Act shall be due within forty-five (45) days  
18 of the receipt by the employer or insurance carrier of a complete  
19 and accurate invoice, unless the employer or insurance carrier has a  
20 good-faith reason to request additional information about such  
21 invoice. Thereafter, the Commission may assess a penalty up to  
22 twenty-five percent (25%) for any amount due under the Fee Schedule  
23 that remains unpaid on the finding by the Commission that no good-  
24 faith reason existed for the delay in payment. If the Commission

1 finds a pattern of an employer or insurance carrier willfully and  
2 knowingly delaying payments for medical care, the Commission may  
3 assess a civil penalty of not more than Five Thousand Dollars  
4 (\$5,000.00) per occurrence.

5 12. If an employee fails to appear for a scheduled appointment  
6 with a physician or chiropractor, the employer or insurance company  
7 shall pay to the physician or chiropractor a reasonable charge, to  
8 be determined by the Commission, for the missed appointment. In the  
9 absence of a good-faith reason for missing the appointment, the  
10 Commission shall order the employee to reimburse the employer or  
11 insurance company for the charge.

12 13. Physicians or chiropractors providing treatment under the  
13 Administrative Workers' Compensation Act shall disclose under  
14 penalty of perjury to the Commission, on a form prescribed by the  
15 Commission, any ownership or interest in any health care facility,  
16 business, or diagnostic center that is not the physician's or  
17 chiropractor's primary place of business. The disclosure shall  
18 include any employee leasing arrangement between the physician or  
19 chiropractor and any health care facility that is not the  
20 physician's or chiropractor's primary place of business. A  
21 physician's or chiropractor's failure to disclose as required by  
22 this section shall be grounds for the Commission to disqualify the  
23 physician or chiropractor from providing treatment under the  
24 Administrative Workers' Compensation Act.

- 1       14.   a.   Beginning on May 28, 2019, the Commission shall  
2           conduct an evaluation of the Fee Schedule, which shall  
3           include an update of the list of Current Procedural  
4           Terminology (CPT) codes, a line item adjustment or  
5           renewal of all rates, and amendment as needed to the  
6           rules applicable to the Fee Schedule.
- 7       b.   The Commission shall contract with an external  
8           consultant with knowledge of workers' compensation fee  
9           schedules to review regional and nationwide  
10          comparisons of Oklahoma's Fee Schedule rates and date  
11          and market for medical services. The consultant shall  
12          receive written and oral comment from employers,  
13          workers' compensation medical service and insurance  
14          providers, self-insureds, group self-insurance  
15          associations of this state and the public. The  
16          consultant shall submit a report of its findings and a  
17          proposed amended Fee Schedule to the Commission.
- 18      c.   The Commission shall adopt the proposed amended Fee  
19          Schedule in whole or in part and make any additional  
20          updates or adjustments. The Commission shall submit a  
21          proposed updated and adjusted Fee Schedule to the  
22          President Pro Tempore of the Senate, the Speaker of  
23          the House of Representatives and the Governor. The  
24          proposed Fee Schedule shall become effective on July 1

1 following the legislative session, if approved by  
2 Joint Resolution of the Legislature during the session  
3 in which a proposed Fee Schedule is submitted.

4 d. Beginning on May 28, 2019, an external evaluation  
5 shall be conducted and a proposed amended Fee Schedule  
6 shall be submitted to the Legislature for approval  
7 during the 2020 legislative session. Thereafter, an  
8 external evaluation shall be conducted and a proposed  
9 amended Fee Schedule shall be submitted to the  
10 Legislature for approval every two (2) years.

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

20 SECTION 10. AMENDATORY 85A O.S. 2021, Section 69, is  
21 amended to read as follows:

22 Section 69. A. Time for Filing.

23 1. A claim for benefits under this act, other than an  
24 occupational disease, shall be barred unless it is filed with the

1 Workers' Compensation Commission within one (1) year from the date  
2 of the injury or, if the employee has received benefits under this  
3 title for the injury, six (6) months from the date of the last  
4 ~~issuance of such benefits~~ payment of indemnity benefits or date of  
5 service for medical treatment, whichever is later. For purposes of  
6 this section, the date of the injury shall be defined as the date an  
7 injury is caused by an accident as set forth in paragraph 9 of  
8 Section 2 of this title.

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

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

21           c.   A claim for compensation for disability on account of  
22               a disease condition caused by exposure to X-rays,  
23               radioactive substances, or ionizing radiation only  
24               shall be filed with the Commission within two (2)

1                   years from the date the condition is made known to an  
2                   employee following examination and diagnosis by a  
3                   medical doctor.

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

7           4. If a claim for benefits has been timely filed ~~under~~  
8 ~~paragraph 1 of this subsection~~ and the ~~employee~~ claimant does not:

9               a. make a good-faith request for a hearing to resolve a  
10               dispute regarding the right to receive benefits,  
11               including medical treatment, under this title within  
12               six (6) months of the date the claim is filed, or

13               b. receive or seek benefits, including medical treatment,  
14               under this title for a period of six (6) months,  
15 then on motion by the employer, the claim shall be dismissed with  
16 prejudice.

17           B. Failure to File. Failure to file a claim within the period  
18 prescribed in subsection A of this section shall not be a bar to the  
19 right to benefits hereunder unless objection to the failure is made  
20 at the first hearing on the claim in which all parties in interest  
21 have been given a reasonable notice and opportunity to be heard by  
22 the Commission.

23           C. Persons under Disability.  
24



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

6        2. Subsection A of this section shall not apply to a mental  
7 incompetent or minor so long as the person has no guardian or  
8 similar legal representative. The limitations prescribed in  
9 subsection A of this section shall apply to the mental incompetent  
10 or minor from the date of the appointment of a guardian or similar  
11 legal representative for that person, and when no guardian or  
12 similar representative has been appointed, to a minor on reaching  
13 the age of majority.

14        D. A latent injury or condition shall not delay or toll the  
15 limitation periods specified in this section. This subsection shall  
16 not apply to the limitation period for occupational diseases  
17 specified in paragraph 2 of subsection A of this section.

18        SECTION 11.        AMENDATORY        85A O.S. 2021, Section 80, is  
19 amended to read as follows:

20        Section 80. A. A final order for permanent disability is a  
21 final adjudication of all issues pending in the claim unless  
22 reserved in the order or by operation of law. Except where a joint  
23 petition settlement has been approved, the Workers' Compensation  
24 Commission may review any compensation judgment, award, or decision.

1        1. Such review may be done upon application for a change of  
2 condition for the worse at any time within six (6) months from the  
3 date of the last order in which monetary benefits were awarded or  
4 active medical treatment was provided, ~~on the Commission's own~~  
5 ~~motion or on the application of any party in interest,~~ and unless  
6 filed within such period of time shall be forever barred. On  
7 review, the Commission may make a judgment or award ~~terminating,~~  
8 continuing, decreasing, or increasing for the future the  
9 compensation previously awarded, subject to the maximum limits  
10 provided for in this title. An order denying an application to  
11 reopen a claim shall not extend the period of time set out in this  
12 title for reopening the claim. A failure to comply with a medical  
13 treatment plan ordered by the Commission shall bar the reopening of  
14 a claim.

15        2. The Workers' Compensation Commission may review any  
16 compensation judgment, award, or decision at any time, and without  
17 limitation upon a filing of an application for a finding of a change  
18 of condition for the better. Such review may be filed for good  
19 cause shown. On review, the Commission may make a judgment or award  
20 terminating, continuing, or decreasing for the future the  
21 compensation previously awarded, subject to the limits provided for  
22 in this act.

23        B. The review and subsequent award shall be made in accordance  
24 with the procedure prescribed in Sections 69 through 78 of this

1 title. No review shall affect any compensation paid under a prior  
2 order, judgment or award.

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

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

11 SECTION 12. AMENDATORY 85A O.S. 2021, Section 112, is  
12 amended to read as follows:

13 Section 112. A. The Workers' Compensation Commission shall  
14 create, maintain and review a list of licensed physicians who shall  
15 serve as independent medical examiners from a list of licensed  
16 physicians who have completed such course study as the Commission  
17 may require. An independent medical examiner must agree to examine  
18 an employee within forty-five (45) days of appointment. The  
19 Commission shall, to the best of its ability, include the most  
20 experienced and competent physicians in the specific fields of  
21 expertise utilized most often in the treatment of injured employees.  
22 The period of qualification shall be two (2) years. Physicians may  
23 be qualified for successive two-year periods. Physicians serving as  
24 independent medical examiners on the effective date of this act

1 shall serve the remainder of their respective two-year qualification  
2 periods and may reapply for successive qualification periods. The  
3 Commission may remove an independent medical examiner from the list  
4 for cause.

5 B. An administrative law judge may appoint an independent  
6 medical examiner to assist in determining any issue before the  
7 Commission. In the event surgery is recommended by a treating  
8 physician, upon request of the employer, an independent medical  
9 examiner shall be appointed to determine the reasonableness and  
10 necessity of the recommended surgery. Upon request of the employee,  
11 an independent medical examiner may be appointed to determine the  
12 reasonableness and necessity of surgery recommended by a treating  
13 physician. Such independent medical examiner shall be qualified to  
14 perform the type of surgery recommended.

15 C. An independent medical examiner shall be selected from the  
16 list of independent medical examiners within ten (10) days when the  
17 employer or the employee petitions the Commission for the selection  
18 of an independent medical examiner. The independent medical  
19 examiner shall be certified by a recognized specialty board in the  
20 area or areas appropriate to the condition under review.

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

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

4 F. After a physical examination and review of medical records  
5 and other appropriate information, including depositions and  
6 surveillance video, the independent medical examiner shall submit a  
7 verified written report to the Commission and to the parties. In  
8 the event the independent medical examiner determines that more  
9 medical treatment is necessary, the employer shall designate a  
10 treating physician to provide the indicated treatment.

11 G. Any independent medical examiner selected pursuant to the  
12 provisions of this section shall be reimbursed for the medical  
13 examination, reports and fees in a reasonable and customary amount  
14 set by the Commission, and these costs shall be borne by the  
15 employer.

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

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

1 J. Upon receipt of an independent medical examiner's report,  
2 any party shall have the right to object to the introduction of the  
3 report into evidence. The objection must be made by giving written  
4 notification to all parties and to the Commission within ten (10)  
5 days after receipt of the report. The employer shall be responsible  
6 for the reasonable charges of the physician for such testimony,  
7 preparation time, and the expense of the deposition.

8 SECTION 13. This act shall become effective November 1, 2022.

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