

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB642 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By deleting the content of the entire measure, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Kyle Hilbert

Reading Clerk

STATE OF OKLAHOMA

1st Session of the 60th Legislature (2025)

FLOOR SUBSTITUTE
FOR ENGROSSED

SENATE BILL NO. 642

By: Paxton of the Senate

and

Hilbert of the House

FLOOR SUBSTITUTE

An Act relating to workers' compensation; amending 85A O.S. 2021, Section 5, which relates to exclusive liability; expanding rights and remedies granted to certain persons; stating effect of provisions to certain contracts; making language gender neutral; updating statutory references; defining terms; authorizing agreement between contractors to provide certain insurance coverage; providing for deduction of premiums under certain agreements; clarifying application of certain rights and remedies; prohibiting coverage for certain contractors without agreement; amending 85A O.S. 2021, Section 45, which relates to disability classification and compensation; modifying compensation standard for permanent partial disability; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 85A O.S. 2021, Section 5, is amended to read as follows:

Section 5. A. The rights and remedies granted to an employee subject to the provisions of the Administrative Workers'

1 Compensation Act shall be exclusive of all other rights and remedies
2 of the employee, his or her legal representative, dependents, next
3 of kin, or anyone else claiming rights to recovery on behalf of the
4 employee against the employer, as well as a general contractor that
5 provides workers' compensation insurance coverage to a subcontractor
6 pursuant to Section 2 of this act, or any principal, officer,
7 director, employee, stockholder, partner, or prime contractor of the
8 employer on account of injury, illness, or death. Negligent acts of
9 a co-employee may not be imputed to the employer. No role,
10 capacity, or persona of any employer, principal, officer, director,
11 employee, or stockholder other than that existing in the role of
12 employer of the employee shall be relevant for consideration for
13 purposes of ~~this act~~ the Administrative Workers' Compensation Act,
14 and the remedies and rights provided by ~~this act~~ the Administrative
15 Workers' Compensation Act to an employee or other person claiming
16 rights to recovery on behalf of the employee shall be exclusive
17 regardless of the multiple roles, capacities, or personas the
18 employer may be deemed to have.

19 B. Notwithstanding the date of the injury, illness, or death of
20 an employee, nothing in subsection A of this section shall affect
21 any provision in an executed contract that requires the employer, or
22 any principal, officer, director, stockholder, partner, or prime
23 contractor of the employer, to indemnify, defend, or hold harmless
24 another person or entity against liability for the injury, illness,

1 or death of an employee, including, but not limited to, the ability
2 or requirement to insure for such claims.

3 C. Exclusive remedy shall not apply if:

4 1. An employer fails to secure the payment of compensation due
5 to the employee as required by ~~this act~~ the Administrative Workers'
6 Compensation Act. An injured employee, or his or her legal
7 representative in case death results from the injury, may, at his or
8 her option, elect to claim compensation under ~~this act~~ the
9 Administrative Workers' Compensation Act or to maintain a legal
10 action in court for damages on account of the injury or death; or

11 2. The injury was caused by an intentional tort committed by
12 the employer. An intentional tort shall exist only when the
13 employee is injured as a result of willful, deliberate, specific
14 intent of the employer to cause such injury. Allegations or proof
15 that the employer had knowledge that the injury was substantially
16 certain to result from the employer's conduct shall not constitute
17 an intentional tort. The employee shall plead facts that show it is
18 at least as likely as it is not that the employer acted with the
19 purpose of injuring the employee. The issue of whether an act is an
20 intentional tort shall be a question of law.

21 ~~C.~~ D. The immunity from civil liability described in subsection
22 A of this section shall apply regardless of whether the injured
23 employee is denied compensation or deemed ineligible to receive
24

1 compensation under ~~this act~~ the Administrative Workers' Compensation
2 Act.

3 ~~D.~~ E. If an employer has failed to secure the payment of
4 compensation for his or her injured employee as provided for in ~~this~~
5 ~~act~~ the Administrative Workers' Compensation Act, an injured
6 employee, or his or her legal representative if death results from
7 the injury, may maintain an action in the district court for damages
8 on account of such injury.

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

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

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

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

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

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 126 of Title 85A, unless there
23 is created a duplication in numbering, reads as follows:

24 A. For the purposes of this section:

1 1. "General contractor" means a person who undertakes to
2 procure the performance of work or a service, either separately or
3 through the use of subcontractors. General contractor shall
4 include, but is not limited to, a principal contractor, an original
5 contractor, a prime contractor or other analogous term, and a
6 premises owner who contracts all or part of the work being performed
7 on the premises;

8 2. "Provides workers' compensation insurance coverage" means to
9 make available workers' compensation insurance coverage. Workers'
10 compensation insurance coverage may be provided, even if it does not
11 ultimately cover an incident, so long as it was made available to
12 the subcontractor. The following does not constitute acceptable or
13 relevant evidence to suggest that workers' compensation insurance
14 made available to a subcontractor was not provided to the
15 subcontractor:

- 16 a. timing discrepancies between the issuance of workers'
17 compensation insurance policies and contracts between
18 and among general contractors and subcontractors,
- 19 b. factual discrepancies in secondary documentation such
20 as certificates of insurance or enrollment forms,
- 21 c. a general contractor's lack of notice of election of
22 coverage, or
- 23 d. payment of premiums, or lack thereof, by the general
24 contractor; and

1 3. "Subcontractor" means a person who contracts with a general
2 contractor to perform all or part of the work or services that the
3 general contractor has undertaken to perform.

4 B. A general contractor and a subcontractor may enter into a
5 written agreement under which the general contractor provides
6 workers' compensation insurance coverage to the subcontractor and
7 employees of the subcontractor.

8 C. If a general contractor has workers' compensation insurance
9 to protect the general contractor's employees and if, in the course
10 and scope of the general contractor's business, the general
11 contractor enters into a contract with a subcontractor who does not
12 have employees, the general contractor shall be treated as the
13 employer of the subcontractor for the purposes of the Administrative
14 Workers' Compensation Act and may enter into an agreement for the
15 deduction of premiums paid in accordance with subsection D of this
16 section. A premises owner who acts as a general contractor shall be
17 treated as the employer of all subcontractors for the purposes of
18 the Administrative Workers' Compensation Act and may enter into an
19 agreement for the deduction of premiums paid in accordance with
20 subsection D of this section.

21 D. If a general contractor elects to provide coverage, then the
22 actual premiums based on payroll that are paid or incurred by the
23 general contractor for the coverage may be deducted from the
24

1 contract price or other amount owed to the subcontractor by the
2 general contractor.

3 E. An agreement under this section makes the general contractor
4 the employer of the subcontractor and the subcontractor's employees
5 only for the purposes of this title. A subcontractor or
6 subcontractor's employee's rights and remedies against the general
7 contractor or any principal, officer, director, employee,
8 stockholder, partner, or prime contractor of the general contractor
9 shall be subject to the limitations pursuant to Section 5 of Title
10 85A of the Oklahoma Statutes. The limitations in this subsection
11 shall only apply to claims against the general contractor. To the
12 extent not otherwise precluded by Section 5 of Title 85A of the
13 Oklahoma Statutes, a subcontractor or subcontractor's employee
14 retains the right to recover from another subcontractor or
15 subcontractor's employee who is not their employee.

16 F. Notwithstanding subsection C of this section, a person who
17 performs work or provides a service for an oil or gas well operator
18 and who is an independent contractor that has no employees shall be
19 treated in the same manner as an independent contractor with
20 employees and is not entitled to coverage under the general
21 contractor's workers' compensation insurance policy unless the
22 independent subcontractor and the general contractor enter into an
23 agreement under this section.

SECTION 3. AMENDATORY 85A O.S. 2021, Section 45, is

amended to read as follows:

Section 45. Temporary Total Disability - Temporary Partial
Disability - Permanent Partial Disability - Permanent Total
Disability.

A. Temporary Total Disability.

1. If the injured employee is temporarily unable to perform his
or her job or any alternative work offered by the employer, he or
she shall be entitled to receive compensation equal to seventy
percent (70%) of the injured employee's average weekly wage, but not
to exceed the state average weekly wage, for one hundred fifty-six
(156) weeks. Provided, there shall be no payment for the first
three (3) days of the initial period of temporary total disability.
If an administrative law judge finds that a consequential injury has
occurred and that additional time is needed to reach maximum medical
improvement, temporary total disability may continue for a period of
not more than an additional fifty-two (52) weeks. Such finding
shall be based upon a showing of medical necessity by clear and
convincing evidence. An employer shall have the right to recover
any overpayment of temporary total disability payments from a
subsequent permanent partial disability award if the offset is
deemed justified by the Workers' Compensation Commission.

2. When the injured employee is released from active medical
treatment by the treating physician for all body parts found by the

1 Commission to be injured, or in the event that the employee, without
2 a valid excuse, misses three consecutive medical treatment
3 appointments, fails to comply with medical orders of the treating
4 physician, or otherwise abandons medical care, the employer shall be
5 entitled to terminate temporary total disability by notifying the
6 employee, or if represented, his or her counsel. If, however, an
7 objection to the termination is filed by the employee within ten
8 (10) days of termination, the Commission shall set the matter within
9 twenty (20) days for a determination if temporary total disability
10 compensation shall be reinstated. The temporary total disability
11 shall remain terminated until such time as the employee complies
12 with medical orders of the treating physician. Notwithstanding the
13 provisions of this paragraph, benefits under this subsection shall
14 be permanently terminated by order of the Commission if the employee
15 is noncompliant or abandons treatment for sixty (60) days, or if
16 benefits under this subsection have been suspended under this
17 paragraph at least two times. The administrative law judge may
18 appoint an independent medical examiner to determine if further
19 medical treatment is reasonable and necessary. The independent
20 medical examiner shall not provide treatment to the injured worker,
21 unless agreed upon by the parties.

22 B. Temporary Partial Disability.

23 1. If the injured employee is temporarily unable to perform his
24 or her job, but may perform alternative work offered by the

1 employer, he or she shall be entitled to receive compensation equal
2 to seventy percent (70%) of the difference between the injured
3 employee's average weekly wage before the injury and his or her
4 weekly wage for performing alternative work after the injury, but
5 only if his or her weekly wage for performing the alternative work
6 is less than the temporary total disability rate. The injured
7 employee's actual earnings plus temporary partial disability
8 compensation shall not exceed the temporary total disability rate.

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

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

14 C. Permanent Partial Disability.

15 1. A permanent partial disability award or combination of
16 awards granted an injured worker may not exceed a permanent partial
17 disability rating of one hundred percent (100%) to any body part or
18 to the body as a whole. The determination of permanent partial
19 disability shall be the responsibility of the Commission through its
20 administrative law judges. Any claim by an employee for
21 compensation for permanent partial disability must be supported by
22 competent medical testimony of a medical doctor, osteopathic
23 physician, or chiropractor, and shall be supported by objective
24 medical findings, as defined in this act. The opinion of the

1 physician shall include employee's percentage of permanent partial
2 disability and whether or not the disability is job-related and
3 caused by the accidental injury or occupational disease. A
4 physician's opinion of the nature and extent of permanent partial
5 disability to parts of the body other than scheduled members must be
6 based solely on criteria established by the Sixth Edition of the
7 American Medical Association's "Guides to the Evaluation of
8 Permanent Impairment". A copy of any written evaluation shall be
9 sent to both parties within seven (7) days of issuance. Medical
10 opinions addressing compensability and permanent disability must be
11 stated within a reasonable degree of medical certainty. Any party
12 may submit the report of an evaluating physician.

13 2. Permanent partial disability shall not be allowed to a part
14 of the body for which no medical treatment has been received. A
15 determination of permanent partial disability made by the Commission
16 or administrative law judge which is not supported by objective
17 medical findings provided by a treating physician who is a medical
18 doctor, doctor of osteopathy, chiropractor or a qualified
19 independent medical examiner shall be considered an abuse of
20 discretion.

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

23 4. In cases of permanent partial disability, the compensation
24 shall be seventy percent (70%) of the employee's average weekly

1 wage, not to exceed ~~Three Hundred Fifty Dollars (\$350.00)~~ Three
2 Hundred Sixty Dollars (\$360.00) per week which shall increase to
3 ~~Three Hundred Sixty Dollars (\$360.00) per week on July 1, 2021, for~~
4 ~~a term not to exceed a total of three hundred sixty (360) weeks for~~
5 ~~the body as a whole~~ Three Hundred Seventy-five Dollars (\$375.00) per
6 week on July 1, 2025.

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

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

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

9 7. No payments on any permanent partial disability order shall
10 begin until payments on any preexisting permanent partial disability
11 orders have been completed.

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

14 9. The permanent partial disability rate of compensation for
15 amputation or permanent total loss of use of a scheduled member
16 specified in Section 46 of this title shall be seventy percent (70%)
17 of the employee's average weekly wage, not to exceed Three Hundred
18 Fifty Dollars (\$350.00), with an increase to Three Hundred Sixty
19 Dollars (\$360.00) on July 1, 2021, multiplied by the number of weeks
20 set forth for the member in Section 46 of this title, regardless of
21 whether the injured employee is able to return to his or her pre-
22 injury or equivalent job.

23 10. An injured employee who is eligible for permanent partial
24 disability under this subsection shall be entitled to receive

1 vocational rehabilitation services provided by a technology center
2 or public secondary school offering vocational-technical education
3 courses, or a member institution of The Oklahoma State System of
4 Higher Education, which shall include retraining and job placement
5 to restore the employee to gainful employment. Vocational
6 rehabilitation services or training shall not extend for a period of
7 more than fifty-two (52) weeks.

8 D. Permanent Total Disability.

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

1 disability award is paid in full. If otherwise qualified according
2 to the provisions of this act, permanent total disability benefits
3 may be awarded to an employee who has exhausted the maximum period
4 of temporary total disability even though the employee has not
5 reached maximum medical improvement.

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

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

18 2. Upon the request of either party, an administrative law
19 judge shall determine if it is appropriate for a claimant to receive
20 vocational rehabilitation training or services. If appropriate, the
21 administrative law judge shall refer the employee to a qualified
22 expert for evaluation of the practicability of, need for and kind of
23 rehabilitation services or training necessary and appropriate in
24

1 order to restore the employee to gainful employment. The cost of
2 the evaluation shall be paid by the employer.

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

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

21 5. Vocational rehabilitation services or training shall not
22 extend for a period of more than fifty-two (52) weeks. A request
23 for vocational rehabilitation services or training shall be filed
24 with the Commission by an interested party not later than sixty (60)

1 days from the date of receiving permanent disability that prevents
2 the injured employee from returning to his or her pre-injury or
3 equivalent position.

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

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

21 F. Disfigurement.

22 1. If an injured employee incurs serious and permanent
23 disfigurement to any part of the body, the Commission may award
24

1 compensation to the injured employee in an amount not to exceed
2 Fifty Thousand Dollars (\$50,000.00).

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

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

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

16 SECTION 4. It being immediately necessary for the preservation
17 of the public peace, health or safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

20

21 60-1-13637 TKR 04/28/25

22

23

24