

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2367

By: Kannady of the House and Daniels of the Senate

Title: Workers' compensation; amending various statutes relating to workers' compensation;
emergency.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

SENATE CONFEREES

Daniels _____
Jech _____
Howard _____
Weaver _____
Brooks _____
Floyd _____

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 2367

By: Kannady of the House

and

Daniels of the Senate

7
8
9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to workers' compensation; amending
11 Section 2, Chapter 208, O.S.L. 2013, as amended by
12 Section 1, Chapter 150, O.S.L. 2018 (85A O.S. Supp.
13 2018, Section 2), which relates to definitions in the
14 Administrative Workers' Compensation Act; modifying
15 definitions; amending Sections 3 and 5, Chapter 208,
16 O.S.L. 2013 (85A O.S. Supp. 2018, Sections 3 and 5),
17 which relate to the Administrative Workers'
18 Compensation Act; specifying application of the
19 Administrative Workers' Compensation Act; modifying
20 scope of immunity; amending Section 6, Chapter 208,
21 O.S.L. 2013, as amended by Section 1, Chapter 390,
22 O.S.L. 2015 (85A O.S. Supp. 2018, Section 6), which
23 relates to crimes in violation of the Administrative
24 Workers' Compensation Act; eliminating certain notice
requirement; amending Section 7, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2018, Section 7), which relates
to discrimination; modifying procedure for
determination of retaliation; providing for damages
for certain violations; limiting maximum amount for
exemplary or punitive damages; providing burden of
proof; amending Section 14, Chapter 208, O.S.L. 2013
(85A O.S. Supp. 2018, Section 14), which relates to
specific types of injury or illness; eliminating
prohibition against consideration of physical or
mental stress in determining if burden of proof is
met in certain circumstances; amending Section 16,
Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018,
Section 16), which relates to Official Disability

1 Guidelines; making Guidelines mandatory; requiring
2 certain evaluation and report; amending Section 18,
3 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018,
4 Section 18), which relates to billing and collection
5 of fees for services; expanding methods of providing
6 notice; amending Section 19, Chapter 208, O.S.L.
7 2013, as amended by Section 4, House Joint Resolution
8 No. 1096, page 1745, O.S.L. 2014, and Sections 20 and
9 21, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018,
10 Sections 19, 20 and 21), which relate to the Workers'
11 Compensation Commission; eliminating salary
12 restriction; correcting name of certain fund;
13 clarifying scope of authority; authorizing certain
14 confidential communications; amending Sections 22 and
15 27, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018,
16 Sections 22 and 27), which relate to administration
17 of the Administrative Workers' Compensation Act;
18 modifying powers and duties of the Workers'
19 Compensation Commission; amending Section 29, Chapter
20 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 29),
21 which relates to certain fees; clarifying that fees
22 are annual fees; expanding authority of the
23 Commission to assess fees; providing scope of
24 authority for certain court reporters; amending
Sections 38 and 40, Chapter 208, O.S.L. 2013 (85A
O.S. Supp. 2018, Sections 38 and 40), which relate to
securing workers' compensation for employees;
modifying certain rulemaking authority; providing
fine limitations; authorizing collection proceedings;
authorizing disclosure of certain information;
authorizing the Commission to award compensation in
certain instances in which an employer has failed to
secure compensation; amending Sections 45, as amended
by Section 2, Chapter 390, O.S.L. 2015 and 46,
Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018,
Sections 45 and 46), which relate to disability;
modifying temporary total and temporary partial
disability compensation and permanent partial
disability compensation rates; authorizing employers
to recover overpayment of temporary total disability
payments; modifying termination period for certain
temporary total disability payments; providing that
actual earnings plus temporary partial disability
compensation shall not exceed temporary total
disability rate; making hiring or contracting for a
Vocational Rehabilitation Director discretionary;
eliminating specified duties of the Vocational

1 Rehabilitation Director; eliminating authorization to
2 deduct vocational rehabilitation tuition for
3 compensation award; providing exception to waiting
4 period for disfigurement awards; amending Section 47,
5 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018,
6 Section 47), which relates to death benefits;
7 modifying jurisdiction for determination of common
8 law marriage; amending Sections 50 and 53, Chapter
9 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 50
10 and 53), which relate to medical treatment; requiring
11 periodic review and update of certain information;
12 authorizing certain audits; requiring evaluation of
13 Fee Schedule; providing required procedures;
14 requiring legislative approval; modifying
15 circumstances which bar the right to receive
16 temporary total disability payments or terminate such
17 payments; amending Section 60, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, Section 60), which relates
19 to evaluation of permanent disability; modifying
20 reference to title of the Director of the Commission;
21 amending Section 62, Chapter 208, O.S.L. 2013 (85A
22 O.S. Supp. 2018, Section 62), which relates to soft
23 tissue injuries; modifying what constitutes
24 injections and soft tissue injuries; amending
Sections 63, 66, 67, 69, 71, 78, 80, 82, 86, 87 and
89, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018,
Sections 63, 66, 67, 69, 71, 78, 80, 82, 86, 87 and
89), which relate to procedure after injury; making
certain reports confidential; modifying standard of
evidence for silicosis and asbestosis claims;
eliminating certain authority of the Commission
regarding employees affected by silicosis or
asbestosis; eliminating certain review and
compensation modification; modifying times for
filing; providing for dismissals; expanding methods
for certain notice; prohibiting continuances absent
extraordinary circumstances; providing for certain
reviver action after death of injured employee;
clarifying name of certain fund; modifying procedure
and requirements for review of compensation final
orders and judgements; placing limitations on review;
providing responsibility for payment of legal fees
and litigation expenses; modifying definition; making
employer's filing to controvert claim discretionary;
clarifying result of filing of joint petition;
prohibiting deduction of certain wages from benefits;
amending Section 94, Chapter 208, O.S.L. 2013 (85A

1 O.S. Supp. 2018, Section 94), which relates to
2 incarcerated employees; clarifying benefits for which
3 incarcerated employees are not eligible; providing
4 limitation on medical benefits to incarcerated
5 employees; amending Section 101, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2018, Section 101), which
7 relates to certain reports and electronic data;
8 modifying time for implementation of electronic data
9 interchange system; amending Section 158, Chapter
10 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 115),
11 which relates to joint petitions for settlement;
12 correcting references; amending Sections 161 and 162,
13 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018,
14 Sections 118 and 119), which relate to fees;
15 modifying scope of certain filing fee; specifying who
16 pays fee; correcting statutory references to certain
17 fund; amending Section 163, Chapter 208, O.S.L. 2013
18 (85A O.S. Supp. 2018, Section 120), which relates to
19 inquiries about compensation claims; modifying scope
20 of certain requests; correcting statutory reference
21 to certain fund; amending Section 164, Chapter 208,
22 O.S.L. 2013 (85A O.S. Supp. 2018, Section 121), which
23 relates to the Advisory Council on Workers'
24 Compensation; modifying duties of the Council;
amending Sections 121, 125, 126, 128, 133, 134, 135,
137, 139, 141, 142, 143, 144 and 148, Chapter 208,
O.S.L. 2013 (85A O.S. Supp. 2018, Sections 300, 304,
305, 307, 312, 313, 314, 316, 318, 320, 321, 322, 323
and 327), which relate to the Workers' Compensation
Arbitration Act; updating statutory references;
amending Section 169, Chapter 208, O.S.L. 2013 (85A
O.S. Supp. 2018, Section 400), which relates to the
Workers' Compensation Court of Existing Claims;
providing for appointment of judges after a certain
date; modifying procedure for filling vacancies;
eliminating the authority of the Workers'
Compensation Commission to appoint administrative law
judges to assist the Court when vacancies occur on
the Court; providing duties and authority of
Presiding Judge; eliminating procedure whereby
rulings of the Court are appealable to the
Commission; providing appeal procedure; eliminating
certain duties of administrative law judges; amending
25 O.S. 2011, Section 307, as last amended by Section
1, Chapter 252, O.S.L. 2018 (25 O.S. Supp. 2018,
Section 307), which relates to the Oklahoma Open
Meeting Act; authorizing the Workers' Compensation

1 Commission to hold executive sessions for specified
2 purposes; creating the Multiple Injury Trust Fund
3 Recovery Act; stating purpose; amending Section 30,
4 Chapter 208, O.S.L. 2013, Section 31, Chapter 208,
5 O.S.L. 2013, as amended by Section 3, Chapter 344,
6 O.S.L. 2015, Sections 32, 33 and 34, Chapter 208,
7 O.S.L. 2013 and Section 165, Chapter 208, O.S.L.
8 2013, as amended by Section 4, Chapter 344, O.S.L.
9 2015 (85A O.S. Supp. 2018, Sections 30, 31, 32, 33,
10 34 and 122), which relate to the Administrative
11 Workers' Compensation Act; modifying definition of
12 physically impaired person; modifying application to
13 certain adjudications; modifying assessment procedure
14 for the Multiple Injury Trust Fund; modifying maximum
15 amount of certain assessments for certain period of
16 time; requiring the Oklahoma Tax Commission to assess
17 and collect certain assessments; providing for annual
18 transfer of certain funds; stating purposes;
19 establishing interest rate for accrued and unpaid
20 compensation from the Multiple Injury Trust Fund;
21 modifying duration of certain periodic installment
22 payments; providing for permanent total disability
23 awards from the Multiple Injury Trust Fund for
24 physically impaired persons; providing certain
requirements for proceeding against the Multiple
Injury Trust Fund; requiring offers to be conveyed
within a certain time; prohibiting subsequent claims
in certain circumstances; clarifying when attorney
awards vest; modifying statute of limitations;
modifying authority of the Multiple Injury Trust Fund
Director; repealing Section 15, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2018, Section 15), which relates
to reports regarding funding needs for the Workers'
Compensation Fraud Investigation Unit; repealing
Sections 107, 108, 109, 110, as amended by Section 4,
Chapter 390, O.S.L. 2015, 111, 112, as amended by
Section 5, Chapter 390, O.S.L. 2015, 113, 114, 115,
116, 117, 118, as amended by Section 6, Chapter 390,
O.S.L. 2015, 119 and 120, Chapter 208, O.S.L. 2013
(85A O.S. Supp. 2018, Sections 200, 201, 202, 203,
204, 205, 206, 207, 208, 209, 210, 211, 212 and 213),
which relate to the Oklahoma Employee Injury Benefit
Act; providing for severability; providing for
codification; providing for noncodification; and
declaring an emergency.

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

2 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
3 2013, as amended by Section 1, Chapter 150, O.S.L. 2018 (85A O.S.
4 Supp. 2018, Section 2), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

18 9. a. "Compensable injury" means damage or harm to the
19 physical structure of the body, or damage or harm to
20 prosthetic appliances, including eyeglasses, contact
21 lenses, or hearing aids, ~~caused solely as the result~~
22 of which the major cause is either an accident,
23 cumulative trauma or occupational disease arising out
24 of the course and scope of employment. An "accident"

1 means an event involving factors external to the
2 employee that:

3 (1) was unintended, unanticipated, unforeseen,
4 unplanned and unexpected,

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

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

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

10 b. "Compensable injury" does not include:

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

20 (2) injury incurred while engaging in or performing
21 or as the result of engaging in or performing any
22 recreational or social activities for the
23 employee's personal pleasure,
24

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

1 proves by clear and convincing evidence that his
2 or her state of intoxication had no causal
3 relationship to the injury,

- 4 (5) any strain, degeneration, damage or harm to, or
5 disease or condition of, the eye or
6 musculoskeletal structure or other body part
7 resulting from the natural results of aging,
8 osteoarthritis, arthritis, or degenerative
9 process including, but not limited to,
10 degenerative joint disease, degenerative disc
11 disease, degenerative
12 spondylosis/spondylolisthesis and spinal
13 stenosis, or
14 (6) any preexisting condition except when the
15 treating physician clearly confirms an
16 identifiable and significant aggravation incurred
17 in the course and scope of employment.

18 c. ~~The definition of "compensable injury" shall not be~~
19 ~~construed to limit or abrogate the right to recover~~
20 ~~for mental injuries as described in Section 13 of this~~
21 ~~title, heart or lung injury or illness as described in~~
22 ~~Section 14 of this title, or occupational diseases as~~
23 ~~described in Section 65 of this title.~~

1 ~~d.~~ A compensable injury shall be established by medical
2 evidence supported by objective findings as defined in
3 paragraph 31 of this section.

4 ~~e.~~ d. The injured employee shall prove by a preponderance of
5 the evidence that he or she has suffered a compensable
6 injury.

7 ~~f.~~ e. Benefits shall not be payable for a condition which
8 results from a non-work-related independent
9 intervening cause following a compensable injury which
10 causes or prolongs disability, aggravation, or
11 requires treatment. A non-work-related independent
12 intervening cause does not require negligence or
13 recklessness on the part of a claimant.

14 ~~g.~~ f. An employee who suffers a compensable injury shall be
15 entitled to receive compensation as prescribed in this
16 act. Notwithstanding other provisions of law, if it
17 is determined that a compensable injury did not occur,
18 the employee shall not be entitled to compensation
19 under this act;

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

1 11. "Consequential injury" means injury or harm to a part of
2 the body that is a direct result of the injury or medical treatment
3 to the part of the body originally injured in the claim. The
4 Commission shall not make a finding of a consequential injury unless
5 it is established by objective medical evidence that medical
6 treatment for such part of the body is required;

7 12. "Continuing medical maintenance" means medical treatment
8 that is reasonable and necessary to maintain claimant's condition
9 resulting from the compensable injury or illness after reaching
10 maximum medical improvement, but in no event shall such treatment
11 continue for longer than one (1) year from the date of maximum
12 medical improvement. Continuing medical maintenance shall not
13 include diagnostic tests, surgery, injections, counseling, physical
14 therapy, or pain management devices or equipment;

15 13. "Course and scope of employment" means an activity of any
16 kind or character for which the employee was hired and that relates
17 to and derives from the work, business, trade or profession of an
18 employer, and is performed by an employee in the furtherance of the
19 affairs or business of an employer. The term includes activities
20 conducted on the premises of an employer or at other locations
21 designated by an employer and travel by an employee in furtherance
22 of the affairs of an employer that is specifically directed by the
23 employer. This term does not include:

24

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

19 14. "Cumulative trauma" means an injury to an employee that is
20 caused by the combined effect of repetitive physical activities
21 extending over a period of time in the course and scope of
22 employment. Cumulative trauma shall not mean fatigue, soreness or
23 general aches and pain that may have been caused, aggravated,
24 exacerbated or accelerated by the employee's course and scope of

1 employment. Cumulative trauma shall have resulted directly and
2 independently of all other causes ~~and the employee shall have~~
3 ~~completed at least one hundred eighty (180) days of continuous~~
4 ~~active employment with the employer;~~

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

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

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

16 18. a. "Employee" means any person, including a minor, in the
17 service of an employer under any contract of hire or
18 apprenticeship, written or oral, expressed or implied,
19 but excluding one whose employment is casual and not
20 in the course of the trade, business, profession, or
21 occupation of his or her employer and excluding one
22 who is required to perform work for a municipality or
23 county or the state or federal government on having
24 been convicted of a criminal offense or while

1 incarcerated. "Employee" shall also include a member
2 of the Oklahoma National Guard while in the
3 performance of duties only while in response to state
4 orders and any authorized voluntary or uncompensated
5 worker, rendering services as a firefighter, ~~peace~~ law
6 enforcement officer or emergency management worker.
7 Travel by a ~~policeman~~ police officer, fireman, or a
8 member of a first aid or rescue squad, in responding
9 to and returning from an emergency, shall be deemed to
10 be in the course of employment.

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

12 (1) any person for whom an employer is liable under
13 any Act of Congress for providing compensation to
14 employees for injuries, disease or death arising
15 out of and in the course of employment including,
16 but not limited to, the Federal Employees'
17 Compensation Act, the Federal Employers'
18 Liability Act, the Longshore and Harbor Workers'
19 Compensation Act and the Jones Act, to the extent
20 his or her employees are subject to such acts,

21 (2) any person who is employed in agriculture,
22 ranching or horticulture by an employer who had a
23 gross annual payroll in the preceding calendar
24 year of less than One Hundred Thousand Dollars

1 (\$100,000.00) wages for agricultural, ranching or
2 horticultural workers, or any person who is
3 employed in agriculture, ranching or horticulture
4 who is not engaged in operation of motorized
5 machines. This exemption applies to any period
6 of time for which such employment exists,
7 irrespective of whether or not the person is
8 employed in other activities for which the
9 exemption does not apply. If the person is
10 employed for part of a year in exempt activities
11 and for part of a year in nonexempt activities,
12 the employer shall be responsible for providing
13 workers' compensation only for the period of time
14 for which the person is employed in nonexempt
15 activities,

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

18 (4) any person who is providing services in a medical
19 care or social services program, or who is a
20 participant in a work or training program,
21 administered by the Department of Human Services,
22 unless the Department is required by federal law
23 or regulations to provide workers' compensation
24

1 for such person. This division shall not be
2 construed to include nursing homes,

3 (5) any person employed by an employer with five or
4 fewer total employees, all of whom are related
5 within the second degree by blood or marriage to
6 the employer, ~~if~~ all of whom are dependents
7 living in the household of the employer, or all
8 of whom are a combination of such relatives and
9 dependents. If the employer is not a natural
10 person ~~or a general or limited partnership, or an~~
11 ~~incorporator of a corporation if the corporation~~
12 ~~is the employer~~ such relative shall be related
13 within the second degree by blood or marriage to
14 a person who owns fifty percent (50%) or more of
15 the employer or such dependent shall be in the
16 household of a person who owns fifty percent
17 (50%) or more of the employer,

18 (6) any person employed by an employer which is a
19 youth sports league which qualifies for exemption
20 from federal income taxation pursuant to federal
21 law,

22 (7) sole proprietors, members of a partnership,
23 individuals who are party to a franchise
24 agreement as set out by the Federal Trade

1 Commission franchise disclosure rule, 16 CFR
2 436.1 through 436.11, members of a limited
3 liability company who own at least ten percent
4 (10%) of the capital of the limited liability
5 company or any stockholder-employees of a
6 corporation who own ten percent (10%) or more
7 stock in the corporation, unless they elect to be
8 covered by a policy of insurance covering
9 benefits under the Administrative Workers'
10 Compensation Act,

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

18 (9) a person, commonly referred to as an owner-
19 operator, who owns or leases a truck-tractor or
20 truck for hire, if the owner-operator actually
21 operates the truck-tractor or truck and if the
22 person contracting with the owner-operator is not
23 the lessor of the truck-tractor or truck.

24 Provided, however, an owner-operator shall not be

1 precluded from workers' compensation coverage
2 under the Administrative Workers' Compensation
3 Act if the owner-operator elects to participate
4 as a sole proprietor,

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

17 (11) any person who is employed as a domestic servant
18 or as a casual worker in and about a private home
19 or household, which private home or household had
20 a gross annual payroll in the preceding calendar
21 year of less than Fifty Thousand Dollars
22 (\$50,000.00) for such workers;

23 19. "Employer" means a natural person, partnership,
24 association, limited liability company, corporation, and the legal

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

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

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

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

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

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

12 25. "Insurance Commissioner" means the Insurance Commissioner
13 of the State of Oklahoma;

14 26. "Insurance Department" means the Insurance Department of
15 the State of Oklahoma;

16 27. "Major cause" means more than fifty percent (50%) of the
17 resulting injury, disease or illness. A finding of major cause
18 shall be established by a preponderance of the evidence. A finding
19 that the workplace was not a major cause of the injury, disease or
20 illness shall not adversely affect the exclusive remedy provisions
21 of this act and shall not create a separate cause of action outside
22 this act;

1 28. "Maximum medical improvement" means that no further
2 material improvement would reasonably be expected from medical
3 treatment or the passage of time;

4 29. "Medical services" means those services specified in
5 Section 50 of this title;

6 30. "Misconduct" shall include the following:

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

21 31. a. (1) "Objective findings" are those findings which
22 cannot come under the voluntary control of the
23 patient.

1 (2) (a) When determining permanent disability, a
2 physician, any other medical provider, an
3 administrative law judge, the Commission or
4 the courts shall not consider complaints of
5 pain.

6 (b) For the purpose of making permanent
7 disability ratings to the spine, physicians
8 shall use criteria established by the ~~most~~
9 ~~current edition~~ Sixth Edition of the
10 American Medical Association "Guides to the
11 Evaluation of Permanent Impairment".

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

20 (b) Any difference in the baseline hearing
21 levels shall be confirmed by subsequent
22 testing; provided, however, such test shall
23 be given within four (4) weeks of the
24 initial baseline hearing level test but not

1 before five (5) days after being adjusted
2 for presbycusis.

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

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

9 33. "Permanent disability" means the extent, expressed as a
10 percentage, of the loss of a portion of the total physiological
11 capabilities of the human body as established by competent medical
12 evidence and based on the ~~current edition~~ Sixth Edition of the
13 American Medical Association guides to the evaluation of impairment,
14 if the impairment is contained therein;

15 34. "Permanent partial disability" means a permanent disability
16 or loss of use after maximum medical improvement has been reached
17 which prevents the injured employee, who has been released to return
18 to work by the treating physician, from returning to his or her pre-
19 injury or equivalent job. All evaluations of permanent partial
20 disability must be supported by objective findings;

21 35. "Permanent total disability" means, based on objective
22 findings, incapacity, based upon accidental injury or occupational
23 disease, to earn wages in any employment for which the employee may
24 become physically suited and reasonably fitted by education,

1 training, experience or vocational rehabilitation provided under
2 this act. Loss of both hands, both feet, both legs, or both eyes,
3 or any two thereof, shall constitute permanent total disability;

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

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

13 38. "Private self-insurer" means a private employer that has
14 been authorized to self-insure its workers' compensation obligations
15 pursuant to this act, but does not include group self-insurance
16 associations authorized by this act, or any public employer that
17 self-insures pursuant to this act;

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

21 40. "Scheduled member" or "member" means hands, fingers, arms,
22 legs, feet, toes, and eyes. In addition, for purposes of the
23 Multiple Injury Trust Fund only, "scheduled member" means hearing
24 impairment;

1 41. "Scientifically based" involves the application of
2 rigorous, systematic, and objective procedures to obtain reliable
3 and valid knowledge relevant to medical testing, diagnoses and
4 treatment; is adequate to justify the general conclusions drawn; and
5 has been accepted by a peer-review journal or approved by a panel of
6 independent experts through a comparably rigorous, objective, and
7 scientific review;

8 42. "State average weekly wage" means the state average weekly
9 wage determined by the Oklahoma Employment Security Commission in
10 the preceding calendar year. If such determination is not
11 available, the Commission shall determine the wage annually after
12 reasonable investigation;

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

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

18 45. "Surviving spouse" means the employee's spouse by reason of
19 a legal marriage recognized by the State of Oklahoma or under the
20 requirements of a common law marriage in this state, as determined
21 by the Workers' Compensation Commission;

22 46. "Temporary partial disability" means an injured employee
23 who is temporarily unable to perform his or her job, but may perform
24 alternative work offered by the employer;

1 47. "Time of accident" or "date of accident" means the time or
2 date of the occurrence of the accidental incident from which
3 compensable injury, disability, or death results; and

4 48. "Wages" means money compensation received for employment at
5 the time of the accident, including the reasonable value of board,
6 rent, housing, lodging, or similar advantage received from the
7 employer and includes the amount of tips required to be reported by
8 the employer under Section 6053 of the Internal Revenue Code and the
9 regulations promulgated pursuant thereto or the amount of actual
10 tips reported, whichever amount is greater.

11 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 3), is amended to read as
13 follows:

14 Section 3. A. Every employer and every employee, unless
15 otherwise specifically provided in this act, shall be subject and
16 bound to the provisions of the Administrative Workers' Compensation
17 Act. ~~However, nothing~~ and every employer shall pay or provide
18 benefits according to the provisions of this act for the accidental
19 injury or death of an employee arising out of and in the course of
20 his or her employment, without regard to fault for such injury, if
21 the employee's contract of employment was made or if the injury
22 occurred within this state. If an employee makes a claim for an
23 injury in another jurisdiction, the employee is precluded from his
24 or her right of action under the Administrative Workers'

1 Compensation Act unless the Commission determines that there is a
2 change in circumstances that creates a good cause to bring the claim
3 under the Administrative Workers' Compensation Act; provided,
4 however, that the employee may not receive duplicate benefits to
5 those received in the foreign jurisdiction and the employee's right
6 to bring a claim under this act shall be subject to the limitations
7 period for bringing a claim pursuant to paragraph 1 of subsection A
8 of Section 69 of this title. Nothing in this act shall be construed
9 to conflict with any valid Act of Congress governing the liability
10 of employers for injuries received by their employees.

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

24

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

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

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

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

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

9 B. Exclusive remedy shall not apply if:

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

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

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

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

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

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

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

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

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

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

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

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

23 Section 6.
24

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

6 (1) obtaining any benefit or payment,

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

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

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

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

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

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

1 B. ~~A~~ Except for forms submitted through the Electronic Data
2 Interchange system employed by the Commission pursuant to Section
3 101 of this title, a copy of division (1) of subparagraph a of
4 paragraph 1 of subsection A of this section shall be included on all
5 forms prescribed by the Commission for the use of injured employees
6 claiming benefits and for the use of employers in responding to
7 employees' claims under this act.

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

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

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

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

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

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

9 4. a. In the course of any investigation being conducted by
10 the Unit, the Attorney General and his or her deputies
11 and assistants and the Director and his or her
12 deputies and assistants shall have the power of
13 subpoena and may:

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

19 b. The issuance of subpoenas for witnesses shall be
20 served in the same manner as if issued by a district
21 court.

22 c. (1) Upon application by the commissioner or the
23 Director of the Unit, the district court located
24 in the county where a subpoena was served may

1 issue an order compelling an individual to comply
2 with the subpoena to testify.

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

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

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

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

23 6. a. Every carrier or employer who has reason to suspect
24 that a violation of division (1) of subparagraph a of

1 paragraph 1 of subsection A of this section has
2 occurred shall be required to report all pertinent
3 matters to the ~~unit~~ Unit.

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

10 c. (1) Any carrier or employer who willfully and
11 knowingly fails to report a violation under
12 division (1) of subparagraph a of paragraph 1 of
13 subsection A of this section shall be guilty of a
14 misdemeanor and on conviction shall be punished
15 by a fine not to exceed One Thousand Dollars
16 (\$1,000.00).

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

21 d. Any employee may report suspected violations of
22 division (1) of subparagraph a of paragraph 1 of
23 subsection A of this section. No employee who makes a
24

1 report shall be liable to the employee whose suspected
2 violations have been reported.

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

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

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

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

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

6 I. The Except for forms submitted through the Electronic Data
7 Interchange system employed by the Commission pursuant to Section
8 101 of this title, the Commission shall include a statement on all
9 forms for notices and instructions to employees, employers, carriers
10 and third-party administrators that any person who commits workers'
11 compensation fraud, upon conviction, shall be guilty of a felony
12 punishable by imprisonment, a fine or both.

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

19 K. If the Attorney General's Office is in compliance with the
20 discovery provisions of Section 258 of Title 22 of the Oklahoma
21 Statutes, medical records created for the purpose of treatment and
22 medical opinions obtained during the investigation shall be
23 admissible at the preliminary hearing without the appearance of the
24 medical professional creating such records or opinions. However,

1 when material evidence dispositive to the issues of whether there
2 was probable cause the crime was committed and whether the defendant
3 committed the crime, was not included in a report or opinion
4 admitted at preliminary hearing, but might be presented at a
5 pretrial hearing by a medical professional who created such report
6 or opinion, the judge may, upon the motion of either party, order
7 the appearance of the medical professional creating such report or
8 opinion. Questions of fact regarding the conduct of the defendant
9 that conflict with the findings of the medical professional
10 evaluating the defendant shall not constitute material evidence. In
11 the event of such motion, notice shall be given to the Attorney
12 General's Workers' Compensation Fraud and Investigation and
13 Prosecution Unit. A hearing shall be held and, if the motion is
14 granted, the evidence shall not be presented fewer than five (5)
15 days later.

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

1 of any civil or criminal proceeding, there shall be a presumption of
2 good faith of any person making a report, providing medical records
3 or providing information pertaining to a workers' compensation or
4 insurance fraud investigation by the Attorney General, and
5 participating in a judicial proceeding resulting from a subpoena or
6 a report.

7 SECTION 5. AMENDATORY Section 7, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 7), is amended to read as
9 follows:

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

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

19 B. The ~~Commission~~ district courts shall have exclusive
20 jurisdiction to hear and decide claims based on ~~subsection A of this~~
21 section.

22 C. ~~If the Commission determines that the defendant violated~~
23 ~~subsection A of this section, the Commission may award the employee~~
24 ~~back pay up to a maximum of One Hundred Thousand Dollars~~

1 ~~(\$100,000.00). Interim earnings or amounts earnable with reasonable~~
2 ~~diligence by the person discriminated against shall reduce the back~~
3 ~~pay otherwise allowable~~ An employer which violates any provision of
4 this section shall be liable in a district court action for
5 reasonable damages, actual and punitive if applicable, suffered by
6 an employee as a result of the violation. Exemplary or punitive
7 damage awards made pursuant to this section shall not exceed One
8 Hundred Thousand Dollars (\$100,000.00). The employee shall have the
9 burden of proof by a preponderance of the evidence.

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

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

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

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

23

24

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

4 SECTION 6. AMENDATORY Section 14, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2018, Section 14), is amended to read as
6 follows:

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

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

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

22 SECTION 7. AMENDATORY Section 16, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 16), is amended to read as
24 follows:

1 Section 16. A. The Official Disability Guidelines - Treatment
2 in Workers' Compensation (ODG), published by the Work Loss Data
3 Institute, ~~is to be recognized as the primary standard of reference,~~
4 shall be mandatory at the time of treatment, in determining the
5 frequency and extent of services presumed to be medically necessary
6 and appropriate for compensable injuries under this act, or in
7 resolving such matters in the event a dispute arises. ~~The medical
8 treatment guidelines are not requirements, nor are they mandates or
9 standards; they provide advice by identifying the care most likely
10 to benefit injured workers. The guidelines shall be evidence-based,
11 scientifically valid, outcome-focused, and designed to reduce
12 excessive or inappropriate medical care while safeguarding necessary
13 medical care.~~

14 B. Beginning on the effective date of this act, the Workers'
15 Compensation Commission shall conduct an evaluation of the Official
16 Disability Guidelines to determine if any amendments are needed for
17 the rules applicable to the Official Disability Guidelines or if
18 statutory changes are necessary. The Commission may utilize the
19 services of any external consultant that is under contract pursuant
20 to Section 16 of this title in complying with this subsection. The
21 Commission shall submit a report containing proposed updated and
22 adjusted amendments to rules and statutes pertaining to the Official
23 Disability Guidelines to the Speaker of the House of
24 Representatives, the President Pro Tempore of the Senate and the

1 Governor. Any proposal for amended rules shall be promulgated and
2 adopted in accordance with the Administrative Procedures Act. The
3 initial report required by this subsection shall be submitted by
4 December 1, 2019. Thereafter, the evaluation shall be conducted and
5 a report shall be submitted every five (5) years.

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

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

14 SECTION 8. AMENDATORY Section 18, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 18), is amended to read as
16 follows:

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

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

6 B. The notice shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 G. When any commissioner of the Commission is disqualified for
21 any reason to hear and participate in the determination of any
22 matter pending before the Commission, the Governor shall appoint a
23 qualified person to hear and participate in the decision on the
24 particular matter. The special commissioner so appointed shall have

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

13 SECTION 10. AMENDATORY Section 20, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2018, Section 20), is amended to read as
15 follows:

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

19 1. To appoint administrative law judges to hear all claims for
20 compensation, including claims based on injuries which occurred
21 outside this state for which compensation is payable under this act.
22 An administrative law judge shall have been licensed to practice law
23 in this state for a period of not less than three (3) years and
24

1 shall have not less than three (3) years of workers' compensation
2 experience prior to appointment;

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

5 3. To assess penalties;

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

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

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

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

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

24

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

5 SECTION 11. AMENDATORY Section 21, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2018, Section 21), is amended to read as
7 follows:

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

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

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

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

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

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

5 SECTION 12. AMENDATORY Section 22, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2018, Section 22), is amended to read as
7 follows:

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

11 a. to make rules necessary for the administration and
12 operation of the Commission,

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

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

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

24

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

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

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

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

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

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

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

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

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

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

12 1. To hear and approve compromise settlements;

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

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

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

24

- 1 5. To establish a toll-free telephone number in order to
2 provide information and answer questions about the Commission;
- 3 6. To hear and determine claims concerning disputed medical
4 bills;
- 5 7. To promulgate necessary rules for administering this ~~act~~
6 title and develop uniform forms and procedures for use by
7 administrative law judges. Such rules shall be reviewable by the
8 Legislature;
- 9 8. To invest funds on behalf of the Multiple Injury Trust Fund;
- 10 9. To appoint a Commission Mediator to conduct informal
11 sessions to attempt to resolve assigned disputes; ~~and~~
- 12 10. To establish a petty cash fund in an amount not to exceed
13 Five Hundred Dollars (\$500.00) to be used for the purpose of making
14 change for persons purchasing printed or electronic materials from
15 the Commission, paying fees and fines, and transacting other such
16 business with the Commission. The fund shall be established and
17 replenished from any monies available to the Commission for
18 operating expenses and it shall be administered pursuant to the
19 requirements of Section 195 of Title 62 of the Oklahoma Statutes;
20 and
- 21 11. Such other duties and responsibilities authorized by law.
- 22 D. Communications, whether in person, by electronic medium or
23 in writing, that reflect the pre-decisional deliberations of the
24 Commissioners among each other or with Commission staff, and which

1 occur while exercising their quasi-judicial duties such as reviewing
2 decisions or awards made by the administrative law judges of the
3 Commission pursuant to Section 78 of this title or reviewing
4 arbitration awards pursuant to Section 322 and Section 323 of this
5 title, shall not be subject to requirements of the Oklahoma Open
6 Meeting Act or Oklahoma Open Records Act, shall be confidential and
7 shall be considered protected deliberative communications.

8 E. It shall be the duty of an administrative law judge, under
9 the rules adopted by the Commission, to hear and determine claims
10 for compensation and to conduct hearings and investigations and to
11 make such judgments, decisions, and determinations as may be
12 required by any rule or judgment of the Commission.

13 SECTION 13. AMENDATORY Section 27, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2018, Section 27), is amended to read as
15 follows:

16 Section 27. A. The Workers' Compensation Commission shall be
17 vested with jurisdiction over all claims filed pursuant to the
18 Administrative Workers' Compensation Act. All claims so filed shall
19 be heard by the administrative law judge sitting without a jury.
20 The Commission shall have full power and authority to determine all
21 questions in relation to claims for compensation under the
22 provisions of the Administrative Workers' Compensation Act. The
23 Commission, upon application of either party, shall order a hearing.
24 Upon a hearing, either party may present evidence and be represented

1 by counsel. Except as provided in this act, the decision of the
2 administrative law judge shall be final as to all questions of fact
3 and law. The decision of the administrative law judge shall be
4 issued within thirty (30) days following the submission of the case
5 by the parties. The power and jurisdiction of the Commission over
6 each case shall be continuing and it may, from time to time, make
7 such modifications or changes with respect to former findings or
8 orders relating thereto if, in its opinion, it may be justified.

9 B. In addition to the duties set forth in this section, the
10 administrative law judges shall have the following duties and
11 powers:

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

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

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

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

22 SECTION 14. AMENDATORY Section 29, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 29), is amended to read as
24 follows:

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

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

10 C. ~~The Commission may assess~~ Each third-party ~~administrators~~
11 administrator and marketing firm shall pay to the Commission an
12 annual application fee of One Thousand Dollars (\$1,000.00).

13 D. Fees required pursuant to this section shall be deposited
14 ~~into~~ to the credit of the Workers' Compensation Commission Revolving
15 Fund.

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

19 A court reporter employed by or contracted by the Workers'
20 Compensation Commission shall be authorized to stenographically
21 report both joint petition settlements and compromise settlements in
22 the Workers' Compensation Court of Existing Claims. A court
23 reporter employed by or contracted by the Court of Existing Claims
24 shall be authorized to stenographically report both compromise

1 settlements and joint petition settlements under the jurisdiction of
2 the Commission.

3 SECTION 16. AMENDATORY Section 38, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 38), is amended to read as
5 follows:

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

8 1. By insuring and keeping insured the payment of compensation
9 with any stock corporation, mutual association, or other concerns
10 authorized to transact the business of workers' compensation
11 insurance in this state. When an insurer issues a policy to provide
12 workers' compensation benefits under the provisions of this act, it
13 shall file a notice with the Workers' Compensation Commission
14 containing the name, address, and principal occupation of the
15 employer, the number, effective date, and expiration date of the
16 policy, and such other information as may be required by the
17 Commission. The notice shall be filed by the insurer within thirty
18 (30) days after the effective date of the policy. Any insurer who
19 does not file the notice required by this paragraph shall be subject
20 to a fine by the Commission of not more than One Thousand Dollars
21 (\$1,000.00);

22 2. By obtaining and keeping in force guaranty insurance with
23 any company authorized to do guaranty business in this state. Each
24 company that issues workers' compensation guaranty insurance shall

1 file a copy of the contract with the Commission within thirty (30)
2 days after the effective date of the contract. Any company that
3 does not file a copy of the contract as required by this paragraph
4 shall be subject to a fine by the Commission of not more than One
5 Thousand Dollars (\$1,000.00);

6 3. By furnishing satisfactory proof to the Commission of the
7 employer's financial ability to pay the compensation. The
8 Commission, under rules adopted by the ~~Insurance Department~~
9 Commission, shall require any employer that has:

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

12 (1) deposit with the Commission securities, an
13 irrevocable letter of credit or a surety bond
14 payable to the state, in an amount determined by
15 the Commission which shall be at least an average
16 of the yearly claims for the last three (3)
17 years, or

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

22 b. one hundred or more employees and One Million Dollars
23 (\$1,000,000.00) or more in net assets to:
24

- 1 (1) secure a surety bond payable to the state, or an
2 irrevocable letter of credit, in an amount
3 determined by the Commission which shall be at
4 least an average of the yearly claims for the
5 last three (3) years, or
6 (2) provide proof of excess coverage with terms and
7 conditions that are commensurate with their
8 ability to pay the benefits required by the
9 provisions of this act;

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

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

23 B. The Commission may waive the requirements of this section in
24 an amount which is commensurate with the ability of the employer to

1 pay the benefits required by the provisions of this act.
2 Irrevocable letters of credit required by this subsection shall
3 contain such terms as may be prescribed by the Commission and shall
4 be issued for the benefit of the state by a financial institution
5 whose deposits are insured by the Federal Deposit Insurance
6 Corporation.

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

13 D. Failure on the part of any employer to secure the payment of
14 compensation provided in this act shall have the effect of enabling
15 the Commission to assert the rights of an injured employee against
16 the employer.

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

21 SECTION 17. AMENDATORY Section 40, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2018, Section 40), is amended to read as
23 follows:
24

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

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

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

15 2. a. An employer may contest a proposed judgment of the
16 Commission issued under paragraph 1 of this subsection
17 by filing with the Commission, within twenty (20) days
18 of receipt of the proposed judgment, a written request
19 for a hearing.

20 b. The request for a hearing does not need to be in any
21 particular form but shall specify the grounds on which
22 the person contests the proposed judgment, the
23 proposed assessment, or both.

24

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

8 d. A proposed judgment by the Commission under this
9 section shall be prima facie correct, and the burden
10 is on the employer to prove that the proposed judgment
11 is incorrect.

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

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

19 c. The carrier shall promptly, and no later than five (5)
20 days before the hearing, respond in writing to the
21 employer's allegation by providing evidence of
22 coverage for the period in question or by
23 affirmatively denying the employer's allegation.
24

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

3 5. The Commission may assess a fine against an employer who
4 fails to secure the payment of compensation in an amount up to One
5 Thousand Dollars (\$1,000.00) per day of violation payable to the
6 Workers' Compensation Commission Revolving Fund, not to exceed a
7 total of Fifty Thousand Dollars (\$50,000.00) for the first
8 violation.

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

18 7. Upon any penalty becoming final under this section, the
19 Commission may institute collection proceedings against any assets
20 of the employer independently or in district court including, but
21 not limited to, an asset hearing, garnishment of income and wages,
22 judgment lien, or an intercept of an income tax refund consistent
23 with Section 205.2 of Title 68 of the Oklahoma Statutes.
24

1 8. Information subject to subsection A or B of Section 4-508 of
2 Title 40 of the Oklahoma Statutes may be disclosed to the employees
3 of the Commission for purposes of investigation and enforcement of
4 workers' compensation coverage requirements pursuant to this title,
5 and such information shall be admissible in any hearing before an
6 administrative law judge of the Commission.

7 SECTION 18. AMENDATORY Section 45, Chapter 208, O.S.L.
8 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
9 Supp. 2018, Section 45), is amended to read as follows:

10 Section 45. A. Temporary Total Disability.

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

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

1 any overpayment of temporary total disability payments from a
2 subsequent permanent partial disability award if the offset is
3 deemed justified by the Commission.

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

1 appoint an independent medical examiner to determine if further
2 medical treatment is reasonable and necessary. The independent
3 medical examiner shall not provide treatment to the injured worker,
4 unless agreed upon by the parties.

5 B. Temporary Partial Disability.

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

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

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

21 C. Permanent Partial Disability.

22 1. A permanent partial disability award or combination of
23 awards granted an injured worker may not exceed a permanent partial
24 disability rating of one hundred percent (100%) to any body part or

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

21 2. Permanent partial disability shall not be allowed to a part
22 of the body for which no medical treatment has been received. A
23 determination of permanent partial disability made by the Commission
24 or administrative law judge which is not supported by objective

1 medical findings provided by a treating physician who is a medical
2 doctor, doctor of osteopathy, chiropractor or a qualified
3 independent medical examiner shall be considered an abuse of
4 discretion.

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

7 4. In cases of permanent partial disability, the compensation
8 shall be seventy percent (70%) of the employee's average weekly
9 wage, not to exceed ~~Three Hundred Twenty-three Dollars (\$323.00)~~
10 Three Hundred Fifty-five Dollars (\$355.00) per week which shall
11 increase to Three Hundred Sixty-five Dollars (\$365.00) per week on
12 July 1, 2021, for a term not to exceed a total of three hundred
13 fifty (350) weeks for the body as a whole.

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

23 a. ~~The amount of the permanent partial disability award~~
24 ~~shall be reduced by seventy percent (70%) of the~~

1 ~~employee's average weekly wage for each week he works~~
2 ~~in his pre-injury or equivalent job.~~

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

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

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

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

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

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

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

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

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

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

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

4 8. The whole body shall represent a maximum of ~~three hundred~~
5 ~~fifty (350)~~ three hundred sixty (360) weeks.

6 9. The permanent partial disability rate of compensation for
7 amputation or permanent total loss of use of a scheduled member
8 specified in Section 46 of this ~~act~~ title shall be seventy percent
9 (70%) of the employee's average weekly wage, not to exceed ~~Three~~
10 ~~Hundred Twenty-three Dollars (\$323.00)~~ Three Hundred Fifty-five
11 Dollars (\$355.00), with an increase to Three Hundred Sixty-five
12 Dollars (\$365.00) on July 1, 2021, multiplied by the number of weeks
13 set forth for the member in Section 46 of this ~~act~~ title, regardless
14 of whether the injured employee is able to return to his or her pre-
15 injury or equivalent job.

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

1 D. Permanent Total Disability.

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

23 2. The Workers' Compensation Commission shall annually review
24 the status of any employee receiving benefits for permanent total

1 disability against the last employer. The Commission shall require
2 the employee to annually file an affidavit under penalty of perjury
3 stating that he or she is not and has not been gainfully employed
4 and is not capable of gainful employment. Failure to file such
5 affidavit shall result in suspension of benefits; provided, however,
6 reinstatement of benefits may occur after proper hearing before the
7 Commission.

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

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

1 ~~shall be paid by the employer. All administrative orders are~~
2 ~~subject to appeal to the full Commission.~~

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

6 ~~a. if the employee's occupation is truck driver or~~
7 ~~laborer and the medical condition is traumatic brain~~
8 ~~injury, stroke or uncontrolled vertigo,~~

9 ~~b. if the employee's occupation is truck driver or~~
10 ~~laborer performing high-risk tasks and the medical~~
11 ~~condition is seizures,~~

12 ~~c. if the employee's occupation is manual laborer and the~~
13 ~~medical condition is bilateral wrist fusions,~~

14 ~~d. if the employee's occupation is assembly-line worker~~
15 ~~and the medical condition is radial head fracture with~~
16 ~~surgical excision,~~

17 ~~e. if the employee's occupation is heavy laborer and the~~
18 ~~medical condition is myocardial infarction with~~
19 ~~congestive heart failure,~~

20 ~~f. if the employee's occupation is heavy manual laborer~~
21 ~~and the medical condition is multilevel neck or back~~
22 ~~fusions greater than two levels,~~

23

24

- 1 ~~g. if the employee's occupation is laborer performing~~
2 ~~overhead work and the medical condition is massive~~
3 ~~rotator cuff tears, with or without surgery,~~
- 4 ~~h. if the employee's occupation is heavy laborer and the~~
5 ~~medical condition is recurrent inguinal hernia~~
6 ~~following unsuccessful surgical repair,~~
- 7 ~~i. if the employee's occupation is heavy manual laborer~~
8 ~~and the medical condition is total knee replacement or~~
9 ~~total hip replacement,~~
- 10 ~~j. if the employee's occupation is roofer and the medical~~
11 ~~condition is calcaneal fracture, medically or~~
12 ~~surgically treated,~~
- 13 ~~k. if the employee's occupation is laborer of any kind~~
14 ~~and the medical condition is total shoulder~~
15 ~~replacement,~~
- 16 ~~l. if the employee's occupation is laborer and the~~
17 ~~medical condition is amputation of a hand, arm, leg,~~
18 ~~or foot,~~
- 19 ~~m. if the employee's occupation is laborer and the~~
20 ~~medical condition is tibial plateau fracture, pilon~~
21 ~~fracture,~~
- 22 ~~n. if the employee's occupation is laborer and the~~
23 ~~medical condition is ankle fusion or knee fusion,~~
- 24

1 ~~o. if the employee's occupation is driver or heavy~~
2 ~~equipment operator and the medical condition is~~
3 ~~unilateral industrial blindness, or~~

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

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

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

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

19 ~~6.~~ 5. Vocational rehabilitation services or training shall not
20 extend for a period of more than fifty-two (52) weeks. A request
21 for vocational rehabilitation services or training shall be filed
22 with the Commission by an interested party not later than sixty (60)
23 days from the date of receiving permanent ~~restrictions~~ disability

24

1 that ~~prevent~~ prevents the injured employee from returning to his or
2 her pre-injury or equivalent position.

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

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

22 F. Disfigurement.

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

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 19. AMENDATORY Section 46, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2018, Section 46), is amended to read as
18 follows:

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

24

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

1 B. The permanent partial disability rate of compensation for
2 amputation or permanent total loss of use of a scheduled member
3 specified in this section shall be seventy percent (70%) of the
4 employee's average weekly wage, not to exceed ~~Three Hundred Twenty-~~
5 ~~three Dollars (\$323.00)~~ Three Hundred Fifty-five Dollars (\$355.00)
6 with an increase to Three Hundred Sixty-five Dollars (\$365.00) on
7 July 1, 2021, multiplied by the number of weeks as set forth in this
8 section, regardless of whether or not the injured employee is able
9 to return to his or her pre-injury job.

10 C. Other cases: In cases in which the Workers' Compensation
11 Commission finds an injury to a part of the body not specifically
12 covered by the foregoing provisions of this section, the employee
13 may be entitled to compensation for permanent partial disability.
14 The compensation ordered paid shall be seventy percent (70%) of the
15 employee's average weekly wage, not to exceed ~~Three Hundred Twenty-~~
16 ~~three Dollars (\$323.00)~~ Three Hundred Fifty-five Dollars (\$355.00)
17 with an increase to Three Hundred Sixty-five Dollars (\$365.00) on
18 July 1, 2021, for the number of weeks which the partial disability
19 of the employee bears to three hundred fifty (350) 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) weeks.

17 SECTION 20. AMENDATORY Section 47, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, Section 47), is amended to read as
19 follows:

20 Section 47. A. Time of death. If death does not result within
21 one (1) year from the date of the accident or within the first three
22 (3) years of the period for compensation payments fixed by the
23 compensation judgment, a rebuttable presumption shall arise that the
24 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 ~~a court with competent jurisdiction~~ the Workers'
4 Compensation Commission ruling that a common law marriage existed
5 between the decedent and the surviving spouse. The ruling by the
6 Commission shall be exclusive in regard to benefits under this
7 section regardless of any district court decision regarding the
8 probate of the decedent's estate.

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

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

18 2. If there is a surviving spouse and a child or children, a
19 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
20 fifteen percent (15%) of the lesser of the deceased employee's
21 average weekly wage and the state average weekly wage to each child.
22 If there are more than two children, each child shall receive a pro
23 rata share of Fifty Thousand Dollars (\$50,000.00) and thirty percent
24 (30%) of the deceased employee's average weekly wage;

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

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

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

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

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

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

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

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

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

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

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

4 SECTION 21. AMENDATORY Section 50, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2018, Section 50), is amended to read as
6 follows:

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

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

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

24

1 D. Unless recommended by the treating doctor at the time
2 claimant reaches maximum medical improvement or by an independent
3 medical examiner, continuing medical maintenance shall not be
4 awarded by the Commission. The employer or insurance carrier shall
5 not be responsible for continuing medical maintenance or pain
6 management treatment that is outside the parameters established by
7 the Physician Advisory Committee or ODG. The employer or insurance
8 carrier shall not be responsible for continuing medical maintenance
9 or pain management treatment not previously ordered by the
10 Commission or approved in advance by the employer or insurance
11 carrier.

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

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

24

1 G. The employer shall reimburse the employee for the actual
2 mileage in excess of twenty (20) miles round-trip to and from the
3 employee's home to the location of a medical service provider for
4 all reasonable and necessary treatment, for an evaluation of an
5 independent medical examiner and for any evaluation made at the
6 request of the employer or insurance carrier. The rate of
7 reimbursement for such travel expense shall be the official
8 reimbursement rate as established by the State Travel Reimbursement
9 Act. In no event shall the reimbursement of travel for medical
10 treatment or evaluation exceed six hundred (600) miles round trip.

11 H. Fee Schedule.

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

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

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

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

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

19 b. For reimbursement of medical services for Evaluation
20 and Management of injured employees as defined in the
21 Fee Schedule adopted by the Commission, the
22 reimbursement rate shall not be less than one hundred
23 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 this act shall lie solely with the Commission. When a
22 medical care provider has brought a claim to the Commission to
23 obtain payment for services, a party who prevails in full on the
24 claim shall be entitled to reasonable attorney fees.

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

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

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

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

22 Physicians shall prescribe and pharmacies shall dispense generic
23 equivalent drugs when available. If the National Drug Code, or
24 "NDC", for the drug product dispensed is for a repackaged drug, then

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

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

18 10. Implantables are paid in addition to procedural
19 reimbursement paid for medical or surgical services. A
20 manufacturer's invoice for the actual cost to a physician, hospital
21 or other entity of an implantable device shall be adjusted by the
22 physician, hospital or other entity to reflect, at the time
23 implanted, all applicable discounts, rebates, considerations and
24 product replacement programs and shall be provided to the payer by

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

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

1 medical care, the Commission may assess a civil penalty of not more
2 than Five Thousand Dollars (\$5,000.00) per occurrence.

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

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

19 14. a. Beginning on the effective date of this act, the
20 Commission shall conduct an evaluation of the Fee
21 Schedule, which shall include an update of the list of
22 Current Procedural Terminology (CPT) codes, a line
23 item adjustment or renewal of all rates, and amendment
24 as needed to the rules applicable to the Fee Schedule.

1 b. The Commission shall contract with an external
2 consultant with knowledge of workers' compensation fee
3 schedules to review regional and nationwide
4 comparisons of Oklahoma's Fee Schedule rates and date
5 and market for medical services. The consultant shall
6 receive written and oral comment from employers,
7 workers' compensation medical service and insurance
8 providers, self-insureds, group self-insurance
9 associations of this state and the public. The
10 consultant shall submit a report of its findings and a
11 proposed amended Fee Schedule to the Commission.

12 c. The Commission shall adopt the proposed amended Fee
13 Schedule in whole or in part and make any additional
14 updates or adjustments. The Commission shall submit a
15 proposed updated and adjusted Fee Schedule to the
16 President Pro Tempore of the Senate, the Speaker of
17 the House of Representatives and the Governor. The
18 proposed Fee Schedule shall become effective on July 1
19 following the legislative session, unless disapproved
20 by Joint Resolution of the Legislature during the
21 session in which a proposed Fee Schedule is submitted.

22 d. Beginning on the effective date of this act, an
23 external evaluation shall be conducted and a proposed
24 amendment Fee Schedule shall be submitted to the

1 Legislature for approval during the 2020 legislative
2 session. Thereafter, an external evaluation shall be
3 conducted and a proposed amended Fee Schedule shall be
4 submitted to the Legislature every five (5) years.

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

14 SECTION 22. AMENDATORY Section 53, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 53), is amended to read as
16 follows:

17 Section 53. A. An injured employee claiming to be entitled to
18 benefits under this act shall submit to physical examination and
19 treatment by another qualified physician, designated or approved by
20 the Commission, as the Commission may require from time to time if
21 reasonable and necessary.

22 B. In cases where the Commission directs examination or
23 treatment, proceedings shall be suspended, and no compensation shall
24 be payable for any period during which the employee refuses to

1 submit to examination and treatment or otherwise obstructs the
2 examination or treatment.

3 C. Failure of the employee to obey a judgment of the Commission
4 for an examination or treatment ~~for a period of one (1) month from~~
5 ~~the date of the judgment~~ shall bar the right of the claimant to
6 further temporary total disability compensation in respect to the
7 injury.

8 SECTION 23. AMENDATORY Section 60, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2018, Section 60), is amended to read as
10 follows:

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

1 action on the method or system submitted by the Executive Director,
2 the method or system shall become operative thirty (30) days
3 following the adjournment of the Legislature.

4 SECTION 24. AMENDATORY Section 62, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2018, Section 62), is amended to read as
6 follows:

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

1 employer any temporary total disability compensation he or she
2 received beyond eight (8) weeks. An epidural steroid injection, or
3 any procedure of the same or similar physical invasiveness, shall
4 not be considered surgery.

5 B. For purposes of this section, "soft tissue injury" means
6 damage to one or more of the tissues that surround bones and joints.
7 Soft tissue injury includes, but is not limited to, sprains,
8 strains, contusions, tendonitis and muscle tears. Cumulative trauma
9 is to be considered a soft tissue injury unless corrective surgery
10 is necessary. Soft tissue injury does not include any of the
11 following:

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

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

15 a. sensory or motor disturbances,

16 b. communication disturbances,

17 c. complex integrated disturbances of cerebral function,

18 d. episodic neurological disorders, or

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

22 3. Any joint replacement.

23

24

1 SECTION 25. AMENDATORY Section 63, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 63), is amended to read as
3 follows:

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

- 7 1. The name, address, and business of the employer;
- 8 2. The name, address, and occupation of the employee;
- 9 3. The cause and nature of the injury or death;
- 10 4. The year, month, day, approximately when, and the particular
11 locality where, the injury or death occurred; and
- 12 5. Such other information as the Commission may require.

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

18 C. Any report provided for in subsection A or B of this section
19 shall not be evidence of any fact stated in the report in any
20 proceeding with respect to the injury or death on account of which
21 the report is made. Any such report shall be kept confidential and
22 shall not be open to public inspection; provided, however, such
23 report shall be made available immediately upon request by the
24 injured employee named in the report, the injured employee's legal

1 representative, or any prosecutorial authority. The report shall be
2 open to public inspection upon the employee's first notice of claim
3 for compensation being filed.

4 D. The mailing of any report in a stamped envelope, properly
5 addressed, within the time prescribed in subsection A or B of this
6 section, shall be in compliance with this section. In addition, the
7 Commission shall establish a means of electronic delivery of any
8 report or other information required by this section.

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

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

17 F. An employer may contest a proposed judgment of the
18 Commission issued under subsection E of this section by filing with
19 the Commission, within twenty (20) days of receipt of the proposed
20 judgment, a written request for a hearing. If a written request for
21 hearing is not filed with the Commission within this time, the
22 proposed judgment, proposed penalty, or both, shall be a final
23 judgment of the Commission. The request for a hearing does not need
24 to be in any particular form but shall specify the grounds on which

1 the person contests the proposed judgment, the proposed assessment,
2 or both. A proposed judgment by the Commission under this section
3 shall be prima facie correct, and the burden is on the employer to
4 prove that the proposed judgment is incorrect.

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

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

15 SECTION 26. AMENDATORY Section 66, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2018, Section 66), is amended to read as
17 follows:

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

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

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

24

1 B. In the absence of ~~conclusive~~ a preponderance of the evidence
2 in favor of the claim, disability or death from silicosis or
3 asbestosis shall be presumed not to be due to the nature of any
4 occupation within the provision of this section unless during the
5 ten (10) years immediately preceding the date of disablement the
6 employee has been exposed to the inhalation of silica dust or
7 asbestos dust over a period of not less than five (5) years, two (2)
8 years of which shall have been in this state, under a contract of
9 employment performed in this state. However, if the employee has
10 been employed by the same employer during the entire five-year
11 period, his or her right to compensation against the employer shall
12 not be affected by the fact that he or she had been employed during
13 any part of the period outside of this state.

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

18 D. 1. In case of disability or death from silicosis or
19 asbestosis complicated with tuberculosis of the lungs, compensation
20 shall be payable as for uncomplicated silicosis or asbestosis,
21 provided that the silicosis or asbestosis was an essential factor in
22 the causing of disability or death.

23 2. In case of disability or death from silicosis or asbestosis
24 complicated with any other disease, or from any other disease

1 complicated with silicosis or asbestosis, the compensation shall be
2 reduced as provided in subsection C of Section 65 of this ~~act~~ title.

3 ~~E. 1. When an employee, though not actually disabled, is found
4 by the Commission to be affected by silicosis or asbestosis to such
5 a degree as to make it unduly hazardous for him or her to continue
6 in an employment involving exposure to the hazards of the disease,
7 the Commission may order that he or she be removed from his or her
8 employment. In such a case, or in case he or she has already been
9 discharged from the employment and is unemployed, he or she shall be
10 entitled to compensation until he or she can obtain steady
11 employment in some other suitable occupation in which there are no
12 hazards of the disease.~~

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

18 SECTION 27. AMENDATORY Section 67, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 67), is amended to read as
20 follows:

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

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

6 ~~B. An award or denial of award of compensation for an
7 occupational disease or cumulative trauma may be reviewed and
8 compensation increased, reduced, or terminated where previously
9 awarded, or awarded where previously denied, only on proof of fraud
10 or undue influence or of change of condition, and then only on
11 application by a party in interest made not later than one (1) year
12 after the denial of award or, where compensation has been awarded,
13 after the award or the date when the last payment was made under the
14 award, except in cases of silicosis or asbestosis, where the statute
15 of limitations shall be two (2) years.~~

16 SECTION 28. AMENDATORY Section 69, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2018, Section 69), is amended to read as
18 follows:

19 Section 69. A. Time for Filing.

20 1. A claim for benefits under this act, other than an
21 occupational disease, shall be barred unless it is filed with the
22 Workers' Compensation Commission within one (1) year from the date
23 of the injury or, if the employee has received benefits under this
24 title for the injury, one (1) year from the date of the last

1 issuance of such benefits. ~~If during the one-year period following~~
2 ~~the filing of the claim the employee receives no weekly benefit~~
3 ~~compensation and receives no medical treatment resulting from the~~
4 ~~alleged injury, the claim shall be barred thereafter.~~ For purposes
5 of this section, the date of the injury shall be defined as the date
6 an injury is caused by an accident as set forth in paragraph 9 of
7 Section 2 of this ~~act~~ title.

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

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

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

1 employee following examination and diagnosis by a
2 medical doctor.

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

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

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

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

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

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

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

1 ~~2. The statute of limitations provided in this subsection shall~~
2 ~~not apply to claims for the replacement of medicine, crutches,~~
3 ~~ambulatory devices, artificial limbs, eyeglasses, contact lenses,~~
4 ~~hearing aids, and other apparatus permanently or indefinitely~~
5 ~~required as the result of a compensable injury, when the employer or~~
6 ~~carrier previously furnished such medical supplies, but replacement~~
7 ~~of such items shall not constitute payment of compensation so as to~~
8 ~~toll the statute of limitations.~~

9 ~~C. A claim for additional compensation shall specifically state~~
10 ~~that it is a claim for additional compensation. Documents which do~~
11 ~~not specifically request additional benefits shall not be considered~~
12 ~~a claim for additional compensation.~~

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

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

24 ~~F. C. Persons under Disability.~~

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

14 ~~G. D.~~ 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 29. AMENDATORY Section 71, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 71), is amended to read as
20 follows:

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

1 B. ~~Investigation~~ - Hearing.

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

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

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

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

19 5. The award, together with the statement of the findings of
20 fact and other matters pertinent to the issues, shall be filed with
21 the record of the proceedings, and a copy of the award shall
22 immediately be sent to the parties in or to counsels of record, if
23 any.

24 C. Evidence and Construction.

1 1. a. At the hearing the claimant and the employer may each
2 present evidence relating to the claim. Evidence may
3 be presented by any person authorized in writing for
4 such purpose. The evidence may include verified
5 medical reports which shall be accorded such weight as
6 may be warranted when considering all evidence in the
7 case.

8 b. Any determination of the existence or extent of
9 physical impairment shall be supported by objective
10 and measurable physical or mental findings.

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

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

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

21 D. Judgment. The judgment denying the claim or making the
22 award shall be filed in the office of the Commission, and a copy
23 shall be sent by registered mail, facsimile, electronic mail or by
24

1 other means with receipt of confirmation to the claimant and to the
2 employer or to their attorneys.

3 E. No compensation for disability of an injured employee shall
4 be payable for any period beyond his or her death; provided,
5 however, ~~an~~ if an injured employee is awarded compensation for
6 permanent partial disability by final order and then dies, a revivor
7 action may be brought by the injured employee's spouse, minor child
8 or children under a disability as defined by Section 67 of this
9 title, but limited to the number of weeks of disability awarded to
10 the injured employee minus the number of weeks of benefits paid for
11 the permanent partial disability to the injured worker at the time
12 of the death of the injured employee. An award of compensation for
13 permanent partial disability may be made after the death of the
14 injured employee ~~for the period of disability preceding death.~~ Such
15 revivor action may be brought only by the injured employee's spouse,
16 minor child or children under a disability as defined by Section 67
17 of this title.

18 SECTION 30. AMENDATORY Section 78, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 78), is amended to read as
20 follows:

21 Section 78. A. Any party feeling aggrieved by the judgment,
22 decision, or award made by the administrative law judge may, within
23 ten (10) days of issuance, appeal to the Workers' Compensation
24 Commission. After hearing arguments, the Commission may reverse or

1 modify the decision only if it determines that the decision was
2 against the clear weight of the evidence or contrary to law. All
3 such proceedings of the Commission shall be recorded by a court
4 reporter, if requested by any party. Any judgment of the Commission
5 which reverses a decision of the administrative law judge shall
6 contain specific findings relating to the reversal.

7 B. The appellant shall pay a filing fee of One Hundred Seventy-
8 five Dollars (\$175.00) to the Commission at the time of filing his
9 or her appeal. The fee shall be deposited ~~in~~ to the credit of the
10 Workers' Compensation Commission Revolving Fund.

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

- 20 1. In violation of constitutional provisions;
- 21 2. In excess of the statutory authority or jurisdiction of the
22 Commission;
- 23 3. Made on unlawful procedure;
- 24 4. Affected by other error of law;

- 1 5. Clearly erroneous in view of the reliable, material,
- 2 probative and substantial competent evidence;
- 3 6. Arbitrary or capricious;
- 4 7. Procured by fraud; or
- 5 8. Missing findings of fact on issues essential to the
- 6 decision.

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

21 D. A fee of One Hundred Dollars (\$100.00) per appeal to the
22 Supreme Court shall be paid to the Commission and deposited ~~in~~ to
23 the credit of the Workers' Compensation Commission Revolving Fund as
24 costs for preparing, assembling, indexing and transmitting the

1 record for appellate review. This fee shall be paid by the party
2 taking the appeal. If more than one party to the action files an
3 appeal from the same judgment, decision or award, the fee shall be
4 paid by the party whose petition in error commences the principal
5 appeal.

6 SECTION 31. AMENDATORY Section 80, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2018, Section 80), is amended to read as
8 follows:

9 Section 80. A. A final order for permanent disability is a
10 final adjudication of all issues pending in the claim unless
11 reserved in the order or by operation of law. Except where a joint
12 petition settlement has been approved, the Workers' Compensation
13 Commission may reopen for review any compensation judgment, award,
14 or decision. Such review may be done at any time within six (6)
15 months ~~of termination of the compensation period fixed in the~~
16 ~~original compensation judgment or award~~ from the date of the last
17 order in which monetary benefits were awarded or active medical
18 treatment was provided, on the Commission's own motion or on the
19 application of any party in interest, ~~on the ground of a change in~~
20 ~~physical condition or on proof of erroneous wage rate~~ and unless
21 filed within such period of time shall be forever barred. On
22 review, the Commission may make a judgment or award terminating,
23 continuing, decreasing, or increasing for the future the
24 compensation previously awarded, subject to the maximum limits

1 provided for in this act title. An order denying an application to
2 reopen a claim shall not extend the period of time set out in this
3 title for reopening the claim. A failure to comply with a medical
4 treatment plan ordered by the Commission shall bar the reopening of
5 a claim.

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

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

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

18 SECTION 32. AMENDATORY Section 82, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 82), is amended to read as
20 follows:

21 Section 82.

22 A. 1. a. Each party shall be responsible for its legal services
23 and litigation expenses. Fees for legal services
24 ~~rendered in a claim shall not be valid unless approved~~

1 may be reviewed by the Workers' Compensation
2 Commission.

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

17 (1) Attorney fees may not be collected for recovery
18 on noncontroverted claims.

19 (2) Attorney fees shall not be awarded on medical
20 benefits or services.

21 (3) The fee for legal services rendered by an
22 attorney representing an employee in connection
23 with a change of physician requested by the
24 injured employee, controverted by the employer,

1 and awarded by the Commission, shall be Two
2 Hundred Dollars (\$200.00).

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

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

1 2. ~~Any person who or entity that brings a controverted claim~~
2 ~~against the State Treasurer, as a custodian of the Multiple Injury~~
3 ~~Trust Fund, shall provide notice of the claim to the Commission.~~
4 ~~Thereafter, the Commission shall direct fees for legal services be~~
5 ~~paid from the Fund, in addition to any compensation award. The fees~~
6 ~~shall be authorized only on the difference between the amount of~~
7 ~~compensation controverted and the amount awarded from the Fund.~~

8 ~~3.~~ In any case where attorney fees are allowed by the
9 Commission, the limitations expressed in subparagraph b of paragraph
10 1 of this subsection shall apply.

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

15 B. An attorney representing an employee under this act may not
16 recover fees for services except as expressly provided in this
17 section.

18 SECTION 33. AMENDATORY Section 86, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 86), is amended to read as
20 follows:

21 Section 86. A. 1. Each employer desiring to controvert an
22 employee's right to compensation ~~shall~~ may file with the Workers'
23 Compensation Commission on or before the fifteenth day following
24 notice of the alleged injury or death a statement on a form

1 prescribed by the Commission that the right to compensation is
2 controverted and the grounds for the controversion, the names of the
3 claimant, employer, and carrier, if any, and the date and place of
4 the alleged injury or death.

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

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

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

23
24

1 SECTION 34. AMENDATORY Section 87, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 87), is amended to read as
3 follows:

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

11 SECTION 35. AMENDATORY Section 89, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 89), is amended to read as
13 follows:

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

1 disability maximum, pursuant to a collective bargaining agreement,
2 shall be deducted from any benefit otherwise available under this
3 title.

4 SECTION 36. AMENDATORY Section 94, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2018, Section 94), is amended to read as
6 follows:

7 Section 94. An employee who is incarcerated shall not be
8 eligible to receive ~~medical or~~ temporary total disability benefits
9 under this ~~act~~ title. Any medical benefits available to an
10 incarcerated employee shall be limited by other provisions of this
11 title in the same manner as for all injured employees.

12 SECTION 37. AMENDATORY Section 101, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2018, Section 101), is amended to read as
14 follows:

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

1 together with any other matter which the Commission deems proper to
2 report.

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

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

18 SECTION 38. AMENDATORY Section 158, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 115), is amended to read as
20 follows:

21 Section 115. A. If the employee and employer shall reach an
22 agreement for the full, final and complete settlement of any issue
23 of a claim pursuant to this act, a form designated as "Joint
24 Petition" shall be signed by both the employer and employee, or

1 representatives thereof, and shall be approved by the Workers'
2 Compensation Commission or an administrative law judge, and filed
3 with the Workers' Compensation Commission. In cases in which the
4 employee is not represented by legal counsel, the Commission or an
5 administrative law judge shall have jurisdiction to approve a full,
6 final and complete settlement of any issue upon the filing of an
7 Employer's First Notice of Injury. There shall be no requirement
8 for the filing of an Employee's First Notice of Claim for
9 Compensation to effect such settlement in cases in which the
10 employee is not represented by legal counsel.

11 B. In the event all issues of a claim are not fully, finally
12 and completely settled by a Joint Petition, the issues not settled
13 by the parties and subject to the Commission's continuing
14 jurisdiction must be noted by appendix to the Joint Petition or on a
15 form created for such purpose by the Commission. The appendix must
16 be signed by the parties and approved by the Commission as set forth
17 herein.

18 C. In the absence of fraud, a Joint Petition shall be deemed
19 binding upon the parties thereto and a final adjudication of all
20 rights pursuant to this ~~act~~ title or the workers' compensation law
21 in effect at the time of the injury or final order of the Workers'
22 Compensation ~~Court~~ Commission. An official record shall be made by
23 an official Commission reporter of the testimony taken to effect the
24 Joint Petition.

1 D. A good-faith effort shall be made on the part of any
2 insurance carrier, ~~CompSource Oklahoma,~~ or group self-insured plan
3 to notify an insured employer of the possibility of and terms of any
4 settlement of a workers' compensation case pursuant to this section.
5 Written comments or objections to settlements shall be filed with
6 the Commission and periodically shared with the management of the
7 applicable insurer. A written notice shall be made to all
8 policyholders of their right to a good-faith effort by their insurer
9 to notify them of any proposed settlement, if the policyholder so
10 chooses.

11 SECTION 39. AMENDATORY Section 161, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 118), is amended to read as
13 follows:

14 Section 118. A. A filing fee of One Hundred Forty Dollars
15 (\$140.00) per case, including but not limited to any Joint Petition
16 or medical fee dispute authorized by this ~~act~~ title, shall be
17 collected from the employer filing a Joint Petition or party filing
18 a medical fee dispute by the Workers' Compensation Commission ~~and~~.
19 In the event any award becomes final against an employer, such
20 amount shall be assessed as costs to be paid by the party against
21 whom any award becomes final, to be by the Commission. The filing
22 fee shall be deposited as follows:

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

1 2. Ten Dollars (\$10.00) to the credit of the Attorney General's
2 Workers' Compensation Fraud Unit Revolving Fund created by Section
3 19.2 of Title 74 of the Oklahoma Statutes; and

4 3. Twenty-five Dollars (\$25.00) to the credit of the Workers'
5 Compensation Commission Revolving Fund for purposes of implementing
6 the provisions of this ~~act~~ title, including strengthening and
7 providing additional funding for the Attorney General's Workers'
8 Compensation Fraud Unit, providing counseling services pursuant to
9 the workers' compensation counselor or ombudsman program and safety
10 in the workplace.

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

22 SECTION 40. AMENDATORY Section 162, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 119), is amended to read as
24 follows:

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

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

9 SECTION 41. AMENDATORY Section 163, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2018, Section 120), is amended to read as
11 follows:

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

20 B. 1. All requests made to the Workers' Compensation
21 Commission for information on ~~prior~~ workers' compensation claims
22 involving a worker, including written inquiries about prior claims
23 and requests to access a worker's compensation claim file, must be
24 in writing, on a form prescribed by the Commission, and accompanied

1 by a fee of One Dollar (\$1.00) per search request, not to exceed One
2 Dollar (\$1.00) per claims record of a particular worker. The fee
3 shall be deposited to the credit of the Workers' Compensation
4 Commission Revolving Fund. The form shall require identification of
5 the person requesting the information, and the person for whom a
6 search is being made if different from the requester. The form must
7 contain an affidavit signed by the requester under penalty of
8 perjury that the information sought is not requested for a purpose
9 in violation of state or federal law. The form must be used by all
10 repositories of archived Court claim files. All request forms shall
11 be maintained by the Commission as a public record, together with a
12 record of a worker's written authorization permitting a search
13 indexed by the worker's Social Security number as required by
14 Section 3113 of Title 74 of the Oklahoma Statutes. The request
15 forms and authorizations shall be indexed alphabetically by the last
16 name of the worker.

17 2. This subsection shall not apply:

18 a. to requests for claims information made by a public
19 officer or by a public employee in the performance of
20 his or her duties on behalf of a governmental entity
21 or as may be allowed by law,

22 b. to requests for claims information made by an insurer,
23 self-insured employer, third-party claims
24 administrator, or a legal representative thereof, when

1 necessary to process or defend a workers' compensation
2 claim,

3 c. when a worker or the worker's representative requests
4 review of the worker's claims information,

5 d. when the disclosure is made for educational or
6 research purposes and in such a manner that the
7 disclosed information cannot be used to identify any
8 worker who is the subject of a claim,

9 e. to requests for claims information made by a health
10 care or rehabilitation provider or the provider's
11 legal representative when necessary to process payment
12 of health care or rehabilitation services rendered to
13 a worker, and

14 f. to requests for claims information made by an employer
15 or personnel service company, including but not
16 limited to an individual or entity, where the worker
17 executes a written authorization permitting the search
18 and designating the employer or personnel service
19 company as the worker's representative for that
20 purpose; however, nothing in this subparagraph shall
21 relieve the employer or personnel service company from
22 complying with the requirements of utilizing the form
23 set forth in paragraph 1 of this subsection.

24

1 SECTION 42. AMENDATORY Section 164, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 121), is amended to read as
3 follows:

4 Section 121. A. There is hereby created an Advisory Council on
5 Workers' Compensation.

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

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

15 2. The Speaker of the House of Representatives shall appoint
16 three members representing employees in this state, one of whom
17 shall be from a list of nominees provided by the most representative
18 labor organization in the state.

19 3. The President Pro Tempore of the Senate shall appoint three
20 members, two who are attorneys representing the legal profession in
21 this state, one of whom shall be an attorney who practices primarily
22 in the area of defense of workers' compensation claims, and one of
23 whom shall be an attorney who primarily represents claimants, and a
24

1 medical doctor or doctor of osteopathy actively engaged in the
2 treatment of injured workers.

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

4 1. The term of office for three positions, one each appointed
5 by the Governor, the President Pro Tempore of the Senate and the
6 Speaker of the House of Representatives shall expire on January 1,
7 2015;

8 2. The term of office for three positions, one each appointed
9 by the Governor, the President Pro Tempore of the Senate and the
10 Speaker of the House of Representatives shall expire on January 1,
11 2016; and

12 3. The term of office for three positions, one each appointed
13 by the Governor, the President Pro Tempore of the Senate and the
14 Speaker of the House of Representatives shall expire on January 1,
15 2017.

16 D. Thereafter, successors in office shall be appointed for a
17 three-year term. Members shall be eligible to succeed themselves in
18 office.

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

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

23

24

1 G. Members shall receive their traveling and other necessary
2 expenses incurred in the performance of their duties as provided in
3 the State Travel Reimbursement Act.

4 H. Meetings of the Advisory Council shall be quarterly or as
5 called by the chair or upon petition by a majority of the voting
6 members. The presence of five voting members constitutes a quorum.
7 No action shall be taken by the Advisory Council without the
8 affirmative vote of at least five members.

9 I. The Commission shall provide office supplies and personnel
10 of the Commission to carry out any of the duties that have been
11 entrusted to the Advisory Council.

12 J. The Advisory Council shall analyze and review the workers'
13 compensation system, the reports of the Commission, and trends in
14 the field of workers' compensation. The Advisory Council may
15 recommend improvements and proper responses to developing trends.
16 The Advisory Council shall report its findings annually to the
17 Governor, the Chief Justice of the Supreme Court, the President Pro
18 Tempore of the Senate, and the Speaker of the House of
19 Representatives.

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

1 ~~L. The Advisory Council shall review the Oklahoma Treatment~~
2 ~~Guidelines as provided in the Workers' Compensation Code, and report~~
3 ~~the findings of such review to the Commission as provided in this~~
4 ~~act.~~

5 SECTION 43. AMENDATORY Section 121, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2018, Section 300), is amended to read as
7 follows:

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

11 SECTION 44. AMENDATORY Section 125, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 304), is amended to read as
13 follows:

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

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

21 1. Waive or agree to vary the effect of the requirements of
22 subsection A of Section ~~126~~ 305, subsection A of Section ~~127~~ 306,
23 Section ~~128~~ 307, subsection A or B of Section ~~138~~ 317, Section ~~147~~
24 326 or Section ~~149~~ 328 of this ~~act~~ title;

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

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

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

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

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

17 SECTION 45. AMENDATORY Section 126, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, Section 305), is amended to read as
19 follows:

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

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

8 SECTION 46. AMENDATORY Section 128, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2018, Section 307), is amended to read as
10 follows:

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

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

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

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

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

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

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

22 SECTION 47. AMENDATORY Section 133, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 312), is amended to read as
24 follows:

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

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

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

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

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

1 SECTION 48. AMENDATORY Section 134, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 313), is amended to read as
3 follows:

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

8 SECTION 49. AMENDATORY Section 135, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2018, Section 314), is amended to read as
10 follows:

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

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

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

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

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

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

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

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

23

24

1 SECTION 50. AMENDATORY Section 137, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 316), is amended to read as
3 follows:

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

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

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

11 SECTION 51. AMENDATORY Section 139, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 318), is amended to read as
13 follows:

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

24

1 SECTION 52. AMENDATORY Section 141, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 320), is amended to read as
3 follows:

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

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

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

11 3. To clarify the award.

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

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

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

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

24

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

4 3. To clarify the award.

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

7 SECTION 53. AMENDATORY Section 142, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 321), is amended to read as
9 follows:

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

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

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

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

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

4 SECTION 54. AMENDATORY Section 143, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2018, Section 322), is amended to read as
6 follows:

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

14 SECTION 55. AMENDATORY Section 144, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 323), is amended to read as
16 follows:

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

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

23 2. There was:
24

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

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

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

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

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

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

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

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

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

15 SECTION 56. AMENDATORY Section 148, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2018, Section 327), is amended to read as
17 follows:

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

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

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

3 SECTION 57. AMENDATORY Section 169, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 400), is amended to read as
5 follows:

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

15 ~~Position 1 shall expire 7-1-14.~~

16 ~~Position 2 shall expire 7-1-14.~~

17 ~~Position 3 shall expire 7-1-14.~~

18 Position 4 shall expire 7-1-20.

19 Position 5 shall expire 7-1-20.

20 ~~Position 6 shall expire 7-1-16.~~

21 ~~Position 7 shall expire 7-1-16.~~

22 Position 8 shall expire 7-1-20.

23 Position 9 shall expire 7-1-20.

24 ~~Position 10 shall expire 7-1-14.~~

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

8 ~~When a vacancy on the Court occurs or is certain to occur, the~~
9 ~~Workers' Compensation Commission shall assign administrative law~~
10 ~~judges from the Commission to assist in the duties of the Workers'~~
11 ~~Compensation Court of Existing Claims.~~

12 B. Effective July 1, 2020, the Workers' Compensation Court of
13 Existing Claims shall consist of two judges to be appointed by the
14 Governor, with confirmation by the Senate, for a term to be
15 determined by position. Position A shall be appointed for a term to
16 expire on July 1, 2022. Position B shall be appointed for a term to
17 expire on July 1, 2022. The Governor shall select each judge from a
18 list of three applicants submitted to the Governor by the Judicial
19 Nominating Commission. If the list is not acceptable to the
20 Governor, the Governor may request from the Judicial Nominating
21 Commission a list of names of three additional applicants. Any
22 present judge of the Court of Existing Claims may apply to the
23 Judicial Nominating Commission for appointment to fill any position
24 authorized by this section.

1 C. Effective July 1, 2020, the Governor shall select one of the
2 judges of the Court of Existing Claims to be the Presiding Judge who
3 shall serve at the pleasure of the Governor. Until July 1, 2020,
4 the Presiding Judge serving on the effective date of this act shall
5 continue to serve in that capacity.

6 D. A judge may be removed for cause by the Court on the
7 Judiciary prior to the expiration of his or her term.

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

12 ~~F.~~ F. If a vacancy occurs on the Court of Existing Claims, the
13 Governor shall appoint a judge to serve the remainder of the term
14 from a list of three applicants submitted to the Governor by the
15 Judicial Nominating Commission, with confirmation of the State
16 Senate. If the list is not acceptable to the Governor, the Governor
17 may request from the Judicial Nominating Commission a list of the
18 names of three additional applicants.

19 G. 1. Effective July 1, 2020, the Governor shall appoint an
20 Administrator of the Court of Existing Claims, who shall serve at
21 the pleasure of the Governor. The Administrator shall be appointed
22 by the Governor with the advice and consent of the Senate. The
23 compensation for the Administrator shall be set at ninety percent
24 (90%) of the compensation of a district court judge.

1 2. The Administrator shall employ and supervise the work of
2 employees of the Court and shall have the authority to expend funds
3 and contract on behalf of the Court. The Administrator may contract
4 with the Workers' Compensation Commission to provide support
5 services or personnel needs necessary to carry out the purposes of
6 the Court and shall supervise the work of any such personnel as
7 necessary to maintain the Court as a Court of Record.

8 3. Until July 1, 2020, the individual serving as Administrator
9 on the effective date of this act shall continue to serve in that
10 capacity.

11 H. The Court of Existing Claims shall contract with the
12 Workers' Compensation Commission to integrate its case management
13 and records Information Technology System into the system of the
14 Workers' Compensation Commission with such integration to be
15 completed on or before July 1, 2022. The Court shall be entitled to
16 any fees generated for the retrieval of such data.

17 I. The Court shall operate by the rules adopted by the Workers'
18 Compensation Court prior to the effective date of this act.

19 ~~E.~~ J. The Court is hereby designated and confirmed as a court
20 of record, with respect to any matter within the limits of its
21 jurisdiction, and within such limits the judges thereof shall
22 possess the powers and prerogatives of the judges of the other
23 courts of record of this state, including the power to punish for
24

1 contempt those persons who disobey a subpoena, or refuse to be sworn
2 or to answer as a witness, when lawfully ordered to do so.

3 ~~F.~~ K. The principal office of the Court shall be situated in
4 the City of Oklahoma City in quarters assigned by the Office of
5 Management and Enterprise Services. The Court may hold hearings in
6 any city of this state.

7 ~~G.~~ L. All county commissioners and presiding district judges of
8 this state shall make quarters available for the conducting of
9 hearings by a judge of the Court upon request by the Court.

10 ~~H.~~ M. Judges of the Workers' Compensation Court of Existing
11 Claims may punish for direct contempt pursuant to Sections 565,
12 565.1 and 566 of Title 21 of the Oklahoma Statutes.

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

1 and law; provided, the decision of the Court may be appealed to the
2 Commission Court en banc or the Supreme Court as provided by the
3 Workers' Compensation Code or previous statute in effect on the date
4 of an injury that occurred before February 1, 2014. In the event
5 that an insufficient number of active judges are available to
6 comprise the three-judge en banc panel, retired or former judges of
7 the district court, Workers' Compensation Court or Workers'
8 Compensation Court of Existing Claims may be designated by the
9 Presiding Judge of the Court of Existing Claims as eligible to serve
10 on such panel. The Governor shall provide to the Court of Existing
11 Claims a list of designated judges eligible for service on the Court
12 en banc. The decision of the Court shall be issued within ~~sixty~~
13 ~~(60)~~ thirty (30) days following the submission of the case by the
14 parties. The power and jurisdiction of the Court over each case
15 shall be continuing and it may, from time to time, make such
16 modifications or changes with respect to former findings or orders
17 relating thereto if, in its opinion, it may be justified.

18 ~~J. Any appeal of an order by the Workers' Compensation Court of~~
19 ~~Existing Claims shall be heard by the Commission en banc. The~~
20 ~~Commission shall review the decision using an abuse of discretion~~
21 ~~standard of review. Orders by the Commission may be appealed in~~
22 ~~accordance with Section 78 of this act.~~

23 ~~K. To protect the integrity of the transition from the Workers'~~
24 ~~Compensation Court to the administrative system created by this act,~~

1 ~~and to protect all rights and privileges of parties to claims~~
2 ~~adjudicated by the Workers' Compensation Court, the Commission shall~~
3 ~~retain all remedies and responsibilities of the Workers'~~
4 ~~Compensation Court for as long as cases involving claims for~~
5 ~~compensation accruing before the effective date of this act but~~
6 ~~filed thereafter or which were pending before or adjudicated by the~~
7 ~~Workers' Compensation Court shall remain open.~~

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

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

23
24

1 SECTION 58. AMENDATORY 25 O.S. 2011, Section 307, as
2 last amended by Section 1, Chapter 252, O.S.L. 2018 (25 O.S. Supp.
3 2018, Section 307), is amended to read as follows:

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

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

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

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

13 3. Discussing the purchase or appraisal of real property;

14 4. Confidential communications between a public body and its
15 attorney concerning a pending investigation, claim, or action if the
16 public body, with the advice of its attorney, determines that
17 disclosure will seriously impair the ability of the public body to
18 process the claim or conduct a pending investigation, litigation, or
19 proceeding in the public interest;

20 5. Permitting district boards of education to hear evidence and
21 discuss the expulsion or suspension of a student when requested by
22 the student involved or the student's parent, attorney or legal
23 guardian;

24 6. Discussing matters involving a specific handicapped child;

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

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

6 9. Discussing matters involving safety and security at state
7 penal institutions or correctional facilities used to house state
8 inmates;

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

16 11. Discussing the following:

17 a. the investigation of a plan or scheme to commit an act
18 of terrorism,

19 b. assessments of the vulnerability of government
20 facilities or public improvements to an act of
21 terrorism,

22 c. plans for deterrence or prevention of or protection
23 from an act of terrorism,

24

- 1 d. plans for response or remediation after an act of
2 terrorism,
- 3 e. information technology of the public body but only if
4 the discussion specifically identifies:
- 5 (1) design or functional schematics that demonstrate
6 the relationship or connections between devices
7 or systems,
 - 8 (2) system configuration information,
 - 9 (3) security monitoring and response equipment
10 placement and configuration,
 - 11 (4) specific location or placement of systems,
12 components or devices,
 - 13 (5) system identification numbers, names, or
14 connecting circuits,
 - 15 (6) business continuity and disaster planning, or
16 response plans, or
 - 17 (7) investigation information directly related to
18 security penetrations or denial of services, or
- 19 f. the investigation of an act of terrorism that has
20 already been committed.

21 For the purposes of this subsection, the term "terrorism" means any
22 act encompassed by the definitions set forth in Section 1268.1 of
23 Title 21 of the Oklahoma Statutes.
24

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

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

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

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

9 4. The Oklahoma Center for the Advancement of Science and
10 Technology, as provided for in Section 5060.7 of Title 74 of the
11 Oklahoma Statutes;

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

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

19 6. The Workers' Compensation Commission for the purposes
20 provided for in Section 20 of Title 85A of the Oklahoma Statutes;

21 7. A review committee, as provided for in Section 855 of Title
22 62 of the Oklahoma Statutes;

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

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

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

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

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

1 13. The Quality Investment Committee for purposes of discussing
2 applications and confidential materials pursuant to the terms of the
3 Oklahoma Quality Investment Act.

4 D. Except as otherwise specified in this subsection, an
5 executive session for the purpose of discussing the purchase or
6 appraisal of real property shall be limited to members of the public
7 body, the attorney for the public body and the immediate staff of
8 the public body. No landowner, real estate salesperson, broker,
9 developer or any other person who may profit directly or indirectly
10 by a proposed transaction concerning real property which is under
11 consideration may be present or participate in the executive
12 session, unless they are operating under an existing agreement to
13 represent the public body.

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

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

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

20 3. Except for matters considered in executive sessions of the
21 State Banking Board and the Oklahoma Savings and Loan Board, and
22 which are required by state or federal law to be confidential, any
23 vote or action on any item of business considered in an executive
24

1 session shall be taken in public meeting with the vote of each
2 member publicly cast and recorded.

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

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

6 2. Cause the minutes and all other records of the executive
7 session, including tape recordings, to be immediately made public.

8 SECTION 59. NEW LAW A new section of law not to be
9 codified in the Oklahoma Statutes reads as follows:

10 Sections 59 through 65 of this act shall be known and may be
11 cited as the "Multiple Injury Trust Fund Recovery Act". The purpose
12 of this act is to change eligibility criteria for claims against the
13 Multiple Injury Trust Fund and to provide additional funding for
14 said fund from nongovernmental sources to minimize legislative
15 appropriation to secure the fund as a general obligation of the
16 State of Oklahoma.

17 SECTION 60. AMENDATORY Section 30, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, Section 30), is amended to read as
19 follows:

20 Section 30. A. For the purposes of Sections 31 through 35 of
21 this ~~act~~ title, the term "physically impaired person" means a person
22 who, as a result of accident, disease, birth, military action, or
23 any other cause, has suffered:

24 1. The loss of the sight of one eye;

1 2. The loss by amputation of the whole or a part of a member of
2 the body; or

3 ~~3. The loss of use or partial loss of use of a member such as
4 is obvious and apparent from observation or examination by a person
5 who is not skilled in the medical profession; or~~

6 ~~4. Any previous adjudications of compensable permanent partial
7 disability adjudged and determined by the Workers' Compensation
8 Court, the Workers' Compensation Court of Existing Claims or the
9 Workers' Compensation Commission ~~or any disability resulting from~~
10 ~~separately adjudicated injuries and adjudicated occupational~~
11 ~~diseases even though arising at the same time. Provided, that any~~
12 ~~adjudication of preexisting disability to a part of the body shall~~
13 ~~not be combinable for purposes of the Multiple Injury Trust Fund~~
14 ~~unless that part of the body was deemed to have been injured in the~~
15 ~~claim being adjudicated.~~~~

16 B. This section shall apply to all adjudications of Multiple
17 Injury Trust Fund claims ~~heard by the Commission~~ in which the last
18 injury occurred on or after ~~the effective date of this act~~ July 1,
19 2019.

20 SECTION 61. AMENDATORY Section 31, Chapter 208, O.S.L.
21 2013, as amended by Section 3, Chapter 344, O.S.L. 2015 (85A O.S.
22 Supp. 2018, Section 31), is amended to read as follows:

23 Section 31. A. The Multiple Injury Trust Fund shall be derived
24 from the following additional sources:

1 1. As soon as practicable after January 1 of each year, the
2 commissioners of the Workers' Compensation Commission shall
3 establish an assessment rate applicable to each mutual or
4 interinsurance association, stock company, ~~CompSource Oklahoma~~, or
5 other insurance carrier writing workers' compensation insurance in
6 this state, each employer carrying its own risk, and each group
7 self-insurance association, for amounts for purposes of computing
8 the assessment authorized by this section necessary to pay the
9 annual obligations of the Multiple Injury Trust Fund determined on
10 or before December 31 of each year by the ~~MITF~~ Multiple Injury Trust
11 Fund (MITF) Director, provided for in subsection ~~P~~ Q of this
12 section, to be outstanding for the next calendar year, ~~and to pay~~
13 ~~the allocations provided for in subsection I of this section.~~ The
14 rate shall be equal for all parties required to pay the assessment.
15 ~~If CompSource begins operating as a mutual insurance company, the~~
16 The Board of Directors for CompSource Mutual Insurance Company shall
17 have the power to disapprove the rate established by the MITF
18 Director until the Multiple Injury Trust Fund repays in full the
19 amount due on any loan from CompSource Mutual Insurance Company or
20 its predecessor CompSource Oklahoma. If the MITF Director and
21 CompSource Mutual Insurance Company have not agreed on the
22 assessment rate within thirty (30) days, the Workers' Compensation
23 Commission shall set an assessment rate sufficient to cover all
24 foreseeable obligations of the Multiple Injury Trust Fund, including

1 interest and principal owed by the ~~Fund~~ fund on any loan. ~~The rate~~
2 ~~in effect on the effective date of this act shall remain effective~~
3 ~~through June 30, 2014;~~

4 2. ~~The Oklahoma Tax Commission shall assess and collect from~~
5 ~~any uninsured employer a temporary assessment at the rate of five~~
6 ~~percent (5%) of the total compensation for permanent total~~
7 ~~disability awards, permanent partial disability awards, and death~~
8 ~~benefits paid out during each quarter of the calendar year by the~~
9 ~~employers;~~

10 3. The assessments shall be paid to the Oklahoma Tax
11 Commission. Insurance carriers, self-insurers, and group self-
12 insurance associations ~~and CompSource Oklahoma~~ shall pay the
13 assessment in four equal installments not later than the fifteenth
14 day of the month following the close of each quarter of the calendar
15 year of the assessment. Assessments shall be determined based upon
16 gross direct written premiums, normal premiums or actual paid losses
17 of the paying party, as applicable, during the calendar quarter for
18 which the assessment is due. Assessments are expressly conditioned
19 and contingent upon preservation of the rebate equal to two-thirds
20 (2/3) of the amount of the assessment actually paid pursuant to
21 Sections 6101 and 6102 of Title 68 of the Oklahoma Statutes.

22 Uninsured employers shall pay the assessment not later than the
23 fifteenth day of the month following the close of each quarter of
24 the calendar year of the assessment. For purposes of this section,

1 "uninsured employer" means an employer required by law to carry
2 workers' compensation insurance but who has failed or neglected to
3 do so.

4 a. The assessment authorized in this section shall be
5 determined using a rate equal to the proportion that
6 the sum of the outstanding obligations of the Multiple
7 Injury Trust Fund as determined pursuant to paragraph
8 1 of this subsection ~~and the allocations provided for~~
9 ~~in subsection I of this section bear~~ bears to the
10 combined gross direct written premiums of all such
11 insurers; all actual paid losses of all individual
12 self-insureds; and the normal premium of all group
13 self-insurance associations, for the year period from
14 January 1 to December 31 preceding the assessment.

15 b. For purposes of this subsection:

16 (1) "actual paid losses" means all medical and
17 indemnity payments, including temporary
18 disability, permanent disability, and death
19 benefits, and excluding loss adjustment expenses
20 and reserves, and

21 (2) "normal premium" means a standard premium less
22 any discounts;

23 ~~4.~~ 3. By April 15 of each year, the Insurance Commissioner, the
24 MITF Director and each individual and group self-insured shall

1 provide the Workers' Compensation Commission with such information
2 as the Commission may determine is necessary to effectuate the
3 purposes of this section;

4 ~~5.~~ 4. Each mutual or interinsurance association, stock company,
5 ~~CompSource Oklahoma,~~ or other insurance carrier writing workers'
6 compensation insurance in this state, and each employer carrying its
7 own risk, including each group self-insurance association, shall be
8 notified by the Workers' Compensation Commission in writing of the
9 rate for the assessment on or before May 1 of each year in which a
10 rate is determined. The rate determined by the Commission shall be
11 in effect for four calendar quarters beginning July 1 following
12 determination by the Commission. The Commission may amend its
13 previously determined rate on or after July 1, 2019. Parties
14 affected by the amended rate shall be notified by the Commission in
15 writing as is reasonable. The amended rate shall be in effect
16 beginning October 1, 2019, for the remainder of fiscal year 2020;
17 and

18 ~~6.~~ 5. a. No mutual or interinsurance association, stock
19 company, ~~CompSource Oklahoma,~~ or other insurance
20 carrier writing workers' compensation insurance in
21 this state may be assessed in any year an amount
22 greater than ~~six percent (6%)~~ seven percent (7%) of
23 the gross direct written premiums of that insurer.
24 The authorization for a maximum seven-percent

1 assessment shall exist for a period of three (3)
2 years, then revert back to six percent (6%)
3 thereafter.

4 b. No employer carrying its own risk may be assessed in
5 any year an amount greater than ~~six percent (6%)~~ seven
6 percent (7%) of the total actual paid losses of that
7 individual self-insured. The authorization for a
8 maximum seven-percent assessment shall exist for a
9 period of three (3) years, then revert back to six
10 percent (6%) thereafter.

11 c. No group self-insurance association may be assessed in
12 any year an amount greater than ~~six percent (6%)~~ seven
13 percent (7%) of the normal premium of that group self-
14 insurance association. The authorization for a
15 maximum seven-percent assessment shall exist for a
16 period of three (3) years, then revert back to six
17 percent (6%) thereafter;

18 6. The Oklahoma Tax Commission shall assess and collect from
19 any uninsured employer a temporary assessment at the rate of five
20 percent (5%) of the total compensation for permanent total
21 disability awards, permanent partial disability awards and death
22 benefits paid out during each quarter of the calendar year by
23 employers. The assessment shall be paid in four equal installments
24 not later than the fifteenth day of the month following the close of

1 the calendar year of the assessments. For the purpose of this
2 paragraph, "uninsured employer" means an employer required by law to
3 secure its workers' compensation obligations but who has failed or
4 neglected to do so;

5 7. For injuries occurring on or after July 1, 2019, the
6 Oklahoma Tax Commission shall assess and collect from claimants a
7 temporary assessment as follows:

8 a. if an award has been made by the Workers' Compensation
9 Court of Existing Claims or the Workers' Compensation
10 Commission for permanent partial disability or
11 permanent total disability, or if a Compromise
12 Settlement or Joint Petition has been approved, the
13 employer or insurance carrier shall pay to such
14 employee the amount of the award less the assessment.
15 The assessment shall be paid to the Oklahoma Tax
16 Commission no later than the fifteenth day of the
17 month following the close of each quarter of the
18 calendar year in which compensation is paid or became
19 payable, and

20 b. in making and entering awards for compensation for
21 permanent total disability or permanent partial
22 disability, three percent (3%) of the total award or
23 settlement shall be paid to the Tax Commission no
24 later than the fifteenth day of the month following

1 the close of each quarter of the calendar year in
2 which compensation is paid or became payable. The
3 total amount of the deduction so determined and fixed
4 shall have the same force and effect as an award for
5 compensation, and all provisions relating to the
6 collection of awards shall apply to such judgments;
7 and

8 ~~d.~~

9 8. If the ~~maximum assessment does not provide revenue~~ in any
10 one (1) year ~~an amount sufficient~~ is insufficient to make all
11 necessary payments for obligations of the Multiple Injury Trust Fund
12 and for the allocations provided for in subsection ~~I~~ J of this
13 section, the unpaid portion shall be paid as soon thereafter as
14 funds become available.

15 B. The Multiple Injury Trust Fund is hereby authorized to
16 receive and expend monies appropriated by the Legislature.

17 C. It shall be the duty of the Tax Commission to collect the
18 payments provided for in this act. The Tax Commission is hereby
19 authorized to bring an action for the recovery of any delinquent or
20 unpaid payments required in this section.

21 D. Any mutual or interinsurance association, stock company, or
22 other insurance company, which is subject to regulation by the
23 Insurance Commissioner, ~~or CompSource Oklahoma,~~ failing to make
24 payments required in this act promptly and correctly, and failing to

1 report payment of the same to the Insurance ~~Commission~~ Commissioner
2 within ten (10) days of payment shall be subject to administrative
3 penalties as allowed by law, including but not limited to a fine in
4 the amount of Five Hundred Dollars (\$500.00) or an amount equal to
5 one percent (1%) of the unpaid amount, whichever is greater, to be
6 paid to the Insurance Commissioner.

7 E. Any employer carrying its own risk, or group self-insurance
8 association failing to make payments required in this act promptly
9 and correctly, and failing to report payment of the same to the
10 Commission within ten (10) days of payment shall be subject to
11 administrative penalties as allowed by law, including but not
12 limited to a fine in the amount of Five Hundred Dollars (\$500.00) or
13 an amount equal to one percent (1%) of the unpaid amount, whichever
14 is greater, to be paid to the Commission.

15 F. 1. On or before the first day of April of each year, the
16 State Treasurer shall advise the Commission, the MITF Director and
17 the Tax Commission of the amount of money held as of March 1 of that
18 year by the State Treasurer to the credit of the Multiple Injury
19 Trust Fund. On or before the first day of November of each year,
20 the State Treasurer shall advise the Commission, the MITF Director
21 and the Tax Commission of the amount of money held as of October 1
22 of that year by the State Treasurer to the credit of the Multiple
23 Injury Trust Fund.

24

1 2. Until such time as the Multiple Injury Trust Fund fully
2 satisfies any loan obligation payable to CompSource Mutual Insurance
3 Company or its predecessor CompSource Oklahoma, the State Treasurer
4 shall:

5 a. advise the Chief Executive Officer of CompSource
6 Mutual Insurance Company on or before the first day of
7 April of the money held as of March 1 of that year by
8 the State Treasurer to the credit of the Multiple
9 Injury Trust Fund, and

10 b. advise the Chief Executive Officer of CompSource
11 Mutual Insurance Company on or before the first day of
12 November of the money held as of October 1 of that
13 year by the State Treasurer to the credit of the
14 Multiple Injury Trust Fund.

15 G. Eighty percent (80%) of all sums held by the State Treasurer
16 to the credit of the Multiple Injury Trust Fund may by order of the
17 MITF Director be invested in or loaned on the pledge of any of the
18 securities in which a state bank may invest the monies deposited
19 therein by the State Treasurer; or may be deposited in state or
20 national banks or trust companies upon insured time deposit bearing
21 interest at a rate no less than currently being paid upon insured
22 savings accounts in the institutions. As used in this section,
23 "insured" means insurance as provided by an agency of the federal
24 government. All such securities or evidence of indebtedness shall

1 be placed in the hands of the State Treasurer, who shall be the
2 custodian thereof, who shall collect the principal and interest when
3 due, and pay the same into the Multiple Injury Trust Fund. The
4 State Treasurer shall pay by vouchers drawn on the Multiple Injury
5 Trust Fund for the making of such investments, when signed by the
6 MITF Director, upon delivery of such securities or evidence of
7 indebtedness to the State Treasurer. The MITF Director may sell any
8 of such securities, the proceeds thereof to be paid over to the
9 State Treasurer for the Multiple Injury Trust Fund.

10 H. The refund provisions of Sections 227 through 229 of Title
11 68 of the Oklahoma Statutes shall be applicable to any payments made
12 to the Multiple Injury Trust Fund. Refunds shall be paid from and
13 out of the Multiple Injury Trust Fund.

14 I. The Beginning July 1, 2019, One Million Dollars
15 (\$1,000,000.00) of the funds in the Multiple Injury Trust Fund shall
16 be transferred annually on July 1 to the Oklahoma Department of
17 Labor Revolving Fund exclusively for the operation and
18 administration of the Oklahoma Occupational Health and Safety
19 Standards Act and for other necessary expenses of the Department of
20 Labor.

21 J. Except for the monies provided for in subsection I of this
22 section, the Tax Commission shall pay, monthly, to the State
23 Treasurer to the credit of the Multiple Injury Trust Fund all monies
24 collected pursuant to the provisions of this section. The State

1 Treasurer shall pay out of the Multiple Injury Trust Fund only upon
2 the order and direction of the Workers' Compensation Commission
3 acting under the provisions hereof.

4 ~~J.~~ K. The Commission shall promulgate rules as the Commission
5 deems necessary to effectuate the provisions of this section.

6 ~~K.~~ L. The Insurance Commissioner shall promulgate rules
7 relating to insurers as defined in Title 36 of the Oklahoma
8 Statutes, as the Insurance Commissioner deems necessary to
9 effectuate the provisions of this section.

10 ~~L.~~ M. The MITF Director shall have authority to fulfill all
11 payment obligations of the Multiple Injury Trust Fund.

12 ~~M.~~ N. The Multiple Injury Trust Fund may enter into an
13 agreement with any reinsurer licensed to sell reinsurance by the
14 Insurance Commissioner pursuant to a competitive process
15 administered by the Director of Central Purchasing in the Office of
16 Management and Enterprise Services.

17 ~~N.~~ O. Any dividend, rebate, or other distribution, payable by
18 CompSource ~~Oklahoma~~ Mutual Insurance Company or any other workers'
19 compensation insurance carrier, to a state agency policyholder shall
20 be paid to the State Treasurer, and shall be credited as follows:

21 1. In the event of failure of the Multiple Injury Trust Fund to
22 meet all lawful obligations, the monies shall be credited to the
23 Multiple Injury Trust Fund and shall be used by the Multiple Injury
24

1 Trust Fund to meet all lawful obligations of the Multiple Injury
2 Trust Fund; and

3 2. Otherwise, all future dividends made by ~~CompSource Oklahoma~~
4 ~~or~~ any workers' compensation insurance carrier, on behalf of state
5 agencies, shall be deposited to the credit of the General Revenue
6 Fund of the State Treasury.

7 ~~Q.~~ P. The Workers' Compensation Commission shall be charged
8 with the administration and protection of the Multiple Injury Trust
9 Fund.

10 ~~P.~~ Q. The person serving as the Administrator of the Multiple
11 Injury Trust Fund on the date of passage and approval of this act
12 shall serve as the initial MITF Director, provided such person is
13 serving as the Administrator of the Multiple Injury Trust Fund on
14 the effective date of this act. The MITF Director shall be
15 appointed by and serve at the pleasure of the Governor.

16 ~~Q.~~ R. Any party interested shall have a right to bring a
17 proceeding in the Supreme Court to review an award of the Workers'
18 Compensation Commission affecting such Multiple Injury Trust Fund,
19 in the same manner as is provided by law with reference to other
20 awards by the Commission.

21 ~~R.~~ S. The State Treasurer shall allocate to the Commission out
22 of the Multiple Injury Trust Fund sufficient funds for
23 administration expenses thereof in amounts to be fixed and approved
24

1 by the ~~Administrator~~ Director for the Multiple Injury Trust Fund,
2 unless rejected by the Workers' Compensation Commission.

3 T. On or after July 1, 2019, accrued and unpaid compensation
4 from the Multiple Injury Trust Fund shall bear simple interest only
5 at the percentage rate applicable under Section 727.1 of Title 12 of
6 the Oklahoma Statutes from the day an award is made by the Workers'
7 Compensation Court of Existing Claims or the Workers' Compensation
8 Commission.

9 SECTION 62. AMENDATORY Section 32, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2018, Section 32), is amended to read as
11 follows:

12 Section 32. A. ~~For actions in which the subsequent injury~~
13 ~~occurred on or after November 1, 2005, if such~~ If an employee who is
14 a "physically impaired person" receives an accidental personal
15 injury compensable under the Administrative Workers' Compensation
16 Act which results in additional permanent disability so that the
17 degree of disability caused by the combination of both disabilities
18 results in disability materially greater than that which would have
19 resulted from the subsequent injury alone, the employee may proceed
20 against the Multiple Injury Trust Fund for permanent total
21 disability. Only disability due to an injury to the body as a whole
22 at a subsequent employer shall be combinable with a prior body
23 disability, except that disability to a member may be combined with
24 disability to the body as a whole. If such combined disabilities

1 constitute permanent total disability, as defined in Section 2 of
2 this ~~act~~ title, the employee shall receive full compensation as
3 provided by law for the disability resulting directly and
4 specifically from the subsequent injury. In addition, the employee
5 shall receive compensation for permanent total disability if the
6 combination of injuries renders the employee permanently and totally
7 disabled. The employer shall be liable only for the degree of
8 percent of disability which would have resulted from the subsequent
9 injury if there had been no preexisting impairment. The
10 compensation rate for permanent total disability awards from the
11 Multiple Injury Trust Fund shall be the compensation rate for
12 permanent partial disability paid by the employer in the last
13 combinable compensable injury.

14 B. Permanent total disability awards from the Multiple Injury
15 Trust Fund shall be payable in periodic installments for a period of
16 ~~fifteen (15)~~ eight (8) years or until the employee reaches sixty-
17 five (65) years of age, whichever period is longer.

18 C. Permanent total disability awards from the Multiple Injury
19 Trust Fund shall accrue from the file date of the order of the
20 Workers' Compensation Commission finding the claimant to be
21 permanently and totally disabled.

22 D. Before a physically impaired person can proceed against the
23 Multiple Injury Trust Fund, the previously adjudicated compensable
24 permanent partial disability adjudged and determined by the Workers'

1 Compensation Court, the Workers' Compensation Court of Existing
2 Claims or the Workers' Compensation Commission and the permanent
3 partial disability from the last injury must exceed fifty percent
4 (50%) to the body as a whole. However, amputations and loss of use
5 of a scheduled member qualifying as previous impairment under
6 paragraph 2 of subsection A of Section 30 of this title shall be
7 considered in lieu of previously adjudicated compensable permanent
8 partial disability.

9 E. Awards under this section shall abate upon the death, from
10 any cause, of the employee.

11 ~~E.~~ F. Reopening any prior claim other than the last injury
12 claim against the employer shall not give a claimant the right to
13 additional Multiple Injury Trust Fund benefits.

14 ~~F.~~ G. The Multiple Injury Trust Fund shall have authority to
15 compromise a claim for less than the indicated amount of permanent
16 total disability. ~~An order entered after the effective date of this~~
17 ~~act may~~ Orders shall be paid in periodic installments beginning on
18 the date of the award, ~~or may be~~ unless commuted to a lump-sum
19 payment or payments, by agreement of the claimant and the Multiple
20 Injury Trust Fund. All offers made by the Multiple Injury Trust
21 Fund pursuant to this section shall be conveyed by the claimant's
22 attorney to the claimant within five (5) days of receipt of the
23 offer.

24

1 ~~G.~~ H. If an order is entered finding an employee to be
2 permanently totally disabled as a result of combined disability, and
3 such order is the result of a compromised settlement, the employee
4 is thereafter prohibited from making an additional claim against the
5 Multiple Injury Trust Fund. An attorney for a claimant against the
6 Multiple Injury Trust Fund shall be entitled to a fee equal to
7 twenty percent (20%) of permanent disability benefits awarded. ~~For~~
8 ~~awards entered after the effective date of this act, the~~ The
9 attorney fee shall be paid in periodic installments by the attorney
10 receiving every fifth check. All benefits awarded to the attorney
11 shall be vested at the time the award becomes final.

12 ~~H.~~ I. In the event a claimant receiving benefits for permanent
13 and total disability from the Multiple Injury Trust Fund dies as a
14 result of his or her injury before the award has been fully paid,
15 payments shall continue to the surviving spouse for five (5) years
16 or upon remarriage, whichever occurs first. In no event shall
17 payments to the surviving spouse extend beyond the period of
18 benefits awarded to the claimant.

19 SECTION 63. AMENDATORY Section 33, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2018, Section 33), is amended to read as
21 follows:

22 Section 33. A. The right to claim compensation for benefits
23 from the Multiple Injury Trust Fund shall be forever barred unless a
24 Notice of Claim, on a form prescribed by the Workers' Compensation

1 Commission, shall be filed with the Commission within ~~two (2) years~~
2 one (1) year of the date of the last order for permanent partial
3 disability arising from the latest claim against the last employer.

4 B. When a claim for benefits from the Multiple Injury Trust
5 Fund is filed, unless a claimant shall in good faith request a
6 hearing and final determination thereon within ~~three (3)~~ two (2)
7 years of the filing thereof, the same shall be barred.

8 C. An attorney who represents a respondent or insurance carrier
9 in a claim against the last employer shall not represent the
10 employee in a subsequent claim against the Multiple Injury Trust
11 Fund.

12 SECTION 64. AMENDATORY Section 34, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2018, Section 34), is amended to read as
14 follows:

15 Section 34. A. The MITF Director shall be charged with the
16 administration and protection of the Multiple Injury Trust Fund and
17 shall be notified by the Workers' Compensation Commission of all
18 proceedings which may affect such fund.

19 B. The MITF Director shall have authority to conduct all
20 business affairs relating to administration of the Multiple Injury
21 Trust Fund, including, but not limited to, appointment of
22 assistants, accountants, attorneys and other employees as may be
23 necessary.

24

1 C. The MITF Director shall provide results of audit reports to
2 the Workers' Compensation Commission annually.

3 D. The MITF Director shall have standing and the authority to
4 appear in any case before the Commission in which the Commission is
5 considering an award from the Multiple Injury Trust Fund.

6 ~~C.~~ E. Any party interested shall have a right to bring a
7 proceeding in the Supreme Court to review an award of the Commission
8 affecting such Multiple Injury Trust Fund, in the same manner as is
9 now provided by law with reference to other awards by the
10 Commission.

11 ~~D.~~ F. The State Treasurer shall allocate to the MITF Director
12 sufficient funds for administration expenses thereof in amounts to
13 be fixed and approved by the Administrator for the Multiple Injury
14 Trust Fund, unless rejected by the Governor and Attorney General.

15 SECTION 65. AMENDATORY Section 165, Chapter 208, O.S.L.
16 2013, as amended by Section 4, Chapter 344, O.S.L. 2015 (85A O.S.
17 Supp. 2018, Section 122), is amended to read as follows:

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

22 B. For the purpose of providing funds for the Workers'
23 Compensation Commission Revolving Fund, for the Workers'
24 Compensation Administrative Fund created in Section ~~5~~ 401.1 of this

1 ~~act~~ title, for the Multiple Injury Trust Fund created in Section 28
2 of this title, and to fund other provisions within this title, the
3 following tax rates shall apply:

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

21 2. When an employer is authorized to become a self-insurer, the
22 Commission shall so notify the Tax Commission, giving the effective
23 date of such authorization. The Tax Commission shall then assess
24 and collect from the employers carrying their own risk an assessment

1 at the rate of two percent (2%) of the total compensation for
2 permanent total disability awards, permanent partial disability
3 awards and death benefits paid out during each quarter of the
4 calendar year by the employers. Such assessment shall be payable by
5 the employers and collected by the Tax Commission according to the
6 provisions of this section regarding payment and collection of the
7 assessment created in paragraph 1 of this subsection.

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

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

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

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

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

14 E. The refund provisions of Sections 227 through 229 of Title
15 68 of the Oklahoma Statutes shall be applicable to any payments made
16 pursuant to this section.

17 SECTION 66. REPEALER Section 15, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, Section 15), is hereby repealed.

19 SECTION 67. REPEALER Sections 107, 108, 109, 110, as
20 amended by Section 4, Chapter 390, O.S.L. 2015, 111, 112, as amended
21 by Section 5, Chapter 390, O.S.L. 2015, 113, 114, 115, 116, 117,
22 118, as amended by Section 6, Chapter 390, O.S.L. 2015, 119 and 120,
23 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 200, 201,

24

1 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212 and 213), are
2 hereby repealed.

3 SECTION 68. The provisions of this act are severable and if any
4 part or provision shall be held void the decision of the court so
5 holding shall not affect or impair any of the remaining parts or
6 provisions of this act.

7 SECTION 69. It being immediately necessary for the preservation
8 of the public peace, health or safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

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