

1 **SENATE FLOOR VERSION**

2 February 19, 2019

3 SENATE BILL NO. 701

By: Daniels

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5
6 An Act relating to workers' compensation; amending
7 Sections 2, as amended by Section 1, Chapter 150,
8 O.S.L. 2018, and 3, Chapter 208, O.S.L. 2013 (85A
9 O.S. Supp. 2018, Sections 2 and 3), which relate to
10 the Administrative Workers' Compensation Act;
11 modifying definitions; specifying application of the
12 Administrative Workers' Compensation Act; amending
13 Section 6, Chapter 208, O.S.L. 2013, as amended by
14 Section 1, Chapter 390, O.S.L. 2015 (85A O.S. Supp.
15 2018, Section 6), which relates to crimes in
16 violation of the Administrative Workers' Compensation
17 Act; modifying certain notice requirement; amending
18 Section 18, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
19 2018, Section 18), which relates to billing and
20 collection of fees for services; expanding methods of
21 providing notice; amending Section 19, Chapter 208,
22 O.S.L. 2013, as amended by Section 4, H.J.R. No.
23 1096, O.S.L. 2014 (85A O.S. Supp. 2018, Section 19),
24 which relates to exempting certain communications
from Open Meetings and Open Records Acts; providing
for confidentiality of certain communications;
amending Section 22, Chapter 208, O.S.L. 2013 (85A
O.S. Supp. 2018, Section 22), which relates to
administration of the Administrative Workers'
Compensation Act; modifying powers and duties of the
Workers' Compensation Commission; amending Sections
28, Chapter 208, O.S.L. 2013, as last amended by
Section 1, Chapter 344, O.S.L. 2015, 29, Chapter 208,
O.S.L. 2013 and 31, Chapter 208, O.S.L. 2013, as
amended by Section 3, Chapter 344, O.S.L. 2015, (85A
O.S. Supp. 2018, Sections 28, 29 and 31), which
relate to the Multiple Injury Trust Fund; eliminating
certain requirements for the administration or
disbursement of certain funds; modifying requirements
for certain annual fees; modifying responsibility for
administration of Multiple Injury Trust Fund;
amending Sections 38 and 40, Chapter 208, O.S.L. 2013

1 (85A O.S. Supp. 2018, Sections 38 and 40), which
2 relate to securing workers' compensation for
3 employees; changing certain rule-making authority;
4 capping certain penalty; authorizing certain
5 collection proceedings; authorizing disclosure of
6 information under certain circumstances; authorizing
7 proceeds of penalty to be awarded as certain
8 compensation; amending Section 45, Chapter 208,
9 O.S.L. 2013, as amended by Section 2, Chapter 390,
10 O.S.L. 2015 (85A O.S. Supp. 2018, Section 45), which
11 relates to disability; modifying temporary partial
12 disability compensation; amending Section 60, Chapter
13 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 60),
14 which relates to evaluation of permanent disability;
15 modifying reference to title of the director of the
16 Commission; amending Sections 63, 67, 69, 71, 78, 80
17 and 82, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
18 2018, Sections 63, 67, 69, 71, 78, 80 and 82), which
19 relate to notification and procedure after injury;
20 making certain reports confidential and not subject
21 to the Oklahoma Open Records Act; modifying scope of
22 review and compensation modification; expanding
23 methods for certain notice; modifying allowable venue
24 for hearings; directing deposit of certain filing
fee; modifying procedure and requirements for review
of compensation rulings; placing limitations on
review; modifying entity that certain claims are
brought against; amending Section 90, Chapter 208,
O.S.L. 2013 (85A O.S. Supp. 2018, Section 90), which
relates to bond or other deposit requirements;
limiting Supreme Court review unless certain
requirements are met; amending Section 101, Chapter
208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 101),
which relates to certain reports and electronic data;
modifying time for implementation of electronic data
interchange system; amending Section 152, Chapter
208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 109),
which relates to the workers' compensation counselor
or ombudsman program; eliminating the authority of
the Commission to provide additional information
regarding program; amending Section 158, Chapter 208,
O.S.L. 2013 (85A O.S. Supp. 2018, Section 115), which
relates to joint petitions for settlement; correcting
references; amending Section 161, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2018, Section 118), which
relates to fees; modifying scope of fee requirement;
correcting statutory references; amending Section

1 163, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018,
2 Section 120), which relates to inquiries about
3 compensation claims; modifying scope of certain
4 requests; correcting statutory reference; amending
5 Section 164, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
6 2018, Section 121), which relates to the Advisory
7 Council on Workers' Compensation; modifying duties of
8 the Council; amending Section 165, Chapter 208,
9 O.S.L. 2013, as amended by Section 4, Chapter 344,
10 O.S.L. 2015 (85A O.S. Supp. 2018, Section 122), which
11 relates to tax rates and distribution of certain
12 funds; modifying certain apportionment and funding
13 amount; amending Section 166, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2018, Section 123), which
15 relates to perjury; establishing exception to certain
16 filing requirement; amending Section 167, Chapter
17 208, O.S.L. 2013, as amended by Section 7, Chapter
18 169, O.S.L. 2014 (85A O.S. Supp. 2018, Section 124),
19 which relates to transfers from the Workers'
20 Compensation Court; modifying transfer; amending
21 Sections 121, 125, 126, 133, 134, 135, 137, 139, 141,
22 142, 143, 144 and 148, Chapter 208, O.S.L. 2013 (85A
23 O.S. Supp. 2018, Sections 300, 304, 305, 312, 313,
24 314, 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; eliminating
the authority of the Workers' Compensation Commission
to appoint administrative law judges to assist the
Court when vacancies occur on the Court; eliminating
procedure whereby rulings of the Court are appealable
to the Commission; eliminating certain duty of
administrative law judges; 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 Section 25, Chapter
208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 25),
which relates to annual publication of aggregate
information; updating statutory references; repealing
Section 57, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
2018, Section 57), which relates to scheduled
treatment appointments; repealing Sections 107, 108,
109, 110, as amended by Section 4, Chapter 390,
O.S.L. 2015, 111, 112, as amended by Section 5,

1 Chapter 390, O.S.L. 2015, 113, 114, 115, 116, 117,
118, as amended by Section 6, Chapter 390, O.S.L.
2 2015, 119 and 120, Chapter 208, O.S.L. 2013 (85A O.S.
3 Supp. 2018, Sections 200, 201, 202, 203, 204, 205,
206, 207, 208, 209, 210, 211, 212 and 213), which
4 relate to the Oklahoma Employee Injury Benefit Act;
providing an effective date; and declaring an
5 emergency.

6
7 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

8 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
9 2013, as amended by Section 1, Chapter 150, O.S.L. 2018 (85A O.S.
10 Supp. 2018, Section 2), is amended to read as follows:

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

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

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

21 3. "Case management" means the ongoing coordination, by a case
22 manager, of health care services provided to an injured or disabled
23 worker, including but not limited to systematically monitoring the
24 treatment rendered and the medical progress of the injured or

1 disabled worker; ensuring that any treatment plan follows all
2 appropriate treatment protocols, utilization controls and practice
3 parameters; assessing whether alternative health care services are
4 appropriate and delivered in a cost-effective manner based upon
5 acceptable medical standards; and ensuring that the injured or
6 disabled worker is following the prescribed health care plan;

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

- 14 a. Certified Disability Management Specialist (CDMS),
- 15 b. Certified Case Manager (CCM),
- 16 c. Certified Rehabilitation Registered Nurse (CRRN),
- 17 d. Case Manager - Certified (CMC),
- 18 e. Certified Occupational Health Nurse (COHN), or
- 19 f. Certified Occupational Health Nurse Specialist (COHN-
20 S);

21 5. "Certified workplace medical plan" means an organization of
22 health care providers or any other entity, certified by the State
23 Commissioner of Health, that is authorized to enter into a
24 contractual agreement with an employer, group self-insurance

1 association plan, an employer's workers' compensation insurance
2 carrier, third-party administrator or an insured to provide medical
3 care under the Administrative Workers' Compensation Act. Certified
4 plans shall only include plans which provide medical services and
5 payment for services on a fee-for-service basis to medical
6 providers;

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

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

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

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1 9. a. "Compensable injury" means damage or harm to the
2 physical structure of the body, or prosthetic
3 appliances, including eyeglasses, contact lenses, or
4 hearing aids, caused solely as the result of either an
5 accident, cumulative trauma or occupational disease
6 arising out of the course and scope of employment. An
7 "accident" means an event involving factors external
8 to the employee that:

9 (1) was unintended, unanticipated, unforeseen,
10 unplanned and unexpected,

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

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

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

16 b. "Compensable injury" does not include:

17 (1) injury to any active participant in assaults or
18 combats which, although they may occur in the
19 workplace, are the result of non-employment-
20 related hostility or animus of one, both, or all
21 of the combatants and which assault or combat
22 amounts to a deviation from customary duties;
23 provided, however, injuries caused by horseplay
24

1 shall not be considered to be compensable
2 injuries, except for innocent victims,

3 (2) injury incurred while engaging in or performing
4 or as the result of engaging in or performing any
5 recreational or social activities for the
6 employee's personal pleasure,

7 (3) injury which was inflicted on the employee at a
8 time when employment services were not being
9 performed or before the employee was hired or
10 after the employment relationship was terminated,

11 (4) injury where the accident was caused by the use
12 of alcohol, illegal drugs, or prescription drugs
13 used in contravention of physician's orders. If
14 a biological specimen is collected within twenty-
15 four (24) hours of the employee being injured or
16 reporting an injury, ~~an~~ or if at any time after
17 the injury a biological specimen is collected by
18 the Oklahoma Office of the Chief Medical Examiner
19 if the injured employee does not survive at least
20 twenty-four (24) hours after the accident and the
21 employee tests positive for intoxication, an
22 illegal controlled substance, or a legal
23 controlled substance used in contravention to a
24 treating physician's orders, or refuses to

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

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

20 (6) any preexisting condition except when the
21 treating physician clearly confirms an
22 identifiable and significant aggravation incurred
23 in the course and scope of employment.
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- 1 c. The definition of "compensable injury" shall not be
2 construed to limit or abrogate the right to recover
3 for mental injuries as described in Section 13 of this
4 title, heart or lung injury or illness as described in
5 Section 14 of this title, or occupational diseases as
6 described in Section 65 of this title.
- 7 d. A compensable injury shall be established by medical
8 evidence supported by objective findings as defined in
9 paragraph 31 of this section.
- 10 e. The injured employee shall prove by a preponderance of
11 the evidence that he or she has suffered a compensable
12 injury.
- 13 f. Benefits shall not be payable for a condition which
14 results from a non-work-related independent
15 intervening cause following a compensable injury which
16 causes or prolongs disability, aggravation, or
17 requires treatment. A non-work-related independent
18 intervening cause does not require negligence or
19 recklessness on the part of a claimant.
- 20 g. An employee who suffers a compensable injury shall be
21 entitled to receive compensation as prescribed in this
22 act. Notwithstanding other provisions of law, if it
23 is determined that a compensable injury did not occur,
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1 the employee shall not be entitled to compensation
2 under this act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (2) any person who is employed in agriculture,
21 ranching or horticulture by an employer who had a
22 gross annual payroll in the preceding calendar
23 year of less than One Hundred Thousand Dollars
24 (\$100,000.00) wages for agricultural, ranching or

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

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

17 (4) any person who is providing services in a medical
18 care or social services program, or who is a
19 participant in a work or training program,
20 administered by the Department of Human Services,
21 unless the Department is required by federal law
22 or regulations to provide workers' compensation
23 for such person. This division shall not be
24 construed to include nursing homes,

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

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

21 (7) sole proprietors, members of a partnership,
22 individuals who are party to a franchise
23 agreement as set out by the Federal Trade
24 Commission franchise disclosure rule, 16 CFR

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

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

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

23 Provided, however, an owner-operator shall not be
24 precluded from workers' compensation coverage

1 under the Administrative Workers' Compensation
2 Act if the owner-operator elects to participate
3 as a sole proprietor,

4 (10) a person referred to as a drive-away owner-
5 operator who privately owns and utilizes a tow
6 vehicle in drive-away operations and operates
7 independently for hire, if the drive-away owner-
8 operator actually utilizes the tow vehicle and if
9 the person contracting with the drive-away owner-
10 operator is not the lessor of the tow vehicle.

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

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

22 19. "Employer" means a natural person, partnership,
23 association, limited liability company, corporation, and the legal
24 representatives of a deceased employer, or the receiver or trustee

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

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

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

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

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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;

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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 of the American Medical
10 Association "Guides to the Evaluation of
11 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 of the American Medical
13 Association guides to the evaluation of impairment, if the
14 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~~ shall pay or provide benefits according to
18 the provisions of this act for the accidental injury or death of an
19 employee arising out of and in the course of his or her employment,
20 without regard to fault for such injury, if the employee's contract
21 of employment was made in this state or if the injury occurred
22 within this state. If an employee makes a claim for an injury in
23 another jurisdiction and a final adjudication is entered in the
24 case, the employee is precluded from a right of action under the

1 Administrative Workers' Compensation Act of this state. If the
2 employee makes a claim or brings an action in this state prior to a
3 final adjudication in another jurisdiction, any receipt of benefits
4 in the other jurisdiction shall not bar the claim or action in this
5 state; provided, however, in no event shall the Workers'
6 Compensation Commission grant benefits that duplicate benefits paid
7 by the employer or the employer's insurance carrier in the other
8 jurisdiction. Nothing in this act shall be construed to conflict
9 with any valid Act of Congress governing the liability of employers
10 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 federal government of the United States of America owns or
17 holds 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 federal
20 government of the United States of America, in the same manner and
21 to the same extent as if the premises were under the exclusive
22 jurisdiction of this state, subject only to the limitations placed
23 thereon by the Acts of 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. 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 6, Chapter 208, O.S.L.
9 2013, as amended by Section 1, Chapter 390, O.S.L. 2015 (85A O.S.
10 Supp. 2018, Section 6), is amended to read as follows:

11 Section 6.

12 A. 1. a. Any person or entity who makes any material false
13 statement or representation, who willfully and
14 knowingly omits or conceals any material information,
15 or who employs any device, scheme, or artifice, or who
16 aids and abets any person for the purpose of:

- 17 (1) obtaining any benefit or payment,
- 18 (2) increasing any claim for benefit or payment, or
- 19 (3) obtaining workers' compensation coverage under
- 20 this act,

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

23 b. A material false statement or representation includes,
24 but is not limited to, attempting to obtain treatment

1 or compensation for body parts that were not injured
2 in the course and scope of employment.

3 c. Fifty percent (50%) of any criminal fine imposed and
4 collected under this section shall be paid and
5 allocated in accordance with applicable law to the
6 Workers' Compensation Commission Revolving Fund
7 ~~administered by the Commission.~~

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

12 B. A Except for forms submitted through the Electronic Data
13 Interchange system employed by the Commission pursuant to Section
14 101 of this title, a copy of division (1) of subparagraph a of
15 paragraph 1 of subsection A of this section shall be included on all
16 forms prescribed by the Commission for the use of injured employees
17 claiming benefits and for the use of employers in responding to
18 employees' claims under this act.

19 C. Where the Commission or the Attorney General finds that a
20 violation of division (1) of subparagraph a of paragraph 1 of
21 subsection A of this section has been committed, or that any other
22 criminal violations in furtherance of this act were committed, the
23 chair of the Commission or the Attorney General shall refer the
24

1 matter for appropriate action to the prosecuting attorney having
2 criminal jurisdiction over the matter.

3 D. 1. a. There shall be established within the Office of the
4 Attorney General a Workers' Compensation Fraud
5 Investigation Unit, funded by the Commission. The
6 Attorney General shall appoint a Director of the
7 Workers' Compensation Fraud Investigation Unit, who
8 may also serve as the director of any other designated
9 insurance fraud investigation division within the
10 Attorney General's office.

11 b. (1) The Unit shall investigate workers' compensation
12 fraud, any additional criminal violations that
13 may be related to workers' compensation fraud,
14 and any other insurance fraud matters as may be
15 assigned at the discretion of the Attorney
16 General.

17 (2) The Attorney General shall designate the
18 personnel assigned to the Unit, who, on meeting
19 the qualifications established by the Oklahoma
20 Council on Law Enforcement Education and
21 Training, shall have the powers of specialized
22 law enforcement officers of the State of Oklahoma
23 for the purpose of conducting investigations
24 under this subparagraph. Personnel hired as

1 specialized law enforcement officers shall have a
2 minimum of three (3) years of certified law
3 enforcement experience or its equivalent in
4 national or military law enforcement experience
5 as approved by the Oklahoma Council on Law
6 Enforcement Education and Training.

7 2. The Attorney General and his or her deputies and assistants
8 and the Director of the Workers' Compensation Fraud Investigation
9 Unit and his or her deputies and assistants shall be vested with the
10 power of enforcing the requirements of this section.

11 3. It shall be the duty of the Unit to assist the Attorney
12 General in the performance of his or her duties. The Unit shall
13 determine the identity of employees in this state who have violated
14 division (1) of subparagraph a of paragraph 1 of subsection A of
15 this section and report the violation to the Office of the Attorney
16 General and the Commission. The Attorney General shall report the
17 violation to the prosecuting attorney having jurisdiction over the
18 matter.

19 4. a. In the course of any investigation being conducted by
20 the Unit, the Attorney General and his or her deputies
21 and assistants and the Director and his or her
22 deputies and assistants shall have the power of
23 subpoena and may:

24 (1) subpoena witnesses,

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

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

5 b. The issuance of subpoenas for witnesses shall be
6 served in the same manner as if issued by a district
7 court.

8 c. (1) Upon application by the commissioner or the
9 Director of the Unit, the district court located in
10 the county where a subpoena was served may issue an
11 order compelling an individual to comply with the
12 subpoena to testify.

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

15 d. If any person has refused in connection with an
16 investigation by the Director to be examined under
17 oath concerning his or her affairs, then the Director
18 is authorized to conduct and enforce by all
19 appropriate and available means any examination under
20 oath in any state or territory of the United States in
21 which any officer, director, or manager may then
22 presently be to the full extent permitted by the laws
23 of the state or territory.

24

1 e. In addition to the punishments described in paragraph
2 1 of subsection A of this section, any person
3 providing false testimony under oath or affirmation in
4 this state as to any matter material to any
5 investigation or hearing conducted under this
6 subparagraph, or any workers' compensation hearing,
7 shall upon conviction be guilty of perjury.

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

10 6. a. Every carrier or employer who has reason to suspect
11 that a violation of division (1) of subparagraph a of
12 paragraph 1 of subsection A of this section has
13 occurred shall be required to report all pertinent
14 matters to the unit.

15 b. No carrier or employer who makes a report for a
16 suspected violation of division (1) of subparagraph a
17 of paragraph 1 of subsection A of this section by an
18 employee shall be liable to the employee unless the
19 carrier or employer knowingly and intentionally
20 included false information in the report.

21 c. (1) Any carrier or employer who willfully and
22 knowingly fails to report a violation under
23 division (1) of subparagraph a of paragraph 1 of
24 subsection A of this section shall be guilty of a

1 misdemeanor and on conviction shall be punished
2 by a fine not to exceed One Thousand Dollars
3 (\$1,000.00).

4 (2) Fifty percent (50%) of any criminal fine imposed
5 and collected under this subparagraph shall be
6 paid and allocated in accordance with applicable
7 law to the ~~fund administered by the~~ Workers'
8 Compensation Commission Revolving Fund.

9 d. Any employee may report suspected violations of
10 division (1) of subparagraph a of paragraph 1 of
11 subsection A of this section. No employee who makes a
12 report shall be liable to the employee whose suspected
13 violations have been reported.

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

19 2. The prosecuting attorney of the district to whom a suspected
20 violation of subsection A of this section, or any other criminal
21 violations that may be related thereto, have been referred shall,
22 for the purpose of assisting him or her in such prosecutions, have
23 the authority to appoint as special deputy prosecuting attorneys
24 licensed attorneys-at-law in the employment of the Unit or any other

1 designated insurance fraud investigation division within the
2 Attorney General's office. Such special deputy prosecuting
3 attorneys shall, for the purpose of the prosecutions to which they
4 are assigned, be responsible to and report to the prosecuting
5 attorney.

6 F. Notwithstanding any other provision of law, investigatory
7 files as maintained by the Attorney General's office and by the Unit
8 shall be deemed confidential and privileged. The files may be made
9 open to the public once the investigation is closed by the Director
10 of the Workers' Compensation Fraud Investigation Unit with the
11 consent of the Attorney General.

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

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

17 I. ~~The~~ Except for forms submitted through the Electronic Data
18 Interchange system employed by the Commission pursuant to Section
19 101 of this title, the Commission shall include a statement on all
20 forms for notices and instructions to employees, employers, carriers
21 and third-party administrators that any person who commits workers'
22 compensation fraud, upon conviction, shall be guilty of a felony
23 punishable by imprisonment, a fine or both.

24

1 ~~F.~~ If an injured employee is charged with workers' compensation
2 fraud, any pending workers' compensation proceeding, including
3 benefits, shall be stayed after the preliminary hearing is concluded
4 and the claimant is bound over and shall remain stayed until the
5 final disposition of the criminal case. All notice requirements
6 shall continue during the stay.

7 ~~K.~~ J. If the Attorney General's Office is in compliance with
8 the discovery provisions of Section 258 of Title 22 of the Oklahoma
9 Statutes, medical records created for the purpose of treatment and
10 medical opinions obtained during the investigation shall be
11 admissible at the preliminary hearing without the appearance of the
12 medical professional creating such records or opinions. However,
13 when material evidence dispositive to the issues of whether there
14 was probable cause the crime was committed and whether the defendant
15 committed the crime, was not included in a report or opinion
16 admitted at preliminary hearing, but might be presented at a
17 pretrial hearing by a medical professional who created such report
18 or opinion, the judge may, upon the motion of either party, order
19 the appearance of the medical professional creating such report or
20 opinion. Questions of fact regarding the conduct of the defendant
21 that conflict with the findings of the medical professional
22 evaluating the defendant shall not constitute material evidence. In
23 the event of such motion, notice shall be given to the Attorney
24 General's Workers Compensation Fraud and Investigation and

1 Prosecution Unit. A hearing shall be held and, if the motion is
2 granted, the evidence shall not be presented fewer than five (5)
3 days later.

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

19 SECTION 4. AMENDATORY Section 18, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2018, Section 18), is amended to read as
21 follows:

22 Section 18. A. No hospital, physician, or other health care
23 provider shall bill or attempt to collect any fee or any portion of
24 a fee for services rendered to an employee due to a work-related

1 injury or report to any credit-reporting agency any failure of the
2 employee to make the payment, when a claim for compensation has been
3 filed under this act and the hospital, physician, or health care
4 provider has received actual notice given in writing by the employee
5 or the employee's representative. Actual notice shall be deemed
6 received by the hospital, physician, or health care provider five
7 (5) days after mailing by certified mail or sending by facsimile,
8 electronic mail or other electronic means with receipt of
9 confirmation by the employee or his or her representative to the
10 hospital, physician, or health care provider.

11 B. The notice shall include:

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

17 C. When an injury or bill is found to be noncompensable under
18 this act, the hospital, physician, or other health care provider
19 shall be entitled to pursue the employee for any unpaid portion of
20 the fee or other charges for authorized services provided to the
21 employee. Any applicable statute of limitations for an action for
22 the fees or other charges shall be tolled from the time notice is
23 given to the hospital, physician, or other health care provider
24 until a determination of noncompensability in regard to the injury

1 which is the basis of the services is made, or if there is an
2 appeal, until a final determination of noncompensability is rendered
3 and all appeal deadlines have passed.

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

6 E. An order by the Commission under this section shall stay all
7 proceedings for collection.

8 SECTION 5. AMENDATORY Section 19, Chapter 208, O.S.L.
9 2013, as amended by Section 4, H.J.R. No. 1096, O.S.L. 2014 (85A
10 O.S. Supp. 2018, Section 19), is amended to read as follows:

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

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

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

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

23 D. The principal office of the Commission shall be situated in
24 the City of Oklahoma City in quarters assigned by the Office of

1 Management and Enterprise Services. The Commission shall maintain
2 and keep open, during reasonable business hours, the office in
3 Oklahoma City, for the transaction of business, at which office its
4 official records and papers shall be kept. The Commission or any
5 commissioner may hold hearings in any city of this state.

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

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

13 2. To employ administrative staff for the Commission, within
14 budgetary limitation; and

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

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

23 G. When any commissioner of the Commission is disqualified for
24 any reason to hear and participate in the determination of any

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

16 H. Communications, whether in person, by electronic medium or
17 in writing, that reflect the pre-decisional deliberations of the
18 Commissioners among each other or with Commission staff, and which
19 occur while exercising their quasi-judicial duties such as reviewing
20 decisions or awards made by the administrative law judges of the
21 Commission pursuant to Section 78 of this title or reviewing
22 arbitration awards pursuant to Section 322 and Section 323 of this
23 title, shall not be subject to requirements of the Oklahoma Open
24

1 Meeting Act or Oklahoma Open Records Act, shall be confidential and
2 shall be considered protected deliberative communications.

3 SECTION 6. AMENDATORY Section 22, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 22), is amended to read as
5 follows:

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

- 9 a. to make rules necessary for the administration and
10 operation of the Commission,
- 11 b. to appoint and fix the compensation of temporary
12 technical assistants, medical and legal advisers,
13 clerical assistants and other officers and employees,
14 and
- 15 c. to make such expenditures, including those for
16 personal service, rent, books, periodicals, office
17 equipment, and supplies, and for printing and binding
18 as may be necessary.
- 19 2. a. ~~Before~~ The Commission shall vote on any substantive
20 change to any form and the effective date of such
21 substantive change.
- 22 b. The Commission shall comply with the Administrative
23 Procedures Act applicable to the filing and
24 publication requirements for rules before the

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

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

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

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

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

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

22 B. 1. The Commission may appoint as many persons as may be
23 necessary to be administrative law judges and in addition may
24 appoint such examiners, investigators, medical examiners, clerks,

1 and other employees as it deems necessary to effectuate the
2 provisions of this ~~act~~ title.

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

5 C. Additionally, the Commission shall have the following powers
6 and duties:

7 1. To hear and approve compromise settlements;

8 2. To review and approve own-risk applications and group self-
9 insurance association applications, except for those established
10 pursuant to Section 85.58A of Title 74 of the Oklahoma Statutes;

11 3. To monitor own-risk, self-insurer and group self-insurance
12 programs, in accordance with the rules of the Commission, except for
13 those established pursuant to Section 85.58A of Title 74 of the
14 Oklahoma Statutes;

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

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

24

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

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

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

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

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

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

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

1 SECTION 7. AMENDATORY Section 28, Chapter 208, O.S.L.
2 2013, as last amended by Section 1, Chapter 344, O.S.L. 2015 (85A
3 O.S. Supp. 2018, Section 28), is amended to read as follows:

4 Section 28. A. There are established within the Office of the
5 State Treasurer two separate funds:

- 6 1. The "Multiple Injury Trust Fund"; and
- 7 2. The "Self-insurance Guaranty Fund".

8 B. ~~Except as provided in Section 97 of this title, no money~~
9 ~~shall be appropriated from these funds for any purpose except for~~
10 ~~the use and benefit, or at the direction, of the Oklahoma Workers'~~
11 ~~Compensation Commission.~~

12 C. ~~Except as provided in Section 96 of this title, all funds~~
13 ~~established under this section shall be administered, disbursed, and~~
14 ~~invested under the direction of the Commission and the State~~
15 ~~Treasurer.~~

16 D. All incomes derived through investment of the Multiple
17 Injury Trust Fund shall be credited as investment income to the fund
18 that participated in the investment.

19 E. C. No monies deposited to these funds shall be subject to
20 any deduction, tax, levy, or any other type of assessment.

21 F. D. If the balance in the Multiple Injury Trust Fund becomes
22 insufficient to fully compensate those employees to whom it is
23 obligated, payment shall be suspended until such time as the
24

1 Multiple Injury Trust Fund is capable of meeting its obligations,
2 paying all arrearages, and restoring normal benefit payments.

3 ~~G.~~ E. On the effective maturity dates of each investment, the
4 investment shall be transferred to the State Treasurer for deposit
5 into the Multiple Injury Trust Fund created in this section.

6 ~~H.~~ F. Unless provided otherwise in the Administrative Workers'
7 Compensation Act, all fines and penalties assessed under the
8 Administrative Workers' Compensation Act shall be deposited into the
9 Workers' Compensation Commission Revolving Fund. Any monies
10 remaining in the Workers' Compensation Fund on June 30, 2015, shall
11 be transferred to the Workers' Compensation Commission Revolving
12 Fund.

13 SECTION 8. AMENDATORY Section 29, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2018, Section 29), is amended to read as
15 follows:

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

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

24

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

4 D. Fees required pursuant to this section shall be deposited
5 into the Workers' Compensation Commission Revolving Fund.

6 SECTION 9. AMENDATORY Section 31, Chapter 208, O.S.L.
7 2013, as amended by Section 3, Chapter 344, O.S.L. 2015 (85A O.S.
8 Supp. 2018, Section 31), is amended to read as follows:

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

11 1. As soon as practicable after January 1 of each year, the
12 commissioners of the Workers' Compensation Commission shall
13 establish an assessment rate applicable to each mutual or
14 interinsurance association, stock company, CompSource Oklahoma, or
15 other insurance carrier writing workers' compensation insurance in
16 this state, each employer carrying its own risk, and each group
17 self-insurance association, for amounts for purposes of computing
18 the assessment authorized by this section necessary to pay the
19 annual obligations of the Multiple Injury Trust Fund determined on
20 or before December 31 of each year by the MITF Director, provided
21 for in subsection P of this section, to be outstanding for the next
22 calendar year, and to pay the allocations provided for in subsection
23 I of this section. The rate shall be equal for all parties required
24 to pay the assessment. If CompSource begins operating as a mutual

1 insurance company, the Board of Directors for CompSource Mutual
2 Insurance Company shall have the power to disapprove the rate
3 established by the MITF Director until the Multiple Injury Trust
4 Fund repays in full the amount due on any loan from CompSource
5 Mutual Insurance Company or its predecessor CompSource Oklahoma. If
6 the MITF Director and CompSource have not agreed on the assessment
7 rate within thirty (30) days, the Commission shall set an assessment
8 rate sufficient to cover all foreseeable obligations of the Multiple
9 Injury Trust Fund, including interest and principal owed by the Fund
10 on any loan. The rate in effect on the effective date of this act
11 shall remain effective through June 30, 2014;

12 2. The Oklahoma Tax Commission shall assess and collect from
13 any uninsured employer a temporary assessment at the rate of five
14 percent (5%) of the total compensation for permanent total
15 disability awards, permanent partial disability awards, and death
16 benefits paid out during each quarter of the calendar year by the
17 employers;

18 3. The assessments shall be paid to the Tax Commission.
19 Insurance carriers, self-insurers, group self-insurance associations
20 and CompSource Oklahoma shall pay the assessment in four equal
21 installments not later than the fifteenth day of the month following
22 the close of each quarter of the calendar year of the assessment.
23 Assessments shall be determined based upon gross direct written
24 premiums, normal premiums or actual paid losses of the paying party,

1 as applicable, during the calendar quarter for which the assessment
2 is due. Uninsured employers shall pay the assessment not later than
3 the fifteenth day of the month following the close of each quarter
4 of the calendar year of the assessment. For purposes of this
5 section, "uninsured employer" means an employer required by law to
6 carry workers' compensation insurance but who has failed or
7 neglected to do so.

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

19 b. For purposes of this subsection:

20 (1) "actual paid losses" means all medical and
21 indemnity payments, including temporary
22 disability, permanent disability, and death
23 benefits, and excluding loss adjustment expenses
24 and reserves, and

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

3 4. By April 15 of each year, the Insurance Commissioner, the
4 MITF Director and each individual and group self-insured shall
5 provide the Commission with such information as the Commission may
6 determine is necessary to effectuate the purposes of this section;

7 5. Each mutual or interinsurance association, stock company,
8 CompSource Oklahoma, or other insurance carrier writing workers'
9 compensation insurance in this state, and each employer carrying its
10 own risk, including each group self-insurance association, shall be
11 notified by the Commission in writing of the rate for the assessment
12 on or before May 1 of each year in which a rate is determined. The
13 rate determined by the Commission shall be in effect for four
14 calendar quarters beginning July 1 following determination by the
15 Commission; and

16 6. a. No mutual or interinsurance association, stock
17 company, CompSource Oklahoma, or other insurance
18 carrier writing workers' compensation insurance in
19 this state may be assessed in any year an amount
20 greater than six percent (6%) of the gross direct
21 written premiums of that insurer.

22 b. No employer carrying its own risk may be assessed in
23 any year an amount greater than six percent (6%) of
24

1 the total actual paid losses of that individual self-
2 insured.

3 c. No group self-insurance association may be assessed in
4 any year an amount greater than six percent (6%) of
5 the normal premium of that group self-insurance
6 association.

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

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

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

19 D. Any mutual or interinsurance association, stock company, or
20 other insurance company, which is subject to regulation by the
21 Insurance Commissioner, or CompSource Oklahoma, failing to make
22 payments required in this act promptly and correctly, and failing to
23 report payment of the same to the Insurance Commission within ten
24 (10) days of payment shall be subject to administrative penalties as

1 allowed by law, including but not limited to a fine in the amount of
2 Five Hundred Dollars (\$500.00) or an amount equal to one percent
3 (1%) of the unpaid amount, whichever is greater, to be paid to the
4 Insurance Commissioner.

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

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

22 2. Until such time as the Multiple Injury Trust Fund fully
23 satisfies any loan obligation payable to CompSource Mutual Insurance
24

1 Company or its predecessor CompSource Oklahoma, the State Treasurer
2 shall:

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

7 b. advise the Chief Executive Officer of CompSource on or
8 before the first day of November of the money held as
9 of October 1 of that year by the State Treasurer to
10 the credit of the Multiple Injury Trust Fund.

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

1 Trust Fund for the making of such investments, when signed by the
2 MITF Director, upon delivery of such securities or evidence of
3 indebtedness to the State Treasurer. The MITF Director may sell any
4 of such securities, the proceeds thereof to be paid over to the
5 State Treasurer for the Multiple Injury Trust Fund.

6 H. The refund provisions of Sections 227 through 229 of Title
7 68 of the Oklahoma Statutes shall be applicable to any payments made
8 to the Multiple Injury Trust Fund. Refunds shall be paid from and
9 out of the Multiple Injury Trust Fund.

10 I. The Tax Commission shall pay, monthly, to the State
11 Treasurer to the credit of the Multiple Injury Trust Fund all monies
12 collected pursuant to the provisions of this section. The State
13 Treasurer shall pay out of the Multiple Injury Trust Fund only upon
14 the order and direction of the Workers' Compensation Commission
15 acting under the provisions hereof.

16 J. The Commission shall promulgate rules as the Commission
17 deems necessary to effectuate the provisions of this section.

18 K. The Insurance Commissioner shall promulgate rules relating
19 to insurers as defined in Title 36 of the Oklahoma Statutes, as the
20 Insurance Commissioner deems necessary to effectuate the provisions
21 of this section.

22 L. The MITF Director shall have authority to fulfill all
23 payment obligations of the Multiple Injury Trust Fund.

24

1 M. The Multiple Injury Trust Fund may enter into an agreement
2 with any reinsurer licensed to sell reinsurance by the Insurance
3 Commissioner pursuant to a competitive process administered by the
4 Director of Central Purchasing in the Office of Management and
5 Enterprise Services.

6 N. Any dividend, rebate, or other distribution, payable by
7 CompSource Oklahoma or any other workers' compensation insurance
8 carrier, to a state agency policyholder shall be paid to the State
9 Treasurer, and shall be credited as follows:

10 1. In the event of failure of the Multiple Injury Trust Fund to
11 meet all lawful obligations, the monies shall be credited to the
12 Multiple Injury Trust Fund and shall be used by the Multiple Injury
13 Trust Fund to meet all lawful obligations of the Multiple Injury
14 Trust Fund; and

15 2. Otherwise, all future dividends made by CompSource Oklahoma
16 or any workers' compensation insurance carrier, on behalf of state
17 agencies, shall be deposited to the credit of the General Revenue
18 Fund of the State Treasury.

19 ~~O. The Workers' Compensation Commission shall be charged with~~
20 ~~the administration and protection of the Multiple Injury Trust Fund.~~

21 ~~P.~~ The person serving as the Administrator of the Multiple
22 Injury Trust Fund on the date of passage and approval of this act
23 shall serve as the initial MITF Director, provided such person is
24 serving as the Administrator of the Multiple Injury Trust Fund on

1 the effective date of this act. The MITF Director shall be
2 appointed by and serve at the pleasure of the Governor.

3 ~~Q.~~ P. Any party interested shall have a right to bring a
4 proceeding in the Supreme Court to review an award of the Commission
5 affecting such Multiple Injury Trust Fund, in the same manner as is
6 provided by law with reference to other awards by the Commission.

7 ~~R. The State Treasurer shall allocate to the Commission out of
8 the Multiple Injury Trust Fund sufficient funds for administration
9 expenses thereof in amounts to be fixed and approved by the
10 Administrator for the Multiple Injury Trust Fund, unless rejected by
11 the Commission.~~

12 SECTION 10. AMENDATORY Section 38, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2018, Section 38), is amended to read as
14 follows:

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

17 1. By insuring and keeping insured the payment of compensation
18 with any stock corporation, mutual association, or other concerns
19 authorized to transact the business of workers' compensation
20 insurance in this state. When an insurer issues a policy to provide
21 workers' compensation benefits under the provisions of this act, it
22 shall file a notice with the Workers' Compensation Commission
23 containing the name, address, and principal occupation of the
24 employer, the number, effective date, and expiration date of the

1 policy, and such other information as may be required by the
2 Commission. The notice shall be filed by the insurer within thirty
3 (30) days after the effective date of the policy. Any insurer who
4 does not file the notice required by this paragraph shall be subject
5 to a fine by the Commission of not more than One Thousand Dollars
6 (\$1,000.00);

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

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

19 a. less than one hundred employees or less than One
20 Million Dollars (\$1,000,000.00) in net assets to:
21 (1) deposit with the Commission securities, an
22 irrevocable letter of credit or a surety bond
23 payable to the state, in an amount determined by
24 the Commission which shall be at least an average

1 of the yearly claims for the last three (3)
2 years, or

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

7 b. one hundred or more employees and One Million Dollars
8 (\$1,000,000.00) or more in net assets to:

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

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

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

1 as prescribed by the Commission, acknowledging that the employer
2 accepts joint and several liability. Upon approval by the
3 Commission of such application for membership, said member shall be
4 a qualified self-insured employer; or

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

7 B. The Commission may waive the requirements of this section in
8 an amount which is commensurate with the ability of the employer to
9 pay the benefits required by the provisions of this act.

10 Irrevocable letters of credit required by this subsection shall
11 contain such terms as may be prescribed by the Commission and shall
12 be issued for the benefit of the state by a financial institution
13 whose deposits are insured by the Federal Deposit Insurance
14 Corporation.

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

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

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

5 SECTION 11. AMENDATORY Section 40, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2018, Section 40), is amended to read as
7 follows:

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

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

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

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

1 of receipt of the proposed judgment, a written request
2 for a hearing.

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

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

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

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

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

1 c. The carrier shall promptly, and no later than five (5)
2 days before the hearing, respond in writing to the
3 employer's allegation by providing evidence of
4 coverage for the period in question or by
5 affirmatively denying the employer's allegation.

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

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

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

22 7. Upon any penalty becoming final under this section, the
23 Commission may institute collection proceedings independently or in
24 district court including, but not limited to, an asset hearing,

1 garnishment of income and wages, judgment lien against personal or
2 business property, or an intercept of an employer's income tax
3 refund consistent with Section 205.2 of Title 68 of the Oklahoma
4 Statutes.

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

11 SECTION 12. AMENDATORY Section 45, Chapter 208, O.S.L.
12 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
13 Supp. 2018, Section 45), is amended to read as follows:

14 Section 45. A. Temporary Total Disability. 1. If the injured
15 employee is temporarily unable to perform his or her job or any
16 alternative work offered by the employer, he or she shall be
17 entitled to receive compensation equal to seventy percent (70%) of
18 the injured employee's average weekly wage, but not to exceed
19 seventy percent (70%) of the state average weekly wage, for one
20 hundred four (104) weeks. Provided, there shall be no payment for
21 the first three (3) days of the initial period of temporary total
22 disability. If an administrative law judge finds that a
23 consequential injury has occurred and that additional time is needed
24 to reach maximum medical improvement, temporary total disability may

1 continue for a period of not more than an additional fifty-two (52)
2 weeks. Such finding shall be based upon a showing of medical
3 necessity by clear and convincing evidence.

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 with medical orders
18 of the treating physician or his or her abandonment of medical care.
19 The administrative law judge may appoint an independent medical
20 examiner to determine if further medical treatment is reasonable and
21 necessary. The independent medical examiner shall not provide
22 treatment to the injured worker, unless agreed upon by the parties.

23 B. Temporary Partial Disability.
24

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

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

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

16 C. Permanent Partial Disability.

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

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

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

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

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

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

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

19 b. If, for any reason other than misconduct as defined in
20 Section 2 of this ~~act~~ title, the employer terminates
21 the employee or the position offered is not the pre-
22 injury or equivalent job, the remaining permanent
23 partial disability award shall be paid in a lump sum.
24 If the employee is discharged for misconduct, the

1 employer shall have the burden to prove that the
2 employee engaged in misconduct.

3 c. If the employee refuses an offer to return to his pre-
4 injury or equivalent job, the permanent partial
5 disability award shall continue to be deferred and
6 shall be reduced by seventy percent (70%) of the
7 employee's average weekly wage for each week he
8 refuses to return to his pre-injury or equivalent job.

9 d. Attorney fees for permanent partial disability awards,
10 as approved by the Commission, shall be calculated
11 based upon the total permanent partial disability
12 award and paid in full at the time of the deferral.

13 e. Assessments pursuant to Sections 31, 98, ~~112~~ and ~~165~~
14 122 of this ~~act~~ title shall be calculated based upon
15 the amount of the permanent partial disability award
16 and shall be paid at the time of the deferral.

17 6. Previous Disability: The fact that an employee has suffered
18 previous disability or received compensation therefor shall not
19 preclude the employee from compensation for a later accidental
20 personal injury or occupational disease. In the event there exists
21 a previous permanent partial disability, including a previous non-
22 work-related injury or condition which produced permanent partial
23 disability and the same is aggravated or accelerated by an
24 accidental personal injury or occupational disease, compensation for

1 permanent partial disability shall be only for such amount as was
2 caused by such accidental personal injury or occupational disease
3 and no additional compensation shall be allowed for the preexisting
4 disability or impairment. Any such reduction shall not apply to
5 temporary total disability, nor shall it apply to compensation for
6 medical treatment.

7 a. If workers' compensation benefits have previously been
8 awarded through settlement or judicial or
9 administrative determination in Oklahoma, the
10 percentage basis of the prior settlement or award
11 shall conclusively establish the amount of permanent
12 partial disability determined to be preexisting. If
13 workers' compensation benefits have not previously
14 been awarded through settlement or judicial or
15 administrative determination in Oklahoma, the amount
16 of preexisting permanent partial disability shall be
17 established by competent evidence.

18 b. In all cases, the applicable reduction shall be
19 calculated as follows:

20 (1) if the preexisting impairment is the result of
21 injury sustained while working for the employer
22 against whom workers' compensation benefits are
23 currently being sought, any award of compensation
24 shall be reduced by the current dollar value

1 attributable under the Administrative Workers'
2 Compensation Act to the percentage of permanent
3 partial disability determined to be preexisting.
4 The current dollar value shall be calculated by
5 multiplying the percentage of preexisting
6 permanent partial disability by the compensation
7 rate in effect on the date of the accident or
8 injury against which the reduction will be
9 applied, and

10 (2) in all other cases, the employer against whom
11 benefits are currently being sought shall be
12 entitled to a credit for the percentage of
13 preexisting permanent partial disability.

14 7. No payments on any permanent partial disability order shall
15 begin until payments on any preexisting permanent partial disability
16 orders have been completed.

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

19 9. The permanent partial disability rate of compensation for
20 amputation or permanent total loss of use of a scheduled member
21 specified in Section 46 of this ~~act~~ title shall be seventy percent
22 (70%) of the employee's average weekly wage, not to exceed Three
23 Hundred Twenty-three Dollars (\$323.00), multiplied by the number of
24 weeks set forth for the member in Section 46 of this ~~act~~ title,

1 regardless of whether the injured employee is able to return to his
2 or her pre-injury or equivalent job.

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

12 D. Permanent Total Disability.

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

1 the lump-sum payment shall be evenly divided between or among such
2 persons. In the event the Commission awards both permanent partial
3 disability and permanent total disability benefits, the permanent
4 total disability award shall not be due until the permanent partial
5 disability award is paid in full. If otherwise qualified according
6 to the provisions of this act, permanent total disability benefits
7 may be awarded to an employee who has exhausted the maximum period
8 of temporary total disability even though the employee has not
9 reached maximum medical improvement.

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

19 E. 1. The Workers' Compensation Commission shall hire or
20 contract for a Vocational Rehabilitation Director to oversee the
21 vocational rehabilitation program of the Commission.

22 2. The Vocational Rehabilitation Director shall help injured
23 workers return to the work force. If the injured employee is unable
24 to return to his or her pre-injury or equivalent position due to

1 permanent restrictions as determined by the treating physician, upon
2 the request of either party, the Vocational Rehabilitation Director
3 shall determine if it is appropriate for a claimant to receive
4 vocational rehabilitation training or services, and will oversee
5 such training. If appropriate, the Vocational Rehabilitation
6 Director shall issue administrative orders, including, but not
7 limited to, an order for a vocational rehabilitation evaluation for
8 any injured employee unable to work for at least ninety (90) days.
9 In addition, the Vocational Rehabilitation Director may assign
10 injured workers to vocational rehabilitation counselors for
11 coordination of recommended services. The cost of the services
12 shall be paid by the employer. All administrative orders are
13 subject to appeal to the full Commission.

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

- 17 a. if the employee's occupation is truck driver or
18 laborer and the medical condition is traumatic brain
19 injury, stroke or uncontrolled vertigo,
- 20 b. if the employee's occupation is truck driver or
21 laborer performing high-risk tasks and the medical
22 condition is seizures,
- 23 c. if the employee's occupation is manual laborer and the
24 medical condition is bilateral wrist fusions,

- 1 d. if the employee's occupation is assembly-line worker
2 and the medical condition is radial head fracture with
3 surgical excision,
- 4 e. if the employee's occupation is heavy laborer and the
5 medical condition is myocardial infarction with
6 congestive heart failure,
- 7 f. if the employee's occupation is heavy manual laborer
8 and the medical condition is multilevel neck or back
9 fusions greater than two levels,
- 10 g. if the employee's occupation is laborer performing
11 overhead work and the medical condition is massive
12 rotator cuff tears, with or without surgery,
- 13 h. if the employee's occupation is heavy laborer and the
14 medical condition is recurrent inguinal hernia
15 following unsuccessful surgical repair,
- 16 i. if the employee's occupation is heavy manual laborer
17 and the medical condition is total knee replacement or
18 total hip replacement,
- 19 j. if the employee's occupation is roofer and the medical
20 condition is calcaneal fracture, medically or
21 surgically treated,
- 22 k. if the employee's occupation is laborer of any kind
23 and the medical condition is total shoulder
24 replacement,

- 1 1. if the employee's occupation is laborer and the
2 medical condition is amputation of a hand, arm, leg,
3 or foot,
4 m. if the employee's occupation is laborer and the
5 medical condition is tibial plateau fracture, pilon
6 fracture,
7 n. if the employee's occupation is laborer and the
8 medical condition is ankle fusion or knee fusion,
9 o. if the employee's occupation is driver or heavy
10 equipment operator and the medical condition is
11 unilateral industrial blindness, or
12 p. if the employee's occupation is laborer and the
13 medical condition is 3-, 4-, or 5-level positive
14 discogram of the cervical spine or lumbar spine,
15 medically treated.

16 4. Upon the request of either party, or by order of an
17 administrative law judge, the Vocational Rehabilitation Director
18 shall assist the Workers' Compensation Commission in determining if
19 it is appropriate for a claimant to receive vocational
20 rehabilitation training or services. If appropriate, the
21 administrative law judge shall refer the employee to a qualified
22 expert for evaluation of the practicability of, need for and kind of
23 rehabilitation services or training necessary and appropriate in
24 order to restore the employee to gainful employment. The cost of

1 the evaluation shall be paid by the employer. Following the
2 evaluation, if the employee refuses the services or training ordered
3 by the administrative law judge, or fails to complete in good faith
4 the vocational rehabilitation training ordered by the administrative
5 law judge, then the cost of the evaluation and services or training
6 rendered may, in the discretion of the administrative law judge, be
7 deducted from any award of benefits to the employee which remains
8 unpaid by the employer. Upon receipt of such report, and after
9 affording all parties an opportunity to be heard, the administrative
10 law judge shall order that any rehabilitation services or training,
11 recommended in the report, or such other rehabilitation services or
12 training as the administrative law judge may deem necessary,
13 provided the employee elects to receive such services, shall be
14 provided at the expense of the employer. Except as otherwise
15 provided in this subsection, refusal to accept rehabilitation
16 services by the employee shall in no way diminish any benefits
17 allowable to an employee.

18 5. The administrative law judge may order vocational
19 rehabilitation before the injured employee reaches maximum medical
20 improvement, if the treating physician believes that it is likely
21 that the employee's injury will prevent the employee from returning
22 to his or her former employment. In granting early benefits for
23 vocational rehabilitation, the Commission shall consider temporary
24 restrictions and the likelihood that such rehabilitation will return

1 the employee to gainful employment earlier than if such benefits are
2 granted after the permanent partial disability hearing in the claim.

3 6. Vocational rehabilitation services or training shall not
4 extend for a period of more than fifty-two (52) weeks. A request
5 for vocational rehabilitation services or training shall be filed
6 with the Commission by an interested party not later than sixty (60)
7 days from the date of receiving permanent restrictions that prevent
8 the injured employee from returning to his or her pre-injury or
9 equivalent position.

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

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

1 directly to the facility providing the vocational rehabilitation
2 services or training to the employee. The employer or employer's
3 insurer may deduct the amount paid for tuition from compensation
4 awarded to the employee.

5 F. Disfigurement.

6 1. If an injured employee incurs serious and permanent
7 disfigurement to any part of the body, the Commission may award
8 compensation to the injured employee in an amount not to exceed
9 Fifty Thousand Dollars (\$50,000.00).

10 2. No award for disfigurement shall be entered until twelve
11 (12) months after the injury.

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

15 G. Benefits for a single-event injury shall be determined by
16 the law in effect at the time of injury. Benefits for a cumulative
17 trauma injury or occupational disease or illness shall be determined
18 by the law in effect at the time the employee knew or reasonably
19 should have known that the injury, occupational disease or illness
20 was related to work activity. Benefits for death shall be
21 determined by the law in effect at the time of death.

22 SECTION 13. AMENDATORY Section 60, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 60), is amended to read as
24 follows:

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

18 SECTION 14. AMENDATORY Section 63, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 63), is amended to read as
20 follows:

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

24 1. The name, address, and business of the employer;

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

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

11 C. Any report provided for in subsection A or B of this section
12 shall not be evidence of any fact stated in the report in any
13 proceeding with respect to the injury or death on account of which
14 the report is made. Any such report shall be kept confidential and
15 shall not be open to public inspection; provided, however, such
16 report shall be made available immediately upon request of the
17 injured employee named in the report, the injured employee's legal
18 representative or any prosecutorial authority, at such time as an
19 employee's first notice of claim for compensation shall be filed.

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

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

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

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

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

23 H. If an employer fails to pay any civil penalty assessed
24 against the employer after a judgment issued under this section has

1 become final by operation of law, the Commission may petition the
2 district court of the county where the employer's principal place of
3 business is located for an order enjoining the employer from
4 engaging in further employment or conduct of business until such
5 time as the employer makes all required reports and pays all civil
6 penalties.

7 SECTION 15. AMENDATORY Section 67, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 67), is amended to read as
9 follows:

10 Section 67. A. 1. Except as otherwise provided in this
11 section, notice of disability resulting from an occupational disease
12 or cumulative trauma shall be the same as in cases of accidental
13 injury.

14 2. Written notice shall be given to the employer of an
15 occupational disease or cumulative trauma by the employee, or a
16 representative of the employee in the case of incapacity or death,
17 within six (6) months after the first distinct manifestation of the
18 disease or cumulative trauma or within six (6) months after death.

19 B. An award or denial of award of compensation for an
20 occupational disease ~~or cumulative trauma~~ may be reviewed and
21 compensation increased, reduced, or terminated where previously
22 awarded, or awarded where previously denied, only on proof of fraud
23 or undue influence or of change of condition, and then only on
24 application by a party in interest made not later than one (1) year

1 after the denial of award or, where compensation has been awarded,
2 after the award or the date when the last payment was made under the
3 award, except in cases of silicosis or asbestosis, where the statute
4 of limitations shall be two (2) years.

5 SECTION 16. AMENDATORY Section 69, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2018, Section 69), is amended to read as
7 follows:

8 Section 69. A. Time for Filing.

9 1. A claim for benefits under this act, other than an
10 occupational disease, shall be barred unless it is filed with the
11 Commission within one (1) year from the date of the injury. If
12 during the one-year period following the filing of the claim the
13 employee receives no weekly benefit compensation and receives no
14 medical treatment resulting from the alleged injury, the claim shall
15 be barred thereafter. For purposes of this section, the date of the
16 injury shall be defined as the date an injury is caused by an
17 accident as set forth in paragraph 9 of Section 2 of this ~~act~~ title.

18 2. a. A claim for compensation for disability on account of
19 injury which is either an occupational disease or
20 occupational infection shall be barred unless filed
21 with the Workers' Compensation Commission within two
22 (2) years from the date of the last injurious exposure
23 to the hazards of the disease or infection.

24

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

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

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

17 4. If within six (6) months after the filing of a claim for
18 compensation no bona fide request for a hearing has been made with
19 respect to the claim, the claim may, on motion and after hearing, be
20 dismissed with prejudice.

21 B. Time for Filing Additional Compensation.

22 1. In cases in which any compensation, including disability or
23 medical, has been paid on account of injury, a claim for additional
24 compensation shall be barred unless filed with the Commission within

1 one (1) year from the date of the last payment of ~~disability~~
2 compensation or two (2) years from the date of the injury, whichever
3 is ~~greater~~ later.

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

12 C. A claim for additional compensation shall specifically state
13 that it is a claim for additional compensation. Documents which do
14 not specifically request additional benefits shall not be considered
15 a claim for additional compensation.

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

21 E. Failure to File. Failure to file a claim within the period
22 prescribed in subsection A or B of this section shall not be a bar
23 to the right to benefits hereunder unless objection to the failure
24 is made at the first hearing on the claim in which all parties in

1 interest have been given a reasonable notice and opportunity to be
2 heard by the Commission.

3 F. Persons under Disability.

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

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

17 G. A latent injury or condition shall not delay or toll the
18 limitation periods specified in this section. This subsection shall
19 not apply to the limitation period for occupational diseases
20 specified in paragraph 2 of subsection A of this section.

21 SECTION 17. AMENDATORY Section 71, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2018, Section 71), is amended to read as
23 follows:
24

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

5 B. Investigation - Hearing.

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

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

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

14 4. If a hearing on the claim is ordered, the administrative law
15 judge shall give the claimant and other interested parties ten (10)
16 days' notice of the hearing served personally on the claimant and
17 other parties, or by registered mail, facsimile, electronic mail or
18 by other electronic means with receipt of confirmation. The hearing
19 ~~shall~~ may be held in ~~Tulsa or Oklahoma County~~ any county of this
20 state, as determined by the Commission.

21 5. The award, together with the statement of the findings of
22 fact and other matters pertinent to the issues, shall be filed with
23 the record of the proceedings, and a copy of the award shall
24

1 immediately be sent to the parties in or to counsels of record, if
2 any.

3 C. Evidence and Construction.

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

11 b. Any determination of the existence or extent of
12 physical impairment shall be supported by objective
13 and measurable physical or mental findings.

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

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

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

24

1 D. Judgment. The judgment denying the claim or making the
2 award shall be filed in the office of the Commission, and a copy
3 shall be sent by registered mail, facsimile, electronic mail or by
4 other electronic means with receipt of confirmation to the claimant
5 and to the employer or to their attorneys.

6 E. No compensation for disability of an injured employee shall
7 be payable for any period beyond his or her death; provided,
8 however, an award of compensation for disability may be made after
9 the death of the injured employee for the period of disability
10 preceding death.

11 SECTION 18. AMENDATORY Section 78, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 78), is amended to read as
13 follows:

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

24

1 B. The appellant shall pay a filing fee of One Hundred Seventy-
2 five Dollars (\$175.00) to the Commission at the time of filing his
3 or her appeal. The fee shall be deposited in the Workers'
4 Compensation Commission Revolving Fund.

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

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

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

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

23

24

1 SECTION 19. AMENDATORY Section 80, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 80), is amended to read as
3 follows:

4 Section 80. A. Except where a joint petition settlement has
5 been approved, the Workers' Compensation Commission may reopen for
6 review any compensation judgment, award, or decision. Such review
7 based on a change of physical condition may be done at any time
8 ~~within six (6) months of termination of the compensation period~~
9 ~~fixed in the original compensation judgment or award~~ from the date
10 of the last order in which monetary benefits or active medical
11 treatment was provided, on the Commission's own motion or on the
12 application of any party in interest, on the ground of a change in
13 ~~physical condition or on proof of erroneous wage rate~~ and unless
14 filed within such period of time shall be forever barred. On
15 review, the Commission may make a judgment or award terminating,
16 continuing, decreasing, or increasing for the future the
17 compensation previously awarded, subject to the maximum limits
18 provided for in this ~~act~~ title. An order denying an application to
19 reopen a claim shall not extend the period of time set out in this
20 section for reopening the case. A failure to comply with a medical
21 treatment plan ordered by the Commission shall bar the reopening of
22 a claim.

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

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

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

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

11 SECTION 20. AMENDATORY Section 82, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 82), is amended to read as
13 follows:

14 Section 82.

15 A. 1. a. Fees for legal services rendered in a claim shall not
16 be valid unless approved by the Workers' Compensation
17 Commission.

18 b. An attorney representing an injured employee may only
19 recover attorney fees up to ten percent (10%) of any
20 temporary total disability or temporary partial
21 disability compensation and twenty percent (20%) of
22 any permanent partial disability, permanent total
23 disability, or death compensation awarded to an
24 injured employee by the Commission from a controverted

1 claim. If the employer makes a written offer to
2 settle permanent partial disability, permanent total
3 disability, or death compensation and that offer is
4 rejected, the employee's attorney may not recover
5 attorney fees in excess of thirty percent (30%) of the
6 difference between the amount of any award and the
7 settlement offer.

8 (1) Attorney fees may not be collected for recovery
9 on noncontroverted claims.

10 (2) Attorney fees shall not be awarded on medical
11 benefits or services.

12 (3) The fee for legal services rendered by an
13 attorney representing an employee in connection
14 with a change of physician requested by the
15 injured employee, controverted by the employer,
16 and awarded by the Commission, shall be Two
17 Hundred Dollars (\$200.00).

18 (4) Attorney fees may include not more than ten
19 percent (10%) of the value, or reasonable
20 estimate thereof, of vocational rehabilitation
21 services.

22 c. A "controverted claim" means that there has been a
23 contested hearing before the Commission over whether
24 there has been a compensable injury or whether the

1 employee is entitled to temporary total disability,
2 temporary partial disability, permanent partial
3 disability, permanent total disability, or death
4 compensation. A request for a change in physician
5 shall not trigger a controverted claim for purposes of
6 recovering any attorney fees except the fees under
7 division 3 of subparagraph b of this paragraph. A
8 controverted claim shall not exist if the employee or
9 his or her representative has withheld pertinent
10 information in his or her possession related to the
11 claim from the employer or has violated the provisions
12 of Section 6 of this ~~act~~ title.

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

20 3. In any case where attorney fees are allowed by the
21 Commission, the limitations expressed in subparagraph b of paragraph
22 1 of this subsection shall apply.

1 4. Medical providers may voluntarily contract with the attorney
2 for the employee to recover disputed charges, and the provider may
3 charge a reasonable fee for the cost of collection.

4 B. An attorney representing an employee under this act may not
5 recover fees for services except as expressly provided in this
6 section.

7 SECTION 21. AMENDATORY Section 90, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 90), is amended to read as
9 follows:

10 Section 90. A. The Workers' Compensation Commission may
11 require any employer to make a deposit or bond with the Commission
12 to secure the prompt and convenient payment of compensation, and
13 payments shall be made on judgment of the Commission.

14 B. No proceeding to reverse, vacate or modify any order,
15 decision or award of the Commission en banc or administrative law
16 judge of the Commission wherein compensation has been awarded to an
17 injured employee shall be entertained by the Supreme Court unless
18 the Executive Director of the Commission shall take a written
19 undertaking to the claimant executed on the part of the respondent
20 or insurance carrier, or both the respondent and insurance carrier,
21 with one or more sureties to be approved by the Executive Director,
22 to the effect that the appellant shall pay the amount of the award
23 rendered therein, together with interest thereon from the date of
24 the award by the administrative law judge of the Commission and all

1 costs of the proceeding, or on the further order of the Commission
2 en banc or administrative law judge of the Commission after the
3 appeal has been decided by the Supreme Court, except that
4 municipalities and other political subdivisions of this state are
5 exempt from making such written undertakings.

6 SECTION 22. AMENDATORY Section 101, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2018, Section 101), is amended to read as
8 follows:

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

21 B. After public hearing and consultation with representatives
22 of employers, insurance carriers, and employees, the Commission
23 shall implement, with the assistance of the Insurance Commissioner,
24 ~~by July 1, 2014,~~ an electronic data interchange (EDI) system that

1 provides relevant data concerning the Oklahoma workers' compensation
2 system and the delivery of benefits to injured workers on a time
3 frame to be reasonably determined by the Commission.

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

12 SECTION 23. AMENDATORY Section 152, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2018, Section 109), is amended to read as
14 follows:

15 Section 109. A. The Workers' Compensation Commission shall
16 establish a workers' compensation counselor or ombudsman program to
17 assist injured workers, employers and persons claiming death
18 benefits in obtaining benefits under this act. A special effort
19 shall be made to equip counselors or ombudsmen with sufficient
20 resources to assist injured workers through the system without the
21 necessity of retaining legal representation.

22 B. Workers' compensation counselors or ombudsmen shall provide
23 information to injured workers; investigate complaints; communicate
24 with employers, insurance carriers, self-insurers, and health care

1 providers; provide informational seminars and workshops on workers'
2 compensation for medical providers, insurance adjustors, and
3 employee and employer groups; and develop informational materials
4 for employees, employers and medical providers.

5 C. The Commission shall mail a notice to the injured worker
6 within ten (10) days of the filing of an Employer's First Notice of
7 Injury. The notice shall advise the injured worker of the
8 availability of the services of the Commission's counselor or
9 ombudsman program and of the availability of mediation and other
10 forms of alternative dispute resolution to assist the injured
11 worker. ~~The Commission shall provide additional information as the~~
12 ~~Commission may determine necessary.~~

13 D. The Commission shall develop a program that provides for
14 annual training for own-risk employers and claims representatives
15 handling workers' compensation claims in Oklahoma. The training
16 shall include information about the alternative dispute resolution
17 program, including counselor and ombudsman programs, mediation, and
18 other services provided by the Commission.

19 SECTION 24. AMENDATORY Section 158, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2018, Section 115), is amended to read as
21 follows:

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

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

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

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

1 an official Commission reporter of the testimony taken to effect the
2 Joint Petition.

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

13 SECTION 25. AMENDATORY Section 161, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2018, Section 118), is amended to read as
15 follows:

16 Section 118. A. A At the time of commencement of a claim, a
17 fee of One Hundred Forty Dollars (\$140.00) per case, including any
18 Joint Petition, medical fee dispute, claim for discrimination or
19 retaliation, or claim for benefits under the Multiple Injury Trust
20 Fund authorized by this act title, shall be collected from the party
21 filing the claim by the Workers' Compensation Commission and. In
22 the event any award becomes final against an employer, such amount
23 shall be assessed as costs to be paid by the party against whom any
24

1 ~~award becomes final, to~~ and paid to the injured employee. The
2 filing fee shall be deposited as follows:

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

5 2. Ten Dollars (\$10.00) to the credit of the Attorney General's
6 Workers' Compensation Fraud Unit Revolving Fund created by Section
7 19.2 of Title 74 of the Oklahoma Statutes; and

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

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

24

1 compensation counselor or ombudsman program and safety in the
2 workplace.

3 SECTION 26. AMENDATORY Section 163, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 120), is amended to read as
5 follows:

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

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

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

11 2. This subsection shall not apply:

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

1 disclosed information cannot be used to identify any
2 worker who is the subject of a claim,

3 e. to requests for claims information made by a health
4 care or rehabilitation provider or the provider's
5 legal representative when necessary to process payment
6 of health care or rehabilitation services rendered to
7 a worker, and

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

18 SECTION 27. AMENDATORY Section 164, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 121), is amended to read as
20 follows:

21 Section 121. A. There is hereby created an Advisory Council on
22 Workers' Compensation.

23 B. The voting membership of the Advisory Council shall consist
24 of nine (9) members. Any member serving on the effective date of

1 this section shall serve the remainder of his or her term. The
2 chair of the Workers' Compensation Commission shall be an ex officio
3 nonvoting member.

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

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

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

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

20 1. The term of office for three positions, one each appointed
21 by the Governor, the President Pro Tempore of the Senate and the
22 Speaker of the House of Representatives shall expire on January 1,
23 2015;

24

1 2. The term of office for three positions, one each appointed
2 by the Governor, the President Pro Tempore of the Senate and the
3 Speaker of the House of Representatives shall expire on January 1,
4 2016; and

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

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

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

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

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

19 H. Meetings of the Advisory Council shall be quarterly or as
20 called by the chair or upon petition by a majority of the voting
21 members. The presence of five voting members constitutes a quorum.
22 No action shall be taken by the Advisory Council without the
23 affirmative vote of at least five members.

24

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

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

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

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

20 SECTION 28. AMENDATORY Section 165, Chapter 208, O.S.L.
21 2013, as amended by Section 4, Chapter 344, O.S.L. 2015 (85A O.S.
22 Supp. 2018, Section 122), is amended to read as follows:

23 Section 122. A. The Workers' Compensation Commission Revolving
24 Fund established by Section ~~2~~ 28.1 of this ~~act~~ title shall be used

1 for the costs of administering this act and for other purposes as
2 authorized by law.

3 B. For the purpose of providing funds for the Workers'
4 Compensation Commission Revolving Fund, for the Workers'
5 Compensation Administrative Fund created in Section ~~5~~ 401.1 of this
6 ~~act~~ title, for the Multiple Injury Trust Fund created in Section 28
7 of this title, and to fund other provisions within this title, the
8 following tax rates shall apply:

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

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

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

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

22 1. To be fulfilled first, Five Million Dollars (\$5,000,000.00)
23 shall be payable in equal monthly installments to the credit of the
24 Workers' Compensation Commission Revolving Fund established in

1 Section ~~2~~ 28.1 of this ~~act~~ title for the fiscal year ending June 30,
2 ~~2016~~ 2020, and ~~Three Million Dollars (\$3,000,000.00)~~ for the fiscal
3 ~~year ending June 30, 2017~~, and for all subsequent years to be used
4 to implement the provisions of this title; and

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

18 E. The refund provisions of Sections 227 through 229 of Title
19 68 of the Oklahoma Statutes shall be applicable to any payments made
20 pursuant to this section.

21 SECTION 29. AMENDATORY Section 166, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2018, Section 123), is amended to read as
23 follows:
24

1 Section 123. A. Any form, claim, answer or report to be filed
2 by any person with the Workers' Compensation Commission pursuant to
3 this act shall contain or be verified by a written declaration that,
4 to the best of the knowledge of the filing party, such form, claim,
5 answer or report is true and made under the penalty of perjury.

6 B. Notwithstanding subsection A of this section, submission of
7 any report by Electronic Data Interchange pursuant to the
8 requirements of Section 101 of this title is sufficient ipso facto
9 to establish that the trading partner making the filing declares to
10 the best of his or her knowledge that any information contained in
11 the report is true and made under the penalty of perjury.

12 SECTION 30. AMENDATORY Section 167, Chapter 208, O.S.L.
13 2013, as amended by Section 7, Chapter 169, O.S.L. 2014 (85A O.S.
14 Supp. 2018, Section 124), is amended to read as follows:

15 Section 124. A. 1. All unexpended funds, assets, property,
16 ~~and records, personnel and any outstanding financial obligations and~~
17 ~~encumbrances of the Workers' Compensation Court before February 1,~~
18 ~~2014, are hereby~~ shall be deemed transferred to the Workers'
19 Compensation Commission at such time as the Legislature no longer
20 appropriates funding to the Court independent of funding for the
21 Commission for the purpose of maintaining such assets or records.
22 ~~The personnel transferred shall retain leave, sick and annual time~~
23 ~~earned and any retirement and longevity benefits which have accrued~~
24 ~~during their employment with the state. The salaries of employees~~

1 ~~who are transferred shall not be reduced as a direct and immediate~~
2 ~~result of the transfer. There shall be no reduction in force as a~~
3 ~~result of the transfer.~~

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

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

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

1 Workers' Compensation Act. Such funds shall be expended by the
2 Board only as authorized in the Administrative Workers' Compensation
3 Act.

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

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

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

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

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

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

12 SECTION 31. AMENDATORY Section 121, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2018, Section 300), is amended to read as
14 follows:

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

18 SECTION 32. AMENDATORY Section 125, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 304), is amended to read as
20 follows:

21 Section 304. A. Except as otherwise provided in subsections B
22 and C of this section and in the laws of this state outside of this
23 act, a party to an agreement to arbitrate or to an arbitration
24

1 proceeding may waive, or the parties may vary the effect of, the
2 requirements of this act to the extent permitted by law.

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

5 1. Waive or agree to vary the effect of the requirements of
6 subsection A of Section ~~126~~ 305, subsection A of Section ~~127~~ 306,
7 Section ~~128~~ 307, subsection A or B of Section ~~138~~ 317, Section ~~147~~
8 326 or Section ~~149~~ 328 of this ~~act~~ title;

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

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

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

17 5. Agree to conduct arbitration proceedings outside of this
18 state.

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

1 SECTION 33. AMENDATORY Section 126, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 305), is amended to read as
3 follows:

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

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

16 SECTION 34. AMENDATORY Section 133, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2018, Section 312), is amended to read as
18 follows:

19 Section 312. A. Before accepting appointment, an individual
20 who is requested to serve as an arbitrator, after making a
21 reasonable inquiry, shall disclose to the parties to the arbitration
22 agreement, the parties to the arbitration proceeding, and any other
23 arbitrators any known facts that a reasonable person would consider
24

1 likely to affect the impartiality of the arbitrator in the
2 arbitration proceeding, including but not limited to:

3 1. A financial or personal interest in the outcome of the
4 arbitration proceeding; and

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

8 B. An arbitrator has a continuing obligation to disclose to the
9 parties to the arbitration agreement, the arbitration proceeding,
10 and to any other arbitrators any facts that the arbitrator learns
11 after accepting appointment which a reasonable person would consider
12 likely to affect the impartiality of the arbitrator.

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

20 SECTION 35. AMENDATORY Section 134, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2018, Section 313), is amended to read as
22 follows:

23 Section 313. If there is more than one arbitrator, the powers
24 of an arbitrator shall be exercised by a majority of the

1 arbitrators, but all of them shall conduct the hearing under Section
2 ~~136~~ 315 of this ~~act~~ title.

3 SECTION 36. AMENDATORY Section 135, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 314), is amended to read as
5 follows:

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

10 B. The immunity afforded by this section supplements any
11 immunity under other law.

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

15 D. An arbitrator or representative of an arbitration
16 organization is not competent to testify in a judicial,
17 administrative, or similar proceeding and may not be required to
18 produce records as to any statement, conduct, decision, or ruling
19 occurring during the arbitration proceeding, to the same extent as a
20 judge of a court of this state acting in a judicial capacity. This
21 subsection shall not apply to:

22 1. The extent necessary to determine the claim of an
23 arbitrator, arbitration organization, or representative of the
24

1 arbitration organization against a party to the arbitration
2 proceeding; or

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

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

19 SECTION 37. AMENDATORY Section 137, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2018, Section 316), is amended to read as
21 follows:

22 Section 316. A. A party to an arbitration proceeding may be
23 represented by a lawyer.

24

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

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

6 SECTION 38. AMENDATORY Section 139, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2018, Section 318), is amended to read as
8 follows:

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

19 SECTION 39. AMENDATORY Section 141, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2018, Section 320), is amended to read as
21 follows:

22 Section 320. A. On motion by a party to an arbitration
23 proceeding, the arbitrator may modify or correct an award:
24

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

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

6 3. To clarify the award.

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

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

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

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

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

22 3. To clarify the award.

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

1 SECTION 40. AMENDATORY Section 142, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 321), is amended to read as
3 follows:

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

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

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

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

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

22 SECTION 41. AMENDATORY Section 143, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 322), is amended to read as
24 follows:

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

8 SECTION 42. AMENDATORY Section 144, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2018, Section 323), is amended to read as
10 follows:

11 Section 323. A. On an application and motion to the court by a
12 party to an arbitration proceeding, the Workers' Compensation
13 Commission shall vacate an award made in the arbitration proceeding
14 if:

15 1. The award was procured by corruption, fraud, or other undue
16 means;

17 2. There was:

18 a. evident partiality by an arbitrator appointed as a
19 neutral arbitrator,

20 b. corruption by an arbitrator, or

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

23 3. An arbitrator refused to postpone the hearing upon showing
24 of sufficient cause for postponement, refused to consider evidence

1 material to the controversy, or otherwise conducted the hearing
2 contrary to Section ~~136~~ 315 of this ~~act~~ title, so as to prejudice
3 substantially the rights of a party to the arbitration proceeding;

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

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

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

11 B. An application and motion under this section shall be filed
12 within thirty (30) days after the movant receives notice of the
13 award or within thirty (30) days after the movant receives notice of
14 a modified or corrected award, unless the movant alleges that the
15 award was procured by corruption, fraud, or other undue means, in
16 which case the motion shall be made within ninety (90) days after
17 the ground is known or by the exercise of reasonable care would have
18 been known by the movant.

19 C. If the Commission vacates an award it may order a rehearing.
20 If the award is vacated on a ground stated in paragraph 1, 2 or 6 of
21 subsection A of this section, the rehearing shall be before a new
22 arbitrator. If the award is vacated on a ground stated in paragraph
23 3, 4 or 5 of subsection A of this section, the rehearing may be
24 before the arbitrator who made the award or the arbitrator's

1 successor. The arbitrator shall render the decision in the
2 rehearing within the same time as that provided in subsection B of
3 Section ~~140~~ 319 of this ~~act~~ title for an award.

4 D. If the Commission denies a motion to vacate an award, it
5 shall confirm the award unless a motion to modify or correct the
6 award is pending.

7 SECTION 43. AMENDATORY Section 148, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 327), is amended to read as
9 follows:

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

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

19 SECTION 44. AMENDATORY Section 169, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2018, Section 400), is amended to read as
21 follows:

22 Section 400. A. The Workers' Compensation Court shall be
23 renamed the Workers' Compensation Court of Existing Claims for the
24 purpose of hearing disputes relating to claims that arise before

1 February 1, 2014. The Court shall consist of the existing judges
2 for the remainder of his or her term. Each judge of the Court shall
3 continue to serve as the appointment to a designated numbered
4 position on the Court. The positions shall be numbered one through
5 ten. The terms of the judges by position number shall expire on the
6 following dates:

7 Position 1 shall expire 7-1-14.

8 Position 2 shall expire 7-1-14.

9 Position 3 shall expire 7-1-14.

10 Position 4 shall expire 7-1-20.

11 Position 5 shall expire 7-1-20.

12 Position 6 shall expire 7-1-16.

13 Position 7 shall expire 7-1-16.

14 Position 8 shall expire 7-1-20.

15 Position 9 shall expire 7-1-20.

16 Position 10 shall expire 7-1-14.

17 Provided, judges who are serving unexpired terms on the Workers'
18 Compensation Court on the effective date of this section shall serve
19 on the Court created by this section until their respective terms
20 expire as provided in this act. Thereafter, each position shall be
21 dissolved. After a judge serves this term, such judge shall be
22 eligible to reapply for an administrative law judge with the
23 Workers' Compensation Commission.

24

1 ~~When a vacancy on the Court occurs or is certain to occur, the~~
2 ~~Workers' Compensation Commission shall assign administrative law~~
3 ~~judges from the Commission to assist in the duties of the Workers'~~
4 ~~Compensation Court of Existing Claims.~~

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

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

11 D. The Court shall operate by the rules adopted by the Workers'
12 Compensation Court prior to the effective date of this act.

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

20 F. The principal office of the Court shall be situated in the
21 City of Oklahoma City in quarters assigned by the Office of
22 Management and Enterprise Services. The Court may hold hearings in
23 any city of this state.

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

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

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

23 J. ~~Any appeal of an order by the Workers' Compensation Court of~~
24 ~~Existing Claims shall be heard by the Commission en banc. The~~

1 ~~Commission shall review the decision using an abuse of discretion~~
2 ~~standard of review. Orders by the Commission may be appealed in~~
3 ~~accordance with Section 78 of this act.~~

4 ~~K.~~ To protect the integrity of the transition from the Workers'
5 Compensation Court to the administrative system created by this act,
6 and to protect all rights and privileges of parties to claims
7 adjudicated by the Workers' Compensation Court, the Commission shall
8 retain all remedies and responsibilities of the Workers'
9 Compensation Court for as long as cases involving claims for
10 compensation accruing before the effective date of this act but
11 filed thereafter or which were pending before or adjudicated by the
12 Workers' Compensation Court shall remain open.

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

21 ~~M.~~ L. All accrued rights and penalties incurred pursuant to a
22 final order of the Workers' Compensation Court shall be preserved.
23 Administrative law judges of the Commission shall be authorized to
24 issue orders and conduct legal proceedings to enforce all such

1 accrued rights and penalties incurred. No accrued right, penalty
2 incurred, or proceeding begun by virtue of a statute repealed by
3 this act shall be abrogated by the terms of this act.

4 SECTION 45. REPEALER Sections 15, 25 and 57, Chapter
5 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 15, 25 and 57), are
6 hereby repealed.

7 SECTION 46. REPEALER Sections 107, 108, 109, 110, as
8 amended by Section 4, Chapter 390, O.S.L. 2015, 111, 112, as amended
9 by Section 5, Chapter 390, O.S.L. 2015, 113, 114, 115, 116, 117,
10 118, as amended by Section 6, Chapter 390, O.S.L. 2015, 119 and 120,
11 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 200, 201,
12 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212 and 213), are
13 hereby repealed.

14 SECTION 47. This act shall become effective July 1, 2019.

15 SECTION 48. It being immediately necessary for the preservation
16 of the public peace, health or safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
February 19, 2019 - DO PASS
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