

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL 2367

By: Kannady of the House

and

Daniels of the Senate

7
8 COMMITTEE SUBSTITUTE

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

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

14 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
15 2013, as amended by Section 1, Chapter 150, O.S.L. 2018 (85A O.S.
16 Supp. 2018, Section 2), is amended to read as follows:

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

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

22 2. "Carrier" means any stock company, mutual company, or
23 reciprocal or interinsurance exchange authorized to write or carry
24 on the business of workers' compensation insurance in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 b. "Compensable injury" does not include:

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

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

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

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

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

10 ~~e.~~

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

14 ~~f.~~

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

22 ~~g.~~

23 f. An employee who suffers a compensable injury shall be
24 entitled to receive compensation as prescribed in this

1 act. Notwithstanding other provisions of law, if it
2 is determined that a compensable injury did not occur,
3 the employee shall not be entitled to compensation
4 under this act;

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

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

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

23 13. "Course and scope of employment" means an activity of any
24 kind or character for which the employee was hired and that relates

1 to and derives from the work, business, trade or profession of an
2 employer, and is performed by an employee in the furtherance of the
3 affairs or business of an employer. The term includes activities
4 conducted on the premises of an employer or at other locations
5 designated by an employer and travel by an employee in furtherance
6 of the affairs of an employer that is specifically directed by the
7 employer. This term does not include:

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

1 employer and the work break is authorized by the
2 employee's supervisor;

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

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

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

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

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

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

21 (1) any person for whom an employer is liable under
22 any Act of Congress for providing compensation to
23 employees for injuries, disease or death arising
24 out of and in the course of employment including,

1 but not limited to, the Federal Employees'
2 Compensation Act, the Federal Employers'
3 Liability Act, the Longshore and Harbor Workers'
4 Compensation Act and the Jones Act, to the extent
5 his or her employees are subject to such acts,

6 (2) any person who is employed in agriculture,
7 ranching or horticulture by an employer who had a
8 gross annual payroll in the preceding calendar
9 year of less than One Hundred Thousand Dollars
10 (\$100,000.00) wages for agricultural, ranching or
11 horticultural workers, or any person who is
12 employed in agriculture, ranching or horticulture
13 who is not engaged in operation of motorized
14 machines. This exemption applies to any period
15 of time for which such employment exists,
16 irrespective of whether or not the person is
17 employed in other activities for which the
18 exemption does not apply. If the person is
19 employed for part of a year in exempt activities
20 and for part of a year in nonexempt activities,
21 the employer shall be responsible for providing
22 workers' compensation only for the period of time
23 for which the person is employed in nonexempt
24 activities,

- 1 (3) any person who is a licensed real estate sales
2 associate or broker, paid on a commission basis,
- 3 (4) any person who is providing services in a medical
4 care or social services program, or who is a
5 participant in a work or training program,
6 administered by the Department of Human Services,
7 unless the Department is required by federal law
8 or regulations to provide workers' compensation
9 for such person. This division shall not be
10 construed to include nursing homes,
- 11 (5) any person employed by an employer with five or
12 fewer total employees, all of whom are related
13 within the second degree by blood or marriage to
14 the employer, are dependents living in the
15 household of the employer, or are a combination
16 of such relatives and dependents, if the employer
17 is a natural person or ~~a general or limited~~
18 ~~partnership, or an incorporator of a corporation~~
19 ~~if the corporation is the employer~~ in the
20 household of the owner of the employer if the
21 employer is not a natural person and the owner
22 owns fifty percent (50%) or more of the employer,
- 23 (6) any person employed by an employer which is a
24 youth sports league which qualifies for exemption

1 from federal income taxation pursuant to federal
2 law,

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

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

23 (9) a person, commonly referred to as an owner-
24 operator, who owns or leases a truck-tractor or

1 truck for hire, if the owner-operator actually
2 operates the truck-tractor or truck and if the
3 person contracting with the owner-operator is not
4 the lessor of the truck-tractor or truck.

5 Provided, however, an owner-operator shall not be
6 precluded from workers' compensation coverage
7 under the Administrative Workers' Compensation
8 Act if the owner-operator elects to participate
9 as a sole proprietor,

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

22 (11) any person who is employed as a domestic servant
23 or as a casual worker in and about a private home
24 or household, which private home or household had

1 a gross annual payroll in the preceding calendar
2 year of less than Fifty Thousand Dollars
3 (\$50,000.00) for such workers;

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

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

23 21. "Evidence-based" means expert-based, literature-supported
24 and outcomes validated by well-designed randomized trials when such

1 information is available and which uses the best available evidence
2 to support medical decision making;

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

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

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

17 25. "Insurance Commissioner" means the Insurance Commissioner
18 of the State of Oklahoma;

19 26. "Insurance Department" means the Insurance Department of
20 the State of Oklahoma;

21 27. "Major cause" means more than fifty percent (50%) of the
22 resulting injury, disease or illness. A finding of major cause
23 shall be established by a preponderance of the evidence. A finding
24 that the workplace was not a major cause of the injury, disease or

1 illness shall not adversely affect the exclusive remedy provisions
2 of this act and shall not create a separate cause of action outside
3 this act;

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

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

9 30. "Misconduct" shall include the following:

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

24

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

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

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

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

23 (b) Any difference in the baseline hearing
24 levels shall be confirmed by subsequent

1 testing; provided, however, such test shall
2 be given within four (4) weeks of the
3 initial baseline hearing level test but not
4 before five (5) days after being adjusted
5 for presbycusis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 45. "Surviving spouse" means the employee's spouse by reason of
23 a legal marriage recognized by the State of Oklahoma or under the
24

1 requirements of a common law marriage in this state, as determined
2 by the Workers' Compensation Commission;

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

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

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

16 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2018, Section 3), is amended to read as
18 follows:

19 Section 3. A. ~~Every employer and every employee, unless~~
20 ~~otherwise specifically provided in this act, shall be~~ subject and
21 bound to the provisions of the Administrative Workers' Compensation
22 Act. ~~However, nothing~~ shall pay or provide benefits according to
23 the provisions of this act for the accidental injury or death of an
24 employee arising out of and in the course of his or her employment,

1 without regard to fault for such injury, if the employee's contract
2 of employment was made or if the injury occurred within this state.
3 If an employee makes a claim for an injury in another jurisdiction,
4 the employee is precluded from his or her right of action under the
5 Administrative Workers' Compensation Act. Nothing in this act shall
6 be construed to conflict with any valid Act of Congress governing
7 the liability of employers for injuries received by their employees.

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

21 C. The Administrative Workers' Compensation Act shall apply
22 only to claims for injuries and death based on accidents which occur
23 on or after ~~the effective date of this act~~ February 1, 2014.
24

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

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

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

1 ~~producing oil or gas shall be deemed to be an intermediate or~~
2 ~~principal employer for services performed at a drill site or~~
3 ~~location with respect to injured or deceased workers whose immediate~~
4 ~~employer was hired by such operator or owner at the time of the~~
5 ~~injury or death.~~

6 B. Exclusive remedy shall not apply if:

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

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

23 C. The immunity from civil liability described in subsection A
24 of this section shall apply regardless of whether the injured

1 employee is denied compensation or deemed ineligible to receive
2 compensation under this act.

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

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

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

22 G. This section shall not be construed to abrogate the loaned
23 servant doctrine in any respect other than that described in
24 subsection F of this section. Nothing in this act shall be

1 construed to relieve the employer from any other penalty provided
2 for in this act for failure to secure the payment of compensation
3 under this act.

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

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

15 SECTION 4. AMENDATORY Section 6, Chapter 208, O.S.L.
16 2013, as amended by Section 1, Chapter 390, O.S.L. 2015 (85A O.S.
17 Supp. 2018, Section 6), is amended to read as follows:

18 Section 6.

19 A. 1. a. Any person or entity who makes any material false
20 statement or representation, who willfully and
21 knowingly omits or conceals any material information,
22 or who employs any device, scheme, or artifice, or who
23 aids and abets any person for the purpose of:

24 (1) obtaining any benefit or payment,

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

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

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

10 c. Fifty percent (50%) of any criminal fine imposed and
11 collected under this section shall be paid and
12 allocated in accordance with applicable law to the
13 Workers' Compensation Commission Revolving Fund
14 ~~administered by the Commission.~~

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

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

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

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

16 b. (1) The Unit shall investigate workers' compensation
17 fraud, any additional criminal violations that
18 may be related to workers' compensation fraud,
19 and any other insurance fraud matters as may be
20 assigned at the discretion of the Attorney
21 General.

22 (2) The Attorney General shall designate the
23 personnel assigned to the Unit, who, on meeting
24 the qualifications established by the Oklahoma

1 Council on Law Enforcement Education and
2 Training, shall have the powers of specialized
3 law enforcement officers of the State of Oklahoma
4 for the purpose of conducting investigations
5 under this subparagraph. Personnel hired as
6 specialized law enforcement officers shall have a
7 minimum of three (3) years of certified law
8 enforcement experience or its equivalent in
9 national or military law enforcement experience
10 as approved by the Oklahoma Council on Law
11 Enforcement Education and Training.

12 2. The Attorney General and his or her deputies and assistants
13 and the Director of the Workers' Compensation Fraud Investigation
14 Unit and his or her deputies and assistants shall be vested with the
15 power of enforcing the requirements of this section.

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

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

6 (1) subpoena witnesses,

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

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

11 b. The issuance of subpoenas for witnesses shall be
12 served in the same manner as if issued by a district
13 court.

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

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

21 d. If any person has refused in connection with an
22 investigation by the Director to be examined under
23 oath concerning his or her affairs, then the Director
24 is authorized to conduct and enforce by all

1 appropriate and available means any examination under
2 oath in any state or territory of the United States in
3 which any officer, director, or manager may then
4 presently be to the full extent permitted by the laws
5 of the state or territory.

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

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

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

20 b. No carrier or employer who makes a report for a
21 suspected violation of division (1) of subparagraph a
22 of paragraph 1 of subsection A of this section by an
23 employee shall be liable to the employee unless the
24

1 carrier or employer knowingly and intentionally
2 included false information in the report.

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

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

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

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

24

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

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

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

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

23 I. The Commission shall include a statement on all forms for
24 notices and instructions to employees, employers, carriers and

1 third-party administrators that any person who commits workers'
2 compensation fraud, upon conviction, shall be guilty of a felony
3 punishable by imprisonment, a fine or both.

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

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

1 evaluating the defendant shall not constitute material evidence. In
2 the event of such motion, notice shall be given to the Attorney
3 General's Workers' Compensation Fraud and Investigation and
4 Prosecution Unit. A hearing shall be held and, if the motion is
5 granted, the evidence shall not be presented fewer than five (5)
6 days later.

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

22 SECTION 5. AMENDATORY Section 7, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 7), is amended to read as
24 follows:

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

3 1. Filed a claim under this act;

4 2. Retained a lawyer for representation regarding a claim under
5 this act;

6 3. Instituted or caused to be instituted any proceeding under
7 the provisions of this act; or

8 4. Testified or is about to testify in any proceeding under the
9 provisions of this act.

10 B. The ~~Commission~~ district courts shall have exclusive
11 jurisdiction to hear and decide claims based on ~~subsection A~~ of this
12 section.

13 C. ~~If the Commission determines that the defendant violated~~
14 ~~subsection A of this section, the Commission may award the employee~~
15 ~~back pay up to a maximum of One Hundred Thousand Dollars~~
16 ~~(\$100,000.00). Interim earnings or amounts earnable with reasonable~~
17 ~~diligence by the person discriminated against shall reduce the back~~
18 ~~pay otherwise allowable~~ An employer which violates any provision of

19 this section shall be liable in a district court action for
20 reasonable damages, actual and punitive if applicable, suffered by
21 an employee as a result of the violation. Exemplary or punitive
22 damage awards made pursuant to this section shall not exceed One
23 Hundred Thousand Dollars (\$100,000.00). The employee shall have the
24 burden of proof by a preponderance of the evidence.

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

3 E. No employer may discharge an employee during a period of
4 temporary total disability for the sole reason of being absent from
5 work or for the purpose of avoiding payment of temporary total
6 disability benefits to the injured employee.

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

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

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

17 SECTION 6. AMENDATORY Section 14, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2018, Section 14), is amended to read as
19 follows:

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

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

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

11 SECTION 7. AMENDATORY Section 16, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 16), is amended to read as
13 follows:

14 Section 16. A. The Official Disability Guidelines - Treatment
15 in Workers' Compensation (ODG), published by the Work Loss Data
16 Institute, ~~is to be recognized as the primary standard of reference,~~
17 shall be mandatory at the time of treatment, in determining the
18 frequency and extent of services presumed to be medically necessary
19 and appropriate for compensable injuries under this act, or in
20 resolving such matters in the event a dispute arises. ~~The medical~~
21 ~~treatment guidelines are not requirements, nor are they mandates or~~
22 ~~standards; they provide advice by identifying the care most likely~~
23 ~~to benefit injured workers. The guidelines shall be evidence based,~~
24 ~~scientifically valid, outcome-focused, and designed to reduce~~

1 ~~excessive or inappropriate medical care while safeguarding necessary~~
2 ~~medical care.~~

3 B. Physicians providing care to an employee shall prescribe for
4 the employee any necessary prescription drugs and over-the-counter
5 alternatives to prescription medicine as clinically appropriate and
6 as recommended under the Official Disability Guidelines.

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

11 SECTION 8. AMENDATORY Section 18, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 18), is amended to read as
13 follows:

14 Section 18. A. No hospital, physician, or other health care
15 provider shall bill or attempt to collect any fee or any portion of
16 a fee for services rendered to an employee due to a work-related
17 injury or report to any credit-reporting agency any failure of the
18 employee to make the payment, when a claim for compensation has been
19 filed under this act and the hospital, physician, or health care
20 provider has received actual notice given in writing by the employee
21 or the employee's representative. Actual notice shall be deemed
22 received by the hospital, physician, or health care provider five
23 (5) days after mailing by certified mail or sending by facsimile,
24 electronic mail or other electronic means with receipt of

1 confirmation by the employee or his or her representative to the
2 hospital, physician, or health care provider.

3 B. The notice shall include:

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

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

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

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

24

1 SECTION 9. AMENDATORY Section 19, Chapter 208, O.S.L.
2 2013, as amended by Section 4, House Joint Resolution No. 1096, Page
3 1745, O.S.L. 2014 (85A O.S. Supp. 2018, Section 19), is amended to
4 read as follows:

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

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

1 Membership on the Commission shall be a full-time position and no
2 commissioner shall have any other employment, unless authorized or
3 excused by law. Each commissioner shall receive a salary equal to
4 that paid to a district judge of this state; ~~provided however, the~~
5 ~~commissioners shall not receive any increase in salary as a result~~
6 ~~of the provisions of Section 1 of this resolution.~~

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

15 D. The principal office of the Commission shall be situated in
16 the City of Oklahoma City in quarters assigned by the Office of
17 Management and Enterprise Services. The Commission shall maintain
18 and keep open, during reasonable business hours, the office in
19 Oklahoma City, for the transaction of business, at which office its
20 official records and papers shall be kept. The Commission or any
21 commissioner may hold hearings in any city of this state.

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

1 1. To organize, direct and develop the administrative work of
2 the administrative law judges, including but not limited to
3 docketing, clerical, technical and financial work and establishment
4 of hours of operation;

5 2. To employ administrative staff for the Commission, within
6 budgetary limitation; and

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

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

13 G. When any commissioner of the Commission is disqualified for
14 any reason to hear and participate in the determination of any
15 matter pending before the Commission, the Governor shall appoint a
16 qualified person to hear and participate in the decision on the
17 particular matter. The special commissioner so appointed shall have
18 all authority and responsibility with respect to the particular
19 matter before the Commission as if the person were a regular
20 commissioner of the Commission but shall have no authority or
21 responsibility with respect to any other matter before the
22 Commission. A person appointed as a special commissioner of the
23 Commission under the provisions of this subsection shall be entitled
24 to receive a per diem equal to the annual salary of the

1 commissioners prorated for the number of days he or she serves in
2 the capacity of a special commissioner of the Commission.
3 Furthermore, when a vacancy on the Commission occurs or is certain
4 to occur, the position shall be filled pursuant to the provisions of
5 this section.

6 SECTION 10. AMENDATORY Section 20, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2018, Section 20), is amended to read as
8 follows:

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

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

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

21 3. To assess penalties;

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

1 5. To make available all records in connection with all cases
2 of personal injury to the Oklahoma Department of Labor. The
3 Commissioner of Labor may propose rules for the prevention of
4 injuries and transmit the rules to the Commission. The Commission
5 may recommend proposed rules for prevention of injuries to the
6 Commissioner of Labor; and

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

9 B. 1. In addition to the other powers and duties granted to
10 the Commission in this section and otherwise provided by law, the
11 Commission is authorized to establish and impose reasonable
12 administrative fees to recover the cost of preparation of various
13 informative materials distributed by the Commission.

14 2. The administrative fees shall be established by regulation
15 of the Commission.

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

20 SECTION 11. AMENDATORY Section 21, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2018, Section 21), is amended to read as
22 follows:
23
24

1 Section 21. A. Commissioners shall be considered officers and
2 shall take the oath prescribed by the Oklahoma Constitution and the
3 laws of this state.

4 B. 1. A majority of the Workers' Compensation Commission shall
5 constitute a quorum for the transaction of business, and vacancies
6 shall not impair the right of the remaining commissioners to
7 exercise all the powers of the full Commission, so long as a
8 majority remains.

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

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

16 D. Except with respect to the Commission's authority to hear
17 appeals of decisions from administrative law judges, any reference
18 in this ~~act~~ title to the Commission's ability to hear and decide the
19 rights of interested parties under this ~~act~~ title shall not prevent
20 it from delegating that responsibility to an administrative law
21 judge.

22 SECTION 12. AMENDATORY Section 22, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 22), is amended to read as
24 follows:

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

4 a. to make rules necessary for the administration and
5 operation of the Commission,

6 b. to appoint and fix the compensation of temporary
7 technical assistants, medical and legal advisers,
8 clerical assistants and other officers and employees,
9 and

10 c. to make such expenditures, including those for
11 personal service, rent, books, periodicals, office
12 equipment, and supplies, and for printing and binding
13 as may be necessary.

14 2. a. ~~Before~~ The Commission shall vote on any substantive
15 change to any form and the effective date of such
16 substantive change.

17 b. The Commission shall comply with the provisions of the
18 Administrative Procedures Act applicable to the filing
19 and publication requirements for rules before the
20 adoption, prescription, amendment, modification, or
21 repeal of any rule, regulation, or form, the
22 Commission shall give at least thirty (30) days'
23 notice of its intended action.

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

6 ~~e. The notice shall be mailed to any person specified by~~
7 ~~law or who shall have requested advance notice of~~
8 ~~rule-making proceedings.~~

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

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

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

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

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

3 C. Additionally, the Commission shall have the following powers
4 and duties:

5 1. To hear and approve compromise settlements;

6 2. To review and approve own-risk applications and group self-
7 insurance association applications;

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

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

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

19 6. To hear and determine claims concerning disputed medical
20 bills;

21 7. To promulgate necessary rules for administering this ~~act~~
22 title and develop uniform forms and procedures for use by
23 administrative law judges. Such rules shall be reviewable by the
24 Legislature;

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

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

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

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

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

19 SECTION 13. AMENDATORY Section 27, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2018, Section 27), is amended to read as
21 follows:

22 Section 27. A. The Workers' Compensation Commission shall be
23 vested with jurisdiction over all claims filed pursuant to the
24 Administrative Workers' Compensation Act. All claims so filed shall

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

15 B. In addition to the duties set forth in this section, the
16 administrative law judges shall have the following duties and
17 powers:

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

22 2. To hear and determine challenges to an agreement to
23 arbitrate under the Workers' Compensation Arbitration Act; and
24

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

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

5 SECTION 14. AMENDATORY Section 29, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2018, Section 29), is amended to read as
7 follows:

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

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

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

19 D. Fees required pursuant to this section shall be deposited
20 ~~into~~ to the credit of the Workers' Compensation Commission Revolving
21 Fund.

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

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

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

12 C. An employer or insurance carrier shall contract for language
13 interpreter services for medical appointments, depositions,
14 statements, mediations and hearings directly with a language
15 interpreter whose principal place of business is in the State of
16 Oklahoma. The charge for such service shall be limited to the
17 actual fee of the interpreter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24

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

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

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

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

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

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

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

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

16 C. If an employee injury occurs during a period when an
17 employer has failed to secure the payment of compensation and the
18 employer has paid a civil penalty assessed pursuant to this section,
19 the Commission may, upon application of the injured employee and
20 hearing before an administrative law judge, award as compensation to
21 the injured employee an amount from the proceeds of the civil
22 penalty not to exceed the amount of the civil penalty.

23
24

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

4 Section 45. A. Temporary Total Disability. 1. If the injured
5 employee is temporarily unable to perform his or her job or any
6 alternative work offered by the employer, he or she shall be
7 entitled to receive compensation equal to seventy percent (70%) of
8 the injured employee's average weekly wage, but not to exceed
9 ~~seventy percent (70%)~~ of the state average weekly wage, for ~~one~~
10 ~~hundred four (104)~~ one hundred fifty-six (156) weeks. Provided,
11 there shall be no payment for the first three (3) days of the
12 initial period of temporary total disability. If an administrative
13 law judge finds that a consequential injury has occurred and that
14 additional time is needed to reach maximum medical improvement,
15 temporary total disability may continue for a period of not more
16 than an additional fifty-two (52) weeks. Such finding shall be
17 based upon a showing of medical necessity by clear and convincing
18 evidence. An employer shall have the right to recover any
19 overpayment of temporary total disability payments from a subsequent
20 permanent partial disability award if the offset is deemed
21 justified.

22 2. When the injured employee is released from active medical
23 treatment by the treating physician for all body parts found by the
24 Commission to be injured, or in the event that the employee, without

1 a valid excuse, misses three consecutive medical treatment
2 appointments, fails to comply with medical orders of the treating
3 physician, or otherwise abandons medical care, the employer shall be
4 entitled to terminate temporary total disability by notifying the
5 employee, or if represented, his or her counsel. If, however, an
6 objection to the termination is filed by the employee within ten
7 (10) days of termination, the Commission shall set the matter within
8 twenty (20) days for a determination if temporary total disability
9 compensation shall be reinstated. The temporary total disability
10 shall remain terminated ~~unless the employee proves the existence of~~
11 ~~a valid excuse for his or her failure to comply~~ until such time as
12 the employee complies with medical orders of the treating physician
13 ~~or his or her abandonment of medical care.~~ Notwithstanding the
14 provisions of this paragraph, benefits under this subsection shall
15 be permanently terminated by order of the Commission if the employee
16 is non-compliant or abandons treatment for sixty (60) days, or if
17 benefits under this subsection have been suspended under this
18 paragraph at least two times. The administrative law judge may
19 appoint an independent medical examiner to determine if further
20 medical treatment is reasonable and necessary. The independent
21 medical examiner shall not provide treatment to the injured worker,
22 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~~ Sixth
9 Edition of the American Medical Association's "Guides to the
10 Evaluation of Permanent Impairment". A copy of any written
11 evaluation shall be sent to both parties within seven (7) days of
12 issuance. Medical opinions addressing compensability and permanent
13 disability must be stated within a reasonable degree of medical
14 certainty. Any party may submit the report of an evaluating
15 physician.

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

24

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

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

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

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

22 b. ~~If, for any reason other than misconduct as defined in~~
23 ~~Section 2 of this act, the employer terminates the~~
24 ~~employee or the position offered is not the pre-injury~~

1 ~~or equivalent job, the remaining permanent partial~~
2 ~~disability award shall be paid in a lump sum. If the~~
3 ~~employee is discharged for misconduct, the employer~~
4 ~~shall have the burden to prove that the employee~~
5 ~~engaged in misconduct.~~

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

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

16 ~~e. Assessments pursuant to Sections 31, 98, ~~112~~ 205 and~~
17 ~~~~165~~ 122 of this act ~~title~~ shall be calculated based~~
18 ~~upon the amount of the permanent partial disability~~
19 ~~award and shall be paid at the time of the deferral.~~

20 6. Previous Disability: The fact that an employee has suffered
21 previous disability or received compensation therefor shall not
22 preclude the employee from compensation for a later accidental
23 personal injury or occupational disease. In the event there exists
24 a previous permanent partial disability, including a previous non-

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

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

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

24

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

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

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

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

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

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

19 D. Permanent Total Disability.

20 1. In case of total disability adjudged to be permanent,
21 seventy percent (70%) of the employee's average weekly wages, but
22 not in excess of the state's average weekly wage, shall be paid to
23 the employee during the continuance of the disability until such
24 time as the employee reaches the age of maximum Social Security

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

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

1 reinstatement of benefits may occur after proper hearing before the
2 Commission.

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

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

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

- a. ~~if the employee's occupation is truck driver or laborer and the medical condition is traumatic brain injury, stroke or uncontrolled vertigo,~~
- b. ~~if the employee's occupation is truck driver or laborer performing high-risk tasks and the medical condition is seizures,~~
- c. ~~if the employee's occupation is manual laborer and the medical condition is bilateral wrist fusions,~~
- d. ~~if the employee's occupation is assembly-line worker and the medical condition is radial head fracture with surgical excision,~~
- e. ~~if the employee's occupation is heavy laborer and the medical condition is myocardial infarction with congestive heart failure,~~
- f. ~~if the employee's occupation is heavy manual laborer and the medical condition is multilevel neck or back fusions greater than two levels,~~
- g. ~~if the employee's occupation is laborer performing overhead work and the medical condition is massive rotator cuff tears, with or without surgery,~~
- h. ~~if the employee's occupation is heavy laborer and the medical condition is recurrent inguinal hernia following unsuccessful surgical repair,~~

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

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

18 3. Upon receipt of such report, and after affording all parties
19 an opportunity to be heard, the administrative law judge shall order
20 that any rehabilitation services or training, recommended in the
21 report, or such other rehabilitation services or training as the
22 administrative law judge may deem necessary, provided the employee
23 elects to receive such services, shall be provided at the expense of
24 the employer. Except as otherwise provided in this subsection,

1 refusal to accept rehabilitation services by the employee shall in
2 no way diminish any benefits allowable to an employee.

3 ~~5.~~ 4. The administrative law judge may order vocational
4 rehabilitation before the injured employee reaches maximum medical
5 improvement, if the treating physician believes that it is likely
6 that the employee's injury will prevent the employee from returning
7 to his or her former employment. In granting early benefits for
8 vocational rehabilitation, the Commission shall consider temporary
9 restrictions and the likelihood that such rehabilitation will return
10 the employee to gainful employment earlier than if such benefits are
11 granted after the permanent partial disability hearing in the claim.

12 ~~6.~~ 5. Vocational rehabilitation services or training shall not
13 extend for a period of more than fifty-two (52) weeks. A request
14 for vocational rehabilitation services or training shall be filed
15 with the Commission by an interested party not later than sixty (60)
16 days from the date of receiving permanent ~~restrictions~~ disability
17 that ~~prevent~~ prevents the injured employee from returning to his or
18 her pre-injury or equivalent position.

19 ~~7.~~ 6. If rehabilitation requires residence at or near the
20 facility or institution which is away from the employee's customary
21 residence, reasonable cost of the employee's board, lodging, travel,
22 tuition, books and necessary equipment in training shall be paid for
23 by the insurer in addition to weekly compensation benefits to which
24

1 the employee is otherwise entitled under the Administrative Workers'
2 Compensation Act.

3 ~~8.~~ 7. During the period when an employee is actively and in
4 good faith being evaluated or participating in a retraining or job
5 placement program for purposes of evaluating permanent total
6 disability status, the employee shall be entitled to receive
7 benefits at the same rate as the employee's temporary total
8 disability benefits for an additional fifty-two (52) weeks. All
9 tuition related to vocational rehabilitation services shall be paid
10 by the employer or the employer's insurer on a periodic basis
11 directly to the facility providing the vocational rehabilitation
12 services or training to the employee. ~~The employer or employer's~~
13 ~~insurer may deduct the amount paid for tuition from compensation~~
14 ~~awarded to the employee.~~

15 F. Disfigurement.

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

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

23

24

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

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

11 SECTION 19. AMENDATORY Section 46, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 46), is amended to read as
13 follows:

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

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

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

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

- 1 4. Leg amputated between the knee and the ankle, two hundred
- 2 twenty (220) weeks;
- 3 5. Hand amputated, two hundred twenty (220) weeks;
- 4 6. Thumb amputated, sixty-six (66) weeks;
- 5 7. First finger amputated, thirty-nine (39) weeks;
- 6 8. Second finger amputated, thirty-three (33) weeks;
- 7 9. Third finger amputated, twenty-two (22) weeks;
- 8 10. Fourth finger amputated, seventeen (17) weeks;
- 9 11. Foot amputated, two hundred twenty (220) weeks;
- 10 12. Great toe amputated, thirty-three (33) weeks;
- 11 13. Toe other than great toe amputated, eleven (11) weeks;
- 12 14. Eye enucleated, in which there was useful vision, two
- 13 hundred seventy-five (275) weeks;
- 14 15. Loss of hearing of one ear, one hundred ten (110) weeks;
- 15 16. Loss of hearing of both ears, three hundred thirty (330)
- 16 weeks; and
- 17 17. Loss of one testicle, fifty-three (53) weeks; loss of both
- 18 testicles, one hundred fifty-eight (158) weeks.
- 19 B. The permanent partial disability rate of compensation for
- 20 amputation or permanent total loss of use of a scheduled member
- 21 specified in this section shall be seventy percent (70%) of the
- 22 employee's average weekly wage, not to exceed ~~Three Hundred Twenty-~~
- 23 ~~three Dollars (\$323.00)~~ Three Hundred Fifty Dollars (\$350.00),
- 24 multiplied by the number of weeks as set forth in this section,

1 regardless of whether or not the injured employee is able to return
2 to his or her pre-injury job.

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

12 D. 1. Compensation for amputation of the first phalange of a
13 digit shall be one-half (1/2) of the compensation for the amputation
14 of the entire digit.

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

17 E. 1. Compensation for the permanent loss of eighty percent
18 (80%) or more of the vision of an eye shall be the same as for the
19 loss of an eye.

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

23 F. Compensation for amputation or loss of use of two or more
24 digits or one or more phalanges of two or more digits of a hand or a

1 foot may be proportioned to the total loss of use of the hand or the
2 foot occasioned thereby but shall not exceed the compensation for
3 total loss of a hand or a foot.

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

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

9 SECTION 20. AMENDATORY Section 47, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2018, Section 47), is amended to read as
11 follows:

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

17 B. Common law spouse. A common law spouse shall not be
18 entitled to benefits under this section unless he or she obtains an
19 order from a court with competent jurisdiction ruling that a common
20 law marriage existed between the decedent and the surviving spouse.

21 C. Beneficiaries - Amounts. If an injury or occupational
22 illness causes death, weekly income benefits shall be payable as
23 follows:

24

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

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

14 3. If there is a child or children and no surviving spouse, a
15 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
16 fifty percent (50%) of the lesser of the deceased employee's average
17 weekly wage and the state average weekly wage to each child. If
18 there are more than two children, each child shall receive a pro
19 rata share of one hundred percent (100%) of the lesser of the
20 deceased employee's average weekly wage and the state average weekly
21 wage. With respect to the lump-sum payment, if there are more than
22 six children, each child shall receive a pro rata share of One
23 Hundred Fifty Thousand Dollars (\$150,000.00);

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

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

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

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

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

22 3. Physically or mentally incapable of self-support,
23 then he or she may continue to receive weekly income benefits under
24 this section until the earlier of reaching the age of twenty-three

1 (23) or, with respect to paragraphs 1 and 2 of this subsection, no
2 longer being enrolled as a student, and with respect to paragraph 3
3 of this subsection, becoming capable of self-support.

4 E. If any member of the class of beneficiaries who receive a
5 pro rata share of weekly income benefits becomes ineligible to
6 continue to receive benefits, the remaining members of the class
7 shall receive adjusted weekly income benefits equal to the new class
8 size.

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

18 SECTION 21. AMENDATORY Section 50, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 50), is amended to read as
20 follows:

21 Section 50. A. The employer shall promptly provide an injured
22 employee with medical, surgical, hospital, optometric, podiatric,
23 and nursing services, along ~~any~~ with any medicine, crutches,
24 ambulatory devices, artificial limbs, eyeglasses, contact lenses,

1 hearing aids, and other apparatus as may be reasonably necessary in
2 connection with the injury received by the employee. The employer
3 shall have the right to choose the treating physician.

4 B. If the employer fails or neglects to provide medical
5 treatment within five (5) days after actual knowledge is received of
6 an injury, the injured employee may select a physician to provide
7 medical treatment at the expense of the employer; provided, however,
8 that the injured employee, or another in the employee's behalf, may
9 obtain emergency treatment at the expense of the employer where such
10 emergency treatment is not provided by the employer.

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

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

1 E. An employee claiming or entitled to benefits under this act,
2 shall, if ordered by the Commission or requested by the employer or
3 insurance carrier, submit himself or herself for medical
4 examination. If an employee refuses to submit himself or herself to
5 examination, ~~his or her right to prosecute any proceeding under this~~
6 ~~act shall be suspended,~~ and no compensation shall be payable for the
7 period of such refusal.

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

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

1 part of the body, the employer shall pay such expense within sixty
2 (60) days. If the employer does not reimburse the employee within
3 that time, the employer is subject to a penalty, paid to the
4 employee, of up to fifteen percent (15%) of the requested amount, to
5 be determined by the administrative law judge. Proper documentation
6 shall include the date the request is filed, the date of each trip,
7 the name and city or town of each medical provider, and the round-
8 trip mileage between the home of the employee and medical service
9 provider. The Commission shall develop a form for submitting a
10 travel expense reimbursement request pursuant to this subsection.

11 H. Fee Schedule.

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

24

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 I. Formulary. The Commission by rule shall adopt a closed
20 formulary. Rules adopted by the Commission shall allow an appeals
21 process for claims in which a treating doctor determines and
22 documents that a drug not included in the formulary is necessary to
23 treat an injured employee's compensable injury. The Commission by
24 rule shall require the use of generic pharmaceutical medications and

1 clinically appropriate over-the-counter alternatives to prescription
2 medications unless otherwise specified by the prescribing doctor, in
3 accordance with applicable state law.

4 SECTION 22. AMENDATORY Section 53, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2018, Section 53), is amended to read as
6 follows:

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

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

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

22 SECTION 23. 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 24. AMENDATORY Section 62, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 62), is amended to read as
20 follows:

21 Section 62. A. Notwithstanding the provisions of Section 45 of
22 this ~~act~~ title, if an employee suffers a nonsurgical soft tissue
23 injury, temporary total disability compensation shall not exceed
24 eight (8) weeks, regardless of the number of parts of the body to

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

19 B. For purposes of this section, "soft tissue injury" means
20 damage to one or more of the tissues that surround bones and joints.
21 Soft tissue injury includes, but is not limited to, sprains,
22 strains, contusions, tendonitis and muscle tears. Cumulative trauma
23 is to be considered a soft tissue injury unless corrective surgery
24

1 is necessary. Soft tissue injury does not include any of the
2 following:

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

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

6 a. sensory or motor disturbances,

7 b. communication disturbances,

8 c. complex integrated disturbances of cerebral function,

9 d. episodic neurological disorders, or

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

13 3. Any joint replacement.

14 SECTION 25. AMENDATORY Section 63, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 63), is amended to read as
16 follows:

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

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

21 2. The name, address, and occupation of the employee;

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

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

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

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

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

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

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

22 2. Whenever the employer has failed or refused to comply as
23 provided in this section, the Commission may serve on the employer a
24 proposed judgment declaring the employer to be in violation of this

1 act and containing the amount, if any, of the civil penalty to be
2 assessed against the employer under this section.

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

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

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

1 SECTION 26. AMENDATORY Section 66, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 66), is amended to read as
3 follows:

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

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

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

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

23 C. Except as otherwise provided in this section, compensation
24 for disability from uncomplicated silicosis or asbestosis shall be

1 payable in accordance with the provisions of Sections 45 and 48 of
2 this ~~act~~ title.

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

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

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

22 ~~2. When in any case the forced change of employment shall, in~~
23 ~~the opinion of the Commission, require that the employee be given~~
24 ~~special training in order to qualify him or her for another~~

1 ~~occupation, the employer liable for compensation shall pay for the~~
2 ~~vocational rehabilitation and training provided for in this act.~~

3 SECTION 27. AMENDATORY Section 67, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 67), is amended to read as
5 follows:

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

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

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

1 SECTION 28. AMENDATORY Section 69, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 69), is amended to read as
3 follows:

4 Section 69. A. Time for Filing. 1. A claim for benefits
5 under this act, other than an occupational disease, shall be barred
6 unless it is filed with the Workers' Compensation Commission within
7 one (1) year from the date of the injury; or, if the employee has
8 received benefits under this title for the injury, six (6) months
9 from the date of the last issuance of such benefits. ~~If during the~~
10 ~~one-year period following the filing of the claim the employee~~
11 ~~receives no weekly benefit compensation and receives no medical~~
12 ~~treatment resulting from the alleged injury, the claim shall be~~
13 ~~barred thereafter.~~ For purposes of this section, the date of the
14 injury shall be defined as the date an injury is caused by an
15 accident as set forth in paragraph 9 of Section 2 of this ~~act~~ title.

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

22 b. A claim for compensation for disability on account of
23 silicosis or asbestosis shall be filed with the
24 Commission within one (1) year after the time of

1 disablement, and the disablement shall occur within
2 three (3) years from the date of the last injurious
3 exposure to the hazard of silicosis or asbestosis.

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

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

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

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

22 b. receive or seek benefits, including medical treatment,
23 under this title for a period of six (6) months,
24

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

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

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

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

18 C. ~~A claim for additional compensation shall specifically state~~
19 ~~that it is a claim for additional compensation. Documents which do~~
20 ~~not specifically request additional benefits shall not be considered~~
21 ~~a claim for additional compensation.~~

22 D. ~~If within six (6) months after the filing of a claim for~~
23 ~~additional compensation no bona fide request for a hearing has been~~
24 ~~made with respect to the claim, the claim shall be dismissed without~~

1 ~~prejudice to the refiling of the claim within the limitation period~~
2 ~~specified in subsection B of this section.~~

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

9 ~~F.~~ C. Persons under Disability.

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

15 2. ~~Subsections~~ Subsection A ~~and B~~ of this section shall not
16 apply to a mental incompetent or minor so long as the person has no
17 guardian or similar legal representative. The limitations
18 prescribed in ~~subsections~~ subsection A ~~and B~~ of this section shall
19 apply to the mental incompetent or minor from the date of the
20 appointment of a guardian or similar legal representative for that
21 person, and when no guardian or similar representative has been
22 appointed, to a minor on reaching the age of majority.

23 ~~G.~~ D. A latent injury or condition shall not delay or toll the
24 limitation periods specified in this section. This subsection shall

1 not apply to the limitation period for occupational diseases
2 specified in paragraph 2 of subsection A of this section.

3 SECTION 29. AMENDATORY Section 71, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 71), is amended to read as
5 follows:

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

10 B. ~~Investigation~~—Hearing.

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

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

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

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

1 state, as determined by the Commission. No hearing or trial shall
2 be continued absent extraordinary circumstances as determined by the
3 Commission.

4 5. The award, together with the statement of the findings of
5 fact and other matters pertinent to the issues, shall be filed with
6 the record of the proceedings, and a copy of the award shall
7 immediately be sent to the parties in or to counsels of record, if
8 any.

9 C. Evidence and Construction.

10 1. a. At the hearing the claimant and the employer may each
11 present evidence relating to the claim. Evidence may
12 be presented by any person authorized in writing for
13 such purpose. The evidence may include verified
14 medical reports which shall be accorded such weight as
15 may be warranted when considering all evidence in the
16 case.

17 b. Any determination of the existence or extent of
18 physical impairment shall be supported by objective
19 and measurable physical or mental findings.

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

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

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

7 D. Judgment. The judgment denying the claim or making the
8 award shall be filed in the office of the Commission, and a copy
9 shall be sent by registered mail, facsimile, electronic mail or by
10 other means with receipt of confirmation to the claimant and to the
11 employer or to their attorneys.

12 E. No compensation for disability of an injured employee shall
13 be payable for any period beyond his or her death; provided,
14 however, ~~an~~ if an injured employee is awarded compensation for
15 permanent partial disability by final order and then dies, a revivor
16 action may be brought by the injured employee's spouse, minor child
17 or children under a disability as defined by Section 67 of this
18 title, but limited to the number of weeks of disability that the
19 employee had accrued between reaching maximum medical improvement
20 and the time of death at the permanent partial disability rate. An
21 award of compensation for permanent partial disability may be made
22 after the death of the injured employee ~~for the period of disability~~
23 ~~preceding death.~~ Such revivor action may be brought only by the
24

1 injured employee's spouse, minor child or children under a
2 disability as defined by Section 67 of this title.

3 SECTION 30. AMENDATORY Section 78, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 78), is amended to read as
5 follows:

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

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

20 C. The judgment, decision or award of the Commission shall be
21 final and conclusive on all questions within its jurisdiction
22 between the parties unless an action is commenced in the Supreme
23 Court of this state to review the judgment, decision or award within
24 twenty (20) days of being sent to the parties. Any judgment,

1 decision or award made by an administrative law judge shall be
2 stayed until all appeal rights have been waived or exhausted. The
3 Supreme Court may modify, reverse, remand for rehearing, or set
4 aside the judgment or award only if it was:

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

16 This action shall be commenced by filing with the Clerk of the
17 Supreme Court a certified copy of the judgment, decision or award of
18 the Commission attached to the petition by the complaint which shall
19 specify why the judgment, decision or award is erroneous or illegal.
20 The proceedings shall be heard in a summary manner and shall have
21 precedence over all other civil cases in the Supreme Court, except
22 preferred Corporation Commission appeals. The Supreme Court shall
23 require the appealing party to file within forty-five (45) days from
24 the date of the filing of an appeal or a judgment appealed from, a

1 transcript of the record of the proceedings before the Commission,
2 or such later time as may be granted by the Supreme Court on
3 application and for good cause shown. The action shall be subject
4 to the law and practice applicable to other civil actions cognizable
5 in the Supreme Court.

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

15 SECTION 31. AMENDATORY Section 80, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2018, Section 80), is amended to read as
17 follows:

18 Section 80. A. A final order for permanent disability is a
19 final adjudication of all issues pending in the claim unless
20 reserved in the order or by operation of law. Except where a joint
21 petition settlement has been approved, the Workers' Compensation
22 Commission may reopen for review any compensation judgment, award,
23 or decision. Such review ~~may be done at any time~~ based on a change
24 of physical condition must be requested by the filing of a Request

1 for Rehearing within six (6) months of termination of the
2 compensation period fixed in the original compensation judgment or
3 award from the date of the last order in which monetary benefits
4 were awarded or active medical treatment was provided, on the
5 Commission's own motion or on the application of any party in
6 interest, ~~on the ground of a change in physical condition or on~~
7 proof of erroneous wage rate and unless filed within such period of
8 time shall be forever barred. A change of condition shall be proved
9 with objective medical evidence which must be filed within thirty
10 (30) days of the filing of the Request for Rehearing. On review,
11 the Commission may ~~make a judgment or award terminating, continuing,~~
12 ~~decreasing, or increasing for the future the~~ additional compensation
13 ~~previously awarded~~ and medical treatment, subject to the maximum
14 limits provided for in this act. An order denying an application to
15 reopen a claim shall not extend the period of time set out in this
16 title for reopening the claim. A failure to comply with a medical
17 treatment plan ordered by the Commission shall bar the reopening of
18 a claim.

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

23
24

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

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

9 SECTION 32. AMENDATORY Section 82, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2018, Section 82), is amended to read as
11 follows:

12 Section 82.

13 A. 1. a. Each party shall be responsible for its legal services
14 and litigation expenses. Fees for legal services
15 ~~rendered in a claim shall not be valid unless approved~~
16 may be reviewed 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 the~~
24 employer or the employer's insurance carrier has

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

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

22 3. In any case where attorney fees are allowed by the
23 Commission, the limitations expressed in subparagraph b of paragraph
24 1 of this subsection shall apply.

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

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

8 SECTION 33. AMENDATORY Section 86, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2018, Section 86), is amended to read as
10 follows:

11 Section 86. A. 1. Each employer desiring to controvert an
12 employee's right to compensation ~~shall~~ may file with the Workers'
13 Compensation Commission on or before the fifteenth day following
14 notice of the alleged injury or death a statement on a form
15 prescribed by the Commission that the right to compensation is
16 controverted and the grounds for the controversion, the names of the
17 claimant, employer, and carrier, if any, and the date and place of
18 the alleged injury or death.

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

23 B. If an employer is unable to obtain sufficient medical
24 information as to the alleged injury or death within fifteen (15)

1 days following receipt of notice, although the employer has acted in
2 good faith and with all due diligence, the employer may apply in
3 writing for an extension of time for making payment of the first
4 installment or controverting the claim. This written application is
5 to be postmarked within the fifteen-day period. The Commission may,
6 in its discretion, grant the extension and fix the additional time
7 to be allowed. Filing of application for an extension shall not be
8 deemed to be a controversion of the claim.

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

13 SECTION 34. AMENDATORY Section 87, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2018, Section 87), is amended to read as
15 follows:

16 Section 87. If the employer or carrier and the injured employee
17 desire to settle the claim, they shall file a joint petition for
18 settlement with the Workers' Compensation Commission. After the
19 joint petition has been filed, the Commission shall order that all
20 workers' compensation claims between the parties covered by the
21 joint petition have been settled. No appeal shall lie from a
22 judgment or award denying a joint petition.

23
24

1 SECTION 35. AMENDATORY Section 89, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 89), is amended to read as
3 follows:

4 Section 89. If the employer has made advance payments for
5 compensation, the employer shall be entitled to be reimbursed out of
6 any unpaid installment or installments of compensation due. If the
7 injured employee receives full wages during disability, he or she
8 shall not be entitled to compensation during the period. Any wages
9 paid by the employer, over the statutory temporary disability
10 maximum, shall be deducted from the permanent partial disability
11 award. Such deduction shall be made after any such applicable
12 attorney fee and any such assessment made pursuant to Sections 45
13 and 46 of this ~~act~~ title have been paid. Provided, however, no
14 wages paid by the employer in excess of the statutory temporary
15 disability maximum, pursuant to a collective bargaining agreement,
16 shall be deducted from any benefit otherwise available under this
17 title.

18 SECTION 36. AMENDATORY Section 94, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 94), is amended to read as
20 follows:

21 Section 94. An employee who is incarcerated shall not be
22 eligible to receive ~~medical or~~ temporary total disability benefits
23 under this ~~act~~ title. Any other benefit available to an
24

1 incarcerated employee shall be limited by other provisions of this
2 title in the same manner as for all injured employees.

3 SECTION 37. AMENDATORY Section 101, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 101), is amended to read as
5 follows:

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

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

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

9 SECTION 38. AMENDATORY Section 105, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2018, Section 105), is amended to read as
11 follows:

12 Section 105. A. No employee of the Workers' Compensation
13 Commission shall be competent to testify on any matter concerning
14 any information the employee has received through the performance of
15 the employee's duties under the provisions of this act, except for
16 employees in the Compliance Division regarding their investigations,
17 custodians of the Commission's records, or if the Commission or any
18 of its employees are a named party in the matter.

19 B. The commissioners and employees of the Commission shall not
20 solicit employment for any attorney or physician nor shall they
21 recommend or refer any claimant or employer to an attorney or
22 physician. If any employee of the Commission makes such a
23 solicitation, recommendation or reference, that person, upon
24 conviction, shall be guilty of a misdemeanor punishable, for each

1 offense, by a fine of not more than One Thousand Dollars (\$1,000.00)
2 or by imprisonment in the county jail not to exceed one (1) year, or
3 by both such fine and imprisonment. The Commission shall
4 immediately terminate the employment of any employee who is guilty
5 of such solicitation, recommendation or reference. A commissioner
6 guilty of such solicitation, recommendation or reference shall be
7 subject to removal from office.

8 C. No administrative law judge shall engage in any ex parte
9 communication with any party to an action pending before the
10 Commission or with any witness or medical provider regarding the
11 merits of a specific matter pending before the judge for resolution.
12 Any violation of this provision shall subject the judge to
13 disqualification from the action or matter upon presentation of an
14 application for disqualification.

15 SECTION 39. AMENDATORY Section 152, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2018, Section 109), is amended to read as
17 follows:

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

1 B. Workers' compensation counselors or ombudsmen shall provide
2 information to injured workers; investigate complaints; communicate
3 with employers, insurance carriers, self-insurers, and health care
4 providers; provide informational seminars and workshops on workers'
5 compensation for medical providers, insurance adjustors, and
6 employee and employer groups; and develop informational materials
7 for employees, employers and medical providers.

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

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

22 SECTION 40. AMENDATORY Section 158, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 115), is amended to read as
24 follows:

1 Section 115. A. If the employee and employer shall reach an
2 agreement for the full, final and complete settlement of any issue
3 of a claim pursuant to this act, a form designated as "Joint
4 Petition" shall be signed by both the employer and employee, or
5 representatives thereof, and shall be approved by the Workers'
6 Compensation Commission or an administrative law judge, and filed
7 with the Workers' Compensation Commission. In cases in which the
8 employee is not represented by legal counsel, the Commission or an
9 administrative law judge shall have jurisdiction to approve a full,
10 final and complete settlement of any issue upon the filing of an
11 Employer's First Notice of Injury. There shall be no requirement
12 for the filing of an Employee's First Notice of Claim for
13 Compensation to effect such settlement in cases in which the
14 employee is not represented by legal counsel.

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

22 C. In the absence of fraud, a Joint Petition shall be deemed
23 binding upon the parties thereto and a final adjudication of all
24 rights pursuant to this ~~act~~ title or the workers' compensation law

1 in effect at the time of the injury or final order of the Workers'
2 Compensation ~~Court~~ Commission. An official record shall be made by
3 an official Commission reporter of the testimony taken to effect the
4 Joint Petition.

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

15 E. If an employee has not filed a claim for compensation and
16 the employer and the injured employee reach a final agreement as to
17 the facts with relation to an injury and the resulting disability
18 for which compensation is claimed under the Administrative Workers'
19 Compensation Act, a memorandum of such agreement in a form
20 prescribed by the Commission shall be filed with the Commission by
21 the employer.

22 SECTION 41. AMENDATORY Section 161, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2018, Section 118), is amended to read as
24 follows:

1 Section 118. A. A filing fee of One Hundred Forty Dollars
2 (\$140.00) per case, including any Joint Petition authorized by this
3 ~~act~~ title, shall be collected by the Workers' Compensation
4 Commission and assessed as costs to be paid by the party against
5 whom any award becomes final, to be deposited as follows:

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

8 2. Ten Dollars (\$10.00) to the credit of the Attorney General's
9 Workers' Compensation Fraud Unit Revolving Fund created by Section
10 19.2 of Title 74 of the Oklahoma Statutes; and

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

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

1 providing additional funding for the Attorney General's Workers'
2 Compensation Fraud Unit, providing counseling services pursuant to
3 the workers' compensation counselor or ombudsman program and safety
4 in the workplace.

5 SECTION 42. AMENDATORY Section 162, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2018, Section 119), is amended to read as
7 follows:

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

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

16 SECTION 43. AMENDATORY Section 163, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2018, Section 120), is amended to read as
18 follows:

19 Section 120. A. Except as otherwise provided by state or
20 federal law and subject to the provisions of this section, an
21 employer may inquire about previous workers' compensation claims
22 paid to an employee while the employee was employed by a previous
23 employer. If the employee fails to answer truthfully about any
24 previous permanent partial disability awards made pursuant to

1 workers' compensation claims, the employee shall be subject to
2 discharge by the employer.

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

24 2. This subsection shall not apply:

- 1 a. to requests for claims information made by a public
2 officer or by a public employee in the performance of
3 his or her duties on behalf of a governmental entity
4 or as may be allowed by law,
- 5 b. to requests for claims information made by an insurer,
6 self-insured employer, third-party claims
7 administrator, or a legal representative thereof, when
8 necessary to process or defend a workers' compensation
9 claim,
- 10 c. when a worker or the worker's representative requests
11 review of the worker's claims information,
- 12 d. when the disclosure is made for educational or
13 research purposes and in such a manner that the
14 disclosed information cannot be used to identify any
15 worker who is the subject of a claim,
- 16 e. to requests for claims information made by a health
17 care or rehabilitation provider or the provider's
18 legal representative when necessary to process payment
19 of health care or rehabilitation services rendered to
20 a worker, and
- 21 f. to requests for claims information made by an employer
22 or personnel service company, including but not
23 limited to an individual or entity, where the worker
24 executes a written authorization permitting the search

1 and designating the employer or personnel service
2 company as the worker's representative for that
3 purpose; however, nothing in this subparagraph shall
4 relieve the employer or personnel service company from
5 complying with the requirements of utilizing the form
6 set forth in paragraph 1 of this subsection.

7 SECTION 44. AMENDATORY Section 164, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2018, Section 121), is amended to read as
9 follows:

10 Section 121. A. There is hereby created an Advisory Council on
11 Workers' Compensation.

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

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

21 2. The Speaker of the House of Representatives shall appoint
22 three members representing employees in this state, one of whom
23 shall be from a list of nominees provided by the most representative
24 labor organization in the state.

1 3. The President Pro Tempore of the Senate shall appoint three
2 members, two who are attorneys representing the legal profession in
3 this state, one of whom shall be an attorney who practices primarily
4 in the area of defense of workers' compensation claims, and one of
5 whom shall be an attorney who primarily represents claimants, and a
6 medical doctor or doctor of osteopathy actively engaged in the
7 treatment of injured workers.

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

9 1. The term of office for three positions, one each appointed
10 by the Governor, the President Pro Tempore of the Senate and the
11 Speaker of the House of Representatives shall expire on January 1,
12 2015;

13 2. The term of office for three positions, one each appointed
14 by the Governor, the President Pro Tempore of the Senate and the
15 Speaker of the House of Representatives shall expire on January 1,
16 2016; and

17 3. The term of office for three positions, one each appointed
18 by the Governor, the President Pro Tempore of the Senate and the
19 Speaker of the House of Representatives shall expire on January 1,
20 2017.

21 D. Thereafter, successors in office shall be appointed for a
22 three-year term. Members shall be eligible to succeed themselves in
23 office.

24

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

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

5 G. Members shall receive their traveling and other necessary
6 expenses incurred in the performance of their duties as provided in
7 the State Travel Reimbursement Act.

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

13 I. The Commission shall provide office supplies and personnel
14 of the Commission to carry out any of the duties that have been
15 entrusted to the Advisory Council.

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

24

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

5 ~~L. The Advisory Council shall review the Oklahoma Treatment~~
6 ~~Guidelines as provided in the Workers' Compensation Code, and report~~
7 ~~the findings of such review to the Commission as provided in this~~
8 ~~act.~~

9 SECTION 45. AMENDATORY Section 167, Chapter 208, O.S.L.
10 2013, as amended by Section 7, Chapter 169, O.S.L. 2014 (85A O.S.
11 Supp. 2018, Section 124), is amended to read as follows:

12 Section 124. A. 1. All unexpended funds, assets, property,
13 records, personnel and any outstanding financial obligations and
14 encumbrances of the Workers' Compensation Court before February 1,
15 2014, are hereby transferred to the Workers' Compensation
16 Commission, except for personnel transferred to the Workers'
17 Compensation Court of Existing Claims on July 9, 2014. The
18 personnel transferred to the Commission and retained by the
19 Commission shall retain leave, sick and annual time earned and any
20 retirement and longevity benefits which have accrued during their
21 employment with the state. The salaries of employees who are
22 transferred shall not be reduced as a direct and immediate result of
23 the transfer. There shall be no reduction-in-force as a result of
24 the transfer. The Workers' Compensation Court of Existing Claims

1 shall pay the expense of maintaining the records of the Court and
2 the records of the former Workers' Compensation Court for as long as
3 the Legislature appropriates funding to the Court independent of
4 funding for the Commission. Thereafter, all such records shall be
5 transferred to the Commission.

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

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

23 2. Any unexpended funds, including interest thereon, held by
24 the State Treasurer in the Workers' Compensation Self-insurance

1 Guaranty Fund before February 1, 2014, shall be transferred to the
2 Self-insurance Guaranty Fund Board created by the Administrative
3 Workers' Compensation Act. Such funds shall be expended by the
4 Board only as authorized in the Administrative Workers' Compensation
5 Act.

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

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

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

22 E. All unexpended funds, assets, property, records, personnel
23 and any outstanding financial obligations and encumbrances of the
24 Multiple Injury Trust Fund before February 1, 2014, are hereby

1 transferred to the Multiple Injury Trust Fund created in the
2 Administrative Workers' Compensation Act. The personnel transferred
3 shall retain leave, sick and annual time earned and any retirement
4 and longevity benefits which have accrued during their employment
5 with the state. The salaries of employees who are transferred shall
6 not be reduced as a direct and immediate result of the transfer.
7 There shall be no reduction-in-force as a result of the transfer.

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

14 SECTION 46. AMENDATORY Section 121, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 300), is amended to read as
16 follows:

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

20 SECTION 47. AMENDATORY Section 125, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2018, Section 304), is amended to read as
22 follows:

23 Section 304. A. Except as otherwise provided in subsections B
24 and C of this section and in the laws of this state outside of this

1 ~~act~~ title, a party to an agreement to arbitrate or to an arbitration
2 proceeding may waive, or the parties may vary the effect of, the
3 requirements of this act to the extent permitted by law.

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

6 1. Waive or agree to vary the effect of the requirements of
7 subsection A of Section ~~126~~ 305, subsection A of Section ~~127~~ 306,
8 Section ~~128~~ 307, subsection A or B of Section ~~138~~ 317, Section ~~147~~
9 326 or Section ~~149~~ 328 of this ~~act~~ title;

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

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

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

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

20 C. A party to an agreement to arbitrate or to an arbitration
21 proceeding may not waive, or the parties may not vary the effect of,
22 the requirements of this section or subsection A or C of Section ~~124~~
23 304, Sections ~~128, 135 and 139~~ 307, 314 and 318, subsection D or E
24

1 of Section ~~141~~ 320, Sections ~~143, 144 and 145~~ 322, 323 and 324, or
2 subsection A or B of Section ~~146~~ 325 of this ~~act~~ title.

3 SECTION 48. AMENDATORY Section 126, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2018, Section 305), is amended to read as
5 follows:

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

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

18 SECTION 49. AMENDATORY Section 128, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2018, Section 307), is amended to read as
20 follows:

21 Section 307. A. On application and motion of a person showing
22 an agreement to arbitrate and alleging another person's refusal to
23 arbitrate under the agreement:
24

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

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

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

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

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

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

9 SECTION 50. AMENDATORY Section 133, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2018, Section 312), is amended to read as
11 follows:

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

19 1. A financial or personal interest in the outcome of the
20 arbitration proceeding; and

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

24

1 B. An arbitrator has a continuing obligation to disclose to the
2 parties to the arbitration agreement, the arbitration proceeding,
3 and to any other arbitrators any facts that the arbitrator learns
4 after accepting appointment which a reasonable person would consider
5 likely to affect the impartiality of the arbitrator.

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

13 SECTION 51. AMENDATORY Section 134, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2018, Section 313), is amended to read as
15 follows:

16 Section 313. If there is more than one arbitrator, the powers
17 of an arbitrator shall be exercised by a majority of the
18 arbitrators, but all of them shall conduct the hearing under Section
19 ~~136~~ 315 of this ~~act~~ title.

20 SECTION 52. AMENDATORY Section 135, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2018, Section 314), is amended to read as
22 follows:

23 Section 314. A. Arbitrators and arbitration organizations
24 providing services under this act are immune from civil liability to

1 the same extent as a judge of a court of this state acting in a
2 judicial capacity.

3 B. The immunity afforded by this section supplements any
4 immunity under other law.

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

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

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

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

23 E. If a person commences a civil action against an arbitrator,
24 arbitration organization, or representative of an arbitration

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

11 SECTION 53. AMENDATORY Section 137, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 316), is amended to read as
13 follows:

14 Section 316. A. A party to an arbitration proceeding may be
15 represented by a lawyer.

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

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

21 SECTION 54. AMENDATORY Section 139, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2018, Section 318), is amended to read as
23 follows:

24

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

11 SECTION 55. AMENDATORY Section 141, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2018, Section 320), is amended to read as
13 follows:

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

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

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

21 3. To clarify the award.

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

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

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

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

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

13 3. To clarify the award.

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

16 SECTION 56. AMENDATORY Section 142, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2018, Section 321), is amended to read as
18 follows:

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

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

24

1 C. As to all remedies other than those authorized by
2 subsections A and B of this section, an arbitrator may order such
3 remedies as the arbitrator considers just and appropriate under the
4 circumstances of the arbitration proceeding. The fact that such a
5 remedy could not or would not be granted by the Workers'
6 Compensation Commission is not a ground for refusing to confirm an
7 award under Section ~~143~~ 322 of this ~~act~~ title or for vacating an
8 award under Section ~~144~~ 323 of this ~~act~~ title.

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

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

14 SECTION 57. AMENDATORY Section 143, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 322), is amended to read as
16 follows:

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

24

1 SECTION 58. AMENDATORY Section 144, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 323), is amended to read as
3 follows:

4 Section 323. A. On an application and motion to the court by a
5 party to an arbitration proceeding, the Workers' Compensation
6 Commission shall vacate an award made in the arbitration proceeding
7 if:

8 1. The award was procured by corruption, fraud, or other undue
9 means;

10 2. There was:

11 a. evident partiality by an arbitrator appointed as a
12 neutral arbitrator,

13 b. corruption by an arbitrator, or

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

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

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

22 5. The arbitration was conducted without proper notice of the
23 initiation of an arbitration as required in Section ~~130~~ 309 of this
24

1 ~~act~~ title so as to prejudice substantially the rights of a party to
2 the arbitration proceeding; or

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

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

13 C. If the Commission vacates an award it may order a rehearing.
14 If the award is vacated on a ground stated in paragraph 1, 2 or 6 of
15 subsection A of this section, the rehearing shall be before a new
16 arbitrator. If the award is vacated on a ground stated in paragraph
17 3, 4 or 5 of subsection A of this section, the rehearing may be
18 before the arbitrator who made the award or the arbitrator's
19 successor. The arbitrator shall render the decision in the
20 rehearing within the same time as that provided in subsection B of
21 Section ~~140~~ 319 of this ~~act~~ title for an award.

22 D. If the Commission denies a motion to vacate an award, it
23 shall confirm the award unless a motion to modify or correct the
24 award is pending.

1 SECTION 59. AMENDATORY Section 148, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2018, Section 327), is amended to read as
3 follows:

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

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

13 SECTION 60. AMENDATORY Section 169, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2018, Section 400), is amended to read as
15 follows:

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

1 Position 1 shall expire 7-1-14.

2 Position 2 shall expire 7-1-14.

3 Position 3 shall expire 7-1-14.

4 Position 4 shall expire ~~7-1-20~~ 7-1-22.

5 Position 5 shall expire 7-1-20.

6 Position 6 shall expire 7-1-16.

7 Position 7 shall expire 7-1-16.

8 Position 8 shall expire 7-1-20.

9 Position 9 shall expire ~~7-1-20~~ 7-1-22.

10 Position 10 shall expire 7-1-14.

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

18 B. When a vacancy on the Court occurs or is certain to occur,
19 ~~the Workers' Compensation Commission shall assign administrative law~~
20 ~~judges from the Commission to assist in the duties of the Workers'~~
21 ~~Compensation Court of Existing Claims~~ the Governor shall appoint a
22 judge to serve the remainder of the term from a list of three
23 applicants submitted to the Governor by the Judicial Nominating
24 Commission. The Presiding Judge serving on the effective date of

1 this act shall continue to serve for as long as the Court of
2 Existing Claims is authorized to exist. The Presiding Judge shall
3 perform supervisory duties as the needs of the Court may require and
4 supervise the work of all employees of the Court and handle,
5 oversee, and be responsible for all administrative affairs of the
6 Court. The Presiding Judge shall employ a sufficient number of
7 court reporters, order writers, and other personnel necessary to
8 carry out the duties of the Court. In addition, the Presiding Judge
9 shall be authorized to contract with the Workers' Compensation
10 Commission or other individuals or entities for services and shared
11 services.

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

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

18 ~~D.~~ E. The Court shall operate by the rules adopted by the
19 Workers' Compensation Court prior to the effective date of this act.

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

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

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

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

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

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

1 banc or the Supreme Court as provided by the Workers' Compensation
2 Code. In the event that an insufficient number of active judges are
3 available to comprise the three-judge en banc panel, retired or
4 former judges of the district court, Workers' Compensation Court or
5 Workers' Compensation Court of Existing Claims shall be designated
6 by the Chief Justice of the Supreme Court as eligible to serve on
7 such panel. Such designation shall be made annually by the Chief
8 Justice by November 15 each year for the selection of panels by the
9 administrative officer of the Court of Existing Claims for the
10 following year. The decision of the Court shall be issued within
11 sixty (60) days following the submission of the case by the parties.
12 The power and jurisdiction of the Court over each case shall be
13 continuing and it may, from time to time, make such modifications or
14 changes with respect to former findings or orders relating thereto
15 if, in its opinion, it may be justified.

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

21 ~~K. To protect the integrity of the transition from the Workers'~~
22 ~~Compensation Court to the administrative system created by this act,~~
23 ~~and to protect all rights and privileges of parties to claims~~
24 ~~adjudicated by the Workers' Compensation Court, the Commission shall~~

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

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

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

21 SECTION 61. AMENDATORY 25 O.S. 2011, Section 307, as
22 last amended by Section 1, Chapter 252, O.S.L. 2018 (25 O.S. Supp.
23 2018, Section 307), is amended to read as follows:
24

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

3 B. Executive sessions of public bodies will be permitted only
4 for the purpose of:

5 1. Discussing the employment, hiring, appointment, promotion,
6 demotion, disciplining or resignation of any individual salaried
7 public officer or employee;

8 2. Discussing negotiations concerning employees and
9 representatives of employee groups;

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

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

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

21 6. Discussing matters involving a specific handicapped child;

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

24

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

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

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

14 11. Discussing the following:

- 15 a. the investigation of a plan or scheme to commit an act
16 of terrorism,
- 17 b. assessments of the vulnerability of government
18 facilities or public improvements to an act of
19 terrorism,
- 20 c. plans for deterrence or prevention of or protection
21 from an act of terrorism,
- 22 d. plans for response or remediation after an act of
23 terrorism,

1 e. information technology of the public body but only if
2 the discussion specifically identifies:

3 (1) design or functional schematics that demonstrate
4 the relationship or connections between devices
5 or systems,

6 (2) system configuration information,

7 (3) security monitoring and response equipment
8 placement and configuration,

9 (4) specific location or placement of systems,
10 components or devices,

11 (5) system identification numbers, names, or
12 connecting circuits,

13 (6) business continuity and disaster planning, or
14 response plans, or

15 (7) investigation information directly related to
16 security penetrations or denial of services, or

17 f. the investigation of an act of terrorism that has
18 already been committed.

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

22 C. Notwithstanding the provisions of subsection B of this
23 section, the following public bodies may hold executive sessions:
24

- 1 1. The State Banking Board, as provided for under Section 306.1
2 of Title 6 of the Oklahoma Statutes;
- 3 2. The Oklahoma Industrial Finance Authority, as provided for
4 in Section 854 of Title 74 of the Oklahoma Statutes;
- 5 3. The Oklahoma Development Finance Authority, as provided for
6 in Section 5062.6 of Title 74 of the Oklahoma Statutes;
- 7 4. The Oklahoma Center for the Advancement of Science and
8 Technology, as provided for in Section 5060.7 of Title 74 of the
9 Oklahoma Statutes;
- 10 5. ~~The Oklahoma Savings and Loan Board, as provided for under~~
11 ~~subsection A of Section 381.74 of Title 18 of the Oklahoma Statutes;~~
- 12 ~~6.~~ The Oklahoma Health Research Committee for purposes of
13 conferring on matters pertaining to research and development of
14 products, if public disclosure of the matter discussed would
15 interfere with the development of patents, copyrights, products, or
16 services;
- 17 6. The Workers' Compensation Commission for the purposes
18 specified in Section 19 of Title 85A of the Oklahoma Statutes;
- 19 7. A review committee, as provided for in Section 855 of Title
20 62 of the Oklahoma Statutes;
- 21 8. The Child Death Review Board for purposes of receiving and
22 conferring on matters pertaining to materials declared confidential
23 by law;
- 24

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

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

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

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

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

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

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

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

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

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

23 F. A willful violation of the provisions of this section shall:
24

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

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

5 SECTION 62. REPEALER Section 15, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2018, Section 15), is hereby repealed.

7 SECTION 63. 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 64. It being immediately necessary for the preservation
15 of the public peace, health or safety, an emergency is hereby
16 declared to exist, by reason whereof this act shall take effect and
17 be in full force from and after its passage and approval.

18

19 57-1-2201 TEK 4/9/2019 11:51:09 AM

20

21

22

23

24