

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE BILL 2367

By: Kannady

AS INTRODUCED

An Act relating to workers' compensation; amending Section 2, Chapter 208, O.S.L. 2013, as amended by Section 1, Chapter 150, O.S.L. 2018 (85A O.S. Supp. 2018, Section 2), which relates to definitions in the Administrative Workers' Compensation Act; modifying definitions; amending Sections 3 and 5, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 3 and 5), which relate to the Administrative Workers' Compensation Act; specifying application of the Administrative Workers' Compensation Act; modifying scope of immunity; amending Section 6, Chapter 208, O.S.L. 2013, as amended by Section 1, Chapter 390, O.S.L. 2015 (85A O.S. Supp. 2018, Section 6), which relates to crimes in violation of the Administrative Workers' Compensation Act; eliminating certain notice requirement; amending Section 7, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 7), which relates to discrimination or retaliation; modifying procedure for determination of discrimination or retaliation; amending Sections 13 and 14, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 13 and 14), which relate to specific types of injury or illness; modifying scope of certain exception related to mental illness; modifying compensation for employees with mental injury or illness; eliminating prohibition against consideration of physical or mental stress in determining if burden of proof is met in certain circumstances; amending Section 18, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 18), which relates to billing and collection of fees for services; expanding methods of providing notice; authorizing employment of interpreter or court reporter in certain circumstances; providing qualifications; providing for fees; amending Sections 19, as amended by Section 4, House Joint Resolution No. 1096, page 1745, O.S.L. 2014, 20 and 21, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 19, 20 and 21), which relate to the Workers'

Compensation Commission; providing for private meetings; specifying purposes and requirements; correcting name of certain fund; clarifying scope of authority; amending Sections 22 and 27, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 22 and 27), which relate to administration of the Administrative Workers' Compensation Act; modifying powers and duties of the Workers' Compensation Commission; amending Section 29, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 29), which relates to certain fees; clarifying that fees are annual fees; expanding authority of the Commission to assess fees; authorizing execution of Affidavit of Exempt Status; providing procedure and requirements for Affidavit of Exempt Status; requiring Affidavit to contain specific language; providing that Affidavit establishes rebuttable presumption; providing criminal penalty for providing false information on an Affidavit; requiring the Commission to notify the Workers' Compensation Fraud Unit of fraudulent or suspected fraudulent activity; authorizing the Commission to assess a fee for Affidavits; exempting employer from liability in certain circumstances; amending Sections 38, 40 and 43, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 38, 40 and 43), which relate to securing workers' compensation for employees; changing certain rule-making authority; authorizing the Commission to award compensation in certain instances in which an employer has failed to secure compensation; providing for confidentiality of certain files and reports; modifying scope of actions against third parties; modifying lien and subrogation rights; amending Sections 45, as amended by Section 2, Chapter 390, O.S.L. 2015 and 46, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 45 and 46), which relate to disability; modifying temporary total and temporary partial disability compensation and permanent partial disability compensation rates; authorizing employers to recover overpayment of temporary total disability payments; modifying termination period for certain temporary total disability payments; providing that actual earnings plus temporary partial disability compensation shall not exceed temporary total disability rate; authorizing the Commission to select alternative evaluation method for determination of permanent partial disability; modifying what constitutes objective medical findings in certain circumstances; making hiring or contracting for a Vocational Rehabilitation Director discretionary; eliminating specified duties of the

Vocational Rehabilitation Director; eliminating authorization to deduct vocational rehabilitation tuition for compensation award; providing exception to waiting period for disfigurement awards; amending Sections 50, 53, 56 and 57, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 50, 53, 56 and 57), which relate to medical treatment; authorizing administrative law judges to order employers to provide detoxification treatment; providing consequences if employee refuses detoxification treatment; providing that employers and insurance carriers have right to audit or question medical treatment for which they are billed; modifying limitation on charges for drugs and compounded medications; prohibiting physician from dispensing prescription drugs from physician's office; clarifying basis for certain payments; authorizing employer or insurance carrier to designate pharmacy; providing for certain surgeries; modifying process for selecting physician in certain circumstances; modifying circumstances which bar the right to receive temporary total disability payments or terminate such payments; amending Section 60, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 60), which relates to evaluation of permanent disability; modifying reference to title of the Director of the Commission; amending Section 62, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 62), which relates to soft tissue injuries; modifying what constitutes injections and soft tissue injuries; amending Sections 63, 65, as amended by Section 3, Chapter 390, O.S.L. 2015, 66, 67, 69, 71, 78, 80, 82, 86 and 87, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 63, 65, 66, 67, 69, 71, 78, 80, 82, 86 and 87), which relate to procedure after injury; making certain reports confidential; modifying circumstances for which an employer is liable for compensation for an occupational disease; modifying standard of evidence for silicosis and asbestosis claims; eliminating certain authority of the Commission regarding employees affected by silicosis or asbestosis; eliminating certain review and compensation modification; modifying times for filing; providing for dismissals; expanding methods for certain notice; clarifying name of certain fund; providing for continuation of prescribed drugs during appeal process; providing for reimbursement to employer in certain circumstances; modifying procedure and requirements for review of compensation rulings; placing limitations on review; providing responsibility for payment of legal fees and litigation expenses; modifying definition; modifying

authority of attorney to recover fees for services; making employer's filing to controvert claim discretionary; clarifying result of filing of joint petition; amending Section 90, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 90), which relates to bond or other deposit requirements; limiting Supreme Court review unless certain requirements are met; exempting political subdivisions from certain bond requirements; amending Section 94, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 94), which relates to incarcerated employees; clarifying benefit that the employees are not eligible for; amending Section 101, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 101), which relates to certain reports and electronic data; modifying time for implementation of electronic data interchange system; amending Section 152, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 109), which relates to the workers' compensation counselor or ombudsman program; modifying method of notification of program; eliminating the authority of the Commission to provide additional information regarding program; amending Section 158, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 115), which relates to joint petitions for settlement; correcting references; requiring filing of memorandum of agreement; amending Sections 161 and 162, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 118 and 119), which relate to fees; modifying scope of fee requirement; correcting statutory references to certain fund; amending Section 163, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 120), which relates to inquiries about compensation claims; modifying scope of certain requests; correcting statutory reference to certain fund; amending Section 164, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 121), which relates to the Advisory Council on Workers' Compensation; modifying duties of the Council; amending Section 165, Chapter 208, O.S.L. 2013, as amended by Section 4, Chapter 344, O.S.L. 2015 (85A O.S. Supp. 2018, Section 122), which relates to tax rates and distribution of certain funds; modifying certain apportionment and funding amounts; amending Section 166, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 123), which relates to verified written declarations; providing for electronic data interchange system; amending Section 167, Chapter 208, O.S.L. 2013, as amended by Section 7, Chapter 169, O.S.L. 2014 (85A O.S. Supp. 2018, Section 124), which relates to transfers from the Workers' Compensation Court; modifying transfer; requiring the Workers' Compensation Court of Existing Claims to pay

certain expenses; amending Sections 121, 125, 126, 128, 133, 134, 135, 137, 139, 141, 142, 143, 144 and 148, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 300, 304, 305, 307, 312, 313, 314, 316, 318, 320, 321, 322, 323 and 327), which relate to the Workers' Compensation Arbitration Act; updating statutory references; amending Section 169, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 400), which relates to the Workers' Compensation Court of Existing Claims; modifying procedure for filling vacancies; eliminating the authority of the Workers' Compensation Commission to appoint administrative law judges to assist the Court when vacancies occur on the Court; authorizing Presiding Judge to contract for services; eliminating procedure whereby rulings of the Court are appealable to the Commission; providing appeal procedure; eliminating certain duties of administrative law judges; amending 25 O.S. 2011, Section 307, as last amended by Section 1, Chapter 252, O.S.L. 2018 (25 O.S. Supp. 2018, Section 307), which relates to the Oklahoma Open Meeting Act; authorizing the Workers' Compensation Commission to hold executive sessions for specified purposes; repealing Sections 15 and 24, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 15 and 24), which relate to reports regarding funding needs for the Workers' Compensation Fraud Investigation Unit; repealing Section 36, Chapter 208, O.S.L. 2013, as amended by Section 1, Chapter 239, O.S.L. 2018 (85A O.S. Supp. 2018, Section 36), which relates to liability other than that of an immediate employer; repealing Sections 107, 108, 109, 110, as amended by Section 4, Chapter 390, O.S.L. 2015, 111, 112, as amended by Section 5, Chapter 390, O.S.L. 2015, 113, 114, 115, 116, 117, 118, as amended by Section 6, Chapter 390, O.S.L. 2015, 119 and 120, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212 and 213), which relate to the Oklahoma Employee Injury Benefit Act; providing for codification; providing effective dates; and declaring an emergency.

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

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

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

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

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

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

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

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

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

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

6. "Child" means a natural or adopted son or daughter of the employee under eighteen (18) years of age; or a natural or adopted son or daughter of an employee eighteen (18) years of age or over who is physically or mentally incapable of self-support; or any natural or adopted son or daughter of an employee eighteen (18) years of age or over

who is actually dependent; or any natural or adopted son or daughter of an employee between eighteen (18) and twenty-three (23) years of age who is enrolled as a full-time student in any accredited educational institution. The term "child" includes a posthumous child, a child legally adopted or one for whom adoption proceedings are pending at the time of death, an actually dependent stepchild or an actually dependent acknowledged child born out of wedlock;

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

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

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

- (1) was unintended, unanticipated, unforeseen, unplanned and unexpected,
- (2) occurred at a specifically identifiable time and place,
- (3) occurred by chance or from unknown causes, and

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

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, an illegal ~~drugs~~ controlled substance, ~~or~~ prescription drugs used in contravention of physician's orders or a legal controlled substance

used in contravention of a physician's orders. If, within twenty-four (24) hours of being injured or reporting an injury, or at any time after a fatal injury when the employee does not survive at least twenty-four (24) hours after an accident, a biological specimen is collected by the Office of the Chief Medical Examiner, and an employee tests positive for ~~intoxication~~ alcohol, an illegal controlled substance, prescription drugs used in contravention of a physician's orders or a legal controlled substance used in contravention ~~to~~ of a treating physician's orders, or refuses to undergo the drug and alcohol testing, there shall be a rebuttable presumption that the injury was caused by the use of alcohol, an illegal ~~drugs~~ drug, or prescription ~~drugs~~ drug used in contravention of physician's orders or a legal controlled substance used in contravention of a physician's orders. This presumption may only be overcome if the employee proves by clear and convincing evidence that his or her state of intoxication had no causal relationship to the injury,

(5) any strain, degeneration, damage or harm to, or disease or condition of, the eye or musculoskeletal structure or other body part resulting from the

natural results of aging, osteoarthritis, arthritis, or degenerative process including, but not limited to, degenerative joint disease, degenerative disc disease, degenerative spondylosis/spondylolisthesis and spinal stenosis, or

- (6) any preexisting condition except when the treating physician clearly confirms an identifiable and significant aggravation incurred in the course and scope of employment.
- c. The definition of "compensable injury" shall not be construed to limit or abrogate the right to recover for mental injuries as described in Section 13 of this title, heart or lung injury or illness as described in Section 14 of this title, or occupational diseases as described in Section 65 of this title.
- d. A compensable injury shall be established by medical evidence supported by objective findings as defined in paragraph 31 of this section.
- e. The injured employee shall prove by a preponderance of the evidence that he or she has suffered a compensable injury.
- f. Benefits shall not be payable for a condition which results from a non-work-related independent intervening cause following a compensable injury which causes or prolongs disability, aggravation, or requires treatment. A non-

work-related independent intervening cause does not require negligence or recklessness on the part of a claimant.

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

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

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

12. "Continuing medical maintenance" means medical treatment that is reasonable and necessary to maintain claimant's condition resulting from the compensable injury or illness after reaching maximum medical improvement. Continuing medical maintenance shall not include diagnostic tests, surgery, injections, counseling, physical therapy, or pain management devices or equipment unless the Commission finds it in the best interest of the employee;

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

- a. an employee's transportation to and from his or her place of employment,
- b. travel by an employee in furtherance of the affairs of an employer if the travel is also in furtherance of personal or private affairs of the employee,
- c. any injury occurring in a parking lot or other common area adjacent to an employer's place of business before the employee clocks in or otherwise begins work for the employer or after the employee clocks out or otherwise stops work for the employer unless the employer owns or maintains exclusive control over the area, or
- d. any injury occurring while an employee is on a work break, unless the injury occurs while the employee is on a work break inside the employer's facility or in an area owned by or exclusively controlled by the employer and the work break is authorized by the employee's supervisor;

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

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

16. "Disability" means ~~incapacity because of compensable injury to earn, in the same or any other employment, substantially the same amount of wages the employee was receiving at the time of the compensable injury~~ the loss of use or function of a part of the body which must be proven by objective findings, as defined in paragraph 31 of this section;

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

18. a. "Employee" means any person, including a minor, in the service of an employer under any contract of hire or apprenticeship, written or oral, expressed or implied, but excluding one whose employment is casual and not in the

course of the trade, business, profession, or occupation of his or her employer and excluding one who is required to perform work for a municipality or county or the state or federal government on having been convicted of a criminal offense or while incarcerated. "Employee" shall also include a member of the Oklahoma National Guard while in the performance of duties only while in response to state orders and any authorized voluntary or uncompensated worker, rendering services as a firefighter, peace officer or emergency management worker. Travel by a policeman, fireman, or a member of a first aid or rescue squad, in responding to and returning from an emergency, shall be deemed to be in the course of employment.

b. The term "employee" shall not include:

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

- (2) any person who is employed in agriculture, ranching or horticulture by an employer who had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars (\$100,000.00) wages for agricultural, ranching or horticultural workers, or any person who is employed in agriculture, ranching or horticulture who is not engaged in operation of motorized machines. This exemption applies to any period of time for which such employment exists, irrespective of whether or not the person is employed in other activities for which the exemption does not apply. If the person is employed for part of a year in exempt activities and for part of a year in nonexempt activities, the employer shall be responsible for providing workers' compensation only for the period of time for which the person is employed in nonexempt activities,
- (3) any person who is a licensed real estate sales associate or broker, paid on a commission basis,
- (4) any person who is providing services in a medical care or social services program, or who is a participant in a work or training program, administered by the Department of Human Services, unless the Department is required by federal law or regulations to provide

workers' compensation for such person. This division shall not be construed to include nursing homes,

(5) any person employed by an employer with five or fewer total employees, all of whom are related within the second degree by blood or marriage to the employer, are dependents living in the household of the employer, or are a combination of such relatives and dependents, if the employer is a natural person or a ~~general or limited partnership, or an incorporator of a corporation if the corporation is the employer~~ in the household of the owner of the employer if the employer is not a natural person and the owner owns fifty percent (50%) or more of the employer,

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

(7) sole proprietors, members of a partnership, individuals who are party to a franchise agreement as set out by the Federal Trade Commission franchise disclosure rule, 16 CFR 436.1 through 436.11, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the

corporation, unless they elect to be covered by a policy of insurance covering benefits under the Administrative Workers' Compensation Act,

- (8) any person providing or performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitative therapy, transportation, lodging or reimbursement for incidental expenses except for volunteers specifically provided for in subparagraph a of this paragraph,
- (9) a person, commonly referred to as an owner-operator, who owns or leases a truck-tractor or truck for hire, if the owner-operator actually operates the truck-tractor or truck and if the person contracting with the owner-operator is not the lessor of the truck-tractor or truck. Provided, however, an owner-operator shall not be precluded from workers' compensation coverage under the Administrative Workers' Compensation Act if the owner-operator elects to participate as a sole proprietor,
- (10) a person referred to as a drive-away owner-operator who privately owns and utilizes a tow vehicle in drive-away operations and operates independently for hire, if the drive-away owner-operator actually utilizes the tow vehicle and if the person contracting

with the drive-away owner-operator is not the lessor of the tow vehicle. Provided, however, a drive-away owner-operator shall not be precluded from workers' compensation coverage under the Administrative Workers' Compensation Act if the drive-away owner-operator elects to participate as a sole proprietor, and

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

19. "Employer" means a person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, corporation, or limited liability company, departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof, employing a person included within the term "employee" as defined in this section. Employer may also mean the employer's workers' compensation insurance carrier, if applicable. Except as provided otherwise, this act applies to all public and private entities and institutions. ~~Employer shall not include a~~

~~qualified employer with an employee benefit plan as provided under the Oklahoma Employee Injury Benefit Act in Sections 200 through 213 of this title;~~

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

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

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

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

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

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

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

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

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

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

30. "Misconduct" shall include the following:

- a. unexplained absenteeism or tardiness,
- b. willful or wanton indifference to or neglect of the duties required,
- c. willful or wanton breach of any duty required by the employer,
- d. the mismanagement of a position of employment by action or inaction,

- e. actions or omissions that place in jeopardy the health, life, or property of self or others,
 - f. dishonesty,
 - g. wrongdoing,
 - h. violation of a law, or
 - i. a violation of a policy or rule adopted to ensure orderly work or the safety of self or others;
31. a. (1) "Objective findings" are those findings which cannot come under the voluntary control of the patient.
- (2) (a) When determining permanent disability, a physician, any other medical provider, an administrative law judge, the Commission or the courts shall not consider complaints of pain.
- (b) For the purpose of making permanent disability ratings to the spine, physicians shall use criteria established by the most current edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment".
- (3) (a) Objective evidence necessary to prove permanent disability in occupational hearing loss cases may be established by medically recognized and accepted clinical diagnostic methodologies, including, but not limited to, audiological tests

that measure air and bone conduction thresholds and speech discrimination ability.

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

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

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

33. "Permanent disability" means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the current edition of the American Medical Association guides to the evaluation of impairment, if the impairment is contained therein. Loss of earning capacity directly related to the permanent loss of use of a part of the body shall be considered when determining permanent disability, but shall not constitute a separate remedy under this act;

34. "Permanent partial disability" means a permanent disability or loss of use of a part of the body after maximum medical improvement has been reached ~~which prevents the injured employee, who has been released to return to work by the treating physician, from returning to his or her pre-injury or equivalent job~~ and loss of earning capacity directly related to the disability. All evaluations of permanent partial disability must be supported by objective findings, as defined in paragraph 31 of this section, and competent evidence of loss of earning capacity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. A. ~~Every employer and every employee, unless otherwise specifically provided in this act, shall be subject and bound to the provisions of the Administrative Workers' Compensation Act. However, nothing shall pay or provide benefits according to the provisions of this act for the accidental injury or death of an employee arising out of and in the course of his or her employment, without regard to fault for such injury, if the employee's contract of employment was made or if the injury occurred within this state. If an employee makes a claim for an injury in another jurisdiction and a final adjudication is entered in the case, the employee is precluded from his or her right of action under the Administrative Workers' Compensation Act. If the employee makes a claim or brings an action in this state prior to a final adjudication in another jurisdiction, any receipt of benefits in the other jurisdiction shall not bar the claim or action in this state; provided however, in no event shall the Workers' Compensation Commission grant benefits that duplicate benefits paid by the employer or the employer's insurance carrier in the other jurisdiction. Nothing in this act shall be construed to conflict with any valid Act of Congress governing the liability of employers for injuries received by their employees.~~

B. ~~This act~~ The State of Oklahoma accepts the provisions of the Acts of Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C., Section 290, and hereby extends the territorial jurisdiction of the Administrative Workers' Compensation Act of this state to all lands and premises within the exterior boundaries of this state which the federal

government of the United States of America owns or holds by deed or act of cession, and to all purchases, projects, buildings, constructions, improvements and property within the exterior boundaries of this state belonging to the federal government of the United States of America, in the same manner and to the same extent as if the premises were under the exclusive jurisdiction of this state, subject only to the limitations placed thereon by the Acts of Congress.

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

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

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

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

role, capacity, or persona of any employer, principal, officer, director, employee, or stockholder other than that existing in the role of employer of the employee shall be relevant for consideration for purposes of this act, and the remedies and rights provided by this act shall be exclusive regardless of the multiple roles, capacities, or personas the employer may be deemed to have. ~~For the purpose of extending the immunity of this section, any operator or owner of an oil or gas well or other operation for exploring for, drilling for, or producing oil or gas shall be deemed to be an intermediate or principal employer for services performed at a drill site or location with respect to injured or deceased workers whose immediate employer was hired by such operator or owner at the time of the injury or death.~~

B. Exclusive remedy shall not apply if:

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

2. The injury was caused by an intentional tort committed by the employer. An intentional tort shall exist only when the employee is injured as a result of willful, deliberate, specific intent of the employer to cause such injury. Allegations or proof that the employer had knowledge that the injury was substantially certain to result from the employer's conduct shall not constitute an intentional tort. The

employee shall plead facts that show it is at least as likely as it is not that the employer acted with the purpose of injuring the employee. The issue of whether an act is an intentional tort shall be a question of law.

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

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

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

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

intermediate or principal employer to the immediate employer of the injured or deceased worker.

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

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

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

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

Section 6.

A. 1. a. Any person or entity who makes any material false statement or representation, who willfully and knowingly omits or conceals any material information, or who employs any

device, scheme, or artifice, or who aids and abets any person for the purpose of:

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

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

- b. A material false statement or representation includes, but is not limited to, attempting to obtain treatment or compensation for body parts that were not injured in the course and scope of employment.
- c. Fifty percent (50%) of any criminal fine imposed and collected under this section shall be paid and allocated in accordance with applicable law to the Workers' Compensation Commission Revolving Fund ~~administered by the Commission~~.

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

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

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

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

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

(2) The Attorney General shall designate the personnel assigned to the Unit, who, on meeting the qualifications established by the Oklahoma Council on Law Enforcement Education and Training, shall have the

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

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

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

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

- (1) subpoena witnesses,
 - (2) administer oaths or affirmations and examine any individual under oath, and
 - (3) require and compel the production of records, books, papers, contracts, and other documents.
- b. The issuance of subpoenas for witnesses shall be served in the same manner as if issued by a district court.
- c. (1) Upon application by the commissioner or the Director of the Unit, the district court located in the county where a subpoena was served may issue an order compelling an individual to comply with the subpoena to testify.
- (2) Any failure to obey the order of the court may be punished as contempt.
- d. If any person has refused in connection with an investigation by the Director to be examined under oath concerning his or her affairs, then the Director is authorized to conduct and enforce by all appropriate and available means any examination under oath in any state or territory of the United States in which any officer, director, or manager may then presently be to the full extent permitted by the laws of the state or territory.
- e. In addition to the punishments described in paragraph 1 of subsection A of this section, any person providing false

testimony under oath or affirmation in this state as to any matter material to any investigation or hearing conducted under this subparagraph, or any workers' compensation hearing, shall upon conviction be guilty of perjury.

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

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

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

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

(2) Fifty percent (50%) of any criminal fine imposed and collected under this subparagraph shall be paid and

allocated in accordance with applicable law to the fund administered by the Commission.

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

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

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

F. Notwithstanding any other provision of law, investigatory files as maintained by the Attorney General's office and by the Unit shall be

deemed confidential and privileged. The files may be made open to the public once the investigation is closed by the Director of the Workers' Compensation Fraud Investigation Unit with the consent of the Attorney General.

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

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

I. The Commission shall include a statement on all forms for notices and instructions to employees, employers, carriers and third-party administrators that any person who commits workers' compensation fraud, upon conviction, shall be guilty of a felony punishable by imprisonment, a fine or both.

J. If an injured employee is charged with workers' compensation fraud, any pending workers' compensation proceeding, including benefits, shall be stayed after the preliminary hearing is concluded and the claimant is bound over and shall remain stayed until the final disposition of the criminal case. All notice requirements shall continue during the stay. This subsection shall not be construed to pertain to the electronic data interchange system developed and implemented by the Commission pursuant to Section 101 of this title.

K. If the Attorney General's Office is in compliance with the discovery provisions of Section 258 of Title 22 of the Oklahoma Statutes,

medical records created for the purpose of treatment and medical opinions obtained during the investigation shall be admissible at the preliminary hearing without the appearance of the medical professional creating such records or opinions. However, when material evidence dispositive to the issues of whether there was probable cause the crime was committed and whether the defendant committed the crime, was not included in a report or opinion admitted at preliminary hearing, but might be presented at a pretrial hearing by a medical professional who created such report or opinion, the judge may, upon the motion of either party, order the appearance of the medical professional creating such report or opinion. Questions of fact regarding the conduct of the defendant that conflict with the findings of the medical professional evaluating the defendant shall not constitute material evidence. In the event of such motion, notice shall be given to the Attorney General's Workers Compensation Fraud and Investigation and Prosecution Unit. A hearing shall be held and, if the motion is granted, the evidence shall not be presented fewer than five (5) days later.

L. Any person or entity who, in good faith and exercising due care, reports suspected workers' compensation fraud or insurance fraud, or who allows access to medical records or other information pertaining to suspected workers' compensation or insurance fraud, by persons authorized to investigate a report concerning the workers' compensation and insurance fraud, shall have immunity from any civil or criminal liability for such report or access. Any such person or entity shall have the same

immunity with respect to participation in any judicial proceeding resulting from such reports. For purposes of any civil or criminal proceeding, there shall be a presumption of good faith of any person making a report, providing medical records or providing information pertaining to a workers' compensation or insurance fraud investigation by the Attorney General, and participating in a judicial proceeding resulting from a subpoena or a report.

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

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

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

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

C. ~~If the Commission determines that the defendant violated subsection A of this section, the Commission may award the employee back pay up to a maximum of One Hundred Thousand Dollars (\$100,000.00). Interim earnings or amounts earnable with reasonable diligence by the~~

~~person discriminated against shall reduce the back pay otherwise allowable.~~

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

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

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

~~G.~~ F. This section shall not be construed as establishing an exception to the employment at will doctrine.

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

SECTION 6. AMENDATORY Section 13, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 13), is amended to read as follows:

Section 13. A. 1. A mental injury or illness is not a compensable injury unless caused by a physical injury to the employee, and shall not be considered an injury arising out of and in the course and scope of employment or compensable unless demonstrated by a preponderance of the

evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence or to a police officer, firefighter, emergency medical technician, or any other employee of an emergency service who is likely to be among the first people to arrive at and assist at the scene of an emergency and who suffers a mental injury related to duties performed responding to the emergency.

2. No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

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

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

~~b. Death directly or indirectly related to the mental injury or illness occurring one (1) year or more from the incident resulting in the mental injury or illness shall not be a compensable injury~~

An employee with a compensable mental injury or illness shall be entitled to compensation in the same manner as cases designated as "other cases" pursuant to subsection C of Section 46 of this title.

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

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

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

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

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

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

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

B. The notice shall include:

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

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

services is made, or if there is an appeal, until a final determination of noncompensability is rendered and all appeal deadlines have passed.

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

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

F. Any party may employ the services of an interpreter or court reporter at any hearing or proceeding or during discovery. Provided, however, a party shall contract directly with an interpreter or court reporter whose principal place of business is in the State of Oklahoma. The charge for such service shall be limited to the actual fee of the interpreter or court reporter.

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

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

B. The Commission shall consist of three (3) full-time commissioners, each of whom must have been involved in the workers' compensation field for at least three (3) years, appointed by the Governor: one of whom is chosen from a slate of three selected by the Speaker of the House of Representatives, with all three confirmed by the

Senate. The term of each appointee shall be six (6) years to administer the provisions of this act. The Governor may request a subsequent slate of nominees from the Speaker of the House of Representatives if a suitable nominee is not found. Any or all of the commissioners may be reappointed for additional six-year terms upon reconfirmation by the Senate. However, the initial commissioners shall serve staggered terms of two (2), four (4), and six (6) years, respectively, as determined by the Governor. If the Legislature is not in session at the time of appointment, the appointment shall be subject to confirmation by the Senate upon convening of the next regular session of the Legislature. Membership on the Commission shall be a full-time position and no commissioner shall have any other employment, unless authorized or excused by law. Each commissioner shall receive a salary equal to that paid to a district judge of this state; provided however, the commissioners shall not receive any increase in salary as a result of the provisions of Section 1 of this resolution.

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

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

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

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

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

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

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

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

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

H. As authorized by Section 307 of Title 25 of the Oklahoma Statutes, the members of the Commission may meet in private to discuss policy, personnel and staffing administration and other matters related to the state's workers' compensation system. Provided, however, all three members must be present at the private meeting and no official action shall be taken in the meeting.

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

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

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

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

3. To assess penalties;

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

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

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

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

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

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

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

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

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

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

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

D. Except with respect to the Commission's authority to hear appeals of decisions from administrative law judges, any reference in this ~~act~~ title to the Commission's ability to hear and decide the rights of

interested parties under this ~~act~~ title shall not prevent it from delegating that responsibility to an administrative law judge.

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

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

- a. to make rules necessary for the administration and operation of the Commission as provided in Section 19 of this title,
 - b. to appoint and fix the compensation of temporary technical assistants, medical and legal advisers, clerical assistants and other officers and employees, and
 - c. to make such expenditures, including those for personal service, rent, books, periodicals, office equipment, and supplies, and for printing and binding as may be necessary.
2. ~~a. Before the adoption, prescription, amendment, modification, or repeal of any rule, regulation, or form, the Commission shall give at least thirty (30) days' notice of its intended action.~~
- ~~b. The notice shall include a statement of the terms or substance of the intended action or description of the subjects and issues involved, and the time, place, and manner in which interested persons may present their views thereon.~~

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

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

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

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

The Commission shall vote on any substantive change to any form and the effective date of such substantive change.

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

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

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

1. To hear and approve compromise settlements;

2. To review and approve own-risk applications and group self-insurance association applications;
3. To monitor own-risk, self-insurer and group self-insurance programs, in accordance with the rules of the Commission;
4. To contract with an appropriate state governmental entity, insurance carrier or approved service organization to process, investigate and pay valid claims against an impaired self-insurer which fails, due to insolvency or otherwise, to pay its workers' compensation obligations, charges for which shall be paid from the proceeds of security posted with the Commission as provided in Section 38 of this ~~act~~ title;
5. To establish a toll-free telephone number in order to provide information and answer questions about the Commission;
6. To hear and determine claims concerning disputed medical bills;
7. To promulgate necessary rules for administering this ~~act~~ title and develop uniform forms and procedures for use by administrative law judges. Such rules shall be reviewable by the Legislature;
8. To invest funds on behalf of the Multiple Injury Trust Fund;
9. To appoint a Commission Mediator to conduct informal sessions to attempt to resolve assigned disputes; ~~and~~
10. To establish a petty cash fund in an amount not to exceed Five Hundred Dollars (\$500.00) to be used for the purpose of making change for persons purchasing printed or electronic materials from the Commission, paying fees and fines, and transacting other such business with the

Commission. The fund shall be established and replenished from any monies available to the Commission for operating expenses and it shall be administered pursuant to the requirements of Section 195 of Title 62 of the Oklahoma Statutes; and

11. Such other duties and responsibilities authorized by law.

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

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

Section 27. A. The Workers' Compensation Commission shall be vested with jurisdiction over all claims filed pursuant to the Administrative Workers' Compensation Act. All claims so filed shall be heard by the administrative law judge sitting without a jury. The Commission shall have full power and authority to determine all questions in relation to claims for compensation under the provisions of the Administrative Workers' Compensation Act. The Commission, upon application of either party, shall order a hearing. Upon a hearing, either party may present evidence and be represented by counsel. Except as provided in this act, the decision of the administrative law judge shall be final as to all questions of fact and law. The decision of the administrative law judge shall be issued within thirty (30) days following the submission of the

case by the parties. The power and jurisdiction of the Commission over each case shall be continuing and it may, from time to time, make such modifications or changes with respect to former findings or orders relating thereto if, in its opinion, it may be justified.

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

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

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

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

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

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

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

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

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

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

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 36.1 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. Any person who is not required to be covered under a workers' compensation insurance policy or other plan for the payment of workers' compensation may execute an Affidavit of Exempt Status under the Administrative Workers' Compensation Act. The affidavit shall be a form prescribed by the Workers' Compensation Commission and will be available on the Commission's website.

B. The affidavit shall contain the following statement, under oath:

"(1) I operate as a separate entity and am not an employee of any individual or entity; (2) No individual or entity directs my hours of employment or methods employed in performance of my job or provides tools for the performance of my job; (3) I do not hire any worker or workers for which I direct hours of employment or methods employed in performance of a job or provide tools for the completion of a job. If I do hire any

employees, I will purchase a standard workers' compensation insurance policy; and (4) The employer accepting this affidavit in lieu of a standard insurance certificate acknowledges that this affidavit does not constitute insurance and that if an individual offering this affidavit hires an employee, the affidavit is invalid for such employee and any liability falls on the employer accepting the affidavit".

C. Execution of the affidavit shall establish a rebuttable presumption that the executor is not an employee for purposes of the Administrative Workers' Compensation Act and therefore shall not be eligible to seek workers' compensation benefits against any contractor and that an individual or company possessing the affidavit is in compliance with the provisions of this section and shall not be responsible for workers' compensation claims made by the executor. Any employer has the right to reject an Affidavit of Exempt Status and require a certificate of coverage from an insurance carrier that is licensed to provide worker's compensation insurance coverage in this state.

D. The execution of an affidavit shall not affect the rights or coverage of any employee of the individual executing the affidavit.

E. 1. Knowingly providing false information on a notarized Affidavit of Exempt Status under the Administrative Workers' Compensation Act shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00).

2. Affidavits shall conspicuously state on the front thereof in at least ten-point, boldface print that it is a crime to falsify information on the form.

3. The Commission shall immediately notify the Workers' Compensation Fraud Unit in the Office of the Attorney General of any violations or suspected violations of this section. The Commission shall cooperate with the Fraud Unit in any investigation involving affidavits executed pursuant to this section.

F. The Commission may assess a fee not to exceed Fifty Dollars (\$50.00) for an Affidavit of Exempt Status application. Fees collected pursuant to this section shall be deposited in the State Treasury to the credit of the Workers' Compensation Commission Revolving Fund.

G. If an employer relies in good faith on proof of a valid workers' compensation insurance policy issued to a contractor of any tier or on proof of an Affidavit of Exempt Status under this section, the employer shall not be liable for injuries of any employees of the contractor, unless the employer knew, or with the exercise of reasonable care, should have known that no workers' compensation insurance policy was in force or that the Affidavit of Exempt Status was false, in whole or in part.

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

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

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

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

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

- a. less than one hundred employees or less than One Million Dollars (\$1,000,000.00) in net assets to:
 - (1) deposit with the Commission securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the Commission which shall be at least an average of the yearly claims for the last three (3) years, or
 - (2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of this act, and

- b. one hundred or more employees and One Million Dollars (\$1,000,000.00) or more in net assets to:
 - (1) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount determined by the Commission which shall be at least an average of the yearly claims for the last three (3) years, or
 - (2) provide proof of excess coverage with terms and conditions that are commensurate with their ability to pay the benefits required by the provisions of this act;

4. By forming a group self-insurance association consisting of two or more employers which shall have a common interest and which shall have entered into an agreement to pool their liabilities under the

Administrative Workers' Compensation Act. Such agreement shall be subject to rules of the Commission. Any employer, upon application to become a member of a group self-insurance association, shall file with the Commission a notice, in such form as prescribed by the Commission, acknowledging that the employer accepts joint and several liability. Upon approval by the Commission of such application for membership, said member shall be a qualified self-insured employer; or

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

B. The Commission may waive the requirements of this section in an amount which is commensurate with the ability of the employer to pay the benefits required by the provisions of this act. Irrevocable letters of credit required by this subsection shall contain such terms as may be prescribed by the Commission and shall be issued for the benefit of the state by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

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

D. Failure on the part of any employer to secure the payment of compensation provided in this act shall have the effect of enabling the

Commission to assert the rights of an injured employee against the employer.

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

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

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

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

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

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

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

- b. The request for a hearing does not need to be in any particular form but shall specify the grounds on which the person contests the proposed judgment, the proposed assessment, or both.
 - c. If a written request for hearing is not filed with the Commission within the time specified in subparagraph a of this paragraph, the proposed judgment, the proposed penalty, or both, shall be a final judgment of the Commission and shall not be subject to further review by any court, except if the employer shows good cause why it did not timely contest the judgment or penalty.
 - d. A proposed judgment by the Commission under this section shall be prima facie correct, and the burden is on the employer to prove that the proposed judgment is incorrect.
- 3.
- a. If the employer alleges that a carrier has contracted to provide it workers' compensation insurance coverage for the period in question, the employer shall include the allegation in its request for hearing and shall name the carrier.
 - b. The Commission shall promptly notify the carrier of the employer's allegation and of the date of hearing.

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

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

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

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

C. If an employee injury occurs during a period when an employer has failed to secure the payment of compensation and the employer has paid a civil penalty assessed pursuant to this section, the Commission may, upon application of the injured employee and hearing before an administrative law judge, award as compensation to the injured employee an amount from

the proceeds of the civil penalty not to exceed the amount of the civil penalty.

D. Except as otherwise provided by law, the Commission may keep its litigation files and investigatory reports pertaining to enforcement of this section confidential.

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

Section 43. A. Liability Unaffected.

1. a. The making of a claim for compensation against any employer or carrier for the injury ~~or death~~ of an employee shall not affect the right of the employee, or his or her dependents, to make a claim or maintain an action in court against any third party for the injury.
- b. The employer or the employer's carrier shall be entitled to reasonable notice and opportunity to join in the action.
- c. If the employer or employer's carrier join in the action against a third party for injury ~~or death~~, they shall be entitled to a first lien on ~~two-thirds (2/3)~~ an equitable sum of the net proceeds recovered in the action that remain after the payment of the reasonable costs of collection, for the payment to them of the amount paid and to be paid by them as compensation to the injured employee or his or her dependents.

2. The commencement of an action by an employee or his or her dependents against a third party for damages by reason of an injury to which this act is applicable, or the adjustment of any claim, shall not affect the rights of the injured employee or his or her dependents to recover compensation, but any amount recovered by the injured employee or his or her dependents from a third party shall be applied as follows:

- a. reasonable fees and costs of collection shall be deducted,
- b. the employer or carrier, as applicable, shall receive ~~two-thirds (2/3) of the remainder of the recovery or the amount of the workers' compensation lien, whichever is less~~ an equitable sum, and
- c. the remainder of the recovery shall go to the injured employee or his or her dependents.

B. Determination of Equitable Sum.

The equitable sum due the employer to satisfy the employer's subrogation lien shall be determined by the district court after consideration of the amount of compensation paid on behalf of the employee, the total amount of the third-party recovery, and the adequacy of the settlement to fairly compensate the employee for the employee's disability and loss of earning capacity.

C. Subrogation.

1. An employer or carrier liable for compensation under this act for the injury ~~or death~~ of an employee shall have the right to maintain an action in tort against any third party responsible for the injury ~~or~~

~~death.~~ However, the employer or the carrier shall notify the claimant in writing that the claimant has the right to hire a private attorney to pursue any benefits to which the claimant is entitled in addition to the subrogation interest against any third party responsible for the injury ~~or death.~~

2. After reasonable notice and opportunity to be represented in the action has been given to the injured employee, the liability of the third party to the compensation beneficiary shall be determined in the action, as well as the third party's liability to the employer and carrier.

3. If the employer recovers against the third party, by suit or otherwise, the injured employee shall be entitled to any amount recovered in excess of the amount that the employer and carrier have paid or are liable for in compensation, after deducting reasonable costs of collection.

4. An employer or carrier who is liable for compensation under this act on account of injury ~~or death~~ of an employee shall be entitled to maintain a third-party action against the employer's uninsured motorist coverage or underinsured motorist coverage.

SECTION 19. AMENDATORY Section 45, Chapter 208, O.S.L. 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S. Supp. 2018, Section 45), is amended to read as follows:

Section 45. A. Temporary Total Disability.

1. If the injured employee is temporarily unable to perform his or her job or any alternative work offered by the employer, he or she shall

be entitled to receive compensation equal to seventy percent (70%) of the injured employee's average weekly wage, but not to exceed ~~seventy percent (70%)~~ of the state average weekly wage, for one hundred four (104) weeks unless the Workers' Compensation Commission by clear and convincing evidence finds that the employee remains temporarily disabled and under active medical treatment. Provided, there shall be no payment for the first three (3) days of the initial period of temporary total disability. If an administrative law judge finds that a consequential injury has occurred and that additional time is needed to reach maximum medical improvement, temporary total disability may continue for a period of not more than an additional fifty-two (52) weeks. Such finding shall be based upon a showing of medical necessity by clear and convincing evidence. An employer shall have the right to recover any overpayment of temporary total disability payments from a subsequent permanent partial disability award if the offset is deemed justified.

2. When the injured employee is released from active medical treatment by the treating physician for all body parts found by the Commission to be injured, or in the event that the employee, without a valid excuse, misses three consecutive medical treatment appointments, fails to comply with medical orders of the treating physician, or otherwise abandons medical care, the employer shall be entitled to terminate temporary total disability by notifying the employee, or if represented, his or her counsel. If, however, an objection to the termination is filed by the employee within ten (10) days of termination,

the Commission shall set the matter within twenty (20) days for a determination if temporary total disability compensation shall be reinstated. The temporary total disability shall remain terminated ~~unless the employee proves the existence of a valid excuse for his or her failure to comply~~ until such time as the employee complies with medical orders of the treating physician ~~or his or her abandonment of medical care.~~ The administrative law judge may appoint an independent medical examiner to determine if further medical treatment is reasonable and necessary. The independent medical examiner shall not provide treatment to the injured worker, unless agreed upon by the parties.

B. Temporary Partial Disability.

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

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

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

C. Permanent Partial Disability.

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

disability must be stated within a reasonable degree of medical certainty. Any party may submit the report of an evaluating physician.

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

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

4. In cases of permanent partial disability, the compensation shall be seventy percent (70%) of the employee's average weekly wage, not to exceed ~~Three Hundred Twenty-three Dollars (\$323.00)~~ Three Hundred Ninety-one Dollars (\$391.00) per week, for a term not to exceed a total of three hundred fifty (350) weeks for the body as a whole.

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

- ~~a. The amount of the permanent partial disability award shall be reduced by seventy percent (70%) of the employee's average weekly wage for each week he works in his pre-injury or equivalent job.~~
- ~~b. If, for any reason other than misconduct as defined in Section 2 of this act, the employer terminates the employee or the position offered is not the pre-injury or equivalent job, the remaining permanent partial disability award shall be paid in a lump sum. If the employee is discharged for misconduct, the employer shall have the burden to prove that the employee engaged in misconduct.~~
- ~~c. If the employee refuses an offer to return to his pre-injury or equivalent job, the permanent partial disability award shall continue to be deferred and shall be reduced by seventy percent (70%) of the employee's average weekly wage for each week he refuses to return to his pre-injury or equivalent job.~~
- ~~d. Attorney fees for permanent partial disability awards, as approved by the Commission, shall be calculated based upon the total permanent partial disability award and paid in full at the time of the deferral.~~
- ~~e. Assessments pursuant to Sections 31, 98, 112 and 165 of this act shall be calculated based upon the amount of the~~

~~permanent partial disability award and shall be paid at the time of the deferral.~~

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

- a. If workers' compensation benefits have previously been awarded through settlement or judicial or administrative determination in Oklahoma, the percentage basis of the prior settlement or award shall conclusively establish the amount of permanent partial disability determined to be preexisting. If workers' compensation benefits have not previously been awarded through settlement or judicial or administrative determination in Oklahoma, the amount of

preexisting permanent partial disability shall be established by competent evidence.

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

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

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

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

~~8.~~ 6. The whole body shall represent a maximum of three hundred fifty (350) weeks.

~~9.~~ 7. The permanent partial disability rate of compensation for amputation or permanent total loss of use of a scheduled member specified in Section 46 of this ~~act~~ title shall be seventy percent (70%) of the employee's average weekly wage, not to exceed ~~Three Hundred Twenty-three Dollars (\$323.00)~~ Three Hundred Ninety-one Dollars (\$391.00), multiplied by the number of weeks set forth for the member in Section 46 of this ~~act~~ title, regardless of whether the injured employee is able to return to his or her pre-injury or equivalent job.

~~10.~~ 8. An injured employee who is eligible for permanent partial disability under this subsection shall be entitled to receive vocational rehabilitation services provided by a technology center or public secondary school offering vocational-technical education courses, or a member institution of The Oklahoma State System of Higher Education, which shall include retraining and job placement to restore the employee to gainful employment. Vocational rehabilitation services or training shall not extend for a period of more than ~~fifty-two (52)~~ one hundred four (104) weeks.

D. Permanent Total Disability.

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

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

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

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

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

3. ~~There shall be a presumption in favor of ordering vocational rehabilitation services or training for an eligible injured employee 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,~~
- ~~e. 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,~~
- ~~i. if the employee's occupation is heavy manual laborer and the medical condition is total knee replacement or total hip replacement,~~

- ~~j. if the employee's occupation is roofer and the medical condition is calcaneal fracture, medically or surgically treated,~~
- ~~k. if the employee's occupation is laborer of any kind and the medical condition is total shoulder replacement,~~
- ~~l. if the employee's occupation is laborer and the medical condition is amputation of a hand, arm, leg, or foot,~~
- ~~m. if the employee's occupation is laborer and the medical condition is tibial plateau fracture, pilon fracture,~~
- ~~n. if the employee's occupation is laborer and the medical condition is ankle fusion or knee fusion,~~
- ~~o. if the employee's occupation is driver or heavy equipment operator and the medical condition is unilateral industrial blindness, or~~
- ~~p. if the employee's occupation is laborer and the medical condition is 3-, 4-, or 5-level positive discogram of the cervical spine or lumbar spine, medically treated.~~

~~4. Upon the request of either party, or by order of an administrative law judge, the Vocational Rehabilitation Director shall assist the Workers' Compensation Commission in determining~~ determine if it is appropriate for a claimant to receive vocational rehabilitation training or services. If appropriate, the administrative law judge shall refer the employee to a qualified expert for evaluation of the practicability of, need for and kind of rehabilitation services or

training necessary and appropriate in order to restore the employee to gainful employment. The cost of the evaluation shall be paid by the employer. ~~Following the evaluation, if the employee refuses the services or training ordered by the administrative law judge, or fails to complete in good faith the vocational rehabilitation training ordered by the administrative law judge, then the cost of the evaluation and services or training rendered may, in the discretion of the administrative law judge, be deducted from any award of benefits to the employee which remains unpaid by the employer.~~

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

~~5.~~ 4. The administrative law judge may order vocational rehabilitation before the injured employee reaches maximum medical improvement, if the treating physician believes that it is likely that the employee's injury will prevent the employee from returning to his or her former employment. In granting early benefits for vocational rehabilitation, the Commission shall consider temporary restrictions and

the likelihood that such rehabilitation will return the employee to gainful employment earlier than if such benefits are granted after the permanent partial disability hearing in the claim.

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

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

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

~~employer's insurer may deduct the amount paid for tuition from compensation awarded to the employee.~~

F. Disfigurement.

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

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

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

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

SECTION 20. AMENDATORY Section 46, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 46), is amended to read as follows:

Section 46. A. An injured employee who is entitled to receive permanent partial disability compensation under Section 45 of this ~~act~~

title shall receive compensation for each part of the body in accordance with the number of weeks for the scheduled loss set forth below.

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

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

B. The permanent partial disability rate of compensation for amputation or permanent total loss of use of a scheduled member specified in this section shall be seventy percent (70%) of the employee's average weekly wage, not to exceed ~~Three Hundred Twenty-three Dollars (\$323.00)~~ Three Hundred Ninety-one Dollars (\$391.00), multiplied by the number of weeks as set forth in this section, regardless of whether or not the injured employee is able to return to his or her pre-injury job.

C. Other cases: In cases in which the Workers' Compensation Commission finds an injury to a part of the body not specifically covered by the foregoing provisions of this section, the employee may be entitled to compensation for permanent partial disability. The compensation ordered paid shall be seventy percent (70%) of the employee's average weekly wage, not to exceed ~~Three Hundred Twenty-three Dollars (\$323.00)~~ Three Hundred Ninety-one Dollars (\$391.00) for the number of weeks which the partial disability of the employee bears to three hundred fifty (350) weeks.

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

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

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

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

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

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

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

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

Section 50. A. The employer shall promptly provide an injured employee with medical, surgical, hospital, optometric, podiatric, and nursing services, along ~~any~~ with any medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus as may be reasonably necessary in connection with the

injury received by the employee. The employer shall have the right to choose the treating physician.

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

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

D. Unless recommended by the treating doctor at the time claimant reaches maximum medical improvement or by an independent medical examiner, continuing medical maintenance shall not be awarded by the Commission. The employer or insurance carrier shall not be responsible for continuing medical maintenance or pain management treatment that is outside the parameters established by the Physician Advisory Committee or ODG. The employer or insurance carrier shall not be responsible for continuing medical maintenance or pain management treatment not previously ordered by the Commission or approved in advance by the employer or insurance carrier. An administrative law judge may order an employer to provide detoxification treatment for employees who are prescribed opioids or other narcotics. If an employee refuses such

detoxification treatment, the administrative law judge may terminate pain management after reasonable notice and hearing.

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

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

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

H. Fee Schedule.

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

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

required to complete forms for the Commission, insurance carriers, and employers.

3. In making adjustments to the Fee Schedule, the Commission shall use, as a benchmark, the reimbursement rate for each Current Procedural Terminology (CPT) code provided for in the fee schedule published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services for use in Oklahoma (Medicare Fee Schedule) on the effective date of this section, workers' compensation fee schedules employed by neighboring states, the latest edition of "Relative Values for Physicians" (RVP), usual, customary and reasonable medical payments to workers' compensation health care providers in the same trade area for comparable treatment of a person with similar injuries, and all other data the Commission deems relevant. For services not valued by CMS, the Commission shall establish values based on the usual, customary and reasonable medical payments to health care providers in the same trade area for comparable treatment of a person with similar injuries.

- a. No reimbursement shall be allowed for any magnetic resonance imaging (MRI) unless the MRI is provided by an entity that meets Medicare requirements for the payment of MRI services or is accredited by the American College of Radiology, the Intersocietal Accreditation Commission or the Joint Commission on Accreditation of Healthcare Organizations. For all other radiology procedures, the reimbursement rate shall be the lesser of the reimbursement

rate allowed by the 2010 Oklahoma Fee Schedule and two hundred seven percent (207%) of the Medicare Fee Schedule.

- b. For reimbursement of medical services for Evaluation and Management of injured employees as defined in the Fee Schedule adopted by the Commission, the reimbursement rate shall not be less than one hundred fifty percent (150%) of the Medicare Fee Schedule.
- c. Any entity providing durable medical equipment, prosthetics, orthotics or supplies shall be accredited by a CMS-approved accreditation organization. If a physician provides durable medical equipment, prosthetics, orthotics, prescription drugs, or supplies to a patient ancillary to the patient's visit, reimbursement shall be no more than ten percent (10%) above cost.
- d. The Commission shall develop a reasonable stop-loss provision of the Fee Schedule to provide for adequate reimbursement for treatment for major burns, severe head and neurological injuries, multiple system injuries, and other catastrophic injuries requiring extended periods of intensive care. An employer or insurance carrier has the right to audit or question the reasonableness and necessity of medical treatment contained in a bill for treatment covered by the stop-loss provision.

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

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

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

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

8. Charges for prescription drugs and compounded medications dispensed by a pharmacy shall be limited to ~~ninety percent (90%) of the average wholesale price of the prescription, plus a dispensing fee of~~

~~Five Dollars (\$5.00) per prescription. "Average wholesale price" means the amount determined from the latest publication designated by the Commission one hundred twenty-five percent (125%) of the reimbursement rate established by the Centers for Medicare and Medicaid Services (CMS) for use in Oklahoma. Physicians shall prescribe and pharmacies shall dispense generic equivalent drugs when available. If the National Drug Code, or "NDC", for the drug product dispensed is for a repackaged drug, then the maximum reimbursement shall be the lesser of the original labeler's NDC and the lowest-cost therapeutic equivalent drug product. Compounded medications shall be billed by the compounding pharmacy at the ingredient level, with each ingredient identified using the applicable NDC of the drug product, and the corresponding quantity. Ingredients with no NDC area are not separately reimbursable. Payment shall be based on a sum of the allowable fee for each ingredient plus a dispensing fee of Five Dollars (\$5.00) per prescription.~~

9. ~~When medical care includes prescription drugs dispensed by a physician or other medical care provider and the NDC for the drug product dispensed is for a repackaged drug, then the maximum reimbursement shall be the lesser of the original labeler's NDC and the lowest-cost therapeutic equivalent drug product~~ A physician shall not be allowed to dispense prescription drugs from his or her office. Payment for compounded medications or repackaged drugs shall be based upon a sum of the allowable fee for each ingredient plus a dispensing fee of Five Dollars (\$5.00) per prescription. Compounded medications shall be billed

by the compounding pharmacy. An employer or insurance carrier shall have the right to designate a pharmacy to provide prescription medicines to injured employees.

10. Implantables are paid in addition to procedural reimbursement paid for medical or surgical services. A manufacturer's invoice for the actual cost to a physician, hospital or other entity of an implantable device shall be adjusted by the physician, hospital or other entity to reflect, at the time implanted, all applicable discounts, rebates, considerations and product replacement programs and shall be provided to the payer by the physician or hospital as a condition of payment for the implantable device. If the physician, or an entity in which the physician has a financial interest other than an ownership interest of less than five percent (5%) in a publically traded company, provides implantable devices, this relationship shall be disclosed to patient, employer, insurance company, third-party commission, certified workplace medical plan, case managers, and attorneys representing claimant and defendant. If the physician, or an entity in which the physician has a financial interest other than an ownership interest of less than five percent (5%) in a ~~publically~~ publicly traded company, buys and resells implantable devices to a hospital or another physician, the markup shall be limited to ten percent (10%) above cost.

11. Payment for medical care as required by this act shall be due within forty-five (45) days of the receipt by the employer or insurance carrier of a complete and accurate invoice, unless the employer or

insurance carrier has a good-faith reason to request additional information about such invoice. Thereafter, the Commission may assess a penalty up to twenty-five percent (25%) for any amount due under the Fee Schedule that remains unpaid on the finding by the Commission that no good-faith reason existed for the delay in payment. If the Commission finds a pattern of an employer or insurance carrier willfully and knowingly delaying payments for medical care, the Commission may assess a civil penalty of not more than Five Thousand Dollars (\$5,000.00) per occurrence.

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

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

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

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

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

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

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

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 54.1 of Title 85A, unless there is created a duplication in numbering, reads as follows:

A. If a treating physician recommends a surgery that is subject to choice, and does not involve medical urgency or emergency, the Workers' Compensation Commission, upon request by the employer, shall appoint an Independent Medical Examiner to determine the reasonableness and necessity of such surgery.

B. The Commission shall either approve, deny or modify the request for surgery within sixty (60) days of the receipt of the report of the Independent Medical Examiner.

SECTION 24. AMENDATORY Section 56, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 56), is amended to read as follows:

Section 56. A. If the employer has previously contracted with a certified workplace medical plan, the employer shall select for the injured employee a treating physician from the physicians listed within the network of the certified workplace medical plan. The employee may apply for a change of physician by utilizing the dispute resolution process set out in the certified workplace medical plan on file with the State Department of Health.

B. If the employer is not covered by a certified workplace medical plan, the employer shall select the treating physician. The Commission on application of the employee shall order one change of treating physician. Upon the Commission's granting of the application, the

~~employer~~ employee shall provide a list of three physicians from whom the employee ~~employer~~ may select the replacement.

SECTION 25. AMENDATORY Section 57, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 57), is amended to read as follows:

Section 57. ~~A.~~ If an injured employee misses two or more consecutive scheduled appointments for treatment without a valid reason, he or she shall no longer be eligible to receive temporary total disability benefits under this act title, ~~unless his or her absence was:~~

~~1. Caused by extraordinary circumstances beyond the employee's control as determined by the Commission; or~~

~~2. The employee gave the employer at least two (2) hours prior notice of the absence and had a valid excuse.~~

~~B. Inability to get transportation to or from the appointment shall not be considered extraordinary circumstances nor a valid excuse for the absence.~~

SECTION 26. AMENDATORY Section 60, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 60), is amended to read as follows:

Section 60. The Physician Advisory Committee may recommend the adoption of a method or system to evaluate permanent disability that shall deviate from, or be used in place of or in combination with the Guides. Such recommendation shall be made to the Workers' Compensation Commission which may adopt the recommendation in part or in whole. The adopted method or system shall be submitted by the Executive Director of the Commission to the Governor, the Speaker of the House of

Representatives and the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such method or system so submitted shall be subject to disapproval by joint or concurrent resolution of the Legislature during the legislative session in which submitted. If disapproved, the existing method of determining permanent partial disability shall continue in effect. If the Legislature takes no action on the method or system submitted by the Executive Director, the method or system shall become operative thirty (30) days following the adjournment of the Legislature.

SECTION 27. AMENDATORY Section 62, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 62), is amended to read as follows:

Section 62. A. Notwithstanding the provisions of Section 45 of this ~~act~~ title, if an employee suffers a nonsurgical soft tissue injury, temporary total disability compensation shall not exceed eight (8) weeks, regardless of the number of parts of the body to which there is a nonsurgical soft tissue injury. An employee who is treated with an injection or injections shall be entitled to an extension of an additional eight (8) weeks. For purposes of this section, an injection shall not include facet injections or intravenous injections. An employee who has been recommended by a treating physician for surgery for a soft tissue injury may petition the Workers' Compensation Commission for one extension of temporary total disability compensation and the Commission may order an extension, not to exceed sixteen (16) additional weeks. If the surgery is not performed within thirty (30) days of the

approval of the surgery by the employer, its insurance carrier, or an order of the Commission authorizing the surgery, and the delay is caused by the employee acting in bad faith, the benefits for the extension period shall be terminated and the employee shall reimburse the employer any temporary total disability compensation he or she received beyond eight (8) weeks. An epidural steroid injection, or any procedure of the same or similar physical invasiveness, shall not be considered surgery.

B. For purposes of this section, "soft tissue injury" means damage to one or more of the tissues that surround bones and joints. Soft tissue injury includes, but is not limited to, sprains, strains, contusions, tendonitis and muscle tears. Cumulative trauma is to be considered a soft tissue injury unless corrective surgery is necessary. ~~Soft~~ Without limitation to this list, soft tissue injury, for example, does not include any of the following:

1. Injury to or disease of the spine, spinal discs, spinal nerves or spinal cord, where corrective surgery is performed;
2. Brain or closed-head injury as evidenced by:
 - a. sensory or motor disturbances,
 - b. communication disturbances,
 - c. complex integrated disturbances of cerebral function,
 - d. episodic neurological disorders, or
 - e. other brain and closed-head injury conditions at least as severe in nature as any condition provided in subparagraphs a through d of this paragraph; ~~or~~

3. Any joint replacement; or

4. Heat, electrical, radiation, friction or chemical burns.

SECTION 28. AMENDATORY Section 63, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 63), is amended to read as follows:

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

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

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

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

injured employee's legal representative, the employer, the employer's legal representative or any prosecutorial authority, and at such time as an employee's first notice of claim for compensation shall be filed.

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

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

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

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

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

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

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

SECTION 29. AMENDATORY Section 65, Chapter 208, O.S.L. 2013, as amended by Section 3, Chapter 390, O.S.L. 2015 (85A O.S. Supp. 2018, Section 65), is amended to read as follows:

Section 65. A. If an employee suffers from an occupational disease as defined in this section and is disabled or dies as a result of the disease, the employee, or, in case of death, his or her dependents, shall be entitled to compensation as if the disability or death were caused by injury arising out of work activities within the scope of employment, except as otherwise provided in this section.

B. No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer

by whom the compensation would otherwise be payable, falsely represented himself or herself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise, because of the disease.

C. 1. If an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or if disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable shall be reduced and limited to the proportion only of the compensation that would be payable if the occupational disease were the major cause of the disability or death as the occupational disease, as a causative factor, bears to all the causes of the disability or death.

2. The reduction in compensation is to be effected by reducing the number of weekly or monthly payments or the amounts of the payments, as under the circumstances of the particular case may be for the best interest of the claimant.

D. 1. "Occupational disease", as used in this act, unless the context otherwise requires, means any disease that results in disability or death and arises out of and in the course of the occupation or employment of the employee or naturally follows or unavoidably results from an injury as that term is defined in this act. A causal connection between the occupation or employment and the occupational disease shall be established by a preponderance of the evidence.

2. No compensation shall be payable for any contagious or infectious disease unless contracted in the course and scope of employment.

3. No compensation shall be payable for any ordinary disease of life to which the general public is exposed.

E. 1. When compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of the disease and the carrier, if any, on the risk when the employee was last injuriously exposed under the employer shall be liable.

2. The amount of the compensation shall be based on the average weekly wage of the employee when last injuriously exposed under the employer, and the notice of injury and claim for compensation shall be given and made to that employer.

F. ~~1.~~ An employer shall not be liable for any compensation for an occupational disease unless:

- ~~a.~~ the disease is due to the nature of an employment in which the hazards of the disease actually exist and is actually incurred in the course and scope of his or her employment. This includes any disease due to or attributable to exposure to or contact with any radioactive material by an employee in the course and scope of his or her employment;
- ~~b.~~ disablement or death results within three (3) years in case of silicosis or asbestosis, or one (1) year in case of any other occupational disease, except a diseased condition caused by exposure to X-rays, radioactive substances, or

~~ionizing radiation, after the last injurious exposure to the disease in the employment, or~~

~~e. in case of death, death follows continuous disability from the disease, commencing within the period, for which compensation has been paid or awarded or timely claim made as provided in subparagraph b of this paragraph and results within seven (7) years after the last exposure.~~

~~2. However, in case of a diseased condition caused by exposure to X-rays, radioactive substances, or ionizing radiation only, the limitations expressed do not apply.~~

SECTION 30. AMENDATORY Section 66, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 66), is amended to read as follows:

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

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

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

B. In the absence of ~~conclusive~~ a preponderance of the evidence in favor of the claim, disability or death from silicosis or asbestosis shall be presumed not to be due to the nature of any occupation within the provision of this section unless during the ten (10) years immediately preceding the date of disablement the employee has been exposed to the inhalation of silica dust or asbestos dust over a period

of not less than five (5) years, two (2) years of which shall have been in this state, under a contract of employment performed in this state. However, if the employee has been employed by the same employer during the entire five-year period, his or her right to compensation against the employer shall not be affected by the fact that he or she had been employed during any part of the period outside of this state.

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

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

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

~~E. 1. When an employee, though not actually disabled, is found by the Commission to be affected by silicosis or asbestosis to such a degree as to make it unduly hazardous for him or her to continue in an employment involving exposure to the hazards of the disease, the Commission may order that he or she be removed from his or her employment. In such a case, or in case he or she has already been~~

~~discharged from the employment and is unemployed, he or she shall be entitled to compensation until he or she can obtain steady employment in some other suitable occupation in which there are no hazards of the disease.~~

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

SECTION 31. AMENDATORY Section 67, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 67), is amended to read as follows:

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

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

~~B. An award or denial of award of compensation for an occupational disease or cumulative trauma may be reviewed and compensation increased, reduced, or terminated where previously awarded, or awarded where previously denied, only on proof of fraud or undue influence or of change of condition, and then only on application by a party in interest made~~

~~not later than one (1) year after the denial of award or, where compensation has been awarded, after the award or the date when the last payment was made under the award, except in cases of silicosis or asbestosis, where the statute of limitations shall be two (2) years.~~

SECTION 32. AMENDATORY Section 69, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 69), is amended to read as follows:

Section 69. A. Time for Filing.

1. A claim for benefits under this act, other than an occupational disease, shall be barred unless it is filed with the Workers' Compensation Commission within one (1) year from the date of the injury. ~~If during the one-year period following the filing of the claim the employee receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter.~~ When a claim for compensation has been filed, unless the employee shall in good faith request a hearing for benefits, with competent medical evidence to support the request, within one (1) year from the date of the filing thereof, or within one (1) year from the date of last payment of compensation or wages in lieu thereof, or the date of the last authorized medical appointment attended by the employee, the claim shall be dismissed with prejudice for want of prosecution. For purposes of this section, the date of the injury shall be defined as the date an injury is caused by an accident as set forth in paragraph 9 of Section 2 of this ~~act~~ title.

2. a. A claim for compensation for disability on account of injury which is either an occupational disease or occupational infection shall be barred unless filed with the Commission within two (2) years from the date of the last injurious exposure to the hazards of the disease or infection.
- b. A claim for compensation for disability on account of silicosis or asbestosis shall be filed with the Commission within one (1) year after the time of disablement, and the disablement shall occur within three (3) years from the date of the last injurious exposure to the hazard of silicosis or asbestosis.
- c. A claim for compensation for disability on account of a disease condition caused by exposure to X-rays, radioactive substances, or ionizing radiation only shall be filed with the Commission within two (2) years from the date the condition is made known to an employee following examination and diagnosis by a medical doctor.

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

4. If within ~~six (6) months~~ one (1) year after the filing of a controverted claim for compensation no bona fide request for a hearing

has been made with respect to the claim, the claim may, on motion and after hearing, be dismissed ~~with~~ without prejudice.

B. Time for Filing Additional Compensation.

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

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

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

D. If within ~~six (6) months~~ one (1) year after the filing of a claim for additional compensation no bona fide request for a hearing has been made with respect to the claim, the claim shall be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection B of this section.

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

F. Persons under Disability.

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

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

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

SECTION 33. AMENDATORY Section 71, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 71), is amended to read as follows:

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

B. Investigation - Hearing.

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

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

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

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

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

C. Evidence and Construction.

1. a. At the hearing the claimant and the employer may each present evidence relating to the claim. Evidence may be presented by any person authorized in writing for such purpose. The evidence may include verified medical reports which shall be accorded such weight as may be warranted when considering all evidence in the case.
- b. Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical or mental findings.

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

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

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

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

receipt of confirmation to the claimant and to the employer or to their attorneys.

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

SECTION 34. AMENDATORY Section 78, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 78), is amended to read as follows:

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

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

C. The judgment, decision or award of the Commission shall be final and conclusive on all questions within its jurisdiction between the

parties unless an action is commenced in the Supreme Court of this state to review the judgment, decision or award within twenty (20) days of being sent to the parties. Any judgment, decision or award made by an administrative law judge shall be stayed until all appeal rights have been waived or exhausted. The Supreme Court may modify, reverse, remand for rehearing, or set aside the judgment or award only if it was:

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

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

filing of an appeal or a judgment appealed from, a transcript of the record of the proceedings before the Commission, or such later time as may be granted by the Supreme Court on application and for good cause shown. The action shall be subject to the law and practice applicable to other civil actions cognizable in the Supreme Court.

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

E. During the pendency of an appeal filed by an employer or the employer's insurance carrier pursuant to this section, payment for any prescription drugs prescribed by the treating physician shall be continued. If payment for prescription drugs is an issue on appeal, and the employer is held not to be liable for payment for the prescription drugs, the employee shall reimburse the employer or the employer's insurance carrier for the cost of prescriptions filled during the time of the appeals process.

SECTION 35. AMENDATORY Section 80, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 80), is amended to read as follows:

Section 80. A. Except where a joint petition settlement has been approved, the Workers' Compensation Commission may reopen for review any compensation judgment, award, or decision. Such review based on a change of physical condition may be done at any time within six (6) months ~~of termination of the compensation period fixed in the original compensation judgment or award~~ from the date of the last order in which monetary benefits were awarded or active medical treatment was provided, on the Commission's own motion or on the application of any party in interest, ~~on the ground of a change in physical condition or on proof of erroneous wage rate~~ and unless filed within such period of time shall be forever barred. A change of condition shall be proved with objective findings, as defined in paragraph 31 of Section 2 of this title. On review, the Commission may make a judgment or award terminating, continuing, decreasing, or increasing for the future the compensation previously awarded, subject to the maximum limits provided for in this act. An order denying an application to reopen a claim shall not extend the period of time set out in this title for reopening the case. A failure to comply with a medical treatment plan ordered by the Commission shall bar the reopening of a claim.

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

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

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

SECTION 36. AMENDATORY Section 82, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 82), is amended to read as follows:

Section 82.

A. 1. a. Each party shall be responsible for its legal services and litigation expenses. Fees for legal services ~~rendered in a claim shall not be valid unless approved~~ may be reviewed by the Workers' Compensation Commission.

b. An attorney representing an injured employee may only recover attorney fees up to ten percent (10%) of any temporary total disability or temporary partial disability compensation and twenty percent (20%) of any permanent partial disability, permanent total disability, or death compensation awarded to an injured employee by the Commission from a controverted claim. If the employer makes a written offer to settle permanent partial disability, permanent total disability, or death compensation and that offer is rejected, the employee's

attorney may not recover attorney fees in excess of thirty percent (30%) of the difference between the amount of any award and the settlement offer.

- (1) Attorney fees may not be collected for recovery on noncontroverted claims.
- (2) Attorney fees shall not be awarded on medical benefits or services.
- (3) The fee for legal services rendered by an attorney representing an employee in connection with a change of physician requested by the injured employee, controverted by the employer, and awarded by the Commission, shall be Two Hundred Dollars (\$200.00).
- (4) Attorney fees may include not more than ten percent (10%) of the value, or reasonable estimate thereof, of vocational rehabilitation services.

c. A "controverted claim" means that ~~there has been a contested hearing before the Commission over~~ the employer or the employer's insurance carrier has controverted whether there has been a compensable injury or whether the employee is entitled to temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or death compensation. A request for a change in physician shall not trigger a controverted claim for purposes of recovering any attorney

fees except the fees under division 3 of subparagraph b of this paragraph. A controverted claim shall not exist if the employee or his or her representative has withheld pertinent information in his or her possession related to the claim from the employer or has violated the provisions of Section 6 of this ~~act~~ title.

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

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

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

B. An attorney representing an employee under this act may not recover fees for services except as expressly provided in this section or for good cause shown.

SECTION 37. AMENDATORY Section 86, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 86), is amended to read as follows:

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

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

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

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

SECTION 38. AMENDATORY Section 87, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 87), is amended to read as follows:

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

SECTION 39. AMENDATORY Section 90, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 90), is amended to read as follows:

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

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

interest thereon from the date of the award by the administrative law judge of the Commission and all costs of the proceeding, or on the further order of the Commission en banc or administrative law judge of the Commission after the appeal has been decided by the Supreme Court. Municipalities and other political subdivisions of this state are exempt from making such written undertakings.

SECTION 40. AMENDATORY Section 94, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 94), is amended to read as follows:

Section 94. An employee who is incarcerated shall not be eligible to receive ~~medical or~~ temporary total disability benefits under this ~~act~~ title.

SECTION 41. AMENDATORY Section 101, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 101), is amended to read as follows:

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

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

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

SECTION 42. AMENDATORY Section 152, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 109), is amended to read as follows:

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

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

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

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

SECTION 43. AMENDATORY Section 158, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 115), is amended to read as follows:

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

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

C. In the absence of fraud, a Joint Petition shall be deemed binding upon the parties thereto and a final adjudication of all rights pursuant to this ~~act~~ title or the workers' compensation law in effect at the time of the injury or final order of the Workers' Compensation ~~Court~~

Commission. An official record shall be made by an official Commission reporter of the testimony taken to effect the Joint Petition.

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

E. If an employee has not filed a claim for compensation and the employer and the injured employee reach a final agreement as to the facts with relation to an injury and the resulting disability for which compensation is claimed under the Administrative Workers' Compensation Act, a memorandum of such agreement in a form prescribed by the Commission shall be filed with the Commission by the employer. The memorandum shall be signed by both the employer and the employee and approved by an administrative law judge of the Commission.

SECTION 44. AMENDATORY Section 161, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 118), is amended to read as follows:

Section 118. A. A filing fee of One Hundred Forty Dollars (\$140.00) per case, including any Joint Petition, medical fee dispute, claim for discrimination or retaliation, or claim for benefits under the Multiple

Injury Trust Fund authorized by this ~~act~~ title, shall be collected from the filer by the Workers' Compensation Commission ~~and~~. In the event any award becomes final against an employer, such amount shall be assessed as costs against the employer to be paid by the party against whom any award becomes final, to be to the injured employee. The filing fee shall be deposited as follows:

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

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

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

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

Attorney General's Workers' Compensation Fraud Unit, providing counseling services pursuant to the workers' compensation counselor or ombudsman program and safety in the workplace.

SECTION 45. AMENDATORY Section 162, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 119), is amended to read as follows:

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

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

SECTION 46. AMENDATORY Section 163, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 120), is amended to read as follows:

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

B. 1. All requests made to the Workers' Compensation Commission for information on ~~prior~~ workers' compensation claims involving a worker,

including written inquiries about prior claims and requests to access a worker's compensation claim file, must be in writing, on a form prescribed by the Commission, and accompanied by a fee of One Dollar (\$1.00) per search request, not to exceed One Dollar (\$1.00) per claims record of a particular worker. The fee shall be deposited to the credit of the Workers' Compensation Commission Revolving Fund. The form shall require identification of the person requesting the information, and the person for whom a search is being made if different from the requester. The form must contain an affidavit signed by the requester under penalty of perjury that the information sought is not requested for a purpose in violation of state or federal law. The form must be used by all repositories of archived Court claim files. All request forms shall be maintained by the Commission as a public record, together with a record of a worker's written authorization permitting a search indexed by the worker's social security number as required by Section 3113 of Title 74 of the Oklahoma Statutes. The request forms and authorizations shall be indexed alphabetically by the last name of the worker.

2. This subsection shall not apply:

- a. to requests for claims information made by a public officer or by a public employee in the performance of his or her duties on behalf of a governmental entity or as may be allowed by law,
- b. to requests for claims information made by an insurer, self-insured employer, third-party claims administrator, or

- a legal representative thereof, when necessary to process or defend a workers' compensation claim,
- c. when a worker or the worker's representative requests review of the worker's claims information,
 - d. when the disclosure is made for educational or research purposes and in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim,
 - e. to requests for claims information made by a health care or rehabilitation provider or the provider's legal representative when necessary to process payment of health care or rehabilitation services rendered to a worker, and
 - f. to requests for claims information made by an employer or personnel service company, including but not limited to an individual or entity, where the worker executes a written authorization permitting the search and designating the employer or personnel service company as the worker's representative for that purpose; however, nothing in this subparagraph shall relieve the employer or personnel service company from complying with the requirements of utilizing the form set forth in paragraph 1 of this subsection.

SECTION 47. AMENDATORY Section 164, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 121), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 48. AMENDATORY Section 165, Chapter 208, O.S.L. 2013, as amended by Section 4, Chapter 344, O.S.L. 2015 (85A O.S. Supp. 2018, Section 122), is amended to read as follows:

Section 122. A. The Workers' Compensation Commission Revolving Fund established by Section ~~2~~ 28.1 of this ~~act~~ title shall be used for the costs of administering this act and for other purposes as authorized by law.

B. For the purpose of providing funds for the Workers' Compensation Commission Revolving Fund, for the Workers' Compensation Administrative Fund created in Section ~~5~~ 401.1 of this ~~act~~ title, for the Multiple

Injury Trust Fund created in Section 28 of this title, and to fund other provisions within this title, the following tax rates shall apply:

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

2. When an employer is authorized to become a self-insurer, the Workers' Compensation Commission shall so notify the Tax Commission, giving the effective date of such authorization. The Tax Commission shall then assess and collect from the employers carrying their own risk an assessment at the rate of two percent (2%) of the total compensation for permanent total disability awards, permanent partial disability awards and death benefits paid out during each quarter of the calendar

year by the employers. Such assessment shall be payable by the employers and collected by the Tax Commission according to the provisions of this section regarding payment and collection of the assessment created in paragraph 1 of this subsection.

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

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

1. To be fulfilled first, Five Million Dollars (\$5,000,000.00) shall be payable in equal monthly installments to the credit of the Workers' Compensation Commission Revolving Fund established in Section ~~2~~ 28.1 of this act ~~for the fiscal year ending June 30, 2016, and Three Million Dollars (\$3,000,000.00)~~ title for the fiscal year ending June 30, 2017 2020, and for all subsequent years to be used to implement the provisions of this title; and

2. ~~Four Million Dollars (\$4,000,000.00)~~ Two Million Five Hundred Thousand Dollars (\$2,500,000.00) shall be payable in equal monthly installments to the credit of the Workers' Compensation Administrative

Fund established in Section ~~5~~ 401.1 of this ~~act~~ title for the fiscal year ending ~~June 30, 2016, Three Million Five Hundred Thousand Dollars (\$3,500,000.00) for the fiscal year ending June 30, 2017, Three Million Five Hundred Thousand Dollars (\$3,500,000.00) for the fiscal year ending June 30, 2018, Three Million Dollars (\$3,000,000.00) for the fiscal year ending June 30, 2019, and Two Million Five Hundred Thousand Dollars (\$2,500,000.00) for the fiscal year ending June 30, 2020~~ and Three Million Dollars (\$3,000,000.00) for all subsequent years as long as the Workers' Compensation Court of Existing Claims is authorized by the Legislature. Monies deposited in the Workers' Compensation Administrative Fund shall be used by the Workers' Compensation Court of Existing Claims to implement provisions provided for in this title.

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

SECTION 49. AMENDATORY Section 166, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 123), is amended to read as follows:

Section 123. ~~Any~~ A. Except as otherwise provided in this section, any form, claim, answer or report to be filed by any person with the Workers' Compensation Commission pursuant to this act shall contain or be verified by a written declaration that such form, claim, answer or report is true and made under the penalty of perjury. This subsection shall not be construed to pertain to the electronic data interchange system

developed and implemented by the Commission pursuant to Section 101 of this title.

B. An electronic signature upon, or the act of submitting or filing, any such form, claim, answer or report containing such a written declaration to any online filing system employed by the Commission shall constitute affirmation that the form, claim, answer or report is true and made under the penalty of perjury.

SECTION 50. AMENDATORY Section 167, Chapter 208, O.S.L. 2013, as amended by Section 7, Chapter 169, O.S.L. 2014 (85A O.S. Supp. 2018, Section 124), is amended to read as follows:

Section 124. A. 1. All unexpended funds, assets, property, records, personnel and any outstanding financial obligations and encumbrances of the Workers' Compensation Court ~~before February 1, 2014,~~ are hereby transferred to the Workers' Compensation Commission, except for personnel transferred to the Workers' Compensation Court of Existing Claims on July 9, 2014. The personnel transferred to the Commission and retained by the Commission shall retain leave, sick and annual time earned and any retirement and longevity benefits which have accrued during their employment with the state. The salaries of employees who are transferred shall not be reduced as a direct and immediate result of the transfer. There shall be no reduction-in-force as a result of the transfer. The Workers' Compensation Court of Existing Claims shall pay the expense of maintaining the records of the Court and the records of the former Workers' Compensation Court for as long as the Legislature

appropriates funding to the Court independent of funding for the Commission. Thereafter, all such records shall be transferred to the Commission.

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

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

2. Any unexpended funds, including interest thereon, held by the State Treasurer in the Workers' Compensation Self-insurance Guaranty Fund before February 1, 2014, shall be transferred to the Self-insurance Guaranty Fund Board created by the Administrative Workers' Compensation Act. Such funds shall be expended by the Board only as authorized in the Administrative Workers' Compensation Act.

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

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

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

E. All unexpended funds, assets, property, records, personnel and any outstanding financial obligations and encumbrances of the Multiple Injury Trust Fund before February 1, 2014, are hereby transferred to the Multiple Injury Trust Fund created in the Administrative Workers' Compensation Act. The personnel transferred shall retain leave, sick and annual time earned and any retirement and longevity benefits which have accrued during their employment with the state. The salaries of employees who are transferred shall not be reduced as a direct and immediate result of the transfer. There shall be no reduction-in-force as a result of the transfer.

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

SECTION 51. AMENDATORY Section 121, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 300), is amended to read as follows:

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

SECTION 52. AMENDATORY Section 125, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 304), is amended to read as follows:

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

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

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

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

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

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

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

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

SECTION 53. AMENDATORY Section 126, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 305), is amended to read as follows:

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

B. Unless a civil action involving the agreement to arbitrate is pending, notice of an initial application and motion to the Commission

under this act shall be served in the manner provided by law for the service of a summons in the filing of a civil action. Otherwise, notice of the motion shall be given in the manner provided by law or rule of court for serving motions in pending cases.

SECTION 54. AMENDATORY Section 128, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 307), is amended to read as follows:

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

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

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

B. On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the Commission shall proceed summarily to decide the issue. If the Commission finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate. The Commission may also assess

costs against the party opposing the motion if the Commission concludes the opposition was not brought in good faith to be deposited in the Workers' Compensation Fund created by the Administrative Workers' Compensation Act.

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

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

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

SECTION 55. AMENDATORY Section 133, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 312), is amended to read as follows:

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

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

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

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

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

SECTION 56. AMENDATORY Section 134, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 313), is amended to read as follows:

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

SECTION 57. AMENDATORY Section 135, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 314), is amended to read as follows:

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

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

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

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

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

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

E. If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization,

or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection D of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney fees and other reasonable expenses of litigation.

SECTION 58. AMENDATORY Section 137, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 316), is amended to read as follows:

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

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

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

SECTION 59. AMENDATORY Section 139, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 318), is amended to read as follows:

Section 318. If an arbitrator makes a pre-award ruling in favor of a party, the party may request the arbitrator to incorporate the ruling into an award under Section ~~140~~ 319 of this ~~act~~ title. A prevailing party may make an application and motion to the Commission for an

expedited judgment to confirm the award under Section ~~143~~ 322 of this ~~act~~ title, in which case the Workers' Compensation Commission shall summarily decide the motion. The Commission shall issue a judgment to confirm the award unless the ~~court~~ Commission vacates, modifies, or corrects the award under Section ~~144 or 145~~ 323 or 324 of this ~~act~~ title.

SECTION 60. AMENDATORY Section 141, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 320), is amended to read as follows:

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

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

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

3. To clarify the award.

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

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

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

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

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

3. To clarify the award.

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

SECTION 61. AMENDATORY Section 142, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 321), is amended to read as follows:

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

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

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

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

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

SECTION 62. AMENDATORY Section 143, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 322), is amended to read as follows:

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

SECTION 63. AMENDATORY Section 144, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 323), is amended to read as follows:

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

1. The award was procured by corruption, fraud, or other undue means;
2. There was:
 - a. evident partiality by an arbitrator appointed as a neutral arbitrator,
 - b. corruption by an arbitrator, or
 - c. misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

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

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

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

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

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

C. If the Commission vacates an award it may order a rehearing. If the award is vacated on a ground stated in paragraph 1, 2 or 6 of subsection A of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in paragraph 3, 4 or 5 of subsection A of this section, the rehearing may be before the

arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as that provided in subsection B of Section ~~140~~ 319 of this ~~act~~ title for an award.

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

SECTION 64. AMENDATORY Section 148, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 327), is amended to read as follows:

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

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

SECTION 65. AMENDATORY Section 169, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Section 400), is amended to read as follows:

Section 400. A. The Workers' Compensation Court shall be renamed the Workers' Compensation Court of Existing Claims for the purpose of hearing disputes relating to claims that arise before February 1, 2014. The Court shall consist of the existing judges for the remainder of his

or her term. Each judge of the Court shall continue to serve as the appointment to a designated numbered position on the Court. The positions shall be numbered one through ten. The terms of the judges by position number shall expire on the following dates:

Position 1 shall expire 7-1-14.

Position 2 shall expire 7-1-14.

Position 3 shall expire 7-1-14.

Position 4 shall expire 7-1-20.

Position 5 shall expire 7-1-20.

Position 6 shall expire 7-1-16.

Position 7 shall expire 7-1-16.

Position 8 shall expire 7-1-20.

Position 9 shall expire 7-1-20.

Position 10 shall expire 7-1-14.

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

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

~~Court of Existing Claims~~ the Governor shall appoint a judge to serve the remainder of the term from a list of three applicants submitted to the Governor by the Judicial Nominating Commission. The Governor shall appoint a Presiding Judge of the Workers' Compensation Court of Existing Claims to select sufficient staff to support the functions of the Court. In addition, the Presiding Judge shall be authorized to contract with the Workers' Compensation Commission or other individuals or entities for services and shared services.

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

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

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

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

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

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

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

~~I.~~ J. The Court shall be vested with jurisdiction over all claims filed pursuant to the Workers' Compensation Code or previous statute in effect on the date of an injury that occurred before February 1, 2014. All claims so filed shall be heard by the judge sitting without a jury. The Court shall have full power and authority to determine all questions in relation to payment of claims for compensation under the provisions of the Workers' Compensation Code. The Court, upon application of either party, shall order a hearing. Upon a hearing, either party may present evidence and be represented by counsel. The decision of the Court shall be final as to all questions of fact and law; provided, the decision of the Court may be appealed to the ~~Commission~~ Court en banc or the Supreme Court as provided by the Workers' Compensation Code. In the event that an insufficient number of active judges are available to comprise the three-judge en banc panel, retired or former judges of the district court

or Workers' Compensation Court may be designated by the Presiding Judge to serve on such panel. The decision of the Court shall be issued within sixty (60) days following the submission of the case by the parties. The power and jurisdiction of the Court over each case shall be continuing and it may, from time to time, make such modifications or changes with respect to former findings or orders relating thereto if, in its opinion, it may be justified.

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

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

~~L. For an injury occurring before the effective date of this act~~ February 1, 2014, all benefits and procedures to obtain benefits shall be determined by the workers' compensation law of this state in effect on the date of the injury. ~~Administrative law judges of the Commission~~

~~shall enforce all final orders of the Workers' Compensation Court in a manner to secure for all parties the due process and equal protection guarantees of the Constitution of the State of Oklahoma.~~

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

SECTION 66. AMENDATORY 25 O.S. 2011, Section 307, as last amended by Section 1, Chapter 252, O.S.L. 2018 (25 O.S. Supp. 2018, Section 307), is amended to read as follows:

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

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

1. Discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee;
2. Discussing negotiations concerning employees and representatives of employee groups;
3. Discussing the purchase or appraisal of real property;

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

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

6. Discussing matters involving a specific handicapped child;

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

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

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

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

11. Discussing the following:

- a. the investigation of a plan or scheme to commit an act of terrorism,
- b. assessments of the vulnerability of government facilities or public improvements to an act of terrorism,
- c. plans for deterrence or prevention of or protection from an act of terrorism,
- d. plans for response or remediation after an act of terrorism,
- e. information technology of the public body but only if the discussion specifically identifies:
 - (1) design or functional schematics that demonstrate the relationship or connections between devices or systems,
 - (2) system configuration information,
 - (3) security monitoring and response equipment placement and configuration,
 - (4) specific location or placement of systems, components or devices,
 - (5) system identification numbers, names, or connecting circuits,
 - (6) business continuity and disaster planning, or response plans, or
 - (7) investigation information directly related to security penetrations or denial of services, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. The Oklahoma Indigent Defense System Board for purposes of discussing negotiating strategies in connection with making possible counteroffers to offers to contract to provide legal representation to indigent criminal defendants and indigent juveniles in cases for which

the System must provide representation pursuant to the provisions of the Indigent Defense System Act; and

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

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

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

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

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

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

in public meeting with the vote of each member publicly cast and recorded.

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

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

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

SECTION 67. REPEALER Sections 15, 24 and 36, as amended by Section 1, Chapter 239, O.S.L. 2018, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 15, 24 and 36), are hereby repealed.

SECTION 68. REPEALER Sections 107, 108, 109, 110, as amended by Section 4, Chapter 390, O.S.L. 2015, 111, 112, as amended by Section 5, Chapter 390, O.S.L. 2015, 113, 114, 115, 116, 117, 118, as amended by Section 6, Chapter 390, O.S.L. 2015, 119 and 120, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2018, Sections 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212 and 213), are hereby repealed.

SECTION 69. Sections 1 through 47 and 49 through 68 of this act shall become effective November 1, 2019.

SECTION 70. Section 48 of this act shall become effective July 1, 2019.

SECTION 71. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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