AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause and entire bill and insert

"An Act relating to workers' compensation; amending Sections 2, 7, 45, as amended by Section 2, Chapter 390, O.S.L. 2015, 46, 62, 68, 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 and 118, as amended by Section 6, Chapter 390, O.S.L. 2015, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Sections 2, 7, 45, 46, 62, 68, 201, 202, 203, 204, 205, 206 and 211), which relate to discrimination, disability, soft tissue injury, rebuttable presumption, the Oklahoma Employee Injury Benefit Act, qualified employers, benefit plans, compensation, Oklahoma Option Insured and Self-insured Guaranty Funds, fees and appellate rights; modifying definitions; modifying jurisdictional requirement for certain claims; establishing liability for damages for certain violations; specifying burden of proof for certain violations; modifying requirements for award of temporary total disability; modifying requirements for award of permanent partial disability; modifying calculation for specified permanent partial disability; modifying definitions; modifying procedures for application for certain employer status; requiring certain notice;
requiring issuance of certain certificate; modifying procedures for confirmation of certain status; modifying procedures for certain notification; specifying fee schedule for certain groups; modifying requirements for certain benefit plans; clarifying applicability of certain insurance coverage; conforming language; modifying procedures for appeal of denial of certain claims; requiring maintenance of certain records; requiring certain notice; establishing filing fee for certain appeals; and providing an effective date.

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

SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, 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, illegal drugs, or prescription drugs
used in contravention of physician's orders. If,
within twenty-four (24) hours of being injured or
reporting an injury, an employee tests positive
for intoxication, an illegal controlled
substance, or a legal controlled substance used
in contravention to 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, illegal drugs, or prescription drugs
used in contravention of physician's orders.

This presumption may only be overcome if the
employee proves by **objective**, 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 act, heart or lung injury or illness as described in Section 14 of this act, or occupational diseases as described in Section 65 of this act.
d. A compensable injury shall be established by medical evidence supported by objective findings as defined in paragraph 30 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 act 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;

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, 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 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;

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 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 or
horticultural workers, or any person who is
employed in agriculture or horticulture who is
not engaged in operation of motorized machines,

(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 by blood or marriage to the employer, 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,

(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 107 through 120 of this act;

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 act;

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 sixth 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;

34. "Permanent partial disability" means a permanent disability or loss of use 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. All evaluations of permanent partial disability must be supported by objective findings;

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 the body parts listed in Section 46 of this title which are amputated or have permanent loss of use;
1. "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;

2. "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;

3. "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;

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

5. "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;

6. "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 7, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, 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 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). If a district court of this state determines that an employer violated a provision of this section, such employer shall be liable for reasonable compensatory damages suffered by an employee as a result of the violation. The employee shall have the burden of proof to show such violation by a preponderance of the evidence. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against shall reduce the back pay compensatory damages otherwise allowable.

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

E. 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. 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. This section shall not be construed as establishing an exception to the employment at will doctrine.
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 3. AMENDATORY Section 45, Chapter 208, O.S.L. 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S. Supp. 2015, 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. 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.

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...
more appointments as prescribed under Section 57 of this title,
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 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. However, the injured employee's actual earnings plus temporary partial disability 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 employer, 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 sixth edition of
the American Medical Association's "Guides to the Evaluation of
Permanent Impairment". 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) 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, 99, 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. 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. No payments on any permanent partial disability order shall begin until payments on any preexisting permanent partial disability orders have been completed.

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

9. 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 shall be seventy percent (70%) of the employee's average weekly wage, not to exceed Three Hundred Twenty-three Dollars ($323.00), multiplied by the number of weeks set forth for the member in Section 46 of this act, regardless of whether the injured employee is able to return to his or her pre-injury or equivalent job.

10. 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) 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 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 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, 

c. if the employee's occupation is manual laborer and the 
medical condition is bilateral wrist fusions,  
d. if the employee's occupation is assembly-line worker 
and the medical condition is radial head fracture with 
surgical excision, 

e. if the employee's occupation is heavy laborer and the 
medical condition is myocardial infarction with 
congestive heart failure,
f. if the employee's occupation is heavy manual laborer and the medical condition is multilevel neck or back fusions greater than two levels,
g. if the employee's occupation is laborer performing overhead work and the medical condition is massive rotator cuff tears, with or without surgery,
h. if the employee's occupation is heavy laborer and the medical condition is recurrent inguinal hernia following unsuccessful surgical repair,
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 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. 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. 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. 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. 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. 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.

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 4. AMENDATORY Section 46, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 46), is amended to read as follows:

Section 46. A. In lieu of compensation provided pursuant to paragraph 4 of subsection C of Section 45 of this title, an injured employee who is entitled to receive permanent partial disability compensation under Section 45 of this act suffers amputation or permanent loss of use of a scheduled member shall receive
compensation for each part of the body in accordance with equal to seventy percent (70%) of the employee's average weekly wage, not to exceed Three Hundred Twenty-three Dollars ($323.00) multiplied by the number of weeks for the scheduled loss member set forth below as follows:

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), 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 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) 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 5. AMENDATORY Section 62, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 62), is amended to read as follows:

Section 62. A. Notwithstanding the provisions of Section 45 of this act, 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 epidural steroid injection or injections shall be entitled
to an extension of an additional eight (8) weeks total, regardless
of the number of 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. Soft tissue injury 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.

SECTION 6. AMENDATORY Section 68, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 68), is amended to read as follows:

Section 68. A. Unless an employee gives oral or written notice to the employer within fifteen (15) days of the date an injury occurs, the rebuttable presumption shall be that the injury was not work-related. Such presumption must be overcome by a preponderance of the evidence. If the notice of injury is not timely given but the employee overcomes the presumption, no compensation shall be due for the time period prior to the date notice was given. In no event shall compensation be allowed if notice is not given within one hundred twenty (120) days after the date of the injury.
B. Unless an employee gives oral or written notice to the employer within thirty (30) days of the employee's separation from employment, there shall be a rebuttable presumption that an occupational disease or cumulative trauma injury did not arise out of and in the course of employment. Such presumption must may be overcome by a preponderance of the evidence.

SECTION 7. AMENDATORY Section 108, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 201), is amended to read as follows:

Section 201. A. As used in the Oklahoma Employee Injury Benefit Act:

1. "Benefit plan" means a written plan established by a qualified employer under the requirements of Section 110 of this act the Employee Injury Benefit Act;

2. "Commission" means the Workers' Compensation Commission under the Administrative Workers' Compensation Act;

3. "Commissioner" means the Insurance Commissioner of the State of Oklahoma. "Claimant" means a covered employee or his or her representative or beneficiary who claims benefits under the Employee Injury Benefit Act;

4. "Covered employee" means an employee whose employment with a qualified employer is principally located within the state;

5. "Department" means the Insurance Department of the State of Oklahoma;
6. "Employee" means any person defined as an employee pursuant to Section 2 of this act;

7. "Employer", except when otherwise expressly stated, 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, department, instrumentality or institution of this state and divisions thereof, counties and divisions thereof and other political subdivisions of this state and public trusts employing a person included within the term employee as defined in this section;

8. "Fully insured plan" means insurance coverage of one hundred percent (100%) of an employer's statutory benefit liability, which may include a self-insured retention of up to Twenty-five Thousand Dollars ($25,000.00) per person, per occurrence;

9. "Occupational injury disease" means an injury, including death, or occupational illness, causing internal or external harm to the body, which arises out of and in the course of employment shall have the same meaning provided pursuant to Section 65 of this title;

10. "Qualified employer" means an employer otherwise subject to the Administrative Workers' Compensation Act that voluntarily elects is approved to be exempt from such act the Administrative Workers' Compensation Act by satisfying the requirements under this act the Employee Injury Benefit Act; and
9.11. "Surviving spouse" means the covered 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.

B. Unless otherwise defined in this section, defined terms in the Administrative Workers' Compensation Act shall have the same meaning in this act the Employee Injury Benefit Act.

SECTION 8. AMENDATORY  

Section 109, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 202), is amended to read as follows:

Section 202. A. Any employer may voluntarily elect apply to be exempt from the Administrative Workers' Compensation Act and become a qualified employer if the employer by submitting to the Department:

1. Is in compliance with the notice requirements in subsections B and H of this section and a qualified employer election form published by the Department; and

2. Has established a written benefit plan as described in Section 110 of this act and its proposed effective date, subject to the Department's approval;

3. An annual nonrefundable fee of One Thousand Five Hundred Dollars ($1,500.00);

4. The notice to employees required by subsection G of this section; and
5. Any additional information required pursuant to rules promulgated by the Department.

B. An employer that has elected The Department shall notify an employer whether it has met the requirements to become a qualified employer by satisfying the. If such requirements of this section shall notify the Insurance Commissioner in writing of the election and the date that the election is to become effective, which may not be sooner than the date that the qualified employer satisfies the employee notice requirements in this section. Such qualified employer shall pay to the Commissioner an annual nonrefundable fee of One Thousand Five Hundred Dollars ($1,500.00) on the date of filing written notice and every year thereafter have been met, the Department shall issue a certificate of qualified employer to the employer. If such requirements have not been met, the notice shall contain a description of the deficiencies and how such deficiencies may be resolved.

C. The Commissioner Department shall collect and maintain the information required under this section and shall monitor compliance with the requirements of this section. The Commissioner Department may also require an a qualified employer to provide information periodically to confirm its qualified employer status. Subject to subsection D of this section, the Commissioner that it is still in compliance with the requirements of a qualified employer. The Department shall adopt rules designating the methods and procedures
for confirming whether an employer has met and continues to meet the requirements to become a qualified employer, notifying an employer of any qualifying deficiencies, and the consequences thereof of noncompliance with the requirements of the Employee Injury Benefit Act. The Commissioner Department shall record the date and time each notice of qualified employer that an employer is approved as a qualified employer and the date that such status is received and the becomes effective date of qualified employer election. The Commissioner Department shall maintain a list on its official website accessible by the public of all qualified employers and the date and time that such exemption status became effective.

D. Except as otherwise expressly provided in this act, neither the Workers' Compensation Commission, the courts of this state, or any state administrative agencies shall promulgate rules or any procedures related to design, documentation, implementation, administration or funding of a qualified employer's benefit plan. If the Department determines that a qualified employer is deficient in any requirements, it shall provide written notice of the deficiency to the employer. Within ten (10) days, the qualified employer shall provide proof to the Department that it has cured the deficiency or it shall automatically lose status as a qualified employer and become subject to the provisions of the Administrative Workers' Compensation Act. An employer that has lost status as a qualified employer may reapply for such status.
E. The Commissioner Department may designate an information collection agent, implement an electronic reporting and public information access program, and adopt rules as necessary to implement the information collection requirements of this section.

F. The Commissioner may prescribe rules and forms to be used for the qualified employer notification and shall require the A qualified employer to shall provide its the Department with:

1. Its name, address, contact person and phone number, federal tax identification number, number of persons employed in this state as of a specified date;

2. The name, title, address and telephone number of the person to contact for claim administration contact information; and

3. A listing of all covered business locations in the state.

The Commissioner Department shall notify the Commissioner Workers' Compensation Commission and the Department of Labor of all qualified-employer notifications. The Department of Labor shall provide such notifications to other governmental agencies as it deems necessary.

G. The Commissioner may contract with the Oklahoma Employment Security Commission, the State Treasurer or the Department of Labor for assistance in collecting the notification required under this section or otherwise fulfilling the Commissioner's responsibilities under this act. Such agencies shall cooperate with the Commissioner in enforcing the provisions of this section.
H. A qualified employer shall notify each of its employees in the manner provided in this section that it is a qualified employer, that it does not carry workers' compensation insurance coverage and that such coverage has terminated or been cancelled.

I. The qualified employer shall provide written notification to covered employees as required by this section that it does not carry workers' compensation coverage at the time the covered employee is hired or at least five (5) days before the effective time of designation as a qualified employer the benefit plan, as applicable. The notice shall contain the name, title, address and telephone number of the person to contact for claim administration. A qualified employer shall post the employee notification required by this section at conspicuous locations at the qualified employer's places of business as necessary to provide reasonable notice to all covered employees. The Commissioner Department may adopt rules relating to the form, content, and method of delivery of the employee notification required by this section.

H. Two or more employers who are members of a controlled group may apply to the Department for approval as a single qualified employer and be listed on a single qualified employer certificate. The first member of the controlled group shall pay to the Department an annual nonrefundable fee as required by paragraph 3 of subsection A of this section. Each additional participating member of the controlled group shall:
1. If the controlled group is fully insured, pay to the Department an annual nonrefundable fee of Two Hundred Fifty Dollars ($250.00) on the date of filing written notice of election and every year thereafter; or

2. If the controlled group is self-insured, pay to the Department an annual nonrefundable fee of Seven Hundred Fifty Dollars ($750.00) on the date of filing written notice of election and every year thereafter.

SECTION 9. AMENDATORY Section 110, Chapter 208, O.S.L. 2013, as amended by Section 4, Chapter 390, O.S.L. 2015 (85A O.S. Supp. 2015, Section 203), is amended to read as follows:

Section 203. A. An employer voluntarily electing to become a qualified employer shall adopt a written benefit plan that complies with the requirements of this section. Qualified employer status is optional for eligible employers. The benefit plan shall not become effective until the date that the qualified employer first satisfies the notice requirements in Section 202 of this title.

B. The benefit plan shall provide for payment of the same forms of benefits included in the Administrative Workers' Compensation Act for temporary total disability, temporary partial disability, permanent partial disability, vocational rehabilitation, permanent total disability, disfigurement, amputation or permanent total loss of use of a scheduled member, death and medical benefits as a result of an occupational compensable injury, on a no-fault basis, with the
same statute of limitations, notice of injury reporting, and with
dollar, percentage, and duration limits that are at least equal to
or greater than the dollar, percentage, and duration limits
contained in Sections 45, 46 and 47 of this title. For this
purpose, the standards for determination of average weekly wage,
death beneficiaries, and disability under the Administrative
Workers' Compensation Act shall apply under the Oklahoma Employee
Injury Benefit Act; but no such Act. Benefit plans shall not be
subject to other provision requirements of the Administrative
Workers' Compensation Act defining covered injuries, medical
management, dispute resolution or other process, funding, notices or
penalties shall apply or otherwise be controlling under the Oklahoma
Employee Injury Benefit Act, unless expressly incorporated.

C. The benefit plan may provide for lump-sum payouts that are,
as reasonably determined by the administrator of such plan appointed
by the qualified employer, actuarially equivalent to expected future
payments. The benefit plan may also provide for settlement
agreements; provided, however, any settlement agreement by a covered
employee shall be voluntary, entered into not earlier than the tenth
business day after the date of the initial report of injury, and
signed after the covered employee has received a medical evaluation
from a nonemergency care doctor, with any waiver of rights being
conspicuous and on the face of the agreement. The benefit plan
shall pay benefits without regard to whether the covered employee,
the qualified employer, or a third party caused the occupational
injury; and provided further, that the benefit plan shall provide
eligibility to participate in and provide the same forms and levels
of benefits to all Oklahoma employees of the qualified employer.
The Administrative Workers' Compensation Act shall not define,
restrict, expand or otherwise apply to a benefit plan. Regardless
of whether such provisions are incorporated into a benefit plan,
qualified employers and their covered employees shall be subject to
the provisions of the Administrative Workers' Compensation Act
related to:

1. Compensable injury, as defined pursuant to paragraph 9 of
Section 2 of this title;

2. Course and scope of employment, as defined pursuant to
paragraph 13 of Section 2 of this title;

3. Fraud, pursuant to Section 6 of this title;

4. Discrimination or retaliation, pursuant to Section 7 of this
title;

5. Liability other than immediate employer, pursuant to Section
36 of this title; and

6. Failure to appear for scheduled appointments, pursuant to
Section 57 of this title.

D. A qualified employer shall not charge any fee or cost to
an employee related to a qualified employer's benefit plan.
E. The qualified employer shall provide to the Commissioner and covered employees notice of the name, title, address, and telephone number for the person to contact for injury benefit claims administration, whether in-house at the qualified employer or a third-party administrator.

F. Information submitted to the Commissioner Department as part of the application for approval as a qualified employer, to confirm eligibility for continuing status as a qualified employer, or as otherwise required by the Oklahoma Employee Injury Benefit Act may not be made public by the Commissioner or by an agent or employee of the Commissioner Department without the written consent of the applicant or qualified employer, as applicable, except that:

1. The information may be discoverable by a party in a civil action or contested case to which the employer that submitted the information is a party, upon a showing by the party seeking to discover the information that:

a. the information sought is relevant to and necessary for the furtherance of the action or case,

b. the information sought is unavailable from other non-confidential sources, and

c. a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the Commissioner Department; and
2. The Commissioner Department may disclose the information to a public officer having jurisdiction over the regulation of insurance in another state if:

   a. the public officer agrees in writing to maintain the confidentiality of the information, and

   b. the laws of the state in which the public officer serves require the information to be kept confidential; and

3. A qualified employer's benefit plan and employee notice shall be open to the public.

F. A qualified employer's insurance coverage pertains only to covered employees in this state. An employer with employees in other states shall obtain insurance coverage in compliance with the laws of that state; provided:

1. A qualified employer's benefit plan and insurance coverage may apply to an employee who is employed outside of this state on temporary assignment;

2. A qualified employer's insurance policy may include an endorsement that provides coverage for employees working in other states in compliance with the laws of such states; and

3. If an employee is not principally employed in this state but is injured in this state, the employee shall be subject to the provisions of the Act under this title under which the employer provides coverage.
SECTION 10. AMENDATORY Section 111, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 204), is amended to read as follows:

Section 204. A. A qualified employer may self-fund or insure benefits payable under the benefit plan, employers' liability under this act, and any other insurable risk related to its status as a qualified employer with any insurance carrier authorized to do business in this state.

B. Insurance coverage or surety bond obtained by a qualified employer shall be from an admitted or surplus lines insurer with an AM Best Rating of B+ or better. The Insurance Department has no duty to approve insurance rates charged for this coverage. A qualified employer shall secure compensation to covered employees in one of the following ways:

1. Obtaining accidental insurance coverage in an amount equal to the compensation obligation;

2. Furnishing satisfactory proof to the Commissioner of the employer's financial ability to pay the compensation. The Commissioner, under rules adopted by the Insurance Department or the Commissioner for an individual self-insured employer, the Department shall require an 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 Commissioner Department securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the Commissioner Department 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,

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 Commissioner Department 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; or

3. Any other security as may be approved by the Commissioner Department.
C. The Commissioner Department 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 section shall contain such terms as may be prescribed by the Commissioner Department and shall be issued for the benefit of the state by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

D. An employer who does not fulfill the requirements of this section is not relieved of the obligation for compensation to a covered employee. The security required under this section, including any interest thereon, shall be maintained by the Commissioner Department 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.

E. Any bond shall be filed and held by the Commissioner Department and shall be for the exclusive benefit of any covered employee of a qualified employer.

F. Any security held by the Commissioner Department may be used to make a payment to or on behalf of a covered employee provided the following requirements are met:

1. The covered employee sustained an occupational injury that is covered by the qualified employer’s benefit plan;
2. The covered employee's claim for payment of a specific medical or wage replacement benefit amount has been accepted by the plan administrator of the benefit plan or acknowledged in a final judgment or court order assessing a specific dollar figure for benefits payable under the benefit plan;

3. The covered employee is unable to receive payment from the benefit plan or collect on such judgment or court order because the qualified employer has filed for bankruptcy or the benefit plan has become insolvent; and

4. The covered employee is listed as an unsecured creditor of the qualified employer because of the acceptance of such claim by the plan administrator of the benefit plan or judgment or court order assessing a specific dollar figure for benefits payable under the benefit plan.

G. The Commissioner Department shall promulgate rules to carry out the provisions of this section including those establishing the procedure by which a covered employee may request and receive payment from the security held by the Commissioner Department.

H. The benefit plan may provide some level of benefits for sickness, injury or death not due to an occupational injury.

I. A qualified employer shall hold harmless any insurance agent or broker who sold the employer a benefits program compliant with the Oklahoma Employee Injury Benefit Act if the qualified employer
is sued in district court for an injury arising in the course and scope of employment.

SECTION 11. AMENDATORY Section 112, Chapter 208, O.S.L. 2013, as amended by Section 5, Chapter 390, O.S.L. 2015 (85A O.S. Supp. 2015, Section 205), is amended to read as follows:

Section 205. A. There are established within the Office of the State Treasurer two separate funds:

1. The Oklahoma Option Insured Guaranty Fund; and
2. The Oklahoma Option Self-insured Guaranty Fund.

B. The funds established pursuant to subsection A of this section shall be for the purpose of continuation of benefits under this act for covered claims that are due and unpaid or interrupted due to the inability of the insurer or sponsor of a self-insured plan, as applicable, to meet its compensation obligations because its financial resources, security deposit, guaranty agreements, surety agreements and excess insurance are either inadequate or not immediately accessible for the payment of benefits. Monies in such funds, including interest, are not subject to appropriation and shall be expended to compensate employees for eligible benefits for a compensable injury under this act, pay outstanding workers' compensation obligations of the impaired insurer, and for all claims for related administrative fees, operating costs, attorney fees, and other costs reasonably incurred by the Oklahoma Property and Casualty Guaranty Association in the performance of its duties under
this act. Expenditures from such funds shall be made on warrants
issued by the State Treasurer against claims as prescribed by law.
Such funds shall be subject to audit the same as state funds and
accounts, the cost for which shall be paid for from the funds. A
"covered claim" has the meaning given to it pursuant to paragraph 7
of Section 2004 of Title 36 of the Oklahoma Statutes.

C. The funds established under this section shall be
administered, disbursed, and invested under the direction of the
Oklahoma Property and Casualty Insurance Guaranty Association
established by Section 2005 of Title 36 of the Oklahoma Statutes.

D. The funds established under this section shall be funded
from the following sources:

1. Insured Guaranty Fund:

Until the Insured Guaranty Fund contains Two Million Dollars
($2,000,000.00) or if the amount in the fund falls below One Million
Dollars ($1,000,000.00), each insurer shall be assessed a fee equal
to two percent (2%) of all gross direct premiums written during each
quarter of the calendar year for insurance covering a benefit plan
under this act 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. The assessment shall be paid to the
Insured Guaranty Fund, care of the Commission, no later than the
fifteenth day of the month following the close of each quarter of
the calendar year in which the gross direct premium is collected or collectible. No insurer may be assessed in any year an amount greater than two percent (2%) of the net direct written premiums of that insurer or one percent (1%) of that surplus of the insurer as regards policyholders for the calendar year preceding the assessment on the kinds of insurance in the account, whichever is less; and

2. Self-insured Guaranty Fund:

   Until the Self-insured Guaranty Fund contains One Million Dollars ($1,000,000.00) or if the amount in the fund falls below Seven Hundred Fifty Thousand Dollars ($750,000.00), each self-insurer shall be assessed a fee at the rate of one percent (1%) of the total compensation for permanent partial disability awards paid out during each quarter of the calendar year by the employers. The fee shall be paid to the Self-insured Guaranty Fund, care of the Commission, no later than the fifteenth day of the month following the close of each quarter of the calendar year. The fee shall be determined using a rate equal to the proportion that the deficiency in the fund attributable to self-insurers bears to the actual paid losses of all self-insurers for the preceding calendar year. Each self-insurer shall provide the Commission with the information necessary to determine the amount of the fee to be assessed.

E. The Guaranty Association shall create a separate account for each fund which may not be commingled with any other account managed by the Guaranty Association.
F. On determination by the Commissioner Department that a self-insurer has become an impaired insurer, the Commissioner Department shall release the security required by paragraph 2 of subsection B of Section 111 of this act title and advise the Guaranty Association of the impairment. Claims administration, including processing, investigating and paying valid claims against an impaired self-insurer under this act, may include payment by the surety that issued the surety bond or be under a contract between the Commissioner Department and an insurance carrier, appropriate state governmental entity or an approved service organization.

G. The Guaranty Association shall be a party in interest in all proceedings involving any claims for benefits under this act with respect to an impaired insurer and shall have all rights of subrogation of the impaired insurer. In those proceedings, the Guaranty Association may assume and exercise all rights and defenses of the impaired insurer, including, but not limited to, the right to:

1. Appear, defend and appeal claims;
2. Receive notice of, investigate, adjust, compromise, settle and pay claims; and
3. Investigate, handle and contest claims.

H. The Guaranty Association may also:

1. Retain persons necessary to handle claims and perform other duties of the Guaranty Association;
2. Sue or be sued;
3. Negotiate and become a party to such contracts as are necessary to carry out the purposes of this act; and
4. Exercise any other powers necessary to perform its duties under this act.

I. No monies deposited to the funds shall be subject to any deduction, tax, levy or any other type of assessment.

J. An impaired self-insurer shall be exempt from assessments until it is no longer impaired.

K. Unless provided otherwise in this act, all fines and penalties assessed under this act shall be paid to the Commission for deposit into the funds established in this section in equal amounts.

SECTION 12. AMENDATORY Section 113, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 206), is amended to read as follows:

Section 206. A. In addition to the premium or surplus lines taxes collected from carriers, the carriers shall pay annually to the Workers' Compensation Commission a fee, at the rate to be determined as provided in Section 115 of this title but not to exceed three percent (3%), on all written premiums resulting from the writing of insurance under this act on risks within the state.

B. The fee required pursuant to subsection A of this section shall be collected by the Workers' Compensation Commission from the
carriers at the same time and in the same manner as insurance
premium taxes under Title 36 of the Oklahoma Statutes and deposited
into the Oklahoma Option Insured Guaranty Fund.

C. 1. Assessments on which premium taxes are based shall be
made on forms prescribed by the Commission and shall be paid to the
Commission.

2. Absent a waiver obtained from the Commission for good cause,
the failure of the carrier to pay the assessment when due shall be
referred to the Commissioner Department for appropriate
administrative action against the Oklahoma certificate of authority
of the delinquent insurer.

D. Payments shall be made by check payable to the Commission.

SECTION 13. AMENDATORY Section 118, Chapter 208, O.S.L.
2013, as amended by Section 6, Chapter 390, O.S.L. 2015 (85A O.S.
Supp. 2015, Section 211), is amended to read as follows:

Section 211. A. If a qualified employer denies a claimant's
claim for benefits under this act the Employee Injury Benefit Act,
the qualified employer shall notify him or her in writing of the
decision or the need for additional information within fifteen (15)
days after receipt of the claim, subject to a reasonable extension
if the qualified employer requests additional information. Unless
otherwise provided by law, the adverse benefit determination letter
shall contain an explanation of why the claim was denied, including
the benefit plan provision or provisions that were the basis for the
denial, and a detailed description of how to appeal the determination. The letter shall also inform the claimant of the right to testify at the hearing, produce witnesses in person or by written statement and submit expert reports. Additional claim procedures consistent with this section may be specified in the benefit plan.

B. The benefit plan Qualified employers and claimants shall provide be subject to the following minimum appeal rights:

1. The claimant may appeal in writing an initial adverse benefit determination to an appeals committee within one hundred eighty (180) days following his or her receipt of the adverse benefit determination. The appeals committee shall be heard by a committee consisting of at least three people, none of whom are employees of the qualified employer, that were not involved in the original adverse benefit determination or have any pecuniary interest in the outcome of the appeal. The appeals committee shall conduct a full and fair hearing including, but not limited to, the opportunity to present live testimony, witness statements, briefs, expert reports and oral argument on the merits. The appeals committee shall not give any deference to the claimant's initial adverse benefit determination in its review;

2. The appeals committee may request any additional information it deems necessary to make a decision, including having the claimant submit to a medical exam. The committee shall create a
comprehensive record of the hearing and maintain such record for no
less than two (2) years from the date the decision on appeal is
issued;

3. The committee shall notify the claimant in writing of its
decision, including an explanation of the decision and his or her
right to judicial review;

4. Subject to the need for a reasonable extension of time due
to matters beyond the control of the benefit plan, the appeals
committee shall review the determination and issue a decision no
later than forty-five (45) days from the date the notice of contest
is received. The committee shall provide written notice of its
decision to the claimant and the qualified employer. Such notice
shall include a detailed explanation of the decision, analysis of
evidence presented and instruction for seeking judicial review of
the decision. No legal action may be brought by or with respect to
a claimant to recover benefits under the benefit plan before the
foregoing claim procedures have been exhausted;

5. If any part of an adverse benefit determination is upheld by
the committee, the 4. The qualified employer or claimant may then
file appeal the decision of the appeals committee by filing a
petition for review with the Commission within one (1) year after
the date the claimant receives notice that of the adverse benefit
determination, or part thereof, was upheld is received. The appeals
committee shall provide the record of the hearing to the Commission.
within seven (7) days of notice from the Commission. If the Commission determines in its sole discretion that the record is deficient, it shall provide written notice to the appeals committee of the defect or defects, after which the committee shall have three (3) days to submit a cured record. If the record is not cured, the administrative law judge shall presume that the defect or defects are unfavorable to the qualified employer. The Commission shall appoint an administrative law judge to hear any appeal of an adverse benefit determination as a trial de novo. The Commission shall prescribe additional rules governing the authority and responsibility of the parties, the administrative law judge and the Commission during the appeal processes. The administrative law judge and Commission shall act as the court of competent jurisdiction under 29 U.S.C.A. Section 1132(e)(1), and shall possess adjudicative authority to render decisions in individual proceedings by claimants to recover benefits due to the claimant or employers under the terms of the claimant's applicable plan, including the authority to award or deny benefits and otherwise enforce the claimant's rights under the terms of the benefit plan, or to clarify the claimant's rights to future benefits under the terms of the plan;

6. 5. The Commission administrative law judge shall rely on the record established by the internal appeal process and use an objective standard of review that is not arbitrary or capricious the
claim de novo. Any party aggrieved by the judgment, decision, or award made by an administrative law judge may, within ten (10) days of issuance, appeal to the Commission. After hearing, the Commission may reverse or modify the decision of the administrative law judge only if it determines that the decision was against the clear weight of evidence or contrary to law. All such proceedings of the Commission shall be recorded by a court reporter. Any judgment of the Commission which reverses a decision of the administrative law judge shall contain specific findings relating to the reversal. Any award by the administrative law judge or Commission shall be limited to benefits payable under the terms of the benefit plan and, to the extent provided herein, attorney fees and costs; and

⇒ 6. If the claimant appeals to the Commission and any part of the adverse benefit determination is upheld, he or she may appeal to the Oklahoma Supreme Court. 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, decision or award only if it was:

a. in violation of constitutional provisions,
b. in excess of the statutory authority or jurisdiction of the Commission,
c. made on unlawful procedure,
d. affected by other error of law,
e. clearly erroneous in view of the reliable, material, probative and substantial competent evidence,
f. arbitrary or capricious,
g. procured by fraud, or
h. missing findings of fact on issues essential to the decision.

Such 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 a petition which shall specify why the judgment, decision or award is erroneous or illegal.

The Supreme Court shall require the appealing party to file within forty-five (45) days from the date of the filing of an appeal 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 comparable civil actions cognizable in the Supreme Court.
C. If any of the provisions in paragraphs 5 through 7 of subsection B of this section are determined to be unconstitutional or otherwise unenforceable by the final nonappealable ruling of a court of competent jurisdiction, then the following minimal appeal procedures will go into effect:

1. The appeal shall be heard by a committee consisting of at least three people that were not involved in the original adverse benefit determination. The appeals committee shall not give any deference to the claimant’s initial adverse benefit determination in its review;

2. The committee may request any additional information it deems necessary to make a decision, including having the claimant submit to a medical exam;

3. The committee shall notify the claimant in writing of its decision, including an explanation of the decision and his or her right to judicial review;

4. The committee shall review the determination and issue a decision no later than forty-five (45) days from the date the notice of contest is received;

5. If any part of an adverse benefit determination is upheld by the committee, the claimant may then file a petition for review in a proper state district court; and
6. The district court shall rely on the record established by the internal appeal process and use a deferential standard of review.

D. The provisions of this section shall apply to the extent not inconsistent with or preempted by any other applicable law or rule.

E. All intentional tort or other employers' liability claims may proceed through the appropriate state courts of Oklahoma, mediation, arbitration, or any other form of alternative dispute resolution or settlement process available by law.

A fee of One Hundred Dollars ($100.00) per appeal to the Supreme Court shall be paid by the party filing the appeal to the Commission and deposited to the credit of the Workers' Compensation Fund as costs for preparing, assembling, indexing and transmitting the record for appellate review. 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.

SECTION 14. This act shall become effective in accordance with the provisions of Section 58 of Article V of the Oklahoma Constitution."
Passed the Senate the 20th day of April, 2016.

______________________________
Presiding Officer of the Senate

Passed the House of Representatives the ___ day of ________, 2016.

______________________________
Presiding Officer of the House of Representatives
ENGROSSED HOUSE BILL NO. 2205

By: Echols of the House and

Sykes of the Senate

[ workers' compensation - Administrative Workers'
Compensation Act - clarifying language - effective
date ]

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

SECTION 1. AMENDATORY Section 29, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 29), is amended to read as follows:

Section 29. A. Each carrier writing compensation insurance in this state shall pay to the Commission at the time of securing or renewing a license to transact business in this state an annual 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 fee of One Thousand Dollars ($1,000.00) at the time it is approved to self-insure the obligations under this act the Administrative Workers' Compensation Act.
C. The Commission may assess third-party administrators an annual fee of One Thousand Dollars ($1,000.00).

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

SECTION 2. AMENDATORY Section 65, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, 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
1. Occupational disease, the compensation payable shall be reduced and
2. limited to the proportion only of the compensation that would be
3. payable if the occupational disease were the major cause of the
4. disability or death as the occupational disease, as a causative
5. factor, bears to all the causes of the disability or death.

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

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

2. No compensation shall be payable for any contagious or
3. infectious disease unless contracted in the course and scope of
4. employment in or immediately connected with a hospital or sanatorium
5. in which persons suffering from that disease are cared for or
6. treated.

3. No compensation shall be payable for any ordinary disease of
4. 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 are characteristic thereof and peculiar to the trade, occupation, process, or employment 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

c. 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 3. AMENDATORY Section 96, Chapter 208, O.S.L.
2013, as amended by Section 2, Chapter 169, O.S.L. 2014 (85A O.S.
Supp. 2014, Section 96), is amended to read as follows:

Section 96. A. The Self-insurance Guaranty Fund shall be
administered, supervised and protected by the Self-insurance
Guaranty Fund Board. All self-insurers under the Administrative
Workers' Compensation Act and all self-insured qualified employers
under the Oklahoma Employee Injury Benefit Act shall participate in
the fund as a condition of authority to self-insure in this state,
except public employers that self-insure pursuant to Section 107 of
this title.
B. 1. The Self-insurance Guaranty Fund Board shall consist of five (5) members to be appointed as follows:
   a. the Governor shall appoint two members, one of whom shall represent an approved group self-insurance association authorized to self-insure pursuant to Section 38 or Section 102 of this title,
   b. the President Pro Tempore of the Senate shall appoint one member who shall be an attorney licensed in this state who is engaged in the primary practice of workers' compensation law,
   c. the Speaker of the House of Representatives shall appoint one member who represents a private self-insurer, and
   d. the Chair of the Oklahoma Workers' Compensation Commission shall appoint one member who shall be a licensed claims adjuster affiliated with either a private self-insurer or an approved group self-insurance association.

2. Members of the Workers' Compensation Self-insurance Guaranty Fund Board serving on January 31, 2014, shall constitute the initial appointees to the Self-insurance Guaranty Fund Board created pursuant to this section, with terms extended an additional two (2) years beyond their original, respective expiration dates.
3. In the event of a vacancy, the appointing authority for the position shall appoint a qualified successor to serve as the appointee for the unexpired term of the member so replaced. The term of office for the appointees shall be as follows:

   a. the term of office for three positions, one each appointed by the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives, shall expire on November 1, 2016, and
   b. the term of office for two positions, one each appointed by the Governor and the Chair of the Commission, shall expire on November 1, 2015.

   Thereafter, successor members shall be appointed for a three-year term. Members may serve successive terms. Any person appointed to fill a vacancy shall be appointed for the unexpired portion of the term in the same manner as the original appointment.

4. The chair and vice-chair of the Board shall be elected by the Board from among its members.

5. Members of the Board shall not receive compensation for serving on the Board but shall be reimbursed from monies in the fund for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

   C. Meetings of the Board shall be held at least quarterly. The presence of a majority of the members constitutes a quorum. No
action shall be taken by the Board without the affirmative vote of
at least a majority of the members.

D. The Office of the Attorney General shall provide legal
counsel to assist the Board in the performance of its duties.

E. No member or personnel of the Self-insurance Guaranty Fund
Board, the Workers' Compensation commissioners or any employee of
the Workers' Compensation Commission shall be liable in a civil
proceeding for any act performed in good faith in the execution of
that person's powers or duties pursuant to Sections 96 through 100
of the Administrative Workers' Compensation Act this title.

SECTION 4. AMENDATORY Section 97, Chapter 208, O.S.L.
2013, as amended by Section 3, Chapter 169, O.S.L. 2014 (85A O.S.
Supp. 2014, Section 97), is amended to read as follows:

Section 97. The Self-insurance Guaranty Fund shall be for the
purpose of continuation of workers' compensation benefits or
compensation pursuant to a written benefit plan as provided in
Section 203 of this title due and unpaid or interrupted due to the
inability of a self-insurer to meet its compensation obligations
because its financial resources, security deposit, guaranty
agreements, surety agreements and excess insurance are either
inadequate or not immediately accessible for the payment of
benefits. Monies in the fund, including interest, are not subject
to appropriation hereby appropriated, but shall not be transferred
by the Legislature from this fund to any other fund in the State.
Treasury, and shall be expended to compensate employees for eligible benefits for a compensable injury under the Administrative Workers' Compensation Act or the Oklahoma Employee Injury Benefit Act, pay outstanding workers' compensation or benefit plan obligations of the impaired self-insurer, and for all claims for related administrative fees, operating costs of the Self-insurance Guaranty Fund Board, attorney fees, and other costs reasonably incurred by the Board in the performance of its duties. Expenditures from the fund shall be made on warrants issued by the State Treasurer against claims as prescribed by law. The fund shall be subject to audit in the same manner as state funds and accounts, the cost for which shall be paid for from the fund.

SECTION 5. AMENDATORY Section 98, Chapter 208, O.S.L. 2013, as amended by Section 4, Chapter 169, O.S.L. 2014 (85A O.S. Supp. 2014, Section 98), is amended to read as follows:

Section 98. The Self-insurance Guaranty Fund shall be derived from the following sources:

1. Any unexpended funds, including interest thereon, held by the State Treasurer in the Workers' Compensation Self-insurance Guaranty Fund transferred to the Self-insurance Guaranty Fund as provided in Section 124 of this title;

2. Until the Self-insurance Guaranty Fund contains Two Million Dollars ($2,000,000.00) or in Any unexpended funds, including interest thereon, held by the State Treasurer in the Oklahoma Option
Insured Guaranty Fund and the Oklahoma Option Self-insured Guaranty Fund transferred to the Self-insurance Guaranty Fund as provided in Section 205 of this title;

3. In the event the amount in the fund falls below One Million Dollars ($1,000,000.00), an assessment levied against each private self-insurer and group self-insurance association based on an assessment rate to be determined by the commissioners, not exceeding one percent (1%) of actual paid losses of the self-insurer during the preceding calendar year, payable to the Tax Commission for deposit to the fund. The assessment levied against private self-insurers shall be determined using a rate equal to the proportion that the deficiency in the fund attributable to private self-insurers bears to the actual paid losses of all private self-insurers for the year period of January 1 through December 31 preceding the assessment. The assessment levied against group self-insurance associations shall be determined using a rate equal to the proportion that the deficiency in excess of the surplus of the Group Self-insurance Association Guaranty Fund at the date of the transfer attributable to group self-insurance associations bears to the actual paid losses of all group self-insurance associations cumulatively for any calendar year preceding the assessment. Each self-insurer shall provide the Workers' Compensation Commission with such information as the Commission may determine is necessary to effectuate the purposes of this paragraph. For purposes of this
paragraph, "actual paid losses" means all medical and indemnity payments, including temporary disability, permanent disability, and death benefits, and excluding loss adjustment expenses and reserves.

a. The assessment shall be paid within thirty (30) calendar days after the date the commissioners notify the self-insurer of the assessment.

b. A private employer or group self-insurance association which ceases to be a self-insurer shall remain liable for any and all assessments of the self-insurer as provided in this paragraph based on actual paid losses for the calendar year period preceding the assessment.

c. Failure of a self-insurer to pay, or timely pay, an assessment required by this paragraph, or to report payment of the same to the Commission within ten (10) days of payment, shall be grounds for revocation by the Commission of the self-insurer's permit to self-insure in this state, after notice and hearing. A former self-insurer failing to make payments required by this paragraph promptly and correctly, or failing to report payment of the same to the Commission within ten (10) days of payment, shall be subject to administrative penalties as allowed by law, including but not limited to, a fine in the amount of Five Hundred Dollars ($500.00) or an amount equal to one
percent (1%) of the unpaid amount, whichever is
greater, to be paid and deposited to the credit of the
Workers' Compensation Fund created in Section 28 of
this title. It shall be the duty of the Tax
Commission to collect the assessment provided for in
this paragraph. The Tax Commission is authorized to
bring an action for recovery of any delinquent or
unpaid assessments, and may enforce payment of the
assessment by proceeding in accordance with Section 79
of this title.

d. An impaired self-insurer shall be exempt from
assessments beginning on the date of the Commission's
designation until the Commission determines the self-
insurer is no longer impaired.

e. The Tax Commission shall determine the fund balance as
of March 1 and September 1 of each year, and when
otherwise requested by the Workers' Compensation
Commission, and shall advise the Workers' Compensation
Commission in writing within thirty (30) days of each
such determination; and

Any interest accruing on monies paid into the fund.

SECTION 6. AMENDATORY Section 110, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2014, Section 203), is amended to read as
follows:

TEGR. H. B. NO. 2205
Section 203.  A. An employer voluntarily electing to become a qualified employer shall adopt a written benefit plan that complies with the requirements of this section. Qualified-employer status is optional for eligible employers. The benefit plan shall not become effective until the date that the qualified employer first satisfies the approval and notice requirements in this section and Section 202 of this act title.

B. The benefit plan shall provide for payment of the same forms of benefits included in the Administrative Workers' Compensation Act for temporary total disability, temporary partial disability, permanent partial disability, vocational rehabilitation, permanent total disability, disfigurement, amputation or permanent total loss of use of a scheduled member, death and medical benefits as a result of an occupational injury, on a no-fault basis, with the same statute of limitations, and with dollar, percentage, and duration limits that are at least equal to or greater than the dollar, percentage, and duration limits contained in Sections 45, 46 and 47 of this act title. For this purpose, the standards for determination definitions of average weekly wage, death beneficiaries, and disability under the Administrative Workers' Compensation Act shall apply under the Oklahoma Employee Injury Benefit Act; but no other provision of the Administrative Workers' Compensation Act defining covered injuries, medical management, dispute resolution or other process, funding, notices or penalties
shall apply or otherwise be controlling under the Oklahoma Employee Injury Benefit Act, unless expressly incorporated.

C. The benefit plan may provide for lump-sum payouts that are, as reasonably determined by the administrator of such plan appointed by the qualified employer, actuarially equivalent to expected future payments. The benefit plan may also provide for settlement agreements; provided, however, any settlement agreement by a covered employee shall be voluntary, entered into not earlier than the tenth business day after the date of the initial report of injury, and signed after the covered employee has received a medical evaluation from a nonemergency care doctor, with any waiver of rights being conspicuous and on the face of the agreement. The benefit plan shall pay benefits without regard to whether the covered employee, the qualified employer, or a third party caused the occupational injury; and provided further, that the benefit plan shall provide eligibility to participate in and provide the same forms and levels of benefits to all Oklahoma employees of the qualified employer.

The Except as otherwise provided in the Oklahoma Employee Injury Benefit Act, the Administrative Workers' Compensation Act shall not define, restrict, expand or otherwise apply to a benefit plan.

D. No fee or cost to an employee shall apply to a qualified employer's benefit plan.

E. The qualified employer shall provide to the Commissioner and covered employees notice of the name, title, address, and telephone
number for the person to contact for injury benefit claims administration, whether in-house at the qualified employer, with an insurer, or a third-party administrator.

F. Information submitted to the Commissioner as part of the application for approval as a qualified employer, to confirm eligibility for continuing status as a qualified employer, or as otherwise required by the Oklahoma Employee Injury Benefit Act may not be made public by the Commissioner or by an agent or employee of the Commissioner without the written consent of the applicant, except that:

1. The information may be discoverable by a party in a civil action or contested case to which the employer that submitted the information is a party, upon a showing by the party seeking to discover the information that:

   a. the information sought is relevant to and necessary for the furtherance of the action or case,

   b. the information sought is unavailable for other nonconfidential sources, and

   c. a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the Commissioners; and

2. The Commissioner may disclose the information to a public officer having jurisdiction over the regulation of insurance in another state if:
a. the public officer agrees in writing to maintain the confidentiality of the information, and

b. the laws of the state in which the public officer serves require the information to be kept confidential.

G. In addition to satisfying the notice and benefit plan requirements of the Oklahoma Employee Injury Benefit Act, no employer may be a qualified employer until approved by the Commissioner. The Commissioner shall promulgate rules to carry out the provisions of this section including those establishing the procedure and the information to be submitted by a qualified employer in an application for approval as a qualified employer.

H. A qualified employer's insurance coverage pertains to Oklahoma covered employees only, and employers with employees working in states other than Oklahoma shall arrange separate insurance coverage in compliance with such states' laws; provided:

1. A qualified employer's benefit plan and insurance coverage may apply to an employee who is employed outside Oklahoma on temporary assignment;

2. A qualified employer's insurance policy may include an endorsement that provides coverage for employees working in states other than Oklahoma in compliance with such states' laws; and

3. For an employee who is not principally employed in Oklahoma, but is injured in Oklahoma:
a. if the employer carries workers' compensation coverage or coverage pursuant to the Oklahoma Employee Injury Benefit Act in Oklahoma, that coverage applies, and

b. if the employer does not carry workers' compensation coverage or coverage pursuant to the Oklahoma Employee Injury Benefit Act in Oklahoma, workers' compensation benefits apply.

I. Two or more employers who are members of a controlled group may apply to the Insurance Commissioner for approval as a single qualified employer and be listed on a single qualified employer certificate. Such qualified employers shall pay the Commissioner the fee specified in subsection B of Section 202 of this title; provided, however, in the case of a self-insured controlled group, the fee required by subsection B of Section 202 of this title is applicable to the first member of a controlled group and a fee of Two Hundred Fifty Dollars ($250.00) for each additional participating member of the controlled group is due on the date of filing written notice of election and every year thereafter.

SECTION 7. AMENDATORY Section 111, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 204), is amended to read as follows:

Section 204. A. A qualified employer may self-fund or insure benefits payable under the benefit plan, employers' liability under this act, the Oklahoma Employee Injury Benefit Act, and any other
insurable risk related to its status as a qualified employer with any insurance carrier authorized to do business in this state.

B. Insurance coverage or surety bond obtained by a qualified employer shall be from an admitted either a licensed insurer or a surplus lines insurer with an AM Best Rating of B+ or better. The Insurance Department has no duty to approve insurance rates charged for this coverage. A qualified employer shall secure compensation to covered employees in one of the following ways:

1. Obtaining accidental insurance coverage in an amount equal to the compensation obligation;

2. Furnishing satisfactory proof to the Commissioner of the employer's financial ability to pay the compensation. The Commissioner, under rules adopted by the Insurance Department or the Commissioner for an individual self-insured employer, shall require an 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 Commissioner securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the Commissioner 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 the Oklahoma Employee Injury Benefit Act,

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 Commissioner 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 the Oklahoma Employee Injury Benefit Act; or

3. Any other security as may be approved by the Commissioner.

C. The Commissioner 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 the Oklahoma Employee Injury Benefit Act. Irrevocable letters of credit required by this section shall contain such terms as may be prescribed by the Commissioner and shall be issued for the benefit
of the state by a financial institution whose deposits are insured
by the Federal Deposit Insurance Corporation.

D. An employer who does not fulfill the requirements of this
section is not relieved of the obligation for compensation to a
covered employee. The security required under this section,
including any interest thereon, shall be maintained by the
Commissioner as provided in this act the Oklahoma Employee Injury
Benefit Act until each:

1. Each claim for benefits is paid, settled, or lapses under
this act pursuant to the Oklahoma Employee Injury Benefit Act, and
costs of administration of such claims are paid; or

2. The Commissioner has determined that the self-insured
qualified employer is impaired, advised the Self-insurance Guaranty
Fund Board of the impairment, and released the balance of any
security required by this section to the Self-insurance Guaranty
Fund. Claims administration, including processing, investigating,
and paying valid claims against an impaired self-insured qualified
employer's benefit plan under the Oklahoma Employee Injury Benefit
Act may include claim upon the surety that issued any bond, a draw
upon the bank that issued any letter of credit, or liquidation or
other security.

E. Any bond Except as otherwise provided in this section, any
security shall be filed deposited with and held by the Commissioner
and shall be for the exclusive benefit of any covered employee of a
qualified employer. Any security deposited by a qualified employer, as required by this subsection, shall not be released without the signature of the Commissioner. Administration of deposited security shall be subject to the provisions of Article 17 of Title 36 of the Oklahoma Statutes.

F. Any security held released by the Commissioner to the Self-insurance Guaranty Fund may be used to make a payment to or on behalf of a covered employee provided the following requirements are met:

1. The covered employee sustained an occupational injury that is covered by the qualified employer's benefit plan;

2. The covered employee's claim for payment of a specific medical or wage replacement benefit amount has been accepted by the plan administrator of the benefit plan or acknowledged in a final judgment or court order assessing a specific dollar figure for benefits payable under the benefit plan;

3. The covered employee is unable to receive payment from the benefit plan or collect on such judgment or court order because the qualified employer has filed for bankruptcy or the benefit plan has become insolvent; and

4. The covered employee is listed as an unsecured creditor of the qualified employer because of the acceptance of such claim by the plan administrator of the benefit plan or judgment or court
order assessing a specific dollar figure for benefits payable under the benefit plan.

G. The Commissioner shall promulgate rules to carry out the provisions of this section including those establishing the procedure by which a covered employee may request and receive payment from the security held by the Commissioner to determine whether or not a qualified employer's program is self-insured pursuant to the Oklahoma Employee Injury Benefit Act.

H. The benefit plan may provide some level of benefits for sickness, injury or death not due to an occupational injury.

I. A qualified employer shall hold harmless any insurance agent or broker who sold the employer a benefits program compliant with the Oklahoma Employee Injury Benefit Act if the qualified employer is sued in district court for an injury arising in the course and scope of employment.

J. Except as provided in Section 203 of this title, documents, materials, financial reports, or other information in the possession or control of the Insurance Department that are obtained by or disclosed by the Commissioner or any other person in the course of an evaluation, examination, investigation, or review made pursuant to Section 202, 203 or 204 of this title shall be confidential by law and shall not be subject to discovery or admissible in evidence in any private civil action if obtained from the Commissioner or any employees of the Commissioner.
K. The provisions of Section 29 of this title shall not apply to self-insured qualified employers, third-party administrators in the handling of claims pursuant to the Oklahoma Employee Injury Benefit Act in Oklahoma, or to insurance coverage of qualified employers pursuant to the Oklahoma Employee Injury Benefit Act in Oklahoma.

L. No provision of the Administrative Workers' Compensation Act pertaining to the Multiple Injury Trust Fund is applicable to qualified employers under the Oklahoma Employee Injury Benefit Act or to insurance coverage of qualified employers under the Oklahoma Employee Injury Benefit Act.

SECTION 8. AMENDATORY Section 112, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 205), is amended to read as follows:

Section 205. A. There are established within the Office of the State Treasurer two separate funds:

1. The Oklahoma Option Insured Guaranty Fund and

2. The Oklahoma Option Self-insured Guaranty Fund are hereby abolished.

B. Any monies in the funds established abolished pursuant to subsection A of this section shall be for the purpose of continuation of benefits under this act for covered claims that are due and unpaid or interrupted due to the inability of the insurer or sponsor of a self-insured plan, as applicable, to meet its...
compensation obligations because its financial resources, security
deposit, guaranty agreements, surety agreements and excess insurance
are either inadequate or not immediately accessible for the payment
of benefits. Monies in such funds, including interest, are not
subject to appropriation and shall be expended to compensate
employees for eligible benefits for a compensable injury under this
act, pay outstanding workers' compensation obligations of the
impaired insurer, and for all claims for related administrative
fees, operating costs, attorney fees, and other costs reasonably
incurred by the Oklahoma Property and Casualty Guaranty Association
in the performance of its duties under this act. Expenditures from
such funds shall be made on warrants issued by the State Treasurer
against claims as prescribed by law. Such funds shall be subject to
audit the same as state funds and accounts, the cost for which shall
be paid for from the funds. A "covered claim" has the meaning given
to it pursuant to paragraph 7 of Section 2004 of Title 36 of the
Oklahoma Statutes.

C. The funds established under this section shall be
administered, disbursed, and invested under the direction of the
Oklahoma Property and Casualty Insurance Guaranty Association
established by Section 2005 of Title 36 of the Oklahoma Statutes.

D. The funds established under this section shall be funded
from the following sources:

1. Insured Guaranty Fund:
Until the Insured Guaranty Fund contains Two Million Dollars ($2,000,000.00) or if the amount in the fund falls below One Million Dollars ($1,000,000.00), each insurer shall be assessed a fee equal to two percent (2%) of all gross direct premiums written during each quarter of the calendar year for insurance covering a benefit plan under this act 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. The assessment shall be paid to the Insured Guaranty Fund, care of the Commission, no later than the fifteenth day of the month following the close of each quarter of the calendar year in which the gross direct premium is collected or collectible. No insurer may be assessed in any year an amount greater than two percent (2%) of the net direct written premiums of that insurer or one percent (1%) of that surplus of the insurer as regards policyholders for the calendar year preceding the assessment on the kinds of insurance in the account, whichever is less; and

2. Self-insured Guaranty Fund:

Until the Self-insured Guaranty Fund contains One Million Dollars ($1,000,000.00) or if the amount in the fund falls below Seven Hundred Fifty Thousand Dollars ($750,000.00), each self-insurer shall be assessed a fee at the rate of one percent (1%) of the total compensation for permanent partial disability awards paid out during each quarter of the calendar year by the employers. The
fee shall be paid to the Self-insured Guaranty Fund, care of the Commission, no later than the fifteenth day of the month following the close of each quarter of the calendar year. The fee shall be determined using a rate equal to the proportion that the deficiency in the fund attributable to self-insurers bears to the actual paid losses of all self-insurers for the preceding calendar year. Each self-insurer shall provide the Commission with the information necessary to determine the amount of the fee to be assessed.

E. The Guaranty Association shall create a separate account for each fund which may not be commingled with any other account managed by the Guaranty Association.

F. On determination by the Commission that a self-insurer has become an impaired insurer, the Commission shall release the security required by paragraph 2 of subsection B of Section 111 of this act and advise the Guaranty Association of the impairment. Claims administration, including processing, investigating and paying valid claims against an impaired self-insurer under this act, may include payment by the surety that issued the surety bond or be under a contract between the Commission and an insurance carrier, appropriate state governmental entity or an approved service organization.

G. The Guaranty Association shall be a party in interest in all proceedings involving any claims for benefits under this act with respect to an impaired insurer and shall have all rights of
subrogation of the impaired insurer. In those proceedings, the
Guaranty Association may assume and exercise all rights and defenses
of the impaired insurer, including, but not limited to, the right
to:

1. Appear, defend and appeal claims;
2. Receive notice of, investigate, adjust, compromise, settle
and pay claims; and
3. Investigate, handle and contest claims.

H. The Guaranty Association may also:

1. Retain persons necessary to handle claims and perform other
duties of the Guaranty Association;
2. Sue or be sued;
3. Negotiate and become a party to such contracts as are
necessary to carry out the purposes of this act; and
4. Exercise any other powers necessary to perform its duties
under this act.

I. No monies deposited to the funds shall be subject to any
deduction, tax, levy or any other type of assessment.

J. An impaired self-insurer shall be exempt from assessments
until it is no longer impaired.

K. Unless provided otherwise in this act, all fines and
penalties assessed under this act shall be paid to the Commission
for deposit into the funds established in this section in equal
amounts transferred to the Self-insurance Guaranty Fund.
C. Every self-insured qualified employer shall be subject to all provisions of Title 85A of the Oklahoma Statutes establishing and governing the operations of the Self-insurance Guaranty Fund. Assessments paid by self-insured, qualified employers into the Self-insurance Guaranty Fund shall be for the purpose of continuation of benefits under the Oklahoma Employee Injury Benefit Act for covered claims that are due and unpaid or interrupted due to the inability of the insurer or sponsor of a self-insured plan, as applicable, to meet its compensation obligations because its financial resources, security deposit, guaranty agreements, surety agreements and excess insurance are either inadequate or not immediately accessible for the payment of benefits. The Workers' Compensation Commission shall have the authority to promulgate rules to carry out the provisions of this section.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 206.1 of Title 85A unless there is created a duplication in numbering, reads as follows:

A. In the event that the insurer of benefit obligations of an insured qualified employer shall be a member of the Oklahoma Property and Casualty Insurance Guaranty Association and is determined by a court of competent jurisdiction to be an insolvent insurer pursuant to Articles 18 and 19 of Title 36 of the Oklahoma Statutes and a final order of liquidation is entered, the provisions of Article 20A of Title 36 of the Oklahoma Statutes, the Oklahoma
Property and Casualty Insurance Guaranty Association Act, shall become applicable for the purpose of continuation of benefits under the Oklahoma Employee Injury Benefit Act. For purposes of Article 20A of Title 36 of the Oklahoma Statutes, all net direct premiums written for insurance covering in whole or in part the benefit obligations of such an insured qualified employer under the Oklahoma Employee Injury Benefit Act shall be deemed to be workers' compensation insurance premiums.

B. In the event that the insurer of benefit obligations of an insured employer shall be a member insurer of the Oklahoma Life and Health Insurance Guaranty Association and is determined by a court of competent jurisdiction to be an insolvent insurer pursuant to Articles 18 and 19 of Title 36 of the Oklahoma Statutes and a final order of liquidation is entered, the provisions of Article 20B of Title 36 of the Oklahoma Statutes, the Oklahoma Life and Health Insurance Guaranty Association Act, shall become applicable for the purpose of continuation of benefits under the Oklahoma Employee Injury Benefit Act. For purposes of Article 20B of Title 36 of the Oklahoma Statutes, all premiums received on business in this state for insurance covering the benefit obligations of such an insured qualified employer under the Oklahoma Employee Injury Benefit Act shall be deemed to be life and health insurance premiums.

C. The Commissioner shall have the authority to promulgate rules to carry out the provisions of this section.
SECTION 10. AMENDATORY  

Section 118, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 211), is amended to read as follows:

Section 211. A. If an employer denies a claimant's claim for benefits under the Oklahoma Employee Injury Benefit Act, the employer shall notify him or her in writing of the decision or the need for additional information within fifteen (15) days after receipt of the claim. Unless otherwise provided by law, the adverse benefit determination letter shall contain an explanation of why the claim was denied, including the plan provisions that were the basis for the denial, and a detailed description of how to appeal the determination. Additional claim procedures consistent with this section may be specified in the benefit plan and by the Commission. References in this section to a decision on a claim for benefits by an employer shall include a decision on a claim for benefits by an insurance company or claims administrator on behalf of an employer.

B. The benefit plan shall provide the following minimum appeal rights:

1. The claimant may appeal in writing an initial adverse benefit determination to a final review officer or an appeals committee within one hundred eighty (180) days following his or her receipt of the adverse benefit determination. The appeal shall be heard by a final review officer or committee consisting of at least three people that were not involved in the original adverse benefit determination.
2. The final review officer or committee may request any additional information it deems necessary to make a decision, including having the claimant submit to a medical exam;

3. The final review officer or committee shall notify the claimant in writing of its decision, including an explanation of the decision and his or her right to judicial review;

4. Subject to the need for a reasonable extension of time due to matters beyond the control of the benefit plan, the final review officer or committee shall review the determination and issue a decision no later than forty-five (45) days from the date the notice of contest is received. No legal action may be brought by or with respect to a claimant to recover benefits under the benefit plan before the foregoing claim procedures have been exhausted;

5. If any part of an adverse benefit determination is upheld by the final review officer or committee, the claimant may then file a petition for review with the Commission sitting en banc within one (1) year after the date the claimant receives notice that the adverse benefit determination, or part thereof, was upheld. The Commission en banc shall appoint an administrative law judge to hear any appeal of an adverse benefit determination. The administrative law judge shall not give any deference to the qualified employer's determination. The appeals committee shall not give any deference to the claimant's initial adverse benefit determination in its review;
adverse benefit determination. The Commission shall prescribe additional rules governing the authority and responsibility of the parties, the administrative law judge and the Commission during these appeal processes, including, but not limited to, filing fees. The administrative law judge and Commission shall act as the court of competent jurisdiction under Oklahoma Law and 29 U.S.C.A. Section 1132(e)(1), and shall possess adjudicative authority to render decisions in individual proceedings by claimants to recover benefits due to the claimant under the terms of the claimant's employer's plan, to enforce the claimant's rights under the terms of the plan, or to clarify the claimant's rights to future benefits under the terms of the plan;

6. The Commission shall rely on the record established by the internal appeal process and use an objective standard of review that is not arbitrary or capricious. Any party aggrieved by the judgment, decision, or award made by an administrative law judge may, within ten (10) days of issuance, appeal to the Commission. After hearing arguments the Commission may reverse or modify the decision of the administrative law judge 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. Any judgment of the Commission which reverses a decision of the administrative law judge shall contain specific findings relating to the reversal. Any award by the administrative law judge
or Commission shall be limited to benefits payable under the terms of the benefit plan and, to the extent provided herein, attorney fees and costs; and

7. If the claimant appeals to the Commission and any part of the adverse benefit determination is upheld, he or she may appeal to the Oklahoma Supreme Court. 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:

a. in violation of constitutional provisions,
b. in excess of the statutory authority or jurisdiction of the Commission,
c. made on unlawful procedure,
d. affected by other error of law,
e. clearly erroneous in view of the reliable, material, probative and substantial competent evidence,
f. arbitrary or capricious,
g. procured by fraud, or
h. 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 a petition which shall specify why the judgment, decision or award is contrary to law within twenty (20) days of the decision being issued. The Supreme Court may modify, reverse, remand for rehearing, or set aside the decision only if the decision was contrary to law 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 claimant 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 comparable civil actions cognizable in the Supreme Court.

C. If any of the provisions in paragraphs 5 through 7 of subsection B of this section are determined to be unconstitutional or otherwise unenforceable by the final nonappealable ruling of a court of competent jurisdiction, then the following minimal appeal procedures will go into effect:
1. The appeal shall be heard by a final review officer or committee consisting of at least three people that were not. No final review officer or member of such committee shall be involved in the original adverse benefit determination or be an employee of the employer sponsoring the benefit plan. The final review officer or appeals committee shall not give any deference to the claimant's initial adverse benefit determination in its review;

2. The final review officer or the committee may request any additional information it deems necessary to make a decision, including having the claimant submit to a medical exam;

3. The final review officer or the committee shall notify the claimant in writing of its decision, including an explanation of the decision and his or her right to judicial review;

4. The final review officer or the committee shall review the determination and issue a decision no later than forty-five (45) days from the date the notice of contest is received;

5. If any part of an adverse benefit determination is upheld by a final review officer or the committee, the claimant may then file a petition for review in a proper state district court; and

6. The district court shall rely on the record established by the internal appeal process and use a deferential standard of review not give any deference to the claimant's initial adverse benefit determination in its review.
D. The provisions of this section shall apply to the extent not inconsistent with or preempted by any other applicable law or rule.

E. All intentional tort or other employers' liability claims may proceed through the appropriate state courts of Oklahoma, mediation, arbitration, or any other form of alternative dispute resolution or settlement process available by law.

SECTION 11. AMENDATORY Section 119, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 212), is amended to read as follows:

Section 212. This act The Oklahoma Employee Injury Benefit Act shall be liberally strictly construed to give the fullest effect of its provisions by the Insurance Commissioner, the Workers' Compensation Commission and any court. Any conflict between this act and any other law shall be resolved in favor of the operation of this act.

SECTION 12. REPEALER Sections 113, 114 and 115, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Sections 206, 207 and 208), are hereby repealed.

SECTION 13. This act shall become effective November 1, 2015.
Passed the House of Representatives the 4th day of March, 2015.

Presiding Officer of the House of Representatives

Passed the Senate the ___ day of __________, 2015.

Presiding Officer of the Senate