Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2205

By: Echols of the House and Sykes of the Senate

Title: Workers’ Compensation; Administrative Workers’ Compensation Act; Employee Injury Benefit Act; violations; disability; effective date.

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

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

Respectfully submitted,
HB2205 CCR2 (B)

HOUSE CONFEREES

Coody, Jeff

Kirby, Dan

Kouplen, Steve

McDaniel, Randy

Moore, Lewis

Mulready, Glen

Rogers, Michael

Russ, Todd

Shelton, Mike

Stone, Shane
SENATE CONFEREES
Sykes
Bingman
Jolley
Marlatt
Treat
Floyd
Sparks

House Action __________ Date ______  Senate Action __________ Date ______
STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2205

By: Echols of the House

and

Sykes of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending Sections 2, 3, 7, 18, 19, as amended by Section 4, H.J.R. No. 1096, p. 1745, O.S.L. 2014, 21, 22, 38, 45, as amended by Section 2, Chapter 390, O.S.L. 2015, 46, 56, 62, 68, 71, 78, 80, 108, 109, 110, as amended by Section 4, Chapter 390, O.S.L. 2015, 111 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, 3, 7, 18, 19, 21, 22, 38, 45, 46, 56, 62, 68, 71, 78, 80, 201, 202, 203, 204 and 211), which relate to the Administrative Workers' Compensation Act and the Oklahoma Employee Injury Benefit Act; modifying definitions; clarifying applicability of act; modifying jurisdictional requirement for certain claims; establishing liability for damages for certain violations; specifying burden of proof for certain violations; limiting certain exemplary or punitive damage awards; expanding methods of providing certain notice; modifying procedure for replacement of disqualified Commissioners; modifying certain powers of the Commission; modifying duties of the Commission; providing procedure for Affidavit of Exempt Status; requiring issuance of certain certificate; modifying procedures for confirmation of certain status; modifying procedures for certain notification; modifying grounds for termination of temporary total disability awards; modifying
compensation for temporary partial disability awards; modifying requirements for award of permanent partial disability; modifying calculation for specified permanent partial disability; providing employer options regarding treating physicians; clarifying time limit on injections; modifying time limit for certain notice; providing for appointment of administrative law judge to en banc panel under certain circumstances; providing for payment for prescription drugs during appeal process; providing for reimbursement under certain circumstances; modifying procedure and requirements for case review by the Workers' Compensation Commission; modifying definitions; modifying procedures for application for certain employer status; requiring certain notice; 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; providing for codification; 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 title, heart or lung injury or illness as described in Section 14 of this act title, or occupational diseases as described in Section 65 of this act title.

d. A compensable injury shall be established by medical evidence supported by objective findings as defined in paragraph 30 31 of this section.

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

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

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

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

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

12. "Continuing medical maintenance" means medical treatment
that is reasonable and necessary to maintain claimant's condition
resulting from the compensable injury or illness after reaching
maximum medical improvement. Continuing medical maintenance shall
not include diagnostic tests, surgery, injections, counseling,
physical therapy, or pain management devices or equipment;
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 107 200 through 120 213 of this act title;
20. "Employment" includes work or labor in a trade, business, occupation or activity carried on by an employer or any authorized voluntary or uncompensated worker rendering services as a firefighter, peace officer or emergency management worker;

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

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

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

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

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

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

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

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

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

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

43. "Subcontractor" means a person, firm, corporation or other
legal entity hired by the general or prime contractor to perform a
specific task for the completion of a work-related activity;
44. "Surgery" does not include an injection, or the forcing of fluids beneath the skin, for treatment or diagnosis;
45. "Surviving spouse" means the employee's spouse by reason of a legal marriage recognized by the State of Oklahoma or under the requirements of a common law marriage in this state, as determined by the Workers' Compensation Commission;
46. "Temporary partial disability" means an injured employee who is temporarily unable to perform his or her job, but may perform alternative work offered by the employer;
47. "Time of accident" or "date of accident" means the time or date of the occurrence of the accidental incident from which compensable injury, disability, or death results; and
48. "Total loss of use" means a one-hundred-percent permanent partial disability rating to the specific body part; and
49. "Wages" means money compensation received for employment at the time of the accident, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer and includes the amount of tips required to be reported by the employer under Section 6053 of the Internal Revenue Code and the regulations promulgated pursuant thereto or the amount of actual tips reported, whichever amount is greater.

SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 3), is amended to read as follows:
Section 3.  A. Every employer and every employee, unless otherwise specifically provided in this act, shall be subject and bound to the provisions of the Administrative Workers' Compensation Act shall pay or provide benefits according to the provisions of this act for the accidental injury or death of an employee arising out of and in the course of his or her employment, without regard to fault for such injury, if the employee's contract of employment was made or if the injury occurred within this state. If an employee makes claim for an injury in another jurisdiction and a final adjudication is entered in the case, the employee is precluded from his or her right of action under the Administrative Workers' Compensation Act of this state. If the employee brings an action in this state prior to a final adjudication in another jurisdiction, any receipt of benefits in the other jurisdiction shall not bar the action in this state; provided, however, in no event shall the Workers' Compensation Commission grant benefits that duplicate those paid by the employer or insurance carrier in the other jurisdiction. However, nothing in this act shall be construed to conflict with any valid Act of Congress governing the liability of employers for injuries received by their employees.

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

C. This act shall apply only to claims for injuries and death
based on accidents which occur on or after the effective date of
this act February 1, 2014.

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

SECTION 3. AMENDATORY Section 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. Exemplary or punitive
damage awards made pursuant to this section shall not exceed One
Hundred Thousand Dollars ($100,000.00).

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

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

H. G. 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 4. AMENDATORY Section 18, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2015, Section 18), is amended to read as
follows:

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

B. The notice shall include:

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

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

D. This section shall not avoid, modify, or amend any other section or subsection of this act title.
E. An order by the Commission under this section shall stay all
proceedings for collection.

SECTION 5. AMENDATORY Section 19, Chapter 208, O.S.L.
2013, as amended by Section 4, H.J.R. No. 1096, p. 1745, O.S.L. 2014
(85A O.S. Supp. 2015, Section 19), is amended to read as follows:

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

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

Membership on the Commission shall be a full-time position and no commissioner shall have any other employment, unless authorized or excused by law. Each commissioner shall receive a salary equal to that paid to a district judge of this state; provided however, the commissioners shall not receive any increase in salary as a result of the provisions of Section 1 of this resolution House Joint Resolution No. 1096 of the 2nd Session of the 54th Oklahoma Legislature.

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

D. The principal office of the Commission shall be situated in the City of Oklahoma City in quarters assigned by the Office of Management and Enterprise Services. The Commission shall maintain and keep open, during reasonable business hours, the office in Oklahoma City, for the transaction of business, at which office its official records and papers shall be kept. The Commission or any commissioner may hold hearings in any city of this state.
E. The Governor shall appoint one of the commissioners to be chair of the Commission. In addition to other duties, the chair of the Commission shall have the following powers and duties:

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

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

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

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

G. When any commissioner of the Commission is disqualified for any reason to hear and participate in the determination of any matter pending before the Commission, the Governor shall appoint a qualified person to hear and participate in the decision on the particular matter. The special commissioner so appointed shall have all authority and responsibility with respect to the particular matter before the Commission as if the person were a regular commissioner of the Commission but shall have no authority or responsibility with respect to any other matter before the
Commission. A person appointed as a special commissioner of the Commission under the provisions of this subsection shall be entitled to receive a per diem equal to the annual salary of the commissioners prorated for the number of days he or she serves in the capacity of a special commissioner of the Commission. Furthermore, when a vacancy on the Commission occurs or is certain to occur, the position shall be filled pursuant to the provisions of this section. The power of the Commission to decide issues of fact does not include the power to determine the constitutionality of provisions of this title or the constitutionality of application of the provisions of this title.

SECTION 6. AMENDATORY Section 21, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 21), is amended to read as follows:

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

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

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

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

D. Except with respect to the Commission's authority to hear
appeals of decisions from administrative law judges other than as
provided pursuant to subsection B of Section 78 of this title, any
reference in this act title to the Commission's ability to hear and
decide the rights of interested parties under this act title shall
not prevent it from delegating that responsibility to an
administrative law judge.

SECTION 7. AMENDATORY  Section 22, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2015, Section 22), is amended to read as
follows:

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

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

b. to appoint and fix the compensation of temporary
   technical assistants, medical and legal advisers,
   clerical assistants and other officers and employees,
c. to make such expenditures, including those for personal service, rent, books, periodicals, office equipment, and supplies, and for printing and binding as may be necessary.

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

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

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

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

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

testimony or argument.

4. Each rule, regulation, or form adopted by the Commission

shall be effective twenty (20) days after adoption unless a later
date is specified by law or in the rule itself.

5. All expenditures of the Commission in the administration of

this act shall be allowed and paid from the Workers' Compensation

Fund on the presentation of itemized vouchers approved by the

Commission.

B. 1. The Commission may appoint as many persons as may be

necessary to be administrative law judges and in addition may

appoint such examiners, investigators, medical examiners, clerks,

and other employees as it deems necessary to effectuate the

provisions of this act title.

2. Employees appointed under this subsection shall receive an

annual salary to be fixed by the Commission.

C. Additionally, the Commission shall have the following powers

and duties:

1. To hear and approve compromise settlements;

2. To review and approve own-risk applications and group self-

insurance association applications;

3. To monitor own-risk, self-insurer and group self-insurance

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

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

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

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

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

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

10. Such other duties and responsibilities authorized by law.

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

SECTION 8. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 36.1 of Title 85A, unless there
is created a duplication in numbering, reads as follows:

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

B. Execution of the affidavit shall establish a rebuttable
presumption that the executor is not an employee for purposes of the
Administrative Workers' Compensation Act and therefore shall not be
eligible to seek workers' compensation benefits against any
contractor.

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

D. The lack of an executed affidavit under this section shall
not prejudice any defense by an employer to a claim for workers'
compensation benefits.

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

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

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

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

G. If an employer relies in good faith on proof of a valid workers' compensation insurance policy issued to a contractor of any tier or on proof of an Affidavit of Exempt Status under this section, the employer shall not be liable for injuries of any employees of the contractor.

SECTION 9. AMENDATORY Section 38, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 38), is amended to read as follows:
Section 38.  A.  An employer shall secure compensation to employees under this act title in one of the following ways:

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

2.  By obtaining and keeping in force guaranty insurance with any company authorized to do guaranty business in this state. Each company that issues workers' compensation guaranty insurance shall file a copy of the contract with the Commission within thirty (30) days after the effective date of the contract. Any company that does not file a copy of the contract as required by this paragraph shall be subject to a fine by the Commission of not more than One Thousand Dollars ($1,000.00);
3. By furnishing satisfactory proof to the Commission of the employer's financial ability to pay the compensation. The Commission, under rules adopted by the Insurance Department Commission, shall require any employer that has:

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

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

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

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

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

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

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

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

C. An employer who does not fulfill the requirements of this section is not relieved of the obligation to pay compensation under this act. The security required under this section, including any interest, shall be maintained by the Commission Self-insured Guaranty Fund Board as provided in Section 99 of this act title until each claim for benefits is paid, settled, or lapses under this act title, and costs of administration of such claims are paid.

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

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

SECTION 10. 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 two consecutive medical treatment
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 Section 2 of this title. The opinion of the physician shall include employee's percentage of permanent partial disability and whether or not the disability is job-related and caused by the accidental injury or occupational disease. A physician's opinion of the nature and extent of permanent partial disability to parts of the body other than scheduled members must be based solely on criteria established by the current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment". 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, 98, 112 and 165 of this act shall be calculated based upon the amount
of the permanent partial disability award and shall be
paid at the time of the deferral.

6. 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 disability 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
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 11. 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 total 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 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 12. AMENDATORY Section 56, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 56), is amended to read as follows:

Section 56. A. If the employer has previously contracted with a certified workplace medical plan, the employer shall select for the injured employee a treating physician from the physicians listed within the network of the certified workplace medical plan. The employee may apply for a change of physician by utilizing the dispute resolution process set out in the certified workplace medical plan on file with the State Department of Health.
B. If the employer is not covered by a certified workplace medical plan, the employer shall select the treating physician. The Commission on application of the employee shall order one change of treating physician. Upon the Commission's granting of the application, the employer shall provide a list of three physicians from whom the employee may select the replacement. The employer may identify physicians within the same practice, facility or hospital as the treating physician. The only requirement for the list of three physicians is that they be licensed and accredited to perform the necessary treatment.

SECTION 13. 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 title, if an employee suffers a nonsurgical soft tissue injury, temporary total disability compensation shall not exceed eight (8) weeks, regardless of the number of parts of the body to which there is a nonsurgical soft tissue injury. An employee who is treated with an injection or injections shall be entitled to an extension of an additional eight (8) weeks 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 14. 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 thirty (30) fifteen (15) days of the date an injury occurs, the rebuttable presumption shall be that the injury was not work-related. Such presumption must may be overcome by a preponderance of the evidence. 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 15. AMENDATORY Section 71, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 71), is amended to read as follows:
Section 71.  A. Notice.  Within ten (10) days after a claim for compensation has been filed, the Commission shall notify the employer and any other interested person of the filing of the claim.

B. Investigation - Hearing.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 16. AMENDATORY Section 78, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 78), is amended to read as follows:

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

B. The chair of the Commission shall have the authority to appoint an administrative law judge to the en banc panel when any Commissioner of the Commission is disqualified for any reason, to fill a vacancy, or in the absence of a Commissioner; provided, the
appointed administrative law judge shall not have presided over any of the previous hearings on the claim.

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

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

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

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

D. E. A fee of One Hundred Dollars ($100.00) per appeal to the
Supreme Court shall be paid to the Commission and deposited in the
Workers' Compensation Fund as costs for preparing, assembling,
indexing and transmitting the record for appellate review. This fee
shall be paid by the party taking the appeal. If more than one
party to the action files an appeal from the same judgment, decision
or award, the fee shall be paid by the party whose petition in error
commences the principal appeal.
F. During the pendency of an appeal filed by an employer or the employer's insurance carrier pursuant to this section, payment for any prescription drugs prescribed by the treating physician shall be continued. If payment for prescription drugs is an issue on appeal, and the employer is held not to be liable for payment for the prescription drugs, the employee shall reimburse the employer or the employer's insurance carrier for the cost of prescriptions filled during the time of the appeals process.

SECTION 17. AMENDATORY Section 80, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015, Section 80), is amended to read as follows:

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

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

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

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

SECTION 18. 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 Oklahoma 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 Oklahoma 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 title;

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;
7. "Fully insured plan" means insurance coverage of one hundred percent (100%) of an employer's statutory benefit liability;

8. "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;

9. "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 Oklahoma Employee Injury Benefit Act; and

10. "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 Oklahoma Employee Injury Benefit Act.

SECTION 19. 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 Insurance Department:
1. Is in compliance with the notice requirements in subsections B and H of this section; A qualified employer election form published by the Department; and

2. Has established a written A 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 Oklahoma 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, and 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.
3. A listing of all covered business locations in the state. The Commissioner 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 A 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 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 20. 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 the Administrative Workers' Compensation 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. No 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 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 for 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 specific act in this title under which the employer provides coverage.

SECTION 21. 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 Department
of the employer's financial ability to pay the compensation (self-
insure). The Commissioner, under rules adopted by the
Insurance Department or the Commissioner for an individual self-
insured employer, the Department shall require an a self-insured
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, or
(3) provide a combination of the requirements of divisions (1) and (2) of this subparagraph, as may be approved by the Department,

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) provide a combination of the requirements of divisions (1) and (2) of this subparagraph, as may be approved by the Department; 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:

1. Each claim for benefits is paid, settled, or lapses under this act, and costs of administration of such claims are paid; or

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

E. Any bond security shall be filed deposited with 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 released by the Commissioner Department to the Oklahoma Option Self-insured 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 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 an employer may
be approved to self-insure all or part of the employer's liability under 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 compensable 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 22. 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 Oklahoma 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 consist of at least three people that, none of whom are employees of the qualified employer, 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 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

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, 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 23. This act shall become effective in accordance with the provisions of Section 58 of Article V of the Oklahoma Constitution.

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