

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 CONFERENCE COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL 767

By: Sykes of the Senate

and

Echols of the House

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9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to administrative workers'
11 compensation system; amending Sections 6, 45, 65,
12 110, 112 and 118, Chapter 208, O.S.L. 2013 (85A O.S.
13 Supp. 2014, Sections 6, 45, 65, 203, 205 and 211),
14 which relate to fraud, disability, occupational
15 disease, benefit plans, Guaranty Funds and appellate
16 procedures; clarifying certain punishment; providing
17 for admissibility of certain reports; establishing
18 procedures for requiring certain testimony;
19 establishing immunity from certain liability;
20 creating certain presumption; authorizing certain
21 professional to provide certain findings; modifying
22 requirements for certain compensation; updating
23 statutory references; modifying requirements for
24 certain benefit plans; providing for confidentiality
of certain information; providing exceptions;
modifying entity to take certain actions related to
self-insurers; modifying certain appellate
procedures; and providing an effective date.

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

1 SECTION 1. AMENDATORY Section 6, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2014, Section 6), is amended to read as
3 follows:

4 Section 6.

5 A. 1. a. Any person or entity who makes any material false
6 statement or representation, who willfully and knowingly omits or
7 conceals any material information, or who employs any device,
8 scheme, or artifice, or who aids and abets any person for the
9 purpose of:

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

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

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

20 c. Fifty percent (50%) of any criminal fine imposed and
21 collected under this section shall be paid and
22 allocated in accordance with applicable law to the
23 Workers' Compensation Fund administered by the
24 Commission.

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

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

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

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

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

7 (2) The Attorney General shall designate the
8 personnel assigned to the Unit, who, on meeting
9 the qualifications established by the Oklahoma
10 Council on Law Enforcement Education and
11 Training, shall have the powers of specialized
12 law enforcement officers of the State of Oklahoma
13 for the purpose of conducting investigations
14 under this subparagraph. Personnel hired as
15 specialized law enforcement officers shall have a
16 minimum of three (3) years of certified law
17 enforcement experience or its equivalent in
18 national or military law enforcement experience
19 as approved by the Oklahoma Council on Law
20 Enforcement Education and Training.

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

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

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

14 (1) subpoena witnesses,

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

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

19 b. The issuance of subpoenas for witnesses shall be
20 served in the same manner as if issued by a district
21 court.

22 c. (1) Upon application by the commissioner or the
23 Director of the Unit, the district court located
24 in the county where a subpoena was served may

1 issue an order compelling an individual to comply
2 with the subpoena to testify.

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

5 d. If any person has refused in connection with an
6 investigation by the Director to be examined under
7 oath concerning his or her affairs, then the Director
8 is authorized to conduct and enforce by all
9 appropriate and available means any examination under
10 oath in any state or territory of the United States in
11 which any officer, director, or manager may then
12 presently be to the full extent permitted by the laws
13 of the state or territory.

14 e. In addition to the punishments described in paragraph
15 1 of subsection A of this section, any person
16 providing false testimony under oath or affirmation in
17 this state as to any matter material to any
18 investigation or hearing conducted under this
19 subparagraph, or any workers' compensation hearing,
20 shall upon conviction be guilty of perjury.

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

23 6. a. Every carrier or employer who has reason to suspect
24 that a violation of division (1) of subparagraph a of

1 paragraph 1 of subsection A of this section has
2 occurred shall be required to report all pertinent
3 matters to the unit.

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

10 c. (1) Any carrier or employer who willfully and
11 knowingly fails to report a violation under
12 division (1) of subparagraph a of paragraph 1 of
13 subsection A of this section shall be guilty of a
14 misdemeanor and on conviction shall be punished
15 by a fine not to exceed One Thousand Dollars
16 (\$1,000.00).

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

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

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

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

19 F. Notwithstanding any other provision of law, investigatory
20 files as maintained by the Attorney General's office and by the Unit
21 shall be deemed confidential and privileged. The files may be made
22 open to the public once the investigation is closed by the Director
23 of the Workers' Compensation Fraud Investigation Unit with the
24 consent of the Attorney General.

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

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

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

11 J. If an injured employee is charged with workers' compensation
12 fraud, any pending workers' compensation proceeding, including
13 benefits, shall be stayed after the preliminary hearing is concluded
14 and the claimant is bound over and shall remain stayed until the
15 final disposition of the criminal case. All notice requirements
16 shall continue during the stay.

17 K. If the Attorney General's Office is in compliance with the
18 discovery provisions of Section 258 of Title 22 of the Oklahoma
19 Statutes, medical records created for the purpose of treatment and
20 medical opinions obtained during the investigation shall be
21 admissible at the preliminary hearing without the appearance of the
22 medical professional creating such records or opinions. However,
23 when material evidence dispositive to the issues of whether there
24 was probable cause the crime was committed and whether the defendant

1 committed the crime, was not included in a report or opinion
2 admitted at preliminary hearing, but might be presented at a
3 pretrial hearing by a medical professional who created such report
4 or opinion, the judge may, upon the motion of either party, order
5 the appearance of the medical professional creating such report or
6 opinion. Questions of fact regarding the conduct of the defendant
7 that conflict with the findings of the medical professional
8 evaluating the defendant shall not constitute material evidence. In
9 the event of such motion, notice shall be given to the Attorney
10 General's Workers Compensation Fraud and Investigation and
11 Prosecution Unit. A hearing shall be held and, if the motion is
12 granted, the evidence shall not be presented fewer than five (5)
13 days later.

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

1 or providing information pertaining to a workers' compensation or
2 insurance fraud investigation by the Attorney General, and
3 participating in a judicial proceeding resulting from a subpoena or
4 a report.

5 SECTION 2. AMENDATORY Section 45, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2014, Section 45), is amended to read as
7 follows:

8 Section 45. A. Temporary Total Disability.

9 1. If the injured employee is temporarily unable to perform his
10 or her job or any alternative work offered by the employer, he or
11 she shall be entitled to receive compensation equal to seventy
12 percent (70%) of the injured employee's average weekly wage, but not
13 to exceed seventy percent (70%) of the state average weekly wage,
14 for one hundred four (104) weeks. Provided, there shall be no
15 payment for the first three (3) days of the initial period of
16 temporary total disability. If an administrative law judge finds
17 that a consequential injury has occurred and that additional time is
18 needed to reach maximum medical improvement, temporary total
19 disability may continue for a period of not more than an additional
20 fifty-two (52) weeks. Such finding shall be based upon a showing of
21 medical necessity by clear and convincing evidence.

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

1 a valid excuse, misses three consecutive medical treatment
2 appointments, fails to comply with medical orders of the treating
3 physician, or otherwise abandons medical care, the employer shall be
4 entitled to terminate temporary total disability by notifying the
5 employee, or if represented, his or her counsel. If, however, an
6 objection to the termination is filed by the employee within ten
7 (10) days of termination, the Commission shall set the matter within
8 twenty (20) days for a determination if temporary total disability
9 compensation shall be reinstated. The temporary total disability
10 shall remain terminated unless the employee proves the existence of
11 a valid excuse for his or her failure to comply with medical orders
12 of the treating physician or his or her abandonment of medical care.
13 The administrative law judge may appoint an independent medical
14 examiner to determine if further medical treatment is reasonable and
15 necessary. The independent medical examiner shall not provide
16 treatment to the injured worker, unless agreed upon by the parties.

17 B. Temporary Partial Disability.

18 1. If the injured employee is temporarily unable to perform his
19 or her job, but may perform alternative work offered by the
20 employer, he or she shall be entitled to receive compensation equal
21 to the greater of seventy percent (70%) of the difference between
22 the injured employee's average weekly wage before the injury and his
23 or her weekly wage for performing alternative work after the injury,
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1 but only if his or her weekly wage for performing the alternative
2 work is less than the temporary total disability rate.

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

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

8 C. Permanent Partial Disability.

9 1. A permanent partial disability award or combination of
10 awards granted an injured worker may not exceed a permanent partial
11 disability rating of one hundred percent (100%) to any body part or
12 to the body as a whole. The determination of permanent partial
13 disability shall be the responsibility of the Commission through its
14 administrative law judges. Any claim by an employee for
15 compensation for permanent partial disability must be supported by
16 competent medical testimony of a medical doctor, osteopathic
17 physician, or chiropractor, and shall be supported by objective
18 medical findings, as defined in this act. The opinion of the
19 physician shall include employee's percentage of permanent partial
20 disability and whether or not the disability is job-related and
21 caused by the accidental injury or occupational disease. A
22 physician's opinion of the nature and extent of permanent partial
23 disability to parts of the body other than scheduled members must be
24 based solely on criteria established by the current edition of the

1 American Medical Association's "Guides to the Evaluation of
2 Permanent Impairment". A copy of any written evaluation shall be
3 sent to both parties within seven (7) days of issuance. Medical
4 opinions addressing compensability and permanent disability must be
5 stated within a reasonable degree of medical certainty. Any party
6 may submit the report of an evaluating physician.

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

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

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

22 5. Except pursuant to settlement agreements entered into by the
23 employer and employee, payment of a permanent partial disability
24 award shall be deferred and held in reserve by the employer or

1 insurance company if the employee has reached maximum medical
2 improvement and has been released to return to work by his or her
3 treating physician, and then returns to his pre-injury or equivalent
4 job for a term of weeks determined by dividing the total dollar
5 value of the award by seventy percent (70%) of the employee's
6 average weekly wage.

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

11 b. If, for any reason other than misconduct as defined in
12 Section 2 of this act, the employer terminates the
13 employee or the position offered is not the pre-injury
14 or equivalent job, the remaining permanent partial
15 disability award shall be paid in a lump sum. If the
16 employee is discharged for misconduct, the employer
17 shall have the burden to prove that the employee
18 engaged in misconduct.

19 c. If the employee refuses an offer to return to his pre-
20 injury or equivalent job, the permanent partial
21 disability award shall continue to be deferred and
22 shall be reduced by seventy percent (70%) of the
23 employee's average weekly wage for each week he
24 refuses to return to his pre-injury or equivalent job.

1 d. Attorney fees for permanent partial disability awards,
2 as approved by the Commission, shall be calculated
3 based upon the total permanent partial disability
4 award and paid in full at the time of the deferral.

5 e. Assessments pursuant to Sections 31, 98, 112 and 165
6 of this act shall be calculated based upon the amount
7 of the permanent partial disability award and shall be
8 paid at the time of the deferral.

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

23 a. If workers' compensation benefits have previously been
24 awarded through settlement or judicial or

1 administrative determination in Oklahoma, the
2 percentage basis of the prior settlement or award
3 shall conclusively establish the amount of permanent
4 partial disability determined to be preexisting. If
5 workers' compensation benefits have not previously
6 been awarded through settlement or judicial or
7 administrative determination in Oklahoma, the amount
8 of preexisting permanent partial disability shall be
9 established by competent evidence.

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

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

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

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

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

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

20 10. An injured employee who is eligible for permanent partial
21 disability under this subsection shall be entitled to receive
22 vocational rehabilitation services provided by a technology center
23 or public secondary school offering vocational-technical education
24 courses, or a member institution of The Oklahoma State System of

1 Higher Education, which shall include retraining and job placement
2 to restore the employee to gainful employment. Vocational
3 rehabilitation services or training shall not extend for a period of
4 more than fifty-two (52) weeks.

5 D. Permanent Total Disability.

6 1. In case of total disability adjudged to be permanent,
7 seventy percent (70%) of the employee's average weekly wages, but
8 not in excess of the state's average weekly wage, shall be paid to
9 the employee during the continuance of the disability until such
10 time as the employee reaches the age of maximum Social Security
11 retirement benefits or for a period of fifteen (15) years, whichever
12 is longer. In the event the claimant dies of causes unrelated to
13 the injury or illness, benefits shall cease on the date of death.
14 Provided, however, any person entitled to revive the action shall
15 receive a one-time lump-sum payment equal to twenty-six (26) weeks
16 of weekly benefits for permanent total disability awarded the
17 claimant. If more than one person is entitled to revive the claim,
18 the lump-sum payment shall be evenly divided between or among such
19 persons. In the event the Commission awards both permanent partial
20 disability and permanent total disability benefits, the permanent
21 total disability award shall not be due until the permanent partial
22 disability award is paid in full. If otherwise qualified according
23 to the provisions of this act, permanent total disability benefits
24 may be awarded to an employee who has exhausted the maximum period

1 of temporary total disability even though the employee has not
2 reached maximum medical improvement.

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

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

14 2. The Vocational Rehabilitation Director shall help injured
15 workers return to the work force. If the injured employee is unable
16 to return to his or her pre-injury or equivalent position due to
17 permanent restrictions as determined by the treating physician, upon
18 the request of either party, the Vocational Rehabilitation Director
19 shall determine if it is appropriate for a claimant to receive
20 vocational rehabilitation training or services, and will oversee
21 such training. If appropriate, the Vocational Rehabilitation
22 Director shall issue administrative orders, including, but not
23 limited to, an order for a vocational rehabilitation evaluation for
24 any injured employee unable to work for at least ninety (90) days.

1 In addition, the Vocational Rehabilitation Director may assign
2 injured workers to vocational rehabilitation counselors for
3 coordination of recommended services. The cost of the services
4 shall be paid by the employer. All administrative orders are
5 subject to appeal to the full Commission.

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

- 9 a. if the employee's occupation is truck driver or
10 laborer and the medical condition is traumatic brain
11 injury, stroke or uncontrolled vertigo,
- 12 b. if the employee's occupation is truck driver or
13 laborer performing high-risk tasks and the medical
14 condition is seizures,
- 15 c. if the employee's occupation is manual laborer and the
16 medical condition is bilateral wrist fusions,
- 17 d. if the employee's occupation is assembly-line worker
18 and the medical condition is radial head fracture with
19 surgical excision,
- 20 e. if the employee's occupation is heavy laborer and the
21 medical condition is myocardial infarction with
22 congestive heart failure,

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- f. if the employee's occupation is heavy manual laborer and the medical condition is multilevel neck or back fusions greater than two levels,
- g. if the employee's occupation is laborer performing overhead work and the medical condition is massive rotator cuff tears, with or without surgery,
- h. if the employee's occupation is heavy laborer and the medical condition is recurrent inguinal hernia following unsuccessful surgical repair,
- i. if the employee's occupation is heavy manual laborer and the medical condition is total knee replacement or total hip replacement,
- j. if the employee's occupation is roofer and the medical condition is calcaneal fracture, medically or surgically treated,
- k. if the employee's occupation is laborer of any kind and the medical condition is total shoulder replacement,
- l. if the employee's occupation is laborer and the medical condition is amputation of a hand, arm, leg, or foot,
- m. if the employee's occupation is laborer and the medical condition is tibial plateau fracture, pilon fracture,

- n. if the employee's occupation is laborer and the medical condition is ankle fusion or knee fusion,
- o. if the employee's occupation is driver or heavy equipment operator and the medical condition is unilateral industrial blindness, or
- p. if the employee's occupation is laborer and the medical condition is 3-, 4-, or 5-level positive discogram of the cervical spine or lumbar spine, medically treated.

4. Upon the request of either party, or by order of an administrative law judge, the Vocational Rehabilitation Director shall assist the Workers' Compensation Commission in determining if it is appropriate for a claimant to receive vocational rehabilitation training or services. If appropriate, the administrative law judge shall refer the employee to a qualified expert for evaluation of the practicability of, need for and kind of rehabilitation services or training necessary and appropriate in order to restore the employee to gainful employment. The cost of the evaluation shall be paid by the employer. Following the evaluation, if the employee refuses the services or training ordered by the administrative law judge, or fails to complete in good faith the vocational rehabilitation training ordered by the administrative law judge, then the cost of the evaluation and services or training rendered may, in the discretion of the administrative law judge, be

1 deducted from any award of benefits to the employee which remains
2 unpaid by the employer. Upon receipt of such report, and after
3 affording all parties an opportunity to be heard, the administrative
4 law judge shall order that any rehabilitation services or training,
5 recommended in the report, or such other rehabilitation services or
6 training as the administrative law judge may deem necessary,
7 provided the employee elects to receive such services, shall be
8 provided at the expense of the employer. Except as otherwise
9 provided in this subsection, refusal to accept rehabilitation
10 services by the employee shall in no way diminish any benefits
11 allowable to an employee.

12 5. The administrative law judge may order vocational
13 rehabilitation before the injured employee reaches maximum medical
14 improvement, if the treating physician believes that it is likely
15 that the employee's injury will prevent the employee from returning
16 to his or her former employment. In granting early benefits for
17 vocational rehabilitation, the Commission shall consider temporary
18 restrictions and the likelihood that such rehabilitation will return
19 the employee to gainful employment earlier than if such benefits are
20 granted after the permanent partial disability hearing in the claim.

21 6. Vocational rehabilitation services or training shall not
22 extend for a period of more than fifty-two (52) weeks. A request
23 for vocational rehabilitation services or training shall be filed
24 with the Commission by an interested party not later than sixty (60)

1 days from the date of receiving permanent restrictions that prevent
2 the injured employee from returning to his or her pre-injury or
3 equivalent position.

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

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

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

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

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

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

17 SECTION 3. AMENDATORY Section 65, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2014, Section 65), is amended to read as
19 follows:

20 Section 65. A. If an employee suffers from an occupational
21 disease as defined in this section and is disabled or dies as a
22 result of the disease, the employee, or, in case of death, his or
23 her dependents, shall be entitled to compensation as if the
24 disability or death were caused by injury arising out of work

1 activities within the scope of employment, except as otherwise
2 provided in this section.

3 B. No compensation shall be payable for an occupational disease
4 if the employee, at the time of entering into the employment of the
5 employer by whom the compensation would otherwise be payable,
6 falsely represented himself or herself in writing as not having
7 previously been disabled, laid off, or compensated in damages or
8 otherwise, because of the disease.

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

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

22 D. 1. "Occupational disease", as used in this act, unless the
23 context otherwise requires, means any disease that results in
24 disability or death and arises out of and in the course of the

1 occupation or employment of the employee or naturally follows or
2 unavoidably results from an injury as that term is defined in this
3 act. A causal connection between the occupation or employment and
4 the occupational disease shall be established by a preponderance of
5 the evidence.

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

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

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

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

22 F. 1. An employer shall not be liable for any compensation for
23 an occupational disease unless:
24

1 a. the disease is due to the nature of an employment in
2 which the hazards of the disease actually exist and
3 ~~are characteristic thereof and peculiar to the trade,~~
4 ~~occupation, process, or employment~~ and is actually
5 incurred in the course and scope of his or her
6 employment. This includes any disease due to or
7 attributable to exposure to or contact with any
8 radioactive material by an employee in the course and
9 scope of his or her employment,

10 b. disablement or death results within three (3) years in
11 case of silicosis or asbestosis, or one (1) year in
12 case of any other occupational disease, except a
13 diseased condition caused by exposure to X-rays,
14 radioactive substances, or ionizing radiation, after
15 the last injurious exposure to the disease in the
16 employment, or

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

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

4 SECTION 4. AMENDATORY Section 110, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2014, Section 203), is amended to read as
6 follows:

7 Section 203. A. An employer voluntarily electing to become a
8 qualified employer shall adopt a written benefit plan that complies
9 with the requirements of this section. Qualified-employer status is
10 optional for eligible employers. The benefit plan shall not become
11 effective until the date that the qualified employer first satisfies
12 the notice requirements in Section ~~109~~ 202 of this ~~act~~ title.

13 B. The benefit plan shall provide for payment of the same forms
14 of benefits included in the Administrative Workers' Compensation Act
15 for temporary total disability, temporary partial disability,
16 permanent partial disability, vocational rehabilitation, permanent
17 total disability, disfigurement, amputation or permanent total loss
18 of use of a scheduled member, death and medical benefits as a result
19 of an occupational injury, on a no-fault basis, ~~with the same~~
20 ~~statute of limitations,~~ and with dollar, percentage, and duration
21 limits that are at least equal to or greater than the dollar,
22 percentage, and duration limits contained in Sections 45, 46 and 47
23 of this ~~act~~ title. For this purpose, the standards for
24 determination of average weekly wage, death beneficiaries, and

1 disability under the Administrative Workers' Compensation Act shall
2 apply under the Oklahoma Employee Injury Benefit Act; but no other
3 provision of the Administrative Workers' Compensation Act defining
4 covered injuries, medical management, dispute resolution or other
5 process, funding, notices or penalties shall apply or otherwise be
6 controlling under the Oklahoma Employee Injury Benefit Act, unless
7 expressly incorporated.

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

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

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

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

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

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

21 b. the information sought is unavailable for other non-
22 confidential sources, and

23
24

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

4 2. The Commissioner may disclose the information to a public
5 officer having jurisdiction over the regulation of insurance in
6 another state if:

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

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

12 SECTION 5. AMENDATORY Section 112, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2014, Section 205), is amended to read as
14 follows:

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

17 1. The Oklahoma Option Insured Guaranty Fund; and

18 2. The Oklahoma Option Self-insured Guaranty Fund.

19 B. The funds established pursuant to subsection A of this
20 section shall be for the purpose of continuation of benefits under
21 this act for covered claims that are due and unpaid or interrupted
22 due to the inability of the insurer or sponsor of a self-insured
23 plan, as applicable, to meet its compensation obligations because
24 its financial resources, security deposit, guaranty agreements,

1 surety agreements and excess insurance are either inadequate or not
2 immediately accessible for the payment of benefits. Monies in such
3 funds, including interest, are not subject to appropriation and
4 shall be expended to compensate employees for eligible benefits for
5 a compensable injury under this act, pay outstanding workers'
6 compensation obligations of the impaired insurer, and for all claims
7 for related administrative fees, operating costs, attorney fees, and
8 other costs reasonably incurred by the Oklahoma Property and
9 Casualty Guaranty Association in the performance of its duties under
10 this act. Expenditures from such funds shall be made on warrants
11 issued by the State Treasurer against claims as prescribed by law.
12 Such funds shall be subject to audit the same as state funds and
13 accounts, the cost for which shall be paid for from the funds. A
14 "covered claim" has the meaning given to it pursuant to paragraph 7
15 of Section 2004 of Title 36 of the Oklahoma Statutes.

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

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

22 1. Insured Guaranty Fund:

23 Until the Insured Guaranty Fund contains Two Million Dollars
24 (\$2,000,000.00) or if the amount in the fund falls below One Million

1 Dollars (\$1,000,000.00), each insurer shall be assessed a fee equal
2 to two percent (2%) of all gross direct premiums written during each
3 quarter of the calendar year for insurance covering a benefit plan
4 under this act after deducting from such gross direct premiums,
5 return premiums, unabsorbed portions of any deposit premiums, policy
6 dividends, safety refunds, savings and other similar returns paid or
7 credited to policyholders. The assessment shall be paid to the
8 Insured Guaranty Fund, care of the Commission, no later than the
9 fifteenth day of the month following the close of each quarter of
10 the calendar year in which the gross direct premium is collected or
11 collectible. No insurer may be assessed in any year an amount
12 greater than two percent (2%) of the net direct written premiums of
13 that insurer or one percent (1%) of that surplus of the insurer as
14 regards policyholders for the calendar year preceding the assessment
15 on the kinds of insurance in the account, whichever is less; and

16 2. Self-insured Guaranty Fund:

17 Until the Self-insured Guaranty Fund contains One Million
18 Dollars (\$1,000,000.00) or if the amount in the fund falls below
19 Seven Hundred Fifty Thousand Dollars (\$750,000.00), each self-
20 insurer shall be assessed a fee at the rate of one percent (1%) of
21 the total compensation for permanent partial disability awards paid
22 out during each quarter of the calendar year by the employers. The
23 fee shall be paid to the Self-insured Guaranty Fund, care of the
24 Commission, no later than the fifteenth day of the month following

1 the close of each quarter of the calendar year. The fee shall be
2 determined using a rate equal to the proportion that the deficiency
3 in the fund attributable to self-insurers bears to the actual paid
4 losses of all self-insurers for the preceding calendar year. Each
5 self-insurer shall provide the Commission with the information
6 necessary to determine the amount of the fee to be assessed.

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

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

20 G. The Guaranty Association shall be a party in interest in all
21 proceedings involving any claims for benefits under this act with
22 respect to an impaired insurer and shall have all rights of
23 subrogation of the impaired insurer. In those proceedings, the
24 Guaranty Association may assume and exercise all rights and defenses

1 of the impaired insurer, including, but not limited to, the right
2 to:

3 1. Appear, defend and appeal claims;

4 2. Receive notice of, investigate, adjust, compromise, settle
5 and pay claims; and

6 3. Investigate, handle and contest claims.

7 H. The Guaranty Association may also:

8 1. Retain persons necessary to handle claims and perform other
9 duties of the Guaranty Association;

10 2. Sue or be sued;

11 3. Negotiate and become a party to such contracts as are
12 necessary to carry out the purposes of this act; and

13 4. Exercise any other powers necessary to perform its duties
14 under this act.

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

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

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

23

24

1 SECTION 6. AMENDATORY Section 118, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2014, Section 211), is amended to read as
3 follows:

4 Section 211. A. If an employer denies a claimant's claim for
5 benefits under this act, the employer shall notify him or her in
6 writing of the decision or the need for additional information
7 within fifteen (15) days after receipt of the claim. Unless
8 otherwise provided by law, the adverse benefit determination letter
9 shall contain an explanation of why the claim was denied, including
10 the plan provisions that were the basis for the denial, and a
11 detailed description of how to appeal the determination. Additional
12 claim procedures consistent with this section may be specified in
13 the benefit plan.

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

16 1. The claimant may appeal in writing an initial adverse
17 benefit determination to an appeals committee within one hundred
18 eighty (180) days following his or her receipt of the adverse
19 benefit determination. The appeal shall be heard by a committee
20 consisting of at least three people that were not involved in the
21 original adverse benefit determination. The appeals committee shall
22 not give any deference to the claimant's initial adverse benefit
23 determination in its review;

24

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

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

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

14 5. If any part of an adverse benefit determination is upheld by
15 the committee, the claimant may then file a petition for review with
16 the Commission ~~sitting en banc~~ within one (1) year after the date
17 the claimant receives notice that the adverse benefit determination,
18 or part thereof, was upheld. The Commission ~~en banc~~ shall appoint
19 an administrative law judge to hear any appeal of an adverse benefit
20 determination as a trial de novo. The Commission shall prescribe
21 additional rules governing the authority and responsibility of the
22 parties, the administrative law judge and the Commission during the
23 appeal processes. The administrative law judge and Commission shall
24 act as the court of competent jurisdiction under 29 U.S.C.A. Section

1 1132(e)(1), and shall possess adjudicative authority to render
2 decisions in individual proceedings by claimants to recover benefits
3 due to the claimant under the terms of the claimant's plan, to
4 enforce the claimant's rights under the terms of the plan, or to
5 clarify the claimant's rights to future benefits under the terms of
6 the plan;

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

22 7. If the claimant appeals to the Commission and any part of
23 the adverse benefit determination is upheld, he or she may appeal to
24 the Oklahoma Supreme Court. The judgment, decision or award of the

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

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

21 Such action shall be commenced by filing with the Clerk of the
22 Supreme Court a certified copy of the judgment, decision or award of
23 the Commission attached to a petition which shall specify why the
24 judgment, decision or award is ~~contrary to law within twenty (20)~~

1 ~~days of the decision being issued. The Supreme Court may modify,~~
2 ~~reverse, remand for rehearing, or set aside the decision only if the~~
3 ~~decision was contrary to law~~ erroneous or illegal.

4 The Supreme Court shall require the ~~claimant~~ appealing party to
5 file within forty-five (45) days from the date of the filing of an
6 appeal a transcript of the record of the proceedings before the
7 Commission, or such later time as may be granted by the Supreme
8 Court on application and for good cause shown. The action shall be
9 subject to the law and practice applicable to comparable civil
10 actions cognizable in the Supreme Court.

11 C. If any of the provisions in paragraphs 5 through 7 of
12 subsection B of this section are determined to be unconstitutional
13 or otherwise unenforceable by the final nonappealable ruling of a
14 court of competent jurisdiction, then the following minimal appeal
15 procedures will go into effect:

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

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

24

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

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

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

10 6. The district court shall rely on the record established by
11 the internal appeal process and use a deferential standard of
12 review.

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

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

19 SECTION 7. This act shall become effective November 1, 2015.

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