
SB 1062 – Bill Summary

Subject: Administrative Workers' Compensation Act
Workers' Compensation Court of Existing Claims
Oklahoma Employee Injury Benefit Act
Workers' Compensation Arbitration Act
Prepared By: Tish Sommer, Special Counsel, Workers' Compensation Court
Date: May 30, 2013, as revised June 20, 2013

Table of Contents

Bill Section Number	Page
I. ADMINISTRATIVE WORKERS' COMPENSATION ACT	
General Provisions	
1. Short Title	1
2. Definitions	1
3. Applicability	1
4. Severability	1
5. Exclusive Remedy – Exceptions	1
6. Fraud	2
7. Penalties for Discrimination For Filing Claim	2
8. Waiver of Compensation Void – Exception	2
9. Employee Agreement to Pay Premium Void	2
10. Compensation Nonassignable, etc., and Payable to Dependents Only – Child Support Excepted	2
11. Compensation Payable to Certain Alien Dependents	2
12. Preference for Due Compensation	2
13. Mental Injury or Illness	2
14. Heart or Lung Injury or Illness	3
15. Attorney General's Workers' Compensation Fraud Unit – Fund Transfer	3
16. Official Disability Guidelines – Not Mandatory – Exception	3
17. Physician Advisory Committee	3
18. Provider Payments While Claims Are Pending	3
106. Strict Construction	23
152. Ombudsman Program	33
153. Alternative Dispute Resolution	33
163. Requests for Claims Information	35
164. Advisory Council on Workers' Compensation	35
168. Time Computation	35

Workers' Compensation Commission

19. Commissioners – Appointment – Compensation 3

20. Powers and Duties 4

21. Proceedings 4

22. Administration of Act – Staff and Expenditures 4

23. Traveling Expenses 5

24. Biennial Report 5

25. Statistical Data Collection 5

26. Commissioners – Removal 5

27. Jurisdiction – Powers and Duties of Administrative Law Judges 5

101. Annual Report of Commission – EDI Advisory Committee 23

104. Immunity From Civil Liability 23

105. Prohibited Acts 23

Funds – Fees – Penalties – Fines

28. Funds Established 5

29. Workers' Compensation Fund – Fees 5

161. Commission Fees 34

162. Copy Fee – Penalties and Fines 34

165. Workers' Compensation Fund 35

Multiple Injury Trust Fund

30. Physically Impaired Person Defined 6

31. Funding Sources – Administration and Protection – Appeals 6

32. Attorney Fees 6

33. Limitations Periods – Prohibition on Representing Carrier and Claimant 6

34. Administration and Protection – Standing to Appear – Appeals 6

Employer Liability – Insurance

35. Employer's Liability for Compensation 6

36. Liability of Prime Contractors and Subcontractors – Sole Proprietorships or Partnerships 7

37. Waiver of Exclusion or Exemption 7

38. Security For Compensation 7

39. Substitution of Carrier For Employer 7

40. Failure to Secure Compensation – Penalty 7

41. Posting Notice of Compliance 8

42. Insurance Policies 8

43. Third Party Liability 8

44. Effect of Payment By Other Insurers 8

102. Group Self-Insurance 23

103. Group Self-Insurance – Excess Insurance 23

150. Public Employers' Coverage 32

160. Estoppel 34

Accidental Injury or Death

45. Benefits For Temporary and Permanent Disability, Vocational Rehabilitation
and Disfigurement – Law Governing Determination of Benefits 8

46. Scheduled Permanent Injuries 11

Bill Section Number	Page	
47.	Death Benefits	12
48.	Additional Benefits – Illegally Employed Minor	13
49.	Limitations on Temporary Total Disability – Recipients of Unemployment Benefits	13
50.	Medical Benefits – Employer Liability – Fee Schedule	13
51.	Payment of Medical Expenses	14
52.	Medical Services and Supplies – Contested Injury	14
53.	Physical Examination	14
54.	Refusal to Submit to Operation	14
55.	Review of Medical Charges	14
56.	Initial Selection and Change of Physician	14
57.	Missing Medical Appointments – Ineligibility For Benefits	14
58.	Disclosure of Healthcare Records	14
59.	Weekly Wages as Basis of Compensation	15
60.	System of Evaluating Permanent Impairment – Physician Advisory Committee	15
61.	Hernia	15
62.	Soft Tissue Injury	15
63.	Employer Reports	16
64.	Managed Care – Certified Workplace Medical Plan	16
155.	Independent Medical Examiner System	33
156.	Case Management	33
157.	Prosthetic Devices	34
 Occupational Disease 		
65.	Compensation Generally	16
66.	Asbestosis or Silicosis	16
67.	Notice of Occupational Disease or Cumulative Trauma – Modification or Denial of Award	17
 Proceedings Before Workers’ Compensation Commission 		
68.	Notice of Injury, Occupational Disease or Cumulative Trauma – Rebuttable Presumptions	17
69.	Filing of Claims	17
70.	Preliminary Conference Procedure	18
71.	Proceedings on Claims	18
72.	Nature of Proceedings Generally	18
73.	Contempt and Subpoena Powers	19
74.	Presumptions in Enforcement Proceedings	19
75.	Depositions	19
76.	Witness Fees	19
77.	Representation of Commission	19
78.	Finality of Order or Award – Review	19
79.	Enforcement of Judgment or Award	20
80.	Modification of Awards – Change of Condition	20
81.	Costs In Proceedings Brought Without Reasonable Grounds	20
82.	Fees for Legal Services	20
83.	Attorney’s or Party’s Signature	20
151.	Dismissal	32
154.	Commencement of Claim	33
166.	Perjury Declaration	35

Payment

84.	Methods of Payment	21
85.	Payment of Clean Claims	21
86.	Controversion of Right to Compensation	21
87.	Joint Petition Settlement	21
88.	Disputed Source of Benefits	21
89.	Credit For Compensation or Wages Paid	21
90.	Deposit or Bond to Secure Payment	21
91.	Interest	22
92.	Notice of Payment	22
93.	Investigations	22
94.	Incarceration of Injured Employee	22
95.	Deductibles	22
158.	Joint Petition – Authorization – Process	34
159.	Payment of Awards – Credits – Commutation	34

Self-Insurance Guaranty Fund

96.	Self-Insurance Guaranty Fund Board	22
97.	Purpose	22
98.	Sources of Funding	22
99.	Impaired Self-Insurer – Commission Duties	22
100.	Board Powers and Duties	22

Miscellaneous

167.	Transfer of Funds, Assets, Etc.	35
------	---	----

II. WORKERS’ COMPENSATION COURT OF EXISTING CLAIMS

169.	Workers’ Compensation Court of Existing Claims	35
------	--	----

III. OKLAHOMA EMPLOYEE INJURY BENEFIT ACT

107.	Short Title	23
108.	Definitions	23
109.	Employer Election	23
110.	Benefit Plan	24
111.	Security For Insurable Risks	25
112.	Guaranty Funds	26
113.	Premium Assessment	26
114.	Premium Equivalent Assessment	26
115.	Guaranty Funds – Assessment Rates	26
116.	Exclusive Remedy – Exception	27
117.	Payment Sources - Responsibilities	27
118.	Adverse Benefit Determinations – Claim Procedures	27
119.	Construction of Act	28
120.	Challenges to Act	28

IV. WORKERS' COMPENSATION ARBITRATION ACT

121. Short Title 28

122. Enforceability of Agreements to Arbitrate 28

123. Notice 28

124. When Act Applies 28

125. Effect of Agreement to Arbitrate; Nonwaivable Provisions 29

126. Application to Commission for Relief 29

127. Validity of Agreements to Arbitrate 29

128. Motion to Compel Arbitration; Stay of Claim 29

129. Provisional Remedies 29

130. Initiation of Arbitration 29

131. Consolidation of Separate Arbitration Proceedings 29

132. Appointment of Arbitrator 30

133. Disclosure by Arbitrator 30

134. Action by Majority 30

135. Immunity of Arbitrator; Competency to Testify; Attorney Fees and Costs 30

136. Arbitration Process 30

137. Representation by Lawyer 30

138. Witnesses; Subpoenas; Depositions; Discovery 31

139. Enforcement of Pre-Award Ruling by Arbitrator 31

140. Award 31

141. Change of Award by Arbitrator 31

142. Remedies; Fees and Expenses of Arbitration Proceeding 31

143. Confirmation of Award 32

144. Vacating Award 32

145. Modification or Correction of Award 32

146. Judgment on Award; Attorney Fees and Litigation Expenses 32

147. Jurisdiction 32

148. Appeals 32

149. Venue 32

V. MISCELLANEOUS

Repealers

170. Title 74, Oklahoma Statutes on Attorney General Workers' Compensation Fraud Unit 36

171. Title 85, Oklahoma Statutes – Exceptions 36

Effective Date

172. Effective Date 36

This page intentionally left blank.

SB 1062 – BILL SUMMARY

The following is a general overview of Senate Bill No. 1062 (2013). The measure is effective 2/1/14, but various provisions may have different operative dates. This summary is for informational purposes only. It is not a statement of policy, is not binding on any workers' compensation tribunal in any way, and should not be relied upon as the basis of any action.

NOTE: All references are to sections of the measure, unless otherwise noted.

- Section 1.** **Short Title and Strict Construction** (85A O.S., §1). Sections 1 through 106 and 150 through 168 of the measure comprise the “Administrative Workers’ Compensation Act” (AWCA). The act is to be strictly construed.
- Section 2.** **Definitions** (85A O.S., §2). Defines terms used in the AWCA. Definitions include, but are not limited to:
Compensable Injury: Damage or harm to the physical structure of the body or prosthetic appliances caused solely from an accident, cumulative trauma or occupational disease in the course and scope of employment.
Permanent Disability: The extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the body established by competent medical evidence and based on the current edition of the *AMA Guides to the Evaluation of Permanent Impairment*.
Permanent Partial Disability: Permanent disability or loss of use after maximum medical improvement (MMI) has been reached which prevents an injured employee, released to return to work by the treating physician, from returning to the employee’s pre-injury or equivalent job. PPD must be supported by objective findings.
Pre-injury or Equivalent Job: Worker’s job with the employer at the time of injury or other job offered by the employer that pays at least the worker’s average weekly wage.
- Section 3.** **Applicability of Act** (85A O.S., §3). The AWCA covers all employers and employees, unless otherwise provided, applies to all claims based on accidents occurring on or after February 1, 2014, and shall not be construed to conflict with Federal law governing an employer’s liability for injuries received by its employees. Rights regarding claims based on accidents occurring before February 1, 2014 are governed by the Workers’ Compensation Code.
- Section 4.** **Severability Clause** (85A O.S., §4). Parts of the AWCA determined to be unconstitutional or invalid may be severed without affecting the validity of the act as a whole. Payments invalidated by an adjudication of unconstitutionality shall be offset against a subsequent damage award.
- Section 5.** **Exclusive Remedy – Exceptions** (85A O.S., §5). Provides for exclusive rights and remedies to workers in place of all other rights or remedies of the worker, except for intentional torts and when the employer fails to secure its workers’ compensation obligations. In those excepted instances, the employee can pursue an action before the Commission or in district court, but not both. Extends the immunity to oil and gas owners and operators who are intermediate or principal employers but not the immediate employer of an injured or deceased worker. Exclusive remedy applies even if the employee is denied compensation or is deemed ineligible for compensation under the act.

- Section 6. Fraud (85A O.S., §6).** Provides penalties for workers' compensation fraud and for failure of a carrier or employer to report suspected fraud. Requires a fraud notice on Commission forms. Creates a Workers' Compensation Fraud Investigation Unit within the Attorney General's Office. If an injured worker is charged with workers' compensation fraud, pending workers' compensation proceedings and benefits are stayed from conclusion of the preliminary hearing and the worker being bound over, until final disposition of the criminal case. Notice requirements continue during the stay.
- Section 7. Penalties for Discrimination For Filing Claim – Wrongful Termination (85A O.S., §7).** Prohibits an employer from discriminating or retaliating against a worker who in good faith filed a workers' compensation claim, retained a lawyer regarding a claim, instituted a proceeding under the AWCA, or testified in a proceeding. The Commission has exclusive jurisdiction over the matter and the remedies provided are exclusive. Sanctions are an award of back pay up to \$100,000 (offset by actual or potential interim earnings), costs and a reasonable attorney fee. An employer cannot discharge an employee during a period of TTD solely due to absence from work or to avoid paying TTD.
- Section 8. Waiver of Compensation Void – Exception (85A O.S., §8).** An agreement by an employee to waive the right to compensation is invalid. Prohibits any contract, regulation or device from operating to relieve an employer's liability under the AWCA, unless the AWCA specifically provides otherwise. Certain business officers, owners and members may exclude themselves from coverage or waive their rights to compensation under the AWCA.
- Section 9. Employee Agreement to Pay Premium Void (85A O.S., §9).** An agreement by an employee to pay any portion of premium paid by the employer to a carrier or a benefit fund or department maintained by the employer to provide compensation or medical services is invalid.
- Section 10. Compensation Nonassignable, etc., and Payable to Dependents Only – Child Support Obligations Excepted (85A O.S., §10).** The right to any claim, benefit or compensation shall not be released or commuted except as provided in the AWCA, and except for child support liens, is not assignable or subject to attachment or other legal process. Monetary compensation to dependents of a deceased employee is payable to and for the benefit of the dependents alone. If a child support lien is filed in a case before the Commission, an ALJ shall recognize the lien in any award of monetary benefits and the employer/carrier shall include the lienor's name on any check for TTD, PPD and PTD.
- Section 11. Compensation Payable to Certain Alien Dependents (85A O.S., §11).** The amount of compensation to alien nonresidents of the United States or Canada shall be the same as residents, but alien nonresident dependents in any foreign country are limited to the surviving spouse or children, or if none, the surviving parents if supported in whole or part for 1 year before the injury.
- Section 12. Preference for Due Compensation (85A O.S., §12).** Compensation due an injured employee or the employee's dependents shall have the same preference as allowed by law to an employee for unpaid wages.
- Section 13. Mental Injury or Illness (85A O.S., §13).** Mental injury or illness is compensable only if caused by a physical injury to the employee (except for victims of crimes of violence),

diagnosed by a psychiatrist or psychologist based on criteria established in the most current issue of the *Diagnostic and Statistical Manual of Mental Disorder*, and demonstrated by a preponderance of the evidence. Disability benefits are limited to 26 weeks, unless shown by clear and convincing evidence that the benefits should continue for a set period of time, not to exceed a total of 52 weeks. If death results directly from the mental injury or illness within 1 year, compensation shall be paid to dependents as in other death cases. If death occurs one or more years after the incident resulting in the mental injury or illness, it is not a compensable injury.

- Section 14. Heart or Lung Injury or Illness (85A O.S., §14).** The course and scope of employment must be the major cause of the injury, illness or death. For the injury or illness to be compensable, it must be shown that the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the employee's usual work in the course of the employee's regular employment, or that some unusual and unpredicted incident occurred which was the major cause of the physical harm. Physical or mental stress shall not be considered.
- Section 15. Attorney General's Workers' Compensation Fraud Unit – Fund Transfer (85A O.S., §15).** The Fraud Unit shall receive funds every fiscal year from the Workers' Compensation Fund (created in 85A O.S., §28) based on estimated funding needs determined by the AG and certified by the Commission.
- Section 16. Official Disability Guidelines – Not Mandatory – Exception (85A O.S., §16).** The ODG are the primary standard of reference, at the time of treatment, for the frequency and extent of medically necessary and appropriate services for compensable injuries or for resolving such matters if a dispute arises. The ODG are not mandatory. However, physicians shall prescribe any appropriate and necessary prescription drugs and over-the-counter alternatives as recommended by ODG. Preauthorization is required for any prescription or nonprescription drugs that are not preferred, exceed or are not addressed by ODG.
- Section 17. Physician Advisory Committee (85A O.S., §17).** Recreates a 9-member Physician Advisory Committee to assist the Commission and perform certain duties, including adopting treatment guidelines only for medical treatment and for the prescription and dispensing of Schedule II drugs, if not addressed by the latest edition of ODG. Committee members serving before February 1, 2014 are grandfathered. The Commission is to recognize the latest edition of the ODG as the primary standard of reference, at the time of treatment, in determining the frequency and extent of services presumed to be medically necessary and appropriate for compensable injuries, or in resolving such matters if a dispute arises.
- Section 18. Provider Payments While Claims are Pending (85A O.S., §18).** Health care providers are prohibited from billing or attempting to collect any 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 payment, upon receipt of actual written notice of the employee's filing of a claim for compensation and until a final determination regarding compensability. The statute of limitations for an action on the fees is tolled during this period. If the claim is found noncompensable, the provider may pursue collection against the employee.
- Section 19. Workers' Compensation Commission – Commissioners – Appointment – Compensation (85A O.S., §19).** Creates the "Oklahoma Workers' Compensation Commission," a new

executive agency, which shall have the exclusive responsibility and duty to carry out the provisions of the act, except as otherwise provided. The Commission is comprised of 3 full-time Commissioners appointed by the Governor and confirmed by the Senate for staggered terms. The initial appointments are for 2, 4 and 6 years respectively, as determined by the Governor. Subsequent terms are for 6 years. Incumbents may seek reappointment. One of the initial appointments must be from a list of 3 nominees selected by the Speaker of the House of Representatives. The Governor may request a subsequent slate of nominees from the Speaker if a suitable nominee is not found. To be qualified, a Commissioner must have been involved in the workers' compensation field for at least 3 years. Commissioners are paid a salary equal to that of a district judge of the state. The Governor shall appoint one of the Commissioners as Chair to organize, direct and develop the administrative work, employ administrative staff within budgetary limitations, and perform other duties prescribed by the Commission. The Commission may adopt rules in accordance with the Oklahoma Administrative Procedures Act (APA), but is not otherwise subject to the APA. Appeals or disputes regarding Commission actions are governed by the AWCA. The Commission's main office is in Oklahoma City where its official records and papers shall be kept. Commission or Commissioner hearings may be held in any city in the state. The Governor shall appoint a qualified person as a special commissioner when any Commissioner is disqualified for any reason to hear or participate in a matter before the Commission. Special commissioners are paid a per diem. Vacancies on the Commission shall be filled in the same manner as the original appointment.

Section 20. Commission Powers and Duties (85A O.S., §20). Sets out the powers and duties of the Commission, including authority to appoint ALJs to hear claims for compensation. ALJs must be attorneys licensed in Oklahoma for at least 3 years and have at least 3 years of workers' compensation experience before appointment.

Section 21. Commission Proceedings – Seal (85A O.S., §21). Commissioners are state officers and must take the oaths of office required by law. A majority of Commissioners constitutes a quorum. At least two Commissioners are required to transact business of the full Commission. Except for hearing appeals of ALJ decisions, the Commission may delegate responsibility to hear and decide the rights of interested parties under the act to an ALJ. The Commission shall have a seal to authenticate its judgments, awards and proceedings.

Section 22. Administration of Act – Staff and Expenditures (85A O.S., §22). Sets out the following administrative powers of the Commission:

1. Promulgate necessary rules, subject to specific procedures,
2. Appoint and fix the compensation of temporary personnel,
3. Make necessary expenditures from the Workers' Compensation Fund,
4. Appoint as many ALJs, examiners, investigators, medical examiners, clerks and other employees as may be necessary, and fix the employee's annual salary,
5. Hear and approve compromise settlements,
6. Administer self-insurance,
7. Set up a toll-free number for information calls,
8. Hear and determine disputed medical bills,
9. Invest funds of the Multiple Injury Trust Fund,
10. Appoint a Commission Mediator to conduct informal sessions to resolve disputes, and

11. Other powers and duties allowed by law.

ALJs have the duty to hear and determine claims for compensation; conduct hearings and investigations; and make judgments, decisions and determinations required by Commission rule or judgment.

Section 23. Traveling Expenses (85A O.S., §23). Traveling expenses for Commissioners and Commission employees are allowed as provided in the State Travel Reimbursement Act.

Section 24. Biennial Report (85A O.S., §24). Requires the Commission to file a biennial report with the Governor and Legislature regarding administration of the act.

Section 25. Statistical Data Collection (85A O.S., §25). Requires the Commission to collect information from the Insurance Commissioner and publish an annual report of aggregate data regarding the distribution of workers' compensation insurance premiums, losses, expenses and net income. The report also shall include aggregate data on benefit distribution to claimants, medical providers and attorneys, if available.

Section 26. Commissioners – Removal (85A O.S., §26). Allows the Governor to remove a Commissioner for inefficiency, neglect of duty or misconduct in office. Specifies removal procedures.

Section 27. Commission Jurisdiction – Powers and Duties of Administrative Law Judges (85A O.S., §27). The Commission has jurisdiction over all claims filed pursuant to the AWCA. Claims are heard by an ALJ sitting without a jury. A hearing may be ordered upon application of either party. Parties may present evidence and be represented by counsel. The ALJ must issue a decision within 30 days after submission of the case by the parties. The decision is final unless appealed. ALJs have the duty to hear and determine claims for compensation; conduct hearings and investigations; and make judgments, decisions and determinations required by Commission rule or judgment. They also may hear and determine challenges to an arbitration agreement and assume duties within the Workers' Compensation Court of Existing Claims as assigned by the Commission.

Section 28. Funds Established (85A O.S., §28). Creates three funds within the State Treasury:

1. Workers' Compensation Fund (used to fund administration of the act and other purposes provided by law),
2. Multiple Injury Trust Fund (payments shall be suspended if the fund balance is insufficient to cover claims obligations to employees), and
3. Self-Insured Guaranty Fund.

Limits appropriations from the Funds. Provides for administration, disbursement and investment of the Funds. Exempts the Funds from taxes and other assessments.

Section 29. Workers' Compensation Fund – Fees (85A O.S., §29). The following fees are payable to the Workers' Compensation Commission for deposit to the Workers' Compensation Fund:

1. \$1,000 fee from workers' compensation carriers upon securing a license to transact business in the state,
2. \$1,000 fee from self-insurers when approved to self-insure,

3. \$1,000 annual fee from third-party administrators.

Section 30. Physically Impaired Person Defined (85A O.S., §30). Defines “physically impaired person” for purposes of liability for combined disabilities against the Multiple Injury Trust Fund. Includes previous adjudications of disability adjudged and determined by the Commission among adjudications of preexisting disability that may be combinable for MITF purposes.

Section 31. Multiple Injury Trust Fund – Funding Sources – Administration and Protection – Appeals (85A O.S., §31). The Commissioners shall establish the MITF assessment rate against workers’ compensation payers for purposes of computing the assessment necessary to pay the annual obligations of the MITF (as determined by the MITF Director) and allocations set out in the section. The rate in effect on February 1, 2014 remains effective through June 30, 2014. If mutualized, CompSource Oklahoma may influence the assessment rate until the MITF repays in full any loan owed by the MITF to the company. The MITF Director may invest monies deposited in the Fund and fulfill the Fund’s payment obligations. The Commission is charged with administering and protecting the Fund. The person serving as Administrator of the Fund before February 1, 2014 shall serve as the initial MITF Director. The Director is appointed by and serves at the pleasure of the Governor. The State Treasurer shall allocate to the Commission sufficient funds from the Fund for administration expenses thereof in amounts fixed by the MITF Administrator (Director), unless rejected by the Commission. Commission awards affecting the MITF are appealable in the same manner as other Commission awards.

Section 32. Multiple Injury Trust Fund Awards – Attorney Fees (85A O.S., §32). The MITF has liability for combined disabilities constituting permanent and total disability. Benefits are payable in periodic installments for 15 years or until the employee reaches 65, whichever period is longer. Attorney fees are vested and equal 20% of the PTD awarded. They are payable periodically with the attorney receiving every 5th check.

Section 33. Limitations Periods for Multiple Injury Trust Fund Claims – Prohibition on Representing Carrier and Claimant (85A O.S., §33). Establishes limitations periods governing the filing and timely prosecution of a claim against the MITF. An attorney for the respondent in a claim against the last employer cannot represent the employee in a subsequent claim against the Fund.

Section 34. Administration and Protection of Multiple Injury Trust Fund – Standing to Appear – Appeals (85A O.S., §34). The MITF Director is charged with administering and protecting the Fund. The Director has standing and authority to appear in cases affecting the Fund. The State Treasurer shall allocate to the MITF Director sufficient funds from the Fund for administration expenses thereof in amounts fixed by the MITF Administrator (Director), unless rejected by the Governor and Attorney General. Commission awards affecting the MITF are appealable in the same manner as other Commission awards.

Section 35. Employer’s Liability for Compensation (85A O.S., §35). Requires employers to secure compensation to its employees. There is no liability for compensation for an injury or death due substantially to an employee’s willful intention to cause such compensable injury or death. Employers have the primary obligation to pay compensation regardless whether coverage is procured.

Section 36. Liability of Prime Contractors and Subcontractors – Sole Proprietorships or Partnerships – Certification of Noncoverage (85A O.S., §36). Establishes rules of secondary liability involving prime contractors and subcontractors, and prime contractors and sole proprietorships and partnerships. Provides for certification of noncoverage issued by the Commission. Exempts owners or farmers from liability for compensation for injuries to an independent contractor or employees of the contractor for work performed on a single-family dwelling or its premises, or for a farmer whose cash payroll for wages did not exceed \$100,000.

Section 37. Waiver of Exclusion or Exemption (85A O.S., §37). Allows employers engaged in any exempted or excepted employment to waive the exemptions or exceptions as to any or all employees engaged in the employment as the employer may elect, provided notice of the waiver is given. Provides procedures governing the notice.

Section 38. Security for Compensation (85A O.S., §38). An employer may secure compensation for its employees by:

1. Insuring with an entity authorized to transact workers' compensation insurance in the state,
2. Obtaining and keeping in force workers' compensation guaranty insurance with a company authorized to do guaranty business in the state,
3. Self-insuring through the Commission under Insurance Department rules,
4. Forming a group self-insurance association of two or more employers with a common interest which agree, pursuant to rules of the Commission, to pool their liabilities under the AWCA, and
5. Providing any other security as may be approved by the Commission and the Insurance Department.

The Commission may waive the requirements of securing compensation in an amount commensurate with the employer's ability to pay required benefits. An employer that knowingly provides false information to the Commission for purposes of securing or maintaining a self-insurance permit is guilty of a felony subject to a fine up to \$10,000.

Section 39. Substitution of Carrier For Employer (85A O.S., §39). In any case where the employer is not a self-insurer, the employer's carrier may discharge the employer's duties under the AWCA.

Section 40. Failure to Secure Payment of Compensation – Penalty (85A O.S., §40). Sets forth penalties for failure to secure compensation:

1. A misdemeanor and payment of up to a \$10,000 fine,
2. A civil fine of up to \$1,000 per day of the violation, assessed by the Commission, subject to a hearing process, and
3. A district court order, petitioned by the Commission, enjoining the employer from engaging in further employment until compensation is secured or all civil penalties assessed by the Commission are paid.

All fines, upon collection, shall be deposited to the Workers' Compensation Fund.

Section 41. Posting Notice of Compliance (85A O.S., §41). Employers that secure payment of compensation must post notice of compliance in a conspicuous place at the employer's place of business on a form prescribed by the Commission.

Section 42. Insurance Policies (85A O.S., §42). Sets out content, cancellation and coverage requirements of insurance policies issued to secure the payment of compensation under the AWCA. The Insurance Commissioner may adopt rules and certify 5 or more employers as an insurance group which shall be considered an employer for purposes of the act.

Section 43. Third Party Liability (85A O.S., §43). The filing of a claim for compensation against the employer and its carrier does not prevent an employee or the employee's dependents from bringing a district court action against a third party for the injury. The employer/carrier is entitled to notice and opportunity to join in the action. Commencement of a third party action does not affect the right of the employee or the employee's dependents to recover compensation. Provides for allocation of the third party recovery. An employer or carrier liable for compensation has the right to maintain a tort action against any third party responsible for the employee's injury/death. The claimant is entitled to notice and opportunity to be represented in the action to pursue benefits and subrogation. Provides for allocation of the recovery. An employer or carrier liable for compensation on account of injury or death of an employee may maintain an action against the employer's uninsured or underinsured motorist coverage.

Section 44. Effect of Payment By Other Insurers (85A O.S., §44). Benefits payable to an injured employee shall be offset, dollar-for-dollar, by the amount of benefits the injured employee previously received for the same medical services or period of disability from a group health care service plan, a group disability policy, a group loss of income policy, a group accident, health, or accident and health policy, a self-insured employee health or welfare benefit plan, or a group hospital or medical service contract. The offset does not apply to any benefit received from a group policy for disability if the injured employee paid for the policy. The claimant must identify and provide contact information of any person/entity which paid benefits described.

Section 45. Benefits for Temporary and Permanent Disability, Vocational Rehabilitation and Disfigurement – Law Governing Determination of Benefits (85A O.S., §45).

Temporary Total Disability (TTD)

- **Maximum TTD Benefit:** 70% of the injured employee's average weekly wage, not to exceed 70% of the state average weekly wage for 104 weeks, plus up to an additional 52 weeks if an ALJ finds, based on a showing of medical necessity by clear and convincing evidence, that a consequential injury occurred and additional time is needed to reach maximum medical improvement.
- **Commencement:** No payment for the first 3 days of the initial period of TTD.
- **Terminating TTD:** The employer may terminate TTD upon notice of termination to the employee (or the employee's attorney if represented) when the employee is released to full duty by the treating physician for all body parts found by the Commission to be injured, or if the employee, without valid excuse, misses 3 consecutive medical treatment appointments, is noncompliant with the treating physician's orders, or otherwise abandons care. The employee may object within 10 days and request a hearing on reinstatement before an ALJ. The employee must

prove there was a valid excuse for noncompliance or abandonment of care. The ALJ may appoint an IME to determine if further medical treatment is needed. The IME is not allowed to treat the employee unless agreed to by the parties.

Temporary Partial Disability (TPD)

- **Maximum TPD Benefit:** 70% of the difference between the injured employee's average weekly wage before the injury and the employee's weekly wage for performing alternative work after the injury, but only if the employee's weekly wage for performing the alternative work is less than the TTD rate. Total compensation for TPD may not exceed 52 weeks.
- **Ineligibility for Benefits:** An employee who refuses to perform alternative work offered is not entitled to benefits for TTD, TPD, PPD, PTD, vocational rehabilitation, or disfigurement.

Permanent Partial Disability (PPD)

- **Maximum PPD Benefit:** 70% of the employee's average weekly wage, not to exceed \$323 per week, up to 350 weeks for the body as a whole. For amputation or permanent total loss of use of a scheduled member, 70% of the employee's average weekly wage, not to exceed \$323, multiplied by the number of weeks in the schedule of compensation for the member set forth in 85A O.S., §46, regardless whether the employee is able to return to the employee's pre-injury or equivalent job.
- **Evidentiary Requirements:** Opinions addressing compensability and permanent disability must be stated within a reasonable degree of medical certainty. The Commission is responsible for determining PPD through its ALJs. PPD must be supported by competent medical testimony of an "MD, DO or DC" and shall be supported by objective medical findings as defined in 85A O.S., §2. The medical testimony must include the employee's percentage of PPD and whether or not the disability is job-related and caused by the accidental injury or occupational disease. A determination of PPD which is not supported by objective medical findings provided by a treating physician who is an "MD, DO or qualified independent medical examiner" shall be considered an abuse of discretion. Evaluations of PPD to parts of the body, other than scheduled members, must be based solely on criteria established by the current edition of the *AMA Guides*. Deviations from the *Guides* are permitted only when specifically provided for in the *Guides*.
- **Deferral of PPD Award:** Payment of a PPD award shall be deferred and held in reserve by the employer/carrier if the employee:
 1. Has reached maximum medical improvement (MMI);
 2. Has been released by the employee's treating physician to return to work; and
 3. Returns to the pre-injury or equivalent job for a term of weeks determined by dividing the total dollar value of the award by 70% of the employee's average weekly wage.

Settlement agreements are excepted from deferral. Attorney fees and assessments related to the Multiple Injury Trust Fund (85A O.S., §31), Self-Insurance Guaranty Fund (85A O.S., §98), Oklahoma Option Insured Guaranty Fund and Oklahoma Option Self-Insured Guaranty Fund (85A O.S., §205), and Workers' Compensation Fund (85A O.S., §122), shall be calculated on the full PPD award and paid at the time of the deferral.

- **Reduction of PPD Award:** The PPD award shall be reduced by 70% of the employee's average weekly wage for every week the employee:

1. Works in the pre-injury or equivalent job; or
 2. Refuses an offer to return to the pre-injury or equivalent job.
- **Lump Sum:** If the employee is terminated by the employer other than for misconduct as defined in 85A O.S., §2, or the position offered is not the pre-injury or equivalent job, the remaining PPD award shall be paid in a lump sum.
 - **Previous Disability:** An employee who suffered previous disability or received compensation therefor is not precluded from compensation for a later accidental personal injury or occupational disease.
 - **Compensation For Later Injury:** If there exists a previous permanent partial disability (impairment) which produced PPD and the same is aggravated or accelerated by an accidental injury or occupational disease, compensation for PPD shall be only for such amount as was caused by the accidental injury or occupational disease, and no additional compensation shall be allowed for the preexisting disability or impairment. The percentage of previous disability must be based on competent evidence. The percentage of previous disability awarded by settlement or judicial or administrative determination is conclusive.
 - **Reduction For Preexisting Disability:** If the employer against whom compensation is sought was the employer when injury resulting in preexisting disability or impairment was sustained, any award of compensation against the employer shall be reduced by the current dollar value of the percentage of preexisting disability. The reduction shall be calculated by multiplying the percentage of preexisting disability by the compensation rate in effect on the date of the accident or injury against which the reduction shall be applied.
 - **Credit For Preexisting Disability:** If the employer against whom compensation is sought was not the employer when injury resulting in preexisting disability or impairment was sustained, the employer is entitled to credit for the percentage of preexisting disability.
 - **Limitations Affecting PPD Award:** A PPD award or combination of awards may not exceed a PPD rating of 100% to any body part or to the body as a whole. Body as a whole represents 350 weeks. No PPD is allowed to a body part for which no medical treatment has been received. PPD orders shall be paid consecutively.
 - **Vocational Rehabilitation (VR) Services:** If eligible for PPD, an employee is entitled to VR (retraining/job placement), for not to exceed 52 weeks.

Permanent Total Disability (PTD)

- **Maximum PTD Benefit:** 70% of the employee's average weekly wage, not to exceed the state average weekly wage, for the continuance of the disability until the employee reaches the age of maximum Social Security retirement benefits or for 15 years, whichever is longer.
- **Early Benefits:** PTD may be awarded upon exhaustion of TTD even though the employee has not reached MMI, if the employee is otherwise qualified.
- **Death From Unrelated Causes – Revivor:** PTD benefits cease on the date of death from unrelated causes. A one-time lump sum payment equal to 26 weeks of weekly PTD benefits awarded the claimant is payable to eligible beneficiaries upon revivor, to share and share alike.
- **Limitations Affecting PTD Award – Annual Review of PTD Status:** If the Commission awards PPD and PTD benefits, the PTD award is due after the PPD award is paid in full. The Commission shall review the status of a PTD recipient

annually. PTD recipients shall file an affidavit annually, under penalty of perjury, regarding ongoing eligibility. Benefits may be suspended for failure to file the affidavit but may be reinstated after a Commission hearing.

Vocational Rehabilitation (VR) Services

- **Vocational Rehabilitation Director:** The Commission shall hire or contract for a Director with the following powers and duties:
 1. Oversee the Commission's VR program.
 2. Help injured workers return to the workforce.
 3. Upon request of either party, or by order of an ALJ, assist the Commission in determining if VR training/services are appropriate for an injured employee, and oversee the training. Eligibility for training/services is presumed under certain circumstances.
 4. Issue administrative orders (appealable to the full Commission), including VR evaluation orders when an employee is unable to work for at least 90 days.
 5. Assign VR counselors to coordinate recommended services for the employee to be paid for by the employer.
- **Request for VR Benefit:** A request must be filed with the Commission not later than 60 days from the date of receiving permanent restrictions that prevent the employee from returning to the pre-injury or equivalent position.
- **Maximum VR Benefit:** 52 weeks.
- **Early Benefits:** An ALJ may order VR before the injured employee reaches MMI, if the treating physician believes the injury likely will prevent the employee from returning to the employee's former employment.
- **Vocational Rehabilitation Evaluation:** An ALJ may refer an employee to an evaluation, and order necessary and appropriate VR services/training, to be paid for by the employer. The cost of the evaluation and services/training may, at the ALJ's discretion, be deducted from any award of benefits to the employee if the employee refuses, or fails in good faith to complete, the VR.
- **TTD Equivalent Benefits:** An employee is entitled to TTD equivalent benefits for an additional 52 weeks 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 PTD status.
- **Tuition:** Tuition for VR services is paid periodically by the employer/insurer to the facility providing the services. The employer/insurer may deduct the tuition amount from compensation awarded to the employee.

Disfigurement: Up to \$50,000 for serious and permanent disfigurement may be awarded by the Commission no sooner than 12 months after the injury, unless the employee was awarded PPD to the same body part.

Law For Determining Benefits: For single-event injuries, the law in effect at the time of injury controls. For cumulative trauma or occupational disease or illness, the law in effect at the time of awareness controls. For death, the law in effect at the time of death controls.

Section 46. Schedule of Compensation for PPD (85A O.S., §46).

Amputation and Permanent Total Loss of Use: 70% of the employee's average weekly wage, not to exceed \$323, multiplied by the number of weeks set forth in the schedule, regardless whether the employee is able to return to the employee's pre-injury job. The schedule includes extremities and related body parts, eye enucleation, loss of hearing, loss

of vision, and loss of testes. Use of corrective lenses may be considered in evaluating the extent of vision loss. Provides rules on compensation for amputation or loss of use of one or more phlanges of a single digit or of multiple digits.

Other Cases: 70% of the employee's average weekly wage, not to exceed \$323 for the number of weeks which the partial disability bears to 350 weeks.

Maximum Lifetime Award of PPD Benefits: The sum of all PPD awards, excluding awards against the Multiple Injury Trust Fund, shall not exceed 350 weeks.

Section 47. Death Benefits (85A O.S., §47).

Time of Death: If death does not result within 1 year from the date of the injury or within the first 3 years of the period of compensation fixed by the compensation order/judgment, there is a rebuttable presumption that the death did not result from the injury.

Common Law Spouse: To be eligible for death benefits, a common law spouse must obtain an order from a court of competent jurisdiction establishing the existence of the common law marriage with the deceased worker.

Beneficiaries – Amounts:

- **Surviving Spouse:** \$100,000 lump sum payment and 70% of the lesser of the deceased employee's wages and the state average weekly wage, plus 2 years' indemnity benefit upon remarriage payable in lump sum. The surviving spouse's weekly benefit shall not be diminished by the award to other beneficiaries.
- **Surviving Spouse and One Child:** To the child, a \$25,000 lump sum payment and 15% of the lesser of the deceased employee's wages and the state average weekly wage.
- **Surviving Spouse and Two or More Children:** To the children, a \$50,000 lump sum payment and 30% of the deceased employee's average weekly wage, share and share alike.
- **No Spouse, Up to Two Children:** A \$25,000 lump sum payment and 50% of the lesser of the deceased employee's average weekly wage and the state average weekly wage, to each child.
- **No Spouse, More Than Two Children:** If there are more than 2 children, a \$25,000 lump sum payment per child, up to a maximum of \$150,000 for all children, plus 100% of the lesser of the deceased employee's average weekly wage and the state average weekly wage to share and share alike.
- **No Spouse or Children:** To each legal guardian (of a beneficiary) who was financially dependent upon the employee at the time of death, 25% of the lesser of the deceased employee's average weekly wage and the state average weekly wage until the earlier of death, eligibility for social security, obtaining full-time employment, or 5 years from the date their benefits began.

Funeral Expenses: Actual funeral expenses, up to \$10,000.

Commencing Benefits – Determining Dependency: The employer must commence payment of benefits within 15 days of the Commission's determination of proper beneficiaries. A beneficiary or the beneficiary's guardian must file a proof of loss form with the Commission to receive benefits. The Commission shall appoint a guardian ad litem for all minor children. Questions of dependency shall be determined at the time of injury.

Adjusting Weekly Benefits: When a member of a class of beneficiaries who receive a pro rata share of weekly income benefits becomes ineligible to continue to receive benefits, weekly income benefits payable to the remaining members of the class shall be adjusted based on the new class size.

Terminating Weekly Benefits: The spouse's weekly benefits terminate upon remarriage. Weekly benefits to any child terminate on the earlier of death, marriage or reaching the age of 18. Provided, if the child turns 18 and is enrolled as a full-time student, benefits terminate upon the earlier of reaching the age of 23 or no longer being enrolled as a student. Provided further, if a child turns 18 and is physically or mentally incapable of self-support, benefits terminate upon the earlier of reaching the age of 23 or becoming capable of self-support.

Section 48. Additional Benefits – Illegally Employed Minor (85A O.S., §48). Disability or death benefits are doubled when injury or death is sustained by a minor employed in violation of statutes on minimum ages for employment of minors, unless the minor misrepresents the minor's age, in writing, to the employer.

Section 49. Limitation on Temporary Total Disability – Recipients of Unemployment Benefits (85A O.S., §49). No TTD is payable for any week for which unemployment benefits were received. Provided, TTD in excess of unemployment benefits received by the employee is payable if TTD is disputed and later determined compensable.

Section 50. Medical Benefits – Employer Liability – Fee Schedule (85A O.S., §50).

Employer Duty To Provide Treatment: The employer must promptly provide such medical services, devices and apparatuses as are reasonably necessary in connection with the employee's injury. The employer has the right to choose the treating physician. However, an injured employee may select a treating physician at the employer's expense where the employer fails or neglects to provide treatment within 5 days after actual notice of the injury or where an emergency exists. Requires ongoing service of medical devices for compensable injuries.

Suspension of Proceedings: Proceedings shall be suspended and compensation shall not be payable for any period during which an injured employee refuses to submit to a medical examination ordered by the Commission or requested by the employer/insurer.

Mileage Reimbursement: The employer must reimburse an employee for actual mileage in excess of 20 miles round-trip to and from the employee's home to the location of certain medical service providers, not to exceed a total of 600 miles round-trip. The reimbursement rate is per the State Travel Reimbursement Act.

Fee Schedule: The fee schedule in effect on the August 23, 2013 remains in effect, unless and until the Legislature approves a proposed fee schedule developed by the Commission. The schedule shall be developed after notice and public hearing and is subject to approval by the Legislature. The Commission shall review the schedule every 2 years. The Commission has sole jurisdiction over the right to recover charges for medical care.

Closed Formulary: The Commission by rule shall adopt a closed formulary with an appeals process and require the use of generic and over-the-counter alternatives unless otherwise specified by the prescribing physician.

- Section 51. Payment of Medical Expenses (85A O.S., §51).** The employer shall pay all medical expenses, subject to the fee schedule, with no maximum dollar or duration limits for all compensable injuries.
- Section 52. Medical Services and Supplies – Contested Injury (85A O.S., §52).** The employer is not liable for payment of any medical services and supplies if the Commission determines the injury is not compensable.
- Section 53. Physical Examination (85A O.S., §53).** An injured employee shall submit to physical examination and treatment by another qualified physician if ordered by the Commission. Proceedings shall be suspended and no compensation shall be payable for any period during which the employee refuses to submit to, or otherwise obstructs, the Commission ordered examination or treatment. The employee’s right to further compensation is barred if the employee fails to obey the Commission’s judgment for one month from its date.
- Section 54. Refusal to Submit to Operation – Hernia Exception (85A O.S., §54).** Except in cases of hernia (85A O.S., §61), an injured employee’s unreasonable refusal to submit to a low risk surgical operation advised by at least 2 qualified physicians shall be taken into consideration by the Commission when determining compensation for PPD or PTD.
- Section 55. Review of Medical Charges (85A O.S., §55).** The employer/insurer may ask the Commission to review medical charges it considers are unreasonable. If found unreasonable, the charges may be amended per the fee schedule or in accordance with reasonable market rates. This process for review and enforcement of charges does not apply if a written contract exists between the employer and provider.
- Section 56. Initial Selection and Change of Physician (85A O.S., §56).** The employer has the initial choice of treating physician. The injured employee has the right to change the treating physician. The process differs depending upon whether the employer participates in a certified workplace medical plan (CWMP). If the employer participates in a CWMP, the employee may seek to change the treating physician using the plan’s dispute resolution process. If the employer does not participate in a CWMP, the employee may petition the Commission one time for a change of physician. If granted, the employee shall select a physician from a list of 3 physicians provided by the employer.
- Section 57. Missing Medical Appointments – Ineligibility for Benefits (85A O.S., §57).** An injured employee who misses 2 or more scheduled appointments for treatment is not eligible to receive benefits under this act, unless the employee’s absence was caused by an extraordinary circumstance as determined by the Commission or the employee gave the employer at least 2 hours prior notice and a valid excuse. Inability to get transportation is not a sufficient excuse.
- Section 58. Disclosure of Healthcare Records (85A O.S., §58).** An injured employee’s medical services provider shall permit its records to be copied and shall furnish full written information to the Commission, the AG Fraud Investigation Unit, the employer/carrier and the employee or the employee’s dependents, upon request. The requestor shall pay a reasonable copy charge. No person who, in good faith under this section or per Commission rule, reports the medical information shall incur legal liability for disclosing the information.

Section 59. Basis of Compensation – Determining Weekly Wages (85A O.S., §59). Provides formulas for calculating the employee’s average weekly wage (AWW) as a basis of compensation under the act:

1. The employee’s AWW equals gross earnings divided by the number of full weeks of employment with the employer up to a maximum of 52 weeks.
2. If the employee was working on a piece basis, the employee’s AWW is calculated by determining the employee’s hourly wage and by multiplying the hourly wage by the number of hours in a full-time workweek in the employment.
3. Overtime earnings are calculated and added to the regular weekly wages.
4. The Commission may determine the employee’s AWW using a method that is just and fair to all parties, if exceptional circumstances prevent a just and fair determination of the employee’s AWW using the above formulas.
5. Compensation for members of the National Guard and certain authorized voluntary or uncompensated first responders is determined using the wages of the employee in the employee’s regular occupation.

Section 60. Physician Advisory Committee – System to Evaluate Permanent Disability (85A O.S., §60). The Physician Advisory Committee (85A O.S., §17) may recommend adoption of a method or system to evaluate permanent disability that deviates from or is used in place of or in combination with the AMA’s *Guides to the Evaluation of Permanent Impairment*. The recommendation is subject to review by the Commission and disapproval by the Legislature after submission to the Governor and legislative leaders. If the Legislature takes no action, the recommendation becomes operative 30 days after adjournment of the Legislature.

Section 61. Hernia – Compensation for Disability (85A O.S., §61).

Evidentiary Requirements: For a hernia to be compensable, the injured employee must prove by a preponderance of the evidence that:

1. The hernia is a “compensable injury” as defined in 85A O.S., §2;
2. The occurrence of the hernia followed as a result of sudden effort, severe strain, or the application of force directly to the abdominal wall;
3. There was severe pain in the hernial region;
4. Notice of the occurrence was given to the employer within 5 days thereafter; and
5. The physical distress following the occurrence of the hernia was such as to require the attendance of a licensed physician.

Compensation: Notwithstanding 85A O.S., §45 (benefits for temporary and permanent disability, vocational rehabilitation and disfigurement), TTD for a compensable hernia is limited to 6 weeks, unless the employee refuses a physician recommended hernia operation. In that case, the employee is entitled to 13 weeks of TTD in addition to medical care. If the employee dies within 1 year as a direct and sole result of the hernia or a radical operation of the hernia, compensation shall be paid to dependents as in other death cases.

Section 62. Soft Tissue Injury – Compensation for Disability (85A O.S., §62).

Definition: “Soft Tissue Injury” means damage to one or more of the tissues that surround bones and joints. It includes sprains, strains, contusions, tendonitis, muscle tears and

cumulative trauma. It excludes spinal injury or disease with corrective surgery, brain or closed-head injury, and any joint replacement.

Compensation: Notwithstanding 85A O.S., §45 (benefits for temporary and permanent disability, vocational rehabilitation and disfigurement), TTD for a nonsurgical soft tissue injury is limited to 8 weeks, regardless of the number of body parts to which there is a nonsurgical soft tissue injury. An additional 8 weeks of TTD is allowed if the employee is treated with one or more injections. Epidural steroid injections, or any procedure with the same or similar level of invasiveness, is not “surgery.” If surgery is recommended, the employee may petition the Commission for one extension of TTD and the Commission may order an extension of up to 16 additional weeks. If surgery is not performed within 30 days of its authorization by the employer/insurer or Commission, due to the employee acting in bad faith, benefits for the extension period shall end and the employee shall reimburse the employer for all TTD received beyond 8 weeks.

Section 63. Employer Reports – Penalty (85A O.S., §63). Employers must report an injury or death to the Commission within 10 days after notice or knowledge of the same, and send additional reports as prescribed by the Commission. A report properly mailed within the 10-day period is considered timely. The Commission shall develop a means of accepting reports electronically. Refusal to send a report after notice is subject to a monetary civil penalty, which the employer may contest. If the employer fails to pay the penalty after final judgment, the Commission may bring a district court action to enjoin the employer from engaging in business until all required reports and penalties are paid.

Section 64. Managed Care – Certified Workplace Medical Plans (85A O.S., §64). Specifies application criteria for certification of a certified workplace medical plan and regulatory oversight of plans by the State Commissioner of Health. One criteria for certification is that the plan use medical treatment guidelines consistent with the Official Disability Guidelines (ODG). An employer that is not experience-rated when participating in a plan shall be granted a 10% premium reduction from its workers’ compensation insurer.

Section 65. Occupational Disease – Compensation – Employer Liability (85A O.S., §65).

Definition: Defines “occupational disease.” The causal connection between the occupation or employment and the disease must be established by a preponderance of the evidence.

Employer Liability: The last employer in whose employment the employee was last injuriously exposed and the carrier, if any, on the risk at the time, is liable for compensation for an occupational disease. The amount of compensation is based on the employee’s average weekly wage when last injuriously exposed.

Compensation: Specifies instances when no compensation for occupational disease is payable. Excuses an employer from liability for compensation unless certain conditions are met. Compensation for occupational disease is limited to the proportion of the disability attributable to the occupational disease as opposed to another noncompensable cause.

Section 66. Asbestosis or Silicosis – Compensation (85A O.S., §66). Defines “asbestosis” and “silicosis.” Disability or death from asbestosis/silicosis is presumed not to be due to the nature of the occupation unless certain conditions are met. Specifies compensation payable for disability from uncomplicated asbestosis/silicosis and for disability or death from asbestosis/silicosis complicated with tuberculosis or another disease. The Commission may order an employee removed from employment if the employee, though not disabled, is found affected by

asbestosis/silicosis to such a degree that continued exposure in the employment is unduly hazardous. If removed, the employee is entitled to compensation until steady employment is obtained in a suitable occupation without the hazards of the disease, and to vocational rehabilitation paid for by the employer if required by the Commission.

Section 67. Notice of Occupational Disease or Cumulative Trauma – Modification of Award or Denial of Award (85A O.S., §67). Written notice of occupational disease or cumulative trauma must be given to the employer within 6 months after the first distinct manifestation of the disease or cumulative trauma, or within 6 months after death. An award or denial of a compensation award for occupational disease or cumulative trauma may be modified or terminated or awarded where previously denied, on proof of fraud, undue influence or change of condition. The request must be made within 1 year of the denial of the award, or after the award or the date when the last payment was made on the award. For asbestosis or silicosis, the request must be made within 2 years.

Section 68. Notice of Injury, Occupational Disease or Cumulative Trauma – Rebuttable Presumptions (85A O.S., §68). Creates the following rebuttable presumptions that must be overcome by a preponderance of the evidence:

1. An injury is not work related unless oral or written notice is given to the employer within 30 days of the injury.
2. An occupational disease or cumulative trauma injury did not arise out of or in the course of employment unless oral or written notice is given to the employer within 30 days of the employee's separation of employment.

Section 69. Filing of Claims With the Commission (85A O.S., §69).

Time for Filing: A claim for benefits must be filed within the applicable period provided below. If no bona fide request for hearing on the claim is made within 6 months of filing the claim, the claim may be dismissed with prejudice.

- **Injury Other Than Occupational Disease:** Within 1 year from the date of the injury. The claim is barred if the employee receives no weekly benefit compensation or medical treatment within 1 year following the filing of the claim. "Date of injury" is the date an injury is caused by an "accident" as provided in ¶19 of 85A O.S., §2.
- **Occupational Disease or Occupational Infection:** Within 2 years from the date of the last injurious exposure to the hazards of the disease or infection. Provided, a claim for **silicosis or asbestosis** must be filed within 1 year after the time of disablement. Disablement must occur within 3 years from the date of the last injurious exposure to the hazard of silicosis or asbestosis. Provided further, a claim for **disease condition caused by exposure to x-rays, radioactive substances, or ionizing radiation** must be filed within 2 years from the date the condition is made known to an employee following examination and diagnosis by a medical doctor.
- **Death:** Within 2 years of the date of death.

Claim for Additional Compensation: A claim for additional compensation (including disability or medical) is barred unless filed within 1 year of the last payment of disability compensation or 2 years from the date of injury, whichever is longer. This does not apply to replacement of medical supplies, durable medical equipment (including artificial limbs) and other apparatus permanently or indefinitely required due to a compensable injury. Replacement of such items is not payment of compensation so as to toll the statute of

limitations. The claim for additional compensation shall be dismissed without prejudice to its refiling within the limitations period, if no bona fide request for hearing on the claim for additional compensation is made within 6 months after the claim is filed.

Failure to File Not a Bar: Failure to timely file a claim or request for additional compensation shall not bar the right to benefits unless the failure is objected to at the first hearing on the claim in which all interested parties were given notice and opportunity to be heard by the Commission.

Tolling: If failure to file a claim for compensation was induced by fraud, the claim may be filed within 1 year of discovery of the fraud. Limitations periods against a mentally incompetent person or minor are tolled until a guardian is appointed for the person or upon the minor reaching the age of majority. Except for occupational disease, a latent injury or condition does not toll the limitations periods.

Section 70. Preliminary Conference Procedure (85A O.S., §70). The Commission shall develop a prehearing conference procedure by rule. The objectives of the conference are for the Commission to provide legal assistance to claimants and to facilitate informal dispute resolution and settlement. Commission attorneys may approve a settlement unless the attorney also advised the claimant.

Section 71. Proceedings on Claims (85A O.S., §71).

Notice: The Commission must notify the employer and other interested persons of the filing of a claim for compensation within 10 days after the claim is filed.

Investigation and Hearing: The claim shall be assigned to an ALJ who shall hold a hearing on application of a party or on the ALJ's own motion. If a hearing is ordered, it shall be held in Tulsa or Oklahoma City, as determined by the Commission. The ALJ must give 10 days' notice of the hearing served personally or by registered mail. The award, including findings of fact, shall be filed of record and copied to the parties or attorneys of record, if any.

Evidence and Construction: Each party may present evidence, including verified medical reports, at a hearing, or authorize another, in writing, to do so. Determinations of physical impairment must be supported by objective and measurable findings. ALJs and the Commission shall determine impartially, on the basis of the record as a whole, whether a party has met its burden of proof by a preponderance of the evidence. The act shall be strictly construed.

Judgment: The judgment denying the claim or making an award shall be filed with the Commission and a copy sent by registered mail to the parties or their attorneys.

Award After Death: No compensation for disability of an injured employee shall be payable beyond the employee's death, but an award of compensation for disability may be made after the employee's death for the period of disability preceding death.

Section 72. Nature of Proceedings Generally (85A O.S., §72).

Conduct of Hearing or Inquiry: ALJs and the Commission are not bound by statutory rules of evidence or formal rules of procedure. Proceedings shall be conducted in a manner as best ascertains the rights of the parties. Dying declarations, if corroborated, may be sufficient to establish the injury. ALJs and the Commission shall determine, on the basis of the record as a whole, whether a party has met its burden of proof by a preponderance of the evidence. ALJs must make findings of fact and conclusions of law responsive to the issues shaped by the evidence.

Hearings to Be Public: Commission hearings are open to the public and must be stenographically reported. The Commission may contract for the reporting and shall provide by rule for the preparation of a record of all proceedings before it. No stenographic report or record of joint petition hearings is required, but the ALJ or Commission attorney shall record the hearing at no cost to the parties.

Introduction of Evidence: All evidence offered by each party shall be presented at the initial hearing on a controverted claim. Oral evidence shall be stenographically reported. Further hearings to introduce additional evidence shall be granted only at the discretion of the hearing officer or Commission. No medical reports or physician testimony shall be introduced at a hearing unless furnished to the opposing party and the Commission at least 7 days before the hearing. If no written reports are available to a party, in lieu of furnishing the report, the party shall notify the opposing party and Commission in writing of the name and address of the physicians proposed as witnesses, and the substance of their testimony, at least 7 days before the hearing. The time periods may be waived by agreement of the parties. The party offering a medical report shall make every effort to have the physician present for the hearing, upon notice by the opposing party of a desire to cross-examine the physician. Expert testimony will not be allowed unless it satisfies the requirements of Federal Rule of Evidence 702.

- Section 73. Contempt and Subpoena Powers** (85A O.S., §73). The Commission has the power of direct contempt and to issue subpoenas to compel attendance or produce evidence. A person found in contempt may be subject to a fine not to exceed \$10,000.
- Section 74. Presumptions in Enforcement Proceedings** (85A O.S., §74). In a proceeding before the Commission for enforcement of a claim for compensation, there is a rebuttable presumption that the Commission has jurisdiction, notice was sufficient, and the injured employee did not willfully intend to injure himself or others.
- Section 75. Depositions** (85A O.S., §75). The Commission may direct the manner in which depositions of witnesses are to be taken.
- Section 76. Witness Fees** (85A O.S., §76). Witnesses who appear in obedience to a subpoena are entitled to the same witness fee as witnesses in a civil action in district court.
- Section 77. Representation of the Commission** (85A O.S., §77). The Commission may hire attorneys on its behalf if the Commission is a party to or is interested in a court proceeding under this act. If requested, the AG or a district attorney shall represent the Commission without charge.
- Section 78. Finality of Order or Award – Review** (85A O.S., §78). An ALJ judgment, decision or award shall be stayed until all appeal rights have been waived or exhausted. An ALJ's decision may be appealed to the Commission within 10 days of its issuance. A \$175 appeal fee shall be paid to the Commission. The Commission may reverse or modify the decision if it is against the clear weight of the evidence or contrary to law. The Commission proceeding shall be recorded by a court reporter if requested. The Commission's determination is final unless appealed to the Oklahoma Supreme Court within 20 days of being sent to the parties. The Supreme Court may modify, reverse, remand for rehearing or set aside the judgment or award upon certain grounds (i.e. in violation of constitutional provision, outside the Commission's authority or jurisdiction, made on unlawful procedure, affected by other

error of law, clearly erroneous, arbitrary or capricious, procured by fraud, or missing findings of fact on essential issues). A \$100 fee for preparing and transmitting the record for appellate review shall be paid to the Commission.

Section 79. Enforcement of Judgment or Award (85A O.S., §79). Permits certification of Commission judgments and awards to district court for enforcement.

Section 80. Modification of Awards – Change of Condition (85A O.S., §80). The Commission may review, on the ground of change in physical condition or proof of erroneous wage rate, any award or decision (except approved joint petitions) within 6 months of the termination of the compensation period originally ordered. The review may be on the Commission’s own motion or on request of a party. The Commission may modify the award (terminate, continue, decrease or increase future compensation payments), subject to the maximum allowable limits. No review shall affect compensation paid under a prior award. Clerical errors may be corrected within 1 year from the date of the compensation award. Age and its effects on a compensable injury shall not be considered in determining the existence of a change in physical condition or in determining permanent disability.

Section 81. Costs in Proceedings Brought Without Reasonable Grounds (85A O.S., §81). If the court having jurisdiction over the claim or compensation judgment determines the proceedings were brought or continued without reasonable grounds, the cost of the proceedings shall be assessed against the offending party.

Section 82. Fees for Legal Services (85A O.S., §82). Attorney fees are not valid unless approved by the Commission. An attorney representing an employee may not recover fees for services except as expressly provided in this section. Attorney fees are not allowed on uncontroverted claims or medical benefits or services. “Controverted claim” is defined. Attorney fees shall not exceed:

1. 10% of TTD or TPD compensation.
2. 20% of PPD, PTD or death compensation. If the employer makes a written offer to settle and the offer is rejected, the fee is capped at 30% of the difference between the amount of the award and the settlement offer.
3. \$200 for a change of physician that is controverted by the employer and awarded by the Commission.
4. 10% of the actual or estimated value of vocational rehabilitation services.
5. The difference between the amount of compensation controverted and the amount awarded from the Multiple Injury Trust Fund, payable from the Fund in addition to the compensation awarded.

A medical provider may contract with the employee’s attorney to recover disputed charges, and a reasonable fee for the collection may be charged.

Section 83. Attorney’s or Party’s Signature (85A O.S., §83). Every claim, answer and other paper of a party shall be signed by the attorney of record, or if none, by the party. The signature is a certification of certain representations regarding the paper. If not signed, the paper shall be stricken unless signed promptly after the omission is made known. If a paper is signed in violation of the act, the Commission or an ALJ shall impose an appropriate sanction against the signatory and/or a represented party. Sanctions also may be imposed against

a party or its attorney which fails, without good cause shown, to appear for any matter scheduled by the Commission or ALJ, or frivolously joins another party.

Section 84. Methods of Payment (85A O.S., §84). Compensation is payable to the person entitled thereto and shall be paid by check, electronic funds transfer, debit card or state warrant. If the compensation beneficiary is a mental incompetent or minor, the Commission may order the compensation paid to the legally appointed guardian of the estate of such person.

Section 85. Payment of Clean Claims (85A O.S., §85). Clean claims as defined are payable within 30 days after receipt by the employer unless disputed as to compensability or amount.

Section 86. Controversion of Right to Compensation (85A O.S., §86). Within 15 days of receipt of notice of an alleged injury or death, the employer may:

1. Controvert the claim, using a form prescribed by the Commission. Failure to file the form does not bar the employer from controverting the claim or cause it to waive any defenses. The employer may assert additional defenses not included in the initial statement at any time.
2. Apply in writing for additional time to commence compensation or to controvert the claim when, despite good faith and due diligence, sufficient medical information regarding the injury or death is not obtainable within the 15-day period. The application must be postmarked within the 15-day period.

Section 87. Joint Petition Settlement (85A O.S., §87). Parties desiring to settle a claim shall file a joint petition settlement with the Commission. Once filed, the Commission shall order that all claims between the parties have been settled. A judgment denying a joint petition settlement is not appealable.

Section 88. Disputed Source of Benefits (85A O.S., §88). Where an employer changes how it secures compensation to its employees and the only dispute in a claim against the employer is the proper source of payment of benefits, the Commission shall direct that compensation be paid equally by the carriers or self-insured employer. The prevailing insurer is entitled to indemnification from the other insurers, with interest from the date of payment.

Section 89. Credit for Compensation or Wages Paid (85A O.S. §89). An employer may offset:

1. Advance payments for compensation against unpaid installments of compensation due.
2. Wages paid over the temporary disability maximum against the PPD award, after applicable attorney fees and assessments are made.

An employee who receives full wages during disability is not entitled to compensation during the period.

Section 90. Deposit or Bond to Secure Payment (85A O.S., §90). The Commission may require an employer to make a deposit or bond with the Commission to secure prompt and convenient payment of compensation, and payments shall be made upon judgment of the Commission.

- Section 91.** **Interest** (85A O.S., §91). Compensation shall bear interest as provided in 12 O.S., §727.1 from the day an award is made by an ALJ or the Commission on all accrued and unpaid compensation.
- Section 92.** **Notice of Payment** (85A O.S., §92). Employers shall notify the Commission of payments of compensation or suspension of payments, using forms prescribed by the Commission. The Commission may assess up to \$100 civil penalty against an employer for failure to notify the Commission within 30 days after the final payment of compensation was made.
- Section 93.** **Investigations** (85A O.S., §93). Specifies the Commission’s right to investigate and take further action deemed proper to protect the rights of all parties when compensation payments are being made without an award and in instances of controverted claims, suspension of payments, or on request of an interested party.
- Section 94.** **Incarceration of Injured Employee** (85A O.S., §94). An employee who is incarcerated is not entitled to medical or disability benefits.
- Section 95.** **Deductibles** (85A O.S., §95). Requires insurance carriers to offer deductibles optional to the policyholder for benefits payable under this act. If a deductible is chosen, the insured employer is liable for the amount of the deductible for benefits paid for a compensable claim. The carrier shall pay the deductible amount and seek reimbursement of the amount from the insured employer.
- Section 96.** **Self-Insurance Guaranty Fund Board** (85A O.S., §96). Creates the Board that administers, supervises and protects the Self-Insurance Guaranty Fund. All self-insurers must participate in the Fund as a condition of self-insurance. Provides for appointment and terms of Board members. Three members of the Board shall be Commissioners of the Workers’ Compensation Commission and two additional members shall be appointed by the Governor. The Office of the Attorney General provides legal counsel to assist the Board in the performance of its duties. Board members and Commission employees are insulated from civil liability for acts performed in good faith in the execution of Board and Fund duties.
- Section 97.** **Self-Insurance Guaranty Fund – Purpose** (85A O.S., §97). The Fund shall be for continuation of workers’ compensation benefits due and unpaid or interrupted due to the inability of a self-insurer to meet its compensation obligations. Exempts monies in the Fund, including interest, from appropriation. Authorizes certain expenditures from the Fund. Subjects the Fund to audit. Makes the Fund’s Board responsible for all liabilities and obligations of entities that ceased existence.
- Section 98.** **Self-Insurance Guaranty Fund – Sources** (85A O.S., §98). Identifies funding sources for the Self-Insurance Guaranty Fund.
- Section 99.** **Impaired Self-Insurer – Commission Duties** (85A O.S., §99). States duties of the Workers’ Compensation Commission when a self-insurer becomes impaired. Permits the Commission to contract for claims administration.
- Section 100.** **Self-Insurance Guaranty Fund Board – Powers and Duties** (85A O.S., §100). Lists powers and duties of the Self-Insurance Guaranty Fund Board, including the right to exercise any

powers necessary to perform its duties under the act as prescribed by the Workers' Compensation Commission.

Section 101. Annual Report of Commission – EDI Advisory Committee (85A O.S., §101). The Commission shall publish a statistical report annually by July 1 and implement an electronic data interchange (EDI) system by July 1, 2014. The EDI system is to provide relevant data concerning the state's workers' compensation system and delivery of benefits to injured workers. It is to be developed after public hearing, consultation with system participants and assistance from an EDI advisory committee and the Insurance Commissioner. The Governor shall appoint advisory committee members within 30 days of February 1, 2014, and appoint 1 of the 5 members as chair.

Section 102. Group Self-Insurance (85A O.S., §102). Directs the Commission to adopt rules permitting 2 or more employers, except public employers that self-insure under 85A O.S., §107, to pool liabilities as a group self-insurer. Gives the Commission the right to distribute undistributed policyholders' surplus of a workers' compensation self-insurance program if the program meets certain criteria.

Section 103. Group Self-Insurance – Excess Insurance (85A O.S., §103). Directs the Commission to adopt rules permitting 2 or more group self-insurance associations to pool their liabilities for purposes of providing the associations specific and aggregate excess insurance.

Section 104. Immunity From Civil Liability for Acts Performed In Good Faith (85A O.S., §104). Insulates members or personnel of the Workers' Compensation Commission, Self-Insurance Guaranty Fund Board and ALJs from civil liability for acts performed in good faith in the performance of that person's powers or duties under the Administrative Workers' Compensation Act.

Section 105. Prohibited Acts (85A O.S., §105). Prohibits certain conduct by Commission personnel.

Section 106. Strict Construction (85A O.S., §106). The Administrative Workers' Compensation Act shall be strictly construed by the Workers' Compensation Commission and any appellate court reviewing a Commission decision.

Section 107. Short Title (85A O.S., §200). Sections 107 through 120 of the measure comprise the "Oklahoma Employee Injury Benefit Act" (OEIBA).

Section 108. Definitions (85A O.S., §201). Defines terms used in the OEIBA.

Section 109. Employer Election (85A O.S., §202).

Election and Notice Requirements: An employer may voluntarily elect to be exempt from the Administrative Workers' Compensation Act and become a "qualified employer" if the employer:

1. Notifies the Insurance Commissioner in writing of the election and its effective date, and pays a nonrefundable \$1,500 fee upon filing the notice and annually thereafter;
2. Notifies all its employees that it does not carry workers' compensation insurance and that the coverage ended or was cancelled. This notice shall be provided in

writing to an employee when hired or at the time of designation as a qualified employer. The notice also shall be posted conspicuously at the employer's business locations as necessary to provide reasonable notice to all employees; and

3. Has established a written benefit plan (85A O.S., §203) for payment of benefits to covered employees as a result of an occupational injury.

Insurance Commissioner Duties: The Insurance Commissioner shall:

1. Collect and maintain information required under this section;
2. Monitor compliance with the requirements of this section;
3. Adopt rules designating the methods and procedures for confirming whether an employer is a qualified employer, and notifying an employer of any qualifying deficiencies and the consequences thereof;
4. Record the date and time each notice of qualified employer status is received and the effective date of qualified employer election;
5. Maintain a list on its website of all qualified employers and the date and time the exemption became effective;
6. Require the qualified employer to provide contact information, federal tax identification number, number of its employees in the state, claim administration contact information, and a list of covered business locations in Oklahoma; and
7. Notify the Commissioner of Labor of all qualified employer notifications. The Department of Labor shall provide the qualified employer notifications to other agencies as it deems necessary.

Insurance Commissioner Powers: The Insurance Commissioner may:

1. Require an employer to confirm its qualified employer status;
2. Designate an information collection agent, implement an electronic reporting and public information access program, and adopt rules necessary to implement the information collection requirements of this section;
3. Prescribe rules and forms to be used for the qualified employer notification;
4. Contract with the Oklahoma Employment Security Commission, State Treasurer or Department of Labor for help in collecting the notification required under the section or otherwise fulfilling the Commissioner's duties under the OEIBA; and
5. Adopt rules relating to the form, content and method of delivery of the employee notification of the benefit plan.

Section 110. Benefit Plan (85A O.S., §203).

Effective Date: The benefit plan shall not become effective until the date the qualified employer notifies the Insurance Commissioner and the employer's employees that it is a qualified employer.

Plan Requirements: The benefit plan shall:

1. Provide for payment of the same forms of benefits included in the Administrative Workers' Compensation Act (AWCA) for TTD, TPD, PPD, vocational rehabilitation, PTD, disfigurement, amputation or permanent total loss of use of a scheduled member, death and medical benefits, as a result of an occupational injury, on a no-fault basis, with the same statute of limitations and with dollar, percentage, and duration limits that are equal to or greater than the dollar, percentage, and duration limits contained in 85A O.S., §§45, 46 and 47. No other provisions of the AWCA defining covered injuries, medical management, dispute resolution or other process, funding, notices or penalties apply unless expressly incorporated in the plan. The AWCA shall not define, restrict, expand or otherwise apply to a plan;

2. Pay benefits without regard to whether the covered employee, qualified employer, or a third party caused the injury;
3. Provide eligibility to participate in and provide the same forms and levels of benefits to all Oklahoma employees of the qualified employer; and
4. Not apply any fee or cost to an employee.

Optional Plan Provisions: The benefit plan may:

1. Provide for lump-sum payouts that are, as reasonably determined by the plan administrator, actuarially equivalent to expected future payments; and
2. Provide for settlement agreements. Any settlement agreement by a covered employee shall be voluntary, entered into not sooner than the 10th business day after the date of the initial report of injury, and signed after the employee received a medical evaluation, with any waiver of rights being conspicuous and on the face of the agreement.

Notice Requirement: The qualified employer shall provide the Insurance Commissioner and its covered employees notice of the name, title, address and telephone number of the injury benefit claims administrator, whether in-house or a third-party administrator.

Section 111. Security for Insurable Risks (85A O.S., §204).

Types of Security: A qualified employer may self-fund or insure benefits payable under the benefit plan, employers' liability under the OEIBA, and any other insurable risk related to its status as a qualified employer, with an insurance carrier authorized to do business in Oklahoma. Insurance coverage or a surety bond obtained by a qualified employer must 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 rates charged for this coverage.

A qualified employer shall secure compensation for its employees by:

1. Obtaining accidental insurance coverage in an amount equal to the compensation obligation;
2. Furnishing satisfactory proof to the Insurance Commissioner of the employer's financial ability to self-insure; and
3. Providing any other security as may be approved by the Commissioner.

The Commissioner may waive the requirements in an amount commensurate with the employer's ability to pay required benefits. An employer that does not secure compensation for its employees is not relieved of its compensation obligations.

Use of Securities: The Commissioner shall maintain any required securities. The securities may be used to address a plan's compensation obligations if the:

1. Covered employee sustained an occupational injury that is covered by the employer's benefit plan;
2. Covered employee's claim for payment of a medical or wage replacement benefit amount was accepted by the plan administrator or mentioned in a final judgment or court order assessing a specific dollar figure for benefits payable under the plan;
3. Covered employee is unable to receive payment from the benefit plan or collect on the judgment or order because the qualified employer filed bankruptcy or the plan is insolvent; and

4. The covered employee is listed as an unsecured creditor of the qualified employer.

Hold Harmless: A qualified employer shall hold harmless any insurance agent or broker who sold the employer a benefits program compliant with the OEIBA if the employer is sued in district court for an injury arising out of and in the course of employment.

Section 112. Guaranty Funds (85A O.S., §205). Creates two guaranty funds within the State Treasury:

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

The Funds shall be administered, disbursed and invested as independent accounts by the Oklahoma Property and Casualty Insurance Guaranty Association. The Funds are for the purpose of continuing benefits for covered claims that are due and unpaid or interrupted due to the inability of the insurer or sponsor of a self-insured plan, as applicable, to meet its compensation obligations. Funding sources for each Guaranty Fund are identified.

Defines the powers and duties of the Oklahoma Property and Casualty Guaranty Association in the event of an impaired insurer.

Fines and penalties assessed under the OEIBA shall be paid to the Workers' Compensation Commission for deposit into the Funds in equal amounts.

Section 113. Premium Assessment (85A O.S., §206). Carriers shall pay an annual fee to the Workers' Compensation Commission, at a rate to be determined by the Commission pursuant to 85A O.S., §208, not exceeding 3% on all written premiums on coverage on risks within the state. The fee is in addition to the premium or surplus lines taxes collected from carriers. Unless waived by the Commission, failure to timely pay the assessment may be referred to the Insurance Commissioner for appropriate administrative action.

Section 114. Premium Equivalent Assessment (85A O.S., §207). Self-insured employers shall pay an annual fee to the Workers' Compensation Commission, at a rate to be determined by the Commission pursuant to 85A O.S., §208, not exceeding 3% of the written premium which would have to be paid by a carrier per 85A O.S., §206 if the self-insured employer were insured by a carrier. Failure to timely pay the fee is subject to a penalty equal to 10% of the unpaid amount.

Section 115. Guaranty Funds – Assessment Rates (85A O.S., §208).

Oklahoma Option Insured Guaranty Fund Assessment: The Workers' Compensation Commission shall establish the Oklahoma Option Insured Guaranty Fund assessment rate against carriers for purposes of computing the assessment necessary to properly administer the OEIBA for the next ensuing year. The rate shall be established annually by March 1. The Commission shall notify carriers of the rate. Fees from the assessment are paid as provided in 85A O.S., §206 and are due April 1. Collections shall be deposited to the Oklahoma Option Insured Guaranty Fund.

Oklahoma Option Self-Insured Guaranty Fund Assessment: The Workers' Compensation Commission shall establish the Oklahoma Option Self-Insured Guaranty Fund assessment rate against self-insured employers for purposes of the Fund. The Commission shall notify

self-insured employers subject to the fee of the assessment rate. Fees from the assessment are due April 1.

Section 116. Qualified Employer Exclusive Remedy – Exception (85A O.S., §209). A qualified employer's liability under a benefit plan is exclusive and in place of all other liability of the qualified employer and any of its employees at common law or otherwise, for a covered employee's occupational injury or loss of services, to the covered employee, the employee's dependents or any other person, except for intentional torts. Any benefits paid under a benefit plan shall offset any other award against a qualified employer for an intentional tort. An action arising out of an occupational injury, other than an action to enforce benefit plan provisions, shall be brought within 2 years from the date of injury or death giving rise to the action.

Section 117. Payment Sources – Responsibilities (85A O.S., §210). A qualified employer or its insurers or other payment sources are responsible for:

1. Complying with federal law in the administration of a benefit plan and claims for benefits under the plan; and
2. Damages awarded against a qualified employer for an intentional tort, including pre- and post-judgment interest, costs and reasonable attorney fees not to exceed 20% of lost earnings awarded.

An employer that is not a qualified employer shall comply with the Administrative Workers' Compensation Act.

Section 118. Adverse Benefit Determinations – Claim Procedures (85 O.S., §211). Two appeals procedures are provided in the alternative in the event certain portions of the first are determined to be unconstitutional or unenforceable by a court of competent jurisdiction:

1. **Appeals Procedure:** If an employer denies a claimant's claim for benefits under the OEIBA, an adverse benefit determination letter shall be issued within 15 days of receipt of the claim. The claimant may appeal to the plan's appeals committee within 180 days after receipt of the letter. The committee shall issue a decision within 45 days of the notice of contest. If the committee affirms any part of the adverse benefit determination, the claimant has 1 year after receipt of notice of the committee's decision within which to file a petition for review with the Workers' Compensation Commission sitting en banc. The Commission shall review the record established by the internal appeal process and use an objective standard of review that is not arbitrary or capricious. An award by the Commission or an ALJ shall be limited to benefits payable under the plan, and as allowed, attorney fees and costs. If the Commission affirms any part of the adverse benefit determination, the claimant may appeal to the Oklahoma Supreme Court within 20 days of the Commission's decision. The Supreme Court may modify, reverse, remand for rehearing, or set aside the decision only if the decision is found to be contrary to law.
2. **Alternative Appeals Procedure:** If certain portions of the above described appeals procedure are found unconstitutional, an appeal of an adverse benefit determination letter shall be to the plan's appeals committee. The committee shall

issue a decision within 45 days of the notice of contest. If the committee affirms any part of the adverse benefit determination, the claimant may file a petition for review in district court. The district court shall rely on the record established by the internal appeal process and use a deferential standard of review.

The procedures apply if not inconsistent with or preempted by other applicable law or rule.

Claims for intentional torts or other employers' liability claims may proceed through the district court or alternative dispute resolution or settlement process allowed by law.

Section 119. Construction of Act (85A O.S., §212). The OEIBA shall be liberally construed and governs in the event of a conflict with other law.

Section 120. Challenges to Act (85A O.S., §213). The decision of any lower court addressing challenges to all or some of the OEIBA shall be appealed directly to the Supreme Court which shall retain the case. If all or some of the act is declared unconstitutional or unenforceable:

1. Parts of the act found unconstitutional or unenforceable may be severed without affecting the validity of remaining parts or the act as a whole;
2. A qualified employer shall not be deemed to have failed to secure workers' compensation insurance;
3. Exclusive remedy is preserved and the employer's liability for injury is to the same extent as for employers subject to the Administrative Workers' Compensation Act (AWCA); and
4. A qualified employer has 90 days after a final decision declaring all or part of the act unconstitutional within which to comply with the AWCA.

Section 121. Short Title (85A O.S., §300). Sections 121 through 149 of the measure comprise the "Workers' Compensation Arbitration Act" (WCAA).

Section 122. Enforceability of Agreements to Arbitrate (85A O.S., §301). Agreements to arbitrate claims for injuries covered by the Administrative Workers' Compensation Act (AWCA) are valid and enforceable in Oklahoma when:

1. The employer provides notice of the existence of an agreement to arbitrate to the employee and the employer's workers' compensation carrier;
2. The employer or the employer's certified workplace plan files an alternative dispute resolution program with the Workers' Compensation Commission; or
3. The agreement is subject to the Federal Arbitration Act and includes a provision requiring a party to the arbitration be given the opportunity to appeal any decision of the arbitrator to the Commission.

Section 123. Notice (85A O.S., §302). Specifies conditions of giving and receiving notice.

Section 124. When Act Applies (85A O.S., §303). The WCAA applies to arbitration agreements made on or after February 1, 2014. Parties who have entered into an arbitration agreement before February 1, 2014 may elect coverage under the WCAA if they do so in writing.

- Section 125. Effect of Agreement to Arbitrate; Nonwaivable Provisions (85A O.S., §304).** Except as otherwise provided, parties to an arbitration agreement or proceeding may waive, or the parties may vary the effect of, the requirements of the WCAA to the extent permitted by law. Lists those provisions that cannot be waived in a pre-dispute context. Lists those provisions that should not be within the control of the parties either before or after the arbitration dispute arises.
- Section 126. Application to Commission for Relief (85A O.S., §305).** Actions made to the Workers' Compensation Commission involving an arbitration matter under the WCAA will be by motion. Unless a civil action involving the arbitration agreement is pending, notice of the initial motion to the Commission shall be served in the same manner as the initiation of a civil action.
- Section 127. Validity of Agreements to Arbitrate (85A O.S., §306).** Written arbitration agreements are valid, enforceable and irrevocable except on a ground that exists at law or in equity for the revocation of a contract. An arbitrator decides whether prerequisites and other conditions precedent to an obligation to arbitrate have been met, and whether a contract containing a valid agreement to arbitrate is enforceable. If a party challenges the arbitrability of a dispute in a proceeding, the arbitration proceeding may continue unless the Commission otherwise orders.
- Section 128. Motion to Compel Arbitration; Stay of Claim (85A O.S., §307).** The Workers' Compensation Commission may compel arbitration proceedings under certain circumstances, determine whether the parties entered into an enforceable arbitration agreement, hear disputed motions to compel arbitration, and assess costs against the party opposing the motion if the opposition was not brought in good faith. If a party challenges the enforceability of an arbitration agreement, the underlying claim, including all benefits, shall be stayed until the Commission determines the issue.
- Section 129. Provisional Remedies (85A O.S., §308).** Grants the Workers' Compensation Commission discretion to proceed if a party to an arbitration agreement files a motion for a provisional remedy before an arbitrator is appointed and authorized to act. After an arbitrator is appointed and authorized to act, the arbitrator may issue further or revised orders for provisional remedies. Once there is an arbitrator, the only instance in which a party may seek relief from the Commission rather than the arbitrator is when the matter is urgent and the arbitrator could not act in a timely fashion or could not provide an effective provisional remedy. So long as a party is pursuing the arbitration process while requesting the Commission to provide provisional relief under the WCAA, the motion to the Commission should not act as a waiver of that party's right to arbitrate a matter.
- Section 130. Initiation of Arbitration (85A O.S., §309).** An arbitration proceeding is initiated by giving written notice to the Commission and the other parties to the arbitration agreement. Specifies the means of bringing the notice to the attention of the other parties and the contents of the notice of a claim. An objection to the sufficiency of the notice shall be made to the Commission before the initial hearing with the appointed arbitrator.
- Section 131. Consolidation of Separate Arbitration Proceedings (85A O.S., §310).** Gives the Workers' Compensation Commission discretion to consolidate separate arbitration proceedings in the instance of multiparty disputes involving common issues of fact or law. Consolidation

of a party's claims should not be ordered if the agreement to arbitrate prohibits consolidation.

Section 132. Appointment of Arbitrator (85A O.S., §311). Parties may choose their own method of selecting an arbitrator. The Workers' Compensation Commission shall appoint an arbitrator if the parties have not agreed upon a method, the method fails, or the arbitrator appointed fails or is unable to act and there is no successor. Parties may agree in writing to have a non-neutral arbitrator.

Section 133. Disclosure by Arbitrator (85A O.S., §312). An arbitrator must make a reasonable inquiry before accepting an appointment as to any potential conflict of interests and to disclose known facts that might affect impartiality. The disclosure requirement is a continuing one and applies to conflicts that arise or become evident during the course of the arbitration proceedings. A party has 10 days after disclosure of a conflict to file a notice of conflict with the Workers' Compensation Commission to seek to remove the arbitrator. Failure to timely file the notice of conflict waives the party's right to vacate any order or award made in the arbitration proceeding.

Section 134. Action by Majority (85A O.S., §313). If there are multiple arbitrators, the powers of the arbitrator must be exercised by a majority of the arbitrators and all arbitrators shall conduct the hearing.

Section 135. Immunity of Arbitrator; Competency to Testify; Attorney Fees and Costs (85A O.S., §314). Arbitrators and arbitration organizations providing services under the WCAA are immune from civil liability to the same extent as state court judges acting in a judicial capacity. The immunity supplements any immunity under other law. There is no loss of immunity for failure to disclose a conflict. Protects an arbitrator or representative of an arbitration organization from being required to testify or produce records from an arbitration proceeding in any civil action, administrative proceeding, or similar proceeding. Provides exceptions. If a person sues an arbitrator in a civil action arising from the arbitrator's services or seeks to compel an arbitrator to testify or produce certain records, and the court determines civil immunity applies or that the arbitrator is not competent to testify, the court shall award the arbitrator reasonable attorney fees and other reasonable expenses of litigation.

Section 136. Arbitration Process (85A O.S., §315). Arbitration shall be conducted in a fair and expeditious manner. Arbitrators may hold prehearing conferences and may decide a request for summary disposition by agreement or after notice and opportunity for hearing. An arbitrator may hear and decide the controversy on the evidence produced although a party who was notified of the arbitration proceeding did not appear. The Workers' Compensation Commission, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision. Parties at a hearing have the right to be heard, present evidence, and cross-examine witnesses appearing at the hearing. Provides procedures for appointment of a replacement arbitrator if an arbitrator ceases or is unable to act during the arbitration proceeding.

Section 137. Representation by Lawyer (85A O.S., §316). A party to an arbitration agreement may be represented by a lawyer. Parties are responsible for their respective legal fees, except as

provided for in 85A O.S., §321. The employee's attorney fees are capped to levels applicable to workers' compensation benefits.

Section 138. Witnesses; Subpoenas; Depositions; Discovery (85A O.S., 317). An arbitrator has subpoena authority to require the attendance of witnesses and production of documents at a hearing. An arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, if the deposition will make the proceeding fair, expeditious and cost effective. The arbitrator has discretion whether to allow discovery, taking into account matters of fairness, efficiency and cost. If discovery is permitted, the arbitrator may oversee the prehearing process and enforce discovery-related orders in the same manner as would occur in a civil action. The same rules in civil actions apply to arbitration proceedings for compelling a person under subpoena to testify and for compelling the payment of witness fees for attending depositions or discovery proceedings. The Workers' Compensation Commission may enforce a subpoena or any discovery-related order issued by an arbitrator in an arbitration proceeding in another state upon conditions determined by the Commission so as to make the arbitration proceeding fair, expeditious and cost effective.

Section 139. Enforcement of Pre-Award Ruling by Arbitrator (85A O.S., §318). To enforce pre-award determinations by an arbitrator, the prevailing party may ask the arbitrator to incorporate the ruling into an award. The prevailing party may move the Workers' Compensation Commission for an expedited judgment to confirm the award. The Commission shall confirm the award unless it is vacated, modified or corrected as provided in the WCAA.

Section 140. Award (85A O.S., §319). An arbitrator shall make a record of the award. The basis for the award may be included in the award, unless the parties agree upon the type of award to be issued. The record shall be signed and notice of the award, together with a copy of the award, shall be sent to each party. Provides rules governing the time within which the award must be made. A party waives any objection to the timeliness of an award if notice of the objection is not given to the arbitrator before receiving notice of the award.

Section 141. Change of Award by Arbitrator (85A O.S., §320). A motion by a party for the arbitrator to modify or correct an award shall be made within 20 days after the award is issued to the parties. The grounds for modification or correction are limited. Notice of any objection to the motion shall be made within 10 days after receipt of the motion. Allows the parties to apply to the Workers' Compensation Commission to submit the claim back to the arbitrator for a determination whether to modify or correct the award on certain grounds. Modified or corrected awards are subject to confirmation, vacation, and modification or correction by the Commission.

Section 142. Remedies; Fees and Expenses of Arbitration Proceeding (85A O.S., §321). An arbitrator may award:

1. Benefits for TTD, TPD, PPD, PTD, death, vocational rehabilitation, disfigurement, amputation and permanent total loss of use, and shall specify the basis therefor;
2. Payment of medical expenses;
3. Reasonable attorney fees and expenses of arbitration, if the arbitrator found the party was not acting in good faith throughout the arbitration; and
4. Such other remedies as the arbitrator considers are just and appropriate.

The employer shall pay the arbitrator's expenses and fees, and other expenses.

- Section 143. Confirmation of Award (85A O.S., §322).** After receipt of notice of an award, the party may move the Workers' Compensation Commission for a judgment confirming the award. The Commission shall confirm the award unless the award was changed or vacated.
- Section 144. Vacating Award (85A O.S., §323).** Lists grounds for, and procedures governing, vacation of an award by the Workers' Compensation Commission. If the Commission vacates an award, it may order a rehearing. If the Commission denies a motion to vacate an award, it shall confirm the award unless a motion to change the award is pending.
- Section 145. Modification or Correction of Award (85A O.S., §324).** A motion to modify or correct an award must be made to the Workers' Compensation Commission within 30 days after the movant receives notice of the award or of a changed award. Lists grounds for modifying or correcting an award. If the motion is granted, the Commission shall make the changes and confirm the award as changed. Otherwise, the Commission shall confirm the award, unless a motion to vacate is pending. A motion to modify or correct an award may be joined with a motion to vacate the award.
- Section 146. Judgment on Award; Attorney Fees and Litigation Expenses (85A O.S., §325).** Once a motion to confirm or vacate an order is granted, the Workers' Compensation Commission shall enter a judgment in conformity therewith. The judgment may be recorded, docketed and enforced as any other judgment in the Commission's jurisdiction. On the prevailing party's application, the Commission may award reasonable expenses of litigation, including attorney fees, incurred in the proceeding.
- Section 147. Jurisdiction (85A O.S., §326).** The Workers' Compensation Commission has exclusive jurisdiction to enforce and enter judgments confirming, vacating, correcting or modifying an award under the WCAA.
- Section 148. Appeals (85A O.S., §327).** Identifies orders entered under the WCAA which may be appealed to the district court as provided in 85A O.S., §328.
- Section 149. Venue (85A O.S., §328).** Identifies the district court where a motion for judicial review of a judgment or award of the Workers' Compensation Commission under the WCAA shall be made. Subsequent motions shall be made in the district court hearing the initial motion, unless the court otherwise directs.
- Section 150. Public Employers' Coverage (85A O.S., §107).** Requires and outlines how public entities of the state are to secure their workers' compensation obligations, including options depending upon whether CompSource Oklahoma becomes a mutualized company.
- Section 151. Dismissal (85A O.S., §108).** Allows a claimant to dismiss a claim for compensation, with or without prejudice, at any time before final submission to the Workers' Compensation Commission for decision, upon paying a filing fee. If a claim is timely filed and then dismissed without prejudice, the claimant may recommence the claim within 1 year, even if the limitations period expired before the new claim is filed.
- Section 152. Ombudsman Program (85A O.S., §109).** Directs the Workers' Compensation Commission to create a workers' compensation counselor or ombudsman program, and to notify injured workers of its availability, within 10 days of the employer's filing of a notice of injury. The

Commission shall develop a program for annual training of self-insureds and claims adjusters.

- Section 153. Alternative Dispute Resolution (85A O.S., §110).** Directs the Workers' Compensation Commission to develop an alternative dispute resolution program which promotes informal dispute resolution without the necessity of legal representation. Mediation is permissive, except for certain claims in cases in which the employee is pro se or there is no record of insurance coverage that shall be mediated by a Commission mediator within 30 days of a request for the benefits sought. Procedures related to mediation are specified. The Commission shall certify mediators. Permits attorney and non-attorney mediators. Mediators serving as Commission-certified mediators on February 1, 2014 are grandfathered. The Commission shall establish by rule the maximum rate for compensation of mediators. Mediators must block at least 2 hours per mediation and shall not schedule more than one mediation to take place at a time. An injured worker may mediate without counsel. A compromised settlement of a mediated claim may be submitted to any ALJ for approval.
- Section 154. Commencement of Claim – Answer (85A O.S., §111).** Provides procedures for commencement of a claim for benefits and the employer's filing of an answer and defenses thereto. If the employer controverts any issue related to the employee's claim for compensation, the employer shall file a Notice of Contested Issues on a form prescribed by the Commission. The Commission, within 7 days of a request for prehearing conference or administrative hearing, shall set the matter at the earliest available time. If compensability of the claim is contested, the employer shall complete discovery and secure a medical evaluation of the employee within 60 days of the filing of the claim for compensation.
- Section 155. Independent Medical Examiner System (85A O.S., §112).** The Workers' Compensation Commission shall develop and maintain an Independent Medical Examiner (IME) System comprised of licensed physicians who have completed such course study as required by the Commission. Physicians serving as IMEs on February 1, 2014 are grandfathered. An ALJ may appoint an IME on any issue before the Commission. An IME shall be appointed at the employer's request to determine the reasonableness and necessity of surgery recommended by the treating physician. The IME must be a physician qualified to perform the recommended surgery. Provides procedures regarding sending medical records to the IME, consideration of information by the IME, submission of the IME's verified report, and objections to the report. The Commission shall set the reimbursement amount for IME services which shall be borne by the employer. The Commission shall create a review process to oversee on a continuing basis the quality of performance and timeliness of the submission of medical findings by the IME. The IME's opinion is binding unless there is clear and convincing evidence to the contrary. Deviations from the IME's opinion must be explained.
- Section 156. Case Management (85A O.S., §113).** The Workers' Compensation Commission may grant case management when case management services are not provided by the payer and the case is not covered by a certified workplace medical plan (managed care plan). The ALJ shall appoint a case manager from a list of case managers developed and maintained by the Commission. Case managers serving as qualified case managers on February 1, 2014 are grandfathered. One change of case manager per party shall be made upon application of any party.

- Section 157. Prosthetic Devices** (85A O.S., §114). An employer shall furnish necessary prosthetic devices for the lifetime of an injured worker whose compensable injury resulted in certain anatomical losses or the replacement of a joint. The employer shall repair or replace a prosthetic device damaged as a result of a compensable injury. Terminates an employer's duty to provide a prosthetic device upon subsequent injury to the body part for which the device was provided.
- Section 158. Joint Petition – Authorization – Process** (85A O.S., §115). Provides for a full, final and binding settlement of any issue of a claim by "joint petition" which shall be signed by the parties, approved by the Workers' Compensation Commission or an ALJ, and filed with the Commission. Issues not settled and subject to the Commission's continuing jurisdiction shall be noted by appendix to the joint petition or on a form prescribed by the Commission, which shall be signed by the parties and approved by the Commission. Grants the Commission or an ALJ jurisdiction to approve a joint petition involving a pro se employee upon the employer's filing of a notice of injury and in the absence of a claim for compensation filed by the worker. Payers shall make a good faith effort to alert an insured of settlement potential and/or terms. A record of the joint petition shall be made by an official Commission reporter.
- Section 159. Payment of Awards – Credits – Commutation** (85A O.S., §116).
- Permanent Partial Disability (PPD) Awards:** PPD awards shall be paid as provided in 85A O.S., §45 and 85A O.S., §46, less any proper credits the Workers' Compensation Commission determines. Once the PPD award becomes final, the claimant, or a surviving beneficiary in case of death, may enforce payment of the award as a final adjudicated obligation.
- Permanent Total Disability (PTD) Awards:** PTD awards shall be paid weekly. Once the award becomes final, the claimant, or a surviving beneficiary in case of death, may enforce payment of the accrued portion as a final adjudicated obligation. PTD awards shall not be commuted to a lump-sum payment.
- Section 160. Estoppel** (85A O.S., §117). Estops an employer and insurance carrier from denying an employee was employed by the employer for workers' compensation insurance purposes when the employee was scheduled as a person employed by the employer, or the employer pays, receives or collects premiums upon a policy securing the employer's workers' compensation obligations to the employee.
- Section 161. Commission Fees** (85A O.S., §118). The Workers' Compensation Commission shall collect a \$140 final award fee and a \$130 reopen fee for deposit to the Workers' Compensation Fund (85A O.S., §28 and 85A O.S., §122). Directs that \$10 of the final award fee shall be deposited to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund.
- Section 162. Copy Fee – Penalties and Fines** (85A O.S., §119). A \$1 per page copy fee shall be collected by the Workers' Compensation Commission and deposited to the Workers' Compensation Fund (85A O.S., §28 and 85A O.S., §122). Deposits to the Fund also include all sums collected pursuant to penalties and fines imposed by the Commission.

- Section 163. Requests for Claims Information (85A O.S., §120).** An employer may ask about prior workers' compensation claims paid to an employee by a previous employer, except as otherwise provided by law. An employer may discharge an employee for failing to answer truthfully about any previous PPD awards. Provides procedures for accessing prior workers' compensation claims information from the Commission.
- Section 164. Advisory Council on Workers' Compensation (85A O.S., §121).** Recreates the Advisory Council on Workers' Compensation. Provides for qualifications and appointment of members. Council members serving on February 1, 2014 are grandfathered to serve the remainder of their respective terms. The Chair of the Workers' Compensation Commission shall be an ex officio nonvoting member. Identifies Council duties. The Commission shall provide office supplies and personnel to assist the Council in the performance of its duties.
- Section 165. Workers' Compensation Fund (85A O.S., §122).** Provides that the Workers' Compensation Fund created in 85A O.S., §28 shall be used for administering the Administrative Workers' Compensation Act and for other purposes pursuant to legislative appropriation. Provides for funding based on assessments against payers and directs that collections from the assessments be paid to the General Revenue Fund of the state.
- Section 166. Perjury Declaration (85A O.S., §123).** All forms, claims, answers or reports filed with the Workers' Compensation Commission shall include a declaration under penalty of perjury that the document is true.
- Section 167. Transfer of Funds, Assets, Etc. (85A O.S., §124).** Provides for the transfer of any unexpended funds, assets, property, records, personnel and any outstanding financial obligations and encumbrances of certain entities to other entities. The transfer involving the Workers' Compensation Court is to the Workers' Compensation Commission.
- Section 168. Time Computation (85A O.S., §125).** Sets how time is computed under the Administrative Workers' Compensation Act.
- Section 169. Workers' Compensation Court of Existing Claims – Transition (85A O.S., §400).** The Workers' Compensation Court (WCC) is renamed the Workers' Compensation Court of Existing Claims (CEC).
Court of Record: The CEC is designated a court of record and has the power of other courts of record, including contempt powers.
Jurisdiction: The CEC shall hear disputes relating to workers' compensation claims that arise before February 1, 2014. It has jurisdiction over all claims filed pursuant to the Workers' Compensation Code. The power and jurisdiction of the Court is continuing and former findings or orders may be modified as the Court determines is justified.
Judges: Judges of the WCC shall serve as judges of the CEC until their respective terms expire. The positions dissolve as the terms expire. Judges who serve their term may reapply as an ALJ with the Workers' Compensation Commission. The Commission shall assign ALJs to assist the CEC when a vacancy on the Court occurs or is certain to occur. Judges of the Court shall receive a salary equal to that of a district court judge.
Claims Process and Appeals: The CEC shall operate by rules adopted by the WCC before February 1, 2014. Its principal office shall be in Oklahoma City, but hearings may be held in any city of the state. Hearings shall be by a judge sitting without a jury. All benefits and procedures to obtain benefits shall be determined by the workers' compensation law in

effect on the date of injury. Parties may present evidence and be represented by counsel. Court decisions shall be made within 60 days of submission of the case by the parties. The decision is final as to all questions of fact and law, unless appealed to the Workers' Compensation Commission sitting en banc. The Commission shall review the case using an abuse of discretion standard of review. Orders of the Commission may be appealed to the Supreme Court as provided in 85A O.S., §78.

Transition Provisions: The Workers' Compensation Commission shall retain all remedies and responsibilities of the WCC for as long as cases subject to its jurisdiction shall remain open. Commission ALJs shall enforce all final orders of the WCC in a manner consistent with due process and equal protection. All accrued rights and penalties incurred pursuant to a final order of the WCC shall be preserved and may be enforced by Commission ALJs. No accrued right, penalty incurred or proceeding begun by virtue of a statute repealed by this measure shall be abrogated.

Section 170. Repealer: Repeals 74 O.S., §18m-1 and 74 O.S., §18m-2 related to the Attorney General Workers' Compensation Fraud Unit.

Section 171. Repealer: Repeals Title 85 of the Oklahoma Statutes in its entirety except for sections which relate to CompSource Oklahoma.

Section 172. Effective Date: All sections of SB1062 are effective February 1, 2014 except Sections 1, 2, 19 through 24, 50, 70, 129 and 172, which are effective August 23, 2013 (90 days after sine adjournment of the 1st Regular Session of the 54th Oklahoma Legislature).