

## BILL SUMMARY

**Measure:** [SB 878](#)  
**Subject:** Workers' Compensation  
**Prepared By:** Prepared by Tish Sommer, Special Counsel, Workers' Compensation Court  
**Date:** June 1, 2011

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*The following is a general overview of Senate Bill No. 878 (2011) which becomes effective 8/26/11. It is for informational purposes only. It is not a statement of policy by the Oklahoma Workers' Compensation Court, is not binding on the Court in any way and should not be relied upon as the basis of any action.*

- Section 1. Short Title.** Names the act the “Workers’ Compensation Code.” *Section to be codified as 85 O.S., §301.*
- Section 2. Exclusive Remedy.** Provides for exclusive remedy in place of all other liability at common law or otherwise, except for intentional torts and when the employer fails to secure its workers’ compensation obligations. 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. *Section to be codified as 85 O.S., §302.*
- Section 3. Workers’ Compensation Court.** Creates a 10 judge Workers’ Compensation Court comprised of the current judges who shall serve until July of the year of their respective terms. Future judges shall serve an 8-year term and may be reappointed. Allows current judges to seek reappointment. Requires judges be appointed by the Governor, with advice and consent of the Senate, from a list of nominees submitted by the Judicial Nominating Commission (JNC). Makes the JNC process applicable to all applicants. Specifies the salary, qualifications, and assignment of judges. Directs that no fewer than 3 judges be permanently assigned to the Court’s Tulsa location. Requires appointments for a term commencing July 1 be made by April 15, or later with notice to the President Pro Tempore of the Senate. Identifies powers and duties of the Court and judges. Permits hearings in any city of the state. Requires Court decisions be made within 60 days of submission of the case by the parties. Designates the Court as a court of record with jurisdiction over all claims filed pursuant to the act. Provides that claims shall be heard by a judge sitting without a jury. *Section to be codified as 85 O.S., §303.*
- Section 4. Presiding Judge.** Provides for a Presiding Judge of the Workers’ Compensation Court, to be appointed by the Governor for a two-year term beginning 1/1/13. Allows the present PJ to complete his term. Identifies duties of the PJ. *Section to be codified as 85 O.S., §304.*
- Section 5. Court Administrator - Appointment.** Requires the Workers Compensation Court Administrator be appointed by the Governor with the advice and consent of the Senate, to serve at the Governor’s pleasure. Specifies the salary of the Administrator. *Section to be codified as 85 O.S., §305.*

- Section 6. Administrator’s Powers and Duties.** Lists powers and duties of the Administrator, including contracting for administration of claims against an impaired self-insurer. *Section to be codified as 85 O.S., §306.*
- Section 7. Prohibited Acts.** Prohibits certain conduct by Court personnel. Prohibits an attorney from withholding client funds for the purpose of making contributions to a political fund, candidate or campaign. *Section to be codified as 85 O.S., §307.*
- Section 8. Definitions.** Defines terms used in the Workers’ Compensation Code. *Section to be codified as 85 O.S., §308.*
- Section 9. Time Computation.** Sets how time is computed under the act. *Section to be codified as 85 O.S., §309.*
- Section 10. Employer to Pay Compensation - Jurisdiction.** Defines the employer’s duty to pay compensation and jurisdiction over injuries occurring outside the state or on Federal lands within the state. *Section to be codified as 85 O.S., §310.*
- Section 11. Employees Not Covered.** Lists employees excluded from the act. *Section to be codified as 85 O.S., §311.*
- Section 12. Injuries Not Covered.** Lists injuries excluded from the act, including injuries resulting directly from the willful failure of the injured worker to use a guard or protection against accident furnished for use pursuant to statute or by order of the Commissioner of Labor, injuries which occur when an employee tests positive for the presence of alcohol, illegal drugs or chemicals or refuses to take a drug or alcohol test required by the employer, and injuries occurring before being hired or after termination of employment. *Section to be codified as 85 O.S., §312.*
- Section 13. Public Employers’ Coverage.** Requires and outlines how public entities of the state are to secure their workers’ compensation obligations. *Section to be codified as 85 O.S., §313.*
- Section 14. Secondary Liability.** Addresses secondary liability for work-related injuries. *Section to be codified as 85 O.S., §314.*
- Section 15. Benefit Determinations.** Defines the date of the law governing benefit determinations. For a single event injury, it is the law in effect at the time of injury. For a cumulative trauma injury or occupational disease/illness, it is the law in effect when the employee knew or reasonably should have known the injury/disease/illness was related to work activity. For death, it is the law in effect at the time of death. *Section to be codified as 85 O.S., §315.*
- Section 16. Liability for Occupational Disease.** Makes the last employer liable for occupation disease. *Section to be codified as 85 O.S., §316.*
- Section 17. Liability for Cumulative Trauma.** Makes the last employer liable for an injury resulting in cumulative trauma. *Section to be codified as 85 O.S., §317.*

- Section 18. Limitations Periods.** Establishes limitations periods for filing, prosecuting and reopening, a claim for compensation. Limits timely prosecution to 2 years from the date a claim for compensation was filed or to within 2 years from the date of last payment of medical treatment or compensation or wages in lieu thereof. Tolls limitations of time against a mentally incompetent person or minor until a guardian is appointed by the district court. *Section to be codified as 85 O.S., §318.*
- Section 19. Dismissal.** Allows a claimant to dismiss a claim for compensation, with or without prejudice, upon paying a filing fee, if the case has not been finally submitted to the Court for decision. Permits a claim dismissed without prejudice to be refiled within 1 year. *Section to be codified as 85 O.S., §319.*
- Section 20. Ombudsman Program.** Directs the Court Administrator 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 Form 2 notice of injury. Directs the Administrator to develop a program by 4/2/12 for annual training for self-insureds and claims adjusters. *Section to be codified as 85 O.S., §320.*
- Section 21. Mediation of Claims.** Allows mediation and specifies procedures related thereto. Directs the Court to certify mediators. Permits non-attorney mediators. Grandfathers in existing mediators. Requires mediators to block at least 2 hours per mediation and prohibits scheduling more than one mediation to take place at a time. Allows an injured worker to mediate without counsel. Permits submission of a compromised settlement of a mediated claim to the Administrator for approval. *Section to be codified as 85 O.S., §321.*
- Section 22. Employer Record of Injuries (Form 2) - Filing Requirements.** Directs employers to record injuries and to report them to the Court and the employer's insurer within a certain time, or be subject to a fine. Vests the Court with jurisdiction in all matters subject to the act upon the employer's filing of a Form 2 notice of injury. Provides that the Form 2 is not an admission of liability or of the employee's proper notice of the injury. Makes the Form 2 confidential, with exceptions. Requires employers to post information advising employees of certain information about workers' compensation. *Section to be codified as 85 O.S., §322.*
- Section 23. Notice of Injury.** Creates a rebuttable presumption that a single event injury is not work related unless reported or medical attention was provided within 30 days. Creates a rebuttable presumption that an occupational disease or cumulative trauma injury is not work related unless reported within 90 days of separation from employment. Requires the Administrator to prescribe a form for a worker's claim for compensation which must include, among other things, a declaration about any Social Security Disability Insurance claims of the employee and the employee's Medicare status. *Section to be codified as 85 O.S., §323.*
- Section 24. Commencement of Claim - Answer.** Provides procedures for commencement of a claim for benefits and the employer's filing of an answer and defenses thereto. Directs the Administrator, within 7 days of a request for prehearing or trial, to set the matter at the earliest available time. *Section to be codified as 85 O.S., §324.*

**Section 25. Venue.** Directs the Administrator to assign cases to judges for hearing in Oklahoma City or Tulsa, and to divide counties proportionately to determine proper venue. Permits hearings by videoconferencing and in other judicial districts by agreement of the parties and with Court approval. *Section to be codified as 85 O.S., §325.*

**Section 26. Medical Care - Selection and Change of Physician - Treatment Guidelines - Continuing Medical Maintenance - Suspension of Benefits - Medical Devices - Mileage Reimbursement.**

Requires an employer to provide reasonable and necessary medical care to a worker within 7 days of actual knowledge of the injury. Provides that if the employer fails to do so, or in the case of an emergency, the injured employee may select a physician at the employer's expense.

Provides that when an employee is not covered by a managed care plan, the employee may be granted one change of physician for an affected body part. Permits the employer to object and be granted a hearing. Prohibits a change of physician for a body part unless authorized treatment for the body part was provided within 180 days before the request for change of physician was filed. Sets a maximum of 2 changes of physician per claim regardless of the number of body parts injured.

Provides that when an employee is covered by a plan, the employer shall select a treating physician from the plan's physician list. Allows the claimant to apply for a change of physician as set out in the plan. Makes a claimant exhaust the plan's dispute resolution process before asking the Court to appoint an independent medical examiner to determine the nature of medical treatment needed.

Provides that effective 3/1/12, scope and duration of medical treatment will be governed by the Work Loss Data Institute's "Official Disability Guidelines." Directs the Physician Advisory Committee to adopt Oklahoma Treatment Guidelines (OTG) for medical treatment to the spine that is not addressed in or recommended by ODG, and for continuing medical maintenance and pain management. Creates a presumption that care provided per the ODG or OTG is reasonable and necessary. Provides that a payer is not responsible for care outside the ODG or OTG unless the treatment was rendered in an emergency, preauthorized by the payer, or approved by the Court based on a determination by a qualified independent medical examiner that treatment per the ODG or OTG is not in the best interest of the employee.

Prohibits the Court from awarding continuing medical maintenance (CMM) unless recommended by the treating physician at maximum medical improvement or by an IME. Allows an IME to be appointed to address the nature and extent of CMM. Provides the payer is not responsible for CMM or pain management treatment that is outside the OTG, not previously Court ordered, or not preauthorized by the payer. Requires suspension of benefits and abeyance of proceedings if a worker refuses to submit to a medical examination. Permits ongoing service of medical devices for compensable injuries. Requires certain mileage reimbursement to a worker.

*Section to be codified as 85 O.S., §326.*

**Section 27. Workers' Compensation Fee Schedule - Payment of Medical - Physician Disclosures.**

Directs the Court Administrator to develop a new workers' compensation fee schedule by 1/1/12, after notice and public hearing, which limits reimbursement for health care services provided to injured workers and reduces the overall cost of medical care by 5%. Subjects the schedule to review every 2 years. Requires the director of the Oklahoma State and Education Employees Group Insurance Board to provide the Administrator information relevant to development of the schedule. Provides that the Oklahoma allowable for Medicare physician fees in effect on the effective date of the act be used as a benchmark and that reimbursement for services not valued by Medicare be based on the usual and customary payment to providers in the same trade area for like services for a similar injury. Limits reimbursement for radiology procedures (including magnetic resonance imaging), durable medical equipment and supplies, medical testimony (including depositions), prescription drugs dispensed by a physician or pharmacy, and implantable devices. Requires development of a stop loss reimbursement methodology for catastrophic injuries. Fixes reimbursement for evaluation and management services at not less than 150% of Medicare. Allows payers and providers to contract for reimbursement in amounts different from the fee schedule. Grants the Workers' Compensation Court and its administration exclusive jurisdiction over disputed medical charges.

Requires a payer to pay for medical care within 45 days of receipt of an invoice, unless the payer has a good faith reason to request additional information about the billing. Permits the Court, if there is no good faith reason, to assess up to a 25% penalty against the payer for failure to timely pay. Allows assessment of a fine up to \$5,000 per occurrence for a willful and knowing pattern of delaying payment for medical care. Requires the Administrator to establish a no-show fee payable to a physician for a missed medical appointment. Requires the fee to be paid initially by the employer, but reimbursed by the worker absent a good faith reason for missing the appointment. Requires treating physicians to disclose to the Administrator ownership or interest in certain health care entities that are not the physician's primary place of business. Provides that failure to disclose is grounds for the Administrator to disqualify the physician as a treating physician under the Workers' Compensation Code.

*Section to be codified as 85 O.S., §327.*

**Section 28. Change of Physician and Treatment When Covered by Managed Care Plan - Certification of Plans.** Allows procedures for a worker covered by a certified workplace medical plan (CWMP) to seek a change of treating physician. Compels treatment as prescribed by the plan, notwithstanding other provisions of law. Specifies application criteria for certification of a plan and regulatory oversight of plans by the State Commissioner of Health. Permits a workers' compensation insurer to grant a 10% premium reduction to an employer who is not experience rated when the employer participates in a CWMP. *Section to be codified as 85 O.S., §328.*

**Section 29. Independent Medical Examiner System.** Requires the Court to develop and maintain an Independent Medical Examiner System comprised of licensed physicians who have completed certain course study and who have been recommended as IMEs by the Physician Advisory Committee. Defines “physician” as a licensed medical doctor or licensed doctor of osteopathy. Grandfathers in existing Court qualified independent medical examiners serving on the effective date of the act, to serve the remainder of their respective 2-year terms.

Allows an IME to be appointed at any time for any issue before the Court, regardless of the date of injury. Requires appointment of an IME at the employer’s request to determine the reasonableness and necessity of surgery recommended by the treating physician. Requires the IME 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. Requires the Court to set the reimbursement amount for IME services and provides the cost for such services shall be borne by the employer.

Requires the Court to consult with the Advisory Council on Workers’ Compensation to 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.

Makes the IME’s opinion binding unless there is clear and convincing evidence to the contrary. Requires the Court to explain deviations from the IME’s opinion.

*Section to be codified as 85 O.S., §329.*

**Section 30. Case Management.** Permits the Court to appoint a Court qualified case manager when case management services are not provided by the payer and the case is not covered by a managed care plan (CWMP). Allows one change of case manager at the request of either party. Grandfathers in existing Court qualified case managers serving on the effective date of the act, to serve the remainder of their respective 2-year terms. *Section to be codified as 85 O.S., §330.*

**Section 31. Average Weekly Wage.** Provides for determination of a worker’s average weekly wage as the basis upon which compensation is computed. *Section to be codified as 85 O.S., §331.*

**Section 32. Temporary Total and Temporary Partial Disability - When Due - Commencement - Termination - Soft Tissue Injuries - Report of Change in Material Fact - Rebuttable Presumption - Payment Not Admission of Liability.**

Limits TTD benefits to 70% of the worker’s average weekly wages, not to exceed the state’s average weekly wage. Limits TTD to no more than 156 weeks, unless the Court finds a consequential injury, in which case, an additional 52 weeks of TTD may be awarded. Prohibits TTD for the first 7 days of disability unless the Court determines the disability to be for more than 21 days, in which case, TTD is paid

from the first day of such disability. States when TTD is due and payable. Subjects an employer to a 15% penalty payable to a worker for unpaid or delayed weekly benefits. Permits state employees to supplement TTD with accrued leave. Provides procedures for terminating TTD upon a full or light duty release. Allows termination if, without a valid excuse, the employee misses 3 medical treatment appointments, abandons care or is noncompliant with treatment. Requires the Court to set objections to termination of TTD within 20 days. Requires a treating physician to notify each party in writing after the worker has reached maximum medical improvement and is released from active medical care. Prohibits TTD for periods during which state unemployment benefits or certain short term disability benefits are received. Permits TTD for soft tissue injuries for specified durations depending upon whether or not surgery is recommended or performed. Defines “soft tissue injury.”

Limits TPD benefits to 70% of the difference between the employee’s average weekly wages before the injury and the employee’s wage-earning capacity after the injury. Provides that benefits paid for TPD, when added to the worker’s actual wage, shall not exceed 80% of the worker’s average weekly wage before the injury. Provides that TPD benefits be paid during the continuance of the partial disability but not to exceed 156 weeks.

Requires a person receiving temporary disability benefits to notify the employer/insurer in writing within 7 days of any change in material fact occurring during receipt of the benefits. Creates a presumption in favor of the treating physician on the issues of temporary disability and need for medical treatment, unless rebutted by clear and convincing evidence to the contrary of a qualified independent medical examiner. States when temporary disability compensation is due and payable. Provides that payments made for temporary disability shall not constitute an admission of liability.

*Section to be codified as 85 O.S., §332.*

**Section 33. Permanent Partial Impairment (PPI) - Evaluation of Impairment - Schedule of Compensation - 520 Week Cap.**

Makes determination of permanent impairment or disability the responsibility of the Workers’ Compensation Court. Requires claims for PPI to be based on competent medical testimony supported by objective medical findings provided by a treating physician who is a doctor of medicine or a doctor of osteopathy or a qualified independent medical examiner. (NOTE: “Qualified independent medical examiner” is defined in Section 8 of the act as a licensed MD or DO who is qualified to serve as an IME pursuant to the act.) Requires evaluations of compensability and PPI be stated within a reasonable degree of medical certainty. Provides that a determination of permanent impairment of disability made by the Court which is not supported by objective medical findings of a treating physician who is an MD or DO or a qualified independent medical examiner shall be considered an abuse of discretion. Precludes PPI for any body part for which no treatment was received.

Requires a physician's opinion of PPI to unscheduled members be based solely on criteria established by the 5<sup>th</sup> Edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment, or a subsequent edition approved by the Administrator, or on an alternative method developed by the Physician Advisory Committee. Provides any such alternative method is not operative unless adopted by the Administrator and not rejected by the Legislature.

Provides for a schedule of compensation. Limits PPI to 70% of the worker's average weekly wages, not to exceed \$323 per week, for injuries occurring from 8/27/10 through 8/26/15, and then to 50% of the state's average weekly wage for injuries occurring thereafter. Establishes a PPI benefit floor of \$150 per week for injuries occurring on or after 8/27/10.

Caps lifetime PPI awards, except awards against the Multiple Injury Trust Fund, to not more than 520 weeks, except for awards for amputations and disability to body parts for which surgery was received in the latest injury.

Requires PPI orders to be paid consecutively.

*Section to be codified as 85 O.S., §333.*

**Section 34. Disfigurement.** Permits up to \$50,000 for disfigurement, but none for a body part for which permanent partial impairment was awarded. *Section to be codified as 85 O.S., §334.*

**Section 35. Prosthetic Devices.** Requires an employer to 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. Requires an employer to 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 to be codified as 85 O.S., §335.*

**Section 36. Permanent Total Disability.**

Limits PTD to 70% of the worker's average weekly wages, not to exceed the state's average weekly wage, for the continuance of the disability until the worker reaches the age of maximum Social Security retirement benefits or 15 years, whichever is longer. Terminates benefits on the date of death if the claimant dies of causes unrelated to the injury, but allows a one-time lump sum payment to the person(s) entitled to revive the action, to share and share alike if more than one person.

Directs that if both PPI and PTD are awarded, the PTD award is not due until the PPI award is paid in full. Allows PTD to be paid to a worker who has exhausted the maximum period of TTD even though the worker has not reached MMI.

Requires the Court to review PTD status every 3 years. Requires suspension of a worker's benefits for failure to file an affidavit under penalty of perjury that the

worker is not, nor was, engaged in gainful employment. Permits reinstatement after proper hearing before the Court.

*Section to be codified as 85 O.S., §336.*

**Section 37. Death Benefits.** Specifies death benefits payable to beneficiaries of a decedent of a compensable work-related injury. Prohibits attorney fees on uncontested death claims. Allows death claims to be concluded by compromise settlement. Permits a duly appointed guardian ad litem to enter into such a compromise settlement on behalf of a minor claimant. *Section to be codified as 85 O.S., §337.*

**Section 38. Physical and Vocational Rehabilitation Services - Vocational Rehabilitation Director.**

Allows an injured worker prompt and reasonable physical rehabilitation.

Entitles a worker to vocational rehabilitation services or training for 52 weeks, but not to exceed 104 weeks by special order of the Court, if as a result of the injury the worker is unable to perform the same work duties as before the injury. Disallows vocational rehabilitation benefits to any nondocumented employee who is unable by law to be hired in Oklahoma. Permits the Court to award vocational rehabilitation services while the worker is TTD and under active medical care if the Court determines the injury will prevent the worker from returning to his former employment.

Prohibits a PTD award, except in claims against the Multiple Injury Trust Fund, without evaluation of the practicability of restoration to gainful employment through vocational rehabilitation or training. Permits TTD equivalent benefits during the evaluation period. Prohibits attorney fees to be awarded or deducted from such benefits.

Requires the Administrator to hire or contract for a Vocational Rehabilitation Director to oversee the Court's vocational rehabilitation program. Identifies the purpose of the position and duties of the Director.

*Section to be codified as 85 O.S., §338.*

**Section 39. Compromise Settlement.** Provides for a full, final and binding settlement of any issue of a claim by "compromise settlement" which shall be signed by the parties, approved by the Court or Administrator, and filed with the Court. Requires a record of certain compromise settlements be made by a court reporter. Requires issues not settled and subject to the Court's continuing jurisdiction to be noted by appendix to the compromise settlement or on a form prescribed by the Administrator, which shall be signed by the parties and approved by the Court. Grants the Court jurisdiction to approve a compromise settlement involving a pro se worker upon the employer's filing of a Form 2 notice of injury and in the absence of a claim for compensation filed by the worker. Requires payers to make a good faith effort to alert an insured of settlement potential and/or terms. *Section to be codified as 85 O.S., §339.*

- Section 40. Appeals - Standard of Review - Appeal Related Fees.** Makes written orders of the trial judge final unless appealed to a three-judge review panel of the Workers' Compensation Court within 10 days, or to the Oklahoma Supreme Court within 20 days. Allows interest on accrued amounts of the award when an order appealed by the employer/insurer is not modified or vacated on appeal. Provides the Court en banc shall be comprised of 3 judges unrelated to the claim who, by majority vote, shall determine if the trial judge's order was against the clear weight of the evidence. Allows the Supreme Court to reverse, modify, vacate or remand a case, regardless of the date of injury, if the trial court acted outside its powers, or the order was contrary to law, procured by fraud or against the clear weight of the evidence. Establishes a \$175 fee for appeals to the Court En Banc and a \$100 fee for preparing and transmitting the record for appeal to the Supreme Court, payable to the Court's revolving fund. Permits payment of death benefit proceeds to the Administrator during the pendency of an appeal under certain and limited circumstances. *Section to be codified as 85 O.S., §340.*
- Section 41. Discharge of Employee - Termination of Health Insurance - Prohibited Grounds.** Prohibits discharge of an employee or termination of the employee's group health insurance for filing a workers' compensation claim and for other grounds. Provides that after an employee's period of TTD has ended, no employer is required to rehire or retain an employee who is determined physically unable to perform assigned duties. Provides for a district court action and sanctions against an employer found by a preponderance of the evidence to have violated provisions of the section. *Section to be codified as 85 O.S., §341.*
- Section 42. Change of Condition - Consequential Injury.** Allows benefits for a change of condition for the worse to body parts previously adjudicated or as a result of a consequential injury. Requires change of condition to be established by objective medical evidence. Provides that additional PPI on change of condition, when added to PPI from the previous award, shall not exceed 520 weeks, except for additional PPI resulting from amputation or surgery as a result of the change of condition. *Section to be codified as 85 O.S., §342.*
- Section. 43. Attorney Fees.** Grants the Court exclusive jurisdiction of claims for legal services related to prosecution of a claim under the act. Limits attorney fees to 10% of a contested temporary disability award or 20% of a PPI, PTD or contested death award, and specifies how and when each fee is payable. Provides there shall be no claim for legal services for TTD being paid at the time of the filing of the worker's claim for compensation. Caps attorney fees for certain admitted claims involving a written settlement offer at not more than 35% of the PPI award or settlement amount which exceeds the offer, plus additional fees, based on an hourly rate, for contested benefits obtained for the injured worker during the pendency of the claim. Limits the total fee in all instances to not more than 20% of the total PPI award or compromise settlement. Prohibits attorney fees in an uncontested death case, on the value of vocational rehabilitation in a compromise settlement or court order, or for the amount of a required Medicare Set Aside trust agreement. Requires attorney fees to be deducted from the award or settlement to the injured worker, except as otherwise provided. *Section to be codified as 85 O.S., §343.*

- Section 44. Penalties for Unreasonable Behavior.** Allows the Court to assess penalties for bringing a proceeding not based on a reasonable ground, for unreasonable denial of benefits, and for failure of an employer or insurer to pay travel expenses timely. *Section to be codified as 85 O.S., §344.*
- Section 45. Payment of Awards - Commutation - Acceleration - Credits.** Requires periodic payment of PPI awards and weekly payment of PTD awards, using US legal tender, negotiable instruments payable on demand or negotiable drafts. Allows an award of disability to be made after a worker dies from causes other than the injury. Abates unaccrued award amounts if the worker dies from the compensable injury. Permits permanent partial impairment (PPI) awards to be commuted to a lump sum for good cause shown, not to exceed 25% of the total award, with the balance payable periodically. Prohibits commutation of PTD awards. Permits acceleration of unpaid amounts upon failure of the employer or insurer to pay the award as ordered. Allows credits against PPI awards. Prohibits adjustments or credits for salary or remuneration paid in lieu of TTD. *Section to be codified as 85 O.S., §345.*
- Section 46. Failure to Pay Compensation - Judgment and Execution - Revocation or Suspension of Insurer's License - Creation of New Business Entity to Avoid Awards Prohibited.** Allows certain awards to be certified for execution in district court if the employer/insurer fails to pay compensation within 10 days of when due. Requires the Insurance Commissioner, upon request of a judge or the Court Administrator, to revoke or suspend a carrier's license for willful violation of the Workers' Compensation Code or rules promulgated thereunder. Prohibits creation of a new business entity to avoid payment of a workers' compensation award. *Section to be codified as 85 O.S., §346.*
- Section 47. Enforcement of Orders - Indirect Contempt.** Makes failure to attend in obedience to a subpoena a contempt punishable by a fine payable to the Court's revolving fund. Allows the Court to compel obedience to its orders by attachment proceedings in district court. *Section to be codified as 85 O.S., §347.*
- Section 48. Third Party Claims - Subrogation.** Provides that if an employee is injured or killed by the negligence or wrong of another not in the same employ, the injured employee, surviving spouse or surviving dependent may elect to pursue a workers' compensation claim or suit against the third party. Provides procedures related thereto. Permits subrogation for death claims. Grants the employer/insurer a credit against future workers' compensation benefits in an amount equal to the net recovery of the injured employee, surviving spouse or surviving dependent in the third party action. *Section to be codified as 85 O.S., §348.*
- Section 49. Employee Agreements to Pay Premium Invalid - Penalty - Claims Nonassignable - Death of Claimant, to Whom Compensation Paid.** Makes agreements by a worker to pay any portion of the employer's workers' compensation premium invalid. Subjects the employer to criminal sanctions. Makes claims for compensation or benefits under the Workers' Compensation Code nonassignable and exempt from execution except for child support liens. Specifies to whom compensation is to be paid when a claimant dies from causes other than the injury

for which PPI benefits were awarded prior to death. Permits revivor of a PTD award by certain persons if the claimant who was adjudged permanently and totally disabled before death dies from causes unrelated to the injury. *Section to be codified as 85 O.S., §349.*

- Section 50. Child Support Liens.** Allows child support liens, and income assignments or wage assignments for child support, against workers' compensation benefits. Requires a lien filed in a workers' compensation case to be recognized by the Court in any award of monetary benefits and directs the employer/insurer to include the name of the person or government agency asserting the lien on any benefit check exceeding \$1,000. *Section to be codified as 85 O.S., §350.*
- Section 51. Ways of Securing Compensation to Employees - Sanctions.** Lists ways in which an employer must secure its workers' compensation obligations. Includes private insurance, insurance from CompSource Oklahoma, and self-insurance. Provides sanctions for noncompliance and for knowingly providing the Administrator false information. *Section to be codified as 85 O.S., §351.*
- Section 52. Penalty for Failure to Secure Compensation - Cease and Desist Orders.** Permits the Commissioner of Labor to impose civil penalties against an employer for failing to obtain workers' compensation insurance and to issue cease and desist orders for multiple violations. *Section to be codified as 85 O.S., §352.*
- Section 53. Civil Fine - Hearing and Appeal Process.** Outlines the Commissioner of Labor's hearing and appeal process for actions to enforce workers' compensation insurance required by law. *Section to be codified as 85 O.S., §353.*
- Section 54. Criminal Penalties for Failure to Secure Compensation.** Allows criminal sanctions against an employer that willfully fails to secure workers' compensation insurance required by law. *Section to be codified as 85 O.S., §354.*
- Section 55. Prohibited Acts - Administrator of Group Associations.** Lists prohibited conduct of persons employed as an administrator of a group self-insurance association. *Section to be codified as 85 O.S., §355.*
- Section 56. General Requirements of Policies of Insurance.** Requires policies of insurance covering the liability of an employer for compensation to include certain provisions. Provides procedures for cancellation of a workers' compensation insurance policy. *Section to be codified as 85 O.S., §356.*
- Section 57. Estoppel.** Estops an employer/insurer 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 to be codified as 85 O.S., §357.*
- Section 58. Individual Self-Insured Guaranty Fund and Board.** Creates the Individual Self-insured Guaranty Fund and Board. Grandfathers in existing Board members.

Provides a funding mechanism for the Fund. Allows certain claims against the Fund when an individual self-insured employer is impaired. Permits the Board to contract for claims administration. Prohibits a claim or award against the Fund unless made within 1 year of the time provided in the section. Causes the Individual Self-Insured Guaranty Fund and Board to cease once the initial appointments to the Workers' Compensation Self-Insurance Guaranty Fund Board are made as provided in Section 60 of the act. *Section to be codified as 85 O.S., §358.*

- Section 59. Group Self-Insurance Association Guaranty Fund and Board.** Creates the Group Self-insurance Association Guaranty Fund and Board. Grandfathers in existing Board members. Provides a funding mechanism for the Fund. Allows certain claims against the Fund when a group self-insurance association is impaired. Permits the Board to contract for claims administration. Prohibits a claim or award against the Fund unless made within 1 year of the time provided in the section. Causes the Group Self-Insurance Association Guaranty Fund and Board to cease once the initial appointments to the Workers' Compensation Self-Insurance Guaranty Fund Board are made as provided in Section 60 of the act. *Section to be codified as 85 O.S., §359.*
- Section 60. Workers' Compensation Self-Insurance Guaranty Fund and Board.** Creates the Workers' Compensation Self-Insurance Guaranty Fund and Board. Except for public employers that self-insure, makes participation in the Fund a condition of self-insurance. Provides for appointment and terms of Board members. Requires the Office of the Attorney General to provide legal counsel to assist the Board in the performance of its duties. *Section to be codified as 85 O.S., §360.*
- Section 61. Workers' Compensation Self-Insurance Guaranty Fund (SIGF) - Purpose.** Provides the SIGF shall be for continuation of workers' compensation benefits due and unpaid or interrupted due to the inability of an impaired self-insurer to meet its compensation obligations. Exempts monies in the Fund, including interest thereon, from appropriation. Authorizes certain expenditures from the Fund. Subjects the Fund to audit. *Section to be codified as 85 O.S., §361.*
- Section 62. Workers' Compensation Self-Insurance Guaranty Fund - Sources.** Identifies funding sources for the Workers' Compensation Self-Insurance Guaranty Fund. *Section to be codified as 85 O.S., §362.*
- Section 63. Impaired Self-Insurer - Duties of Administrator.** States duties of the Administrator when a self-insurer becomes impaired. Permits the Administrator to contract for claims administration. *Section to be codified as 85 O.S., §363.*
- Section 64. Powers and Duties - Workers' Compensation Self-Insurance Guaranty Fund Board.** States powers and duties of the Workers' Compensation Self-Insurance Guaranty Fund Board. *Section to be codified as 85 O.S., §364.*
- Section 65. Merger of Individual and Group Guaranty Funds.** Merges the Individual Self-Insured Guaranty Fund and the Group Self-Insurance Association Guaranty Fund into a new guaranty fund named the Workers' Compensation Self-Insurance

Guaranty Fund (SIGF). Causes the individual and group funds and their respective boards to cease once initial appointments to the SIGF Board are made. Makes the SIGF Board responsible and liable for all liabilities and obligations of the entities that ceased existence. *Section to be codified as 85 O.S., §365.*

- Section 66. Immunity From Civil Liability For Acts Performed in Good Faith.** Insulates certain persons from civil liability for acts performed in good faith in the execution of their powers or duties regarding impaired self-insurers. *Section to be codified as 85 O.S., §366.*
- Section 67. Annual Report by Court Administrator - EDI Advisory Committee.** Requires the Administrator to publish a statistical report annually by July 1. Directs the Administrator to implement an electronic data interchange (EDI) system by 7/1/12. States the purpose of the system is to provide relevant data about the workers' compensation system and delivery of benefits to injured workers. Provides the EDI system shall be developed after public hearing, consultation with system participants and assistance from an EDI advisory committee and the Insurance Commissioner. *Section to be codified as 85 O.S., §367.*
- Section 68. Court Fees.** Authorizes a final award fee (\$140) and a reopen fee (\$130) to be deposited to the Court's revolving fund. Directs that \$10 of the final award fee be deposited to the credit of the Attorney General Workers' Compensation Fraud Unit Revolving Fund. *Section to be codified as 85 O.S., §368.*
- Section 69. Application Fees.** Authorizes an annual application fee (\$1,000) for self-insurers and servicing companies, and a fee for review of interim financial statements of self-insured employers (\$500 per review, not to exceed \$1,000 per state fiscal year), to be deposited to the Court's revolving fund. *Section to be codified as 85 O.S., §369.*
- Section 70. Revolving Fund - Copy Fees.** Creates the "Administrator of Workers' Compensation Revolving Fund" to defray necessary expenses in carrying out the provisions of the Workers' Compensation Code. Allows certain deposits to the fund, including a \$1 per page copy fee. *Section to be codified as 85 O.S., §370.*
- Section 71. Securing Information - Employer's Records and Books.** Requires employers to furnish the Administrator information upon request necessary to implement the Workers' Compensation Code. Subjects certain books, records and payrolls of employers to inspection by the Administrator and others. *Section to be codified as 85 O.S., §371.*
- Section 72. Requests for Claims Information - Internet Posting.** Allows an employer to ask about prior workers' compensation claims paid to an employee by a previous employer, unless otherwise provided by law. Permits an employer to discharge an employee for failing to answer truthfully about any previous PPI awards. Provides procedures for accessing prior workers' compensation claims information from the Court. Requires the Administrator to publish on the Internet the names of all claimants who have filed a workers' compensation claim in the preceding 10 years, beginning 1/1/12 and updated annually. *Section to be codified as 85 O.S., §372.*

- Section 73. Physician Advisory Committee - Oklahoma Treatment Guidelines.** Creates the Physician Advisory Committee. Provides for qualifications and appointment of members. Terminates the terms of members serving on the effective date of the act. States the powers and duties of the Committee. Includes adopting certain Oklahoma Treatment Guidelines (OTG) by 3/1/12. Subjects the OTG to public hearings and review and action by various entities, including the legislature, before becoming operative. Makes the Court bound by treatment guidelines of the Official Disability Guidelines or OTG. Insulates PAC members from liability for good faith performance of Committee duties. *Section to be codified as 85 O.S., §373.*
- Section 74. Advisory Council on Workers' Compensation.** Creates the Advisory Council on Workers' Compensation. Provides for qualifications and appointment of members. Grandfathers in existing members until expiration of their respective terms. States Council duties. *Section to be codified as 85 O.S., §374.*
- Section 75. Physically Impaired Person - Multiple Injury Trust Fund.** Defines “physically impaired person” for purposes of combined disabilities claims against the Multiple Injury Trust Fund. *Section to be codified as 85 O.S., §402.*
- Section 76. Multiple Injury Trust Fund - Creation - Assessments.** Creates the “Multiple Injury Trust Fund.” Provides for funding of the MITF by an assessment against workers' compensation payers. Requires the Administrator to determine the assessment rate annually based on a statutory formula. Requires certain reports from payers and permits administrative penalties for failure to do so. Directs allocation of certain sums from the assessment to various entities. *Section to be codified as 85 O.S., §403.*
- Section 77. Multiple Injury Trust Fund Awards.** Requires the Multiple Injury Trust Fund to pay for combined disabilities constituting permanent total disability when the subsequent injury occurred on or after 11/1/05. Provides that benefits shall be paid for 15 years or until the worker reaches 65 years of age, whichever period is longer. Allows the payments to continue to a surviving spouse for a limited duration if the worker dies as a result of his injury before the award is fully paid. Allows the MITF to compromise claims and to commute payments to a lump sum by agreement of the parties. Limits attorney fees on awards against the Fund. *Section to be codified as 85 O.S., §404.*
- Section 78. Limitations Periods for MITF Claims.** Requires claims against the MITF to be filed within 2 years of the date of the last order for permanent partial impairment from the latest claim against the employer, or be forever barred. Provides that an MITF claim shall be forever barred unless prosecuted within 3 years of the filing thereof. Prohibits attorneys for the employer/insurer from representing a claimant in an MITF claim. *Section to be codified as 85 O.S., §405.*
- Section 79. Administration of MITF - Standing to Appear.** Charges CompSource Oklahoma (CSO) with the administration and protection of the MITF. Gives CSO standing to appear in cases before the Court involving the MITF. Subjects review of awards against the MITF to appellate review as other awards of the Court. Requires

allocation of MITF funds to CSO for administration expenses thereof. *Section to be codified as 85 O.S., §406.*

- Section 80. Workers' Compensation Administration Fund.** Creates the Workers' Compensation Administration Fund to be used for administering the Workers' Compensation Code and for other purposes pursuant to legislative appropriation. Provides for funding based on assessments against payers and directs that collections shall be paid to the General Revenue Fund. *Section to be codified as 85 O.S., §407.*
- Section 81. Perjury Declaration.** Requires all forms, claims, answers and reports filed with the Court to contain a declaration under penalty of perjury that the document is true. *Section to be codified as 85 O.S., §408.*
- Section 82. Disputes Between Two or More Carriers or Employers.** Allows the Court to order one of multiple carriers to start paying benefits immediately whenever there is a dispute among the carriers regarding which is liable for the benefits. Provides for indemnification of the paying carrier if another is ultimately found to be liable on the risk. Permits the Court to require an employer/insurer to reimburse other employers and insurers for workers' compensation benefits paid. *Section to be codified as 85 O.S., §409.*
- Section 83. Permission to Examine or Inspect Records - Subpoenas.** Provides that every employer and employee subject to the Workers' Compensation Code, upon filing a notice of injury, shall give the Administrator, Insurance Commissioner, Attorney General, District Attorney, or their respective designees, written permission to examine records and matters related thereto. Directs the Court to include a statement on forms advising that the permission must be given at the time of filing the notice. Authorizes the Attorney General to use subpoenas or other process in aid of prosecution and investigations. *Section to be codified as 85 O.S., §410.*
- Section 84. Substantive Provisions Prospective.** Makes provisions of the bill prospective in operation if determined by a court of competent jurisdiction to be substantive and not procedural in nature. *Section to be codified as 85 O.S., §411.*
- Section 85. Transfer of Funds, Assets, Etc.** Provides for the transfer of any unexpended funds, assets, property, records, personnel and any outstanding financial obligations and encumbrances of preexisting entities to successor entities created by the act. *Section to be codified as 85 O.S., §412.*
- Section 86. Benefits or Savings Considered - Waiver of Compensation Invalid.** Excludes consideration of certain benefits, savings or insurance in determining compensation under the act. Makes an employee's agreement to waive compensation under the act invalid. *Section to be codified as 85 O.S., §413.*
- Section 87. Repealer.** Repeals multiple sections within Title 85 of the Oklahoma Statutes.
- Section 88. Recodification.** Renumbers multiple sections within Title 85 of the Oklahoma Statutes.