

1 ENGROSSED SENATE
BILL NO. 767

By: Sykes of the Senate

2
3 and

4 Echols of the House

5
6 [workers' compensation - administrative workers'
7 compensation system and Oklahoma Employee Injury
8 Benefit Act - immunity from certain liability -
9 temporary total disability - reporting requirements -
10 attorney fees - appellate and adjudicative authority
11 - effective date]

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

13 SECTION 1. AMENDATORY Section 6, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2014, Section 6), is amended to read as
15 follows:

16 Section 6.

17 A. 1. a. Any person or entity who makes any material false
18 statement or representation, who willfully and
19 knowingly omits or conceals any material information,
20 or who employs any device, scheme, or artifice, or who
21 aids and abets any person for the purpose of:

- 22 (1) obtaining any benefit or payment,
23 (2) increasing any claim for benefit or payment, or
24 (3) obtaining workers' compensation coverage under
this act,

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

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

7 c. Fifty percent (50%) of any criminal fine imposed and
8 collected under this section shall be paid and
9 allocated in accordance with applicable law to the
10 Workers' Compensation Fund administered by the
11 Commission.

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

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

21 C. Where the Commission or the Attorney General finds that a
22 violation of division (1) of subparagraph a of paragraph 1 of
23 subsection A of this section has been committed, or that any other
24 criminal violations in furtherance of this act were committed, the

1 chair of the Commission or the Attorney General shall refer the
2 matter for appropriate action to the prosecuting attorney having
3 criminal jurisdiction over the matter.

4 D. 1. a. There shall be established within the Office of the
5 Attorney General a Workers' Compensation Fraud
6 Investigation Unit, funded by the Commission. The
7 Attorney General shall appoint a Director of the
8 Workers' Compensation Fraud Investigation Unit, who
9 may also serve as the director of any other designated
10 insurance fraud investigation division within the
11 Attorney General's office.

12 b. (1) The Unit shall investigate workers' compensation
13 fraud, any additional criminal violations that
14 may be related to workers' compensation fraud,
15 and any other insurance fraud matters as may be
16 assigned at the discretion of the Attorney
17 General.

18 (2) The Attorney General shall designate the
19 personnel assigned to the Unit, who, on meeting
20 the qualifications established by the Oklahoma
21 Council on Law Enforcement Education and
22 Training, shall have the powers of specialized
23 law enforcement officers of the State of Oklahoma
24 for the purpose of conducting investigations

1 under this subparagraph. Personnel hired as
2 specialized law enforcement officers shall have a
3 minimum of three (3) years of certified law
4 enforcement experience or its equivalent in
5 national or military law enforcement experience
6 as approved by the Oklahoma Council on Law
7 Enforcement Education and Training.

8 2. The Attorney General and his or her deputies and assistants
9 and the Director of the Workers' Compensation Fraud Investigation
10 Unit and his or her deputies and assistants shall be vested with the
11 power of enforcing the requirements of this section.

12 3. It shall be the duty of the Unit to assist the Attorney
13 General in the performance of his or her duties. The Unit shall
14 determine the identity of employees in this state who have violated
15 division (1) of subparagraph a of paragraph 1 of subsection A of
16 this section and report the violation to the Office of the Attorney
17 General and the Commission. The Attorney General shall report the
18 violation to the prosecuting attorney having jurisdiction over the
19 matter.

20 4. a. In the course of any investigation being conducted by
21 the Unit, the Attorney General and his or her deputies
22 and assistants and the Director and his or her
23 deputies and assistants shall have the power of
24 subpoena and may:

- 1 (1) subpoena witnesses,
- 2 (2) administer oaths or affirmations and examine any
- 3 individual under oath, and
- 4 (3) require and compel the production of records,
- 5 books, papers, contracts, and other documents.

6 b. The issuance of subpoenas for witnesses shall be
7 served in the same manner as if issued by a district
8 court.

9 c. (1) Upon application by the commissioner or the
10 Director of the Unit, the district court located
11 in the county where a subpoena was served may
12 issue an order compelling an individual to comply
13 with the subpoena to testify.

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

16 d. If any person has refused in connection with an
17 investigation by the Director to be examined under
18 oath concerning his or her affairs, then the Director
19 is authorized to conduct and enforce by all
20 appropriate and available means any examination under
21 oath in any state or territory of the United States in
22 which any officer, director, or manager may then
23 presently be to the full extent permitted by the laws
24 of the state or territory.

1 e. In addition to the punishments described in paragraph
2 1 of subsection A of this section, any person
3 providing false testimony under oath or affirmation in
4 this state as to any matter material to any
5 investigation or hearing conducted under this
6 subparagraph, or any workers' compensation hearing,
7 shall upon conviction be guilty of perjury.

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

10 6. a. Every carrier or employer who has reason to suspect
11 that a violation of division (1) of subparagraph a of
12 paragraph 1 of subsection A of this section has
13 occurred shall be required to report all pertinent
14 matters to the unit.

15 b. No carrier or employer who makes a report for a
16 suspected violation of division (1) of subparagraph a
17 of paragraph 1 of subsection A of this section by an
18 employee shall be liable to the employee unless the
19 carrier or employer knowingly and intentionally
20 included false information in the report.

21 c. (1) Any carrier or employer who willfully and
22 knowingly fails to report a violation under
23 division (1) of subparagraph a of paragraph 1 of
24 subsection A of this section shall be guilty of a

1 misdemeanor and on conviction shall be punished
2 by a fine not to exceed One Thousand Dollars
3 (\$1,000.00).

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

8 d. Any employee may report suspected violations of
9 division (1) of subparagraph a of paragraph 1 of
10 subsection A of this section. No employee who makes a
11 report shall be liable to the employee whose suspected
12 violations have been reported.

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

18 2. The prosecuting attorney of the district to whom a suspected
19 violation of subsection A of this section, or any other criminal
20 violations that may be related thereto, have been referred shall,
21 for the purpose of assisting him or her in such prosecutions, have
22 the authority to appoint as special deputy prosecuting attorneys
23 licensed attorneys-at-law in the employment of the Unit or any other
24 designated insurance fraud investigation division within the

1 Attorney General's office. Such special deputy prosecuting
2 attorneys shall, for the purpose of the prosecutions to which they
3 are assigned, be responsible to and report to the prosecuting
4 attorney.

5 F. Notwithstanding any other provision of law, investigatory
6 files as maintained by the Attorney General's office and by the Unit
7 shall be deemed confidential and privileged. The files may be made
8 open to the public once the investigation is closed by the Director
9 of the Workers' Compensation Fraud Investigation Unit with the
10 consent of the Attorney General.

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

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

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

21 J. If an injured employee is charged with workers' compensation
22 fraud, any pending workers' compensation proceeding, including
23 benefits, shall be stayed after the preliminary hearing is concluded
24 and the claimant is bound over and shall remain stayed until the

1 final disposition of the criminal case. All notice requirements
2 shall continue during the stay.

3 K. If the Attorney General's Office is in compliance with the
4 discovery provisions of Section 258 of Title 22 of the Oklahoma
5 Statutes, medical records created for the purpose of treatment and
6 medical opinions obtained during the investigation shall be
7 admissible at the preliminary hearing without the appearance of the
8 medical professional creating such records or opinions. However,
9 when material evidence dispositive to the issues of whether there
10 was probable cause the crime was committed and whether the defendant
11 committed the crime, was not included in a report or opinion
12 admitted at preliminary hearing, but might be presented at a
13 pretrial hearing by a medical professional who created such report
14 or opinion, the judge may, upon the motion of either party, order
15 the appearance of the medical professional creating such report or
16 opinion. Questions of fact regarding the conduct of the defendant
17 that conflict with the findings of the medical professional
18 evaluating the defendant shall not constitute material evidence. In
19 the event of such motion, notice shall be given to the Attorney
20 General's Workers Compensation Fraud and Investigation and
21 Prosecution Unit. A hearing shall be held and, if the motion is
22 granted, the evidence shall not be presented fewer than five (5)
23 days later.

1 L. Any person or entity who, in good faith and exercising due
2 care, reports suspected workers' compensation fraud or insurance
3 fraud, or who allows access to medical records or other information
4 pertaining to suspected workers' compensation or insurance fraud, by
5 persons authorized to investigate a report concerning the workers'
6 compensation and insurance fraud, shall have immunity from any civil
7 or criminal liability for such report or access. Any such person or
8 entity shall have the same immunity with respect to participation in
9 any judicial proceeding resulting from such reports. For purposes
10 of any civil or criminal proceeding, there shall be a presumption of
11 good faith of any person making a report, providing medical records
12 or providing information pertaining to a workers' compensation or
13 insurance fraud investigation by the Attorney General, and
14 participating in a judicial proceeding resulting from a subpoena or
15 a report.

16 SECTION 2. AMENDATORY Section 40, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2014, Section 40), is amended to read as
18 follows:

19 Section 40. A. 1. Any employer who fails to secure
20 compensation required under this act, upon conviction, shall be
21 guilty of a misdemeanor and subject to a fine of up to Ten Thousand
22 Dollars (\$10,000.00) to be deposited in the Workers' Compensation
23 Fund.

24

1 2. This subsection shall not affect any other liability of the
2 employer under this act.

3 B. 1. Whenever the Commission has reason to believe that any
4 employer required to secure the payment of compensation under this
5 act has failed to do so, the Commission shall serve on the employer
6 a proposed judgment declaring the employer to be in violation of
7 this act and containing the amount, if any, of the civil penalty to
8 be assessed against the employer under paragraph 5 of this
9 subsection.

10 2. a. An employer may contest a proposed judgment of the
11 Commission issued under paragraph 1 of this subsection
12 by filing with the Commission, within twenty (20) days
13 of receipt of the proposed judgment, a written request
14 for a hearing.

15 b. The request for a hearing does not need to be in any
16 particular form but shall specify the grounds on which
17 the person contests the proposed judgment, the
18 proposed assessment, or both.

19 c. If a written request for hearing is not filed with the
20 Commission within the time specified in subparagraph a
21 of this paragraph, the proposed judgment, the proposed
22 penalty, or both, shall be a final judgment of the
23 Commission and shall not be subject to further review
24

1 by any court, except if the employer shows good cause
2 why it did not timely contest the judgment or penalty.

3 d. A proposed judgment by the Commission under this
4 section shall be prima facie correct, and the burden
5 is on the employer to prove that the proposed judgment
6 is incorrect.

7 3. a. If the employer alleges that a carrier has contracted
8 to provide it workers' compensation insurance coverage
9 for the period in question, the employer shall include
10 the allegation in its request for hearing and shall
11 name the carrier.

12 b. The Commission shall promptly notify the carrier of
13 the employer's allegation and of the date of hearing.

14 c. The carrier shall promptly, and no later than five (5)
15 days before the hearing, respond in writing to the
16 employer's allegation by providing evidence of
17 coverage for the period in question or by
18 affirmatively denying the employer's allegation.

19 4. Hearings under this section shall be procedurally conducted
20 as provided in Sections 69 through 78 of this ~~act~~ title. In lieu of
21 a hearing, the Commission may utilize informal disposition in any
22 individual proceeding under this section by consent agreement.

23 5. The Commission may assess a fine against an employer who
24 fails to secure the payment of compensation in an amount up to One

1 Thousand Dollars (\$1,000.00) per day of violation payable to the
2 Workers' Compensation Fund.

3 6. If an employer fails to secure the payment of compensation
4 or pay any civil penalty assessed against the employer after a
5 judgment issued under this section has become final by operation of
6 law or on appeal, the Commission may petition the Oklahoma County
7 District Court or the district court of the county where the
8 employer's principal place of business is located for an order
9 enjoining the employer from engaging in further employment until
10 such time as the employer secures the payment of compensation or
11 makes full payment of all civil penalties.

12 SECTION 3. AMENDATORY Section 45, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2014, Section 45), is amended to read as
14 follows:

15 Section 45. A. Temporary Total Disability.

16 1. If the injured employee is temporarily unable to perform his
17 or her job or any alternative work offered by the employer, he or
18 she shall be entitled to receive compensation equal to seventy
19 percent (70%) of the injured employee's average weekly wage, but not
20 to exceed seventy percent (70%) of the state average weekly wage,
21 for one hundred four (104) weeks. Provided, there shall be no
22 payment for the first three (3) days of the initial period of
23 temporary total disability. If an administrative law judge finds
24 that a consequential injury has occurred and that additional time is

1 needed to reach maximum medical improvement, temporary total
2 disability may continue for a period of not more than an additional
3 fifty-two (52) weeks. Such finding shall be based upon a showing of
4 medical necessity by clear and convincing evidence.

5 2. When the injured employee is released from active medical
6 treatment by the treating physician for all body parts found by the
7 Commission to be injured, or in the event that the employee, ~~without~~
8 ~~a valid excuse,~~ misses ~~three consecutive medical treatment~~ two or
9 more appointments as prescribed under Section 57 of this title,
10 fails to comply with medical orders of the treating physician, or
11 otherwise abandons medical care, the employer shall be entitled to
12 terminate temporary total disability by notifying the employee, or
13 if represented, his or her counsel. If, however, an objection to
14 the termination is filed by the employee within ten (10) days of
15 termination, the Commission shall set the matter within twenty (20)
16 days for a determination if temporary total disability compensation
17 shall be reinstated. The temporary total disability shall remain
18 terminated unless the employee proves the existence of a valid
19 excuse for his or her failure to comply with medical orders of the
20 treating physician or his or her abandonment of medical care. The
21 administrative law judge may appoint an independent medical examiner
22 to determine if further medical treatment is reasonable and
23 necessary. The independent medical examiner shall not provide
24 treatment to the injured worker, unless agreed upon by the parties.

1 B. Temporary Partial Disability.

2 1. If the injured employee is temporarily unable to perform his
3 or her job, but may perform alternative work offered by the
4 employer, he or she shall be entitled to receive compensation equal
5 to ~~the greater of~~ seventy percent (70%) of the difference between
6 the injured employee's average weekly wage before the injury and his
7 or her weekly wage for performing alternative work after the injury,
8 but only if his or her weekly wage for performing the alternative
9 work is less than the temporary total disability rate. The injured
10 employee's actual earnings plus temporary total disability shall not
11 exceed the temporary total disability rate.

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

14 3. If the employee refuses to perform the alternative work
15 offered by the employer, he or she shall not be entitled to benefits
16 under subsection A of this section or under this section.

17 C. Permanent Partial Disability.

18 1. A permanent partial disability award or combination of
19 awards granted an injured worker may not exceed a permanent partial
20 disability rating of one hundred percent (100%) to any body part or
21 to the body as a whole. The determination of permanent partial
22 disability shall be the responsibility of the Commission through its
23 administrative law judges. Any claim by an employee for
24 compensation for permanent partial disability must be supported by

1 competent medical testimony of a medical doctor, osteopathic
2 physician, or chiropractor, and shall be supported by objective
3 medical findings, as defined in this act. The opinion of the
4 physician shall include employee's percentage of permanent partial
5 disability and whether or not the disability is job-related and
6 caused by the accidental injury or occupational disease. A
7 physician's opinion of the nature and extent of permanent partial
8 disability to parts of the body other than scheduled members must be
9 based solely on criteria established by the current edition of the
10 American Medical Association's "Guides to the Evaluation of
11 Permanent Impairment". A copy of any written evaluation shall be
12 sent to both parties within seven (7) days of issuance. Medical
13 opinions addressing compensability and permanent disability must be
14 stated within a reasonable degree of medical certainty. Any party
15 may submit the report of an evaluating physician.

16 2. Permanent partial disability shall not be allowed to a part
17 of the body for which no medical treatment has been received. A
18 determination of permanent partial disability made by the Commission
19 or administrative law judge which is not supported by objective
20 medical findings provided by a treating physician who is a medical
21 doctor or doctor of osteopathy or a qualified independent medical
22 examiner shall be considered an abuse of discretion.

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

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

6 5. Except pursuant to settlement agreements entered into by the
7 employer and employee, payment of a permanent partial disability
8 award shall be deferred and held in reserve by the employer or
9 insurance company if the employee has reached maximum medical
10 improvement and has been released to return to work by his or her
11 treating physician, and then returns to his pre-injury or equivalent
12 job for a term of weeks determined by dividing the total dollar
13 value of the award by seventy percent (70%) of the employee's
14 average weekly wage.

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

19 b. If, for any reason other than misconduct as defined in
20 Section 2 of this ~~act~~ title, the employer terminates
21 the employee or the position offered is not the pre-
22 injury or equivalent job, the remaining permanent
23 partial disability award shall be paid in a lump sum.
24 If the employee is discharged for misconduct, the

1 employer shall have the burden to prove that the
2 employee engaged in misconduct.

3 c. If the employee refuses an offer to return to his pre-
4 injury or equivalent job, the permanent partial
5 disability award shall continue to be deferred and
6 shall be reduced by seventy percent (70%) of the
7 employee's average weekly wage for each week he
8 refuses to return to his pre-injury or equivalent job.

9 d. Attorney fees for permanent partial disability awards,
10 as approved by the Commission, shall be calculated
11 based upon the total permanent partial disability
12 award and paid in full at the time of the deferral.

13 e. Assessments pursuant to Sections 31, 98, 112 and 165
14 of this act shall be calculated based upon the amount
15 of the permanent partial disability award and shall be
16 paid at the time of the deferral.

17 6. Previous Disability: The fact that an employee has suffered
18 previous disability or received compensation therefor shall not
19 preclude the employee from compensation for a later accidental
20 personal injury or occupational disease. In the event there exists
21 a previous permanent partial disability, including a previous non-
22 work-related injury or condition which produced permanent partial
23 disability and the same is aggravated or accelerated by an
24 accidental personal injury or occupational disease, compensation for

1 permanent partial disability shall be only for such amount as was
2 caused by such accidental personal injury or occupational disease
3 and no additional compensation shall be allowed for the preexisting
4 disability or impairment. Any such reduction shall not apply to
5 temporary total disability, nor shall it apply to compensation for
6 medical treatment.

7 a. If workers' compensation benefits have previously been
8 awarded through settlement or judicial or
9 administrative determination in Oklahoma, the
10 percentage basis of the prior settlement or award
11 shall conclusively establish the amount of permanent
12 partial disability determined to be preexisting. If
13 workers' compensation benefits have not previously
14 been awarded through settlement or judicial or
15 administrative determination in Oklahoma, the amount
16 of preexisting permanent partial disability shall be
17 established by competent evidence.

18 b. In all cases, the applicable reduction shall be
19 calculated as follows:

20 (1) if the preexisting impairment is the result of
21 injury sustained while working for the employer
22 against whom workers' compensation benefits are
23 currently being sought, any award of compensation
24 shall be reduced by the current dollar value

1 attributable under the Administrative Workers'
2 Compensation Act to the percentage of permanent
3 partial disability determined to be preexisting.
4 The current dollar value shall be calculated by
5 multiplying the percentage of preexisting
6 permanent partial disability by the compensation
7 rate in effect on the date of the accident or
8 injury against which the reduction will be
9 applied, and

10 (2) in all other cases, the employer against whom
11 benefits are currently being sought shall be
12 entitled to a credit for the percentage of
13 preexisting permanent partial disability.

14 7. No payments on any permanent partial disability order shall
15 begin until payments on any preexisting permanent partial disability
16 orders have been completed.

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

19 9. The permanent partial disability rate of compensation for
20 amputation or permanent total loss of use of a scheduled member
21 specified in Section 46 of this ~~act~~ title shall be seventy percent
22 (70%) of the employee's average weekly wage, not to exceed Three
23 Hundred Twenty-three Dollars (\$323.00), multiplied by the number of
24 weeks set forth for the member in Section 46 of this ~~act~~ title,

1 regardless of whether the injured employee is able to return to his
2 or her pre-injury or equivalent job.

3 10. An injured employee who is eligible for permanent partial
4 disability under this subsection shall be entitled to receive
5 vocational rehabilitation services provided by a technology center
6 or public secondary school offering vocational-technical education
7 courses, or a member institution of The Oklahoma State System of
8 Higher Education, which shall include retraining and job placement
9 to restore the employee to gainful employment. Vocational
10 rehabilitation services or training shall not extend for a period of
11 more than fifty-two (52) weeks.

12 D. Permanent Total Disability.

13 1. In case of total disability adjudged to be permanent,
14 seventy percent (70%) of the employee's average weekly wages, but
15 not in excess of the state's average weekly wage, shall be paid to
16 the employee during the continuance of the disability until such
17 time as the employee reaches the age of maximum Social Security
18 retirement benefits or for a period of fifteen (15) years, whichever
19 is longer. In the event the claimant dies of causes unrelated to
20 the injury or illness, benefits shall cease on the date of death.
21 Provided, however, any person entitled to revive the action shall
22 receive a one-time lump-sum payment equal to twenty-six (26) weeks
23 of weekly benefits for permanent total disability awarded the
24 claimant. If more than one person is entitled to revive the claim,

1 the lump-sum payment shall be evenly divided between or among such
2 persons. In the event the Commission awards both permanent partial
3 disability and permanent total disability benefits, the permanent
4 total disability award shall not be due until the permanent partial
5 disability award is paid in full. If otherwise qualified according
6 to the provisions of this act, permanent total disability benefits
7 may be awarded to an employee who has exhausted the maximum period
8 of temporary total disability even though the employee has not
9 reached maximum medical improvement.

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

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

21 2. The Vocational Rehabilitation Director shall help injured
22 workers return to the work force. If the injured employee is unable
23 to return to his or her pre-injury or equivalent position due to
24 permanent restrictions as determined by the treating physician, upon

1 the request of either party, the Vocational Rehabilitation Director
2 shall determine if it is appropriate for a claimant to receive
3 vocational rehabilitation training or services, and will oversee
4 such training. If appropriate, the Vocational Rehabilitation
5 Director shall issue administrative orders, including, but not
6 limited to, an order for a vocational rehabilitation evaluation for
7 any injured employee unable to work for at least ninety (90) days.
8 In addition, the Vocational Rehabilitation Director may assign
9 injured workers to vocational rehabilitation counselors for
10 coordination of recommended services. The cost of the services
11 shall be paid by the employer. All administrative orders are
12 subject to appeal to the full Commission.

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

- 16 a. if the employee's occupation is truck driver or
17 laborer and the medical condition is traumatic brain
18 injury, stroke or uncontrolled vertigo,
- 19 b. if the employee's occupation is truck driver or
20 laborer performing high-risk tasks and the medical
21 condition is seizures,
- 22 c. if the employee's occupation is manual laborer and the
23 medical condition is bilateral wrist fusions,

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- d. if the employee's occupation is assembly-line worker and the medical condition is radial head fracture with surgical excision,
- e. if the employee's occupation is heavy laborer and the medical condition is myocardial infarction with congestive heart failure,
- f. if the employee's occupation is heavy manual laborer and the medical condition is multilevel neck or back fusions greater than two levels,
- g. if the employee's occupation is laborer performing overhead work and the medical condition is massive rotator cuff tears, with or without surgery,
- h. if the employee's occupation is heavy laborer and the medical condition is recurrent inguinal hernia following unsuccessful surgical repair,
- i. if the employee's occupation is heavy manual laborer and the medical condition is total knee replacement or total hip replacement,
- j. if the employee's occupation is roofer and the medical condition is calcaneal fracture, medically or surgically treated,
- k. if the employee's occupation is laborer of any kind and the medical condition is total shoulder replacement,

- 1 1. if the employee's occupation is laborer and the
2 medical condition is amputation of a hand, arm, leg,
3 or foot,
- 4 m. if the employee's occupation is laborer and the
5 medical condition is tibial plateau fracture, pilon
6 fracture,
- 7 n. if the employee's occupation is laborer and the
8 medical condition is ankle fusion or knee fusion,
- 9 o. if the employee's occupation is driver or heavy
10 equipment operator and the medical condition is
11 unilateral industrial blindness, or
- 12 p. if the employee's occupation is laborer and the
13 medical condition is 3-, 4-, or 5-level positive
14 discogram of the cervical spine or lumbar spine,
15 medically treated.

16 4. Upon the request of either party, or by order of an
17 administrative law judge, the Vocational Rehabilitation Director
18 shall assist the Workers' Compensation Commission in determining if
19 it is appropriate for a claimant to receive vocational
20 rehabilitation training or services. If appropriate, the
21 administrative law judge shall refer the employee to a qualified
22 expert for evaluation of the practicability of, need for and kind of
23 rehabilitation services or training necessary and appropriate in
24 order to restore the employee to gainful employment. The cost of

1 the evaluation shall be paid by the employer. Following the
2 evaluation, if the employee refuses the services or training ordered
3 by the administrative law judge, or fails to complete in good faith
4 the vocational rehabilitation training ordered by the administrative
5 law judge, then the cost of the evaluation and services or training
6 rendered may, in the discretion of the administrative law judge, be
7 deducted from any award of benefits to the employee which remains
8 unpaid by the employer. Upon receipt of such report, and after
9 affording all parties an opportunity to be heard, the administrative
10 law judge shall order that any rehabilitation services or training,
11 recommended in the report, or such other rehabilitation services or
12 training as the administrative law judge may deem necessary,
13 provided the employee elects to receive such services, shall be
14 provided at the expense of the employer. Except as otherwise
15 provided in this subsection, refusal to accept rehabilitation
16 services by the employee shall in no way diminish any benefits
17 allowable to an employee.

18 5. The administrative law judge may order vocational
19 rehabilitation before the injured employee reaches maximum medical
20 improvement, if the treating physician believes that it is likely
21 that the employee's injury will prevent the employee from returning
22 to his or her former employment. In granting early benefits for
23 vocational rehabilitation, the Commission shall consider temporary
24 restrictions and the likelihood that such rehabilitation will return

1 the employee to gainful employment earlier than if such benefits are
2 granted after the permanent partial disability hearing in the claim.

3 6. Vocational rehabilitation services or training shall not
4 extend for a period of more than fifty-two (52) weeks. A request
5 for vocational rehabilitation services or training shall be filed
6 with the Commission by an interested party not later than sixty (60)
7 days from the date of receiving permanent restrictions that prevent
8 the injured employee from returning to his or her pre-injury or
9 equivalent position.

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

17 8. During the period when an employee is actively and in good
18 faith being evaluated or participating in a retraining or job
19 placement program for purposes of evaluating permanent total
20 disability status, the employee shall be entitled to receive
21 benefits at the same rate as the employee's temporary total
22 disability benefits for an additional fifty-two (52) weeks. All
23 tuition related to vocational rehabilitation services shall be paid
24 by the employer or the employer's insurer on a periodic basis

1 directly to the facility providing the vocational rehabilitation
2 services or training to the employee. The employer or employer's
3 insurer may deduct the amount paid for tuition from compensation
4 awarded to the employee.

5 F. Disfigurement.

6 1. If an injured employee incurs serious and permanent
7 disfigurement to any part of the body, the Commission may award
8 compensation to the injured employee in an amount not to exceed
9 Fifty Thousand Dollars (\$50,000.00).

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

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

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

22 SECTION 4. AMENDATORY Section 63, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2014, Section 63), is amended to read as
24 follows:

1 Section 63. A. Within ten (10) days after the date of receipt
2 of notice or of knowledge of injury that results in absence from
3 work for more than three (3) days or death, the employer shall send
4 to the Commission a report setting forth:

- 5 1. The name, address, and business of the employer;
- 6 2. The name, address, and occupation of the employee;
- 7 3. The cause and nature of the injury or death;
- 8 4. The year, month, day, approximately when, and the particular
9 locality where, the injury or death occurred; and
- 10 5. Such other information as the Commission may require.

11 B. Additional reports with respect to the injury and of the
12 condition of the employee shall be sent by the employer to the
13 Commission at such time and in such manner as the Commission may
14 prescribe. However, an employer may refuse to provide any
15 information that it deems privileged or confidential.

16 C. Any report provided for in subsection A or B of this section
17 shall not be evidence of any fact stated in the report in any
18 proceeding with respect to the injury or death on account of which
19 the report is made.

20 D. The mailing of any report in a stamped envelope, properly
21 addressed, within the time prescribed in subsection A or B of this
22 section, shall be in compliance with this section. In addition, the
23 Commission shall establish a means of electronic delivery of any
24 report or other information required by this section.

1 E. 1. Any employer who after notice refuses to send any report
2 required by this section shall be subject to a civil penalty in an
3 amount of Five Hundred Dollars (\$500.00) for each refusal.

4 2. Whenever the employer has failed or refused to comply as
5 provided in this section, the Commission may serve on the employer a
6 proposed judgment declaring the employer to be in violation of this
7 act and containing the amount, if any, of the civil penalty to be
8 assessed against the employer under this section.

9 F. An employer may contest a proposed judgment of the
10 Commission issued under subsection E of this section by filing with
11 the Commission, within twenty (20) days of receipt of the proposed
12 judgment, a written request for a hearing. If a written request for
13 hearing is not filed with the Commission within this time, the
14 proposed judgment, proposed penalty, or both, shall be a final
15 judgment of the Commission. The request for a hearing does not need
16 to be in any particular form but shall specify the grounds on which
17 the person contests the proposed judgment, the proposed assessment,
18 or both. A proposed judgment by the Commission under this section
19 shall be prima facie correct, and the burden is on the employer to
20 prove that the proposed judgment is incorrect.

21 G. Hearings conducted under this section shall proceed as
22 provided in Sections 69 through 78 of this ~~act~~ title.

23 H. If an employer fails to pay any civil penalty assessed
24 against the employer after a judgment issued under this section has

1 become final by operation of law, the Commission may petition the
2 district court of the county where the employer's principal place of
3 business is located for an order enjoining the employer from
4 engaging in further employment or conduct of business until such
5 time as the employer makes all required reports and pays all civil
6 penalties.

7 SECTION 5. AMENDATORY Section 65, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2014, Section 65), is amended to read as
9 follows:

10 Section 65. A. If an employee suffers from an occupational
11 disease as defined in this section and is disabled or dies as a
12 result of the disease, the employee, or, in case of death, his or
13 her dependents, shall be entitled to compensation as if the
14 disability or death were caused by injury arising out of work
15 activities within the scope of employment, except as otherwise
16 provided in this section.

17 B. No compensation shall be payable for an occupational disease
18 if the employee, at the time of entering into the employment of the
19 employer by whom the compensation would otherwise be payable,
20 falsely represented himself or herself in writing as not having
21 previously been disabled, laid off, or compensated in damages or
22 otherwise, because of the disease.

23 C. 1. If an occupational disease is aggravated by any other
24 disease or infirmity, not itself compensable, or if disability or

1 death from any other cause, not itself compensable, is aggravated,
2 prolonged, accelerated, or in any way contributed to by an
3 occupational disease, the compensation payable shall be reduced and
4 limited to the proportion only of the compensation that would be
5 payable if the occupational disease were the major cause of the
6 disability or death as the occupational disease, as a causative
7 factor, bears to all the causes of the disability or death.

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

12 D. 1. "Occupational disease", as used in this act, unless the
13 context otherwise requires, means any disease that results in
14 disability or death and arises out of and in the course of the
15 occupation or employment of the employee or naturally follows or
16 unavoidably results from an injury as that term is defined in this
17 act. A causal connection between the occupation or employment and
18 the occupational disease shall be established by a preponderance of
19 the evidence.

20 2. No compensation shall be payable for any contagious or
21 infectious disease unless contracted in the course and scope of
22 employment ~~in or immediately connected with a hospital or sanatorium~~
23 ~~in which persons suffering from that disease are cared for or~~
24 ~~treated.~~

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

3 E. 1. When compensation is payable for an occupational
4 disease, the employer in whose employment the employee was last
5 injuriously exposed to the hazards of the disease and the carrier,
6 if any, on the risk when the employee was last injuriously exposed
7 under the employer shall be liable.

8 2. The amount of the compensation shall be based on the average
9 weekly wage of the employee when last injuriously exposed under the
10 employer, and the notice of injury and claim for compensation shall
11 be given and made to that employer.

12 F. 1. An employer shall not be liable for any compensation for
13 an occupational disease unless:

14 a. the disease is due to the nature of an employment in
15 which the hazards of the disease actually exist and
16 ~~are characteristic thereof and peculiar to the trade,~~
17 ~~occupation, process, or employment~~ and is actually
18 incurred in the course and scope of his or her
19 employment. This includes any disease due to or
20 attributable to exposure to or contact with any
21 radioactive material by an employee in the course and
22 scope of his or her employment,

23 b. disablement or death results within three (3) years in
24 case of silicosis or asbestosis, or one (1) year in

1 case of any other occupational disease, except a
2 diseased condition caused by exposure to X-rays,
3 radioactive substances, or ionizing radiation, after
4 the last injurious exposure to the disease in the
5 employment, or

6 c. in case of death, death follows continuous disability
7 from the disease, commencing within the period, for
8 which compensation has been paid or awarded or timely
9 claim made as provided in subparagraph b of this
10 paragraph and results within seven (7) years after the
11 last exposure.

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

15 SECTION 6. AMENDATORY Section 82, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2014, Section 82), is amended to read as
17 follows:

18 Section 82.

19 A. 1. a. Fees for legal services rendered in a claim shall not
20 be valid unless approved by the Commission.

21 b. An attorney representing an injured employee may only
22 recover attorney fees up to ten percent (10%) of any
23 temporary total disability or temporary partial
24 disability compensation and twenty percent (20%) of

1 any permanent partial disability, permanent total
2 disability, or death compensation awarded to an
3 injured employee by the Commission from a controverted
4 claim. If the employer makes a written offer to
5 settle permanent partial disability, permanent total
6 disability, or death compensation and that offer is
7 rejected, the employee's attorney may not recover
8 attorney fees in excess of thirty percent (30%) of the
9 difference between the amount of any award and the
10 settlement offer.

11 (1) Attorney fees may not be collected for recovery
12 on noncontroverted claims.

13 (2) Attorney fees shall not be awarded on medical
14 benefits or services.

15 (3) The fee for legal services rendered by an
16 attorney representing an employee in connection
17 with a change of physician requested by the
18 injured employee, controverted by the employer,
19 and awarded by the Commission, shall be Two
20 Hundred Dollars (\$200.00).

21 ~~(4) Attorney fees may include not more than ten~~
22 ~~percent (10%) of the value, or reasonable~~
23 ~~estimate thereof, of vocational rehabilitation~~
24 ~~services.~~

1 c. A "controverted claim" means that there has been a
2 contested hearing before the Commission over whether
3 there has been a compensable injury or whether the
4 employee is entitled to temporary total disability,
5 temporary partial disability, permanent partial
6 disability, permanent total disability, or death
7 compensation. A request for a change in physician
8 shall not trigger a controverted claim for purposes of
9 recovering any attorney fees except the fees under
10 division 3 of subparagraph b of this paragraph. A
11 controverted claim shall not exist if the employee or
12 his or her representative has withheld pertinent
13 information in his or her possession related to the
14 claim from the employer or has violated the provisions
15 of Section 6 of this ~~act~~ title.

16 2. Any person who or entity that brings a controverted claim
17 against the State Treasurer, as a custodian of the Multiple Injury
18 Trust Fund, shall provide notice of the claim to the Commission.
19 Thereafter, the Commission shall direct fees for legal services be
20 paid from the Fund, in addition to any compensation award. The fees
21 shall be authorized only on the difference between the amount of
22 compensation controverted and the amount awarded from the Fund.

1 3. In any case where attorney fees are allowed by the
2 Commission, the limitations expressed in subparagraph b of paragraph
3 1 of this subsection shall apply.

4 4. Medical providers may voluntarily contract with the attorney
5 for the employee to recover disputed charges, and the provider may
6 charge a reasonable fee for the cost of collection.

7 B. An attorney representing an employee under this act may not
8 recover fees for services except as expressly provided in this
9 section.

10 SECTION 7. AMENDATORY Section 109, Chapter 208, O.S.L.
11 2013 (85A O.S. Supp. 2014, Section 202), is amended to read as
12 follows:

13 Section 202. A. Any employer may voluntarily elect to be
14 exempt from the Administrative Workers' Compensation Act and become
15 a qualified employer if the employer:

16 1. Is in compliance with the notice requirements in subsections
17 B and H of this section; and

18 2. Has established a written benefit plan as described in
19 Section 110 of this ~~act~~ title.

20 B. An employer that has elected to become a qualified employer
21 by satisfying the requirements of this section shall notify the
22 Insurance Commissioner in writing of the election and the date that
23 the election is to become effective, which may not be sooner than
24 the date that the qualified employer satisfies the employee notice

1 requirements in this section. Such qualified employer shall pay to
2 the Commissioner an annual nonrefundable fee of ~~One Thousand Five~~
3 ~~Hundred Dollars (\$1,500.00)~~ One Thousand Dollars (\$1,000.00) on the
4 date of filing written notice and every year thereafter.

5 C. The Commissioner shall collect and maintain the information
6 required under this section and shall monitor compliance with the
7 requirements of this section. The Commissioner may also require an
8 employer to confirm its qualified-employer status. Subject to
9 subsection D of this section, the Commissioner shall adopt rules
10 designating the methods and procedures for confirming whether an
11 employer is a qualified employer, notifying an employer of any
12 qualifying deficiencies, and the consequences thereof. The
13 Commissioner shall record the date and time each notice of
14 qualified-employer status is received and the effective date of
15 qualified-employer election. The Commissioner shall maintain a list
16 on its official website accessible by the public of all qualified
17 employers and the date and time such exemption became effective.

18 D. Except as otherwise expressly provided in this act, neither
19 the Workers' Compensation Commission, the courts of this state, or
20 any state administrative agencies shall promulgate rules or any
21 procedures related to design, documentation, implementation,
22 administration or funding of a qualified employer's benefit plan.

23 E. The Commissioner may designate an information collection
24 agent, implement an electronic reporting and public information

1 access program, and adopt rules as necessary to implement the
2 information collection requirements of this section.

3 F. The Commissioner may prescribe rules and forms to be used
4 for the qualified-employer notification and shall require the
5 qualified employer to provide its name, address, contact person and
6 phone number, federal tax identification number, number of persons
7 employed in this state as of a specified date, claim administration
8 contact information, and a listing of all covered business locations
9 in the state. The Commissioner shall notify the Commissioner of
10 Labor of all qualified-employer notifications. The Department of
11 Labor shall provide such notifications to other governmental
12 agencies as it deems necessary.

13 G. The Commissioner may contract with the Oklahoma Employment
14 Security Commission, the State Treasurer or the Department of Labor
15 for assistance in collecting the notification required under this
16 section or otherwise fulfilling the Commissioner's responsibilities
17 under this act. Such agencies shall cooperate with the Commissioner
18 in enforcing the provisions of this section.

19 H. A qualified employer shall notify each of its employees in
20 the manner provided in this section that it is a qualified employer,
21 that it does not carry workers' compensation insurance coverage and
22 that such coverage has terminated or been cancelled.

23 I. The qualified employer shall provide written notification to
24 employees as required by this section at the time the employee is

1 hired or at the time of designation as a qualified employer. The
2 qualified employer shall post the employee notification required by
3 this section at conspicuous locations at the qualified employer's
4 places of business as necessary to provide reasonable notice to all
5 employees. The Commissioner may adopt rules relating to the form,
6 content, and method of delivery of the employee notification
7 required by this section.

8 SECTION 8. AMENDATORY Section 118, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2014, Section 211), is amended to read as
10 follows:

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

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

23 1. The claimant may appeal in writing an initial adverse
24 benefit determination to an appeals committee within one hundred

1 eighty (180) days following his or her receipt of the adverse
2 benefit determination. The appeal shall be heard by a committee
3 consisting of at least three people that were not involved in the
4 original adverse benefit determination. The appeals committee shall
5 not give any deference to the claimant's initial adverse benefit
6 determination in its review;

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

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

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

20 5. If any part of an adverse benefit determination is upheld by
21 the committee, the claimant may then file a petition for review with
22 the Commission sitting en banc within one (1) year after the date
23 the claimant receives notice that the adverse benefit determination,
24 or part thereof, was upheld. The Commission en banc shall act as

1 the court of competent jurisdiction under 29 U.S.C.A. Section
2 1132(e) (1), and shall possess adjudicative authority to render
3 decisions in individual proceedings by claimants to recover benefits
4 due to the claimant under the terms of the claimant's plan, to
5 enforce the claimant's rights under the terms of the plan, or to
6 clarify the claimant's rights to future benefits under the terms of
7 the plan;

8 6. The Commission ~~shall rely on the record established by the~~
9 ~~internal appeal process and use an objective standard of review that~~
10 ~~is not arbitrary or capricious~~ sitting en banc may reverse or modify
11 the decision only if it determines the decision was against the
12 clear weight of the evidence or contrary to law. The Commission, as
13 a body, shall act as the court of competent jurisdiction under 29
14 U.S.C.A. Section 1132(e) (1), and shall possess adjudicative
15 authority to render decisions in individual proceedings by a
16 claimant to recover benefits due to the claimant under the terms of
17 the claimant's plan, to enforce the claimant's rights under the
18 terms of the plan, or to clarify the claimant's rights to future
19 benefits under the terms of the plan. Any award by the
20 administrative law judge or Commission en banc shall be limited to
21 benefits payable under the terms of the benefit plan and, to the
22 extent provided herein, attorney fees and costs; and

23 7. If the claimant appeals to the Commission and any part of
24 the adverse benefit determination is upheld, he or she may appeal to

1 the Oklahoma Supreme Court by filing with the Clerk of the Supreme
2 Court a certified copy of the decision of the Commission attached to
3 a petition which shall specify why the decision is contrary to law
4 within twenty (20) days of the decision being issued. The Supreme
5 Court may modify, reverse, remand for rehearing, or set aside the
6 decision only if the decision was contrary to law.

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

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

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

24

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

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

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

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

13 6. The district court shall rely on the record established by
14 the internal appeal process and use a deferential standard of
15 review.

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

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

22 SECTION 9. This act shall become effective November 1, 2015.
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