

ANALYSIS—HB 2367
By Bob Burke
2019 Oklahoma Workers' Compensation Bill

Changes by Section # of the bill, not 85A

Section 1:

In regard to causation of an injury, work activity must be the “major cause,” not the “sole” cause.

In intoxication defense, biological specimens from the medical examiner’s office may be used if worker died less than 24 hours after injury.

Makes compensable an injury that occurs in an area under the exclusive ownership or control of the employer.

Clarifies definition of households exempt from workers’ compensation law.

Eliminates definition of an Opt Out employer.

Clarifies that the “latest edition of the AMA Guides” is the “Sixth Edition.”

Removes unconstitutional language that limited cumulative trauma injuries to minimum of 180 days hazardous exposure.

Section 2:

Gives Oklahoma jurisdiction over injuries in which the employee was hired in the state or the accident occurs in the state.

Prevents double recovery in Oklahoma if injured worker has received benefits in another state.

Extends the Oklahoma comp law to injuries that occur on federal land.

Section 3:

Removes unconstitutional provision that exempt oil and gas operators from third party negligence liability.

Section 5:

Moves retaliatory discharge claims back to district court. Punitive damages limited to \$100,000.

Section 6:

Allows mental or physical stress to be used as evidence in heart attack or stroke case.

Section 11:

The Commission shall abide by the Administrative Procedures Act in making rules.

The Commission may establish a \$500 petty cash fund.

The commissioners may communicate with each other when discussing an appeal.

Section 12:

Removes unconstitutional provision that allowed Commission ALJ’s to hear old law cases.

Section 13:

Raises Own Risk annual fees to be paid to Commission.

Section 14:

Commission or CEC reporters may report either old law or new law settlements.

Section 16:

Gives Commission authority to collect judgments against employers who fail to pay penalties for not carrying insurance.

Section 17:

Raises TTD maximum to 156 weeks. Temporary PTD still available under statute.

Raises maximum TTD rate to the state's average weekly wage, currently \$853.

An employer may recover a TTD overpayment from a PPD award.

TTD may be terminated if worker abandons medical treatment for 60 days.

Temporary Partial Disability payment plus wages cannot exceed TTD rate.

PPD rate raised to \$350 immediately and \$360 in 2021.

Removes unconstitutional PPD deferral language.

ALJ's given the authority to determine amount of pre-existing disability.

Removes inoperable language in regard to deducting percentages of previous disability from current PPD award.

Raises basis for PPD awards to 360 weeks.

Simplifies vocational rehabilitation benefit.

Removes unconstitutional provision that cost of voc rehab tuition could be deducted from PPD award.

Allows disfigurement award for a scar less than 12 months old if treating doctor says it is fully healed.

Section 18:

Raises PPD rate for scheduled member to \$350 immediately and \$360 in 2021.

Section 19:

Authorizes Commission to determine validity of a common law marriage, not the district court.

Section 20:

Mandates Commission to update CPT codes in Medical Fee Schedule. The Fee Schedule will be studied and updated.

An employer or carrier shall have the right to update the amount of charges and the reasonableness and necessity of the charges, no matter the amount of bill. Affects stop loss provision.

Section 21:

If an injured worker refuses to obey a Commission order for medical treatment or evaluation, TTD ceases.

Section 23:

If a corrective surgery occurs, the 8-week TTD scheme no longer applies.
An “injection” under the 8-week TTD scheme shall not include a facet injection or an injection given through an IV.

Section 24:

A Form 2 is confidential until a Form 3 is filed. At that time, the Form 2 is a matter of public record and is available to injured worker or his or her representative.

Section 25:

Removes unconstitutional and inoperable language in regard to asbestosis and silicosis.

Section 26:

Removes unconstitutional language that allowed Commission to change a final award.

Section 27:

Clarifies statute of limitation to one year from date of injury or **six months** from date of last benefits paid, whichever is longer. Does away with two year maximum SOL.

Statute of repose is changed. **This will require attorneys to be on his or her toes.** The claim shall be dismissed if a request for hearing is not made within six months of filing Form 3 for benefits, including medical. However, if benefits are being paid, no request for hearing will need to be filed within that six month period. A second hazard is that a claim will be dismissed if it goes for a six-month period without payment of benefits and no request for hearing is made.

The “Additional Compensation” provision is deleted.

Section 28:

Creates revivor action for PPD after death of injured worker. Benefits limited to spouse or dependent children.

Section 30:

Clarifies six month time for reopening on a change of condition for the worse.

Section 31:

Defines “controverted” claim in regard to attorney’s fee.

Section 32:

Eliminates for employers the mandatory filing of a Notice of Controverted Claim.

Section 33:

Clarifies that only workers’ compensation issues between employee and employer are settled in a Joint Petition.

Section 34:

Prevents employer from deducting full wages in lieu of TTD benefits from PPD award if the full wages come from a collective bargaining agreement.

Section 35:

Removes unconstitutional language that cut off all benefits to an injured worker who later became incarcerated. Now only TTD is cut off.

Sections 42-55:

Cleanup language for Oklahoma Arbitration Act.

Section 56:

All four Court of Existing Claims judges continue to serve to the end of their terms on July 1, 2020.

Extends the CEC for 2 years, to July 1, 2022.

Allows Governor to appoint one judge, effective July 1, 2020. All applicants, including sitting judges, must go through the Judicial Nominating Commission and will require Senate confirmation.

On January 1, 2020, Governor will appoint a CEC Administrator, to serve at the pleasure of the Governor. Administrator must be confirmed by the Senate.

Appeals from the Judges can go to the Court en Banc or directly to the Supreme Court. The Court en Banc will be made up of retired district court, Workers' Compensation Court, or CEC judges, designated by the Presiding Judge. The Governor will present to the Presiding Judge a list of qualified judges that may serve on the Court en Banc.

The CEC will be required to consolidate its Information Technology system with that of the Commission.

CEC judges' order must be issued within 30 days, rather than present statutory 60 days.

Removes unconstitutional language that allows the Commission ALJ's from having any jurisdiction over claims for injuries before February 1, 2014.

Section 58--64:

The Multiple Injury Trust Fund Recovery Act. Notes that orders owed by MITF are a general obligation of the State of Oklahoma and it is necessary to reform the criteria for MITF awards and provide additional funding to stabilize the fund.

Establishes a 50% threshold of pre-existing disability before worker is eligible for MITF benefits.

Increases by 16%, from 6 % to 7%, the contribution of insurance carriers and own risk employers for a period of three years.

Assesses a 3% MITF deduction to be paid by claimants on old law and new law PPD orders, compromise settlements, and joint petitions.

Eliminates use of obvious and apparent disability to scheduled members unless partial or entire amputation or loss of use are concerned.

CompSource dividends due state agencies shall be paid into the MITF

Allows a \$1 million annual deduction from the MITF for the State Labor Commissioner's programs that deal with workers.

MITF awards are to age 65 or 8 years, whichever is longer.

If a compromise settlement is reached, the claimant can never make another claim against the MITF.

Statute of limitation is reduced to one year after the order in the last injury.

Requires claimant attorney to convey to client an offer to compromise within 5 days.

Section 66:

Repeals Oklahoma Employee Injury Benefit Act (Opt Out), previously ruled unconstitutional by the Oklahoma Supreme Court.

Section 67:

Declares emergency to provide for effective date when Governor signs bill.

***** No change in Official Disability Guidelines. ODG remains advisory.

**** No change in criteria for Continuing Maintenance Medical (CMM).