

## BILL SUMMARY

**MEASURE:** SB 1 of the 1<sup>st</sup> Extraordinary Session of the 50<sup>th</sup> Oklahoma Legislature (2005)

**SUBJECT:** Workers' Compensation

**AUTHORS:** President Pro Tempore Mike Morgan  
Speaker Todd Hiett

---

**Section 1:** *Amends 21 O.S. 2001, Section 1663.* Increases penalties and defines “person” and “work” for purposes of workers’ compensation fraud.

**Section 2:** *New law.* Allows insurance companies to use rates before filing them with the Insurance Department, subject to disapproval by the Department.

**Section 3:** *Amends 36 O.S. 2001, Section 983.* Subjects workers’ compensation insurance to the Property and Casualty Competitive Loss Cost Rating Act.

**Section 4:** *Amends 40 O.S. 2001, Section 554.* Allows an employer to drug test any employee following an incident which injures an employee or causes damage to equipment worth \$500 or more, without requiring reasonable suspicion of drug use or that the property damage be the direct result of the use of alcohol or drugs.

**Section 5:** *New law.* Provides a tax credit for eligible wages paid by an employer to an employee. The credit is 10% of gross wages paid to the worker for not to exceed 90 days, up to \$5,000 per worker and \$25,000 per employer. Provides a tax credit of 50% of expenses to modify a workplace for an injured worker on light duty, up to \$1,000 and \$10,000 per employer.

**Section 6:** *Amends 68 O.S. Supp. 2004, Section 2358.* Gives an employer that uses the Safety Pays Consultation Services provided by the Oklahoma Department of Labor a \$1,000 income tax exemption.

**Section 7:** *Amends 85 O.S. 2001, Section 1.1.* Requires the Workers’ Compensation Act to be strictly construed by the courts.

**Section 8:** *Amends 85 O.S. 2001, Section 1.3.* Allows the Governor, in lieu of the Presiding Judge of the Workers’ Compensation Court, to appoint the Court Administrator. Sets the term of appointment to six years and provides for removal for cause as provided for officers not subject to impeachment.

**Section 9:** *Amends 85 O.S. Supp. 2004, Section 3.* Defines “amount in dispute”, “compensable injury”, “major cause” and “objective evidence”. Modifies the definition of “cumulative trauma”, “occupational disease”, “treating physician” and “permanent

impairment”. Strikes the definition of “injury”. Requires all evaluations of permanent impairment to be supported by objective medical evidence.

**Section 10:** *Amends 85 O.S. 2001, Section 3.5.* Permits venue in cases involving resident claimants to be established by agreement of the parties, or absent agreement, where the judge determines that good cause has been shown. Fixes venue in cases involving nonresident claimants as the judicial district of the county of the employer’s principal place of business. Permits the Workers’ Compensation Court to hold hearings by videoconference if the parties agree.

**Section 11:** *Amends 85 O.S. 2001, Section 3.9.* Requires the Court Administrator to mail notice to an injured worker, within 30 days of filing a Form 3, advising of mediation and counselor services.

**Section 12:** *Amends 85 O.S. 2001, Section 3.10.* Permits the Court to order mediation upon request by a party or when the Court determines it would be helpful to resolution of the claim. Requires Court ordered mediation to be completed within 30 days. Requires the Workers’ Compensation Court, in lieu of the Supreme Court, to determine the qualifications and certification of mediators.

**Section 13:** *Amends 85 O.S. 2001, Section 5.* Prohibits an employer from firing an injured worker to avoid paying for temporary total disability benefits.

**Section 14:** *Amends 85 O.S. 2001, Section 12.* Provides that the exclusive remedy provision does not abrogate any rights arising under the Oklahoma Constitution.

**Section 15:** *Amends 85 O.S. Supp 2004, Section 14.* Holds temporary compensation in abeyance during a partially disabled worker’s refusal of light duty, unless the refusal was justified according to the treating physician. The worker is entitled to notice and hearing before discontinuation of the benefits. The hearing must be granted within 5 days of an employee’s request therefor. Requires an employer selected treating physician to release a report of the physician’s examination of the claimant to the employer, in addition to the worker. Substitutes an employer selected treating physician for a physician previously selected by the worker during the employer’s neglect or failure to provide medical treatment. Requires the employer to select a treating physician from the certified workplace medical plan (CWMP) list of providers when a carrier, insured or self-insured employer has contracted with a plan. Permits testimony from a psychologist if requested by the Court. Directs the Court Administrator to develop a new fee schedule by January 1, 2006 that results in at least a 4% savings in workers’ compensation medical costs. The schedule for physician fees must be based on the most current relative values produced by the Centers for Medicare and Medicaid Services for the Medicare Physician Fee Schedule. The values are to be multiplied by conversion factors, determined by the Administrator, that reflect usual and customary rates for the treatment of workers’ compensation patients. Reimbursement for any single procedure shall not be less

than 115% of Medicare. Modifies the cap on increases to the overall maximum reimbursement levels for providers, including hospitals and ambulatory surgical centers, from the cumulative percentage change in the Consumer Price Index - Urban (CPI-U) for medical costs to the cumulative percentage change in the CPI-U for all costs, since the last biennial review. Requires as a condition of payment that a hospital provide the payor with an invoice for implantables that is adjusted to reflect all rebates and discounts. Limits charges for prescription drugs to 90% of the average wholesale price of the prescription, plus a dispensing fee of \$5. Mandates use of generic equivalent drugs when available. Directs an employer to select a treating physician for employees not subject to a plan. Allows an employee not covered by a CWMP one change of physician to be selected from a list of 3 physicians provided by the worker. If the employer disapproves of the physicians offered, the employer may counteroffer with its own list of 3 physicians. If the parties cannot agree upon a physician, the Court shall select a treating physician from the Court's independent medical examiner system. Permits one change of an employer selected case manager. Prohibits repeating diagnostic tests sooner than 6 months from the test date, unless agreed to by the parties or ordered by the Court.

**Section 16:** *Amends 85 O.S. 2001, Section 14.2.* Requires the employer to select a treating physician from the CWMP list of providers when a carrier, insured or self-insured employer has contracted with a plan. Deletes the approval process related to selection of a plan when there is a collective bargaining agreement. Authorizes the claimant one change of physician within the plan using the dispute resolution process of the plan. Deletes the CWMP enrollment option for workers.

**Section 17:** *Amends 85 O.S. 2001, Section 14.3.* Prohibits certification of a CWMP unless the plan's dispute resolution procedure includes a requirement that disputes on an issue, including change of physician by a worker, be resolved within 10 days under the plan. Requires the Commissioner of Health to implement a site visit protocol by 11/1/05 for Department of Health employees to annually inspect CWMPs. Specifies protocol requirements. Shifts administrative rulemaking concerning CWMPs from the Commissioner of Health to the State Board of Health.

**Section 18:** *Amends 85 O.S. 2001, Section 16.* Requires an employee to obtain and pay for a vocational rehabilitation evaluation prior to any award for permanent total disability (PTD). Limits TTD-equivalent benefits during PTD evaluation to not to exceed two, 52-week periods during good faith participation in a retraining or job placement program.

**Section 19:** *Amends 85 O.S. Supp. 2004, Section 17.* Requires permanent disability claims to be supported by competent medical evidence supported by objective medical evidence (evidence that meets the criteria of Federal Rule of Evidence 702) which shall include an evaluation by the treating physician (or an IME, if there is no evaluation by the treating physician). The evaluation must be sent to both parties within 7 days of issuance. Creates a rebuttable presumption in favor of the treating physician's

testimony on disability, causation, apportionment, rehabilitation and medical treatment, unless objected to, in which case, an IME agreed to by the parties or randomly selected by the Court, may be appointed. Requires the IME to be randomly selected within 15 days, and, whenever possible, to be Board certified in the area(s) appropriate to the condition under review. Provides for transmittal of medical records to the IME. Provides that the objecting party shall pay for the IME unless the IME's opinion is favorable to the objecting party, in which case, the other party shall bear the costs. Allows the IME to examine the claimant and relevant medical records to determine whether or not the treating physician's opinion is supported by objective medical evidence. If it is, the review ends. If it is not, the IME may opine on the issues. Provides for employer selected care if the IME determines more medical treatment is needed or if the treating physician refuses to treat. Requires the Court to follow the opinion of the treating physician or IME, or establish its own opinion within the range of the opinions of the treating physician and IME. Makes the Court explain any deviation from the treating physician's opinion. Allows for cross-examination of the treating physician or IME by deposition payable by the requesting party. Permits removal of a physician from the IME list for cause. Preserves provision of medical benefits when an IME determines the employee is capable of returning to work and the claimant elects not to do so. Allows an employer to stop TTD if the employee is released from treatment by the treating physician and provides procedures for objecting to such termination of TTD. Requires IME impairment ratings to be based on objective medical evidence.

**Section 20:** *Amends 85 O.S. 2001, Section 22.* Limits **TTD** and temporary partial disability (**TPD**), inclusive of consequential injuries, to 300 weeks in the aggregate. Increases **disfigurement** benefits from \$20,000 to \$50,000 for injuries occurring after 10/31/05. Limits TTD for **hernia** to 6 weeks, plus the cost of surgery, unless an additional 6 weeks of Court ordered TTD is allowed by agreement of the parties or the treating physician. Limits TTD for **nonsurgical soft tissue injuries** to 8 weeks. Soft tissue injuries include, but are not limited to, cumulative trauma, sprains, strains, contusions, tendonitis and muscle tears, but exclude spinal related injuries with corrective surgery, closed head injuries and total knee replacements. Limits TTD for **surgical soft tissue injuries** to 8 weeks with a 16 week Court ordered extension of TTD possible if the parties or treating physician agree. Limits compensation for **all soft tissue injuries** to medical and TTD unless there is objective medical evidence of permanent anatomical abnormality. Prohibits **permanent disability** unless there is objective medical evidence of permanent anatomical abnormality. Allows consideration of permanent impairment to wage earning capacity to determine the existence of a permanent anatomical abnormality. Clarifies there is no employer liability for nonwork-related, **pre-existing conditions**. Increases **funeral expenses** from \$5,000 to \$8,000 for deaths after 10/31/05 for which there are no dependents or heirs-at-law. For deaths occurring after 10/31/05, increases the **lump sum death benefit to a surviving spouse and children** to \$100,000 for the spouse and \$25,000 per child up to 2 children, plus funeral expenses up to \$10,000. For deaths occurring after 10/31/05, increases the **lump sum death benefit to children only** to \$25,000 per child, up to \$150,000, share and share alike, plus funeral expenses up to \$10,000.

- Section 21:** *Amends 85 O.S. 2001, Section 24.1.* Makes the Employer’s First Notice of Injury (Form 2) confidential, except for parties, their counsel, and prosecutorial authorities.
- Section 22:** *Amends 85 O.S. 2001, Section 26.* Eliminates Court approval of Form 14 Settlements if a worker is represented by counsel. Creates an additional method for settling a workers’ compensation claim between an employer and an unrepresented employee to be known as a “compromise settlement”. Provides that the compromise settlement involves creation of a Court file, making of a record and approval of the settlement by the Court or its Administrator, but no Form 3. Compensation received by an employee pursuant to a compromise settlement or dismissal with prejudice shall not be considered as a PPD award for statistical purposes.
- Section 23:** *Amends 85 O.S. 2001, Section 30.* Limits claimant attorney fees for indemnity benefits to 35% of the amount in dispute, plus attorney fees at a reasonable hourly rate for other contested benefits obtained for the employee, not to exceed a total of 20% of the PPD award. “Amount in dispute” means the dollar value of any permanent disability award granted by the Court over the dollar amount offered by the employer if the employer admits compensability within 20 days of the Form 3, has not disputed medical treatment, and has made a written settlement offer within 15 days of the employee reaching maximum medical improvement. Strikes the requirement that attorney fees be determined on a quantum meruit basis.
- Section 24:** *Amends 85 O.S. 2001, Section 43.* Clarifies the limitations period for an initial claim when medical treatment is authorized or compensation or other remuneration is paid. Requires post-termination claims to be filed within 6 months of termination of employment, with no tolling. Limits reopen on change of condition for the worse to 3 years from the date of the last order. This provision operates to extend the limitations period for the thumb, fingers, grand toe, other toes, and deafness of one ear to 152 weeks, but shortens it for unscheduled members, the hand, arm, foot, leg, eye, and deafness of both ears.
- Section 25:** *Amends 85 O.S. 2001, Section 44.* Grants the employer or its insurer a cause of action against a third party tortfeasor to recover any death benefits paid under the Workers’ Compensation Act, but not pursuant to subrogation and with no right to seek an interest in either the death benefits or a life insurance policy procured by the employee.
- Section 26:** *Amends 85 O.S. 2001, Section 48.* For claims arising after the effective date of the act, where the claimant has been adjudged PTD and dies from causes other than the accident or occupational disease causing such PTD, increases the benefit payable to the surviving spouse from \$50 per week to 50% of the deceased’s PTD rate, ending upon the surviving spouse’s death or remarriage.
- Section 27:** *Amends 85 O.S. 2001, Section 171.* Narrows the definition of “physically impaired person”.

- Section 28:** *Amends 85 O.S. 2001, Section 172.* Reinstates the Multiple Injury Trust Fund (MITF) and shifts the liability for combined disabilities constituting PTD from the last employer to the MITF for actions in which the subsequent injury occurred after 10/31/05. Provides that MITF PTD awards may be paid in periodic installments at the employee's PPD rate for 15 years or until the employee reaches 65 years of age, whichever is longer. If a claimant dies as a result of the injury before the award is fully paid, payments shall continue to the surviving spouse for 5 years or until remarriage, whichever occurs first, but in no event beyond the period of benefits awarded to the claimant. Permits the MITF to compromise a claim for less than the PTD amount, and if so, payment shall be in periodic installments. Allows a claimant attorney fee of 20% of the permanent disability benefits awarded in a MITF claim, payable every fifth check.
- Section 29:** *Amends 85 O.S. Supp. 2004, Section 173.* Makes the MITF assessment permanent. Increases funding from MITF assessment revenue for worker safety programs at the Department of Labor and Department of Career and Technology and for the Attorney General's Workers' Compensation Fraud Unit.
- Section 30:** *Amends 85 O.S. Supp. 2004, Section 175.* Allows CompSource Oklahoma to appear in any case before the Workers' Compensation Court is considering an award against the MITF.
- Section 31:** *Amends 85 O.S. Supp 2004, Section 201.1.* Requires the Physician Advisory Committee (PAC) to include an occupational medicine physician. Allows the appointing authorities to change all appointments on the Committee effective 7/1/05, with newly appointed members serving out the terms of the replaced members. Directs the PAC to develop treatment guidelines for all injuries and makes compliance with the guidelines mandatory in the absence of prior authorization from the employer or insurer. Provides a procedure for preauthorization review by an IME. Requires the Court to randomly select an IME within 7 days of the employee's request. Sets forth guidelines for payment of the IME for preauthorization review. Directs the PAC to adopt guidelines for the prescription and dispensing of Schedule II drugs. Allows the PAC to conduct utilization reviews and censure abusive practices.
- Section 32:** *New law.* Creates the Task Force for the Study of the Competitiveness of the Workers' Compensation Insurance Market and the Solvency of the Workers' Compensation Insurance Account of the Oklahoma Property and Casualty Insurance Guaranty Association.
- Section 33:** *Repealer.* Repeals 36 O.S. Supp. 2004, Section 902.1 which required workers' compensation insurance rates to be filed and approved before use by insurance companies.
- Section 34:** *Repealer.* Repeals 40 O.S. 2001, Sections 415.1 and 415.2 which allowed the Department of Labor to issue certificates of non-coverage.

**Section 35:** *Effective Date.* Makes Sections 1 - 4 and 7 - 34 of the measure effective 7/1/05.

**Section 36:** *Effective Date.* Makes Sections 5 and 6 of the measure effective 7/1/06.

**Section 37:** *New law (uncodified).* Severability clause.

**Section 38:** *Emergency.*

---

#### IMPORTANT INFORMATION

**Disclaimer:** The purpose of this document is to provide an unofficial summary of legislative activity during the 1<sup>st</sup> Extraordinary Session of the 50<sup>th</sup> Oklahoma Legislature (2005), for workers' compensation system participants and other interested persons. The information contained in the summary is presented "as is" and without warranties, either expressed or implied, including warranties regarding the content of the legislative information and does not constitute an endorsement of the information's content by the Oklahoma Workers' Compensation Court, its judges or Court Administrator. Do not rely solely on this information if it might affect your legal rights. Please refer to the printed version of the appropriate official publication or contact legal counsel of your choice. To see the full text of the legislation that passed, go to: <http://www.sos.state.ok.us/documents/Legislation/50th/2005/1S/SB/1X.pdf>.