

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2155 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Kris Steele

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2155

By: Steele

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to benefits for employee injury;
9 creating the Oklahoma Employee Injury Benefit Act;
10 providing short title; construing provisions; stating
11 legislative findings; stating legislative intent;
12 defining terms; authorizing voluntary exemption from
13 certain act; requiring certain notice to Workers'
14 Compensation Court; requiring payment of certain fee;
15 establishing responsibilities of certain
16 Commissioner; requiring certain notice to employees;
17 stating requirements for certain notice; authorizing
18 adoption of certain rules; requiring adoption of
19 certain plan by certain employers; establishing
20 schedule of benefits for certain plans; establishing
21 requirements for implementation of certain plans;
22 requiring employers to provide certain insurance
23 coverage in specified amounts; specifying liability
24 of employers under certain plans; establishing
exceptions to certain liability; establishing
responsibilities of employers under certain plans;
limiting attorney fees under certain circumstances;
specifying means of dispute resolution; prohibiting
promulgation of certain rules; construing provisions;
stating effects of certain challenges; providing for
codification; and providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 311.1 of Title 85, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Oklahoma
5 Employee Injury Benefit Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 311.2 of Title 85, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Provisions of this act shall be strictly construed without
10 favoritism to any party.

11 B. The Legislature finds that certain employers, by virtue of
12 the number of employees employed by the employers or the nature and
13 type of the work undertaken by their employees, are experiencing
14 significant costs associated with occupational injuries subject to
15 the Workers' Compensation Code. The Legislature further has
16 determined that the inability on the part of those employers to
17 effectively and efficiently manage those claims has contributed to
18 the increased costs associated with those claims and has also
19 resulted in reduced efficiency in the treatment of injured
20 employees. In an effort to provide more efficient management of
21 those claims, to help provide employees with better managed medical
22 care and to assist this state in the attraction and retention of new
23 employers the Legislature hereby adopts this act. The exceptions to
24 application of the Workers' Compensation Code which are provided for

1 in subsection A of Section 4 of this act are ones which are added to
2 the already existing extensive exceptions provided for in Section
3 311 of Title 85 of the Oklahoma Statutes. The Legislature has
4 determined that the distinctions between certain categories of
5 employers and employees, based on the criteria set forth in
6 subsection A of Section 4 of this act, are warranted due to the size
7 of the employer's workforce, as well as an employer's "workers'
8 compensation experience modifier", or its "total annual incurred
9 claims" history, or both an employer's "workers' compensation
10 experience modifier" and its "total annual incurred claims" history.
11 Each of these factors bears on the ability and need for an employer
12 to create and maintain a benefit plan as described herein. Further,
13 because an employer's status under the criteria set forth in
14 subsection A of Section 4 of this act affects its stability and
15 ability to hire, maintain, and promote employees, these same factors
16 affect its employees. Thus, there are rational grounds for the
17 exceptions to the application of the Workers' Compensation Code that
18 are provided herein. The Legislature hereby adopts this act.

19 C. Accordingly, it is the specific purpose and intent of the
20 Legislature that this act:

- 21 1. Provide a fair and balanced alternative to the Workers'
22 Compensation Code for providing benefits to injured employees;
- 23 2. Encourage the prompt medical care for and payment of
24 compensation to injured workers;

- 1 3. Promote the efficient resolution of occupational injuries;
- 2 4. Provide employers with a more efficient and effective system
- 3 to manage the medical care and treatment of their injured employees;
- 4 and
- 5 5. Assist the state in attracting and retaining business,
- 6 thereby contributing to the overall economic development and well-
- 7 being of its citizens.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 311.3 of Title 85, unless there
10 is created a duplication in numbering, reads as follows:

11 As used in the Oklahoma Employee Injury Benefit Act:

- 12 1. "Accidental death and dismemberment" means any benefit
- 13 provided under Section 5 of this act;
- 14 2. "Commissioner" means the Insurance Commissioner of the
- 15 Insurance Department of the State of Oklahoma;
- 16 3. "Benefit plan" means a plan established by a qualified
- 17 employer under the requirements of Section 5 of this act;
- 18 4. "Court" means the Oklahoma Workers' Compensation Court or
- 19 any successor, unless otherwise stated;
- 20 5. "Covered employee" means an employee whose employment with a
- 21 qualified employer is principally located within the state;
- 22 6. "Employee" means any person engaged in the employment of an
- 23 employer and who receives his or her pay by means of a salary, wage,
- 24 or commission directly from the employer and for whom an employer

1 files a Form W-2 with the Internal Revenue Service. This term does
2 not include an independent contractor or third-party agent;

3 7. "Employer", except when otherwise expressly stated, means a
4 person, partnership, association, limited liability company,
5 corporation, and the legal representatives of a deceased employer,
6 or the receiver or trustee of a person, partnership, association,
7 corporation, or limited liability company, employing a person
8 included within the term "employee" as defined in this act;

9 8. "Occupational injury" means an injury, including death, or
10 occupational illness, causing internal or external harm to the body,
11 which is incurred in the course and scope of employment;

12 9. "Pre-injury pay" means:

- 13 a. for salaried covered employees, regular periodic
14 salary from a qualified employer at the time of the
15 occupational injury,
- 16 b. for hourly covered employees, the average earnings
17 from a qualified employer for the six consecutive pay
18 periods immediately preceding the date of the
19 occupational injury; provided, however, that if the
20 covered employee has worked for a qualified employer
21 for less than six consecutive pay periods, or if his
22 or her earnings as of such date cannot be reasonably
23 determined, the six-pay-period-average will be based
24

1 on the earnings received over the period by a similar
2 covered employee of the qualified employer.

3 Pre-injury pay shall include pay for overtime and employee
4 contributions, through salary reduction or otherwise, to a 401(k) or
5 similar arrangement, cafeteria plan, or other pre-tax salary
6 deferral employee benefit plan. Pre-injury pay shall not include
7 any bonuses, benefits, including but not limited to employer
8 contributions to any employee benefit plans or matching
9 contributions to a retirement plan, or other extraordinary
10 remuneration; and

11 10. "Qualified employer" means an employer otherwise subject to
12 the Workers' Compensation Code that voluntarily elects to be exempt
13 from the Workers' Compensation Code by satisfying the requirements
14 under this act.

15 SECTION 4. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 311.4 of Title 85, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Any employer may voluntarily elect to be exempt from the
19 Workers' Compensation Code and become a qualified employer if, on
20 the date the employer elects to become a qualified employer, the
21 employer:

22 1. Employed fifty or more employees as of the end of the
23 preceding calendar year, and either:
24

- 1 a. has a workers' compensation experience modifier, as
2 reported by the National Council of Compensation
3 Insurers (NCCI), greater than one (1.00) for the
4 preceding Oklahoma workers' compensation insurance
5 policy year, or
- 6 b. has total annual incurred claims, as reflected in an
7 NCCI workers' compensation experience modifier
8 worksheet or their workers' compensation carrier loss
9 runs, greater than Fifty Thousand Dollars (\$50,000.00)
10 in at least one of the preceding three (3) Oklahoma
11 workers' compensation insurance policy years.

12 For purposes of the above fifty-employee requirement, the
13 principles of Section 414 of the Internal Revenue Code shall apply
14 such that all employees of all corporations which are members of a
15 controlled group of corporations shall be treated as employed by a
16 single employer, all employees of trades or businesses (whether or
17 not incorporated) which are under common control shall be treated as
18 employed by a single employer, and all employees of the members of
19 an affiliated service group shall be treated as employed by a single
20 employer; and all employees of the members of a multiple employer
21 welfare arrangement licensed under Oklahoma law shall be treated as
22 employed by a single employer.

23 The qualification criteria in this subsection shall apply only
24 as of the date the employer elects to become a qualified employer;

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

3 3. Has established a written benefit plan as described in
4 Section 5 of this act.

5 B. An employer that has elected to become a qualified employer
6 by satisfying the requirements of this section shall notify the
7 Court and the Commissioner in writing of the election and the date
8 that the election is to become effective, which may not be sooner
9 than the date that the qualified employer satisfies the employee
10 notice requirements in this section. The qualified employer shall
11 pay to the Commissioner an annual nonrefundable fee of Two Thousand
12 Five Hundred Dollars (\$2,500.00) which shall accompany the filing of
13 the written notice.

14 C. The Commissioner shall collect and maintain the information
15 required under this section and shall monitor compliance with the
16 requirements of this section. The Commissioner may also require an
17 employer to confirm its qualified employer status. Subject to
18 subsection D of this section, the Commissioner shall adopt rules
19 designating the methods and procedures for confirming whether an
20 employer is a qualified employer, notifying an employer of any
21 qualifying deficiencies, and the consequences thereof. The
22 Commissioner shall record the date and time each notice of qualified
23 employer status is received and the effective date of qualified
24 employer election. The Commissioner shall maintain a list on its

1 official website accessible by the public of all qualified employers
2 and the date and time such exemption became effective.

3 D. The Oklahoma Workers' Compensation Court, the state courts
4 of Oklahoma, the Commissioner, and all other Oklahoma administrative
5 agencies, shall not promulgate rules, regulations or any procedures
6 related to design, documentation, implementation, administration or
7 funding of a qualified employer's benefit plan.

8 E. The Commissioner may designate an information collection
9 agent, implement an electronic reporting and public information
10 access program, and adopt rules as necessary to implement the
11 information collection requirements of this section.

12 F. The Commissioner may prescribe forms to be used for the
13 qualified employer notification and shall require the qualified
14 employer to provide its name, address, contact person and phone,
15 federal tax identification number, claim administration contact
16 information, and a listing of all covered business locations in the
17 state. The Commissioner shall also notify the Oklahoma Commissioner
18 of Labor of all qualified employer notifications.

19 G. The Commissioner may contract with the Oklahoma Employment
20 Security Commission, the State Treasurer or the Oklahoma Department
21 of Labor for assistance in collecting the notification required
22 under this section. Those agencies shall cooperate with the
23 Commissioner in enforcing this section.

24

1 H. A qualified employer shall notify each of its employees in
2 the manner provided in this section that it is a qualified employer
3 and is exempt from the Workers' Compensation Code, that it does not
4 carry workers' compensation insurance coverage and that such
5 coverage has terminated or been cancelled.

6 I. The qualified employer shall provide written notification to
7 employees as required by this section at the time the employee is
8 hired or at the time of designation as a qualified employer.

9 J. The qualified employer shall post the employee notification
10 required by this section at conspicuous locations at the qualified
11 employer's places of business as necessary to provide reasonable
12 notice to all employees.

13 K. The Commissioner may adopt rules relating to the form,
14 content, and method of delivery of the employee notification
15 required by this section.

16 SECTION 5. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 311.5 of Title 85, unless there
18 is created a duplication in numbering, reads as follows:

19 A. An employer voluntarily electing to become a qualified
20 employer shall adopt a written benefit plan that complies with the
21 requirements of this section. Qualified employer status is entirely
22 optional for eligible employers, and no benefit plan shall be
23 considered to be maintained solely for the purpose of complying with
24 Oklahoma workers' compensation laws provided that the benefit plan

1 is otherwise subject to the Employee Retirement Income Security Act
2 of 1974, as amended ("ERISA"). The benefit plan shall not become
3 effective until the date that the qualified employer first satisfies
4 the notice requirements in Section 4 of this act.

5 B. The benefit plan must provide for payment of medical,
6 disability, permanent bodily impairment, death and dismemberment
7 benefits as a result of an occupational injury, in amounts not less
8 than the following:

9 1. One hundred percent (100%) of covered medical expenses as
10 defined in the plan, with, subject to subsection C of this section,
11 no maximum dollar or duration limits for all medical expenses
12 combined per occurrence;

13 2. For temporary inability to work in either a covered
14 employee's own occupation or any alternative work offered by the
15 employer, eighty percent (80%) of the covered employee's pre-injury
16 pay, less other related post-injury income, starting from the first
17 scheduled working day of disability, for one hundred fifty-six (156)
18 weeks, with a maximum weekly benefit of eighty percent (80%) of the
19 Oklahoma state average weekly wage;

20 3. For permanent inability to work in either any occupation or
21 any alternative work offered by the employer following payment of
22 all temporary wage replacement under paragraph 2 of this subsection,
23 eighty percent (80%) of the covered employee's pre-injury pay, less
24 other related post-injury income, until the later of eligibility for

1 one hundred percent (100%) Social Security retirement or fifteen
2 (15) years, with a maximum weekly benefit of one hundred percent
3 (100%) of the Oklahoma state average weekly wage;

4 4. Following payment of temporary wage replacement under
5 paragraph 2 of this subsection, if:

6 a. future medical expense will be incurred and payable on
7 the injury claim, and

8 b. the covered employee is unable to return to the pre-
9 injury or equivalent job position,

10 eighty percent (80%) of the covered employee's pre-injury pay for
11 five (5) weeks for each percentage point of whole-person impairment
12 determined under the fourth edition of the American Medical
13 Association's "Guides to the Evaluation of Permanent Impairment" for
14 objective loss of function, with a minimum weekly benefit of One
15 Hundred Fifty Dollars (\$150.00) and a maximum weekly benefit of
16 fifty percent (50%) of the Oklahoma state average weekly wage;
17 provided, however, that the number of weeks for certain scheduled
18 injuries shall be subject to the following minimum number of weeks
19 for complete loss or loss of use:

20	Scheduled Member	Weeks
21	Arms or Legs	275
22	Hands or Feet	220
23	Thumb	66
24	First Finger	39

1	Second Finger	33
2	Third Finger	22
3	Fourth Finger	17
4	Great Toe	33
5	Other Toes	11
6	One Ear	110
7	Two Ears	330
8	Eye	275

9 A partial loss or loss of use of a scheduled member of the body
10 may result in payment for the number of weeks which the percentage
11 of loss bears to the above number of weeks. Payments need not be
12 made for both loss of fingers and loss of the same hand, or for loss
13 of toes and loss of the same foot. All above impairment income
14 benefits combined shall not exceed one hundred percent (100%) whole-
15 person impairment or five hundred (500) weeks; and

16 5. Death benefits equal to the lesser of:

17 a. ten times the covered employee's base annual earnings,

18 or

19 b. Two Hundred Thousand Dollars (\$200,000.00).

20 Beneficiaries for any death benefit payment shall be determined
21 by the provisions of the benefit plan.

22 C. The benefit plan may provide for lump-sum payouts that are,
23 as reasonably determined by the administrator of such plan appointed
24 by the qualified employer in accordance with ERISA, actuarially

1 equivalent to expected future payments. The benefit plan may also
2 provide for settlement agreements; provided, that any such
3 settlement agreement by a covered employee shall be voluntary,
4 entered into not earlier than the tenth business day after the date
5 of the initial report of injury, and signed after the covered
6 employee has received a medical evaluation from a non-emergency-care
7 doctor, with any waiver of rights being conspicuous and on the face
8 of the agreement. The benefit plan may also specify further
9 conditions and limitations on benefits under this section, including
10 but not limited to further criteria for covered and noncovered
11 injuries and medical charges, and continuation, suspension and
12 termination of benefits; provided, however, that the benefit plan
13 must pay benefits without regard to whether the covered employee,
14 the qualified employer, or a third party caused the occupational
15 injury. None of the provisions of the Workers' Compensation Code
16 shall define, restrict, expand or otherwise apply to a benefit plan.

17 D. The benefit plan shall comply with and shall be subject to
18 the requirements of ERISA applicable to an employee benefit plan.
19 Such compliance is required in order for a qualified employer to be
20 protected by both ERISA and the exclusive remedy protection
21 contained in subsection A of Section 6 of this act. Such a benefit
22 plan shall be governed by and subject to ERISA. A violation of
23 ERISA if timely cured shall not act to deny qualified employer
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1 status to an employer that otherwise meets the requirements for a
2 qualified employer.

3 E. No fee or cost shall apply with respect to a qualified
4 employer's benefit plan, except as specifically provided for in this
5 section or ERISA. All authority over penalties and enforcement of
6 the provisions of the benefit plan and ERISA shall be vested in the
7 benefit plan administrator, employees covered by the benefit plan,
8 the U.S. Department of Labor, and the federal courts as provided by
9 ERISA.

10 F. The qualified employer shall provide to the Commissioner and
11 all covered employees notice of the name, title, address, and
12 telephone number for the person to contact for injury benefit claims
13 administration, whether in-house at the qualified employer or a
14 third-party administrator.

15 G. A qualified employer may self-fund or insure benefits
16 payable under the benefit plan, employer's liability under this act,
17 and any other risk related to its status as a qualified employer
18 with any insurance carrier authorized to do business in this state.

19 H. A qualified employer shall either obtain accident insurance
20 coverage described in paragraph 1 of this subsection, obtain a
21 surety bond described in paragraph 2 of this subsection, or meet the
22 requirements of paragraph 3 of this subsection. Such insurance
23 coverage or bond shall be obtained from an admitted or surplus lines
24 insurer with an AM Best Rating of A- or better.

1 1. Accidental insurance coverage shall be on a guaranteed-cost
2 or deductible basis (not self-insured retention) in at least the
3 following amounts:

- 4 a. Three Hundred Thousand Dollars (\$300,000.00) for
5 medical expenses and coverage for at least one hundred
6 fifty-six (156) weeks,
- 7 b. eighty percent (80%) of the covered employee's pre-
8 injury pay for not less than one hundred fifty-six
9 (156) weeks of wage replacement for inability to work,
10 with a five-hundred-dollar-maximum weekly benefit, and
- 11 c. One Hundred Thousand Dollars (\$100,000.00) for
12 accidental death and dismemberment.

13 2. A bond shall be in an amount equal to Three Hundred Thousand
14 Dollars (\$300,000.00).

- 15 a. The bond shall be filed and held by the Commissioner
16 and shall be conditioned to run solely and directly
17 for the benefit of any covered employee of a qualified
18 employer.
- 19 b. The bond held by the Commissioner may be used to make
20 a payment to or on behalf of a covered employee
21 provided the following requirements are met:
 - 22 (1) the covered employee sustained an occupational
23 injury that is covered by the qualified
24 employer's benefit plan,

1 (2) the covered employee's claim for payment of a
2 specific medical or wage-replacement benefit
3 amount or both a specific medical and wage-
4 replacement benefit amount has been accepted by
5 the plan administrator of the benefit plan or
6 acknowledged in a final judgment or court order
7 assessing a specific dollar figure for benefits
8 payable under the benefit plan,

9 (3) the covered employee is unable to receive payment
10 from the benefit plan or collect on such judgment
11 or court order because the qualified employer has
12 filed for bankruptcy or the benefit plan has
13 become insolvent, and

14 (4) the covered employee is listed as an unsecured
15 creditor of the qualified employer because of the
16 acceptance of such claim by the plan
17 administrator of the benefit plan or judgment or
18 court order assessing a specific dollar figure
19 for benefits payable under the benefit plan.

20 c. The Commissioner shall promulgate, by rule, the
21 procedure by which a covered employee may request and
22 receive payment from the security held by the
23 administrator.
24

1 3. Such other security as may be acceptable to the
2 Commissioner.

3 I. The benefit plan shall provide some level of benefits for
4 sickness, injury, or death, or sickness, injury and death, not due
5 to an occupational injury.

6 SECTION 6. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 311.6 of Title 85, unless there
8 is created a duplication in numbering, reads as follows:

9 A. A qualified employer's liability under the benefit plan and
10 otherwise prescribed in this act shall, in all cases, be exclusive
11 and in place of all other liability of the qualified employer and
12 any of its employees at common law or otherwise, for a covered
13 employee's occupational injury or loss of services, to the covered
14 employee, or the spouse, personal representative, parents, or
15 dependents of the covered employee, or any other person. The
16 exclusive remedy protections provided by this subsection shall be as
17 broad as the exclusive remedy protections of Section 302 of Title 85
18 of the Oklahoma Statutes, and thus preclude a covered employee's
19 claim against a qualified employer for negligence or other causes of
20 action.

21 B. Except as otherwise provided by its benefit plan, the
22 Employee Retirement Income Security Act (ERISA) or applicable
23 federal law, a qualified employer is only subject to liability in
24 any action brought by a covered employee or his or her family

1 members for injury resulting from an occupational injury if the
2 injury is the result of an intentional tort on the part of the
3 qualified employer. An intentional tort shall exist only when the
4 covered employee is injured because of willful, deliberate, specific
5 intent of the qualified employer to cause such injury. Allegations
6 or proof that the qualified employer had knowledge that such injury
7 was substantially certain to result from its conduct shall not
8 constitute an intentional tort. The issue of whether an act is an
9 intentional tort shall be a question of law for the court or the
10 duly appointed arbitrator, as applicable.

11 C. In a qualified employer's defense of any intentional tort or
12 death claim brought by or with respect to an injured covered
13 employee, such employee's positive test for intoxication or use of
14 an illegal controlled substance shall create a rebuttable
15 presumption that the covered employee's intoxication or use of an
16 illegally controlled substance caused the covered employee's injury
17 or death.

18 D. To prevent a double recovery, any benefits paid under a
19 qualified employer's benefit plan shall offset any other award
20 against such qualified employer under subsection B of this section.

21 E. Other than an action brought to enforce the provisions of
22 the benefit plan, any action brought by a covered employee or his or
23 her spouse, personal representative, parents, or dependents based on
24 a claim against a qualified employer arising out of any occupational

1 injury shall be filed no later than two (2) years from the date of
2 the injury or death giving rise to such action or be barred.

3 F. Enforcement of a limitation on available causes of action,
4 damages, or attorney fees in favor of a covered employee against a
5 qualified employer in accordance with this act shall not be an
6 appealable error.

7 SECTION 7. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 311.7 of Title 85, unless there
9 is created a duplication in numbering, reads as follows:

10 A. A qualified employer or its insurers (or other payment
11 sources) shall be responsible for:

12 1. Complying with federal law regarding the administration of
13 the plan and claims for benefits thereunder;

14 2. Any damage awarded against the qualified employer for
15 intentional tort under Section 6 of this act, including any pre- and
16 post-judgment interest on the award and reasonable court costs as
17 may be lawfully awarded in the action; and

18 3. Reasonable attorney fees awarded against the qualified
19 employer under Section 6 of this act; provided, however, that an
20 employee's attorney fees that are contingent upon a recovery under
21 the terms of the benefit plan in paragraph 1 of this subsection
22 shall be payable by a qualified employer as part of and not in
23 addition to such recovery; provided, an award of attorney fees in
24 favor of a covered employee against a qualified employer on a claim

1 for intentional tort, excluding death, shall be limited to no more
2 than twenty percent (20%) of any lost earnings awarded to the
3 covered employee or his or her spouse, personal representative,
4 parents, or dependents of the covered employee under the benefit
5 plan and such award. However, nothing in this subsection shall
6 restrict an award of fees and costs made under federal law.

7 B. An employer who is not a qualified employer shall comply
8 with the Workers' Compensation Code.

9 SECTION 8. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 311.8 of Title 85, unless there
11 is created a duplication in numbering, reads as follows:

12 A covered employee and a qualified employer shall resolve:

13 1. All occupational injury benefit disputes in accordance with
14 the terms of the qualified employer's benefit plan and the Employee
15 Retirement Income Security Act (ERISA); and

16 2. All intentional tort or death claims through the appropriate
17 state or federal courts of Oklahoma, mediation, arbitration, or any
18 other form of alternative dispute resolution or settlement process
19 available by law.

20 SECTION 9. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 311.9 of Title 85, unless there
22 is created a duplication in numbering, reads as follows:

23 A qualified employer may elect to adopt and provide notice to
24 employees, as a condition of employment or continued employment, a

1 requirement for voluntary or mandatory mediation, or voluntary or
2 mandatory final and binding arbitration for resolution of
3 intentional tort claims. A mandatory final and binding arbitration
4 requirement shall:

5 1. Not waive any substantive legal right of the covered
6 employee or the spouse, personal representative, parents, or
7 dependents of the employee other than any right to jury trial and
8 appeal through the court system;

9 2. Not create any unfair procedural advantages for the
10 qualified employer; and

11 3. Have been disclosed to the covered employee before the date
12 of an occupational injury.

13 SECTION 10. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 311.10 of Title 85, unless there
15 is created a duplication in numbering, reads as follows:

16 This act shall be liberally construed to give the fullest effect
17 of its provisions and is adopted as part of the public policy of the
18 State of Oklahoma. Any conflict between this act and any other law
19 shall be resolved in favor of the operation of this act.

20 SECTION 11. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 311.11 of Title 85, unless there
22 is created a duplication in numbering, reads as follows:

23 A. In any action brought to challenge, in whole or in part, the
24 constitutionality of this act, any party to such action may take a

1 direct appeal from the decision of any lower court to the Supreme
2 Court and the Supreme Court shall retain the appeal. The Supreme
3 Court on an expedited basis shall consider any such appeal.

4 B. To the extent this act, or any part thereof, is declared to
5 be unconstitutional or unenforceable or both unconstitutional and
6 unenforceable, it is specifically intended that:

7 1. Any employer that became a qualified employer under this act
8 shall not be deemed to have failed to secure workers' compensation
9 insurance and instead shall be treated as if it complied with
10 Section 351 of Title 85 of the Oklahoma Statutes and secured
11 compensation to employees as provided thereunder;

12 2. The rights and obligations of a qualified employer and its
13 employees shall be subject to the exclusive remedies provisions of
14 Section 314 of Title 85 of the Oklahoma Statutes and a qualified
15 employer shall be entitled to the immunity provided under Section
16 302 of Title 85 of the Oklahoma Statutes, and an employer that
17 became a qualified employer under this act shall be liable for
18 injury to employees only to the extent to which an employer that
19 complied with the provisions of Section 351 of Title 85 of the
20 Oklahoma Statutes would be liable to employees in compensation for
21 such injuries under the Workers' Compensation Code; and

22 3. A qualified employer shall have ninety (90) days from any
23 final decision declaring this act or any part thereof
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1 unconstitutional to secure compliance with the Workers' Compensation
2 Code.

3 SECTION 12. This act shall become effective November 1, 2012.

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5 53-2-9615 SDR 02/22/12

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