

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2155

6 By: Steele

7 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.

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:

- 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  
24

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  
24

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 53-2-9795 SDR 02/28/12

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