STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 2155 By: Steele of the House

and

Bingman of the Senate

COMMITTEE SUBSTITUTE

An Act relating to benefits for employee injury; creating the Oklahoma Employee Injury Benefit Act; providing short title; construing provisions; stating legislative findings; stating legislative intent; defining terms; authorizing voluntary exemption from certain act; requiring certain notice to Workers' Compensation Court; requiring payment of certain fee; establishing responsibilities of certain Commissioner; requiring certain notice to employees; stating requirements for certain notice; authorizing adoption of certain rules; requiring adoption of certain plan by certain employers; establishing schedule of benefits for certain plans; establishing requirements for implementation of certain plans; requiring employers to provide certain insurance coverage in specified amounts; requiring bond under certain circumstances; specifying authorized usage of certain bond; specifying liability 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; amending 85 O.S. 2011, Section 311, which relates to applicability of Workers' Compensation Code; adding certain exception; providing for codification; providing for noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

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

B. The Legislature finds that certain employers, by virtue of the nature and type of the work undertaken by their employees, are experiencing significant costs associated with claims for occupational injuries subject to the Workers' Compensation Code. The Legislature has determined that the inability on the part of those employers to effectively and efficiently manage these claims has contributed to the increased costs associated with such claims and has resulted in reduced efficiency in the treatment of injured employees. In an effort to provide more efficient management of such claims, to help provide employees with better managed medical care and to assist this state in the attraction and retention of new employers, the Legislature hereby adopts this act. The exceptions to application of the Workers' Compensation Code provided for in subsection A of Section 4 of this act are in addition to exceptions provided for in Section 311 of Title 85 of the Oklahoma Statutes. The Legislature has determined that the distinctions between certain categories of employers and employees, based on the criterion set forth in subsection A of Section 4 of this act, are warranted due to either or both the employer's "workers' compensation experience

modifier", and its "total annual incurred claims" history. Each of these factors bear on the ability and need for an employer to create and maintain a benefit plan as described in this act. Further, because an employer's status under the criteria set forth in subsection A of Section 4 of this act affects its stability and ability to hire, maintain, and promote employees, these same factors affect its employees. Thus, there is a rational basis for the exceptions to the application of the Workers' Compensation Code that are provided in this act.

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

1. Provide a fair and balanced alternative to the Workers' Compensation Code for providing benefits to injured employees;

2. Encourage the prompt medical care for and payment of compensation to injured workers;

3. Promote the efficient resolution of occupational injuries;

4. Provide employers with a more efficient and effective system to manage the medical care and treatment of their injured employees; and

5. Assist the state in attracting and retaining business, thereby contributing to the overall economic development and well-being of its citizens.

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

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 311.2 of Title 85, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Employee Injury Benefit Act:

1. "Benefit plan" means a plan established by a qualified employer under the requirements of Section 5 of this act;

2. "Bona fide association" means an association that:

a. has been formed and maintained in good faith for purposes other than obtaining insurance, and

b. does not make insurance described in this act and offered through the bona fide association available other than in connection with a member of the bona fide association;

3. " Commissioner" means the Insurance Commissioner of the Oklahoma Insurance Department;

4. "Court" means the Oklahoma Workers' Compensation Court or any successor, unless otherwise stated;

5. "Covered employee" means an employee whose employment with a qualified employer is principally located within the state;

6. "Employee" means any person engaged in the employment of an employer and receives his or her pay by means of a salary, wage, or commission directly from the employer and for whom an employer files a Form W-2 with the Internal Revenue Service. "Employee" does not include an independent contractor or third-party agent;

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

8. "Occupational injury" means an injury, including death, or occupational illness, causing internal or external harm to the body, which arises out of and in the course of employment;

9. "Pre-injury pay" means:

a. for salaried covered employees, regular periodic salary from a qualified employer at the time of the occupational injury,

b. for hourly covered employees, the average earnings from a qualified employer for the six consecutive pay periods immediately preceding the date of the occupational injury; provided, however, that if the covered employee has worked for a qualified employer for less than six consecutive pay periods, or if his

or her earnings as of such date cannot be reasonably determined, such six-pay-period-average will be based on the earnings received over such period by a similar covered employee of the qualified employer.

Pre-injury pay shall include pay for overtime and employee contributions, through salary reduction or otherwise, to a 401(k) or similar arrangement, cafeteria plan, or other pre-tax salary deferral employee benefit plan. Pre-injury pay shall not include any bonuses, employer-paid benefits that include but are not limited to contributions to any employee benefit plans or matching contributions to a retirement plan, or other extraordinary remuneration;

10. "Surviving Spouse" means a spouse who was married to the deceased covered employee.

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 311.3 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Any employer may voluntarily elect to be exempt from the Workers' Compensation Code and become a qualified employer if the employer:

1. a. has a workers' compensation experience modifier, as reported by the National Council of Compensation Insurers (NCCI), greater than one (1.00) for the preceding Oklahoma workers' compensation insurance policy year, or

b. has total annual incurred claims, as reflected in an NCCI workers' compensation experience modifier worksheet or their workers' compensation carrier loss runs, greater than Fifty Thousand Dollars ($50,000.00) in at least one of the preceding three (3) Oklahoma workers' compensation insurance policy years;

For purposes of the requirements of paragraph 1 of this subsection, the principles of Internal Revenue Code Section 414 shall apply such that all employees of all corporations which are members of a controlled group of corporations shall be treated as employed by a single employer, all employees of trades or businesses, whether or not incorporated, which are under common control shall be treated as employed by a single employer, and all employees of the members of an affiliated service group shall be treated as employed by a single employer; and all employees of the members of a multiple employer welfare arrangement licensed under the laws of this state shall be treated as employed by a single employer.

Qualification criterion established in this subsection shall apply only as of the date the employer elects to become a qualified employer;

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

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

B. An employer that has elected to become a qualified employer by satisfying the requirements of this section shall notify the Court and the Commissioner in writing of the election and the date that the election is to become effective, which may not be sooner than the date that the qualified employer satisfies the employee notice requirements in this section. Such qualified employer shall pay to the Commissioner an annual nonrefundable fee of One Thousand Five Hundred Dollars ($1,500.00) which shall accompany the filing of the written notice.

C. The Commissioner shall collect and maintain the information required under this section and shall monitor compliance with the requirements of this section. The Commissioner may also require an employer to confirm its qualified employer status. Subject to subsection D of this section, the Commissioner shall adopt rules designating the methods and procedures for confirming whether an employer is a qualified employer, notifying an employer of any qualifying deficiencies, and the consequences thereof. The

Commissioner shall record the date and time each notice of qualified employer status is received and the effective date of qualified employer election. The Commissioner shall maintain a list on its official website accessible by the public of all qualified employers and the date and time such exemption became effective.

D. The Oklahoma Workers' Compensation Court, the state courts of Oklahoma, the Commissioner, and all other Oklahoma administrative agencies, shall not promulgate rules, regulations or any procedures related to design, documentation, implementation, administration or funding of a qualified employer's benefit plan. Provided, however, that the Commissioner may promulgate rules, regulations and procedures related to (1) bona fide association plans for a particular trade, business, profession or industry; and, (2) the insurance, bonding, and other security approved under subsection H of Section 5 of this act to support payment of the benefits described in subsection B of Section 5 of this act.

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

F. The Commissioner may prescribe forms to be used for the qualified employer notification and shall require the qualified employer to provide its name, address, contact person and phone number, federal tax identification number, claim administration

contact information, and a listing of all covered business locations in the state. The Commissioner shall notify the Oklahoma Commissioner of Labor of all qualified employer notifications. The Department of Labor shall provide such notifications to other governmental agencies as the Department deems necessary.

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

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

I. A bona fide association may, through such insurance carriers and products approved by the Commissioner, offer benefit plans and insurance coverage described in this act to a particular trade, business, profession or industry or their subsidiaries.

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

K. The qualified employer shall post the employee notification required by this section at conspicuous locations at the qualified

employer's places of business as necessary to provide reasonable notice to all employees.

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 311.4 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. An employer voluntarily electing to become a qualified employer shall adopt a written benefit plan that complies with the requirements of this section. Qualified employer status is optional for eligible employers, and no benefit plan shall be considered to be maintained solely for the purpose of complying with the workers' compensation laws of this state, provided that the benefit plan is otherwise subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The benefit plan shall not become effective until the date that the qualified employer first satisfies the notice requirements in Section 4 of this act.

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

1. One hundred percent (100%) of occupational injury medical expenses, subject to subsection C of this section, with no other

maximum dollar or duration limits for all medical expenses combined per occurrence. Medical necessity must be directly related to the occupational injury and confirmed by objective medical evidence. In no event shall an employee be charged any premium, co-pay or deductible under this act;

2. For temporary inability to work in either a covered employee's own occupation or any alternative work offered by the employer, eighty percent (80%) of the covered employee's pre-injury pay, less other related post-injury income, starting from the first scheduled working day of disability, for one hundred fifty-six (156) weeks, with a maximum weekly benefit of one hundred percent (100%) of the Oklahoma state average weekly wage;

3. For permanent inability to work as a result of the occupational injury in the employee's previously held position, any occupation and any alternative work offered by the employer and following payment of all temporary wage replacement under paragraph 2 of this subsection, eighty percent (80%) of the covered employee's pre-injury pay, less other related post-injury income, until the later of eligibility for one hundred percent (100%) Social Security Disability or fifteen (15) years, with a maximum weekly benefit of one hundred percent (100%) of the Oklahoma state average weekly wage;

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

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

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

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

| Scheduled Member | Weeks |
|---|---|
| Arm or Leg | 275 |
| Hand or Foot | 220 |
| Thumb | 66 |
| First Finger | 39 |
| Second Finger | 33 |
| Third Finger | 22 |
| Fourth Finger | 17 |
| Great Toe | 33 |
| Other Toes | 11 |

| | |
|---|---|
| One Ear | 110 |
| Two Ears | 330 |
| Eye | 275 |

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

5. Death benefits equal to:

a. Two Hundred Thousand Dollars ($200,000.00),

b. funeral benefits in an amount not to exceed Ten Thousand Dollars ($10,000.00), and

c. weekly benefits equal to eighty percent (80%) of the covered employee's pre-injury pay up to one hundred percent (100%) of the Oklahoma state average weekly wage to the surviving spouse until the earlier of re-marriage or two hundred and sixty (260) weeks. If there is no surviving spouse, but minor children, then each minor child will receive a pro-rata portion of the (i) Two Hundred Thousand Dollars ($200,000.00) and (ii) weekly benefits until the earlier of reaching the age of majority or two hundred and sixty (260) weeks.

In all other cases, beneficiaries for any death benefit payment shall be determined by the provisions of the benefit plan.

C. The benefit plan may provide for lump sum payouts that are, as reasonably determined by the administrator of such plan appointed by the qualified employer in accordance with ERISA, actuarially equivalent to expected future payments. The benefit plan may also provide for settlement agreements; provided, however, any settlement agreement by a covered employee shall be voluntary, entered into not earlier than the tenth business day after the date of the initial report of injury, and signed after the covered employee has received a medical evaluation from a nonemergency care doctor, with any waiver of rights being conspicuous and on the face of the agreement. The benefit plan may specify conditions and limitations on benefits, including but not limited to additional criteria for covered and non-covered injuries and medical charges, and continuation, suspension and termination of benefits; provided, however, the benefit plan shall pay benefits without regard to whether the covered employee, the qualified employer, or a third party caused the occupational injury; and, provided further, that the benefit plan must provide eligibility to participate for and provide the same forms and levels of benefits to all Oklahoma employees of the qualified employer. None of the provisions of the Workers' Compensation Code shall define, restrict, expand or otherwise apply to a benefit plan.

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

E. No fee or cost to an employee shall apply to a qualified employer's benefit plan. Authority over penalties and enforcement of the provisions of the benefit plan and ERISA shall be vested in the benefit plan administrator, employees covered by the benefit plan, the U.S. Department of Labor, and the federal courts as provided by ERISA.

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

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

H. Insurance coverage or surety bond obtained by a qualified employer shall be from an admitted or surplus lines insurer with an AM Best Rating of A- or better. A qualified employer shall obtain either:

1. Accidental insurance coverage in an amount of at least Two Million Dollars ($2,000,000) per occurrence, with sublimits in at least the following amounts:

a. Five Hundred Thousand Dollars ($500,000.00) per person for medical expenses and coverage for at least one hundred fifty-six (156) weeks,

b. eighty percent (80%) of the covered employee's pre-injury pay for not less than one hundred fifty-six (156) weeks of wage replacement for inability to work, with a $500 maximum weekly benefit, and

c. Two Hundred Thousand Dollars ($200,000.00) per person for accidental death;

2. A bond, letter of credit, or excess insurance determined as follows:

a. The Commissioner, pursuant to rules adopted by the Commissioner for an individual self-insured employer, shall require an employer to:

(1) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount no less than Three Hundred Thousand Dollars

($300,000.00) or such additional amount as determined by the Commissioner, or

(2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of this act.

The Commissioner may waive the requirements of this paragraph in an amount which is commensurate with the ability of the employer to pay the benefits required by the provisions of this act. Irrevocable letters of credit required by this subsection shall contain such terms as may be prescribed by the Commissioner and shall be issued for the benefit of the state by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

An employer whose permit to self-insure is revoked, denied for renewal or surrendered is not relieved of the obligation for compensation to an employee for a compensable injury that occurred during the period of self-insurance. The security required under this section, including any interest thereon, shall be maintained by the Commissioner as provided in this act until each claim for benefits is paid, settled, or

lapses under this act, and costs of administration of such claims are paid.

b. Any bond shall be filed and held by the Commissioner and shall be for the exclusive benefit of any covered employee of a qualified employer.

c. Any security held by the Commissioner may be used to make a payment to or on behalf of a covered employee provided the following requirements are met:

(1) the covered employee sustained an occupational injury that is covered by the qualified employer's benefit plan,

(2) the covered employee's claim for payment of a specific medical or wage replacement benefit amount has been accepted by the plan administrator of the benefit plan or acknowledged in a final judgment or court order assessing a specific dollar figure for benefits payable under the benefit plan,

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

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

d. The Commissioner shall promulgate rules to carry out the provisions of this section including those establishing the procedure by which a covered employee may request and receive payment from the security held by the Commissioner; or

3. Any other security as may be approved by the Commissioner.

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

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 311.5 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. A qualified employer's liability under the benefit plan and otherwise prescribed in this act shall be exclusive and in place of all other liability of the qualified employer and any of its employees at common law or otherwise, for a covered employee's occupational injury or loss of services, to the covered employee, or the spouse, personal representative, parents, or dependents of the covered employee, or any other person. The exclusive remedy

protections provided by this subsection shall be as broad as the exclusive remedy protections of Section 302 of Title 85 of the Oklahoma Statutes, and thus preclude a covered employee's claim against a qualified employer for negligence or other causes of action.

B. Except as otherwise provided by its benefit plan, ERISA or applicable federal law, a qualified employer is only subject to liability in any action brought by a covered employee or his or her dependent family members for injury resulting from an occupational injury if the injury is the result of an intentional tort on the part of the qualified employer. An intentional tort shall exist only when the covered employee is injured because of willful, deliberate, specific intent of the qualified employer to cause such injury. Allegations or proof that the qualified employer had knowledge that such injury was substantially certain to result from its conduct shall not constitute an intentional tort. The issue of whether an act is an intentional tort shall be a question of law for the court or the duly appointed arbitrator, as applicable.

C. An employee's positive test for intoxication or use of an illegal controlled substance shall create a rebuttable presumption that the covered employee's intoxication or use of an illegally controlled substance caused the covered employee's injury or death.

D. Any benefits paid under a qualified employer's benefit plan will offset any other award against such qualified employer under Section 6 of this act.

E. Other than an action brought to enforce the provisions of the benefit plan, any action brought by a covered employee or his or her spouse, personal representative, parents, or dependents based on a claim against a qualified employer arising out of any occupational injury shall be filed no later than two (2) years from the date of the injury or death giving rise to such action.

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

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

A. A qualified employer or its insurers or other payment sources shall be responsible for:

1. Compliance with federal law regarding the administration of the plan and claims for benefits under such plan;

2. Any damage awarded against the qualified employer for intentional tort under Section 8 of this act, including any pre- and post-judgment interest on the award and reasonable court costs as may be lawfully awarded in the action; and

3. Reasonable attorney fees awarded against the qualified employer under Section 8 of this act; provided, however, that an employee's attorney fees that are contingent upon a recovery under the terms of the benefit plan in paragraph 1 of this subparagraph shall be payable by a qualified employer as part of and not in addition to such recovery. An award of attorney fees in favor of a covered employee against a qualified employer on a claim for intentional tort, excluding death, shall be limited to no more than twenty percent (20%) of any lost earnings awarded to the covered employee or his or her spouse, personal representative, parents, or dependents of the covered employee under the benefit plan and such award. Nothing in this paragraph shall be construed to restrict an award of fees and costs made under federal law.

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

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

A covered employee and a qualified employer shall resolve:

1. All occupational injury benefit disputes in accordance with the terms of the qualified employer's benefit plan and ERISA; and

2. All intentional tort or other employers' liability claims through the appropriate state or federal courts of Oklahoma,

mediation, arbitration, or any other form of alternative dispute resolution or settlement process available by law.

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

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

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 311.9 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. In any action brought to challenge, in whole or in part, the constitutionality of this act, any party to such action may take a direct appeal from the decision of any lower court to the Supreme Court and the Supreme Court shall retain the appeal. The Supreme Court on an expedited basis shall consider any such appeal.

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

1. Any employer that became a qualified employer under this act shall not be deemed to have failed to secure workers compensation insurance;

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

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

SECTION 11. AMENDATORY 85 O.S. 2011, Section 311, is amended to read as follows:

Section 311. The Workers' Compensation Code shall not apply to the following employees:

1. Any person for whom an employer is liable under any Act of Congress for providing compensation to employees for injuries, disease or death arising out of and in the course of employment including, but not limited to, the Federal Employees' Compensation Act, the Federal Employers' Liability Act, the Longshoremen's and

Harbor Workers' Act and the Jones Act, to the extent his or her employees are subject to such acts;

2. Any person who is employed in agriculture or horticulture by an employer who had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars ($100,000.00) wages for agricultural or horticultural workers, or any person who is employed in agriculture or horticulture who is not engaged in operation of motorized machines;

3. Any person who is a licensed real estate sales associate or broker, paid on a commission basis;

4. Any person who is providing services in a medical care or social services program, or who is a participant in a work or training program, administered by the Department of Human Services, unless the Department is required by federal law or regulations to provide workers' compensation for such person. This paragraph shall not be construed to include nursing homes;

5. Any person employed by an employer with five or less total employees, all of whom are related by blood or marriage to the employer, if the employer is a natural person or a general or limited partnership, or an incorporator of a corporation if the corporation is the employer;

6. Any person employed by an employer which is a youth sports league which qualifies for exemption from federal income taxation pursuant to federal law;

7. Sole proprietors, members of a partnership, individuals who are party to a franchise agreement as set out by the Federal Trade Commission franchise disclosure rule, 16 CFR 436.1 through 436.11, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation, unless they elect to be covered by a policy of insurance covering benefits under the Workers' Compensation Code;

8. Any person providing or performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitative therapy, transportation, lodging or reimbursement for incidental expenses;

9. A person, commonly referred to as an owner-operator, who owns or leases a truck-tractor or truck for hire, if the owner-operator actually operates the truck-tractor or truck and if the person contracting with the owner-operator is not the lessor of the truck-tractor or truck. Provided, however, an owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Code if the owner-operator elects to participate as a sole proprietor;

10. A person referred to as a drive-away owner-operator who privately owns and utilizes a tow vehicle in drive-away operations and operates independently for hire, if the drive-away owner-

operator actually utilizes the tow vehicle and if the person contracting with the drive-away owner-operator is not the lessor of the tow vehicle. Provided, however, a drive-away owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Code if the drive-away owner-operator elects to participate as a sole proprietor; ~~and~~

11. Any person who is employed as a domestic servant or as a casual worker in and about a private home or household, which private home or household had a gross annual payroll in the preceding calendar year of less than Ten Thousand Dollars ($10,000.00) for such workers; and

12. A qualified employer with an employee benefit plan as provided in Sections 2 through 10 of this act.

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

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