

1 ENGROSSED HOUSE  
2 BILL NO. 2155

By: Steele of the House

3 and

4 Bingman of the Senate

5  
6  
7 ( benefits for employee injury - Oklahoma Employee

8 Injury Benefit Act - legislative intent -

9 codification -

10 effective date )

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

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SECTION 1. NEW LAW A new section of law to be codified

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in the Oklahoma Statutes as Section 311.1 of Title 85, unless there

16

is created a duplication in numbering, reads as follows:

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This act shall be known and may be cited as the "Oklahoma

18

Employee Injury Benefit Act".

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SECTION 2. NEW LAW A new section of law to be codified

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in the Oklahoma Statutes as Section 311.2 of Title 85, unless there

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is created a duplication in numbering, reads as follows:

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A. Provisions of this act shall be strictly construed without

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favoritism to any party.

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1 B. The Legislature finds that certain employers, by virtue of  
2 the number of employees employed by the employers or the nature and  
3 type of the work undertaken by their employees, are experiencing  
4 significant costs associated with occupational injuries subject to  
5 the Workers' Compensation Code. The Legislature further has  
6 determined that the inability on the part of those employers to  
7 effectively and efficiently manage those claims has contributed to  
8 the increased costs associated with those claims and has also  
9 resulted in reduced efficiency in the treatment of injured  
10 employees. In an effort to provide more efficient management of  
11 those claims, to help provide employees with better managed medical  
12 care and to assist this state in the attraction and retention of new  
13 employers the Legislature hereby adopts this act. The exceptions to  
14 application of the Workers' Compensation Code which are provided for  
15 in subsection A of Section 4 of this act are ones which are added to  
16 the already existing extensive exceptions provided for in Section  
17 311 of Title 85 of the Oklahoma Statutes. The Legislature has  
18 determined that the distinctions between certain categories of  
19 employers and employees, based on the criteria set forth in  
20 subsection A of Section 4 of this act, are warranted due to the size  
21 of the employer's workforce, as well as an employer's "workers'  
22 compensation experience modifier", or its "total annual incurred  
23 claims" history, or both an employer's "workers' compensation  
24 experience modifier" and its "total annual incurred claims" history.

1 Each of these factors bears on the ability and need for an employer  
2 to create and maintain a benefit plan as described herein. Further,  
3 because an employer's status under the criteria set forth in  
4 subsection A of Section 4 of this act affects its stability and  
5 ability to hire, maintain, and promote employees, these same factors  
6 affect its employees. Thus, there are rational grounds for the  
7 exceptions to the application of the Workers' Compensation Code that  
8 are provided herein. The Legislature hereby adopts this act.

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

- 11 1. Provide a fair and balanced alternative to the Workers'  
12 Compensation Code for providing benefits to injured employees;
- 13 2. Encourage the prompt medical care for and payment of  
14 compensation to injured workers;
- 15 3. Promote the efficient resolution of occupational injuries;
- 16 4. Provide employers with a more efficient and effective system  
17 to manage the medical care and treatment of their injured employees;  
18 and
- 19 5. Assist the state in attracting and retaining business,  
20 thereby contributing to the overall economic development and well-  
21 being of its citizens.

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

1 As used in the Oklahoma Employee Injury Benefit Act:

2 1. "Accidental death and dismemberment" means any benefit  
3 provided under Section 5 of this act;

4 2. "Commissioner" means the Insurance Commissioner of the  
5 Insurance Department of the State of Oklahoma;

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

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

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

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

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

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

4 9. "Pre-injury pay" means:

- 5 a. for salaried covered employees, regular periodic  
6 salary from a qualified employer at the time of the  
7 occupational injury, or  
8 b. for hourly covered employees, the average earnings  
9 from a qualified employer for the six consecutive pay  
10 periods immediately preceding the date of the  
11 occupational injury; provided, however, that if the  
12 covered employee has worked for a qualified employer  
13 for less than six consecutive pay periods, or if his  
14 or her earnings as of such date cannot be reasonably  
15 determined, the six-pay-period average will be based  
16 on the earnings received over the period by a similar  
17 covered employee of the qualified employer.

18 Pre-injury pay shall include pay for overtime and employee  
19 contributions, through salary reduction or otherwise, to a 401(k) or  
20 similar arrangement, cafeteria plan, or other pre-tax salary  
21 deferral employee benefit plan. Pre-injury pay shall not include  
22 any bonuses, benefits, including but not limited to employer  
23 contributions to any employee benefit plans or matching  
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1 contributions to a retirement plan, or other extraordinary  
2 remuneration; and

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

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

10 A. Any employer may voluntarily elect to be exempt from the  
11 Workers' Compensation Code and become a qualified employer if, on  
12 the date the employer elects to become a qualified employer, the  
13 employer:

14 1. Employed fifty or more employees as of the end of the  
15 preceding calendar year, and either:

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

21 b. has total annual incurred claims, as reflected in an  
22 NCCI workers' compensation experience modifier  
23 worksheet or their workers' compensation carrier loss  
24 runs, greater than Fifty Thousand Dollars (\$50,000.00)

1           in at least one of the preceding three (3) Oklahoma  
2           workers' compensation insurance policy years.

3           For purposes of the above fifty-employee requirement, the  
4 principles of Section 414 of the Internal Revenue Code shall apply  
5 such that all employees of all corporations which are members of a  
6 controlled group of corporations shall be treated as employed by a  
7 single employer, all employees of trades or businesses (whether or  
8 not incorporated) which are under common control shall be treated as  
9 employed by a single employer, and all employees of the members of  
10 an affiliated service group shall be treated as employed by a single  
11 employer; and all employees of the members of a multiple employer  
12 welfare arrangement licensed under Oklahoma law shall be treated as  
13 employed by a single employer.

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

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

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

20           B. An employer that has elected to become a qualified employer  
21 by satisfying the requirements of this section shall notify the  
22 Court and the Commissioner in writing of the election and the date  
23 that the election is to become effective, which may not be sooner  
24 than the date that the qualified employer satisfies the employee

1 notice requirements in this section. The qualified employer shall  
2 pay to the Commissioner an annual nonrefundable fee of Two Thousand  
3 Five Hundred Dollars (\$2,500.00) which shall accompany the filing of  
4 the written notice.

5 C. The Commissioner shall collect and maintain the information  
6 required under this section and shall monitor compliance with the  
7 requirements of this section. The Commissioner may also require an  
8 employer to confirm its qualified employer status. Subject to  
9 subsection D of this section, the Commissioner shall adopt rules  
10 designating the methods and procedures for confirming whether an  
11 employer is a qualified employer, notifying an employer of any  
12 qualifying deficiencies, and the consequences thereof. The  
13 Commissioner shall record the date and time each notice of qualified  
14 employer status is received and the effective date of qualified  
15 employer election. The Commissioner shall maintain a list on its  
16 official website accessible by the public of all qualified employers  
17 and the date and time such exemption became effective.

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

23 E. The Commissioner may designate an information collection  
24 agent, implement an electronic reporting and public information

1 access program, and adopt rules as necessary to implement the  
2 information collection requirements of this section.

3 F. The Commissioner may prescribe forms to be used for the  
4 qualified employer notification and shall require the qualified  
5 employer to provide its name, address, contact person and phone,  
6 federal tax identification number, claim administration contact  
7 information, and a listing of all covered business locations in the  
8 state. The Commissioner shall also notify the Oklahoma Commissioner  
9 of Labor of all qualified employer notifications.

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

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

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

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

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

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

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

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

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

23 1. One hundred percent (100%) of covered medical expenses as  
24 defined in the plan, with, subject to subsection C of this section,

1 no maximum dollar or duration limits for all medical expenses  
2 combined per occurrence;

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

10 3. For permanent inability to work in either any occupation or  
11 any alternative work offered by the employer following payment of  
12 all temporary wage replacement under paragraph 2 of this subsection,  
13 eighty percent (80%) of the covered employee's pre-injury pay, less  
14 other related post-injury income, until the later of eligibility for  
15 one hundred percent (100%) Social Security retirement or fifteen  
16 (15) years, with a maximum weekly benefit of one hundred percent  
17 (100%) of the Oklahoma state average weekly wage;

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

- 20 a. future medical expense will be incurred and payable on
- 21 the injury claim, and
- 22 b. the covered employee is unable to return to the pre-
- 23 injury or equivalent job position,

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

11	Scheduled Member	Weeks
12	Arms or Legs	275
13	Hands or Feet	220
14	Thumb	66
15	First Finger	39
16	Second Finger	33
17	Third Finger	22
18	Fourth Finger	17
19	Great Toe	33
20	Other Toes	11
21	One Ear	110
22	Two Ears	330
23	Eye	275

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

8 5. Death benefits equal to the lesser of:

9 a. ten times the covered employee's base annual earnings,  
10 or

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

12 Beneficiaries for any death benefit payment shall be determined  
13 by the provisions of the benefit plan.

14 C. The benefit plan may provide for lump-sum payouts that are,  
15 as reasonably determined by the administrator of such plan appointed  
16 by the qualified employer in accordance with ERISA, actuarially  
17 equivalent to expected future payments. The benefit plan may also  
18 provide for settlement agreements; provided, that any such  
19 settlement agreement by a covered employee shall be voluntary,  
20 entered into not earlier than the tenth business day after the date  
21 of the initial report of injury, and signed after the covered  
22 employee has received a medical evaluation from a non-emergency-care  
23 doctor, with any waiver of rights being conspicuous and on the face  
24 of the agreement. The benefit plan may also specify further

1 conditions and limitations on benefits under this section, including  
2 but not limited to further criteria for covered and noncovered  
3 injuries and medical charges, and continuation, suspension and  
4 termination of benefits; provided, however, that the benefit plan  
5 must pay benefits without regard to whether the covered employee,  
6 the qualified employer, or a third party caused the occupational  
7 injury. None of the provisions of the Workers' Compensation Code  
8 shall define, restrict, expand or otherwise apply to a benefit plan.

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

18 E. No fee or cost shall apply with respect to a qualified  
19 employer's benefit plan, except as specifically provided for in this  
20 section or ERISA. All authority over penalties and enforcement of  
21 the provisions of the benefit plan and ERISA shall be vested in the  
22 benefit plan administrator, employees covered by the benefit plan,  
23 the U.S. Department of Labor, and the federal courts as provided by  
24 ERISA.

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

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

11 H. A qualified employer shall either obtain accident insurance  
12 coverage described in paragraph 1 of this subsection, obtain a  
13 surety bond described in paragraph 2 of this subsection, or meet the  
14 requirements of paragraph 3 of this subsection. Such insurance  
15 coverage or bond shall be obtained from an admitted or surplus lines  
16 insurer with an AM Best Rating of A- or better.

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

- 20 a. Three Hundred Thousand Dollars (\$300,000.00) for  
21 medical expenses and coverage for at least one hundred  
22 fifty-six (156) weeks,
- 23 b. eighty percent (80%) of the covered employee's pre-  
24 injury pay for not less than one hundred fifty-six

1 (156) weeks of wage replacement for inability to work,  
2 with a five-hundred-dollar-maximum weekly benefit, and  
3 c. One Hundred Thousand Dollars (\$100,000.00) for  
4 accidental death and dismemberment.

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

7 a. The bond shall be filed and held by the Commissioner  
8 and shall be conditioned to run solely and directly  
9 for the benefit of any covered employee of a qualified  
10 employer.

11 b. The bond held by the Commissioner may be used to make  
12 a payment to or on behalf of a covered employee  
13 provided the following requirements are met:

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

17 (2) the covered employee's claim for payment of a  
18 specific medical or wage-replacement benefit  
19 amount or both a specific medical and wage-  
20 replacement benefit amount has been accepted by  
21 the plan administrator of the benefit plan or  
22 acknowledged in a final judgment or court order  
23 assessing a specific dollar figure for benefits  
24 payable under the benefit plan,

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

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

12 c. The Commissioner shall promulgate, by rule, the  
13 procedure by which a covered employee may request and  
14 receive payment from the security held by the  
15 administrator.

16 3. Such other security as may be acceptable to the  
17 Commissioner.

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

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

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

13       B. Except as otherwise provided by its benefit plan, the  
14 Employee Retirement Income Security Act (ERISA) or applicable  
15 federal law, a qualified employer is only subject to liability in  
16 any action brought by a covered employee or his or her family  
17 members for injury resulting from an occupational injury if the  
18 injury is the result of an intentional tort on the part of the  
19 qualified employer. An intentional tort shall exist only when the  
20 covered employee is injured because of willful, deliberate, specific  
21 intent of the qualified employer to cause such injury. Allegations  
22 or proof that the qualified employer had knowledge that such injury  
23 was substantially certain to result from its conduct shall not  
24 constitute an intentional tort. The issue of whether an act is an

1 intentional tort shall be a question of law for the court or the  
2 duly appointed arbitrator, as applicable.

3 C. In a qualified employer's defense of any intentional tort or  
4 death claim brought by or with respect to an injured covered  
5 employee, such employee's positive test for intoxication or use of  
6 an illegal controlled substance shall create a rebuttable  
7 presumption that the covered employee's intoxication or use of an  
8 illegally controlled substance caused the covered employee's injury  
9 or death.

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

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

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

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

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

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

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

12           3. Reasonable attorney fees awarded against the qualified  
13 employer under Section 6 of this act; provided, however, that an  
14 employee's attorney fees that are contingent upon a recovery under  
15 the terms of the benefit plan in paragraph 1 of this subsection  
16 shall be payable by a qualified employer as part of and not in  
17 addition to such recovery; provided, an award of attorney fees in  
18 favor of a covered employee against a qualified employer on a claim  
19 for intentional tort, excluding death, shall be limited to no more  
20 than twenty percent (20%) of any lost earnings awarded to the  
21 covered employee or his or her spouse, personal representative,  
22 parents, or dependents of the covered employee under the benefit  
23 plan and such award. However, nothing in this subsection shall  
24 restrict an award of fees and costs made under federal law.

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

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

6 A covered employee and a qualified employer shall resolve:

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

10 2. All intentional tort or death claims through the appropriate  
11 state or federal courts of Oklahoma, mediation, arbitration, or any  
12 other form of alternative dispute resolution or settlement process  
13 available by law.

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

17 A qualified employer may elect to adopt and provide notice to  
18 employees, as a condition of employment or continued employment, a  
19 requirement for voluntary or mandatory mediation, or voluntary or  
20 mandatory final and binding arbitration for resolution of  
21 intentional tort claims. A mandatory final and binding arbitration  
22 requirement shall:

23 1. Not waive any substantive legal right of the covered  
24 employee or the spouse, personal representative, parents, or

1 dependents of the employee other than any right to jury trial and  
2 appeal through the court system;

3 2. Not create any unfair procedural advantages for the  
4 qualified employer; and

5 3. Have been disclosed to the covered employee before the date  
6 of an occupational injury.

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

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

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

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

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

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

6           2. The rights and obligations of a qualified employer and its  
7 employees shall be subject to the exclusive remedies provisions of  
8 Section 314 of Title 85 of the Oklahoma Statutes and a qualified  
9 employer shall be entitled to the immunity provided under Section  
10 302 of Title 85 of the Oklahoma Statutes, and an employer that  
11 became a qualified employer under this act shall be liable for  
12 injury to employees only to the extent to which an employer that  
13 complied with the provisions of Section 351 of Title 85 of the  
14 Oklahoma Statutes would be liable to employees in compensation for  
15 such injuries under the Workers' Compensation Code; and

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

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

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