

1 ENGROSSED SENATE
2 BILL NO. 1378

By: Bingman and Simpson of the
Senate

3 and

4 Steele of the House

5
6 [benefits for employee injury - Oklahoma Employee
7 Injury Benefit Act - codification - noncodification -
effective date]

8
9 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

1 this state in the attraction and retention of new employers, the
2 Legislature hereby adopts this act. The exceptions to application
3 of the Workers' Compensation Code provided for in subsection A of
4 Section 4 of this act are in addition to exceptions provided for in
5 Section 311 of Title 85 of the Oklahoma Statutes. The Legislature
6 has determined that the distinctions between certain categories of
7 employers and employees, based on the criterion set forth in
8 subsection A of Section 4 of this act, are warranted due to the size
9 of the employer's workforce, an employer's "workers' compensation
10 experience modifier," and its "total annual incurred claims"
11 history. Each of these factors bear on the ability and need for an
12 employer to create and maintain a Benefit Plan as described in this
13 act. Further, because an employer's status under the criteria set
14 forth in subsection A of Section 4 of this act affects its stability
15 and ability to hire, maintain, and promote employees, these same
16 factors affect its employees. Thus, there is a rational basis for
17 the exceptions to the application of the Workers' Compensation Code
18 that are provided in 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 2. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 311.1 of Title 85, unless there
10 is created a duplication in numbering, reads as follows:

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

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

16 As used in the Oklahoma Employee Injury Benefit Act:

17 1. "Accidental death and dismemberment" means any benefit
18 provided under Section 6 of this act;

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

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

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

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

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

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

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

17 9. "Pre-injury pay" means:

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

21 b. for hourly covered employees, the average earnings
22 from a qualified employer for the six consecutive pay
23 periods immediately preceding the date of the
24 occupational injury; provided, however, that if the

1 covered employee has worked for a qualified employer
2 for less than six consecutive pay periods, or if his
3 or her earnings as of such date cannot be reasonably
4 determined, such six-pay-period-average will be based
5 on the earnings received over such period by a similar
6 covered employee of the qualified employer.

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

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

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

22 A. Any employer may voluntarily elect to be exempt from the
23 Workers' Compensation Code and become a qualified employer if, on
24

1 the date the employer elects to become a qualified employer, the
2 employer:

3 1. Employed fifty (50) or more employees as of the end of the
4 preceding calendar year; and either:

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

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

16 For purposes of the requirements of paragraph 1 of this
17 subsection, the principles of Internal Revenue Code Section 414
18 shall apply such that all employees of all corporations which are
19 members of a controlled group of corporations shall be treated as
20 employed by a single employer, all employees of trades or
21 businesses, whether or not incorporated, which are under common
22 control shall be treated as employed by a single employer, and all
23 employees of the members of an affiliated service group shall be
24 treated as employed by a single employer; and all employees of the

1 members of a multiple employer welfare arrangement licensed under
2 the laws of this state shall be treated as employed by a single
3 employer.

4 Qualification criterion established in this subsection shall
5 apply only as of the date the employer elects to become a Qualified
6 Employer;

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

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

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

20 C. The Commissioner shall collect and maintain the information
21 required under this section and shall monitor compliance with the
22 requirements of this section. The Commissioner may also require an
23 employer to confirm its qualified employer status. Subject to
24 subsection D of this section, the Commissioner shall adopt rules

1 designating the methods and procedures for confirming whether an
2 employer is a qualified employer, notifying an employer of any
3 qualifying deficiencies, and the consequences thereof. The
4 Commissioner shall record the date and time each notice of qualified
5 employer status is received and the effective date of qualified
6 employer election. The Commissioner shall maintain a list on its
7 official website accessible by the public of all qualified employers
8 and the date and time such exemption became effective.

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

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

18 F. The Commissioner may prescribe forms to be used for the
19 qualified employer notification and shall require the qualified
20 employer to provide its name, address, contact person and phone,
21 federal tax identification number, claim administration contact
22 information, and a listing of all covered business locations in the
23 state. The Commissioner shall notify the Oklahoma Commissioner of
24 Labor of all Qualified Employer notifications.

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

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

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

14 J. The qualified employer shall post the employee notification
15 required by this section at conspicuous locations at the qualified
16 employer's places of business as necessary to provide reasonable
17 notice to all employees.

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

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

1 A. An employer voluntarily electing to become a qualified
2 employer shall adopt a written benefit plan that complies with the
3 requirements of this section. Qualified employer status is optional
4 for eligible employers, and no benefit plan shall be considered to
5 be maintained solely for the purpose of complying with the workers'
6 compensation laws of this state, provided that the benefit plan is
7 otherwise subject to the Employee Retirement Income Security Act of
8 1974, as amended ("ERISA"). In no event shall the benefits payable
9 to the employee under the benefit plan be less than the benefits
10 payable for the same injury under the Workers' Compensation Code.
11 The benefit plan shall not become effective until the date that the
12 qualified employer first satisfies the notice requirements in
13 Section 4 of this act.

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

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

22 2. For temporary inability to work in either a covered
23 employee's own occupation or any alternative work offered by the
24 employer, eighty percent (80%) of the covered employee's pre-injury

1 pay, less other related post-injury income, starting from the first
2 scheduled working day of disability, for one hundred fifty-six (156)
3 weeks, with a maximum weekly benefit of eighty percent (80%) of the
4 Oklahoma state average weekly wage;

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

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

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

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

19 eighty percent (80%) of the covered employee's pre-injury pay for
20 five (5) weeks for each percentage point of whole person impairment
21 determined under the fourth edition of the American Medical
22 Association's "Guides to the Evaluation of Permanent Impairment" for
23 objective loss of function, with a minimum weekly benefit of One
24 Hundred Fifty Dollars (\$150.00) and a maximum weekly benefit of

1 fifty percent (50%) of the Oklahoma state average weekly wage;
2 provided, however, that the number of weeks for certain scheduled
3 injuries shall be subject to the following minimum number of weeks
4 for complete loss or loss of use:

5	Scheduled Member	Weeks
6	Arms or Legs	275
7	Hands or Feet	220
8	Thumb	66
9	First Finger	39
10	Second Finger	33
11	Third Finger	22
12	Fourth Finger	17
13	Great Toe	33
14	Other Toes	11
15	One Ear	110
16	Two Ears	330
17	Eye	275

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

1 5. Death benefits equal to the lesser of:

2 a. ten (10) times the covered employee's base annual
3 earnings, or

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

5 Beneficiaries for any death benefit payment shall be determined
6 by the provisions of the benefit plan.

7 C. The benefit plan may provide for lump sum payouts that are,
8 as reasonably determined by the administrator of such plan appointed
9 by the qualified employer in accordance with ERISA, actuarially
10 equivalent to expected future payments. The benefit plan may also
11 provide for settlement agreements; provided, however, any settlement
12 agreement by a covered employee shall be voluntary, entered into not
13 earlier than the tenth business day after the date of the initial
14 report of injury, and signed after the covered employee has received
15 a medical evaluation from a nonemergency care doctor, with any
16 waiver of rights being conspicuous and on the face of the agreement.
17 The benefit plan may specify conditions and limitations on benefits,
18 including but not limited to additional criteria for covered and
19 non-covered injuries and medical charges, and continuation,
20 suspension and termination of benefits; provided, however, the
21 benefit plan shall pay benefits without regard to whether the
22 covered employee, the qualified employer, or a third party caused
23 the occupational injury. None of the provisions of the Workers'

1 Compensation Code shall define, restrict, expand or otherwise apply
2 to a benefit plan.

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

11 E. No fee or cost shall apply to a qualified employer's benefit
12 plan except as specifically provided for in this section or ERISA.
13 Authority over penalties and enforcement of the provisions of the
14 benefit plan and ERISA shall be vested in the benefit plan
15 administrator, employees covered by the benefit plan, the U.S.
16 Department of Labor, and the federal courts as provided by ERISA.

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

22 G. A qualified employer may self-fund or insure benefits
23 payable under the benefit plan, employers liability under this act,
24

1 and any other risk related to its status as a qualified employer
2 with any insurance carrier authorized to do business in this state.

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

7 1. Accidental insurance coverage on a guaranteed cost or
8 deductible, not self-insured retention, basis in at least the
9 following amounts:

10 a. Three Hundred Thousand Dollars (\$300,000.00) for
11 medical expenses and coverage for at least one hundred
12 fifty-six (156) weeks,

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

17 c. One Hundred Thousand Dollars (\$100,000.00) for
18 accidental death and dismemberment;

19 2. A bond in an amount equal to Three Hundred Thousand Dollars
20 (\$300,000.00).

21 a. The bond shall be filed and held by the Commissioner
22 and shall be for the exclusive benefit of any covered
23 employee of a qualified employer.

24

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

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

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

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

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

1 c. The Commissioner shall promulgate rules establishing
2 the procedure by which a covered employee may request
3 and receive payment from the security held by the
4 Administrator; or

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

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

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

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

23 B. Except as otherwise provided by its benefit plan, ERISA or
24 applicable federal law, a qualified employer is only subject to

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

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

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

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

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

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

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

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

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

16 3. Reasonable attorney fees awarded against the qualified
17 employer under Section 8 of this act; provided, however, that an
18 employee's attorney fees that are contingent upon a recovery under
19 the terms of the benefit plan in paragraph 1 of this subparagraph
20 shall be payable by a qualified employer as part of and not in
21 addition to such recovery. An award of attorney fees in favor of a
22 covered employee against a qualified employer on a claim for
23 intentional tort, excluding death, shall be limited to no more than
24 twenty percent (20%) of any lost earnings awarded to the covered

1 employee or his or her spouse, personal representative, parents, or
2 dependents of the covered employee under the benefit plan and such
3 award. Nothing in this paragraph shall be construed to restrict an
4 award of fees and costs made under federal law.

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

7 SECTION 8. 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 covered employee and a qualified employer shall resolve:

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

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

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

20 A qualified employer may elect to adopt and publish to employees
21 as a condition of employment or continued employment, a requirement
22 for voluntary or mandatory mediation, or voluntary or mandatory,
23 final and binding arbitration for resolution of intentional tort
24

1 claims. A mandatory, final and binding arbitration requirement
2 shall:

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

7 2. Not create any unfair procedural advantages for the
8 qualified employer; and

9 3. Have been disclosed to the covered employee before the date
10 of an occupational injury.

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

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

18 SECTION 11. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 311.10 of Title 85, unless there
20 is created a duplication in numbering, reads as follows:

21 A. In any action brought to challenge, in whole or in part, the
22 constitutionality of this act, any party to such action may take a
23 direct appeal from the decision of any lower court to the Supreme
24

1 Court and the Supreme Court shall retain the appeal. The Supreme
2 Court on an expedited basis shall consider any such appeal.

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

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

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

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

23 SECTION 12. AMENDATORY 85 O.S. 2011, Section 311, is
24 amended to read as follows:

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

3 1. Any person for whom an employer is liable under any Act of
4 Congress for providing compensation to employees for injuries,
5 disease or death arising out of and in the course of employment
6 including, but not limited to, the Federal Employees' Compensation
7 Act, the Federal Employers' Liability Act, the Longshoremen's and
8 Harbor Workers' Act and the Jones Act, to the extent his or her
9 employees are subject to such acts;

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

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

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

24

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

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

9 7. Sole proprietors, members of a partnership, individuals who
10 are party to a franchise agreement as set out by the Federal Trade
11 Commission franchise disclosure rule, 16 CFR 436.1 through 436.11,
12 members of a limited liability company who own at least ten percent
13 (10%) of the capital of the limited liability company or any
14 stockholder-employees of a corporation who own ten percent (10%) or
15 more stock in the corporation, unless they elect to be covered by a
16 policy of insurance covering benefits under the Workers'
17 Compensation Code;

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

22 9. A person, commonly referred to as an owner-operator, who
23 owns or leases a truck-tractor or truck for hire, if the owner-
24 operator actually operates the truck-tractor or truck and if the

1 person contracting with the owner-operator is not the lessor of the
2 truck-tractor or truck. Provided, however, an owner-operator shall
3 not be precluded from workers' compensation coverage under the
4 Workers' Compensation Code if the owner-operator elects to
5 participate as a sole proprietor;

6 10. A person referred to as a drive-away owner-operator who
7 privately owns and utilizes a tow vehicle in drive-away operations
8 and operates independently for hire, if the drive-away owner-
9 operator actually utilizes the tow vehicle and if the person
10 contracting with the drive-away owner-operator is not the lessor of
11 the tow vehicle. Provided, however, a drive-away owner-operator
12 shall not be precluded from workers' compensation coverage under the
13 Workers' Compensation Code if the drive-away owner-operator elects
14 to participate as a sole proprietor; ~~and~~

15 11. Any person who is employed as a domestic servant or as a
16 casual worker in and about a private home or household, which
17 private home or household had a gross annual payroll in the
18 preceding calendar year of less than Ten Thousand Dollars
19 (\$10,000.00) for such workers; and

20 12. A qualified employer with an employee benefit plan as
21 provided in Sections 2 through 11 of this act.

22 SECTION 13. This act shall become effective November 1, 2012.
23
24

1 Passed the Senate the 14th day of March, 2012.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2012.

7
8 _____
9 Presiding Officer of the House
10 of Representatives