

1 **SENATE FLOOR VERSION**

2 April 9, 2012

3 As Amended

4 COMMITTEE SUBSTITUTE

5 FOR ENGROSSED

6 HOUSE BILL NO. 2155

By: Steele of the House

and

Bingman and Brecheen of the
Senate

9 An Act relating to benefits for employee injury;
10 creating the Oklahoma Employee Injury Benefit Act;
11 providing short title; construing provisions; stating
12 legislative findings; stating legislative intent;
13 defining terms; authorizing voluntary exemption from
14 certain act; requiring certain notice to Workers'
15 Compensation Court; requiring payment of certain fee;
16 establishing responsibilities of certain
17 Commissioner; requiring certain notice to employees;
18 stating requirements for certain notice; authorizing
19 adoption of certain rules; requiring adoption of
20 certain plan by certain employers; establishing
21 schedule of benefits for certain plans; establishing
22 requirements for implementation of certain plans;
23 requiring employers to provide certain insurance
24 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.

1
2 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

7 B. The Legislature finds that certain employers, by virtue of
8 the nature and type of the work undertaken by their employees, are
9 experiencing significant costs associated with claims for
10 occupational injuries subject to the Workers' Compensation Code.
11 The Legislature has determined that the inability on the part of
12 those employers to effectively and efficiently manage these claims
13 has contributed to the increased costs associated with such claims
14 and has resulted in reduced efficiency in the treatment of injured
15 employees. In an effort to provide more efficient management of
16 such claims, to help provide employees with better managed medical
17 care and to assist this state in the attraction and retention of new
18 employers, the Legislature hereby adopts this act. The exceptions
19 to application of the Workers' Compensation Code provided for in
20 subsection A of Section 4 of this act are in addition to exceptions
21 provided for in Section 311 of Title 85 of the Oklahoma Statutes.
22 The Legislature has determined that the distinctions between certain
23 categories of employers and employees, based on the criterion set
24 forth in subsection A of Section 4 of this act, are warranted due to

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

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

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

24

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

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

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

9 As used in the Oklahoma Employee Injury Benefit Act:

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

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

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

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

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

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

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

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

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

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

15 9. "Pre-injury pay" means:

- 16 a. for salaried covered employees, regular periodic
17 salary from a qualified employer at the time of the
18 occupational injury,
- 19 b. for hourly covered employees, the average earnings
20 from a qualified employer for the six consecutive pay
21 periods immediately preceding the date of the
22 occupational injury; provided, however, that if the
23 covered employee has worked for a qualified employer
24 for less than six consecutive pay periods, or if his

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

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

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

15 11. "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 the
24 employer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 L. 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 311.4 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 optional
12 for eligible employers, and no benefit plan shall be considered to
13 be maintained solely for the purpose of complying with the workers'
14 compensation laws of this state, provided that the benefit plan is
15 otherwise subject to the Employee Retirement Income Security Act of
16 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 shall 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 occupational injury medical
24 expenses, subject to subsection C of this section, with no other

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

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

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

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

1 a. future medical expense will be incurred and payable on
2 the injury claim, and
3 b. the covered employee is unable to return to the pre-
4 injury or equivalent job position,
5 eighty percent (80%) of the covered employee's pre-injury pay for
6 five (5) weeks for each percentage point of whole person impairment
7 determined under the Fourth edition of the American Medical
8 Association's "Guides to the Evaluation of Permanent Impairment" for
9 objective loss of function, with a minimum weekly benefit of One
10 Hundred Fifty Dollars (\$150.00) and a maximum weekly benefit of fifty
11 percent (50%) of the Oklahoma state average weekly wage; provided,
12 however, that the number of weeks for certain scheduled injuries
13 shall be subject to the following minimum number of weeks for
14 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

1	One Ear	110
2	Two Ears	330
3	Eye	275

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

11 5. Death benefits equal to:

- 12 a. Two Hundred Thousand Dollars (\$200,000.00),
- 13 b. funeral benefits in an amount not to exceed Ten
14 Thousand Dollars (\$10,000.00), and
- 15 c. weekly benefits equal to eighty percent (80%) of the
16 covered employee's pre-injury pay up to one hundred
17 percent (100%) of the Oklahoma state average weekly
18 wage to the surviving spouse until the earlier of re-
19 marriage or two hundred and sixty (260) weeks. If
20 there is no surviving spouse, but minor children, then
21 each minor child will receive a pro-rata portion of
22 the (i) Two Hundred Thousand Dollars (\$200,000.00) and
23 (ii) weekly benefits until the earlier of reaching the
24 age of majority or two hundred and sixty (260) weeks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (\$300,000.00) or such additional amount as
2 determined by the Commissioner, or

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

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

16 An employer whose permit to self-insure is revoked,
17 denied for renewal or surrendered is not relieved of
18 the obligation for compensation to an employee for a
19 compensable injury that occurred during the period of
20 self-insurance. The security required under this
21 section, including any interest thereon, shall be
22 maintained by the Commissioner as provided in this act
23 until each claim for benefits is paid, settled, or
24

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

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

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

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

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

19 (3) the covered employee is unable to receive payment
20 from the benefit plan or collect on such judgment
21 or court order because the qualified employer has
22 filed for bankruptcy or the benefit plan has
23 become insolvent, and
24

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

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

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

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

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

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

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

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

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

23

24

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

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

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

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

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

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

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

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

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

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

19 A covered employee and a qualified employer shall resolve:

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

22 2. All intentional tort or other employers' liability claims
23 through the appropriate state or federal courts of Oklahoma,
24

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

3 SECTION 9. 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 This act shall be liberally construed to give the fullest effect
7 of its provisions and is adopted as part of the public policy of the
8 State of Oklahoma. Any conflict between this act and any other law
9 shall be resolved in favor of the operation of this act.

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

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

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

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

24

1 2. The rights and obligations of a qualified employer and its
2 employees shall be subject to the exclusive remedies provisions of
3 Section 314 of Title 85 of the Oklahoma Statutes and a qualified
4 employer shall be entitled to the immunity provided under Section
5 302 of Title 85 of the Oklahoma Statutes, and an employer that
6 became a qualified employer under this act shall be liable for
7 injury to employees only to the extent to which an employer that
8 complied with the provisions of Section 351 of Title 85 of the
9 Oklahoma Statutes would be liable to employees in compensation for
10 such injuries under the Workers' Compensation Code; and

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

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

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

19 1. Any person for whom an employer is liable under any Act of
20 Congress for providing compensation to employees for injuries,
21 disease or death arising out of and in the course of employment
22 including, but not limited to, the Federal Employees' Compensation
23 Act, the Federal Employers' Liability Act, the Longshoremen's and
24

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

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

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

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

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

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

1 7. Sole proprietors, members of a partnership, individuals who
2 are party to a franchise agreement as set out by the Federal Trade
3 Commission franchise disclosure rule, 16 CFR 436.1 through 436.11,
4 members of a limited liability company who own at least ten percent
5 (10%) of the capital of the limited liability company or any
6 stockholder-employees of a corporation who own ten percent (10%) or
7 more stock in the corporation, unless they elect to be covered by a
8 policy of insurance covering benefits under the Workers'
9 Compensation Code;

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

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

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

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

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

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

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

15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-3-12 - DO PASS,
16 As Amended and Coauthored.

17
18
19
20
21
22
23
24