

1 **SENATE FLOOR VERSION**

2 February 27, 2012

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 1378

6 By: Bingman and Shortey of the  
7 Senate

8 and

9 Steele of the House

10 An Act relating to benefits for employee injury;  
11 creating the Oklahoma Employee Injury Benefit Act;  
12 providing short title; construing provisions; stating  
13 legislative findings; stating legislative intent;  
14 defining terms; authorizing voluntary exemption from  
15 certain act; requiring certain notice to Workers'  
16 Compensation Court; requiring payment of certain fee;  
17 establishing responsibilities of certain  
18 Commissioner; requiring certain notice to employees;  
19 stating requirements for certain notice; authorizing  
20 adoption of certain rules; requiring adoption of  
21 certain plan by certain employers; establishing  
22 schedule of benefits for certain plans; establishing  
23 requirements for implementation of certain plans;  
24 requiring employers to provide certain insurance  
coverage in specified amounts; requiring bond under  
certain circumstances; specifying authorized usage of  
certain bond; specifying liability of employers under  
certain plans; establishing exceptions to certain  
liability; establishing responsibilities of employers  
under certain plans; limiting attorney fees under  
certain circumstances; specifying means of dispute  
resolution; prohibiting promulgation of certain  
rules; construing provisions; stating effects of  
certain challenges; amending 85 O.S. 2011, Section  
311, which relates to applicability of Workers'  
Compensation Code; adding certain exception;  
providing for codification; providing for  
noncodification; and providing an effective date.

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

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

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

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

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

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

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

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

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

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

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

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

10 9. "Pre-injury pay" means:

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

24

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

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

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

16 A. Any employer may voluntarily elect to be exempt from the  
17 Workers' Compensation Code and become a qualified employer if, on  
18 the date the employer elects to become a qualified employer, the  
19 employer:

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

22 a. has a workers' compensation experience modifier, as  
23 reported by the National Council of Compensation  
24 Insurers (NCCI), greater than one (1.00) for the

1 preceding Oklahoma workers' compensation insurance  
2 policy year, or

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

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

21 Qualification criterion established in this subsection shall  
22 apply only as of the date the employer elects to become a Qualified  
23 Employer;

24

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

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

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

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

1 official website accessible by the public of all qualified employers  
2 and the date and time such exemption became effective.

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

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

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

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

24

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

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

9 J. The qualified employer shall post the employee notification  
10 required by this section at conspicuous locations at the qualified  
11 employer's places of business as necessary to provide reasonable  
12 notice to all employees.

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

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

19 A. An employer voluntarily electing to become a qualified  
20 employer shall adopt a written benefit plan that complies with the  
21 requirements of this section. Qualified employer status is optional  
22 for eligible employers, and no benefit plan shall be considered to  
23 be maintained solely for the purpose of complying with the workers'  
24 compensation laws of this state, provided that the benefit plan is

1 otherwise subject to the Employee Retirement Income Security Act of  
2 1974, as amended ("ERISA"). The benefit plan shall not become  
3 effective until the date that the qualified employer first satisfies  
4 the notice requirements in Section 4 of this act.

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

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

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

20 3. For permanent inability to work in either any occupation or  
21 any alternative work offered by the employer following payment of  
22 all temporary wage replacement under paragraph 2 of this subsection,  
23 eighty percent (80%) of the covered employee's pre-injury pay, less  
24 other related post-injury income, until the later of eligibility for

1 one hundred percent (100%) Social Security Retirement or fifteen  
2 (15) years, with a maximum weekly benefit of one hundred percent  
3 (100%) of the Oklahoma state average weekly wage;

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

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

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

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

Scheduled Member	Weeks
Arms or Legs	275
Hands or Feet	220
Thumb	66
First Finger	39

1	Second Finger	33
2	Third Finger	22
3	Fourth Finger	17
4	Great Toe	33
5	Other Toes	11
6	One Ear	110
7	Two Ears	330
8	Eye	275

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

16 5. Death benefits equal to the lesser of:

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

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

20 Beneficiaries for any death benefit payment shall be determined  
21 by the provisions of the benefit plan.

22 C. The benefit plan may provide for lump sum payouts that are,  
23 as reasonably determined by the administrator of such plan appointed  
24 by the qualified employer in accordance with ERISA, actuarially

1 equivalent to expected future payments. The benefit plan may also  
2 provide for settlement agreements; provided, however, any settlement  
3 agreement by a covered employee shall be voluntary, entered into not  
4 earlier than the tenth business day after the date of the initial  
5 report of injury, and signed after the covered employee has received  
6 a medical evaluation from a nonemergency care doctor, with any  
7 waiver of rights being conspicuous and on the face of the agreement.  
8 The benefit plan may specify conditions and limitations on benefits,  
9 including but not limited to additional criteria for covered and  
10 non-covered injuries and medical charges, and continuation,  
11 suspension and termination of benefits; provided, however, the  
12 benefit plan shall pay benefits without regard to whether the  
13 covered employee, the qualified employer, or a third party caused  
14 the occupational injury. None of the provisions of the Workers'  
15 Compensation Code shall define, restrict, expand or otherwise apply  
16 to a benefit plan.

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

1 E. No fee or cost shall apply to a qualified employer's benefit  
2 plan except as specifically provided for in this section or ERISA.  
3 Authority over penalties and enforcement of the provisions of the  
4 benefit plan and ERISA shall be vested in the benefit plan  
5 administrator, employees covered by the benefit plan, the U.S.  
6 Department of Labor, and the federal courts as provided by ERISA.

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

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

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

20 1. Accidental insurance coverage on a guaranteed cost or  
21 deductible, not self-insured retention, basis in at least the  
22 following amounts:  
23  
24

- 1 a. Three Hundred Thousand Dollars (\$300,000.00) for  
2 medical expenses and coverage for at least one hundred  
3 fifty-six (156) weeks,  
4 b. eighty percent (80%) of the covered employee's pre-  
5 injury pay for not less than one hundred fifty-six  
6 (156) weeks of wage replacement for inability to work,  
7 with a \$500 maximum weekly benefit, and  
8 c. One Hundred Thousand Dollars (\$100,000.00) for  
9 accidental death and dismemberment;

10 2. A bond in an amount equal to Three Hundred Thousand Dollars  
11 (\$300,000.00).

12 a. The bond shall be filed and held by the Commissioner  
13 and shall be for the exclusive benefit of any covered  
14 employee of a qualified employer.

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

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

21 (2) the covered employee's claim for payment of a  
22 specific medical or wage replacement benefit  
23 amount has been accepted by the plan

24 administrator of the benefit plan or acknowledged

1 in a final judgment or court order assessing a  
2 specific dollar figure for benefits payable under  
3 the benefit plan,

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

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

15 c. The Commissioner shall promulgate rules establishing  
16 the procedure by which a covered employee may request  
17 and receive payment from the security held by the  
18 Administrator; or

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

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

22 SECTION 6. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 311.5 of Title 85, unless there  
24 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 be exclusive and in place of  
3 all other liability of the qualified employer and any of its  
4 employees at common law or otherwise, for a covered employee's  
5 occupational injury or loss of services, to the covered employee, or  
6 the spouse, personal representative, parents, or dependents of the  
7 covered employee, or any other person. The exclusive remedy  
8 protections provided by this subsection shall be as broad as the  
9 exclusive remedy protections of Section 302 of Title 85 of the  
10 Oklahoma Statutes, and thus preclude a covered employee's claim  
11 against a qualified employer for negligence or other causes of  
12 action.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 A covered employee and a qualified employer shall resolve:

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

4 2. All intentional tort or death claims through the appropriate  
5 state or federal courts of Oklahoma, mediation, arbitration, or any  
6 other form of alternative dispute resolution or settlement process  
7 available by law.

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

11 A qualified employer may elect to adopt and publish to employees  
12 as a condition of employment or continued employment, a requirement  
13 for voluntary or mandatory mediation, or voluntary or mandatory,  
14 final and binding arbitration for resolution of intentional tort  
15 claims. A mandatory, final and binding arbitration requirement  
16 shall:

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

21 2. Not create any unfair procedural advantages for the  
22 qualified employer; and

23 3. Have been disclosed to the covered employee before the date  
24 of an occupational injury.

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

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

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

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

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

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

22 2. The rights and obligations of a qualified employer and its  
23 employees shall be subject to the exclusive remedies provisions of  
24 Section 314 of Title 85 of the Oklahoma Statutes and a qualified

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

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

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

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

16 1. Any person for whom an employer is liable under any Act of  
17 Congress for providing compensation to employees for injuries,  
18 disease or death arising out of and in the course of employment  
19 including, but not limited to, the Federal Employees' Compensation  
20 Act, the Federal Employers' Liability Act, the Longshoremen's and  
21 Harbor Workers' Act and the Jones Act, to the extent his or her  
22 employees are subject to such acts;

23 2. Any person who is employed in agriculture or horticulture by  
24 an employer who had a gross annual payroll in the preceding calendar

1 year of less than One Hundred Thousand Dollars (\$100,000.00) wages  
2 for agricultural or horticultural workers, or any person who is  
3 employed in agriculture or horticulture who is not engaged in  
4 operation of motorized machines;

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

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

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

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

21 7. Sole proprietors, members of a partnership, individuals who  
22 are party to a franchise agreement as set out by the Federal Trade  
23 Commission franchise disclosure rule, 16 CFR 436.1 through 436.11,  
24 members of a limited liability company who own at least ten percent

1 (10%) of the capital of the limited liability company or any  
2 stockholder-employees of a corporation who own ten percent (10%) or  
3 more stock in the corporation, unless they elect to be covered by a  
4 policy of insurance covering benefits under the Workers'  
5 Compensation Code;

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

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

18 10. A person referred to as a drive-away owner-operator who  
19 privately owns and utilizes a tow vehicle in drive-away operations  
20 and operates independently for hire, if the drive-away owner-  
21 operator actually utilizes the tow vehicle and if the person  
22 contracting with the drive-away owner-operator is not the lessor of  
23 the tow vehicle. Provided, however, a drive-away owner-operator  
24 shall not be precluded from workers' compensation coverage under the

1 Workers' Compensation Code if the drive-away owner-operator elects  
2 to participate as a sole proprietor; ~~and~~

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

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

10 SECTION 13. This act shall become effective November 1, 2012.

11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-21-12 - DO  
12 PASS, As Amended and Coauthored.

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