

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1752

By: Moore

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5
6 AS INTRODUCED

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

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

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

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

5 B. The Legislature finds that certain employers, by virtue of
6 the nature and type of the work undertaken by their employees, are
7 experiencing significant costs associated with claims for
8 occupational injuries subject to the Workers' Compensation Code.

9 The Legislature has determined that the inability on the part of
10 those employers to effectively and efficiently manage these claims
11 has contributed to the increased costs associated with such claims
12 and has resulted in reduced efficiency in the treatment of injured
13 employees. In an effort to provide more efficient management of
14 such claims, to help provide employees with better managed medical
15 care and to assist this state in the attraction and retention of new
16 employers, the Legislature hereby adopts this act. The exceptions
17 to application of the Workers' Compensation Code provided for in
18 subsection A of Section 4 of this act are in addition to exceptions
19 provided for in Section 311 of Title 85 of the Oklahoma Statutes.

20 The Legislature has determined that the distinctions between certain
21 categories of employers and employees, based on the criterion set
22 forth in subsection A of Section 4 of this act, are warranted due to
23 either or both the employer's "workers' compensation experience
24 modifier", and its "total annual incurred claims" history. Each of

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

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

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

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

1 Sections 2 through 10 of this act shall be known and may be
2 cited as the "Oklahoma Employee Injury Benefit Act".

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

6 As used in the Oklahoma Employee Injury Benefit Act:

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

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

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

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

16 3. "Commissioner" means the Insurance Commissioner of the
17 Insurance Department of the State of Oklahoma;

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

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

22 6. "Employee" means any person engaged in the employment of an
23 employer and receives his or her pay by means of a salary, wage, or
24 commission directly from the employer and for whom an employer files

1 a Form W-2 with the Internal Revenue Service. "Employee" does not
2 include an independent contractor or third-party agent;

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

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

12 9. "Pre-injury pay" means:

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

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

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

13 11. "Qualified employer" means an employer otherwise subject to
14 the Workers' Compensation Code that voluntarily elects to be exempt
15 from the Workers' Compensation Code by satisfying the requirements
16 under the Oklahoma Employee Injury Benefit Act.

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

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

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

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

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

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

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

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

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

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 that it does not carry workers' compensation insurance coverage and
9 that such coverage has terminated or been cancelled.

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

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

17 K. The qualified employer shall post the employee notification
18 required by this section at conspicuous locations at the qualified
19 employer's places of business as necessary to provide reasonable
20 notice to all employees.

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

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

4 A. An employer voluntarily electing to become a qualified
5 employer shall adopt a written benefit plan that complies with the
6 requirements of this section. Qualified employer status is optional
7 for eligible employers, and no benefit plan shall be considered to
8 be maintained solely for the purpose of complying with the workers'
9 compensation laws of this state, provided that the benefit plan is
10 otherwise subject to the Employee Retirement Income Security Act of
11 1974, as amended ("ERISA"). The benefit plan shall not become
12 effective until the date that the qualified employer first satisfies
13 the notice requirements in 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 occupational injury medical
19 expenses, subject to subsection C of this section, with no other
20 maximum dollar or duration limits for all medical expenses combined
21 per occurrence. Medical necessity must be directly related to the
22 occupational injury and confirmed by objective medical evidence. In
23 no event shall an employee be charged any premium, co-pay or
24 deductible under the Oklahoma Employee Benefit Act;

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

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

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

- 20 a. is unable to return to the pre-injury or equivalent
21 job position but is not eligible to receive benefits
22 under paragraph 3 of this subsection, or
- 23 b. incurs the complete loss of use of the scheduled
24 members of the body described in the table below,

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

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

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

8 A covered employee who satisfies the conditions in subparagraph
9 a of this paragraph shall be entitled to vocational rehabilitation
10 services provided by a technology center school, a public or private
11 vocational skills center or public secondary school offering
12 vocational-technical education courses, or a member institution of
13 The Oklahoma State System of Higher Education, which shall include
14 retraining and job placement so as to restore the employee to
15 gainful employment. Vocational rehabilitation services or training
16 shall not extend for a period of more than fifty-two (52) weeks.

17 A covered employee shall be entitled to benefits described in
18 paragraph 4 of this subsection for serious and permanent
19 disfigurement without regard to satisfying the conditions in
20 subparagraph a or b of this paragraph. Such award for disfigurement
21 shall not be in excess of Fifty Thousand Dollars (\$50,000.00) and
22 shall not be made for a part of the body for which another
23 impairment benefit is granted; and

24 5. Death benefits equal to:

- 1 a. Two Hundred Thousand Dollars (\$200,000.00),
2 b. funeral benefits in an amount not to exceed Ten
3 Thousand Dollars (\$10,000.00), and
4 c. weekly benefits equal to eighty percent (80%) of the
5 covered employee's pre-injury pay up to one hundred
6 percent (100%) of the Oklahoma state average weekly
7 wage to the surviving spouse until the earlier of re-
8 marriage or two hundred and sixty (260) weeks. If
9 there is no surviving spouse, but minor children, then
10 each minor child will receive a pro-rata portion of
11 the (i) Two Hundred Thousand Dollars (\$200,000.00) and
12 (ii) weekly benefits until the earlier of reaching the
13 age of majority or two hundred and sixty (260) weeks.

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

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

1 waiver of rights being conspicuous and on the face of the agreement.
2 The benefit plan may specify conditions and limitations on benefits,
3 including but not limited to additional criteria for covered and
4 noncovered injuries and medical charges, and continuation,
5 suspension and termination of benefits; provided, however, the
6 benefit plan shall pay benefits without regard to whether the
7 covered employee, the qualified employer, or a third party caused
8 the occupational injury; and, provided further, that the benefit
9 plan must provide eligibility to participate for and provide the
10 same forms and levels of benefits to all Oklahoma employees of the
11 qualified employer. None of the provisions of the Workers'
12 Compensation Code shall define, restrict, expand or otherwise apply
13 to a benefit plan.

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

22 E. No fee or cost to an employee shall apply to a qualified
23 employer's benefit plan. Authority over penalties and enforcement
24 of the provisions of the benefit plan and ERISA shall be vested in

1 the benefit plan administrator, employees covered by the benefit
2 plan, the U.S. Department of Labor, and the federal courts as
3 provided by ERISA.

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

9 G. A qualified employer may self-fund or insure benefits
10 payable under the benefit plan, employers liability under the
11 Oklahoma Employee Injury Benefit Act, and any other insurable risk
12 related to its status as a qualified employer with any insurance
13 carrier authorized to do business in this state.

14 H. Insurance coverage or surety bond obtained by a qualified
15 employer shall be from an admitted or surplus lines insurer with an
16 AM Best Rating of B+ or better. A qualified employer shall secure
17 compensation to covered employees in one of the following ways:

18 1. Obtaining accidental insurance coverage in an amount of at
19 least Two Million Dollars (\$2,000,000) per occurrence, with
20 sublimits in at least the following amounts:

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

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- 1 b. eighty percent (80%) of the covered employee's pre-
2 injury pay for not less than one hundred fifty-six
3 (156) weeks of wage replacement for inability to work,
4 with a \$500 maximum weekly benefit, and
5 c. Two Hundred Thousand Dollars (\$200,000.00) per person
6 for accidental death;

7 2. Furnishing satisfactory proof to the Commissioner of the
8 employer's financial ability to pay the compensation. The
9 Commissioner, under rules adopted by the Insurance Department of the
10 State of Oklahoma or the Commissioner for an individual self-insured
11 employer, shall require an employer that has:

- 12 a. less than one hundred employees or less than One
13 Million Dollars (\$1,000,000.00) in net assets to:
14 (1) deposit with the Commissioner securities, an
15 irrevocable letter of credit or a surety bond
16 payable to the state, in an amount determined by
17 the Commissioner which shall be at least an
18 average of the yearly claims for the last three
19 (3) years, or
20 (2) provided proof of excess coverage with such terms
21 and conditions as is commensurate with their
22 ability to pay the benefits required by the
23 provisions of the Oklahoma Employee Injury
24 Benefit Act.

1 b. one hundred or more employees and One Million Dollars
2 (\$1,000,000.00) or more in net assets to:

3 (1) secure a surety bond payable to the state, or an
4 irrevocable letter of credit, in an amount
5 determined by the Commissioner which shall be at
6 least an average of the yearly claims for the
7 last three (3) years, or

8 (2) provide proof of excess coverage with such terms
9 and conditions as is commensurate with their
10 ability to pay the benefits required by the
11 provisions of the Oklahoma Employee Injury
12 Benefit Act; or

13 The Commissioner may waive the requirements of this subsection in an
14 amount which is commensurate with the ability of the employer to pay
15 the benefits required by the provisions of the Oklahoma Employee
16 Injury Benefit Act. Irrevocable letters of credit required by this
17 subsection shall contain such terms as may be prescribed by the
18 Commissioner and shall be issued for the benefit of the state by a
19 financial institution whose deposits are insured by the Federal
20 Deposit Insurance Corporation.

21 I. 1. An employer who does not fulfill the requirements of
22 subsection H of this section is not relieved of the obligation for
23 compensation to a covered employee. The security required under
24 this section, including any interest thereon, shall be maintained by

1 the Commissioner as provided in the Oklahoma Employee Injury Benefit
2 Act until each claim for benefits is paid, settled, or lapses under
3 this act, and costs of administration of such claims are paid.

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

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

- 10 a. the covered employee sustained an occupational injury
11 that is covered by the qualified employer's benefit
12 plan,
- 13 b. the covered employee's claim for payment of a specific
14 medical or wage replacement benefit amount has been
15 accepted by the plan administrator of the benefit plan
16 or acknowledged in a final judgment or court order
17 assessing a specific dollar figure for benefits
18 payable under the benefit plan,
- 19 c. the covered employee is unable to receive payment from
20 the benefit plan or collect on such judgment or court
21 order because the qualified employer has filed for
22 bankruptcy or the benefit plan has become insolvent,
23 and

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1 d. 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 administrator of
4 the benefit plan or judgment or court order assessing
5 a specific dollar figure for benefits payable under
6 the benefit plan.

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

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

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

16 A. A qualified employer's liability under the benefit plan and
17 otherwise prescribed in the Oklahoma Employee Injury Benefit Act
18 shall be exclusive and in place of all other liability of the
19 qualified employer and any of its employees at common law or
20 otherwise, for a covered employee's occupational injury or loss of
21 services, to the covered employee, or the spouse, personal
22 representative, parents, or dependents of the covered employee, or
23 any other person. The exclusive remedy protections provided by this
24 subsection shall be as broad as the exclusive remedy protections of

1 Section 302 of Title 85 of the Oklahoma Statutes, and thus preclude
2 a covered employee's claim against a qualified employer for
3 negligence or other causes of action.

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

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

21 D. Any benefits paid under a qualified employer's benefit plan
22 will offset any other award against such qualified employer under
23 this section.

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

7 F. Enforcement of a limitation on available causes of action,
8 damages, or attorney fees with respect to a covered employee against
9 a qualified employer in accordance with the Oklahoma Employee Injury
10 Benefit Act shall not be an appealable error.

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

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

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

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

22 3. Reasonable attorney fees awarded against the qualified
23 employer under Section 8 of this act; provided, however, that an
24 employee's attorney fees that are contingent upon a recovery under

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

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

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

16 A covered employee and a qualified employer shall resolve:

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

19 2. All intentional tort or other employers' liability claims
20 through the appropriate state or federal courts of Oklahoma,
21 mediation, arbitration, or any other form of alternative dispute
22 resolution or settlement process available by law.

23

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

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

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

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

18 B. To the extent the Oklahoma Employee Injury Benefit Act, or
19 any part thereof, is declared to be unconstitutional or
20 unenforceable, it is specifically intended 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, 2013.

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16 54-1-6276 SD 01/10/13

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