

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 769

By: Sykes

4  
5 AS INTRODUCED

6 An Act relating to the Oklahoma Employee Injury  
7 Benefit Act; amending Sections 108, 109, 110 and 116,  
8 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014,  
9 Sections 201, 202, 203 and 209), which relate to  
10 definitions, voluntary election, written benefit plan  
11 and liability; adding definition; updating statutory  
12 references; adding certain requirement for specified  
13 election; decreasing certain fee; modifying certain  
14 rulemaking authority; removing certain option;  
15 modifying requirements of certain plan; creating  
16 certain presumption; specifying burden of proof to  
17 overcome certain presumption; and providing an  
18 effective date.

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

20 SECTION 1. AMENDATORY Section 108, Chapter 208, O.S.L.  
21 2013 (85A O.S. Supp. 2014, Section 201), is amended to read as  
22 follows:

23 Section 201. A. As used in the Oklahoma Employee Injury  
24 Benefit Act:

1. "Benefit plan" means a plan established by a qualified  
employer under the requirements of Section 110 of this act;

2. "Claimant" means a covered employee or his or her  
representative or beneficiary;

1        3. "Commission" means the Workers' Compensation Commission  
2 under the Administrative Workers' Compensation Act;

3        ~~3.~~ 4. "Commissioner" means the Insurance Commissioner of the  
4 State of Oklahoma;

5        ~~4.~~ 5. "Covered employee" means an employee whose employment  
6 with a qualified employer is principally located within the state;

7        ~~5.~~ 6. "Employee" means any person defined as an employee  
8 pursuant to Section 2 of this ~~act~~ title;

9        ~~6.~~ 7. "Employer", except when otherwise expressly stated, means  
10 a person, partnership, association, limited liability company,  
11 corporation, and the legal representatives of a deceased employer,  
12 or the receiver or trustee of a person, partnership, association,  
13 corporation, or limited liability company, department,  
14 instrumentality or institution of this state and divisions thereof,  
15 counties and divisions thereof and other political subdivisions of  
16 this state and public trusts employing a person included within the  
17 term employee as defined in this section;

18        ~~7.~~ 8. "Occupational injury" means an injury, including death,  
19 or occupational illness, causing internal or external harm to the  
20 body, which arises out of and in the course of employment;

21        ~~8.~~ 9. "Qualified employer" means an employer otherwise subject  
22 to the Administrative Workers' Compensation Act that voluntarily  
23 elects to be exempt from such act by satisfying the requirements  
24 under this act; and

1        ~~9.~~ 10. "Surviving spouse" means the employee's spouse by reason  
2 of a legal marriage recognized by the State of Oklahoma or under the  
3 requirements of a common law marriage in this state.

4        B. Unless otherwise defined in this section, defined terms in  
5 the Administrative Workers' Compensation Act shall have the same  
6 meaning in this act.

7        SECTION 2.        AMENDATORY        Section 109, Chapter 208, O.S.L.  
8 2013 (85A O.S. Supp. 2014, Section 202), is amended to read as  
9 follows:

10        Section 202. A. Any employer may voluntarily elect to be  
11 exempt from the Administrative Workers' Compensation Act and become  
12 a qualified employer if the employer:

13        1. Is in compliance with the notice requirements in subsections  
14 B and ~~H~~ G of this section; ~~and~~

15        2. Has established a written benefit plan as described in  
16 Section ~~110~~ 203 of this ~~act~~ title; and

17        3. Has satisfied the security requirements pursuant to Section  
18 204 of this title.

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

1 the Commissioner an annual nonrefundable fee of ~~One Thousand Five~~  
2 ~~Hundred Dollars (\$1,500.00)~~ One Thousand Dollars (\$1,000.00) on the  
3 date of filing written notice and every year thereafter.

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

17 ~~D. Except as otherwise expressly provided in this act, neither~~  
18 ~~the Workers' Compensation Commission, the courts of this state, or~~  
19 ~~any state administrative agencies shall promulgate rules or any~~  
20 ~~procedures related to design, documentation, implementation,~~  
21 ~~administration or funding of a qualified employer's benefit plan.~~

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

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

3 ~~F.~~ E. The Commissioner may prescribe rules and forms to be used  
4 for the qualified-employer notification and shall require the  
5 qualified employer to provide its name, address, contact person and  
6 phone number, federal tax identification number, number of persons  
7 employed in this state as of a specified date, claim administration  
8 contact information, and a listing of all covered business locations  
9 in the state. The Commissioner shall notify the Commissioner of  
10 Labor of all qualified-employer notifications. The Department of  
11 Labor shall provide such notifications to other governmental  
12 agencies as it deems necessary.

13 ~~G.~~ F. The Commissioner may contract with the Oklahoma  
14 Employment Security Commission, the State Treasurer or the  
15 Department of Labor for assistance in collecting the notification  
16 required under this section or otherwise fulfilling the  
17 Commissioner's responsibilities under this act. Such agencies shall  
18 cooperate with the Commissioner in enforcing the provisions of this  
19 section.

20 ~~H.~~ G. A qualified employer shall notify each of its employees  
21 in the manner provided in this section that it is a qualified  
22 employer, that it does not carry workers' compensation insurance  
23 coverage and that such coverage has terminated or been cancelled.  
24

1        ~~F.~~ H. The qualified employer shall provide written notification  
2 to employees as required by this section at the time the employee is  
3 hired or at the time of designation as a qualified employer. The  
4 qualified employer shall post the employee notification required by  
5 this section at conspicuous locations at the qualified employer's  
6 places of business as necessary to provide reasonable notice to all  
7 employees. The Commissioner may adopt rules relating to the form,  
8 content, and method of delivery of the employee notification  
9 required by this section.

10        SECTION 3.        AMENDATORY        Section 110, Chapter 208, O.S.L.  
11 2013 (85A O.S. Supp. 2014, Section 203), is amended to read as  
12 follows:

13        Section 203. A. An employer voluntarily electing to become a  
14 qualified employer shall adopt a written benefit plan that complies  
15 with the requirements of this section. ~~Qualified employer status is~~  
16 ~~optional for eligible employers.~~ The benefit plan shall not become  
17 effective until the date that the qualified employer ~~first~~ satisfies  
18 the ~~notice~~ requirements in subsection A of Section 109 202 of this  
19 ~~act~~ title.

20        B. The benefit plan shall provide for payment of the same forms  
21 of benefits included in the Administrative Workers' Compensation Act  
22 for temporary total disability, temporary partial disability,  
23 permanent partial disability, vocational rehabilitation, permanent  
24 total disability, disfigurement, amputation or permanent total loss

1 of use of a scheduled member, death and medical benefits as a result  
2 of an occupational injury, on a no-fault basis, with the same  
3 statute of limitations, and with dollar, percentage, and duration  
4 limits that are at least equal to or greater than the dollar,  
5 percentage, and duration limits contained in Sections 45, 46 and 47  
6 of this ~~act~~ title. For this purpose, the standards for  
7 determination of average weekly wage, death beneficiaries, and  
8 disability under the Administrative Workers' Compensation Act shall  
9 apply under the Oklahoma Employee Injury Benefit Act; but no other  
10 provision of the Administrative Workers' Compensation Act defining  
11 covered injuries, medical management, dispute resolution or other  
12 process, funding, notices or penalties shall apply or otherwise be  
13 controlling under the Oklahoma Employee Injury Benefit Act, unless  
14 expressly incorporated.

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

1 shall pay benefits without regard to whether the covered employee,  
2 the qualified employer, or a third party caused the occupational  
3 injury; and provided further, that the benefit plan shall provide  
4 eligibility to participate in and provide the same forms and levels  
5 of benefits to all Oklahoma employees of the qualified employer.  
6 ~~The Administrative Workers' Compensation Act shall not define,~~  
7 ~~restrict, expand or otherwise apply to a benefit plan.~~

8 D. No fee or cost to an employee shall apply to a qualified  
9 employer's benefit plan.

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

15 SECTION 4. AMENDATORY Section 116, Chapter 208, O.S.L.  
16 2013 (85A O.S. Supp. 2014, Section 209), is amended to read as  
17 follows:

18 Section 209. A. A qualified employer's liability under the  
19 benefit plan and otherwise prescribed in this act shall be exclusive  
20 and in place of all other liability of the qualified employer and  
21 any of its employees at common law or otherwise, for a covered  
22 employee's occupational injury or loss of services, to the covered  
23 employee, or the spouse, personal representative, parents, or  
24 dependents of the covered employee, or any other person. The

1 exclusive remedy protections provided by this subsection shall be as  
2 broad as the exclusive remedy protections of Section 5 of this ~~act~~  
3 title, and thus preclude a covered employee's claim against a  
4 qualified employer, its employees, and insurer for negligence or  
5 other causes of action.

6 B. Except as otherwise provided by its benefit plan, 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. If within twenty-four (24) hours of being injured or  
20 reporting an injury, an employee tests positive for intoxication,  
21 use of an illegal controlled substance, or a legal controlled  
22 substance ~~that is~~ used in contravention ~~with~~ of a treating  
23 physician's orders ~~within twenty-four (24) hours of being injured or~~  
24 ~~reporting an injury, he or she shall not be eligible to receive~~

1 ~~benefits under a qualified employer's benefit plan. In order to~~  
2 ~~retain exclusive remedy and enjoy immunity from common law~~  
3 ~~negligence claims, an employee shall be entitled to receive benefits~~  
4 ~~under a qualified employer's benefit plan if the employee can prove~~  
5 ~~by a preponderance of the evidence that the acts described by this~~  
6 ~~section were not the major cause of an injury or refuses to submit~~  
7 ~~to the drug or alcohol testing, there shall be a rebuttable~~  
8 ~~presumption that the injury was caused by the use of alcohol,~~  
9 ~~illegal drugs or prescription drugs used in contravention of a~~  
10 ~~treating physician's orders. Such presumption may only be overcome~~  
11 ~~by clear and convincing evidence that the employee's state of~~  
12 ~~intoxication had no causal relationship to the injury.~~

13 D. Any benefits paid under a qualified employer's benefit plan  
14 shall offset any other award against such qualified employer under  
15 subsection B of this section.

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

22 SECTION 5. This act shall become effective November 1, 2015.  
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