

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1062 _____
Of the printed Bill
Page 209-234 Section 120-133 Lines _____
Of the Engrossed Bill

By deleting Sections 120-133 from the bill and inserting in lieu thereof
new Sections 120-129 to read as follows:

SEE ATTACHED

And renumbering subsequent sections.

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Lewis Moore

Adopted: _____

Reading Clerk

1 "SECTION 120. NEW LAW A new section of law to be
2 codified in the Oklahoma Statutes as Section 200 of Title 85A,
3 unless there is created a duplication in numbering, reads as
4 follows:

5 Sections 120 through 129 of this act shall be known and may be
6 cited as the "Oklahoma Employee Injury Benefit Act".

7 SECTION 121. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 201 of Title 85A, unless there
9 is created a duplication in numbering, reads as follows:

10 A. As used in the Oklahoma Employee Injury Benefit Act:

11 1. "Benefit plan" means a plan established by a qualified
12 employer under the requirements of Section 123 of this act;

13 2. "Commission" means the Workers' Compensation Commission
14 under the Administrative Workers' Compensation Act;

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

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

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

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1 6. "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 7. "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 8. "Qualified employer" means an employer otherwise subject to
11 the Administrative Workers' Compensation Act that voluntarily elects
12 to be exempt from such Act by satisfying the requirements under this
13 act; and

14 9. "Surviving spouse" means a spouse who was married to the
15 deceased covered employee at the time of the employee's death.

16 B. Unless otherwise defined in this section, defined terms in
17 the Administrative Workers' Compensation Act shall have the same
18 meaning in this act.

19 SECTION 122. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 202 of Title 85A, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Any employer may voluntarily elect to be exempt from the
23 Administrative Workers' Compensation Act and become a qualified
24 employer if the employer:

1 1. Has a net worth of Five Million Dollars (\$5,000,000.00) or
2 more for its last preceding fiscal year based upon unqualified
3 audited financial statements prepared using generally accepted
4 accounting principles. Such financial statement shall be filed with
5 the Insurance Commissioner annually not later than May 15 of each
6 year;

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

9 3. Has established a written benefit plan as described in
10 Section 123 of this act.

11 B. An employer that has elected to become a qualified employer
12 by satisfying the requirements of this section shall notify the
13 Commissioner in writing of the election and the date that the
14 election is to become effective, which may not be sooner than the
15 date that the qualified employer satisfies the employee notice
16 requirements in this section. Such qualified employer shall pay to
17 the Commissioner an annual nonrefundable fee of One Thousand Five
18 Hundred Dollars (\$1,500.00) on the date of filing written notice and
19 every year thereafter which shall be deposited in the Workers'
20 Compensation Fund.

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

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

10 D. The Commissioner shall promulgate rules and procedures
11 related to insurance, bonding, and other security approved under
12 Section 124 of this act to support payment of the benefits described
13 in subsection B of Section 123 of this act.

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

18 F. The Commissioner shall prescribe rules and forms to be used
19 for the qualified-employer notification and shall require the
20 qualified employer to provide its name, address, contact person and
21 phone number, federal tax identification number, number of persons
22 employed in this state as of a specified date, claim administration
23 contact information, and a listing of all covered business locations
24 in the state. The Commissioner shall notify the Commissioner of

1 Labor of all qualified-employer notifications. The Department of
2 Labor shall provide such notifications to other governmental
3 agencies as it deems necessary.

4 G. The Commissioner may contract with the Oklahoma Employment
5 Security Commission, the State Treasurer or the Department of Labor
6 for assistance in collecting the notification required under this
7 section or otherwise fulfilling the Commissioner's responsibilities
8 under this act. Such agencies shall cooperate with the Commissioner
9 in enforcing the provisions of this section.

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

14 I. 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. The
17 qualified employer shall post the employee notification required by
18 this section at conspicuous locations at the qualified employer's
19 places of business as necessary to provide reasonable notice to all
20 employees. The Commissioner may adopt rules relating to the form,
21 content, and method of delivery of the employee notification
22 required by this section.

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1 SECTION 123. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 203 of Title 85A, 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 meets the approval
6 of the Insurance Commissioner and otherwise complies with the
7 requirements of this section. Qualified-employer status is optional
8 for eligible employers. The benefit plan shall not become effective
9 until the date that the qualified employer first satisfies the
10 notice requirements in Section 122 of this act.

11 B. The benefit plan shall provide for payment of medical,
12 disability, permanent bodily impairment, death and dismemberment
13 benefits as a result of an occupational injury, in amounts equal to
14 the amounts provided under the Administrative Workers' Compensation
15 Act and, in no event, shall such amounts be less than the following:

16 1. One hundred percent (100%) of occupational injury medical
17 expenses, with no other maximum dollar or duration limits for all
18 medical expenses combined per occurrence. Medical necessity must be
19 directly related to the occupational injury and confirmed by
20 objective medical evidence. In no event shall an employee be
21 charged any premium, co-pay or deductible under this act;

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

1 pay, less other related post-injury income, starting from the first
2 scheduled working day of disability, for one hundred fifty-six (156)
3 weeks, with a maximum weekly benefit of one hundred percent (100%)
4 of the Oklahoma state average weekly wage;

5 3. For permanent inability to work as a result of the
6 occupational injury in the employee's previously held position, any
7 occupation and any alternative work offered by the employer and
8 following payment of all temporary wage replacement under paragraph
9 2 of this subsection, eighty percent (80%) of the covered employee's
10 pre-injury pay, less other related post-injury income, until the
11 later of eligibility for one hundred percent (100%) Social Security
12 Disability or fifteen (15) years, with a maximum weekly benefit of
13 one hundred percent (100%) of the Oklahoma state average weekly
14 wage, and vocational rehabilitation services provided by a
15 technology center school, a public or private vocational skills
16 center or public secondary school offering vocational-technical
17 education courses, or a member institution of The Oklahoma State
18 System of Higher Education, which shall include retraining and job
19 placement so as to restore the employee to gainful employment.
20 Vocational rehabilitation services or training shall not extend for
21 a period of more than fifty-two (52) weeks;

22 4. Following payment of temporary wage replacement under
23 paragraph 2 of this subsection, eighty percent (80%) of the covered
24 employee's pre-injury pay for five (5) weeks for each percentage

point of whole person impairment determined under the Fourth Edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" for objective loss of function or impairment, with a minimum weekly benefit of One Hundred Fifty Dollars (\$150.00) and a maximum weekly benefit of fifty percent (50%) of the Oklahoma state average weekly wage; provided, however, that the number of weeks for certain scheduled injuries shall be subject to the following minimum number of weeks for complete loss or loss of use:

Scheduled Member	Weeks
Arm or Leg	275
Hand or Foot	220
Thumb	66
First Finger	39
Second Finger	33
Third Finger	22
Fourth Finger	17
Great Toe	33
Other Toes	11
One Ear	110
Two Ears	330
Eye	275

A partial loss or loss of use of such a scheduled member of the body may result in payment for the number of weeks which the percentage of loss bears to the above number of weeks. Payments

1 need not be made for both loss of fingers and loss of the same hand,
2 or for loss of toes and loss of the same foot. All above impairment
3 income benefits combined shall not exceed one hundred percent (100%)
4 whole person impairment or five hundred (500) weeks; and

5 5. Death benefits to the surviving spouse and minor children of
6 the decedent in the amounts and for the time periods specified or as
7 provided in the Administrative Workers' Compensation Act, including
8 amendments.

9 C. The benefit plan may provide for lump-sum payouts that are
10 actuarially equivalent to expected future payments. The benefit
11 plan may also provide for settlement agreements; provided, however,
12 any settlement agreement by a covered employee shall be voluntary,
13 entered into not earlier than the tenth business day after the date
14 of the initial report of injury, and signed after the covered
15 employee has received a medical evaluation from a nonemergency care
16 doctor, with any waiver of rights being conspicuous and on the face
17 of the agreement. To be conspicuous, the waiver provisions must
18 appear in a type larger than the type contained in the body of the
19 agreement or in contrasting colors. The benefit plan shall pay
20 benefits without regard to whether the covered employee, the
21 qualified employer, or a third party caused the occupational injury.
22 The benefit plan must provide eligibility to participate for and
23 provide the same forms and levels of benefits to all Oklahoma
24 employees of the qualified employer.

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

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

8 SECTION 124. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 204 of Title 85A, unless there
10 is created a duplication in numbering, reads as follows:

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

16 B. Insurance coverage or surety bond obtained by a qualified
17 employer may be provided by a life and health or property and
18 casualty insurer. A qualified employer shall obtain either:

19 1. Insurance coverage in an amount of at least Two Million
20 Dollars (\$2,000,000.00) per occurrence, with sublimits in at least
21 the following amounts:

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

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 maximum weekly benefit of Five Hundred Dollars
5 (\$500.00), and

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

8 2. A bond, letter of credit, or excess insurance determined as
9 follows:

10 a. the Commissioner, pursuant to rules adopted by the
11 Commissioner for an individual self-insured employer,
12 shall require an employer to:

13 (1) secure a surety bond payable to the state, or an
14 irrevocable letter of credit, in an amount no
15 less than One Million Five Hundred Thousand
16 Dollars (\$1,500,000.00) or such additional amount
17 as determined by the Commissioner, or

18 (2) provide proof of excess coverage with such terms
19 and conditions as is commensurate with their
20 ability to pay the benefits required by the
21 provisions of this act.

22 Irrevocable letters of credit required by this
23 subsection shall contain such terms as may be
24 prescribed by the Commissioner and shall be issued for

1 the benefit of the state by a financial institution
2 whose deposits are insured by the Federal Deposit
3 Insurance Corporation.

4 An employer whose permit to self-insure is revoked,
5 denied for renewal or surrendered is not relieved of
6 the obligation for compensation to an employee for a
7 compensable injury that occurred during the period of
8 self-insurance. The security required under this
9 section, including any interest thereon, shall be
10 maintained by the Commissioner as provided in this act
11 until each claim for benefits is paid, settled, or
12 lapses under this act, and costs of administration of
13 such claims are paid,

14 b. any bond shall be filed and held by the Commissioner
15 and shall be for the exclusive benefit of any covered
16 employee of a qualified employer, and

17 c. any security held by the Commissioner may be used to
18 make a payment to or on behalf of a covered employee
19 provided the following requirements are met:

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

23 (2) the covered employee's claim for payment of a
24 specific medical or wage replacement benefit

1 amount has been accepted by the plan
2 administrator of the benefit plan or acknowledged
3 in a final judgment or court order assessing a
4 specific dollar figure for benefits payable under
5 the benefit plan,

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

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

17 3. Any other security as may be approved by the Commissioner
18 but having a commercially verifiable value of not less than One
19 Million Five Hundred Thousand Dollars (\$1,500,000.00).

20 C. An employer who does not fulfill the requirements of this
21 section is not relieved of the obligation for compensation to a
22 covered employee. The security required under this section,
23 including any interest thereon, shall be maintained by the
24 Commissioner as provided in this act until each claim for benefits

1 is paid, settled, or lapses under this act, and costs of
2 administration of such claims are paid;

3 D. The Commissioner shall promulgate rules to carry out the
4 provisions of this section including those establishing the
5 procedure by which a covered employee may request and receive
6 payment from the security held by the Commissioner.

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

9 SECTION 125. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 205 of Title 85A, unless there
11 is created a duplication in numbering, reads as follows:

12 The exclusive remedy protection provided by Section 5 of this
13 act shall not apply to a qualified employer, except as otherwise
14 expressly provided therein.

15 SECTION 126. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 206 of Title 85A, unless there
17 is created a duplication in numbering, reads as follows:

18 A. An employee of a qualified employer, or his or her legal
19 beneficiary, retains his common law or statutory right of action to
20 recover from a qualified employer and the qualified employer's
21 agents, employees, and contractors, damages for personal injury or
22 death sustained in the course and scope of employment, unless he
23 notifies the qualified employer in a writing meeting the
24 requirements of subsection E of Section 131 of this act, within

1 twenty (20) business days after the date on which the employee
2 sustained personal injury or death in the course and scope of
3 employment that he waives such right.

4 B. A qualified employer may not condition employment upon a
5 waiver of an employee's common law or statutory right of action to
6 recover damages for personal injury or death sustained in the course
7 and scope of employment. Any agreement or arrangement of any kind
8 by an employee of a qualified employer that purports to waive the
9 employee's common law or statutory right of action before the
10 employee's injury or death is void and unenforceable.

11 SECTION 127. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 207 of Title 85A, unless there
13 is created a duplication in numbering, reads as follows:

14 A. In an action against a qualified employer by or on behalf of
15 an employee of the qualified employer to recover damages for
16 personal injury or death sustained in the course and scope of
17 employment, it is not a defense that:

18 1. The employee was guilty of contributory negligence;
19 2. The employee assumed the risk of injury or death; or
20 3. The injury or death was caused by the negligence of a fellow
21 employee.

22 B. This section does not reinstate or otherwise affect the
23 availability of defenses at common law, including the defenses
24 described by subsection A of this section.

1 C. The qualified employer may defend the action on the ground
2 that the injury was caused:

3 1. By an act of the employee intended to bring about the
4 injury; or

5 2. While the employee was in a state of intoxication.

6 D. In an action described by subsection A of this section, the
7 plaintiff must prove negligence of the qualified employer or of an
8 agent or servant of the qualified employer acting within the general
9 scope of the agent's or servant's employment.

10 E. A cause of action described by subsection A of this section
11 may not be waived by an employee after the employee's injury or
12 death unless:

13 1. The employee or his or her legal beneficiary voluntarily
14 enters into the waiver with knowledge of the waiver's effect;

15 2. The waiver is entered into within twenty (20) business days
16 after the date of the injury or death;

17 3. The employee, before signing the waiver, has received a
18 medical evaluation from a nonemergency care doctor; and

19 4. The waiver is in a writing under which the true intent of
20 the parties is specifically stated in the document.

21 F. The waiver provisions required under subsection E of this
22 section must be conspicuous and appear on the face of the agreement.
23 To be conspicuous, the waiver provisions must appear in a type
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1 larger than the type contained in the body of the agreement or in
2 contrasting colors.

3 SECTION 128. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 208 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 This act shall be liberally construed to give the fullest effect
7 of its provisions. Any conflict between this act and any other law
8 shall be resolved in favor of the operation of this act.

9 SECTION 129. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 209 of Title 85A, unless there
11 is created a duplication in numbering, reads as follows:

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

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