

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2205 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Jon Echols

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 2205

By: Echols

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending Section 29, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 29), which relates to certain fees; clarifying that fees are annual fees; amending Section 65, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 65), which relates to occupational diseases; expanding scope of compensation; amending Sections 96, 97 and 98, Chapter 208, O.S.L. 2013, as amended by Sections 2, 3 and 4, Chapter 169, O.S.L. 2014 (85A O.S. Supp. 2014, Sections 96, 97 and 98), which relate to the Self-insurance Guaranty Fund; expanding the scope of the fund; providing for transfer of certain monies to the fund; amending Sections 110, 111, 112, 118 and 119, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Sections 203, 204, 205, 211 and 212), which relate to the Oklahoma Employee Injury Benefit Act; clarifying statutory citations; providing that certain members of a controlled group may apply for approval as a single qualified employer; providing procedure and requirements; providing for fees; providing for security; providing for promulgation of rules for the application process; providing that certain information shall not be made public; providing exceptions; providing for coverage of employees employed outside the state on temporary assignment; providing for employees employed out of state and injured in this state; modifying insurance carriers from which an employer may obtain insurance; modifying length of time security must be maintained; requiring the approval of the Insurance Commissioner

1 for release of deposited security; providing for the
2 administration of deposited security; providing for
3 application of the Oklahoma Life and Health Guaranty
4 Act, the Oklahoma Property and Casualty Guaranty Act
5 and the Self-insurance Guaranty Fund; authorizing the
6 release of deposited security to the Self-insurance
7 Guaranty Fund; expanding scope of certain rules to be
8 promulgated by the Insurance Commissioner; providing
9 that certain information is confidential; providing
10 that certain provisions of the Administrative
11 Workers' Compensation Act are not applicable to the
12 Oklahoma Employee Injury Benefit Act; modifying
13 procedure for review on appeal of certain decisions;
14 modifying level of scrutiny; repealing Sections 113,
15 114 and 115, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
16 2014, Sections 206, 207 and 208), which relate to the
17 Oklahoma Employee Injury Benefit Act; providing for
18 codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 29, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2014, Section 29), is amended to read as
follows:

Section 29. A. Each carrier writing compensation insurance in
this state shall pay to the Commission at the time of securing or
renewing a license to transact business in this state an annual fee
of One Thousand Dollars (\$1,000.00) for the privilege of qualifying
with the Commission for the writing of compensation insurance.

B. Each self-insurer shall pay to the Commission an annual fee
of One Thousand Dollars (\$1,000.00) at the time it is approved to
self-insure the obligations under ~~this act~~ the Administrative
Workers' Compensation Act.

1 C. The Commission may assess third-party administrators an
2 annual fee of One Thousand Dollars (\$1,000.00).

3 D. Fees required pursuant to this section shall be deposited
4 into the Workers' Compensation Fund.

5 SECTION 2. AMENDATORY Section 65, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2014, Section 65), is amended to read as
7 follows:

8 Section 65. A. If an employee suffers from an occupational
9 disease as defined in this section and is disabled or dies as a
10 result of the disease, the employee, or, in case of death, his or
11 her dependents, shall be entitled to compensation as if the
12 disability or death were caused by injury arising out of work
13 activities within the scope of employment, except as otherwise
14 provided in this section.

15 B. No compensation shall be payable for an occupational disease
16 if the employee, at the time of entering into the employment of the
17 employer by whom the compensation would otherwise be payable,
18 falsely represented himself or herself in writing as not having
19 previously been disabled, laid off, or compensated in damages or
20 otherwise, because of the disease.

21 C. 1. If an occupational disease is aggravated by any other
22 disease or infirmity, not itself compensable, or if disability or
23 death from any other cause, not itself compensable, is aggravated,
24 prolonged, accelerated, or in any way contributed to by an

1 occupational disease, the compensation payable shall be reduced and
2 limited to the proportion only of the compensation that would be
3 payable if the occupational disease were the major cause of the
4 disability or death as the occupational disease, as a causative
5 factor, bears to all the causes of the disability or death.

6 2. The reduction in compensation is to be effected by reducing
7 the number of weekly or monthly payments or the amounts of the
8 payments, as under the circumstances of the particular case may be
9 for the best interest of the claimant.

10 D. 1. "Occupational disease", as used in this act, unless the
11 context otherwise requires, means any disease that results in
12 disability or death and arises out of and in the course of the
13 occupation or employment of the employee or naturally follows or
14 unavoidably results from an injury as that term is defined in this
15 act. A causal connection between the occupation or employment and
16 the occupational disease shall be established by a preponderance of
17 the evidence.

18 2. No compensation shall be payable for any contagious or
19 infectious disease unless contracted in the course and scope of
20 employment ~~in or immediately connected with a hospital or sanatorium~~
21 ~~in which persons suffering from that disease are cared for or~~
22 ~~treated.~~

23 3. No compensation shall be payable for any ordinary disease of
24 life to which the general public is exposed.

1 E. 1. When compensation is payable for an occupational
2 disease, the employer in whose employment the employee was last
3 injuriously exposed to the hazards of the disease and the carrier,
4 if any, on the risk when the employee was last injuriously exposed
5 under the employer shall be liable.

6 2. The amount of the compensation shall be based on the average
7 weekly wage of the employee when last injuriously exposed under the
8 employer, and the notice of injury and claim for compensation shall
9 be given and made to that employer.

10 F. 1. An employer shall not be liable for any compensation for
11 an occupational disease unless:

12 a. the disease is due to the nature of an employment in
13 which the hazards of the disease actually exist and
14 are characteristic thereof and peculiar to the trade,
15 occupation, process, or employment and is actually
16 incurred in the course and scope of his or her
17 employment. This includes any disease due to or
18 attributable to exposure to or contact with any
19 radioactive material by an employee in the course and
20 scope of his or her employment,

21 b. disablement or death results within three (3) years in
22 case of silicosis or asbestosis, or one (1) year in
23 case of any other occupational disease, except a
24 diseased condition caused by exposure to X-rays,

1 radioactive substances, or ionizing radiation, after
2 the last injurious exposure to the disease in the
3 employment, or

4 c. in case of death, death follows continuous disability
5 from the disease, commencing within the period, for
6 which compensation has been paid or awarded or timely
7 claim made as provided in subparagraph b of this
8 paragraph and results within seven (7) years after the
9 last exposure.

10 2. However, in case of a diseased condition caused by exposure
11 to X-rays, radioactive substances, or ionizing radiation only, the
12 limitations expressed do not apply.

13 SECTION 3. AMENDATORY Section 96, Chapter 208, O.S.L.
14 2013, as amended by Section 2, Chapter 169, O.S.L. 2014 (85A O.S.
15 Supp. 2014, Section 96), is amended to read as follows:

16 Section 96. A. The Self-insurance Guaranty Fund shall be
17 administered, supervised and protected by the Self-insurance
18 Guaranty Fund Board. All self-insurers under the Administrative
19 Workers' Compensation Act and all self-insured qualified employers
20 under the Oklahoma Employee Injury Benefit Act shall participate in
21 the fund as a condition of authority to self-insure in this state,
22 except public employers that self-insure pursuant to Section 107 of
23 this title.
24

1 B. 1. The Self-insurance Guaranty Fund Board shall consist of
2 five (5) members to be appointed as follows:

3 a. the Governor shall appoint two members, one of whom
4 shall represent an approved group self-insurance
5 association authorized to self-insure pursuant to
6 Section 38 or Section 102 of this title,

7 b. the President Pro Tempore of the Senate shall appoint
8 one member who shall be an attorney licensed in this
9 state who is engaged in the primary practice of
10 workers' compensation law,

11 c. the Speaker of the House of Representatives shall
12 appoint one member who represents a private self-
13 insurer, and

14 d. the Chair of the Oklahoma Workers' Compensation
15 Commission shall appoint one member who shall be a
16 licensed claims adjuster affiliated with either a
17 private self-insurer or an approved group self-
18 insurance association.

19 2. Members of the Workers' Compensation Self-insurance Guaranty
20 Fund Board serving on January 31, 2014, shall constitute the initial
21 appointees to the Self-insurance Guaranty Fund Board created
22 pursuant to this section, with terms extended an additional two (2)
23 years beyond their original, respective expiration dates.
24

1 3. In the event of a vacancy, the appointing authority for the
2 position shall appoint a qualified successor to serve as the
3 appointee for the unexpired term of the member so replaced. The
4 term of office for the appointees shall be as follows:

5 a. the term of office for three positions, one each
6 appointed by the Governor, President Pro Tempore of
7 the Senate and Speaker of the House of
8 Representatives, shall expire on November 1, 2016, and

9 b. the term of office for two positions, one each
10 appointed by the Governor and the Chair of the
11 Commission, shall expire on November 1, 2015.

12 Thereafter, successor members shall be appointed for a three-
13 year term. Members may serve successive terms. Any person
14 appointed to fill a vacancy shall be appointed for the unexpired
15 portion of the term in the same manner as the original appointment.

16 4. The chair and vice-chair of the Board shall be elected by
17 the Board from among its members.

18 5. Members of the Board shall not receive compensation for
19 serving on the Board but shall be reimbursed from monies in the fund
20 for their necessary travel expenses incurred in the performance of
21 their duties in accordance with the State Travel Reimbursement Act.

22 C. Meetings of the Board shall be held at least quarterly. The
23 presence of a majority of the members constitutes a quorum. No
24

1 action shall be taken by the Board without the affirmative vote of
2 at least a majority of the members.

3 D. The Office of the Attorney General shall provide legal
4 counsel to assist the Board in the performance of its duties.

5 E. No member or personnel of the Self-insurance Guaranty Fund
6 Board, the Workers' Compensation commissioners or any employee of
7 the Workers' Compensation Commission shall be liable in a civil
8 proceeding for any act performed in good faith in the execution of
9 that person's powers or duties pursuant to Sections 96 through 100
10 of ~~the Administrative Workers' Compensation Act~~ this title.

11 SECTION 4. AMENDATORY Section 97, Chapter 208, O.S.L.
12 2013, as amended by Section 3, Chapter 169, O.S.L. 2014 (85A O.S.
13 Supp. 2014, Section 97), is amended to read as follows:

14 Section 97. The Self-insurance Guaranty Fund shall be for the
15 purpose of continuation of workers' compensation benefits or
16 compensation pursuant to a written benefit plan as provided in
17 Section 203 of this title due and unpaid or interrupted due to the
18 inability of a self-insurer to meet its compensation obligations
19 because its financial resources, security deposit, guaranty
20 agreements, surety agreements and excess insurance are either
21 inadequate or not immediately accessible for the payment of
22 benefits. Monies in the fund, including interest, are ~~not subject~~
23 ~~to appropriation~~ hereby appropriated, but shall not be transferred
24 by the Legislature from this fund to any other fund in the State

1 Treasury, and shall be expended to compensate employees for eligible
2 benefits for a compensable injury under the Administrative Workers'
3 Compensation Act or the Oklahoma Employee Injury Benefit Act, pay
4 outstanding workers' compensation or benefit plan obligations of the
5 impaired self-insurer, and for all claims for related administrative
6 fees, operating costs of the Self-insurance Guaranty Fund Board,
7 attorney fees, and other costs reasonably incurred by the Board in
8 the performance of its duties. Expenditures from the fund shall be
9 made on warrants issued by the State Treasurer against claims as
10 prescribed by law. The fund shall be subject to audit in the same
11 manner as state funds and accounts, the cost for which shall be paid
12 for from the fund.

13 SECTION 5. AMENDATORY Section 98, Chapter 208, O.S.L.
14 2013, as amended by Section 4, Chapter 169, O.S.L. 2014 (85A O.S.
15 Supp. 2014, Section 98), is amended to read as follows:

16 Section 98. The Self-insurance Guaranty Fund shall be derived
17 from the following sources:

18 1. Any unexpended funds, including interest thereon, held by
19 the State Treasurer in the Workers' Compensation Self-insurance
20 Guaranty Fund transferred to the Self-insurance Guaranty Fund as
21 provided in Section 124 of this title;

22 2. ~~Until the Self-insurance Guaranty Fund contains Two Million~~
23 ~~Dollars (\$2,000,000.00) or in~~ Any unexpended funds, including
24 interest thereon, held by the State Treasurer in the Oklahoma Option

1 Insured Guaranty Fund and the Oklahoma Option Self-insured Guaranty
2 Fund transferred to the Self-insurance Guaranty Fund as provided in
3 Section 205 of this title;

4 3. In the event the amount in the fund falls below One Million
5 Dollars (\$1,000,000.00), an assessment levied against each private
6 self-insurer and group self-insurance association based on an
7 assessment rate to be determined by the commissioners, not exceeding
8 one percent (1%) of actual paid losses of the self-insurer during
9 the preceding calendar year, payable to the Tax Commission for
10 deposit to the fund. The assessment levied against private self-
11 insurers shall be determined using a rate equal to the proportion
12 that the deficiency in the fund attributable to private self-
13 insurers bears to the actual paid losses of all private self-
14 insurers for the year period of January 1 through December 31
15 preceding the assessment. The assessment levied against group self-
16 insurance associations shall be determined using a rate equal to the
17 proportion that the deficiency in excess of the surplus of the Group
18 Self-insurance Association Guaranty Fund at the date of the transfer
19 attributable to group self-insurance associations bears to the
20 actual paid losses of all group self-insurance associations
21 cumulatively for any calendar year preceding the assessment. Each
22 self-insurer shall provide the Workers' Compensation Commission with
23 such information as the Commission may determine is necessary to
24 effectuate the purposes of this paragraph. For purposes of this

1 paragraph, "actual paid losses" means all medical and indemnity
2 payments, including temporary disability, permanent disability, and
3 death benefits, and excluding loss adjustment expenses and reserves.

4 a. The assessment shall be paid within thirty (30)
5 calendar days after the date the commissioners notify
6 the self-insurer of the assessment.

7 b. A private employer or group self-insurance association
8 which ceases to be a self-insurer shall remain liable
9 for any and all assessments of the self-insurer as
10 provided in this paragraph based on actual paid losses
11 for the calendar year period preceding the assessment.

12 c. Failure of a self-insurer to pay, or timely pay, an
13 assessment required by this paragraph, or to report
14 payment of the same to the Commission within ten (10)
15 days of payment, shall be grounds for revocation by
16 the Commission of the self-insurer's permit to self-
17 insure in this state, after notice and hearing. A
18 former self-insurer failing to make payments required
19 by this paragraph promptly and correctly, or failing
20 to report payment of the same to the Commission within
21 ten (10) days of payment, shall be subject to
22 administrative penalties as allowed by law, including
23 but not limited to, a fine in the amount of Five
24 Hundred Dollars (\$500.00) or an amount equal to one

1 percent (1%) of the unpaid amount, whichever is
2 greater, to be paid and deposited to the credit of the
3 Workers' Compensation Fund created in Section 28 of
4 this title. It shall be the duty of the Tax
5 Commission to collect the assessment provided for in
6 this paragraph. The Tax Commission is authorized to
7 bring an action for recovery of any delinquent or
8 unpaid assessments, and may enforce payment of the
9 assessment by proceeding in accordance with Section 79
10 of this title.

- 11 d. An impaired self-insurer shall be exempt from
12 assessments beginning on the date of the Commission's
13 designation until the Commission determines the self-
14 insurer is no longer impaired.
- 15 e. The Tax Commission shall determine the fund balance as
16 of March 1 and September 1 of each year, and when
17 otherwise requested by the Workers' Compensation
18 Commission, and shall advise the Workers' Compensation
19 Commission in writing within thirty (30) days of each
20 such determination; and

21 3. Any interest accruing on monies paid into the fund.

22 SECTION 6. AMENDATORY Section 110, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2014, Section 203), is amended to read as
24 follows:

1 Section 203. A. An employer voluntarily electing to become a
2 qualified employer shall adopt a written benefit plan that complies
3 with the requirements of this section. Qualified-employer status is
4 optional for eligible employers. The benefit plan shall not become
5 effective until the date that the qualified employer first satisfies
6 the approval and notice requirements in this section and Section ~~109~~
7 202 of this ~~act~~ title.

8 B. The benefit plan shall provide for payment of the same ~~forms~~
9 types of benefits included in the Administrative Workers'
10 Compensation Act for temporary total disability, temporary partial
11 disability, permanent partial disability, vocational rehabilitation,
12 permanent total disability, disfigurement, amputation or permanent
13 total loss of use of a scheduled member, death and medical benefits
14 as a result of an occupational injury, on a no-fault basis, ~~with the~~
15 ~~same statute of limitations,~~ and with dollar, percentage, and
16 duration limits that are at least equal to or greater than the
17 dollar, percentage, and duration limits contained in Sections 45, 46
18 and 47 of this ~~act~~ title. For this purpose, the ~~standards for~~
19 ~~determination~~ definitions of average weekly wage, death
20 beneficiaries, and disability under the Administrative Workers'
21 Compensation Act shall apply under the Oklahoma Employee Injury
22 Benefit Act; but no other provision of the Administrative Workers'
23 Compensation Act defining covered injuries, medical management,
24 dispute resolution or other process, funding, notices or penalties

1 shall apply or otherwise be controlling under the Oklahoma Employee
2 Injury Benefit Act, unless expressly incorporated.

3 C. The benefit plan may provide for lump-sum payouts that are,
4 as reasonably determined by the administrator of such plan appointed
5 by the qualified employer, actuarially equivalent to expected future
6 payments. The benefit plan may also provide for settlement
7 agreements; provided, however, any settlement agreement by a covered
8 employee shall be voluntary, entered into not earlier than the tenth
9 business day after the date of the initial report of injury, and
10 signed after the covered employee has received a medical evaluation
11 from a nonemergency care doctor, with any waiver of rights being
12 conspicuous and on the face of the agreement. The benefit plan
13 shall pay benefits without regard to whether the covered employee,
14 the qualified employer, or a third party caused the occupational
15 injury; and provided further, that the benefit plan shall provide
16 eligibility to participate in and provide the same forms and levels
17 of benefits to all Oklahoma employees of the qualified employer.
18 The Except as otherwise provided in the Oklahoma Employee Injury
19 Benefit Act, the Administrative Workers' Compensation Act shall not
20 define, restrict, expand or otherwise apply to a benefit plan.

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

23 E. The qualified employer shall provide to the Commissioner and
24 covered employees notice of the name, title, address, and telephone

1 number for the person to contact for injury benefit claims
2 administration, whether in-house at the qualified employer, with an
3 insurer, or a third-party administrator.

4 F. Information submitted to the Commissioner as part of the
5 application for approval as a qualified employer, to confirm
6 eligibility for continuing status as a qualified employer, or as
7 otherwise required by the Oklahoma Employee Injury Benefit Act may
8 not be made public by the Commissioner or by an agent or employee of
9 the Commissioner without the written consent of the applicant,
10 except that:

11 1. The information may be discoverable by a party in a civil
12 action or contested case to which the employer that submitted the
13 information is a party, upon a showing by the party seeking to
14 discover the information that:

- 15 a. the information sought is relevant to and necessary
16 for the furtherance of the action or case,
- 17 b. the information sought is unavailable for other
18 nonconfidential sources, and
- 19 c. a subpoena issued by a judicial or administrative
20 officer of competent jurisdiction has been submitted
21 to the Commissioners; and

22 2. The Commissioner may disclose the information to a public
23 officer having jurisdiction over the regulation of insurance in
24 another state if:

- a. the public officer agrees in writing to maintain the confidentiality of the information, and
- b. the laws of the state in which the public officer serves require the information to be kept confidential.

G. In addition to satisfying the notice and benefit plan requirements of the Oklahoma Employee Injury Benefit Act, no employer may be a qualified employer until approved by the Commissioner. The Commissioner shall promulgate rules to carry out the provisions of this section including those establishing the procedure and the information to be submitted by a qualified employer in an application for approval as a qualified employer.

H. A qualified employer's insurance coverage pertains to Oklahoma covered employees only, and employers with employees working in states other than Oklahoma shall arrange separate insurance coverage in compliance with such states' laws; provided:

1. A qualified employer's benefit plan and insurance coverage may apply to an employee who is employed outside Oklahoma on temporary assignment;

2. A qualified employer's insurance policy may include an endorsement that provides coverage for employees working in states other than Oklahoma in compliance with such states' laws; and

3. For an employee who is not principally employed in Oklahoma, but is injured in Oklahoma:

- a. if the employer carries workers' compensation coverage or coverage pursuant to the Oklahoma Employee Injury Benefit Act in Oklahoma, that coverage applies, and
- b. if the employer does not carry workers' compensation coverage or coverage pursuant to the Oklahoma Employee Injury Benefit Act in Oklahoma, workers' compensation benefits apply.

I. Two or more employers who are members of a controlled group may apply to the Insurance Commissioner for approval as a single qualified employer and be listed on a single qualified employer certificate. Such qualified employers shall pay the Commissioner the fee specified in subsection B of Section 202 of this title; provided, however, in the case of a self-insured controlled group the fee required by subsection B of Section 202 of this title is applicable to the first member of a controlled group and a fee of Two Hundred Fifty Dollars (\$250.00) for each additional participating member of the controlled group is due on the date of filing written notice of election and every year thereafter.

SECTION 7. AMENDATORY Section 111, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 204), is amended to read as follows:

Section 204. A. A qualified employer may self-fund or insure benefits payable under the benefit plan, employers' liability under ~~this act~~ the Oklahoma Employee Injury Benefit Act, and any other

1 insurable risk related to its status as a qualified employer ~~with~~
2 ~~any insurance carrier authorized to do business in this state.~~

3 B. Insurance coverage or surety bond obtained by a qualified
4 employer shall be from ~~an admitted~~ either a licensed insurer or a
5 surplus lines insurer with an AM Best Rating of B+ or better. The
6 Insurance Department has no duty to approve insurance rates charged
7 for this coverage. A qualified employer shall secure compensation
8 to covered employees in one of the following ways:

9 1. Obtaining ~~accidental~~ insurance coverage in an amount equal
10 to the compensation obligation;

11 2. Furnishing satisfactory proof to the Commissioner of the
12 employer's financial ability to pay the compensation. The
13 Commissioner, under rules adopted by ~~the Insurance Department or the~~
14 Commissioner for an individual self-insured employer, shall require
15 an employer that has:

16 a. less than one hundred employees or less than One
17 Million Dollars (\$1,000,000.00) in net assets to:

18 (1) deposit with the Commissioner securities, an
19 irrevocable letter of credit or a surety bond
20 payable to the state, in an amount determined by
21 the Commissioner which shall be at least an
22 average of the yearly claims for the last three
23 (3) years, or
24

1 (2) provide proof of excess coverage with such terms
2 and conditions as is commensurate with their
3 ability to pay the benefits required by the
4 provisions of ~~this act~~ the Oklahoma Employee
5 Injury Benefit Act,

6 b. one hundred or more employees and One Million Dollars
7 (\$1,000,000.00) or more in net assets to:

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

13 (2) provide proof of excess coverage with such terms
14 and conditions as is commensurate with their
15 ability to pay the benefits required by the
16 provisions of ~~this act~~ the Oklahoma Employee
17 Injury Benefit Act; or

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

19 C. The Commissioner may waive the requirements of this section
20 in an amount which is commensurate with the ability of the employer
21 to pay the benefits required by the provisions of ~~this act~~ the
22 Oklahoma Employee Injury Benefit Act. Irrevocable letters of credit
23 required by this section shall contain such terms as may be
24 prescribed by the Commissioner and shall be issued for the benefit

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

3 D. An employer who does not fulfill the requirements of this
4 section is not relieved of the obligation for compensation to a
5 covered employee. The security required under this section,
6 including any interest thereon, shall be maintained by the
7 Commissioner as provided in ~~this act~~ the Oklahoma Employee Injury
8 Benefit Act until ~~each~~:

9 1. Each claim for benefits is paid, settled, or lapses under
10 ~~this act~~ pursuant to the Oklahoma Employee Injury Benefit Act, and
11 costs of administration of such claims are paid; or

12 2. The Commissioner has determined that the self-insured
13 qualified employer is impaired, advised the Self-insurance Guaranty
14 Fund Board of the impairment, and released the balance of any
15 security required by this section to the Self-insurance Guaranty
16 Fund. Claims administration, including processing, investigating,
17 and paying valid claims against an impaired self-insured qualified
18 employer's benefit plan under the Oklahoma Employee Injury Benefit
19 Act may include claim upon the surety that issued any bond, a draw
20 upon the bank that issued any letter of credit, or liquidation or
21 other security.

22 E. ~~Any bond~~ Except as otherwise provided in this section, any
23 security shall be ~~filed~~ deposited with and held by the Commissioner
24 and shall be for the exclusive benefit of any covered employee of a

1 qualified employer. Any security deposited by a qualified employer,
2 as required by this subsection, shall not be released without the
3 signature of the Commissioner. Administration of deposited security
4 shall be subject to the provisions of Article 17 of Title 36 of the
5 Oklahoma Statutes.

6 F. Any security ~~held~~ released by the Commissioner to the Self-
7 insurance Guaranty Fund may be used to make a payment to or on
8 behalf of a covered employee provided the following requirements are
9 met:

10 1. The covered employee sustained an occupational injury that
11 is covered by the qualified employer's benefit plan;

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

17 3. The covered employee is unable to receive payment from the
18 benefit plan or collect on such judgment or court order because the
19 qualified employer has filed for bankruptcy or the benefit plan has
20 become insolvent; and

21 4. The covered employee is listed as an unsecured creditor of
22 the qualified employer because of the acceptance of such claim by
23 the plan administrator of the benefit plan or judgment or court
24

1 order assessing a specific dollar figure for benefits payable under
2 the benefit plan.

3 G. 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~~ to determine
7 whether or not a qualified employer's program is self-insured
8 pursuant to the Oklahoma Employee Injury Benefit Act.

9 H. The benefit plan may provide some level of benefits for
10 sickness, injury or death not due to an occupational injury.

11 I. A qualified employer shall hold harmless any insurance agent
12 or broker who sold the employer a benefits program compliant with
13 the Oklahoma Employee Injury Benefit Act if the qualified employer
14 is sued ~~in district court~~ for an injury arising in the course and
15 scope of employment.

16 J. Except as provided in Section 203 of this title, documents,
17 materials, financial reports, or other information in the possession
18 or control of the Insurance Department that are obtained by or
19 disclosed by the Commissioner or any other person in the course of
20 an evaluation, examination, investigation, or review made pursuant
21 to Section 202, 203 or 204 of this title shall be confidential by
22 law and shall not be subject to discovery or admissible in evidence
23 in any private civil action if obtained from the Commissioner or any
24 employees of the Commissioner.

1 K. The provisions of Section 29 of this title shall not apply
2 to self-insured qualified employers, third-party administrators in
3 the handling of claims pursuant to the Oklahoma Employee Injury
4 Benefit Act in Oklahoma, or to insurance coverage of qualified
5 employers pursuant to the Oklahoma Employee Injury Benefit Act in
6 Oklahoma.

7 L. No provision of the Administrative Workers' Compensation Act
8 pertaining to the Multiple Injury Trust Fund is applicable to
9 qualified employers under the Oklahoma Employee Injury Benefit Act
10 or to insurance coverage of qualified employers under the Oklahoma
11 Employee Injury Benefit Act.

12 SECTION 8. AMENDATORY Section 112, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2014, Section 205), is amended to read as
14 follows:

15 Section 205. A. ~~There are established within the Office of the~~
16 ~~State Treasurer two separate funds:~~

17 1. ~~The Oklahoma Option Insured Guaranty Fund,~~ and
18 2. ~~The the~~ the Oklahoma Option Self-insured Guaranty Fund are
19 hereby abolished.

20 B. ~~The Any monies in the funds established~~ abolished pursuant
21 to subsection A of this section shall be ~~for the purpose of~~
22 ~~continuation of benefits under this act for covered claims that are~~
23 ~~due and unpaid or interrupted due to the inability of the insurer or~~
24 ~~sponsor of a self-insured plan, as applicable, to meet its~~

~~compensation obligations because its financial resources, security deposit, guaranty agreements, surety agreements and excess insurance are either inadequate or not immediately accessible for the payment of benefits. Monies in such funds, including interest, are not subject to appropriation and shall be expended to compensate employees for eligible benefits for a compensable injury under this act, pay outstanding workers' compensation obligations of the impaired insurer, and for all claims for related administrative fees, operating costs, attorney fees, and other costs reasonably incurred by the Oklahoma Property and Casualty Guaranty Association in the performance of its duties under this act. Expenditures from such funds shall be made on warrants issued by the State Treasurer against claims as prescribed by law. Such funds shall be subject to audit the same as state funds and accounts, the cost for which shall be paid for from the funds. A "covered claim" has the meaning given to it pursuant to paragraph 7 of Section 2004 of Title 36 of the Oklahoma Statutes.~~

~~C. The funds established under this section shall be administered, disbursed, and invested under the direction of the Oklahoma Property and Casualty Insurance Guaranty Association established by Section 2005 of Title 36 of the Oklahoma Statutes.~~

~~D. The funds established under this section shall be funded from the following sources:~~

~~1. Insured Guaranty Fund:~~

1 ~~Until the Insured Guaranty Fund contains Two Million Dollars~~
2 ~~(\$2,000,000.00) or if the amount in the fund falls below One Million~~
3 ~~Dollars (\$1,000,000.00), each insurer shall be assessed a fee equal~~
4 ~~to two percent (2%) of all gross direct premiums written during each~~
5 ~~quarter of the calendar year for insurance covering a benefit plan~~
6 ~~under this act after deducting from such gross direct premiums,~~
7 ~~return premiums, unabsorbed portions of any deposit premiums, policy~~
8 ~~dividends, safety refunds, savings and other similar returns paid or~~
9 ~~credited to policyholders. The assessment shall be paid to the~~
10 ~~Insured Guaranty Fund, care of the Commission, no later than the~~
11 ~~fifteenth day of the month following the close of each quarter of~~
12 ~~the calendar year in which the gross direct premium is collected or~~
13 ~~collectible. No insurer may be assessed in any year an amount~~
14 ~~greater than two percent (2%) of the net direct written premiums of~~
15 ~~that insurer or one percent (1%) of that surplus of the insurer as~~
16 ~~regards policyholders for the calendar year preceding the assessment~~
17 ~~on the kinds of insurance in the account, whichever is less; and~~

18 ~~2. Self-insured Guaranty Fund:~~

19 ~~Until the Self-insured Guaranty Fund contains One Million~~
20 ~~Dollars (\$1,000,000.00) or if the amount in the fund falls below~~
21 ~~Seven Hundred Fifty Thousand Dollars (\$750,000.00), each self-~~
22 ~~insurer shall be assessed a fee at the rate of one percent (1%) of~~
23 ~~the total compensation for permanent partial disability awards paid~~
24 ~~out during each quarter of the calendar year by the employers. The~~

~~fee shall be paid to the Self-insured Guaranty Fund, care of the Commission, no later than the fifteenth day of the month following the close of each quarter of the calendar year. The fee shall be determined using a rate equal to the proportion that the deficiency in the fund attributable to self-insurers bears to the actual paid losses of all self-insurers for the preceding calendar year. Each self-insurer shall provide the Commission with the information necessary to determine the amount of the fee to be assessed.~~

~~E. The Guaranty Association shall create a separate account for each fund which may not be commingled with any other account managed by the Guaranty Association.~~

~~F. On determination by the Commission that a self-insurer has become an impaired insurer, the Commission shall release the security required by paragraph 2 of subsection B of Section 111 of this act and advise the Guaranty Association of the impairment. Claims administration, including processing, investigating and paying valid claims against an impaired self-insurer under this act, may include payment by the surety that issued the surety bond or be under a contract between the Commission and an insurance carrier, appropriate state governmental entity or an approved service organization.~~

~~G. The Guaranty Association shall be a party in interest in all proceedings involving any claims for benefits under this act with respect to an impaired insurer and shall have all rights of~~

~~subrogation of the impaired insurer. In those proceedings, the Guaranty Association may assume and exercise all rights and defenses of the impaired insurer, including, but not limited to, the right to:~~

~~1. Appear, defend and appeal claims;~~

~~2. Receive notice of, investigate, adjust, compromise, settle and pay claims; and~~

~~3. Investigate, handle and contest claims.~~

~~H. The Guaranty Association may also:~~

~~1. Retain persons necessary to handle claims and perform other duties of the Guaranty Association;~~

~~2. Sue or be sued;~~

~~3. Negotiate and become a party to such contracts as are necessary to carry out the purposes of this act; and~~

~~4. Exercise any other powers necessary to perform its duties under this act.~~

~~I. No monies deposited to the funds shall be subject to any deduction, tax, levy or any other type of assessment.~~

~~J. An impaired self-insurer shall be exempt from assessments until it is no longer impaired.~~

~~K. Unless provided otherwise in this act, all fines and penalties assessed under this act shall be paid to the Commission for deposit into the funds established in this section in equal amounts transferred to the Self-insurance Guaranty Fund.~~

1 C. Every self-insured qualified employer shall be subject to
2 all provisions of Title 85A of the Oklahoma Statutes establishing
3 and governing the operations of the Self-insurance Guaranty Fund.
4 Assessments paid by self-insured, qualified employers into the Self-
5 insurance Guaranty Fund shall be for the purpose of continuation of
6 benefits under the Oklahoma Employee Injury Benefit Act for covered
7 claims that are due and unpaid or interrupted due to the inability
8 of the insurer or sponsor of a self-insured plan, as applicable, to
9 meet its compensation obligations because its financial resources,
10 security deposit, guaranty agreements, surety agreements and excess
11 insurance are either inadequate or not immediately accessible for
12 the payment of benefits. The Workers' Compensation Commission shall
13 have the authority to promulgate rules to carry out the provisions
14 of this section.

15 SECTION 9. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 206.1 of Title 85A unless there
17 is created a duplication in numbering, reads as follows:

18 A. In the event that the insurer of benefit obligations of an
19 insured qualified employer shall be a member of the Oklahoma
20 Property and Casualty Insurance Guaranty Association, and is
21 determined by a court of competent jurisdiction to be an insolvent
22 insurer pursuant to Articles 18 and 19 of Title 36 of the Oklahoma
23 Statutes and a final order of liquidation is entered, the provisions
24 of Article 20A of Title 36 of the Oklahoma Statutes, the Oklahoma

1 Property and Casualty Insurance Guaranty Association Act, shall
2 become applicable for the purpose of continuation of benefits under
3 the Oklahoma Employee Injury Benefit Act. For purposes of Article
4 20A of Title 36 of the Oklahoma Statutes, all net direct premiums
5 written for insurance covering in whole or in part the benefit
6 obligations of such an insured qualified employer under the Oklahoma
7 Employee Injury Benefit Act shall be deemed to be workers'
8 compensation insurance premiums.

9 B. In the event that the insurer of benefit obligations of an
10 insured employer shall be a member insurer of the Oklahoma Life and
11 Health Insurance Guaranty Association, and is determined by a court
12 of competent jurisdiction to be an insolvent insurer pursuant to
13 Articles 18 and 19 of Title 36 of the Oklahoma Statutes and a final
14 order of liquidation is entered, the provisions of Article 20B of
15 Title 36 of the Oklahoma Statutes, the Oklahoma Life and Health
16 Insurance Guaranty Association Act, shall become applicable for the
17 purpose of continuation of benefits under the Oklahoma Employee
18 Injury Benefit Act. For purposes of Article 20B of Title 36 of the
19 Oklahoma Statutes, all premiums received on business in this state
20 for insurance covering the benefit obligations of such an insured
21 qualified employer under the Oklahoma Employee Injury Benefit Act
22 shall be deemed to be life and health insurance premiums.

23 C. The Commissioner shall have the authority to promulgate
24 rules to carry out the provisions of this section.

1 SECTION 10. AMENDATORY Section 118, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2014, Section 211), is amended to read as
3 follows:

4 Section 211. A. If an employer denies a claimant's claim for
5 benefits under ~~this act~~ the Oklahoma Employee Injury Benefit Act,
6 the employer shall notify him or her in writing of the decision or
7 the need for additional information within fifteen (15) days after
8 receipt of the claim. Unless otherwise provided by law, the adverse
9 benefit determination letter shall contain an explanation of why the
10 claim was denied, including the plan provisions that were the basis
11 for the denial, and a detailed description of how to appeal the
12 determination. Additional claim procedures consistent with this
13 section may be specified in the benefit plan and by the Commission.
14 References in this section to a decision on a claim for benefits by
15 an employer shall include a decision on a claim for benefits by an
16 insurance company or claims administrator on behalf of an employer.

17 B. The benefit plan shall provide the following minimum appeal
18 rights:

19 1. The claimant may appeal in writing an initial adverse
20 benefit determination to a final review officer or an appeals
21 committee within one hundred eighty (180) days following his or her
22 receipt of the adverse benefit determination. The appeal shall be
23 heard by a final review officer or committee consisting of at least
24 three people that were not involved in the original adverse benefit

1 determination. The appeals committee shall not give any deference
2 to the claimant's initial adverse benefit determination in its
3 review;

4 2. The final review officer or committee may request any
5 additional information it deems necessary to make a decision,
6 including having the claimant submit to a medical exam;

7 3. The final review officer or committee shall notify the
8 claimant in writing of its decision, including an explanation of the
9 decision and his or her right to judicial review;

10 4. Subject to the need for a reasonable extension of time due
11 to matters beyond the control of the benefit plan, the final review
12 officer or committee shall review the determination and issue a
13 decision no later than forty-five (45) days from the date the notice
14 of contest is received. No legal action may be brought by or with
15 respect to a claimant to recover benefits under the benefit plan
16 before the foregoing claim procedures have been exhausted;

17 5. If any part of an adverse benefit determination is upheld by
18 the final review officer or committee, the claimant may then file a
19 petition for review with the Commission ~~sitting en banc~~ within one
20 (1) year after the date the claimant receives notice that the
21 adverse benefit determination, or part thereof, was upheld. The
22 Commission ~~en banc~~ shall appoint an administrative law judge to hear
23 any appeal of an adverse benefit determination. The administrative
24 law judge shall not give any deference to the qualified employer's

1 adverse benefit determination. The Commission shall prescribe
2 additional rules governing the authority and responsibility of the
3 parties, the administrative law judge and the Commission during
4 these appeal processes, including, but not limited to, filing fees.
5 The administrative law judge and Commission shall act as the court
6 of competent jurisdiction under Oklahoma Law and 29 U.S.C.A. Section
7 1132(e)(1), and shall possess adjudicative authority to render
8 decisions in individual proceedings by claimants to recover benefits
9 due to the claimant under the terms of the ~~claimant's~~ employer's
10 plan, to enforce the claimant's rights under the terms of the plan,
11 or to clarify the claimant's rights to future benefits under the
12 terms of the plan;

13 6. ~~The Commission shall rely on the record established by the~~
14 ~~internal appeal process and use an objective standard of review that~~
15 ~~is not arbitrary or capricious~~ Any party aggrieved by the judgment,
16 decision, or award made by an administrative law judge may, within
17 ten (10) days of issuance, appeal to the Commission. After hearing
18 arguments the Commission may reverse or modify the decision of the
19 administrative law judge only if it determines that the decision was
20 against the clear weight of the evidence or contrary to law. All
21 such proceedings of the Commission shall be recorded by a court
22 reporter. Any judgment of the Commission which reverses a decision
23 of the administrative law judge shall contain specific findings
24 relating to the reversal. Any award by the administrative law judge

1 or Commission shall be limited to benefits payable under the terms
2 of the benefit plan and, to the extent provided herein, attorney
3 fees and costs; and

4 7. ~~If the claimant appeals to the Commission and any part of~~
5 ~~the adverse benefit determination is upheld, he or she may appeal to~~
6 ~~the Oklahoma Supreme Court~~ The judgment, decision or award of the
7 Commission shall be final and conclusive on all questions within its
8 jurisdiction between the parties unless an action is commenced in
9 the Supreme Court of this state to review the judgment, decision or
10 award within twenty (20) days of being sent to the parties. Any
11 judgment, decision or award made by an administrative law judge
12 shall be stayed until all appeal rights have been waived or
13 exhausted. The Supreme Court may modify, reverse, remand for
14 rehearing, or set aside the judgment or award only if it was:

- 15 a. in violation of constitutional provisions,
 - 16 b. in excess of the statutory authority or jurisdiction
17 of the Commission,
 - 18 c. made on unlawful procedure,
 - 19 d. affected by other error of law,
 - 20 e. clearly erroneous in view of the reliable, material,
21 probative and substantial competent evidence,
 - 22 f. arbitrary or capricious,
 - 23 g. procured by fraud, or
- 24

1 h. missing findings of fact on issues essential to the
2 decision.

3 This action shall be commenced by filing with the Clerk of the
4 Supreme Court a certified copy of the judgment, decision or award of
5 the Commission attached to a petition which shall specify why the
6 judgment, decision or award is ~~contrary to law within twenty (20)~~
7 ~~days of the decision being issued. The Supreme Court may modify,~~
8 ~~reverse, remand for rehearing, or set aside the decision only if the~~
9 ~~decision was contrary to law~~ erroneous or illegal. The proceedings
10 shall be heard in a summary manner and shall have precedence over
11 all other civil cases in the Supreme Court, except preferred
12 Corporation Commission appeals. The Supreme Court shall require the
13 ~~claimant~~ appealing party to file within forty-five (45) days from
14 the date of the filing of an appeal, or a judgment appealed from, a
15 transcript of the record of the proceedings before the Commission,
16 or such later time as may be granted by the Supreme Court on
17 application and for good cause shown. The action shall be subject
18 to the law and practice applicable to comparable civil actions
19 cognizable in the Supreme Court.

20 C. If any of the provisions in paragraphs 5 through 7 of
21 subsection B of this section are determined to be unconstitutional
22 or otherwise unenforceable by the final nonappealable ruling of a
23 court of competent jurisdiction, then the following minimal appeal
24 procedures will go into effect:

1 1. The appeal shall be heard by a final review officer or
2 committee consisting of at least three people ~~that were not.~~ No
3 final review officer or member of such committee shall be involved
4 in the original adverse benefit determination or be an employee of
5 the employer sponsoring the benefit plan. The final review officer
6 or appeals committee shall not give any deference to the claimant's
7 initial adverse benefit determination in its review;

8 2. ~~The~~ A final review officer or the committee may request any
9 additional information it deems necessary to make a decision,
10 including having the claimant submit to a medical exam;

11 3. ~~The~~ A final review officer or the committee shall notify the
12 claimant in writing of its decision, including an explanation of the
13 decision and his or her right to judicial review;

14 4. ~~The~~ A final review officer or the committee shall review the
15 determination and issue a decision no later than forty-five (45)
16 days from the date the notice of contest is received;

17 5. If any part of an adverse benefit determination is upheld by
18 a final review officer or the committee, the claimant may then file
19 a petition for review in a proper state district court; and

20 6. The district court shall ~~rely on the record established by~~
21 ~~the internal appeal process and use a deferential standard of review~~
22 not give any deference to the claimant's initial adverse benefit
23 determination in its review.
24

1 D. The provisions of this section shall apply to the extent not
2 inconsistent with or preempted by any other applicable law or rule.

3 E. All intentional tort or other employers' liability claims
4 may proceed through the appropriate state courts of Oklahoma,
5 mediation, arbitration, or any other form of alternative dispute
6 resolution or settlement process available by law.

7 SECTION 11. AMENDATORY Section 119, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2014, Section 212), is amended to read as
9 follows:

10 Section 212. ~~This act~~ The Oklahoma Employee Injury Benefit Act
11 shall be ~~liberally~~ strictly construed ~~to give the fullest effect of~~
12 ~~its provisions~~ by the Insurance Commissioner, the Workers'
13 Compensation Commission and any court. Any conflict between this
14 act and any other law shall be resolved in favor of the operation of
15 this act.

16 SECTION 12. REPEALER Sections 113, 114 and 115, Chapter
17 208, O.S.L. 2013 (85A O.S. Supp. 2014, Sections 206, 207 and 208),
18 are hereby repealed.

19 SECTION 13. This act shall become effective November 1, 2015.
20

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