

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 55th Legislature (2015)

4       COMMITTEE SUBSTITUTE  
5       FOR  
6       HOUSE BILL NO. 2205

By: Echols of the House

and

Sykes of the Senate

8  
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11                                   COMMITTEE SUBSTITUTE

12       An Act relating to workers' compensation; amending  
13       Section 29, Chapter 208, O.S.L. 2013 (85A O.S. Supp.  
14       2014, Section 29), which relates to certain fees;  
15       clarifying that fees are annual fees; amending  
16       Section 65, Chapter 208, O.S.L. 2013 (85A O.S. Supp.  
17       2014, Section 65), which relates to occupational  
18       diseases; expanding scope of compensation; amending  
19       Sections 96, 97 and 98, Chapter 208, O.S.L. 2013, as  
20       amended by Sections 2, 3 and 4, Chapter 169, O.S.L.  
21       2014 (85A O.S. Supp. 2014, Sections 96, 97 and 98),  
22       which relate to the Self-insurance Guaranty Fund;  
23       expanding the scope of the fund; providing for  
24       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

1 employed outside the state on temporary assignment;  
2 providing for employees employed out of state and  
3 injured in this state; modifying insurance carriers  
4 from which an employer may obtain insurance;  
5 modifying length of time security must be maintained;  
6 requiring the approval of the Insurance Commissioner  
7 for release of deposited security; providing for the  
8 administration of deposited security; providing for the  
9 application of the Oklahoma Life and Health Guaranty  
10 Act, the Oklahoma Property and Casualty Guaranty Act  
11 and the Self-insurance Guaranty Fund; authorizing the  
12 release of deposited security to the Self-insurance  
13 Guaranty Fund; expanding scope of certain rules to be  
14 promulgated by the Insurance Commissioner; providing  
15 that certain information is confidential; providing  
16 that certain provisions of the Administrative  
17 Workers' Compensation Act are not applicable to the  
18 Oklahoma Employee Injury Benefit Act; modifying  
19 procedure for review on appeal of certain decisions;  
20 modifying level of scrutiny; repealing Sections 113,  
21 114 and 115, Chapter 208, O.S.L. 2013 (85A O.S. Supp.  
22 2014, Sections 206, 207 and 208), which relate to the  
23 Oklahoma Employee Injury Benefit Act; providing for  
24 codification; and providing an effective date.

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.

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

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

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

9 SECTION 2. AMENDATORY Section 65, Chapter 208, O.S.L.  
10 2013 (85A O.S. Supp. 2014, Section 65), is amended to read as  
11 follows:

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

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

1 C. 1. If an occupational disease is aggravated by any other  
2 disease or infirmity, not itself compensable, or if disability or  
3 death from any other cause, not itself compensable, is aggravated,  
4 prolonged, accelerated, or in any way contributed to by an  
5 occupational disease, the compensation payable shall be reduced and  
6 limited to the proportion only of the compensation that would be  
7 payable if the occupational disease were the major cause of the  
8 disability or death as the occupational disease, as a causative  
9 factor, bears to all the causes of the disability or death.

10 2. The reduction in compensation is to be effected by reducing  
11 the number of weekly or monthly payments or the amounts of the  
12 payments, as under the circumstances of the particular case may be  
13 for the best interest of the claimant.

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

22 2. No compensation shall be payable for any contagious or  
23 infectious disease unless contracted in the course and scope of  
24 employment ~~in or immediately connected with a hospital or sanatorium~~

1 ~~in which persons suffering from that disease are cared for or~~  
2 ~~treated.~~

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

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

10 2. The amount of the compensation shall be based on the average  
11 weekly wage of the employee when last injuriously exposed under the  
12 employer, and the notice of injury and claim for compensation shall  
13 be given and made to that employer.

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

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

- b. disablement or death results within three (3) years in case of silicosis or asbestosis, or one (1) year in case of any other occupational disease, except a diseased condition caused by exposure to X-rays, radioactive substances, or ionizing radiation, after the last injurious exposure to the disease in the employment, or
- c. in case of death, death follows continuous disability from the disease, commencing within the period, for which compensation has been paid or awarded or timely claim made as provided in subparagraph b of this paragraph and results within seven (7) years after the last exposure.

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

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

Section 96. A. The Self-insurance Guaranty Fund shall be administered, supervised and protected by the Self-insurance Guaranty Fund Board. All self-insurers under the Administrative Workers' Compensation Act and all self-insured qualified employers under the Oklahoma Employee Injury Benefit Act shall participate in

1 the fund as a condition of authority to self-insure in this state,  
2 except public employers that self-insure pursuant to Section 107 of  
3 this title.

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

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

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

14 c. the Speaker of the House of Representatives shall  
15 appoint one member who represents a private self-  
16 insurer, and

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

22 2. Members of the Workers' Compensation Self-insurance Guaranty  
23 Fund Board serving on January 31, 2014, shall constitute the initial  
24 appointees to the Self-insurance Guaranty Fund Board created

1 pursuant to this section, with terms extended an additional two (2)  
2 years beyond their original, respective expiration dates.

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

- 7 a. the term of office for three positions, one each  
8 appointed by the Governor, President Pro Tempore of  
9 the Senate and Speaker of the House of  
10 Representatives, shall expire on November 1, 2016, and  
11 b. the term of office for two positions, one each  
12 appointed by the Governor and the Chair of the  
13 Commission, shall expire on November 1, 2015.

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

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

20 5. Members of the Board shall not receive compensation for  
21 serving on the Board but shall be reimbursed from monies in the fund  
22 for their necessary travel expenses incurred in the performance of  
23 their duties in accordance with the State Travel Reimbursement Act.  
24



1 C. Meetings of the Board shall be held at least quarterly. The  
2 presence of a majority of the members constitutes a quorum. No  
3 action shall be taken by the Board without the affirmative vote of  
4 at least a majority of the members.

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

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

13 SECTION 4. AMENDATORY Section 97, Chapter 208, O.S.L.  
14 2013, as amended by Section 3, Chapter 169, O.S.L. 2014 (85A O.S.  
15 Supp. 2014, Section 97), is amended to read as follows:

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

1 ~~to appropriation~~ hereby appropriated, but shall not be transferred  
2 by the Legislature from this fund to any other fund in the State  
3 Treasury, and shall be expended to compensate employees for eligible  
4 benefits for a compensable injury under the Administrative Workers'  
5 Compensation Act or the Oklahoma Employee Injury Benefit Act, pay  
6 outstanding workers' compensation or benefit plan obligations of the  
7 impaired self-insurer, and for all claims for related administrative  
8 fees, operating costs of the Self-insurance Guaranty Fund Board,  
9 attorney fees, and other costs reasonably incurred by the Board in  
10 the performance of its duties. Expenditures from the fund shall be  
11 made on warrants issued by the State Treasurer against claims as  
12 prescribed by law. The fund shall be subject to audit in the same  
13 manner as state funds and accounts, the cost for which shall be paid  
14 for from the fund.

15 SECTION 5. AMENDATORY Section 98, Chapter 208, O.S.L.  
16 2013, as amended by Section 4, Chapter 169, O.S.L. 2014 (85A O.S.  
17 Supp. 2014, Section 98), is amended to read as follows:

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

20 1. Any unexpended funds, including interest thereon, held by  
21 the State Treasurer in the Workers' Compensation Self-insurance  
22 Guaranty Fund transferred to the Self-insurance Guaranty Fund as  
23 provided in Section 124 of this title;  
24

1       2. ~~Until the Self-insurance Guaranty Fund contains Two Million~~  
2 ~~Dollars (\$2,000,000.00) or in~~ Any unexpended funds, including  
3 interest thereon, held by the State Treasurer in the Oklahoma Option  
4 Insured Guaranty Fund and the Oklahoma Option Self-insured Guaranty  
5 Fund transferred to the Self-insurance Guaranty Fund as provided in  
6 Section 205 of this title;

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

1 self-insurer shall provide the Workers' Compensation Commission with  
2 such information as the Commission may determine is necessary to  
3 effectuate the purposes of this paragraph. For purposes of this  
4 paragraph, "actual paid losses" means all medical and indemnity  
5 payments, including temporary disability, permanent disability, and  
6 death benefits, and excluding loss adjustment expenses and reserves.

7 a. The assessment shall be paid within thirty (30)  
8 calendar days after the date the commissioners notify  
9 the self-insurer of the assessment.

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

15 c. Failure of a self-insurer to pay, or timely pay, an  
16 assessment required by this paragraph, or to report  
17 payment of the same to the Commission within ten (10)  
18 days of payment, shall be grounds for revocation by  
19 the Commission of the self-insurer's permit to self-  
20 insure in this state, after notice and hearing. A  
21 former self-insurer failing to make payments required  
22 by this paragraph promptly and correctly, or failing  
23 to report payment of the same to the Commission within  
24 ten (10) days of payment, shall be subject to

1 administrative penalties as allowed by law, including  
2 but not limited to, a fine in the amount of Five  
3 Hundred Dollars (\$500.00) or an amount equal to one  
4 percent (1%) of the unpaid amount, whichever is  
5 greater, to be paid and deposited to the credit of the  
6 Workers' Compensation Fund created in Section 28 of  
7 this title. It shall be the duty of the Tax  
8 Commission to collect the assessment provided for in  
9 this paragraph. The Tax Commission is authorized to  
10 bring an action for recovery of any delinquent or  
11 unpaid assessments, and may enforce payment of the  
12 assessment by proceeding in accordance with Section 79  
13 of this title.

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

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

1       SECTION 6.       AMENDATORY       Section 110, Chapter 208, O.S.L.  
2       2013 (85A O.S. Supp. 2014, Section 203), is amended to read as  
3       follows:

4       Section 203. A. An employer voluntarily electing to become a  
5       qualified employer shall adopt a written benefit plan that complies  
6       with the requirements of this section. Qualified-employer status is  
7       optional for eligible employers. The benefit plan shall not become  
8       effective until the date that the qualified employer first satisfies  
9       the approval and notice requirements in this section and Section ~~109~~  
10      202 of this ~~act~~ title.

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

1 Benefit Act; but no other provision of the Administrative Workers'  
2 Compensation Act defining covered injuries, medical management,  
3 dispute resolution or other process, funding, notices or penalties  
4 shall apply or otherwise be controlling under the Oklahoma Employee  
5 Injury Benefit Act, unless expressly incorporated.

6 C. The benefit plan may provide for lump-sum payouts that are,  
7 as reasonably determined by the administrator of such plan appointed  
8 by the qualified employer, actuarially equivalent to expected future  
9 payments. The benefit plan may also provide for settlement  
10 agreements; provided, however, any settlement agreement by a covered  
11 employee shall be voluntary, entered into not earlier than the tenth  
12 business day after the date of the initial report of injury, and  
13 signed after the covered employee has received a medical evaluation  
14 from a nonemergency care doctor, with any waiver of rights being  
15 conspicuous and on the face of the agreement. The benefit plan  
16 shall pay benefits without regard to whether the covered employee,  
17 the qualified employer, or a third party caused the occupational  
18 injury; and provided further, that the benefit plan shall provide  
19 eligibility to participate in and provide the same forms and levels  
20 of benefits to all Oklahoma employees of the qualified employer.  
21 The Except as otherwise provided in the Oklahoma Employee Injury  
22 Benefit Act, the Administrative Workers' Compensation Act shall not  
23 define, restrict, expand or otherwise apply to a benefit plan.  
24

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, with an  
7 insurer, or a third-party administrator.

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

15 1. The information may be discoverable by a party in a civil  
16 action or contested case to which the employer that submitted the  
17 information is a party, upon a showing by the party seeking to  
18 discover the information that:

- 19 a. the information sought is relevant to and necessary  
20 for the furtherance of the action or case,  
21 b. the information sought is unavailable for other  
22 nonconfidential sources, and  
23  
24



1           c. a subpoena issued by a judicial or administrative  
2           officer of competent jurisdiction has been submitted  
3           to the Commissioners; and

4           2. The Commissioner may disclose the information to a public  
5           officer having jurisdiction over the regulation of insurance in  
6           another state if:

7           a. the public officer agrees in writing to maintain the  
8           confidentiality of the information, and

9           b. the laws of the state in which the public officer  
10           serves require the information to be kept  
11           confidential.

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

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

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

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

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

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

16       I. Two or more employers who are members of a controlled group  
17 may apply to the Insurance Commissioner for approval as a single  
18 qualified employer and be listed on a single qualified employer  
19 certificate. Such qualified employers shall pay the Commissioner  
20 the fee specified in subsection B of Section 202 of this title;  
21 provided, however, in the case of a self-insured controlled group  
22 the fee required by subsection B of Section 202 of this title is  
23 applicable to the first member of a controlled group and a fee of  
24 Two Hundred Fifty Dollars (\$250.00) for each additional

1 participating member of the controlled group is due on the date of  
2 filing written notice of election and every year thereafter.

3 SECTION 7. AMENDATORY Section 111, Chapter 208, O.S.L.  
4 2013 (85A O.S. Supp. 2014, Section 204), is amended to read as  
5 follows:

6 Section 204. A. A qualified employer may self-fund or insure  
7 benefits payable under the benefit plan, employers' liability under  
8 ~~this act~~ the Oklahoma Employee Injury Benefit Act, and any other  
9 insurable risk related to its status as a qualified employer ~~with~~  
10 ~~any insurance carrier authorized to do business in this state.~~

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

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

19 2. Furnishing satisfactory proof to the Commissioner of the  
20 employer's financial ability to pay the compensation. The  
21 Commissioner, under rules adopted by ~~the Insurance Department or the~~  
22 Commissioner for an individual self-insured employer, shall require  
23 an employer that has:

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

provisions of ~~this act~~ the Oklahoma Employee Injury Benefit Act; or

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

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

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

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

2. The Commissioner has determined that the self-insured qualified employer is impaired, advised the Self-insurance Guaranty Fund Board of the impairment, and released the balance of any security required by this section to the Self-insurance Guaranty

1 Fund. Claims administration, including processing, investigating,  
2 and paying valid claims against an impaired self-insured qualified  
3 employer's benefit plan under the Oklahoma Employee Injury Benefit  
4 Act may include claim upon the surety that issued any bond, a draw  
5 upon the bank that issued any letter of credit, or liquidation or  
6 other security.

7 E. ~~Any bond~~ Except as otherwise provided in this section, any  
8 security shall be ~~filed~~ deposited with and held by the Commissioner  
9 and shall be for the exclusive benefit of any covered employee of a  
10 qualified employer. Any security deposited by a qualified employer,  
11 as required by this subsection, shall not be released without the  
12 signature of the Commissioner. Administration of deposited security  
13 shall be subject to the provisions of Article 17 of Title 36 of the  
14 Oklahoma Statutes.

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

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

21 2. The covered employee's claim for payment of a specific  
22 medical or wage replacement benefit amount has been accepted by the  
23 plan administrator of the benefit plan or acknowledged in a final  
24

1 judgment or court order assessing a specific dollar figure for  
2 benefits payable under the benefit plan;

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

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

12 G. The Commissioner shall promulgate rules to carry out the  
13 provisions of this section including those establishing the  
14 procedure ~~by which a covered employee may request and receive~~  
15 ~~payment from the security held by the Commissioner~~ to determine  
16 whether or not a qualified employer's program is self-insured  
17 pursuant to the Oklahoma Employee Injury Benefit Act.

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

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

1        J. Except as provided in Section 203 of this title, documents,  
2 materials, financial reports, or other information in the possession  
3 or control of the Insurance Department that are obtained by or  
4 disclosed by the Commissioner or any other person in the course of  
5 an evaluation, examination, investigation, or review made pursuant  
6 to Section 202, 203 or 204 of this title shall be confidential by  
7 law and shall not be subject to discovery or admissible in evidence  
8 in any private civil action if obtained from the Commissioner or any  
9 employees of the Commissioner.

10       K. The provisions of Section 29 of this title shall not apply  
11 to self-insured qualified employers, third-party administrators in  
12 the handling of claims pursuant to the Oklahoma Employee Injury  
13 Benefit Act in Oklahoma, or to insurance coverage of qualified  
14 employers pursuant to the Oklahoma Employee Injury Benefit Act in  
15 Oklahoma.

16       L. No provision of the Administrative Workers' Compensation Act  
17 pertaining to the Multiple Injury Trust Fund is applicable to  
18 qualified employers under the Oklahoma Employee Injury Benefit Act  
19 or to insurance coverage of qualified employers under the Oklahoma  
20 Employee Injury Benefit Act.

21       SECTION 8.        AMENDATORY        Section 112, Chapter 208, O.S.L.  
22       2013 (85A O.S. Supp. 2014, Section 205), is amended to read as  
23       follows:  
24



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

3       ~~1. The Oklahoma Option Insured Guaranty Fund,~~ and

4       ~~2. The~~ the Oklahoma Option Self-insured Guaranty Fund are  
5 hereby abolished.

6       B. ~~The~~ Any monies in the funds ~~established~~ abolished pursuant  
7 to subsection A of this section shall be ~~for the purpose of~~  
8 ~~continuation of benefits under this act for covered claims that are~~  
9 ~~due and unpaid or interrupted due to the inability of the insurer or~~  
10 ~~sponsor of a self-insured plan, as applicable, to meet its~~  
11 ~~compensation obligations because its financial resources, security~~  
12 ~~deposit, guaranty agreements, surety agreements and excess insurance~~  
13 ~~are either inadequate or not immediately accessible for the payment~~  
14 ~~of benefits. Monies in such funds, including interest, are not~~  
15 ~~subject to appropriation and shall be expended to compensate~~  
16 ~~employees for eligible benefits for a compensable injury under this~~  
17 ~~act, pay outstanding workers' compensation obligations of the~~  
18 ~~impaired insurer, and for all claims for related administrative~~  
19 ~~fees, operating costs, attorney fees, and other costs reasonably~~  
20 ~~incurred by the Oklahoma Property and Casualty Guaranty Association~~  
21 ~~in the performance of its duties under this act. Expenditures from~~  
22 ~~such funds shall be made on warrants issued by the State Treasurer~~  
23 ~~against claims as prescribed by law. Such funds shall be subject to~~  
24 ~~audit the same as state funds and accounts, the cost for which shall~~

1 ~~be paid for from the funds. A "covered claim" has the meaning given~~  
2 ~~to it pursuant to paragraph 7 of Section 2004 of Title 36 of the~~  
3 ~~Oklahoma Statutes.~~

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

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

10 ~~1. Insured Guaranty Fund:~~

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

1 ~~that insurer or one percent (1%) of that surplus of the insurer as~~  
2 ~~regards policyholders for the calendar year preceding the assessment~~  
3 ~~on the kinds of insurance in the account, whichever is less; and~~

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

5 ~~Until the Self-insured Guaranty Fund contains One Million~~  
6 ~~Dollars (\$1,000,000.00) or if the amount in the fund falls below~~  
7 ~~Seven Hundred Fifty Thousand Dollars (\$750,000.00), each self-~~  
8 ~~insurer shall be assessed a fee at the rate of one percent (1%) of~~  
9 ~~the total compensation for permanent partial disability awards paid~~  
10 ~~out during each quarter of the calendar year by the employers. The~~  
11 ~~fee shall be paid to the Self-insured Guaranty Fund, care of the~~  
12 ~~Commission, no later than the fifteenth day of the month following~~  
13 ~~the close of each quarter of the calendar year. The fee shall be~~  
14 ~~determined using a rate equal to the proportion that the deficiency~~  
15 ~~in the fund attributable to self-insurers bears to the actual paid~~  
16 ~~losses of all self-insurers for the preceding calendar year. Each~~  
17 ~~self-insurer shall provide the Commission with the information~~  
18 ~~necessary to determine the amount of the fee to be assessed.~~

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

22 ~~F. On determination by the Commission that a self-insurer has~~  
23 ~~become an impaired insurer, the Commission shall release the~~  
24 ~~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~~

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

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

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

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

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

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

4       A. In the event that the insurer of benefit obligations of an  
5 insured qualified employer shall be a member of the Oklahoma  
6 Property and Casualty Insurance Guaranty Association, and is  
7 determined by a court of competent jurisdiction to be an insolvent  
8 insurer pursuant to Articles 18 and 19 of Title 36 of the Oklahoma  
9 Statutes and a final order of liquidation is entered, the provisions  
10 of Article 20A of Title 36 of the Oklahoma Statutes, the Oklahoma  
11 Property and Casualty Insurance Guaranty Association Act, shall  
12 become applicable for the purpose of continuation of benefits under  
13 the Oklahoma Employee Injury Benefit Act. For purposes of Article  
14 20A of Title 36 of the Oklahoma Statutes, all net direct premiums  
15 written for insurance covering in whole or in part the benefit  
16 obligations of such an insured qualified employer under the Oklahoma  
17 Employee Injury Benefit Act shall be deemed to be workers'  
18 compensation insurance premiums.

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

1 Title 36 of the Oklahoma Statutes, the Oklahoma Life and Health  
2 Insurance Guaranty Association Act, shall become applicable for the  
3 purpose of continuation of benefits under the Oklahoma Employee  
4 Injury Benefit Act. For purposes of Article 20B of Title 36 of the  
5 Oklahoma Statutes, all premiums received on business in this state  
6 for insurance covering the benefit obligations of such an insured  
7 qualified employer under the Oklahoma Employee Injury Benefit Act  
8 shall be deemed to be life and health insurance premiums.

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

11 SECTION 10. AMENDATORY Section 118, Chapter 208, O.S.L.  
12 2013 (85A O.S. Supp. 2014, Section 211), is amended to read as  
13 follows:

14 Section 211. A. If an employer denies a claimant's claim for  
15 benefits under ~~this act~~ the Oklahoma Employee Injury Benefit Act,  
16 the employer shall notify him or her in writing of the decision or  
17 the need for additional information within fifteen (15) days after  
18 receipt of the claim. Unless otherwise provided by law, the adverse  
19 benefit determination letter shall contain an explanation of why the  
20 claim was denied, including the plan provisions that were the basis  
21 for the denial, and a detailed description of how to appeal the  
22 determination. Additional claim procedures consistent with this  
23 section may be specified in the benefit plan and by the Commission.  
24 References in this section to a decision on a claim for benefits by

1 an employer shall include a decision on a claim for benefits by an  
2 insurance company or claims administrator on behalf of an employer.

3 B. The benefit plan shall provide the following minimum appeal  
4 rights:

5 1. The claimant may appeal in writing an initial adverse  
6 benefit determination to a final review officer or an appeals  
7 committee within one hundred eighty (180) days following his or her  
8 receipt of the adverse benefit determination. The appeal shall be  
9 heard by a final review officer or committee consisting of at least  
10 three people that were not involved in the original adverse benefit  
11 determination. The appeals committee shall not give any deference  
12 to the claimant's initial adverse benefit determination in its  
13 review;

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

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

20 4. Subject to the need for a reasonable extension of time due  
21 to matters beyond the control of the benefit plan, the final review  
22 officer or committee shall review the determination and issue a  
23 decision no later than forty-five (45) days from the date the notice  
24 of contest is received. No legal action may be brought by or with



1 respect to a claimant to recover benefits under the benefit plan  
2 before the foregoing claim procedures have been exhausted;

3 5. If any part of an adverse benefit determination is upheld by  
4 the final review officer or committee, the claimant may then file a  
5 petition for review with the Commission ~~sitting en banc~~ within one  
6 (1) year after the date the claimant receives notice that the  
7 adverse benefit determination, or part thereof, was upheld. The  
8 Commission ~~en banc~~ shall appoint an administrative law judge to hear  
9 any appeal of an adverse benefit determination. The administrative  
10 law judge shall not give any deference to the qualified employer's  
11 adverse benefit determination. The Commission shall prescribe  
12 additional rules governing the authority and responsibility of the  
13 parties, the administrative law judge and the Commission during  
14 these appeal processes, including, but not limited to, filing fees.  
15 The administrative law judge and Commission shall act as the court  
16 of competent jurisdiction under Oklahoma Law and 29 U.S.C.A. Section  
17 1132(e) (1), and shall possess adjudicative authority to render  
18 decisions in individual proceedings by claimants to recover benefits  
19 due to the claimant under the terms of the ~~claimant's~~ employer's  
20 plan, to enforce the claimant's rights under the terms of the plan,  
21 or to clarify the claimant's rights to future benefits under the  
22 terms of the plan;

23 6. ~~The Commission shall rely on the record established by the~~  
24 ~~internal appeal process and use an objective standard of review that~~

1 ~~is not arbitrary or capricious~~ Any party aggrieved by the judgment,  
2 decision, or award made by an administrative law judge may, within  
3 ten (10) days of issuance, appeal to the Commission. After hearing  
4 arguments the Commission may reverse or modify the decision of the  
5 administrative law judge only if it determines that the decision was  
6 against the clear weight of the evidence or contrary to law. All  
7 such proceedings of the Commission shall be recorded by a court  
8 reporter. Any judgment of the Commission which reverses a decision  
9 of the administrative law judge shall contain specific findings  
10 relating to the reversal. Any award by the administrative law judge  
11 or Commission shall be limited to benefits payable under the terms  
12 of the benefit plan and, to the extent provided herein, attorney  
13 fees and costs; and

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

- a. in violation of constitutional provisions,
- b. in excess of the statutory authority or jurisdiction  
of the Commission,
- c. made on unlawful procedure,
- d. affected by other error of law,
- e. clearly erroneous in view of the reliable, material,  
probative and substantial competent evidence,
- f. arbitrary or capricious,
- g. procured by fraud, or
- h. missing findings of fact on issues essential to the  
decision.

This action shall be commenced by filing with the Clerk of the  
Supreme Court a certified copy of the judgment, decision or award of  
the Commission attached to a petition which shall specify why the  
judgment, decision or award ~~is contrary to law within twenty (20)~~  
~~days of the decision being issued. The Supreme Court may modify,~~  
~~reverse, remand for rehearing, or set aside the decision only if the~~  
~~decision was contrary to law~~ erroneous or illegal. The proceedings  
shall be heard in a summary manner and shall have precedence over  
all other civil cases in the Supreme Court, except preferred  
Corporation Commission appeals. The Supreme Court shall require the  
~~claimant~~ appealing party to file within forty-five (45) days from  
the date of the filing of an appeal, or a judgment appealed from, a  
transcript of the record of the proceedings before the Commission,

1 or such later time as may be granted by the Supreme Court on  
2 application and for good cause shown. The action shall be subject  
3 to the law and practice applicable to comparable civil actions  
4 cognizable in the Supreme Court.

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

10 1. The appeal shall be heard by a final review officer or  
11 committee consisting of at least three people ~~that were not~~. No  
12 final review officer or member of such committee shall be involved  
13 in the original adverse benefit determination or be an employee of  
14 the employer sponsoring the benefit plan. The final review officer  
15 or appeals committee shall not give any deference to the claimant's  
16 initial adverse benefit determination in its review;

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

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

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

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

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

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

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

17        SECTION 11.        AMENDATORY        Section 119, Chapter 208, O.S.L.  
18 2013 (85A O.S. Supp. 2014, Section 212), is amended to read as  
19 follows:

20        Section 212. ~~This act~~ The Oklahoma Employee Injury Benefit Act  
21 shall be ~~liberally~~ strictly construed ~~to give the fullest effect of~~  
22 ~~its provisions~~ by the Insurance Commissioner, the Workers'  
23 Compensation Commission and any court. Any conflict between this  
24

1 act and any other law shall be resolved in favor of the operation of  
2 this act.

3 SECTION 12. REPEALER Sections 113, 114 and 115, Chapter  
4 208, O.S.L. 2013 (85A O.S. Supp. 2014, Sections 206, 207 and 208),  
5 are hereby repealed.

6 SECTION 13. This act shall become effective November 1, 2015.  
7

8 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 03/02/2015 - DO  
9 PASS, As Amended and Coauthored.  
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