

1 **SENATE FLOOR VERSION**

2 April 1, 2015

3 ENGROSSED HOUSE
4 BILL NO. 1001

By: McDaniel (Randy) of the
House

5 and

6 Newberry of the Senate

7
8
9
10 An Act relating to labor; amending 40 O.S. 2011,
11 Sections 1-210, 2-108, 2-203, as last amended by
12 Section 1, Chapter 220, O.S.L. 2014, 2-417, 2-618, 2-
13 802, 3-103, as amended by Section 8, Chapter 71,
14 O.S.L. 2013, 3-106, as amended by Section 8, Chapter
15 196, O.S.L. 2012, Section 13, Chapter 196, O.S.L.
16 2012, 4-318, 4-504 and 4-508, as last amended by
17 Section 1, Chapter 282, O.S.L. 2014 (40 O.S. Supp.
18 2014, Sections 2-203, 3-103, 3-106, 3-511 and 4-508),
19 which relate to the Employment Security Act of 1980;
20 modifying definition; exempting certain persons from
21 coverage; defining terms; requiring limited liability
22 companies be taxed in the same manner as under the
23 Federal Unemployment Tax Act and Internal Revenue
24 Code; modifying when certain individuals produce
certain evidence; modifying requirements for filing
claim for unemployment benefits; modifying
disqualification to receive benefits; authorizing
Oklahoma Employment Security Commission to require
individual to personally appear at workforce center;
providing for disqualification of benefits for
failure to appear; requiring Commission to establish
system to identify certain claimants; allowing
employers to file a specific statement of the
objection to a claim by telefax or email; authorizing
Commission to levy employer wages or bank accounts to
collect unemployment benefit overpayments;
authorizing Commission to utilize the United States
Treasury Offset Program to collect benefit

1 overpayment indebtedness; modifying references to the
2 Workforce Investment Act programs; modifying employer
3 contribution rate; prohibiting eligibility of certain
4 employers to be relieved of benefit wage charge;
5 providing certain contribution rate for certain
6 employers; authorizing levy for the collection of
7 delinquent unemployment taxes; authorizing Commission
8 to utilize the United States Treasury Offset Program
9 to collect delinquent employer taxes; clarifying
10 references to certain programs; repealing 40 O.S.
11 2011, Sections 3-110 and 3-112, as amended by Section
12 11, Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2014,
13 Section 3-112), which relate to contribution rates;
14 providing for codification; and providing an
15 effective date.

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

17 SECTION 1. AMENDATORY 40 O.S. 2011, Section 1-210, is
18 amended to read as follows:

19 Section 1-210. EMPLOYMENT.

20 "Employment" means:

21 (1) Any service, including service in interstate commerce,
22 performed by:

23 (a) any officer of a corporation; or

24 (b) any individual who, under the usual common-law rules
applicable in determining the employer-employee
relationship, has the status of an employee.

(2) (a) any service, including service in interstate commerce,
performed by any individual other than an individual

1 who is an employee under paragraph (1) of this section
2 who performs services for remuneration for any person:

- 3 (i) as an agent-driver or commission-driver engaged
4 in distributing meat products, vegetable
5 products, fruit products, bakery products,
6 beverages other than milk, or laundry or dry
7 cleaning services, for his or her principal; or
8 (ii) as a traveling or city salesperson, other than as
9 an agent-driver or commission-driver, engaged
10 upon a full-time basis in the solicitation on
11 behalf of, and the transmission to, his or her
12 principal, except for sideline sales activities
13 on behalf of some other person, of orders from
14 wholesalers, retailers, contractors, or operators
15 of hotels, restaurants or other similar
16 establishments for merchandise for resale or
17 supplies for use in their business operations;

18 (b) provided, the term "employment" shall include services
19 described in divisions (i) and (ii) of subparagraph

20 (a) of this paragraph if:

- 21 (i) the contract of service contemplates that
22 substantially all of the services are to be
23 performed personally by such individual;

24

1 (ii) the individual does not have a substantial
2 investment in facilities used in connection with
3 the performance of the services, other than in
4 facilities for transportation; and

5 (iii) the services are not in the nature of a single
6 transaction that is not part of a continuing
7 relationship with the person for whom the
8 services are performed.

9 (3) Service performed in the employ of this state or any of its
10 instrumentalities or any political subdivision thereof or any of its
11 instrumentalities or any instrumentality of more than one of the
12 foregoing or any instrumentality of any of the foregoing and one or
13 more other states or political subdivisions; provided, that such
14 service is excluded from "employment" as defined in the Federal
15 Unemployment Tax Act, 26 U.S.C., Section 3306(c)(7), and is not
16 excluded from "employment" under paragraph (7) of this section.

17 (4) Service performed by an individual in the employ of a
18 community chest, fund, foundation or corporation, organized and
19 operated exclusively for religious, charitable, scientific, testing
20 for public safety, literary or educational purposes, or for the
21 prevention of cruelty to children or animals, no part of the net
22 earnings of which inures to the benefit of any private shareholder
23 or individual, no substantial part of the activities of which is
24 carrying on propaganda, or otherwise attempting to influence

1 | legislation and which does not participate in, or intervene in,
2 | including the publishing or distributing of statements, any
3 | political campaign on behalf of any candidate for public office;
4 | provided that such organization had four or more individuals in
5 | employment for some portion of a day in each of twenty (20)
6 | different weeks, whether or not such weeks were consecutive, within
7 | either the calendar year or preceding calendar year, regardless of
8 | whether they were employed at the same moment of time.

9 | (5) Service performed by an individual in agricultural labor as
10 | defined in subparagraph (a) of paragraph (15) of this section when:

11 | (a) the service is performed for a person who:

12 | (i) during any calendar quarter in either the
13 | calendar year or the preceding calendar year,
14 | paid remuneration in cash of Twenty Thousand
15 | Dollars (\$20,000.00) or more to individuals
16 | employed in agricultural labor; or

17 | (ii) for some portion of a day in each of twenty (20)
18 | different calendar weeks, whether or not the
19 | weeks were consecutive, in either the calendar
20 | year or the preceding calendar year, employed in
21 | agricultural labor ten or more individuals,
22 | regardless of whether they were employed at the
23 | same moment of time.

24 |

1 (b) for the purposes of this paragraph any individual who
2 is a member of a crew furnished by a crew leader to
3 perform service in agricultural labor for any other
4 person shall be treated as an employee of the crew
5 leader:

6 (i) if the crew leader holds a valid certificate of
7 registration under the Farm Labor Contractor
8 Registration Act of 1963, Public Law 95-562, 29
9 U.S.C., Sections 1801 through 1872; or
10 substantially all the members of the crew operate
11 or maintain tractors, mechanized harvesting or
12 crop-dusting equipment, or any other mechanized
13 equipment, which is provided by the crew leader;
14 and

15 (ii) if the individual is not an employee of the other
16 person within the meaning of paragraph (1) of
17 this section or subparagraph (d) of this
18 paragraph.

19 (c) for the purposes of this paragraph, in the case of any
20 individual who is furnished by a crew leader to
21 perform service in agricultural labor for any other
22 person and who is not treated as an employee of the
23 crew leader under subparagraph (b) of this paragraph:
24

- 1 (i) the other person and not the crew leader shall be
2 treated as the employer of the individual; and
3 (ii) the other person shall be treated as having paid
4 cash remuneration to the individual in an amount
5 equal to the amount of cash remuneration paid to
6 the individual by the crew leader, either on his
7 or her own behalf or on behalf of the other
8 person, for the service in agricultural labor
9 performed for the other person.

10 (d) for the purposes of this paragraph, the term "crew
11 leader" means an individual who:

- 12 (i) furnishes individuals to perform service in
13 agricultural labor for any other person;
14 (ii) pays, either on his or her own behalf or on
15 behalf of another person, the individuals so
16 furnished by the crew leader for the service in
17 agricultural labor performed by them; and
18 (iii) has not entered into a written agreement with the
19 other person (farm operator) under which the
20 individual is designated as an employee of the
21 other person.

22 (6) The term "employment" shall include domestic service in a
23 private home, local college club or local chapter of a college
24 fraternity or sorority performed for a person or entity who paid

1 cash remuneration of One Thousand Dollars (\$1,000.00) or more ~~in the~~
2 ~~calendar year or the preceding calendar year~~ to individuals employed
3 in ~~such~~ domestic service in any calendar quarter in the calendar
4 year or the preceding calendar year.

5 (7) For the purposes of paragraphs (3) and (4) of this section
6 the term "employment" does not apply to service performed:

7 (a) in the employ of:

8 (i) a church or convention or association of
9 churches;

10 (ii) an organization which is operated primarily for
11 religious purposes and which is operated,
12 supervised, controlled, or principally supported
13 by a church or convention or association of
14 churches; or

15 (iii) an elementary or secondary school which is
16 operated primarily for religious purposes, which
17 is described in 26 U.S.C., Section 501(c)(3), and
18 which is exempt from tax under 26 U.S.C., Section
19 501(a);

20 (b) by a duly ordained, commissioned or licensed minister
21 of a church in the exercise of his or her ministry or
22 by a member of a religious order in the exercise of
23 duties required by the order;

24

- 1 (c) in the employ of a governmental entity referred to in
2 paragraph (3) of this section if the service is
3 performed by an individual in the exercise of duties:
- 4 (i) as an elected official;
 - 5 (ii) as a member of a legislative body, or a member of
6 the judiciary of a state or political
7 subdivision;
 - 8 (iii) as a member of the State National Guard or Air
9 National Guard;
 - 10 (iv) as an employee serving on a temporary basis in
11 case of fire, storm, snow, earthquake, flood or
12 similar emergency;
 - 13 (v) in a position which, under or pursuant to the
14 laws of this state, is designated as a major
15 nontenured policymaking or advisory position, or
16 a policymaking or advisory position the
17 performance of the duties of which ordinarily
18 does not require more than eight (8) hours per
19 week;
 - 20 (vi) as an election official or election worker if the
21 amount of remuneration received by the individual
22 during the calendar year for services as an
23 election official or election worker is less than
24 One Thousand Dollars (\$1,000.00);

- 1 (d) by an individual who is participating or enrolled in a
2 program of an organization that provides
3 rehabilitation through work for individuals whose
4 earning capacity is impaired by age, physical or
5 mental deficiency, or injury, or a program of an
6 organization that provides work for individuals who,
7 because of their impaired mental or physical capacity
8 cannot be readily absorbed into the competitive labor
9 market; provided that the services are performed by a
10 program participant on real property owned or leased
11 directly by the organization or by a program
12 participant working under a special certificate issued
13 by the U.S. Secretary of Labor pursuant to 29 U.S.C.,
14 Section 214(c) and 29 C.F.R., Section 525.1 et seq.;
- 15 (e) as part of an unemployment work-relief or work-
16 training program assisted or financed in whole or in
17 part by any federal agency or an agency of a state or
18 political subdivision thereof or of an Indian tribe,
19 by an individual receiving such work-relief or work-
20 training; or
- 21 (f) by an inmate of a custodial or penal institution.

22 (8) The term "employment" shall include the service of an
23 individual who is a citizen of the United States, performed outside
24 the United States, except in Canada, in the employ of an American

1 employer other than service which is deemed "employment" under the
2 provisions of paragraphs (11) or (12) of this section or the
3 parallel provisions of another state's law, if:

4 (a) the employer's principal place of business in the
5 United States is located in this state;

6 (b) the employer has no place of business in the United
7 States, but:

8 (i) the employer is an individual who is a resident
9 of this state;

10 (ii) the employer is a corporation which is organized
11 under the laws of this state; or

12 (iii) the employer is a partnership or a trust and the
13 number of the partners or trustees who are
14 residents of this state is greater than the
15 number who are residents of any one other state;

16 (c) none of the criteria of subparagraphs (a) and (b) of
17 this paragraph are met but the employer has elected
18 coverage in this state or, the employer having failed
19 to elect coverage in any state, the individual has
20 filed a claim for benefits, based on such service,
21 under the law of this state;

22 (d) an "American employer", for purposes of this
23 subsection, means a person who is:

24

1 (i) an individual who is a resident of the United
2 States;

3 (ii) a partnership if two-thirds (2/3) or more of the
4 partners are residents of the United States;

5 (iii) a trust, if all of the trustees are residents of
6 the United States; or

7 (iv) a corporation organized under the laws of the
8 United States or of any state; and

9 (e) the term "United States", for the purposes of this
10 subsection, includes the states, the District of
11 Columbia, the Commonwealth of Puerto Rico and the
12 Virgin Islands.

13 (9) Notwithstanding paragraph (11) of this section, all service
14 performed by an officer or member of the crew of an American vessel
15 on or in connection with the vessel, if the operating office, from
16 which the operations of the vessel operating on navigable waters
17 within, or within and without, the United States are ordinarily and
18 regularly supervised, managed, directed and controlled is within
19 this state.

20 (10) Notwithstanding any other provisions of the Employment
21 Security Act of 1980, "employment":

22 (a) includes any service with respect to which a tax is
23 required to be paid under any federal law imposing a
24 tax against which credit may be taken for

1 contributions required to be paid into a state
2 unemployment fund; and

3 (b) includes any service which is required to be
4 "employment" for full tax credit to be allowed against
5 the tax imposed by the Federal Unemployment Tax Act of
6 1954, Public Law 591, Chapter 736, as amended, 26
7 U.S.C., Section 3301 et seq.

8 (11) The term "employment" shall include an individual's entire
9 service, performed within or both within and without this state if:

10 (a) the service is localized in this state; or

11 (b) the service is not localized in any state but some of
12 the service is performed in this state and:

13 (i) the individual's base of operations, or, if there
14 is no base of operations, then the place from
15 which the individual's employment is directed or
16 controlled is in this state; or

17 (ii) the individual's base of operations or place from
18 which the service is directed or controlled is
19 not in any state in which some part of the
20 service is performed but the individual's
21 residence is in this state.

22 (12) (a) Services covered by an election pursuant to Section 3-
23 203 of this title; and

1 (b) services covered by an arrangement pursuant to Section
2 4-701 et seq. of this title between the Oklahoma
3 Employment Security Commission and the agency charged
4 with the administration of any other state or federal
5 unemployment compensation law, pursuant to which all
6 services performed by an individual for an employing
7 unit are deemed to be performed entirely within this
8 state,

9 shall be deemed to be employment if the Commission has approved an
10 election of the employing unit for whom such services are performed,
11 pursuant to which the entire service of such individual during the
12 period covered by such election is deemed to be insured work.

13 (13) Service shall be deemed to be localized within a state if:

14 (a) the service is performed entirely within such state;

15 or

16 (b) the service is performed both within and without such
17 state, but the service performed without such state is
18 incidental to the individual's service within the
19 state; for example, is temporary or transitory in
20 nature or consists of isolated transactions.

21 (14) Notwithstanding any other provision of this subsection,
22 services performed by an individual for wages or under any contract
23 of hire shall be deemed to be employment subject to the Employment
24

1 Security Act of 1980 unless and until it is shown to the
2 satisfaction of the Commission that:

3 (a) such individual has been and will continue to be free
4 from control or direction over the performance of the
5 services, both under the contract of hire and in fact;
6 and

7 (b) such individual is customarily engaged in an
8 independently established business; or

9 (c) such service is outside the usual course of the
10 business for which the service is performed and that
11 the service is performed outside of all the places of
12 business of the enterprise for which the service is
13 performed.

14 (15) The term "employment" shall not include:

15 (a) services performed by an individual in agricultural
16 labor, except as provided under paragraph (5) of this
17 section. Services performed by an individual who is a
18 nonresident alien admitted to the United States to
19 perform agricultural labor, pursuant to 8 U.S.C.,
20 Sections 1101(a), 1184(c) and 1188. For purposes of
21 this subparagraph, the term "agricultural labor" means
22 remunerated service performed in agricultural labor as
23 defined in the Federal Unemployment Tax Act, 26
24 U.S.C., Section 3306(k);

1 (b) domestic service, except as provided under paragraph
2 (6) of this section, in a private home, local college
3 club, or local chapter of a college fraternity or
4 sorority;

5 (c) service performed by an individual in the employ of
6 his or her son, daughter, or spouse, and service
7 performed by a child under the age of twenty-one (21)
8 in the employ of his or her father or mother, or both
9 father and mother;

10 (d) service performed in the employ of the United States
11 government or an instrumentality of the United States
12 exempt under the Constitution of the United States
13 from the contributions imposed by the Employment
14 Security Act of 1980, except that to the extent that
15 the Congress of the United States shall permit states
16 to require any instrumentalities of the United States
17 to make payments into an unemployment fund under a
18 state unemployment compensation law, all of the
19 provisions of the Employment Security Act of 1980
20 shall be applicable to such instrumentalities, and to
21 services performed for such instrumentalities, in the
22 same manner, to the same extent, and on the same terms
23 as to all other employers, employing units,
24 individuals and services; provided that if this state

1 shall not be certified for any year by the Secretary
2 of Labor of the United States under the Federal
3 Internal Revenue Code, 26 U.S.C., Section 3304(c), the
4 payments required of such instrumentalities with
5 respect to the year shall be refunded by the
6 Commission from the fund in the same manner and within
7 the same period as is provided in Section 3-304 of
8 this title with respect to contributions erroneously
9 collected;

10 (e) service with respect to which unemployment
11 compensation is payable under an unemployment
12 compensation system established by an act of Congress;

13 (f) service performed in the employ of a foreign
14 government, including service as a consul or other
15 officer or employee or a nondiplomatic representative;

16 (g) service performed in the employ of an instrumentality
17 wholly owned by a foreign government:

18 (i) if the service is of a character similar to that
19 performed in foreign countries by employees of
20 the United States government or of an
21 instrumentality thereof, and

22 (ii) if the Commission finds that the United States
23 Secretary of State has certified to the United
24 States Secretary of the Treasury that the foreign

1 government, with respect to whose instrumentality
2 exemption is claimed, grants an equivalent
3 exemption with respect to similar service
4 performed in the foreign country by employees of
5 the United States government and of
6 instrumentalities thereof;

7 (h) service covered by an arrangement between the
8 Commission and the agency charged with the
9 administration of any other state or federal
10 unemployment compensation law pursuant to which all
11 services performed by an individual for an employing
12 unit during the period covered by such employing
13 unit's duly approved election, are deemed to be
14 performed entirely within the jurisdiction of such
15 other state or federal agency;

16 (i) service performed as a student nurse in the employ of
17 a hospital or a nurses' training school by an
18 individual who is enrolled and is regularly attending
19 classes in a nurses' training school chartered or
20 approved pursuant to state law; and service performed
21 as an intern in the employ of a hospital by an
22 individual who has completed a four-year course in a
23 medical school chartered or approved pursuant to state
24 law;

1 (j) service performed by an individual for a person, firm,
2 association, trust, partnership or corporation as an
3 insurance agent, or as an insurance solicitor or as a
4 licensed real estate agent, if all such service
5 performed by such individual for such person is
6 performed for remuneration solely by way of
7 commissions or fees;

8 (k) service performed by an individual under the age of
9 eighteen (18) in the delivery and distribution of
10 newspapers or shopping news, not including delivery or
11 distribution to any point for subsequent delivery or
12 distribution, and services performed by an individual
13 eighteen (18) years of age or older who meets the
14 definition of a "direct seller" as defined in 26
15 U.S.C., Section 3508(b)(2), that states in pertinent
16 part:

17 (i) the individual must be engaged in the delivery or
18 distribution of newspapers or shopping news,
19 including any services directly related to such
20 trade or business,

21 (ii) substantially all the remuneration, whether or
22 not paid in cash, for the performance of the
23 services described in clause (i) of this
24 subdivision is directly related to sales or other

1 output, including the performance of services,
2 rather than the number of hours worked, and
3 (iii) the services performed by the individual are
4 performed pursuant to a written contract between
5 the person and the person for whom the services
6 are performed and the contract provides that the
7 person will not be treated as an employee with
8 respect to the services;

9 (l) service performed in the employ of a school, college
10 or university, if the service is performed:

11 (i) by a student who is enrolled and is regularly
12 attending classes at the school, college, or
13 university, or

14 (ii) by the spouse of the student, if the spouse is
15 advised, at the time the spouse commences to
16 perform the service, that:

17 (I) the employment of the spouse to perform the
18 service is provided under a program to
19 provide financial assistance to the student
20 by the school, college, or university, and

21 (II) the employment will not be covered by any
22 program of unemployment insurance;

23 (m) service performed by an individual who is enrolled at
24 a nonprofit or public educational institution which

1 normally maintains a regular faculty and curriculum
2 and normally has a regularly organized body of
3 students in attendance at the place where its
4 educational activities are carried on as a student in
5 a full-time program, taken for credit at the
6 institution, which combines academic instruction with
7 work experience, if the service is an integral part of
8 the program, and the institution has so certified to
9 the employer, except that this provision shall not
10 apply to service performed in a program established
11 for or on behalf of an employer or group of employers;
12 (n) service performed in the employ of a hospital, if the
13 service is performed by a patient of the hospital;
14 (o) services performed by cooperative extension personnel
15 holding federal appointments employed by state
16 institutions of higher learning;
17 (p) earnings of employees being paid by state warrants who
18 are presently covered by the Federal Unemployment
19 Compensation Act, 5 U.S.C., Section 8501 et seq., by
20 virtue of their federal status;
21 (q) cosmetology services performed by an individual in a
22 beauty shop, as defined by Section 199.1 of Title 59
23 of the Oklahoma Statutes, pursuant to an agreement
24

1 whereby the owner of the beauty shop leases or rents
2 facilities for cosmetology to such individual;

3 (r) barbering services performed by an individual in a
4 barber shop, as defined by Section 61.5 of Title 59 of
5 the Oklahoma Statutes, pursuant to an agreement
6 whereby the owner of the barber shop leases or rents
7 facilities for barbering to such individual;

8 (s) services performed as a participant in a work or
9 training program administered by the Department of
10 Human Services;

11 (t) riding services performed by a jockey and services
12 performed by a trainer of race horses in preparation
13 for and during an approved race meeting licensed by
14 the Oklahoma Horse Racing Commission;

15 (u) service performed by an individual whose remuneration
16 consists solely of commissions, overrides, bonuses,
17 and differentials related to sales or other output
18 derived from in-person sales to, or solicitation of
19 orders from, ultimate consumers primarily in the home,
20 or otherwise than in a permanent retail establishment;

21 (v) service performed by a person, commonly referred to as
22 "owner-operator", who owns or leases a truck-tractor
23 or truck for hire, provided the owner-operator
24 actually operates the truck-tractor or truck and,

1 further, that the entity contracting with the owner-
2 operator is not the lessor of the truck-tractor or
3 truck;

4 (w) services performed as a chopper of cotton who weeds or
5 thins cotton crops by hand or hoe. This subsection
6 shall be interpreted and applied consistently with the
7 Federal Unemployment Tax Act, 26 U.S.C., Sections
8 3304(a)(6)(A) and 3306(k); ~~or~~

9 (x) services performed for a private for-profit person or
10 entity by an individual as a landman:

11 (i) if the individual is engaged primarily in
12 negotiating for the acquisition or divestiture of
13 mineral rights or negotiating business agreements
14 that provide for the exploration for or
15 development of minerals,

16 (ii) if substantially all remuneration paid in cash or
17 otherwise for the performance of the services is
18 directly related to the completion by the
19 individual of the specific tasks contracted for
20 rather than to the number of hours worked by the
21 individual, and

22 (iii) if the services performed by the individual are
23 performed under a written contract between the
24 individual and the person for whom the services

1 are performed; provided that the individual is to
2 be treated as an independent contractor and not
3 as an employee with respect to the services
4 provided under the contract; or

5 (y) services performed by persons working under an
6 AmeriCorps grant from the Corporation for National
7 Service made pursuant to the National and Community
8 Service Act of 1990 (NCSA) codified at 42 U.S.C.,
9 Section 12501, et. seq.

10 SECTION 2. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1-228 of Title 40, unless there
12 is created a duplication in numbering, reads as follows:

13 LIMITED LIABILITY COMPANIES.

14 A. For purposes of the Employment Security Act of 1980, a
15 "limited liability company" and a "foreign limited liability
16 company" shall be defined by the provisions of the Oklahoma Limited
17 Liability Company Act.

18 B. For unemployment tax purposes, wages, salaries, or draws
19 paid to limited liability company members, relatives of the members,
20 and employees shall be taxed in the same manner as required by the
21 Federal Unemployment Tax Act, Title 26 U.S.C., Chapter 23, and the
22 Internal Revenue Code, Title 26 U.S.C., Chapters 1 through 99.

23 SECTION 3. AMENDATORY 40 O.S. 2011, Section 2-108, is
24 amended to read as follows:

1 Section 2-108. BENEFITS - APPROVED TRAINING.

2 A. Notwithstanding any other provisions of law, no otherwise
3 eligible individual shall be denied benefits for any week because
4 the individual is in training with the approval of the Oklahoma
5 Employment Security Commission, nor shall such individual be denied
6 benefits with respect to any week in which the individual is in
7 training with the approval of the Commission by reason of the
8 application of provisions of law relating to availability for work,
9 active search for work, failure to apply for, or a refusal to
10 accept, suitable work. Such approval for training shall be
11 determined by consideration of all the following factors:

12 1. The individual's skills are obsolete or such that there are
13 minimal opportunities for employment;

14 2. Training is for an occupation for which there is a
15 substantial and recurring demand; and

16 3. The individual possesses aptitudes or skills which can be
17 supplemented by retraining within a reasonable time.

18 B. Any individual in training approved by the Commission will
19 produce satisfactory evidence of continued attendance and
20 satisfactory progress, when requested by the Commission. Failure to
21 comply shall result in a disqualification of benefits for each week
22 of occurrence.

1 SECTION 4. AMENDATORY 40 O.S. 2011, Section 2-203, as
2 last amended by Section 1, Chapter 220, O.S.L. 2014 (40 O.S. Supp.
3 2014, Section 2-203), is amended to read as follows:

4 Section 2-203. CLAIM.

5 A. An unemployed individual must file an initial claim for
6 unemployment benefits by calling an Oklahoma Employment Security
7 Commission claims representative in a Commission Call Center, by
8 completing the required forms through the Internet Claims service
9 provided by the Commission, or by completing all forms necessary to
10 process an initial claim in a local office of the Commission or any
11 alternate site designated by the Commission to take unemployment
12 benefit claims. The Commission may obtain additional information
13 regarding an individual's claim through any form of
14 telecommunication, writing, or interview. An unemployed individual
15 must file a claim in writing or by telecommunication for benefits
16 with respect to each week in accordance with such rule as the
17 Commission may prescribe.

18 B. 1. During the process of filing an initial claim for
19 unemployment benefits, the claimant shall be made aware of the
20 definition of misconduct set out in Section 2-406 of this title, and
21 the claimant shall affirmatively certify that the answers given to
22 all questions in the initial claim process are true and correct to
23 the best of the claimant's knowledge and that no information has
24

1 | been intentionally withheld or misrepresented in an attempt by the
2 | claimant to receive benefits to which he or she is not entitled.

3 | 2. The certification statement required in paragraph 1 of this
4 | subsection shall be available through the Internet Claims service
5 | provided by the Commission and by a form to be completed by the
6 | claimant in a local office of the Commission or at any alternate
7 | site designated by the Commission to take unemployment benefit
8 | claims.

9 | C. With respect to each week, he or she must provide the
10 | Commission with a true and correct statement of all material facts
11 | relating to: his or her unemployment; ability to work; availability
12 | for work; activities or conditions which could restrict the
13 | individual from seeking or accepting full-time employment
14 | immediately; applications for or receipt of workers' compensation
15 | benefits; employment and earnings; and the reporting of other income
16 | from retirement, pension, disability, self-employment, education or
17 | training allowances.

18 | D. No claim will be allowed or paid unless the claimant resides
19 | within a state or foreign country with which the State of Oklahoma
20 | has entered into a reciprocal or cooperative arrangement pursuant to
21 | Part 7 of Article IV of the Employment Security Act of 1980.

22 | E. The Commission may require the individual to produce
23 | documents or information relevant to the claim for benefits. If the
24 | individual fails to produce it, the individual's claim for

1 unemployment benefits may be disqualified indefinitely by the
2 Commission until the information is produced. ~~The Commission may~~
3 ~~require the individual to personally appear at a location for a~~
4 ~~purpose relevant to the individual's unemployment claim or job~~
5 ~~search. If the individual fails to appear, the individual's claim~~
6 ~~for unemployment benefits may be disqualified indefinitely by the~~
7 ~~Commission until the individual makes a personal appearance as~~
8 ~~directed.~~ An individual that has been disqualified indefinitely by
9 the provisions of this subsection may receive payment for any week
10 between the initial failure and the compliance with this subsection
11 if the claimant is otherwise eligible and has made a timely filing
12 for each intervening week.

13 SECTION 5. AMENDATORY 40 O.S. 2011, Section 2-417, is
14 amended to read as follows:

15 Section 2-417. SEEK AND ACCEPT WORK - WEEK OF OCCURRENCE
16 DISQUALIFICATION.

17 A. An individual shall be disqualified to receive benefits for
18 each week in which the individual shall have failed to do any of the
19 following:

20 1. Diligently search for suitable employment at a pay rate
21 generally available in that area of the state in keeping with his or
22 her prior experience, education and training;

23 2. Make application for work with employers who could
24 reasonably be expected to have work available; or

1 3. Present oneself as an applicant for employment in a manner
2 designed to encourage favorable employment consideration; ~~or~~

3 ~~4. Participate in reemployment services, such as job search~~
4 ~~assistance services, if the individual has been determined likely to~~
5 ~~exhaust regular benefits and needs reemployment services pursuant to~~
6 ~~a profiling system established by the Oklahoma Employment Security~~
7 ~~Commission. An individual will not be disqualified under this~~
8 ~~paragraph for failure to participate in reemployment services, if:~~

9 a. ~~the individual has previously completed reemployment~~
10 ~~services, or~~

11 b. ~~there is justifiable cause for the individual's~~
12 ~~failure to participate in reemployment services.~~

13 B. The requirements of subsection A of this section shall be
14 waived if the individual has been summoned to appear for jury duty
15 before any court of the United States or of any state. The waiver
16 will continue for as long as the individual remains on jury duty
17 pursuant to the original summons.

18 SECTION 6. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 2-420 of Title 40, unless there
20 is created a duplication in numbering, reads as follows:

21 FAILURE TO PERSONALLY APPEAR AS DIRECTED.

22 The Oklahoma Employment Security Commission may require the
23 individual to personally appear at a location for a purpose relevant
24 to the individual's unemployment claim, job search, or reemployment

1 services. If the individual fails to appear, the individual's claim
2 for unemployment benefits will be disqualified indefinitely by the
3 Commission until the individual makes a personal appearance as
4 directed. An individual who has been disqualified indefinitely by
5 the provisions of this section shall be disqualified for all weeks
6 between the initial failure and the compliance with this section.

7 SECTION 7. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 2-421 of Title 40, unless there
9 is created a duplication in numbering, reads as follows:

10 FAILURE TO PARTICIPATE IN REEMPLOYMENT SERVICES THROUGH
11 PROFILING.

12 The Oklahoma Employment Security Commission shall establish and
13 utilize a system of profiling for all unemployment benefit claimants
14 that will identify claimants who will be likely to exhaust
15 unemployment benefits and who will need job-search assistance
16 services to make a successful transition to new employment. Any
17 claimant who has been referred to reemployment services pursuant to
18 the profiling system and who fails to participate in the
19 reemployment services made available to the claimant, shall be
20 disqualified to receive benefits for each week in which the failure
21 occurs; unless the Commission determines that:

- 22 1. The claimant has completed the reemployment services; or
- 23 2. There is justifiable cause for the claimant's failure to
24 participate in reemployment services.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2-503.1 of Title 40, unless
3 there is created a duplication in numbering, reads as follows:

4 FILING OF EMPLOYER PROTEST AND DOCUMENTS BY TELEFAX OR EMAIL.

5 A. The procedure set out in this section for the filing of a
6 statement of objection by telefax or email is an optional procedure
7 for the employer. If the employer chooses not to utilize this
8 procedure, the employer must file its protest in accordance with
9 subsection E of Section 2-503 of Title 40 of the Oklahoma Statutes.

10 B. An employer may file a statement of objections to the claim
11 of a former employee at any time from the moment of discharge or
12 separation from employment of the employee until the expiration of
13 the ten-day time period set out in subsection E of Section 2-503 of
14 Title 40 of the Oklahoma Statutes. The statement of objection must
15 be filed by telefax or email and must contain a statement of
16 specific facts and documentation which:

17 1. Disclose the name and social security number of the
18 employee;

19 2. Make the claimant ineligible for benefits under Sections 2-
20 201 through 2-210 of Title 40 of the Oklahoma Statutes;

21 3. Disqualify the claimant for benefits under Sections 2-401
22 through 2-419 of Title 40 of the Oklahoma Statutes; or

23 4. Relieve the employer from being charged for the benefits
24 wages of this claimant.

1 C. Any statement of objection filed within the time period set
2 out in subsection B of this section shall be considered a valid
3 protest to a claim for unemployment benefits filed by the former
4 employee and the employer shall be considered an interested party to
5 the claim. A statement of objection filed outside the time period
6 set out in subsection B of this section shall not be considered a
7 valid protest to a claim for unemployment of the former employee,
8 and the employer shall not be considered an interested party to the
9 claim.

10 SECTION 9. AMENDATORY 40 O.S. 2011, Section 2-618, is
11 amended to read as follows:

12 Section 2-618. LEVY ON INCOME AND MONETARY ASSETS.

13 A. As used in this section, the following words have the
14 following meanings:

15 1. "Bank" means any state bank or banking association, national
16 bank or banking association, savings and loan company, credit union,
17 or any other financial institution;

18 2. "Bank account" means any checking or savings account the
19 debtor has with any bank;

20 3. "Debtor" means any person that is the subject of a warrant
21 of levy and lien issued pursuant to Section 2-617 of this title;

22 4. "Earnings" means any form of payment to an individual
23 including, but not limited to, salary, wages, commission, or other
24 compensation; and

1 5. "Employer" means any type of business or organization that
2 owes earnings to a debtor.

3 B. If any debtor shall fail to pay his or her indebtedness to
4 the Oklahoma Employment Security Commission and after the debtor has
5 been notified of the amount due and demand for payment has been
6 made, it shall be lawful for the Commission to collect the amount
7 owed by levy upon the debtor's employer or any bank account of the
8 debtor.

9 C. To levy upon an employer of the debtor, the Commission must
10 serve a Notice of Levy on the employer along with the warrant of
11 levy and lien that sets out the amount owing on the benefit
12 overpayment of the debtor, with interest. The levy will have the
13 same priority, and be subject to the same exceptions, as a
14 continuing earnings garnishment provided for in Section 1173.4 of
15 Title 12 of the Oklahoma Statutes. The following procedures will
16 apply to a Notice of Levy served on an employer:

17 1. The employer shall answer the Notice of Levy on a form
18 provided by the Commission. The employer shall follow the procedure
19 for answering a continuing earnings garnishment as set out in
20 subsection F of Section 1173.4 of Title 12 of the Oklahoma Statutes;
21 and

22 2. The Notice of Levy shall be a lien on the debtor's property
23 in the same manner as provided for in subsection G of Section 1173.4
24 of Title 12 of the Oklahoma Statutes. The Notice of Levy shall also

1 be subject to the procedures and time limits set out in subsections
2 H, I, J and K of Section 1173.4 of Title 12 of the Oklahoma
3 Statutes, except that when a document is required to be filed with
4 the clerk of the court, the document will instead be filed with the
5 Commission as directed on the forms provided;

6 3. Any employer that fails or refuses to surrender money or
7 rights to money belonging to its employee in the employer's
8 possession, or that fails or refuses to make the appropriate
9 deduction from wages pursuant to a levy provided for by this statute
10 upon being served with a Notice of Levy and supporting warrant of
11 levy and lien of the Commission, shall be liable to the Commission
12 in a sum equal to the amount of money, rights to money, or wage
13 deduction not so surrendered, but not exceeding the amount of the
14 debtor's indebtedness for the collection of which the levy has been
15 made, together with accrued interest pursuant to Section 2-613 of
16 this title, and the cost of service of the Notice of Levy. Any
17 amount recovered in this manner shall be credited against the
18 liability of the debtor for the benefit overpayment indebtedness,
19 for which the levy was made; and

20 4. Any employer in possession of money or rights to money
21 subject to levy upon which a levy has been made that surrenders the
22 money or rights to money to the Commission shall be discharged from
23 any obligation or liability to the debtor and any other person or
24

1 entity with respect to such money or rights to money arising from
2 the surrender or payment.

3 D. To levy upon a debtor's bank account, the Commission must
4 serve a Notice of Levy on the bank in which the debtor has an
5 account, along with the warrant of levy and lien issued against the
6 debtor. The following procedures will apply to a Notice of Levy
7 served on a bank:

8 1. Upon receiving the Notice of Levy and the warrant of levy
9 and lien issued against the debtor, the bank shall deliver all of
10 the debtor's interest in the money in the debtor's bank account at
11 the time of service of the levy, subject to the banker's lien or
12 right of set off or any other priority claim of the bank, up to the
13 amount of indebtedness indicated on the warrant of levy and lien
14 plus accrued interest pursuant to Section 2-613 of this title and
15 any fees for service of process, to the Commission office indicated
16 in the Notice of Levy;

17 2. The delivery of this money shall occur within ten (10) days
18 of the date of service of the Notice of Levy;

19 3. If there is no money in the debtor's bank account at the
20 time the Notice of Levy is served, or if the bank account has been
21 closed, an officer of the bank on which the Notice of Levy is served
22 shall make a statement to that effect on the Notice of Levy. The
23 statement shall be notarized and returned to the office of the
24 Commission that is indicated in the Notice of Levy;

1 4. Any bank that fails or refuses to surrender money or rights
2 to money in a bank account subject to levy, upon being served with a
3 Notice of Levy and supporting warrant of levy and lien of the
4 Commission, shall be liable to the Commission in a sum equal to the
5 amount of money or rights to money not so surrendered, but not
6 exceeding the amount of the debtor's indebtedness for the collection
7 of which the levy has been made, together with accrued interest
8 pursuant to Section 2-613 of this title, and the cost of service of
9 the Notice of Levy. Any amount recovered in this manner shall be
10 credited against the liability of the debtor for the benefit
11 overpayment indebtedness, for which the levy was made; and

12 5. Any bank in possession of money or rights to money subject
13 to levy, upon which a levy has been made, that surrenders the money
14 or rights to money to the Commission shall be discharged from any
15 obligation or liability to the debtor and any other person or entity
16 with respect to such money or rights to money arising from the
17 surrender or payment.

18 E. Service of the Notice of Levy and the warrant of levy and
19 lien shall be made in the same manner as provided in Section 2004 of
20 Title 12 of the Oklahoma Statutes for service of process in civil
21 actions.

22 F. If a sheriff's department is enlisted to serve the Notice of
23 Levy, that sheriff's department shall be entitled to a service fee
24

1 of Fifty Dollars (\$50.00) that is to be paid by the Commission and
2 added to the debtor's indebtedness.

3 G. Claims for exemptions and any other matter relating to the
4 levy shall be filed with the Appeal Tribunal of the Oklahoma
5 Employment Security Commission. An order of exemption may relate
6 back no more than thirty (30) days before the filing of the claim
7 for exemption and shall extend no further than the expiration date
8 or termination of the levy. Appeal from the Appeal Tribunal
9 decision shall be governed by the appeal procedures set out in Part
10 6 of Article 2 of the Employment Security Act of 1980, and the
11 Administrative Rules of the Oklahoma Employment Security Commission
12 pertaining thereto.

13 SECTION 10. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 2-619 of Title 40, unless there
15 is created a duplication in numbering, reads as follows:

16 TREASURY OFFSET PROGRAM - BENEFIT OVERPAYMENT COLLECTIONS.

17 A. The Oklahoma Employment Security Commission shall be
18 authorized to collect unemployment benefit overpayment indebtedness
19 through the Tax Offset Program of the U.S. Department of the
20 Treasury pursuant to 26 U.S.C., Section 6402(f) and 31 CFR, Section
21 285.8. The Commission may submit overpayment indebtedness due to
22 fraud that was established pursuant to paragraph 1 of Section 2-613
23 of Title 40 of the Oklahoma Statutes and overpayment indebtedness
24 due to claimant error that was established under paragraph 2 of

1 Section 2-613 of Title 40 of the Oklahoma Statutes, if the claimant
2 error overpayment was due to a failure to report earnings.

3 B. Before submitting an indebtedness to the U.S. Department of
4 the Treasury for collection through the Tax Offset Program, the
5 Oklahoma Employment Security Commission shall notify the debtor in
6 writing of the amount of the debt and the date the indebtedness was
7 established. The notification shall give the debtor sixty (60) days
8 from the date of mailing of the notice to present evidence to the
9 Commission that all or a part of the indebtedness is not legally
10 enforceable or is otherwise invalid.

11 C. If the debtor responds to the notice by presenting evidence,
12 the Commission shall evaluate the evidence and review its records of
13 the indebtedness. Based on this evaluation and review, the
14 Commission may modify the amount of the indebtedness. Once the
15 evaluation and review process is complete, the indebtedness shall be
16 submitted to the U.S. Department of the Treasury for collection
17 through the Tax Offset Program.

18 D. If no evidence is presented by the debtor within the sixty-
19 day time period allowed by the notice, the amount of the
20 indebtedness will be submitted to the U.S. Department of the
21 Treasury for collection through the Tax Offset Program.

22 E. If the Oklahoma Employment Security Commission receives an
23 erroneous payment from the U.S. Department of the Treasury, the
24 Oklahoma Employment Security Commission shall return the payment to

1 the U.S. Department of the Treasury. If the money that was
2 erroneously paid to the Oklahoma Employment Security Commission had
3 been credited to an unemployment benefit overpayment indebtedness,
4 that indebtedness shall be reinstated to the amount that existed
5 before the payment was credited.

6 SECTION 11. AMENDATORY 40 O.S. 2011, Section 2-802, is
7 amended to read as follows:

8 Section 2-802. REPORTS BY EMPLOYERS TO EMPLOYMENT SECURITY
9 COMMISSION - NEW HIRE REGISTRY.

10 A. Employers doing business in the State of Oklahoma shall
11 report to the Oklahoma Employment Security Commission, the hiring or
12 employment of any person who resides or works in this state to whom
13 the employer anticipates paying earnings.

14 B. Such report shall contain the employee's name, address,
15 social security number, date of employment, state of employment,
16 along with the employer's name, address, and federal identification
17 number.

18 C. The report must be made within twenty (20) days of hiring,
19 or twice monthly, not less than twelve (12) nor more than sixteen
20 (16) days apart if reported electronically or magnetically. The
21 report may be made by mailing a copy of the employee's W-4 form, by
22 submitting a fax transmission of the employee's W-4 form, by
23 submitting electronic media in a format that can be used by the
24 Commission, or by any other means authorized by the Commission.

1 D. The Child Support Enforcement Division shall be the official
2 New Hire Registry for the State of Oklahoma and will obtain the new
3 hire information from the Oklahoma Employment Security Commission.

4 E. The Child Support Enforcement Division shall enter into
5 agreements with state agencies administering unemployment,
6 employment services, ~~Workforce Investment Act~~ workforce system
7 programs, workers' compensation, public assistance, Medicaid, food
8 stamps, vocational rehabilitation, and other programs specified by
9 federal law or regulation, to provide such information upon request.

10 F. Used in this section:

11 1. "Employee" means an individual who is an employee as defined
12 by the Internal Revenue Code of 1986, 26 U.S.C., Section 3401 et
13 seq. "Employee" does not mean an employee of a federal or state
14 agency performing intelligence or counterintelligence functions if
15 the head of such agency has determined that reporting with respect
16 to that employee could endanger the safety of the employee or
17 compromise an ongoing investigation or intelligence mission;

18 2. "Employer" means an individual or other entity who is an
19 employer as defined by the Internal Revenue Code of 1986, 26 U.S.C.,
20 Section 3401(d) and includes any governmental entity and any labor
21 organization; and

22 3. "Labor organization" means an entity as defined by the
23 National Labor Relations Act, 29 U.S.C., Section 152(5) including,
24 but not limited to, any entity known as a "hiring hall" which is

1 used by the organization and an employer to carry out requirements
2 described in Section 8(f)(3) of the National Labor Relations Act, 29
3 U.S.C., Section 158(f)(3), of an agreement between the organization
4 and the employer.

5 SECTION 12. AMENDATORY 40 O.S. 2011, Section 3-103, as
6 amended by Section 8, Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2014,
7 Section 3-103), is amended to read as follows:

8 Section 3-103. COMPUTATION - PERCENTAGE OF WAGES PAYABLE.

9 Beginning January 1, ~~1996~~ 2016, each employer, unless otherwise
10 prescribed in Sections 3-111, 3-111.1, ~~3-112~~, 3-701 or 3-801 of this
11 title or Section 14 of this act, shall pay contributions equal to a
12 one and one-half percent (1.5%) of taxable wages paid by the
13 employer with respect to employment ~~which shall be the greater of~~
14 ~~one percent (1%) or the average contribution rate paid by all~~
15 ~~employers during the second year preceding the current calendar~~
16 ~~year. The average contribution rate shall be calculated by dividing~~
17 ~~annual net contributions received by total annual taxable wages.~~

18 SECTION 13. AMENDATORY 40 O.S. 2011, Section 3-106, as
19 amended by Section 8, Chapter 196, O.S.L. 2012 (40 O.S. Supp. 2014,
20 Section 3-106), is amended to read as follows:

21 Section 3-106. BENEFIT WAGES CHARGED AND RELIEF THEREFROM.

22 A. The Oklahoma Employment Security Commission shall give
23 notice to each base period employer of a claimant promptly after the
24 claimant is issued his or her fifth week of benefits by the

1 Commission or promptly after the Commission receives notice of the
2 amounts paid as benefits by another state under a reciprocal
3 arrangement. Notice shall be deemed given under this subsection
4 when the Commission deposits the same with the United States Postal
5 Service addressed to the employer at an address designated by the
6 employer to receive the notice or at the employer's last-known
7 address. If the employer has elected to be notified by electronic
8 means according to procedures set out in Oklahoma Employment
9 Security Commission rules, notice shall be deemed to be given when
10 the Commission transmits the notification by electronic means.
11 Notice shall be presumed prima facie to have been given to the
12 employer to whom addressed on the date stated in the written notice.
13 This notice shall give the name and social security number of the
14 claimant, the date the claim was filed, and the amount of benefit
15 wages charged to the employer in each quarter of the base period.

16 B. Within twenty (20) days from the date stated upon the notice
17 provided for in subsection A of this section, the employer may file
18 with the Commission written objections to being charged with the
19 benefit wages upon one or more of the grounds for objection set
20 forth in subsection G of this section. The employer's written
21 objection must set forth specifically:

- 22 1. The date on which the employment was terminated;
- 23 2. Full particulars as to the circumstances of the termination
24 including the reason given by the individual for voluntarily leaving

1 the employment, or the nature of the misconduct for which
2 discharged, as the case may be;

3 3. Full particulars as to the regular scheduled part-time or
4 full-time employment of the employee including the starting date,
5 and ending date if any, of the continuous period of such part-time
6 or full-time employment; and

7 4. Such other information as called for by the notice.

8 C. Upon receipt of the employer's written objections, the
9 Commission shall make a determination as to whether or not the
10 employer is entitled to be relieved from the charging of benefit
11 wages. The Commission shall promptly notify the employer of that
12 determination. Provided further, the twenty-day time period for
13 filing written objections with the Commission as provided for in
14 subsection B of this section may be waived for good cause shown.

15 D. Within fourteen (14) days after the mailing of the
16 determination provided for in subsection C of this section, the
17 employer may file with the Commission or its representative a
18 written protest to the determination and request an oral hearing de
19 novo to present evidence in support of its protest. The Commission
20 or its representative shall, by written notice, advise the employer
21 of the date of the hearing, which shall not be less than ten (10)
22 days from the date of mailing of the written notice. At the
23 discretion of the Commission, this hearing shall be conducted by the
24 Commission or its representative appointed by the Commission for

1 this purpose. Pursuant to the hearing, the Commission or its
2 representative shall, as soon as practicable, make a written order
3 setting forth its findings of fact and conclusions of law, and shall
4 send it to the employer.

5 E. If any employer fails to file a written protest within the
6 period of fourteen (14) days, as provided by subsection D of this
7 section, then the determination shall be final, and no appeal shall
8 thereafter be allowed.

9 F. The employer or the Commission may appeal the order of the
10 Commission or its representative to the district court by filing a
11 petition for review with the clerk of that court within thirty (30)
12 days after the date the order was mailed to all parties. The
13 mailing date shall be specifically stated in the order.

14 G. The benefit wages charged to an employer for a given
15 calendar year shall be the total of the benefit wages stated in the
16 notices given to the employer by the Commission. Provided, that an
17 employer shall be relieved of a benefit wage charge if the employer
18 proves to the satisfaction of the Commission that the benefit wage
19 charge includes wages paid by the employer to any employee or former
20 employee, who:

21 1. Left employment with that employer, or with his or her last
22 employer, voluntarily without good cause connected to the work;

23 2. Was discharged from such employment for misconduct connected
24 with his or her work;

1 3. Was a regular scheduled employee of that employer prior to
2 the week the employee separated from other employment, and continued
3 to work for the employer through the fifth compensable week of
4 unemployment in his or her established benefit year;

5 4. Was separated from his or her employment as a direct result
6 of a major natural disaster, declared as such by the President
7 pursuant to the Disaster Relief Act of 1974, P.L. 93-288, and such
8 employee would have been entitled to disaster unemployment
9 assistance if he or she had not received unemployment insurance
10 benefits;

11 5. Was discharged by an employer for unsatisfactory performance
12 during an initial employment probationary period. As used in this
13 paragraph, "probationary period" means a period of time set forth in
14 an established probationary plan which applies to all employees or a
15 specific group of employees and does not exceed ninety (90) calendar
16 days from the first day a new employee begins work. The employee
17 must be informed of the probationary period within the first seven
18 (7) work days. There must be conclusive evidence to establish that
19 the individual was separated due to unsatisfactory work performance;

20 6. Left employment to attend training approved under the Trade
21 Act of 1974 and is allowed unemployment benefits pursuant to Section
22 2-416 of this title; or

23 7. Was separated from employment for compelling family
24 circumstances as defined in Section 2-210 of this title.

1 H. If an employer recalls an employee deemed unemployed as
2 defined by the Employment Security Act of 1980 and the employee
3 continues to be employed or the employee voluntarily terminates
4 employment or is discharged for misconduct within the benefit year,
5 the employer shall be entitled to have the benefit wage charged
6 against the employer's experience rating for the employee reduced by
7 the ratio of the number of weeks of remaining eligibility of the
8 employee to the total number of weeks of entitlement.

9 I. An employer shall not be charged with benefit wages of a
10 laid-off employee if the employer lists as an objection in a
11 statement filed in accordance with subsection B of this section that
12 the employee collecting benefits was hired to replace a United
13 States serviceman or servicewoman called into active duty and laid-
14 off upon the return to work by that serviceman or servicewoman. The
15 Unemployment Compensation Fund shall be charged with the benefit
16 wages of the laid-off employee.

17 J. If the Commission receives a notice of amounts paid as
18 benefits by another state under a reciprocal agreement, and the
19 notice is received after three (3) years from the effective date of
20 the underlying benefit claim, no benefit wage charge will be made
21 against the employer identified in the notice, or if a benefit wage
22 charge is made based on such a notice, the employer will be relieved
23 of the charge when the facts are brought to the attention of the
24 Commission.

1 K. An employer shall not be eligible to be relieved of a
2 benefit wage charge under paragraphs 1 and 2 of subsection G of this
3 section if the employer was sent a notice of benefit claim, pursuant
4 to Section 2-503 of this title, and failed to timely file protest to
5 the benefit claim.

6 SECTION 14. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 3-110.1 of Title 40, unless
8 there is created a duplication in numbering, reads as follows:

9 MINIMUM CONTRIBUTIONS.

10 A. All employers shall have a rate of one and one-half percent
11 (1.5%) until the calendar year following the eighth consecutive
12 calendar quarter in which the employer employed at least one
13 individual in covered employment, at which time the employer shall
14 qualify for an earned rate calculated pursuant to the provisions of
15 Part 1 of Article III of the Employment Security Act of 1980.

16 B. If an employer qualifies for an earned rate under subsection
17 A of this section and subsequently ceases to employ at least one
18 person, the employer shall revert to the minimum contribution rate
19 of one and one-half percent (1.5%) if, throughout the one (1)
20 calendar year immediately preceding the calculation of the
21 employer's contribution rate, there was no individual who could have
22 filed a claim in each quarter of that year establishing a base
23 period, as defined by Section 1-202 of Title 40 of the Oklahoma
24 Statutes, which would include wages from that employer. The

1 employer shall pay at the minimum contribution rate until the
2 provisions of subsection A of this section are met.

3 SECTION 15. AMENDATORY Section 13, Chapter 196, O.S.L.
4 2012 (40 O.S. Supp. 2014, Section 3-511), is amended to read as
5 follows:

6 Section 3-511. LEVY UPON EARNINGS OF TAX DEBTOR.

7 A. If any tax debtor shall fail to pay his or her indebtedness
8 to the Oklahoma Employment Security Commission after the tax debtor
9 has been notified of the amount due and demand for payment has been
10 made, it shall be lawful for the Oklahoma Employment Security
11 Commission to collect the amount owed by levy upon any earnings or
12 contract proceeds of the tax debtor.

13 B. To levy upon the earnings of a tax debtor or contract
14 proceeds owed to a tax debtor, the Oklahoma Employment Security
15 Commission must serve a Notice of Levy on the employer who employs
16 the tax debtor or the contracting entity that owes money under
17 contract to the tax debtor, along with the tax warrants covering all
18 quarters in which the tax debtor owes unemployment taxes, interest,
19 penalties, fees or surcharge. The levy will have the same priority,
20 and be subject to the same exceptions, as a continuing earnings
21 garnishment provided for in Section 1173.4 of Title 12 of the
22 Oklahoma Statutes. The following procedures will apply to a Notice
23 of Levy served on an employer or contracting entity:

24

1 1. The employer or contracting entity shall answer the Notice
2 of Levy on a form provided by the Commission. The employer or
3 contracting entity shall follow the procedure for answering a
4 continuing earnings garnishment as set out in subsection F of
5 Section 1173.4 of Title 12 of the Oklahoma Statutes;

6 2. The Notice of Levy shall be a lien on the debtor's property
7 in the same manner as provided for in subsection G of Section 1173.4
8 of Title 12 of the Oklahoma Statutes. The Notice of Levy shall also
9 be subject to the procedures and time limits set out in subsections
10 H, I, J and K of Section 1173.4 of Title 12 of the Oklahoma
11 Statutes, except that when a document is required to be filed with
12 the clerk of the court, the document will instead be filed with the
13 Commission as directed on the forms provided; ~~and~~

14 3. The employer or contracting entity shall deliver all funds
15 subject to the levy up to the amount of indebtedness indicated on
16 the tax warrants plus accrued interest pursuant to subsection A of
17 Section 3-301 of ~~Title 40 of the Oklahoma Statutes~~ this title and
18 any fees for service of process to the representative of the
19 Commission indicated on the Notice of Levy. The delivery of this
20 money shall occur within ten (10) days of the date the earnings or
21 contract proceeds are due to be paid to the tax debtor;

22 4. Any employer that fails or refuses to surrender money or
23 rights to money belonging to its employee in the employer's
24 possession, or that fails or refuses to make the appropriate

1 deduction from wages pursuant to a levy provided for by this statute
2 upon being served with a Notice of Levy and supporting warrant of
3 levy and lien of the Commission, shall be liable to the Commission
4 in a sum equal to the amount of money, rights to money, or wage
5 deduction not so surrendered, but not exceeding the amount of the
6 debtor's indebtedness for the collection of which the levy has been
7 made, together with accrued interest and penalty pursuant to Section
8 3-301 of this title, and the cost of service of the Notice of Levy.
9 Any amount recovered in this manner shall be credited against the
10 liability of the debtor for which the levy was made; and

11 5. Any employer in possession of money or rights to money
12 subject to levy upon which a levy has been made that surrenders the
13 money or rights to money to the Commission shall be discharged from
14 any obligation or liability to the debtor and any other person or
15 entity with respect to such money or rights to money arising from
16 the surrender or payment.

17 C. Service of the Notice of Levy and tax warrants shall be made
18 on the employer or contracting entity in the same manner as provided
19 in Section 2004 of Title 12 of the Oklahoma Statutes for service of
20 process in civil actions.

21 D. The sheriff's department that serves the Notice of Levy on
22 the employer or contracting entity shall be entitled to a service
23 fee of Fifty Dollars (\$50.00) that is to be paid by the Oklahoma
24 Employment Security Commission and added to the tax debtor's

1 indebtedness as a fee in the latest calendar quarter for which the
2 tax debtor has any type of indebtedness.

3 E. Claims for Exemption and any other matter related to the
4 levy shall be filed with the Assessment Board of the Oklahoma
5 Employment Security Commission. An Order of Exemption may relate
6 back no more than thirty (30) days before the filing of the Claim
7 for Exemption and shall extend no further than the expiration date
8 or termination of the levy. Appeal from the Assessment Board shall
9 be governed by the appeal procedures set out in Part 4 of Article
10 III of the Employment Security Act of 1980, and the Administrative
11 Rules of the Oklahoma Employment Security Commission pertaining
12 thereto.

13 SECTION 16. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3-512 of Title 40, unless there
15 is created a duplication in numbering, reads as follows:

16 TREASURY OFFSET PROGRAM - DELINQUENT UNEMPLOYMENT TAXES.

17 A. The Oklahoma Employment Security Commission shall be
18 authorized to collect state unemployment tax indebtedness
19 established pursuant to Article 3 of the Employment Security Act of
20 1980, through the Tax Offset Program of the U.S. Department of the
21 Treasury pursuant to 26 U.S.C., Section 6402(f) and 31 CFR, Section
22 285.8.

23 B. Before submitting an indebtedness to the U.S. Department of
24 the Treasury for collection through the Tax Offset Program, the

1 Oklahoma Employment Security Commission shall notify the debtor in
2 writing of the amount of the debt and the time period the
3 indebtedness accrued. The notification shall give the debtor sixty
4 (60) days from the date of mailing of the notice to present evidence
5 to the Commission that all or a part of the indebtedness is not
6 legally enforceable or is otherwise invalid.

7 C. If the debtor responds to the notice by presenting evidence,
8 the Commission shall evaluate the evidence and review its records of
9 the indebtedness. Based on this evaluation and review, the
10 Commission may modify the amount of the indebtedness. Once the
11 evaluation and review process is complete, the indebtedness shall be
12 submitted to the U.S. Department of Treasury for collection through
13 the Tax Offset Program.

14 D. If no evidence is presented by the debtor within the sixty-
15 day time period allowed by the notice, the amount of the
16 indebtedness will be submitted to the U.S. Department of the
17 Treasury for collection through the Tax Offset Program.

18 E. If the Oklahoma Employment Security Commission receives an
19 erroneous payment from the U.S. Department of the Treasury, the
20 Oklahoma Employment Security Commission shall return the payment to
21 the U.S. Department of the Treasury. If the money that was
22 erroneously paid to the Oklahoma Employment Security Commission had
23 been credited to a state unemployment tax indebtedness, that

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1 indebtedness shall be reinstated to the amount that existed before
2 the payment was credited.

3 SECTION 17. AMENDATORY 40 O.S. 2011, Section 4-318, is
4 amended to read as follows:

5 Section 4-318. In order to encourage the improvement and
6 modernization of employment, training, and placement services for
7 veterans, and to recognize eligible employees for excellence in the
8 provision of services to veterans, or for having made demonstrable
9 improvements in the provision of services to veterans, the Veterans
10 Service Division of the Oklahoma Employment Security Commission is
11 directed to establish an employee performance recognition program.
12 The Commission is hereby authorized to grant cash awards of up to
13 Five Thousand Dollars (\$5,000.00) to the eligible employees meeting
14 criteria established by the Veterans Service Division of the
15 Oklahoma Employment Security Commission~~;~~, provided~~;~~, funds exist from
16 United States Department of Labor grants for the payment of the
17 awards. For the purposes of this act, "eligible employees" means
18 any of the following:

- 19 1. A disabled veterans outreach program specialist;
- 20 2. A local veterans employment representative; or
- 21 3. An individual providing employment, training and placement
22 services to veterans under the ~~Workforce Investment Act of 1998~~
23 workforce system programs or through an Employment Service delivery
24 system.

1 SECTION 18. AMENDATORY 40 O.S. 2011, Section 4-504, is
2 amended to read as follows:

3 Section 4-504. OATHS, DEPOSITIONS, CERTIFICATIONS OF OFFICIAL
4 ACTS AND SUBPOENAS.

5 In the discharge of the duties imposed by the Employment
6 Security Act of 1980, the Oklahoma Employment Security Commission,
7 the chairman of an appeal tribunal, the members of the Board of
8 Review, and any duly authorized representative of any of them shall
9 have power to administer oaths and affirmations, take depositions,
10 certify to official acts, and issue subpoenas to compel the
11 attendance of witnesses and the production of books, papers,
12 correspondence, memoranda, and other records deemed necessary as
13 evidence in connection with a disputed claim or the administration
14 of the Employment Security Act of 1980 or for purposes of monitoring
15 a workforce system program ~~under the Workforce Investment Act, 29~~
16 ~~U.S.C., Section 2934.~~

17 SECTION 19. AMENDATORY 40 O.S. 2011, Section 4-508, as
18 last amended by Section 1, Chapter 282, O.S.L. 2014 (40 O.S. Supp.
19 2014, Section 4-508), is amended to read as follows:

20 Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL -
21 DISCLOSURE.

22 A. Except as otherwise provided by law, information obtained
23 from any employing unit or individual pursuant to the administration
24 of the Employment Security Act of 1980, ~~the Workforce Investment Act~~

1 ~~of 1998~~ any workforce system program administered or monitored by
2 the Oklahoma Employment Security Commission, and determinations as
3 to the benefit rights of any individual shall be kept confidential
4 and shall not be disclosed or be open to public inspection in any
5 manner revealing the individual's or employing unit's identity. Any
6 claimant or employer or agent of such person as authorized in
7 writing shall be supplied with information from the records of the
8 Oklahoma Employment Security Commission, to the extent necessary for
9 the proper presentation of the claim or complaint in any proceeding
10 under the Employment Security Act of 1980, with respect thereto.

11 B. Upon receipt of written request by any employer who
12 maintains a Supplemental Unemployment Benefit (SUB) Plan, the
13 Commission or its designated representative may release to such
14 employer information regarding weekly benefit amounts paid its
15 workers during a specified temporary layoff period, provided such
16 Supplemental Unemployment Benefit (SUB) Plan requires benefit
17 payment information before Supplemental Unemployment Benefits can be
18 paid to such workers. Any information disclosed under this
19 provision shall be utilized solely for the purpose outlined herein
20 and shall be held strictly confidential by the employer.

21 C. The provisions of this section shall not prevent the
22 Commission from disclosing the following information and no
23 liability whatsoever, civil or criminal, shall attach to any member
24

1 of the Commission or any employee thereof for any error or omission
2 in the disclosure of such information:

3 1. The delivery to taxpayer or claimant a copy of any report or
4 other paper filed by the taxpayer or claimant pursuant to the
5 Employment Security Act of 1980;

6 2. The disclosure of information to any person for a purpose as
7 authorized by the taxpayer or claimant pursuant to a waiver of
8 confidentiality. The waiver shall be in writing and shall be
9 notarized;

10 3. The Oklahoma Department of Commerce may have access to data
11 obtained pursuant to the Employment Security Act of 1980 pursuant to
12 rules promulgated by the Commission. The information obtained shall
13 be held confidential by the Department and any of its agents and
14 shall not be disclosed or be open to public inspection. The
15 Oklahoma Department of Commerce, however, may release aggregated
16 data, either by industry or county, provided that such aggregation
17 meets disclosure requirements of the Commission;

18 4. The publication of statistics so classified as to prevent
19 the identification of a particular report and the items thereof;

20 5. The disclosing of information or evidence to the Attorney
21 General or any district attorney when the information or evidence is
22 to be used by the officials or other parties to the proceedings to
23 prosecute or defend allegations of violations of the Employment
24 Security Act of 1980. The information disclosed to the Attorney

1 General or any district attorney shall be kept confidential by them
2 and not be disclosed except when presented to a court in a
3 prosecution of a violation of Section 1-101 et seq. of this title,
4 and a violation by the Attorney General or district attorney by
5 otherwise releasing the information shall be a felony;

6 6. The furnishing, at the discretion of the Commission, of any
7 information disclosed by the records or files to any official person
8 or body of this state, any other state or of the United States who
9 is concerned with the administration of assessment of any similar
10 tax in this state, any other state or the United States;

11 7. The furnishing of information to other state agencies for
12 the limited purpose of aiding in the collection of debts owed by
13 individuals to the requesting agencies or the Oklahoma Employment
14 Security Commission;

15 8. The release to employees of the Department of Transportation
16 or any Metropolitan Planning Organization as defined in 23 U.S.C.,
17 Section 134 and 49 U.S.C., Section 5303 of information required for
18 use in federally mandated regional transportation planning, which is
19 performed as a part of its official duties;

20 9. The release to employees of the State Treasurer's office of
21 information required to verify or evaluate the effectiveness of the
22 Oklahoma Small Business Linked Deposit Program on job creation;

23 10. The release to employees of the Attorney General, the State
24 Insurance Fund, the Department of Labor, the Workers' Compensation

1 Commission, and the Insurance Department for use in investigation of
2 workers' compensation fraud;

3 11. The release to employees of any Oklahoma state, Oklahoma
4 county or Oklahoma municipal law enforcement agency for use in
5 criminal investigations and the location of missing persons or
6 fugitives from justice;

7 12. The release to employees of the Center of International
8 Trade, Oklahoma State University, of information required for the
9 development of International Trade for employers doing business in
10 the State of Oklahoma;

11 13. The release to employees of the Oklahoma State Regents for
12 Higher Education of information required for use in the default
13 prevention efforts and/or collection of defaulted student loans
14 guaranteed by the Oklahoma Guaranteed Student Loan Program. Any
15 information disclosed under this provision shall be utilized solely
16 for the purpose outlined herein and shall be held strictly
17 confidential by the Oklahoma State Regents for Higher Education;

18 14. The release to employees of the Center for Economic and
19 Management Research of the University of Oklahoma, the Center for
20 Economic and Business Development at Southwestern Oklahoma State
21 University, or a center of economic and business research or
22 development at a comprehensive or regional higher education
23 institution within the Oklahoma State System of Higher Education of
24 information required to identify economic trends. The information

1 obtained shall be kept confidential by the higher education
2 institution and shall not be disclosed or be open to public
3 inspection. The higher education institution may release aggregated
4 data, provided that such aggregation meets disclosure requirements
5 of the Commission;

6 15. The release to employees of the Office of Management and
7 Enterprise Services of information required to identify economic
8 trends. The information obtained shall be kept confidential by the
9 Office of Management and Enterprise Services and shall not be
10 disclosed or be open to public inspection. The Office of Management
11 and Enterprise Services may release aggregate data, provided that
12 such aggregation meets disclosure requirements of the Commission;

13 16. The release to employees of the Department of Mental Health
14 and Substance Abuse Services of information required to evaluate the
15 effectiveness of mental health and substance abuse treatment and
16 state or local programs utilized to divert persons from inpatient
17 treatment. The information obtained shall be kept confidential by
18 the Department and shall not be disclosed or be open to public
19 inspection. The Department of Mental Health and Substance Abuse
20 Services, however, may release aggregated data, either by treatment
21 facility, program or larger aggregate units, provided that such
22 aggregation meets disclosure requirements of the Oklahoma Employment
23 Security Commission;

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1 17. The release to employees of the Attorney General, the
2 Oklahoma State Bureau of Investigation, and the Insurance Department
3 for use in the investigation of insurance fraud and health care
4 fraud;

5 18. The release to employees of public housing agencies for
6 purposes of determining eligibility pursuant to 42 U.S.C., Section
7 503(i);

8 19. The release of wage and benefit claim information, at the
9 discretion of the Commission, to an agency of this state or its
10 political subdivisions, or any nonprofit corporation that operates a
11 program or activity designated as a partner in the Workforce
12 Investment Act One-Stop delivery system pursuant to 29 U.S.C.A.,
13 Section 2481(b), based on a showing of need made to the Commission
14 and after an agreement concerning the release of information is
15 entered into with the entity receiving the information;

16 20. The release of information to the wage record interchange
17 system, at the discretion of the Commission;

18 21. The release of information to the Bureau of the Census of
19 the U.S. Department of Commerce for the purpose of economic and
20 statistical research;

21 22. The release of employer tax information and benefit claim
22 information to the Oklahoma Health Care Authority for use in
23 determining eligibility for a program that will provide subsidies
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1 for health insurance premiums for qualified employers, employees,
2 self-employed persons, and unemployed persons;

3 23. The release of employer tax information and benefit claim
4 information to the State Department of Rehabilitation Services for
5 use in assessing results and outcomes of clients served;

6 24. The release of information to any state or federal law
7 enforcement authority when necessary in the investigation of any
8 crime in which the Commission is a victim. Information that is
9 confidential under this section shall be held confidential by the
10 law enforcement authority unless and until it is required for use in
11 court in the prosecution of a defendant in a criminal prosecution;

12 25. The release of information to vendors that contract with
13 the Oklahoma Employment Security Commission to provide for the
14 issuance of debit cards, to conduct electronic fund transfers, to
15 perform computer programming operations, or to perform computer
16 maintenance or replacement operations; provided the vendor agrees to
17 protect and safeguard the information it receives and to destroy the
18 information when no longer needed for the purposes set out in the
19 contract;

20 26. The release to employees of the Office of Juvenile Affairs
21 of information for use in assessing results and outcomes of clients
22 served as well as the effectiveness of state and local juvenile and
23 justice programs including prevention and treatment programs. The
24 information obtained shall be kept confidential by the Office of

1 Juvenile Affairs and shall not be disclosed or be open to public
2 inspection. The Office of Juvenile Affairs may release aggregated
3 data for programs or larger aggregate units, provided that the
4 aggregation meets disclosure requirements of the Oklahoma Employment
5 Security Commission; or

6 27. The release of information to vendors that contract with
7 the State of Oklahoma for the purpose of providing a public
8 electronic labor exchange system that will support the Oklahoma
9 Employment Security Commission's operation of an employment service
10 system to connect employers with job seekers and military veterans.
11 This labor exchange system would enhance the stability and security
12 of Oklahoma's economy as well as support the provision of veterans'
13 priority of service. The vendors may perform computer programming
14 operations, perform computer maintenance or replacement operations,
15 or host the electronic solution; provided each vendor agrees to
16 protect and safeguard all information received, that no information
17 shall be disclosed to any third party, that the use of the
18 information shall be restricted to the scope of the contract, and
19 that the vendor shall properly dispose of all information when no
20 longer needed for the purposes set out in the contract.

21 D. Subpoenas to compel disclosure of information made
22 confidential by this statute shall not be valid, except for
23 administrative subpoenas issued by federal, state, or local
24 governmental agencies that have been granted subpoena power by

1 statute or ordinance. Confidential information maintained by the
2 Commission can be obtained by order of a court of record that
3 authorizes the release of the records in writing. All
4 administrative subpoenas or court orders for production of documents
5 must provide a minimum of twenty (20) days from the date it is
6 served for the Commission to produce the documents. If the date on
7 which production of the documents is required is less than twenty
8 (20) days from the date of service, the subpoena or order shall be
9 considered void on its face as an undue burden or hardship on the
10 Commission. All administrative subpoenas, court orders or notarized
11 waivers of confidentiality authorized by paragraph 2 of subsection C
12 of this section shall be presented with a request for records within
13 ninety (90) days of the date the document is issued or signed, and
14 the document can only be used one time to obtain records.

15 E. Should any of the disclosures provided for in this section
16 require more than casual or incidental staff time, the Commission
17 shall charge the cost of such staff time to the party requesting the
18 information.

19 F. It is further provided that the provisions of this section
20 shall be strictly interpreted and shall not be construed as
21 permitting the disclosure of any other information contained in the
22 records and files of the Commission.

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1 SECTION 20. REPEALER 40 O.S. 2011, Sections 3-110 and 3-
2 112, as amended by Section 11, Chapter 71, O.S.L. 2013 (40 O.S.
3 Supp. 2014, Section 3-112), are hereby repealed.

4 SECTION 21. This act shall become effective November 1, 2015.

5 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
6 April 1, 2015 - DO PASS
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