

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1001

6 By: McDaniel (Randy)

7 COMMITTEE SUBSTITUTE

8 An Act relating to labor; amending 40 O.S. 2011,
9 Sections 1-210, 2-108, 2-203, as last amended by
10 Section 1, Chapter 220, O.S.L. 2014, 2-417, 2-618, 2-
11 802, 3-103, as amended by Section 8, Chapter 71,
12 O.S.L. 2013, 3-106, as amended by Section 8, Chapter
13 196, O.S.L. 2012, Section 13, Chapter 196, O.S.L.
14 2012, 4-318, 4-504 and 4-508, as last amended by
15 Section 1, Chapter 282, O.S.L. 2014 (40 O.S. Supp.
16 2014, Sections 2-203, 3-103, 3-106, 3-511 and 4-508),
17 which relate to the Employment Security Act of 1980;
18 modifying definition; exempting certain persons from
19 coverage; defining terms; requiring limited liability
20 companies be taxed in the same manner as under the
21 Federal Unemployment Tax Act and Internal Revenue
22 Code; modifying when certain individuals produce
23 certain evidence; modifying requirements for filing
24 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
overpayment indebtedness; modifying references to the
Workforce Investment Act programs; modifying employer
contribution rate; prohibiting eligibility of certain
employers to be relieved of benefit wage charge;

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

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

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

Section 1-210. EMPLOYMENT.

"Employment" means:

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

(a) any officer of a corporation; or

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

1 (i) as an agent-driver or commission-driver engaged
2 in distributing meat products, vegetable
3 products, fruit products, bakery products,
4 beverages other than milk, or laundry or dry
5 cleaning services, for his or her principal; or

6 (ii) as a traveling or city salesperson, other than as
7 an agent-driver or commission-driver, engaged
8 upon a full-time basis in the solicitation on
9 behalf of, and the transmission to, his or her
10 principal, except for sideline sales activities
11 on behalf of some other person, of orders from
12 wholesalers, retailers, contractors, or operators
13 of hotels, restaurants or other similar
14 establishments for merchandise for resale or
15 supplies for use in their business operations;

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

18 (a) of this paragraph if:

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

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

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

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

15 (4) Service performed by an individual in the employ of a
16 community chest, fund, foundation or corporation, organized and
17 operated exclusively for religious, charitable, scientific, testing
18 for public safety, literary or educational purposes, or for the
19 prevention of cruelty to children or animals, no part of the net
20 earnings of which inures to the benefit of any private shareholder
21 or individual, no substantial part of the activities of which is
22 carrying on propaganda, or otherwise attempting to influence
23 legislation and which does not participate in, or intervene in,
24 including the publishing or distributing of statements, any

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

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

9 (a) the service is performed for a person who:

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

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

22 (b) for the purposes of this paragraph any individual who
23 is a member of a crew furnished by a crew leader to
24 perform service in agricultural labor for any other

1 person shall be treated as an employee of the crew
2 leader:

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

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

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

21 (i) the other person and not the crew leader shall be
22 treated as the employer of the individual; and

23 (ii) the other person shall be treated as having paid
24 cash remuneration to the individual in an amount

1 equal to the amount of cash remuneration paid to
2 the individual by the crew leader, either on his
3 or her own behalf or on behalf of the other
4 person, for the service in agricultural labor
5 performed for the other person.

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

8 (i) furnishes individuals to perform service in
9 agricultural labor for any other person;

10 (ii) pays, either on his or her own behalf or on
11 behalf of another person, the individuals so
12 furnished by the crew leader for the service in
13 agricultural labor performed by them; and

14 (iii) has not entered into a written agreement with the
15 other person (farm operator) under which the
16 individual is designated as an employee of the
17 other person.

18 (6) The term "employment" shall include domestic service in a
19 private home, local college club or local chapter of a college
20 fraternity or sorority performed for a person or entity who paid
21 cash remuneration of One Thousand Dollars (\$1,000.00) or more ~~in the~~
22 ~~calendar year or the preceding calendar year~~ to individuals employed
23 in ~~such~~ domestic service in any calendar quarter in the calendar
24 year or the preceding calendar year.

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

3 (a) in the employ of:

4 (i) a church or convention or association of
5 churches;

6 (ii) an organization which is operated primarily for
7 religious purposes and which is operated,
8 supervised, controlled, or principally supported
9 by a church or convention or association of
10 churches; or

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

16 (b) by a duly ordained, commissioned or licensed minister
17 of a church in the exercise of his or her ministry or
18 by a member of a religious order in the exercise of
19 duties required by the order;

20 (c) in the employ of a governmental entity referred to in
21 paragraph (3) of this section if the service is
22 performed by an individual in the exercise of duties:

23 (i) as an elected official;

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1 (ii) as a member of a legislative body, or a member of
2 the judiciary of a state or political
3 subdivision;

4 (iii) as a member of the State National Guard or Air
5 National Guard;

6 (iv) as an employee serving on a temporary basis in
7 case of fire, storm, snow, earthquake, flood or
8 similar emergency;

9 (v) in a position which, under or pursuant to the
10 laws of this state, is designated as a major
11 nontenured policymaking or advisory position, or
12 a policymaking or advisory position the
13 performance of the duties of which ordinarily
14 does not require more than eight (8) hours per
15 week;

16 (vi) as an election official or election worker if the
17 amount of remuneration received by the individual
18 during the calendar year for services as an
19 election official or election worker is less than
20 One Thousand Dollars (\$1,000.00);

21 (d) by an individual who is participating or enrolled in a
22 program of an organization that provides
23 rehabilitation through work for individuals whose
24 earning capacity is impaired by age, physical or

1 mental deficiency, or injury, or a program of an
2 organization that provides work for individuals who,
3 because of their impaired mental or physical capacity
4 cannot be readily absorbed into the competitive labor
5 market; provided that the services are performed by a
6 program participant on real property owned or leased
7 directly by the organization or by a program
8 participant working under a special certificate issued
9 by the U.S. Secretary of Labor pursuant to 29 U.S.C.,
10 Section 214(c) and 29 C.F.R., Section 525.1 et seq.;

11 (e) as part of an unemployment work-relief or work-
12 training program assisted or financed in whole or in
13 part by any federal agency or an agency of a state or
14 political subdivision thereof or of an Indian tribe,
15 by an individual receiving such work-relief or work-
16 training; or

17 (f) by an inmate of a custodial or penal institution.

18 (8) The term "employment" shall include the service of an
19 individual who is a citizen of the United States, performed outside
20 the United States, except in Canada, in the employ of an American
21 employer other than service which is deemed "employment" under the
22 provisions of paragraphs (11) or (12) of this section or the
23 parallel provisions of another state's law, if:

- 1 (a) the employer's principal place of business in the
2 United States is located in this state;
- 3 (b) the employer has no place of business in the United
4 States, but:
- 5 (i) the employer is an individual who is a resident
6 of this state;
- 7 (ii) the employer is a corporation which is organized
8 under the laws of this state; or
- 9 (iii) the employer is a partnership or a trust and the
10 number of the partners or trustees who are
11 residents of this state is greater than the
12 number who are residents of any one other state;
- 13 (c) none of the criteria of subparagraphs (a) and (b) of
14 this paragraph are met but the employer has elected
15 coverage in this state or, the employer having failed
16 to elect coverage in any state, the individual has
17 filed a claim for benefits, based on such service,
18 under the law of this state;
- 19 (d) an "American employer", for purposes of this
20 subsection, means a person who is:
- 21 (i) an individual who is a resident of the United
22 States;
- 23 (ii) a partnership if two-thirds or more of the
24 partners are residents of the United States;

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

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

5 (e) the term "United States", for the purposes of this
6 subsection, includes the states, the District of
7 Columbia, the Commonwealth of Puerto Rico and the
8 Virgin Islands.

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

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

18 (a) includes any service with respect to which a tax is
19 required to be paid under any federal law imposing a
20 tax against which credit may be taken for
21 contributions required to be paid into a state
22 unemployment fund; and

23 (b) includes any service which is required to be
24 "employment" for full tax credit to be allowed against

1 the tax imposed by the Federal Unemployment Tax Act of
2 1954, Public Law 591, Chapter 736, as amended, 26
3 U.S.C., Section 3301 et seq.

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

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

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

9 (i) the individual's base of operations, or, if there
10 is no base of operations, then the place from
11 which the individual's employment is directed or
12 controlled is in this state; or

13 (ii) the individual's base of operations or place from
14 which the service is directed or controlled is
15 not in any state in which some part of the
16 service is performed but the individual's
17 residence is in this state.

18 (12) (a) Services covered by an election pursuant to Section 3-
19 203 of this title; and

20 (b) services covered by an arrangement pursuant to Section
21 4-701 et seq. of this title between the Oklahoma
22 Employment Security Commission and the agency charged
23 with the administration of any other state or federal
24 unemployment compensation law, pursuant to which all

1 services performed by an individual for an employing
2 unit are deemed to be performed entirely within this
3 state,
4 shall be deemed to be employment if the Commission has approved an
5 election of the employing unit for whom such services are performed,
6 pursuant to which the entire service of such individual during the
7 period covered by such election is deemed to be insured work.

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

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

10 or

11 (b) the service is performed both within and without such
12 state, but the service performed without such state is
13 incidental to the individual's service within the
14 state; for example, is temporary or transitory in
15 nature or consists of isolated transactions.

16 (14) Notwithstanding any other provision of this subsection,
17 services performed by an individual for wages or under any contract
18 of hire shall be deemed to be employment subject to the Employment
19 Security Act of 1980 unless and until it is shown to the
20 satisfaction of the Commission that:

21 (a) such individual has been and will continue to be free
22 from control or direction over the performance of the
23 services, both under the contract of hire and in fact;
24 and

- 1 (b) such individual is customarily engaged in an
2 independently established business; or
3 (c) such service is outside the usual course of the
4 business for which the service is performed and that
5 the service is performed outside of all the places of
6 business of the enterprise for which the service is
7 performed.

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

- 9 (a) services performed by an individual in agricultural
10 labor, except as provided under paragraph (5) of this
11 section. Services performed by an individual who is a
12 nonresident alien admitted to the United States to
13 perform agricultural labor, pursuant to 8 U.S.C.,
14 Sections 1101(a), 1184(c) and 1188. For purposes of
15 this subparagraph, the term "agricultural labor" means
16 remunerated service performed in agricultural labor as
17 defined in the Federal Unemployment Tax Act, 26
18 U.S.C., Section 3306(k);
19 (b) domestic service, except as provided under paragraph
20 (6) of this section, in a private home, local college
21 club, or local chapter of a college fraternity or
22 sorority;
23 (c) service performed by an individual in the employ of
24 his or her son, daughter, or spouse, and service

1 performed by a child under the age of twenty-one (21)
2 in the employ of his or her father or mother, or both
3 father and mother;

4 (d) service performed in the employ of the United States
5 government or an instrumentality of the United States
6 exempt under the Constitution of the United States
7 from the contributions imposed by the Employment
8 Security Act of 1980, except that to the extent that
9 the Congress of the United States shall permit states
10 to require any instrumentalities of the United States
11 to make payments into an unemployment fund under a
12 state unemployment compensation law, all of the
13 provisions of the Employment Security Act of 1980
14 shall be applicable to such instrumentalities, and to
15 services performed for such instrumentalities, in the
16 same manner, to the same extent, and on the same terms
17 as to all other employers, employing units,
18 individuals and services; provided that if this state
19 shall not be certified for any year by the Secretary
20 of Labor of the United States under the Federal
21 Internal Revenue Code, 26 U.S.C., Section 3304(c), the
22 payments required of such instrumentalities with
23 respect to the year shall be refunded by the
24 Commission from the fund in the same manner and within

1 the same period as is provided in Section 3-304 of
2 this title with respect to contributions erroneously
3 collected;

4 (e) service with respect to which unemployment
5 compensation is payable under an unemployment
6 compensation system established by an act of Congress;

7 (f) service performed in the employ of a foreign
8 government, including service as a consul or other
9 officer or employee or a nondiplomatic representative;

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

12 (i) if the service is of a character similar to that
13 performed in foreign countries by employees of
14 the United States government or of an
15 instrumentality thereof, and

16 (ii) if the Commission finds that the United States
17 Secretary of State has certified to the United
18 States Secretary of the Treasury that the foreign
19 government, with respect to whose instrumentality
20 exemption is claimed, grants an equivalent
21 exemption with respect to similar service
22 performed in the foreign country by employees of
23 the United States government and of
24 instrumentalities thereof;

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

10 (i) service performed as a student nurse in the employ of
11 a hospital or a nurses' training school by an
12 individual who is enrolled and is regularly attending
13 classes in a nurses' training school chartered or
14 approved pursuant to state law; and service performed
15 as an intern in the employ of a hospital by an
16 individual who has completed a four-year course in a
17 medical school chartered or approved pursuant to state
18 law;

19 (j) service performed by an individual for a person, firm,
20 association, trust, partnership or corporation as an
21 insurance agent, or as an insurance solicitor or as a
22 licensed real estate agent, if all such service
23 performed by such individual for such person is
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1 performed for remuneration solely by way of
2 commissions or fees;

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

12 (i) the individual must be engaged in the delivery or
13 distribution of newspapers or shopping news,
14 including any services directly related to such
15 trade or business,

16 (ii) substantially all the remuneration, whether or
17 not paid in cash, for the performance of the
18 services described in clause (i) of this
19 subdivision is directly related to sales or other
20 output, including the performance of services,
21 rather than the number of hours worked, and

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

1 are performed and the contract provides that the
2 person will not be treated as an employee with
3 respect to the services;

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

6 (i) by a student who is enrolled and is regularly
7 attending classes at the school, college, or
8 university, or

9 (ii) by the spouse of the student, if the spouse is
10 advised, at the time the spouse commences to
11 perform the service, that:

12 (I) the employment of the spouse to perform the
13 service is provided under a program to
14 provide financial assistance to the student
15 by the school, college, or university, and

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

18 (m) service performed by an individual who is enrolled at
19 a nonprofit or public educational institution which
20 normally maintains a regular faculty and curriculum
21 and normally has a regularly organized body of
22 students in attendance at the place where its
23 educational activities are carried on as a student in
24 a full-time program, taken for credit at the

1 institution, which combines academic instruction with
2 work experience, if the service is an integral part of
3 the program, and the institution has so certified to
4 the employer, except that this provision shall not
5 apply to service performed in a program established
6 for or on behalf of an employer or group of employers;

7 (n) service performed in the employ of a hospital, if the
8 service is performed by a patient of the hospital;

9 (o) services performed by cooperative extension personnel
10 holding federal appointments employed by state
11 institutions of higher learning;

12 (p) earnings of employees being paid by state warrants who
13 are presently covered by the Federal Unemployment
14 Compensation Act, 5 U.S.C., Section 8501 et seq., by
15 virtue of their federal status;

16 (q) cosmetology services performed by an individual in a
17 beauty shop, as defined by Section 199.1 of Title 59
18 of the Oklahoma Statutes, pursuant to an agreement
19 whereby the owner of the beauty shop leases or rents
20 facilities for cosmetology to such individual;

21 (r) barbering services performed by an individual in a
22 barber shop, as defined by Section 61.5 of Title 59 of
23 the Oklahoma Statutes, pursuant to an agreement
24

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

3 (s) services performed as a participant in a work or
4 training program administered by the Department of
5 Human Services;

6 (t) riding services performed by a jockey and services
7 performed by a trainer of race horses in preparation
8 for and during an approved race meeting licensed by
9 the Oklahoma Horse Racing Commission;

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

16 (v) service performed by a person, commonly referred to as
17 "owner-operator", who owns or leases a truck-tractor
18 or truck for hire, provided the owner-operator
19 actually operates the truck-tractor or truck and,
20 further, that the entity contracting with the owner-
21 operator is not the lessor of the truck-tractor or
22 truck;

23 (w) services performed as a chopper of cotton who weeds or
24 thins cotton crops by hand or hoe. This subsection

1 shall be interpreted and applied consistently with the
2 Federal Unemployment Tax Act, 26 U.S.C., Sections
3 3304(a)(6)(A) and 3306(k); ~~or~~

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

6 (i) if the individual is engaged primarily in
7 negotiating for the acquisition or divestiture of
8 mineral rights or negotiating business agreements
9 that provide for the exploration for or
10 development of minerals,

11 (ii) if substantially all remuneration paid in cash or
12 otherwise for the performance of the services is
13 directly related to the completion by the
14 individual of the specific tasks contracted for
15 rather than to the number of hours worked by the
16 individual, and

17 (iii) if the services performed by the individual are
18 performed under a written contract between the
19 individual and the person for whom the services
20 are performed; provided that the individual is to
21 be treated as an independent contractor and not
22 as an employee with respect to the services
23 provided under the contract; or

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

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

9 LIMITED LIABILITY COMPANIES.

10 A. For purposes of the Employment Security Act of 1980, a
11 "limited liability company" and a "foreign limited liability
12 company" shall be defined by the provisions of the Oklahoma Limited
13 Liability Company Act.

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

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

21 Section 2-108. BENEFITS - APPROVED TRAINING.

22 A. Notwithstanding any other provisions of law, no otherwise
23 eligible individual shall be denied benefits for any week because
24 the individual is in training with the approval of the Oklahoma

1 Employment Security Commission, nor shall such individual be denied
2 benefits with respect to any week in which the individual is in
3 training with the approval of the Commission by reason of the
4 application of provisions of law relating to availability for work,
5 active search for work, failure to apply for, or a refusal to
6 accept, suitable work. Such approval for training shall be
7 determined by consideration of all the following factors:

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

10 2. Training is for an occupation for which there is a
11 substantial and recurring demand; and

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

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

19 SECTION 4. AMENDATORY 40 O.S. 2011, Section 2-203, as
20 last amended by Section 1, Chapter 220, O.S.L. 2014 (40 O.S. Supp.
21 2014, Section 2-203), is amended to read as follows:

22 Section 2-203. CLAIM.

23 A. An unemployed individual must file an initial claim for
24 unemployment benefits by calling an Oklahoma Employment Security

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

12 B. 1. During the process of filing an initial claim for
13 unemployment benefits, the claimant shall be made aware of the
14 definition of misconduct set out in Section 2-406 of this title, and
15 the claimant shall affirmatively certify that the answers given to
16 all questions in the initial claim process are true and correct to
17 the best of the claimant's knowledge and that no information has
18 been intentionally withheld or misrepresented in an attempt by the
19 claimant to receive benefits to which he or she is not entitled.

20 2. The certification statement required in paragraph 1 of this
21 subsection shall be available through the Internet Claims service
22 provided by the Commission and by a form to be completed by the
23 claimant in a local office of the Commission or at any alternate
24

1 site designated by the Commission to take unemployment benefit
2 claims.

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

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

16 E. The Commission may require the individual to produce
17 documents or information relevant to the claim for benefits. If the
18 individual fails to produce it, the individual's claim for
19 unemployment benefits may be disqualified indefinitely by the
20 Commission until the information is produced. ~~The Commission may
21 require the individual to personally appear at a location for a
22 purpose relevant to the individual's unemployment claim or job
23 search. If the individual fails to appear, the individual's claim
24 for unemployment benefits may be disqualified indefinitely by the~~

1 ~~Commission until the individual makes a personal appearance as~~
2 ~~directed.~~ An individual that has been disqualified indefinitely by
3 the provisions of this subsection may receive payment for any week
4 between the initial failure and the compliance with this subsection
5 if the claimant is otherwise eligible and has made a timely filing
6 for each intervening week.

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

9 Section 2-417. SEEK AND ACCEPT WORK - WEEK OF OCCURRENCE
10 DISQUALIFICATION.

11 A. An individual shall be disqualified to receive benefits for
12 each week in which the individual shall have failed to do any of the
13 following:

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

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

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

21 ~~4. Participate in reemployment services, such as job search~~
22 ~~assistance services, if the individual has been determined likely to~~
23 ~~exhaust regular benefits and needs reemployment services pursuant to~~
24 ~~a profiling system established by the Oklahoma Employment Security~~

1 ~~Commission. An individual will not be disqualified under this~~
2 ~~paragraph for failure to participate in reemployment services, if:~~

- 3 a. ~~the individual has previously completed reemployment~~
4 ~~services, or~~
- 5 b. ~~there is justifiable cause for the individual's~~
6 ~~failure to participate in reemployment services.~~

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

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

15 FAILURE TO PERSONALLY APPEAR AS DIRECTED.

16 The Oklahoma Employment Security Commission may require the
17 individual to personally appear at a location for a purpose relevant
18 to the individual's unemployment claim, job search, or reemployment
19 services. If the individual fails to appear, the individual's claim
20 for unemployment benefits will be disqualified indefinitely by the
21 Commission until the individual makes a personal appearance as
22 directed. An individual who has been disqualified indefinitely by
23 the provisions of this section shall be disqualified for all weeks
24 between the initial failure and the compliance with this section.

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

4 FAILURE TO PARTICIPATE IN REEMPLOYMENT SERVICES THROUGH
5 PROFILING.

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

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

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

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

23 A. The procedure set out in this section for the filing of a
24 statement of objection by telefax or email is an optional procedure

1 for the employer. If the employer chooses not to utilize this
2 procedure, the employer must file its protest in accordance with
3 subsection E of Section 2-503 of Title 40 of the Oklahoma Statutes.

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

11 1. Disclose the name and social security number of the
12 employee;

13 2. Make the claimant ineligible for benefits under Sections 2-
14 201 through 2-210 of Title 40 of the Oklahoma Statutes;

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

17 4. Relieve the employer from being charged for the benefits
18 wages of this claimant.

19 C. Any statement of objection filed within the time period set
20 out in subsection B of this section shall be considered a valid
21 protest to a claim for unemployment benefits filed by the former
22 employee and the employer shall be considered an interested party to
23 the claim. A statement of objection filed outside the time period
24 set out in subsection B of this section shall not be considered a

1 valid protest to a claim for unemployment of the former employee,
2 and the employer shall not be considered an interested party to the
3 claim.

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

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

7 A. As used in this section, the following words have the
8 following meanings:

9 1. "Bank" means any state bank or banking association, national
10 bank or banking association, savings and loan company, credit union,
11 or any other financial institution;

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

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

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

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

21 B. If any debtor shall fail to pay his or her indebtedness to
22 the Oklahoma Employment Security Commission and after the debtor has
23 been notified of the amount due and demand for payment has been
24 made, it shall be lawful for the Commission to collect the amount

1 owed by levy upon the debtor's employer or any bank account of the
2 debtor.

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

11 1. The employer shall answer the Notice of Levy on a form
12 provided by the Commission. The employer shall follow the procedure
13 for answering a continuing earnings garnishment as set out in
14 subsection F of Section 1173.4 of Title 12 of the Oklahoma Statutes;
15 ~~and~~

16 2. The Notice of Levy shall be a lien on the debtor's property
17 in the same manner as provided for in subsection G of Section 1173.4
18 of Title 12 of the Oklahoma Statutes. The Notice of Levy shall also
19 be subject to the procedures and time limits set out in subsections
20 H, I, J and K of Section 1173.4 of Title 12 of the Oklahoma
21 Statutes, except that when a document is required to be filed with
22 the clerk of the court, the document will instead be filed with the
23 Commission as directed on the forms provided;

24

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

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

21 D. To levy upon a debtor's bank account, the Commission must
22 serve a Notice of Levy on the bank in which the debtor has an
23 account, along with the warrant of levy and lien issued against the
24

1 debtor. The following procedures will apply to a Notice of Levy
2 served on a bank:

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

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

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

20 4. Any bank that fails or refuses to surrender money or rights
21 to money in a bank account subject to levy, upon being served with a
22 Notice of Levy and supporting warrant of levy and lien of the
23 Commission, shall be liable to the Commission in a sum equal to the
24 amount of money or rights to money not so surrendered, but not

1 exceeding the amount of the debtor's indebtedness for the collection
2 of which the levy has been made, together with accrued interest
3 pursuant to Section 2-613 of this title, and the cost of service of
4 the Notice of Levy. Any amount recovered in this manner shall be
5 credited against the liability of the debtor for the benefit
6 overpayment indebtedness, for which the levy was made; and

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

13 E. Service of the Notice of Levy and the warrant of levy and
14 lien shall be made in the same manner as provided in Section 2004 of
15 Title 12 of the Oklahoma Statutes for service of process in civil
16 actions.

17 F. If a sheriff's department is enlisted to serve the Notice of
18 Levy, that sheriff's department shall be entitled to a service fee
19 of Fifty Dollars (\$50.00) that is to be paid by the Commission and
20 added to the debtor's indebtedness.

21 G. Claims for exemptions and any other matter relating to the
22 levy shall be filed with the Appeal Tribunal of the Oklahoma
23 Employment Security Commission. An order of exemption may relate
24 back no more than thirty (30) days before the filing of the claim

1 for exemption and shall extend no further than the expiration date
2 or termination of the levy. Appeal from the Appeal Tribunal
3 decision shall be governed by the appeal procedures set out in Part
4 6 of Article 2 of the Employment Security Act of 1980, and the
5 Administrative Rules of the Oklahoma Employment Security Commission
6 pertaining thereto.

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

10 TREASURY OFFSET PROGRAM - BENEFIT OVERPAYMENT COLLECTIONS.

11 A. The Oklahoma Employment Security Commission shall be
12 authorized to collect unemployment benefit overpayment indebtedness
13 through the Tax Offset Program of the U.S. Department of the
14 Treasury pursuant to 26 U.S.C. §6402 (f) and 31 CFR §285.8. The
15 Commission may submit overpayment indebtedness due to fraud that was
16 established pursuant to paragraph 1 of Section 2-613 of Title 40 of
17 the Oklahoma Statutes and overpayment indebtedness due to claimant
18 error that was established under paragraph 2 of Section 2-613 of
19 Title 40 of the Oklahoma Statutes, if the claimant error overpayment
20 was due to a failure to report earnings.

21 B. Before submitting an indebtedness to the U.S. Department of
22 the Treasury for collection through the Tax Offset Program, the
23 Oklahoma Employment Security Commission shall notify the debtor in
24 writing of the amount of the debt and the date the indebtedness was

1 established. The notification shall give the debtor sixty (60) days
2 from the date of mailing of the notice to present evidence to the
3 Commission that all or a part of the indebtedness is not legally
4 enforceable or is otherwise invalid.

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

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

16 E. If the Oklahoma Employment Security Commission receives an
17 erroneous payment from the U.S. Department of the Treasury, the
18 Oklahoma Employment Security Commission shall return the payment to
19 the U.S. Department of the Treasury. If the money that was
20 erroneously paid to the Oklahoma Employment Security Commission had
21 been credited to an unemployment benefit overpayment indebtedness,
22 that indebtedness shall be reinstated to the amount that existed
23 before the payment was credited.

24

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

3 Section 2-802. REPORTS BY EMPLOYERS TO EMPLOYMENT SECURITY
4 COMMISSION - NEW HIRE REGISTRY.

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

9 B. Such report shall contain the employee's name, address,
10 social security number, date of employment, state of employment,
11 along with the employer's name, address, and federal identification
12 number.

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

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

23 E. The Child Support Enforcement Division shall enter into
24 agreements with state agencies administering unemployment,

1 employment services, ~~Workforce Investment Act~~ workforce system
2 programs, workers' compensation, public assistance, Medicaid, food
3 stamps, vocational rehabilitation, and other programs specified by
4 federal law or regulation, to provide such information upon request.

5 F. Used in this section:

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

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

17 3. "Labor organization" means an entity as defined by the
18 National Labor Relations Act, 29 U.S.C., Section 152(5) including,
19 but not limited to, any entity known as a "hiring hall" which is
20 used by the organization and an employer to carry out requirements
21 described in Section 8(f)(3) of the National Labor Relations Act, 29
22 U.S.C., Section 158(f)(3), of an agreement between the organization
23 and the employer.

24

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

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

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

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

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

18 A. The Oklahoma Employment Security Commission shall give
19 notice to each base period employer of a claimant promptly after the
20 claimant is issued his or her fifth week of benefits by the
21 Commission or promptly after the Commission receives notice of the
22 amounts paid as benefits by another state under a reciprocal
23 arrangement. Notice shall be deemed given under this subsection
24 when the Commission deposits the same with the United States Postal

1 Service addressed to the employer at an address designated by the
2 employer to receive the notice or at the employer's last-known
3 address. If the employer has elected to be notified by electronic
4 means according to procedures set out in Oklahoma Employment
5 Security Commission rules, notice shall be deemed to be given when
6 the Commission transmits the notification by electronic means.
7 Notice shall be presumed prima facie to have been given to the
8 employer to whom addressed on the date stated in the written notice.
9 This notice shall give the name and social security number of the
10 claimant, the date the claim was filed, and the amount of benefit
11 wages charged to the employer in each quarter of the base period.

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

18 1. The date on which the employment was terminated;

19 2. Full particulars as to the circumstances of the termination
20 including the reason given by the individual for voluntarily leaving
21 the employment, or the nature of the misconduct for which
22 discharged, as the case may be;

23 3. Full particulars as to the regular scheduled part-time or
24 full-time employment of the employee including the starting date,

1 and ending date if any, of the continuous period of such part-time
2 or full-time employment; and

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

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

11 D. Within fourteen (14) days after the mailing of the
12 determination provided for in subsection C of this section, the
13 employer may file with the Commission or its representative a
14 written protest to the determination and request an oral hearing de
15 novo to present evidence in support of its protest. The Commission
16 or its representative shall, by written notice, advise the employer
17 of the date of the hearing, which shall not be less than ten (10)
18 days from the date of mailing of the written notice. At the
19 discretion of the Commission, this hearing shall be conducted by the
20 Commission or its representative appointed by the Commission for
21 this purpose. Pursuant to the hearing, the Commission or its
22 representative shall, as soon as practicable, make a written order
23 setting forth its findings of fact and conclusions of law, and shall
24 send it to the employer.

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

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

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

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

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

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

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

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

16 6. Left employment to attend training approved under the Trade
17 Act of 1974 and is allowed unemployment benefits pursuant to Section
18 2-416 of this title; or

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

21 H. If an employer recalls an employee deemed unemployed as
22 defined by the Employment Security Act of 1980 and the employee
23 continues to be employed or the employee voluntarily terminates
24 employment or is discharged for misconduct within the benefit year,

1 the employer shall be entitled to have the benefit wage charged
2 against the employer's experience rating for the employee reduced by
3 the ratio of the number of weeks of remaining eligibility of the
4 employee to the total number of weeks of entitlement.

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

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

21 K. An employer shall not be eligible to be relieved of a
22 benefit wage charge under paragraphs 1 and 2 of subsection G of this
23 section if the employer was sent a notice of benefit claim, pursuant
24

1 to Section 2-503 of this title, and failed to timely file protest to
2 the benefit claim.

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

6 MINIMUM CONTRIBUTIONS.

7 A. All employers shall have a rate of one and one-half percent
8 (1.5%) until the calendar year following the eighth consecutive
9 calendar quarter in which the employer employed at least one
10 individual in covered employment, at which time the employer shall
11 qualify for an earned rate calculated pursuant to the provisions of
12 Part 1 of Article III of the Employment Security Act of 1980.

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

24

1 SECTION 15. AMENDATORY Section 13, Chapter 196, O.S.L.
2 2012 (40 O.S. Supp. 2014, Section 3-511), is amended to read as
3 follows:

4 LEVY UPON EARNINGS OF TAX DEBTOR

5 Section 3-511. A. If any tax debtor shall fail to pay his or
6 her indebtedness to the Oklahoma Employment Security Commission
7 after the tax debtor has been notified of the amount due and demand
8 for payment has been made, it shall be lawful for the Oklahoma
9 Employment Security Commission to collect the amount owed by levy
10 upon any earnings or contract proceeds of the tax debtor.

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

22 1. The employer or contracting entity shall answer the Notice
23 of Levy on a form provided by the Commission. The employer or
24 contracting entity shall follow the procedure for answering a

1 continuing earnings garnishment as set out in subsection F of
2 Section 1173.4 of Title 12 of the Oklahoma Statutes;

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

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

19 4. Any employer that fails or refuses to surrender money or
20 rights to money belonging to its employee in the employer's
21 possession, or that fails or refuses to make the appropriate
22 deduction from wages pursuant to a levy provided for by this statute
23 upon being served with a Notice of Levy and supporting warrant of
24 levy and lien of the Commission, shall be liable to the Commission

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

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

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

18 D. The sheriff's department that serves the Notice of Levy on
19 the employer or contracting entity shall be entitled to a service
20 fee of Fifty Dollars (\$50.00) that is to be paid by the Oklahoma
21 Employment Security Commission and added to the tax debtor's
22 indebtedness as a fee in the latest calendar quarter for which the
23 tax debtor has any type of indebtedness.

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

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

14 TREASURY OFFSET PROGRAM - DELINQUENT UNEMPLOYMENT TAXES.

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

21 B. Before submitting an indebtedness to the U.S. Department of
22 the Treasury for collection through the Tax Offset Program, the
23 Oklahoma Employment Security Commission shall notify the debtor in
24 writing of the amount of the debt and the time period the

1 indebtedness accrued. The notification shall give the debtor sixty
2 (60) days from the date of mailing of the notice to present evidence
3 to the Commission that all or a part of the indebtedness is not
4 legally enforceable or is otherwise invalid.

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

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

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

24

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

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

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

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

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

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

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

18 Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL -
19 DISCLOSURE.

20 A. Except as otherwise provided by law, information obtained
21 from any employing unit or individual pursuant to the administration
22 of the Employment Security Act of 1980, ~~the Workforce Investment Act~~
23 ~~of 1998~~ any workforce system program administered or monitored by
24 the Oklahoma Employment Security Commission, and determinations as

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

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

19 C. The provisions of this section shall not prevent the
20 Commission from disclosing the following information and no
21 liability whatsoever, civil or criminal, shall attach to any member
22 of the Commission or any employee thereof for any error or omission
23 in the disclosure of such information:

24

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

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

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

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

18 5. The disclosing of information or evidence to the Attorney
19 General or any district attorney when the information or evidence is
20 to be used by the officials or other parties to the proceedings to
21 prosecute or defend allegations of violations of the Employment
22 Security Act of 1980. The information disclosed to the Attorney
23 General or any district attorney shall be kept confidential by them
24 and not be disclosed except when presented to a court in a

1 prosecution of a violation of Section 1-101 et seq. of this title,
2 and a violation by the Attorney General or district attorney by
3 otherwise releasing the information shall be a felony;

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

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

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

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

21 10. The release to employees of the Attorney General, the State
22 Insurance Fund, the Department of Labor, the Workers' Compensation
23 Commission, and the Insurance Department for use in investigation of
24 workers' compensation fraud;

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

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

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

16 14. The release to employees of the Center for Economic and
17 Management Research of the University of Oklahoma, the Center for
18 Economic and Business Development at Southwestern Oklahoma State
19 University, or a center of economic and business research or
20 development at a comprehensive or regional higher education
21 institution within the Oklahoma State System of Higher Education of
22 information required to identify economic trends. The information
23 obtained shall be kept confidential by the higher education
24 institution and shall not be disclosed or be open to public

1 inspection. The higher education institution may release aggregated
2 data, provided that such aggregation meets disclosure requirements
3 of the Commission;

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

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

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

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

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

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

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

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

24

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

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

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

18 26. The release to employees of the Office of Juvenile Affairs
19 of information for use in assessing results and outcomes of clients
20 served as well as the effectiveness of state and local juvenile and
21 justice programs including prevention and treatment programs. The
22 information obtained shall be kept confidential by the Office of
23 Juvenile Affairs and shall not be disclosed or be open to public
24 inspection. The Office of Juvenile Affairs may release aggregated

1 data for programs or larger aggregate units, provided that the
2 aggregation meets disclosure requirements of the Oklahoma Employment
3 Security Commission; or

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

19 D. Subpoenas to compel disclosure of information made
20 confidential by this statute shall not be valid, except for
21 administrative subpoenas issued by federal, state, or local
22 governmental agencies that have been granted subpoena power by
23 statute or ordinance. Confidential information maintained by the
24 Commission can be obtained by order of a court of record that

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

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

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

21 SECTION 20. REPEALER 40 O.S. 2011, Sections 3-110 and 3-
22 112, as amended by Section 11, Chapter 71, O.S.L. 2013 (40 O.S.
23 Supp. 2014, Section 3-112), are hereby repealed.

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

55-1-6750 MAH 02/10/15