

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 2485

BY: ROACH of the HOUSE

and

BROWN of the SENATE

AN ACT RELATING TO LABOR; AMENDING 40 O.S. 1991,
SECTION 3-106, WHICH RELATES TO BENEFIT WAGES
CHARGED AND RELIEF THEREFROM; MODIFYING PROCEDURES
RELATING TO THE DETERMINATION OF BENEFITS;
MODIFYING CERTAIN DETERMINATIONS OF BENEFITS;
AUTHORIZING THE REDUCTION OF CERTAIN BENEFIT WAGES;
AMENDING 40 O.S. 1991, SECTION 2-613, WHICH RELATES
TO THE RECOVERY AND RECOUPMENT OF CERTAIN BENEFITS
PAID; PROVIDING FOR THE CESSATION OF ACCRUAL OF
CERTAIN INTEREST; AUTHORIZING THE COLLECTION OF
CERTAIN INDEBTEDNESS TO THE OKLAHOMA EMPLOYMENT
SECURITY COMMISSION BY LEVY ON CERTAIN BANK
ACCOUNTS; PROVIDING FOR CERTAIN RIGHTS AND
PROCEDURES RELATING TO SUCH LEVY; AUTHORIZING
CERTAIN SERVICE FEES; PROVIDING FOR THE ENFORCEMENT
OF SUCH BANK LEVIES; PROVIDING FOR CERTAIN
LIABILITY RELATING TO THE FAILURE OR REFUSAL OF
BANKS TO HONOR SUCH BANK LEVY; PROVIDING FOR
CERTAIN EFFECTS OF HONORING SUCH BANK LEVY;
PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE
DATE; AND DECLARING AN EMERGENCY.

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill and insert

"[UNEMPLOYMENT COMPENSATION - AMENDING 40 O.S., SECTIONS 2-411, 2-613, 2-614, 3-106, 3-114, 3-304, 3-305 AND 3-406 - BENEFITS AND CONTRIBUTIONS - CODIFICATION -

EMERGENCY]

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

SECTION 1. AMENDATORY 40 O.S. 1991, Section 2-411, is amended to read as follows:

Section 2-411. RETIREMENT PAYMENTS. (1) An individual shall be disqualified for benefits for any week which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity or any other similar periodic retirement payment which is based on the previous work of such individual if:

(a) Such pension, retirement or retired pay, annuity or similar payment is under a plan maintained, or contributed to, by a base period or chargeable employer, and

(b) In the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974, services performed for such employer by the individual after the beginning of the base period, or remuneration for such services, affect eligibility for or increase the amount of, such pension, retirement or retired pay, annuity or similar payment.

(2) If the total of such remuneration is less than the benefits which would otherwise be due under the Employment Security Act of 1980, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

(3) If payments referred to in this section are being received by an individual under the federal Social Security Act, the Commission shall take into account the individual's contribution and make no reduction in the weekly benefit amount.

SECTION 2. AMENDATORY 40 O.S. 1991, Section 2-613, is amended to read as follows:

Section 2-613. RECOVERY AND RECOUPMENT. Any individual who, by reason of a false statement or representation or failure to disclose a material fact, has received any sum as benefits to which he or she was not entitled shall be liable to repay such sum to the Commission for the fund plus interest at the rate of one percent (1%) per month or fraction thereof until repaid. The interest will cease to accrue when the total accrued interest equals the amount of the overpayment. If an overpayment is amended, the interest will cease to accrue when the total accrued interest equals the amount of the amended overpayment. Provided, the Commission may deduct such principal sum from any future benefits payable to said individual. If any individual, for any other reason, has received any sum as benefits under this act to which, under a redetermination or decision pursuant to this act, ~~he~~ the individual has been found not entitled, he or she shall not be liable to repay such sum but shall be liable to have such sum deducted from any future benefits payable to ~~him~~ the individual with respect to the benefit year current at the time of such receipt and the next subsequent benefit year that begins within one (1) year after the expiration of the benefit year current at the time of such receipt.

SECTION 3. AMENDATORY 40 O.S. 1991, Section 2-614, is amended to read as follows:

Section 2-614. WAIVER OF APPEAL TIME. The ten-day time period provided for appeals pursuant to the provisions of the Employment Security Act of 1980, Section 1-101 et seq. of this title, may be

waived for good cause shown; provided, this waiver shall not apply to appeals to district court of decisions of the Board of Review.

SECTION 4. AMENDATORY 40 O.S. 1991, Section 3-106, is amended to read as follows:

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

A. The Oklahoma Employment Security Commission shall give notice to each base period employer of a claimant promptly after the claimant is paid his or her second week of benefits by the Commission or promptly after the Commission receives notice of the amounts paid as benefits by another state under a reciprocal arrangement. Notice shall be deemed given under this subsection when the Commission deposits the same in the United States mail addressed to the employer at his last-known address. Notice shall be presumed prima facie to have been given to the employer to whom addressed on the date stated in the written notice. This notice shall give the name and Social Security Number of the claimant, the date the claim was filed, and the amount of benefit wages charged to the employer in each quarter of the base period.

B. Within fourteen (14) days from the date stated upon ~~such~~ the notice provided for in subsection A of this section, the employer may file with the Commission his written objections to being charged with such benefit wages upon one or more of the grounds for objection set forth in subsection ~~D or subsection F~~ G of this section. The employer's written objection must set forth specifically:

1. The date on which the employment was terminated;;
2. Full particulars as to the circumstances of the termination including the reason given by the individual for voluntarily leaving the employment, or the nature of the misconduct for which discharged, as the case may be, or if applicable under the third ground;;

3. Full particulars as to the regular scheduled part-time or full-time employment of the employee including the starting date, and ending date if any, of the continuous period of such part-time or full-time employment,⁷ and

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

C. Upon receipt of the employer's written objections, the Commission shall make a determination as to whether or not the employer is entitled to be relieved from the charging of benefit wages. The Commission shall by certified mail promptly notify the employer of that determination. ~~The determination shall become final unless the employer files an appeal within the time and manner provided by Sections 2-601 through 2-613 of this title.~~ Provided further, the fourteen-day time period for filing written objections with the Commission as provided for in subsection B of this section may be waived for good cause shown.

D. ~~The benefit wages charged to an employer for a given calendar year shall be the total of the benefit wages stated in the notices given to the employer by the Commission. Provided that an employer's benefit wages shall not include wages paid by him to any employee or former employee, who:~~

~~1. left employment with that employer, or with his last employer, voluntarily, without good cause connected to the work,~~

~~2. was discharged from such employment for misconduct connected with his work,~~

~~3. was a full-time, or regular scheduled part-time employee of that employer prior to the week the employee was separated from other employment, and remained continuous each week as such an employee of that employer until the employee is paid benefits for his second compensable week of unemployment in such benefit year, or~~

~~4. was separated from his employment as a direct result of a major natural disaster, declared as such by the President pursuant to the Disaster Relief Act of 1974, P.L. 93-288, and such employee~~

~~would have been entitled to disaster unemployment assistance if he had not received unemployment insurance benefits.~~

~~E. If an employer recalls a laid-off or separated employee and said employee continues to be employed or said employee voluntarily terminates employment or is discharged for misconduct within the benefit year, the employer shall be entitled to have the benefit wage charged against his experience rating for said employee reduced by the ratio of the number of weeks of remaining eligibility of said employee to the total number of weeks of entitlement.~~

F. Within twenty (20) days after the mailing of the determination provided for in subsection C of this section, the employer may file with the Commission or its representative a written protest to the determination and request an oral hearing de novo to present evidence in support of its protest. The Commission or its representative shall, by written notice by certified mail, advise the employer of the date of the hearing, which shall not be less than ten (10) days from the date of mailing of the written notice. At the discretion of the Commission, this hearing shall be conducted by the Commission or its representative appointed by the Commission for this purpose. Pursuant to the hearing, the Commission or its representative shall, as soon as practicable, make a written order setting forth its findings of fact and conclusions of law, and shall send it to the employer.

E. If any employer fails to file a written protest within the period of twenty (20) days, as provided by subsection D of this section, then the determination shall be final, and no appeal shall thereafter be allowed.

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

G. The benefit wages charged to an employer for a given calendar year shall be the total of the benefit wages stated in the notices given to the employer by the Commission. Provided, that an employer's benefit wages shall not include wages paid by the employer to any employee or former employee, who:

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

2. Was discharged from such employment for misconduct connected with his work;

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

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

H. If an employer recalls a laid-off or separated employee and said employee continues to be employed or said employee voluntarily terminates employment or is discharged for misconduct within the benefit year, the employer shall be entitled to have the benefit wage charged against the employer's experience rating for said employee reduced by the ratio of the number of weeks of remaining eligibility of said employee to the total number of weeks of entitlement.

I. An employer shall not be charged with benefit wages of a laid-off employee if the employer lists as an objection in a statement filed in accordance with subsection B of this section that said employee collecting benefits was hired to replace a United States serviceman or servicewoman called into active duty and laid-

off upon the return to work by that serviceman or servicewoman. The Unemployment Compensation Fund shall be charged with the benefit wages of the laid-off employee.

SECTION 5. AMENDATORY 40 O.S. 1991, Section 3-114, is amended to read as follows:

Section 3-114. ESTIMATE OF FINANCIAL CONDITION OF FUND - SURCHARGE. Prior to the beginning of each calendar quarter, the Commission shall prepare an estimate of the financial condition of the fund for the quarter. ~~It~~ Effective July 1, 1992, if the estimate for ~~the~~ any quarter shows a balance at any time during the quarter of less than Twenty-five Million Dollars (\$25,000,000.00), the Commission shall assess and collect a surcharge for that calendar quarter in an amount sufficient to keep the balance at Twenty-five Million Dollars (\$25,000,000.00).

The surcharge shall be charged to each employer in proportion to the employer's total tax liability as of the last completed quarter for the current calendar year and shall not exceed thirty-three and one-third percent (33 1/3%) per taxable year.

~~Said surcharge authority shall expire June 30, 1988.~~

SECTION 6. AMENDATORY 40 O.S. 1991, Section 3-304, is amended to read as follows:

Section 3-304. REFUNDS. If not later than three (3) years after the date ~~of payment of any amount as contributions, interest, or penalty thereon~~ on which a specific report or return was required to be filed, an employer, who has ~~made such payment shall~~ paid all amounts owing for that specific quarter, may make application for an adjustment ~~thereof~~ in connection with ~~subsequent contribution payments~~ that report or payment, or for a refund thereof because ~~such~~ an adjustment cannot be made, and if the Commission shall determine that payment of ~~such~~ the contributions, interest or penalty or any portion thereof was erroneous, the Commission shall allow such employer to make an adjustment thereof, without interest,

in connection with subsequent contribution payments by ~~him~~ the employer, or if such adjustment cannot be made, the Commission shall refund from the fund, without interest, the amount erroneously paid. For like cause and within the same period, adjustment or refund may be so made on the Commission's own initiative.

SECTION 7. AMENDATORY 40 O.S. 1991, Section 3-305, is amended to read as follows:

Section 3-305. ASSESSMENTS. A. If any employer shall fail to make any report or return as required by this act, the Oklahoma Employment Security Commission or its duly authorized representative, from any information in ~~his~~ the possession of or obtainable by ~~him~~ the employer may determine the amount of contribution due from such employer, and shall mail a copy of ~~said~~ the assessment to the last-known address of the delinquent employer ~~at his last-known address~~. The assessment so made shall not preclude the Commission or its representative from making field audits of the books and records, wherever located, of the employer and from making further adjustments, corrections or assessments. The assessments provided for herein must be made, and a copy thereof delivered to the employer or mailed to ~~his~~ the last-known address of the employer, within three (3) years after the date on which the report or return was required to be filed; ~~provided, that nothing in this subsection shall be construed to extend the time within which any civil action may be commenced.~~

B. Within twenty (20) days after the mailing of the assessment provided for above, the employer may file with the Commission or ~~its~~ the representative a written protest to ~~such~~ the assessment and a request for an oral hearing de novo to present evidence in support of ~~its~~ the protest. The Commission or its representative shall by written notice, advise the employer of the date of ~~such~~ the hearing, which shall not be less than ten (10) days from the date of mailing of ~~such~~ the written notice. At the discretion of the Commission,

~~said~~ this hearing shall be conducted by the Commission, or by a three-member board appointed by the Commission for ~~such~~ this purpose. Pursuant to ~~such~~ the hearing, the Commission or its representative shall, as soon as practicable, make ~~an~~ a written order ~~confirming, modifying or vacating the prior determination and assessment~~ setting forth its findings of fact and conclusions of law, and shall send it to ~~such~~ the employer ~~immediately a written notice thereof~~, and shall in accordance with ~~such~~ the order make an assessment of any contribution found to be due and not ~~theretofore~~ assessed.

C. If any employer fails to file ~~such~~ a written protest within ~~the period of~~ twenty (20) days, as provided by this section, then the assessment shall be final, and no appeal shall ~~thereafter~~ be allowed.

D. The employer or the Commission may appeal ~~from~~ the order ~~confirming, modifying or vacating the prior determination and assessment~~ to the district court by filing a petition for review with the clerk of that court within thirty (30) days after the date ~~of mailing stated upon the notice thereof~~ the order was mailed to all parties. The mailing date shall be specifically stated in the Assessment Board order.

SECTION 8. AMENDATORY 40 O.S. 1991, Section 3-406, is amended to read as follows:

Section 3-406. BOND IN LIEU OF CASH DEPOSIT. In lieu of the cash payment provided for in Section 3-405 of this title, the employer may file with the Commission a surety bond ~~in~~ issued by an insurance company that is licensed by the Oklahoma Insurance Department to issue surety bonds in this state. The surety bond must be issued in an amount that is double the amount of the contribution, penalties and interest assessed, conditioned and include the conditions that ~~he~~ the employer will faithfully and diligently prosecute such appeal to a final determination, and, in

the event the order, judgment, ruling or finding of the Commission or its duly authorized representative be affirmed on appeal, will pay such contributions, interest and costs assessed against ~~him~~ the employer.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-106.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

In addition to reimbursement for travel expenses pursuant to the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes, each Commissioner shall receive Fifty Dollars (\$50.00) for each Commission meeting attended, not to exceed Six Hundred Dollars (\$600.00) per annum.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-509 of Title 40, unless there is created a duplication in numbering, reads as follows:

LEVY ON BANK ACCOUNTS

A. As used in Part 5 of Article 3 of the Employment Security Act of 1980:

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

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

3. "Tax debtor" means any person, partnership, corporation, or legal entity of any kind that owes the Oklahoma Employment Security Commission any amount for delinquent state unemployment taxes, interest, penalty, fees, or surcharge.

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

Commission to collect the amount owed by levy upon any bank account of the tax debtor.

C. To levy upon a tax debtor's bank account, the Oklahoma Employment Security Commission must serve a Notice of Levy on the bank in which the tax debtor has an account, along with the tax warrants covering all calendar quarters in which the tax debtor owes unemployment taxes, interest, penalty, fees, or surcharge.

D. Service of the Notice of Levy and tax warrants shall be made on the bank in the same manner as provided in Section 2004 of Title 12 of the Oklahoma Statutes for service of process in civil actions.

E. Upon receiving the Notice of Levy and any tax warrants issued against the tax debtor, the bank shall deliver all of the money in the tax debtor's bank account at the time of the service of the levy, subject to the banker's lien or right of setoff, or any other claim having priority, up to the amount of indebtedness indicated on the tax warrants plus accrued interest pursuant to subsection A of Section 3-301 of Title 40 of the Oklahoma Statutes and any fees for service of process, to the representative of the Commission indicated on the Notice of Levy. The delivery of this money shall occur within ten (10) days of the date of service of the Notice of Levy.

F. If there is no money in the tax debtor's bank account at the time the Notice of Levy is served, or if the bank account has been closed, an officer of the bank on which the Notice of Levy is served shall make a statement to that effect on the Notice of Levy. The statement must be notarized and returned to the representative of the Oklahoma Employment Security Commission on the Notice of Levy.

G. The Sheriff's Department that serves the Notice of Levy on the bank shall be entitled to a service fee of Fifty Dollars (\$50.00) that is to be paid by the Oklahoma Employment Security Commission and added to the tax debtor's indebtedness as a fee in

the latest calendar quarter for which the tax debtor has any type of indebtedness.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-510 of Title 40, unless there is created a duplication in numbering, reads as follows:

ENFORCEMENT OF BANK LEVY

A. Any bank that fails or refuses to surrender any money or rights to money in a bank account subject to levy, upon being served with a Notice of Levy and supporting tax warrants of the Oklahoma Employment Security Commission, shall be liable to the Oklahoma Employment Security Commission in a sum equal to the amount of money or rights to money not so surrendered, but not exceeding the amount of the tax debtor's indebtedness for the collection of which the levy has been made, together with accrued interest pursuant to subsection A of Section 3-301 of this title, and the cost of service of the Notice of Levy. Any amount recovered under this subsection shall be credited against the liability for taxes, interest, penalty, fees, and surcharge, for the collection of which the levy was made.

B. Any bank in possession of money or rights to money subject to levy, upon which a levy has been made, that surrenders such money or rights to money to the Oklahoma Employment Security Commission shall be discharged from any obligation or liability to the tax debtor and any other person or entity with respect to such money or rights to money arising from the surrender or payment.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-109 of Title 40, unless there is created a duplication in numbering, reads as follows:

Any penalty or interest, or any portion thereof, assessed because an employer or employee fails to file a report or remit payment as required by Section 1-101 et seq. of Title 40 of the Oklahoma Statutes may be waived by the Oklahoma Employment Security

Commission provided the failure of the employer or employee to file a report or remit payment:

1. Is satisfactorily explained to the Commission;

2. Has resulted from a mistake by the employer or employee of either the law or the facts subjecting the employer or employee to file the report or remit payment; or

3. Results from insolvency.

SECTION 13. This act shall become effective July 1, 1992.

SECTION 14. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the Senate the 20th day of April, 1992.

President of the Senate

Passed the House of Representatives the ____ day of

_____, 1992.

Speaker of the House of Representatives