

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.

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

SECTION 1. 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 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 τi
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 τi

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,<sup>7</sup> 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 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, 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 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.

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 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.

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 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 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 shall cease accruing when the accrued interest equals the amount of the overpayment. If an overpayment is amended, the interest shall cease to accrue when the 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~~ the Employment Security Act of 1980 to which, under a redetermination or decision pursuant to this act, he has been found not entitled, he shall not be liable to repay such sum but shall be liable to have such sum deducted from any future benefits payable to him 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. 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. 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.

B. 1. The term "tax debtor" as used in part 5 of Article 3 of this title shall mean 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.

2. The term "bank" as used in part 5 of Article 3 of this title shall mean any state bank or banking association, national bank or banking association, savings and loan company, credit union, or any other financial institution.

3. The term "bank account" as used in part 5 of Article 3 of this title shall mean any checking or savings account the tax debtor has with any bank.

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 4. 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. Enforcement of Bank Levy - 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. Effect of Honoring Levy - 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 5. This act shall become effective July 1, 1992.

SECTION 6. 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 House of Representatives the 11th day of March, 1992.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1992.

President of the Senate