

ENROLLED HOUSE
BILL NO. 1198

By: Benson, Widener, Cotner
and Johnson (Rob) of the
House

and

Kerr of the Senate

An Act relating to agriculture; creating the Boll Weevil Eradication Act; stating purpose; defining terms; requiring the Commissioner of Agriculture to implement certain sections of the Boll Weevil Eradication Act; authorizing cooperation and written agreements between certain entities for eradication purposes; authorizing the formation of the Oklahoma Boll Weevil Eradication Organization; providing for membership; specifying certain conditions; creating an initial board; providing for appointment, duties and terms; providing for certain elections; specifying procedures and eligibility; providing for payment of certain expenses; providing for content of certain procedures; providing for voting; providing for elected board of directors; specifying powers and duties; providing for liability; requiring certain information; authorizing referendum for assessment; providing for assessment; providing for procedures; providing for collection; requiring audits and inspections; providing for content; providing for payment of costs; creating the Boll Weevil Eradication Fund; providing for deposits and creation; providing for uses; providing for use of certain funds; authorizing additional assessments; making certain monies not state monies; making certain obligations non-state; providing for assessment of certain penalties; providing for remittance and reimbursement; authorizing procedures for completion of eradication program; providing conditions; authorizing revocation methods and procedures; authorizing the Commissioner of Agriculture to implement certain programs; prohibiting use of state monies; authorizing entry to certain premises for eradication activities; providing for rules relating to quarantines and certain regulated articles; providing for public hearings; making certain actions unlawful; authorizing rules; providing for notice of certain prohibitions and requirements; authorizing destruction or treatment of cotton in certain circumstances; providing compensation under certain circumstances; restricting access to elimination zones; making certain actions unlawful; specifying penalties; amending 40 O.S. 1991, Section 1-210, which relates to labor; modifying definition of employment;

providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 20 of this act shall be known and may be cited as the "Boll Weevil Eradication Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The *Anthonomus grandis* Boheman, known as the boll weevil, is hereby declared to be a public nuisance, a pest, and a menace to the cotton industry. Due to the interstate nature of boll weevil infestation, it is necessary to secure the cooperation of cotton growers, other state governments, and agencies of the federal government in order to carry out a program of boll weevil eradication.

B. The purpose of the Boll Weevil Eradication Act is to secure the eradication of the boll weevil.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.3 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Boll Weevil Eradication Act:

1. "Board of directors" means the board of directors of the Oklahoma Boll Weevil Eradication Organization elected pursuant to the provisions of the Boll Weevil Eradication Act;

2. "Boll weevil" means the insect *Anthonomus grandis* Boheman, in any stage of development, including the egg, larval, pupal and adult stages;

3. "Commissioner" means the Commissioner of the Department of Agriculture, or his designee;

4. "Cotton" means a cotton plant or any part of it including bolls, stalk, flowers, root, or leaves or cotton products such as seed cotton, cottonseed, and hulls;

5. "Cotton grower" means any person who is actively engaged in the production of cotton or who was actively engaged in production of cotton in any two (2) of the three (3) years immediately preceding the calling of an election or a referendum;

6. "Department" means the State Department of Agriculture;

7. "Host" means any plant or plant product in which the boll weevil is capable of completing any portion of its life cycle;

8. "Infested" means the presence of the boll weevil in any life stage or the existence of circumstances that make it reasonable to believe that the boll weevil is present;

9. "Organization" means the Oklahoma Boll Weevil Eradication Organization established pursuant to the provisions of the Boll Weevil Eradication Act;

10. "Person" means any individual, corporation, company, society, association, or other business entity; and

11. "Regulated article" means any article carrying or capable of carrying the boll weevil, including but not limited to cotton plants, seed cotton, gin trash, other hosts, or cotton harvesting equipment.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.4 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Upon the effective date of this act, the Commissioner is hereby authorized and directed to implement Sections 5 through 13 of this act.

B. The Commissioner is authorized to cooperate with any agency of the federal government, any state contiguous to this state, any other agency in this state, or any person engaged in growing, processing, marketing, or handling cotton, or any group of such persons in this state, in programs to implement Sections 5 through 13 of this act, and may enter into written agreements to effectuate such purposes.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.5 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. There is hereby authorized the formation of the Oklahoma Boll Weevil Eradication Organization within this state for the purpose of entering into agreements with the State of Oklahoma, other states, the federal government and other parties as may be necessary to carry out the purposes of the Boll Weevil Eradication Act.

The Oklahoma Boll Weevil Eradication Organization shall not be construed to be an agency of the state or a political corporation or political subdivision of the state.

Membership in the Organization shall be open to all cotton growers in this state. The Organization shall have only one class of members with each member entitled to only one vote.

B. 1. The Organization's initial board shall be composed of four (4) members. Three members shall be cotton growers from this state who are selected by the Governor from a list of six persons submitted by the Oklahoma Cotton Improvement Association for purposes of appointment to the initial board. The fourth member, appointed by the Governor, shall be a representative of state government from this state. The initial board shall serve only until a board of directors is elected pursuant to Section 6 of this act.

2. The primary function of the initial board is to:

- a. fairly and equitably establish five election districts,
- b. conduct the election of the first board of directors of the Organization,
- c. establish written procedures for the due and orderly administration of the affairs of the initial board and for its responsibilities specified pursuant to the provisions of the Boll Weevil Eradication Act,
- d. advise, consult and cooperate with agencies of this state and political subdivisions thereof, other states, the federal government and with affected groups,
- e. collect and disseminate information relating to boll weevil eradication,
- f. hold public hearings regarding the establishment of election districts, and
- g. facilitate the expeditious transfer of authority to the elected board of directors.

3. In creating election districts the initial board shall utilize geographic areas balanced by cotton production density as the primary factor.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.6 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. The first election for the board of directors shall be conducted under the procedures provided by this section.

2. A cotton grower who desires to be a candidate for the board of directors must file a petition signed by five (5) cotton growers with the initial board. The application must be:

a. filed not later than thirty (30) days before the date set for the election, and

b. on a form approved by the initial board.

3. On receipt of an application and verification that the application meets the requirements of this section, an applicant's name shall be placed on the ballot for the election for the board of directors.

4. The election must be preceded by at least forty-five (45) days' notice published in one or more newspapers published and distributed in the established election districts. The notice shall be published not less than once a week for three (3) consecutive weeks.

B. All cotton growers actively engaged in the production of cotton in the year of the calling of such election or who were actively engaged in production of cotton in any two (2) of the three (3) years immediately preceding the calling of the election shall be entitled to vote in any such election. The initial board shall determine any questions of eligibility to vote.

C. 1. The Department shall bear all reasonable expenses incurred in conducting the election of the first board of directors. All such expenses shall be approved by the Commissioner prior to being incurred.

2. The written procedures established by the initial board for the election process shall include but not be limited to provisions for determining:

a. who is a cotton grower eligible to vote in an election,

b. whether a board member is elected by a plurality or a majority of the votes cast, and

c. qualifications for membership of the board of directors.

3. An eligible cotton grower may vote in any district in which he produces cotton.

D. Ballots in an election may be mailed to a central location or delivered in person to a location or locations designated by the initial board.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.7 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. The board of directors of the Organization shall be composed of five (5) cotton growers from this state, each who are elected from the five separate districts established by the initial board.

2. The terms of office of the elected board of directors shall be as follows:

a. one (1) year for district one,

b. two (2) years for districts two and four, and

c. three (3) years for districts three and five.

Thereafter the term of office shall be for three (3) years. Each district shall also elect an alternate to serve in the absence or inability of the director to serve.

B. The board of directors shall have the power and duty to:

1. Conduct board elections in the event of a vacancy on the board of directors;
2. Conduct assessment referenda pursuant to Section 9 of this act;
3. Conduct programs consistent with the Boll Weevil Eradication Act;
4. Develop a proposed maximum assessment for implementation of the Boll Weevil Eradication Act. The assessment levied pursuant to the Boll Weevil Eradication Act shall be determined upon a fair and equitable system that is based upon cotton production and infestation factors. The board of directors shall determine the collection method and manner and the period of time for which the assessment is to be levied;
5. Develop bylaws for the due and orderly administration of the affairs of the board of directors and for its responsibilities specified pursuant to the provisions of the Boll Weevil Eradication Act;
6. Develop a plan for boll weevil eradication in this state;
7. Advise, consult and cooperate with agencies of this state and political subdivisions thereof, other states, the federal government and with affected groups;
8. Collect and disseminate information relating to boll weevil eradication;
9. Contract with agencies of this state and political subdivisions thereof, other states, the federal government and other organizations or persons to comply and fulfill its mission pursuant to the provisions of the Boll Weevil Eradication Act;
10. Hold public hearings regarding the assessment referenda or for other purposes consistent with the provisions of the Boll Weevil Eradication Act;
11. Designate one or more areas of this state as "elimination zones" where boll weevil eradication programs will be undertaken; and
12. Take such other actions deemed necessary by the board of directors to implement the provisions of the Boll Weevil Eradication Act.

B. The bylaws established by the board of directors relating to boll weevil eradication and the assessment referenda shall be submitted to the State Board of Agriculture for determination as to whether such bylaws will be promulgated as rules of the State Board of Agriculture. Such bylaws may be promulgated in whole or in part or may be returned for modification to the board of directors. The State Board of Agriculture shall comply with the Administrative Procedures Act in promulgating any rules adopted pursuant to the provisions of this subsection.

C. The board of directors shall:

1. Make available for inspection at an annual independent audit all books, records of account and minutes of proceedings maintained by the Organization;
2. Not later than forty-five (45) days after the last day of the fiscal year, submit to the Commissioner a report itemizing all income and expenditures and describing all activities of the Organization during the fiscal year;
3. Provide surety bonds in amounts determined by the Commissioner for employees or agents who handle funds for the Organization;
4. Receive, hold in trust, and disburse all assessments and other funds collected pursuant to the Boll Weevil Eradication Act as trust funds of the Organization; and

5. Make available all books, records of account and minutes of proceedings of the Organization for inspection or audit by the Commissioner at any reasonable time.

D. 1. Pursuant to the authority granted by the Boll Weevil Eradication Act, except for instances of gross negligence, individual criminal actions or acts of dishonesty, the board of directors and employees of the board of directors are not individually liable to a cotton grower or other person for:

- a. errors in judgment,
- b. mistakes, or
- c. omissions.

2. A member of the board of directors or an employee of the board of directors is not individually liable for an act or omission of another member or employee of the board of directors.

E. The board of directors shall serve without compensation but are entitled to reimbursement for reasonable and necessary expenses incurred in the discharge of their duties.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.8 of Title 2, unless there is created a duplication in numbering, reads as follows:

Every person growing cotton in this state shall furnish to the board of directors such information as the board of directors may require concerning the size and location of all commercial cotton fields and of noncommercial patches of cotton grown as ornamentals or for other purposes.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.9 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. At the request of the board of directors, the Department shall provide for a referendum among cotton growers upon the question of whether an assessment shall be levied upon cotton growers in the state to offset the cost of boll weevil eradication.

B. A public hearing regarding the proposed assessment shall be held in each of several locations within the state.

C. All cotton growers actively engaged in the production of cotton in the year of the calling of such referendum or who were actively engaged in production of cotton in any two (2) of the three (3) years immediately preceding the calling of the referendum shall be entitled to vote in any such referendum. The board of directors shall determine any questions of eligibility to vote.

D. The Department shall bear all reasonable expenses incurred in conducting a referendum. All such expenses shall be approved by the Commissioner prior to their being incurred.

E. The bylaws of the board of directors shall provide for referendum procedures.

- F. The board of directors shall propose in the referendum the:
1. Maximum assessment to be paid by cotton growers by district;
 2. Time for which the assessment will be levied; and
 3. Method and manner of assessment.

G. An eligible cotton grower may vote only once in the referendum.

H. Ballots in a referendum may be mailed to a central location or may be cast personally by the cotton grower at a location or locations specified by the board of directors.

I. A referendum is approved if at least sixty percent (60%) of those voting vote in favor of the assessment.

J. If a boll weevil eradication referendum is approved, the board of directors shall collect the annual assessment from the cotton growers in the year such assessment is approved.

K. If the first assessment under this section is not approved, the board of directors may conduct one other referendum at state expense. Additional referenda may be conducted as necessary by the board of directors from any other funds available to the board of directors. Such other referenda shall not be held before the one hundred twenty-first day after the date on which the last referendum on the same issue was held.

L. After the passage of any referendum, the eligible voters shall be allowed, by subsequent referenda periodically to vote on whether to continue the assessments. All of the requirements for an initial referendum must be met in subsequent referenda except that any subsequent referenda, except as otherwise provided by subsection K of this section, shall be paid from any funds available to the Organization.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.10 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Boll Weevil Eradication Fund. The Boll Weevil Eradication Fund shall be administered by the board of directors for the benefit of the cotton growers in this state to eradicate boll weevils. The Boll Weevil Eradication Fund shall be established and maintained in a bank or other depository approved by the Commissioner.

B. The Boll Weevil Eradication Fund shall consist of:

1. All monies received by the board of directors as proceeds from the assessment imposed pursuant to Section 9 of this act;

2. Interest attributable to investment of money in the Boll Weevil Eradication Fund; and

3. Monies received by the board of directors in the form of gifts, grants, reimbursements, or from any other source designated by law for deposit to the Boll Weevil Eradication Fund.

C. 1. Except as otherwise provided by law, the monies deposited in the Boll Weevil Eradication Fund shall at no time become monies of the state.

2. Any costs incurred by the board of directors pursuant to the provisions of the Boll Weevil Eradication Act shall not exceed the actual expenditures made by the board of directors to implement and manage the Boll Weevil Eradication Act.

D. Monies in the Boll Weevil Eradication Fund shall only be expended for:

1. Implementation and management of the Boll Weevil Eradication Act; and

2. Costs incurred by the board of directors and the State Board of Agriculture for the administration of the Boll Weevil Eradication Act.

E. Any debts or obligations of the organization shall not become or be construed to be obligations of this state.

F. The Organization shall provide to the Department an annual audit of the Boll Weevil Eradication Fund performed by a certified public accountant.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.11 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The board of directors may request the Department to provide for the collection of the assessment and of an administrative penalty from any person who fails to pay an assessment when due pursuant to the Boll Weevil Eradication Act.

B. Any penalty collected pursuant to the provisions of this section shall be deposited in the Boll Weevil Eradication Fund,

provided, the Department shall be reimbursed for any costs incurred by the Department in the enforcement of this section.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.12 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Upon the determination by the board of directors that the boll weevil eradication program has been completed, the board of directors shall provide notice of such completion to the Commissioner along with a request for discontinuance of the eradication program. Any such request shall include documentation supporting the eradication of the boll weevil in this state and a plan for discontinuance of the program and assessment.

B. The Commissioner shall determine whether or not the further elimination of the boll weevil is necessary and approve or disapprove discontinuance of the Organization and the plan for dissolution.

C. Upon completion of dissolution, the board of directors shall file a final report with the Commissioner including a financial report. Final books of the board of directors shall be filed with the Commissioner, and are subject to audit by the Department.

D. The Commissioner shall pay from the Organization's remaining funds all of the Organization's outstanding obligations. Funds remaining after payment under this paragraph shall be returned to contributing cotton growers on a pro rata basis.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.13 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. If forty percent (40%) or more of the cotton growers within this state participating in the program present to the board of directors a petition calling for a referendum of the qualified voters on the proposition of discontinuing the program, the board of directors shall conduct a referendum for that purpose.

B. The board of directors shall give notice of the referendum and conduct the referendum as provided in Section 9 of this act provided that such referendum shall be at the expense of the board of directors.

C. The board of directors shall conduct the referendum within ninety (90) days of the date of filing of the petition.

D. Approval of the proposition is by majority vote of those voting. If the proposition is approved, the program shall be abolished.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.14 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Upon the passage and collection of the assessment pursuant to Section 9 of this act, the Commissioner is hereby authorized to carry out programs of the board of directors to eradicate boll weevils in this state at the request of the board of directors.

B. State-appropriated monies shall not be a funding source for activities conducted pursuant to Sections 15 through 20 of this act. The Department shall be reimbursed for any costs and expenses incurred as a result of Sections 15 through 20 of this act.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.15 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Commissioner is authorized to cooperate with any agency of the federal government, any state contiguous to this state, any other agency in this state, or any person engaged in growing, processing, marketing, or handling cotton in this state, or any group of such persons, in programs to effectuate the purposes of the

Boll Weevil Eradication Act, and may enter into written agreements to effectuate such purposes. The agreements may provide for cost sharing, for division of duties and responsibilities pursuant to the Boll Weevil Eradication Act and may include other provisions generally to effectuate the purposes of the Boll Weevil Eradication Act.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.16 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. The board of directors, or the Department at the request of the board of directors, shall have authority, to:

- a. enter cotton fields and other premises in order to carry out activities, including but not limited to treatment with pesticides, monitoring, and destruction of growing cotton and other host plants, as may be necessary to carry out the provisions of the Boll Weevil Eradication Act,
- b. make inspection of any fields or premises in this state and any property located therein or thereon for the purpose of determining whether such property is infested with boll weevils,

2. The inspection and other activities may be conducted at any hour with the permission of the owner or person in charge of the premises or property. If permission is denied, the inspection and other activities shall be conducted in a reasonable manner, with a warrant, with respect to any premises or property.

B. Any judge of this state may, within his territorial jurisdiction, and upon proper cause to believe that any cotton or other regulated article is in or upon any premises in this state, issue warrants for the purpose of conducting administrative inspections and other activities authorized by the Boll Weevil Eradication Act.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.17 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Department is authorized to promulgate rules, including but not limited to:

1. Quarantining this state, or any portion thereof;
2. Governing the storage or other handling in the quarantined areas of regulated articles and the movement of regulated articles into or from such areas, when the Department determines that such action is necessary, or reasonably appears necessary, to prevent, eradicate, or retard the spread of boll weevils;
3. Governing the movement of regulated articles from any other state or portion thereof into this state when such state is known to be infested with boll weevils. Before quarantining any area, the Department shall hold a public hearing, at which any interested party may appear and be heard either in person or by attorney. Provided however, the Department may promulgate rules, imposing a temporary quarantine for a period not to exceed sixty (60) days, during which time a public hearing, as herein provided, shall be held if it appears that a quarantine for more than sixty (60) days will be necessary to prevent, eradicate, or retard the spread of boll weevils; and

4. Establishing a reasonable schedule of administrative penalties for violations of the Boll Weevil Eradication Act.

B. Any rules promulgated pursuant to the Boll Weevil Eradication Act shall be promulgated in accordance with the Administrative Procedures Act.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.18 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. When a cotton grower fails to meet the rules promulgated by the Department, the Commissioner, at the request of the board of directors, shall have authority to destroy cotton in elimination zones not in compliance with such rules.

B. The Commissioner, at the request of the board of directors shall have authority to destroy, or to treat with pesticides, volunteer or other noncommercial cotton in elimination zones.

C. The board of directors shall pay for losses resulting from the destruction of cotton which was planted in elimination zones prior to publication notice of the elimination zone as provided in Section 7 of this act.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.19 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any person to store or handle any regulated article in a quarantined area, or to move into or from a quarantined area any regulated article, except under such conditions as may be prescribed by the rules promulgated by the Commissioner.

B. Any person who, except in compliance with the rules of the Department, moves any regulated article into this state from any other state which the Department found in such rules is infested by boll weevils shall be deemed guilty of a misdemeanor and, upon conviction thereof shall be subject to the penalty provided in Section 20 of this act. In addition, such person may be required to pay restitution for any damages caused by a violation of this section.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.20 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any person who violates any of the provisions of Boll Weevil Eradication Act or the rules promulgated thereto, or who shall alter, forge, counterfeit, or use without authority any certificate or permit or other document provided for in the Boll Weevil Eradication Act or in rules promulgated thereto shall, upon conviction thereof, be guilty of a misdemeanor and shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$1,000.00).

B. Except as otherwise provided by the Boll Weevil Eradication Act any penalty collected by the Department pursuant to the provisions of this section shall be deposited in the Agriculture Revolving Fund.

SECTION 21. AMENDATORY 40 O.S. 1991, Section 1-210, is amended to read as follows:

Section 1-210. EMPLOYMENT. "Employment" means:

(1) Any service performed prior to January 1, 1972, which was employment as defined in this section, prior to such date, and subject to the other provisions of this section, service performed after December 31, 1971, including service in interstate commerce by:

- (a) any officer of a corporation;
- (b) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee; or
- (c) any individual other than an individual who is an employee under subparagraphs (a) or (b) of this paragraph who performs services for remuneration for any person:

- (i) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or dry cleaning services, for his principal;
 - (ii) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants or other similar establishments for merchandise for resale or supplies for use in their business operations;
- (d) provided, that for purposes of subparagraph (c) of this paragraph, the term "employment" shall include services described in divisions (i) and (ii) of subparagraph (c) above performed after December 31, 1971, if:
- (i) the contract of service contemplates that substantially all of the services are to be performed personally by such individual;
 - (ii) the individual does not have a substantial investment in facilities used in connection with the performance of the services, other than in facilities for transportation; and
 - (iii) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(2) Service performed after December 31, 1971, and prior to January 1, 1978, by an individual in the employ of this state or any of its instrumentalities, or in the employ of this state and one or more other states or their instrumentalities, for a hospital or institution of higher education, located in this state, including seasonal or temporary employment.

(3) (a) Service performed after December 31, 1971, and prior to January 1, 1978, in the employ of this state, other than services defined in paragraph (2) of this section; that is, each officer or employee in the service of the State of Oklahoma who, after December 31, 1971, and prior to January 1, 1978, receives his compensation for service rendered to the State of Oklahoma on a warrant or check issued pursuant to a payroll certified by a department or by an elected or duly appointed officer of this state or who receives payment for the performance of personal services on a warrant issued pursuant to a payroll certified by a department and drawn by the State Treasurer against appropriations made by the Legislature from any state fund or against trust funds held by the State Treasurer, excluding any person chosen by election or appointment to fill an elective office, excluding seasonal or temporary employment, and excluding any services performed by an inmate of a state penal institution.

(b) Service performed after December 31, 1977, in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its

instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act, 26 U.S.C., Section 3306(c)(7), and is not excluded from "employment" under paragraph (7) of this section.

(4) Service performed after December 31, 1971, by an individual in the employ of a community chest, fund, foundation or corporation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation and which does not participate in, or intervene in, including the publishing or distributing of statements, any political campaign on behalf of any candidate for public office; provided that such organization had four or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(5) Service performed after December 31, 1977, by an individual in agricultural labor as defined in division (ii) of subparagraph (a) of paragraph (15) of this section when:

- (a) such service is performed for a person who:
 - (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of Twenty Thousand Dollars (\$20,000.00) or more to individuals employed in agricultural labor; or
 - (ii) for some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time.
- (b) for the purposes of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:
 - (i) if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, Public Law 95-562, 7 U.S.C., Section 2401 et seq.; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and
 - (ii) if such individual is not an employee of such other person within the meaning of paragraph (1) of this section or subparagraph (d) of this paragraph.
- (c) for the purposes of this paragraph, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other

person and who is not treated as an employee of such crew leader under subparagraph (b) of this paragraph:

- (i) such other person and not the crew leader shall be treated as the employer of such individual; and
 - (ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.
- (d) for the purposes of this paragraph, the term "crew leader" means an individual who:
- (i) furnishes individuals to perform service in agricultural labor for any other person;
 - (ii) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them; and
 - (iii) has not entered into a written agreement with such other person (farm operator) under which such individual is designated as an employee of such other person.

(6) The term "employment" shall include domestic service after December 31, 1977, in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of One Thousand Dollars (\$1,000.00) or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter.

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

- (a) in the employ of:
 - (i) a church or convention or association of churches; or
 - (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;
- (b) by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;
- (c) prior to January 1, 1978, in the employ of a school which is not an institution of higher education; after December 31, 1977, in the employ of a governmental entity referred to in paragraphs (2) and (3) of this section if such service is performed by an individual in the exercise of duties:
 - (i) as an elected official;
 - (ii) as a member of a legislative body, or a member of the judiciary of a state or political subdivision;
 - (iii) as a member of the State National Guard or Air National Guard;
 - (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

- (v) in a position which, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week;
- (d) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;
- (e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work-relief or work-training; or
- (f) prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

(8) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, after December 31, 1971, in the employ of an American employer other than service which is deemed "employment" under the provisions of paragraphs (11) or (12) of this section or the parallel provisions of another state's law, if:

- (a) the employer's principal place of business in the United States is located in this state;
- (b) the employer has no place of business in the United States, but:
 - (i) the employer is an individual who is a resident of this state;
 - (ii) the employer is a corporation which is organized under the laws of this state; or
 - (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state;
- (c) none of the criteria of subparagraphs (a) and (b) of this paragraph are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state;
- (d) an "American employer", for purposes of this subsection, means a person who is:
 - (i) an individual who is a resident of the United States;
 - (ii) a partnership if two-thirds or more of the partners are residents of the United States;
 - (iii) a trust, if all of the trustees are residents of the United States; or
 - (iv) a corporation organized under the laws of the United States or of any state; and

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

(9) Notwithstanding paragraph (11) of this section, all service performed after December 31, 1971, by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

(10) Notwithstanding any other provisions of the Employment Security Act of 1980, Section 1-101 et seq. of this title, "employment":

- (a) includes any service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund, and
- (b) includes any service which is required to be "employment" for full tax credit to be allowed against the tax imposed by the Federal Unemployment Tax Act of 1954, Public Law 591, Chapter 736, as amended, 26 U.S.C., Section 3301 et seq.

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

- (a) the service is localized in this state; or
- (b) the service is not localized in any state but some of the service is performed in this state and:
 - (i) the individual's base of operations, or, if there is no base of operations, then the place from which the individual's employment is directed or controlled is in this state; or
 - (ii) the individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

- (12) (a) services covered by an election pursuant to Section 3-203 of this title, and
- (b) services covered by an arrangement pursuant to Section 4-701 et seq. of this title between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, shall be deemed to be employment if the Commission has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

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

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

(14) Notwithstanding any other provision of this subsection, services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the Commission that:

- (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of hire and in fact; and
- (b) such individual is customarily engaged in an independently established trade, occupation, profession, or business; or
- (c) such service is outside the usual course of the business for which such service is performed and that such service is performed outside of all the places of business of the enterprise for which such service is performed.

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

- (a) (i) services performed prior to January 1, 1978, in the employ of the owner or tenant operating a farm, in connection with the cultivation of the soil, the harvesting of crops, or the raising, feeding, or management of livestock, poultry, bees, furbearing animals and wildlife, nurseries, or greenhouses or in connection with the processing, packing or marketing of produce of such farms, nurseries or greenhouses and as an incident to such operations, as provided in this division.
(ii) services performed after December 31, 1977, by an individual in agricultural labor, except as provided under paragraph (5) of this section. For purposes of this subparagraph, the term "agricultural labor" means remunerated service performed in agricultural labor as defined in the Federal Unemployment Tax Act, 26 U.S.C. 3306(k).
- (b) domestic service, except as provided under paragraph (6) of this section, in a private home, local college club, or local chapter of a college fraternity or sorority;
- (c) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother, or both father and mother;
- (d) service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by the Employment Security Act of 1980, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of the Employment Security Act of 1980 shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals and services; provided that if this state shall not be certified for any year by the Secretary of Labor of the United States under Section 3304(c) of

the Federal Internal Revenue Code, 26 U.S.C., Section 3304(c), the payments required of such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in Section 3-304 of this title with respect to contributions erroneously collected;

- (e) prior to January 1, 1978, service performed in the employ of this state or of any other state, or of any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by this state or by one or more states or political subdivisions; and any service performed in the employ of any instrumentality of this state or of one or more states or political subdivisions to the extent that the instrumentality is, with respect to such service, exempt under the Constitution of the United States from the tax imposed by Section 3301 of the Federal Internal Revenue Code, 26 U.S.C. 3301, except as otherwise provided in paragraphs (2) and (3) of this section;
- (f) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress;
- (g) service performed in the employ of a foreign government, including service as a consul or other officer or employee or a nondiplomatic representative;
- (h) service performed in the employ of an instrumentality wholly owned by a foreign government:
 - (i) if the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
 - (ii) if the Commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
- (i) service covered by an arrangement between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within the jurisdiction of such other state or federal agency;
- (j) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

- (k) service performed by an individual for a person, firm, association, trust, partnership or corporation as an insurance agent, or as an insurance solicitor or as a licensed real estate agent, if all such service performed by such individual for such person is performed for remuneration solely by way of commissions or fees;
- (l) service performed by an individual under the age of eighteen (18) in the delivery and distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
- (m) service performed in the employ of a school, college or university, if such service is performed:
 - (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or
 - (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that:
 - (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university; and
 - (II) such employment will not be covered by any program of unemployment insurance;
- (n) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this provision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;
- (o) service performed in the employ of a hospital, if such service is performed by a patient of such hospital;
- (p) services performed by cooperative extension personnel holding federal appointments employed by state institutions of higher learning;
- (q) earnings of employees being paid by state warrants who are presently covered by the Federal Unemployment Compensation Act, 5 U.S.C., Section 8501 et seq., by virtue of their federal status;
- (r) cosmetology services performed by an individual in a beauty shop, as defined by Section 199.1 of Title 59 of the Oklahoma Statutes, pursuant to an agreement whereby the owner of the beauty shop leases or rents facilities for cosmetology to such individual;
- (s) barbering services performed by an individual in a barber shop, as defined by Section 70 of Title 59 of the Oklahoma Statutes, pursuant to an agreement whereby the owner of the barber shop leases or rents facilities for barbering to such individual;
- (t) in-home services performed in a medical care program such as the nontechnical medical care program, or

social services program, as certified and approved by the Department of Human Services or the Federal Health Care Financing Administration or as a participant in a work or training program administered by the Department of Human Services;

- (u) riding services performed by a jockey and services performed by a trainer of race horses in an approved race licensed by the Oklahoma Horse Racing Commission;
- (v) service performed by an individual whose remuneration consists solely of commissions, overrides, bonuses, and differentials related to sales or other output derived from in-person sales to, or solicitation of orders from, ultimate consumers primarily in the home, or otherwise than in a permanent retail establishment;
~~or~~
- (w) service performed by a person, commonly referred to as "owner-operator", who owns or leases a truck-tractor or truck for hire, provided said owner-operator actually operates the truck-tractor or truck and, further, that the entity contracting with the owner-operator is not the lessor of the truck-tractor or truck;
- x. services performed as a chopper of cotton who weeds or thins cotton crops by hand or hoe. This subsection shall be interpreted and applied consistently with the Federal Unemployment Tax Act, 26 U.S.C., Sections 3304(a)(6)(A) and 3306(k).

SECTION 22. This act shall become effective September 1, 1993.

Passed the House of Representatives the 17th day of May, 1993.

Speaker of the House of
Representatives

Passed the Senate the 19th day of May, 1993.

President of the Senate