

SHORT TITLE: Labor; relating to unemployment compensation benefits; modifying definition of employer; making various provisions applicable to fees collected by the Oklahoma Employment Security Commission; excluding certain employee benefits from definition of wages; conforming language to Administrative Procedures Act; clarifying liability of acquiring employer; recodification; effective date.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 344

By: Brown

AS INTRODUCED

An Act relating to labor; amending 40 O.S. 1991, Sections 1-208, 1-209A, 1-210, 1-218, 2-103, 2-107, 2-203, 2-204, 2-502, 2-503, 2-714, 3-102, 3-108, 3-111, 3-203, 3-301, 3-302, 3-303, 3-304, as amended by Section 5, Chapter 318, O.S.L. 1992, 3-306, 3-309, 3-405, 3-406, as amended by Section 7, Chapter 318, O.S.L. 1992, 3-501, 3-502, 3-503, 3-504, 3-602, 3-806, 3-809, 3-810, 4-314, 4-509 and 4-702 (40 O.S. Supp. 1992, Sections 3-304 and 3-406), which relate to unemployment compensation benefits; modifying definition of employer of agricultural labor; making various provisions applicable to fees collected by the Oklahoma Employment Security Commission; correcting statutory reference; excluding certain employee benefits from definition of wages; conforming language to Administrative Procedures Act; clarifying liability of acquiring employer; providing for determination of acquiring employer and notice, filing of protest, hearing and orders relating thereto; expanding time period for receipt of certain application; authorizing Commission to terminate election of coverage of certain employers under certain conditions; clarifying that certain monies owed to Commission shall be paid prior to certain appeal and providing for refund; conforming language; expanding time

period before certain assessment is due and interest may be charged; providing for recodification; and providing an effective date.

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

SECTION 1. AMENDATORY 40 O.S. 1991, Section 1-208, is amended to read as follows:

Section 1-208. EMPLOYER. "Employer" means:

(1) Any employing unit which, after December 31, 1971, except as provided under ~~subsections~~ paragraphs (12) and (13) of this section,

- (a) For some portion of a day, but not necessarily simultaneously, in each of twenty (20) different calendar weeks, whether or not such weeks are or were consecutive within either the current or the preceding calendar year, and for the purpose of this definition if any week includes both December 31 and January 1, the days up to January 1 shall be deemed one (1) calendar week and the days beginning January 1 another such week, has or had in employment one or more individuals, irrespective of whether the same individuals are or were employed in each such day; or
- (b) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of One Thousand Five Hundred Dollars (\$1,500.00) or more;

(2) Any individual or employing unit, whether or not an employing unit at the time of the acquisition, which acquired substantially all of the organization, trade, business, or assets

thereof, of another which at the time of such acquisition was an employer subject to this act; or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to this act;

(3) Any individual or employing unit, whether or not an employing unit at the time of acquisition, which acquired substantially all of the organization, trade, business, or assets thereof, of another employing unit, if the employment record of such individual or employing unit subsequent to such acquisition, together with the employment record of the acquired unit prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit and employer subject to this act under ~~subsection~~ paragraph (1) of this section; or any individual or employing unit which acquired substantially all of the organization, trade, business, or assets of another employing unit if such employing unit subsequent to such acquisition, and such acquired unit prior to such acquisition, both within the same calendar quarter, together paid for service in employment wages totaling One Thousand Five Hundred Dollars (\$1,500.00) or more;

(4) Any employing unit which, together with one or more other employing units, is owned or controlled, by legally enforceable means or otherwise, directly by the same interest, or which owns or controls one or more other employing units, by legally enforceable means or otherwise, and which, if treated as a single unit with such other employing unit, would be an employer under ~~subsection~~ paragraph (1) of this section;

(5) Any employing unit which, having become an employer under ~~subsections~~ paragraphs (1), (2), (3), (4), (9), (12) or (13) of this section has not, under Section 3-202 of this title, ceased to be an employer subject to this act;

(6) For the effective period of its election pursuant to Section 3-203 of this title any other employing unit which has elected to become subject to this act;

(7) Any department of this state and other states and instrumentalities of both thereof for which service in employment, as defined in paragraph (2) of Section 1-210 ~~(2)~~ of this title, is performed after December 31, 1971, except as provided under ~~subsections~~ paragraphs (12) and (13) of this section;

(8) Any department of the State of Oklahoma for which service in employment, as defined in paragraph (3) of Section 1-210 ~~(3)~~ of this title, is performed after December 31, 1971, and any department of the State of Oklahoma and other states and instrumentalities of both thereof, including any political subdivisions and their instrumentalities for which service in employment, as defined in paragraph (3) of Section 1-210 ~~(3)~~ of this title, is performed after December 31, 1977, except as provided under subsections (12) and (13) of this section;

(9) Any employing unit for which service in employment, as defined in paragraph (4) of Section 1-210 ~~(4)~~ of this title, is performed after December 31, 1971, except as provided under ~~subsections~~ paragraphs (12) and (13) of this section;

(10) For purposes of ~~subsections~~ paragraphs (1), (9), (12) and (13) of this section, employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into in accordance with Section 4-702 of this title by the Commission and an agency charged with the administration of any other state or federal unemployment compensation law;

(11) Any political subdivision of the State of Oklahoma which elected to become an employer and for which service in employment,

as authorized and defined by 40 O.S. 1971, Section 238, was performed after December 31, 1971, and prior to January 1, 1978;

(12) Any employing unit for which agricultural labor as defined in paragraph (5) of Section 1-210 ~~(5) of this title~~ is performed after December 31, 1977. In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under ~~subsections~~ paragraphs (1), (7), (8), (9) and (13) of this section, the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977, shall not be taken into account. ~~If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for the purposes of subsection (1) of this section;~~

(13) Any employing unit for which domestic service in employment as defined in paragraph (6) of Section 1-210 ~~(6) of this title~~ is performed after December 31, 1977. In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under ~~subsections~~ paragraphs (1), (7), (8), (9) or (12) of this section, the wages earned or the employment of an employee performing domestic service after December 31, 1977, shall not be taken into account; or

(14) Any employing unit which is not an employer by reason of any other provisions of this act shall nevertheless be an "employer" if either

(a) within the current or preceding calendar year, service is or was performed, with respect to which such employing unit is liable for any federal tax against which credit may be taken by such employing unit for contributions required to be paid by it into a state unemployment fund, or

(b) such employing unit is required to be an "employer" as a condition for approval of this act for full tax

credit to be allowed against the tax imposed by the Federal Unemployment Tax Act, 26 U.S.C., Section 3301 et seq.

SECTION 2. AMENDATORY 40 O.S. 1991, Section 1-209A, is amended to read as follows:

Section 1-209A. LESSOR EMPLOYING UNIT. A. "Lessor employing unit" means any independently established business entity which engages in the business of providing leased employees to any other employer, individual, organization, partnership, corporation or other legal entity, referred to herein as a client lessee.

B. Any employer or any individual, organization, partnership, corporation or other legal entity which meets the definition of lessor employing unit shall be liable for contribution on wages paid by the lessor employing unit to individuals performing services for client lessees of the lessor employing unit.

C. Unless the lessor employing unit has timely complied with the provisions of this section, any employer, individual, organization, partnership, corporation or other legal entity leasing employees from any lessor employing unit shall be jointly and severally liable for any unpaid contributions, interest ~~and,~~ penalties and fees due under this section from any lessor employing unit attributable to wages for services performed for the client lessee entity by the employees leased to the client lessee entity.

D. In order to relieve client lessees from joint and several liability imposed under this section, any lessor employing unit as defined herein may post and maintain a surety bond issued by a corporate surety authorized to do business in this state in an amount equivalent to the contributions for which the lessor employing unit was liable in the last calendar year in which it accrued contributions, or One Hundred Thousand Dollars (\$100,000.00), whichever amount is the greater, to ensure prompt payment of contributions, interest ~~and,~~ penalties and fees for which

the lessor employing unit may be or may become liable under this section.

E. Any lessor employing unit as defined herein which is currently engaged in the business of leasing employees to client lessees shall comply with the provisions of this section by January 1, 1991.

F. Any lessor employing unit not engaged in the business of leasing employees to client lessees on or before the effective date of this act shall comply with the requirements herein before entering into lease agreements with client lessees.

SECTION 3. 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.~~ 29 U.S.C., Sections 1801 through 1872; 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.

SECTION 4. AMENDATORY 40 O.S. 1991, Section 1-218, is amended to read as follows:

Section 1-218. WAGES. "Wages" means all remuneration for services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, and includes dismissal payments which the employer is required by law or contract to make. Gratuities customarily received by an individual in the course of his work from persons other than his employing unit shall be treated as wages received from his employing unit. The reasonable cash value of remuneration in any medium other

than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the Commission. The term wages shall not include:

~~(1)~~ 1. The amount of any payment with respect to services performed after June 30, 1951, to or on behalf of an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund to provide for any such payment, on account of:

~~(a)~~ a. retirement,

~~(b)~~ b. sickness or accident disability,

~~(c)~~ c. medical and hospitalization expenses in connection with sickness or accident disability,
or

~~(d)~~ d. death, provided the individual in its employ:

~~(i)~~ (1) has not the option to receive, instead of provision for such death benefit, any part of such payment, or if such death benefit is insured, any part of the premium or contributions to premiums paid by his employing unit, and

~~(ii)~~ (2) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his services with such employing unit, or

~~(e)~~ e. a bona fide thrift or savings fund, providing:

~~(i)~~ (1) such payment is conditioned upon a payment of a substantial sum by such individuals in its employ, and

~~(ii)~~ (2) that such sum paid by the employing unit cannot under the provisions of such plan be withdrawn by an individual more frequently than once in any twelve-month period, except upon an individual's separation from that employment;

~~(2)~~ 2. Any payment made to, or on behalf of, an employee or his or her beneficiary under a cafeteria plan of the type described in 26 U.S.C., Section 125 and referred to in 26 U.S.C., Section 3306 (b) (5) (G);

3. Any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under an educational assistance program as described in 26 U.S.C., Section 127 or a dependent care assistance program as described in 26 U.S.C., Section 129 and as referred to in 26 U.S.C., Section 3306 (b) (13);

4. The payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon such individual in its employ under Section 3101 of the Federal Internal Revenue Code with respect to domestic services in a private home of the employer or for agricultural labor performed after December 31, 1980;

~~(3)~~ 5. Dismissal payments which the employer is not required by law or contract to make; or

~~(4)~~ 6. The value of any meals and lodging furnished by or on behalf of an employer to an individual in his employ; provided the

meals and lodging are furnished on the business premises of the employer for the convenience of the employer.

SECTION 5. AMENDATORY 40 O.S. 1991, Section 2-103, is amended to read as follows:

Section 2-103. BENEFITS PAID FROM FUND. All benefits provided herein shall be payable from the fund. All benefits shall be paid through employment offices in accordance with such ~~regulations~~ rules as the Commission may prescribe.

SECTION 6. AMENDATORY 40 O.S. 1991, Section 2-107, is amended to read as follows:

Section 2-107. BENEFITS - PORTION OF A WEEK. Notwithstanding any other provisions of this act, the Commission may by ~~regulation~~ rule prescribe that the existence of unemployment, eligibility for benefits and the amount of benefits payable shall be determined, in the case of any otherwise eligible claimant who, within a week of unemployment, is separated from, or secures, work on a regular attachment basis, for that portion of the week occurring before or after such separation from or securing of work, provided such rules are reasonably calculated to secure general results substantially similar to those provided by this act with respect to weeks of unemployment.

SECTION 7. AMENDATORY 40 O.S. 1991, Section 2-203, is amended to read as follows:

Section 2-203. CLAIM. An unemployed individual must file a written claim for benefits with respect to such week in accordance with such ~~regulations~~ rule as the Commission may prescribe.

With respect to such week he must provide the Commission with true and correct statement of all material facts relating to: his unemployment; ability to work; availability for work; activities or conditions which could restrict the individual from seeking or accepting full-time employment immediately; applications for or receipt of workers' compensation benefits; employment and earnings;

and the reporting of other income from retirement, pension, disability, self-employment, education or training allowances.

SECTION 8. AMENDATORY 40 O.S. 1991, Section 2-204, is amended to read as follows:

Section 2-204. REGISTRATION EMPLOYMENT. The unemployed individual must register for work at and thereafter continue to report at an employment office in accordance with such ~~regulations~~ rules as the Commission may prescribe, except that the Commission may, by ~~regulation~~ rule, waive or alter either or both the requirements of this section as to individuals attached to regular jobs and as to such other cases or situations involving mass layoffs or individuals in areas not served by an established employment office, with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purpose of this act.

SECTION 9. AMENDATORY 40 O.S. 1991, Section 2-502, is amended to read as follows:

Section 2-502. POSTING OF INFORMATION. Each employer shall post and maintain in places readily accessible to individuals in his employ printed statements concerning benefit rights, claims for benefits and such other matters relating to the administration of this act as the Commission may by ~~regulation~~ rule prescribe. Each employer shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits when and as the Commission may by ~~regulation~~ rule prescribe. Such printed statements and other materials shall be supplied by the Commission to each employer without cost to the employer.

SECTION 10. AMENDATORY 40 O.S. 1991, Section 2-503, is amended to read as follows:

Section 2-503. CLAIMS, NOTICES AND OBJECTIONS. ~~(1)~~ A. Claims for benefits shall be made in accordance with such ~~regulations~~ rule as the Commission may prescribe.

~~(2)~~ B. Promptly after the initial claim is filed the Commission shall give written notice of the claim to the last employer of the claimant for whom he worked at least fifteen (15) working days.

~~(3)~~ C. Promptly after the claim is paid for the second week of benefits the Commission shall give written notice of the claim to all other employers of the claimant during his base period. Such notice may be the notice required by Section 3-106 of this title.

~~(4)~~ D. Notices shall be deemed given 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.

~~(5)~~ E. Within ten (10) days after the date of the notice addressed to him an employer may mail to the Commission at the address prescribed in the notice written objections to the claim setting forth specifically the facts which:

~~(a) make~~ 1. Make the claimant ineligible for benefits under ~~Part 2 of Article 2 (Sections 2-201 through 2-209),~~ of this title;

~~(b) disqualify~~ 2. Disqualify the claimant from benefits under ~~Part 4 of Article 2 (Sections 2-401 through 2-415),~~ of this title;
or

~~(c) relieve~~ 3. Relieve such employer from being charged for the benefits wages of such claimant.

SECTION 11. AMENDATORY 40 O.S. 1991, Section 2-714, is amended to read as follows:

Section 2-714. EXTENDED BENEFITS. Except when the result would be inconsistent with the other provisions of this section, as provided in the ~~regulations~~ rules of the Commission, the provisions of this act which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits including, but not limited to, claim filing, claimant reporting and registration, information to claimants, notices to

claimants of their weekly and total extended benefit amounts determinations, redeterminations, appeals and review, week for which benefits are paid, disqualifications and eligibility requirements, but excluding those provisions which apply to any waiting period, monetary qualifying or requalifying requirements and the computation of weekly and total amounts of regular benefits.

SECTION 12. AMENDATORY 40 O.S. 1991, Section 3-102, is amended to read as follows:

Section 3-102. CONTRIBUTION. ~~(1)~~ A. Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages for employment. Such contributions shall become due and be paid by each employer to the Commission for the Fund in accordance with such ~~regulations~~ rules as the Commission may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

~~(2)~~ B. In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent (\$0.005) or more, in which case it shall be increased to one cent (\$0.01).

~~(3)~~ C. Each employer shall be notified of its contribution rate for the calendar year before March 31 of such year. Such rate shall become conclusive and binding upon the employer unless within twenty (20) days after the mailing of the notice of the contribution rate, to his last-known address, the employer files a written request for a review and redetermination setting forth his reasons therefor. The Commission shall provide for such review and issue a determination to the employer.

~~(4)~~ D. Within fourteen (14) days after the date of mailing of the notice of the determination, the employer may file with the Commission at the address prescribed in the notice his specific written objections to the contribution rate so determined. The

matter will be heard upon those specific written objections by a three-member board appointed by the Commission. The decision thereon shall be made in writing and notice thereof mailed to the employer. The employer may appeal therefrom 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 that notice of decision.

SECTION 13. AMENDATORY 40 O.S. 1991, Section 3-108, is amended to read as follows:

Section 3-108. STATE EXPERIENCE FACTOR. The total benefits paid from the Fund for the most recent three (3) consecutive completed calendar years, less all amounts credited to the Fund other than employers' contributions, interest, penalties, fees and interest earned on the Fund, divided by the statewide total of benefit wages of all employers for the same three (3) calendar years, after adjustments to the nearest multiple of one percent (1%) shall be termed the "state experience factor." The state experience factor for any year shall be determined prior to the due date of the first contribution payment on wages for employment in that year.

SECTION 14. AMENDATORY 40 O.S. 1991, Section 3-111, is amended to read as follows:

Section 3-111. ACQUIRING EMPLOYERS. A. Any employing unit, whether or not an employing unit at the time of the acquisition, which acquires substantially all of the trade, organization, business, or assets of any employer (excepting in such case any assets retained by ~~such~~ that employer incident to the liquidation of his obligations) and who continues the operations of the predecessor as a going business, shall acquire the merit rating account of ~~such~~ the predecessor employer, including the predecessor's actual contribution and benefit experience, annual payrolls, and ~~liability for current or delinquent contributions, interest and penalty, and~~ contribution rate, whether or not such rate is more or less than

three and one-tenth percent (3.1%). The acquiring employer shall also become jointly and severally liable with the predecessor employer for all current or delinquent contributions, interest, penalties and fees owed to the Commission by the predecessor employer. Any remuneration for services covered by the Employment Security Act of 1980 or other state unemployment compensation acts paid by the predecessor shall be considered as having been paid by the acquiring employer. The initial determination regarding whether or not an acquiring employer will become a successor to a predecessor account shall be made by the Commission or its duly authorized representative and notice of this determination shall be delivered to the acquiring employer or mailed to his or her last-known address.

B. Within twenty (20) days after the mailing of the notice of initial determination provided for in subsection A of this section, the employer may file with the Commission or its representative a written protest to the initial determination and request an oral hearing 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 the mailing of the written notice. At the discretion of the Commission, the hearing shall be conducted by the Commission, or by a three-member board appointed by the Commission for this purpose. Pursuant to the hearing, the Commission or its representative shall, as soon as practicable:

1. Make an order affirming, modifying or reversing the initial determination;

2. Immediately send to the employer a written notice thereof;
and

3. In accordance with the order, notify the employer of any additional contributions, interest, penalties or fees then due or owing by the employer and the employer's contribution rate.

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

C. Any employing unit, whether or not an employing unit at the time of the acquisition, which acquires substantially all of the trade, organization, business, or assets of an employer, at one or more separate and distinct establishments and who continues the acquired operations of the predecessor as a going business, shall acquire that portion of the experience rating account of such employer that is applicable to such establishment or establishments, if such employing unit, immediately after such acquisition, is an employer; provided, however, that such employing unit shall not acquire such portion of the experience rating account unless written application therefor is received by the Commission within ~~thirty~~ one hundred twenty (120) days after the date of such acquisition together with evidence sufficient for the Commission to determine which portion of the experience rating account of the predecessor is applicable to the acquired operations, and the Commission finds that such transfer will not tend to defeat or obstruct the object and purpose of the Employment Security Act of 1980; and provided further, that the portion of the experience rating account so transferred, including the taxable payrolls and benefit wages, shall not thereafter be used in computing an experience rating contribution rate for the transferring employer. For the purpose of this subsection a separate and distinct establishment means all operations conducted by an employer at one business location which is readily segregable and identifiable as a separate business organization.

~~C.~~ D. No rate of more or less than three and one-tenth percent (3.1%) shall be assigned an employing unit succeeding to the experience of another employing unit pursuant to this section for

any period subsequent to such succession except in accordance with regulations prescribed by the Commission, which regulations shall be consistent with federal requirements for additional credit allowance in Section 1602 of the Internal Revenue Code, and the Employment Security Act of 1980, Section 1-101 et seq. of this title.

~~D.~~ E. By ~~regulations~~ rule the Commission may establish a computation date for any such period different from the computation date generally prescribed by the provisions of the Employment Security Act of 1980, and may define the words "calendar year" as meaning a twelve-consecutive-month period ending on the same day of the year as that on which such computation date occurs.

~~E.~~ F. If the Commission finds that any report required to complete a determination of contribution rate has not been filed or if filed is incorrect or insufficient, and any such fact or information has not already been established or found in connection with some other proceeding pursuant to the provisions of the Employment Security Act of 1980, an estimate may be made of the information required on the basis of the best evidence reasonably available to it at the time. Notice shall be given of such determination as provided for contribution rate in subsection C of Section 3-102 ~~(3)~~ of this title and the employer may appeal therefrom as provided in subsection D of Section 3-102 ~~(4)~~ of this title.

SECTION 15. AMENDATORY 40 O.S. 1991, Section 3-203, is amended to read as follows:

Section 3-203. ELECTION BY EMPLOYER. ~~(1)~~ A. An employing unit, not otherwise subject to this act, which files with the Commission its written election to become an employer subject hereto for not less than two (2) calendar years shall, with the written approval of such election by the Commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto

as of January 1 of any calendar year subsequent to such two (2) calendar years, only if during January of such year it has filed with the Commission a written application for termination of coverage as provided in this section.

~~(2)~~ B. Any employing unit for which services that do not constitute employment as defined in this act are performed may file with the Commission a written election that all such services with respect to which payments are not required under an employment security law of any other state or of the federal government and which are performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment by an employer for all the purposes of this act for not less than two (2) calendar years. Upon the written approval of such election by the Commission, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two (2) calendar years, only if during January of such year such employing unit has filed with the Commission a written application for termination of such coverage.

C. The Commission may terminate the election of an employer or employing unit made pursuant to subsection A or B of this section at any time the Commission determines that the employer or employing unit is not abiding by all requirements of the Employment Security Act of 1980 and the rules for the administration of that act, or if the employer or employing unit that has made an election for coverage becomes delinquent in the payment of its unemployment tax contributions, interest, penalties or fees.

SECTION 16. AMENDATORY 40 O.S. 1991, Section 3-301, is amended to read as follows:

Section 3-301. PENALTY AND INTEREST ON PAST-DUE CONTRIBUTIONS.

A. If contributions are not paid on the date on which they are due

and payable as prescribed by the Oklahoma Employment Security Commission, the whole or part thereafter remaining unpaid shall bear interest at the rate of one percent (1%) per month for each month or fraction thereof from and after such date until payment is received by the Commission. The date on which payment of contributions is deemed to have been received may be determined by such ~~regulations~~ rules as the Commission may prescribe.

B. If any employer fails or refuses to file contribution and wage reports required under the provisions of this act within fifteen (15) days after written notice has been mailed to the employer by the Commission or its representative regardless whether or not any wages or taxable wages were paid, there shall accrue a penalty of One Hundred Dollars (\$100.00) and in addition to such penalty, there shall be a penalty of ten percent (10%) added to the total contributions due, collected and paid. Such penalties shall be in addition to any interest due. The provisions of this subsection shall not apply to employers as provided in subsection B of Section 3-806 of this title.

SECTION 17. AMENDATORY 40 O.S. 1991, Section 3-302, is amended to read as follows:

Section 3-302. COLLECTIONS. ~~(1)~~ A. If any employer defaults in any payment of contributions, interest, ~~or~~ penalty or fees thereon, the amount due may be collected by civil action in the name of the State of Oklahoma. Civil actions brought under this section to collect contributions, interest ~~or~~ penalty or fees thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act.

~~(2)~~ B. The courts of this state shall in like manner entertain actions to collect contributions, interest, ~~or~~ penalty or fees

thereon for which liability has accrued under the unemployment compensation law of any other state or of the federal government.

~~(3)~~ C. No suit, including an action for a declaratory judgment, shall be maintained and no writ or process shall be issued by any court of this state which has the purpose or effect of restraining, delaying, or forestalling the collection of any contributions, interest ~~and,~~ penalties and fees under this act or substituting any collection procedure for those prescribed in this act.

SECTION 18. AMENDATORY 40 O.S. 1991, Section 3-303, is amended to read as follows:

Section 3-303. PRIORITIES UNDER LEGAL DISSOLUTIONS OR DISTRIBUTIONS. In the event of any distribution of an employer's assets pursuant to an order of any court or under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceedings, all contributions, interest ~~and,~~ penalties and fees imposed by the provisions of this act are hereby declared to constitute a lien in favor of the state upon all franchises, property, and the rights to property, whether real or personal, then belonging to or thereafter acquired by the person, firm, corporation, partnership or association owing the contribution, whether such property is employed by such person, firm, corporation, partnership or association in the prosecution of business, or is in the hands of an assignee, trustee, or receiver for the benefit of creditors, from the date of the filing by the Commission of a notice of claim of said lien in the office of the county clerk of the county in which such property is located. Said lien shall be in addition to any lien accrued by the filing of a tax warrant as provided in this act. Said lien shall be prior, superior and paramount to all other liens, or encumbrances of whatsoever kind or character, attaching to any of said property subsequent to the filing of such notice of claim of lien, except liens for other

taxes, in which event said lien shall be coequal, and claims for wages of not more than Two Hundred Fifty Dollars (\$250.00) to each claimant, earned within six (6) months of the commencement of any proceeding distributing an employer's assets pursuant to an order of the court under the laws of this state. Said lien shall continue until the amount of contribution, interest ~~and~~, penalty and fees due and owing, and interest subsequently accruing thereon, is paid. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in that act for taxes due any state of the United States.

SECTION 19. AMENDATORY 40 O.S. 1991, Section 3-304, as amended by Section 5, Chapter 318, O.S.L. 1992 (40 O.S. Supp. 1992, Section 3-304), is amended to read as follows:

Section 3-304. REFUNDS. If not later than three (3) years after the date on which a specific report or return was required to be filed, an employer, who has paid all amounts owing for that specific quarter, may make application for an adjustment in connection with that report or payment, or for a refund thereof because an adjustment cannot be made, and if the Commission shall determine that payment of the contributions, interest ~~or~~, penalty fees 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 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 20. AMENDATORY 40 O.S. 1991, Section 3-306, is amended to read as follows:

Section 3-306. JEOPARDY ASSESSMENTS. A. If the Commission, notwithstanding that a return or report, or that contributions with respect thereto may not yet be due, and whether prior to or after the close of the period when any contribution may be due under the provisions of this act, believes that:

~~(1)~~ 1. An employer intends to depart or remove from the state, or conceal himself or any of his property subject to a lien for the payment of contributions~~;~~;

~~(2)~~ 2. An employer intends to discontinue business~~;~~; or

~~(3)~~ 3. An employer intends to do any other act tending to prejudice or render wholly or partially ineffectual proceedings to compute, assess or collect any contribution levied under the provisions of this act.~~—The,~~
the Commission shall declare the period for which any contributions may become due to have terminated for such employer, and shall immediately assess the contributions from any information in his possession, notify the employer and demand immediate payment thereof. In the event of any failure or refusal to pay the contributions, by the employer upon the demand of the Commission, the contributions shall immediately become delinquent and the Commission shall proceed to collect the same as in other cases of delinquent contributions.

~~(4)~~ B. The order of the Commission assessing the contributions may be appealed from as provided in Part 4 of this Article 3, or the employer may furnish to the Commission, under ~~regulations~~ rules prescribed by it, security that he will make any return or report thereafter to be required to be filed with the Commission, and pay the contributions with respect to the period for which such contributions will become due. After security is approved and accepted, and such further and other security with respect to the contributions covered thereby is given as the Commission may, from time to time, find necessary and require, the payment of such

contributions shall not be enforced by any proceedings prior to the expiration of the time otherwise allowed for paying such contributions.

(5) C. In cases where the assessment here authorized is made prior to the close of the period for which contributions become due, and in case the employer elects to pay his contribution rather than to file a bond as herein provided for, the employer may pay the Commission the sum assessed, together with additions to contributions imposed by law, and at the time of making such payment shall notify the Commission of his intention, at the close of the period for which such contributions would have become due, to file suit for recovery. Upon receipt of such notice, an account shall be set up showing the amount paid until the termination of thirty (30) days following the close of the period for which such contributions were due, and if within such period, namely, within thirty (30) days following the close of the period for which such contributions were due, the employer files suit for recovery, the account shall be further maintained pending the final determination of such suit, after which it shall be terminated or refund made by the Commission in accordance with the provisions of Section 3-304 of this title.

SECTION 21. AMENDATORY 40 O.S. 1991, Section 3-309, is amended to read as follows:

Section 3-309. COLLECTION OF DELINQUENT CONTRIBUTIONS, PENALTIES OR INTEREST. Upon a hearing with notice, the Oklahoma Employment Security Commission shall be entitled to proceed by garnishment to collect any delinquent contribution and to collect any penalty ~~or~~, interest or fees due and owing as a result of the delinquency. Provided, that upon proper application under the procedures outlined herein, the court may issue an order continuing the garnishment for the collection of delinquent contributions, penalties ~~or~~, interest or fees.

SECTION 22. AMENDATORY 40 O.S. 1991, Section 3-405, is amended to read as follows:

Section 3-405. DEPOSIT OF ASSESSMENT REQUIRED. As a condition precedent to the right of the employer to prosecute such an appeal, and as a jurisdictional prerequisite of the district court to entertain such appeal, it is specifically provided that, if the appeal be from an order, judgment, finding, or ruling of the Commission or its duly authorized representative, assessing a contribution or ~~an~~ causing any additional contribution, ~~penalties, and penalty,~~ interest or fee to become owing, the employer shall pay to the Commission the amounts assessed or owing. Any amounts so paid shall, pending the final determination of the appeal, be reflected by the Commission in a separate account, and if, upon a final determination of the appeal the order assessing ~~such the~~ contributions, or causing the contributions, penalties, and interest or fees to become owing is reversed or modified and it is determined that ~~said the~~ the contribution or part thereof was erroneously assessed, or the contributions, penalties, interest or fees should not be owed to the Commission, the amount paid by the employer shall be refunded to the employer by the Commission.

SECTION 23. AMENDATORY 40 O.S. 1991, Section 3-406, as amended by Section 7, Chapter 318, O.S.L. 1992 (40 O.S. Supp. 1992, 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 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 and fees assessed or owing, and include the conditions that the employer will faithfully and diligently prosecute ~~such the~~ the 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~~ the contributions, interest ~~and~~, penalty, costs and fees assessed against, or owing by, the employer.

SECTION 24. AMENDATORY 40 O.S. 1991, Section 3-501, is amended to read as follows:

Section 3-501. COMMISSION TO ISSUE WARRANTS. If any contribution imposed by the provisions of this act, or any portion of said contribution, be not paid before the same becomes delinquent, the Commission may immediately issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell any real or personal property of any delinquent employer found within his county for the payment of the delinquent contribution, interest ~~and~~, penalty and fees and the cost of executing the warrant, and to return such warrant to the Commission, and to pay it any moneys collected by virtue thereof, by a time to be therein specified, not more than sixty (60) days from the date of the warrant.

SECTION 25. AMENDATORY 40 O.S. 1991, Section 3-502, is amended to read as follows:

Section 3-502. FILING WARRANT WITH COUNTY CLERK. The Commission may also file a copy of such warrant with the county clerk of the county or counties in which the employer has property and thereupon the county clerk shall index such warrant in the same manner as judgments using the name of the delinquent employer named in the warrant, a short name for the contribution, or tax imposed, and the amount of the contributions, interest ~~and~~, penalty and fees for which said warrant was issued, and the date upon which said copy was filed, and shall index such warrant against the real property described therein, if any is described.

SECTION 26. AMENDATORY 40 O.S. 1991, Section 3-503, is amended to read as follows:

Section 3-503. FILED WARRANT IS LIEN. The filing of said warrant in the office of the county clerk of said county shall constitute and be evidence and notice of the state's lien upon the title to any interest in any real or personal property of the delinquent employer against whom such warrant is issued. Such lien shall be in addition to any and all other liens existing in favor of the state to secure the payment of such unpaid contribution, interest, penalty, fees and costs, and such lien shall be paramount and superior to all other liens of whatsoever kind or character, attaching to any of said property subsequent to the date of such recording and shall be in addition to any other lien provided for in this act. This lien on personal property shall be permanent and continuing without any requirement for executions under Section 735 of Title 12 of the Oklahoma Statutes or any other similar statute. This lien on personal property of the State of Oklahoma shall continue until the amount of the tax, contribution, ~~penalty and,~~ interest ~~is~~ and fees are paid. This lien shall continue on real property until released by payment or for a maximum of ten (10) years after the date of its filing.

SECTION 27. AMENDATORY 40 O.S. 1991, Section 3-504, is amended to read as follows:

Section 3-504. SHERIFF TO EXECUTE WARRANT IN SAME MANNER AS JUDGMENT. Upon receiving such warrant the sheriff shall proceed to execute said warrant in all respects with like effect and in the same manner prescribed by law in respect to executions against property upon judgment of the court of record; and such sheriff shall execute and deliver to the purchaser a bill of sale or deed, as the case may be. Any purchaser, other than the State of Oklahoma, shall be entitled, upon application to the court having jurisdiction of the property, to have confirmation (the procedure for which shall be the same as is now provided for the confirmation of a sale under execution) of such sale prior to the issuance of a

bill of sale or deed. The State of Oklahoma shall be authorized to make bids at any such sale to the amount of contributions, penalties, interest ~~and~~, costs and fees accrued. In the event such bid is successful, the sheriff shall issue a proper muniment of title to the Commission, which said Commission shall hold such title for the use and benefit of the State of Oklahoma; and any delinquent employer, or transferee of such delinquent employer, shall have the right, at any time within one (1) year from the date of such sale, to redeem such property, upon the payment of all contributions, penalties, interest ~~and~~, costs and fees accrued to the date of redemption. Such applicant shall not be entitled to a credit upon such contributions, penalties, interest ~~and~~, costs and fees, by reason of any revenue that might have accrued to the State of Oklahoma or other purchaser under sale prior to such redemption. After the expiration of the period of redemption herein provided, the State of Oklahoma may sell such property at public auction, upon giving thirty (30) days' notice, published in a newspaper of general circulation in the county where such property is located, to the highest and best bidder for cash; and upon a sale had thereof, or when a redemption is made, the Commission for and on behalf of the State of Oklahoma shall issue its bill of sale or quit claim deed to the successful bidder or to the redemptioner. The sheriff shall be entitled to the same fee for his services in executing the warrant, as he would be entitled to receive if he were executing an execution issued by the court clerk of said county upon a judgment of a court of record.

SECTION 28. AMENDATORY 40 O.S. 1991, Section 3-602, is amended to read as follows:

Section 3-602. STATE TREASURER CUSTODIAN OF FUND. The State Treasurer shall be ex officio the treasurer and custodian of the fund who shall administer such fund in accordance with the directions of the Commission and shall issue his warrants upon it in

accordance with such ~~regulations~~ rules as the Commission shall prescribe.

SECTION 29. AMENDATORY 40 O.S. 1991, Section 3-806, is amended to read as follows:

Section 3-806. PAYMENT OF IN-LIEU CONTRIBUTIONS. A. At the end of each calendar quarter the Oklahoma Employment Security Commission shall notify in writing each nonprofit organization, or the agent of a group of such organizations, which has elected to make payments in lieu of contributions, the amount, if any, equal to the full amount of regular benefits plus one-half (1/2) of the amount of extended benefits paid by the Commission during such quarter that is attributable to service in the employ of such organization or the members of a group of such organizations. Such full amount shall include all amounts so paid to its former employees as benefits, including amounts paid in error. Such notification shall be deemed and treated as an assessment of contributions and the payment of the amount owing shall be collected as contributions, ~~and~~ interest ~~and~~, penalty and fees, if any, are collected, in accordance with the provisions of this act. The employer, or group of employers, shall have the rights and remedies provided by this act with respect to assessments of contributions, including the right of protest, hearing and appeal. If no protest is filed or if filed and confirmed by the Commission or its authorized representatives, said assessment shall be immediately due and payable and shall bear interest after ~~thirty (30)~~ forty-five (45) days at the rate of one percent (1%) per month until paid. If any nonprofit organization or group of organizations fails or refuses to pay said assessment after same has become delinquent within ~~thirty (30)~~ forty-five (45) days after written request has been mailed to such organization or the agent of such group by the Commission or its representative, a penalty of five percent (5%) of the amount due shall be added thereto, collected and paid. In the

case of group accounts, assessments and penalty and interest provided in this subsection may be prorated in accordance with Section 3-809. All collections made shall be deposited in the Unemployment Compensation Fund.

B. Such electing organization, or group of organizations, shall file reports of wages paid, in the same time and manner as required of said nongovernmental employers for profit. If any such electing organization, or group of organizations, fails or refuses to file said wage report within fifteen (15) days after written notice a penalty of Ten Dollars (\$10.00) for each day until such report is filed with a maximum of One Hundred Dollars (\$100.00) is hereby imposed against such organization or group and shall be collected and paid.

C. Payments made by any nonprofit organization under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

SECTION 30. AMENDATORY 40 O.S. 1991, Section 3-809, is amended to read as follows:

Section 3-809. GROUP ACCOUNTS. Two or more employers that have elected to become liable for payments in lieu of contributions, in accordance with the provisions of this Part, may, within the same period of time required for the filing of such election, file a joint application to the Commission for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this Part. Upon its approval of the application, the Commission shall establish a group account for such group of employers. Such group account shall remain in effect for not less than two (2) full calendar years and thereafter until terminated at the discretion of the Commission or

upon application by the group. Members of a group may prorate the cost of reimbursement of benefits paid from the fund by any method upon which the members of the group may mutually agree.

Notwithstanding this pro rata provision, in the event such group is delinquent and it is necessary to enforce the payment by legal means, each member of the group shall be individually liable for that portion of the benefits paid from the fund attributable to wages paid by the member in the same manner as if no group account had been established. The Commission shall prescribe such ~~regulations~~ rules as it deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this ~~paragraph~~ section, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this ~~paragraph~~ section by members of the group and the time and manner of such payments.

SECTION 31. AMENDATORY 40 O.S. 1991, Section 3-810, is amended to read as follows:

Section 3-810. COMMISSION TO PROVIDE NOTICE OF DETERMINATIONS. The Commission, in accordance with such ~~regulations~~ rules as it may prescribe, shall notify each nonprofit organization, or group of organizations, of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of this act.

SECTION 32. AMENDATORY 40 O.S. 1991, Section 4-314, is amended to read as follows:

Section 4-314. PETTY CASH FUND. There is hereby authorized to be created a petty cash fund for the Oklahoma Employment Security Commission in an amount not to exceed Two Hundred Fifty Dollars (\$250.00). Said fund may be established from any administrative

funds available to the Oklahoma Employment Security Commission for general operating expenses and shall be administered under such rules ~~and regulations~~ as prescribed by the Director of State Finance.

SECTION 33. AMENDATORY 40 O.S. 1991, Section 4-509, is amended to read as follows:

Section 4-509. INFORMATION TO BE FURNISHED TO PUBLIC AGENCIES. Subject to such restrictions as the Employment Security Commission may by ~~regulation~~ rule prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or the Internal Revenue Service of the United States Department of the Treasury or the Oklahoma Tax Commission. Any information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon request therefor the Commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits pursuant to the provisions of the Employment Security Act of 1980, Section 1-101 et seq. of this title. The Commission shall furnish to public agencies administering aid for dependent children and child support programs, promptly upon request and in the most economical, effective and timely manner, information as to:

1. Whether an individual has applied for, is receiving or has received unemployment insurance and the amount;
2. The individual's current address;

3. Whether the individual has refused employment and if so a description of the job including the terms, conditions and rate of pay; and

4. Any other information that might be useful in locating any individual who may have an obligation for support.

SECTION 34. AMENDATORY 40 O.S. 1991, Section 4-702, is amended to read as follows:

Section 4-702. RECIPROCAL ARRANGEMENTS AUTHORIZED. The Commission is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

~~(1)~~ 1. Services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states in which:

~~(a) in which~~ a. any parts of such individual's service is performed ~~or,~~

~~(b) in which~~ b. such individual has his residence, or

~~(c) in which~~ c. the employing unit maintains a place of business,

provided there is in effect, as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state;

~~(2)~~ 2. The Commission shall cooperate with the Department of Labor of the United States to the fullest extent consistent with the provisions of this act, and shall take such action, through the adoption of appropriate rules, ~~regulations,~~ administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act, 42 U.S.C., Section 301 et seq., that relate to

unemployment compensation, the Federal Unemployment Tax Act, 26 U.S.C., Section 3301 et seq., the Wagner-Peyser Act, 29 U.S.C., Section 49 et seq., the Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C., Section 3304 et seq., and any federal comprehensive manpower act and any other similar or related federal acts;

~~(3)~~ 3. The Commission shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under said Oklahoma Employment Security Act, as amended by this act, with his wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for:

~~(a)~~ a. applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws, and

~~(b)~~ b. avoiding the duplicate use of wage and employment by reason of such combining; and

~~(4)~~ 4. Contributions due under this act with respect to wages for insured work shall for the purposes of this act be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions and the actual earnings thereon as the Commission finds will be fair and reasonable as to all affected interests.

SECTION 35. RECODIFICATION Section 12, Chapter 318, O.S.L. 1992 (40 O.S. Supp. 1992, Section 5-109), shall be recodified

as Section 3-310 of Title 40 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 36. This act shall become effective September 1, 1993.

44-1-0363

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