

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 1462

By: Roach, Tyler, Beutler,
Boyd (Laura), Erwin,
Stottlemire, Sullivan
(Leonard), Vaughn and
Wells of the House

and

Long (Lewis) of the
Senate

(labor - amending various sections in Title 40 - benefit
wages - Employment Security Act of 1980 -
codification - noncodification - effective dates -
emergency)

AUTHORS: Add the following Senate Coauthors: Shedrick and Long
(Ed)

AMENDMENT NO. 1. Page 1, strike the stricken title, enacting
clause and entire bill and insert

"[labor - unemployment compensation - amending several
sections - codification - noncodification - effective
date - emergency]

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

SECTION 1. AMENDATORY 40 O.S. 1991, Section 1-210, as
last amended by Section 1, Chapter 195, O.S.L. 1994 (40 O.S. Supp.
1994, 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 or her principal;
 - (ii) as a traveling or city ~~salesman~~ salesperson, 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 or her 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, 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 or her 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 or her own behalf or on behalf of such other person, the individuals so furnished by ~~him~~ the crew leader 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 or her 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~~ the 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 or her son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his or her 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~~ 61.5 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;
- (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);
- (y) services performed for a corporation by an individual who owns one hundred percent (100%) of the stock of such corporation, provided that such corporation is not a nonprofit corporation as provided for in the Employment Security Act of 1980; or
- (z) services performed for a private for-profit person or entity by an individual as a landman:
 - (i) if the individual is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or negotiating business agreements that provide for the exploration for or development of minerals,
 - (ii) if substantially all remuneration paid in cash or otherwise for the performance of the services is

directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual, and

- (iii) if the services performed by the individual are performed under a written contract between the individual and the person for whom the services are performed; provided that the individual is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract.

SECTION 2. AMENDATORY 40 O.S. 1991, Section 1-221, as amended by Section 2, Chapter 195, O.S.L. 1994 (40 O.S. Supp. 1994, Section 1-221), is amended to read as follows:

Section 1-221. BENEFIT WAGES. "Benefit wages" means the wages earned by a claimant during ~~his~~ the claimant's base period which are not in excess of the current maximum weekly benefit amount, as determined under Section 2-104 of this title, multiplied by the maximum number of weeks for which benefits could be paid to any individual (now twenty-six (26) weeks) multiplied by three (3); provided, however, no wages shall be included as "benefit wages" unless and until the claimant has been paid benefits for ~~two (2)~~ five (5) weeks in one (1) benefit year.

SECTION 3. AMENDATORY 40 O.S. 1991, Section 2-108, is amended to read as follows:

Section 2-108. BENEFITS - APPROVED TRAINING. A. Notwithstanding any other provisions of law, no otherwise eligible individual shall be denied benefits for any week because ~~he~~ the individual is in training with the approval of the Commission, nor shall such individual be denied benefits with respect to any week in which ~~he~~ the individual is in training with the approval of the Commission by reason of the application of provisions of law

relating to availability for work, active search for work, failure to apply for, or a refusal to accept, suitable work. Such approval for training shall be determined by consideration of all the following factors:

~~(1)~~ 1. The individual's skills are obsolete or such that there are minimal opportunities for employment;

~~(2)~~ 2. Training is for an occupation for which there is a substantial and recurring demand; and

~~(3)~~ 3. The individual possesses aptitudes or skills which can be supplemented by retraining within a reasonable time; ~~and~~

~~(4)~~ ~~The individual produces satisfactory evidence of continued attendance and satisfactory progress.~~

B. Any individual in training approved by the Commission will produce satisfactory evidence of continued attendance and satisfactory progress. Failure to comply shall result in a disqualification of benefits for each week of occurrence.

SECTION 4. AMENDATORY 40 O.S. 1991, Section 2-207, is amended to read as follows:

Section 2-207. WAGE REQUIREMENT DURING BASE PERIOD. The unemployed individual, during ~~his~~ the individual's base period, shall have been paid wages for insured work of not less than:

~~1. Prior to January 1, 1986:~~

~~a. Three Thousand Dollars (\$3,000.00), and~~

~~b. One Thousand Five Hundred Dollars (\$1,500.00); and~~

2. One and one-half (1 1/2) times the amount of wages during that quarter of ~~his~~ the individual's base period in which such wages were highest; ~~and~~

~~2. Beginning January 1, 1986:~~

~~a. forty percent (40%) of the taxable wage, and~~

~~b. one and one-half (1 1/2) times the amount of wages~~

~~during that quarter of his base period in which such wages were highest.~~

Notwithstanding the preceding provision, an individual with base period wages equal to or more than the highest annual amount of taxable wages that applies to any calendar year in which the claim for unemployment benefits was filed shall be eligible for benefits.

~~From January 1, 1986 through December 31, 1987, notwithstanding any other provision of this section an individual who has worked at least twenty (20) hours in each of twenty (20) weeks in insured work shall be eligible for benefits pursuant to the provisions of the Employment Security Act of 1980.~~

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-305 of Title 40, unless there is created a duplication in numbering, reads as follows:

DEDUCTION OF INDIVIDUAL INCOME TAX WITHHOLDINGS.

Notwithstanding the provisions of Sections 2-301 and 2-303 of Title 40 of the Oklahoma Statutes, nothing shall be construed to prohibit the deduction of an amount from unemployment compensation, otherwise payable to an individual, to pay the withholding of federal or state individual income tax, if that individual elected to have such a deduction made and that deduction is made under a program approved by the United States Secretary of Labor. For the purposes of this section, if an individual elects to have this deduction taken from his or her weekly benefits, fifteen percent (15%) of the total benefit amount will be taken to pay federal withholding and three percent (3%) of the total benefit amount will be deducted to pay the state withholding, for a total deduction of eighteen percent (18%) of the weekly benefit amount. This section shall be effective for all benefit payments made after December 31, 1996.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-404A of Title 40, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of this section:

1. "Temporary help firm" means a firm that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects; and

2. "Temporary employee" means an employee assigned to work for the clients of a temporary help firm.

B. A temporary employee of a temporary help firm will be deemed to have left his or her last work voluntarily without good cause connected with the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee will not be deemed to have left work voluntarily without good cause connected with the work unless the temporary employee has been advised of the obligation to contact the temporary help firm on completion of assignments and that unemployment benefits may be denied for failure to do so.

C. For the purposes of the Employment Security Act of 1980, the temporary help firm is deemed to be the employer of the temporary employee.

SECTION 7. AMENDATORY 40 O.S. 1991, Section 2-411, as amended by Section 1, Chapter 46, O.S.L. 1993 (40 O.S. Supp. 1994, Section 2-411), is amended to read as follows:

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

- (a) Such pension, retirement or retired pay, annuity or similar payment is under a plan maintained, or

contributed to, by a base period or chargeable employer; and

- (b) In the case of such a payment not made under the ~~Social Security Act, 42 U.S.C., Section 301 et seq., or the Railroad Retirement Act of 1974, 45 U.S.C., Section 231 et seq.~~, services performed for such employer by the individual after the beginning of the base period, or remuneration for such services, affect eligibility for or increase the amount of, such pension, retirement or retired pay, annuity or similar payment.

(2) If the total of such remuneration is less than the benefits which would otherwise be due under the Employment Security Act of 1980, Section 1-101 et seq. of this title, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

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

SECTION 8. AMENDATORY Section 1, Chapter 166, O.S.L. 1994 (40 O.S. Supp. 1994, Section 2-417), is amended to read as follows:

Section 2-417. SEEK AND ACCEPT WORK - WEEK OF OCCURRENCE DISQUALIFICATION. An individual shall be disqualified to receive benefits for each week in which the individual shall have failed to do any of the following:

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

2. Make application for work with employers who could reasonably be expected to have work available within that general geographic area of the state;

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

4. Participate in reemployment services, such as job search assistance services, if the individual has been determined likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the Oklahoma Employment Security Commission. An individual will not be disqualified under this paragraph for failure to participate in reemployment services, if:

a. the individual has previously completed reemployment services, or

b. there is justifiable cause for the individual's failure to participate in reemployment services.

SECTION 9. AMENDATORY 40 O.S. 1991, Section 2-503, as amended by Section 10, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 1994, Section 2-503), is amended to read as follows:

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

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 or she worked at least fifteen (15) working days.

C. Promptly after the claim is paid for the ~~second~~ fifth 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.

D. Notices shall be deemed given when the Commission deposits the same in the United States mail addressed to the ~~employer at his~~

employer's 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.

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:

1. Make the claimant ineligible for benefits under Sections 2-201 through 2-209 of this title;

2. Disqualify the claimant from benefits under Sections 2-401 through ~~2-415~~ 2-418 of this title; or

3. Relieve such employer from being charged for the benefits wages of such claimant.

SECTION 10. AMENDATORY 40 O.S. 1991, Section 2-715, as last amended by Section 3, Chapter 166, O.S.L. 1994 (40 O.S. Supp. 1994, Section 2-715), is amended to read as follows:

Section 2-715. ELIGIBILITY FOR EXTENDED BENEFITS. A. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in the eligibility period of the individual only if the Commission finds that with respect to such week:

1. The individual is an "exhaustee" as defined in Section 2-712 of this title; and

2. Except as otherwise provided by this section, the individual has satisfied the requirements of the Employment Security Act of 1980, for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification under the Employment Security Act of 1980, Section 1-101 et seq. of this title, for the receipt of benefits.

B. Any payment of extended benefits under the Employment Security Act of 1980 shall not be made to any individual for any

week of unemployment in his or her eligibility period during which ~~he~~ the individual:

1. Fails to accept any offer of suitable work; ~~or~~

2. Fails to apply for any suitable work to which ~~he was~~ referred by the state employment service; or

3. Fails to actively engage in seeking suitable work.

C. Suitable work shall be defined as any work which is within such individual's capabilities, except that if the individual furnishes satisfactory evidence that the individual's prospects for obtaining work in his or her customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the provisions of Section 2-408 of this title with respect to regular benefit claimants.

1. Any work which is within the capabilities of such individual means that the individual has the physical and mental capacity to do the work and ~~that he has~~ the background and experience which would enable ~~him~~ the individual to perform the job.

2. Work for an extended benefit claimant shall not be considered suitable if the gross weekly pay of the job does not exceed the extended weekly benefit amount payable to ~~him~~ the individual for a week of total unemployment plus the amount of any Supplemental Unemployment Benefits (SUB), as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1954, 26 U.S.C., Section 501, payable for such week and equal the higher of the federal minimum wage provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938, 29 U.S.C., Section 206, without regard to any exemption or any applicable state or local minimum wage.

D. If any individual is ineligible for extended benefits for any week by reason of a failure described in subsection B of this section, such individual shall be ineligible to receive extended benefits for the week in which such failure occurred and until the

individual has been employed during at least four (4) different weeks which begin after such failure and has earned wages equal to or in excess of four (4) times his weekly benefit amount.

E. 1. Extended benefits shall not be denied to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work if the position was not offered to such individual in writing or was not listed with the state employment service.

2. Extended benefits shall not be denied to any individual for any week by reason of a failure to accept an offer of or apply for suitable work if such failure would not result in a denial of benefits under the provisions of Sections 2-408 and 2-409 of this title and Sections ~~±~~ 2-417 and ~~±~~ 2-418 of this ~~act~~ title to the extent that such provisions are not inconsistent with the provisions of this section.

3. Extended benefits shall not be denied to any individual for any week by reason of a failure to accept an offer of or apply for suitable work if the work failed to meet any of the requirements of Section 2-409 of this title.

F. An individual shall be treated as actively engaged in seeking work during any week if such individual has engaged in a systematic and sustained effort to obtain work during such week, and such individual provides tangible evidence to the state employment service that he has engaged in such an effort during such week.

G. An individual filing an interstate claim shall not be eligible for extended benefits after the first two (2) weeks of extended benefits that are payable if no extended benefit period is in effect for such week in the state where the claim is filed.

H. The state employment service shall refer any claimant entitled to extended benefits to any suitable work which meets the criteria prescribed in this section.

~~I. Subsections B, C, D, E, F, and H of this section shall not apply to weeks of unemployment beginning after March 6, 1993, and before January 1, 1995.~~

SECTION 11. AMENDATORY 40 O.S. 1991, Section 3-103, is amended to read as follows:

Section 3-103. COMPUTATION - PERCENTAGE OF WAGES PAYABLE. ~~Each~~ Beginning January 1, 1996, each employer, unless otherwise prescribed in Sections 3-104, 3-111, 3-112, 3-701 or 3-801 of this title, shall pay contributions equal to ~~three and one-tenth percent (3.1%) of taxable wages paid by him with respect to employment except as may be otherwise prescribed in Section 3-104 of this title~~ a percent of taxable wages paid by the employer with respect to employment which shall be the greater of one percent (1%) or the average contribution rate paid by all employers during the second year preceding the current calendar year. The average contribution rate shall be calculated by dividing annual net contributions received by total annual taxable wages.

SECTION 12. AMENDATORY 40 O.S. 1991, Section 3-105, is amended to read as follows:

Section 3-105. BENEFIT WAGES - YEAR CHARGED. ~~An employee's benefit wages for any benefit year beginning before July 1, 1980, shall be defined and treated as provided in the laws which governed at the time such benefit wages were charged, except as hereinafter provided.~~ When in any benefit year ~~an employee~~ a claimant is paid benefits for his ~~second~~ or her fifth compensable week of unemployment or is paid benefits as defined in paragraph (3) of Section 4-702(3) of this title, his or her taxable wages during his or her base period shall be treated, for the purpose of this part, as though they had been paid in the calendar year in which such benefits are paid.

SECTION 13. AMENDATORY 40 O.S. 1991, Section 3-106, as amended by Section 3, Chapter 318, O.S.L. 1992 (40 O.S. Supp. 1994, Section 3-106), is amended to read as follows:

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

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

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

1. The date on which the employment was terminated;

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

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

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

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

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

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

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

F. The employer or the Commission may appeal the order of the Commission or its representative to the district court by filing a petition for review with the clerk of that court within thirty (30)

days after the date the order was mailed to all parties. The mailing date shall be specifically stated in the order.

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

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

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

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

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

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

I. An employer shall not be charged with benefit wages of a laid-off employee if the employer lists as an objection in a statement filed in accordance with subsection B of this section that

said employee collecting benefits was hired to replace a United States serviceman or servicewoman called into active duty and laid-off upon the return to work by that serviceman or servicewoman. The Unemployment Compensation Fund shall be charged with the benefit wages of the laid-off employee.

SECTION 14. AMENDATORY 40 O.S. 1991, Section 3-110, as amended by Section 4, Chapter 195, O.S.L. 1994 (40 O.S. Supp. 1994, Section 3-110), is amended to read as follows:

Section 3-110. MINIMUM CONTRIBUTIONS. No employer's rate shall be less than ~~three and one-tenth percent (3.1%) for any year the~~ greater of one percent (1%) or the average contribution rate paid by all employers during the second year preceding the current calendar year unless throughout the one (1) calendar year immediately preceding such year some eligible ~~individuals~~ individual could have filed a claim in each ~~calendar~~ quarter of said year establishing a base period as prescribed by Section 1-202 of this title which would include wages from that employer.

SECTION 15. AMENDATORY 40 O.S. 1991, Section 3-111, as amended by Section 14, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 1994, 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 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 the predecessor employer, including the predecessor's actual contribution and benefit experience, annual payrolls, 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.

Written notice of all current or delinquent contributions, interest, penalties and fees owed to the Commission by the predecessor employer shall be provided to the acquiring employer by the predecessor employer prior to the sale of the business. Failure to give such notice may subject the predecessor employer to a penalty as specified by the rules of the Commission.

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 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.

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.

E. By 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.

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 of this title and the employer may appeal therefrom as provided in subsection D of Section 3-102 of this title.

SECTION 16. AMENDATORY 40 O.S. 1991, Section 3-113, is amended to read as follows:

Section 3-113. CONDITIONAL FACTORS. For each calendar year commencing after December 31, 1977, except for those employers with a benefit wage ratio of zero (0) and as otherwise provided in this

section, the contribution rate for each employer for such calendar year shall be increased, in the circumstances and in the amounts as follows:

(1) - Condition "a" - If at the beginning of each such year the balance of the unemployment compensation fund is less than three and one-half (3 1/2) times, but not less than three (3) times, the net benefits paid for the most recent five (5) consecutive completed calendar years divided by five (5), the contribution rate for each employer whose benefit wage ratio with respect to such year is zero percent (0%) shall be increased by one-tenth of one percent (1/10 of 1%) of wages paid by ~~him~~ the employer during such year; such contribution rate for each employer whose benefit rate wage ratio with respect to such year is more than zero percent (0%), but not more than one-tenth of one percent (1/10 of 1%), shall be increased by two-tenths of one percent (2/10 of 1%) of wages paid by ~~him~~ the employer during such year and such contribution rate for each employer whose benefit wage ratio with respect to such year is more than one-tenth of one percent (1/10 of 1%), shall be increased by three-tenths of one percent (3/10 of 1%) of wages paid by ~~him~~ the employer during such year.

(2) - Condition "b" - If at the beginning of each such year the balance of the unemployment compensation fund is less than three (3) times, but not less than two and one-half (2 1/2) times, the net benefits paid for the most recent five (5) consecutive completed calendar years divided by five (5), the contribution rate for each employer shall be increased by thirty-three and one-third percent (33 1/3%) of such rate; provided that such total rate, if not a multiple of one-tenth of one percent (1/10 of 1%), shall be computed to the next higher multiple of one-tenth of one percent (1/10 of 1%) of wages paid by ~~him~~ the employer during such year; provided, further, that such contribution rate for each employer whose benefit wage ratio with respect to such year is zero percent (0%) shall be

increased by two-tenths of one percent ($2/10$ of 1%) of wages paid by ~~him~~ the employer during such year; such contribution rate for each employer whose benefit wage ratio with respect to such year is more than zero percent (0%), but not more than one-tenth of one percent ($1/10$ of 1%), shall be increased by three-tenths of one percent ($3/10$ of 1%) of wages paid by ~~him~~ the employer during such year; and such contribution rate for each employer whose benefit wage ratio with respect to such year is more than one-tenth of one percent ($1/10$ of 1%), shall be increased by at least four-tenths of one percent ($4/10$ of 1%) of wages paid by ~~him~~ the employer during such year.

(3) - Condition "c" - If at the beginning of each such year the balance of the unemployment compensation fund is less than two and one-half ($2\ 1/2$) times, but not less than two (2) times, the net benefits paid for the most recent five (5) consecutive completed calendar years divided by five (5), the contribution rate for each employer shall be increased by one-half ($1/2$) of such rate; provided that such total rate, if not a multiple of one-tenth of one percent ($1/10$ of 1%), shall be computed to the next higher multiple of one-tenth of one percent ($1/10$ of 1%) of wages paid by ~~him~~ the employer during such year; provided, further, that such contribution rate for each employer whose benefit wage ratio with respect to such year is zero percent (0%) shall be increased by three-tenths of one percent ($3/10$ of 1%) of wages paid by ~~him~~ the employer during such year; such contribution rate for each employer whose benefit wage ratio with respect to such year is more than zero percent (0%), but not more than one-tenth of one percent ($1/10$ of 1%), shall be increased by four-tenths of one percent ($4/10$ of 1%) of wages paid by ~~him~~ the employer during such year; and such contribution rate for each employer whose benefit wage ratio with respect to such year is more than one-tenth of one percent ($1/10$ of 1%), shall be increased by at

least five-tenths of one percent (5/10 of 1%) of wages paid by ~~him~~ the employer during such year.

(4) - Condition "d" - If at the beginning of each such year the balance of the unemployment compensation fund is less than two (2) times the net benefits paid for the most recent five (5) consecutive completed calendar years divided by five (5), the contribution rate for each employer shall be increased by sixty-six and two-thirds percent (66 2/3%) of such rate; provided that such total rate, if not a multiple of one-tenth of one percent (1/10 of 1%) shall be computed to the next higher multiple of one-tenth of one percent (1/10 of 1%) of wages paid by ~~him~~ the employer during such year; provided, further, that such contribution rate for each employer whose benefit wage ratio with respect to such year is zero percent (0%) shall be increased by four-tenths of one percent (4/10 of 1%) of wages paid by ~~him~~ the employer during such year; such contribution rate for each employer whose benefit wage ratio with respect to such year is more than zero percent (0%), but not more than one-tenth of one percent (1/10 of 1%), shall be increased by five-tenths of one percent (5/10 of 1%) of wages paid by ~~him~~ the employer during such year; such contribution rate for each employer whose benefit wage ratio with respect to such year is more than one-tenth of one percent (1/10 of 1%), shall be increased by at least six-tenths of one percent (6/10 of 1%) of wages paid by ~~him~~ the employer during such year.

(5) The contribution rate, excluding any surcharge, for an employer whose contribution rate is three and four-tenths percent (3.4%) or more shall not be increased by more than two (2) percentage points in any one (1) year. The contribution rate, excluding any surcharge, for an employer whose contribution rate is less than three and four-tenths percent (3.4%) shall not be increased to more than five and four-tenths percent (5.4%) in one (1) year.

For purposes of this section "net benefits paid for the most recent five (5) consecutive completed calendar years" means the total amount of monies withdrawn from this state's account in the unemployment trust fund in the United States Treasury for each of the most recent five (5) consecutive completed calendar years, plus the balance of such monies in the benefit account at the start of such period, less the balance of such monies in the benefit account at end of such period. The contribution rate for those employers with a benefit wage ratio of zero (0) shall be two-tenths of one percent (2/10 of 1%) during those years when the fund is in conditions "a", "b", and "c", and shall be three-tenths of one percent (3/10 of 1%) during those years when the fund is in condition "d".

(6) There is hereby created a Special Surtax Fund. All money collected from the surtax imposed pursuant to this paragraph shall be transferred from the clearing account to the Special Surtax Fund. Funds in the Special Surtax Fund shall be used for repayments to the state's account in the unemployment trust fund for amounts previously withdrawn for refunds of employer contributions made pursuant to the requirements of paragraph (5) of this section. After Three Million Nine Hundred Sixty-nine Thousand Two Hundred Seventy-three Dollars and twenty-eight cents (\$3,969,273.28) has been deposited in the state's account in the unemployment trust fund any remaining balance in the Special Surtax Fund shall also be transferred to the fund. When all such transfers have been made the Special Surtax Fund shall cease to exist.

Notwithstanding any other provision, for the first calendar quarter of 1987, the maximum assignable contribution rate shall be five and four-tenths percent (5.4%). A special surtax shall be assigned to employers who would, in the absence of the preceding sentence, be assigned a rate in excess of five and four-tenths percent (5.4%). The Commission shall determine the rate of surtax

to be assigned to each employer to whom this provision applies in the same manner used to assign contribution rates pursuant to this article. The provisions for collecting past-due contributions shall apply to collection of the surtax. The surtax collected shall after deposit in the clearing account be transferred to the Special Surtax Fund.

(7) Beginning January 1, 1996, except for this paragraph and paragraph (8) of this section, the provisions of this section shall be suspended until the Unemployment Trust Fund reaches a High Cost Multiple of one and one-fourth (1.25). The Oklahoma Employment Security Commission shall determine the High Cost Multiple at the end of each calendar year and shall include the result of its computation in a regularly published periodical together with other employment-related data. As used in this section, "High Cost Multiple" shall be a figure computed as follows:

- (a) first, net fund reserves in the Unemployment Compensation Fund as of the date of each computation required by this section shall be divided by total wages earned in insured employment for the twelve (12) months preceding the date of the quarterly High Cost Multiple computation,
- (b) second, the result of the computation from subparagraph (a) of this paragraph shall be divided by a figure which is a quotient derived from the computation of the High-Cost Rate contained in subparagraph (c) of this paragraph, and
- (c) third, the highest ratio of total state benefit payments experienced previously in any twelve (12) consecutive months to total wages earned in insured employment for the same period shall be the High-Cost Rate,

the result of all computations contained in subparagraphs (a) through (c) of this paragraph, performed in the sequence as specified in this section, shall be known as the High Cost Multiple;

(8) Prior to the beginning of each calendar year, the Commission shall prepare an estimate of the financial condition of the trust fund. If the estimate for the year shows the balance, at any time during the year, will fall below the High Cost Multiple as defined in paragraph (7) of this section, then the Commission shall reinstate the suspended provisions of this section.

SECTION 17. AMENDATORY 40 O.S. 1991, Section 3-502, as amended by Section 25, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 1994, 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~~ its warrant with the county clerk of the county or counties in which the employer has property and thereupon the county clerk shall index ~~such~~ the 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, penalty and fees for which ~~said~~ the warrant was issued, and the date upon which ~~said~~ the copy was filed, and shall index ~~such~~ the warrant against the real property described therein, if any is described. If the county clerk charges a fee for the filing of the warrant, the Commission may add the amount of the fee to the indebtedness owing by the delinquent employer named in the warrant.

SECTION 18. AMENDATORY 40 O.S. 1991, Section 4-508, as last amended by Section 8, Chapter 195, O.S.L. 1994 (40 O.S. Supp. 1994, Section 4-508), is amended to read as follows:

Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL - DISCLOSURE. A. Except as otherwise provided by law, information obtained from any employing unit or individual pursuant to the administration of the Employment Security Act of 1980, and

determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or employer or agent of such person as ~~he may be~~ authorized in writing ~~authorize as his agent~~ shall be supplied with information from the records of the Commission, to the extent necessary for the proper presentation of his claim or complaint in any proceeding under the Employment Security Act of 1980, Section 1-101 et seq. of this title, with respect thereto.

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

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

1. The delivery to taxpayer or claimant a copy of any report or other paper filed by him pursuant to the provision of the act;

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

3. The Oklahoma Department of Commerce may have access to data obtained pursuant to the Oklahoma Employment Security Act of 1980

pursuant to rules promulgated by the Oklahoma Employment Security Commission. The information obtained shall be held confidential by the Department and any of its agents and shall not be disclosed or be open to public inspection. The Oklahoma Department of Commerce, however, may release aggregated data, either by industry or county, provided that such aggregation meets disclosure requirements of the Oklahoma Employment Security Commission;

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

5. The disclosing of information or evidence to the Attorney General or any district attorney when said information or evidence is to be used by said officials or other parties to the proceedings to prosecute or defend allegations of violations of the act. Said information disclosed to the Attorney General or any district attorney shall be kept confidential by them and not be disclosed except when presented to a court in a prosecution of a violation of the act, and a violation by the Attorney General or district attorney by otherwise releasing the information shall be a felony;

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

7. The furnishing of information to other state agencies for the limited purpose of aiding in the collection of debts owed by individuals to said requesting agencies;

8. The release to officials, employees, and agents of the Oklahoma Department of Transportation of information required for use in federally mandated regional transportation planning, which is performed as a part of their official duties;

9. The release to officials, employees and agents of the State Treasurer's office of information required to verify or evaluate the

effectiveness of the Oklahoma Small Business Linked Deposit Program on job creation;

10. The release to officials, employees, and agents of the Attorney General or the State Insurance Fund for use in investigation of workers' compensation fraud; ~~or~~

11. The release to employees of the Oklahoma State Bureau of Investigation or release to employees of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control for use in criminal investigations and the location of missing persons or fugitives from justice;

12. The release to officials, employees, and agents of the Center of International Trade, Oklahoma State University, of information required for the development of International Trade for employers doing business in the State of Oklahoma; or

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

D. All subpoenas or court orders for production of documents must provide a minimum of twenty (20) days from the date it is served for the Commission to produce the documents. If the date, on which production of the documents is required, is less than twenty (20) days from the date of service, the subpoena or order shall be considered void on its face as an undue burden or hardship on the Commission.

E. Should any of the disclosures provided for in this section require more than casual or incidental staff time, the Commission

may charge the cost of such staff time to the party requesting the information.

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

SECTION 19. A. There is hereby created until December 31, 1996, the Worker Training Development and Loan Financing Advisory Task Force. The purpose of the Task Force is to provide a comprehensive, in-depth analysis assessing job training activities in Oklahoma in order to assess the role of state government in providing an effective statewide job training delivery system to residents of the state; to determine the impact of changes, if any, from federal mandates with respect to job training; and to recommend a systematic approach and conceptual framework on the reform, reorganization, and the restructuring needed to comply with any federal changes concerning the job training program. The Task Force shall be composed of fifteen (15) members as follows:

1. The Director of the Employment Security Commission, or designee;

2. The Director of the Job Training Partnership Act Program, Oklahoma Employment Security Commission, or designee;

3. The Director of the Oklahoma Department of Commerce, or designee;

4. The Director of the State Department of Vocational and Technical Education, or designee;

5. The President of the Oklahoma Finance Authorities, or designee;

6. The Vice Chair of Oklahoma Futures, or designee;

7. Four legislative members appointed by the Speaker of the Oklahoma House of Representatives;

8. Four legislative members appointed by the President Pro Tempore of the Oklahoma Senate; and

9. One member appointed by the Governor. Such member shall have business, industry or manufacturing experience.

B. The appointed members of subsection A of this section shall be appointed by August 1, 1995. Any vacancy in the appointive membership of the Task Force shall be filled in the same manner as the original appointment.

C. The membership shall elect a Chair and Vice Chair from its membership. The Task Force shall meet at least quarterly and at such other times as may be necessary at the call of the Chair. The first meeting of the Council shall be held by August 31, 1995. A quorum shall consist of the majority of the membership present. Members shall receive no additional compensation for serving on the Task Force. The legislative members of the Task Force shall be reimbursed for any travel in connection with such service pursuant to Section 456 of Title 74 of the Oklahoma Statutes. Other members shall be reimbursed pursuant to the State Travel Reimbursement Act. All meetings of the Task Force shall be subject to the provisions of the Oklahoma Open Meeting Act.

D. Responsibilities of the Advisory Task Force shall include, but not be limited to:

1. Reviewing job training activities in Oklahoma;

2. Reviewing existing legislation concerning the Job Training Partnership Act (JTPA);

3. Reviewing funding allocation for JTPA program in this state and future trends and changes associated with the funding of the program;

4. Reviewing and identifying state entities receiving JTPA funding and any funding allocation trends;

5. Studying, reviewing, and assessing the need and demand for, and impact of creating, a strategic statewide plan for implementing

a job training worker loan program for use by potential businesses in this state who want to develop workforce training programs, or to improve and expand existing workplace training programs;

6. Studying the types of financially sound businesses who wish to upgrade production, technical, service, management, professional, or support skill of their employees;

7. Reviewing and studying possible funding mechanisms, loan fund sources, targeted lead loan fund agency and administrative functions, and amount of funding for implementation of a proposed strategic statewide plan for the job training worker loan program;

8. Reviewing eligibility loan requirements, loan loss reserve and loan guarantees, criteria and guidelines for targeted borrowers who utilized the strategic statewide plan for the job training worker loan program;

9. Making recommendations concerning a strategic statewide implementation plan for a job training worker loan program;

10. Making recommendations concerning a proposed strategic statewide plan for implementation of the job training worker loan program; and

11. Filing a report listing findings and recommendations concerning a strategic statewide implementation plan for a job training worker loan program prior to December 31, 1996, to the Speaker of the Oklahoma House of Representatives, the President Pro Tempore of the Oklahoma Senate, and the Governor.

E. The Legislative Service Bureau shall provide clerical and technical staff support to assist the Task Force, as authorized by the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 61 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. An employer may disclose information about a current or former employee's job performance to a prospective employer of the current or former employee upon request of the prospective employer or of the former employee and is presumed to be acting in good faith, unless lack of good faith is shown by clear and convincing evidence, and is immune from civil liability for such disclosure or its consequences. For purposes of this section, the presumption of good faith is rebutted only upon a showing that the information disclosed by the current or former employer was false and the employer providing the information had knowledge of its falsity and acted with malice or reckless disregard for the truth.

B. The provisions of this section shall apply to any employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with the provisions of this section.

C. Failure to comply with any provisions of this section shall not give rise to any liability or causes of action which did not exist prior to the effective date of this section.

D. This section shall apply to causes of action accruing on and after the effective date of this section.

SECTION 21. NONCODIFICATION Section 19 of this act shall not be codified in the Oklahoma Statutes.

SECTION 22. Sections 1, 3, 4, 6, 7, 8, 10, 17, 18, 19 and 20 of this act shall become effective July 1, 1995.

SECTION 23. Sections 2, 9, 11, 12, 13, 14, 15 and 16 of this act shall become effective January 1, 1996.

SECTION 24. Section 5 of this act shall become effective January 1, 1997.

SECTION 25. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the Senate the 10th day of April, 1995.

President of the Senate

Passed the House of Representatives the ____ day of

_____, 1995.

Speaker of the House of
Representatives