

ENGROSSED HOUSE
BILL NO. 2428

By: Settle of the House
and
Smith of the Senate

An Act relating to duplicate sections; merging and consolidating duplicate sections; amending 6 O.S. 1991, Section 714, as last amended by Section 1, Chapter 358, O.S.L. 1995 (6 O.S. Supp. 1995, Section 714), 10 O.S. 1991, Sections 1117, as last amended by Section 38, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 and 1403.3, as amended by Section 55, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1995, Sections 7003-7.1 and 7004-3.4), 21 O.S. 1991, Section 845, as last amended by Section 2, Chapter 353, O.S.L. 1995, and as renumbered by Section 20, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7102), 36 O.S. 1991, Section 6504, as amended by Section 2, Chapter 356, O.S.L. 1995 (36 O.S. Supp. 1995, Section 6504), 37 O.S. 1991, Sections 163.7, 231, 506 and 527, as last amended by Sections 13, 38, 44 and 46, Chapter 274, O.S.L. 1995 (37 O.S. Supp. 1995, Sections 163.7, 231, 506 and 527), 47 O.S. 1991, Section 156.1, as last amended by Section 2, Chapter 255, O.S.L. 1995 (47

O.S. Supp. 1995, Section 156.1), Section 6, Chapter 332, O.S.L. 1993, as last amended by Section 1, Chapter 330, O.S.L. 1995 (63 O.S. Supp. 1995, Section 5008), 68 O.S. 1991, Sections 205, as last amended by Section 1, Chapter 325, O.S.L. 1995, 1356, as last amended by Section 4, Chapter 337, O.S.L. 1995, 1359, as last amended by Section 5, Chapter 349, O.S.L. 1995, 2358, as last amended by Section 7, Chapter 337, O.S.L. 1995 and Section 3, Chapter 275, O.S.L. 1993, as last amended by Section 1, Chapter 349, O.S.L. 1995 (68 O.S. Supp. 1995, Sections 205, 1356, 1359, 2358 and 3603), 70 O.S. 1991, Section 17-116.2, as last amended by Section 2, Chapter 333, O.S.L. 1995 (70 O.S. Supp. 1995, Section 17-116.2), 74 O.S. 1991, Sections 18c, as last amended by Section 194, Chapter 352, O.S.L. 1995, 85.7, as last amended by Section 7, Chapter 253, O.S.L. 1995, 500.18, as last amended by Section 10, Chapter 358, O.S.L. 1995, 840.20, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 15, Chapter 310, O.S.L. 1995, 840.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 13, Chapter 328, O.S.L. 1995 and 913, as last amended by Section 2, Chapter 329, O.S.L. 1995 (74 O.S. Supp. 1995, Sections 18c, 85.7, 500.18, 840-4.13, 840-5.5 and 913) and 85 O.S. 1991, Section 2b, as amended by Section 14, Chapter 328, O.S.L. 1995 (85 O.S. Supp. 1995, Section 2b), which are duplicate sections; merging earlier-passed versions of each such duplicate section with last-passed version of the section; repealing 6 O.S.

1991, Section 714, as last amended by Section 14, Chapter 351, O.S.L. 1995 (6 O.S. Supp. 1995, Section 714), 10 O.S. 1991, Sections 1117, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 17, Chapter 353, O.S.L. 1995, 1403.3, as amended by Section 2, Chapter 231, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 and Section 3, Chapter 306, O.S.L. 1993, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as amended by Section 18, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1995, Sections 7003-7.1, 7004-3.4 and 7005-1.4), 21 O.S. 1991, Section 845, as last amended by Section 4, Chapter 231, O.S.L. 1995, and as renumbered by Section 20, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7102), 63 O.S. 1991, Section 1-2421, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 9, Chapter 285, O.S.L. 1995 (27A O.S. Supp. 1995, Section 2-10-304), 36 O.S. 1991, Section 6504, as amended by Section 2, Chapter 355, O.S.L. 1995 (36 O.S. Supp. 1995, Section 6504), 37 O.S. 1991, Sections 163.7, 231, 506 and 527, as last amended by Sections 1, 2, 3 and 8, Chapter 192, O.S.L. 1995 (37 O.S. Supp. 1995, Sections 163.7, 231, 506 and 527), 47 O.S. 1991, Section 156.1, as last amended by Section 2, Chapter 235, O.S.L. 1995 (47 O.S. Supp. 1995, Section 156.1), Section 6, Chapter 332, O.S.L. 1993, as last amended by Section 8, Chapter 204, O.S.L. 1995 (63 O.S. Supp. 1995, Section 5008), 68 O.S. 1991, Sections 205, as last amended by Section 52, Chapter 274, O.S.L.

1995, 1356, as last amended by Section 3, Chapter 271, O.S.L. 1995, 1359, as last amended by Section 20, Chapter 285, O.S.L. 1995, 2358, as last amended by Section 4, Chapter 249, O.S.L. 1995 and Section 3, Chapter 275, O.S.L. 1993, as last amended by Section 11, Chapter 337, O.S.L. 1995 (68 O.S. Supp. 1995, Sections 205, 1356, 1359, 2358 and 3603), 70 O.S. 1991, Section 17-116.2, as last amended by Section 2, Chapter 295, O.S.L. 1995 and Section 1, Chapter 329, O.S.L. 1995 (70 O.S. Supp. 1995, Section 17-116.2), 74 O.S. 1991, Sections 18c, as last amended by Section 2, Chapter 260, O.S.L. 1995, 85.7, as last amended by Section 4, Chapter 212, O.S.L. 1995, 500.18, as last amended by Section 5, Chapter 335, O.S.L. 1995, 840.20, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 1, Chapter 309, O.S.L. 1995, 840.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 5, Chapter 212, O.S.L. 1995 and Section 2, Chapter 309, O.S.L. 1995 and 913, as last amended by Section 2, Chapter 302, O.S.L. 1995 (74 O.S. Supp. 1995, Sections 18c, 85.7, 500.18, 840-4.13, 840-5.5 and 913) and 85 O.S. 1991, Section 2b, as amended by Section 2, Chapter 326, O.S.L. 1995 (85 O.S. Supp. 1995, Section 2b), which are the earlier-passed duplicate sections; and declaring an emergency.

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

SECTION 1. AMENDATORY 6 O.S. 1991, Section 714, as last amended by Section 1, Chapter 358, O.S.L. 1995 (6 O.S. Supp. 1995, Section 714), is amended to read as follows:

Section 714. A. Monthly meeting - Special meeting - Minutes. The board of directors of a bank shall meet at least once every month and the board of directors of a trust company shall meet at least once every quarter. The State Banking Commissioner, a director or an executive officer may call a special meeting. A majority of the board of directors shall constitute a quorum. The board shall keep minutes of each meeting, including a record of attendance and a record of all votes of the directors that would be pertinent to the business of the bank, to any officer, or to any stockholder. A copy of the minutes of each meeting of the board of directors shall be furnished to the Commissioner within thirty (30) days after the board meeting. This copy shall be signed by the chairman of the board or the secretary to the board.

B. Transactions to be reviewed by bank and trust company board of directors - Minutes to be signed. The board of directors of each bank shall review at least monthly and the board of directors of each trust company shall review at least quarterly written reports prepared by the president or other officer of the corporation setting forth such transactions occurring during the calendar month or quarter, as appropriate, preceding the meeting as the Commissioner shall require by appropriate regulations.

C. Annual examination - Banks and trust companies. The board of directors of every bank and trust company shall examine, at least once in each calendar year at intervals of not more than fifteen (15) months, all the affairs of the corporation including the character and value of investments and loans, the efficiency of operating procedures and such other matters as the Commissioner prescribes. A report of the examination shall be submitted promptly to the Commissioner and shall embody such information as the

Commissioner requires. The board of directors may provide that such examination shall be conducted by a committee of not less than three (3) directors, by certified public accountants, or by independent auditors responsible only to the board of directors. Such examination shall be made when practicable without the assistance of the executive officers of the bank or trust company. Such report of examination shall be reviewed by the directors at the next meeting of the board of directors.

D. Board of directors - Bank having trust powers. A bank authorized to exercise trust powers shall not accept or voluntarily relinquish a fiduciary account without approval or ratification of the board of directors or of a committee of officers or directors designated by the board to perform this function, but the board of directors or the committee may prescribe general rules governing acceptance or relinquishment of fiduciary accounts, and action taken by an officer in accordance with these rules is sufficient approval. Any committee so designated shall keep minutes of its meetings and report at each monthly meeting of the board of directors all action taken since the previous meeting of the board. The board of directors shall designate one or more committees of not less than three qualified officers or directors to supervise the investment of fiduciary funds. No ~~such~~ investment shall be made, retained or disposed of without the approval of a committee to which the bank has delegated investment or review responsibility. ~~At least once in every calendar year at intervals of not more than twelve (12) months, the committee shall review all the assets of each fiduciary account as to which the bank has investment or review responsibility and shall determine their current value, safety and suitability and whether the investments should be modified or retained~~ The committee, in making investment decisions, shall be subject to the provisions of the Oklahoma Uniform Prudent Investor Act. The committee shall keep minutes of its meetings and shall report at

each monthly meeting of the board of directors its conclusions on all questions.

E. Official communications from banking department; submission to directors. Every official communication directed by the Commissioner or any examiner to any bank or trust company or to any officer thereof, relating to an investigation or examination conducted by the State Banking Department or containing suggestions or recommendations as to the conduct of the business of the bank or trust company, shall be submitted by the officer receiving it to the board of directors at the next meeting of the board and duly noted in the minutes of the meeting of the board in such form and in such manner as may be prescribed and directed by the Commissioner. No officer of any bank or trust company shall fail to comply with this subsection.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1117, as last amended by Section 38, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7003-7.1), is amended to read as follows:

Section 7003-7.1 A. 1. Whenever the court transfers custody of a child as provided in this article, the person, institution, agency, or Department receiving custody shall have the right to, and shall be responsible for, the care and control of the child, and shall have the duty and authority to provide food, clothing, shelter, medical care, education, and discipline for the child. Except for an emergency psychiatric admission pursuant to the Inpatient Mental Health Treatment of Children Act, said person, institution, agency or department may provide or arrange for the provision of an inpatient mental health evaluation or inpatient mental health treatment of such child only pursuant to a court order as provided by the Inpatient Mental Health Treatment of Children Act. Nothing in this subsection shall be interpreted to prohibit or preclude the provision of outpatient mental health services,

including an outpatient mental health examination, counseling, educational, rehabilitative or other similar services to said child, as necessary and appropriate, in the absence of a specific court order for such services.

2. The medical care, surgery and extraordinary care shall be charged to the appropriate agency where the child qualifies for the care under law, rule, regulation or administrative order or decision.

3. Nothing in this subsection shall be interpreted to:

- a. relieve a parent of the obligation to provide for the support of the child as otherwise provided by law, or
- b. limit the authority of the court to order a parent to make support payments or to make payments or reimbursements for medical care or treatment, including mental health care or treatment, to the person, institution, agency or Department having custody of the child, or
- c. abrogate the right of the child to any benefits provided through public funds for which the child is otherwise eligible.

4. No person, agency or institution shall be liable in a civil suit for damages for authorizing or not authorizing surgery or extraordinary care in an emergency, as determined by competent medical authority.

B. 1. If the child is placed in the custody of the Department of Human Services, whether in emergency, temporary or permanent custody, the Department shall determine the appropriate placement of the child. Any change in the placement of a child adjudicated to be deprived shall be in accord with the provisions of subsection F of Section 7003-5.6 of this title.

2. The person, institution, agency, or Department having legal custody of a child pursuant to an order of the court shall receive

notice of court proceedings regarding the child as provided in Part 3 and Part 5 of this article and shall be allowed to intervene upon application as a party to all court proceedings pertaining to the care and custody of the child including, but not limited to: adjudication, disposition, review of disposition, termination of parental rights and proceedings pursuant to the Inpatient Mental Health Treatment of Children Act.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1403.3, as amended by Section 55, Chapter 352, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7004-3.4), is amended to read as follows:

Section 7004-3.4 A. The Commission for Human Services shall establish and maintain a fair, simple and expeditious system for resolution of grievances of all persons committed to the Department of Human Services regarding the substance or application of any written or unwritten policy, or rule ~~or regulation~~ of the Department or of an agent or contractor of the Department or any decision, behavior or action by an employee, or agent ~~or of,~~ contractor with, or ~~by~~ other person committed to the Department.

B. The Commission for Human Services is authorized and directed to establish the Office of Advocate Defender within the Department and to employ such personnel as may be necessary to carry out the purposes of subsection A of this section. Such personnel may be dismissed only for cause.

1. The chief administrative officer of the Office of Advocate Defender shall be the Advocate General, who shall be an attorney selected from a list of three names submitted by the Oklahoma Commission on Children and Youth. The Advocate General shall be a member of the Oklahoma Bar Association and shall have a minimum of three (3) years' experience as an attorney. The compensation of the Advocate General shall be no less than that of the classification of Attorney III as established in the Merit System of Personnel

Administration classification and compensation plan, but shall be an unclassified position.

2. The duties and responsibilities of the Advocate General are as follows:

- a. supervise personnel assigned to the Office of Advocate General,
- b. monitor and review grievance procedures and hearings,
- c. investigate grievances of children and staff grievances related to children which are not resolved at the facility level,
- d. investigate allegations of abuse or neglect of children in Department-operated facilities or children who are in the custody of the Department and placed in a private facility,
- e. coordinate any hearings or meetings of administrative review committees conducted as a result of unresolved grievances or as a result of investigations,
- f. make recommendations to the Director, and provide regular or special reports regarding grievance procedures, hearings and investigations to the Director, the Office of Juvenile System Oversight and other appropriate persons as necessary,
- g. forward to the Office of Juvenile Systems Oversight, for the information of the Director of that office, a copy of the final report of a complaint which is not resolved, through the system for resolution of grievances established by the ~~Oklahoma Human Services~~ Commission, in the favor of the complainant, and
- h. perform such other duties as required by the Director of Human Services.

C. The Department shall promptly and immediately report to the appropriate district attorney having jurisdiction any act or

omission by persons employed by the Department, perpetrated, committed or suffered or allowed to be perpetrated or committed by such person or persons upon any child in the custody of the Department, wherever housed, when such act or omission, upon conviction, would constitute ~~an~~ a criminal offense ~~against the criminal laws of this state~~. Copies of all such reports shall be forwarded to the Attorney General.

D. The Office of the Advocate General shall investigate allegations of abuse or neglect of a patient in a day treatment program as defined in Section 175.20 of this title, if funds are available. The Advocate General shall file a report of the results of the investigation with the appropriate district attorney having jurisdiction and the State Department of Health.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 845, as last amended by Section 2, Chapter 353, O.S.L. 1995, and as renumbered by Section 20, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7102), is amended to read as follows:

Section 7102. A. 1. It is the policy of this state to provide for the protection of children who have had physical injury inflicted upon them and who, in the absence of appropriate reports concerning their condition and circumstances, may be further threatened by the conduct of persons responsible for the care and protection of such children.

2. It is the policy of this state that in investigating allegations of child abuse and neglect, in any necessary removal of a child from the home, in placements of a child required pursuant to the Oklahoma Child Abuse Reporting and Prevention Act or in any administrative or judicial proceeding held pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act, the best interests of the child shall be of paramount consideration.

B. As used in the Oklahoma Child Abuse Reporting and Prevention Act:

1. "Abuse and neglect" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare;

2. "Harm or threatened harm to a child's health or welfare" includes but is not limited to nonaccidental physical or mental injury; sexual abuse; sexual exploitation; or negligent treatment or maltreatment including but not limited to the failure or omission to provide adequate food, clothing, shelter, or medical care or protection from harm or threatened harm;

3. "Child" means a person under the age of eighteen (18) years;

4. "Person responsible for a child's health or welfare" includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution ~~or~~, facility or day treatment program as defined in Section 175.20 of this title; or an owner, operator, or employee of a child care facility as defined by Section 402 of Title 10 of the Oklahoma Statutes;

5. "Sexual abuse" includes but is not limited to rape, incest and lewd or indecent acts or proposals, as defined by law, by a person responsible for the child's health or welfare;

6. "Sexual exploitation" includes but is not limited to allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child's health or welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by the state law, by a person responsible for the child's health or welfare;

7. "Multidisciplinary personnel" means any team established pursuant to Section ~~40~~ 7110 of this ~~act~~ title of three or more

persons who are trained in the prevention, identification, investigation, prosecution and treatment of child physical and sexual abuse cases and who are qualified to facilitate a broad range of interventions and services related to child abuse;

8. "Ruled out" means a report which is determined by a child protective services worker:

- a. to be false,
- b. to be unfounded,
- c. to be inherently improbable,
- d. to involve an accidental injury where neglect was not a factor, or
- e. as not constituting child abuse or neglect;

9. "Confirmed report" means a report which is determined by a child protective services worker, based upon some credible evidence, to constitute child abuse or neglect;

10. "Uncertain report" means a report which is not ruled out by a child protective services worker, but which has inconclusive findings and for which there is insufficient evidence to determine whether child abuse or neglect has occurred;

11. "Child protective services worker" means a person employed by the Department of Human Services with sufficient experience or training as determined by the Department in child abuse prevention and identification;

12. "Department" means the Department of Human Services; and

13. "Commission" means the Commission for Human Services.

SECTION 5. AMENDATORY 36 O.S. 1991, Section 6504, as amended by Section 2, Chapter 356, O.S.L. 1995 (36 O.S. Supp. 1995, Section 6504), is amended to read as follows:

Section 6504. A. There is hereby created the Oklahoma Basic Health Benefits Board, to continue until July 1, 1996, in accordance with the provisions of the Oklahoma Sunset Law. The Board shall determine and approve the terms and conditions of a state-certified,

basic health benefits plan and provide for the promotion and administration of the plan in accordance with the provisions of Section 6501 et seq. of this title.

B. The Board shall be composed of eleven (11) members who shall be appointed as follows:

1. One member shall be appointed by the President Pro Tempore of the Senate from an employer or business organization;

2. One member shall be appointed by the Speaker of the House of Representatives from an organization representing employees who lack health insurance; and

3. Nine members shall be appointed by the Governor, subject to confirmation by the Senate, one of whom shall be appointed from each of the following categories:

- a. a physician licensed to practice medicine in this state pursuant to the provisions of Section 481 et seq. of Title 59 of the Oklahoma Statutes and included on a list of nominees provided by the Oklahoma State Medical Association,
- b. an osteopathic physician licensed to practice osteopathic medicine in this state and included on a list of nominees provided by the Oklahoma Osteopathic Association,
- c. a chiropractic physician licensed to practice chiropractic in this state and included on a list of nominees provided by the Oklahoma State Chiropractic Association,
- d. a physical therapist licensed to practice in this state pursuant to the provisions of Section 887.1 et seq. of Title 59 of the Oklahoma Statutes and included on a list of nominees provided by the Oklahoma Chapter of the American Physical Therapy Association,

- e. a hospital administrator or a member of a hospital governing board included on a list of nominees submitted by the Oklahoma Hospital Association,
- f. a state official with responsibilities for delivery of health services,
- g. a state official with responsibilities for administration of purchasing functions,
- h. a person who has professional training and experience in health insurance, and
- i. a person who is licensed to practice law or as a public accountant or a certified public accountant in this state and has experience in fund management.

C. Members of the Board shall serve three-year terms and until their respective successors are appointed and qualified. Provided, of those members initially appointed by the Governor, three members shall serve for one (1) year, three members shall serve for two (2) years and three members shall serve for three (3) years, as designated by the Governor. A vacancy in a position on the Board shall be filled for the unexpired term in the same manner as the original appointment.

D. At the first meeting and annually thereafter, the Board shall elect a chair, who shall preside over the meetings of the Board and perform such other duties as required by the Board; a vice-chair, who shall perform the duties of the chair in the absence of the latter or upon the chair's inability or refusal to act; and a secretary, who shall keep minutes of all meetings and who shall certify to actions of the Board. The Board shall hold regular meetings at least once each quarter and may hold special meetings upon written notice of the chair or by agreement of any five members of the Board.

A majority of the members of the Board shall constitute a quorum for the transaction of business and for taking any official action.

Official action of the Board must have a favorable vote by a majority of the members present. No Board member shall be individually or personally liable for any action of the Board. The Board shall adopt rules and procedures to effectuate its purpose.

The Board shall act in accordance with the provisions of the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes, the Oklahoma Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes, and the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes.

E. The Board shall hire an Administrator who shall be in the unclassified service. The Administrator shall have supervisory, managerial or administrative health insurance experience in insurance underwriting, safety or loss prevention, claims management or claims adjustment. The Administrator shall act at the direction of and provide staff support to the Board. Office space and logistical support required by the Board shall be provided by the Department of Central Services. The Attorney General shall provide the Board with legal advice and with assistance in drafting rules of the Board.

F. Members of the Board shall serve without compensation but shall be reimbursed for expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

G. Beginning July 1, 1995, the Basic Health Benefits Board shall not develop or approve any new state-certified, basic health benefits plan or plans. A state-certified, basic health benefits plan which has been developed or approved by the Board may only be offered, issued or renewed on or after July 1, 1995, to employers covered under any state-certified, basic health benefits plan prior to July 1, 1995, provided there has not been nor will be a lapse in coverage.

SECTION 6. AMENDATORY 37 O.S. 1991, Section 163.7, as last amended by Section 13, Chapter 274, O.S.L. 1995 (37 O.S. Supp. 1995, Section 163.7), is amended to read as follows:

Section 163.7 In addition to the excise tax payable under Section 163.1 et seq. of this title, and in addition to the license required to be procured from the judge of the district court, the following permits shall be required and the following annual license taxes shall be payable to the Oklahoma Tax Commission with respect to low-point beer; provided, any such permit issued prior to the effective date of this act with respect to nonintoxicating beverages shall be valid until it expires:

1. Manufacturers: Every manufacturer, located and doing business in this state, shall, before commencing the manufacture of low-point beer, obtain from the Oklahoma Tax Commission a permit to engage in such manufacture. As a condition of the issuance of this permit such manufacturer shall pay to the Tax Commission a license tax of Five Hundred Dollars (\$500.00), which shall cover a one-year period commencing with the effective date of such permit. This permit must be renewed and the license tax paid annually thereafter at the expiration of the preceding permit and license tax period. Each and every other manufacturer of such beverages, coming within the provisions of Section 163.1 et seq. of this title, shall before selling or offering for sale such beverages within the State of Oklahoma, qualify with the Secretary of State of the State of Oklahoma for a permit to do business within the State of Oklahoma and, after so qualifying, shall obtain a permit or license from the Oklahoma Tax Commission and, in addition to any other license, taxes or fees, pay therefor a license tax of Five Hundred Dollars (\$500.00), which shall cover a one-year period commencing with the effective date of such permit. The said permit or license shall be for the privilege of doing business in Oklahoma as a manufacturer of low-point beer. The permit must be renewed and the license tax paid

annually thereafter at the expiration of the preceding permit and license tax period. The receipt of payment of such permit or license shall be on file with the Oklahoma Tax Commission before such manufacturer shall sell, or offer for sale, such beverages to any person within the State of Oklahoma.

Every manufacturer, located and doing business outside the State of Oklahoma, desiring to pay the excise tax on sales to retail dealers, as provided for in Section 163.1 et seq. of this title, shall procure annually a permit and pay annually the license tax required of wholesalers, as provided for under this section. The payment of such fee shall be in addition to the payment of the license fee or tax in the sum of Five Hundred Dollars (\$500.00) as provided herein;

2. Wholesalers: Every wholesaler, located and doing business in this state, must annually obtain from the Oklahoma Tax Commission a permit to sell low-point beer. As a condition of the issuance of this permit such wholesaler shall pay to the Tax Commission a license fee of Two Hundred Fifty Dollars (\$250.00) which shall cover a one-year period commencing with the effective date of such permit. The permit must be renewed and the license tax paid annually thereafter at the expiration of the preceding permit and license tax period.

Every wholesaler, located and doing business outside the state desiring to pay the excise tax on sales to retail dealers, as provided for in Section 163.1 et seq. of this title, shall procure annually a permit and pay annually the license tax required of wholesalers located and doing business in this state.

Wholesalers within this state shall be required to secure an annual permit and must pay an annual license tax for each city or incorporated town from which deliveries of low-point beer are made to retail dealers.

Permits issued to wholesalers shall not be transferable from one person to another person but shall be transferable from one location to another location; and

3. Retail Dealers: Every retail dealer shall, before offering low-point beer for sale to the public, obtain from the Oklahoma Tax Commission a permit to engage in such sales, and shall pay to the Oklahoma Tax Commission, in advance of the issuance of said permit, the license tax, as follows:

- a. each retail dealer who sells low-point beer, on draught and in original packages, for consumption on or off the premises, shall obtain a permit which shall be valid for a period of three (3) years and shall pay a license tax of Three Hundred Dollars (\$300.00),
- b. each retail dealer who sells such beverages in original packages only for consumption on or off the premises shall obtain a permit which shall be valid for a period of three (3) years and shall pay a license tax of One Hundred Fifty Dollars (\$150.00),
- c. each retail dealer who sells low-point beer purchased from a licensed manufacturer or licensed wholesaler for consumption on or off the premises and who sells low-point beer manufactured by said retail dealer for consumption on the premises shall obtain a permit which shall be valid for a period of three (3) years and shall pay a license fee of Four Hundred Fifty Dollars (\$450.00). Provided, a retail dealer licensed pursuant to this subparagraph shall not manufacture more than five thousand (5,000) barrels of low-point beer per year. A retail dealer, that has obtained a permit pursuant to this subparagraph, may sell low-point beer manufactured by the retail dealer, at any of the retail dealer's places of business, as defined

in Section 163.8 of this title, or any other place owned and operated by an entity which has common owners with the licensed dealer, regardless of which place of business brews the beverage. "Common owners" means that the owners at each place or entity together own more than fifty percent (50%) of the interest in each place or entity that has a permit issued pursuant to this subparagraph. A retail dealer, that has obtained a permit pursuant to this subparagraph, may sell low-point beer manufactured by the same retailer pursuant to special licenses issued pursuant to subparagraph d of this paragraph,

- d. special licenses, as provided, may be issued for the sum of Five Dollars (\$5.00) per day for each license; provided, that in the event any state or county fair association shall meet for more than five (5) days in any year, a special license for the sale of such beverages shall be issued for the sum of Twenty-five Dollars (\$25.00),
- e. each retail dealer who sells such beverages in original packages and not for consumption on the premises, shall obtain a permit which shall be valid for a period of three (3) years and shall pay a license tax of Thirty Dollars (\$30.00). It shall be unlawful for such off-premise dealer to allow any bottle, can, or original package to be broken or opened, or to allow any of such low-point beer to be consumed, in or upon the premises described in such permit,
- f. a permit issued prior to September 1, 1994, shall be valid until it expires. Upon expiration of such permit, the retail dealer to whom such permit was

issued may obtain a renewal permit which shall be valid for three (3) years or until expiration of the dealer's sales tax permit, whichever is earlier, after which a renewal permit shall be valid for three (3) years. The manner and prorated fee for renewals of less than three (3) years shall be prescribed by the Oklahoma Tax Commission, and

- g. a retail dealer who has obtained a permit pursuant to this paragraph and who ceases to offer low-point beer for sale to the public shall be entitled to receive a refund of the permit fee from the Oklahoma Tax Commission prorated with respect to the amount of time remaining until expiration of the permit. The manner and prorated refund shall be prescribed by the Oklahoma Tax Commission.

SECTION 7. AMENDATORY 37 O.S. 1991, Section 231, as last amended by Section 38, Chapter 274, O.S.L. 1995 (37 O.S. Supp. 1995, Section 231), is amended to read as follows:

Section 231. A. It shall be unlawful for any person, firm, corporation, or others associated therein or employed thereby, engaged in business as a brewer, importer, or wholesaler, or other holder of a basic permit from the United States Secretary of the Treasury, of low-point beer, individually or through or by affiliates, subsidiaries, associates, agents, or stockholders, directly or indirectly, to do or cause to be done any of the following acts:

1. Acquire, hold, or own any interest in the permit, license, premises, or business of a retail dealer in low-point beer;
2. Acquire, hold, or own any interest in the real or personal property owned, occupied, or used by a retail dealer in low-point beer in the conduct of his or her business;

3. Furnish, give, rent, lend, or sell to a retail dealer in low-point beer any equipment, fixture, outside signs, supplies, or other things having a real or substantial value. Provided that this paragraph shall not be construed to prohibit the furnishing of normal point of purchase advertising matter to such retail dealer in low-point beer;

4. Pay or credit a retail dealer in low-point beer for any advertising display or distribution service;

5. Guarantee or procure another to guarantee any loan or the payment of any financial obligation of a retail dealer in low-point beer;

6. Extend credit to a retail dealer in low-point beer;

7. Offer or give any bonus, premium, or compensation to an officer, employee, associate, relative, or representative of a retail dealer in low-point beer;

8. Sell, offer for sale, or contract to sell to any retail dealer in low-point beer any low-point beer on consignment, or with the privilege of return, or on any basis other than a bona fide cash sale;

9. Use or employ any device or scheme to subsidize in any manner any retail dealer in low-point beer; or

10. Permit any retail dealer in low-point beer to do for such brewer, importer, wholesaler, or other holder of a basic permit from the United States Secretary of the Treasury, of low-point beer any of the above acts hereby made unlawful to be done on behalf of such retail dealer in low-point beer.

B. The provisions of this section shall not preclude a retail dealer from manufacturing low-point beer for consumption on the licensed premises of the retail dealer. As used in this subsection, "licensed premises" means any place of business, as defined by Section 163.8 of this title, for which a retail dealer has obtained a permit pursuant to subparagraph c of paragraph 3 of Section 163.7

of this title or any location for which a retail dealer has obtained a special license pursuant to subparagraph d of paragraph 3 of Section 163.7 of this title.

SECTION 8. AMENDATORY 37 O.S. 1991, Section 506, as last amended by Section 44, Chapter 274, O.S.L. 1995 (37 O.S. Supp. 1995, Section 506), is amended to read as follows:

Section 506. When used in the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title, the following words and phrases shall have the following meaning:

1. "ABLE Commission" means the Alcoholic Beverage Laws Enforcement Commission;

2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl alcohol, ethanol, or spirits of wine, from whatever source or by whatever process produced. It does not include wood alcohol or alcohol which has been denatured or produced as denatured in accordance with Acts of Congress and regulations promulgated thereunder;

3. "Alcoholic beverage" means alcohol, spirits, beer, and wine as those terms are defined herein and also includes every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by human beings, but does not include low-point beer as that term is defined in Section 163.2 of this title;

4. "Applicant" means any individual, legal or commercial business entity, or any individual involved in any legal or commercial business entity allowed to hold any license issued in accordance with the Oklahoma Alcoholic Beverage Control Act;

5. "Beer" means any beverage containing more than three and two-tenths percent (3.2%) of alcohol by weight and obtained by the alcoholic fermentation of an infusion or decoction of barley, or other grain, malt or similar products. "Beer" may or may not contain hops or other vegetable products. "Beer" includes, among

other things, beer, ale, stout, lager beer, porter and other malt or brewed liquors, but does not include sake, known as Japanese rice wine;

~~5.~~ 6. "Bottle club" means any establishment in a county which has not authorized the retail sale of alcoholic beverages by the individual drink, which is required to be licensed to keep, mix, and serve alcoholic beverages belonging to club members on club premises;

~~6.~~ 7. "Brewer" means any person who produces beer in this state;

~~7.~~ 8. "Class B wholesaler" means and includes any person doing any such acts or carrying on any such business that would require such person to obtain a Class B wholesaler license hereunder;

~~8.~~ 9. "Convicted" and "conviction" mean and include a finding of guilt resulting from a plea of guilty or nolo contendere, the decision of a court or magistrate or the verdict of a jury, irrespective of the pronouncement of judgment or the suspension thereof;

~~9.~~ 10. "Director" means the Director of the Alcoholic Beverage Laws Enforcement Commission under the supervision of said Commission;

~~10.~~ 11. "Distiller" means any person who produces spirits from any source or substance, or any person who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits (except a person making or using such material in the authorized production of wine or beer, or the production of vinegar by fermentation), or any person who by any process separates alcoholic spirits from any fermented substance, or any person who, making or keeping mash, wort, or wash, has also in his or her possession or use a still;

~~11.~~ 12. "Hotel" or "motel" shall mean an establishment which is licensed to sell alcoholic beverages by the individual drink and

which contains guestroom accommodations with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of other legal relationships as between some occupants and the owner or operator thereof shall be immaterial;

~~12.~~ 13. "Legal newspaper" means a newspaper meeting the requisites of a newspaper for publication of legal notices as prescribed in Sections 101 through 114 of Title 25 of the Oklahoma Statutes;

~~13.~~ 14. "Licensee" means any person holding a license under the Oklahoma Alcoholic Beverage Control Act, and any agent, servant, or employee of such licensee while in the performance of any act or duty in connection with the licensed business or on the licensed premises;

~~14.~~ 15. "Light beer" means a low-point beer controlled under this title;

~~15.~~ 16. "Light wine" means any wine containing not more than fourteen percent (14%) alcohol measured by volume at sixty (60) degrees Fahrenheit;

~~16.~~ 17. "Manufacturer's agent" means a salaried or commissioned salesman who sells to a wholesaler or Class B wholesaler only;

~~17.~~ 18. "Manufacturer" means a brewer, distiller, winemaker, rectifier, or bottler of any alcoholic beverage;

~~18.~~ 19. "Meals" means foods commonly ordered at lunch or dinner and at least part of which is cooked on the licensed premises and requires the use of dining implements for consumption. Provided, that the service of only food such as appetizers, sandwiches, salads or desserts shall not be considered "meals";

~~19.~~ 20. "Mini-bar" means a closed container, either refrigerated, in whole or in part, or nonrefrigerated, and access to the interior of which is (1) restricted by means of a locking device

which requires the use of a key, magnetic card, or similar device, or (2) controlled at all times by the licensee;

~~20.~~ 21. "Mixed beverage cooler" means any beverage, by whatever name designated, consisting of an alcoholic beverage and fruit or vegetable juice, fruit or vegetable flavorings, dairy products or carbonated water containing more than one-half of one percent (1/2 of 1%) of alcohol measured by volume but not more than seven percent (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is packaged in a container not larger than three hundred seventy-five (375) milliliters. Such term shall include, but not be limited to, the beverage popularly known as a "wine cooler";

~~21.~~ 22. "Mixed beverages" means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage, beer and wine, caterer, or special event license;

~~22.~~ 23. "Motion picture theater" means a place where motion pictures are exhibited and to which the general public is admitted, but does not include a place where meals, as defined by this section, are served, if only persons over twenty-one (21) years of age are admitted;

~~23.~~ 24. "Retail salesman" means a salesman soliciting orders from and calling upon retail alcoholic beverage stores with regard to his or her product;

~~24.~~ 25. "Occupation" as used in connection with "occupation tax" means the sites occupied as the places of business of the manufacturers, wholesalers, Class B wholesalers, retailers, mixed beverage licensees, beer and wine licensees, bottle clubs, caterers, and special event licensees;

~~25.~~ 26. "Original package" means any container of alcoholic beverage filled and stamped or sealed by the manufacturer;

~~26.~~ 27. "Patron" means any person, customer, or visitor who is not employed by a licensee or who is not a licensee;

~~27.~~ 28. "Person" means ~~and includes~~ an individual, any type of partnership, corporation, or association, limited liability company or any individual involved in the legal structure of any such business entity;

~~28.~~ 29. "Premises" means the grounds and all buildings and appurtenances pertaining to the grounds including any adjacent premises if under the direct or indirect control of the licensee and the rooms and equipment under the control of the licensee and used in connection with or in furtherance of the business covered by a license. Provided that the ABLE Commission shall have the authority to designate areas to be excluded from the licensed premises solely for the purpose of:

- a. allowing the presence and consumption of alcoholic beverages, not bearing serially numbered identification stamps issued by the Oklahoma Tax Commission, by private parties which are closed to the general public, or
- b. allowing the services of a caterer serving alcoholic beverages provided by a private party.

This exception shall in no way limit the licensee's concurrent responsibility for any violations of the Oklahoma Alcoholic Beverage Control Act occurring on the licensed premises;

~~29.~~ 30. "Rectifier" means any person who rectifies, purifies, or refines spirits or wines by any process (other than by original and continuous distillation, or original and continuous processing, from mash, wort, wash, or other substance, through continuous closed vessels and pipes, until the production thereof is complete), and any person who, without rectifying, purifying, or refining spirits, shall by mixing (except for immediate consumption on the premises where mixed) such spirits, wine, or other liquor with any material,

manufactures any spurious, imitation, or compound liquors for sale, under the name of whiskey, brandy, rum, gin, wine, spirits, cordials, or any other name;

~~30.~~ 31. "Regulation" or "rule" means a formal rule of general application promulgated by the ABLE Commission as herein required;

~~31.~~ 32. "Retail container for spirits and wines" means an original package of a capacity not less than one-twentieth (1/20) gallon specified by the ABLE Commission in its regulations for the alcoholic beverage concerned, or an original package with a capacity of less than one-twentieth (1/20) gallon, referred to as miniatures;

~~32.~~ 33. "Retailer" means the holder of a Package Store License;

~~33.~~ 34. "Sale" means any transfer, exchange or barter in any manner or by any means whatsoever, and includes and means all sales made by any person, whether as principal, proprietor or as an agent, servant or employee. The term "sale" is also declared to be and include the use or consumption in this state of any alcoholic beverage obtained within or imported from without this state, upon which the excise tax levied by the Oklahoma Alcoholic Beverage Control Act has not been paid or exempted;

~~34.~~ 35. "Short order food" means food other than full meals including but not limited to sandwiches, soups, and salads. Provided that popcorn, chips, and other similar snack food shall not be considered "short order food";

~~35.~~ 36. "Sparkling wine" means champagne or any artificially carbonated wine;

~~36.~~ 37. "Spirits" means any beverage other than wine, beer or light beer, which contains more than one-half of one percent (1/2 of 1%) alcohol measured by volume and obtained by distillation, whether or not mixed with other substances in solution and includes those products known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and fortified wines and similar compounds; but shall not

include any alcohol liquid completely denatured in accordance with the Acts of Congress and regulations pursuant thereto;

~~37.~~ 38. "Wholesaler" means and includes any person doing any such acts or carrying on any such business or businesses that would require such person to obtain a wholesaler's license or licenses hereunder;

~~38.~~ 39. "Wine" means and includes any beverage containing more than one-half of one percent (1/2 of 1%) alcohol by volume and not more than twenty-four percent (24%) alcohol by volume at sixty (60) degrees Fahrenheit obtained by the fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, and includes vermouth and sake, known as Japanese rice wine;

~~39.~~ 40. "Winemaker" means any person who produces wine; and

~~40.~~ 41. "Oklahoma winemaker" means a business premises in Oklahoma licensed pursuant to the Oklahoma Alcoholic Beverage Control Act wherein wine is produced by the licensee who must be a resident of the state. The wine product fermented in said licensed premises shall be of grapes, berries and other fruits and vegetables imported into this state and processed herein or shall be of grapes, berries and other fruits and vegetables grown in Oklahoma.

Words in the plural include the singular, and vice versa, and words imparting the masculine gender include the feminine, as well as persons and licensees as defined in this section.

SECTION 9. AMENDATORY 37 O.S. 1991, Section 527, as last amended by Section 46, Chapter 274, O.S.L. 1995 (37 O.S. Supp. 1995, Section 527), is amended to read as follows:

Section 527. The Alcoholic Beverage Laws Enforcement Commission shall refuse to issue a wholesaler, Class B wholesaler or package store license either on an original application or a renewal application, if it has reasonable grounds to believe and finds any of the following to be true:

1. That the applicant is not a citizen of the United States or is not a qualified elector in this state, or has not been a continuous resident of this state for the ten (10) years next preceding the application for the license;

2. That the applicant is under twenty-one (21) years of age;

3. That the applicant or any partner, or spouse of the applicant or any partner, has been convicted of a felony;

4. That the applicant or any partner, or spouse of the applicant or any partner, has been convicted of a violation of any state or federal law relating to alcoholic beverages, has forfeited a bond while any charge of such violation was pending, nor may any license be granted for any purpose under the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title, to an Oklahoma resident, who has held or whose spouse has held a Federal Liquor Stamp in Oklahoma before the adoption of Article XXVII of the Oklahoma Constitution unless said Liquor Stamp was granted for supplying alcoholic beverages to a federal military installation, or was granted under this title;

5. That the applicant or any partner has, within twelve (12) months next preceding the date of the application, violated any provision of the Oklahoma Alcoholic Beverage Control Act or regulation of the ABLE Commission issued pursuant hereto. Provided, however, that if the ABLE Commission has, during said twelve-month period, suspended any license sought to be renewed, such renewal application may be approved if the term of the suspension has been completed and the applicant has complied with any special conditions imposed in connection with the suspension;

6. That the applicant is not of good moral character, or that the applicant is in the habit of using alcoholic beverages to excess, or is mentally incapacitated. Provided, that the record in any municipal court showing a conviction of violation of any municipal ordinances or state statutes involving moral character or

public nuisance obtained after passage and approval of the Oklahoma Alcoholic Beverage Control Act shall be received in evidence by the ABLE Commission;

7. That the applicant does not own or have a written lease for at least a period of one (1) year ~~on~~ to run concurrent with the license term for the premises for which a license is sought;

8. That the applicant has, within twelve (12) months next preceding the date of application, been the holder of a license revoked for cause;

9. That the applicant is not the real party in interest, or intends to carry on the business authorized by the license as the agent of another;

10. That the applicant, in the case of an application for renewal of any license, would not be eligible for such license on a first application;

11. That the applicant is a person who appoints or is a law enforcement official or is an employee of the ABLE Commission or of the Director;

12. That the proposed location of the licensed premises would violate a valid municipal nondiscriminatory zoning ordinance;

13. That, in the case of an application for a wholesaler license, or Class B wholesaler license, any manufacturer, including an officer, director or principal stockholder thereof, or any partner, has any financial interest in the business to be conducted under the license;

14. That the issuance of the license applied for would result in a violation of any provision of the Oklahoma Alcoholic Beverage Control Act;

15. That, in the case of an application for a wholesaler or Class B wholesaler license, the applicant or any partner, or spouse of the applicant or any partner, is the holder or partner of the holder of any other class of license issued under the provisions of

the Oklahoma Alcoholic Beverage Control Act, other than an agent or employee license for employment by the applicant, or a storage license, bonded warehouse license, carrier license or private carrier license; or

16. That, in the case of an application for a package store license the applicant or any partner, or the spouse of the applicant or any partner, is the holder or partner of the holder, or employee of such holder of any other class of license issued under the provisions of the Oklahoma Alcoholic Beverage Control Act, other than a storage license or an employee license for the proposed licensed premises of the applicant or of a retail dealer's permit for the same location issued by the Oklahoma Tax Commission for the sale of low-point beer for consumption on the premises as provided by Section 163.7 of this title.

SECTION 10. AMENDATORY 47 O.S. 1991, Section 156.1, as last amended by Section 2, Chapter 255, O.S.L. 1995 (47 O.S. Supp. 1995, Section 156.1), is amended to read as follows:

Section 156.1 A. It shall be unlawful for any state official, officer, or employee, except any essential employees approved by the Governor and those officers or employees authorized in subsection B of this section, to ride to or from the employee's place of residence in a state-owned automobile, truck, or pickup, except in the performance of the employee's official duty, or to use any such automobile, truck, ambulance, or pickup for other personal or private purposes. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Hundred Dollars (\$100.00) or by imprisonment in the county jail for a period to not exceed thirty (30) days, or by both said fine and imprisonment, and in addition thereto, shall be discharged from state employment.

B. 1. Any state employee, other than the law enforcement officers provided for in paragraph 2 of this subsection, who

receives emergency telephone calls regularly at the employee's residence when the employee is not on duty and is regularly called upon to use a vehicle after normal work hours in response to such emergency calls, may be permitted to use a vehicle belonging to the State of Oklahoma to provide transportation between the employee's residence and the assigned place of employment, provided such distance does not exceed seventy-five (75) miles in any round trip or is within the county where the assigned place of employment is located. Provided further, an employee may be permitted to use a state-owned vehicle to provide temporary transportation between a specific work location other than the assigned place of employment and the employee's residence, if such use shall result in a monetary saving to the agency, and such authorization shall not be subject to the distance or area restrictions provided for in this paragraph. Authorization for temporary use of a state-owned vehicle for a specific project shall be in writing stating the justification for this use and the saving expected to result. Such authorization shall be valid for not to exceed sixty (60) days. Any state entity other than law enforcement that avails itself of this provision shall keep a monthly record of all participating employees, the number of emergency calls received, and the number of times that a state vehicle was used in the performance of such emergency calls.

2. Any employee of the Department of Public Safety, Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, Oklahoma State Bureau of Investigation, Alcoholic Beverage Laws Enforcement Commission, Oklahoma Horse Racing Commission, Office of the Inspector General within the Department of Human Services or Office of the State Fire Marshal, who is a law enforcement officer, or any employee of a district attorney who is a law enforcement officer, may be permitted to use a state-owned vehicle to provide transportation between the employee's residence and the assigned place of employment and between the residence and any location other

than the assigned place of employment to which the employee travels in the performance of the employee's official duty.

3. The Director, department heads and other essential employees of the Department of Wildlife Conservation, as authorized by the Wildlife Conservation Commission, may be permitted to use a state-owned vehicle to provide transportation between the employee's residence and the assigned place of employment and between the residence and any location other than the assigned place of employment to which the employee travels in the performance of the employee's official duty.

C. The principal administrator of the state agency with which the employee is employed shall so designate the employee's status in writing or provide a copy of the temporary authorization to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. Such employee status report shall also be provided to the State Fleet Manager of the Division of Fleet Management if the motor vehicle for emergency use is provided by said Division.

SECTION 11. AMENDATORY Section 6, Chapter 332, O.S.L. 1993, as last amended by Section 1, Chapter 330, O.S.L. 1995 (63 O.S. Supp. 1995, Section 5008), is amended to read as follows:

Section 5008. A. The Administrator of the Authority shall have the training and experience necessary for the administration of the Authority, as determined by the Oklahoma Health Care Authority Board, including, but not limited to, prior experience in the administration of managed health care. The Administrator shall serve at the pleasure of the Board.

B. The Administrator of the Oklahoma Health Care Authority shall be the chief executive officer of the Authority and shall act for the Authority in all matters except as may be otherwise provided by law. The powers and duties of the Administrator shall include but not be limited to:

1. Supervision of the activities of the Authority;

2. Formulation and recommendation of rules for approval or rejection by the Oklahoma Health Care Authority Board and enforcement of rules and standards promulgated by the Board;

3. Preparation of the plans, reports and proposals required by the Oklahoma Health Care Authority Act, Section 5003 et seq. of this title, other reports as necessary and appropriate, and an annual budget for the review and approval of the Board; ~~and~~

4. Employment of such staff as may be necessary to perform the duties of the Authority including but not limited to an attorney to provide legal assistance to the Authority for the state Medicaid program-

~~B. The administrator shall establish; and~~

5. Establishment of a contract bidding process which:

- ~~1. Encourages~~ a. encourages competition among entities contracting with the Authority for state-purchased and state-subsidized health care; provided, however, the Authority may make patient volume adjustments to any managed care plan whose prime contractor is a state-sponsored, nationally accredited medical school. The Authority may also make education or research supplemental payments to state-sponsored, nationally accredited medical schools based on the level of participation in any managed care plan by managed care plan participants~~†~~
- ~~2. Coincides~~ b. coincides with the state budgetary process~~†~~ and
- ~~3. Specifies~~ c. specifies conditions for awarding contracts to any insuring entity.

C. The Administrator may appoint advisory committees as necessary to assist the Authority with the performance of its duties or to provide the Authority with expertise in technical matters.

SECTION 12. AMENDATORY 68 O.S. 1991, Section 205, as last amended by Section 1, Chapter 325, O.S.L. 1995 (68 O.S. Supp. 1995, Section 205), is amended to read as follows:

Section 205. A. The records and files of the Tax Commission concerning the administration of ~~this article~~ the Uniform Tax Procedure Code, Section 201 et seq. of this title, or of any state tax law shall be considered confidential and privileged, except as otherwise provided for by law, and neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files nor any person who may have secured information from the Tax Commission shall disclose any information obtained from said records or files or from any examination or inspection of the premises or property of any person.

B. Neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files shall be required by any court of this state to produce any of the records or files for the inspection of any person or for use in any action or proceeding, except when the records or files or the facts shown thereby are directly involved in an action or proceeding pursuant to the provisions of this article or of the state tax law, or when the determination of the action or proceeding will affect the validity or the amount of the claim of the state pursuant to any state tax law, or when the information contained in the records or files constitutes evidence of violation of the provisions of this article or of any state tax law.

C. The provisions of this section shall not prevent the Tax Commission from disclosing the following information and no liability whatsoever, civil or criminal, shall attach to any member

of the Tax Commission or any employee thereof for any error or omission in the disclosure of such information:

1. The delivery to a taxpayer or his or her duly authorized representative of a copy of any report or any other paper filed by him or her pursuant to the provisions of ~~this article~~ the Uniform Tax Procedure Code, Section 201 et seq. of this title, or of any state tax law;

2. The Oklahoma Tax Commission from entering into reciprocal agreements with other state agencies or agencies of the federal government to exchange any information that is not protected by the federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq.;

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

4. The examination of said records and files by the State Auditor and Inspector or his or her duly authorized agents;

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 to prosecute violations of the criminal provisions of this article or of any state tax law. 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 for violation of the tax laws of this state, and a violation by the Attorney General or district attorney by otherwise releasing the information shall be a felony;

6. The use by any division of the Tax Commission of any information or evidence in the possession of or contained in any report or return filed with any other division of the Tax Commission;

7. The furnishing, at the discretion of the Tax 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 or assessment of any similar tax in this state, any other state or the United States;

8. 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;

9. The furnishing of information requested by any member of the general public and stated in the sworn lists or schedules of taxable property of public service corporations organized, existing, or doing business in this state which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2858 of this title and Section 21 of Article X of the Oklahoma Constitution, provided such information would be a public record if filed pursuant to Sections 2838 and 2839 of this title on behalf of a corporation other than a public service corporation;

10. The furnishing of information requested by any member of the general public and stated in the findings of the Oklahoma Tax Commission as to the adjustment and equalization of the valuation of real and personal property of the counties of the state, which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2865 of this title and Section 21 of Article X of the Oklahoma Constitution;

11. The furnishing of information to an Oklahoma wholesaler of ~~nonintoxicating beverages~~ low-point beer, licensed under the provisions of Section 163.1 et seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers authorized by law to purchase ~~nonintoxicating beverages~~ low-point beer in this state or the furnishing of information to a licensed Oklahoma wholesaler of shipments by licensed manufacturers into this state;

12. The furnishing of information as to the issuance or revocation of any tax permit, license or exemption by the Tax Commission as provided for by law. Such information shall be limited to the name of the person issued said permit, license or

exemption, the name of the business entity authorized to engage in business pursuant to said permit, license or exemption, the address of said business entity, and the grounds for said revocation;

13. The posting of notice of revocation of any tax permit or license upon the premises of the place of business of any business entity which has had any tax permit or license revoked by the Tax Commission as provided for by law. Such notice shall be limited to the name of the person issued said permit or license, the name of the business entity authorized to engage in business pursuant to said permit or license, the address of said business entity, and the grounds for said revocation;

14. The furnishing of information upon written request by any member of the general public as to the outstanding and unpaid amount due and owing by any taxpayer of this state for any delinquent tax, together with penalty and interest, for which a tax warrant or a certificate of indebtedness has been filed pursuant to law;

15. After the filing of a tax warrant pursuant to law, the furnishing of information upon written request by any member of the general public as to any agreement entered into by the Tax Commission concerning a compromise of tax liability for an amount less than the amount of tax liability stated on such warrant;

16. The disclosure of information necessary to complete the performance of any contract authorized by Sections 255 and 262 of this title to any person with whom the Oklahoma Tax Commission has contracted;

17. The disclosure of information to any person for a purpose as authorized by the taxpayer pursuant to a waiver of confidentiality. The waiver shall be in writing and shall be made upon such form as the Commission may prescribe;

18. The disclosure of information required in order to comply with the provisions of Section 2369 of this title;

19. The disclosure to an employer, as defined in Sections 2385.1 and 2385.3 of this title, of information required in order to collect the tax imposed by Section 2385.2 of this title;

20. The disclosure to a plaintiff of a corporation's last-known address shown on the records of the Franchise Tax Division of the Commission in order for such plaintiff to comply with the requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

21. The disclosure to any person as determined by the Commission to be necessary if, pursuant to the provisions of Section 510 of this title, a distributor of motor fuel and diesel fuel is required to sell such fuel on a tax-paid basis;

22. The disclosure of information directly involved in the resolution of the protest by a taxpayer to an assessment of tax or additional tax or the resolution of a claim for refund filed by a taxpayer, including the disclosure of the pendency of an administrative proceeding involving such protest or claim, to a person called by the Tax Commission as an expert witness or as a witness whose area of knowledge or expertise specifically addresses the issue addressed in the protest or claim for refund. Said disclosure to a witness shall be limited to information pertaining to the specific knowledge of that witness as to the transaction or relationship between taxpayer and witness;

23. The disclosure of information necessary to implement an agreement authorized by Section 2702 of this title when such information is directly involved in the resolution of issues arising out of the enforcement of a municipal sales tax ordinance. Said disclosure shall be to the governing body or to the municipal attorney, if so designated by the governing body;

24. The furnishing of information regarding incentive payments made pursuant to the provisions of Sections 3601 through 3609 of this title or incentive payments made pursuant to the provisions of Sections 3501 through 3508 of this title;

25. The furnishing to a prospective purchaser of any business, or his or her authorized representative, of information relating to any liabilities, delinquencies, assessments or warrants of the prospective seller of the business which have not been filed of record, established, or become final and which relate solely to the seller's business. Any disclosure under this paragraph shall only be allowed upon the presentment by the prospective buyer, or his authorized representative, of the purchase contract and a written authorization between the parties;

26. The notification to the suppliers of a motor fuel distributor who has been required by the Tax Commission to sell motor fuel or diesel fuel on a tax-paid basis pursuant to the provisions of subsection (c) of Section 510 of this title; or

27. The furnishing of information as to the amount of state revenue affected by the issuance or granting of any tax permit, license, exemption, deduction, credit or other tax preference by the Tax Commission as provided for by law. Such information shall be limited to the type of permit, license, exemption, deduction, credit or other tax preference issued or granted, the date and duration of such permit, license, exemption, deduction, credit or other tax preference and the amount of such revenue. The provisions of this paragraph shall not authorize the disclosure of the name of the person issued such permit, license, exemption, deduction, credit or other tax preference, or the name of the business entity authorized to engage in business pursuant to said permit, license, exemption, deduction, credit or other tax preference.

D. The Tax Commission shall cause to be prepared and made available for public inspection in the office of the Tax Commission in such manner as it may determine an annual list containing the name and post office address of each person, whether individual, corporate, or otherwise, making and filing an income tax return with the Tax Commission.

It is specifically provided that no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission of any name or address in the preparation and publication of said list.

E. The Tax Commission shall prepare or cause to be prepared an annual report on all provisions of state tax law that reduce state revenue through exclusions, deductions, credits, exemptions, deferrals or other preferential tax treatments. The report shall be prepared not later than November 1 of each year and shall be submitted to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Tax Commission may prepare and submit supplements to the report at other times of the year if additional or updated information relevant to the report becomes available. The report shall include, for the previous fiscal year, the Tax Commission's best estimate of the amount of state revenue that would have been collected but for the existence of each such exclusion, deduction, credit, exemption, deferral or other preferential tax treatment allowed by law. The Tax Commission may request the assistance of other state agencies as may be needed to prepare the report.

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 Tax Commission relating to income tax or to any other taxes.

G. Unless otherwise provided for in this section, any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by the imposition of a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding one (1) year, or by both said fine and imprisonment, and the offender shall be removed or dismissed from office.

H. Offenses described in Section 2376 of this title shall be reported to the appropriate district attorney of this state by the Tax Commission as soon as said offenses are discovered by the Tax Commission or its agents or employees. The Tax Commission shall make available to the appropriate district attorney or to the authorized agent of said district attorney its records and files pertinent to said prosecutions, and said records and files shall be fully admissible as evidence for the purpose of said prosecutions.

SECTION 13. AMENDATORY 68 O.S. 1991, Section 1356, as last amended by Section 4, Chapter 337, O.S.L. 1995 (68 O.S. Supp. 1995, Section 1356), is amended to read as follows:

Section 1356. Exemptions - Governmental and nonprofit entities.

There are hereby specifically exempted from the tax levied by this article:

1. Sale of tangible personal property or services to the United States government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of this state; provided, all sales to contractors in connection with the performance of any contract with the United States government, State of Oklahoma or any of its political subdivisions shall not be exempted from the tax levied by this article, except as hereinafter provided;

2. Sales of property to agents appointed by or under contract with agencies or instrumentalities of the United States government if ownership and possession of such property transfers immediately to the United States government;

3. Sales of property to agents appointed by or under contract with a political subdivision of this state if the sale of such property is associated with the development of a qualified federal facility, as provided in the Oklahoma Federal Facilities Development Act, and if ownership and possession of such property transfers immediately to the political subdivision or the state;

4. Sales made directly by county, district or state fair authorities of this state, upon the premises of the fair authority, for the sole benefit of the fair authority;

5. Sale of food in cafeterias or lunch rooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils and are not operated primarily for the public or for profit;

6. Dues paid to fraternal, religious, civic, charitable or educational societies or organizations by regular members thereof, provided, such societies or organizations operate under what is commonly termed the lodge plan or system, and provided such societies or organizations do not operate for a profit which inures to the benefit of any individual member or members thereof to the exclusion of other members and dues paid monthly or annually to privately owned scientific and educational libraries by members sharing the use of services rendered by such libraries with students interested in the study of geology, petroleum engineering or related subjects;

7. Sale of tangible personal property or services to or by churches, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or a similar business;

8. The amount of proceeds received from the sale of admission tickets which is separately stated on the ticket of admission for the repayment of money borrowed by any accredited state-supported college or university for the purpose of constructing or enlarging any facility to be used for the staging of an athletic event, a theatrical production, or any other form of entertainment, edification or cultural cultivation to which entry is gained with a paid admission ticket. Such facilities include, but are not limited to, athletic fields, athletic stadiums, field houses, amphitheaters and theaters. To be eligible for this sales tax exemption, the

amount separately stated on the admission ticket shall be a surcharge which is imposed, collected and used for the sole purpose of servicing or aiding in the servicing of debt incurred by the college or university to effect the capital improvements hereinbefore described;

9. Sales of tangible personal property or services to the Council Organizations or similar state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A. and the Campfire Girls shall be exempt from sales tax;

10. Sale of tangible personal property or services to any county, municipality, rural water district, public school district, the institutions of The Oklahoma State System of Higher Education, the Grand River Dam Authority and the Oklahoma Municipal Power Authority, or to any person with whom any of the above-named subdivisions or agencies of this state has duly entered into a public contract pursuant to law, necessary for carrying out such public contract or to any subcontractor to such a public contract. Any person making purchases on behalf of such subdivision or agency of this state shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such subdivision or agency of this state and set out the name of such public subdivision or agency. Any person who wrongfully or erroneously certifies that purchases are for any of the above-named subdivisions or agencies of this state or who otherwise violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days or both;

11. Sales of tangible personal property or services to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of

Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3), including materials, supplies, and equipment used in the construction and improvement of buildings and other structures owned by said institutions and operated for educational purposes.

Any person, firm, agency or entity making purchases on behalf of any institution, agency or subdivision in this state, shall certify in writing, on the copy of the invoice or sales ticket the nature of the purchases, and violation of this act shall be a misdemeanor as set forth in paragraph 10 of this section;

12. Tuition and educational fees paid to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3);

13. Sales of tangible personal property made by:

- a. a public school,
- b. a private school offering instruction for grade levels kindergarten through twelfth grade,
- c. a public school district,
- d. a public or private school board,
- e. a public or private school student group or organization,
- f. a parent-teacher association or organization, or
- g. public or private school personnel for purposes of raising funds for the benefit of a public or private school, public school district, public or private

school board or public or private school student group or organization.

The exemption provided by this paragraph for sales made by a public or private school shall be limited to those public or private schools accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs. Sale of tangible personal property in this paragraph shall include sale of admission tickets and concessions at athletic events;

14. Sales of tangible personal property by:

- a. local 4-H clubs,
- b. county, regional or state 4-H councils,
- c. county, regional or state 4-H committees,
- d. 4-H leader associations,
- e. county, regional or state 4-H foundations, and
- f. authorized 4-H camps and training centers.

The exemption provided by this paragraph shall be limited to sales for the purpose of raising funds for the benefit of such organizations. Sale of tangible personal property exempted by this paragraph shall include sale of admission tickets;

15. The first Seventy-five Thousand Dollars (\$75,000.00) each year from sale of tickets and concessions at athletic events by each organization exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(4);

16. Items or services which are subsequently given away by the Oklahoma Department of Tourism and Recreation as promotional items pursuant to Section 1834 of Title 74 of the Oklahoma Statutes;

17. Sales of tangible personal property or services to fire departments organized pursuant to Section 592 of Title 18 of the Oklahoma Statutes which items are to be used for the purposes of the fire department. Any person making purchases on behalf of any such fire department shall certify, in writing, on the copy of the

invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such fire department and set out the name of such fire department. Any person who wrongfully or erroneously certifies that the purchases are for any such fire department or who otherwise violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days, or both;

18. Complimentary or free tickets for admission to places of amusement, sports, entertainment, exhibition, display or other recreational events or activities which are issued through a box office or other entity which is operated by a state institution of higher education with institutional employees or by a municipality with municipal employees;

19. From the effective date of this act until December 31, 1995, sales of tangible personal property or services, except the service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house or tourist camp, to legislative organizations in connection with national meetings to be held in this state;

20. The first Fifteen Thousand Dollars (\$15,000.00) each year from sales of tangible personal property by fire departments organized pursuant to Titles 11, 18, or 19 of the Oklahoma Statutes for the purposes of raising funds for the benefit of the fire department. Fire departments selling tangible personal property for the purposes of raising funds shall be limited to no more than six (6) days each year to raise such funds in order to receive the exemption granted by this paragraph; ~~and~~

21. Sales of tangible personal property or services to any Boys & Girls Clubs of America affiliate in this state which is not affiliated with the Salvation Army and which is exempt from taxation

pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3); and

22. Sales of tangible personal property or services to any organization, which takes court-adjudicated juveniles for purposes of rehabilitation, and which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3), provided that at least fifty percent (50%) of the juveniles served by such organization are court adjudicated and the organization receives state funds in an amount less than ten percent (10%) of the annual budget of the organization.

SECTION 14. AMENDATORY 68 O.S. 1991, Section 1359, as last amended by Section 5, Chapter 349, O.S.L. 1995 (68 O.S. Supp. 1995, Section 1359), is amended to read as follows:

Section 1359. Exemptions - Manufacturers.

There are hereby specifically exempted from the tax levied by this article:

1. Goods, wares, merchandise, and property purchased for the purpose of being used or consumed in the process of manufacturing, compounding, processing, assembling, or preparing for sale a finished article and such goods, wares, merchandise, or property become integral parts of the manufactured, compounded, processed, assembled, or prepared products or are consumed in the process of manufacturing, compounding, processing, assembling, or preparing products for resale. The term manufacturing plants shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;

2. Ethyl alcohol when sold and used for the purpose of blending same with motor fuel on which motor fuel tax is levied by Section 529 of this title;

3. Sale of machinery and equipment purchased and used by persons establishing new manufacturing plants in Oklahoma, and machinery and equipment purchased or equipment built on site and

used by persons in the operation of manufacturing plants already established in Oklahoma. This exemption shall not apply unless such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property for sale or resale. The term manufacturing plants shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such. For the purposes of this paragraph, sales made to a contractor or subcontractor of persons who are determined to be qualified for incentive benefits pursuant to the Oklahoma Quality Jobs Program Act shall be considered sales made to such persons; provided, the sales were made after July 1, 1993, and before December 31, 1995, but not more than twelve (12) months before such person was determined to be qualified for incentive benefits and that the sales are otherwise qualified for the exemption provided by this paragraph and that the property which is the subject of the sales is utilized for the purpose of the contract by which the person obtained the services of the contractor or subcontractor;

4. Sales of containers when sold to a person regularly engaged in the business of reselling empty or filled containers or when purchased for the purpose of packaging raw products of farm, garden, or orchard for resale to the consumer or processor. This exemption shall not apply to the sale of any containers used more than once and which are ordinarily known as returnable containers, except returnable soft drink bottles and the cartons, crates, pallets, and containers used to transport returnable soft drink bottles. Each and every transfer of title or possession of such returnable containers in this state to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty or filled containers shall be taxable under this Code. Additionally, this exemption shall not apply to the sale of labels or other materials delivered along with items sold but which are not

necessary or absolutely essential to the sale of the sold merchandise;

5. Sales of or transfers of title to or possession of any containers, after June 30, 1987, used or to be used more than once and which are ordinarily known as returnable containers and which do or will contain beverages defined by paragraphs 4 and 14 of Section 506 of Title 37 of the Oklahoma Statutes, or water for human consumption and the cartons, crates, pallets, and containers used to transport such returnable containers;

6. Sale of tangible personal property when sold by the manufacturer to a person who transports it to a state other than Oklahoma for immediate and exclusive use in a state other than Oklahoma. Provided, no sales at a retail outlet shall qualify for the exemption under this paragraph;

7. Machinery, equipment, fuels and chemicals incorporated into and directly used or consumed in the process of treatment to substantially reduce the volume or harmful properties of hazardous waste at treatment facilities specifically permitted pursuant to the Hazardous Waste ~~Disposal~~ Management Act, ~~Section 1-2001 et seq. of Title 63 of the Oklahoma Statutes,~~ and operated at the place of waste generation, or facilities approved by the ~~State Department of Health~~ Department of Environmental Quality for the cleanup of a site of contamination. The term "hazardous" waste may include low-level radioactive waste for the purpose of this subsection;

8. Sales of tangible personal property to a qualified manufacturer to be consumed or incorporated in a new manufacturing facility or to expand an existing manufacturing facility. For purposes of this subsection, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified manufacturer for construction or expansion of a manufacturing facility shall be considered sales made to a qualified manufacturer. For the purposes of this subsection,

"qualified manufacturer" means any enterprise whose total cost of construction material for a new or expanded facility exceeds the sum of Five Million Dollars (\$5,000,000.00) and in which at least one hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission, are added and maintained for a period of at least thirty-six (36) months as a direct result of the new or expanded facility. Provided however, where the total cost of construction material for a new or expanded facility exceeds Ten Million Dollars (\$10,000,000.00) and the combined cost of construction material, machinery, equipment and other tangible personal property exempt from sales tax under the provisions of this subsection exceeds the sum of Fifty Million Dollars (\$50,000,000.00) the required number of new full-time-equivalent employees under this subsection shall be reduced to seventy-five (75) new employees. The employment requirement of this subsection can be satisfied by the employment of a portion of the required number of new full-time-equivalent employees at a manufacturing facility that is related to or supported by the new or expanded manufacturing facility so long as both facilities are owned by one person or business entity. For purposes of this section "manufacturing facility" shall mean building and land improvements used in manufacturing as defined by the Standard Industrial Classification Code and shall also mean building and land improvements used for the purpose of packing, repackaging, labeling or assembling for distribution to market, products at least seventy percent (70%) of which are made in Oklahoma by the same company but at an off-site in-state manufacturing facility or facilities. It shall not include a retail outlet unless said retail outlet is operated in conjunction with and on the same site or premises as the manufacturing facility. Up to ten percent (10%) of the square feet of a manufacturing facility building may be devoted to office space used to provide clerical support for the manufacturing operation. Such ten percent (10%) may

be in a separate building as long as it is part of the same contiguous tract of property on which the manufacturing facility is located. Only sales of tangible personal property made after June 1, 1988, shall be eligible for the exemption provided by this subsection;

9. Sales of tangible personal property purchased and used by a licensed radio or television station in broadcasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. This exemption begins with the equipment used in producing live programming or the electronic equipment directly behind the satellite receiving dish or antenna, and ends with the transmission of the broadcast signal from the broadcast antenna system. For purposes of this subsection, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations;

10. Sales of tangible personal property purchased or used by a licensed cable television operator in cablecasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a cablecast signal or is such that the failure of the machinery or equipment to operate would cause cablecasting to cease. This exemption begins with the equipment used in producing local programming or the electronic equipment behind the satellite receiving dish, microwave tower or antenna, and ends with the transmission of the signal from the cablecast head-end system. For purposes of this subsection, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations;

11. Sales of packaging materials for use in packing, shipping or delivering tangible personal property for sale when sold to a manufacturer of tangible personal property or producer of agricultural products. This exemption shall not apply to the sale of any packaging material which can be used more than once or which is ordinarily known as a returnable container;

12. Sales of any pattern used in the process of manufacturing iron, steel or other metal castings. The exemption provided by this subsection shall be applicable irrespective of ownership of the pattern provided that such pattern is used in the commercial production of metal castings; and

13. Deposits or other charges made and which are subsequently refunded for returnable cartons, crates, pallets, and containers used to transport cement and cement products.

SECTION 15. AMENDATORY 68 O.S. 1991, Section 2358, as last amended by Section 7, Chapter 337, O.S.L. 1995 (68 O.S. Supp. 1995, Section 2358), is amended to read as follows:

Section 2358. For all tax years beginning after December 31, 1981, taxable income and adjusted gross income shall be adjusted to arrive at Oklahoma taxable income and Oklahoma adjusted gross income as required by this section.

A. The taxable income of any taxpayer shall be adjusted to arrive at Oklahoma taxable income for corporations and Oklahoma adjusted gross income for individuals, as follows:

1. There shall be added interest income on obligations of any state or political subdivision thereto which is not otherwise exempted pursuant to other laws of this state, to the extent that said interest is not included in taxable income and adjusted gross income.

2. There shall be deducted amounts included in such income that the state is prohibited from taxing because of the provisions of the

Federal Constitution, the State Constitution, federal laws or laws of Oklahoma.

3. The amount of any federal net operating loss deduction shall be adjusted as follows:

- a. For carryovers and carrybacks to taxable years beginning before January 1, 1981, the amount of any net operating loss deduction allowed to a taxpayer for federal income tax purposes shall be reduced to an amount which is the same portion thereof as the loss from sources within this state, as determined pursuant to this section and Section 2362 of this title, for the taxable year in which such loss is sustained is of the total loss for such year;
- b. For carryovers and carrybacks to taxable years beginning after December 31, 1980, the amount of any net operating loss deduction allowed for the taxable year shall be an amount equal to the aggregate of the Oklahoma net operating loss carryovers and carrybacks to such year. Oklahoma net operating losses shall be separately determined by reference to Section 172 of the Internal Revenue Code, 26 U.S.C., Section 172, as modified by the Oklahoma Income Tax Act, Section 2351 et seq. of this title, and shall be allowed without regard to the existence of a federal net operating loss. The years to which such losses may be carried shall be determined by reference to Section 172 of the Internal Revenue Code, except that losses which are not actually utilized shall not reduce the carryover; provided, for net operating losses incurred for tax years beginning after December 31, 1992, and before December 31, 1993, the loss carryback shall be for a period of three (3) years; for tax years beginning

after December 31, 1993, and before December 31, 1994, the carryback period shall be two (2) years; for tax years beginning after December 31, 1994, and before December 31, 1995, the carryback period shall be one (1) year; and for tax years beginning after December 31, 1995, no net operating loss carryback shall be allowable. For tax years beginning after December 31, 1992, the net operating loss carryforward shall not exceed fifteen (15) years.

4. Items of the following nature shall be allocated as indicated. Allowable deductions attributable to items separately allocable in subparagraphs a, b and c of this paragraph, whether or not such items of income were actually received, shall be allocated on the same basis as those items:

- a. Income from real and tangible personal property, such as rents, oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property;
- b. Income from intangible personal property, such as interest, dividends, patent or copyright royalties, and gains or losses from sales of such property, shall be allocated in accordance with the domiciliary situs of the taxpayer, except that:
 - (1) where such property has acquired a nonunitary business or commercial situs apart from the domicile of the taxpayer such income shall be allocated in accordance with such business or commercial situs; a resident trust or resident estate shall be treated as having a separate commercial or business situs insofar as undistributed income is concerned, but shall not

be treated as having a separate commercial or business situs insofar as distributed income is concerned,

(2) income from such property which is required to be allocated pursuant to the provisions of paragraph 5 of this subsection shall be allocated as herein provided;

c. Net income or loss from a business activity which is not a part of business carried on within or without the state of a unitary character shall be separately allocated to the state in which such activity is conducted;

d. In the case of a manufacturing or processing enterprise the business of which in Oklahoma consists solely of marketing its products by:

(1) sales having a situs without this state, shipped directly to a point from without the state to a purchaser within the state, commonly known as interstate sales,

(2) sales of the product stored in public warehouses within the state pursuant to "in transit" tariffs, as prescribed and allowed by the Interstate Commerce Commission, to a purchaser within the state,

(3) sales of the product stored in public warehouses within the state where the shipment to such warehouses is not covered by "in transit" tariffs, as prescribed and allowed by the Interstate Commerce Commission, to a purchaser within or without the state,

the Oklahoma net income shall, at the option of the taxpayer, be that portion of the total net income of the

taxpayer for federal income tax purposes derived from the manufacture and/or processing and sales everywhere as determined by the ratio of the sales defined in this section made to the purchaser within the state to the total sales everywhere. The term public warehouse as used in this subparagraph means a licensed public warehouse, the principal business of which is warehousing merchandise for the public;

e. In the case of insurance companies, Oklahoma taxable income shall be taxable income of the taxpayer for federal tax purposes, as adjusted for the adjustments provided pursuant to the provisions of paragraphs 1 and 2 of this subsection, apportioned as follows:

(1) except as otherwise provided by division (2) of this subparagraph, taxable income of an insurance company for a taxable year shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the direct premiums written for insurance on property or risks in this state, and the denominator of which is the direct premiums written for insurance on property or risks everywhere. For purposes of this subsection, the term direct premiums written means the total amount of direct premiums written, assessments and annuity considerations as reported for the taxable year on the annual statement filed by the company with the Oklahoma Insurance Commissioner in the form approved by the National Association of Insurance Commissioners, or such other form as may be prescribed in lieu thereof,

(2) if the principal source of premiums written by an insurance company consists of premiums for reinsurance accepted by it, the taxable income of such company shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the sum of (a) direct premiums written for insurance on property or risks in this state, plus (b) premiums written for reinsurance accepted in respect of property or risks in this state, and the denominator of which is the sum of (c) direct premiums written for insurance on property or risks everywhere, plus (d) premiums written for reinsurance accepted in respect of property or risks everywhere. For purposes of this paragraph, premiums written for reinsurance accepted in respect of property or risks in this state, whether or not otherwise determinable, may at the election of the company be determined on the basis of the proportion which premiums written for insurance accepted from companies commercially domiciled in Oklahoma bears to premiums written for reinsurance accepted from all sources, or alternatively in the proportion which the sum of the direct premiums written for insurance on property or risks in this state by each ceding company from which reinsurance is accepted bears to the sum of the total direct premiums written by each such ceding company for the taxable year.

5. The net income or loss remaining after the separate allocation in paragraph 4 of this subsection, being that which is

derived from a unitary business enterprise, shall be apportioned to this state on the basis of the arithmetical average of three factors consisting of property, payroll and sales or gross revenue enumerated as subparagraphs a, b and c of this paragraph. Net income or loss as used in this paragraph includes that derived from patent or copyright royalties, purchase discounts, and interest on accounts receivable relating to or arising from a business activity, the income from which is apportioned pursuant to this subsection, including the sale or other disposition of such property and any other property used in the unitary enterprise. Deductions used in computing such net income or loss shall not include taxes based on or measured by income.

a. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property everywhere owned or rented and used during the tax period.

(1) Property, the income from which is separately allocated in paragraph 4 of this subsection, shall not be included in determining this fraction. The numerator of the fraction shall include a portion of the investment in transportation and other equipment having no fixed situs, such as rolling stock, buses, trucks and trailers, including machinery and equipment carried thereon, airplanes, salesmen's automobiles and other similar equipment, in the proportion that miles traveled in Oklahoma by such equipment bears to total miles traveled,

- (2) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer, less any annual rental rate received by the taxpayer from subrentals,
- (3) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Tax Commission may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property;
- b. The payroll factor is a fraction, the numerator of which is the total compensation for services rendered in the state during the tax period, and the denominator of which is the total compensation for services rendered everywhere during the tax period. Compensation as used in this subsection means those paid-for services to the extent related to the unitary business but does not include officers' salaries, wages and other compensation.
- (1) In the case of a transportation enterprise, the numerator of the fraction shall include a portion of such expenditure in connection with employees operating equipment over a fixed route, such as trainmen, airline pilots, or bus drivers, in this state only a part of the time, in the proportion that mileage traveled in Oklahoma bears to total mileage traveled by such employees,

- (2) In any case the numerator of the fraction shall include a portion of such expenditures in connection with itinerant employees, such as traveling salesmen, in this state only a part of the time, in the proportion that time spent in Oklahoma bears to total time spent in furtherance of the enterprise by such employees;
- c. The sales factor is a fraction, the numerator of which is the total sales or gross revenue of the taxpayer in this state during the tax period, and the denominator of which is the total sales or gross revenue of the taxpayer everywhere during the tax period. Sales as used in this subsection does not include sales or gross revenue which are separately allocated in paragraph 4 of this subsection.
- (1) Sales of tangible personal property have a situs in this state if the property is delivered or shipped to a purchaser other than the United States Government, within this state regardless of the FOB point or other conditions of the sale; or the property is shipped from an office, store, warehouse, factory or other place of storage in this state and (a) the purchaser is the United States Government or (b) the taxpayer is not doing business in the state of the destination of the shipment.
- (2) In the case of a railroad or interurban railway enterprise, the numerator of the fraction shall not be less than the allocation of revenues to this state as shown in its annual report to the Oklahoma Corporation Commission.

- (3) In the case of an airline, truck or bus enterprise or freight car, tank car, refrigerator car or other railroad equipment enterprise, the numerator of the fraction shall include a portion of revenue from interstate transportation in the proportion that interstate mileage traveled in Oklahoma bears to total interstate mileage traveled.
- (4) In the case of an oil, gasoline or gas pipeline enterprise, the numerator of the fraction shall be either the total of traffic units of the enterprise within Oklahoma or the revenue allocated to Oklahoma based upon miles moved, at the option of the taxpayer, and the denominator of which shall be the total of traffic units of the enterprise or the revenue of the enterprise everywhere as appropriate to the numerator. A "traffic unit" is hereby defined as the transportation for a distance of one (1) mile of one (1) barrel of oil, one (1) gallon of gasoline or one thousand (1,000) cubic feet of natural or casinghead gas, as the case may be.
- (5) In the case of a telephone or telegraph or other communication enterprise, the numerator of the fraction shall include that portion of the interstate revenue as is allocated pursuant to the accounting procedures prescribed by the Federal Communications Commission; provided that in respect to each corporation or business entity required by the Federal Communications Commission to keep its books and records in accordance with a uniform system of accounts prescribed by such

Commission, the intrastate net income shall be determined separately in the manner provided by such uniform system of accounts and only the interstate income shall be subject to allocation pursuant to the provisions of this subsection. Provided, further, that the gross revenue factors shall be those as are determined pursuant to the accounting procedures prescribed by the Federal Communications Commission.

In any case where the use of the arithmetical average of three factors prescribed in this paragraph attributes to Oklahoma a portion of net income of the enterprise out of all appropriate proportion to the property owned and/or business transacted within this state, because of the fact that one or more of the factors so prescribed are not employed to any appreciable extent in furtherance of the enterprise; or because one or more factors not so prescribed are employed to a considerable extent in furtherance of the enterprise; or because of other reasons, the Tax Commission is empowered to permit, after a showing by taxpayer that an excessive portion of net income has been attributed to Oklahoma, or require, when in its judgment an insufficient portion of net income has been attributed to Oklahoma, the elimination, substitution, or use of additional factors, or reduction or increase in the weight of such prescribed factors. Provided, however, that any such variance from such prescribed factors which has the effect of increasing the portion of net income attributable to Oklahoma must not be inherently arbitrary, and application of the recomputed final arithmetical average ratio to the net income of the enterprise must attribute to Oklahoma only a reasonable portion thereof.

B. The taxable income of any corporation shall be further adjusted to arrive at Oklahoma taxable income, except those corporations electing treatment as provided in subchapter S of the

Internal Revenue Code, 26 U.S.C., Section 1361 et seq., and Section 2365 of this title, deductions pursuant to the provisions of the Accelerated Cost Recovery System as defined and allowed in the Economic Recovery Tax Act of 1981, Public Law 97-34, 26 U.S.C., Section 168, for depreciation of assets placed into service after December 31, 1981, shall not be allowed in calculating Oklahoma taxable income. Such corporations shall be allowed a deduction for depreciation of assets placed into service after December 31, 1981, in accordance with provisions of the Internal Revenue Code, 26 U.S.C., Section 1 et seq., in effect immediately prior to the enactment of the Accelerated Cost Recovery System. The Oklahoma tax basis for all such assets placed into service after December 31, 1981, calculated in this section shall be retained and utilized for all Oklahoma income tax purposes through the final disposition of said assets.

Notwithstanding any other provisions of the Oklahoma Income Tax Act, Sections 2351 et seq. of this title or of the Internal Revenue Code to the contrary, this subsection shall control calculation of depreciation of assets placed into service after December 31, 1981, and before January 1, 1983.

For assets placed in service and held by a corporation in which accelerated cost recovery system was previously disallowed, an adjustment to taxable income is required in the first taxable year beginning after December 31, 1982, to reconcile the basis of said assets to the basis allowed in the Internal Revenue Code. The purpose of this adjustment is to equalize the basis and allowance for depreciation accounts between that reported to the Internal Revenue Service and that reported to Oklahoma.

C. 1. For taxable years beginning after December 31, 1987, the taxable income of any corporation shall be further adjusted to arrive at Oklahoma taxable income for transfers of technology to qualified small businesses located in Oklahoma. Such transferor

corporation shall be allowed an exemption from taxable income of an amount equal to the amount of royalty payment received as a result of such transfer; provided, however, said amount shall not exceed ten percent (10%) of the amount of gross proceeds received by such transferor corporation as a result of the technology transfer. Such exemption shall be allowed for a period not to exceed ten (10) years from the date of receipt of the first royalty payment accruing from such transfer. No exemption may be claimed for transfers of technology to qualified small businesses made prior to January 1, 1988.

2. For purposes of this subsection:

- a. "Qualified small business" means an entity, whether organized as a corporation, partnership, or proprietorship, organized for profit with its principal place of business located within this state and which meets the following criteria:
 - (1) Capitalization of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00),
 - (2) Having at least fifty percent (50%) of its employees and assets located in Oklahoma at the time of the transfer, and
 - (3) Not a subsidiary or affiliate of the transferor corporation;
- b. "Technology" means a proprietary process, formula, pattern, device or compilation of scientific or technical information which is not in the public domain;
- c. "Transferor corporation" means a corporation which is the exclusive and undisputed owner of the technology at the time the transfer is made; and

- d. "Gross proceeds" means the total amount of consideration for the transfer of technology, whether the consideration is in money or otherwise.

D. The Oklahoma adjusted gross income of any individual taxpayers shall be further adjusted as follows to arrive at Oklahoma taxable income:

1. a. In the case of individuals, there shall be added or deducted, as the case may be, the difference necessary to allow personal exemptions of One Thousand Dollars (\$1,000.00) in lieu of the personal exemptions allowed by the Internal Revenue Code.

- b. There shall be allowed an additional exemption of One Thousand Dollars (\$1,000.00) for each taxpayer or spouse who is blind at the close of the tax year. For purposes of this subparagraph, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200, but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees.

- c. For taxable years beginning after December 31, 1987, there shall be allowed an additional exemption of One Thousand Dollars (\$1,000.00) for each taxpayer or spouse who is sixty-five (65) years of age or older at the close of the tax year based upon the filing status and federal adjusted gross income of the taxpayer. Taxpayers with the following filing status may claim this exemption if the federal adjusted gross income does not exceed:

- (1) Twenty-five Thousand Dollars (\$25,000.00) if married and filing jointly;

- (2) Twelve Thousand Five Hundred Dollars (\$12,500.00) if married and filing separately;
- (3) Fifteen Thousand Dollars (\$15,000.00) if single; and
- (4) Nineteen Thousand Dollars (\$19,000.00) if a qualifying head of household.

d. For taxable years beginning after December 31, 1990, and beginning before January 1, 1992, there shall be allowed a one-time additional exemption of Four Hundred Dollars (\$400.00) for each taxpayer or spouse who is a member of the National Guard or any reserve unit of the Armed Forces of the United States and who was at any time during such taxable year deployed in active service during a time of war or conflict with an enemy of the United States.

2. In the case of individuals who use the standard deduction in determining taxable income, there shall be added or deducted, as the case may be, the difference necessary to allow a standard deduction in lieu of the standard deduction allowed by the Internal Revenue Code, in an amount equal to the larger of fifteen percent (15%) of the Oklahoma adjusted gross income or One Thousand Dollars (\$1,000.00), but not to exceed Two Thousand Dollars (\$2,000.00), except that in the case of a married individual filing a separate return such deduction shall be the larger of fifteen percent (15%) of such Oklahoma adjusted gross income or Five Hundred Dollars (\$500.00), but not to exceed the maximum amount of One Thousand Dollars (\$1,000.00).

3. In the case of resident individuals having adjusted gross income from sources both within and without the state, the itemized or standard deductions and personal exemptions shall be reduced to an amount which is the same portion of the total thereof as Oklahoma adjusted gross income is of adjusted gross income. To the extent

itemized deductions include allowable moving expense, proration of moving expense shall not be required or permitted but allowable moving expense shall be fully deductible for those taxpayers moving within or into Oklahoma and no part of moving expense shall be deductible for those taxpayers moving without or out of Oklahoma. All other itemized or standard deductions and personal exemptions shall be subject to proration as provided by law.

4. A resident individual with a physical disability constituting a substantial handicap to employment may deduct from Oklahoma adjusted gross income such expenditures to modify a motor vehicle, home or workplace as are necessary to compensate for his handicap. A veteran certified by the Veterans Administration of the federal government as having a service-connected disability shall be conclusively presumed to be an individual with a physical disability constituting a substantial handicap to employment. The Oklahoma Tax Commission shall promulgate rules containing a list of combinations of common disabilities and modifications which may be presumed to qualify for this deduction. The Commission shall prescribe necessary requirements for verification.

5. In any taxable year the first One Thousand Five Hundred Dollars (\$1,500.00) received by any person from the United States as salary or compensation in any form, other than retirement benefits, as a member of any component of the Armed Forces of the United States shall be deducted from taxable income. Whenever the filing of a timely income tax return by a member of the Armed Forces of the United States is made impracticable or impossible of accomplishment by reason of:

- a. absence from the United States, which term includes only the states and the District of Columbia;
- b. absence from the State of Oklahoma while on active duty; or

c. confinement in a hospital within the United States for treatment of wounds, injuries or disease, the time for filing a return and paying an income tax shall be and is hereby extended without incurring liability for interest or penalties, to the fifteenth day of the third month following the month in which:

- (1) Such individual shall return to the United States if the extension is granted pursuant to subparagraph (a) of this paragraph, return to the State of Oklahoma if the extension is granted pursuant to subparagraph (b) of this paragraph or be discharged from such hospital if the extension is granted pursuant to subparagraph (c) of this paragraph; or
- (2) An executor, administrator, or conservator of the estate of the taxpayer is appointed, whichever event occurs the earliest.

Provided, that the Tax Commission may, in its discretion, grant any member of the Armed Forces of the United States an extension of time for filing of income tax returns and payment of income tax without incurring liabilities for interest or penalties. Such extension may be granted only when in the judgment of the Tax Commission a good cause exists therefor and may be for a period in excess of six (6) months. A record of every such extension granted, and the reason therefor, shall be kept.

6. The salary or any other form of compensation, received from the United States by a member of any component of the Armed Forces of the United States, shall be deducted from taxable income during the time in which the person is detained by the enemy in a conflict, is a prisoner of war or is missing in action and not deceased.

7. Notwithstanding anything in the Internal Revenue Code or in the Oklahoma Income Tax Act to the contrary, it is expressly

provided that, in the case of resident individuals, amounts received as dividends or distributions of earnings from savings and loan associations or credit unions located in Oklahoma, and interest received on savings accounts and time deposits from such sources or from state and national banks or trust companies located in Oklahoma, shall qualify as dividends for the purpose of the dividend exclusion, and taxable income shall be adjusted accordingly to arrive at Oklahoma taxable income; provided, however, that the dividend, distribution of earnings and/or interest exclusion provided for hereinabove shall not be cumulative to the maximum dividend exclusion allowed by the Internal Revenue Code. Any dividend exclusion already allowed by said Code and reflected in the taxpayer's Oklahoma taxable income together with exclusion allowed herein shall not exceed the total of One Hundred Dollars (\$100.00) per individual or Two Hundred Dollars (\$200.00) per couple filing a joint return.

8. a. An individual taxpayer, whether resident or nonresident, may deduct an amount equal to the federal income taxes paid by said taxpayer during the taxable year.
- b. Federal taxes as described in subparagraph a of this paragraph shall be deductible by any individual taxpayer, whether resident or nonresident, only to the extent they relate to income subject to taxation pursuant to the provisions of the Oklahoma Income Tax Act. The maximum amount allowable in the preceding paragraph shall be prorated on the ratio of the Oklahoma adjusted gross income to federal adjusted gross income.
- c. For the purpose of this paragraph, federal income taxes paid shall mean federal income taxes, surtaxes

imposed on incomes or excess profits taxes, as though the taxpayer was on the accrual basis.

- d. The provisions of this paragraph shall apply to all taxable years ending after December 31, 1978.

9. Retirement benefits not to exceed Five Thousand Five Hundred Dollars (\$5,500.00), which are received by an individual from the civil service of the United States, any component of the Armed Forces of the United States, the Oklahoma Public Employees Retirement System, the Teachers' Retirement System of Oklahoma, the Oklahoma Law Enforcement Retirement System, the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System, the employee retirement systems created by counties pursuant to Sections 951 et seq. of Title 19 of the Oklahoma Statutes, the Uniform Retirement System for Justices and Judges, the Oklahoma Wildlife Conservation Department Retirement Fund, the Oklahoma Employment Security Commission Retirement Plan, or the employee retirement systems created by municipalities pursuant to Sections 48-101 et seq. of Title 11 of the Oklahoma Statutes shall be exempt from taxable income.

10. In taxable years beginning after December 31, 1984, Social Security benefits received by an individual shall be exempt from taxable income, to the extent such benefits are included in the federal adjusted gross income pursuant to the provisions of Section 86 of the Internal Revenue Code, 26 U.S.C., Section 86.

11. For taxable years beginning after December 31, 1994, lump-sum distributions from employer plans of deferred compensation, which are not qualified plans within the meaning of Section 401(a) of the Internal Revenue Code, 26 U.S.C., Section 401(a), and which are deposited in and accounted for within a separate bank account or brokerage account in a financial institution within this state, shall be excluded from taxable income in the same manner as a qualifying rollover contribution to an individual retirement account

within the meaning of Section 408 of the Internal Revenue Code, 26 U.S.C., Section 408. Amounts withdrawn from such bank or brokerage account, including any earnings thereon, shall be included in taxable income when withdrawn in the same manner as withdrawals from individual retirement accounts within the meaning of Section 408 of the Internal Revenue Code.

12. In taxable years beginning after December 31, 1995, contributions made to and interest received from a medical savings account established pursuant to Sections 2621 through 2623 of Title 63 of the Oklahoma Statutes shall be exempt from taxable income.

SECTION 16. AMENDATORY Section 3, Chapter 275, O.S.L. 1993, as last amended by Section 1, Chapter 349, O.S.L. 1995 (68 O.S. Supp. 1995, Section 3603), is amended to read as follows:

Section 3603. A. As used in this act:

1. a. "Basic industry" means:

- (1) manufacturing, as defined or classified under Division D of the Standard Industrial Classification (SIC) Manual, latest version;
- (2) administrative and auxiliary services that are assigned a one-digit auxiliary code in the SIC Manual, and are described therein as Central Administrative Offices, which means central centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing and other administrative functions are accomplished,
- (3) Research, Development and Testing Laboratories,
- (4) an activity described by Industry Group Number 873 of Major Group 87, Division I of the Standard Industrial Classification (SIC) Manual, latest revision, Industry Numbers 8731, 8732, 8733 and 8734,

- (5) an activity related to research and development as described by Auxiliary Code Number 2 of the Standard Industrial Classification (SIC) Manual, latest revision,
- (6) warehouses which serve as distribution centers for retail or wholesale businesses, if seventy-five percent (75%) of the inventory processed through such warehouse is shipped out-of-state,
- (7) or the following, if an establishment classified therein has or will have within one (1) year sales of at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of this section, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government:
 - (a) motor freight transportation and warehousing, as defined or classified under Major Group 42 of the SIC Manual, latest version,
 - (b) transportation by air, as defined or classified under Major Group 45 of the SIC Manual, latest version,
 - (c) arrangement of passenger transportation, as defined or classified under Industry Group 472 of the SIC Manual, latest version,
 - (d) arrangement of transportation of freight or cargo, as defined or classified under Industry Group 473 of the SIC Manual, latest version,

- (e) insurance carriers, as defined or classified under Major Group 63 of the SIC Manual, latest version,
- (f) mailing, reproduction, commercial art and photography and stenographic services, as defined or classified under Industry Group 733 of the SIC Manual, latest version,
- (g) services to dwellings and other buildings, as defined or classified under Industry Group 734 of the SIC Manual, latest version,
- (h) miscellaneous equipment rental and leasing, as defined or classified under Industry Group 735 of the SIC Manual, latest version,
- (i) personnel supply services, as defined or classified under Industry Group 736 of the SIC Manual, latest version,
- (j) computer programming, data processing and other computer-related services, as defined or classified under Industry Group 737 of the SIC Manual, latest version,
- (k) miscellaneous business services, as defined or classified under Industry Group 738 of the SIC Manual, latest version,
- (l) medical and dental laboratories, as defined or classified under Industry Group 807 of the SIC Manual, latest version, and
- (m) engineering and management services, as defined or classified under Major Group 87 of the SIC Manual, latest version.

b. An establishment described in subparagraph a of this paragraph shall not be considered to be engaged in a basic industry unless it offers, or will offer within

one hundred eighty (180) days of the date it receives the first incentive payment pursuant to the provisions of this act, a basic health benefits plan to the individuals it employs in new direct jobs in this state which is determined by the Oklahoma Department of Commerce to consist of the following elements or elements substantially equivalent thereto:

- (1) not less than fifty percent (50%) of the premium shall be paid by the employer,
- (2) coverage for basic hospital care,
- (3) coverage for physician care,
- (4) coverage for mental health care,
- (5) coverage for substance abuse treatment,
- (6) coverage for prescription drugs, and
- (7) coverage for prenatal care;

2. "New direct job" means full-time-equivalent employment in this state in an establishment which has qualified to receive an incentive payment pursuant to the provisions of this act which did not exist in this state prior to the date of approval by the Department of Commerce of the application of the establishment pursuant to the provisions of Section 3604 of this title;

3. "Estimated direct state benefits" means the tax revenues projected by the Department of Commerce to accrue to the state as a result of new direct jobs;

4. "Estimated direct state costs" means the costs projected by the Department of Commerce to accrue to the state as a result of new direct jobs. Such costs shall include but not be limited to:

- a. the costs of education of new state resident children,
- b. the costs of public health, public safety and transportation services to be provided to new state residents,

c. the costs of other state services to be provided to new state residents, and

d. the costs of other state services;

5. "Estimated net direct state benefits" means the estimated direct state benefits less the estimated direct state costs;

6. "Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross payroll; provided:

a. except as otherwise provided in this paragraph, the net benefit rate may be variable and shall not exceed five percent (5%);

b. the net benefit rate shall not exceed six percent (6%) in connection with an establishment which is owned and operated by an entity which has been awarded a United States Department of Defense contract for which:

(1) bids were solicited and accepted by the United States Department of Defense from facilities located outside this state,

(2) the term is or is renewable for not less than twenty (20) years, and

(3) the average annual salary, excluding benefits which are not subject to Oklahoma income taxes, for new direct jobs created as a direct result of the awarding of the contract is projected by the Department of Commerce to equal or exceed Forty Thousand Dollars (\$40,000.00) within three (3) years of the date of the first incentive payment, and

c. in no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits;

7. "Gross payroll" means wages, as defined in Section 2385.1 of Title 68 of the Oklahoma Statutes, for new direct jobs; and

8. a. "Establishment" means any business or governmental entity, no matter what legal form, including, but not limited to, a sole proprietorship; partnership; corporation or combination of corporations which have a central parent corporation which makes corporate management decisions such as those involving consolidation, acquisition, merger or expansion; federal agency; political subdivision of the State of Oklahoma; or trust authority; provided, distinct, identifiable subunits of such entities may be determined to be an establishment, for all purposes of this act, by the Oklahoma Department of Commerce subject to the following conditions:

- (1) the entity must have a minimum payroll of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) and the subunit must also have or will have a minimum payroll of Two Million Five Hundred Thousand Dollars (\$2,500,000.00),
- (2) the subunit is engaged in an activity or service or produces a product which is demonstratively independent and separate from the entity's other activities, services or products and could be conducted or produced in the absence of any other activity, service or production of the entity,
- (3) has an accounting system capable of tracking or facilitating an audit of the subunit's payroll, expenses, revenue and production. Limited interunit overlap of administrative and purchasing functions shall not disqualify a subunit from consideration as an establishment by the Oklahoma Department of Commerce,

(4) the entity has not previously had a subunit determined to be an establishment pursuant to this section; provided, the restriction set forth in this division shall not apply to subunits which qualify pursuant to the provisions of subparagraph b of paragraph 6 of this subsection, and

(5) it is determined by the Department of Commerce that the entity will have a probable net gain in total employment within the incentive period.

b. The Oklahoma Department of Commerce may promulgate rules to further limit the circumstances under which a subunit may be considered an establishment. The Department of Commerce shall promulgate rules to determine whether a subunit of an entity achieves a net gain in total employment. The Department shall establish criteria for determining the period of time within which such gain must be demonstrated and a method for determining net gain in total employment.

B. The Incentive Approval Committee is hereby created and shall consist of the Director of State Finance, the Director of the Department of Commerce and one member of the Oklahoma Tax Commission appointed by the Tax Commission. It shall be the duty of the Committee to determine, upon initial application on a form approved by the Committee, if an establishment is engaged in a basic industry as defined in subdivisions (a) through (m) of division (7) of subparagraph a of paragraph 1 of subsection A of this section or as otherwise provided by subsection C of this section.

C. For an establishment defined as a "basic industry" pursuant to division (4) or division (5) of subparagraph a of paragraph 1 of subsection A of this section, the Incentive Approval Committee shall consist of the members provided by subsection B of this section and

the President of the Oklahoma Center for the Advancement of Science and Technology.

SECTION 17. AMENDATORY 70 O.S. 1991, Section 17-116.2, as last amended by Section 2, Chapter 333, O.S.L. 1995 (70 O.S. Supp. 1995, Section 17-116.2), is amended to read as follows:

Section 17-116.2 A. 1. Beginning July 1, 1987, and prior to July 1, 1995, a member who retires on or after the member's normal retirement age or whose retirement is because of disability shall receive an annual allowance for life, payable monthly, in an amount equal to two percent (2%) of the member's highest three-year average salary upon which member contributions were made, multiplied by the number of the member's years of creditable service.

A classified member who retired prior to July 1, 1986, shall have his retirement allowance calculated on a minimum average salary of Eleven Thousand Five Hundred Dollars (\$11,500.00) or on his current minimum average salary plus Two Thousand Dollars (\$2,000.00), whichever is greater. Beginning July 1, 1994, a classified member who retired prior to July 1, 1993, shall have the member's retirement allowance calculated on the member's current minimum average salary plus Five Hundred Fifty Dollars (\$550.00). An unclassified member who retired prior to July 1, 1986, shall have his retirement allowance calculated on a minimum average salary of Nine Thousand Five Hundred Dollars (\$9,500.00) or on his current minimum average salary plus One Thousand Dollars (\$1,000.00), whichever is greater. Beginning July 1, 1994, an unclassified member who retired prior to July 1, 1993, shall have the member's retirement allowance calculated on the member's current minimum average salary plus Two Hundred Seventy-five Dollars (\$275.00). Those individuals receiving benefits pursuant to subsection (3) of Section 17-105 of this title whose benefits commenced prior to July 1, 1993, shall receive an increase in benefits of two and one-half

percent (2 1/2%). No retirement benefit payments shall be made retroactively.

Except for those members retiring because of a disability, the retirement allowance shall be subject to adjustment for those members retiring before normal retirement age in accordance with the actuarial equivalent factors adopted by the Board of Trustees.

2. Except as otherwise provided by paragraph 3 or 4 of this subsection, beginning July 1, 1995, a member, other than a member employed by an entity or institution within The Oklahoma State System of Higher Education, who retires on or after the member's normal retirement age or whose retirement is because of disability shall receive an annual allowance for life, payable monthly as follows:

- a. if the member becomes a member after June 30, 1995, and was not eligible to become a member prior to July 1, 1995, in an amount equal to two percent (2%) of the member's average salary upon which member contributions were made, multiplied by the number of the member's years of creditable service, or
- b. if the member became a member or is eligible to become a member prior to July 1, 1995, and elected to have a maximum compensation level in excess of Twenty-five Thousand Dollars (\$25,000.00) pursuant to paragraph 1 of subsection C of this section or pursuant to subsection E of this section, or if the member's salary has never exceeded Twenty-five Thousand Dollars (\$25,000.00) prior to July 1, 1995, in an amount equal to:
 - (1) two percent (2%) of the member's average salary upon which member contributions were made not to exceed Forty Thousand Dollars (\$40,000.00), multiplied by the number of the member's years of

credited service authorized and performed prior to July 1, 1995, plus any years of prior service authorized under this title, plus

(2) two percent (2%) of the member's average salary upon which member contributions were made, multiplied by the number of the member's years of credited service authorized and performed after June 30, 1995, or

c. if the member became a member or is eligible to become a member prior to July 1, 1995, and was eligible to elect to have a maximum compensation level in excess of Twenty-five Thousand Dollars (\$25,000.00) and did not elect or elected not to have a maximum compensation level of Forty Thousand Dollars (\$40,000.00) pursuant to paragraph 1 of subsection C of this section or pursuant to subsection E of this section, in an amount equal to:

(1) two percent (2%) of the member's average salary upon which member contributions were made not to exceed Twenty-five Thousand Dollars (\$25,000.00), multiplied by the number of the member's years of credited service authorized and performed prior to July 1, 1995, plus any years of prior service authorized under this title, plus

(2) two percent (2%) of the member's average salary upon which member contributions were made, multiplied by the number of the member's years of credited service authorized and performed after June 30, 1995.

3. Beginning July 1, 1995, a member of the System employed by an entity or institution within The Oklahoma State System of Higher Education as of June 30, 1995, who retires on or after the member's

normal retirement age or whose retirement is because of disability shall receive an annual allowance for life, payable monthly as provided by this paragraph. The maximum compensation level of the member shall be determined based upon the election in effect for the member as of June 30, 1995. No member may change the election with respect to the member's maximum compensation level which is in effect for the member as of June 30, 1995. The allowance for the members specified by this paragraph shall be payable as follows:

a. if, prior to July 1, 1995, the member elected to have a maximum compensation level in excess of Twenty-five Thousand Dollars (\$25,000.00) pursuant to paragraph 1 of subsection C of this section or pursuant to subsection E of this section, or if the member's salary has never exceeded Twenty-five Thousand Dollars (\$25,000.00) prior to July 1, 1995, in an amount equal to:

(1) two percent (2%) of the member's average salary upon which member contributions were made not to exceed Forty Thousand Dollars (\$40,000.00), multiplied by the number of the member's years of credited service authorized and performed prior to July 1, 1995, plus any years of prior service authorized under this title, plus

(2) two percent (2%) of the member's average salary upon which member contributions were made on or after July 1, 1995, but not later than June 30, 1996, not to exceed Forty-four Thousand Dollars (\$44,000.00), multiplied by the number of the member's years of credited service authorized and performed on or after July 1, 1995, but not later than June 30, 1996, plus

(3) two percent (2%) of the member's average salary upon which member contributions were made on or after July 1, 1996, but not later than June 30, 1997, not to exceed Forty-eight Thousand Dollars (\$48,000.00), multiplied by the number of the member's years of credited service authorized and performed on or after July 1, 1996, but not later than June 30, 1997, plus

(4) two percent (2%) of the member's average salary upon which member contributions were made, multiplied by the number of the member's years of credited service authorized and performed after June 30, 1997, or

b. if the member elected to have a maximum compensation level not in excess of Twenty-five Thousand Dollars (\$25,000.00) pursuant to paragraph 1 of subsection C of this section or pursuant to subsection E of this section, in an amount equal to:

(1) two percent (2%) of the member's average salary upon which member contributions were made not to exceed Twenty-five Thousand Dollars (\$25,000.00), multiplied by the number of the member's years of credited service authorized and performed prior to July 1, 1995, plus any years of prior service authorized under this title, plus

(2) two percent (2%) of the member's average salary upon which member contributions were made on or after July 1, 1995, but not later than June 30, 1996, not to exceed Twenty-seven Thousand Five Hundred Dollars (\$27,500.00), multiplied by the number of the member's years of credited service

- authorized and performed on or after July 1, 1995, but not later than June 30, 1996, plus
- (3) two percent (2%) of the member's average salary upon which member contributions were made on or after July 1, 1996, but not later than June 30, 1997, not to exceed Thirty Thousand Dollars (\$30,000.00), multiplied by the number of the member's years of credited service authorized and performed on or after July 1, 1996, but not later than June 30, 1997, plus
- (4) two percent (2%) of the member's average salary upon which member contributions were made, multiplied by the number of the member's years of credited service authorized and performed after June 30, 1997.

4. A member of the System employed by an entity or institution within The Oklahoma State System of Higher Education on or after July 1, 1995, who retires on or after the member's normal retirement age or whose retirement is because of disability shall receive an annual allowance for life, payable monthly in an amount equal to two percent (2%) of the member's average salary upon which member contributions were made, multiplied by the number of years of credited service authorized and performed on or after July 1, 1995.

B. Except as otherwise provided for in this section, the amount contributed by each member to the retirement system shall be:

1. Beginning July 1, 1992, through June 30, 1996, six percent (6%) of the regular annual compensation of members described in paragraphs 2 and 4 of subsection A of this section not in excess of Twenty-five Thousand Dollars (\$25,000.00) and beginning July 1, 1995, through June 30, 1996, six percent (6%) of the maximum compensation level of members described in paragraph 3 of subsection A of this section; and

2. Beginning July 1, 1996, through June 30, 1997, six and one-half percent (6 1/2%) of the regular annual compensation of members described in paragraphs 2 and 4 of subsection A of this section not in excess of Twenty-five Thousand Dollars (\$25,000.00) and beginning July 1, 1996, through June 30, 1997, six and one-half percent (6 1/2%) of the maximum compensation level of members described in paragraph 3 of subsection A of this section; and

3. Beginning July 1, 1997, seven percent (7%) of the regular annual compensation of such member.

C. 1. Prior to July 1, 1995, an active member of the System may elect to have a maximum compensation level of Forty Thousand Dollars (\$40,000.00). Such an election shall be made in writing and filed with the System. Members whose salaries are in excess of Twenty-five Thousand Dollars (\$25,000.00) on the effective date of this act shall file the election with the System prior to January 1, 1988. Members whose salaries exceed Twenty-five Thousand Dollars (\$25,000.00) after the effective date of this act shall file the election when the salary exceeds Twenty-five Thousand Dollars (\$25,000.00). If a member makes such an election, the member shall contribute the following amounts:

- a. beginning July 1, 1992, through June 30, 1993, eleven percent (11%) of the regular annual compensation of such member that is in excess of Twenty-five Thousand Dollars (\$25,000.00) and is not in excess of Forty Thousand Dollars (\$40,000.00),
- b. beginning July 1, 1993, through June 30, 1994, nine percent (9%) of the regular annual compensation of such member that is in excess of Twenty-five Thousand Dollars (\$25,000.00) and is not in excess of Forty Thousand Dollars (\$40,000.00), and
- c. beginning July 1, 1994, through June 30, 1995, eight percent (8%) of the regular annual compensation of

such member that is in excess of Twenty-five Thousand Dollars (\$25,000.00) and is not in excess of Forty Thousand Dollars (\$40,000.00). Except as provided in subsection E of this section, any such election shall be irrevocable.

2. After June 30, 1995, in addition to the amount contributed by each member to the retirement system pursuant to subsection B of this section, the total amount contributed by each member to the retirement system shall include, beginning July 1, 1995, through June 30, 1997, seven percent (7%) of the regular annual compensation of each member described in paragraphs 2 and 4 of subsection A of this section that is in excess of Twenty-five Thousand Dollars (\$25,000.00).

D. For purposes of this act, regular annual compensation shall include:

1. Normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed, such periodic payments shall include payments for staff development or other periodic payments to qualifying employees of the employer;

2. Amounts that would otherwise qualify as salary under paragraph 1 of this subsection but are not received directly by the member pursuant to a good faith, voluntary written salary reduction agreement in order to finance payments to a deferred compensation or tax-sheltered annuity program or to finance benefit options under a cafeteria plan qualifying under the United States Internal Revenue Code, 26 U.S.C., Section 101 et seq.;

3. Group health and disability insurance, group term life insurance, annuities and pension plans, provided on a periodic basis to all qualified employees of the employer, which qualify as fringe benefits under the United States Internal Revenue Code.

Excluded from regular annual compensation are expense payments, allowances, payment for unused vacation and sick leave, any payment made for reason of termination or retirement not specifically provided for in paragraphs 1 through 3 of this subsection, maintenance or other nonmonetary compensation, payment received as an independent contractor or consultant, pursuant to a lawful contract which complies with the requirements of subsection B of Section 6-101.2 of this title, any benefit payments not made pursuant to a valid employment agreement, or any compensation not described in paragraphs 1 through 3 of this subsection.

E. 1. Any member who was a contributing member of the Retirement System between July 1, 1987, and June 30, 1995, who at the time the member was eligible to make an election to increase the maximum compensation level of the member, failed to make an election or chose not to increase the maximum compensation level of the member to Forty Thousand Dollars (\$40,000.00), may elect to make back contributions to the Retirement System. The member shall complete a new election form and file with the Board of Trustees, the form and a payment equaling the difference between the amount contributed at the twenty-five-thousand-dollar level and the appropriate contribution on compensation in excess of Twenty-five Thousand Dollars (\$25,000.00) up to a maximum of Forty Thousand Dollars (\$40,000.00) shall be made prior to the official retirement date of the member. The required payment shall include any contribution required by the employing school district, and shall include interest compounded annually at ten percent (10%) per annum of both employer and employee contributions.

2. Any changes made pursuant to this subsection shall be irrevocable.

F. 1. An individual who withdrew from the Teachers' Retirement System and whose salary was in excess of Seven Thousand Eight Hundred Dollars (\$7,800.00) and had elected to contribute only on

Seven Thousand Eight Hundred Dollars (\$7,800.00) before his withdrawal shall contribute on the earning ceiling as provided for in this section on his reentry into membership in the Teachers' Retirement System.

2. An individual who elected to contribute on a maximum of Seven Thousand Eight Hundred Dollars (\$7,800.00) per annum shall, beginning July 1, 1979, contribute on his earning ceiling as provided for in this section.

3. Any member who elected to contribute on Seven Thousand Eight Hundred Dollars (\$7,800.00) prior to January 1, 1978, and whose salary was more than Seven Thousand Eight Hundred Dollars (\$7,800.00) during the school years 1974-75 through 1978-79 may elect to make back contributions to the retirement system by paying the five percent (5%) contributions on the difference between Seven Thousand Eight Hundred Dollars (\$7,800.00) and the actual salary of the member, not to exceed Ten Thousand Dollars (\$10,000.00) for each applicable school year, plus interest compounded annually at ten percent (10%) per annum. Such payment shall be made prior to the official retirement date of the member.

G. Each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period, the proper percentage of his earnable compensation as provided for in subsection B of this section.

1. Deductions shall begin with the first payroll period of the school year. In determining the amount earnable by a member in a payroll period, the Board of Trustees shall consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from compensation for any period less than a full period, and to facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth of one percent (1/10 of 1%) of the annual

compensation upon the basis of which such deduction is to be made. Prior to January 1, 1991, any active contributing member who joined the System subsequent to July 1, 1943, may pay the normal cost, which shall mean the single sum which would have been paid under existing statutes at the time the service was performed, plus interest, for years of teaching service in Oklahoma from the date of establishment of the System in 1943 to date of membership, in a lump sum, or in installments equal to establishing one (1) year of creditable service. Effective January 1, 1991, any active contributing member who joined the System subsequent to July 1, 1943, may pay the amount determined by the Board of Trustees pursuant to Section 17-116.8 of this title for years of teaching service in Oklahoma from the date of establishment of the System in 1943 to date of membership, in a lump sum, or in installments equal to establishing one (1) year of creditable service. For purposes of this option, teaching service in Oklahoma shall include the teaching of vocational agricultural courses within Oklahoma for the federal government. Years for which contributions are paid shall count as membership service under this plan. A member may receive credit for not more than five (5) years of teaching service rendered while in the Peace Corps or in the public schools of a territory of the United States or the public schools, American Military Dependent Schools or state colleges or state universities outside this state by paying his contributions, plus interest, and membership fees to the retirement system, subject to the regulations of the Board of Trustees, providing he is not receiving and is not eligible to receive retirement credit or benefits from said service in any other public retirement system of this state, or any other state or territory of the United States subject to the following provisions:

- a. the member is required to have two (2) years of employed service teaching earned in Oklahoma for each year of Peace Corps, territorial, out-of-state,

noncovered in-state or military membership credit granted.

- b. prior to January 1, 1991, the out-of-state or noncovered in-state payment shall be the normal cost, which means the single sum which would have been paid under existing law at the time the service was performed, plus interest, on the basis of what his annual salary would have been in Oklahoma or out of state, whichever is greater, had he been employed as a teacher. Effective January 1, 1991, the Peace Corps, territorial, out-of-state or noncovered in-state payment shall be the amount determined by the Board of Trustees pursuant to Section 17-116.8 of this title.

2. In addition to the deductions hereinabove provided for, any member who becomes a member of the Armed Forces of the United States of America during any period of national emergency, including World War II, the Korean conflict, the Vietnam conflict or others as may be determined by the Board of Trustees, or whose entrance into or training for the teaching profession was interrupted by his entrance into the Armed Forces, and who was or shall have become a member of the Teachers' Retirement System shall be granted the privilege of making up his five percent (5%) contributions as provided for in this section until January 1, 1991, for not to exceed five (5) years of service in the Armed Forces by electing to pay said contributions on the basis of the rate of pay in his contract as a teacher at the time his service in the Armed Forces commenced or in the case of a teacher who was not teaching prior to entering the Armed Forces, on the basis of the salary of the first year of teaching after being honorably discharged from the Armed Forces. Effective January 1, 1991, the member will receive such service upon payment of the amount determined by the Board of Trustees pursuant to Section 17-116.8 of this title. Such contributions shall be credited in the

regular manner, and the period for which said contributions were paid shall be counted as creditable years of service and allocated to the period during which the military service was rendered, except that the period for which contributions were paid must have been continuous and shall be credited in the aggregate, regardless of fiscal year limitations.

3. Retirement benefits for all service credits purchased pursuant to this subsection shall be determined in accordance with the provisions of paragraph 2 of this subsection.

H. For those members who joined the System prior to July 1, 1992, the total creditable service of a member who retires or terminates employment and elects a vested benefit shall include not to exceed one hundred twenty (120) days of unused sick leave accumulated subsequent to August 1, 1959. Twenty (20) days of unused sick leave shall equal one (1) month for purposes of creditable service credit. If the member becomes a member or was eligible to become a member prior to July 1, 1995, the year of credit received in this section shall be treated as service earned prior to July 1, 1995. This paragraph shall apply to members retiring or vesting on or after the effective date of this act and shall not be retroactive.

I. Any member who shall be absent from the teaching service because of election to the State Legislature or appointment to the executive branch in an education-related capacity shall be allowed to retain his membership in the Teachers' Retirement System upon payment of the contribution required of other members and employers of said members as provided for in this section and his service credits shall continue to be accumulated during such absence, provided he is not receiving and is not eligible to receive retirement credits or benefits from said service beginning after July 1, 1992, in other public retirement systems.

J. Any member who shall be absent from the teaching service because of election or appointment as a local, state or national education association officer shall be allowed to retain his membership in the Teachers' Retirement System upon payment of the contribution required of other members and employers of said members as provided for in this section and his service credits shall continue to be accumulated during such absence. Provided, however, any one such absence shall not exceed eight (8) continuous years. No member who has less than ten (10) years of contributory service on July 1, 1994, may make this election after June 30, 1994. Members contributing to the System on July 1, 1994, may continue to contribute under this subsection until they have completed eight (8) years allowed by this subsection.

K. A member may receive credit for those years of service accumulated by the member while employed by an entity which is a participating employer in the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System, the Uniform Retirement System for Justices and Judges, the Oklahoma Law Enforcement Retirement System, or the Oklahoma Public Employees Retirement System, if the member is not receiving or eligible to receive retirement credit or benefits from said service in any other public retirement system. A member also may receive credit for those years of service with the Oklahoma Department of Wildlife or with an employer that is a participating employer within one of the state retirement systems specifically referred to in this section when at the time of such service by the member the employer was not such a participating employer, if the member is not receiving or eligible to receive retirement credit or benefits from said service in any other public retirement system. To receive the service credit provided in this subsection, the member shall pay the amount determined by the Board of Trustees pursuant to Section 17-116.8 of this title. For purposes of this subsection, creditable

service transferred from the Oklahoma Public Employees Retirement System shall include service authorized under paragraph (f) of subsection (2) of Section 913 of Title 74 of the Oklahoma Statutes as amended from time to time. Members who retire prior to July 1, 1993, shall have their monthly benefit adjusted to include all services accrued under paragraph (f) of subsection (2) of Section 913 of Title 74 of the Oklahoma Statutes. Provided however, any adjustment of existing retirement benefits caused by reason of inclusion of such service authorized under paragraph (f) of subsection (2) of Section 913 of Title 74 of the Oklahoma Statutes shall not affect any retirement benefit paid prior to July 1, 1993.

L. 1. An active member of the Teachers' Retirement System of Oklahoma may receive credit for those years of service accumulated by the member while a member of the Oklahoma Public Employees Retirement System if:

- a. the member is an active member of the Teachers' Retirement System of Oklahoma, and
- b. the member provides notice to the Oklahoma Public Employees Retirement System and the Teachers' Retirement System of Oklahoma of the member's election to transfer said service credit. The notice shall include a list of the years to be transferred, and
- c. the member is not receiving or eligible to receive retirement credit or benefits from said service in any other public retirement system, notwithstanding the years of service sought to be transferred under this subsection.

Members electing to take advantage of the transfer authorized by this subsection who are receiving or eligible to receive retirement credit or benefits from said service in any other public retirement system shall have all service credit with the Oklahoma Public Employees Retirement System canceled which is not transferred to the

Teachers' Retirement System of Oklahoma or used as a cash offset in such a transfer pursuant to subparagraph d of paragraph 2 of this subsection. Service credit transferred to the Teachers' Retirement System of Oklahoma under this subsection shall also be canceled with the Oklahoma Public Employees Retirement System.

2. For purposes of this subsection, the "sending system" shall mean the Oklahoma Public Employees Retirement System. The "receiving system" shall mean the Teachers' Retirement System of Oklahoma.

a. Within thirty (30) days notification of an intent to transfer is received by the sending system, the sending system shall, according to its own rules and regulations:

(1) for members who have accrued at least eight (8) years of credited service with the sending system, determine the present value of the member's earned benefits attributable to the years of service sought to be transferred, discounted according to the member's age at the time of transfer and computed as of the earliest age at which the member would be able to retire. Said computation shall assume an unreduced benefit and be computed using interest and mortality assumptions consistent with the actuarial assumptions adopted by the Board of Trustees for purposes of preparing the annual actuarial evaluation, but shall not make any projections regarding future salary. For employees who have accrued at least eight (8) years of credited service, the sending system shall use the product of this calculation for purposes of determining the transfer fee to be

paid by the employee under subparagraph c of this paragraph so long as it is greater than the product of the calculation in division (2) of this subparagraph, and

(2) determine the sum of the employee and employer contributions applicable to the years of service sought to be transferred plus interest consistent with the actuarial assumptions adopted by the Board of Trustees for purposes of preparing the annual actuarial evaluation. For all non-vested members, and for members who have accrued at least eight (8) years of credited service, if the product of this calculation is greater than the product of the calculation in division (1) of this subparagraph, the sending system shall use the product of this calculation for purposes of determining the amount to be transferred by the sending system under subparagraph c of this paragraph and any transfer fee to be paid by the member under subparagraph d of this paragraph.

b. Within thirty (30) days notification of an intent to transfer is received by the receiving system, the receiving system shall determine, according to the system's own rules and regulations, the present value of the member's incremental projected benefits discounted according to the member's age at the time of the transfer. Incremental projected benefits shall be the difference between the projected benefit said member would receive without transferring the service credit and the projected benefit after transfer of service credit computed as of the earliest age at which the member would be able to retire. Said

computation shall assume an unreduced benefit and be computed using interest, salary projections and mortality assumptions consistent with the actuarial assumptions adopted by the Board of Trustees for purposes of preparing the annual actuarial evaluation.

c. The sending system shall, within sixty (60) days from the date notification of an intent to transfer is received by the sending system, transfer to the receiving system the amount determined in subparagraph a of this paragraph. Except if the cost as calculated under subparagraph a of this paragraph is greater than the actuarial value of the incremental benefit in the receiving system, as established in subparagraph b of this paragraph, the sending system shall send the receiving system an amount equal to the actuarial value of the incremental projected benefit in the receiving system.

d. In order to receive the credit provided for in paragraph 1 of this subsection, if the cost of the actuarial value of the incremental benefit to the receiving system is greater than the cost as calculated under subparagraph a of this paragraph for the same years of service to the sending system as established in subparagraphs a and b of this paragraph, the employee shall elect to:

(1) pay any difference to receive full credit for the years sought to be transferred, or

(2) receive prorated service credit for only the amount received from the Oklahoma Public Employees Retirement System pursuant to this subsection.

Such an election shall be made in writing, filed with the System prior to receiving the credit provided for in paragraph 1 of this subsection, and shall be irrevocable.

3. Within sixty (60) days of successfully completing all of the requirements for transfer under this subsection, the sending system shall pay the receiving system any amount due under this subsection. Within sixty (60) days of successfully completing all of the requirements for transfer under this subsection, the member shall pay the receiving system any amount due under this subsection. In the event that the member is unable to pay the transfer fee provided for in this subsection by the due date, the Board of Trustees of the receiving system shall permit the member to amortize the transfer fee over a period not to exceed sixty (60) months. Said payments shall be made by payroll deductions unless the Board of Trustees permits an alternate payment source. The amortization shall include interest in an amount not to exceed the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings each year. Any member who ceases to make payment, terminates, retires or dies before completing the payments provided for in this section shall receive prorated service credit for only those payments made, unless the unpaid balance is paid by said member, his or her estate or successor in interest within six (6) months after said member's death, termination of employment or retirement, provided no retirement benefits shall be payable until the unpaid balance is paid, unless said member or beneficiary affirmatively waives the additional six-month period in which to pay the unpaid balance.

4. Years of service transferred pursuant to this subsection shall be used both in determining the member's retirement benefit and in determining the years of service for retirement and/or vesting purposes. ~~Notwithstanding this rule and the provisions of paragraph (24) of Section 17-101 of this title, and Section 17-105~~

~~of this title, and subsection A of this section, the retirement date of the member who makes an election to transfer service credit as provided in this subsection shall not occur unless the member continues to participate as an active contributing member in the Teachers' Retirement System of Oklahoma for at least one (1) full year after the date of the election.~~ Years of service rendered as a member of the Oklahoma Public Employees Retirement System prior to July 1, 1992, if any, shall be deemed to be years of service rendered as a member of the Teachers' Retirement System of Oklahoma prior to July 1, 1992, and shall qualify such person as a member of the Teachers' Retirement System of Oklahoma before July 1, 1992.

5. Notwithstanding the requirements of subsection (5) of Section 917 of Title 74 of the Oklahoma Statutes, members electing to take advantage of the transfer authorized by this subsection who have withdrawn their contributions from the sending system shall remit to the sending system the amount of the accumulated contributions the member has withdrawn plus simple interest of ten percent (10%) per annum prior to making said election or the election shall be deemed invalid and the transfer shall be canceled. If such an election is deemed invalid and the transfer is canceled, the accumulated contribution remitted to the sending system by the member who originally withdrew their contributions shall be returned to the member. The member's rights and obligations regarding any service credit reestablished in the sending system due to a failure to satisfy the requirements of this subsection shall be determined by the sending system in accordance with Section 901 et seq. of Title 74 of the Oklahoma Statutes.

6. If any member fails for any reason to satisfy the requirements of this subsection, the election to transfer service credit shall be void and of no effect, and any service credited as a result of this transfer shall be canceled. If such service is canceled, the years of canceled service credit which were

unsuccessfully transferred to the receiving system from the sending system shall be reestablished in the sending system. The member's rights and obligations regarding any service credit reestablished in the sending system due to a failure to satisfy the requirements of this subsection shall be determined by the sending system in accordance with Section 901 et seq. of Title 74 of the Oklahoma Statutes.

7. The Board of Trustees shall promulgate such rules as are necessary to implement the provisions of this subsection.

M. Any member whose regular annual compensation was not determined as provided for by law may pay the member contribution required pursuant to subsection B of this section on such amount not included in the member's regular annual compensation and receive credit for such amount in the calculation of the member's benefit. The employees must pay the employer contributions required pursuant to Section 17-108.1 of this title. Interest at the rate of ten percent (10%) per annum shall be charged to both employee and employer contributions.

N. Any active member who elected during the 1978-79 school year to pay the difference between five percent (5%) on actual salary not exceeding Ten Thousand Dollars (\$10,000.00) and six percent (6%) on actual salary not exceeding Fifteen Thousand Dollars (\$15,000.00) shall receive credit for one (1) year of credited service upon receipt and approval of a proper request by the Board of Trustees.

O. Effective July 1, 1988, any member who is employed by the Governor, the State Senate, the House of Representatives or the Legislative Service Bureau shall be allowed to elect to retain membership in the Retirement System upon payment of the accrued and current member contributions and employer contributions as provided in subsection B of this section and Section 17-108.1 of this title. Such contributions may be paid on behalf of the member by the employing entity. Upon payment of such contributions, service

credits shall continue to be accumulated during such employment. Accrued contributions shall be paid to the Retirement System by August 1, 1989. Current contributions shall be paid to the Retirement System by the tenth of the following month beginning with the month of July 1989.

SECTION 18. AMENDATORY 74 O.S. 1991, Section 18c, as last amended by Section 194, Chapter 352, O.S.L. 1995 (74 O.S. Supp. 1995, Section 18c), is amended to read as follows:

Section 18c. A. 1. Except as otherwise provided by this subsection, no state officer, board or commission shall have authority to employ or appoint attorneys to advise or represent said officer, board or commission in any matter.

2. The provisions of this subsection shall not apply to the Corporation Commission, the Board of Managers of the State Insurance Fund, the Oklahoma Tax Commission, the Commissioners of the Land Office, the Oklahoma Public Welfare Commission also known as the Commission for Human Services, the Board of Corrections, the Oklahoma Health Care Authority, the Department of Public Safety, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement Commission, the Transportation Commission, the Oklahoma Energy Resources Board, the Department of Central Services, the Oklahoma Merit Protection Commission, the Office of Personnel Management, the Oklahoma Water Resources Board, the Department of Labor and the Office of Juvenile Affairs.

3. The provisions of paragraph 2 of this subsection shall not be construed to authorize the Office of Juvenile Affairs to employ any attorneys that are not specifically authorized by law.

4. All the legal duties of such officer, board or commission shall devolve upon and are hereby vested in the Attorney General; provided that:

- a. the Governor shall have authority to employ special counsel to protect the rights or interest of the state as provided in Section 6 of this title, and
- b. liquidation agents of banks shall have the authority to employ local counsel, with the consent of the Bank Commissioner and the Attorney General and the approval of the district court.

B. At the request of any state officer, board or commission, except the Corporation Commission, the Board of Managers of the State Insurance Fund, Oklahoma Tax Commission and the Commissioners of the Land Office, the Grand River Dam Authority, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement Commission and the Interstate Oil and Gas Compact Commission, the Attorney General shall defend any action in which they may be sued in their official capacity. At the request of any such state officer, board or commission, the Attorney General shall have authority to institute suits in the name of the State of Oklahoma on their relation, if after investigation the Attorney General is convinced there is sufficient legal merit to justify the action.

C. Any officer, board, or commission which has the authority to employ or appoint attorneys may request that the Attorney General defend any action arising pursuant to the provisions of the Governmental Tort Claims Act.

D. Nothing in this section shall be construed to repeal or affect the provisions of the statutes of this state pertaining to attorneys and legal advisors of the several commissions and departments of state specified in subsection B of this section, and all acts and parts of acts pertaining thereto shall be and remain in full force and effect.

SECTION 19. AMENDATORY 74 O.S. 1991, Section 85.7, as last amended by Section 7, Chapter 253, O.S.L. 1995 (74 O.S. Supp. 1995, Section 85.7), is amended to read as follows:

Section 85.7 A. No acquisition or contract shall be made without the submission of competitive bids by the State Purchasing Director, except as provided in this section.

1. Any acquisition or contract for an amount of Two Thousand Five Hundred Dollars (\$2,500.00) or less shall be exempted from competitive bidding procedures. Separate contracts or acquisitions for the individual components of a total project or service or split purchasing for the purpose of evading the requirement of competitive bidding shall be deemed a felony. The State Purchasing Director may waive or increase the two-thousand-five-hundred-dollar limit up to, but not to exceed, a contract or purchase price of ten percent (10%) above the open market limit to perfect an otherwise valid acquisition or contract inadvertently exceeding the two-thousand-five-hundred-dollar limit due to administrative error or unforeseeable circumstances. Requests for such waiver or increase shall be promptly submitted upon the discovery of such error or circumstance to the State Purchasing Director in a form prescribed by said Director setting forth the facts. All requests for such waiver or increase in amount, whether granted or denied, shall be reported monthly to the offices of the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives.

2. Contracts for master custodian banks or trust companies, investment managers and investment consultants for state retirement systems, the State Insurance Fund, and the State and Education Employees Group Insurance Board, the pension fund management consultants of the Oklahoma State Pension Commission, the Commissioners of the Land Office and actuarial, architectural, engineering, legal, or other professional services as such term is defined in Section 803 of Title 18 of the Oklahoma Statutes shall be

exempt from competitive bidding procedures. The Department of Central Services shall send a copy of such contracts or a list of such contracts to any member of the House or Senate Appropriations Committee, if requested by the member.

3. Competitive bids shall not be required for any emergency acquisitions or contracts involving Five Thousand Dollars (\$5,000.00) or less, when, upon written request of the State Purchasing Director specifying the facts and circumstances giving rise thereto, the Governor certifies in writing the existence of an emergency authorizing the acquisition or contract.

4. Competitive bids for services to alleviate a serious environmental emergency shall not be required if, upon the request of the Chairman of the Corporation Commission and after having examined the facts and circumstances of the case, the Governor certifies in writing the existence of a serious environmental emergency. A serious environmental emergency for the purpose of this section means a situation within the jurisdiction of the Commission:

- a. in which serious damage to the environment will quickly occur if immediate action is not taken, and the damage will be so significant that the urgent need for action outweighs the public policy strongly favoring competitive bids, or
- b. a situation in which human life or safety is in imminent danger or significant property interests are threatened with imminent destruction.

5. Purchases or acquisitions for repairs of equipment and machinery in emergencies, or of livestock through a market agency, dealer, commission house, or livestock auction market bonded or licensed under federal or state law shall not be subject to the competitive bid requirements of this section or any other provisions of the Oklahoma Central Purchasing Act.

6. Purchases or acquisitions of human organs and internal prostheses for the Oklahoma Medical Center, shall not be subject to the competitive bid requirements of this section or any other provisions of the Oklahoma Central Purchasing Act.

7. Any contract for the restoration of historical sites and museums shall not be subject to the competitive bid requirements of this section or any other provision of the Oklahoma Central Purchasing Act. The procedures will be followed except contractor and bid selection will be the prerogative of the Oklahoma Historical Society Board and selection will be based on contractors' documented qualifications and experience.

8. Purchases of postage by state agencies shall be made in accordance with the provisions of Sections 90.1 through 90.4 of this title.

9. Any sole source contract shall not be subject to competitive bidding procedures. Any agency requesting products or services pursuant to a sole source contract shall comply with Section 89 of this title.

10. Contracts for the design, development, communication or implementation of the state employees flexible benefits plan shall not be subject to the requirements of this section; provided, that the Flexible Benefits Advisory Council shall use procedures consistent with the competitive bid requirements of the Oklahoma Central Purchasing Act.

11. a. Any contract for a service for which the Department of Central Services has approved as qualifying for a fixed and uniform rate shall not be subject to competitive bid procedures.
- b. The Department of Central Services shall establish criteria and guidelines for those services which may be qualified for a fixed and uniform rate.

- c. The exception to competitive bid procedures authorized by this paragraph shall be limited to contracts for those services furnished to persons directly benefiting from such services and shall not be used by any agency to employ consultants or to purchase products.
- d. Any agency desiring to have a service qualified for a fixed and uniform rate shall make a request for such qualification to the Department of Central Services and shall submit any documentation necessary to support such request. The Department of Central Services shall either approve or deny the request. If the Department of Central Services qualifies such services for a fixed and uniform rate, the agency requesting such qualification shall establish a fixed and uniform rate for such service, provided no contracts shall be entered into by the agency until such rate has been approved by the agency in a public hearing. Prior to approval, the proposed rate shall be clearly and separately identified in the agenda of the agency for the hearing and shall be openly and separately discussed during such hearing. In addition, the agency shall notify the Director of the Department of Central Services of its pending consideration of the proposed rate at least thirty (30) days before the agency is to meet on the proposed rate. Along with such notice, the agency shall deliver to the Department of Central Services a copy of the agenda items concerning the proposed rate with all supporting documentation and materials. The Director of the Department of Central Services shall communicate any observation, reservation, criticism or

recommendation to the agency, either in person at the time of the hearing or in writing delivered to the agency before or at the time of the hearing. The Director of the Department of Central Services shall specifically note in such written communications if the Director of the Department of Central Services has determined the rate to be excessive. Any such written communication presented in the absence of the Director of the Department of Central Services shall be presented orally during the public hearing. Whether made in person or in writing any comment made by the Director of the Department of Central Services shall be made a part of the minutes of the hearing in full.

- e. Within two (2) weeks after the convening of the Legislature, the administrative officer of each state agency shall furnish to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and to any member of the House or Senate, if requested by such member, a complete list of all of the types of services paid for by uniform fixed rates, the amount of the rate last approved by the agency for the service, and the number of contracts then in existence for each type of service. Any rate which has been determined to be excessive by the Director of the Department of Central Services shall be specifically identified in such list.
- f. At any time, the Director of the Department of Central Services is authorized to review, suspend, or terminate a contract entered into pursuant to the provisions of this paragraph if the Director of the Department of Central Services determines the contract is not necessary, is excessive, or is not justified.

12. Purchases of or contracts for specifically prescribed nonmedical adaptive technology-related items for individuals with disabilities who are clients of the Department of Rehabilitation Services and which item is prescribed by a physician, rehabilitation engineer, qualified rehabilitation technician or qualified sensory aids specialist shall not be subject to the competitive bid requirements of this section. The Commission for Rehabilitation Services shall develop standards for the acquisition of such nonmedical adaptive technology-related items and may elect to utilize Central Purchasing when appropriate. Such standards shall foster economy, short response time, and shall include appropriate safeguards and written records to assure appropriate competition and economical and efficient purchasing and shall be approved by the Director of Central Purchasing.

13. Purchases of or contracts for specifically prescribed nonmedical assistive technology-related items not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) for individuals under sixteen (16) years of age who are recipients of Supplemental Security Income and which are prescribed by a physician, qualified sensory aids specialists or qualified special education instructors shall not be subject to the competitive bid requirements. The Department of Human Services shall develop standards for the acquisition of such nonmedical assistive technology-related items and may elect to utilize Central Purchasing when appropriate. Such standards shall foster economy, short response time, and shall include appropriate safeguards and written records to assure appropriate competition and economical and efficient purchasing and shall be approved by the Director of Central Purchasing.

14. a. Structured settlement agreements entered into by the Attorney General's office in order to settle any lawsuit involving the state, the Legislature, any state board, agency, commission, or any employee or

official of the state shall not be subject to the competitive bidding requirements of this section if:

- (1) prior to entering into any contract for the services of an entity to administer a structured settlement agreement, the Attorney General receives proposals from at least three entities engaged in providing such services, and
- (2) the selection of a particular entity is made on the basis of the response to the request which is the most economical and provides the most competent service which furthers the best interests of the state.

b. A list of any such structured settlement agreements entered into by the Attorney General with summary thereon for the previous calendar year shall be submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate on January 31 of each year.

B. Acquisitions or contracts shall be awarded to the lowest and best bidder therefor at a specified time and place, which shall be open to the public, with such preference between bidders offering substantially the same products or services at substantially the same prices, as may be set under the authority of Section 85.5 of this title.

C. Bids for professional service contracts shall be evaluated by the State Purchasing Director and the agency contracting for such service. Both cost and technical expertise shall be considered in determining the lowest and best bid. Further, such agency shall present its evaluation and recommendation to the State Purchasing Director. A documented evaluation report containing the evaluations of the State Purchasing Director and the agency contracting for such

service shall be completed prior to the awarding of a professional service contract and such report shall be a matter of public record.

D. When requested by the governing body of a state retirement system, the State Insurance Fund or the State and Education Employees Group Insurance Board which are authorized to hire investment managers, the Department of Central Services shall assist the governing body of a state retirement system, the Fund or the Board in the process of selecting investment managers. When requested by the Flexible Benefits Advisory Council, the Department of Central Services shall assist the Council in the process of selecting contracts for the design, development, communication or implementation of the state employees flexible benefits plan.

E. Except as otherwise specifically provided by law, the acquisition of food items or food products by a state public agency from a public trust created pursuant to Sections 176 through 180.56 of Title 60 of the Oklahoma Statutes shall comply with competitive bidding procedures pursuant to the provisions of this section.

SECTION 20. AMENDATORY 74 O.S. 1991, Section 500.18, as last amended by Section 10, Chapter 358, O.S.L. 1995 (74 O.S. Supp. 1995, Section 500.18), is amended to read as follows:

Section 500.18 A. Except for members of the Legislature, the Governor and the Lieutenant Governor, provisions of Sections 500.1 through 500.18 of this title shall be mandatory as to all officials and employees of all departments, boards, commissions and institutions of the state, regardless of the provisions of any other act of the Legislature, except as provided by this section. The enactment of any measure in the future providing for travel reimbursement of state officers and employees on the basis of "actual and necessary" expenses or in any other manner inconsistent with Sections 500.1 through 500.18 of this title shall be deemed to provide for reimbursement in accordance with Sections 500.1 through 500.18 of this title unless a contrary intent is explicitly

expressed in this section. Sections 500.1 through 500.18 of this title shall not apply, however, to travel reimbursements made by political subdivisions of this state, except as otherwise provided by law.

B. The agencies listed below are authorized certain exceptions and/or exemptions to the provisions of Sections 500.1 through 500.18 of this title to the extent specified:

1. State Department of Agriculture:

The actual and reasonable expenses of travel and subsistence in pursuing and developing markets for Oklahoma agricultural products incurred by the Commissioner, Deputy Commissioner and such employees designated by the State Board of Agriculture within the marketing development programs of the Department of Agriculture shall be reimbursed to the employee incurring such expenses. Reimbursement of such expenses shall be in accordance with rules and regulations adopted by the Board. Such expenses claimed shall, prior to reimbursement, be reviewed by the Board at each regular meeting and individually approved or disapproved.

2. Wheat Utilization, Research and Market Development Commission:

The actual and reasonable expenses of travel, lodging and subsistence in pursuing and developing markets for Oklahoma wheat and wheat products incurred by the Commission, staff and such persons authorized by the Commission shall be reimbursed to the person incurring such expenses. Expenses of wheat trade officials on wheat trade missions from foreign countries and from other states can be reimbursed to the person previously authorized by the Commission to incur the expense. No actual and reasonable expenses shall be paid except for time spent working with wheat trade officials on wheat trade missions. Reimbursement of such expenses shall be made in accordance with rules and regulations adopted by the Commission. Such expenses claimed shall, prior to

reimbursement, be reviewed by the Commission at each regular meeting and individually approved or disapproved.

3. Department of Public Safety:

Not more than seven personnel assigned by the Commissioner for executive security shall be allowed their actual and necessary traveling expenses, upon claims approved by the Commissioner, when traveling with the Governor or at his request.

4. Department of Corrections:

The Department of Corrections shall be exempt from limitations of reimbursement for rented automobiles, as set forth in Section 500.5 of Title 74 of the Oklahoma Statutes, when such rental is by a Correctional Officer or Transportation Officer for the limited purpose of transporting inmates. Reimbursement for such expense shall be on the basis of actual cost.

5. Oklahoma Tourism and Recreation Department:

Authorization is provided the Oklahoma Tourism and Recreation Commission and Department staff who promote in-state and out-of-state business to Oklahoma's state-operated parks and lodges and the tourism and recreation industry, the actual and necessary expense of travel, subsistence and entertainment for this purpose.

Authorization is also provided the Director of the Oklahoma Tourism and Recreation Department to reimburse the Publisher of Oklahoma Today magazine and its staff for expenses for meals and other entertainment in order to gain advertising and promotion for Oklahoma Today magazine. Reimbursement of all actual and necessary expenses shall be in accordance with rules and regulations adopted by the Commission on Tourism and Recreation.

6. Oklahoma Department of Commerce:

- a. The actual and necessary expenses incurred by the Director and other employees of the Department authorized by the Director for the purpose of business recruitment shall be reimbursed to such employee.

Reimbursement of such expenses shall be in accordance with rules and regulations adopted by the Director of the Oklahoma Department of Commerce. Such expenses claimed shall prior to reimbursement be reviewed by the Director and individually approved or disapproved.

- b. The Department, at the discretion of the Director, may charter aircraft for the purposes of carrying out its duties and responsibilities related to business recruitment and to implement the duties of the Director. The cost of such charter shall be exempt from the provisions of Section 500.6 of this title. Claims filed with the Office of State Finance shall bear the following certification:

The best interests of the citizens of Oklahoma were better served in that conventional ground transportation was not practical or feasible for this trip, aircraft from the Department of Public Safety was not available for this trip, and no other claim has been or will be filed as a payment for the cost of transportation in connection with this trip herein claimed.

7. Office of Public Affairs:

The actual expenses of travel and subsistence incurred by the Director, Assistant Director and any employee approved by the Director of the Office of Public Affairs outside the state in recruiting and evaluating professional money managers for the state's pension funds shall be reimbursed to the employee incurring such expenses. Reimbursement for lodging expenses shall be supported by three telephone bids from hotels within a reasonable distance of the activity for which the travel was approved.

8. Oklahoma Futures:

The actual and necessary expenses incurred by the members of Oklahoma Futures in the performance of their duties shall be reimbursed to the members incurring such expenses. Reimbursement of all actual and necessary expenses shall be in accordance with rules and regulations adopted by Oklahoma Futures.

9. Oklahoma Development Finance Authority:

The actual and necessary expenses incurred by the members and employees of the Oklahoma Development Finance Authority in the performance of their duties shall be reimbursed to the person incurring such expenses. Reimbursement of all actual and necessary expenses shall be in accordance with the bylaws of the Authority.

10. Oklahoma Center for the Advancement of Science and Technology:

The actual and necessary expenses incurred by the members and employees of the Oklahoma Center for the Advancement of Science and Technology in the performance of their duties shall be reimbursed to the person incurring such expenses. Reimbursement of all actual and necessary expenses shall be in accordance with the bylaws of the Center.

11. Center for International Trade Development:

The actual and necessary expenses of travel, lodging and subsistence incurred by the Director and authorized employees of the Center for International Trade Development for performance of their duties for the purpose of business recruitment and assistance shall be reimbursed to the person incurring such expenses. Reimbursement of such expenses shall be in accordance with the rules and regulations adopted by the Director of the Center for International Trade Development. Such expenses claimed shall be reviewed and individually approved or disapproved, prior to reimbursement, first by the Director, and finally by either the Vice President, Business and Finance of Oklahoma State University or the President of Oklahoma State University.

12. Oklahoma State Bureau of Investigation:

The actual and necessary expenses incurred by the Director and other employees of the Bureau authorized by the Director as a result of conducting investigations shall be reimbursed to each such employee incurring the expenses. Reimbursement of the expenses shall be in accordance with rules and regulations adopted by the Director of the Oklahoma State Bureau of Investigation. Prior to reimbursement, expenses claimed shall be reviewed by the Director and individually approved or disapproved.

13. Department of Human Services:

- a. The actual and necessary expenses of travel, lodging and subsistence incurred by employees of the Legal Division in the performance of their duties for the purpose of representing the Department of Human Services or any of its officials, employees, institutions or hospitals at any proceeding, including depositions, held before any court, administrative body or representative thereof, shall be reimbursed to the employee incurring such expenses. Such expenses claimed shall be approved by the General Counsel and the Director of Human Services prior to reimbursement.
- b. The Department, at the discretion of the Director, may charter aircraft when determined by the Director such charter would be more practical or less expensive than normal modes of transportation and when aircraft of the Department of Public Safety are unavailable. The costs of such charter shall be exempt from the provisions of Section 500.6 of this title.

14. Oklahoma Health Care Authority:

The actual and necessary expenses of travel, lodging and subsistence incurred by employees of the Legal Division in the performance of their duties for the purpose of representing the

Authority or any of its officials or employees, at any proceeding, including depositions, held before any court, administrative body or representative thereof, shall be reimbursed to the employee incurring such expenses. Such expenses claimed shall be approved by the Administrator prior to reimbursement.

15. Oklahoma State Bureau of Narcotics and Dangerous Drugs Control:

The actual and necessary expenses incurred by the Director and other employees of the Bureau authorized by the Director as a result of conducting investigations shall be reimbursed to each such employee incurring the expenses. Reimbursement of the expenses shall be in accordance with rules and regulations adopted by the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. Prior to reimbursement, expenses claimed shall be reviewed by the Director and individually approved or disapproved.

16. University Hospitals:

The actual and necessary expenses of travel, lodging and subsistence incurred by employees of the Legal Office in the performance of their duties for the purpose of representing the University Hospitals or any of its officials, employees, institutions or hospitals at any proceeding, including depositions, held before any court, administrative body or representative thereof, shall be reimbursed to the employee incurring such expenses. Such expenses claimed shall be approved by the Chief Executive Officer of the University Hospitals or by the University Hospitals Authority.

17. Oklahoma Historical Society:

The actual and necessary expenses of travel, subsistence and entertainment incurred by the Executive Director, Deputy Director and any employees designated by the Executive Committee of the Oklahoma Historical Society Board of Directors in pursuing and developing programs and projects for the preservation and marketing

of Oklahoma history shall be reimbursed to the person incurring the expenses. Reimbursement of expenses shall be in accordance with rules adopted by the Oklahoma Historical Society Board of Directors. Prior to reimbursement, expenses claimed shall be reviewed by the Executive Committee at a regularly scheduled meeting and each claim shall be individually approved or disapproved.

18. The Oklahoma Department of Mines:

The actual and necessary expenses of travel, lodging and subsistence incurred by employees of the Department in the performance of their duties for the purpose of representing the Department or any of its officials or employees, at any proceeding, hearing or meeting with federal agencies, boards, commissions, congressional representatives, congressional committees or staff, shall be reimbursed to the employee incurring such expenses. Such expenses claimed shall be approved by the executive Director prior to reimbursement.

19. The Office of Attorney General:

The actual and necessary expenses of travel, lodging and subsistence incurred by its employees in the performance of their duties for the purpose of representing the state, the Legislature, any state board, agency or commission, or any employee or official of the state entitled to representation, at any proceeding, including depositions, held before any court, administrative body or any representative thereof, shall be reimbursed to the employee incurring the expenses. The expenses shall be approved by the Attorney General prior to reimbursement.

20. District Attorneys Council:

The actual and necessary expenses incurred by each district attorney and other employees of the district attorney authorized by the district attorney as a result of conducting investigations shall be reimbursed to each employee incurring the expenses. Reimbursement of the expenses shall be in accordance with rules

adopted by the District Attorneys Council. Prior to reimbursement, expenses claimed shall be reviewed by the Council and individually approved or disapproved.

C. The agencies listed in subsection B of this section shall be required to report annually the actual expenses excepted or exempted from Sections 500.1 through 500.18 of this title to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. The report shall be submitted no later than the first day of September following the end of each fiscal year.

SECTION 21. AMENDATORY 74 O.S. 1991, Section 840.20, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 15, Chapter 310, O.S.L. 1995 (74 O.S. Supp. 1995, Section 840-4.13), is amended to read as follows:

Section 840-4.13 A. Based upon the results of competitive entrance examinations and registers, as provided by the Oklahoma Personnel Act, the Administrator of the Office of Personnel Management shall certify to the appointing authority the names of the ten persons receiving the highest grade or score in said examinations plus all eligible applicants whose grade or score is tied with the lowest ranking of those so eligible. The Administrator of the Office of Personnel Management is authorized to implement a pilot project which will allow agencies to make appointments from broad band certificates issued by the Administrator. The pilot project shall include no more than twenty (20) classes and will begin no earlier than January 1, 1996, and end July 1, 1997. During the pilot project, the Administrator may implement a variety of broad band certification methods that certify to appointing authorities no fewer names for appointment than they otherwise receive. The Administrator shall consult with employing agencies prior to implementing broad band certification for a

specific class and shall notify eligibles for a specific class subject to the pilot project.

B. In addition to establishing statewide registers pursuant to subsection A of this section, the Administrator is hereby authorized to promulgate rules creating a local register to fill a vacancy in a local office of an agency by providing a certificate of available names of eligible persons who are residents of the county where the local office is located or said county and adjacent counties or a group of contiguous counties comprising a service area of an agency. Available eligible residents shall be certified ahead of other available eligible persons who reside outside the area of the local register. In filling vacant positions, the appointing authority shall select any one of the persons whose names have been so certified and may give preference in all cases to persons who have resided in this state for at least one (1) year prior to the date of the examination. Provided, however, that any appointing authority authorized to employ persons who are not citizens of the United States, pursuant to Section 255 of this title, may request the Office to certify only the names of persons who are citizens of the United States in carrying out the provisions of this section; and such appointing authority may select any person so certified to the Administrator to fill such vacant positions even though a noncitizen may have received a higher grade on the examination. Provided, further, that any appointing authority may select special disabled veterans considered for employment pursuant to Sections 401 through 404 of Title 72 of the Oklahoma Statutes. The Department of Public Safety, in filling vacancies for Highway Patrol Cadets, may disqualify any eligible whose name has been certified for Highway Patrol Cadet pursuant to subsection A of this section, if the Department of Public Safety considers the eligible in connection with the hiring of three other eligibles pursuant to subsection A of this section from that certificate. The name of such disqualified

eligible shall be omitted from future certification to, and consideration by, the Department of Public Safety for appointment as a Highway Patrol Cadet. Such disqualification shall not deprive any person of any preference pursuant to paragraph 3 of subsection A of Section 840-4.14 of this title. The Department of Public Safety shall provide written notice of the disqualification to the Office of Personnel Management.

C. Every person, except for agents employed by the Alcoholic Beverage Laws Enforcement Commission who shall be appointed for probationary periods of one (1) year, upon initial appointment under the classified service, shall be appointed for a probationary period of six (6) months, except that the appointing authority may extend a probationary period, not to exceed a total of nine (9) months for an individual, provided, however, that the employee and the Administrator of the Office of Personnel Management shall be notified in writing as to such action and the reason therefor. The probationary appointment of any person may be terminated at any time during the probationary period without the right of appeal. At the close of the probationary period, as herein provided, said person shall acquire a permanent status under the conditions prescribed in the Oklahoma Personnel Act.

SECTION 22. AMENDATORY 74 O.S. 1991, Section 840.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 13, Chapter 328, O.S.L. 1995 (74 O.S. Supp. 1995, Section 840-5.5), is amended to read as follows:

Section 840-5.5 A. The following offices, positions, and personnel shall be in the unclassified service and shall not be placed under the classified service:

1. Persons chosen by popular vote or appointment to fill an elective office, and their employees, except the employees of the Corporation Commission, the State Department of Education and the Department of Labor;

2. Members of boards and commissions, and heads of agencies; also one principal assistant or deputy and one executive secretary for each state agency;

3. All judges, elected or appointed, and their employees;

4. Persons employed with one-time, limited duration, federal or other grant funding that is not continuing or indefinitely renewable. The length of the unclassified employment shall not exceed the period of time for which that specific federal funding is provided. Provided any person unclassified pursuant to this paragraph on the effective date of this act in a capacity that does not meet the criteria listed in this paragraph may continue to be employed in such status until July 1, 1995;

5. All officers and employees of The Oklahoma State System of Higher Education, State Board of Education and State Department of Vocational and Technical Education;

6. Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the Legislature or a committee thereof or by authority of the Governor. These appointments and authorizations shall terminate on the first day of the regular legislative session immediately following the appointment, if not terminated earlier. However, nothing in this paragraph shall prevent the reauthorization and reappointment of any such person;

7. Election officials and employees;

8. Temporary employees employed to work less than one thousand (1,000) hours in any twelve-month period. This category of employees may include persons employed on an intermittent, provisional, seasonal, temporary or emergency basis;

9. Temporary lake patrol officers, regardless of the number of hours worked, who are employed by the Department of Public Safety during the period March 16 through October 31 in any calendar year; provided, the hours worked shall be considered in determining the

temporary employee's eligibility for subsequent employment in any other unclassified temporary employment category;

10. Professional trainees only during the prescribed length of their course of training or extension study;

11. Students who are employed on a part-time basis, which shall be seventy-five percent (75%) of a normal forty-hour work week or thirty (30) hours per week, or less, or on a full-time basis if the employment is pursuant to a cooperative education program such as that provided for under Title I IV-D of the Higher Education Act of 1965 (20 U.S.C. 1087a-1087c), as amended, and who are regularly enrolled in:

- a. an institution of higher learning within The Oklahoma State System of Higher Education,
- b. an institution of higher learning qualified to become coordinated with said State System of Higher Education. For purposes of this act a student shall be considered a regularly enrolled student if he or she is enrolled in a minimum of five (5) hours of accredited graduate courses or a minimum of ten (10) hours of accredited undergraduate courses, provided, however, the student shall only be required to be enrolled in a minimum of six (6) hours of accredited undergraduate courses during the summer, and such student is regularly attending classes during that semester of employment, or
- c. high school students regularly enrolled in a high school in Oklahoma and regularly attending classes during such time of enrollment;

12. The spouses of personnel who are employed on a part-time basis to assist or work as a relief for their spouses in the Oklahoma Tourism and Recreation Department;

13. Service substitute attendants who are needed to replace museum and site attendants who are unavoidably absent. Service substitutes may work as part-time or full-time relief for absentees for a period of not more than four (4) weeks per year in the Oklahoma Historical Society sites and museums; such substitutes will not count towards the agency's Full-Time-Equivalent Employee Limit;

14. Employees of either the House of Representatives or the State Senate or the Legislative Service Bureau;

15. Corporation Commission personnel occupying the following offices and positions:

- a. Administrative aides, and executive secretaries to the Commissioners,
- b. Directors of all the divisions, personnel managers and comptrollers,
- c. General Counsel,
- d. Public Utility Division Chief Engineer,
- e. Public Utility Division Chief Accountant,
- f. Public Utility Division Chief Economist,
- g. Public Utility Division Deputy Director, and
- h. Secretary of the Commission;

16. At the option of the employing agency, the Supervisor, Director, or Educational Coordinator in any other state agency having a primary responsibility to coordinate educational programs operated for children in state institutions;

17. Bill Willis Community Mental Health Center personnel occupying the following offices and positions:

- a. Director of Facility,
- b. Deputy Director for Administration,
- c. Clinical Services Director,
- d. Executive Secretary to Director, and
- e. Directors or Heads of Departments or Services;

18. Office of State Finance personnel occupying the following offices and positions:

- a. State Comptroller,
- b. Information Services Divisions Manager,
- c. Network Manager, and
- d. Network Technician;

19. Employees of the Oklahoma Development Finance Authority;

20. Those positions so specified in the annual business plan of the Department of Commerce;

21. Those positions so specified in the annual business plan of the Oklahoma Center for the Advancement of Science and Technology;

22. The following positions and employees of the Oklahoma School of Science and Mathematics:

- a. positions for which the annual salary is Twenty-four Thousand One Hundred Ninety-three Dollars (\$24,193.00) or more, as determined by the Office of Personnel Management, provided no position shall become unclassified because of any change in salary or grade while it is occupied by a classified employee,
- b. positions requiring certification by the State Department of Education, and
- c. positions and employees authorized to be in the unclassified service of the state elsewhere in this section or in subsection B of this section;

23. The Carl Albert Internship Program Coordinator within the Office of Personnel Management;

24. Department of Labor personnel occupying the following offices and positions:

- a. Deputy Commissioner,
- b. Executive Secretary to the Commissioner,
- c. Chief of Staff, and
- d. Administrative Assistant, Legal;

25. The State Bond Advisor and his employees;

26. The Oklahoma Employment Security Commission employees occupying the following positions:

- a. Associate Director,
- b. Secretary to the Associate Director, and
- c. Assistant to the Executive Director;

27. Oklahoma Human Rights Commission personnel occupying the position of Administrative Assistant;

28. The officers and employees of the State Banking Department;

29. Officers and employees of the University Hospitals Authority except personnel in the state classified service pursuant to Section 3211 of Title 63 of the Oklahoma Statutes and members of the University Hospitals Authority Model Personnel System created pursuant to subsection E of Section 3211 of Title 63 of the Oklahoma Statutes;

30. Alcoholic Beverage Laws Enforcement Commission employees occupying the three Administrative Service Assistant positions;

31. The Oklahoma State Bureau of Investigation employee occupying the Special Investigator position and one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection; ~~and~~

32. The Governor's Representative of the Oklahoma Highway Safety Office of the Oklahoma Department of Public Safety who shall be appointed by the Governor;

33. Oklahoma Department of Transportation employee occupying the position of the Director of the Oklahoma Aeronautics Commission;

34. One Director and one Assistant Director of the Investments Division of the Commissioners of the Land Office;

35. Within the Bureau of Narcotics and Dangerous Drugs Control Commission, the following positions:

- a. two Narcotics Agent positions, provided, authorization for such positions shall be terminated when federal

support for the positions by the Gang Intelligence/Enforcement Program is discontinued, and

- b. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;

36. A maximum of one hundred (100) positions, within full-time-employee limitations of the Oklahoma Military Department, to work in any of the Department of Defense directed youth programs or the State of Oklahoma Juvenile Justice Youth Programs. The authorization for such positions shall be terminated if the federal funding for the positions is discontinued;

37. Within the Commission on Children and Youth the following unclassified positions:

- a. one Juvenile Justice Planner and one Oversight Specialist, provided authorization for the positions shall be terminated when federal support for the positions by the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention Program is discontinued,
- b. one State Plan Grant Coordinator, provided authorization for the position shall be terminated when federal support for the position by the United States Department of Education Early Intervention Program is discontinued, and
- c. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;

38. The following positions and employees of the Department of Central Services:

- a. one Executive Secretary in addition to the Executive Secretary authorized by paragraph 2 of this subsection,
- b. the Director of Central Purchasing, and
- c. one Alternate Fuels Administrator; and

39. One Environmental Specialist I within the Water Resources Board.

B. ~~The unclassified service of the state may include, at the discretion of~~ If an agency has the authority to employ personnel in the following offices and positions, the appointing authority, ~~the following regular offices, positions and shall have the discretion to appoint personnel to the unclassified service:~~

1. Licensed medical doctors, osteopathic physicians, dentists, and psychologists;
2. Certified public accountants;
3. Licensed attorneys; and
4. Licensed veterinarians.

C. Effective July 1, 1996, authorization for unclassified offices, positions, or personnel contained in a bill or joint resolution shall terminate June 30 of the ensuing fiscal year after the authorization unless the authorization is codified in the Oklahoma Statutes or the termination is otherwise provided in the legislation.

SECTION 23. AMENDATORY 74 O.S. 1991, Section 913, as last amended by Section 2, Chapter 329, O.S.L. 1995 (74 O.S. Supp. 1995, Section 913), is amended to read as follows:

Section 913. A. Prior service shall be credited as follows:

1. A member shall receive full credit for employment with any participating employer prior to the entry date of his employer whether or not continuous and whether or not he was employed with a participating employer on such entry date, provided that any member who has retired before the passage of this act shall not receive retirement benefits retroactively for such prior service. Provided, that at such time that an employer becomes a participating employer on or after January 1, 1965, and before January 1, 1975, each member and each retirant, upon making proper written application therefor, shall receive prior service credit for service with such employer in

the same manner as if such participating employer had been a participating employer on the date first eligible to become a participating employer; and increased benefits attributable to such increased prior service credit shall commence with the next monthly benefit payment due following receipt and approval of such application by the Board of Trustees. No prior service shall be granted, however, for periods of service in which the employee made contributions which he subsequently withdrew, unless he has complied with the provisions of subsection (5) of Section 917 of this title. The burden of proof regarding prior service shall be with the member and shall be documented in such manner as the Board may direct;

2. Any member who was employed in an institution of higher learning by a State Board of Regents or who was employed by an Oklahoma school district prior to July 1, 1943, may receive prior service credit under this act for the period of time they were so employed;

3. Any member who served in the Armed Forces of the United States, as defined in paragraph 23 of Section 902 of this title, prior to membership in the Oklahoma Public Employees Retirement System shall be granted prior service credit, not to exceed five (5) years, for those periods of active military service during which he was a war veteran. Such prior military service credit shall not apply to any person receiving military retirement benefits other than service-connected disability benefits established by either the military service or the Veterans Administration;

4. An elective state, county, city or town official who is ineligible for membership as a result of any applicable state law or constitutional provision making him ineligible solely because of his being such an official at the time of his eligibility for membership at the time his employer becomes a participating employer shall nevertheless not forfeit the prior service credit to which he would be entitled except for such ineligibility, provided that he either

- a. becomes an employee of a participating employer within four (4) calendar months of the expiration of his term of office current at the time of his eligibility except for his being an elective state or county official, or
- b. within a period of four (4) years after the expiration of his term of office current at the time of his eligibility except for his being an elective state or county official, is elected as a state or county official and thereupon becomes a member of the System, or
- c. has completed ten (10) years of credited service as of the date of his eligibility for membership except for is being an elective state or county official;

5. Beginning July 1, 1965, all employees of the Department of Human Services shall participate in the Oklahoma Public Employees Retirement System to the same extent as other employees of participating employers in such System. Provided, that any employee performing teaching services in the Oklahoma School for the Deaf or the Oklahoma School for the Blind may elect to participate in the Teachers' Retirement System of Oklahoma in lieu of the Oklahoma Public Employees Retirement System; and any other employee at each such institution or any other institution under the jurisdiction of the Oklahoma Department of Human Services, participating in the Teachers' Retirement System of Oklahoma, may elect to continue to participate in such system in lieu of the Oklahoma Public Employees Retirement System. All employees who shall have participated in the Teachers' Retirement System of Oklahoma and not continuing therein shall have the right to withdraw their membership from the Teachers' Retirement System of Oklahoma on the same terms as other members withdrawing from such System before retirement. Provided, all persons employed at the Oklahoma School for the Blind and Oklahoma

School for the Deaf on June 30, 1965, who became subject to the Oklahoma Public Employees Retirement System, on July 1, 1965, shall receive credit for prior service and be eligible for participation, regardless of age;

6. A member employed as a temporary employee by the Legislative Service Bureau or its predecessors, the State Senate or the House of Representatives for the full duration of a regular legislative session prior to the member's eligibility for membership in the System shall receive six (6) months of prior service credit for each such full regular legislative session if the employee is employed by the Legislative Service Bureau or its predecessors, the State Senate or the House of Representatives as either a full-time or temporary employee for a minimum of six (6) full regular legislative sessions beginning January 1, 1983. For purposes of this subsection, the determination of whether an employee is employed for the full duration of a regular legislative session shall be made by the Legislative Service Bureau if such employee is employed by the Legislative Service Bureau, the State Senate if such employee is employed by the State Senate, or by the House of Representatives if such employee is employed by the House of Representatives;

7. A member of the System shall receive prior service credit for any years of service after January 1, 1975, the member had with a participating employer if the member is not receiving or eligible to receive such prior service credit for the same time in any other state or county retirement system authorized by law. To receive the service credit, the member shall pay the amount determined by the Board pursuant to Section 913.5 of this title.

B. Participating service shall be credited as follows:

1. A member shall receive credit for participating service with a participating employer in accordance with the rules and regulations established by the Board; provided, however, that a

member who is not a full-time employee shall receive prorated credit for actual hours worked;

2. Leaves of absence shall not count as a break in continuous employment provided the member leaves his accumulated contribution on deposit with the fund; however, the leaves of absence shall not be credited except that involuntary furloughs established by Office of Personnel Management rules shall be credited;

3. Any member who has served in the Armed Forces of the United States, as defined in paragraph 23 of Section 902 of this title, shall be granted participating service for those periods of active military service during which he was a war veteran provided this service is immediately preceded by a period of employment with a participating employer and is followed by return to employment as an employee with the same or another participating employer within ninety (90) days immediately following discharge from such military service provided the member leaves his accumulated contributions on deposit with the fund;

4. A period of total disability under the System immediately followed by employment with a participating employer, shall not count as a break in continuous employment; provided, that such periods while not employed shall not be credited except that involuntary furloughs established by Office of Personnel Management Rule 6.13, shall be credited;

5. Termination of employment with a participating employer followed by employment with the same or another participating employer within four (4) calendar months shall not constitute a break in continuous employment; provided, that such period while not employed shall not be credited as participating service;

6. Provided, however, that all employee contributions required by this act made by employees prior to June 30, 1977, will entitle the employee to additional years of participating service in accordance with the following schedule.

Employee accumulated contributions:

More than \$1.00 up to \$500 = 1 year participating service
More than \$500 up to \$1,000 = 2 years participating service
More than \$1,000 up to \$1,500 = 3 years participating service
More than \$1,500 up to \$2,000 = 4 years participating service
More than \$2,000 = 5 years participating service

In no event shall the employee be entitled to more than five (5) additional years of participating service as provided hereunder.

Provided further, that upon termination of employment prior to retirement, the accumulated contributions will be credited as above indicated to establish a vested benefit if so elected by any such employee;

7. The total participating service credit of a member who retires or terminates employment and elects a vested benefit shall include not to exceed one hundred thirty (130) days of unused sick leave accumulated subsequent to August 1, 1959, during the member's employment with any participating employer. Such credit shall be added in terms of whole months. Twenty (20) days of unused sick leave shall equal one (1) month for purposes of participating service credit. ~~The~~ If unused sick leave entitles a member to an additional year of service credit, the member's employer shall reimburse the System for the cost of funding the additional reserve. Each participating employer shall provide the System with adequate and timely information necessary to determine additional benefits and its cost under this paragraph. This paragraph shall apply to members retiring or vesting on or after July 1, 1984, ~~and shall not be retroactive.~~

C. In determining the ~~eligibility for retirement or vesting purposes only~~ number of years of credited service, a fractional year of six (6) months or more shall be considered as one (1) year, and less than six (6) months shall be disregarded.

D. A member may receive credit for those years of credited service accumulated by the member while a member of the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System, the Uniform Retirement System for Justices and Judges, the Oklahoma Law Enforcement Retirement System, or the Teachers' Retirement System of Oklahoma, if the member is not receiving or eligible to receive retirement credit or benefits from said service in any other public retirement system. To receive the service credit, the member shall pay the amount determined by the Board pursuant to Section 913.5 of this title.

E. A member may receive credit for those years of service accumulated by the member as an elected official if the member is not receiving or eligible to receive retirement credit or benefits from said service in any public retirement system. Prior to January 1, 1991, to receive the service credit, the member shall pay to the Board for each year of service purchased pursuant to this subsection a sum equal to the employee and employer contribution rate that would have been applicable to the member as determined by the Board and interest of not to exceed five percent (5%), and effective January 1, 1991, to receive the service credit, the member shall pay the amount determined by the Board pursuant to Section 913.5 of this title.

F. 1. An active member of the Oklahoma Public Employees Retirement System may receive credit for those years of service accumulated by the member while a member of the Teachers' Retirement System of Oklahoma if:

- a. the member is an active member of the Oklahoma Public Employees Retirement System, and
- b. the member provides notice to the Teachers' Retirement System of Oklahoma and the Oklahoma Public Employees Retirement System of the member's election to transfer

said retirement credit. The notice shall include a list of the years to be transferred, and

- c. the member is not receiving or eligible to receive retirement credit or benefits from said service in any other public retirement system, notwithstanding the years of service sought to be transferred under this subsection.

Members electing to take advantage of the transfer authorized by this subsection who are receiving or eligible to receive retirement credit or benefits from said service in any other public retirement system shall have all service credit with the Teachers' Retirement System of Oklahoma canceled which is not transferred to the Oklahoma Public Employees Retirement System or used as a cash offset in such a transfer pursuant to subparagraph d of paragraph 2 of this subsection. Service credit transferred to the Teachers' Retirement System of Oklahoma under this subsection shall also be cancelled with the Oklahoma Public Employees Retirement System.

2. For purposes of this subsection, the "sending system" shall mean the Teachers' Retirement System of Oklahoma. The "receiving system" shall mean the Oklahoma Public Employees Retirement System.

- a. Within thirty (30) days notification of an intent to transfer is received by the sending system, the sending system shall, according to its own rules and regulations:

- (1) for members who have vested with the sending system, determine the present value of the member's earned benefits attributable to the years of service sought to be transferred, discounted according to the member's age at the time of transfer and computed as of the earliest age at which the member would be able to retire. Said computation shall assume an unreduced

benefit and be computed using interest and mortality assumptions consistent with the actuarial assumptions adopted by the Board of Trustees for purposes of preparing the annual actuarial evaluation but shall not make any projections regarding future salary. For vested employees the sending system shall use the product of this calculation for purposes of determining the transfer fee to be paid by the employee under subparagraph c of this paragraph so long as it is greater than the product of the calculation in division (1) of this subparagraph, and

- (2) determine the sum of the employee and employer contributions applicable to the years of service sought to be transferred plus interest consistent with the actuarial assumptions adopted by the Board of Trustees for purposes of preparing the annual actuarial evaluation. For all non-vested members, and for vested members if the product of this calculation is greater than the product of the calculation in division (1) of this subparagraph, the sending system shall use the product of this calculation for purposes of determining the amount to be transferred by the sending system under subparagraph c of this paragraph and any transfer fee to be paid by the members under subparagraph d of this paragraph.

- b. Within thirty (30) days notification of an intent to transfer is received by the receiving system, the receiving system shall determine, according to the system's own rules and regulations, the present value

of the member's incremental projected benefits discounted according to the member's age at the time of the transfer. Incremental projected benefits shall be the difference between the projected benefit said member would receive without transferring the service credit and the projected benefit after transfer of service credit computed as of the earliest age at which the member would be able to retire. Said computation shall assume an unreduced benefit and be computed using interest, salary projections and mortality assumptions consistent with the actuarial assumptions adopted by the Board of Trustees for purposes of preparing the annual actuarial evaluation.

- c. The sending system shall, within sixty (60) days from the date notification of an intent to transfer is received by the sending system, transfer to the receiving system the amount determined in subparagraph a of this paragraph. Except, if the cost under subparagraph a of this paragraph for the same years of service to the sending system is greater than the actuarial value of the incremental benefit in the receiving system, as established in subparagraph b of this paragraph, the sending system shall send the receiving system an amount equal to the actuarial value of the incremental projected benefit in the receiving system.
- d. In order to receive the credit provided for in paragraph 1 of this subsection, if the cost of the actuarial value of the incremental benefit to the receiving system is greater than the cost as calculated under subparagraph a of this paragraph for the same years of service to the sending system as

established in subparagraphs a and b of this paragraph, the employee shall elect to:

- (1) pay any difference to receive full credit for the years sought to be transferred, or
- (2) receive prorated service credit for only the amount received from the Teachers' Retirement System of Oklahoma pursuant to this subsection.

Such an election shall be made in writing, filed with the System prior to receiving the credit provided for in paragraph 1 of this subsection, and shall be irrevocable.

3. Within sixty (60) days of successfully completing all of the requirements for transfer under this subsection, the sending system shall pay the receiving system any amount due under this subsection. Within sixty (60) days of successfully completing all of the requirements for transfer under this subsection, the member shall pay the receiving system any amount due under this subsection. In the event that the member is unable to pay the transfer fee provided for in this subsection by the due date, the Board of Trustees of the receiving system shall permit the member to amortize the transfer fee over a period not to exceed sixty (60) months. Said payments shall be made by payroll deductions unless the Board of Trustees permits an alternate payment source. The amortization shall include interest in an amount not to exceed the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings each year. Any member who ceases to make payment, terminates, retires or dies before completing the payments provided for in this section shall receive prorated service credit for only those payments made, unless the unpaid balance is paid by said member, his or her estate or successor in interest within six (6) months after said member's death, termination of employment or retirement, provided no retirement benefits shall be payable until the unpaid balance is

paid, unless said member or beneficiary affirmatively waives the additional six-month period in which to pay the unpaid balance.

4. Years of service transferred pursuant to this subsection shall be used both in determining the member's retirement benefit and in determining the years of service for retirement and/or vesting purposes. Years of service rendered as a member of the Teachers' Retirement System of Oklahoma prior to July 1, 1992, if any, shall be deemed to be years of service rendered as a member of the Oklahoma Public Employees Retirement System prior to July 1, 1992, and shall qualify such person as a member of the Oklahoma Public Employees Retirement System before July 1, 1992.

5. Notwithstanding the requirements of Section 17-104 of Title 70 of the Oklahoma Statutes, members electing to take advantage of the transfer authorized by this subsection who have withdrawn their contributions from the sending system shall remit to the sending system the amount of the accumulated contributions the member has withdrawn plus simple interest of ten percent (10%) per annum prior to making said election or the election shall be deemed invalid and the transfer shall be canceled. If such an election is deemed invalid and the transfer is canceled, the accumulated contribution remitted to the sending system by the member who originally withdrew their contributions shall be returned to the member. The member's rights and obligations regarding any service credit reestablished in the sending system due to a failure to satisfy the requirements of this subsection shall be determined by the sending system in accordance with Section 17-101 et seq. of Title 70 of the Oklahoma Statutes.

6. If any member fails for any reason to satisfy the requirements of this subsection, the election to transfer retirement credit shall be void and of no effect, and any retirement credited as a result of this transfer shall be canceled. If such retirement credit is canceled, the years of canceled retirement credit which

were unsuccessfully transferred to the receiving system from the sending system shall be reestablished in the sending system. The member's rights and obligations regarding any retirement credit reestablished in the sending system due to a failure to satisfy the requirements of this subsection shall be determined by the sending in accordance with Section 17-101 et seq. of Title 70 of the Oklahoma Statutes.

7. The Board of Trustees shall promulgate such rules as are necessary to implement the provisions of this subsection.

SECTION 24. AMENDATORY 85 O.S. 1991, Section 2b, as amended by Section 14, Chapter 328, O.S.L. 1995 (85 O.S. Supp. 1995, Section 2b), is amended to read as follows:

Section 2b. A. All public entities of this state, their agencies and instrumentalities, authorities and public trusts of which they are beneficiaries shall provide workers' compensation to their employees and elected officials engaged in either governmental or proprietary functions in accordance with this section. ~~Such provision of compensation~~ Compensation or indemnification for compensation shall be paid ~~for~~ out of the funds of such public entities.

B. 1. ~~The~~ Except as otherwise provided, the state and all its institutions of higher education, departments, instrumentalities, institutions and public trusts of which they are beneficiaries shall insure against ~~their~~ liability for workers' compensation with the State Insurance Fund and shall not insure with any other insurance carrier unless the State Insurance Fund refuses to accept the risk when the application for insurance is made, or unless specifically authorized by law.

2. The state and all its institutions of higher education except comprehensive universities, departments, instrumentalities, institutions, and public trusts of which ~~they are beneficiaries~~ the state is a beneficiary may self-insure under rules ~~and regulations~~

promulgated by the State Insurance Fund. ~~Such self-insurance~~ Self-insurance administration may only be obtained through the State Insurance Fund. The state and all its institutions of higher education except comprehensive universities, departments, instrumentalities, institutions, and public trusts so electing to self-insure shall pay premiums ~~quoted~~ set by the State Insurance Fund. The State Insurance Fund shall collect ~~said~~ premiums, pay ~~all~~ claims and provide for excess insurance. All dividends or profits accumulating from ~~such~~ a self-insurance program shall be refunded to the participants on a formula devised by the State Insurance Fund.

~~2.~~ 3. All counties, cities and towns, their instrumentalities and public trusts of which they are beneficiaries shall insure against their liability for workers' compensation with the State Insurance Fund; or through any combination of the following may:

- a. self-insure and make any appropriation of funds to cover their risk,
- b. secure reinsurance or excess insurance over and above a self-insurance retention in any manner authorized by subsections B and C of Section 167 of Title 51 of the Oklahoma Statutes,
- c. secure compensation for their employees in the manner provided in the Political Subdivision Tort Claims Act, subsection C of Section 167 of the Oklahoma Statutes, or
- d. insure with other insurance carriers licensed in the State of Oklahoma.

As used in this section, "city" or "town" includes any public trust or authority of which the city or town is beneficiary.

~~3.~~ 4. Boards of education, their instrumentalities and public trusts of which they are beneficiaries shall insure against their liability for workers' compensation with the State Insurance Fund; or through any combination of the following may:

- a. self-insure and make any appropriation of funds to cover their risk,
- b. secure reinsurance or excess insurance over and above a self-insured retention in any manner authorized by subsection B of Section 168 of Title 51 of the Oklahoma Statutes, or
- c. insure with other insurance carriers licensed in the State of Oklahoma.

5. Comprehensive universities shall insure against their liability for workers' compensation with the State Insurance Fund; or if it can be demonstrated to the Board of Regents of the comprehensive university prior to the inception date of a workers' compensation policy that the policy will result in a lower cost than one with the State Insurance Fund, the comprehensive university may insure through any combination of the following:

- a. self-insure and make any appropriation of funds to cover their risk, or
- b. insure with other insurance carriers licensed in the State of Oklahoma.

~~B.~~ C. In addition to any other provision of this section, city, county, city-county and public trust hospitals may insure with other insurance carriers licensed in this state if it can be demonstrated to the governing body of ~~said~~ the hospital prior to the inception date of a workers' compensation policy each year that such policy will result in a lower cost than one with the State Insurance Fund.

~~C.~~ D. For purposes of the Workers' Compensation Act, all contracts of employment for state, county, municipal and state funded educational entities and public trusts will be considered to have been entered into in this state regardless of where the work is performed.

~~D.~~ E. Where a person who is employed by the state, a municipality or a county, or by any political subdivisions thereof,

and who, while off-duty from ~~said~~ the employment, is employed by a private employer, the private employer alone shall be liable for compensation under the Workers' Compensation Act for any injury of the person or his death arising out of and in the course of employment which occurs during the hours of his actual employment by the private employer. The provisions of Section 11 of this title shall be applicable to private employers specified in this subsection. The provisions of this subsection shall not relieve the state, a municipality or a county, or any political subdivision thereof, from providing disability benefits to which a person may be entitled pursuant to a pension or retirement plan. Provided, further, the provisions of this subsection shall not preclude an employee or group of employees so employed from providing separate compensation coverage for off-duty employment by a private employer.

SECTION 25. REPEALER 6 O.S. 1991, Section 714, as last amended by Section 14, Chapter 351, O.S.L. 1995 (6 O.S. Supp. 1995, Section 714), 10 O.S. 1991, Sections 1117, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 17, Chapter 353, O.S.L. 1995, 1403.3, as amended by Section 2, Chapter 231, O.S.L. 1995, and as renumbered by Section 199, Chapter 352, O.S.L. 1995 and Section 3, Chapter 306, O.S.L. 1993, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as amended by Section 18, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1995, Sections 7003-7.1, 7004-3.4 and 7005-1.4), 21 O.S. 1991, Section 845, as last amended by Section 4, Chapter 231, O.S.L. 1995, and as renumbered by Section 20, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1995, Section 7102), 63 O.S. 1991, Section 1-2421, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 9, Chapter 285, O.S.L. 1995 (27A O.S. Supp. 1995, Section 2-10-304), 36 O.S. 1991, Section 6504, as amended by Section 2, Chapter 355, O.S.L. 1995 (36 O.S. Supp. 1995, Section 6504), 37 O.S. 1991, Sections 163.7, 231, 506 and 527, as last amended by Sections 1, 2, 3 and 8, Chapter 192,

O.S.L. 1995 (37 O.S. Supp. 1995, Sections 163.7, 231, 506 and 527), 47 O.S. 1991, Section 156.1, as last amended by Section 2, Chapter 235, O.S.L. 1995 (47 O.S. Supp. 1995, Section 156.1), Section 6, Chapter 332, O.S.L. 1993, as last amended by Section 8, Chapter 204, O.S.L. 1995 (63 O.S. Supp. 1995, Section 5008), 68 O.S. 1991, Sections 205, as last amended by Section 52, Chapter 274, O.S.L. 1995, 1356, as last amended by Section 3, Chapter 271, O.S.L. 1995, 1359, as last amended by Section 20, Chapter 285, O.S.L. 1995, 2358, as last amended by Section 4, Chapter 249, O.S.L. 1995 and Section 3, Chapter 275, O.S.L. 1993, as last amended by Section 11, Chapter 337, O.S.L. 1995 (68 O.S. Supp. 1995, Sections 205, 1356, 1359, 2358 and 3603), 70 O.S. 1991, Section 17-116.2, as last amended by Section 2, Chapter 295, O.S.L. 1995 and Section 1, Chapter 329, O.S.L. 1995 (70 O.S. Supp. 1995, Section 17-116.2), 74 O.S. 1991, Sections 18c, as last amended by Section 2, Chapter 260, O.S.L. 1995, 85.7, as last amended by Section 4, Chapter 212, O.S.L. 1995, 500.18, as last amended by Section 5, Chapter 335, O.S.L. 1995, 840.20, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 1, Chapter 309, O.S.L. 1995, 840.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 5, Chapter 212, O.S.L. 1995 and Section 2, Chapter 309, O.S.L. 1995 and 913, as last amended by Section 2, Chapter 302, O.S.L. 1995 (74 O.S. Supp. 1995, Sections 18c, 85.7, 500.18, 840-4.13, 840-5.5 and 913) and 85 O.S. 1991, Section 2b, as amended by Section 2, Chapter 326, O.S.L. 1995 (85 O.S. Supp. 1995, Section 2b), are hereby repealed.

SECTION 26. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 13th day of February, 1996.

Speaker

of the House of
Representatives

Passed the Senate the ____ day of _____, 1996.

President

of the Senate