

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 43

By: Long of the Senate

and

Roach of the House

COMMITTEE SUBSTITUTE

An Act relating to unemployment benefits; amending 40 O.S. 1991, Sections 1-208, as amended by Section 1, Chapter 219, O.S.L. 1993, 1-210, as last amended by Section 2, Chapter 340, O.S.L. 1995, 1-218 and 2-203, as amended by Sections 4 and 7, Chapter 219, O.S.L. 1993, 2-303, 2-405, 2-503, as last amended by Section 10, Chapter 340, O.S.L. 1995, 3-203, as amended by Section 15, Chapter 219, O.S.L. 1993, 4-508, as last amended by Section 20, Chapter 340, O.S.L. 1995, 4-509, as amended by Section 34, Chapter 219, O.S.L. 1993, 4-605 and Section 20, Chapter 349, O.S.L. 1993, as last amended by Section 16, Chapter 363, O.S.L. 1996 (40 O.S. Supp. 1996, Sections 1-208, 1-210, 1-218, 2-203, 2-503, 3-203, 4-508, 4-509 and 415.1), which relate to the Employment Security Act of 1980; modifying definitions of employer, employment and wages; defining certain terms; deleting obsolete language and clarifying definitions; modifying procedures relating to filing a claim; requiring certain claim be filed in person; allowing other claims to be

filed and information gathered by other methods;
allowing deduction be made to repay debt from
overissuance of food stamps; expanding meaning of
good cause to include all agreed upon voluntary
separation from employment; permitting certain
objections to be filed by method other than mail
and modifying filing period; requiring individual
to disclose certain information regarding food
stamps when filing for unemployment compensation;
authorizing deduction for debt owed from overissued
food stamps and payment to certain agency;
clarifying status of deduction; modifying
determination of good cause; providing for
reduction in compensation rate for certain purpose
with exceptions; providing for and specifying
certain rate reduction; providing procedure for
protesting certain determinations and for notice,
hearing, determination, and appeal; providing for
release of confidential information to certain
entities for certain purposes; authorizing certain
information relating to food stamps and other
programs to be furnished to public agencies;
conforming management of certain fund to standard
practices of State Treasurer; requiring the
Commission to publish certain report concerning the
unemployment trust fund; requiring certain
distribution of the report; creating revolving
fund; stating purposes; providing for custodian of
fund and investment within certain parameters;
specifying expenditures from fund; providing for
certain assessment; providing for promulgation of
rules; increasing application fee for a certificate

of Non-coverage Under the Workers' Compensation Act; modifying procedures related to eligibility for such certificate; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 40 O.S. 1991, Section 1-208, as amended by Section 1, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 1996, Section 1-208), is amended to read as follows:

Section 1-208. EMPLOYER.

"Employer" means:

(1) Any employing unit ~~which, after December 31, 1971,~~ except as provided under paragraphs ~~(12)~~ (10) and ~~(13)~~ (11) of this section, which,

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

(2) Any individual or employing unit, whether or not an employing unit at the time of the acquisition, which acquired substantially all of the organization, trade, business, or assets thereof, of another which at the time of such acquisition was an employer subject to ~~this act~~ the Employment Security Act of 1980; or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to ~~this act~~ the Employment Security Act of 1980;

(3) Any individual or employing unit, whether or not an employing unit at the time of acquisition, which acquired substantially all of the organization, trade, business, or assets thereof, of another employing unit, if the employment record of such individual or employing unit subsequent to such acquisition, together with the employment record of the acquired unit prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit and employer subject to ~~this act~~ the Employment Security act of 1980 under paragraph (1) of this section; or any individual or employing unit which acquired substantially all of the organization, trade, business, or assets of another employing unit if such employing unit subsequent to such acquisition, and such acquired unit prior to such acquisition, both within the same calendar quarter, together paid for service in employment wages totaling One Thousand Five Hundred Dollars (\$1,500.00) or more;

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

(5) Any employing unit which, having become an employer under paragraphs (1), (2), (3), (4), ~~(9)~~ (8), ~~(12)~~ (10) or ~~(13)~~ (11) of this section has not, under Section 3-202 of this title, ceased to be an employer subject to ~~this act~~ the Employment Security Act of 1980;

(6) For the effective period of its election pursuant to Section 3-203 of this title any other employing unit which has elected to become subject to ~~this act~~ the Employment Security Act of 1980;

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

~~(8) Any department of the State of Oklahoma for which service in employment, as defined in paragraph (3) of Section 1-210 of this title, is performed after December 31, 1971, and any department of the State of Oklahoma and this state, any other states state, and all instrumentalities ~~of both~~ thereof, including any political subdivisions and their instrumentalities, for which service in employment, as defined in paragraph (3) of Section 1-210 of this title, is performed after December 31, 1977, except as provided under ~~subsections (12)~~ paragraphs (10) and ~~(13)~~ (11) of this section;~~

~~(9)~~ (8) Any employing unit for which service in employment, as defined in paragraph (4) of Section 1-210 of this title, is performed after December 31, 1971, except as provided under paragraphs ~~(12)~~ (10) and ~~(13)~~ (11) of this section;

~~(10)~~ (9) For purposes of paragraphs (1), ~~(9)~~ (8), ~~(12)~~ (10) and ~~(13)~~ (11) of this section, employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an

election under an arrangement entered into in accordance with Section 4-702 of this title by the Oklahoma Employment Security Commission and an agency charged with the administration of any other state or federal unemployment compensation law;

~~(11)~~ Any political subdivision of the State of Oklahoma which elected to become an employer and for which service in employment, as authorized and defined by 40 O.S. 1971, Section 238, was performed after December 31, 1971, and prior to January 1, 1978;

~~(12)~~ (10) Any employing unit for which agricultural labor as defined in paragraph (5) of Section 1-210 of this title is performed after December 31, 1977. In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraphs (1), (7), (8), ~~(9)~~ and ~~(13)~~ or (11) of this section, the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977, shall not be taken into account;

~~(13)~~ (11) Any employing unit for which domestic service in employment as defined in paragraph (6) of Section 1-210 of this title is performed after December 31, 1977. In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraphs (1), (7), (8), ~~(9)~~ or ~~(12)~~ (10) of this section, the wages earned or the employment of an employee performing domestic service after December 31, 1977, shall not be taken into account; or

~~(14)~~ (12) Any employing unit which is not an employer by reason of any other provisions of ~~this act~~ the Employment Security Act of 1980 shall nevertheless be an "employer" if either

- (a) within the ~~current~~ calendar year or preceding calendar year, service is or was performed, with respect to which such employing unit is liable for any federal tax against which credit may be taken by such

employing unit for contributions required to be paid by it into a state unemployment fund, or

- (b) such employing unit is required to be an "employer" as a condition for approval of ~~this act~~ the Employment Security Act of 1980 for full tax credit to be allowed against the tax imposed by the Federal Unemployment Tax Act, 26 U.S.C., Section 3301 et seq.

SECTION 2. AMENDATORY 40 O.S. 1991, Section 1-210, as last amended by Section 2, Chapter 340, O.S.L. 1995 (40 O.S. Supp. 1996, Section 1-210), is amended to read as follows:

Section 1-210. EMPLOYMENT.

"Employment" means:

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

- (a) any officer of a corporation; or
(b) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee; ~~or (c).~~

(2) (a) any service, including service in interstate commerce, performed by any individual other than an individual who is an employee under ~~subparagraphs (a) or (b) of this paragraph~~ (1) of this section who performs services for remuneration for any person:

- (i) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or dry cleaning services, for his or her principal; or

(ii) as a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants or other similar establishments for merchandise for resale or supplies for use in their business operations;

~~(d)~~ (b) provided, ~~that for purposes of subparagraph (c) of this paragraph,~~ the term "employment" shall include services described in divisions (i) and (ii) of subparagraph ~~(c) above performed after December 31, 1971,~~ (a) of this paragraph if:

- (i) the contract of service contemplates that substantially all of the services are to be performed personally by such individual;
- (ii) the individual does not have a substantial investment in facilities used in connection with the performance of the services, other than in facilities for transportation; and
- (iii) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

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

- (3) ~~(a) Service performed after December 31, 1971, and prior to January 1, 1978, in the employ of this state, other than services defined in paragraph (2) of this section; that is, each officer or employee in the service of the State of Oklahoma who, after December 31, 1971, and prior to January 1, 1978, receives compensation for service rendered to the State of Oklahoma on a warrant or check issued pursuant to a payroll certified by a department or by an elected or duly appointed officer of this state or who receives payment for the performance of personal services on a warrant issued pursuant to a payroll certified by a department and drawn by the State Treasurer against appropriations made by the Legislature from any state fund or against trust funds held by the State Treasurer, excluding any person chosen by election or appointment to fill an elective office, excluding seasonal or temporary employment, and excluding any services performed by an inmate of a state penal institution.~~
- ~~(b) Service performed after December 31, 1977, in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act, 26 U.S.C., Section 3306(c)(7), and is not excluded from "employment" under paragraph (7) of this section.~~

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

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

(a) such service is performed for a person who:

- (i) during any calendar quarter in either the ~~current~~ calendar year or the preceding calendar year, paid remuneration in cash of Twenty Thousand Dollars (\$20,000.00) or more to individuals employed in agricultural labor; or
- (ii) for some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the ~~current~~ calendar year or the preceding calendar year, employed in agricultural labor ten or more

individuals, regardless of whether they were employed at the same moment of time.

(b) for the purposes of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

- (i) if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, Public Law 95-562, 29 U.S.C., Sections 1801 through 1872; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and
- (ii) if such individual is not an employee of such other person within the meaning of paragraph (1) of this section or subparagraph (d) of this paragraph.

(c) for the purposes of this paragraph, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subparagraph (b) of this paragraph:

- (i) such other person and not the crew leader shall be treated as the employer of such individual; and
- (ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his

or her own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(d) for the purposes of this paragraph, the term "crew leader" means an individual who:

- (i) furnishes individuals to perform service in agricultural labor for any other person;
- (ii) pays, either on his or her own behalf or on behalf of such other person, the individuals so furnished by the crew leader for the service in agricultural labor performed by them; and
- (iii) has not entered into a written agreement with such other person (farm operator) under which such individual is designated as an employee of such other person.

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

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

- (a) in the employ of:
 - (i) a church or convention or association of churches; or
 - (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

- (b) by a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order;
- (c) ~~prior to January 1, 1978, in the employ of a school which is not an institution of higher education; after December 31, 1977, in the employ of a governmental entity referred to in paragraphs (2) and paragraph (3) of this section if such service is performed by an individual in the exercise of duties:~~
- (i) as an elected official;
 - (ii) as a member of a legislative body, or a member of the judiciary of a state or political subdivision;
 - (iii) as a member of the State National Guard or Air National Guard;
 - (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
 - (v) in a position which, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week;
- (d) ~~in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily~~

~~absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work~~ by an individual receiving rehabilitation or remunerative work while participating or enrolled in a program in a facility that:

(i) conducts a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury;
or,

(ii) conducts a program that provides remunerative work for individuals who, because of their impaired mental or physical capacity cannot be readily absorbed into the competitive labor market;

- (e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work-relief or work-training; or
- (f) ~~prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977,~~ by an inmate of a custodial or penal institution.

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

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

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

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

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

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

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

service is performed but the individual's residence is in this state.

(12) (a) Services covered by an election pursuant to Section 3-203 of this title; and

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

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

(a) the service is performed entirely within such state; or

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

(14) Notwithstanding any other provision of this subsection, services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to ~~this act~~ the Employment Security Act of 1980 unless and until it is shown to the satisfaction of the Commission that:

(a) such individual has been and will continue to be free from control or direction over the performance of such

services, both under the contract of hire and in fact;
and

- (b) such individual is customarily engaged in an independently established trade, occupation, profession, or business; or
- (c) such service is outside the usual course of the business for which such service is performed and that such service is performed outside of all the places of business of the enterprise for which such service is performed.

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

- (a) ~~(i) services performed prior to January 1, 1978, in the employ of the owner or tenant operating a farm, in connection with the cultivation of the soil, the harvesting of crops, or the raising, feeding, or management of livestock, poultry, bees, furbearing animals and wildlife, nurseries, or greenhouses or in connection with the processing, packing or marketing of produce of such farms, nurseries or greenhouses and as an incident to such operations, as provided in this division.~~
- ~~(ii) services performed after December 31, 1977, by an individual in agricultural labor, except as provided under paragraph (5) of this section. For purposes of this subparagraph, the term "agricultural labor" means remunerated service performed in agricultural labor as defined in the Federal Unemployment Tax Act, 26 U.S.C., Section 3306(k);~~
- (b) domestic service, except as provided under paragraph (6) of this section, in a private home, local college

club, or local chapter of a college fraternity or sorority;

- (c) service performed by an individual in the employ of his or her son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his or her father or mother, or both father and mother;
- (d) service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by the Employment Security Act of 1980, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of the Employment Security Act of 1980 shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals and services; provided that if this state shall not be certified for any year by the Secretary of Labor of the United States under ~~Section 3304(c) of~~ the Federal Internal Revenue Code, 26 U.S.C., Section 3304(c), the payments required of such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in Section 3-304 of this title with respect to contributions erroneously collected;

- (e) ~~prior to January 1, 1978, service performed in the employ of this state or of any other state, or of any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by this state or by one or more states or political subdivisions; and any service performed in the employ of any instrumentality of this state or of one or more states or political subdivisions to the extent that the instrumentality is, with respect to such service, exempt under the Constitution of the United States from the tax imposed by Section 3301 of the Federal Internal Revenue Code, 26 U.S.C. 3301, except as otherwise provided in paragraphs (2) and (3) of this section;~~
- ~~(f)~~ service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress;
- ~~(g)~~ (f) service performed in the employ of a foreign government, including service as a consul or other officer or employee or a nondiplomatic representative;
- ~~(h)~~ (g) service performed in the employ of an instrumentality wholly owned by a foreign government:
- (i) if the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
- (ii) if the Commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service

performed in the foreign country by employees of the United States government and of instrumentalities thereof;

- ~~(i)~~ (h) service covered by an arrangement between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within the jurisdiction of such other state or federal agency;
- ~~(j)~~ (i) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;
- ~~(k)~~ (j) service performed by an individual for a person, firm, association, trust, partnership or corporation as an insurance agent, or as an insurance solicitor or as a licensed real estate agent, if all such service performed by such individual for such person is performed for remuneration solely by way of commissions or fees;
- ~~(l)~~ (k) service performed by an individual under the age of eighteen (18) in the delivery and distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or

distribution, and services performed in the same manner by an individual eighteen (18) years of age or older who meets the definition of a "direct seller" as defined in 26 U.S.C., Section 3508(b) (2);

- ~~(m)~~ (l) service performed in the employ of a school, college or university, if ~~such~~ the service is performed:
- (i) by a student who is enrolled and is regularly attending classes at ~~such~~ the school, college, or university; or
 - (ii) by the spouse of ~~such a~~ the student, if ~~such~~ the spouse is advised, at the time ~~such~~ the spouse commences to perform ~~such~~ the service, that:
 - (I) the employment of ~~such~~ the spouse to perform ~~such~~ the service is provided under a program to provide financial assistance to ~~such~~ the student by ~~such~~ the school, college, or university, and
 - (II) ~~such~~ the employment will not be covered by any program of unemployment insurance;
- ~~(n)~~ (m) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at ~~such~~ the institution, which combines academic instruction with work experience, if ~~such~~ the service is an integral part of ~~such~~ the program, and ~~such~~ the institution has so certified to the employer, except that this provision shall not apply to service performed in a

program established for or on behalf of an employer or group of employers;

~~(e)~~ (n) service performed in the employ of a hospital, if ~~such~~ the service is performed by a patient of ~~such~~ the hospital;

~~(p)~~ (o) services performed by cooperative extension personnel holding federal appointments employed by state institutions of higher learning;

~~(q)~~ (p) earnings of employees being paid by state warrants who are presently covered by the Federal Unemployment Compensation Act, 5 U.S.C., Section 8501 et seq., by virtue of their federal status;

~~(r)~~ (q) cosmetology services performed by an individual in a beauty shop, as defined by Section 199.1 of Title 59 of the Oklahoma Statutes, pursuant to an agreement whereby the owner of the beauty shop leases or rents facilities for cosmetology to such individual;

~~(s)~~ (r) barbering services performed by an individual in a barber shop, as defined by Section 61.5 of Title 59 of the Oklahoma Statutes, pursuant to an agreement whereby the owner of the barber shop leases or rents facilities for barbering to such individual;

~~(t)~~ (s) in-home services performed in a medical care program such as the nontechnical medical care program, or social services program, as certified and approved by the Department of Human Services or the Federal Health Care Financing Administration or as a participant in a work or training program administered by the Department of Human Services;

~~(u)~~ (t) riding services performed by a jockey and services performed by a trainer of race horses in an approved race licensed by the Oklahoma Horse Racing Commission;

~~(v)~~ (u) service performed by an individual whose remuneration consists solely of commissions, overrides, bonuses, and differentials related to sales or other output derived from in-person sales to, or solicitation of orders from, ultimate consumers primarily in the home, or otherwise than in a permanent retail establishment;

~~(w)~~ (v) service performed by a person, commonly referred to as "owner-operator", who owns or leases a truck-tractor or truck for hire, provided ~~said~~ the owner-operator actually operates the truck-tractor or truck and, further, that the entity contracting with the owner-operator is not the lessor of the truck-tractor or truck;

~~(x)~~ (w) services performed as a chopper of cotton who weeds or thins cotton crops by hand or hoe. This subsection shall be interpreted and applied consistently with the Federal Unemployment Tax Act, 26 U.S.C., Sections 3304 (a) (6) (A) and 3306 (k);

~~(y)~~ (x) services performed for a corporation by an individual who owns one hundred percent (100%) of the stock of ~~such~~ the corporation, provided that ~~such~~ the corporation is not a nonprofit corporation as provided for in the Employment Security Act of 1980; or

~~(z)~~ (y) services performed for a private for-profit person or entity by an individual as a landman:

(i) if the individual is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or negotiating business agreements that provide for the exploration for or development of minerals,

(ii) if substantially all remuneration paid in cash or otherwise for the performance of the services is

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

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

SECTION 3. AMENDATORY 40 O.S. 1991, Section 1-218, as amended by Section 4, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 1996, Section 1-218), is amended to read as follows:

Section 1-218. WAGES.

"Wages" means all remuneration for services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, and includes dismissal payments which the employer is required by law or contract to make. Gratuities customarily received by an individual in the course of ~~his~~ work from persons other than ~~his~~ the employing unit shall be treated as wages received from ~~his~~ the employing unit. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the Commission. The term wages shall not include:

1. The amount of any payment, with respect to services performed after June 30, 1951, to or on behalf of an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals, including any amount

paid by an employing unit for insurance or annuities, or into a fund to provide for any such payment, on account of:

- a. retirement,
- b. sickness or accident disability,
- c. medical and hospitalization expenses in connection with sickness or accident disability,
- d. death, provided the individual in its employ:
 - (1) has not the option to receive, instead of provision for such death benefit, any part of such payment, or if such death benefit is insured, any part of the premium or contributions to premiums paid by ~~his~~ the employing unit, and
 - (2) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive cash consideration in lieu of such benefit either upon ~~his~~ withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of ~~his~~ the individual's services with such employing unit, or
- e. a bona fide thrift or savings fund, providing:
 - (1) such payment is conditioned upon a payment of a substantial sum by such individuals in its employ, and
 - (2) that such sum paid by the employing unit cannot under the provisions of such plan be withdrawn by an individual more frequently than once in any twelve-month period, except upon an individual's separation from that employment;

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

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

4. The payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon such individual in its employ under 26 U.S.C., Section 3101 ~~of the Federal Internal Revenue Code~~ with respect to domestic services in a private home of the employer or for agricultural labor ~~performed after December 31, 1980;~~

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

6. The value of any meals and lodging furnished by or on behalf of an employer to an individual in ~~his~~ its employ; provided the meals and lodging are furnished on the business premises of the employer for the convenience of the employer.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-224 of Title 40, unless there is created a duplication in numbering, reads as follows:

FILE.

For the purposes of Sections 2-503, 2-505, 2-603, 2-606, 3-102, 3-106, 3-111, 3-202, 3-203, 3-301, 3-305, 3-310, 3-402, 3-805, 3-806 and 3-809 of Title 40 of the Oklahoma Statutes, the term "file", "files", or "filed" will be defined as follows:

1. Hand-delivered to an office of the Oklahoma Employment Security Commission by the close of business on or before the date due;

2. Telefaxed to an office of the Oklahoma Employment Security Commission by midnight on or before the date due. Timely telefaxing will be determined by the date and time on the document received or the date and time on the sender's transmittal sheet; or

3. Mailed to an office of the Oklahoma Employment Security Commission on or before the date due. Timely mailing will be determined by the postmark.

SECTION 5. AMENDATORY 40 O.S. 1991, Section 2-203, as amended by Section 7, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 1996, Section 2-203), is amended to read as follows:

Section 2-203. CLAIM.

A. An unemployed individual must file an initial claim for unemployment benefits by personally appearing at an office or designated location of the Oklahoma Employment Security Commission and signing, in the presence of an employee or agent of the Commission, all forms necessary to process an initial claim. The Commission may obtain preliminary or additional information regarding an individual's initial claim, through any form of telecommunication, writing, or interview, either before or after the required personal appearance of the individual claiming benefits.
An unemployed individual must file a ~~written~~ claim in writing or by telecommunication for benefits with respect to ~~such~~ each week in accordance with such rule as the Commission may prescribe.

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

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

SECTION 6. AMENDATORY 40 O.S. 1991, Section 2-303, is amended to read as follows:

Section 2-303. ASSIGNMENTS VOID, EXEMPTION FROM PROCESS.

No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under the Employment Security Act shall be valid. All such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt. Benefits received by an individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts during the time the individual was unemployed, except those debts incurred for necessities furnished to ~~such the~~ individual or his or her spouse, or dependents, including child support obligations pursuant to Section ~~18~~ 2-801 of this ~~act~~ title, and debts created due to food stamp overissuances for which the individual is liable pursuant to Section 9 of this act ~~during the time when such individual was unemployed~~. No waiver of any exemption provided for in this section shall be valid.

SECTION 7. AMENDATORY 40 O.S. 1991, Section 2-405, is amended to read as follows:

Section 2-405. DETERMINING GOOD CAUSE.

Good cause for voluntarily leaving work under Section 2-404 of this title may include, among other factors, a job working condition that had changed to such a degree it was so harmful, detrimental, or adverse to the individual's health, safety, or morals, that leaving such work was justified or if the claimant, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits waiver of his or her right to retain the employment when there is a ~~temporary~~ layoff ~~because of lack of work~~,

has elected to be separated ~~for a temporary period~~ and the employer has consented thereto.

SECTION 8. AMENDATORY 40 O.S. 1991, Section 2-503, as last amended by Section 10, Chapter 340, O.S.L. 1995 (40 O.S. Supp. 1996, Section 2-503), is amended to read as follows:

Section 2-503. CLAIMS, NOTICES AND OBJECTIONS.

A. Claims for benefits shall be made in accordance with such rule as the Oklahoma Employment Security Commission may prescribe.

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

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

D. Notices shall be deemed given when the Commission deposits the same in the United States mail addressed to the employer's last-known address. Notice shall be presumed prima facie to have been given to the employer to whom addressed on the date stated in the written notice.

E. Within ten (10) days after the date ~~of~~ on the notice ~~addressed to him~~ or the date of the postmark on the envelope in which the notice was sent, whichever is later, an employer may ~~mail~~ ~~to~~ file with the Commission at the address prescribed in the notice written objections to the claim setting forth specifically the facts which:

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

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

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

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-803 of Title 40, unless there is created a duplication in numbering, reads as follows:

FOOD STAMPS OVERISSUANCES.

A. An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not he or she owes an uncollected overissuance of food stamp coupons, as defined in 7 U.S.C., Section 2022(c)(1). The Oklahoma Employment Security Commission shall notify the state food stamp agency enforcing such obligations of any individual who discloses that he or she owes food stamp overissuances and who is determined to be eligible for unemployment compensation.

B. The Commission shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance:

1. The amount specified by the individual to the Commission to be deducted and withheld under this section;

2. The amount, if any, determined pursuant to an agreement submitted to the state food stamp agency under 7 U.S.C., Section 2022(c)(3)(A); or

3. Any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to 7 U.S.C., Section 2022(c)(3)(B).

C. Any amount deducted and withheld under this section shall be paid by the Commission to the appropriate state food stamp agency.

D. Any amount deducted and withheld under subsection B of this section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the state food stamp agency as repayment of the individual's uncollected overissuance.

E. For purposes of this section, the term "unemployment compensation" means any compensation payable under this act including amounts payable by the Commission pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

F. This section applies only if arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the Commission under this section which are attributable to the repayment of uncollected overissuances to the state food stamp agency.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-109.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

RATE REDUCTION FOR FUND ASSESSMENT.

Notwithstanding the provisions of Sections 3-103, 3-109, 3-110, and 3-113 of Title 40 of the Oklahoma Statutes, for the time period beginning July 1, 1997, and ending June 30, 1998, the contribution rate assigned to an employer shall be reduced by fifty percent (50%). Provided, the tax rate of employers assigned a tax rate pursuant to Sections 3-103 and 3-110 of Title 40 of the Oklahoma Statutes shall not be reduced to less than one percent (1%). Provided further, employers who qualify for an earned rate calculated pursuant to Section 3-109 of Title 40 of the Oklahoma Statutes, and are given a rate of five and one-half percent (5.5%), shall not be eligible for the rate reduction provided for in this section.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-115 of Title 40, unless there is created a duplication in numbering, reads as follows:

PROTEST OF DETERMINATIONS.

A. If a determination is made by the Oklahoma Employment Security Commission on any aspect of an employer's account, and a

method of protest of the determination is not set out in the statute under which the determination was made, then the employer may protest under the procedure set forth in subsection B of this section.

B. 1. All determinations affecting an employer account must be made by the Commission in writing and mailed to the employer at the employer's last-known address.

2. Within twenty (20) days after the mailing of the Notice of Determination as provided for in paragraph 1 of this subsection, the employer may file with the Commission, or its representative, a written protest to the determination and a request for an oral hearing de novo to present evidence in support of the protest.

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

4. The Commission or its representatives shall, by written notice, advise the employer of the date of the hearing, which shall not be less than ten (10) days from the date of the mailing of the written notice. At the discretion of the Commission, this hearing shall be conducted by the Commission, or by a representative appointed by the Commission for this purpose.

5. Pursuant to the hearing, the Commission or its representative shall, as soon as practicable, make a written order setting forth its findings of fact and conclusions of law, and shall mail it to the employer at the employer's last-known address.

6. The employer or the Commission may appeal the order to the district court by filing a Petition for Review with the clerk of the court within thirty (30) days after the date the order was mailed to all parties. The mailing date shall be specifically stated in the order. All appeals shall be governed by Part IV of Article III of the Employment Security Act of 1980.

SECTION 12. AMENDATORY 40 O.S. 1991, Section 3-203, as amended by Section 15, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 1996, Section 3-203), is amended to read as follows:

Section 3-203. ELECTION BY EMPLOYER.

A. An employing unit, not otherwise subject to ~~this act~~ the Employment Security Act of 1980, which files with the Oklahoma Employment Security Commission its written election to become an employer subject hereto for not less than two (2) calendar years shall, with the written approval of ~~such~~ the election by the Commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in ~~such~~ the approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to ~~such~~ the two (2) required calendar years, only if during January of ~~such~~ that year it has filed with the Commission a written application for termination of coverage as provided in this section.

B. Any employing unit for which services that do not constitute employment as defined in ~~this act~~ the Employment Security Act of 1980 are performed may file with the Commission a written election that all such services with respect to which payments are not required under an employment security law of any other state or of the federal government and which are performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment by an employer for all the purposes of ~~this act~~ the Employment Security Act of 1980 for not less than two (2) calendar years. Upon the written approval of ~~such~~ the election by the Commission, such services shall be deemed to constitute employment subject to ~~this act~~ the Employment Security Act of 1980 from and after the date stated in ~~such~~ the approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to ~~such~~ the two (2) required calendar years, only if during January of ~~such~~ that year

~~such~~ the employing unit has filed with the Commission a written application for termination of ~~such~~ the coverage.

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

D. If the Commission makes a determination that an application of an employer or employing unit submitted under subsections A or B of this section should be denied, or that a voluntary election should be terminated under subsection C of this section, the Commission shall notify the affected employer or employing unit in writing. The notification of the determination shall be delivered to the employer, or mailed to the employer's last-known address.

E. Within twenty (20) days after the mailing of the notice of determination provided for in subsection D of this section, the employer may file with the Commission or its representative a written protest to the initial determination and request an oral hearing to present evidence in support of its protest. The Commission or its representative shall, by written notice, advise the employer of the date of hearing, which shall not be less than ten (10) days from the date of the mailing of the written notice. At the discretion of the Commission, the hearing shall be conducted by the Commission, or by a representative appointed by the Commission for this purpose. Pursuant to the hearing, the Commission or its representative shall, as soon as practicable:

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

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

3. In accordance with the order, notify the employer of any
changes in the status of his or her account.

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

SECTION 13. AMENDATORY 40 O.S. 1991, Section 4-508, as
last amended by Section 20, Chapter 340, O.S.L. 1995 (40 O.S. Supp.
1996, Section 4-508), is amended to read as follows:

Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL -
DISCLOSURE.

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

B. Upon receipt of written request by any employer who
maintains a Supplemental Unemployment Benefit (SUB) Plan, the
Commission or its designated representative may release to such
employer information regarding weekly benefit amounts paid its
workers during a specified temporary layoff period, provided such
Supplemental Unemployment Benefit (SUB) Plan requires benefit
payment information before Supplemental Unemployment Benefits can be

paid to such workers. Any information disclosed under this provision shall be utilized solely for the purpose outlined herein and shall be held strictly confidential by the employer.

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

1. The delivery to taxpayer or claimant a copy of any report or other paper filed by ~~him~~ the taxpayer or claimant pursuant to the ~~provision of the act~~ Employment Security Act of 1980;

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

3. The Oklahoma Department of Commerce may have access to data obtained pursuant to the Oklahoma Employment Security Act of 1980 pursuant to rules promulgated by the Oklahoma Employment Security Commission. The information obtained shall be held confidential by the Department and any of its agents and shall not be disclosed or be open to public inspection. The Oklahoma Department of Commerce, however, may release aggregated data, either by industry or county, provided that such aggregation meets disclosure requirements of the Oklahoma Employment Security Commission;

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

5. The disclosing of information or evidence to the Attorney General or any district attorney when ~~said~~ the information or evidence is to be used by ~~said~~ the officials or other parties to the proceedings to prosecute or defend allegations of violations of the ~~act~~ Employment Security Act of 1980. ~~Said~~ The information disclosed to the Attorney General or any district attorney shall be kept

confidential by them and not be disclosed except when presented to a court in a prosecution of a violation of ~~the act~~ Section 1-101 et seq. of this title, and a violation by the Attorney General or district attorney by otherwise releasing the information shall be a felony;

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

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

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

9. The release to officials, employees and agents of the State Treasurer's office of information required to verify or evaluate the effectiveness of the Oklahoma Small Business Linked Deposit Program on job creation;

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

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

12. The release to officials, employees, and agents of the Center of International Trade, Oklahoma State University, of

information required for the development of International Trade for employers doing business in the State of Oklahoma; ~~or~~

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

14. The release to officials, employees, and agents of the Center for Economic and Management Research of the University of Oklahoma, of information required to identify economic trends. The information obtained shall be kept confidential by the University and any of its agents and shall not be disclosed or be open to public inspection. The University of Oklahoma may release aggregated data, provided that such aggregation meets disclosure requirements of the Commission; or

15. The release to officials, employees, and agents of the State of Oklahoma Office of State Finance of information required to identify economic trends. The information obtained shall be kept confidential by the Office of State Finance and any of its agents and shall not be disclosed or be open to public inspection. The Office may release aggregated data, provided that such aggregation meets disclosure requirements of the Commission.

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

E. Should any of the disclosures provided for in this section require more than casual or incidental staff time, the Commission may charge the cost of such staff time to the party requesting the information.

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

SECTION 14. AMENDATORY 40 O.S. 1991, Section 4-509, as amended by Section 34, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 1996, Section 4-509), is amended to read as follows:

Section 4-509. INFORMATION TO BE FURNISHED TO PUBLIC AGENCIES.

Subject to such restrictions as the Employment Security Commission may by rule prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or the Internal Revenue Service of the United States Department of the Treasury or the Oklahoma Tax Commission. Any information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon request therefor the Commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits pursuant to the provisions of the Employment Security Act of 1980, ~~Section 1-101 et seq. of this title.~~ The Commission shall furnish to public agencies collecting debts created by food stamp overissuances or administering aid for dependent children and Transitional Assistance

to Needy Families (TANF) or child support programs, promptly upon request and in the most economical, effective and timely manner, information as to:

1. Whether an individual has applied for, is receiving or has received unemployment insurance and the amount;
2. The individual's current address;
3. Whether the individual has refused employment and if so a description of the job including the terms, conditions and rate of pay; and
4. Any other information that might be useful in locating any individual who may have a food stamp overissuance or an obligation for support.

SECTION 15. AMENDATORY 40 O.S. 1991, Section 4-605, is amended to read as follows:

Section 4-605. FUND MAINTAINED IN SEPARATE ACCOUNT.

All ~~moneys~~ monies in this fund shall be deposited in a special fund in the State Treasury; ~~provided, that moneys in this fund shall not be commingled with other state funds, but shall be maintained in a separate account on the books of a depository bank.~~ Such monies shall be secured by ~~the depository~~ collateral in the full amount of the funds on deposit. ~~Such security shall consist of (1) United States Government obligations, direct or guaranteed and (2) direct obligations of the State of Oklahoma. Such collateral security shall be pledged at not to exceed the face value of the obligation, and shall be kept separate and distinct from any collateral security pledged~~ in the same kind and manner the State Treasurer is required to secure other funds of the state on deposit.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-608 of Title 40, unless there is created a duplication in numbering, reads as follows:

REPORTING ON UNEMPLOYMENT COMPENSATION FUND.

Within thirty (30) days from the last day of each calendar quarter, the Oklahoma Employment Security Commission shall publish a report on the condition of the unemployment trust fund for the State of Oklahoma, and it shall be delivered to:

1. The Governor;
2. The Speaker of the House of Representatives;
3. The President Pro Tempore of the Senate; and
4. The Director of the Office of State Finance.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-101 of Title 40, unless there is created a duplication in numbering, reads as follows:

OESC COMPUTER FUND.

A. There is hereby created in the State Treasury a revolving fund for the Oklahoma Employment Security Commission to be designated the "OESC Computer Fund". The OESC Computer Fund shall be separate and distinct from the Unemployment Compensation Fund and shall consist of:

1. All monies received from employers and paid pursuant to Section 19 of this act;
2. All other sums, from whatever source, received by the Commission and paid into the OESC Computer Fund; and
3. Property and securities acquired by and through the use of monies in the OESC Computer Fund.

B. The OESC Computer Fund shall be a continuing fund, not subject to fiscal year limitations. All monies accruing to the credit of the OESC Computer Fund are hereby appropriated and may be budgeted and expended to purchase or lease a new computer system for the Oklahoma Employment Security Commission including all peripheral or auxiliary equipment and all computer programming services required to make the new computer system fully operational. Expenditures from the OESC Computer Fund shall be made upon warrants

issued by the State Treasurer against claims filed, as prescribed by law, with the Director of State Finance for approval and payment.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-102 of Title 40, unless there is created a duplication in numbering, reads as follows:

EXPENDITURES FROM FUND.

A. The monies in the OESC Computer Fund shall be used for the following purposes:

1. To purchase or lease a new computer system for the Oklahoma Employment Security Commission to be used in its mission to provide an employment service, unemployment insurance, and economic research for the citizens of this state as well as the administration of these programs;

2. To purchase or lease any auxiliary or peripheral equipment necessary for the operation of the new computer system;

3. To purchase or lease any and all software needed for the operation of the new computer system;

4. To pay for all computer programming and analysis necessary to make the new computer system operational;

5. To pay for all designing, engineering, planning, networking and training to make the new computer system operational;

6. To pay for all shipping and installation charges for the computer system and its auxiliary and peripheral equipment; and

7. To make refunds of contributions erroneously collected and deposited in the OESC Computer Fund.

B. If any money remains in this fund after the new computer system has been brought on line and made fully operational, that excess money shall be transferred to the Unemployment Compensation Fund.

C. If the Commission receives a grant from the United States Department of Labor to be used to make the Commission's computer system compliant with the year 2000, or if the Commission receives a

grant from the United States Department of Labor to upgrade or modify its interactive voice response system (IVRS), then the Commission will, upon receipt of the federal grant money, deduct an equal amount of money from the OESC Computer Fund and transfer it to the Unemployment Compensation Fund.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-103 of Title 40, unless there is created a duplication in numbering, reads as follows:

CUSTODIAN AND TREASURER OF FUND.

A. The State Treasurer shall be the custodian and treasurer of the OESC Computer Fund.

B. The State Treasurer shall deposit the monies belonging to the OESC Computer Fund, that are in his or her custody, subject to the provisions of this section.

C. The State Treasurer, as custodian of the OESC Computer Fund, shall hold, invest, transfer, sell, deposit, and release those monies, properties, or securities in a manner approved by the Oklahoma Employment Security Commission. Provided however, that those monies shall be invested in the classes of securities legal for investment of public monies of this state. Provided further, the investment shall at all times be so made that all assets of the OESC Computer Fund shall always be readily convertible into cash when needed for any expenditure authorized in Section 18 of this act.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-104 of Title 40, unless there is created a duplication in numbering, reads as follows:

COMPUTER FUND ASSESSMENTS.

A. 1. For the period from July 1, 1997 to June 30, 1998, each employer subject to the provisions of Sections 3-103, 3-109 and 3-110 of Title 40 of the Oklahoma Statutes shall be required to pay an OESC Computer Fund assessment equal to fifty percent (50%) of the

unemployment contributions that would be owed to the Oklahoma Employment Security Commission before any rate reduction is made pursuant to Section 10 of this act. This assessment shall be in addition to any contribution which that employer is required to make pursuant to the provisions of the Employment Security Act of 1980.

2. The assessment provided for in this section shall not be considered part of any contribution required of an individual employer pursuant to the Employment Security Act of 1980, nor shall it be considered for purposes of determining the individual employers contribution rate.

B. Employers assigned a tax rate pursuant to Sections 3-103 and 3-110 of Title 40 of the Oklahoma Statutes shall pay an OESC Computer Fund assessment equal to the rate reduction granted them pursuant to Section 10 of this act.

C. Employers who qualify for an earned rate calculated pursuant to Section 3-109 of Title 40 of the Oklahoma Statutes, and are given a rate of five and one-half percent (5.5%), shall be exempt from the provisions of this section.

D. Employers making payments in lieu of contributions pursuant to Sections 3-702, 3-705 and 3-806 of Title 40 of the Oklahoma Statutes shall be exempt from the provisions of this section.

E. The assessment shall be made and collected by the Oklahoma Employment Security Commission for deposit, on a quarterly basis, to the credit of the OESC Computer Fund. Provided, all monies received by the Oklahoma Employment Security Commission for the account of the OESC Computer Fund, upon receipt, shall be deposited in a clearance account in a financial institution located in this state.

F. Once the sum of Twenty Million Dollars (\$20,000,000.00) is collected through this assessment, any amount of money collected through this assessment in excess of Twenty Million Dollars (\$20,000,000.00) shall be transferred to the Unemployment Compensation Fund.

G. The Oklahoma Employment Security Commission shall promulgate such rules as may be necessary to implement the provisions of Sections 16 through 19 of this act.

SECTION 21. AMENDATORY Section 20, Chapter 349, O.S.L. 1993, as last amended by Section 16, Chapter 363, O.S.L. 1996 (40 O.S. Supp. 1996, Section 415.1), is amended to read as follows:

Section 415.1 A. Any person who is not required to be covered under a workers' compensation insurance policy or other plan for the payment of workers' compensation may apply to the Commissioner of Labor for a "Certificate of Non-Coverage Under the Workers' Compensation Act". Applications shall be made on forms prescribed by the Commissioner and shall be accompanied by a nonrefundable application fee in an amount to be set by the Commissioner by rule not to exceed ~~Ten Dollars (\$10.00)~~ Fifteen Dollars (\$15.00).

B. The Commissioner of Labor shall issue a certificate to any individual who the Commissioner finds, after reasonable inquiry, to be exempt from the definition of employee under Section 3 of Title 85 of the Oklahoma Statutes. Issuance of the certificate by the Commissioner shall establish a rebuttable presumption that the filer is not an employee for purposes of the Workers' Compensation Act.

C. The Commissioner of Labor shall develop necessary procedures for determining eligibility for the certificates which shall include at least the following:

1. A questionnaire designed to determine the basis for the claim of exemption from the requirements of the Workers' Compensation Act. The questionnaire shall ask at least the following questions or substantially similar questions:

a. For what or under what type of business organization do you work? (e.g., sole proprietorship, partnership, limited partnership, limited liability partnership, limited liability company, corporation, or an

association of persons to perform a particular piece of work), and

- b. Has any person asked you to obtain a certificate of non-coverage under the Workers' Compensation Act in order for you to be considered for employment, for a contract, or for any other arrangement for which you are to receive compensation? If you answer "yes", please explain the type of work to be performed, the nature of the employment, contract, or other arrangement, and why you believe the employment, contract, or other arrangement is exempt from the requirements of the Workers' Compensation Act. A "yes" answer will not necessarily result in denial of your application;

2. A conspicuous warning on the application and on the questionnaire that giving false information is a crime and that suspected violations will be referred to the Attorney General or district attorney for prosecution;

3. A conspicuous warning on the application and on the Certificate of Non-Coverage that employers are required to provide workers' compensation for their employees and that failure to do so may subject an employer to civil and criminal penalties and to liability for employee injuries;

4. A requirement that the applicant provide the following information or substantially similar information as substantiation of the claimed exemption from the requirements of the Workers' Compensation Act:

- a. if the applicant is a sole proprietorship, a business card, telephone book advertisement, state or federal income tax return, or other documentation that the applicant is doing business as a sole proprietorship,

or an affidavit that the applicant is doing business as a sole proprietorship,

b. if the applicant is a member of a partnership, limited partnership, or limited liability partnership, a copy of the partnership agreement, or an affidavit that the applicant is a member of a partnership for which there is no partnership agreement,

c. if the applicant is an owner of at least ten percent (10%) of the capital of a limited liability company, a copy of the articles of organization of the limited liability company and a copy of the operating agreement, and

d. if the applicant is an owner of at least ten percent (10%) of the stock issued by a corporation, a copy of the certificate of incorporation and an affidavit from the secretary or other officer of the corporation other than the applicant attesting to the applicant's ownership interest in the corporation; and

5. A statement on the back of or attached to the Certificate of Non-Coverage containing the factors considered in determining whether or not a person is an employee including, but not limited to, the factors considered in determining whether or not a person is acting as an independent contractor.

D. If, after reviewing an application, the Commissioner is in doubt about the applicant's eligibility for a Certificate of Non-Coverage, the Commissioner may require additional information or investigation prior to issuance of the Certificate of Non-Coverage.

E. The Commissioner may revoke a Certificate of Non-Coverage after notice and hearing in compliance with the Administrative Procedures Act.

F. Except as otherwise provided in Section 11 of Title 85 of the Oklahoma Statutes, the filing of a ~~certificate~~ Certificate of

Non-Coverage shall not affect the rights or coverage of any employee of the individual filing the certificate.

~~E. G.~~ 1. Knowingly providing false information to the Department of Labor for the purpose of obtaining a "Certificate of Non-Coverage Under the Workers' Compensation Act" shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars ~~(\$1,000.00)~~ and be punishable as perjury.

2. ~~Application forms for such certificates shall conspicuously state on the front thereof in at least ten-point bold-faced print that it is a crime to falsify information on the form~~ Knowingly causing another to provide false information to the Department of Labor for the purpose of obtaining a "Certificate of Non-Coverage Under the Workers' Compensation Act" shall constitute subornation of perjury and shall be punishable as perjury.

3. The Commissioner of Labor shall immediately notify the Workers' Compensation Fraud Unit in the Office of the Attorney General of any violations or suspected violations of this section. The Commissioner shall cooperate with the Fraud Unit in any investigation involving certificates issued pursuant to this section.

~~F. H.~~ Application fees collected pursuant to this section shall be deposited in the State Treasury to the credit of the Workers' Compensation Enforcement Revolving Fund. Fees collected pursuant to this section shall only be used for enforcement of the provisions of this section.

SECTION 22. This act shall become effective July 1, 1997.

SECTION 23. 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.

