

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)
2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 43

By: Long of the Senate

and

Roach of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to employment; amending 40 O.S. 1991, Section 1-210, as last amended by Section 3 of Enrolled House Bill No. 1130 of the 1st Session of the 46th Oklahoma Legislature, and 4-605, as amended by Section 22 of Enrolled House Bill No. 1130 of the 1st Session of the 46th Oklahoma Legislature, which relate to definition of employment and maintenance of certain funds; clarifying exemption relating to newspaper carriers; correcting statutory description of certain provisions; providing for reduction in compensation rate for computer fund assessment with certain exceptions; creating revolving fund; stating purposes; providing for transfer of excess funds to Unemployment Compensation Fund; providing for custodian of fund and investment within certain parameters; providing for certain assessment; providing for promulgation of rules; amending 40 O.S. 1991, Sections 75, as amended by Section 1, Chapter 137, O.S.L. 1993, and 88 (40 O.S. Supp. 1996, Section 75), which relate to hours of employment and penalties for violating child labor laws; clarifying language; providing for additional hours of work when school attendance is not compulsory; modifying criminal penalty; requiring willful violation; deleting minimum penalty; deleting certain enforcement authority and obsolete language; making enforcement of laws duty of Commissioner of Labor; providing for administrative fine; authorizing deposit of fines in certain revolving fund; providing for in lieu warning for first offense; authorizing issuance of cease and desist order under certain circumstances; providing for mitigation of fine; providing for hearing to determine if fine should be assessed and for appeal of decision; amending Section 21, Chapter 349, O.S.L. 1993, as amended by Section 2, Chapter 163, O.S.L. 1994 (40 O.S. Supp. 1996, Section 418.2), which relates to the Worker Safety Policy Council; modifying membership and meeting requirement; amending Section 12, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (40 O.S. Supp. 1996, Section 425), which relates to approval of list of most hazardous industries; modifying time frame for approving list; creating special interim committee; providing for appointment of members, co-chairs and staffing, purpose, and reimbursement for travel; providing for codification; providing for noncodification; 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 1-210, as last amended by Section 3 of Enrolled House Bill No. 1130 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 1-210. EMPLOYMENT.

"Employment" means:

(1) Any service, 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.

(2) (a) any service, including service in interstate commerce, performed by any individual other than an individual who is an employee under 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;

- (b) provided, the term "employment" shall include services described in divisions (i) and (ii) of subparagraph (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.

(3) Service performed 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 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 calendar year or preceding calendar year, regardless of whether they were employed at the same moment of time.

(5) Service performed by an individual in agricultural labor as defined in 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 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 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; orsubstantially 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 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 in the 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) in the employ of a governmental entity referred to in 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) 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) 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, 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 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 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) services performed 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 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) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress;
- (f) service performed in the employ of a foreign government, including service as a consul or other officer or employee or a nondiplomatic representative;
- (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;
- (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;
- (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;

(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;

(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), that states in pertinent part:

(i) the individual must be engaged in the delivery or distribution of newspapers or shopping news, including any services directly related to such trade or business,

(ii) substantially all the remuneration, whether or not paid in cash, for the performance of the services described in clause (i) of this subdivision is directly related to sales or other output, including the performance of services, rather than the number of hours worked, and

(iii) the services performed by the individual are performed pursuant to a written contract between such person and the person for whom the services

are performed and such contract provides that the person will not be treated as an employee with respect to such services;

- (l) service performed in the employ of a school, college or university, if the service is performed:
 - (i) by a student who is enrolled and is regularly attending classes at the school, college, or university, or
 - (ii) by the spouse of the student, if the spouse is advised, at the time the spouse commences to perform the service, that:
 - (I) the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, college, or university, and
 - (II) the employment will not be covered by any program of unemployment insurance;
- (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 the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and 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;
- (n) service performed in the employ of a hospital, if the service is performed by a patient of the hospital;

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

- (v) service performed by a person, commonly referred to as "owner-operator", who owns or leases a truck-tractor or truck for hire, provided 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;
- (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);
- (x) services performed for a corporation by an individual who owns one hundred percent (100%) of the stock of the corporation, provided that the corporation is not a nonprofit corporation as provided for in the Employment Security Act of 1980; or
- (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 2. AMENDATORY 40 O.S. 1991, Section 4-605, as amended by Section 22 of Enrolled House Bill No. 1130 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 4-605. MAINTENANCE OF ADMINISTRATIVE FUND ~~MAINTAINED IN SEPARATE ACCOUNT.~~

All monies in this fund shall be deposited in a special fund in the State Treasury. Such monies shall be secured by collateral in the full amount of the funds on deposit in the same kind and manner the State Treasurer is required to secure other funds of the state on deposit.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-109.2 of Title 40, unless there is created a duplication in numbering, reads as follows:

RATE REDUCTION FOR COMPUTER 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 4. 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 7 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 for the purposes set forth in Section 5 of this act. 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 5. 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 6. 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 Section 7 of this act.

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 5 of this act.

SECTION 7. 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 3 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 3 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 3 through 7 of this act.

SECTION 8. AMENDATORY 40 O.S. 1991, Section 75, as amended by Section 1, Chapter 137, O.S.L. 1993 (40 O.S. Supp. 1996, Section 75), is amended to read as follows:

Section 75. A. No child under the age of sixteen (16) years shall be employed or permitted to work in any gainful occupation, other than agriculture or domestic service, for more than three:

1. Three (3) hours in any one (1) school day, ~~or more than eight~~ except that if the employer is not covered by the Fair Labor Standards Act, a child may work eight (8) hours or less on a school day which precedes a nonschool day;

2. Eight (8) hours on a nonschool day ~~or, if the employer is not covered by the Fair Labor Standards Act, on a school day which precedes a nonschool day, or eighteen;~~

3. Eighteen (18) hours in any one (1) week when school is in session, ~~or forty~~

4. Forty (40) hours in any one (1) week when school is not in session. ~~"In,~~ except that if the employer is not covered by the Fair Labor Standards Act, a child may work forty (40) hours in any one (1) week when school is in session if attendance is not compulsory.

B. As used in this section, "in session" means the period beginning on the first Tuesday after Labor Day through May 31 of the following year.

C. Children under the age of sixteen (16) years must be permitted a one (1) hour cumulative rest period for each eight (8) consecutive hours worked. However, no such child shall work more

than five (5) consecutive hours unless permitted a one-half (1/2) hour cumulative rest period.

SECTION 9. AMENDATORY 40 O.S. 1991, Section 88, is amended to read as follows:

Section 88. Any person ~~violating~~ who is in willful violation of any of the provisions of this article, Section 71 et seq. of this title shall, upon conviction, be punished by guilty of a misdemeanor and, for each offense, shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or imprisonment for not less than ten (10) nor more than thirty (30) days, or both such fine and imprisonment. It shall be the duty of the Commissioner of Labor to see that the provisions of this article, are enforced with the exception of Section 85 of this title, which shall be enforced by the Mine Inspector or under his direction.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 89 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. It shall be the duty of the Commissioner of Labor to enforce the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes.

B. 1. In addition to any other penalty prescribed by law, any person who is in violation of Section 71 et seq. of Title 40 of the Oklahoma Statutes shall be liable for an administrative fine, to be assessed by the Commissioner of Labor, of not more than One Hundred Dollars (\$100.00) for each offense. The maximum administrative fine shall not exceed One Thousand Dollars (\$1,000.00) for all related violations. All administrative fines collected pursuant to this section shall be deposited in the Department of Labor Revolving Fund, created pursuant to Section 141.19 of Title 40 of the Oklahoma Statutes.

2. In lieu of the penalty provided for in paragraph 1 of this subsection, the Commissioner or a representative of the Commissioner may issue a warning for a first offense to a person who is in violation of Section 71 et seq. of Title 40 of the

Oklahoma Statutes. The warning shall cite the violation committed by the person and, where appropriate, state the time period in which the violation must be remedied.

C. After a violator is cited or fined for two unrelated offenses of failure to comply with the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes, the Commissioner of Labor shall have the authority to issue cease and desist orders, in accordance with the rules of the Department of Labor, against the violator until such time as compliance with the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes is met. Any order to cease and desist issued by the Commissioner may be enforced in district court. Upon application of the Commissioner, the district court may issue an injunction without bond for the purpose of enforcing this section.

D. The Commissioner of Labor shall assess and collect administrative fines incurred under subsection B of this section and, at the Commissioner's discretion, may remit, mitigate, or negotiate the fines. In determining the fine to be assessed, or the amount agreed upon in any negotiation, consideration shall be given to the appropriateness of the fine in light of the gravity of the violation and the extent to which the person charged has attempted to remedy the consequences of the violation. Individual proceedings shall be conducted pursuant to the provisions of subsection E of this section.

E. For the purpose of determining if an administrative fine should be assessed, a hearing shall be conducted in accordance with the provisions of the Administrative Procedures Act, by a hearing officer designated by the Commissioner of Labor. A final order by the hearing officer may be appealed to the district court in the county in which the violation occurred pursuant to the provisions of the Administrative Procedures Act.

SECTION 11. AMENDATORY Section 21, Chapter 349, O.S.L. 1993, as amended by Section 2, Chapter 163, O.S.L. 1994 (40 O.S. Supp. 1996, Section 418.2), is amended to read as follows:

Section 418.2 A. There is hereby created the Worker Safety Policy Council to study and formulate reforms for worker safety
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that could result in lower work-related injuries and result in lower workers' compensation costs for business.

B. The Worker Safety Policy Council shall be comprised of ~~fourteen (14)~~ eighteen (18) members as follows:

1. The Commissioner of Labor or his or her designee, who shall act as chairman for the Council;

2. The Administrator of the Workers' Compensation Court or his or her designee;

3. The Commissioner of the State Insurance Fund or his or her designee;

4. The Insurance Commissioner or his or her designee;

5. The Director of the Department of Commerce or his or her designee;

6. A representative from the Oklahoma Safety Council who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner;

7. A representative from an American society or organization of safety engineers who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner;

8. A representative from an American industrial hygiene association who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner;

9. A representative from an Oklahoma labor union who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner;

10. A representative from the Oklahoma State Chamber of Commerce and Industry who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner;

11. A representative from an organization of the private sector who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner;

12. A representative from an organization of public employees who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner;

13. A representative from the Oklahoma Municipal League who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner; ~~and~~

14. A representative of the public schools who shall be appointed by the Commissioner of Labor and shall serve at the pleasure of the Commissioner; and

15. Four members of the Legislature of which two shall be members of the Senate who shall be appointed by the President Pro Tempore of the Senate and two shall be members of the House of Representatives who shall be appointed by the Speaker of the House of Representatives.

C. Vacancies on the Council shall be filled by the Commissioner of Labor, except that legislative vacancies shall be filled in the same manner as the original appointment. A simple majority of the Council shall constitute a quorum.

D. The Department of Labor shall provide such office supplies and personnel as may be necessary to assist the Council.

E. Members of the Council shall receive no compensation for serving on the Council, but shall be reimbursed by the Department of Labor for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

F. The Council shall hold at least ~~two regular~~ quarterly meetings each calendar year at a place and time to be fixed by the Council. The Council shall make annual recommendations for legislative and policy changes to public and private employers to reduce worker injuries and the resulting costs associated with those injuries. Commencing September 1, 1994, and annually thereafter, the Council shall submit a report of its recommendations to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

SECTION 12. AMENDATORY Section 12, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (40 O.S. Supp. 1996, Section 425), is amended to read as follows:

Section 425. A. The Commissioner of Labor shall for each calendar year approve a list of the most hazardous industries in
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the state by Standard Industrial Classification Code based on the most current data available from the Federal Occupational Health and Safety Administration. In computing level of hazard the Commissioner of Labor shall include the following factors:

1. Total injuries;
2. Fatalities;
3. Number of fatal incidents;
4. High experience modifiers; and
5. Other factors as determined by the Commissioner to

indicate a high hazard industry.

B. The Commissioner of Labor shall approve the annual list ~~by November 1 of the prior year~~ within forty-five (45) days after receipt of national and state incident rate of nonfatal occupational injuries by industry data from the United States Department of Labor, Bureau of Labor Statistics. The list shall be transmitted to the Insurance Commissioner for distribution to insurance companies providing workers' compensation insurance or an equivalent product in this state and to the State Insurance Fund.

SECTION 13. A. There is hereby created a special interim committee to be called the "Worker Training Study Committee". The committee shall be composed of fourteen (14) members to be appointed no later than September 1, 1997, as follows:

1. Three members shall be Senate members, appointed by the President Pro Tempore of the Senate, of which one shall be the chair of the Senate Business and Labor Committee;

2. Three members shall be House members, appointed by the Speaker of the House of Representatives, of which one shall be the chair of the House Commerce, Industry and Labor Committee;

3. Two members shall be employees of the Oklahoma Employment Security Commission, appointed by the Director of the Commission, of which one shall be the director or an employee of the Job Training Partnership Act Program;

4. One member shall be an employee of the State Department of Health, appointed by the State Commissioner of Health;

5. Two members shall be representatives of the vocational-technical education system, appointed by the Director of the Oklahoma Department of Vocational and Technical Education;

6. One member shall be a representative of the private vocational schools, appointed by the Director of the Oklahoma Board of Private Vocational Schools;

7. One member shall be a union member representing the building trades, appointed by the President Pro Tempore of the Senate; and

8. One member shall be a nonunion member representing the building contractors, appointed by the Speaker of the House of Representatives.

B. The chair of the Senate Business and Labor Committee and the chair of the House Commerce, Industry and Labor Committee shall serve as co-chairs of the Study Committee. The Senate and House of Representatives shall provide staff support for the Study Committee.

C. The Worker Training Study Committee shall study the issues relating to outside work utilized by vocational-technical programs in the onsite training of persons for the plumbing, electrical, and mechanical trades and make recommendations to the Legislature regarding such training. The Study Committee shall also review funding allocations for the JTPA program and make recommendations to the Legislature regarding such funding.

D. Members of the Worker Training Study Committee shall be reimbursed for their travel expenses incurred to attend meetings of the committee according to the provisions of the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes. Nonlegislative members shall be reimbursed for travel in the same manner as legislative members by the appointing authority.

E. The Worker Training Study Committee shall be a special committee of the Legislature and shall be governed by the same rules that apply to other special committees of the Legislature.

SECTION 14. NONCODIFICATION The provisions of Section 13 of this act shall not be codified in the Oklahoma Statutes.

SECTION 15. This act shall become effective July 1, 1997.

SECTION 16. 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.

46-1-1615

JY