

ENGROSSED HOUSE
BILL NO. 1130

By: Fields

An Act relating to unemployment benefits; providing for extended base period for certain job-related injuries; defining term; 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, 2-507, 3-102, as amended by Section 12, Chapter 219, O.S.L. 1993, 3-106, as last amended by Section 14, Chapter 340, O.S.L. 1995, 3-203, as amended by Section 15, Chapter 219, O.S.L. 1993, 3-111, as last amended by Section 17, Chapter 340, O.S.L. 1995, 3-305, as amended by Section 6, Chapter 318, O.S.L. 1992, 3-801, 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, and 4-605 (40 O.S. Supp. 1996, Sections 1-208, 1-210, 1-218, 2-203, 2-503, 3-102, 3-106, 3-203, 3-111, 3-305, 4-508 and 4-509), which relate to definitions of employer, employment and wages, claims, assignments, good cause, claims, notice and objections, election by employer, confidential information, information furnished to agencies and

special funds; deleting obsolete language and clarifying definitions; clarifying exclusion from coverage for workers participating or enrolled in certain program; modifying exclusion pertaining to newspaper carriers; clarifying statutory references; defining terms; 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; construing application of provision; correcting cite relating to notice of a determination; eliminating certain three-member hearing boards; authorizing certain appointed representatives to hear certain matters; adding to benefit wages not charged to the employer; providing for reduction in compensation rate for certain period; providing certain exceptions; correcting cite; 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; conforming management of certain fund to standard

practices of State Treasurer; providing for
codification; providing an effective date; and
declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1-202A of Title 40, unless there
is created a duplication in numbering, reads as follows:

EXTENDED BASE PERIOD.

If an individual lacks sufficient base period wages because of a
job-related injury for which the individual received total temporary
disability payments awarded by the Workers' Compensation Court, upon
written application by the claimant, an extended base period will be
substituted for the current base period on a quarter-by-quarter
basis as needed to establish a valid claim. "Extended base period"
means the four quarters prior to the claimant's base period. These
four quarters may be substituted for base period quarters on a
quarter-by-quarter basis to establish a valid claim regardless of
whether the wages have been used to establish a prior claim, except
any wages earned that would render the Commission out of compliance
with applicable federal law will be excluded if used in a prior
claim. Benefits paid on the basis of an extended base period, which
would not otherwise be payable, shall be noncharged.

SECTION 2. 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 3. 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)~~ (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;

~~(o)~~ (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 4. 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 5. 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 6. 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 7. 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, during the time when such individual was unemployed and debts
created due to food stamp overissuances for which the individual is
liable pursuant to Section 10 of this act. No waiver of any
exemption provided for in this section shall be valid.

SECTION 8. 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 9. 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~~ 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 10. 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 11. AMENDATORY 40 O.S. 1991, Section 2-507, is amended to read as follows:

Section 2-507. NOTICE OF DETERMINATIONS. Notice of a determination upon a claim shall be given promptly to the claimant

by delivery thereof or by mailing such notice to ~~his~~ the claimant's last-known address. Notice of a determination shall also be given promptly to the last employer of the claimant, for whom ~~he~~ the claimant worked at least fifteen (15) working days, that objected to the claim in accordance with the provisions of subsection E of Section 2-503(5) 2-503 of this title and to each other employer who timely filed a written objection to the claim.

SECTION 12. AMENDATORY 40 O.S. 1991, Section 3-102, as amended by Section 12, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 1996, Section 3-102), is amended to read as follows:

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

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

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

D. Within fourteen (14) days after the date of mailing of the notice of the determination, the employer may file with the

Commission at the address prescribed in the notice ~~his~~ the employer's specific written objections to the contribution rate so determined. The matter will be heard upon those specific written objections by a ~~three-member board~~ representative appointed by the Commission. The decision thereon shall be made in writing and notice thereof mailed to the employer. The employer may appeal therefrom to the district court by filing a petition for review with the clerk of that court within thirty (30) days after the date of mailing stated upon that notice of decision.

SECTION 13. AMENDATORY 40 O.S. 1991, Section 3-106, as last amended by Section 14, Chapter 340, O.S.L. 1995 (40 O.S. Supp. 1996, Section 3-106), is amended to read as follows:

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

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

B. Within fourteen (14) days from the date stated upon the notice provided for in subsection A of this section, the employer may file with the Commission written objections to being charged with such benefit wages upon one or more of the grounds for

objection set forth in subsection G of this section. The employer's written objection must set forth specifically:

1. The date on which the employment was terminated;

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

3. Full particulars as to the regular scheduled part-time or full-time employment of the employee including the starting date, and ending date if any, of the continuous period of such part-time or full-time employment; and

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

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

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

setting forth its findings of fact and conclusions of law, and shall send it to the employer.

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

F. The employer or the Commission may appeal the order of the Commission or its representative to the district court by filing a petition for review with the clerk of that court within thirty (30) days after the date the order was mailed to all parties. The mailing date shall be specifically stated in the order.

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

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

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

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

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

5. Was separated from employment with that employer due to a medically verifiable illness or medical condition of the employee or the minor child of the employee.

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

I. An employer shall not be charged with benefit wages of a laid-off employee if the employer lists as an objection in a statement filed in accordance with subsection B of this section that said employee collecting benefits was hired to replace a United States serviceman or servicewoman called into active duty and laid-off upon the return to work by that serviceman or servicewoman. The Unemployment Compensation Fund shall be charged with the benefit wages of the laid-off employee.

SECTION 14. 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.

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 December 31, 1999, the contribution rate assigned to an employer shall be reduced by twenty-five percent (25%). 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 in this section.

SECTION 15. AMENDATORY 40 O.S. 1991, Section 3-111, as last amended by Section 17, Chapter 340, O.S.L. 1995 (40 O.S. Supp. 1996, Section 3-111), is amended to read as follows:

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

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

Any remuneration for services covered by the Employment Security Act of 1980 or other state unemployment compensation acts paid by the predecessor shall be considered as having been paid by the acquiring employer. The initial determination regarding whether or not an acquiring employer will become a successor to a predecessor account shall be made by the Commission or its duly authorized representative and notice of this determination shall be delivered

to the acquiring employer or mailed to his or her last-known address.

B. Within twenty (20) days after the mailing of the notice of initial determination provided for in subsection A of this section, the employer may file with the Commission or its representative a written protest to the initial determination and request an oral hearing to present evidence in support of its protest. The Commission or its representative shall, by written notice, advise the employer of the date of the hearing, which shall not be less than ten (10) days from the date of the mailing of the written notice. At the discretion of the Commission, the hearing shall be conducted by the Commission, or by a ~~three-member board~~ 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 additional contributions, interest, penalties or fees then due or owing by the employer and the employer's contribution rate.

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

C. Any employing unit, whether or not an employing unit at the time of the acquisition, which acquires substantially all of the trade, organization, business, or assets of an employer, at one or more separate and distinct establishments and who continues the acquired operations of the predecessor as a going business, shall acquire that portion of the experience rating account of such

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

D. No rate shall be assigned an employing unit succeeding to the experience of another employing unit pursuant to this section for any period subsequent to such succession except in accordance with regulations prescribed by the Commission, which regulations shall be consistent with federal requirements for additional credit allowance in Section 1602 of the Internal Revenue Code, and the Employment Security Act of 1980, Section 1-101 et seq. of this title.

E. By rule the Commission may establish a computation date for any such period different from the computation date generally prescribed by the provisions of the Employment Security Act of 1980, and may define the words "calendar year" as meaning a twelve-

consecutive-month period ending on the same day of the year as that on which such computation date occurs.

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

SECTION 16. AMENDATORY 40 O.S. 1991, Section 3-305, as amended by Section 6, Chapter 318, O.S.L. 1992 (40 O.S. Supp. 1996, Section 3-305), is amended to read as follows:

Section 3-305. ASSESSMENTS. A. If any employer shall fail to make any report or return as required by ~~this act~~ the Employment Security Act of 1980, the Oklahoma Employment Security Commission or its duly authorized representative, from any information in the possession of or obtainable by the Commission, may determine the amount of contribution due from such employer, and shall mail a copy of the assessment to the last-known address of the delinquent employer. The assessment so made shall not preclude the Commission or its representative from making field audits of the books and records, wherever located, of the employer and from making further adjustments, corrections or assessments. The assessments provided for herein must be made, and a copy thereof delivered to the employer or mailed to the last-known address of the employer, within three (3) years after the date on which the report or return was required to be filed.

B. Within twenty (20) days after the mailing of the assessment provided for above, the employer may file with the Commission or its representative a written protest to the assessment and a request for an oral hearing de novo to present evidence in support of the protest. The Commission or its representative shall by written notice, advise the employer of the date of the hearing, which shall not be less than ten (10) days from the date of mailing of the written notice. At the discretion of the Commission, this hearing shall be conducted by the Commission, or by a ~~three-member board~~ representative appointed by the Commission for this purpose. Pursuant to the hearing, the Commission or its representative shall, as soon as practicable, make a written order setting forth its findings of fact and conclusions of law, and shall send it to the employer and shall in accordance with the order make an assessment of any contribution found to be due and not assessed.

C. If any employer fails to file a written protest within twenty (20) days, as provided by this section, then the assessment shall be final, and no appeal shall be allowed.

D. The employer or the Commission may appeal the order to the district court by filing a petition for review with the clerk of that court within thirty (30) days after the date the order was mailed to all parties. The mailing date shall be specifically stated in the order.

SECTION 17. AMENDATORY 40 O.S. 1991, Section 3-801, is amended to read as follows:

Section 3-801. APPLICABILITY. Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this part. For the purpose of this part, a nonprofit organization is an organization or group of organizations defined in paragraph (4) of Section 1-210 of this act title.

SECTION 18. 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 19. 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 20. 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 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 of State Finance may release aggregate 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 21. 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 22. 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 23. This act shall become effective July 1, 1997.

SECTION 24. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 12th day of March, 1997.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1997.

President of the Senate