ENGROSSED HOUSE
BILL NO. 1667

By: Gilbert and Toure of the House

and

Maddox of the Senate

(revenue and taxation - Oklahoma Small Business Payroll Incentive Act - filing of claims - codification - effective date - 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 3901 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Small Business Payroll Incentive Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3902 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Basic health benefits plan" consists of the following elements or elements substantially equivalent thereto:

a. not less than fifty percent (50%) of the premium shall be paid by the employer,

b. coverage for basic hospital care,

c. coverage for physician care,

d. coverage for mental health care,

e. coverage for substance abuse treatment,

f. coverage for prescription drugs, and

g. coverage for prenatal care;

2. "Establishment" means any business entity, no matter what legal form, including, but not limited to, a sole proprietorship, general partnership, limited partnership, corporation, limited liability company or limited liability partnership;

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

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

a. the costs of education of new state resident children,

b. the costs of public health, public safety and transportation services to be provided to new state residents,

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

d. the costs of other state services;

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

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

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

a. except as otherwise provided in this paragraph, the net benefit rate may be variable and shall not exceed:

(1) seven percent (7%) for establishments qualifying for incentive payments pursuant to subsection A of Section 3 of this act, or

(2) ten percent (10%) for establishments qualifying for incentive payments pursuant to subsection D of Section 3 of this act, and

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

8. "New direct job" means full-time-equivalent employment in this state in an establishment which has qualified to receive an incentive payment pursuant to the provisions of this act which did not exist in this state prior to the date of approval by the Department of Commerce of the application of the establishment pursuant to the provisions of Section 4 of this act; and

9. "Small business" means any legally recognized entity conducting sales of goods, services or a combination of goods and services for profit within the state and which has a gross annual payroll of less than Two Million Five Hundred Thousand Dollars ($2,500,000.00) or which employs an average of less than one hundred (100) employees annually or both such criteria.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3903 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by this act, a small business which increases its gross annual payroll shall receive an incentive payment equal to seven percent (7%) of the amount of the increase in the gross annual payroll.

B. A small business which otherwise qualifies for the incentive payments pursuant to this act shall be entitled to the incentive payments if it is engaged in any lawful business activity and the business shall not be required to be engaged in any particular activity as defined by the Standard Industrial Classification Manual, latest version, in order to qualify for the payments.

C. A small business which otherwise qualifies for the incentive payments pursuant to this act shall be entitled to the incentive

payments irrespective of the percentage of its sales which are made to purchasers located outside the state.

D. A small business which otherwise qualifies for the incentive payments pursuant to this act which makes sales of its product or services, or combination of products and services, to buyers out of state in an amount equal to or greater than seventy-five percent (75%) of its total sales shall be entitled to an incentive payment equal to ten percent (10%) of the amount of the increase in the gross annual payroll of the small business.

E. An establishment shall not be eligible to receive incentive payments pursuant to this act unless it offers, or will offer within one hundred eighty (180) days of the date it receives the first incentive payment pursuant to the provisions of this act, a basic health benefits plan to the individuals it employs in new direct jobs in this state.

F. An establishment which meets the qualifications specified in this act may receive quarterly incentive payments for a ten-year period from the Oklahoma Tax Commission pursuant to the provisions of the Oklahoma Small Business Payroll Incentive Act in an amount which shall be equal to the net benefit rate multiplied by the actual gross payroll of new direct jobs for a calendar quarter as verified by the Oklahoma Employment Security Commission.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3904 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. In order to receive incentive payments, an establishment shall apply to the Oklahoma Department of Commerce. The application shall be on a form prescribed by the Department and shall contain such information as may be required by the Department to determine if the applicant is qualified.

B. In order to qualify to receive such payments, the establishment applying shall be required to:

1. Be a small business; and

2. Have an annual gross payroll for new direct jobs projected by the Department of Commerce to be less than Two Million Five Hundred Thousand Dollars ($2,500,000.00).

C. If the applicant is determined to be qualified by the Department of Commerce, the Department shall conduct a cost/benefit analysis to determine the estimated net direct state benefits and the net benefit rate applicable for a ten-year period and to estimate the amount of gross payroll for a ten-year period. In conducting such cost/benefit analysis, the Department shall consider quantitative factors, such as the anticipated level of new tax revenues to the state along with the added cost to the state of providing services, and such other criteria as deemed appropriate by the Department. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits.

D. Upon approval of such an application, the Department shall notify the Oklahoma Tax Commission and shall provide it with a copy of the application and the results of the cost/benefit analysis. The Tax Commission may require the qualified establishment to submit such additional information as may be necessary to administer the provisions of this act. The approved establishment shall report to the Tax Commission periodically to show its continued eligibility for incentive payments, as provided in Section 6 of this act. The establishment may be audited by the Tax Commission to verify such eligibility. Once the establishment is approved, an agreement shall be deemed to exist between the establishment and the State of Oklahoma, requiring the continued incentive payment to be made as long as the establishment retains its eligibility as defined in and established pursuant to this section and Sections 2 and 6 of this act and within the limitations contained in the Oklahoma Small Business Payroll Incentive Act, which existed at the time of such approval.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3905 of Title 68, unless there is created a duplication in numbering, reads as follows:

There is hereby created within the State Treasury a special fund for the Oklahoma Tax Commission to be designated the "Oklahoma Small Business Payroll Incentive Payment Fund". The Oklahoma Tax Commission is hereby authorized and directed to withhold a portion of the taxes levied and collected pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for deposit into the fund. The amount deposited shall equal the sum of an amount determined by multiplying the net benefit rate provided by the Department of Commerce by the gross payroll as determined pursuant to the provisions of subsection A of Section 6 of this act. All of the amounts deposited in such fund shall be used and expended by the Tax Commission solely for the purposes and in the amounts authorized by the Oklahoma Small Business Payroll Incentive Act. The liability of the State of Oklahoma to make the incentive payments under this act shall be limited to the balance contained in the fund created by this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3906 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As soon as practicable after the end of a calendar quarter for which an establishment has qualified to receive an incentive payment, the establishment shall file a claim for the payment with the Oklahoma Tax Commission and shall specify the actual number and gross payroll of new direct jobs for the establishment for the calendar quarter. The Tax Commission shall verify the actual gross payroll for new direct jobs for the establishment for such calendar quarter. If the Tax Commission is not able to provide such verification utilizing all available resources, the Tax Commission may request such additional information from the establishment as

may be necessary or may request the establishment to revise its claim.

B. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits.

C. An establishment that has qualified pursuant to Section 4 of this act may receive payments only in accordance with the provisions under which it initially applied and was approved. If an establishment that is receiving incentive payments expands, it may apply for additional incentive payments based on the gross payroll anticipated from the expansion only, pursuant to Section 4 of this act.

D. As soon as practicable after such verification, the Tax Commission shall issue a warrant to the establishment in the amount of the net benefit rate multiplied by the actual gross payroll as determined pursuant to subsection A of this section for the calendar quarter.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3907 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Department of Commerce and the Tax Commission shall promulgate rules necessary to implement their respective duties and responsibilities under the provisions of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3908 of Title 68, unless there is created a duplication in numbering, reads as follows:

Any person making an application, claim for payment or any report, return, statement or other instrument or providing any other information pursuant to the provisions of this act who willfully makes a false or fraudulent application, claim, report, return, statement, invoice or other instrument or who willfully provides any false or fraudulent information, or any person who willfully aids or abets another in making such false or fraudulent application, claim,

report, return, statement, invoice or other instrument or who willfully aids or abets another in providing any false or fraudulent information, upon conviction, shall be guilty of a felony punishable by the imposition of a fine of not less than One Thousand Dollars ($1,000.00) and not more than Fifty Thousand Dollars ($50,000.00), or imprisonment in the State Penitentiary for not less than two (2) years and not more than five (5) years, or by both such fine and imprisonment. Any person convicted of a violation of this section shall be liable for the repayment of all incentive payments which were paid to the establishment. Interest shall be due on such payments at the rate of ten percent (10%) per annum.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3909 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Department of Commerce shall prepare annually a report which shall include, but not be limited to, documentation of the new direct jobs created under the Oklahoma Small Business Payroll Incentive Act and a fiscal analysis of the costs and benefits of the Act to the state. The report shall be submitted to the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Governor of this state no later than March 1, 1998, and every year thereafter.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3910 of Title 68, unless there is created a duplication in numbering, reads as follows:

The incentive payments provided pursuant to the Oklahoma Small Business Payroll Incentive Act shall be deemed to be made for public purposes as a method for developing the Oklahoma economy through incentives to small businesses for creation and expansion of employment opportunities.

SECTION 11. This act shall become effective July 1, 1997.

SECTION 12. 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 4th day of March, 1997.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1997.

President of the Senate