

ENROLLED HOUSE
BILL NO. 2792

By: Fields, Bonny, Erwin,
Langmacher, Morgan,
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Tyler, Case, Culver,
Hefner, Hiett, Ingmire,
Lindley, Mass, Miller,
Newport, O'Neal,
Pettigrew, Phillips,
Sullivan (John),
Thornbrugh, Toure and
Weese of the House

and

Long of the Senate

An Act relating to the Employment Security Act of 1980; amending 40 O.S. 1991, Sections 1-210, as last amended by Section 1, Chapter 391, O.S.L. 1997, 1-223, as amended by Section 3, Chapter 195, O.S.L. 1994, 2-104, 2-105, as last amended by Section 2, Chapter 349, O.S.L. 1994, 2-106, 2-303, as amended by Section 7, Chapter 30, O.S.L. 1997, 2-405, as amended by Section 8, Chapter 30, O.S.L. 1997, 2-607, 3-106, as last amended by Section 13, Chapter 30, O.S.L. 1997, and 3-403, and Section 5, Chapter 30, O.S.L. 1997, and Section 14, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 1997, Sections 1-210, 1-223, 1-224, 2-105, 2-303, 2-405, 3-106 and 3-109.1), which relate to employment, taxable wages, files, computation of benefit amount, wages subtracted from benefit amount, maximum benefit amounts, exemption of benefits from process, good cause for voluntarily leaving work, procedures in appeals, benefit wages charged and relief, rate reductions and transcript of proceedings; modifying definition of employment, taxable wages, and file; modifying computation of weekly benefit amount; requiring reporting of wages; modifying method of determining maximum benefit amount; making benefits subject to certain tax levies; adding factors constituting good cause; clarifying manner in which hearings and appeals are conducted; modifying circumstances under which employer's benefit wages do not include certain wages; providing for a contribution rate reduction during certain period of time; providing for a reduction of the earned rate of certain employers; making such reduction ineffective under certain circumstances; modifying procedures concerning a Petition for Review; limiting use of monies in the Unemployment Trust Fund; requiring the Oklahoma Employment Security Commission to report to certain committees of the Legislature; specifying purpose of the report;

repealing 40 O.S. 1991, Sections 1-222 and 3-402, which relate to filing of notices, protests or appeals and intention to appeal notices; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 40 O.S. 1991, Section 1-210, as last amended by Section 1, Chapter 391, O.S.L. 1997 (40 O.S. Supp. 1997, Section 1-210), is amended to read as follows:

Section 1-210. EMPLOYMENT.

"Employment" means:

- (1) Any service, including service in interstate commerce, performed by:
 - (a) any officer of a corporation; or
 - (b) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee.
- (2) (a) any service, including service in interstate commerce, performed by any individual other than an individual who is an employee under paragraph (1) of this section who performs services for remuneration for any person:
 - (i) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or dry cleaning services, for his or her principal; or
 - (ii) as a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants or other similar establishments for merchandise for resale or supplies for use in their business operations;
- (b) provided, the term "employment" shall include services described in divisions (i) and (ii) of subparagraph (a) of this paragraph if:
 - (i) the contract of service contemplates that substantially all of the services are to be performed personally by such individual;
 - (ii) the individual does not have a substantial investment in facilities used in connection with the performance of the services, other than in facilities for transportation; and
 - (iii) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.
- (3) Service performed in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions; provided, that such service is excluded from "employment" as defined in the Federal

Unemployment Tax Act, 26 U.S.C., Section 3306(c)(7), and is not excluded from "employment" under paragraph (7) of this section.

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

(5) Service performed by an individual in agricultural labor as defined in subparagraph (a) of paragraph (15) of this section when:

- (a) such service is performed for a person who:
 - (i) during any calendar quarter in either the calendar year or the preceding calendar year, paid remuneration in cash of Twenty Thousand Dollars (\$20,000.00) or more to individuals employed in agricultural labor; or
 - (ii) for some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the calendar year or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time.
- (b) for the purposes of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:
 - (i) if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, Public Law 95-562, 29 U.S.C., Sections 1801 through 1872; 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 in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of One Thousand Dollars (\$1,000.00) or more in the calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter.

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

- (a) in the employ of:
 - (i) a church or convention or association of churches; or
 - (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;
- (b) by a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order;
- (c) in the employ of a governmental entity referred to in paragraph (3) of this section if such service is performed by an individual in the exercise of duties:
 - (i) as an elected official;
 - (ii) as a member of a legislative body, or a member of the judiciary of a state or political subdivision;
 - (iii) as a member of the State National Guard or Air National Guard;
 - (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
 - (v) in a position which, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week;
 - (vi) as an election official or election worker if the amount of remuneration received by the individual

during the calendar year for services as an election official or election worker is less than One Thousand Dollars (\$1,000.00);

- (d) by an individual receiving rehabilitation or remunerative work while participating or enrolled in a program in a facility that:
 - (i) conducts a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury; or
 - (ii) conducts a program that provides remunerative work for individuals who, because of their impaired mental or physical capacity cannot be readily absorbed into the competitive labor market;
- (e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work-relief or work-training; or
- (f) by an inmate of a custodial or penal institution.

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

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

(9) Notwithstanding paragraph (11) of this section, all service performed by an officer or member of the crew of an American vessel

on or in connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

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

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

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

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

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

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

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

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

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

- (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under the contract of hire and in fact; and
 - (b) such individual is customarily engaged in an independently established trade, occupation, profession, or business; or
 - (c) such service is outside the usual course of the business for which such service is performed and that such service is performed outside of all the places of business of the enterprise for which such service is performed.
- (15) The term "employment" shall not include:
- (a) services performed by an individual in agricultural labor, except as provided under paragraph (5) of this section. For purposes of this subparagraph, the term "agricultural labor" means remunerated service performed in agricultural labor as defined in the Federal Unemployment Tax Act, 26 U.S.C., Section 3306(k);
 - (b) domestic service, except as provided under paragraph (6) of this section, in a private home, local college club, or local chapter of a college fraternity or sorority;
 - (c) service performed by an individual in the employ of his or her son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his or her father or mother, or both father and mother;
 - (d) service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by the Employment Security Act of 1980, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of the Employment Security Act of 1980 shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals and services; provided that if this state shall not be certified for any year by the Secretary of Labor of the United States under the Federal Internal Revenue Code, 26 U.S.C., Section 3304(c), the payments required of such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in Section 3-304 of this title with respect to contributions erroneously collected;
 - (e) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress;
 - (f) service performed in the employ of a foreign government, including service as a consul or other officer or employee or a nondiplomatic representative;

- (g) service performed in the employ of an instrumentality wholly owned by a foreign government:
 - (i) if the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof, and
 - (ii) if the Commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
- (h) service covered by an arrangement between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within the jurisdiction of such other state or federal agency;
- (i) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;
- (j) service performed by an individual for a person, firm, association, trust, partnership or corporation as an insurance agent, or as an insurance solicitor or as a licensed real estate agent, if all such service performed by such individual for such person is performed for remuneration solely by way of commissions or fees;
- (k) service performed by an individual under the age of eighteen (18) in the delivery and distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, and services performed by an individual eighteen (18) years of age or older who meets the definition of a "direct seller" as defined in 26 U.S.C., Section 3508(b)(2), that states in pertinent part:
 - (i) the individual must be engaged in the delivery or distribution of newspapers or shopping news, including any services directly related to such trade or business,
 - (ii) substantially all the remuneration, whether or not paid in cash, for the performance of the services described in clause (i) of this subdivision is directly related to sales or other output, including the performance of services, rather than the number of hours worked, and

- (iii) the services performed by the individual are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services;
- (l) service performed in the employ of a school, college or university, if the service is performed:
 - (i) by a student who is enrolled and is regularly attending classes at the school, college, or university, or
 - (ii) by the spouse of the student, if the spouse is advised, at the time the spouse commences to perform the service, that:
 - (I) the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, college, or university, and
 - (II) the employment will not be covered by any program of unemployment insurance;
- (m) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has so certified to the employer, except that this provision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;
- (n) service performed in the employ of a hospital, if the service is performed by a patient of the hospital;
- (o) services performed by cooperative extension personnel holding federal appointments employed by state institutions of higher learning;
- (p) earnings of employees being paid by state warrants who are presently covered by the Federal Unemployment Compensation Act, 5 U.S.C., Section 8501 et seq., by virtue of their federal status;
- (q) cosmetology services performed by an individual in a beauty shop, as defined by Section 199.1 of Title 59 of the Oklahoma Statutes, pursuant to an agreement whereby the owner of the beauty shop leases or rents facilities for cosmetology to such individual;
- (r) barbering services performed by an individual in a barber shop, as defined by Section 61.5 of Title 59 of the Oklahoma Statutes, pursuant to an agreement whereby the owner of the barber shop leases or rents facilities for barbering to such individual;
- (s) in-home services performed in a medical care program such as the nontechnical medical care program, or social services program, as certified and approved by the Department of Human Services or the Federal Health Care Financing Administration or as a participant in a work or training program administered by the Department of Human Services;

- (t) riding services performed by a jockey and services performed by a trainer of race horses in an approved race licensed by the Oklahoma Horse Racing Commission;
- (u) service performed by an individual whose remuneration consists solely of commissions, overrides, bonuses, and differentials related to sales or other output derived from in-person sales to, or solicitation of orders from, ultimate consumers primarily in the home, or otherwise than in a permanent retail establishment;
- (v) service performed by a person, commonly referred to as "owner-operator", who owns or leases a truck-tractor or truck for hire, provided the owner-operator actually operates the truck-tractor or truck and, further, that the entity contracting with the owner-operator is not the lessor of the truck-tractor or truck;
- (w) services performed as a chopper of cotton who weeds or thins cotton crops by hand or hoe. This subsection shall be interpreted and applied consistently with the Federal Unemployment Tax Act, 26 U.S.C., Sections 3304(a)(6)(A) and 3306(k);
- (x) services performed for a corporation by an individual who owns one hundred percent (100%) of the stock of the corporation, provided that the corporation is not a nonprofit corporation as provided for in the Employment Security Act of 1980; or
- (y) services performed for a private for-profit person or entity by an individual as a landman:
 - (i) if the individual is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or negotiating business agreements that provide for the exploration for or development of minerals,
 - (ii) if substantially all remuneration paid in cash or otherwise for the performance of the services is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual, and
 - (iii) if the services performed by the individual are performed under a written contract between the individual and the person for whom the services are performed; provided that the individual is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract.

SECTION 2. AMENDATORY 40 O.S. 1991, Section 1-223, as amended by Section 3, Chapter 195, O.S.L. 1994 (40 O.S. Supp. 1997, Section 1-223), is amended to read as follows:

Section 1-223. TAXABLE WAGES. "Taxable A. Prior to January 1, 2000, "taxable wages" means the wages paid to an individual with respect to employment during a calendar year for services covered by the Employment Security Act of 1980 or other state unemployment compensation acts which shall equal fifty percent (50%) of the state's average annual wage for the second preceding calendar year as determined by the Commission, rounded to the nearest multiple of One Hundred Dollars (\$100.00).

B. Beginning January 1, 2000, "taxable wages" means the wages paid to an individual with respect to employment during a calendar year for services covered by the Employment Security Act of 1980 or

other state unemployment compensation acts which shall equal the applicable percentage of the state's average annual wage for the second preceding calendar year as determined by the Commission, rounded to the nearest multiple of One Hundred Dollars (\$100.00). The applicable percentage is determined by the conditional factor in place during the calendar year for which the taxable wage is being calculated. The conditional factor is determined pursuant to the provisions of Section 3-113 of this title. The applicable percentages are as follows:

1. Forty percent (40%) during any calendar year in which the balance in the Unemployment Compensation Fund is in excess of the amount required to initiate conditional contribution rates, pursuant to the provisions of Section 3-113 of this title;

2. Forty-two and one-half percent (42.5%) during calendar years in which condition "a" exists;

3. Forty-five percent (45%) during calendar years in which condition "b" exists;

4. Forty-seven and one-half percent (47.5%) during calendar years in which condition "c" exists; and

5. Fifty percent (50%) during calendar years in which condition "d" exists.

SECTION 3. AMENDATORY Section 5, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 1997, Section 1-224), is amended to read as follows:
Section 1-224. 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~~ this title, the term "file", "files", or "filed" ~~will~~ shall 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~~ shall be determined by the date and time printed by the Commission's telefax machine on the document received or the date and time on the sender's transmittal sheet; ~~or~~

3. Mailed with sufficient postage and properly addressed to an office of the Oklahoma Employment Security Commission on or before the date due. Timely mailing ~~will~~ shall be determined by the postmark; or

4. Electronically mailed via computer terminal to a Commission e-mail address by midnight on or before the date due. Timely e-mailing shall be determined by the Commission's e-mail log file.

SECTION 4. AMENDATORY 40 O.S. 1991, Section 2-104, is amended to read as follows:

Section 2-104. COMPUTATION OF BENEFIT AMOUNT. A. The weekly benefit amount of an individual shall be an amount equal to ~~one-twenty-fifth (1/25)~~ one twenty-third (1/23) of the taxable wages paid to the individual during that quarter of his base period in which such taxable wages were highest. If such amount is more than the maximum weekly benefit amount, it shall be reduced to the maximum weekly benefit amount or if the amount is less than Sixteen Dollars (\$16.00), it shall be increased to Sixteen Dollars (\$16.00).

B. The maximum weekly benefit amount shall be:

1. Prior to July 1, 1984, One Hundred Eighty-five Dollars (\$185.00); and

2. Beginning July 1, 1984, the greater of:

a. One Hundred Ninety-seven Dollars (\$197.00) ~~+~~ or

b. (1) sixty percent (60%) of the average weekly wage of the second preceding calendar year during any

calendar year in which the balance in the Unemployment Compensation Fund is in excess of the amount required to initiate conditional contribution rates, pursuant to the provisions of Section 3-113 of this title~~;~~

- (2) fifty-seven and one-half percent (57.5%) of the average weekly wage of the second preceding calendar year during calendar years in which condition "a" exists~~;~~
- (3) fifty-five percent (55%) of the average weekly wage of the second preceding calendar year during calendar years in which condition "b" exists~~;~~
- (4) fifty-two and one-half percent (52.5%) of the average weekly wage of the second preceding calendar year during calendar years in which condition "c" exists~~;~~ and
- (5) fifty percent (50%) of the average weekly wage of the second preceding calendar year during calendar years in which condition "d" exists.

C. Before the last day of June of each year the Commission shall determine the average weekly wage of the preceding calendar year in the following manner:

~~(1)~~ 1. The sum of the total monthly employment reported for the calendar year shall be divided by twelve (12) to determine the average monthly employment~~;~~

~~(2)~~ 2. The sum of the total wages reported for the previous calendar year shall be divided by the average monthly employment to determine the average annual wage~~;~~ and

~~(3)~~ 3. The average annual wage shall be divided by fifty-two (52) to determine the average weekly wage.

SECTION 5. AMENDATORY 40 O.S. 1991, Section 2-105, as last amended by Section 2, Chapter 349, O.S.L. 1994 (40 O.S. Supp. 1997, Section 2-105), is amended to read as follows:

Section 2-105. WAGES SUBTRACTED FROM BENEFIT AMOUNT.

Each eligible individual who is unemployed with respect to any week ending after July 1, 1994, shall be paid with respect to such week a benefit in an amount equal to ~~his~~ the weekly benefit amount of the individual less that part of the wages, if any, payable to ~~him~~ the individual with respect to such week which is in excess of One Hundred Dollars (\$100.00). Each individual claiming benefits shall report all wages that the individual has been or will be paid for work performed during any week in which the individual claims unemployment benefits, regardless of the source or amount.

SECTION 6. AMENDATORY 40 O.S. 1991, Section 2-106, is amended to read as follows:

Section 2-106. MAXIMUM BENEFIT AMOUNT. An otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of ~~twenty-six~~ (26):

1. Twenty-six (26) times his the weekly benefit amount ~~or~~ ~~forty percent (40%) of the individual;~~

2. The applicable percentage of the state's average annual wage for the second preceding calendar year as determined by the Commission, rounded to the nearest multiple of One Hundred Dollars (\$100.00). The applicable percentage is determined by the conditional factor in place during the calendar year in which the individual files for benefits. The conditional factor is determined pursuant to the provisions of Section 3-113 of this title. The applicable percentages for this paragraph are as follows:

- a. twenty-five percent (25%) during any calendar year in which the balance in the Unemployment Compensation Fund is in excess of the amount required to initiate conditional contribution rates, pursuant to the provisions of Section 3-113 of this title,
- b. twenty-three and three-fourths percent (23.75%) during calendar years in which condition "a" exists,
- c. twenty-two and one-half percent (22.5%) during calendar years in which condition "b" exists,
- d. twenty-one and one-fourth percent (21.25%) during calendar years in which condition "c" exists, and
- e. twenty percent (20%) during calendar years in which condition "d" exists; or

3. The applicable percentage of the taxable wage, or forty percent (40%) of his individual's wages for insured work paid during his the base period of the individual. The applicable percentage is determined by the conditional factor in place during the calendar year in which the individual files for benefits. The conditional factor is determined pursuant to the provisions of Section 3-113 of this title. The applicable percentages for this paragraph are as follows:

- a. fifty percent (50%) during any calendar year in which the balance in the Unemployment Compensation Fund is in excess of the amount required to initiate conditional contribution rates, pursuant to the provisions of Section 3-113 of this title,
- b. forty-seven and one-half percent (47.5%) during calendar years in which condition "a" exists,
- c. forty-five percent (45%) during calendar years in which condition "b" exists,
- d. forty-two and one-half percent (42.5%) during calendar years in which condition "c" exists, and
- e. forty percent (40%) during calendar years in which condition "d" exists.

SECTION 7. AMENDATORY 40 O.S. 1991, Section 2-303, as amended by Section 7, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 1997, 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 of 1980 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 the individual or his or her spouse, or dependents, including child support obligations pursuant to Section 2-801 of this title, and debts created due to food stamp overissuances for which the individual is liable pursuant to ~~Section 10 of this act~~ Section 2-803 of this title. Benefits shall be subject to tax levies issued by the Internal Revenue Service in accordance with 26 U.S.C., Section 6331(h) provided an agreement is entered into between the Internal Revenue Service and the Oklahoma Employment Security Commission, and approved by the United States Department of Labor, that provides for the payment of all administrative costs associated with processing the tax levies. No waiver of any exemption provided for in this section shall be valid.

SECTION 8. AMENDATORY 40 O.S. 1991, Section 2-405, as amended by Section 8, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 1997, 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 the following:

1. 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;~~

2. 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 layoff, has elected to be separated and the employer has consented thereto;

3. If the claimant was separated from employment with the employer because a physician diagnosed or treated a medically verifiable illness or medical condition of the claimant or the minor child of the claimant, and the physician found that it was medically necessary for the claimant to stop working or change occupations; or

4. If the spouse of the claimant was transferred or obtained employment in another city or state, and the family is required to move to the location of that job that is outside of commuting distance from the prior employment of the claimant, and the claimant separates from employment in order to move to the new employment location of the spouse. As used in this paragraph, "commuting distance" means a radius of fifty (50) miles from the prior work location of the claimant.

SECTION 9. AMENDATORY 40 O.S. 1991, Section 2-607, is amended to read as follows:

Section 2-607. RULES AND PROCEDURES IN APPEALS.

The Board of Review and appeal referees shall ~~not be bound by common law or statutory rules of evidence or by technical rules of procedure, but~~ conduct any hearing or appeal ~~before either shall be conducted~~ in such manner as to ascertain the substantial rights of the parties. The Board of Review shall adopt reasonable rules governing the manner of filing appeals and the conduct of hearings and appeals before the Board of Review, consistent with the provisions of the Employment Security Act of 1980, ~~Section 1-101 et seq. of this title.~~ The Oklahoma Employment Security Commission shall adopt and, from time to time, may modify and amend rules governing appeals before the Appeals Tribunal of the Commission and its referees, which rules shall provide for one hearing before a referee near the place of the last employment involved in an intrastate appeal. When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual or in claims by a single individual with respect to two (2) or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, provided that in the judgment of the appeal tribunal referee having jurisdiction of the proceeding, such consolidation would not be prejudicial to any party. No person shall participate as an appeal tribunal referee or member of the Board of Review on any case in which ~~he~~ the person has a personal interest. A record shall be kept of all testimony and proceedings before an appeal tribunal referee or the Board of Review in connection with an appeal, but the testimony need not be transcribed unless judicial review is initiated. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the

Commission, and fees of witnesses subpoenaed on behalf of the Commission or any claimant, or the Board of Review, shall be deemed part of the expense of administering the Employment Security Act of 1980.

SECTION 10. AMENDATORY 40 O.S. 1991, Section 3-106, as last amended by Section 13, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 1997, 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~~ with the United States ~~mail~~ Postal Service 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;
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;

6. Was discharged by an employer for unsatisfactory performance during an initial employment probationary period. As used in this paragraph, "probationary period" means a period of time set forth in an established probationary plan which applies to all employees or a specific group of employees and does not exceed forty-five (45) calendar days from the first day a new employee begins work. The employee must be informed of the probationary period within the first seven (7) work days. There must be conclusive evidence to establish that the individual was separated due to unsatisfactory work performance and not separated because of lack of work due to temporary, seasonal, casual, or other similar employment not of regular, permanent, and year-round nature; or

7. Was separated from employment because the spouse of the employee was transferred or obtained employment in another city or state that required the family of the employee to move, and the employee quit current employment to move with the spouse.

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 11. AMENDATORY Section 14, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 1997, Section 3-109.1), is amended to read as follows:

Section 3-109.1 RATE REDUCTION. Notwithstanding the provisions of Sections 3-103, 3-109, 3-110 and 3-113 of ~~Title 40 of the Oklahoma Statutes~~ this title, for the time period beginning July 1, ~~1997~~ 1998, and ending December 31, 1999, the contribution rate assigned to an employer shall be reduced by ~~twenty-five percent (25%)~~ fifty percent (50%). Provided, the tax rate of employers assigned a tax rate pursuant to Sections 3-103 and 3-110 of ~~Title 40 of the Oklahoma Statutes~~ this title shall not be reduced to less than one percent (1%). ~~Provided further, employers~~ Employers who qualify for an earned rate calculated pursuant to Section 3-109 of ~~Title 40 of the Oklahoma Statutes~~ this title, 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~~ be reduced to no less than five and four-tenths percent (5.4%). Employers who qualify for an earned rate calculated pursuant to Section 3-109 of this title, and are given a rate of one-tenth of one percent (0.1%), shall be reduced to a rate of zero percent (0.0%). This section shall become ineffective for any calendar year in which a conditional factor exists as specified in Section 3-113 of this title.

SECTION 12. AMENDATORY 40 O.S. 1991, Section 3-403, is amended to read as follows:

Section 3-403. ~~TRANSCRIPT OF PETITION FOR REVIEW AND~~ TRANSCRIPT OF COMMISSION PROCEEDINGS TO BE FILED WITH COURT.

Within thirty (30) days after the date of mailing ~~to the employer~~ of the order, ruling, or finding complained of, the ~~employer~~ party desiring to appeal shall file in the office of the clerk of the district court of ~~such~~ the county that has the proper jurisdiction, a petition for review specifying the grounds upon which such appeal is based. ~~At the same time the employer shall file with the district court a true copy of the proceedings before the Commission certified to by the Commission and consisting of any citations, findings, judgments, actions, orders, pleadings and rulings, together with a transcript of all evidence introduced at any hearing relative thereto, or such portion of such citations, findings, judgments, motions, orders, pleadings, rulings and evidence as the appealing party and the Commission may agree to be sufficient to present fully to the court questions involved. The appealing party shall serve a file-stamped copy of the Petition for Review on the opposing party or its attorney and the designated hearing officer of the Commission before whom the original hearing was held. The hearing officer of the Commission shall then cause a certified transcript of the hearing to be made which shall consist of all testimony of the parties, all documentary evidence and other evidence introduced at the hearing, and all decisions, judgments, or orders rendered as a result of the hearing. The hearing officer shall then cause the certified transcript to be filed in the appropriate district court within sixty (60) days of receipt of the Petition for Review. Copies of the transcript shall be mailed by the hearing officer to the Commission's attorney and the employer or the employer's attorney.~~

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-608 of Title 40, unless there is created a duplication in numbering, reads as follows:

REED ACT DISTRIBUTIONS.

Monies credited to the account of this state in the Unemployment Trust Fund, described in Section 3-605 of Title 40 of the Oklahoma Statutes, by the Secretary of the Treasury of the United States pursuant to 42 U.S.C., Section 1103, with respect to federal fiscal years 1999, 2000, and 2001, shall be used solely for the administration of the Unemployment Compensation Program in this state.

SECTION 14. In December, 1999, the Oklahoma Employment Security Commission shall make a report to the Commerce, Industry and Labor Committee of the House of Representatives and the Business and Industry Committee of the Senate concerning the condition of the Unemployment Compensation Fund and the impact of the provisions of this act on the Fund.

SECTION 15. REPEALER 40 O.S. 1991, Sections 1-222 and 3-402, are hereby repealed.

SECTION 16. NONCODIFICATION Section 14 of this act shall not be codified in the Oklahoma Statutes.

SECTION 17. This act shall become effective July 1, 1998.

SECTION 18. 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 21st day of April, 1998.

Speaker of the House of
Representatives

Passed the Senate the 14th day of April, 1998.

President of the Senate