ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 172 By: Leftwich of the Senate

and

Fields of the House

An Act relating to labor; amending 40 O.S. 1991, Sections 1-209, 1-218, as last amended by Section 4, Chapter 30, O.S.L. 1997, 2-203, as last amended by Section 6, Chapter 30, O.S.L. 1997, 2-402, 2-603, 2-613, as amended by Section 1, Chapter 318, O.S.L. 1992, 2-706, 2-707, Section 14, Chapter 30, O.S.L. 1997, as last amended by Section 1, Chapter 382, O.S.L. 1999, 3-401, 3-405, as amended by Section 22, Chapter 219, O.S.L. 1993, 4-508, as last amended by Section 3, Chapter 348, O.S.L. 2000, 4-509, as last amended by Section 21, Chapter 30, O.S.L. 1997, Section 13, Chapter 161, O.S.L. 1998, and 5-102 (40 O.S. Supp. 2000, Sections 1-218, 2-203, 2-613, 3-109.1, 3-405, 4-508, 4-509, and 4-608), which relate to the Employment Security Act of 1980; * * * providing for codification; providing effective dates; and declaring an emergency.

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill and insert

"(labor - amending 15 sections in Title 40 - Employment Security Act of 1980 - Indian tribes and tribal units - definitions - unemployment benefits - employee recognition program - codification - effective dates - emergency)

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-108 of Title 40, unless there is created a duplication in numbering, reads as follows:

COVERAGE OF INDIAN TRIBES.

A. The term "employer" shall include any Indian tribe for which service in employment as defined in the Employment Security Act of 1980 (ESA) is performed.

B. The term "employment" shall include service performed in the employ of an Indian tribe, as defined in the Federal Unemployment Tax Act (FUTA), 26 U.S.C., Section 3306(u), provided such service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of 26 U.S.C., Section 3306(c)(7), and is not otherwise excluded from employment under the Employment Security Act. For purposes of this section, the exclusions from employment in paragraphs (c) and (e) of subsection (7) of Section 1-210 of Title 40 of the Oklahoma Statutes shall be applicable to services performed in the employ of an Indian tribe.

C. The terms "Indian tribe" and "tribal unit" shall have the meanings ascribed to them in federal law. "Tribal unit" includes subdivisions, subsidiaries, and business enterprises wholly owned by a tribe.

D. Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to the ESA, provided wages used to establish the claim were paid during a time in which the account of the Indian tribe for which services were rendered was not terminated pursuant to subparagraph a of paragraph 1 of subsection F of this section.

E. 1. An Indian tribe or tribal unit subject to the Employment Security Act shall pay contributions under the same terms and conditions as required of nongovernmental employers for profit subject to the Employment Security Act unless the tribe elects to pay into the State Unemployment Compensation Fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

2. An Indian tribe or tribal unit electing to make payments in lieu of contributions shall so notify the Commission in writing. After making the election, the Indian tribe shall be liable for reimbursement payments in lieu of contributions in the same manner and subject to the same provisions that apply to reimbursing nonprofit organizations as provided in Part 8 of Article 3 of the Employment Security Act, including formation of group accounts, and the proportionate allocation of benefit costs, except that one hundred percent (100%) of the extended benefits attributable to the Indian tribe shall be reimbursed. Indian tribes shall determine whether reimbursement for benefits paid shall be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units. If any provision contained in Part 8 of Article 3 of the Employment Security Act, including the administrative rules implementing that Part, contradicts a provision of this section, the provision of this section shall control.

3. An Indian tribe or tribal unit shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

F. 1. a. If an Indian tribe or tribal unit thereof fails to file the required reports and pay all late filing penalties or make required payments under the Employment Security Act, including payment of all interest, penalties, surcharges, or fees, a notice of reporting or payment delinquency shall be mailed to the Indian tribe at its last-known address. If the delinquency is not corrected within ninety (90) days of the date of mailing of the notice of delinquency, the account of the Indian tribe shall be terminated and notice of termination shall be mailed to the tribe at its last-known address, together with a statement

of protest rights available pursuant to Section 3-115 of Title 40 of the Oklahoma Statutes. If the account of an Indian tribe is terminated pursuant to this subparagraph, the Indian tribe shall not be considered an "employer" for purposes of subsection A of this section, and services performed for the Indian tribe shall not be considered "employment" for purposes of subsection B of this section.

b. The Oklahoma Employment Security Commission may reinstate the account of any Indian tribe that loses coverage under paragraph a of this subsection if the tribe pays all contributions, payments in lieu of contributions, interest, penalties, surcharges, and fees that are due and owing. Upon reinstatement, the tribe shall again be considered an "employer" for purposes of subsection A of this section and services performed for the tribe shall again be considered "employment" for purposes of subsection B of this section.

2. a. Failure of an Indian tribe or tribal unit to make required payments, including assessments of interest, penalties, surcharges, and fees within ninety (90) days of the due date for payment shall cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in subsection E of this section, for the following tax year unless payment in full is received before January 31 of the next tax year.

b. Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subparagraph a of this paragraph, shall have the option reinstated if, after

a period of one (1) year, all contribution payments have been timely made, provided no contributions, payments in lieu of contributions for benefits paid, interest, penalties, surcharges, or fees remain outstanding.

G. The notice of payment or reporting delinquency to Indian tribes or their tribal units, referred to in subparagraph a of paragraph 1 of subsection F of this section, shall include information that failure to make full payment and file required reports within the prescribed time frame shall cause:

1. The Indian tribe to be liable for taxes under the Federal Unemployment Tax Act;

2. The Indian tribe to lose the option to make payments in lieu of contributions;

3. The Indian tribe to be excepted from the definition of "employer", as provided in subsection A of this section; and

4. Services in the employ of the Indian tribe to be excepted from the definition of "employment", as provided in subsection B of this section.

H. Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the United States government shall be financed in their entirety by the Indian tribe.

I. If an Indian tribe fails to make required payments under the Employment Security Act, including the payment of all interest, penalties, surcharges, and fees, within ninety (90) days of the mailing of the notice of payment delinquency, the Oklahoma Employment Security Commission will immediately notify the United States Internal Revenue Service and the United States Department of Labor.

SECTION 2. AMENDATORY 40 O.S. 1991, Section 1-209, is amended to read as follows:

Section 1-209. EMPLOYING UNIT.

"Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state.

All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act, except as provided under paragraphs (10) and (11) of Section 1-208 ~~(12) and (13)~~ of this title.

Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment, which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of Section 1-208 or Section 3-203 of this title, the employing unit shall for all the purposes of ~~this act~~ the Employment Security Act of 1980 be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment; except that each such contractor or subcontractor who is an employer by reason of Section 1-208 or Section 3-203 shall alone be liable for the contributions measured by wages paid to individuals in his employ, and except that any employing unit which shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of Section 1-208 or Section 3-203 may recover the same from such contractor or subcontractor.

Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of ~~this act~~ the Employment Security Act of 1980, whether such individual was hired or paid directly by such employing unit or by such agent or employee of an employing unit, provided the employing unit had actual or constructive knowledge of the employment.

SECTION 3. AMENDATORY 40 O.S. 1991, Section 1-218, as last amended by Section 4, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 2000, 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 work from persons other than the employing unit shall be treated as wages received from 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 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 other than employee contributions or deferrals after December 31, 2001, under a qualified plan as described in 26 U.S.C., Section 401(k),

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 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 withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of 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 with respect to domestic services in a private home of the employer or for agricultural labor;

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 its employ; provided the meals and lodging are furnished on the business premises of the employer for the convenience of the employer; or

7. Payments made under an approved supplemental unemployment benefit plan.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-225 of Title 40, unless there is created a duplication in numbering, reads as follows:

SUPPLEMENTAL UNEMPLOYMENT BENEFIT PLAN.

A. "Supplemental unemployment benefit plan" means a plan that provides for an employer to make payments to its employees during a temporary layoff that will supplement unemployment benefits received by the employees. The purpose of a supplemental unemployment benefit plan is to allow an employer the opportunity to keep the employer's workforce intact during a temporary layoff.

B. Every supplemental unemployment benefit plan must meet the following requirements:

1. The plan shall provide for a payment from the employer to the employee each week during the temporary layoff to supplement unemployment benefits received by the employee;

2. The employer must be able to give a reasonable assurance that the separated employees will be able to return to work at the end of the temporary layoff; and

3. The overall plan must be in keeping with the statement of purpose set out in subsection A of this section.

C. The amount of supplemental unemployment benefit plan payments will not be deducted from the weekly benefit amount of an unemployment benefit claim.

D. All supplemental unemployment benefit plans must be approved by the Director of the Unemployment Insurance Division of the Oklahoma Employment Security Commission. The Director's determination will be in writing and mailed to the employer's last-known address. If an employer disagrees with the determination, an appeal can be taken pursuant to Section 3-115 of the Employment Security Act of 1980.

SECTION 5. AMENDATORY 40 O.S. 1991, Section 2-203, as last amended by Section 6, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 2000, 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 claim in writing or by telecommunication for benefits with respect to each week in accordance with such rule as the Commission may prescribe.

B. With respect to 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.

C. No claim will be allowed or paid unless the claimant resides within this state or a state or a foreign country with which the State of Oklahoma has entered into a reciprocal or cooperative arrangement pursuant to Part 7 of Article IV of the Employment Security Act of 1980.

SECTION 6. AMENDATORY 40 O.S. 1991, Section 2-402, is amended to read as follows:

Section 2-402. FRAUD.

~~(1)~~ A. If the Oklahoma Employment Security Commission determines that any individual has made a false statement or representation or has failed to disclose a material fact in violation of Section 5-102 of this title, ~~such~~ the individual shall be ineligible to receive unemployment compensation for the week ~~in which it is so determined~~ that determination is made by the Commission and for the next following fifty-one (51) weeks, and no benefit or base year shall be established during such period of ineligibility. After an individual has been determined to have violated Section 5-102 of this title in a particular benefit year, if the Commission determines that another violation of that section

has occurred in any subsequent benefit year, the individual shall be ineligible to receive unemployment compensation for the week in which the subsequent determination is made by the Commission and for the next following one hundred three (103) weeks, and no benefit or base year shall be established during such period of ineligibility.

B. If the Commission makes a determination as described in subsection A of this section, the individual shall be disqualified for each week benefits were paid as a result of a false statement or representation or a failure to disclose a material fact, and the individual shall be deemed overpaid for the entire amount of benefits paid as a result of claimant fraud.

~~(2) Such~~ C. The ineligibility ~~is~~ and disqualification set forth in subsections A and B of this section are in addition to the penalty provided by Section 5-102 of this title, and shall be invoked irrespective of whether such individual is prosecuted for violation of Section 5-102 of this title, when the Commission makes such a determination of ineligibility or disqualification. This section shall not apply to a determination made more than two (2) years after such violation occurred.

SECTION 7. AMENDATORY 40 O.S. 1991, Section 2-603, is amended to read as follows:

Section 2-603. APPEAL TRIBUNAL.

The claimant or any other party entitled to notice of a determination may file an appeal from such determination with the appeal tribunal within ten (10) days after the date of mailing of the notice to his last-known address or, if such notice is not mailed, within ten (10) days after the date of delivery of such notice. The claimant or other entitled party may file an appeal in any manner allowed by Section 1-224 of this title or by telephone through the Commission's Interactive Voice Response System or by speaking with one of the Commission's claims representatives. In order to be considered timely, filing of an appeal made by telephone

through the Interactive Voice Response System shall be completed by midnight on the date it is due, and filing of an appeal made by telephone through a claims representative shall be completed by close of business on the day due.

SECTION 8. AMENDATORY 40 O.S. 1991, Section 2-613, as amended by Section 1, Chapter 318, O.S.L. 1992 (40 O.S. Supp. 2000, Section 2-613), is amended to read as follows:

Section 2-613. ~~RECOVERY AND RECOUPMENT. Any individual who, by reason of a false statement or representation or failure to disclose a material fact, has received any sum as benefits to which he or she was not entitled shall be liable to repay such sum to the Commission for the fund plus interest at the rate of one percent (1%) per month or fraction thereof until repaid. The interest will cease to accrue when the total accrued interest equals the amount of the overpayment. If an overpayment is amended, the interest will cease to accrue when the total accrued interest equals the amount of the amended overpayment. Provided, the Commission may deduct such principal sum from any future benefits payable to said individual. If any individual, for any other reason, has received any sum as benefits under this act to which, under a redetermination or decision pursuant to this act, the individual has been found not entitled, he or she shall not be liable to repay such sum but shall be liable to have such sum deducted from any future benefits payable to the individual with respect to the benefit year current at the time of such receipt and the next subsequent benefit year that begins within one (1) year after the expiration of the benefit year current at the time of such receipt~~

BENEFIT OVERPAYMENTS.

An overpayment of unemployment benefits shall be classified in one of three ways with recovery and recoupment to be conducted as follows:

1. Fraud overpayment - in which an individual intentionally makes a false statement or representation or fails to disclose a material fact, and has received any sum as benefits to which the individual was not entitled. In this overpayment classification, the individual shall be liable to repay this sum to the Commission for the fund plus interest at the rate of 1 percent (1%) per month or fraction thereof until repaid. The interest will cease to accrue when the total accrued interest equals the amount of overpayment. If an overpayment is modified, the interest will cease to accrue when the total accrued interest equals the amount of the modified overpayment. The Commission may deduct the principal sum from any future benefits payable to the individual;

2. Claimant error overpayment - in which an individual, by mistake of law or fact, makes a false statement or representation or fails to disclose a material fact and has received any sum as benefits to which the individual was not entitled. In this overpayment classification, the individual shall be liable to repay this sum to the Commission for the fund plus interest at the rate of 1% per month on the unpaid balance of the principal or fraction thereof until repaid. The interest will cease to accrue when the total accrued interest equals the amount of the overpayment. If an overpayment is modified, the interest will cease to accrue when the total accrued interest equals the amount of the modified overpayment. The Commission may deduct the principal sum from any future benefits payable to the individual; or

3. Administrative overpayment - in which:

a. an individual has received any sum as benefits under this act due to an error by the Commission or an employer, or

b. an individual has received benefits and, under a redetermination or a reversal of a decision on appeal,

the individual has been found to be not entitled to benefits.

In this overpayment classification, the individual shall be liable to have this sum deducted from any future benefits payable to the individual with respect to the benefit year current at the time of the receipt and the next subsequent benefit year that begins within one (1) year after the expiration of the benefit year current at the time of the receipt. No interest will accrue on administrative overpayments.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-615 of Title 40, unless there is created a duplication in numbering, reads as follows:

BENEFIT OVERPAYMENT INTEREST WAIVER.

Any interest, or any portion thereof, that accrues pursuant to the provisions of Section 2-613 of this title, may be waived by the Oklahoma Employment Security Commission provided the failure of the claimant to remit payment at the time a determination of overpayment was made:

1. Is explained to the satisfaction of the Commission;

2. Resulted from a mistake by the claimant of either the law or the facts concerning the repayment of overpayment benefits; or

3. Was caused by insolvency of the claimant.

No waiver of interest shall be granted unless a request for waiver is filed with the Commission within a three-year period from the date the interest accrued. No waiver of interest shall be granted to a claimant if it is determined that the claimant received an overpayment of benefits through fraud.

SECTION 10. AMENDATORY 40 O.S. 1991, Section 2-706, is amended to read as follows:

Section 2-706. STATE "ON" INDICATOR.

~~A. For weeks beginning prior to September 26, 1982, there is a "state 'on' indicator" for this state for a week if the Commission~~

~~determines, in accordance with the regulations of the Secretary of Labor of the United States, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment, not seasonally adjusted:~~

~~(1) equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two (2) calendar years, and~~

~~(2) equaled or exceeded four percent (4%), or~~

~~(3) after June 30, 1977, equaled or exceeded five percent (5%).~~

~~Any optional or revised "state 'on' indicator" or indicators or optional waiver by a state of any such indicator or part of any such indicator provided for by Congress for any period of time shall be considered to be in effect in Oklahoma for such period of time.~~

~~B. For weeks beginning after September 25, 1982, there~~ There is a "state 'on' indicator" for this state for a week if the Commission determines, in accordance with the regulations of the Secretary of Labor of the United States, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment, not seasonally adjusted:

(1) equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two (2) calendar years, and

~~(2)~~ equaled or exceeded five percent (5%), or

~~(3)~~ (2) equaled or exceeded six percent (6%).

Any optional or revised "state 'on' indicator" or indicators or optional waiver by a state of any such indicator or part of any such indicator provided for by Congress for any period of time shall be considered to be in effect in Oklahoma for such period of time.

SECTION 11. AMENDATORY 40 O.S. 1991, Section 2-707, is amended to read as follows:

Section 2-707. STATE "OFF" INDICATOR.

~~A. For weeks beginning prior to September 26, 1982, there is a "state 'off' indicator" for this state for a week if the Commission determines, in accordance with the regulations of the Secretary of Labor of the United States, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment, not seasonally adjusted after June 30, 1977, was either:~~

~~(1) less than five percent (5%) and was less than one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two (2) calendar years, or~~

~~(2) was less than four percent (4%).~~

~~Any optional or revised "state 'off' indicator" or indicators or optional waiver by a state of any such indicator or part of any such indicator provided for by Congress for any period of time shall be considered to be in effect in Oklahoma for such period of time.~~

~~B. For weeks beginning after September 25, 1982, there~~ There is a "state 'off' indicator" for this state for a week if the Commission determines, in accordance with the regulations of the Secretary of Labor of the United States, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment, not seasonally adjusted was either:

(1) less than six percent (6%) and was less than one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two (2) calendar years, or

(2) less than five percent (5%).

Any optional or revised "state 'off' indicator" or indicators or optional waiver by a state of any such indicator or part of any such indicator provided for by Congress for any period of time shall be considered to be in effect in Oklahoma for such period of time.

SECTION 12. AMENDATORY Section 14, Chapter 30, O.S.L. 1997, as last amended by Section 1, Chapter 382, O.S.L. 1999 (40 O.S. Supp. 2000, 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 this title, for the time period beginning July 1, 1998, and ending December 31, ~~2001~~ 2003, the contribution rate assigned to an employer shall be reduced by fifty percent (50%); provided: the tax rate of employers assigned a tax rate pursuant to Sections 3-103 and 3-110 of this title shall not be reduced to less than one percent (1%); employers who qualify for an earned rate calculated pursuant to Section 3-109 of this title, and are given a rate of five and one-half percent (5.5%) shall be reduced to no less than five and four-tenths percent (5.4%); and 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%). The provisions of this section shall be suspended for any year in which a conditional factor applies pursuant to the provisions of Section 3-113 of this title.

SECTION 13. AMENDATORY 40 O.S. 1991, Section 3-401, is amended to read as follows:

Section 3-401. APPEALS TO DISTRICT COURT.

~~Any employer aggrieved by~~ After the administrative appeal hearing process provided for in Article III of this title is complete, any order, ruling or finding ~~of the Commission, or its duly authorized representative,~~ that directly ~~affecting such~~ affects an employer or the Commission~~,~~ may ~~appeal therefrom~~ be appealed by the affected entity to the district court of the county of residence, or principal place of business, of ~~such~~ the employer; provided, however, if ~~such~~ the employer is a nonresident of this state, then to the district court of Oklahoma County.

SECTION 14. AMENDATORY 40 O.S. 1991, Section 3-405, as amended by Section 22, Chapter 219, O.S.L. 1993 (40 O.S. Supp. 2000, Section 3-405), is amended to read as follows:

Section 3-405. DEPOSIT OF ASSESSMENT REQUIRED.

As a condition precedent to the right of ~~the~~ an employer to prosecute ~~such~~ an appeal, and as a jurisdictional prerequisite of the district court to entertain ~~such~~ the appeal, it is specifically provided that, if the appeal be from an order, judgment, finding, or ruling of the Commission or its duly authorized representative, ~~assessing a contribution or causing any additional contribution, penalty, interest or fee to become owing,~~ the employer shall pay to the Commission ~~the amounts assessed or owing~~ all amounts owing in the employer's account. Any amounts so paid shall, pending the final determination of the appeal, be reflected by the Commission in ~~a separate~~ the employer's account, and if, upon a final determination of the appeal, the order ~~assessing the contributions, or causing the contributions, penalties, interest or fees to become owing~~ of the Commission is reversed or modified and it is determined that the contribution or part thereof was erroneously assessed, or the contributions, penalties, interest or fees should not be owed to the Commission, the amount paid by the employer shall be refunded to the employer by the Commission.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-317 of Title 40, unless there is created a duplication in numbering, reads as follows:

EMPLOYEE RECOGNITION PROGRAM.

In order to establish a public employee benefit program to encourage outstanding performance in the workplace, the Oklahoma Employment Security Commission is hereby directed to establish an on-the-job employee performance recognition program which encourages outstanding job performance and productivity. In order to promote excellence in job performance and provide recognition for work units

with exceptional performance, the Commission is authorized to expend from monies available to it so much thereof as may be necessary for the purchase of recognition awards for presentation to the members of work units or individual employees with exceptional job performance records or for other significant contributions to the operation of the Commission. Recognition awards shall consist of distinctive wearing apparel, service pins, plaques, U.S. Savings Bonds, or other distinguished awards, the value of which shall not exceed One Hundred Dollars ($100.00) per employee, which recognizes the achievement of the work unit or individual employee.

SECTION 16. AMENDATORY 40 O.S. 1991, Section 4-508, as last amended by Section 3, Chapter 348, O.S.L. 2000 (40 O.S. Supp. 2000, 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 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 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 the taxpayer or claimant pursuant to the 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 the information or evidence is to be used by the officials or other parties to the proceedings to prosecute or defend allegations of violations of the Employment

Security Act of 1980. 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 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 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 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, 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;

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;

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; ~~or~~

16. The release to officials, employees, and agents of the Department of Mental Health and Substance Abuse Services of information required to evaluate the effectiveness of mental health and substance abuse treatment and state or local programs utilized to divert persons from inpatient treatment. The information

obtained shall be kept confidential by the Department, its employees and any of its agents and shall not be disclosed or be open to public inspection. The Department of Mental Health and Substance Abuse Services, however, may release aggregated data, either by treatment facility, program or larger aggregate units, provided that such aggregation meets disclosure requirements of the Oklahoma Employment Security Commission;

17. The release to officials, employees, and agents of public housing agencies for purposes of determining eligibility pursuant to 42 U.S.C., Section 503(i);

18. The release of wage and benefit claim information, at the discretion of the Commission, to an agency of this state or its political subdivisions, or any nonprofit corporation that operates a program or activity designated as a partner in the Workforce Investment Act one-stop delivery system pursuant to 29 U.S.C.A., Section 2481(b), based on a showing of need made to the Oklahoma Employment Security Commission and after an agreement concerning the release of information is entered into with the entity receiving the information; or

19. The release of information to the wage record interchange system, at the discretion 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 17. AMENDATORY 40 O.S. 1991, Section 4-509, as last amended by Section 21, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 2000, Section 4-509), is amended to read as follows:

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

A. Subject to such restrictions as the Oklahoma Employment Security Commission may by rule prescribe, ~~such~~ information maintained by the Commission 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, the United States Social Security Administration, or the Oklahoma Tax Commission. Any information obtained in connection with the administration of the employment service may be made available to ~~persons~~:

1. Persons or agencies for purposes appropriate to the operation of a public employment service; or

2. Any agency of this state or its political subdivisions or nonprofit corporation that operates a program or activity designated as a required partner in the Workforce Investment Act one-stop delivery system pursuant to 29 U.S.C.A., Section 2841(b)(1).

B. 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. The

Commission shall furnish to public agencies collecting debts created by food stamp overissuances or administering 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 18. AMENDATORY Section 13, Chapter 161, O.S.L. 1998 (40 O.S. Supp. 2000, Section 4-608), is amended to read as follows:

Section 4-608. REED ACT DISTRIBUTIONS.

A. Monies credited to the account of this state in the Unemployment Trust Fund, described in Section 3-605 of this title, by the Secretary of the Treasury of the United States pursuant to 42 U.S.C., Section 1103, may be used for the payment of unemployment benefits to qualified claimants in the State of Oklahoma or it may be appropriated by the Legislature following the procedure set out in 42 U.S.C., Section 1103 (c)(2), for the administration of the unemployment compensation law and public employment offices in the State of Oklahoma.

B. 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~~ this title, 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 19. AMENDATORY 40 O.S. 1991, Section 5-102, is amended to read as follows:

Section 5-102. FALSE STATEMENT FOR BENEFITS, FAILURE TO DISCLOSE MATERIAL FACT.

~~(1)~~ A. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act or under the unemployment compensation law of any state or of the federal government, either for himself or for any other person, shall be guilty of a misdemeanor and shall be punished by a fine of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for not longer than ninety (90) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense for each week of benefits.

~~(2)~~ B. If a person is convicted of the crime described in subsection A of this section in a particular benefit year, and in any subsequent benefit year that person again commits the crime described in subsection A of this section, that person shall be guilty of a misdemeanor and shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment of not longer than one hundred eighty (180) days, or by both fine and imprisonment. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense for each week of benefits.

C. Upon conviction sentences may be suspended or upon a plea of guilty judgment and sentencing may be deferred only upon the condition of full restitution to the Commission of all benefits so obtained or the excess of any benefits so increased.

SECTION 20. Section 1 of this act shall become effective July 1, 2001.

SECTION 21. Sections 2 and 4 through 19 of this act shall become effective November 1, 2001.

SECTION 22. Section 3 of this act shall become effective January 1, 2002.

SECTION 23. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 17th day of April, 2001.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2001.

_____
Presiding Officer of the Senate