

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

2ND CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL 1404

By: Leftwich of the Senate

and

Fields of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to labor; amending 40 O.S. 2001, Sections 1-208A, 1-209, 1-210, 1-218, 2-203, 2-207, 2-305, 2-402, 2-603, 2-613, 2-706, 2-707, 2-715, 2-802, 3-106, 3-401, 3-405, 4-508, 4-509, 4-608 and 5-102, which relate to the Employment Security Act of 1980; stating, in relation to Indian tribes and tribal units, definitions, exceptions to definitions and exclusions from definitions; providing basis for unemployment benefits; requiring payment of contributions; providing for payments in lieu of contributions; providing for tribal determination regarding reimbursement; providing for conflict of laws; requiring billing; stating consequences of failure to make payments; requiring notice; allowing time for correction of delinquency; providing for account termination and notice of action; requiring statement of protest rights; providing for reinstatement; stating loss of option for failure to make payments; stating circumstances for reinstatement of option; outlining content of notice; stating obligation of Indian tribe to finance benefits under specified circumstances; requiring notice to federal agencies; providing for transition; providing for election of coverage during certain time frame; providing for prospective coverage under certain circumstances; limiting change in election; construing specified provision of act; establishing and defining alternative base period; clarifying status of certain motor carriers; clarifying definition of employing unit; stating exclusions from definition of employment; modifying exclusions from definition of wages; defining, stating requirements for, and providing for approval of, supplemental unemployment benefit plan; restricting claim payment on basis of claimant's place of residence; providing for status of alternative base period; authorizing use of affidavit; providing for adjustment of determination of benefits; establishing employer's right to protest reported wages; limiting use of wages to establish claim; limiting application of alternative base period; modifying percentage deduction from income tax withholding; increasing penalties and providing for claimant disqualification for repeated fraud; authorizing filing of appeals by telephone; clarifying types of benefit overpayments

and liabilities applicable to each; permitting waiver of interest on benefit overpayments; requiring notice of overpayment and providing for appeal; setting out procedures for collection of benefit overpayment; authorizing Oklahoma Employment Security Commission to issue warrant of levy and lien and establishing applicable procedures; providing for manner of service and notice of warrant; authorizing Commission to charge a fee when sheriff used to serve notice; defining terms; authorizing Oklahoma Employment Security Commission to collect amounts owed under specific circumstances and establishing procedures; deleting obsolete language; establishing criteria for eligibility for extended benefits; permitting specified information sharing between state agencies; modifying exclusions from employer's benefit wages; clarifying circumstance under, and stage in process at which, appeal may be filed; clarifying amount to be paid before an appeal is filed; directing establishment of an employee recognition program; authorizing payments; stating nature of recognition awards; authorizing and limiting value thereof; permitting the release of otherwise confidential information to public housing agencies, certain entities operating under the Workforce Investment Act One-Stop delivery system, and the wage record interchange system; adding to entities with access to certain information; providing for distribution of federal funds; creating penalty for repeated violations; making an appropriation to the Employment Security Administration Fund; providing for codification; providing for noncodification; providing effective dates; and declaring an emergency.

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

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

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

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 FUTA solely by reason of 26 U.S.C., Section 3306(c)(7), and is not otherwise excluded from employment under the Employment Security Act of 1980. For purposes

of this section, the exclusions from employment in subparagraphs (c) and (e) of paragraph (7) of Section 1-210 of this title 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 an Indian 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 Employment Security Act of 1980, 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 of 1980 shall pay contributions under the same terms and conditions as required of nongovernmental employers for profit subject to the Employment Security Act of 1980 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 Oklahoma Employment Security 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 of 1980, 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 of 1980, 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 fails to make required payments under the Employment Security Act of 1980, 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 this title. 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 subparagraph 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 FUTA;
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 performed 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 of 1980, 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 shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

J. The provisions of subsections K and L of this section shall provide a transition for the implementation of Section 166 of Public Law 106-144 enacted by the Congress of the United States and effective December 21, 2000, so that Indian tribes may qualify for federal tax credits and employees of Indian tribes may be eligible for benefits.

K. Any Indian tribe which did not have an active account with the Oklahoma Employment Security Commission from January 1, 2001, to the effective date of this section, but which desires to be covered for benefits for that period of time, may elect to be subject to one

of the following, if the tribe notifies the Commission of the election in writing:

1. To pay contributions. If the tribe elects to make payments for contributions, interest or penalties shall not be assessed against such tribe for the period from January 1, 2001, to the effective date of this section if full payment for all contributions due is made within twenty (20) days after an account is established for the tribe; or

2. To make payments in lieu of contributions. If the tribe elects to make payments in lieu of contributions, interest or penalties shall not be assessed against such tribe for the period from January 1, 2001, to the effective date of this section if all reports that are due for that period are filed within twenty (20) days after an account is established for the tribe.

L. Any Indian tribe which did not have an active account with the Oklahoma Employment Security Commission from January 1, 2001, to the effective date of this section and does not desire to be covered for benefits for that period shall be covered by the provisions of subsections A through I of this section. The coverage for any such tribe shall be prospective only and shall not entitle any employee of the tribe to benefits for any period prior to the effective date of this section.

M. Indian tribes paying contributions prior to the date of this section shall not be able to make an election to make payments in lieu of contributions for the period from January 1, 2001, to the effective date of this section. Any change in election shall be prospective only.

N. Participation by any Indian tribe in the state unemployment insurance system shall not operate as a waiver of the sovereign immunity of the tribe.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-202B of Title 40, unless there is created a duplication in numbering, reads as follows:

ALTERNATIVE BASE PERIOD.

"Alternative Base Period" means the most recent four (4) completed calendar quarters immediately preceding the first day of an individual's benefit year. In the event that an individual's claim uses an alternative base period to meet the wage requirement under Section 2-207 of Title 40 of the Oklahoma Statutes, this "alternative base period" shall be substituted for "base period" for all other purposes under the Employment Security Act of 1980.

SECTION 3. AMENDATORY 40 O.S. 2001, Section 1-208A, is amended to read as follows:

Section 1-208A. MOTOR CARRIER NOT EMPLOYER OF LESSOR OR DRIVER.

In no event will a motor carrier be determined to be the employer of a lessor as defined in Section 166a or 230.29 of Title 47 of the Oklahoma Statutes, or of a driver receiving compensation from a lessor.

SECTION 4. AMENDATORY 40 O.S. 2001, 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~~ the Employment

Security Act of 1980, 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 of this title shall alone be liable for the contributions measured by wages paid to individuals ~~in his employ~~ employed by the contractor or subcontractor, 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 of this title 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 5. AMENDATORY 40 O.S. 2001, 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 (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); or

~~(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 6. AMENDATORY 40 O.S. 2001, 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 Oklahoma Employment Security 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, 2002, 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 7. 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 Title 40 of the Oklahoma Statutes.

SECTION 8. AMENDATORY 40 O.S. 2001, 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 a state or 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 9. AMENDATORY 40 O.S. 2001, Section 2-207, is amended to read as follows:

Section 2-207. WAGE REQUIREMENT DURING BASE PERIOD.

A. The unemployed individual, during the individual's base period, shall have been paid wages for insured work of not less than:

1. One Thousand Five Hundred Dollars (\$1,500.00); and
2. One and one-half (1 1/2) times the amount of wages during that quarter of the individual's base period in which such wages were highest.

Notwithstanding the preceding provision, an individual with base period wages equal to or more than the highest annual amount of taxable wages that applies to any calendar year in which the claim for unemployment benefits was filed shall be eligible for benefits.

B. 1. If an individual lacks sufficient base period wages under subsection A of this section to establish a claim for benefits, any wages paid in the individual's alternative base period shall be considered as the individual's base period wages.

2. If the Commission has not received wage information from the individual's employer for the most recent calendar quarter of the alternative base period, the Commission shall accept an affidavit from the individual supported by wage information such as check stubs, deposit slips, or other supporting documentation to determine wages paid.

3. A determination of benefits based on an alternative base period shall be adjusted when the quarterly wage report is received

from the employer, if the wage information in the report differs from that reported by the individual.

4. If alternative base period wages are established by affidavit of the individual, the employer to which the wages are attributed will have the right to protest the wages reported. If a protest is made, the employer must provide documentary evidence of wages paid to the individual. The Commission will determine the wages paid based on the preponderance of the evidence presented by each party.

5. Provided, no wages used to establish a claim under an alternative base period shall be subsequently used to establish a second benefit year.

6. Provided, in any calendar year in which the balance in the Unemployment Compensation Fund is below the amount required to initiate conditional factors pursuant to the provisions of Section 3-113 of this title, this subsection shall not apply and no alternative base period shall be available.

SECTION 10. AMENDATORY 40 O.S. 2001, Section 2-305, is amended to read as follows:

Section 2-305. DEDUCTION OF INDIVIDUAL INCOME TAX WITHHOLDINGS.

Notwithstanding the provisions of Sections 2-301 and 2-303 of ~~Title 40 of the Oklahoma Statutes~~ this title, nothing shall be construed to prohibit the deduction of an amount from unemployment compensation, otherwise payable to an individual, to pay the withholding of federal or state individual income tax, if that individual elected to have such a deduction made and that deduction is made under a program approved by the United States Secretary of Labor. For the purposes of this section, if an individual elects to have this deduction taken from his or her weekly benefits, ~~fifteen percent (15%) of the total benefit amount will be taken to pay the~~ federal withholding will be deducted at the percentage specified in the Federal Internal Revenue Code at 26 U.S.C., Section 3402(p)(2),

and three percent (3%) of the total benefit amount will be deducted to pay the state withholding, ~~for a total deduction of eighteen percent (18%) of the weekly benefit amount. This section shall be effective for all benefit payments made after December 31, 1996.~~

SECTION 11. AMENDATORY 40 O.S. 2001, 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 a determination has been made that an individual has 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 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. ~~This section shall not apply to a determination made more than two (2) years after such violation occurred or~~ disqualification.

D. A determination of fraud must be made within two (2) years of the date on which the violation occurred.

SECTION 12. AMENDATORY 40 O.S. 2001, 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~~ the claimant's or other party's 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 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 12 midnight on the date it is due, and filing of an appeal made by telephone through a claims representative must be completed before the end of normal business hours.

SECTION 13. AMENDATORY 40 O.S. 2001, 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. The individual shall be liable to repay this sum, plus interest at the rate of one percent (1%) per month on the unpaid balance of the overpayment, to the Oklahoma Employment Security Commission. The interest shall cease to accrue when the total accrued interest equals the amount of the overpayment. If an overpayment is modified, the interest shall 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. The individual shall be liable to repay this sum, plus interest at the rate of one percent (1%) per month on the unpaid balance of the overpayment, to the Commission. The interest shall cease to accrue when the total accrued interest equals the amount of the overpayment. If an overpayment is modified, the interest shall 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.

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 shall accrue on administrative overpayments.

SECTION 14. 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:

Any interest, or any portion thereof, that accrues pursuant to the provisions of Section 2-613 of Title 40 of the Oklahoma Statutes, 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 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-616 of Title 40, unless there is created a duplication in numbering, reads as follows:

If the Oklahoma Employment Security Commission or its representative determines that an individual has been overpaid unemployment benefits pursuant to paragraph 1 or 2 of Section 2-613 of Title 40 of the Oklahoma Statutes, the individual shall be sent a notice of overpayment determination. If the individual disagrees with this determination, the individual may file an appeal of the determination with the Appeal Tribunal within twenty (20) days after the date of the mailing of the notice to the individual's last-known address or, if the notice is not mailed, within twenty (20) days after the date of the delivery of the notice. If the individual fails to appeal the determination within the time provided, then the determination will be deemed final and no further appeal shall be allowed.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-617 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. If the notice of overpayment determination issued pursuant to Section 15 of this act becomes final due to a lack of appeal or if the determination is affirmed on appeal, and if the amount due is not paid within ninety (90) days of the date that the determination becomes final, then the Oklahoma Employment Security Commission may issue a warrant of levy and lien under its official seal, which shall state the name and social security number of the debtor and list the amount of indebtedness with interest. The warrant of levy and lien shall be for all purposes the equivalent of a judgment of a court of record.

B. The Commission may file a copy of the warrant of levy and lien with the county clerk of the county or counties in which the individual has property and thereupon the county clerk shall index the warrant of levy and lien in the same manner as judgments using the name of the individual named in the warrant of levy and lien, indicating that it is due to an overpayment of unemployment insurance benefits, showing the amount due with interest, the date upon which the warrant of levy and lien was filed, and shall index the warrant of levy and lien against the real property described therein, if any is described. If the county clerk charges a fee for the filing of the warrant of levy and lien, the Commission may add the amount of the fee to the indebtedness owing by the individual named in the warrant of levy and lien.

C. The filing of the notice in the office of the county clerk of the county in which the individual resides shall constitute and be evidence and notice of the state's lien upon the title to any interest in any real or personal property of the individual named in the notice. The lien shall be in addition to any and all other liens existing in favor of the state to secure the payment of any

unpaid indebtedness, interest, penalty, fees and costs, and the lien shall be paramount and superior to all other liens of whatsoever kind or character, attaching to any of the property subsequent to the date of the recording and shall be in addition to any other lien provided for in this act. This lien shall be permanent and continuing without any requirement for executions under Section 735 of Title 12 of the Oklahoma Statutes or any other similar statute. This lien shall continue on personal property of the individual until the amount of the indebtedness, interest, fees and costs are paid. This lien shall continue on real property until released by payment or for a maximum of ten (10) years after the date of its filing.

D. The Commission may file a copy of the notice with the court clerk in the county in which the individual is employed or resides, and it shall be filed in the same manner as a judgment of a court of record for the purpose of pursuing any post-judgment collection procedure that is deemed appropriate. The Commission may send the notice to the sheriff in a county in which the individual owns real or personal property for execution. Upon receiving the notice, the sheriff shall proceed to execute the notice in all respects and with like effect and in same manner prescribed by law in respect to executions against property upon judgment of the court of record; and the sheriff shall execute and deliver to the purchaser a bill of sale or deed, as the case may be. Any purchaser, other than the state, shall be entitled, upon application to the court having jurisdiction of the property, to have confirmation (the procedure for which shall be the same as is now provided for the confirmation of a sale under execution) of the sale prior to the issuance of a bill of sale or deed. The state shall be authorized to make bids at any such sale to the amount of indebtedness, interest, costs, and fees accrued. In the event the bid of the state is successful, the sheriff shall issue a proper muniment of title to the Commission,

and the Commission shall hold the title for the use and benefit of the state. The state may sell any property obtained in this manner through the procedures available for the sale of excess property of the state. Any money received by the Commission through the sale of property in this manner shall be credited against the indebtedness of the individual. The sheriff shall be entitled to the same fee for executing the notice as the sheriff would be entitled to receive if executing an execution issued by the court clerk of the county upon a judgment of a court of record.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-618 of Title 40, unless there is created a duplication in numbering, reads as follows:

LEVY ON INCOME AND MONETARY ASSETS.

A. As used in this section, the following words have the following meanings:

1. "Bank" means any state bank or banking association, national bank or banking association, savings and loan company, credit union, or any other financial institution;

2. "Bank account" means any checking or savings account the debtor has with any bank;

3. "Debtor" means any person that is the subject of a warrant of levy and lien issued pursuant to Section 9 of this act;

4. "Earnings" means any form of payment to an individual including, but not limited to, salary, wages, commission, or other compensation; and

5. "Employer" means any type of business or organization that owes earnings to a debtor.

B. If any debtor shall fail to pay his or her indebtedness to the Oklahoma Employment Security Commission and after the debtor has been notified of the amount due and demand for payment has been made, it shall be lawful for the Commission to collect the amount

owed by levy upon the debtor's employer or any bank account of the debtor.

C. To levy upon an employer of the debtor, the Commission must serve a Notice of Levy on the employer along with the warrant of levy and lien that sets out the amount owing on the benefit overpayment of the debtor, with interest. The levy will have the same priority, and be subject to the same exceptions, as a continuing earnings garnishment provided for in Section 1173.4 of Title 12 of the Oklahoma Statutes. The following procedures will apply to a Notice of Levy served on an employer:

1. The employer shall answer the Notice of Levy on a form provided by the Commission. The employer shall follow the procedure for answering a continuing earnings garnishment as set out in subsection F of Section 1173.4 of Title 12 of the Oklahoma Statutes;

2. The Notice of Levy shall be a lien on the debtor's property in the same manner as provided for in subsection G of Section 1173.4 of Title 12 of the Oklahoma Statutes. The Notice of Levy shall also be subject to the procedures and time limits set out in subsections H, I, J and K of Section 1173.4 of Title 12 of the Oklahoma Statutes, except that when a document is required to be filed with the clerk of the court, the document will instead be filed with the Commission as directed on the forms provided; and

3. Claims for exemptions and any other matter relating to the levy shall be filed with the Appeal Tribunal of the Oklahoma Employment Security Commission and all claims and issues shall be decided by that office. Appeal from the Appeal Tribunal decision shall be governed by the appeal procedures set out in Part 6 of Article II of the Oklahoma Employment Security Act of 1980, and the Administrative Rules of the Oklahoma Employment Security Commission pertaining thereto.

D. To levy upon a debtor's bank account, the Commission must serve a Notice of Levy on the bank in which the debtor has an

account, along with the warrant of levy and lien issued against the debtor. The following procedures will apply to a Notice of Levy served on a bank:

1. Upon receiving the Notice of Levy and the warrant of levy and lien issued against the debtor, the bank shall deliver all of the debtor's interest in the money in the debtor's bank account at the time of service of the levy, subject to the banker's lien or right of set off or any other priority claim of the bank, up to the amount of indebtedness indicated on the warrant of levy and lien plus accrued interest pursuant to Section 2-613 of Title 40 of the Oklahoma Statutes and any fees for service of process, to the Commission office indicated in the Notice of Levy;

2. The delivery of this money shall occur within ten (10) days of the date of service of the Notice of Levy;

3. If there is no money in the debtor's bank account at the time the Notice of Levy is served, or if the bank account has been closed, an officer of the bank on which the Notice of Levy is served shall make a statement to that effect on the Notice of Levy. The statement shall be notarized and returned to the office of the Commission that is indicated in the Notice of Levy;

4. Any bank that fails or refuses to surrender money or rights to money in a bank account subject to levy, upon being served with a Notice of Levy and supporting warrant of levy and lien of the Commission, shall be liable to the Commission in a sum equal to the amount of money or rights to money not so surrendered, but not exceeding the amount of the debtor's indebtedness for the collection of which the levy has been made, together with accrued interest pursuant to Section 2-613 of Title 40 of the Oklahoma Statutes, and the cost of service of the Notice of Levy. Any amount recovered in this manner shall be credited against the liability of the debtor for the benefit overpayment indebtedness, for which the levy was made; and

5. Any bank in possession of money or rights to money subject to levy, upon which a levy has been made, that surrenders the money or rights to money to the Commission shall be discharged from any obligation or liability to the debtor and any other person or entity with respect to such money or rights to money arising from the surrender or payment.

E. Service of the Notice of Levy and the warrant of levy and lien shall be made in the same manner as provided in Section 2004 of Title 12 of the Oklahoma Statutes for service of process in civil actions.

F. If a sheriff's department is enlisted to serve the Notice of Levy, that sheriff's department shall be entitled to a service fee of Fifty Dollars (\$50.00) that is to be paid by the Commission and added to the debtor's indebtedness.

SECTION 18. AMENDATORY 40 O.S. 2001, 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 Oklahoma  
Employment Security 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 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) equaled 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 19. AMENDATORY 40 O.S. 2001, 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~~ 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~~ 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 20. AMENDATORY 40 O.S. 2001, Section 2-715, is amended to read as follows:

Section 2-715. ELIGIBILITY FOR EXTENDED BENEFITS. A. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in the eligibility period of the individual only if the Commission finds that with respect to such week:

1. The individual is an "exhaustee" as defined in Section 2-712 of this title; and

2. Except as otherwise provided by this section, the individual has satisfied the requirements of the Employment Security Act of 1980, for the receipt of regular benefits that are applicable to

individuals claiming extended benefits, including not being subject to a disqualification under the Employment Security Act of 1980, Section 1-101 et seq. of this title, for the receipt of benefits.

B. An individual shall not be eligible for extended benefits unless, in the base period with respect to which the individual exhausted all rights to regular benefits, the individual shall have been paid wages for insured work of not less than one and one-half (1 1/2) times the amount of wages during that quarter of the base period of the individual in which the wages were the highest.

C. Any payment of extended benefits under the Employment Security Act of 1980 shall not be made to any individual for any week of unemployment in his or her eligibility period during which the individual:

1. Fails to accept any offer of suitable work;

2. Fails to apply for any suitable work to which referred by the state employment service; or

3. Fails to actively engage in seeking suitable work.

~~C.~~ D. Suitable work shall be defined as any work which is within such individual's capabilities, except that if the individual furnishes satisfactory evidence that the individual's prospects for obtaining work in his or her customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the provisions of Section 2-408 of this title with respect to regular benefit claimants.

1. Any work which is within the capabilities of such individual means that the individual has the physical and mental capacity to do the work and the background and experience which would enable the individual to perform the job.

2. Work for an extended benefit claimant shall not be considered suitable if the gross weekly pay of the job does not exceed the extended weekly benefit amount payable to the individual

for a week of total unemployment plus the amount of any Supplemental Unemployment Benefits (SUB), as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1954, 26 U.S.C., Section 501, payable for such week and equal the higher of the federal minimum wage provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938, 29 U.S.C., Section 206, without regard to any exemption or any applicable state or local minimum wage.

~~D.~~ E. If any individual is ineligible for extended benefits for any week by reason of a failure described in subsection B of this section, such individual shall be ineligible to receive extended benefits for the week in which such failure occurred and until the individual has been employed during at least four (4) different weeks which begin after such failure and has earned wages equal to or in excess of four (4) times his weekly benefit amount.

~~E.~~ F. 1. Extended benefits shall not be denied to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work if the position was not offered to such individual in writing or was not listed with the state employment service.

2. Extended benefits shall not be denied to any individual for any week by reason of a failure to accept an offer of or apply for suitable work if such failure would not result in a denial of benefits under the provisions of Sections 2-408, 2-409, 2-417 and 2-418 of this title to the extent that such provisions are not inconsistent with the provisions of this section.

3. Extended benefits shall not be denied to any individual for any week by reason of a failure to accept an offer of or apply for suitable work if the work failed to meet any of the requirements of Section 2-409 of this title.

~~F.~~ G. An individual shall be treated as actively engaged in seeking work during any week if such individual has engaged in a systematic and sustained effort to obtain work during such week, and

such individual provides tangible evidence to the state employment service that he has engaged in such an effort during such week.

~~G.~~ H. An individual filing an interstate claim shall not be eligible for extended benefits after the first two (2) weeks of extended benefits that are payable if no extended benefit period is in effect for such week in the state where the claim is filed.

~~H.~~ I. The state employment service shall refer any claimant entitled to extended benefits to any suitable work which meets the criteria prescribed in this section.

SECTION 21. AMENDATORY 40 O.S. 2001, Section 2-802, is amended to read as follows:

Section 2-802. REPORTS BY EMPLOYERS TO EMPLOYMENT SECURITY COMMISSION - NEW HIRE REGISTRY.

A. Employers doing business in the State of Oklahoma shall report to the Oklahoma Employment Security Commission, the hiring or employment of any person who resides or works in this state to whom the employer anticipates paying earnings.

B. Such report shall contain the employee's name, address, social security number, date of employment, state of employment, along with the employer's name, address, and federal identification number.

C. The report must be made within twenty (20) days of hiring, or twice monthly, not less than twelve (12) nor more than sixteen (16) days apart if reported electronically or magnetically. The report may be made by mailing a copy of the employee's W-4 form, by submitting a fax transmission of the employee's W-4 form, by submitting electronic media in a format that can be used by the ~~Oklahoma Employment Security~~ Commission, or by any other means authorized by the ~~Oklahoma Employment Security~~ Commission.

D. The Child Support Enforcement Division shall be the official New Hire Registry for the State of Oklahoma and will obtain the new hire information from the Oklahoma Employment Security Commission.

E. The Child Support Enforcement Division shall enter into agreements with state agencies administering unemployment, employment services, Workforce Investment Act programs, workers' compensation, public assistance, Medicaid, food stamps, vocational rehabilitation, and other programs specified by federal law or regulation, to provide such information upon request.

F. Used in this section:

1. "Employee" means an individual who is an employee as defined by the Internal Revenue Code of 1986, 26 U.S.C., Section 3401 et seq. "Employee" does not mean an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of such agency has determined that reporting with respect to that employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission;

2. "Employer" means an individual or other entity who is an employer as defined by the Internal Revenue Code of 1986, 26 U.S.C., Section 3401(d) and includes any governmental entity and any labor organization; and

3. "Labor organization" means an entity as defined by the National Labor Relations Act, 29 U.S.C., Section 152(5) including, but not limited to, any entity known as a "hiring hall" which is used by the organization and an employer to carry out requirements described in Section 8(f)(3) of the National Labor Relations Act, 29 U.S.C., Section 158(f)(3), of an agreement between the organization and the employer.

SECTION 22. AMENDATORY 40 O.S. 2001, 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 with the United States 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;

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; or

8. Establishes a claim for unemployment benefits by utilizing an alternative base period pursuant to Section 2-207 of this title.

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 23. AMENDATORY 40 O.S. 2001, 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 Oklahoma Employment Security 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 24. AMENDATORY 40 O.S. 2001, 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 Oklahoma Employment Security 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 25. 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 recognize the achievement of the work unit or individual employee.

SECTION 26. AMENDATORY 40 O.S. 2001, 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 Oklahoma Employment Security 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, the Workers' Compensation Court, and the Insurance Department 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;

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; ~~or~~

17. The release to officials, employees, and agents of the Attorney General, the Oklahoma State Bureau of Investigation, and the Insurance Department for use in the investigation of insurance fraud;

18. 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);

19. 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 Commission and after an agreement concerning the release of information is entered into with the entity receiving the information; or

20. 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 27. AMENDATORY 40 O.S. 2001, 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., Section 2841 (b) (1), in accordance with a written agreement entered into between the partner and the Commission.

B. Upon request ~~therefore~~, 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 28. AMENDATORY 40 O.S. 2001, 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 this state, or 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 this state.

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 29. AMENDATORY 40 O.S. 2001, 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~~ the individual or for any other person, shall, upon conviction, 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~~ more 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 for not more 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 30. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

There is hereby appropriated to the Employment Security Administration Fund out of funds made available to this state by the federal Reed Act distribution made on March 13, 2002, pursuant to Section 903 (d) of the Social Security Act (42 U.S.C., 1103 (d)) as amended, the amount of Two Million Dollars (\$2,000,000) to be used by the Oklahoma Employment Security Commission for the purpose of paying the administrative expenses of the following programs in the following amounts:

1. The Employment Service program in the amount of One Million Seven Hundred Thousand Dollars (\$1,700,000); and

2. The One-Stop Career Center expenses attributable to the Employment Service and Unemployment Insurance programs in the amount of Three Hundred Thousand Dollars (\$300,000).

The funds appropriated by this section shall be expended during the fiscal year beginning July 1, 2002 and ending on June 30, 2003. Expenditures from this appropriation shall be accounted for in accordance with standards established by the United State Secretary of Labor. The Oklahoma Employment Security Commission shall utilize the appropriation made by this section in accordance with the provisions and requirements contained in the Social Security Act, Title 42 of the United States Code.

SECTION 31. Sections 1 and 30 of this act shall become effective July 1, 2002.

SECTION 32. Sections 2 through 29 of this act shall become effective November 1, 2002.

SECTION 33. 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.

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