

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1404

By: Leftwich

AS INTRODUCED

An Act relating to labor; amending 40 O.S. 2001, Sections 1-208A, 1-210, 2-305, 2-603, 4-312, 4-509, and 4-608, which relate to 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; clarifying status of certain motor carriers; stating exclusions from definition of employment; modifying percentage deduction from income tax withholding; authorizing filing of appeals by telephone; authorizing the Commission to employ a specified percentage of unclassified employees; establishing requirements for unclassified employees; requiring Executive Director to certify list of employees; providing for telephonic appeal; authorizing employment of specified personnel; providing for the transfer and status of employees to the unclassified service; adding to entities with access to certain information; providing for distribution of federal funds; providing for codification; 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 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. 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 3. 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 4. 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 5. 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 6. AMENDATORY 40 O.S. 2001, Section 4-312, is amended to read as follows:

Section 4-312. PERSONNEL AND COMPENSATION.

A. Subject to other provisions of this act, the Oklahoma Employment Security Commission is authorized to appoint, fix the compensation and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this act. The Commission may delegate to any such persons such power and authority as it deems reasonable and proper for the effective administration of this act, and may in its discretion bond any person handling

moneys or signing checks hereunder. The Commission is authorized and directed to maintain the existing merit system covering ~~all persons employed~~ classified employees in the administration of this act and shall have authority, by rule, to provide for all matters which are appropriate to the establishment and maintenance of such system on the basis of efficiency and fitness. The Commission is authorized to adopt such rules as may be necessary to meet personnel standards promulgated by the Office of Personnel Management pursuant to the Social Security Act, as amended, and the Act of Congress entitled "An Act to provide for the establishment of a national employment system, and for other purposes", approved June 6, 1933, as amended, and to provide for the maintenance of the merit system required under this section in conjunction with any merit system applicable to any other state agency or agencies which meets the personnel standards promulgated by the Office of Personnel Management.

B. The Commission is authorized to employ a maximum of four percent (4%) of the maximum number of full-time-equivalent positions authorized by law to the Commission as part of the unclassified service; provided, the Executive Director of the Commission certifies that each position so designated as unclassified meets at least one of the following criteria:

- a. the employee reports directly to the Executive Director,
- b. the employee provides support directly to the members of the Commission, or
- c. the duties of the employee are primarily administrative or managerial in nature and involve establishing broad policies or program direction for the Commission or divisions within the Commission.

The Executive Director shall submit such certification and a list of unclassified employees to the Office of Personnel Management by November 1, 2002, and annually thereafter.

C. No classified employee of the Commission shall be transferred into the unclassified service pursuant to subsection B of this section except on the freely given written consent of the employee. All employees shall retain leave, sick and annual time earned, and any retirement and longevity benefits which have accrued during the employee's tenure in the classified service. The transfer shall be coordinated with the Office of Personnel Management.

SECTION 7. 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 8. 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 9. Section 1 of this act shall become effective July 1, 2002.

SECTION 10. Sections 2 through 6 of this act shall become effective November 1, 2002.

SECTION 11. 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.

48-2-1933

JCR

6/12/2015 11:01:07 AM