

THE STATE SENATE
Wednesday, February 22, 2006

Committee Substitute for
Senate Bill No. 1634

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1634 - By: MYERS of the Senate and WILT of the House.

[labor - amending Title 40 - Employment Security Act of 1980 - effective date - emergency]

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

SECTION 1. AMENDATORY 40 O.S. 2001, Section 1-208, as amended by Section 1, Chapter 182, O.S.L. 2005 (40 O.S. Supp. 2005, Section 1-208), is amended to read as follows:

Section 1-208. EMPLOYER.

"Employer" means:

1. Any employing unit, except as provided under paragraphs 10 and 11 of this section, which:

- a. for some portion of a day, but not necessarily simultaneously, in each of twenty (20) different calendar weeks, whether or not such weeks are or were consecutive, within either the calendar year or the preceding calendar year, and for the purpose of this definition if any week includes both December 31 and January 1, the days up to January 1 shall be deemed one (1) calendar week and the days beginning January 1

1 another such week, has or had in employment one or
2 more individuals, irrespective of whether the same
3 individuals are or were employed in each such day, or
4 b. in any calendar quarter, in either the calendar year
5 or preceding calendar year paid for service in
6 employment wages of One Thousand Five Hundred Dollars
7 (\$1,500.00) or more;

8 2. Any individual or employing unit, whether or not an
9 employing unit at the time of the acquisition, which acquired
10 substantially all of the organization, employees, trade, business,
11 or assets thereof, of another which at the time of such acquisition
12 was an employer subject to the Employment Security Act of 1980; or
13 which acquired a part of the organization, employees, trade, or
14 business of another employing unit which at the time of such
15 acquisition was an employer subject to the Employment Security Act
16 of 1980;

17 3. Any individual or employing unit, whether or not an
18 employing unit at the time of acquisition, which acquired
19 substantially all of the organization, employees, trade, business,
20 or assets thereof, of another employing unit, if the employment
21 record of such individual or employing unit subsequent to such
22 acquisition, together with the employment record of the acquired
23 unit prior to such acquisition, both within the same calendar year,

1 would be sufficient to constitute an employing unit and employer
2 subject to the Employment Security ~~act~~ Act of 1980 under paragraph 1
3 of this section; or any individual or employing unit which acquired
4 substantially all of the organization, employees, trade, business,
5 or assets of another employing unit if such employing unit
6 subsequent to such acquisition, and such acquired unit prior to such
7 acquisition, both within the same calendar quarter, together paid
8 for service in employment wages totaling One Thousand Five Hundred
9 Dollars (\$1,500.00) or more;

10 4. Any employing unit which, together with one or more other
11 employing units, is owned or controlled, by legally enforceable
12 means or otherwise, directly by the same interest, or which owns or
13 controls one or more other employing units, by legally enforceable
14 means or otherwise, and which, if treated as a single unit with such
15 other employing unit, would be an employer under paragraph (1) of
16 this section;

17 5. Any employing unit which, having become an employer under
18 paragraphs 1, 2, 3, 4, 8, 10 or 11 of this section has not, under
19 Section 3-202 of this title, ceased to be an employer subject to the
20 Employment Security Act of 1980;

21 6. For the effective period of its election pursuant to Section
22 3-203 of this title any other employing unit which has elected to
23 become subject to the Employment Security Act of 1980;

1 7. Any department of this state, any other state, and all
2 instrumentalities thereof, including any political subdivisions and
3 their instrumentalities, for which service in employment, as defined
4 in paragraph (3) of Section 1-210 of this title, is performed,
5 except as provided under paragraphs 10 and 11 of this section;

6 8. Any employing unit for which service in employment, as
7 defined in paragraph (4) of Section 1-210 of this title, is
8 performed, except as provided under paragraphs 10 and 11 of this
9 section;

10 9. For purposes of paragraphs 1, 8, 10 and 11 of this section,
11 employment shall include service which would constitute employment
12 but for the fact that ~~such~~ the service is deemed to be performed
13 entirely within another state pursuant to an election under an
14 arrangement entered into in accordance with Section 4-702 of this
15 title by the Oklahoma Employment Security Commission and an agency
16 charged with the administration of any other state or federal
17 unemployment compensation law;

18 10. Any employing unit for which agricultural labor as defined
19 in paragraph (5) of Section 1-210 of this title is performed. In
20 determining whether or not an employing unit for which service other
21 than agricultural labor is also performed is an employer under
22 paragraph 1, 7, 8 or 11 of this section, the wages earned or the

1 employment of an employee performing service in agricultural labor
2 shall not be taken into account;

3 11. Any employing unit for which domestic service in employment
4 as defined in paragraph (6) of Section 1-210 of this title is
5 performed. In determining whether or not an employing unit for
6 which service other than domestic service is also performed is an
7 employer under paragraph 1, 7, 8 or 10 of this section, the wages
8 earned or the employment of an employee performing domestic service
9 shall not be taken into account;

10 12. Any employing unit which is not an employer by reason of
11 any other provisions of the Employment Security Act of 1980 shall
12 nevertheless be an "employer" if either:

- 13 a. within the calendar year or preceding calendar year,
14 service is or was performed, with respect to which
15 ~~such~~ the employing unit is liable for any federal tax
16 against which credit may be taken by ~~such~~ the
17 employing unit for contributions required to be paid
18 by it into a state unemployment fund, or
19 b. ~~such~~ the employing unit is required to be an
20 "employer" as a condition for approval of the
21 Employment Security Act of 1980 for full tax credit to
22 be allowed against the tax imposed by the Federal

1 Unemployment Tax Act, 26 U.S.C., Section 3301 et seq.;

2 or

3 13. If two or more employers share common ownership,
4 management, or control, the Commission may combine their merit
5 rating accounts, including their actual contribution and benefit
6 experience, annual payrolls, and contribution rates into one
7 account.

8 SECTION 2. AMENDATORY 40 O.S. 2001, Section 1-210, as
9 last amended by Section 1, Chapter 102, O.S.L. 2004 (40 O.S. Supp.
10 2005, Section 1-210), is amended to read as follows:

11 Section 1-210. EMPLOYMENT.

12 "Employment" means:

13 (1) Any service, including service in interstate commerce,
14 performed by:

15 (a) any officer of a corporation; or

16 (b) any individual who, under the usual common-law rules
17 applicable in determining the employer-employee
18 relationship, has the status of an employee.

19 (2) (a) any service, including service in interstate commerce,
20 performed by any individual other than an individual
21 who is an employee under paragraph (1) of this section
22 who performs services for remuneration for any person:

- 1 (i) as an agent-driver or commission-driver engaged
2 in distributing meat products, vegetable
3 products, fruit products, bakery products,
4 beverages other than milk, or laundry or dry
5 cleaning services, for his or her principal; or
6 (ii) as a traveling or city salesperson, other than as
7 an agent-driver or commission-driver, engaged
8 upon a full-time basis in the solicitation on
9 behalf of, and the transmission to, his or her
10 principal, except for sideline sales activities
11 on behalf of some other person, of orders from
12 wholesalers, retailers, contractors, or operators
13 of hotels, restaurants or other similar
14 establishments for merchandise for resale or
15 supplies for use in their business operations;
- 16 (b) provided, the term "employment" shall include services
17 described in divisions (i) and (ii) of subparagraph
18 (a) of this paragraph if:
- 19 (i) the contract of service contemplates that
20 substantially all of the services are to be
21 performed personally by such individual;
- 22 (ii) the individual does not have a substantial
23 investment in facilities used in connection with

1 the performance of the services, other than in
2 facilities for transportation; and

3 (iii) the services are not in the nature of a single
4 transaction that is not part of a continuing
5 relationship with the person for whom the
6 services are performed.

7 (3) Service performed in the employ of this state or any of its
8 instrumentalities or any political subdivision thereof or any of its
9 instrumentalities or any instrumentality of more than one of the
10 foregoing or any instrumentality of any of the foregoing and one or
11 more other states or political subdivisions; provided, that such
12 service is excluded from "employment" as defined in the Federal
13 Unemployment Tax Act, 26 U.S.C., Section 3306(c)(7), and is not
14 excluded from "employment" under paragraph (7) of this section.

15 (4) Service performed by an individual in the employ of a
16 community chest, fund, foundation or corporation, organized and
17 operated exclusively for religious, charitable, scientific, testing
18 for public safety, literary or educational purposes, or for the
19 prevention of cruelty to children or animals, no part of the net
20 earnings of which inures to the benefit of any private shareholder
21 or individual, no substantial part of the activities of which is
22 carrying on propaganda, or otherwise attempting to influence
23 legislation and which does not participate in, or intervene in,

1 including the publishing or distributing of statements, any
2 political campaign on behalf of any candidate for public office;
3 provided that such organization had four or more individuals in
4 employment for some portion of a day in each of twenty (20)
5 different weeks, whether or not such weeks were consecutive, within
6 either the calendar year or preceding calendar year, regardless of
7 whether they were employed at the same moment of time.

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

10 (a) ~~such~~ the service is performed for a person who:

11 (i) during any calendar quarter in either the
12 calendar year or the preceding calendar year,
13 paid remuneration in cash of Twenty Thousand
14 Dollars (\$20,000.00) or more to individuals
15 employed in agricultural labor; or

16 (ii) for some portion of a day in each of twenty (20)
17 different calendar weeks, whether or not ~~such~~ the
18 weeks were consecutive, in either the calendar
19 year or the preceding calendar year, employed in
20 agricultural labor ten or more individuals,
21 regardless of whether they were employed at the
22 same moment of time.

1 (b) for the purposes of this paragraph any individual who
2 is a member of a crew furnished by a crew leader to
3 perform service in agricultural labor for any other
4 person shall be treated as an employee of ~~such~~ the
5 crew leader:

6 (i) if ~~such~~ the crew leader holds a valid certificate
7 of registration under the Farm Labor Contractor
8 Registration Act of 1963, Public Law 95-562, 29
9 U.S.C., Sections 1801 through 1872; or
10 substantially all the members of ~~such~~ the crew
11 operate or maintain tractors, mechanized
12 harvesting or crop-dusting equipment, or any
13 other mechanized equipment, which is provided by
14 ~~such~~ the crew leader; and

15 (ii) if ~~such~~ the individual is not an employee of ~~such~~
16 the other person within the meaning of paragraph
17 (1) of this section or subparagraph (d) of this
18 paragraph.

19 (c) for the purposes of this paragraph, in the case of any
20 individual who is furnished by a crew leader to
21 perform service in agricultural labor for any other
22 person and who is not treated as an employee of ~~such~~

1 the crew leader under subparagraph (b) of this
2 paragraph:

3 (i) ~~such~~ the other person and not the crew leader
4 shall be treated as the employer of ~~such~~ the
5 individual; and

6 (ii) ~~such~~ the other person shall be treated as having
7 paid cash remuneration to ~~such~~ the individual in
8 an amount equal to the amount of cash
9 remuneration paid to ~~such~~ the individual by the
10 crew leader, either on his or her own behalf or
11 on behalf of ~~such~~ the other person, for the
12 service in agricultural labor performed for ~~such~~
13 the other person.

14 (d) for the purposes of this paragraph, the term "crew
15 leader" means an individual who:

16 (i) furnishes individuals to perform service in
17 agricultural labor for any other person;

18 (ii) pays, either on his or her own behalf or on
19 behalf of ~~such other~~ another person, the
20 individuals so furnished by the crew leader for
21 the service in agricultural labor performed by
22 them; and

1 (iii) has not entered into a written agreement with
2 ~~such~~ the other person (farm operator) under which
3 ~~such~~ the individual is designated as an employee
4 of ~~such~~ the other person.

5 (6) The term "employment" shall include domestic service in a
6 private home, local college club or local chapter of a college
7 fraternity or sorority performed for a person who paid cash
8 remuneration of One Thousand Dollars (\$1,000.00) or more in the
9 calendar year or the preceding calendar year to individuals employed
10 in such domestic service in any calendar quarter.

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

13 (a) in the employ of:

14 (i) a church or convention or association of
15 churches; or

16 (ii) an organization which is operated primarily for
17 religious purposes and which is operated,
18 supervised, controlled, or principally supported
19 by a church or convention or association of
20 churches;

21 (b) by a duly ordained, commissioned or licensed minister
22 of a church in the exercise of his or her ministry or

1 by a member of a religious order in the exercise of
2 duties required by ~~such~~ the order;

3 (c) in the employ of a governmental entity referred to in
4 paragraph (3) of this section if ~~such~~ the service is
5 performed by an individual in the exercise of duties:

6 (i) as an elected official;

7 (ii) as a member of a legislative body, or a member of
8 the judiciary of a state or political
9 subdivision;

10 (iii) as a member of the State National Guard or Air
11 National Guard;

12 (iv) as an employee serving on a temporary basis in
13 case of fire, storm, snow, earthquake, flood or
14 similar emergency;

15 (v) in a position which, under or pursuant to the
16 laws of this state, is designated as a major
17 nontenured policymaking or advisory position, or
18 a policymaking or advisory position the
19 performance of the duties of which ordinarily
20 does not require more than eight (8) hours per
21 week;

22 (vi) as an election official or election worker if the
23 amount of remuneration received by the individual

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

4 (d) by an individual receiving rehabilitation or
5 remunerative work while participating or enrolled in a
6 program in a facility that:

7 (i) conducts a program of rehabilitation for
8 individuals whose earning capacity is impaired by
9 age, physical or mental deficiency, or injury; or

10 (ii) conducts a program that provides remunerative
11 work for individuals who, because of their
12 impaired mental or physical capacity cannot be
13 readily absorbed into the competitive labor
14 market;

15 (e) as part of an unemployment work-relief or work-
16 training program assisted or financed in whole or in
17 part by any federal agency or an agency of a state or
18 political subdivision thereof, by an individual
19 receiving such work-relief or work-training; or

20 (f) by an inmate of a custodial or penal institution.

21 (8) The term "employment" shall include the service of an
22 individual who is a citizen of the United States, performed outside
23 the United States, except in Canada, in the employ of an American

1 employer other than service which is deemed "employment" under the
2 provisions of paragraphs (11) or (12) of this section or the
3 parallel provisions of another state's law, if:

4 (a) the employer's principal place of business in the
5 United States is located in this state;

6 (b) the employer has no place of business in the United
7 States, but:

8 (i) the employer is an individual who is a resident
9 of this state;

10 (ii) the employer is a corporation which is organized
11 under the laws of this state; or

12 (iii) the employer is a partnership or a trust and the
13 number of the partners or trustees who are
14 residents of this state is greater than the
15 number who are residents of any one other state;

16 (c) none of the criteria of subparagraphs (a) and (b) of
17 this paragraph are met but the employer has elected
18 coverage in this state or, the employer having failed
19 to elect coverage in any state, the individual has
20 filed a claim for benefits, based on such service,
21 under the law of this state;

22 (d) an "American employer", for purposes of this
23 subsection, means a person who is:

- 1 (i) an individual who is a resident of the United
2 States;
- 3 (ii) a partnership if two-thirds or more of the
4 partners are residents of the United States;
- 5 (iii) a trust, if all of the trustees are residents of
6 the United States; or
- 7 (iv) a corporation organized under the laws of the
8 United States or of any state; and
- 9 (e) the term "United States", for the purposes of this
10 subsection, includes the states, the District of
11 Columbia, the Commonwealth of Puerto Rico and the
12 Virgin Islands.

13 (9) Notwithstanding paragraph (11) of this section, all service
14 performed by an officer or member of the crew of an American vessel
15 on or in connection with ~~such~~ the vessel, if the operating office,
16 from which the operations of ~~such~~ the vessel operating on navigable
17 waters within, or within and without, the United States are
18 ordinarily and regularly supervised, managed, directed and
19 controlled is within this state.

20 (10) Notwithstanding any other provisions of the Employment
21 Security Act of 1980, "employment":

- 22 (a) includes any service with respect to which a tax is
23 required to be paid under any federal law imposing a

1 tax against which credit may be taken for
2 contributions required to be paid into a state
3 unemployment fund; and

4 (b) includes any service which is required to be
5 "employment" for full tax credit to be allowed against
6 the tax imposed by the Federal Unemployment Tax Act of
7 1954, Public Law 591, Chapter 736, as amended, 26
8 U.S.C., Section 3301 et seq.

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

11 (a) the service is localized in this state; or

12 (b) the service is not localized in any state but some of
13 the service is performed in this state and:

14 (i) the individual's base of operations, or, if there
15 is no base of operations, then the place from
16 which the individual's employment is directed or
17 controlled is in this state; or

18 (ii) the individual's base of operations or place from
19 which ~~such~~ the service is directed or controlled
20 is not in any state in which some part of the
21 service is performed but the individual's
22 residence is in this state.

1 (12) (a) Services covered by an election pursuant to Section 3-
2 203 of this title; and

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

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

17 (a) the service is performed entirely within such state;
18 or

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

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

6 (a) such individual has been and will continue to be free
7 from control or direction over the performance of ~~such~~
8 the services, both under the contract of hire and in
9 fact; and

10 (b) such individual is customarily engaged in an
11 independently established ~~trade, occupation,~~
12 ~~profession, or~~ business; or

13 (c) such service is outside the usual course of the
14 business for which ~~such~~ the service is performed and
15 that ~~such~~ the service is performed outside of all the
16 places of business of the enterprise for which ~~such~~
17 the service is performed.

18 (15) The term "employment" shall not include:

19 (a) services performed by an individual in agricultural
20 labor, except as provided under paragraph (5) of this
21 section. Services performed by an individual who is a
22 nonresident alien admitted to the United States to
23 perform agricultural labor, pursuant to 8 U.S.C.

1 Sections 1101(a), 1184(c) and 1188. For purposes of
2 this subparagraph, the term "agricultural labor" means
3 remunerated service performed in agricultural labor as
4 defined in the Federal Unemployment Tax Act, 26
5 U.S.C., Section 3306(k);
6 (b) domestic service, except as provided under paragraph
7 (6) of this section, in a private home, local college
8 club, or local chapter of a college fraternity or
9 sorority;
10 (c) service performed by an individual in the employ of
11 his or her son, daughter, or spouse, and service
12 performed by a child under the age of twenty-one (21)
13 in the employ of his or her father or mother, or both
14 father and mother;
15 (d) service performed in the employ of the United States
16 government or an instrumentality of the United States
17 exempt under the Constitution of the United States
18 from the contributions imposed by the Employment
19 Security Act of 1980, except that to the extent that
20 the Congress of the United States shall permit states
21 to require any instrumentalities of the United States
22 to make payments into an unemployment fund under a
23 state unemployment compensation law, all of the

1 provisions of the Employment Security Act of 1980
2 shall be applicable to such instrumentalities, and to
3 services performed for such instrumentalities, in the
4 same manner, to the same extent, and on the same terms
5 as to all other employers, employing units,
6 individuals and services; provided that if this state
7 shall not be certified for any year by the Secretary
8 of Labor of the United States under the Federal
9 Internal Revenue Code, 26 U.S.C., Section 3304(c), the
10 payments required of such instrumentalities with
11 respect to ~~such~~ the year shall be refunded by the
12 Commission from the fund in the same manner and within
13 the same period as is provided in Section 3-304 of
14 this title with respect to contributions erroneously
15 collected;

16 (e) service with respect to which unemployment
17 compensation is payable under an unemployment
18 compensation system established by an act of Congress;

19 (f) service performed in the employ of a foreign
20 government, including service as a consul or other
21 officer or employee or a nondiplomatic representative;

22 (g) service performed in the employ of an instrumentality
23 wholly owned by a foreign government:

- 1 (i) if the service is of a character similar to that
2 performed in foreign countries by employees of
3 the United States government or of an
4 instrumentality thereof, and
- 5 (ii) if the Commission finds that the United States
6 Secretary of State has certified to the United
7 States Secretary of the Treasury that the foreign
8 government, with respect to whose instrumentality
9 exemption is claimed, grants an equivalent
10 exemption with respect to similar service
11 performed in the foreign country by employees of
12 the United States government and of
13 instrumentalities thereof;
- 14 (h) service covered by an arrangement between the
15 Commission and the agency charged with the
16 administration of any other state or federal
17 unemployment compensation law pursuant to which all
18 services performed by an individual for an employing
19 unit during the period covered by such employing
20 unit's duly approved election, are deemed to be
21 performed entirely within the jurisdiction of such
22 other state or federal agency;

- 1 (i) service performed as a student nurse in the employ of
2 a hospital or a nurses' training school by an
3 individual who is enrolled and is regularly attending
4 classes in a nurses' training school chartered or
5 approved pursuant to state law; and service performed
6 as an intern in the employ of a hospital by an
7 individual who has completed a four-year course in a
8 medical school chartered or approved pursuant to state
9 law;
- 10 (j) service performed by an individual for a person, firm,
11 association, trust, partnership or corporation as an
12 insurance agent, or as an insurance solicitor or as a
13 licensed real estate agent, if all such service
14 performed by such individual for such person is
15 performed for remuneration solely by way of
16 commissions or fees;
- 17 (k) service performed by an individual under the age of
18 eighteen (18) in the delivery and distribution of
19 newspapers or shopping news, not including delivery or
20 distribution to any point for subsequent delivery or
21 distribution, and services performed by an individual
22 eighteen (18) years of age or older who meets the
23 definition of a "direct seller" as defined in 26

1 U.S.C., Section 3508(b)(2), that states in pertinent
2 part:

3 (i) the individual must be engaged in the delivery or
4 distribution of newspapers or shopping news,
5 including any services directly related to such
6 trade or business,

7 (ii) substantially all the remuneration, whether or
8 not paid in cash, for the performance of the
9 services described in clause (i) of this
10 subdivision is directly related to sales or other
11 output, including the performance of services,
12 rather than the number of hours worked, and

13 (iii) the services performed by the individual are
14 performed pursuant to a written contract between
15 ~~such~~ the person and the person for whom the
16 services are performed and ~~such~~ the contract
17 provides that the person will not be treated as
18 an employee with respect to ~~such~~ the services;

19 (1) service performed in the employ of a school, college
20 or university, if the service is performed:

21 (i) by a student who is enrolled and is regularly
22 attending classes at the school, college, or
23 university, or

1 (ii) by the spouse of the student, if the spouse is
2 advised, at the time the spouse commences to
3 perform the service, that:

- 4 (I) the employment of the spouse to perform the
5 service is provided under a program to
6 provide financial assistance to the student
7 by the school, college, or university, and
8 (II) the employment will not be covered by any
9 program of unemployment insurance;

10 (m) service performed by an individual who is enrolled at
11 a nonprofit or public educational institution which
12 normally maintains a regular faculty and curriculum
13 and normally has a regularly organized body of
14 students in attendance at the place where its
15 educational activities are carried on as a student in
16 a full-time program, taken for credit at the
17 institution, which combines academic instruction with
18 work experience, if the service is an integral part of
19 the program, and the institution has so certified to
20 the employer, except that this provision shall not
21 apply to service performed in a program established
22 for or on behalf of an employer or group of employers;

- 1 (n) service performed in the employ of a hospital, if the
2 service is performed by a patient of the hospital;
- 3 (o) services performed by cooperative extension personnel
4 holding federal appointments employed by state
5 institutions of higher learning;
- 6 (p) earnings of employees being paid by state warrants who
7 are presently covered by the Federal Unemployment
8 Compensation Act, 5 U.S.C., Section 8501 et seq., by
9 virtue of their federal status;
- 10 (q) cosmetology services performed by an individual in a
11 beauty shop, as defined by Section 199.1 of Title 59
12 of the Oklahoma Statutes, pursuant to an agreement
13 whereby the owner of the beauty shop leases or rents
14 facilities for cosmetology to such individual;
- 15 (r) barbering services performed by an individual in a
16 barber shop, as defined by Section 61.5 of Title 59 of
17 the Oklahoma Statutes, pursuant to an agreement
18 whereby the owner of the barber shop leases or rents
19 facilities for barbering to such individual;
- 20 (s) in-home services performed in a medical care program
21 such as the nontechnical medical care program, or
22 social services program, as certified and approved by
23 the Department of Human Services or the Federal Health

1 Care Financing Administration or as a participant in a
2 work or training program administered by the
3 Department of Human Services;

4 (t) riding services performed by a jockey and services
5 performed by a trainer of race horses in an approved
6 race licensed by the Oklahoma Horse Racing Commission;

7 (u) service performed by an individual whose remuneration
8 consists solely of commissions, overrides, bonuses,
9 and differentials related to sales or other output
10 derived from in-person sales to, or solicitation of
11 orders from, ultimate consumers primarily in the home,
12 or otherwise than in a permanent retail establishment;

13 (v) service performed by a person, commonly referred to as
14 "owner-operator", who owns or leases a truck-tractor
15 or truck for hire, provided the owner-operator
16 actually operates the truck-tractor or truck and,
17 further, that the entity contracting with the owner-
18 operator is not the lessor of the truck-tractor or
19 truck;

20 (w) services performed as a chopper of cotton who weeds or
21 thins cotton crops by hand or hoe. This subsection
22 shall be interpreted and applied consistently with the

1 Federal Unemployment Tax Act, 26 U.S.C., Sections
2 3304(a)(6)(A) and 3306(k); or
3 (x) services performed for a private for-profit person or
4 entity by an individual as a landman:
5 (i) if the individual is engaged primarily in
6 negotiating for the acquisition or divestiture of
7 mineral rights or negotiating business agreements
8 that provide for the exploration for or
9 development of minerals,
10 (ii) if substantially all remuneration paid in cash or
11 otherwise for the performance of the services is
12 directly related to the completion by the
13 individual of the specific tasks contracted for
14 rather than to the number of hours worked by the
15 individual, and
16 (iii) if the services performed by the individual are
17 performed under a written contract between the
18 individual and the person for whom the services
19 are performed; provided that the individual is to
20 be treated as an independent contractor and not
21 as an employee with respect to the services
22 provided under the contract.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-227 of Title 40, unless there
3 is created a duplication in numbering, reads as follows:

4 "Interested party" means the Oklahoma Employment Security
5 Commission, a claimant who files a claim for unemployment benefits
6 with the Commission, and any employer who properly files a written
7 objection to the claim pursuant to subsection E of Section 2-503 of
8 Title 40 of the Oklahoma Statutes.

9 SECTION 4. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1-228 of Title 40, unless there
11 is created a duplication in numbering, reads as follows:

12 "Experience Period" means:

13 1. For any tax year occurring before January 1, 2007, the most
14 recent three (3) consecutive completed calendar years occurring
15 before the calendar year for which a tax rate is being calculated.

16 2. For any tax year occurring after December 31, 2006, the most
17 recent twelve (12) consecutive completed calendar quarters occurring
18 before July 1 of the year immediately preceding the year for which
19 the employer's contribution rate is being calculated.

20 SECTION 5. AMENDATORY 40 O.S. 2001, Section 2-103, is
21 amended to read as follows:

22 Section 2-103. BENEFITS PAID FROM FUND.

1 All benefits provided herein shall be payable from the fund.
2 All benefits shall be paid ~~through employment offices~~ in accordance
3 with ~~such~~ the rules as the Oklahoma Employment Security Commission
4 may prescribe.

5 SECTION 6. AMENDATORY 40 O.S. 2001, Section 2-405, as
6 last amended by Section 4, Chapter 182, O.S.L. 2005 (40 O.S. Supp.
7 2005, Section 2-405), is amended to read as follows:

8 Section 2-405. DETERMINING GOOD CAUSE.

9 Good cause for voluntarily leaving work under Section 2-404 of
10 this title may include, among other factors, the following:

11 1. A job working condition that had changed to such a degree it
12 was so harmful, detrimental, or adverse to the individual's health,
13 safety, or morals, that leaving ~~such~~ the work was justified;

14 2. If the claimant, pursuant to an option provided under a
15 collective bargaining agreement or written employer plan which
16 permits waiver of his or her right to retain the employment when
17 there is a layoff, has elected to be separated and the employer has
18 consented thereto;

19 3. If the claimant was separated from employment with the
20 employer because a physician diagnosed or treated a medically
21 verifiable illness or medical condition of the claimant or the minor
22 child of the claimant, and ~~the physician found~~ based on available
23 information, the Oklahoma Employment Security Commission finds that

1 it was medically necessary for the claimant to stop working or
2 change occupations;

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

11 5. If the claimant separated from employment as part of a plan
12 to escape domestic violence or abuse.

13 SECTION 7. AMENDATORY 40 O.S. 2001, Section 2-406A, is
14 amended to read as follows:

15 Section 2-406A. An employee discharged on the basis of a
16 refusal to undergo drug or alcohol testing or a confirmed positive
17 drug or alcohol test conducted in accordance with the provisions of
18 the Standards for Workplace Drug and Alcohol Testing Act shall be
19 considered to have been discharged for misconduct and shall be
20 disqualified for benefits pursuant to the provisions of Section 2-
21 406 of ~~Title 40 of the Oklahoma Statutes~~ this title.

22 SECTION 8. AMENDATORY 40 O.S. 2001, Section 2-416, is
23 amended to read as follows:

1 Section 2-416. PROHIBITION AGAINST DISQUALIFICATION OF
2 INDIVIDUALS TAKING APPROVED TRAINING UNDER TRADE ACT.

3 No individual shall be denied benefits for any week because such
4 individual is in training approved under Section 236(a)(1) of the
5 Trade Act of 1974. An individual shall not be denied benefits by
6 reason of leaving work to ~~enter~~ begin or continue such training,
7 provided the work left is not suitable employment, or because of the
8 application, to any such week in training, of the provisions of the
9 Employment Security Act of 1980 or any applicable federal
10 unemployment compensation law, relating to availability for work,
11 active search for work, or refusal to accept work. For purposes of
12 this section, the term "suitable employment" means with respect to
13 an individual, work of a substantially equal or higher skill level
14 than the adversely affected past employment of the individual, as
15 defined for purposes of the Trade Act of 1974, and wages for such
16 work at not less than eighty percent (80%) of the average weekly
17 wage of the individual as determined for the purposes of the Trade
18 Act of 1974.

19 SECTION 9. AMENDATORY 40 O.S. 2001, Section 2-417, is
20 amended to read as follows:

21 Section 2-417. SEEK AND ACCEPT WORK - WEEK OF OCCURRENCE
22 DISQUALIFICATION.

1 A. An individual shall be disqualified to receive benefits for
2 each week in which the individual shall have failed to do any of the
3 following:

4 1. Diligently search for suitable employment at a pay rate
5 generally available in that area of the state in keeping with his or
6 her prior experience, education and training;

7 2. Make application for work with employers who could
8 reasonably be expected to have work available ~~within that general~~
9 ~~geographic area of the state;~~

10 3. Present oneself as an applicant for employment in a manner
11 designed to encourage favorable employment consideration; or

12 4. Participate in reemployment services, such as job search
13 assistance services, if the individual has been determined likely to
14 exhaust regular benefits and needs reemployment services pursuant to
15 a profiling system established by the Oklahoma Employment Security
16 Commission. An individual will not be disqualified under this
17 paragraph for failure to participate in reemployment services, if:

18 a. the individual has previously completed reemployment
19 services, or

20 b. there is justifiable cause for the individual's
21 failure to participate in reemployment services.

22 B. The requirements of subsection A of this section shall be
23 waived if the individual has been summoned to appear for jury duty

1 before any court of the United States or of any state. The waiver
2 will continue for as long as the individual remains on jury duty
3 pursuant to the original summons.

4 SECTION 10. AMENDATORY 40 O.S. 2001, Section 2-503, as
5 amended by Section 4, Chapter 102, O.S.L. 2004 (40 O.S. Supp. 2005,
6 Section 2-503), is amended to read as follows:

7 Section 2-503. CLAIMS, NOTICES AND OBJECTIONS.

8 A. Claims for benefits shall be made in accordance with such
9 rule as the Oklahoma Employment Security Commission may prescribe.

10 B. Promptly after the initial claim or the additional initial
11 claim is filed the Commission shall give written notice of the claim
12 to the last employer of the claimant for whom he or she worked at
13 least fifteen (15) working days.

14 C. Promptly after the claim is paid for the fifth week of
15 benefits the Commission shall give written notice of the claim to
16 all other employers of the claimant during the claimant's base
17 period. The notice will be given pursuant to Section 3-106 of this
18 title.

19 D. Notices shall be deemed given when the Commission deposits
20 the same in the United States mail addressed to the employer's last-
21 known address. Notice shall be presumed prima facie to have been
22 given to the employer to whom addressed on the date stated in the
23 written notice.

1 E. Within ten (10) days after the date on the notice or the
2 date of the postmark on the envelope in which the notice was sent,
3 whichever is later, an employer may file with the Commission at the
4 address prescribed in the notice written objections to the claim
5 setting forth specifically the facts which:

6 1. Make the claimant ineligible for benefits under Sections 2-
7 201 through 2-209 of this title;

8 2. Disqualify the claimant from benefits under Sections 2-401
9 through 2-418 of this title; or

10 3. Relieve such employer from being charged for the benefits
11 wages of such claimant.

12 F. If an employer fails to give specific facts required by
13 subsection E of this section, the employer will not be an interested
14 party to the claim. In order to meet this requirement the employer
15 must submit the following information at a minimum, within the time
16 allowed by this statute:

17 1. The date on which employment of the individual began and
18 ended;

19 2. Details leading to the claimant no longer being employed,
20 specifically the final event leading to separation;

21 3. Documentation regarding warnings and violations of company
22 policies, if applicable; and

23 4. Such other information as called for by the notice.

1 SECTION 11. AMENDATORY 40 O.S. 2001, Section 2-610, is
2 amended to read as follows:

3 Section 2-610 JUDICIAL REVIEW.

4 (1) Within the ten (10) days after the day a notice of decision
5 of the Board of Review is mailed to the parties, the Oklahoma
6 Employment Security Commission, or any party to the proceedings
7 before the Board of Review, may obtain judicial review thereof by
8 filing in the district court of the county in which the claimant
9 resides, or if the claimant is not a resident of the State of
10 Oklahoma then in the district court of Oklahoma County, a petition
11 for review of such decision, against the Board of Review. In such
12 petition for review all other parties to the proceeding before the
13 Board of Review and the Commission shall be made codefendants. Such
14 petition for review need not be verified but shall state
15 specifically the grounds upon which such review is sought. A copy
16 of the petition for review shall be served upon a member of the
17 Board of Review or upon such persons as the Board of Review may
18 designate and the petitioner shall also deliver to the person so
19 served as many copies of the petition as there are defendants. The
20 Board of Review shall forthwith send by mail to each other party to
21 the proceeding a copy of such petition, and such mailing shall be
22 deemed to be service upon all such parties. In any proceeding under
23 this section the findings of the Board of Review as to the facts, if

1 supported by evidence, shall be conclusive and the jurisdiction of
2 ~~said~~ the court shall be confined to questions of law. No additional
3 evidence shall be received by the court, but the court may remand
4 the case and order additional evidence to be taken before the Board
5 of Review, and the Board may, after hearing ~~such~~ the additional
6 evidence, modify its findings of fact or conclusions, and file ~~such~~
7 the additional or modified findings and conclusions, together with
8 the transcript of the additional record, with the court.

9 (2) ~~With its answer to the petition~~ Within sixty (60) days of
10 the filing of the petition, the Board of Review shall certify and
11 file with the court a certified copy of the record of the case,
12 including all documents and papers and a transcript of all testimony
13 taken in the matter, together with the Board of Review's findings,
14 conclusions, and decision therein.

15 (3) Such proceedings shall be heard in a summary manner and
16 shall be given precedence over all other civil cases. An appeal may
17 be taken from the decision of the district court to the Supreme
18 Court of this state in the same manner as is provided in other civil
19 cases. It shall not be necessary as a condition precedent to
20 judicial review of any decision of the Board of Review to enter
21 exceptions to the rulings of such Board, and no bond shall be
22 required as a condition of initiating a proceeding for judicial
23 review or entering an appeal from the decision of the court upon

1 such review. Upon the final termination of such judicial
2 proceeding, the Board of Review shall enter an order in accordance
3 with the mandate of the court.

4 SECTION 12. AMENDATORY 40 O.S. 2001, Section 3-101, is
5 amended to read as follows:

6 Section 3-101. APPLICABILITY.

7 (1) The provisions of this Article 3 apply to the payment of
8 contributions by employers.

9 (2) The provisions of this Part 1 apply to employers other than
10 employers who are subject to Part 7, or employers who have elected
11 to reimburse under Part 8 of this article, or employers who have
12 elected to reimburse under paragraph 2 of subsection E of Section 1-
13 108 of this title.

14 SECTION 13. AMENDATORY 40 O.S. 2001, Section 3-102, is
15 amended to read as follows:

16 Section 3-102. CONTRIBUTIONS.

17 A. Contributions shall accrue and become payable by each
18 employer for each calendar year in which the employer is subject to
19 this act, with respect to wages for employment. Such contributions
20 shall become due and be paid by each employer to the Oklahoma
21 Employment Security Commission for the Unemployment Compensation
22 Fund in accordance with such rules as the Commission may prescribe,

1 and shall not be deducted, in whole or in part, from the wages of
2 individuals in ~~such~~ the employer's employ.

3 B. In the payment of any contributions, a fractional part of a
4 cent shall be disregarded unless it amounts to one-half cent
5 (\$0.005) or more, in which case it shall be increased to one cent
6 (\$0.01).

7 C. Each employer shall be notified of its contribution rate for
8 ~~the~~ a given calendar year on or before ~~March 31 of such~~ September 30
9 of the previous calendar year. ~~Such~~ The rate shall become
10 conclusive and binding upon the employer unless within twenty (20)
11 days after the mailing of the notice of the contribution rate, to
12 the employer's last-known address, the employer files a written
13 request for a review and redetermination setting forth the
14 employer's reasons ~~therefor~~ for the review. The Commission shall
15 provide for ~~such~~ a review and issue a determination to the employer.

16 D. Within fourteen (14) days after the date of mailing of the
17 notice of the determination, the employer may file with the
18 Commission at the address prescribed in the notice the employer's
19 specific written objections to the contribution rate so determined.
20 The matter will be heard upon those specific written objections by a
21 representative appointed by the Commission. The decision ~~thereon~~
22 shall be made in writing and notice ~~thereof~~ shall be mailed to the
23 employer. The employer may appeal ~~therefrom~~ to the district court

1 by filing a petition for review with the clerk of that court within
2 thirty (30) days after the date of mailing stated upon ~~that~~ the
3 notice of decision.

4 SECTION 14. AMENDATORY 40 O.S. 2001, Section 3-106, as
5 last amended by Section 6, Chapter 182, O.S.L. 2005 (40 O.S. Supp.
6 2005, Section 3-106), is amended to read as follows:

7 Section 3-106. BENEFIT WAGES CHARGED AND RELIEF THEREFROM.

8 A. The Oklahoma Employment Security Commission shall give
9 notice to each base period employer of a claimant promptly after the
10 claimant is paid his or her fifth week of benefits by the Commission
11 or promptly after the Commission receives notice of the amounts paid
12 as benefits by another state under a reciprocal arrangement. Notice
13 shall be deemed given under this subsection when the Commission
14 deposits the same with the United States Postal Service addressed to
15 the employer at an address designated by the employer to receive
16 ~~such~~ the notice or at the employer's last-known address. Notice
17 shall be presumed prima facie to have been given to the employer to
18 whom addressed on the date stated in the written notice. This
19 notice shall give the name and Social Security Number of the
20 claimant, the date the claim was filed, and the amount of benefit
21 wages charged to the employer in each quarter of the base period.

22 B. Within ~~fourteen (14)~~ twenty (20) days from the date stated
23 upon the notice provided for in subsection A of this section, the

1 employer may file with the Commission written objections to being
2 charged with ~~such~~ the benefit wages upon one or more of the grounds
3 for objection set forth in subsection G of this section. The
4 employer's written objection must set forth specifically:

- 5 1. The date on which the employment was terminated;
- 6 2. Full particulars as to the circumstances of the termination
7 including the reason given by the individual for voluntarily leaving
8 the employment, or the nature of the misconduct for which
9 discharged, as the case may be;
- 10 3. Full particulars as to the regular scheduled part-time or
11 full-time employment of the employee including the starting date,
12 and ending date if any, of the continuous period of such part-time
13 or full-time employment; and
- 14 4. Such other information as called for by the notice.

15 C. Upon receipt of the employer's written objections, the
16 Commission shall make a determination as to whether or not the
17 employer is entitled to be relieved from the charging of benefit
18 wages. The Commission shall promptly notify the employer of that
19 determination. Provided further, the ~~fourteen-day~~ twenty-day time
20 period for filing written objections with the Commission as provided
21 for in subsection B of this section may be waived for good cause
22 shown.

1 D. Within ~~twenty (20)~~ fourteen (14) days after the mailing of
2 the determination provided for in subsection C of this section, the
3 employer may file with the Commission or its representative a
4 written protest to the determination and request an oral hearing de
5 novo to present evidence in support of its protest. The Commission
6 or its representative shall, by written notice, advise the employer
7 of the date of the hearing, which shall not be less than ten (10)
8 days from the date of mailing of the written notice. At the
9 discretion of the Commission, this hearing shall be conducted by the
10 Commission or its representative appointed by the Commission for
11 this purpose. Pursuant to the hearing, the Commission or its
12 representative shall, as soon as practicable, make a written order
13 setting forth its findings of fact and conclusions of law, and shall
14 send it to the employer.

15 E. If any employer fails to file a written protest within the
16 period of ~~twenty (20)~~ fourteen (14) days, as provided by subsection
17 D of this section, then the determination shall be final, and no
18 appeal shall thereafter be allowed.

19 F. The employer or the Commission may appeal the order of the
20 Commission or its representative to the district court by filing a
21 petition for review with the clerk of that court within thirty (30)
22 days after the date the order was mailed to all parties. The
23 mailing date shall be specifically stated in the order.

1 G. The benefit wages charged to an employer for a given
2 calendar year shall be the total of the benefit wages stated in the
3 notices given to the employer by the Commission. Provided, that an
4 employer shall be relieved of a benefit wage charge if the employer
5 proves to the satisfaction of the Commission that the benefit wage
6 charge includes wages paid by the employer to any employee or former
7 employee, who:

8 1. Left employment with that employer, or with his or her last
9 employer, voluntarily without good cause connected to the work;

10 2. Was discharged from such employment for misconduct connected
11 with his or her work;

12 3. Was a regular scheduled employee of that employer prior to
13 the week the employee separated from other employment, and continued
14 to work for ~~said~~ the employer through the fifth compensable week of
15 unemployment in his or her established benefit year;

16 4. Was separated from his or her employment as a direct result
17 of a major natural disaster, declared as such by the President
18 pursuant to the Disaster Relief Act of 1974, P.L. 93-288, and such
19 employee would have been entitled to disaster unemployment
20 assistance if he or she had not received unemployment insurance
21 benefits;

1 5. Was separated from employment with that employer due to a
2 medically verifiable illness or medical condition of the employee or
3 the minor child of the employee;

4 6. Was discharged by an employer for unsatisfactory performance
5 during an initial employment probationary period. As used in this
6 paragraph, "probationary period" means a period of time set forth in
7 an established probationary plan which applies to all employees or a
8 specific group of employees and does not exceed ninety (90) calendar
9 days from the first day a new employee begins work. The employee
10 must be informed of the probationary period within the first seven
11 (7) work days. There must be conclusive evidence to establish that
12 the individual was separated due to unsatisfactory work performance
13 and not separated because of lack of work due to temporary,
14 seasonal, casual, or other similar employment not of regular,
15 permanent, and year-round nature;

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

20 8. Left employment with that employer as part of a plan to
21 escape domestic violence or abuse; or

1 9. Left employment to attend training approved under the Trade
2 Act of 1974 and is allowed unemployment benefits pursuant to Section
3 2-416 of this title.

4 H. If an employer recalls ~~a laid-off or separated employee~~ an
5 employee deemed unemployed as defined by this act and ~~said the~~
6 employee continues to be employed or ~~said the~~ employee voluntarily
7 terminates employment or is discharged for misconduct within the
8 benefit year, the employer shall be entitled to have the benefit
9 wage charged against the employer's experience rating for ~~said the~~ employee
10 reduced by the ratio of the number of weeks of remaining
11 eligibility of ~~said the~~ employee to the total number of weeks of
12 entitlement.

13 I. An employer shall not be charged with benefit wages of a
14 laid-off employee if the employer lists as an objection in a
15 statement filed in accordance with subsection B of this section that
16 said employee collecting benefits was hired to replace a United
17 States serviceman or servicewoman called into active duty and laid-
18 off upon the return to work by that serviceman or servicewoman. The
19 Unemployment Compensation Fund shall be charged with the benefit
20 wages of the laid-off employee.

21 SECTION 15. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3-106.2 of Title 40, unless
23 there is created a duplication in numbering, reads as follows:

1 Separating employers - relief from benefit wage charges

2 A separating employer will not be charged with benefit wages, or
3 will be relieved of the charge upon notification of the Oklahoma
4 Employment Security Commission, if the former employee who is the
5 subject of the charge was separated from employment under one of the
6 circumstances listed in subsection G of Section 3-106 of Title 40 of
7 the Oklahoma Statutes.

8 SECTION 16. AMENDATORY 40 O.S. 2001, Section 3-107, is
9 amended to read as follows:

10 Section 3-107. BENEFIT WAGE RATIO.

11 ~~The~~ A. For any tax year occurring before January 1, 2007, the
12 benefit wage ratio of each employer shall be a percentage equal to
13 the total of ~~his~~ the employer's benefit wages ~~for the most recent~~
14 ~~three (3) consecutive completed calendar years~~ in the experience
15 period divided by ~~his~~ the employer's total taxable payroll for the
16 ~~same three (3) years~~ experience period on which contributions have
17 been paid to the Oklahoma Employment Security Commission on or
18 before January 31 of the calendar year with respect to which ~~his~~ the
19 employer's benefit wage ratio is determined.

20 B. For any tax year occurring after December 21, 2006, the
21 benefit wage ratio of each employer shall be a percentage equal to
22 the total of the employer's benefit wages in the experience period
23 divided by the employer's total taxable payroll for the experience

1 period on which contributions have been paid to the Commission on or
2 before July 31 of the calendar year immediately preceding the year
3 for which the contribution rate is being calculated.

4 SECTION 17. AMENDATORY 40 O.S. 2001, Section 3-108, is
5 amended to read as follows:

6 Section 3-108. STATE EXPERIENCE FACTOR.

7 The total benefits paid from the Unemployment Compensation Fund
8 ~~for the most recent three (3) consecutive completed calendar years~~
9 during the experience period, less all amounts credited to the Fund
10 other than employers' contributions, interest, penalties, fees and
11 interest earned on the Fund, divided by the statewide total of
12 benefit wages of all employers for the ~~same three (3) calendar years~~
13 experience period, after adjustments to the nearest multiple of one
14 percent (1%) shall be termed the "state experience factor." The
15 state experience factor for any year shall be determined prior to
16 the due date of the first contribution payment on wages for
17 employment in that year.

18 SECTION 18. AMENDATORY 40 O.S. 2001, Section 3-111, as
19 last amended by Section 7, Chapter 182 , O.S.L. 2005 (40 O.S. Supp.
20 2005, Section 3-111), is amended to read as follows:

21 Section 3-111. SUCCESSOR AND PREDECESSOR EMPLOYERS.

22 A. Any employing unit, whether or not an employing unit at the
23 time of the acquisition, which acquires substantially all of the

1 trade, organization, employees, business, or assets of any employer
2 (excepting in such case any assets retained by that employer
3 incident to the liquidation of the employer's obligations) and who
4 continues the operations of the predecessor employer as a going
5 business, shall be determined to be a successor employer. The
6 successor employer shall acquire the merit rating account of the
7 predecessor employer, including the predecessor's actual
8 contribution and benefit experience, annual payrolls, and
9 contribution rate. The successor employer shall also become jointly
10 and severally liable with the predecessor employer for all current
11 or delinquent contributions, interest, penalties and fees owed to
12 the Oklahoma Employment Security Commission by the predecessor
13 employer.

14 Written notice of all current or delinquent contributions,
15 interest, penalties and fees owed to the Commission by the
16 predecessor employer shall be provided to the successor employer by
17 the predecessor employer prior to the sale of the business. Failure
18 to give such notice may subject the predecessor employer to a
19 penalty as specified by the rules of the Commission.

20 Any remuneration for services covered by the Employment Security
21 Act of 1980 or other state unemployment compensation acts paid by
22 the predecessor employer shall be considered as having been paid by
23 the successor employer. The initial determination regarding whether

1 or not an acquiring employer will become a successor to a
2 predecessor account shall be made by the Commission or its duly
3 authorized representative and notice of this determination shall be
4 delivered to the acquiring employer or mailed to his or her last-
5 known address.

6 B. ~~Within twenty (20) days after the mailing of the notice of~~
7 ~~initial determination provided for in subsection A of this section,~~
8 ~~the employer may file with the Commission or its representative a~~
9 ~~written protest to the initial determination and request an oral~~
10 ~~hearing to present evidence in support of its protest. The~~
11 ~~Commission or its representative shall, by written notice, advise~~
12 ~~the employer of the date of the hearing, which shall not be less~~
13 ~~than ten (10) days from the date of the mailing of the written~~
14 ~~notice. At the discretion of the Commission, the hearing shall be~~
15 ~~conducted by the Commission, or by a representative appointed by the~~
16 ~~Commission for this purpose. Pursuant to the hearing, the~~
17 ~~Commission or its representative shall, as soon as practicable:~~

18 1. ~~Make an order affirming, modifying or reversing the initial~~
19 ~~determination;~~

20 2. ~~Immediately send to the employer a written notice thereof;~~
21 and

1 ~~3. In accordance with the order, notify the employer of any~~
2 ~~additional contributions, interest, penalties or fees then due or~~
3 ~~owing by the employer and the employer's contribution rate.~~

4 ~~If any employer fails to file its written protest to the initial~~
5 ~~determination within the period of twenty (20) days, as provided by~~
6 ~~this subsection, then the initial determination shall be final, and~~
7 ~~no appeal shall thereafter be allowed.~~

8 ~~6.~~ Any employing unit, whether or not an employing unit at the
9 time of the acquisition, which acquires substantially all of the
10 trade, employees, organization, business, or assets of an employer,
11 at one or more separate and distinct establishments and who
12 continues the acquired operations of the predecessor as a going
13 business, shall acquire that portion of the experience rating
14 account of the predecessor employer that is applicable to the
15 establishment or establishments, if the employing unit, immediately
16 after the acquisition, is an employer; provided, however, that the
17 employing unit shall not acquire a portion of the experience rating
18 account unless written application therefor is received by the
19 Commission within one hundred twenty (120) days after the date of
20 the acquisition together with evidence sufficient for the Commission
21 to determine which portion of the experience rating account of the
22 predecessor is applicable to the acquired operations, and the
23 Commission finds that the transfer will not tend to defeat or

1 obstruct the object and purpose of the Employment Security Act of
2 1980; and provided further, that the portion of the experience
3 rating account so transferred, including the taxable payrolls and
4 benefit wages, shall not thereafter be used in computing an
5 experience rating contribution rate for the transferring employer.
6 For the purpose of this subsection a separate and distinct
7 establishment means all operations conducted by an employer at one
8 business location which is readily ~~segregable~~ and identifiable as a
9 separate business organization.

10 ~~D.~~ C. If the Commission finds that any report required to
11 complete a determination of contribution rate has not been filed or
12 if filed is incorrect or insufficient, and any such fact or
13 information has not already been established or found in connection
14 with some other proceeding pursuant to the provisions of the
15 Employment Security Act of 1980, an estimate may be made of the
16 information required on the basis of the best evidence reasonably
17 available to it at the time. Notice shall be given of ~~such~~ the
18 determination as provided for contribution rate in subsection C of
19 Section 3-102 of this title and the employer may appeal therefrom as
20 provided in subsection D of Section 3-102 of this title.

21 D. A determination made under this section may be appealed
22 pursuant to the provisions of Section 3-115 of this title.

1 SECTION 19. AMENDATORY 40 O.S. 2001, Section 3-113, is
2 amended to read as follows:

3 Section 3-113. CONDITIONAL FACTORS.

4 For each calendar year commencing after ~~December 31, 1977~~
5 December 31, 2006, except for those employers with a benefit wage
6 ratio of zero (0) and as otherwise provided in this section, the
7 contribution rate for each employer for ~~such~~ the calendar year shall
8 be increased, in the circumstances and in the amounts as follows:

9 (1) - Condition "a" - If ~~at the beginning of each such year~~ the
10 balance of the unemployment compensation fund is less than three and
11 one-half (3 1/2) times, but not less than three (3) times, the net
12 benefits paid for the most recent ~~five (5)~~ twenty (20) consecutive
13 completed calendar ~~years~~ quarters divided by five (5), on July 1 of
14 any given year, the contribution rate for the next calendar year for
15 each employer whose benefit wage ratio with respect to ~~such~~ that
16 year is zero percent (0%) shall be increased by one-tenth of one
17 percent (1/10 of 1%) of wages paid by the employer during ~~such~~ the
18 year; ~~such~~ the contribution rate for each employer whose benefit
19 rate wage ratio with respect to ~~such~~ that year is more than zero
20 percent (0%), but not more than one-tenth of one percent (1/10 of
21 1%), shall be increased by two-tenths of one percent (2/10 of 1%) of
22 wages paid by the employer during ~~such~~ the year and ~~such~~ the
23 contribution rate for each employer whose benefit wage ratio with

1 respect to ~~such~~ that year is more than one-tenth of one percent
2 (1/10 of 1%), shall be increased by three-tenths of one percent
3 (3/10 of 1%) of wages paid by the employer during ~~such~~ that year.

4 (2) - Condition "b" - If ~~at the beginning of each such year~~ the
5 balance of the unemployment compensation fund is less than three (3)
6 times, but not less than two and one-half (2 1/2) times, the net
7 benefits paid for the most recent ~~five (5)~~ twenty (20) consecutive
8 completed calendar ~~years~~ quarters divided by five (5), as of July 1
9 of any given year, the contribution rate for the next calendar year
10 for each employer shall be increased by thirty-three and one-third
11 percent (33 1/3%) of ~~such~~ the rate; provided that ~~such~~ the total
12 rate, if not a multiple of one-tenth of one percent (1/10 of 1%),
13 shall be computed to the next higher multiple of one-tenth of one
14 percent (1/10 of 1%) of wages paid by the employer during ~~such~~ that
15 year; provided, further, that ~~such~~ the contribution rate for each
16 employer whose benefit wage ratio with respect to ~~such~~ that year is
17 zero percent (0%) shall be increased by two-tenths of one percent
18 (2/10 of 1%) of wages paid by the employer during ~~such~~ that year;
19 ~~such~~ the contribution rate for each employer whose benefit wage
20 ratio with respect to ~~such~~ that year is more than zero percent (0%),
21 but not more than one-tenth of one percent (1/10 of 1%), shall be
22 increased by three-tenths of one percent (3/10 of 1%) of wages paid
23 by the employer during ~~such~~ that year; and ~~such~~ the contribution

1 rate for each employer whose benefit wage ratio with respect to ~~such~~
2 that year is more than one-tenth of one percent (1/10 of 1%), shall
3 be increased by at least four-tenths of one percent (4/10 of 1%) of
4 wages paid by the employer during ~~such~~ that year.

5 (3) - Condition "c" - If ~~at the beginning of each such year~~ the
6 balance of the unemployment compensation fund is less than two and
7 one-half (2 1/2) times, but not less than two (2) times, the net
8 benefits paid for the most recent ~~five (5)~~ twenty (20) consecutive
9 completed calendar ~~years~~ quarters divided by five (5), as of July 1
10 of any given year, the contribution rate for the next calendar year
11 for each employer shall be increased by one-half (1/2) of ~~such~~ that
12 rate; provided that ~~such~~ the total rate, if not a multiple of one-
13 tenth of one percent (1/10 of 1%), shall be computed to the next
14 higher multiple of one-tenth of one percent (1/10 of 1%) of wages
15 paid by the employer during ~~such~~ that year; provided, further, that
16 ~~such~~ the contribution rate for each employer whose benefit wage
17 ratio with respect to ~~such~~ that year is zero percent (0%) shall be
18 increased by three-tenths of one percent (3/10 of 1%) of wages paid
19 by the employer during ~~such~~ that year; ~~such~~ the contribution rate
20 for each employer whose benefit wage ratio with respect to ~~such~~ that
21 year is more than zero percent (0%), but not more than one-tenth of
22 one percent (1/10 of 1%), shall be increased by four-tenths of one
23 percent (4/10 of 1%) of wages paid by the employer during ~~such~~ that

1 year; and ~~such~~ the contribution rate for each employer whose benefit
2 wage ratio with respect to ~~such~~ that year is more than one-tenth of
3 one percent (1/10 of 1%), shall be increased by at least five-tenths
4 of one percent (5/10 of 1%) of wages paid by the employer during
5 ~~such~~ that year.

6 (4) - Condition "d" - If ~~at the beginning of each such year~~ the
7 balance of the unemployment compensation fund is less than two (2)
8 times the net benefits paid for the most recent ~~five~~ ~~(5)~~ twenty (20)
9 consecutive completed calendar ~~years~~ quarters divided by five (5),
10 as of July 1 of any given year, the contribution rate for the next
11 calendar year for each employer shall be increased by sixty-six and
12 two-thirds percent (66 2/3 %) of ~~such~~ the rate; provided that ~~such~~
13 the total rate, if not a multiple of one-tenth of one percent (1/10
14 of 1%) shall be computed to the next higher multiple of one-tenth of
15 one percent (1/10 of 1%) of wages paid by the employer during ~~such~~
16 that year; provided, further, that ~~such~~ the contribution rate for
17 each employer whose benefit wage ratio with respect to ~~such~~ that
18 year is zero percent (0%) shall be increased by four-tenths of one
19 percent (4/10 of 1%) of wages paid by the employer during ~~such~~ that
20 year; ~~such~~ the contribution rate for each employer whose benefit
21 wage ratio with respect to ~~such~~ that year is more than zero percent
22 (0%), but not more than one-tenth of one percent (1/10 of 1%), shall
23 be increased by five-tenths of one percent (5/10 of 1%) of wages

1 paid by the employer during ~~such~~ that year; ~~such~~ the contribution
2 rate for each employer whose benefit wage ratio with respect to ~~such~~
3 that year is more than one-tenth of one percent (1/10 of 1%), shall
4 be increased by at least six-tenths of one percent (6/10 of 1%) of
5 wages paid by the employer during ~~such~~ that year.

6 (5) The contribution rate, excluding any surcharge, for an
7 employer whose contribution rate is three and four-tenths percent
8 (3.4%) or more shall not be increased by more than two (2)
9 percentage points in any one (1) year. The contribution rate,
10 excluding any surcharge, for an employer whose contribution rate is
11 less than three and four-tenths percent (3.4%) shall not be
12 increased to more than five and four-tenths percent (5.4%) in one
13 (1) year.

14 For the purposes of this section "net benefits paid for the most
15 recent ~~five (5)~~ twenty (20) consecutive completed calendar ~~years~~
16 quarters" means the total amount of monies withdrawn from this
17 state's account in the unemployment trust fund in the United States
18 Treasury for each of the most recent ~~five (5)~~ twenty (20)
19 consecutive completed calendar ~~years~~ quarters, plus the balance ~~of~~
20 ~~such monies~~ in the benefit account at the start of ~~such~~ the period,
21 less the balance ~~of such monies~~ in the benefit account at the end of
22 ~~such~~ the period. The contribution rate for those employers with a
23 benefit wage ratio of zero (0) shall be two-tenths of one percent

1 (2/10 of 1%) during those years when the fund is in conditions "a",
2 "b", and "c", and shall be three-tenths of one percent (3/10 of 1%)
3 during those years when the fund is in condition "d".

4 ~~(6) There is hereby created a Special Surtax Fund. All money~~
5 ~~collected from the surtax imposed pursuant to this paragraph shall~~
6 ~~be transferred from the clearing account to the Special Surtax Fund.~~
7 ~~Funds in the Special Surtax Fund shall be used for repayments to the~~
8 ~~state's account in the unemployment trust fund for amounts~~
9 ~~previously withdrawn for refunds of employer contributions made~~
10 ~~pursuant to the requirements of paragraph (5) of this section.~~
11 ~~After Three Million Nine Hundred Sixty nine Thousand Two Hundred~~
12 ~~Seventy-three Dollars and twenty-eight cents (\$3,969,273.28) has~~
13 ~~been deposited in the state's account in the unemployment trust fund~~
14 ~~any remaining balance in the Special Surtax Fund shall also be~~
15 ~~transferred to the fund. When all such transfers have been made the~~
16 ~~Special Surtax Fund shall cease to exist.~~

17 ~~Notwithstanding any other provision, for the first calendar~~
18 ~~quarter of 1987, the maximum assignable contribution rate shall be~~
19 ~~five and four tenths percent (5.4%). A special surtax shall be~~
20 ~~assigned to employers who would, in the absence of the preceding~~
21 ~~sentence, be assigned a rate in excess of five and four tenths~~
22 ~~percent (5.4%). The Commission shall determine the rate of surtax~~
23 ~~to be assigned to each employer to whom this provision applies in~~

1 ~~the same manner used to assign contribution rates pursuant to this~~
2 ~~article. The provisions for collecting past-due contributions shall~~
3 ~~apply to collection of the surtax. The surtax collected shall after~~
4 ~~deposit in the clearing account be transferred to the Special Surtax~~
5 ~~Fund.~~

6 ~~(7)~~ Beginning January 1, 1996, except for this paragraph and
7 paragraph ~~(8)~~ (7) of this section, the provisions of this section
8 shall be suspended until the Unemployment Trust Fund reaches a High
9 Cost Multiple of one and one-fourth (1.25). The Oklahoma Employment
10 Security Commission shall determine the High Cost Multiple at the
11 end of each calendar year and shall include the result of its
12 computation in a regularly published periodical together with other
13 employment-related data. As used in this section, "High Cost
14 Multiple" shall be a figure computed as follows:

15 (a) first, net fund reserves in the Unemployment
16 Compensation Fund as of the date of each computation
17 required by this section shall be divided by total
18 wages earned in insured employment for the twelve (12)
19 months preceding the date of the quarterly High Cost
20 Multiple computation,

21 (b) second, the result of the computation from
22 subparagraph (a) of this paragraph shall be divided by
23 a figure which is a quotient derived from the

1 computation of the High-Cost Rate contained in
2 subparagraph (c) of this paragraph, and
3 (c) third, the highest ratio of total state benefit
4 payments experienced previously in any twelve (12)
5 consecutive months to total wages earned in insured
6 employment for the same period shall be the High-Cost
7 Rate.

8 The result of all computations contained in subparagraphs (a)
9 through (c) of this paragraph, performed in the sequence as
10 specified in this section, shall be known as the High Cost Multiple;

11 ~~(8)~~ (7) Prior to the beginning of each calendar year, the
12 Commission shall prepare an estimate of the financial condition of
13 the trust fund. If the estimate for the year shows the balance, at
14 any time during the year, will fall below the High Cost Multiple as
15 defined in paragraph ~~(7)~~ (6) of this section, then the Commission
16 shall reinstate the suspended provisions of this section.

17 SECTION 20. AMENDATORY 40 O.S. 2001, Section 3-115, is
18 amended to read as follows:

19 Section 3-115. ~~PROTEST~~ APPEAL OF DETERMINATIONS.

20 A. If a determination is made by the Oklahoma Employment
21 Security Commission on any aspect of an employer's account, and a
22 method of ~~protest~~ appeal of the determination is not set out in the
23 statute or rule under which the determination was made, ~~then~~ the

1 employer may ~~protest~~ appeal the determination under the procedure
2 set forth in subsection B of this section.

3 B. 1. All determinations affecting an employer account must be
4 made by the Commission in writing in a Notice of Determination and
5 mailed to the employer at the employer's last-known address with the
6 mailing date and appeal rights set out in the document.

7 2. Within twenty (20) days after the mailing of the Notice of
8 Determination as provided for in paragraph 1 of this subsection, the
9 employer may file with the Commission, or its representative, a
10 written ~~protest to the determination and a request for an oral~~
11 ~~hearing de novo to present evidence in support of the protest~~
12 request for a review and redetermination setting forth the
13 employer's reasons therefor.

14 ~~3.~~ If any employer fails to file a written ~~protest~~ request for
15 review and redetermination within twenty (20) days ~~as provided by~~
16 ~~this subsection~~, then the initial determination of the Commission
17 shall be final, and no further appeal shall be allowed.

18 3. If a written request for review and redetermination is
19 filed, the Commission shall provide for a review and issue a Notice
20 of Redetermination in the matter. The employer may appeal the
21 redetermination by filing a written protest within fourteen (14)
22 days of the date of the mailing of the Notice of Redetermination.
23 If the employer fails to file a written protest within the time

1 allowed, the redetermination of the Commission shall be final and no
2 further appeal shall be allowed.

3 4. Upon the timely filing of a written protest, the Commission
4 shall provide for an oral hearing de novo to allow the employer to
5 present evidence in support of the protest. The Commission or its
6 representatives shall, by written notice, advise the employer of the
7 date of the hearing, which shall not be less than ten (10) days from
8 the date of the mailing of the written notice. At the discretion of
9 the Commission, this hearing shall be conducted by the Commission,
10 or by a representative appointed by the Commission for this purpose.

11 5. Pursuant to the hearing, the Commission or its
12 representative shall, as soon as practicable, make a written order
13 setting forth its findings of fact and conclusions of law, and shall
14 mail it to the employer at the employer's last-known address with
15 the mailing date and appeal rights set out in the document.

16 6. The employer or the Commission may appeal the order to the
17 district court of the county in which the employer has its principal
18 place of business by filing a Petition for Review with the clerk of
19 the court within thirty (30) days after the date the order was
20 mailed to all parties. ~~The mailing date shall be specifically~~
21 ~~stated in the order~~ If the employer does not have a principal place
22 of business in any county in Oklahoma, then the Petition for Review
23 shall be filed with the Oklahoma County District Court. All appeals

1 shall be governed by Part ~~IV~~ 4 of Article III of the Employment
2 Security Act of 1980.

3 SECTION 21. AMENDATORY 40 O.S. 2001, Section 3-203, is
4 amended to read as follows:

5 Section 3-203. ELECTION BY EMPLOYER.

6 A. An employing unit, not otherwise subject to the Employment
7 Security Act of 1980, which files with the Oklahoma Employment
8 Security Commission its written election to become an employer
9 subject hereto for not less than two (2) calendar years shall, with
10 the written approval of the election by the Commission, become an
11 employer subject hereto to the same extent as all other employers,
12 as of the date stated in the approval, and shall cease to be subject
13 hereto as of January 1 of any calendar year subsequent to the two
14 (2) required calendar years, only if during January of that year it
15 has filed with the Commission a written application for termination
16 of coverage as provided in this section.

17 B. Any employing unit for which services that do not constitute
18 employment as defined in the Employment Security Act of 1980 are
19 performed may file with the Commission a written election that all
20 such services with respect to which payments are not required under
21 an employment security law of any other state or of the federal
22 government and which are performed by individuals in its employ in
23 one or more distinct establishments or places of business shall be

1 deemed to constitute employment by an employer for all the purposes
2 of the Employment Security Act of 1980 for not less than two (2)
3 calendar years. Upon the written approval of the election by the
4 Commission, ~~such~~ the services shall be deemed to constitute
5 employment subject to the Employment Security Act of 1980 from and
6 after the date stated in the approval. ~~Such~~ The services shall
7 cease to be deemed employment subject hereto as of January 1 of any
8 calendar year subsequent to the two (2) required calendar years,
9 only if during January of that year the employing unit has filed
10 with the Commission a written application for termination of the
11 coverage.

12 C. The Commission may terminate the election of an employer or
13 employing unit made pursuant to subsection A or B of this section at
14 any time the Commission determines that the employer or employing
15 unit is not abiding by all requirements of the Employment Security
16 Act of 1980 and the rules for the administration of that act, or if
17 the employer or employing unit that has made an election for
18 coverage becomes delinquent in the payment of its unemployment tax
19 contributions, interest, penalties or fees.

20 D. If the Commission makes a determination that an application
21 of an employer or employing unit submitted under subsections A or B
22 of this section should be denied, or that a voluntary election
23 should be terminated under subsection C of this section, the

1 Commission shall notify the affected employer or employing unit in
2 writing. The notification of the determination shall be delivered
3 to the employer, or mailed to the employer's last-known address.

4 ~~E. Within twenty (20) days after the mailing of the notice of~~
5 ~~determination provided for in subsection D of this section, the~~
6 ~~employer may file with the Commission or its representative a~~
7 ~~written protest to the initial determination and request an oral~~
8 ~~hearing to present evidence in support of its protest. The~~
9 ~~Commission or its representative shall, by written notice, advise~~
10 ~~the employer of the date of hearing, which shall not be less than~~
11 ~~ten (10) days from the date of the mailing of the written notice.~~
12 ~~At the discretion of the Commission, the hearing shall be conducted~~
13 ~~by the Commission, or by a representative appointed by the~~
14 ~~Commission for this purpose. Pursuant to the hearing, the~~
15 ~~Commission or its representative shall, as soon as practicable:~~

16 ~~1. Make an order affirming, modifying or reversing the initial~~
17 ~~determination;~~

18 ~~2. Immediately send to the employer a written notice thereof;~~
19 ~~and~~

20 ~~3. In accordance with the order, notify the employer of any~~
21 ~~changes in the status of his or her account.~~

22 ~~If any employer fails to file its written protest to the initial~~
23 ~~determination within the period of twenty (20) days, as provided by~~

1 ~~this subsection, then the initial determination shall be final, and~~
2 ~~no appeals shall thereafter be allowed~~ A determination made under
3 this section may be appealed pursuant to the provisions of Section
4 3-115 of this title.

5 SECTION 22. AMENDATORY 40 O.S. 2001, Section 3-301, is
6 amended to read as follows:

7 Section 3-301. PENALTY AND INTEREST ON PAST-DUE CONTRIBUTIONS.

8 A. If contributions are not paid on the date on which they are
9 due and payable as prescribed by the Oklahoma Employment Security
10 Commission, the whole or part thereafter remaining unpaid shall bear
11 interest at the rate of one percent (1%) per month for each month or
12 fraction thereof from and after such date until payment is received
13 by the Commission. The date on which payment of contributions is
14 deemed to have been received may be determined by such rules as the
15 Commission may prescribe.

16 B. If any employer fails or refuses to file contribution and
17 wage reports required under the provisions of this act within
18 fifteen (15) days after written notice has been mailed to the
19 employer by the Commission or its representative regardless whether
20 or not any wages or taxable wages were paid, there shall accrue a
21 penalty of One Hundred Dollars (\$100.00) and in addition to such
22 penalty, there shall be a penalty of ten percent (10%) added to the
23 total contributions due, collected and paid. Such penalties shall

1 be in addition to any interest due. The provisions of this
2 subsection shall not apply to employers ~~as provided in~~ that are
3 subject to subsection B of Section 3-806 of this title.

4 SECTION 23. AMENDATORY 40 O.S. 2001, Section 3-305, is
5 amended to read as follows:

6 Section 3-305. ASSESSMENTS.

7 A. If any employer shall fail to make any report or return as
8 required by the Employment Security Act of 1980, the Oklahoma
9 Employment Security Commission or its duly authorized
10 representative, from any information in the possession of or
11 obtainable by the Commission, may determine the amount of
12 contribution due from such employer, and shall mail a copy of the
13 assessment to the last-known address of the delinquent employer.
14 The assessment so made shall not preclude the Commission or its
15 representative from making field audits of the books and records,
16 wherever located, of the employer and from making further
17 adjustments, corrections or assessments. The assessments provided
18 for herein must be made, and a copy thereof delivered to the
19 employer or mailed to the last-known address of the employer, within
20 three (3) years after the date on which the report or return was
21 required to be filed.

22 B. ~~Within twenty (20) days after the mailing of the assessment~~
23 ~~provided for above, the employer may file with the Commission or its~~

1 ~~representative a written protest to the assessment and a request for~~
2 ~~an oral hearing de novo to present evidence in support of the~~
3 ~~protest. The Commission or its representative shall by written~~
4 ~~notice, advise the employer of the date of the hearing, which shall~~
5 ~~not be less than ten (10) days from the date of mailing of the~~
6 ~~written notice. At the discretion of the Commission, this hearing~~
7 ~~shall be conducted by the Commission, or by a representative~~
8 ~~appointed by the Commission for this purpose. Pursuant to the~~
9 ~~hearing, the Commission or its representative shall, as soon as~~
10 ~~practicable, make a written order setting forth its findings of fact~~
11 ~~and conclusions of law, and shall send it to the employer and shall~~
12 ~~in accordance with the order make an assessment of any contribution~~
13 ~~found to be due and not assessed.~~

14 C. ~~If any employer fails to file a written protest within~~
15 ~~twenty (20) days, as provided by this section, then the assessment~~
16 ~~shall be final, and no appeal shall be allowed.~~

17 D. ~~The employer or the Commission may appeal the order to the~~
18 ~~district court by filing a petition for review with the clerk of~~
19 ~~that court within thirty (30) days after the date the order was~~
20 ~~mailed to all parties. The mailing date shall be specifically~~
21 ~~stated in the order Assessments under this section may be appealed~~
22 ~~pursuant to the provisions of Section 3-115 of this title.~~

1 SECTION 24. AMENDATORY 40 O.S. 2001, Section 3-310, is
2 amended to read as follows:

3 Section 3-310. A. Any penalty or interest, or any portion
4 thereof, assessed because an employer or employee fails to file a
5 report or remit payment as required by Section 1-101 et seq. of
6 ~~Title 40 of the Oklahoma Statutes~~ this title may be waived by the
7 Oklahoma Employment Security Commission provided the failure of the
8 employer or employee to file a report or remit payment:

- 9 1. Is satisfactorily explained to the Commission;
- 10 2. Has resulted from a mistake by the employer or employee of
11 either the law or the facts subjecting the employer or employee to
12 file the report or remit payment; or
- 13 3. Results from insolvency.

14 B. Provided, no waiver of penalty or interest assessed for
15 failure to file a report or remit payment as required by this act
16 shall be granted unless the request for waiver is filed with the
17 Commission within a three-year period from the date the penalty or
18 interest was assessed or accrued.

19 ~~C. Any penalty and interest assessed prior to April 1, 1995,~~
20 ~~against an employer which is a federally recognized Indian tribe or~~
21 ~~nation, shall be waived by the Commission upon full payment of all~~
22 ~~outstanding contributions owed by any such Indian tribe or nation~~
23 ~~pursuant to the Employment Security Act of 1980, provided that full~~

1 ~~payment is received by the Commission prior to April 1, 1995. Any~~
2 ~~such Indian tribe or nation who has fully complied with the~~
3 ~~provisions of this subsection shall be eligible to elect coverage~~
4 ~~and thereafter be subject to termination of any such election of~~
5 ~~such coverage pursuant to Section 3-203 of this title.~~

6 SECTION 25. AMENDATORY 40 O.S. 2001, Section 4-310A, is
7 amended to read as follows:

8 Section 4-310A. ADOPTION AND PROMULGATION OF RULES.

9 The adoption and promulgation of all rules by the Oklahoma
10 Employment Security Commission shall be in accordance with the
11 procedures set forth in Article I of the Administrative Procedures
12 Act, ~~Section 250 et seq. of Title 75 of the Oklahoma Statutes.~~

13 SECTION 26. AMENDATORY Section 25, Chapter 452, O.S.L.
14 2002 (40 O.S. Supp. 2005, Section 4-317), is amended to read as
15 follows:

16 Section 4-317. Employee recognition program.

17 In order to establish a public employee benefit program to
18 encourage outstanding performance in the workplace, the Oklahoma
19 Employment Security Commission is hereby directed to establish an
20 on-the-job employee performance recognition program which encourages
21 outstanding job performance and productivity. ~~In order to promote~~
22 ~~excellence in job performance and provide recognition for work units~~
23 ~~with exceptional performance, the~~ The Commission is authorized to

1 expend from monies available to it so much thereof as may be
2 necessary for the purchase of recognition awards for presentation to
3 the members of work units or individual employees with exceptional
4 job performance records or for other significant contributions to
5 the operation of the Commission. Recognition awards shall consist
6 of ~~distinctive wearing apparel, service pins, plaques, U.S. Savings~~
7 ~~Bonds, or other distinguished awards, the value of which shall not~~
8 ~~exceed One Hundred Dollars (\$100.00) per employee, which recognize~~
9 ~~the achievement of the work unit or individual employee~~ any type of
10 award authorized by the provisions of Section 4121 of Title 74 of
11 the Oklahoma Statutes.

12 SECTION 27. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 4-318 of Title 40, unless there
14 is created a duplication in numbering, reads as follows:

15 In order to encourage the improvement and modernization of
16 employment, training, and placement services for veterans, and to
17 recognize eligible employees for excellence in the provision of
18 services to veterans, or for having made demonstrable improvements
19 in the provision of services to veterans the Veterans Service
20 Division of the Oklahoma Employment Security Commission is directed
21 to establish an employee performance recognition program. The
22 Commission is hereby authorized to grant cash awards of up to Five
23 Thousand Dollars (\$5,000.00) to the eligible employees meeting

1 criteria established by the Veterans Service Division of the
2 Oklahoma Employment Security Commission; provided, funds exist from
3 United States Department of Labor grants for the payment of the
4 awards. For the purposes of this act, "eligible employees" means
5 any of the following:

- 6 1. A disabled veterans outreach program specialist;
- 7 2. A local veterans employment representative; or
- 8 3. An individual providing employment, training and placement
9 services to veterans under the Workforce Investment Act of 1998 or
10 through an Employment Service delivery system.

11 SECTION 28. AMENDATORY 40 O.S. 2001, Section 4-508, as
12 last amended by Section 12, Chapter 182, O.S.L. 2005 (40 O.S. Supp.
13 2005, Section 4-508), is amended to read as follows:

14 Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL -
15 DISCLOSURE.

16 A. Except as otherwise provided by law, information obtained
17 from any employing unit or individual pursuant to the administration
18 of the Employment Security Act of 1980, and determinations as to the
19 benefit rights of any individual shall be kept confidential and
20 shall not be disclosed or be open to public inspection in any manner
21 revealing the individual's or employing unit's identity. Any
22 claimant or employer or agent of such person as authorized in
23 writing shall be supplied with information from the records of the

1 Oklahoma Employment Security Commission, to the extent necessary for
2 the proper presentation of the claim or complaint in any proceeding
3 under the Employment Security Act of 1980, with respect thereto.

4 B. Upon receipt of written request by any employer who
5 maintains a Supplemental Unemployment Benefit (SUB) Plan, the
6 Commission or its designated representative may release to such
7 employer information regarding weekly benefit amounts paid its
8 workers during a specified temporary layoff period, provided such
9 Supplemental Unemployment Benefit (SUB) Plan requires benefit
10 payment information before Supplemental Unemployment Benefits can be
11 paid to such workers. Any information disclosed under this
12 provision shall be utilized solely for the purpose outlined herein
13 and shall be held strictly confidential by the employer.

14 C. The provisions of this section shall not prevent the
15 Commission from disclosing the following information and no
16 liability whatsoever, civil or criminal, shall attach to any member
17 of the Commission or any employee thereof for any error or omission
18 in the disclosure of such information:

19 1. The delivery to taxpayer or claimant a copy of any report or
20 other paper filed by the taxpayer or claimant pursuant to the
21 Employment Security Act of 1980;

22 2. The disclosure of information to any person for a purpose as
23 authorized by the taxpayer or claimant pursuant to a waiver of

1 confidentiality. The waiver shall be in writing and shall be
2 notarized;

3 3. The Oklahoma Department of Commerce may have access to data
4 obtained pursuant to the Employment Security Act of 1980 pursuant to
5 rules promulgated by the Commission. The information obtained shall
6 be held confidential by the Department and any of its agents and
7 shall not be disclosed or be open to public inspection. The
8 Oklahoma Department of Commerce, however, may release aggregated
9 data, either by industry or county, provided that such aggregation
10 meets disclosure requirements of the Commission;

11 4. The publication of statistics so classified as to prevent
12 the identification of a particular report and the items thereof;

13 5. The disclosing of information or evidence to the Attorney
14 General or any district attorney when the information or evidence is
15 to be used by the officials or other parties to the proceedings to
16 prosecute or defend allegations of violations of the Employment
17 Security Act of 1980. The information disclosed to the Attorney
18 General or any district attorney shall be kept confidential by them
19 and not be disclosed except when presented to a court in a
20 prosecution of a violation of Section 1-101 et seq. of this title,
21 and a violation by the Attorney General or district attorney by
22 otherwise releasing the information shall be a felony;

1 6. The furnishing, at the discretion of the Commission, of any
2 information disclosed by the records or files to any official person
3 or body of this state, any other state or of the United States who
4 is concerned with the administration of assessment of any similar
5 tax in this state, any other state or the United States;

6 7. The furnishing of information to other state agencies for
7 the limited purpose of aiding in the collection of debts owed by
8 individuals to the requesting agencies;

9 8. The release to employees of the Department of Transportation
10 of information required for use in federally mandated regional
11 transportation planning, which is performed as a part of its
12 official duties;

13 9. The release to employees of the State Treasurer's office of
14 information required to verify or evaluate the effectiveness of the
15 Oklahoma Small Business Linked Deposit Program on job creation;

16 10. The release to employees of the Attorney General, the State
17 Insurance Fund, the Department of Labor, the Workers' Compensation
18 Court, and the Insurance Department for use in investigation of
19 workers' compensation fraud;

20 11. The release to employees of the Oklahoma State Bureau of
21 Investigation or release to employees of the Oklahoma State Bureau
22 of Narcotics and Dangerous Drugs Control for use in criminal

1 investigations and the location of missing persons or fugitives from
2 justice;

3 12. The release to employees of the Center of International
4 Trade, Oklahoma State University, of information required for the
5 development of International Trade for employers doing business in
6 the State of Oklahoma;

7 13. The release to employees of the Oklahoma State Regents for
8 Higher Education of information required for use in the default
9 prevention efforts and/or collection of defaulted student loans
10 guaranteed by the Oklahoma Guaranteed Student Loan Program. Any
11 information disclosed under this provision shall be utilized solely
12 for the purpose outlined herein and shall be held strictly
13 confidential by the Oklahoma State Regents for Higher Education;

14 14. The release to employees of the Center for Economic and
15 Management Research of the University of Oklahoma, of information
16 required to identify economic trends. The information obtained
17 shall be kept confidential by the University and shall not be
18 disclosed or be open to public inspection. The University of
19 Oklahoma may release aggregated data, provided that such aggregation
20 meets disclosure requirements of the Commission;

21 15. The release to employees of the Office of State Finance of
22 information required to identify economic trends. The information
23 obtained shall be kept confidential by the Office of State Finance

1 and shall not be disclosed or be open to public inspection. The
2 Office of State Finance may release aggregate data, provided that
3 such aggregation meets disclosure requirements of the Commission;

4 16. The release to employees of the Department of Mental Health
5 and Substance Abuse Services of information required to evaluate the
6 effectiveness of mental health and substance abuse treatment and
7 state or local programs utilized to divert persons from inpatient
8 treatment. The information obtained shall be kept confidential by
9 the Department and shall not be disclosed or be open to public
10 inspection. The Department of Mental Health and Substance Abuse
11 Services, however, may release aggregated data, either by treatment
12 facility, program or larger aggregate units, provided that such
13 aggregation meets disclosure requirements of the Oklahoma Employment
14 Security Commission;

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

18 18. The release to employees of public housing agencies for
19 purposes of determining eligibility pursuant to 42 U.S.C. Section
20 503(i);

21 19. The release of wage and benefit claim information, at the
22 discretion of the Commission, to an agency of this state or its
23 political subdivisions, or any nonprofit corporation that operates a

1 program or activity designated as a partner in the Workforce
2 Investment Act One-Stop delivery system pursuant to 29 U.S.C.A.,
3 Section 2481 (b), based on a showing of need made to the Commission
4 and after an agreement concerning the release of information is
5 entered into with the entity receiving the information;

6 20. The release of information to the wage record interchange
7 system, at the discretion of the Commission;

8 21. The release of information to the Bureau of the Census of
9 the U.S. Department of Commerce for the purpose of economic and
10 statistical research; ~~or~~

11 22. The release of employer tax information and benefit claim
12 information to the Oklahoma Health Care Authority for use in
13 determining eligibility for a program that will provide subsidies
14 for health insurance premiums for qualified employers, employees,
15 self-employed persons, and unemployed persons; or

16 23. The release of employer tax information and benefit claim
17 information to the Oklahoma Department of Rehabilitation Services
18 for use in assessing results and outcomes of clients served.

19 D. Subpoenas to compel disclosure of information made
20 confidential by this statute shall not be valid, except for
21 administrative subpoenas issued by federal, state, or local
22 governmental agencies that have been granted subpoena power by
23 statute or ordinance. Confidential information maintained by the

1 Commission can be obtained by order of a court of record that
2 authorizes the release of the records in writing. All
3 administrative subpoenas or court orders for production of documents
4 must provide a minimum of twenty (20) days from the date it is
5 served for the Commission to produce the documents. If the date on
6 which production of the documents is required is less than twenty
7 (20) days from the date of service, the subpoena or order shall be
8 considered void on its face as an undue burden or hardship on the
9 Commission.

10 E. Should any of the disclosures provided for in this section
11 require more than casual or incidental staff time, the Commission
12 may charge the cost of such staff time to the party requesting the
13 information.

14 F. It is further provided that the provisions of this section
15 shall be strictly interpreted and shall not be construed as
16 permitting the disclosure of any other information contained in the
17 records and files of the Commission.

18 SECTION 29. NEW LAW A new section of law not to be
19 codified in the Oklahoma Statutes reads as follows:

20 There is hereby appropriated to the Employment Security
21 Administration Fund, out of funds made available to this state by
22 the federal Reed Act Distribution made on March 13, 2002, pursuant
23 to 903(d) of the Social Security Act, 42 U.S.C., 1103(d), as

1 amended, the amount of Six Million Nine Hundred Forty-four Thousand
2 Three Hundred Eighty-three Dollars and thirty-nine cents
3 (\$6,944,383.39) to be used by the Oklahoma Employment Security
4 Commission for the purpose of paying the administration expenses of
5 the following programs in the following amounts:

6 1. The Employment Service program in the amount of Three
7 Million Nine Hundred Thirty Thousand Five Hundred Seventy-one
8 Dollars and eighty-eight cents (\$3,930,571.88);

9 2. The One-Stop Career Center expenses attributable to the
10 Employment Service and the Unemployment Insurance program in the
11 amount of Three Hundred Thousand Dollars (\$300,000.00); and

12 3. The Unemployment Insurance program in the amount of Two
13 Million Seven Hundred Thirteen Thousand Eight Hundred Eleven Dollars
14 and fifty-one cents (\$2,713,811.51).

15 The funds appropriated by this section shall be expended on or
16 before December 31, 2007. Expenditures from this appropriation
17 shall be accounted for in accordance with standards established by
18 the United States Secretary of Labor. The Oklahoma Employment
19 Security Commission shall utilize the appropriation made by this
20 section in accordance with the provisions and requirements contained
21 in the Social Security Act, Title 42, of the United States Code.

22 SECTION 30. RECODIFICATION 40 O.S. 2001, Section 1-202A,
23 shall be recodified as Section 1-202.1 of Title 40 of the Oklahoma

1 Statutes, unless there is created a duplication in numbering.
2 Section 2 Chapter 452, O.S.L. 2002 (40 O.S. Supp. 2005, Section 1-
3 202B), shall be recodified as Section 1-202.2 of Title 40 of the
4 Oklahoma Statutes, unless there is created a duplication in
5 numbering. 40 O.S. 2001, Section 1-208A, as amended by Section 3,
6 Chapter 452, O.S.L. 2002 (40 O.S. Supp. 2005, Section 1-208A), shall
7 be recodified as Section 1-208.1 of Title 40 of the Oklahoma
8 Statutes, unless there is created a duplication in numbering. 40
9 O.S. 2001, Section 1-209A, shall be recodified as Section 1-209.1 of
10 Title 40 of the Oklahoma Statutes, unless there is created a
11 duplication in numbering. 40 O.S. 2001, Section 2-205A, shall be
12 recodified as Section 2-205.1 of Title 40 of the Oklahoma Statutes,
13 unless there is created a duplication in numbering. 40 O.S. 2001,
14 Section 2-404A, shall be recodified as Section 2-404.1 of Title 40
15 of the Oklahoma Statutes, unless there is created a duplication in
16 numbering. Section 2, Chapter 177, O.S.L. 2003 (40 O.S. Supp. 2005,
17 Section 2-404B, shall be recodified as Section 2-404.2 of Title 40
18 of the Oklahoma Statutes, unless there is created a duplication in
19 numbering. 40 O.S. 2001, Section 2-406A, shall be recodified as
20 Section 2-406.1 of Title 40 of the Oklahoma Statutes, unless there
21 is created a duplication in numbering. 40 O.S. 2001, Section 2-
22 610A, shall be recodified as Section 2-610.1 of Title 40 of the
23 Oklahoma Statutes, unless there is created a duplication in

1 numbering. 40 O.S. 2001, Section 4-310A, as amended by Section 26
2 of this act, shall be recodified as Section 4-310.1 of Title 40 of
3 the Oklahoma Statutes, unless there is created a duplication in
4 numbering.

5 SECTION 31. This act shall become effective July 1, 2006.

6 SECTION 32. It being immediately necessary for the preservation
7 of the public peace, health and safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

10 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-15-06 - DO
11 PASS, As Amended and Coauthored.