

1 specifying standards for accountability for expenditures;
2 specifying appropriation be in accordance with certain
3 provisions and requirements; repealing 40 O.S. 2001,
4 Sections 3-407 and 4-315, which relate to bond for appeals
5 from decisions other than those assessing contributions and
6 the petty cash fund for the Job Corps; providing for
7 codification; providing for noncodification; and providing
8 an effective date.

9 E IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

12 Section 1-208. EMPLOYER.

13 "Employer" means:

14 ~~(1)~~ 1. Any employing unit, except as provided under paragraphs
15 ~~(10)~~ 10 and ~~(11)~~ 11 of this section, which:

16 ~~(a)~~

17 a. for some portion of a day, but not necessarily
18 simultaneously, in each of twenty (20) different
19 calendar weeks, whether or not such weeks are or were
20 consecutive, within either the calendar year or the
21 preceding calendar year, and for the purpose of this
22 definition if any week includes both December 31 and
23 January 1, the days up to January 1 shall be deemed
24 one (1) calendar week and the days beginning January 1
25 another such week, has or had in employment one or
26 more individuals, irrespective of whether the same
27 individuals are or were employed in each such day~~+~~, or

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~~(b)~~

b. in any calendar quarter, in either the calendar year or preceding calendar year paid for service in employment wages of One Thousand Five Hundred Dollars (\$1,500.00) or more;

~~(2)~~ 2. Any individual or employing unit, whether or not an employing unit at the time of the acquisition, which acquired substantially all of the organization, trade, business, or assets thereof, of another which at the time of such acquisition was an employer subject to the Employment Security Act of 1980; or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to the Employment Security Act of 1980;

~~(3)~~ 3. Any individual or employing unit, whether or not an employing unit at the time of acquisition, which acquired substantially all of the organization, trade, business, or assets thereof, of another employing unit, if the employment record of such individual or employing unit subsequent to such acquisition, together with the employment record of the acquired unit prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit and employer subject to the Employment Security act of 1980 under paragraph ~~(1)~~ 1 of this section; or any individual or employing unit which acquired

1 substantially all of the organization, trade, business, or assets of
2 another employing unit if such employing unit subsequent to such
3 acquisition, and such acquired unit prior to such acquisition, both
4 within the same calendar quarter, together paid for service in
5 employment wages totaling One Thousand Five Hundred Dollars
6 (\$1,500.00) or more;

7 ~~(4)~~ 4. Any employing unit which, together with one or more
8 other employing units, is owned or controlled, by legally
9 enforceable means or otherwise, directly by the same interest, or
10 which owns or controls one or more other employing units, by legally
11 enforceable means or otherwise, and which, if treated as a single
12 unit with such other employing unit, would be an employer under
13 paragraph (1) of this section;

14 ~~(5)~~ 5. Any employing unit which, having become an employer
15 under paragraphs ~~(1)~~ 1, ~~(2)~~ 2, ~~(3)~~ 3, ~~(4)~~ 4, ~~(8)~~ 8, ~~(10)~~ 10 or ~~(11)~~
16 11 of this section has not, under Section 3-202 of this title,
17 ceased to be an employer subject to the Employment Security Act of
18 1980;

19 ~~(6)~~ 6. For the effective period of its election pursuant to
20 Section 3-203 of this title any other employing unit which has
21 elected to become subject to the Employment Security Act of 1980;

22 ~~(7)~~ 7. Any department of this state, any other state, and all
23 instrumentalities thereof, including any political subdivisions and

1 their instrumentalities, for which service in employment, as defined
2 in paragraph (3) of Section 1-210 of this title, is performed,
3 except as provided under paragraphs ~~(10)~~ 10 and ~~(11)~~ 11 of this
4 section;

5 ~~(8)~~ 8. Any employing unit for which service in employment, as
6 defined in paragraph (4) of Section 1-210 of this title, is
7 performed, except as provided under paragraphs ~~(10)~~ 10 and ~~(11)~~ 11
8 of this section;

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

17 ~~(10)~~ 10. Any employing unit for which agricultural labor as
18 defined in paragraph (5) of Section 1-210 of this title is
19 performed. In determining whether or not an employing unit for
20 which service other than agricultural labor is also performed is an
21 employer under ~~paragraphs (1)~~ paragraph 1, ~~(7)~~ 7, ~~(8)~~ 8 or ~~(11)~~ 11
22 of this section, the wages earned or the employment of an employee

1 performing service in agricultural labor shall not be taken into
2 account;

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

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

14 ~~(a)~~

15 a. within the calendar year or preceding calendar year,
16 service is or was performed, with respect to which
17 such employing unit is liable for any federal tax
18 against which credit may be taken by such employing
19 unit for contributions required to be paid by it into
20 a state unemployment fund, or

21 ~~(b)~~

22 b. such employing unit is required to be an "employer" as
23 a condition for approval of the Employment Security

1 Act of 1980 for full tax credit to be allowed against
2 the tax imposed by the Federal Unemployment Tax Act,
3 26 U.S.C., Section 3301 et seq.; or

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

9 SECTION 2. AMENDATORY 40 O.S. 2001, Section 1-218, as
10 amended by Section 6, Chapter 452, O.S.L. 2002 (40 O.S. Supp. 2004,
11 Section 1-218), is amended to read as follows:

12 Section 1-218. WAGES.

13 "Wages" means all remuneration for services from whatever
14 source, including commissions and bonuses and the cash value of all
15 remuneration in any medium other than cash, and includes dismissal
16 payments which the employer is required by law or contract to make.
17 Gratuities customarily received by an individual in the course of
18 work from persons other than the employing unit shall be treated as
19 wages received from the employing unit. The reasonable cash value
20 of remuneration in any medium other than cash, and the reasonable
21 amount of gratuities, shall be estimated and determined in
22 accordance with rules prescribed by the Oklahoma Employment Security
23 Commission. The term wages shall not include:

1 1. The amount of any payment, with respect to services
2 performed to or on behalf of an individual in its employ under a
3 plan or system established by an employing unit which makes
4 provision for individuals in its employ generally, or for a class or
5 classes of such individuals, including any amount paid by an
6 employing unit for insurance or annuities, or into a fund to provide
7 for any such payment, on account of:

8 a. retirement, other than employee contributions or
9 deferrals after December 31, ~~2002~~ 2005, under a
10 qualified plan as described in 26 U.S.C. ~~Section~~
11 Sections 401(k), 403b, 408(k), 457 and 7701(j),

12 b. sickness or accident disability,

13 c. medical and hospitalization expenses in connection
14 with sickness or accident disability,

15 d. death, provided the individual in its employ:

16 (1) has not the option to receive, instead of
17 provision for such death benefit, any part of
18 such payment, or if such death benefit is
19 insured, any part of the premium or contributions
20 to premiums paid by the employing unit, and

21 (2) has not the right, under the provisions of the
22 plan or system or policy of insurance providing
23 for such death benefit, to assign such benefit,

1 or to receive cash consideration in lieu of such
2 benefit either upon withdrawal from the plan or
3 system providing for such benefit or upon
4 termination of such plan or system or policy of
5 insurance or of the individual's services with
6 such employing unit, or

7 e. a bona fide thrift or savings fund, providing:

8 (1) such payment is conditioned upon a payment of a
9 substantial sum by such individuals in its
10 employ, and

11 (2) that such sum paid by the employing unit cannot
12 under the provisions of such plan be withdrawn by
13 an individual more frequently than once in any
14 twelve-month period, except upon an individual's
15 separation from that employment;

16 2. Any payment made to, or on behalf of, an employee or his or
17 her beneficiary under a cafeteria plan of the type described in 26
18 U.S.C., Section 125 and referred to in 26 U.S.C., Section
19 3306(b) (5) (G);

20 3. Any payment made, or benefit furnished, to or for the
21 benefit of an employee if at the time of such payment or such
22 furnishing it is reasonable to believe that the employee will be
23 able to exclude such payment or benefit from income under an

1 educational assistance program as described in 26 U.S.C., Section
2 127 or a dependent care assistance program as described in 26
3 U.S.C., Section 129 and as referred to in 26 U.S.C., Section
4 3306(b) (13);

5 4. The payment by an employing unit, without deduction from the
6 remuneration of the individual in its employ, of the tax imposed
7 upon such individual in its employ under 26 U.S.C., Section 3101
8 with respect to domestic services in a private home of the employer
9 or for agricultural labor;

10 5. Dismissal payments which the employer is not required by law
11 or contract to make;

12 6. The value of any meals and lodging furnished by or on behalf
13 of an employer to an individual in its employ; provided the meals
14 and lodging are furnished on the business premises of the employer
15 for the convenience of the employer; or

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

18 SECTION 3. AMENDATORY 40 O.S. 2001, Section 1-224, is
19 amended to read as follows:

20 Section 1-224. FILE.

21 For the purposes of Sections 2-503, 2-505, 2-603, 2-606, 3-102,
22 3-106, 3-111, 3-202, 3-203, 3-301, 3-305, 3-310, 3-805, 3-806, and

1 3-809 of this title, the term "file", "files", or "filed" shall be
2 defined as follows:

3 1. Hand-delivered to an office of the Oklahoma Employment
4 Security Commission by the close of business on or before the date
5 due;

6 2. Telefaxed to an office of the Oklahoma Employment Security
7 Commission by midnight on or before the date due. Timely telefaxing
8 shall be determined by the date and time printed by the Commission's
9 telefax machine on the document received or the date and time on the
10 sender's transmittal sheet;

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

15 4. Electronically ~~mailed~~ transmitted via ~~computer terminal~~ data
16 lines to ~~a~~ the Commission ~~e-mail address~~ by midnight on or before
17 the date due. Timely ~~e-mailing~~ transmission shall be determined by
18 the Commission's ~~e-mail~~ transmission log file.

19 SECTION 4. AMENDATORY 40 O.S. 2001, Section 2-405, as
20 amended by Section 3, Chapter 177, O.S.L. 2003 (40 O.S. Supp. 2004,
21 Section 2-405), is amended to read as follows:

22 Section 2-405. DETERMINING GOOD CAUSE.

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

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

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

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

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

1 5. If the claimant separated from employment as part of a plan
2 to escape domestic violence or abuse, ~~provided that agency rules be~~
3 ~~promulgated to reflect that a victim's protection order has been~~
4 ~~filed and is effective at the termination date.~~

5 SECTION 5. AMENDATORY 40 O.S. 2001, Section 2-613, as
6 amended by Section 13, Chapter 452, O.S.L. 2002 (40 O.S. Supp. 2004,
7 Section 2-613), is amended to read as follows:

8 Section 2-613. BENEFIT OVERPAYMENTS.

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

12 1. Fraud overpayment: in which an individual intentionally
13 makes a false statement or representation or fails to disclose a
14 material fact, and has received any sum as benefits to which the
15 individual was not entitled. The individual shall be liable to
16 repay this sum, plus interest at the rate of one percent (1%) per
17 month on the unpaid balance of the overpayment, to the Oklahoma
18 Employment Security Commission. The interest shall cease to accrue
19 when the total accrued interest equals the amount of the
20 overpayment. If an overpayment is modified, the interest shall
21 cease to accrue when the total accrued interest equals the amount of
22 the modified overpayment. The Commission ~~may~~ shall deduct the
23 principal sum from any future benefits payable to the individual;

1 2. Claimant error overpayment: in which an individual, by
2 mistake of law or fact, makes a false statement or representation or
3 fails to disclose a material fact and has received any sum as
4 benefits to which the individual was not entitled. The individual
5 shall be liable to repay this sum, plus interest at the rate of one
6 percent (1%) per month on the unpaid balance of the overpayment, to
7 the Commission. The interest shall cease to accrue when the total
8 accrued interest equals the amount of the overpayment. If an
9 overpayment is modified, the interest shall cease to accrue when the
10 total accrued interest equals the amount of the modified
11 overpayment. The Commission ~~may~~ shall deduct the principal sum from
12 any future benefits payable to the individual; or

13 3. Administrative overpayment - in which:

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

17 b. an individual has received benefits and, under a
18 redetermination or a reversal of a decision on appeal,
19 the individual has been found to be not entitled to
20 benefits.

21 The individual shall be liable to have this sum deducted from any
22 future benefits payable to the individual with respect to the
23 benefit year current at the time of the receipt and the next

1 subsequent benefit year that begins within one (1) year after the
2 expiration of the benefit year current at the time of the receipt.
3 No interest shall accrue on administrative overpayments.

4 SECTION 6. AMENDATORY 40 O.S. 2001, Section 3-106, as
5 last amended by Section 6, Chapter 102, O.S.L. 2004 (40 O.S. Supp.
6 2004, 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 notice or at the employer's last-known address. Notice shall
17 be presumed prima facie to have been given to the employer to whom
18 addressed on the date stated in the written notice. This notice
19 shall give the name and Social Security Number of the claimant, the
20 date the claim was filed, and the amount of benefit wages charged to
21 the employer in each quarter of the base period.

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

1 may file with the Commission written objections to being charged
2 with such benefit wages upon one or more of the grounds for
3 objection set forth in subsection G of this section. The employer's
4 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 time period for
20 filing written objections with the Commission as provided for in
21 subsection B of this section may be waived for good cause shown.

22 D. Within twenty (20) days after the mailing of the
23 determination provided for in subsection C of this section, the

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

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

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

22 G. The benefit wages charged to an employer for a given
23 calendar year shall be the total of the benefit wages stated in the

1 notices given to the employer by the Commission. Provided, that an
2 ~~employer's benefit wages shall not include~~ employer shall be
3 relieved of a benefit wage charge if the employer proves to the
4 satisfaction of the Commission that the benefit wage charge includes
5 wages paid by the employer to any employee or former employee, who:
6 1. Left employment with that employer, or with his or her last
7 employer, voluntarily without good cause connected to the work;
8 2. Was discharged from such employment for misconduct connected
9 with his or her work;
10 3. Was a regular scheduled employee of that employer prior to
11 the week the employee separated from other employment, and continued
12 to work for said employer through the fifth compensable week of
13 unemployment in his or her established benefit year;
14 4. Was separated from his or her employment as a direct result
15 of a major natural disaster, declared as such by the President
16 pursuant to the Disaster Relief Act of 1974, P.L. 93-288, and such
17 employee would have been entitled to disaster unemployment
18 assistance if he or she had not received unemployment insurance
19 benefits;
20 5. Was separated from employment with that employer due to a
21 medically verifiable illness or medical condition of the employee or
22 the minor child of the employee;

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

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

17 8. Left employment with that employer as part of a plan to
18 escape domestic violence or abuse, ~~provided that agency rules be~~
19 ~~promulgated to reflect that a victim's protection order has been~~
20 ~~filed and is effective at the termination date.~~

21 9. Left employment to attend training approved under the Trade
22 Act of 1974 and is allowed unemployment benefits pursuant to Section
23 2-416 of this title.

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

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

17 SECTION 7. AMENDATORY 40 O.S. 2001, Section 3-111, as
18 amended by Section 7, Chapter 102, O.S.L. 2004 (40 O.S. Supp. 2004,
19 Section 3-111), is amended to read as follows:

20 Section 3-111. ~~ACQUIRING~~ SUCCESSOR AND PREDECESSOR EMPLOYERS.

21 A. Any employing unit, whether or not an employing unit at the
22 time of the acquisition, which acquires substantially all of the
23 trade, organization, employees, business, or assets of any employer

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

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

18 Any remuneration for services covered by the Employment Security
19 Act of 1980 or other state unemployment compensation acts paid by
20 the predecessor employer shall be considered as having been paid by
21 the ~~acquiring~~ successor employer. The initial determination
22 regarding whether or not an acquiring employer will become a
23 successor to a predecessor account shall be made by the Commission

1 or its duly authorized representative and notice of this
2 determination shall be delivered to the acquiring employer or mailed
3 to his or her last-known address.

4 B. Within twenty (20) days after the mailing of the notice of
5 initial determination provided for in subsection A of this section,
6 the 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 the hearing, which shall not be less
11 than ten (10) days from the date of the mailing of the written
12 notice. At the discretion of the Commission, the hearing shall be
13 conducted 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 additional contributions, interest, penalties or fees then due or
22 owing by the employer and the employer's contribution rate.

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

5 C. Any employing unit, whether or not an employing unit at the
6 time of the acquisition, which acquires substantially all of the
7 trade, organization, business, or assets of an employer, at one or
8 more separate and distinct establishments and who continues the
9 acquired operations of the predecessor as a going business, shall
10 acquire that portion of the experience rating account of ~~such~~ the
11 predecessor employer that is applicable to ~~such~~ the establishment or
12 establishments, if ~~such~~ the employing unit, immediately after ~~such~~
13 the acquisition, is an employer; provided, however, that ~~such~~ the
14 employing unit shall not acquire ~~such~~ a portion of the experience
15 rating account unless written application therefor is received by
16 the Commission within one hundred twenty (120) days after the date
17 of ~~such~~ the acquisition together with evidence sufficient for the
18 Commission to determine which portion of the experience rating
19 account of the predecessor is applicable to the acquired operations,
20 and the Commission finds that ~~such~~ the transfer will not tend to
21 defeat or obstruct the object and purpose of the Employment Security
22 Act of 1980; and provided further, that the portion of the
23 experience rating account so transferred, including the taxable

1 payrolls and benefit wages, shall not thereafter be used in
2 computing an experience rating contribution rate for the
3 transferring employer. For the purpose of this subsection a
4 separate and distinct establishment means all operations conducted
5 by an employer at one business location which is readily segregable
6 and identifiable as a separate business organization.

7 ~~D. No rate shall be assigned an employing unit succeeding to~~
8 ~~the experience of another employing unit pursuant to this section~~
9 ~~for any period subsequent to such succession except in accordance~~
10 ~~with regulations prescribed by the Commission, which regulations~~
11 ~~shall be consistent with federal requirements for additional credit~~
12 ~~allowance in Section 1602 of the Internal Revenue Code, and the~~
13 ~~Employment Security Act of 1980.~~

14 ~~E. By rule the Commission may establish a computation date for~~
15 ~~any such period different from the computation date generally~~
16 ~~prescribed by the provisions of the Employment Security Act of 1980,~~
17 ~~and may define the words "calendar year" as meaning a twelve-~~
18 ~~consecutive-month period ending on the same day of the year as that~~
19 ~~on which such computation date occurs.~~

20 ~~F.~~ If the Commission finds that any report required to complete
21 a determination of contribution rate has not been filed or if filed
22 is incorrect or insufficient, and any such fact or information has
23 not already been established or found in connection with some other

1 proceeding pursuant to the provisions of the Employment Security Act
2 of 1980, an estimate may be made of the information required on the
3 basis of the best evidence reasonably available to it at the time.
4 Notice shall be given of such determination as provided for
5 contribution rate in subsection C of Section 3-102 of this title and
6 the employer may appeal therefrom as provided in subsection D of
7 Section 3-102 of this title.

8 SECTION 8. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3-111.1 of Title 40, unless
10 there is created a duplication in numbering, reads as follows:

11 SUCCESSOR AND PREDECESSOR EMPLOYERS - SPECIAL RULES ON TRANSFER
12 OF RATES AND EXPERIENCE.

13 A. Notwithstanding any other provision of law, the following
14 shall apply regarding assignments of rates and transfers of
15 experience:

16 1. If an employer transfers its trade or business, or a portion
17 thereof, to another employer and, at the time of the transfer, there
18 is substantially common ownership, management or control of the two
19 employers, then the unemployment experience attributable to the
20 transferred trade or business shall be combined with the
21 unemployment experience of the employer to whom such business is so
22 transferred; and

1 2. Whenever a person who is not an employer under the
2 Employment Security Act of 1980 at the time it acquires the trade or
3 business of an employer, the unemployment experience rate of the
4 acquired business shall not be transferred to such person if the
5 Commission finds that the person acquired the business solely or
6 primarily for the purpose of obtaining a lower rate of
7 contributions. Instead, the person shall be assigned the minimum
8 contribution rate under Section 3-110 of Title 40 of the Oklahoma
9 Statutes. In determining whether the business was acquired solely
10 or primarily for the purpose of obtaining a lower rate of
11 contributions, the Commission shall use objective factors which may
12 include the cost of acquiring the business, whether the person
13 continued the business enterprise of the acquired business, how long
14 such business enterprise was continued, or whether a substantial
15 number of new employees were hired for performance of duties
16 unrelated to the business activity conducted prior to acquisition.

17 B. 1. If a person knowingly violates or attempts to violate
18 paragraph 1 or 2 of subsection A of this section or any other
19 provision of the Employment Security Act of 1980 related to
20 determining the assignment of the contribution rate, or if a person
21 knowingly advises another person in a way that results in a
22 violation of such provision, the person shall be subject to the
23 following penalties:

1 a. if the person is an employer, then the employer shall
2 be assessed a penalty equal to ten percent (10%) of
3 the actual taxes due in the calendar quarter in which
4 the employer violated or attempted to violate the
5 provisions of this section and a penalty equal to ten
6 percent (10%) of the actual taxes due in each of the
7 following three (3) calendar quarters. The funds in
8 payment of this penalty shall be deposited in the
9 Oklahoma Employment Security Commission revolving fund
10 established under section 4-901 of Title 40 of the
11 Oklahoma Statutes,

12 b. if the person is not an employer, the person shall be
13 subject to a civil money penalty of at least One
14 Hundred Dollars (\$100.00) and not more than Five
15 Thousand Dollars (\$5,000.00) to be determined by the
16 Assessment Board of the Oklahoma Employment Security
17 Commission. Any fine shall be deposited in the
18 Oklahoma Employment Security Commission Revolving Fund
19 established under Section 4-901 of Title 40 of the
20 Oklahoma Statutes.

21 2. For purposes of this section, the term "knowingly" means
22 having actual knowledge of or acting with deliberate ignorance or
23 reckless disregard for the prohibition involved.

1 3. For the purposes of this section, the term "violates or
2 attempts to violate" includes, but is not limited to, intent to
3 evade, misrepresentation or willful nondisclosure.

4 4. In addition to the penalty imposed by paragraph 1 of this
5 subsection, any person who violates the provisions of this section
6 shall be guilty of a misdemeanor and may be imprisoned for up to one
7 (1) year.

8 C. The Commission shall establish procedures to identify the
9 transfer or acquisition of a business for purposes of this section.

10 D. For purposes of this section:

11 1. "Person" has the meaning given such term by 26 U.S.C.
12 Section 7701(a)(1); and

13 2. "Trade or business" shall include the employers workforce.

14 E. This section shall be interpreted and applied in such a
15 manner as to meet the minimum requirements contained in any guidance
16 or regulations issued by the United States Department of Labor.

17 SECTION 9. AMENDATORY 40 O.S. 2001, Section 3-202, is
18 amended to read as follows:

19 Section 3-202. TERMINATION OF COVERAGE.

20 Termination of coverage with respect to 1977 or prior years
21 shall be determined in accordance with provisions applicable to
22 those years. Except as otherwise provided in Section 3-203 of this
23 title, an employing unit shall cease to be an employer subject to

1 this act only as of the first day of any calendar year and only if
2 it files with the Commission, during January of such year, a written
3 application for termination of coverage, and the Commission finds
4 that there were (1) no calendar quarter within the preceding
5 calendar year in which such employing unit paid for service in
6 employment wages of One Thousand Five Hundred Dollars (\$1,500.00) or
7 more or (2) no twenty (20) different days, each day being in a
8 different calendar week within the preceding calendar year, within
9 which such employing unit employed one or more individuals in
10 employment subject to this act; provided further that religious,
11 charitable, educational or other organizations covered under
12 paragraph 8 of Section ~~1-208(9)~~ 1-208 of this title shall be so
13 terminated if the Commission finds that there were no twenty (20)
14 different days, each day being in a different calendar week within
15 the preceding calendar year, within which such employing unit
16 employed four or more individuals in employment subject to this act.
17 Provided further that agricultural labor as covered under paragraph
18 10 of Section ~~1-208(12)~~ 1-208 of this title shall be so terminated
19 if the Commission finds that there were (1) no calendar quarter
20 within the preceding calendar year in which such employing unit paid
21 wages of Twenty Thousand Dollars (\$20,000.00) or more, or (2) no
22 twenty (20) different days, each day being in a different calendar
23 week within the preceding calendar year, within which such employing

1 unit employed ten (10) or more individuals in employment subject to
2 this act; provided further that domestic service as covered under
3 paragraph 11 of Section ~~1-208(13)~~ 1-208 of this title shall be
4 terminated if the Commission finds that there were no calendar
5 quarters within the preceding calendar year in which such employing
6 unit paid wages of One Thousand Dollars (\$1,000.00) or more.
7 Provided, however, that if the Federal Congress shall, by amendment
8 to the Federal Unemployment Tax Act, redefine the term employer to
9 include employing units not qualified as employers under this
10 section, all of the provisions of this act shall be applicable to
11 such employing units. For the purposes of this section, the two or
12 more employing units mentioned in ~~subsections (2), (3) or (4)~~
13 paragraph 2, 3 or 4 of Section 1-208 of this title shall be treated
14 as a single employing unit.

15 SECTION 10. AMENDATORY 40 O.S. 2001, Section 4-108, as
16 amended by Section 7, Chapter 177, O.S.L. 2003 (40 O.S. Supp. 2004,
17 Section 4-108), is amended to read as follows:

18 Section 4-108. EXECUTIVE DIRECTOR.

19 A. The chief executive officer of the Commission shall be the
20 Executive Director who shall be appointed by and serve at the
21 pleasure of the Commission. The Executive Director shall have such
22 compensation and further duties as the Commission may establish.
23 The Executive Director may appoint in the unclassified service a

1 Deputy Director and an Associate Director, and shall fix the
2 qualifications and duties of such position. The Executive Director
3 may also appoint in the unclassified service secretaries to the
4 Executive Director ~~and,~~ Deputy Director, and Associate Director.

5 B. If a person has acquired grade, rank and career status under
6 the merit system of personnel administration within the Oklahoma
7 Employment Security Commission before being appointed as Executive
8 Director, Deputy Director, Associate Director, or unclassified
9 secretary, that person shall:

10 1. ~~Have~~ Upon termination from the unclassified position, have
11 the right to be reinstated to the position within the Oklahoma
12 Employment Security Commission which was held prior to such
13 appointment, or to an equivalent position, unless the person was
14 terminated for a reason that would justify termination of a
15 classified employee or disqualify the person for reinstatement under
16 the Oklahoma Personnel Act or the rules implementing it; and

17 2. Be entitled during the unclassified appointment to continue
18 to participate without interruption in any fringe benefit programs
19 available to career employees including, but not limited to,
20 retirement and insurance programs.

21 SECTION 11. AMENDATORY 40 O.S. 2001, Section 4-314, is
22 amended to read as follows:

23 Section 4-314. PETTY CASH FUND.

1 There is hereby authorized to be created a petty cash fund for
2 the Oklahoma Employment Security Commission in an amount not to
3 exceed ~~Two Hundred Fifty Dollars (\$250.00)~~ Six Hundred Dollars
4 (\$600.00). ~~Said~~ This fund may be established from any
5 administrative funds available to the Oklahoma Employment Security
6 Commission for general operating expenses and shall be administered
7 under such rules as prescribed by the Director of State Finance.

8 SECTION 12. AMENDATORY 40 O.S. 2001, Section 5-108, is
9 amended to read as follows:

10 Section 5-108. OTHER PENALTIES IN THIS ACT.

11 Other penalties are provided in the following sections:

12 Employer violations of employee rights - Section 2-301

13 Impermissible charges to claimants - Section 2-302

14 Disqualification of benefit claims for fraud - Section 2-402

15 Recovery of benefits paid upon false statement - Section 2-613

16 SUTA dumping prohibition - Section 3-111.1

17 SECTION 13. NEW LAW A new section of law not to be
18 codified in the Oklahoma Statutes reads as follows:

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

1 nine Thousand Forty-three Dollars and twenty-three cents
2 (\$9,269,043.23) to be used by the Oklahoma Employment Security
3 Commission for the purpose of paying the administration expenses of
4 the following programs in the following amounts:

5 1. The Employment Service program in the amount of Six Million
6 Four Hundred Ninety-nine Thousand Five Hundred Twenty-six Dollars
7 and seventy-seven cents (\$6,499,526.77);

8 2. The One-Stop Career Center expenses attributable to the
9 Employment Service and the Unemployment Insurance program in the
10 amount of Three Hundred Thousand Dollars (\$300,00.00); and

11 3. The Unemployment Insurance program in the amount of Two
12 Million Four Hundred Sixty-nine Thousand Five Hundred Sixteen
13 Dollars and forty-six cents (\$2,469,516.46).

14 The funds appropriated by this section shall be expended on or
15 before December 31, 2006. Expenditures from this appropriation
16 shall be accounted for in accordance with standards established by
17 the United States Secretary of Labor. The Oklahoma Employment
18 Security Commission shall utilize the appropriation made by this
19 section in accordance with the provisions and requirements contained
20 in the Social Security Act, Title 42, of the United States Code.

21 SECTION 14. REPEALER 40 O.S. 2001, Sections 3-407 and 4-
22 315, are hereby repealed.

1 SECTION 15. This act shall become effective November 1, 2005.
2 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 2-14-05
3 - DO PASS, As Coauthored.