

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 809

By: Leftwich of the Senate

3 and

4 McDaniel (Randy) of the
5 House

6
7
8 (Employment Security Act of 1980 - surety bond -
9 orders, rulings and findings - repealing - State
10 Advisory Council - codification -

11 effective date)
12
13

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

16 "An Act relating to labor and state government;
17 amending 40 O.S. 2001, Sections 1-218, as last
18 amended by Section 2, Chapter 182, O.S.L. 2005, 1-
19 224, as amended by Section 3, Chapter 182, O.S.L.
20 2005, 2-109, 2-416, as amended by Section 8, Chapter
21 176, O.S.L. 2006, 2-506, 3-106, as last amended by
22 Section 13, Chapter 176, O.S.L. 2006, 3-115, as
23 amended by Section 19, Chapter 176, O.S.L. 2006, 3-
24 403, 3-806, 4-504 and 4-508, as last amended by
Section 27, Chapter 176, O.S.L. 2006 (40 O.S. Supp.
2006, Sections 1-218, 1-224, 2-416, 3-106, 3-115 and
4-508), which relate to the Employment Security Act
of 1980; amending 40 O.S. 2001, Section 418.2, as
amended by Section 3, Chapter 50, O.S.L. 2002 (40
O.S. 2001, Section 418.2), which relates to the
Worker Safety Policy Council; amending 74 O.S. 2001,
Section 85.29, as amended by Section 5, Chapter 50,

1 O.S.L. 2002 (74 O.S. Supp. 2006, Section 85.29),
2 which relates to schedule of amount of certain
3 surety bond required; clarifying date for certain
4 exclusion relating to retirement plans; modifying
5 and adding definition; clarifying certain benefit
6 year relating to employment requirement; making
7 language gender neutral; clarifying cite; allowing
8 certain redeterminations based on false statements
9 by employer; providing for the issuance of certain
10 benefits; providing for certain relief of benefit
11 wage charges under certain circumstances; providing
12 for certain protest of determination; stating
13 certain order shall be final in certain
14 circumstance; providing basis for certain
15 reconsideration of determinations; setting time
16 limit for redetermination; providing notice and
17 appeal of redetermination; stating certain findings
18 of fact or law for certain purposes shall be
19 conclusive and binding; stating certain findings of
20 fact or law for certain purposes shall not be
21 conclusive and binding; prohibiting use of certain
22 findings of fact or law in certain forums; stating
23 certain orders, rulings and findings will become
24 final if certain Petition for Review is not filed
within required time and court will not have certain
jurisdiction; providing timeframe for certain
assessment or amendments to assessments relating to
payment of in-lieu contributions; providing for
certain service of process; providing exceptions;
providing statute is not to be construed to waive
certain immunity; providing certain powers relating
to oaths, depositions, certifications and subpoenas
will apply to certain program for certain purpose;
providing for disclosure of certain information for
use in certain investigations; providing certain
information is confidential unless required for use
in court for certain purposes; modifying membership
of Worker Safety Policy Council; increasing amount
of certain surety required; repealing 40 O.S. 2001,
Sections 4-401, 4-402, 4-403, 4-404 and 4-405, which
relate to the Employment Security Act of 1980 and
the prohibition of certain disqualification or
recoupment relating to receipt of supplemental
unemployment benefits and the creation, appointment,
duties and compensation of the State Advisory
Council; providing for codification; and providing
an effective date.

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

2 SECTION 1. AMENDATORY 40 O.S. 2001, Section 1-218, as
3 last amended by Section 2, Chapter 182, O.S.L. 2005 (40 O.S. Supp.
4 2006, Section 1-218), is amended to read as follows:

5 Section 1-218. WAGES.

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

17 1. The amount of any payment, with respect to services
18 performed to or on behalf of an individual in its employ under a
19 plan or system established by an employing unit which makes
20 provision for individuals in its employ generally, or for a class or
21 classes of such individuals, including any amount paid by an
22 employing unit for insurance or annuities, or into a fund to provide
23 for any such payment, on account of:

24

- 1 a. retirement, other than employee contributions or
2 deferrals after December 31, 2002, under a qualified
3 plan as described in 26 U.S.C., Section 401(k) and,
4 after December 31, 2005, under a qualified plan as
5 described in 26 U.S.C., Sections ~~401(k)~~, 403b, 408(k),
6 457 and 7701(j),
- 7 b. sickness or accident disability,
- 8 c. medical and hospitalization expenses in connection
9 with sickness or accident disability,
- 10 d. death, provided the individual in its employ:
- 11 (1) has not the option to receive, instead of
12 provision for such death benefit, any part of
13 such payment, or if such death benefit is
14 insured, any part of the premium or contributions
15 to premiums paid by the employing unit, and
- 16 (2) has not the right, under the provisions of the
17 plan or system or policy of insurance providing
18 for such death benefit, to assign such benefit,
19 or to receive cash consideration in lieu of such
20 benefit either upon withdrawal from the plan or
21 system providing for such benefit or upon
22 termination of such plan or system or policy of
23 insurance or of the individual's services with
24 such employing unit, or

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

2 (1) such payment is conditioned upon a payment of a
3 substantial sum by such individuals in its
4 employ, and

5 (2) that such sum paid by the employing unit cannot
6 under the provisions of such plan be withdrawn by
7 an individual more frequently than once in any
8 twelve-month period, except upon an individual's
9 separation from that employment;

10 2. Any payment made to, or on behalf of, an employee or his or
11 her beneficiary under a cafeteria plan of the type described in 26
12 U.S.C., Section 125 and referred to in 26 U.S.C., Section
13 3306(b)(5)(G);

14 3. Any payment made, or benefit furnished, to or for the
15 benefit of an employee if at the time of such payment or such
16 furnishing it is reasonable to believe that the employee will be
17 able to exclude such payment or benefit from income under an
18 educational assistance program as described in 26 U.S.C., Section
19 127 or a dependent care assistance program as described in 26
20 U.S.C., Section 129 and as referred to in 26 U.S.C., Section
21 3306(b)(13);

22 4. The payment by an employing unit, without deduction from the
23 remuneration of the individual in its employ, of the tax imposed
24 upon such individual in its employ under 26 U.S.C., Section 3101

1 with respect to domestic services in a private home of the employer
2 or for agricultural labor;

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

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

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

11 SECTION 2. AMENDATORY 40 O.S. 2001, Section 1-224, as
12 amended by Section 3, Chapter 182, O.S.L. 2005 (40 O.S. Supp. 2006,
13 Section 1-224), is amended to read as follows:

14 Section 1-224. FILE.

15 ~~For the purposes of Sections 2-503, 2-505, 2-603, 2-606, 3-102,~~
16 ~~3-106, 3-111, 3-202, 3-203, 3-301, 3-305, 3-310, 3-805, 3-806, and~~
17 ~~3-809 of this title~~ A. When any document is required to be filed by
18 the provisions of the Employment Security Act of 1980 or the rules
19 promulgated under the authority of the Employment Security Act of
20 1980 with the Oklahoma Employment Security Commission, any of its
21 representatives, or the Board of Review for the Oklahoma Employment
22 Security Commission, the term "file", "files", or "filed" shall be
23 defined as follows:
24

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

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

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

13 4. Electronically transmitted via data lines to the Commission
14 by midnight on or before the date due. Timely transmission shall be
15 determined by the Commission's transmission log file.

16 B. If the Employment Security Act of 1980 or the rules
17 promulgated under the Employment Security Act of 1980 require that a
18 document be filed with a court or any other agency of this state,
19 the term "file", "files" or "filed" shall be defined by the
20 statutes, rules or practice governing that court or agency.

21 SECTION 3. AMENDATORY 40 O.S. 2001, Section 2-109, is
22 amended to read as follows:

23 Section 2-109. EMPLOYMENT REQUIREMENT IN PRECEDING BENEFIT
24 YEAR. No individual may receive benefits in a benefit year unless,

1 subsequent to the beginning of the ~~next~~ immediately preceding
2 benefit year during which ~~he~~ the individual received benefits, ~~he~~
3 the individual performed service and earned remuneration for such
4 service in an amount equal to at least ten (10) times ~~his~~ the
5 individual's weekly benefit amount in ~~his~~ the current benefit year.

6 SECTION 4. AMENDATORY 40 O.S. 2001, Section 2-416, as
7 amended by Section 8, Chapter 176, O.S.L. 2006 (40 O.S. Supp. 2006,
8 Section 2-416), is amended to read as follows:

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

11 No individual shall be denied benefits for any week because such
12 individual is in training approved under ~~Section 236(a)(1)~~ 19
13 U.S.C., Section 2296 (a)(1) of the Trade Act of 1974. An individual
14 shall not be denied benefits by reason of leaving work to begin or
15 continue such training, provided the work left is not suitable
16 employment, or because of the application, to any such week in
17 training, of the provisions of the Employment Security Act of 1980
18 or any applicable federal unemployment compensation law, relating to
19 availability for work, active search for work, or refusal to accept
20 work. For purposes of this section, the term "suitable employment"
21 means with respect to an individual, work of a substantially equal
22 or higher skill level than the adversely affected past employment of
23 the individual, as defined for purposes of the Trade Act of 1974,
24 and wages for such work at not less than eighty percent (80%) of the

1 average weekly wage of the individual as determined for the purposes
2 of the Trade Act of 1974.

3 SECTION 5. AMENDATORY 40 O.S. 2001, Section 2-506, is
4 amended to read as follows:

5 Section 2-506. REDETERMINATIONS. The Oklahoma Employment
6 Security Commission may reconsider a determination only when it
7 finds that an error in computation or identity has occurred in
8 connection therewith, or that wages of the claimant pertinent to
9 such determination, but not considered in connection therewith, have
10 been newly determined, or that benefits have been allowed or denied
11 or the amount of benefits fixed on the basis of misrepresentation or
12 mistake of material facts, but no such redetermination shall be made
13 after the expiration of the benefit year established by the initial
14 determination, except that a determination made because of a false
15 statement or representation or failure to disclose a material fact
16 in violation of Section 5-102 or 5-103 of this title may be
17 redetermined within two (2) years from the date of such false
18 statement or representation or failure to disclose. Notice of any
19 such redetermination shall be promptly given to the parties entitled
20 to notice of the original determination, in the manner prescribed in
21 ~~this act~~ the Employment Security Act of 1980 with respect to notice
22 of an original determination. If the amount of benefits is
23 increased upon such redetermination, an appeal therefrom solely with
24 respect to the matters involved in such increase may be filed in the

1 manner and subject to the limitations provided in ~~this~~ Part 5 of
2 Article 2 of the Employment Security Act of 1980. If the amount of
3 benefits is decreased upon such redetermination, the matters
4 involved in such decrease shall be subject to review in connection
5 with an appeal by claimant from any determination upon a subsequent
6 claim for benefits which may be affected in amount or duration by
7 such redetermination. Subject to the same limitations and for the
8 same reasons, the Commission may reconsider the determination in any
9 case in which the final decision has been rendered by an appeal
10 tribunal, the Board of Review or a court, and may apply to the body
11 or court which rendered such final decision to issue a revised
12 decision. In the event that an appeal involving an original
13 determination is pending as of the date a redetermination thereof is
14 issued, such appeal, unless withdrawn, shall be treated as an appeal
15 from such redetermination.

16 SECTION 6. AMENDATORY 40 O.S. 2001, Section 3-106, as
17 last amended by Section 13, Chapter 176, O.S.L. 2006 (40 O.S. Supp.
18 2006, Section 3-106), is amended to read as follows:

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

20 A. The Oklahoma Employment Security Commission shall give
21 notice to each base period employer of a claimant promptly after the
22 claimant is ~~paid~~ issued his or her fifth week of benefits by the
23 Commission or promptly after the Commission receives notice of the
24 amounts paid as benefits by another state under a reciprocal

1 arrangement. Notice shall be deemed given under this subsection
2 when the Commission deposits the same with the United States Postal
3 Service addressed to the employer at an address designated by the
4 employer to receive the notice or at the employer's last-known
5 address. Notice shall be presumed prima facie to have been given to
6 the employer to whom addressed on the date stated in the written
7 notice. This notice shall give the name and Social Security Number
8 of the claimant, the date the claim was filed, and the amount of
9 benefit wages charged to the employer in each quarter of the base
10 period.

11 B. Within twenty (20) days from the date stated upon the notice
12 provided for in subsection A of this section, the employer may file
13 with the Commission written objections to being charged with the
14 benefit wages upon one or more of the grounds for objection set
15 forth in subsection G of this section. The employer's written
16 objection must set forth specifically:

17 1. The date on which the employment was terminated;

18 2. Full particulars as to the circumstances of the termination
19 including the reason given by the individual for voluntarily leaving
20 the employment, or the nature of the misconduct for which
21 discharged, as the case may be;

22 3. Full particulars as to the regular scheduled part-time or
23 full-time employment of the employee including the starting date,
24

1 and ending date if any, of the continuous period of such part-time
2 or full-time employment; and

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

4 C. Upon receipt of the employer's written objections, the
5 Commission shall make a determination as to whether or not the
6 employer is entitled to be relieved from the charging of benefit
7 wages. The Commission shall promptly notify the employer of that
8 determination. Provided further, the twenty-day time period for
9 filing written objections with the Commission as provided for in
10 subsection B of this section may be waived for good cause shown.

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

1 E. If any employer fails to file a written protest within the
2 period of fourteen (14) days, as provided by subsection D of this
3 section, then the determination shall be final, and no appeal shall
4 thereafter be allowed.

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

10 G. The benefit wages charged to an employer for a given
11 calendar year shall be the total of the benefit wages stated in the
12 notices given to the employer by the Commission. Provided, that an
13 employer shall be relieved of a benefit wage charge if the employer
14 proves to the satisfaction of the Commission that the benefit wage
15 charge includes wages paid by the employer to any employee or former
16 employee, who:

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

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

21 3. Was a regular scheduled employee of that employer prior to
22 the week the employee separated from other employment, and continued
23 to work for the employer through the fifth compensable week of
24 unemployment in his or her established benefit year;

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

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

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

22 7. Was separated from employment because the spouse of the
23 employee was transferred or obtained employment in another city or
24

1 state that required the family of the employee to move, and the
2 employee quit current employment to move with the spouse;

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

5 9. Left employment to attend training approved under the Trade
6 Act of 1974 and is allowed unemployment benefits pursuant to Section
7 2-416 of this title.

8 H. If an employer recalls an employee deemed unemployed as
9 defined by ~~this act~~ the Employment Security Act of 1980 and the
10 employee continues to be employed or the employee voluntarily
11 terminates employment or is discharged for misconduct within the
12 benefit year, the employer shall be entitled to have the benefit
13 wage charged against the employer's experience rating for the
14 employee reduced by the ratio of the number of weeks of remaining
15 eligibility of the employee to the total number of weeks of
16 entitlement.

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

1 J. If the Commission receives a notice of amounts paid as
2 benefits by another state under a reciprocal agreement, and the
3 notice is received after three (3) years from the effective date of
4 the underlying benefit claim, no benefit wage charge will be made
5 against the employer identified in the notice, or if a benefit wage
6 charge is made based on such a notice, the employer will be relieved
7 of the charge when the facts are brought to the attention of the
8 Commission.

9 SECTION 7. AMENDATORY 40 O.S. 2001, Section 3-115, as
10 amended by Section 19, Chapter 176, O.S.L. 2006 (40 O.S. Supp. 2006,
11 Section 3-115), is amended to read as follows:

12 Section 3-115. APPEAL OF DETERMINATIONS.

13 A. If a determination is made by the Oklahoma Employment
14 Security Commission on any aspect of an employer's account, and a
15 method of appeal or protest of the determination is not set out in
16 the statute or rule under which the determination was made, the
17 employer may appeal or protest the determination under the procedure
18 set forth in subsection B of this section.

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

23 2. Within twenty (20) days after the mailing of the Notice of
24 Determination as provided for in paragraph 1 of this subsection, the

1 employer may file with the Commission, or its representative, a
2 written request for a review and redetermination setting forth the
3 employer's reasons therefor. If any employer fails to file a
4 written request for review and redetermination within twenty (20)
5 days, then the initial determination of the Commission shall be
6 final, and no further appeal or protest shall be allowed.

7 3. If a written request for review and redetermination is
8 filed, the Commission shall provide for a review and issue a Notice
9 of Redetermination in the matter. The employer may appeal the
10 redetermination by filing a written protest within fourteen (14)
11 days of the date of the mailing of the Notice of Redetermination.
12 If the employer fails to file a written protest within the time
13 allowed, the redetermination of the Commission shall be final and no
14 further appeal or protest shall be allowed.

15 4. Upon the timely filing of a written protest, the Commission
16 shall provide for an oral hearing de novo to allow the employer to
17 present evidence in support of the protest. The Commission or its
18 representatives shall, by written notice, advise the employer of the
19 date of the hearing, which shall not be less than ten (10) days from
20 the date of the mailing of the written notice. At the discretion of
21 the Commission, this hearing shall be conducted by the Commission,
22 or by a representative appointed by the Commission for this purpose.

23 5. Pursuant to the hearing, the Commission or its
24 representative shall, as soon as practicable, make a written order

1 setting forth its findings of fact and conclusions of law, and shall
2 mail it to the employer at the employer's last-known address with
3 the mailing date and appeal rights set out in the document.

4 6. The employer or the Commission may appeal the order to the
5 district court of the county in which the employer has its principal
6 place of business by filing a Petition for Review with the clerk of
7 the court within thirty (30) days after the date the order was
8 mailed to all parties. If the employer does not have a principal
9 place of business in any county in Oklahoma, then the Petition for
10 Review shall be filed with the Oklahoma County District Court. All
11 appeals shall be governed by Part 4 of Article ~~III~~ 3 of the
12 Employment Security Act of 1980. If the employer fails to file an
13 appeal to the district court within the time allowed, the order
14 shall be final and no further appeal shall be allowed.

15 SECTION 8. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 3-116 of Title 40, unless there
17 is created a duplication in numbering, reads as follows:

18 RECONSIDERATION OF DETERMINATION.

19 A. The Oklahoma Employment Security Commission may reconsider a
20 determination of the basis of:

- 21 1. An error in computation;
- 22 2. An error in identity;
- 23 3. Misrepresentation of material facts;
- 24 4. Mistake of material facts;

1 5. An error in interpretation or application of the law; or

2 6. A timely request made pursuant to paragraph 2 of subsection
3 B of Section 3-115 of Title 40 of the Oklahoma Statutes.

4 B. A redetermination shall be made within three (3) years of
5 the last day of the month following the calendar quarter that is
6 subject to the redetermination.

7 C. Notice and appeal of a redetermination shall be governed by
8 the provisions of Section 3-115 of Title 40 of the Oklahoma
9 Statutes.

10 SECTION 9. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 3-117 of Title 40, unless there
12 is created a duplication in numbering, reads as follows:

13 FINDINGS OF FACT OR LAW.

14 Any findings of fact or law, judgment, conclusion or final order
15 made by the Oklahoma Employment Security Commission or its
16 representatives under Article 3 of the Employment Security Act of
17 1980 shall be conclusive and binding for all purposes concerning
18 this act. The findings of fact or law, judgment, conclusion or
19 final order of the Oklahoma Employment Security Commission or its
20 representatives shall not be conclusive or binding in any separate
21 or subsequent action or proceeding that does not involve the
22 Oklahoma Employment Security Commission and shall not be used as
23 evidence in any separate or subsequent action or proceeding in any
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1 other forum regardless of whether or not the prior action was
2 between the same or related parties or involved the same facts.

3 SECTION 10. AMENDATORY 40 O.S. 2001, Section 3-403, is
4 amended to read as follows:

5 Section 3-403. PETITION FOR REVIEW AND TRANSCRIPT OF COMMISSION
6 PROCEEDINGS.

7 Within thirty (30) days after the date of mailing of the order,
8 ruling, or finding complained of, the party desiring to appeal shall
9 file in the office of the clerk of the district court of the county
10 that has the proper jurisdiction, a Petition for Review specifying
11 the grounds upon which ~~such~~ the appeal is based. If a Petition for
12 Review is not filed within the time allowed by this section, the
13 administrative order, ruling or finding will become final and the
14 district court will not have jurisdiction to consider the appeal.

15 The appealing party shall serve a file-stamped copy of the Petition
16 for Review on the opposing party or its attorney and the designated
17 hearing officer of the Oklahoma Employment Security Commission
18 before whom the original hearing was held. The hearing officer of
19 the Commission shall then cause a certified transcript of the
20 hearing to be made which shall consist of all testimony of the
21 parties, all documentary evidence and other evidence introduced at
22 the hearing, and all decisions, judgments, or orders rendered as a
23 result of the hearing. The hearing officer shall then cause the
24 certified transcript to be filed in the appropriate district court

1 within sixty (60) days of receipt of the Petition for Review.
2 Copies of the transcript shall be mailed by the hearing officer to
3 the Commission's attorney and the employer or the employer's
4 attorney.

5 SECTION 11. AMENDATORY 40 O.S. 2001, Section 3-806, is
6 amended to read as follows:

7 Section 3-806. PAYMENT OF IN-LIEU CONTRIBUTIONS. A. At the
8 end of each calendar quarter the Oklahoma Employment Security
9 Commission shall notify in writing each nonprofit organization, or
10 the agent of a group of such organizations, which has elected to
11 make payments in lieu of contributions, the amount, if any, equal to
12 the full amount of regular benefits plus one-half (1/2) of the
13 amount of extended benefits paid by the Commission during such
14 quarter that is attributable to service in the employ of such
15 organization or the members of a group of such organizations. Such
16 full amount shall include all amounts so paid to its former
17 employees as benefits, including amounts paid in error. Such
18 notification shall be deemed and treated as an assessment of
19 contributions and the payment of the amount owing shall be collected
20 as contributions, interest, penalty and fees, if any, are collected,
21 in accordance with the provisions of ~~this act~~ the Employment
22 Security Act of 1980. The employer, or group of employers, shall
23 have the rights and remedies provided by ~~this act~~ the Employment
24 Security Act of 1980 with respect to assessments of contributions,

1 including the right of protest, hearing and appeal. The Commission
2 shall make its assessment or amend its assessment within three (3)
3 years of the ending date of the calendar quarter to which the
4 assessment or amendment applies. If no protest is filed or if filed
5 and confirmed by the Commission or its authorized representatives,
6 said assessment shall be immediately due and payable and shall bear
7 interest after forty-five (45) days at the rate of one percent (1%)
8 per month until paid. If any nonprofit organization or group of
9 organizations fails or refuses to pay said assessment after same has
10 become delinquent within forty-five (45) days after written request
11 has been mailed to such organization or the agent of such group by
12 the Commission or its representative, a penalty of five percent (5%)
13 of the amount due shall be added thereto, collected and paid. In
14 the case of group accounts, assessments and penalty and interest
15 provided in this subsection may be prorated in accordance with
16 Section 3-809 of this title. All collections made shall be
17 deposited in the Unemployment Compensation Fund.

18 B. Such electing organization, or group of organizations, shall
19 file reports of wages paid, in the same time and manner as required
20 of said nongovernmental employers for profit. If any such electing
21 organization, or group of organizations, fails or refuses to file
22 said wage report within fifteen (15) days after written notice a
23 penalty of Ten Dollars (\$10.00) for each day until such report is
24 filed with a maximum of One Hundred Dollars (\$100.00) is hereby

1 imposed against such organization or group and shall be collected
2 and paid.

3 C. Payments made by any nonprofit organization under the
4 provisions of this section shall not be deducted or deductible, in
5 whole or in part, from the remuneration of individuals in the employ
6 of the organization.

7 SECTION 12. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 4-109 of Title 40, unless there
9 is created a duplication in numbering, reads as follows:

10 SERVICE OF PROCESS.

11 If the Oklahoma Employment Security Commission is sued, or if
12 its officers or employees are sued in their official capacities, the
13 service of all legal process pursuant to Section 2004 of Title 12 of
14 the Oklahoma Statutes and of all extrajudicial notices which may be
15 required in writing shall be made on the Executive Director at the
16 official office of the Commission as set out in Administrative Rule
17 240:1-1-5. This section shall not apply to appeals brought under
18 Article 2, Part 6 and Article 3, Part 4 of the Employment Security
19 Act of 1980. Service of process in Article 2, Part 6 and Article 3,
20 Part 4, shall be made pursuant to the procedures set out by the
21 statutes in those parts and the administrative rules implementing
22 those statutes. This section shall not be construed to waive any
23 immunity created by constitution or statute that applies to the

24

1 Oklahoma Employment Security Commission, its officers or employees
2 or this state.

3 SECTION 13. AMENDATORY 40 O.S. 2001, Section 4-504, is
4 amended to read as follows:

5 Section 4-504. OATHS, DEPOSITIONS, CERTIFICATIONS OF OFFICIAL
6 ACTS AND SUBPOENAS. In the discharge of the duties imposed by ~~this~~
7 ~~act~~ the Employment Security Act of 1980, the Oklahoma Employment
8 Security Commission, the chairman of an appeal tribunal, the members
9 of the Board of Review, and any duly authorized representative of
10 any of them shall have power to administer oaths and affirmations,
11 take depositions, certify to official acts, and issue subpoenas to
12 compel the attendance of witnesses and the production of books,
13 papers, correspondence, memoranda, and other records deemed
14 necessary as evidence in connection with a disputed claim or the
15 administration of ~~this act~~ the Employment Security Act of 1980 or
16 for purposes of monitoring a program under the Workforce Investment
17 Act, 29 U.S.C., Section 2934.

18 SECTION 14. AMENDATORY 40 O.S. 2001, Section 4-508, as
19 last amended by Section 27, Chapter 176, O.S.L. 2006 (40 O.S. Supp.
20 2006, Section 4-508), is amended to read as follows:

21 Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL -
22 DISCLOSURE.

23 A. Except as otherwise provided by law, information obtained
24 from any employing unit or individual pursuant to the administration

1 of the Employment Security Act of 1980, and determinations as to the
2 benefit rights of any individual shall be kept confidential and
3 shall not be disclosed or be open to public inspection in any manner
4 revealing the individual's or employing unit's identity. Any
5 claimant or employer or agent of such person as authorized in
6 writing shall be supplied with information from the records of the
7 Oklahoma Employment Security Commission, to the extent necessary for
8 the proper presentation of the claim or complaint in any proceeding
9 under the Employment Security Act of 1980, with respect thereto.

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

20 C. The provisions of this section shall not prevent the
21 Commission from disclosing the following information and no
22 liability whatsoever, civil or criminal, shall attach to any member
23 of the Commission or any employee thereof for any error or omission
24 in the disclosure of such information:

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

4 2. The disclosure of information to any person for a purpose as
5 authorized by the taxpayer or claimant pursuant to a waiver of
6 confidentiality. The waiver shall be in writing and shall be
7 notarized;

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

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

18 5. The disclosing of information or evidence to the Attorney
19 General or any district attorney when the information or evidence is
20 to be used by the officials or other parties to the proceedings to
21 prosecute or defend allegations of violations of the Employment
22 Security Act of 1980. The information disclosed to the Attorney
23 General or any district attorney shall be kept confidential by them
24 and not be disclosed except when presented to a court in a

1 prosecution of a violation of Section 1-101 et seq. of this title,
2 and a violation by the Attorney General or district attorney by
3 otherwise releasing the information shall be a felony;

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

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

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

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

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

23 11. The release to employees of the Oklahoma State Bureau of
24 Investigation or release to employees of the Oklahoma State Bureau

1 of Narcotics and Dangerous Drugs Control for use in criminal
2 investigations and the location of missing persons or fugitives from
3 justice;

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

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

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

22 15. The release to employees of the Office of State Finance of
23 information required to identify economic trends. The information
24 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 and health care
18 fraud;

19 18. The release to employees of public housing agencies for
20 purposes of determining eligibility pursuant to 42 U.S.C., Section
21 503(i);

22 19. The release of wage and benefit claim information, at the
23 discretion of the Commission, to an agency of this state or its
24 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;

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 State Department of Rehabilitation Services for
18 use in assessing results and outcomes of clients served; or

19 24. The release of information to any state or federal law
20 enforcement authority when necessary in the investigation of any
21 crime in which the Commission is a victim. Information that is
22 confidential under this section shall be held confidential by the
23 law enforcement authority unless and until it is required for use in
24 court in the prosecution of a defendant in a criminal prosecution.

1 D. Subpoenas to compel disclosure of information made
2 confidential by this statute shall not be valid, except for
3 administrative subpoenas issued by federal, state, or local
4 governmental agencies that have been granted subpoena power by
5 statute or ordinance. Confidential information maintained by the
6 Commission can be obtained by order of a court of record that
7 authorizes the release of the records in writing. All
8 administrative subpoenas or court orders for production of documents
9 must provide a minimum of twenty (20) days from the date it is
10 served for the Commission to produce the documents. If the date on
11 which production of the documents is required is less than twenty
12 (20) days from the date of service, the subpoena or order shall be
13 considered void on its face as an undue burden or hardship on the
14 Commission.

15 E. Should any of the disclosures provided for in this section
16 require more than casual or incidental staff time, the Commission
17 may charge the cost of such staff time to the party requesting the
18 information.

19 F. It is further provided that the provisions of this section
20 shall be strictly interpreted and shall not be construed as
21 permitting the disclosure of any other information contained in the
22 records and files of the Commission.

23
24

1 SECTION 15. AMENDATORY 40 O.S. 2001, Section 418.2, as
2 amended by Section 3, Chapter 50, O.S.L. 2002 (40 O.S. Supp. 2006,
3 Section 418.2), is amended to read as follows:

4 Section 418.2 A. There is hereby created the Worker Safety
5 Policy Council to study and formulate reforms for worker safety that
6 could result in lower work-related injuries and result in lower
7 workers' compensation costs for business.

8 B. The Worker Safety Policy Council shall be comprised of
9 ~~eighteen (18)~~ nineteen (19) members as follows:

10 1. The Commissioner of Labor or his or her designee, who shall
11 act as ~~chairman~~ chair for the Council;

12 2. The Administrator of the Workers' Compensation Court or his
13 or her designee;

14 3. The CompSource Oklahoma President and Chief Executive
15 Officer or his or her designee;

16 4. The Insurance Commissioner or his or her designee;

17 5. The Director of the Department of Commerce or his or her
18 designee;

19 6. A representative from the Oklahoma Safety Council who shall
20 be appointed by the Commissioner of Labor and shall serve at the
21 pleasure of the Commissioner;

22 7. A representative from an American society or organization of
23 safety engineers who shall be appointed by the Commissioner of Labor
24 and shall serve at the pleasure of the Commissioner;

1 8. A representative from an American industrial hygiene
2 association who shall be appointed by the Commissioner of Labor and
3 shall serve at the pleasure of the Commissioner;

4 9. A representative from an Oklahoma labor union who shall be
5 appointed by the Commissioner of Labor and shall serve at the
6 pleasure of the Commissioner;

7 10. A representative from the Oklahoma State Chamber of
8 Commerce and Industry who shall be appointed by the Commissioner of
9 Labor and shall serve at the pleasure of the Commissioner;

10 11. A representative from an organization of the private sector
11 who shall be appointed by the Commissioner of Labor and shall serve
12 at the pleasure of the Commissioner;

13 12. A representative from an organization of public employees
14 who shall be appointed by the Commissioner of Labor and shall serve
15 at the pleasure of the Commissioner;

16 13. A representative from the Oklahoma Municipal League who
17 shall be appointed by the Commissioner of Labor and shall serve at
18 the pleasure of the Commissioner;

19 14. A representative of the public schools who shall be
20 appointed by the Commissioner of Labor and shall serve at the
21 pleasure of the Commissioner; ~~and~~

22 15. Four members of the Legislature of which two shall be
23 members of the Senate who shall be appointed by the President Pro
24 Tempore of the Senate and two shall be members of the House of

1 Representatives who shall be appointed by the Speaker of the House
2 of Representatives; and

3 16. A representative from the Oklahoma Department of Career and
4 Technology Education who shall be appointed by the Commissioner of
5 Labor and shall serve at the pleasure of the Commissioner.

6 C. Vacancies on the Council shall be filled by the Commissioner
7 of Labor, except that legislative vacancies shall be filled in the
8 same manner as the original appointment. A simple majority of the
9 Council shall constitute a quorum.

10 D. The Department of Labor shall provide such office supplies
11 and personnel as may be necessary to assist the Council.

12 E. Members of the Council shall receive no compensation for
13 serving on the Council, but shall be reimbursed by the Department of
14 Labor for their necessary travel expenses incurred in the
15 performance of their duties in accordance with the State Travel
16 Reimbursement Act.

17 F. The Council shall hold at least quarterly meetings each
18 calendar year at a place and time to be fixed by the Council. The
19 Council shall make annual recommendations for legislative and policy
20 changes to public and private employers to reduce worker injuries
21 and the resulting costs associated with those injuries. Commencing
22 September 1, 1994, and annually thereafter, the Council shall submit
23 a report of its recommendations to the Governor, the President Pro
24

1 Tempore of the Senate and the Speaker of the House of
2 Representatives.

3 SECTION 16. AMENDATORY 74 O.S. 2001, Section 85.29, as
4 amended by Section 5, Chapter 50, O.S.L. 2002 (74 O.S. Supp. 2006,
5 Section 85.29), is amended to read as follows:

6 Section 85.29 The amount of surety required for each state
7 officer or employee pursuant to Sections 85.26 through 85.31 of this
8 title is as follows:

9 DEPARTMENT	AMOUNT OF BOND
10 Office of the State Treasurer	\$300,000.00
11 <u>Oklahoma Employment Security Commission</u>	<u>\$150,000.00</u>
12 Office of Public Affairs	100,000.00
13 Insurance Commission	100,000.00
14 Office of the State Auditor and Inspector	50,000.00
15 Office of State Finance	50,000.00
16 Bank Commissioner	50,000.00
17 CompSource Oklahoma President and	
18 Chief Executive Officer	50,000.00
19 Commissioners of the Land Office	50,000.00
20 Oklahoma Securities Commission	50,000.00
21 Oklahoma Tax Commission	50,000.00
22 Department of Human Services	50,000.00
23 Oklahoma Public Employees Retirement System	50,000.00
24 Oklahoma Corporation Commission	50,000.00

1	State Board of Education	50,000.00
2	Finance Division	150,000.00
3	All Others	25,000.00
4	Department of Transportation	25,000.00
5	Boards of Regents of Oklahoma	
6	Universities and Colleges	50,000.00
7	Office of Attorney General	10,000.00
8	The University Hospitals	50,000.00
9	All Other State Departments, Agencies,	
10	Institutions, Commissions, Authorities,	
11	and other bodies of state government	10,000.00

12 Provided, however, that nothing in the Oklahoma Central
13 Purchasing Act shall prohibit any head of a department, institution,
14 agency, commission, authority or other body of state government from
15 requiring the Central Purchasing Division to purchase increased
16 amounts of blanket bond coverage for his or her employees up to a
17 total maximum coverage of Fifty Thousand Dollars (\$50,000.00) when
18 the listed amount is deemed inadequate. The cost of increased
19 coverage shall be borne by the department, institution, agency,
20 commission, authority or other body of state government requesting
21 the increased coverage.

22 SECTION 17. REPEALER 40 O.S. 2001, Sections 4-401, 4-
23 402, 4-403, 4-404 and 4-405, are hereby repealed.

24 SECTION 18. This act shall become effective November 1, 2007."

1 Passed the House of Representatives the 24th day of April, 2007.

2
3
4 Presiding Officer of the House of
Representatives
5

6 Passed the Senate the ____ day of _____, 2007.

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9 Presiding Officer of the Senate
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