

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 2537

By: Cannaday

6
7 COMMITTEE SUBSTITUTE

8 (Labor - method of payment of fees and fines -
9 codification -

10 effective date)

11
12
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 12 of Title 40, unless there is
16 created a duplication in numbering, reads as follows:

17 A. All remittances of fees and fines required to be paid to the
18 Oklahoma Department of Labor pursuant to state law shall be made to
19 the Department by bank draft, check, cashier's check, money order,
20 cash, or nationally recognized credit card or debit card. If
21 payment is made by credit or debit card, the Department may add an
22 amount equal to the amount of the service charge incurred by the
23 Department, as a convenience fee for the acceptance of the credit or
24 debit card. For purposes of this subsection, "nationally recognized

1 credit or debit card" means any instrument or device, whether known
2 as a credit card, credit plate, charge plate, debit card, or by any
3 other name issued with or without fee by an issuer for the use of
4 the cardholder in obtaining goods, service, or anything of value on
5 credit which is accepted by over one thousand merchants in this
6 state. The Department shall promulgate rules to allow for the
7 implementation of payment of fees by credit or debit card.

8 B. All remittances by bank draft, check, cashier's check, or
9 money order, collected pursuant to any law, Department rule, or
10 order, shall be made payable to the Oklahoma Department of Labor.
11 The Department shall issue its receipt for cash or money payment to
12 the remitter. No remittance other than cash shall be in full
13 discharge of liability due the Oklahoma Department of Labor unless
14 and until it shall have been paid in cash. All money collected,
15 including service or convenience fees, shall be deposited with the
16 State Treasurer of this state.

17 C. There shall be assessed, in addition to any other penalties
18 provided for by law, an administrative service fee of Twenty-five
19 Dollars (\$25.00) on each check returned to the Oklahoma Department
20 of Labor or any agent by reason of the refusal of the bank upon
21 which the check was drawn to honor the same.

22 D. Upon the return of any check by reason of the refusal of the
23 bank upon which the check was drawn to honor the same, the Oklahoma
24 Department of Labor may file a bogus check complaint with the

1 appropriate district attorney who shall refer the complaint to the
2 Bogus Check Restitution Program established by Section 111 of Title
3 22 of the Oklahoma Statutes. Funds collected by the program, after
4 collection of the fee authorized by Section 114 of Title 22 of the
5 Oklahoma Statutes, shall be transmitted to the Oklahoma Department
6 of Labor and credited to the liability for which the returned check
7 was drawn and to the administrative service fee provided by this
8 section.

9 SECTION 2. AMENDATORY 40 O.S. 2001, Section 53, is
10 amended to read as follows:

11 Section 53. (a) No person shall open, operate or maintain an
12 employment agency in the State of Oklahoma without first procuring a
13 license from the Administrator. Any person who shall open or
14 conduct any such agency without first having procured a license
15 shall be guilty of a misdemeanor and, upon conviction, shall be
16 punished as provided in Section 57 of this title. Application for
17 the first license to be issued to any employment agency following
18 the effective date of this act shall be accompanied by a fee of ~~Two~~
19 ~~Hundred Fifty Dollars (\$250.00)~~ Three Hundred Fifty Dollars
20 (\$350.00); renewal applications for a license to be issued to any
21 employment agency shall be accompanied by a fee of ~~Two Hundred Fifty~~
22 ~~Dollars (\$250.00)~~ Three Hundred Fifty Dollars (\$350.00). The
23 license fee shall not be returnable, and shall be placed in the
24 General Revenue Fund of the State Treasury.

1 (b) Every applicant for a license shall have been a resident of
2 the State of Oklahoma for at least one (1) year immediately
3 preceding the filing of such application, and shall have had at
4 least one (1) year of experience as a placement ~~counsellor~~ counselor
5 in a licensed employment agency either within or without the state.
6 In the case of corporation applicants, at least one of the
7 incorporators and one of the principal officers thereof, together
8 with the person who is to be responsible for the general management
9 of the office shall meet the above requirements as to Oklahoma
10 residence and experience.

11 (c) Every applicant for a license shall file with the
12 Administrator a written application stating the name and address of
13 the applicant; the street and number of the building in which the
14 employment agency is to be conducted; the name of the person who is
15 to be responsible for the general management of the office; the
16 names and addresses of all those financially interested therein; the
17 name under which the business is to be conducted; whether or not the
18 applicant is pecuniarily interested in any other business or
19 businesses, and if so the nature of same and where carried on. Said
20 applicant shall also state on the application whether or not he is
21 engaged at the time of making application or at any previous time
22 has been engaged or financially interested in an employment agency
23 business in Oklahoma or any other state; and, if so, the name and
24 address of such employment agency or agencies and the dates he was

1 | so engaged or interested. If applicant is now or has previously
2 | been employed in any employment agency he shall state the name and
3 | address of such agency, the name of the person conducting such
4 | agency, the dates employed, and in what capacity. All applications
5 | shall be sworn to, under oath, and shall remain confidential in the
6 | files of the Administrator.

7 | (d) All applicants shall clearly state if they have operated or
8 | been employed by an employment agency in Oklahoma or any other state
9 | within the past fifteen (15) years and, if so, under what authority;
10 | and if ever cited for cause, give the final disposition of said
11 | breach of law or regulations charged governing such employment
12 | agency or employment. If applicant should be found guilty of
13 | perjury as to any material fact, after issuance of a license by the
14 | State of Oklahoma, after exhaustion of applicant's right of appeal,
15 | the Administrator shall rescind such license immediately thereafter,
16 | and no license shall subsequently be issued to such applicant.

17 | (e) The applicant shall give as reference the names and
18 | addresses of at least three (3) persons of reputed business or
19 | professional integrity. If applicant is a corporation, the
20 | application shall state the names and addresses of the officers and
21 | directors of said corporation and shall be signed and sworn to by
22 | the president and secretary, with seal affixed. If applicant is a
23 | copartnership, the application shall state the names and addresses
24 | of all partners therein and shall be signed and sworn to by all of

1 them. The Administrator or Director shall be qualified to take
2 sworn statements of applicants, under oath.

3 (f) Upon the filing of an application for the first license
4 after the effective date of this act, as herein provided, the
5 Administrator shall cause an investigation to be made of the
6 applicant and all those financially interested therein, such
7 investigation to be made by appropriate state agencies and other
8 sources of information, and shall finally rule thereon within thirty
9 (30) days after the application is filed. Unless the application
10 shall be rejected by the Administrator on the grounds that the
11 applicant or associated party or parties have been convicted of a
12 felony, or for other good and sufficient reason within the meaning
13 and purpose of this act, the same shall be granted. If the
14 application is rejected, the Administrator shall state in the
15 written order the specific reasons for such rejection. That there
16 are already an adequate number of licensed employment agencies shall
17 not be grounds for rejecting a license application. An appeal from
18 an order of the Administrator rejecting an application for any
19 reason other than conviction of a felony may be taken to the
20 ~~superior or~~ district court of the county of applicant's residence,
21 in accordance with the general statute of the state governing
22 appeals from decisions of administrative agencies in individual
23 proceedings.

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1 (g) A detailed report of such investigation and the action
2 taken thereon by the Administrator shall be made in writing and
3 become a part of the official records in the Administrator's office.

4 (h) Every initial application for a license shall be
5 accompanied by a bond in the sum of Five Thousand Dollars
6 (\$5,000.00), issued by a duly licensed surety company authorized to
7 do business in Oklahoma, to be approved by the Administrator and
8 filed of record in his office, which bond shall be conditioned upon
9 the applicant's complying with all the provisions of this act. Upon
10 completion of one (1) year of operation, the amount of the bond
11 shall be reduced to Three Thousand Dollars (\$3,000.00) and shall
12 remain fixed at that amount until the completion of two (2) years of
13 operation, at which time, the amount of the bond shall be reduced to
14 One Thousand Dollars (\$1,000.00). The bond shall remain at One
15 Thousand Dollars (\$1,000.00) so long as the agency remains under the
16 management of the originally licensed operator. If at any time, in
17 the opinion of the Administrator, any of the sureties shall become
18 irresponsible the person holding the license shall, upon written
19 notice and demand from the Administrator, furnish a new bond,
20 subject to the provisions of this section. Failure to furnish a new
21 bond within fifteen (15) days after receipt of such notice and
22 demand shall, in the discretion of the Administrator, constitute
23 just cause for revocation of such license, and each license when
24 revoked shall be obtained by the Administrator for cancellation.

1 (i) There shall appear on the license the name of the licensee,
2 the location of the office where the employment agency is to be
3 conducted, the name of the person who is to be charged with the
4 general management and the precise name under which the employment
5 agency is to be carried on. In the event of a change in location
6 the Administrator shall be notified of same within ten (10) days and
7 the license shall be endorsed to show the correct address. Each
8 license shall be numbered and dated and posted in a conspicuous
9 place in the office of the employment agency.

10 (j) In the event the services of the person charged with the
11 general management of the employment agency are terminated within
12 the license year, the licensee shall so advise the Administrator and
13 the name of the person taking over the management shall be
14 substituted on the license for that of the former manager so that at
15 all times the person charged with general management of the
16 employment agency shall be known to the Administrator and shall
17 appear on the license.

18 (k) Every license shall remain in force for twelve (12) months
19 next after its issuance, unless sooner surrendered, suspended or
20 revoked.

21 (1) The Administrator shall notify all license holders of the
22 expiration date of their licenses at least ten (10) days prior
23 thereto, and application for renewal shall be accompanied by the
24 required license fee and bond.

1 (m) In the event the Administrator shall find that an
2 employment agency has violated any of the provisions of this act, or
3 that any other good and sufficient reason therefor has arisen within
4 the meaning and purpose of this act, he may suspend or revoke said
5 license or refuse to grant a new license upon the termination
6 thereof; but in any case no action shall be taken until a written
7 notice has been served on said employment agency specifying the
8 charges against said agency, and a fair public hearing, in which the
9 procedure prescribed for individual proceedings by the general
10 administrative procedure acts of the state shall apply wherever not
11 in conflict with the specific procedures herein prescribed, has been
12 given same within thirty (30) days after such written notice has
13 been posted by registered mail to the licensee. If, after such
14 hearing, the Administrator shall find cause to suspend, revoke or
15 refuse to issue a license, the employment agency shall be given
16 written notice of the Administrator's decision and the basis
17 therefor, which decision shall become final at the end of thirty
18 (30) days from the date of such notice, unless during the said
19 thirty-day period the licensee shall take an appeal to the superior
20 or district court of the county in which the license was issued from
21 the Administrator's order, with opportunity for stay as provided in
22 the general statutes of the state governing appeals from
23 administrative orders in individual proceedings. All appeals from
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1 the Administrator's decisions and orders shall be taken in the
2 manner prescribed by law.

3 (n) Every complaint against an employment agency shall be made
4 in writing to the Administrator and shall be thoroughly
5 investigated. A complete record of the investigation and
6 disposition of the complaint shall be made and become a permanent
7 record in the Administrator's office. Whenever, for any cause, a
8 license is revoked, the Administrator shall not within two (2) years
9 from the date of such revocation issue another license to the person
10 whose license has been revoked.

11 (o) No license granted under the terms of this act shall be
12 transferable, but an employment agency may, with the approval of the
13 Administrator, at any time incorporate or admit a partner or
14 partners to the business, or make changes in the corporate name, or
15 sell the business; but no employment agency shall permit any person
16 not mentioned in the application for license to become connected
17 with such agency, either as a partner or as an officer of a
18 corporation, unless the Administrator's written consent thereto
19 shall first have been obtained. Such consent may be withheld only
20 for any reason for which an original application for license might
21 have been rejected if the person or persons in question had been
22 mentioned therein. Nothing in this act shall be construed to
23 prevent any executor, administrator or heir of a deceased licensee
24 from carrying on the employment agency's business for the remainder

1 of the period for which licensed, or pending its sale to a qualified
2 purchaser.

3 (p) No sale of a franchise for an agency operation in Oklahoma
4 shall be legal, or enforceable in the courts of this state, unless
5 and until the qualifications of such franchise purchaser shall first
6 have been submitted to the Administrator as a prospective licensee
7 under the provisions of this act, and approved by the Administrator.

8 SECTION 3. AMENDATORY 40 O.S. 2001, Section 141.16, as
9 amended by Section 1, Chapter 554, O.S.L. 2004 (40 O.S. Supp. 2007,
10 Section 141.16), is amended to read as follows:

11 Section 141.16

12 A. 1. a. Annual certificate of operation fee shall be as
13 follows:

14	(1) with manway state inspector	\$50.00
15		<u>\$75.00</u>
16	(2) without manway state inspector	\$25.00
17		<u>\$50.00</u>
18	(3) any size special - or owner/user	
19	inspector	\$25.00
20		<u>\$50.00</u>
21	<u>(4) each hot water supply heater</u>	<u>\$25.00</u>

22 b. Only one certificate of operation fee per year may be
23 charged; except an additional fee equal to the
24 certificate of operation fee may be charged for

witnessing a hydrostatic test required after repairs,
 provided a fee equal to the total fees identified in
 division (1) or (2) of subparagraph a of this
 paragraph, whichever is appropriate, and subparagraph
 f of paragraph 2 of this subsection may be charged
 when the pressure-retaining item is not prepared and
 ready pursuant to rules promulgated by the
 Commissioner of Labor at the time of the inspection.

2. Other Fees

a.	hydrostatic test of steam pipeline per day	\$150.00
	(for each additional half-day or	
	part thereof)	\$75.00
b.	shop review fees	\$1,250.00
		<u>\$1,750.00</u>
c.	licensing fees	
	(1) repair, service, install (annually)	\$50.00
		<u>\$100.00</u>
	(2) installer technician	
	(one-time issuance)	
	<u>(biennially)</u>	\$50.00
		<u>\$100.00</u>
	(3) boiler operator (biennially)	\$50.00
		<u>\$100.00</u>
d.	certificate of competency fee	\$15.00

1		<u>\$25.00</u>
2	e. examination fee	\$50.00
3	f. boiler or pressure vessel inspection	
4	fee for certificate inspections by	
5	state inspectors	\$100.00
6	g. authorized inspector services for weld	
7	repairs or alterations, per eight-hour	
8	day or part thereof	\$300.00
9	h. a fee as established by rule may be	
10	assessed for the issuance of duplicate	
11	licenses and certificates, not to exceed	\$10.00

12 B. All institutions owned or operated by the State of Oklahoma
13 or its agencies or by any county, municipality or school district,
14 and such institutions or agencies, and all owners or users of
15 boilers or pressure vessels of historical significance as specified
16 in subsection D of Section 141.5 of this title are exempt from the
17 payment of ~~any~~ only those fees provided for in paragraph 2 of
18 subsection A of this section.

19 C. 1. The Except for the revenue listed in paragraph 2 of this
20 subsection, the Commissioner shall account for and transfer all
21 ~~fees, except for the fees listed in subparagraphs b, g, and h of~~
22 ~~paragraph 2 of subsection A of this section,~~ so received to the
23 State Treasury to the credit of the General Revenue Fund, together
24 with a detailed report of same.

1 2. ~~Shop review fees, authorized inspector services fees and~~
2 ~~duplicate license and certificate fees shall be deposited to the~~
3 ~~Department of Labor Revolving Fund created pursuant to Section~~
4 ~~141.19 of this title.~~

5 3. ~~The shop review fees, authorized inspector services fees and~~
6 ~~duplicate license and certificate fees shall be used for conducting~~
7 ~~shop reviews, authorized inspector services and for administrative~~
8 ~~costs~~ The Commissioner shall account for and deposit all fee revenue
9 received and listed in this paragraph to the Safety Standards
10 Revolving Fund created pursuant to Section 463 of this title:

11 a. Twenty-five Dollars (\$25.00) of each certificate of
12 operation fee collected under subparagraph a of
13 paragraph 1 of subsection A of this section,

14 b. all fees listed in subparagraphs b, g and h of
15 paragraph 2 of subsection A of this section,

16 c. Fifty Dollars (\$50.00) of each licensing fee collected
17 under subparagraph c of paragraph 2 of subsection A of
18 this section, and

19 d. Ten Dollars (\$10.00) of each certificate of competency
20 fee collected under subparagraph d of paragraph 2 of
21 subsection A of this section.

22 D. All fees shall be paid directly to the Department of Labor.

23 SECTION 4. AMENDATORY 40 O.S. 2001, Section 197.6, is
24 amended to read as follows:

1 Section 197.6 On and after August 1, 1965, every employer,
2 subject to this act, shall post a notice or notices of the pertinent
3 provisions of this act in such form as may be prescribed and
4 furnished by the Commissioner. Said notice shall be not less than
5 ~~eleven (11)~~ eight and one-half (8.5) inches by ~~seventeen (17)~~ eleven
6 (11) inches in size and shall be displayed in such a manner so as to
7 be accessible to all employees in each establishment under the
8 control of the employer. The Commissioner, or ~~his~~ duly authorized
9 representative, may, for the purpose of determining whether such
10 notice has been properly posted, enter, during business hours, upon
11 the premises of any employer subject to this act.

12 SECTION 5. AMENDATORY 40 O.S. 2001, Section 403, is
13 amended to read as follows:

14 Section 403. A. Each employer shall furnish to each of his or
15 her employees employment and a place of employment which are free
16 from recognized hazards that are causing or are likely to cause
17 death or serious physical harm to his or her employees, commensurate
18 with the Occupational Safety and Health Act of 1970.

19 B. No person shall discharge, discriminate or take adverse
20 personnel action against any employee because such employee has
21 filed any complaint, or instituted or caused to be instituted any
22 proceeding under or related to this act, or has testified or is
23 about to testify in any such proceeding, or because of the exercise
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1 by such employee on behalf of himself or herself or others of any
2 right affected by this act.

3 C. Within forty-eight (48) hours after the occurrence of an
4 employment accident which is fatal to one or more employees or which
5 results in hospitalization of ~~five~~ three or more employees, the
6 employer of any employees so injured or killed shall report the
7 accident in writing to the Oklahoma City office of the Oklahoma
8 Department of Labor, in a manner prescribed by the Department. The
9 Commissioner of Labor may require such additional reports as he or
10 she deems necessary, including the official death certificate from
11 the Oklahoma State Department of Health.

12 D. No rule or standard promulgated under this act shall, or
13 shall be deemed to, establish legal standards of conduct or legal
14 duties, the violation of which standards or duties would constitute
15 negligence or gross negligence in any civil proceeding.

16 E. Every employer having twenty-five (~~25~~) or more full- or
17 part-time employees shall:

18 1. Designate an employee who shall coordinate all safety
19 programs of the employer;

20 2. Provide safety classes to each type or class of employee no
21 less than quarterly, except that public schools shall only be
22 required to provide safety classes or instruction to their employees
23 during the school year. Provided further, public school employees
24 who are certified personnel and are in compliance with federal OSHA

1 occupational safety and health standards shall be exempt from such
2 safety classes or instruction and shall not be included in the
3 computation of the number of employees set forth in this subsection
4 ~~E of this section~~ for determining the requirement of such safety
5 classes or instruction; and

6 3. Cooperate with the Department of Labor including allowing
7 any announced inspection of the premises for the purpose of
8 determining compliance with this subsection.

9 The provisions of this subsection shall not apply to any
10 hospital which is subject to the rules of the U.S. Department of
11 Health and Human Services, Health Care Financing Administration
12 (HCFA), as set forth in 42 CFR, Parts 405, 412, 416, 417, 440, 441,
13 456, 482 and 489; Medicare and Medicaid Programs; Conditions of
14 Participation for Hospitals, Final Regulations.

15 SECTION 6. AMENDATORY 40 O.S. 2001, Section 412, is
16 amended to read as follows:

17 Section 412. A. Any person failing to comply with any standard
18 or interfering with, impeding or obstructing in any manner the
19 administration of standards pursuant to the provisions of the
20 Oklahoma Occupational Health and Safety Standards Act, upon
21 conviction, shall be guilty of a misdemeanor.

22 B. Any person who violates any of the provisions of the
23 Oklahoma Occupational Health and Safety Standards Act, upon
24 conviction, shall be guilty of a misdemeanor and in addition thereto

1 may be enjoined from continuing such violation. Each day upon which
2 such violation occurs shall constitute a separate violation.

3 C. The Attorney General, on the request of the Commissioner,
4 shall bring an action against any person violating any of the
5 provisions of the Oklahoma Occupational Health and Safety Standards
6 Act or violating any order or determination of the Commissioner
7 promulgated pursuant to the Oklahoma Occupational Health and Safety
8 Standards Act.

9 D. Any employer who willfully violates the requirements of the
10 Oklahoma Occupational Health and Safety Standards Act, any standard
11 or order promulgated pursuant to Section 403 of this title, or
12 regulations prescribed pursuant to the Oklahoma Occupational Health
13 and Safety Standards Act on two or more occasions, may be assessed a
14 civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for
15 each violation, to be assessed by the Commissioner of Labor, or
16 designee. Fines shall be assessed as follows:

17 1. Serious violations - up to One Thousand Dollars (\$1,000.00)
18 per violation;

19 2. Other than serious - up to One Thousand Dollars (\$1,000.00)
20 per violation;

21 3. De minimus - no penalty;

22 4. Failure to abate - up to One Thousand Dollars (\$1,000.00)
23 per day for each day during which such failure continues;

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1 5. Violations that cause death - up to Ten Thousand Dollars
2 (\$10,000.00); and

3 6. Knowingly making a false statement, representation or
4 certification in any application, record, report, plan, or other
5 document filed or required to be maintained - Ten Thousand Dollars
6 (\$10,000.00). "Serious" is defined as substantial probability that
7 death or serious physical harm could result from a condition which
8 exists or from one or more practices, means, methods, operations or
9 processes which have been adopted or are in use in such place of
10 employment.

11 E. The Commissioner of Labor or designee shall assess and
12 collect any civil penalty incurred under subsection D of this
13 section and, in the Commissioner's discretion, may remit, mitigate
14 or negotiate said penalty. In determining the amount of the penalty
15 to be assessed, or the amount agreed upon in any negotiation,
16 consideration shall be given to the appropriateness of such penalty
17 in light of the life of the business of the employer charged, the
18 gravity of the violation, and the extent to which the employer
19 charged has complied with the provisions of the Oklahoma
20 Occupational Health and Safety Standards Act or has otherwise
21 attempted to remedy the consequences of the violation. Individual
22 proceedings shall be conducted pursuant to the provisions of the
23 Administrative Procedures Act.

1 F. There is hereby created in the State Treasury a revolving
2 fund for the Department of Labor to be designated the "Public
3 Employee Occupational Safety and Health Revolving Fund". The fund
4 shall be a continuing fund, not subject to fiscal year limitations,
5 and shall consist of all monies collected by the Department pursuant
6 to the provisions of the Oklahoma Occupational Health and Safety
7 Standards Act. Expenditures from said fund shall be made upon
8 warrants issued by the State Treasurer against claims filed as
9 prescribed by law with the Director of State Finance for approval
10 and payment.

11 SECTION 7. AMENDATORY 40 O.S. 2001, Section 414, is
12 amended to read as follows:

13 Section 414. A. The Commissioner shall not assert enforcement
14 jurisdiction pursuant to Section 401 et seq. of this title over any
15 occupational safety or health issue with respect to which a federal
16 standard has been issued pursuant to Section (6) of Public Law
17 91-596, also known as the Williams-Steiger Occupational Safety and
18 Health Act of 1970.

19 B. The Commissioner shall provide competent occupational safety
20 and health consultation, education and training for private and
21 public employers in coordination with the Oklahoma Department of
22 Career and Technology Education and other available community
23 resources.

24

1 C. Such consultation shall be provided on a priority basis to
2 those private employers ~~which, based on their certification, have~~
3 ~~occupational injury and illness rates exceeding the national average~~
4 ~~incidence rate for private employers of similar character in~~
5 accordance with Title 29 of the U.S. Code of Federal Regulations,
6 Part 1908, Consultation Agreements, the current U.S. DOL, OSHA
7 Consultation Policies and Procedures Manual ("CPPM"), and in
8 compliance with Section (6) of Public Law 91-596, also known as the
9 Williams-Steiger Occupational Safety and Health Act of 1970 (29
10 U.S.C.A., Section 655), and the Consultation and Cooperative
11 Agreements pursuant to Section 21(d) of 29 U.S.C., Section 656.

12 D. No such consultation shall be provided except upon written
13 request by the private employer.

14 E. Except when a condition of "imminent danger" exists, no
15 reports, communication, or other information regarding safety and
16 health hazards discovered by the Commissioner, pursuant to the
17 administration of Section 401 et seq. of this title, or ~~his~~ the
18 representative of the Commissioner in the workplaces of private
19 employers, shall be reported to any enforcement authority whatsoever
20 without the prior approval of the employer.

21 F. The Commissioner may, in providing services to private
22 employers upon request, refer private employers for participation in
23 other safety and health consultation, education and training
24

1 programs including but not limited to the programs authorized by
2 Section ~~7(C)~~ 21(d) of Public Law 91-596.

3 G. The Commissioner may, upon request, refer qualifying private
4 employers to programs operated by the U.S. Department of Labor for
5 recognition or for exemption from inspection by the U.S. Department
6 of Labor Occupational Safety and Health Administration.

7 H. The Commissioner shall certify successful participation in
8 the occupational safety and health consultation, education and
9 training program pursuant to the provisions of Section 924.2 of
10 Title 36 of the Oklahoma Statutes.

11 I. The Commissioner may promulgate such rules and regulations
12 as may be necessary to implement the provisions of this section.

13 J. As used in this section:

14 1. "Private employer" means a person engaged in a business
15 affecting commerce who has employees, but does not include the
16 United States or any state or political subdivision of a state; and

17 2. "Imminent danger" means any conditions or practices in any
18 place of employment which are such that a danger exists which could
19 reasonably be expected to cause death, or serious physical harm
20 immediately.

21 SECTION 8. AMENDATORY 40 O.S. 2001, Section 452, is
22 amended to read as follows:

23 Section 452. A. No contractor shall abate any friable material
24 containing asbestos without having first obtained a license to do so

1 from the Commissioner of Labor. The Commissioner shall issue an
2 asbestos abatement license to a qualified contractor upon proper
3 application, as determined by the Commissioner. The annual fee for
4 such license shall be Five Hundred Dollars (\$500.00). A
5 nonrefundable initial application fee of One Thousand Dollars
6 (\$1,000.00) shall be charged. The Commissioner may deny a license
7 to applicants whose past abatement performance for abatement of
8 friable asbestos does not comply with federal and other states'
9 requirements. A minimum waiting period of one hundred twenty (120)
10 days will be required before issuance of a license to permit the
11 Commissioner to perform a work performance investigation of the
12 applicant.

13 The annual fee for examining and certifying workers employed by
14 a contractor for asbestos abatement shall be ~~Twenty five Dollars~~
15 ~~(\$25.00)~~ Seventy-five Dollars (\$75.00). Uncertified workers shall
16 not be used on any asbestos abatement projects.

17 The Commissioner of Labor shall charge a fee of Fifty Dollars
18 (\$50.00) for a duplicate of any license issued pursuant to the
19 Oklahoma Asbestos Control Act.

20 B. The state and political subdivisions thereof, counties and
21 political subdivisions thereof and municipalities and political
22 subdivisions thereof, and their supervisors and employees, shall be
23 exempt from any certification fees required by this section when
24 such entities act as a contractor. Any contractor not performing

1 abatement work which falls under the jurisdiction of the
2 Commissioner during the period of the issued license shall be
3 considered a new applicant for purposes of licensing and training.

4 C. A fee of Six Hundred Dollars (\$600.00) shall be paid by
5 contractors to the Department of Labor, to be deposited in the
6 General Revenue Fund, for each separate containment area of any
7 asbestos abatement project. There shall be a minimum of three
8 inspections of each containment area. For projects which are not a
9 part of a definite containment area, or are performed with multiple
10 glovebags or miniature containments, a fee of Two Hundred Dollars
11 (\$200.00), plus Five Dollars (\$5.00) per such glovebag or miniature
12 containment, shall be made.

13 Asbestos abatement projects performed on properties owned by the
14 state or any political subdivision thereof shall be exempt from this
15 fee.

16 D. Any asbestos abatement contractor transporting asbestos-
17 containing material shall be required to provide to the Commissioner
18 a Certificate of Insurance by a carrier licensed to do business in
19 the State of Oklahoma demonstrating a minimum of One Million Dollars
20 (\$1,000,000.00) of environmental impairment insurance.

21 E. No state agency or political subdivision thereof, county or
22 political subdivision thereof, or municipalities or political
23 subdivisions thereof shall solicit or receive any estimate or bid
24

1 for abatement of asbestos from any person or party who is not a
2 licensed asbestos abatement contractor.

3 F. 1. Except for the revenue listed in paragraph 2 of this
4 subsection, the Commissioner shall account for and transfer all fees
5 so received to the State Treasury to the credit of the General
6 Revenue Fund, together with a detailed report of same.

7 2. The Commissioner shall account for and deposit all fee
8 revenue received and listed in this paragraph to the Oklahoma
9 Asbestos Control Revolving Fund created pursuant to subsection G of
10 this section:

11 a. Fifty Dollars (\$50.00) of each annual fee for
12 examining and certifying workers employed by a
13 contractor for asbestos abatement collected under
14 subsection A of this section, and

15 b. all license duplication fees collected under this
16 section.

17 G. There is hereby created in the State Treasury a revolving
18 fund for the Department of Labor to be designated the "Oklahoma
19 Asbestos Control Revolving Fund". The fund shall be a continuing
20 fund, not subject to fiscal year limitations, and shall consist of
21 all monies collected by the Department and specifically designated
22 for deposit by the provisions of the Oklahoma Asbestos Control Act.
23 Expenditures from said fund shall be made upon warrants issued by
24

1 the State Treasurer against claims filed as prescribed by law with
2 the Director of State Finance for approval and payment.

3 SECTION 9. AMENDATORY 40 O.S. 2001, Section 456, is
4 amended to read as follows:

5 Section 456. A. In addition to any administrative or civil
6 penalty, any person who violates any of the provisions of the
7 Oklahoma Asbestos Control Act or who violates any rule or order
8 promulgated pursuant thereto shall be guilty of a misdemeanor and
9 may be enjoined from continuing such action. Upon conviction
10 thereof, said person shall be punished by imprisonment in the county
11 jail for not more than six (6) months and by a fine of not less than
12 One Hundred Dollars (\$100.00). Each day's violations shall
13 constitute a separate violation.

14 B. The Attorney General shall, upon request of the
15 Commissioner, bring an action for injunction against any person
16 violating any provision of the Oklahoma Asbestos Control Act or
17 violating any order or determination of the Commissioner. In any
18 action for injunction, any finding of the Commissioner, after
19 notice, shall be prima facie evidence of the facts found therein.

20 C. A district attorney, upon request of the Commissioner, shall
21 prosecute any violation of the Oklahoma Asbestos Control Act.

22 D. In addition to any other penalty prescribed by law, any
23 person who violates any of the provisions of the Oklahoma Asbestos
24 Control Act or who violates any rule or order promulgated pursuant

1 thereto shall be liable for a civil penalty, to be assessed by the
2 Commissioner of Labor or designee, of not more than One Thousand
3 Dollars (\$1,000.00) per offense. The Commissioner of Labor or
4 designee shall assess and collect any civil penalty incurred under
5 this subsection and, in the Commissioner's discretion, may remit,
6 mitigate or negotiate said penalty. In determining the amount of
7 the penalty to be assessed, or the amount agreed upon in any
8 negotiation, consideration shall be given to the appropriateness of
9 such penalty in light of the life of the business of the person
10 charged, the gravity of the violation, and the extent to which the
11 person charged has complied with the provisions of the Oklahoma
12 Asbestos Control Act or rules or orders promulgated pursuant thereto
13 or has otherwise attempted to remedy the consequences of the
14 violation. Individual proceedings shall be conducted pursuant to
15 the provisions of the Administrative Procedures Act.

16 SECTION 10. AMENDATORY 40 O.S. 2001, Section 461, as
17 amended by Section 1, Chapter 102, O.S.L. 2003 (40 O.S. Supp. 2007,
18 Section 461), is amended to read as follows:

19 Section 461. As used in Sections 1 through 10 of this act:

20 1. "Amusement ride" means a device or combination of devices or
21 elements that carry, convey, or direct a person or persons over or
22 through a fixed or restricted course or within a defined area for
23 the primary purpose of amusement or entertainment. Amusement ride
24 includes any amusement park device that uses treated water as the

1 means of transportation, including the structure and water quality
2 of the device. Amusement ride does not include the operation of
3 articles of husbandry incidental to any agricultural operation or
4 the operation of amusement devices of a permanent nature which are
5 subject to building regulations issued by cities or counties and
6 existing applicable safety orders;

7 2. "Operator" or "owner" means a person who owns or controls or
8 has the duty to control the operation of an amusement ride and
9 includes the state and every state agency, and each county, city and
10 all private or public corporations and political subdivisions;

11 3. "Certificate of inspection" means a certificate issued by
12 the Commissioner of Labor which indicates that an inspection of the
13 ride has been performed pursuant to rules and regulations adopted by
14 the Department of Labor; and

15 4. "Permanent amusement park ride" means an amusement ride
16 which is stationary or cannot be easily moved and which is located
17 on the same premises on which it is operated for no less than ninety
18 (90) days.

19 SECTION 11. AMENDATORY 40 O.S. 2001, Section 463, is
20 amended to read as follows:

21 Section 463. A. No fees shall be charged to public agencies.
22 The fees provided for in this subsection shall not apply to
23 amusement parks owned and operated by nonprofit corporations.

24 1. The annual ride registration fee shall be: ~~\$25.00~~

1		<u>\$50.00</u>
2	2. The inspection fee shall be:	
3	a. Kiddie Rides	\$25.00
4		<u>\$50.00</u>
5	b. Major Rides	\$50.00
6		<u>\$100.00</u>
7	c. <u>Inflatable Ride</u>	<u>\$ 25.00</u>
8	d. <u>Water Park Ride</u>	<u>\$100.00</u>
9	e. <u>Water Quality</u>	<u>\$200.00</u>
10	f. <u>Return Trip Fee</u>	<u>\$100.00</u>
11	g. Other Rides per hour	\$100.00
12		<u>\$125.00</u>
13	3. <u>The annual waiver fee shall be:</u>	
14	a. <u>Non-complex</u>	<u>\$250.00</u>
15	b. <u>All other</u>	<u>\$1,000.00</u>

16 B. The Commissioner of Labor shall not issue an original
17 certificate of inspection for an amusement ride until he receives
18 certification in writing that such amusement rides meet the
19 requirements established by the Commissioner of Labor for amusement
20 rides. The Commissioner of Labor shall designate by rule and
21 regulation pursuant to Section 460 of this title the qualifications
22 of the inspectors making the inspections required by this section.

23 C. Any permanent amusement park ride owner or operator shall
24 file a copy of a certificate of insurance with the Commissioner of

1 Labor on or before February 1 of each year. Such certificate of
2 insurance shall be in such form as to reflect the safety inspection
3 requirements for obtaining such insurance and the date of the last
4 inspection. The amount of the premium and the amount of coverage
5 shall not be required to be disclosed in the certificate.

6 The Commissioner may accept such certificate and insurance
7 inspection as evidence sufficient to issue a certificate of
8 inspection for the permanent amusement park ride.

9 D. The Governing Board of the State Fair of Oklahoma, the Tulsa
10 State Fair, and the Muskogee State Fair shall file a copy of a
11 certificate of insurance with the Commissioner of Labor before the
12 rides are put into operation at each location for the use of the
13 public. Such certificate shall be in such form as to reflect the
14 safety inspection requirements for obtaining such insurance and the
15 date of the inspection.

16 The Commissioner may accept such insurance inspection as
17 evidence sufficient to issue a certificate of inspection for the
18 rides.

19 E. 1. Except for the revenue listed in paragraph 2 of this
20 subsection, the Commissioner shall account for and transfer all fees
21 so received to the State Treasury to the credit of the General
22 Revenue Fund, together with a detailed report of same.

23 2. The Commissioner shall account for and deposit all fee
24 revenue received and listed in this paragraph to the Safety

1 Standards Revolving Fund created pursuant to subsection F of this
2 section:

- 3 a. fifty percent (50%) of each registration fee collected
4 under paragraph 1 of subsection A of this section,
- 5 b. fifty percent (50%) of each inspection fee collected
6 under subparagraphs a and b of paragraph 2 of
7 subsection A of this section,
- 8 c. all inspection fees collected under subparagraphs c,
9 d, e and f of paragraph 2 of subsection A of this
10 section,
- 11 d. Twenty-five Dollars (\$25.00) of each inspection fee
12 collected under subparagraph g of paragraph 2 of
13 subsection A of this section, and
- 14 e. all waiver fees collected under paragraph 3 of
15 subsection A of this section.

16 F. There is hereby created in the State Treasury a revolving
17 fund for the Department of Labor to be designated the "Safety
18 Standards Revolving Fund". The fund shall be a continuing fund, not
19 subject to fiscal year limitations, and shall consist of monies
20 collected by the Department and specifically designated for deposit
21 pursuant to the Amusement Ride Safety Act, the Oklahoma Welding Act
22 and the Oklahoma Boiler and Pressure Vessel Safety Act.
23 Expenditures from said fund shall be made upon warrants issued by
24

1 the State Treasurer against claims filed as prescribed by law with
2 the Director of State Finance for approval and payment.

3 SECTION 12. AMENDATORY 40 O.S. 2001, Section 469, is
4 amended to read as follows:

5 Section 469. A. Any violation of the provisions of this act
6 shall be a misdemeanor. Conviction thereof shall be punished by a
7 fine not exceeding One Thousand Dollars (\$1,000.00) or not more than
8 one (1) year in the county jail, or both such fine and imprisonment.
9 Each day of violation shall constitute a separate offense.

10 B. The Commissioner shall have subpoena powers and shall have
11 the right to seek injunctive relief to prevent the operation of any
12 amusement ride covered by this act for lacking a current certificate
13 of operation. For any violation of the Amusement Ride Safety Act
14 the Commissioner may assess an administrative fine of not more than
15 Two Thousand Five Hundred Dollars (\$2,500.00), which fine may be
16 assessed in addition to any other penalties provided pursuant to
17 this act.

18 C. Any denial of issuance of a certificate of operation, or any
19 order issued by the Commissioner, or any Red Tag notification or
20 assessment of an administrative fine may be appealed to the
21 Amusement Ride Board of Appeals created by Section 13 of this act
22 and the appropriate party(ies) shall be afforded the opportunity for
23 a hearing pursuant to the provisions of the Administrative
24 Procedures Act, if a written request is received by the Department

1 of Labor within thirty (30) days of the denial letter or
2 notification or assessment of any fine.

3 SECTION 13. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 470 of Title 40, unless there is
5 created a duplication in numbering, reads as follows:

6 A. There is hereby created the Amusement Ride Board of Appeals,
7 which shall consist of five (5) members appointed by the
8 Commissioner of Labor. Two members shall be experienced in the
9 amusement ride industry, two members shall be appointed from an
10 Oklahoma fair authority, and one member shall be appointed at large.

11 B. The initial terms of office of the members appointed to the
12 Amusement Ride Board of Appeals shall expire as follows:

13 1. The term of office of one of the members shall expire July
14 1, 2009;

15 2. The term of office of one of the members shall expire July
16 1, 2010;

17 3. The term of office of one of the members shall expire July 1,
18 2011; and

19 4. The term of office of two of the members shall expire July
20 1, 2012.

21 Thereafter, the terms of office of the members of the Amusement
22 Ride Board of Appeals shall be four (4) years.

23 C. The Commissioner of Labor may remove any member of the Board
24 for incompetence, neglect of duty, or malfeasance in office upon

1 first giving the member a copy of the charges and an opportunity to
2 be heard. A vacancy on the Board shall be filled for the unexpired
3 term by appointment made by the Commissioner of Labor.

4 SECTION 13. This act shall become effective November 1, 2008.

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