

ENROLLED SENATE  
BILL NO. 809

By: Leftwich of the Senate

and

McDaniel (Randy) and Key  
of the House

An Act relating to labor and state government; amending 40 O.S. 2001, Sections 1-218, as last amended by Section 2, Chapter 182, O.S.L. 2005, 1-224, as amended by Section 3, Chapter 182, O.S.L. 2005, 2-109, 2-411, 2-416, as amended by Section 8, Chapter 176, O.S.L. 2006, 2-506, 3-106, as last amended by Section 13, Chapter 176, O.S.L. 2006, 3-115, as amended by Section 19, Chapter 176, O.S.L. 2006, 3-403, 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, O.S.L. 2002 (74 O.S. Supp. 2006, Section 85.29), which relates to schedule of amount of certain surety bond required; clarifying date for certain exclusion relating to retirement plans; modifying and adding definition; clarifying certain benefit year relating to employment requirement; making language gender neutral; modifying provisions relating to retirement payments; clarifying cite; allowing certain redeterminations based on false statements by employer; providing for the issuance of certain benefits; providing for certain relief of benefit wage charges under certain circumstances; providing

for certain protest of determination; stating certain order shall be final in certain circumstance; providing basis for certain reconsideration of determinations; setting time limit for redetermination; providing notice and appeal of redetermination; stating certain findings of fact or law for certain purposes shall be conclusive or binding; stating certain findings of fact or law for certain purposes shall not be conclusive and binding; prohibiting use of certain findings of fact or law in certain forums; stating certain orders, rulings and findings will become 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; providing for codification; repealing Section 1, Chapter 277, O.S.L. 2006, 40 O.S. 2001, Sections 4-401, 4-402, 4-403, 4-404 and 4-405 (40 O.S. Supp. 2006, Section 1-225A), 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; and providing an effective date.

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

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

Section 1-218. WAGES.

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

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

- a. retirement, other than employee contributions or deferrals after December 31, 2002, under a qualified plan as described in 26 U.S.C., Section 401(k) and, after December 31, 2005, under a qualified plan as described in 26 U.S.C., Sections ~~401(k)~~, 403b, 408(k), 457 and 7701(j),
- b. sickness or accident disability,
- c. medical and hospitalization expenses in connection with sickness or accident disability,
- d. death, provided the individual in its employ:

- (1) has not the option to receive, instead of provision for such death benefit, any part of such payment, or if such death benefit is insured, any part of the premium or contributions to premiums paid by the employing unit, and
  - (2) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive cash consideration in lieu of such benefit either upon withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of the individual's services with such employing unit, or
- e. a bona fide thrift or savings fund, providing:
- (1) such payment is conditioned upon a payment of a substantial sum by such individuals in its employ, and
  - (2) that such sum paid by the employing unit cannot under the provisions of such plan be withdrawn by an individual more frequently than once in any twelve-month period, except upon an individual's separation from that employment;

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

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

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

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

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

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

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

Section 1-224. FILE.

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

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

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

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

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

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

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

Section 2-109. EMPLOYMENT REQUIREMENT IN PRECEDING BENEFIT YEAR. No individual may receive benefits in a benefit year unless, subsequent to the beginning of the ~~next~~ immediately preceding benefit year during which ~~he~~ the individual received benefits, ~~he~~ the individual performed service and earned remuneration for such service in an amount equal to at least ten (10) times ~~his~~ the individual's weekly benefit amount in ~~his~~ the current benefit year.

SECTION 4. AMENDATORY 40 O.S. 2001, Section 2-411, is amended to read as follows:

Section 2-411. RETIREMENT PAYMENTS. ~~(1)~~ 1. Except for any payment or benefit payment made pursuant to the federal Social Security Act or as otherwise provided in subparagraph 3 of this section, an individual shall be disqualified for benefits for any week which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity or any other similar periodic retirement payment which is based on the previous work of such individual if:

(a)

a. such pension, retirement or retired pay, annuity or similar payment is under a plan maintained, or contributed to, by a base period or chargeable employer; and

~~(b)~~

b. in the case of such a payment not made under the Railroad Retirement Act of 1974, 45 U.S.C., Section 231 et seq., services performed for such employer by the individual after the beginning of the base period, or remuneration for such services, affect eligibility for or increase the amount of, such pension, retirement or retired pay, annuity or similar payment.

~~(2)~~ 2. If the total of such remuneration is less than the benefits which would otherwise be due under the Employment Security Act of 1980, Section 1-101 et seq. of this title, the individual shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

~~(3)~~ 3. If payments referred to in this section are being received by an individual under the federal Social Security Act or are being received by an individual under a pension, retirement or retired pay, annuity or other similar payment plan that the employee contributed to in any amount, the Commission shall take into account the individual's contribution to social security or the pension, retirement or annuity plan and make no reduction in the weekly benefit amount.

SECTION 5. AMENDATORY 40 O.S. 2001, Section 2-416, as amended by Section 8, Chapter 176, O.S.L. 2006 (40 O.S. Supp. 2006, Section 2-416), is amended to read as follows:

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

No individual shall be denied benefits for any week because such individual is in training approved under ~~Section 236(a)(1)~~ 19 U.S.C., Section 2296 (a)(1) of the Trade Act of 1974. An individual shall not be denied benefits by reason of leaving work to begin or continue such training, provided the work left is not suitable

employment, or because of the application, to any such week in training, of the provisions of the Employment Security Act of 1980 or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this section, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the adversely affected past employment of the individual, as defined for purposes of the Trade Act of 1974, and wages for such work at not less than eighty percent (80%) of the average weekly wage of the individual as determined for the purposes of the Trade Act of 1974.

SECTION 6. AMENDATORY 40 O.S. 2001, Section 2-506, is amended to read as follows:

Section 2-506. REDETERMINATIONS. The Oklahoma Employment Security Commission may reconsider a determination only when it finds that an error in computation or identity has occurred in connection therewith, or that wages of the claimant pertinent to such determination, but not considered in connection therewith, have been newly determined, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentation or mistake of material facts, but no such redetermination shall be made after the expiration of the benefit year established by the initial determination, except that a determination made because of a false statement or representation or failure to disclose a material fact in violation of Section 5-102 or 5-103 of this title may be redetermined within two (2) years from the date of such false statement or representation or failure to disclose. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in ~~this act~~ the Employment Security Act of 1980 with respect to notice of an original determination. If the amount of benefits is increased upon such redetermination, an appeal therefrom solely with respect to the matters involved in such increase may be filed in the manner and subject to the limitations provided in ~~this~~ Part 5 of Article 2 of the Employment Security Act of 1980. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to review in connection with an appeal by claimant from any determination upon a subsequent claim for benefits which may be affected in amount or duration by such redetermination. Subject to the same limitations and for the

same reasons, the Commission may reconsider the determination in any case in which the final decision has been rendered by an appeal tribunal, the Board of Review or a court, and may apply to the body or court which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

SECTION 7. AMENDATORY 40 O.S. 2001, Section 3-106, as last amended by Section 13, Chapter 176, O.S.L. 2006 (40 O.S. Supp. 2006, Section 3-106), is amended to read as follows:

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

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

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

1. The date on which the employment was terminated;

2. Full particulars as to the circumstances of the termination including the reason given by the individual for voluntarily leaving

the employment, or the nature of the misconduct for which discharged, as the case may be;

3. Full particulars as to the regular scheduled part-time or full-time employment of the employee including the starting date, and ending date if any, of the continuous period of such part-time or full-time employment; and

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

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

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

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

F. The employer or the Commission may appeal the order of the Commission or its representative to the district court by filing a petition for review with the clerk of that court within thirty (30)

days after the date the order was mailed to all parties. The mailing date shall be specifically stated in the order.

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

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

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

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

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

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

6. Was discharged by an employer for unsatisfactory performance during an initial employment probationary period. As used in this paragraph, "probationary period" means a period of time set forth in an established probationary plan which applies to all employees or a specific group of employees and does not exceed ninety (90) calendar days from the first day a new employee begins work. The employee must be informed of the probationary period within the first seven (7) work days. There must be conclusive evidence to establish that the individual was separated due to unsatisfactory work performance

and not separated because of lack of work due to temporary, seasonal, casual, or other similar employment not of regular, permanent, and year-round nature;

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

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

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

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

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

J. If the Commission receives a notice of amounts paid as benefits by another state under a reciprocal agreement, and the notice is received after three (3) years from the effective date of the underlying benefit claim, no benefit wage charge will be made against the employer identified in the notice, or if a benefit wage charge is made based on such a notice, the employer will be relieved

of the charge when the facts are brought to the attention of the Commission.

SECTION 8. AMENDATORY 40 O.S. 2001, Section 3-115, as amended by Section 19, Chapter 176, O.S.L. 2006 (40 O.S. Supp. 2006, Section 3-115), is amended to read as follows:

Section 3-115. APPEAL OF DETERMINATIONS.

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

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

2. Within twenty (20) days after the mailing of the Notice of Determination as provided for in paragraph 1 of this subsection, the employer may file with the Commission, or its representative, a written request for a review and redetermination setting forth the employer's reasons therefor. If any employer fails to file a written request for review and redetermination within twenty (20) days, then the initial determination of the Commission shall be final, and no further appeal or protest shall be allowed.

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

4. Upon the timely filing of a written protest, the Commission shall provide for an oral hearing de novo to allow the employer to present evidence in support of the protest. The Commission or its

representatives shall, by written notice, advise the employer of the date of the hearing, which shall not be less than ten (10) days from the date of the mailing of the written notice. At the discretion of the Commission, this hearing shall be conducted by the Commission, or by a representative appointed by the Commission for this purpose.

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

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

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-116 of Title 40, unless there is created a duplication in numbering, reads as follows:

RECONSIDERATION OF DETERMINATION.

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

1. An error in computation;
2. An error in identity;
3. Misrepresentation of material facts;
4. Mistake of material facts;
5. An error in interpretation or application of the law; or

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

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

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

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

FINDINGS OF FACT OR LAW.

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

SECTION 11. AMENDATORY 40 O.S. 2001, Section 3-403, is amended to read as follows:

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

Within thirty (30) days after the date of mailing of the order, ruling, or finding complained of, the party desiring to appeal shall file in the office of the clerk of the district court of the county that has the proper jurisdiction, a Petition for Review specifying the grounds upon which ~~such~~ the appeal is based. If a Petition for

Review is not filed within the time allowed by this section, the administrative order, ruling or finding will become final and the district court will not have jurisdiction to consider the appeal. The appealing party shall serve a file-stamped copy of the Petition for Review on the opposing party or its attorney and the designated hearing officer of the Oklahoma Employment Security Commission before whom the original hearing was held. The hearing officer of the Commission shall then cause a certified transcript of the hearing to be made which shall consist of all testimony of the parties, all documentary evidence and other evidence introduced at the hearing, and all decisions, judgments, or orders rendered as a result of the hearing. The hearing officer shall then cause the certified transcript to be filed in the appropriate district court within sixty (60) days of receipt of the Petition for Review. Copies of the transcript shall be mailed by the hearing officer to the Commission's attorney and the employer or the employer's attorney.

SECTION 12. AMENDATORY 40 O.S. 2001, Section 3-806, is amended to read as follows:

Section 3-806. PAYMENT OF IN-LIEU CONTRIBUTIONS. A. At the end of each calendar quarter the Oklahoma Employment Security Commission shall notify in writing each nonprofit organization, or the agent of a group of such organizations, which has elected to make payments in lieu of contributions, the amount, if any, equal to the full amount of regular benefits plus one-half (1/2) of the amount of extended benefits paid by the Commission during such quarter that is attributable to service in the employ of such organization or the members of a group of such organizations. Such full amount shall include all amounts so paid to its former employees as benefits, including amounts paid in error. Such notification shall be deemed and treated as an assessment of contributions and the payment of the amount owing shall be collected as contributions, interest, penalty and fees, if any, are collected, in accordance with the provisions of ~~this act~~ the Employment Security Act of 1980. The employer, or group of employers, shall have the rights and remedies provided by ~~this act~~ the Employment Security Act of 1980 with respect to assessments of contributions, including the right of protest, hearing and appeal. The Commission shall make its assessment or amend its assessment within three (3) years of the ending date of the calendar quarter to which the

assessment or amendment applies. If no protest is filed or if filed and confirmed by the Commission or its authorized representatives, said assessment shall be immediately due and payable and shall bear interest after forty-five (45) days at the rate of one percent (1%) per month until paid. If any nonprofit organization or group of organizations fails or refuses to pay said assessment after same has become delinquent within forty-five (45) days after written request has been mailed to such organization or the agent of such group by the Commission or its representative, a penalty of five percent (5%) of the amount due shall be added thereto, collected and paid. In the case of group accounts, assessments and penalty and interest provided in this subsection may be prorated in accordance with Section 3-809 of this title. All collections made shall be deposited in the Unemployment Compensation Fund.

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

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

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-109 of Title 40, unless there is created a duplication in numbering, reads as follows:

SERVICE OF PROCESS.

If the Oklahoma Employment Security Commission is sued, or if its officers or employees are sued in their official capacities, the service of all legal process pursuant to Section 2004 of Title 12 of the Oklahoma Statutes and of all extrajudicial notices which may be required in writing shall be made on the Executive Director at the official office of the Commission as set out in Administrative Rule

240:1-1-5. This section shall not apply to appeals brought under Article 2, Part 6 and Article 3, Part 4 of the Employment Security Act of 1980. Service of process in Article 2, Part 6 and Article 3, Part 4, shall be made pursuant to the procedures set out by the statutes in those parts and the administrative rules implementing those statutes. This section shall not be construed to waive any immunity created by constitution or statute that applies to the Oklahoma Employment Security Commission, its officers or employees or this state.

SECTION 14. AMENDATORY 40 O.S. 2001, Section 4-504, is amended to read as follows:

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

SECTION 15. AMENDATORY 40 O.S. 2001, Section 4-508, as last amended by Section 27, Chapter 176, O.S.L. 2006 (40 O.S. Supp. 2006, Section 4-508), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. The release to employees of the Oklahoma State Bureau of Investigation or release to employees of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control for use in criminal investigations and the location of missing persons or fugitives from justice;

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

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

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

15. The release to employees of the Office of State Finance of information required to identify economic trends. The information obtained shall be kept confidential by the Office of State Finance and shall not be disclosed or be open to public inspection. The Office of State Finance may release aggregate data, provided that such aggregation meets disclosure requirements of the Commission;

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

17. The release to employees of the Attorney General, the Oklahoma State Bureau of Investigation, and the Insurance Department

for use in the investigation of insurance fraud and health care fraud;

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

19. The release of wage and benefit claim information, at the discretion of the Commission, to an agency of this state or its political subdivisions, or any nonprofit corporation that operates a program or activity designated as a partner in the Workforce Investment Act One-Stop delivery system pursuant to 29 U.S.C.A., Section 2481 (b), based on a showing of need made to the Commission and after an agreement concerning the release of information is entered into with the entity receiving the information;

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

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

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

23. The release of employer tax information and benefit claim information to the State Department of Rehabilitation Services for use in assessing results and outcomes of clients served; or

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

D. Subpoenas to compel disclosure of information made confidential by this statute shall not be valid, except for

administrative subpoenas issued by federal, state, or local governmental agencies that have been granted subpoena power by statute or ordinance. Confidential information maintained by the Commission can be obtained by order of a court of record that authorizes the release of the records in writing. All administrative subpoenas or court orders for production of documents must provide a minimum of twenty (20) days from the date it is served for the Commission to produce the documents. If the date on which production of the documents is required is less than twenty (20) days from the date of service, the subpoena or order shall be considered void on its face as an undue burden or hardship on the Commission.

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

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

SECTION 16. AMENDATORY 40 O.S. 2001, Section 418.2, as amended by Section 3, Chapter 50, O.S.L. 2002 (40 O.S. Supp. 2006, Section 418.2), is amended to read as follows:

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

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

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

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

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

4. The Insurance Commissioner or his or her designee;

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

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

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

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

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

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

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

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

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

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

15. Four members of the Legislature of which two shall be members of the Senate who shall be appointed by the President Pro Tempore of the Senate and two shall be members of the House of Representatives who shall be appointed by the Speaker of the House of Representatives; and

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

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

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

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

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

SECTION 17. AMENDATORY 74 O.S. 2001, Section 85.29, as amended by Section 5, Chapter 50, O.S.L. 2002 (74 O.S. Supp. 2006, Section 85.29), is amended to read as follows:

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

| DEPARTMENT   | AMOUNT OF BOND      |
|--|---------------------|
| Office of the State Treasurer                                | \$300,000.00        |
| <u>Oklahoma Employment Security Commission</u>               | <u>\$150,000.00</u> |
| Office of Public Affairs                                     | 100,000.00          |
| Insurance Commission   | 100,000.00          |
| Office of the State Auditor and Inspector                    | 50,000.00           |
| Office of State Finance                                      | 50,000.00           |
| Bank Commissioner  | 50,000.00           |
| CompSource Oklahoma President and<br>Chief Executive Officer | 50,000.00           |
| Commissioners of the Land Office                             | 50,000.00           |
| Oklahoma Securities Commission                               | 50,000.00           |
| Oklahoma Tax Commission                                      | 50,000.00           |
| Department of Human Services                                 | 50,000.00           |
| Oklahoma Public Employees Retirement System                  | 50,000.00           |
| Oklahoma Corporation Commission                              | 50,000.00           |
| State Board of Education                                     | 50,000.00           |
| Finance Division   | 150,000.00          |
| All Others   | 25,000.00           |
| Department of Transportation                                 | 25,000.00           |

|   |           |
|---|-----------|
| Boards of Regents of Oklahoma<br>Universities and Colleges  | 50,000.00 |
| Office of Attorney General  | 10,000.00 |
| The University Hospitals  | 50,000.00 |
| All Other State Departments, Agencies,<br>Institutions, Commissions, Authorities,<br>and other bodies of state government | 10,000.00 |

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

SECTION 18. REPEALER Section 1, Chapter 277, O.S.L. 2006, 40 O.S. 2001, Sections 4-401, 4-402, 4-403, 4-404 and 4-405 (40 O.S. Supp. 2006, Section 1-225A), are hereby repealed.

SECTION 19. This act shall become effective November 1, 2007.

Passed the Senate the 17th day of May, 2007.

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Presiding Officer of the Senate

Passed the House of Representatives the 25th day of May, 2007.

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Presiding Officer of the House  
of Representatives