

THE HOUSE OF REPRESENTATIVES
Monday, March 3, 2008

Committee Substitute for
House Bill No. 2537

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2537 - By: CANNADAY of the House.

(Labor – method of payment of fees and fines – codification –
effective date)

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

1 SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 12 of Title 40, unless there is created a duplication in numbering,
3 reads as follows:
4 A. All remittances of fees and fines required to be paid to the Oklahoma
5 Department of Labor pursuant to state law shall be made to the Department by bank
6 draft, check, cashier's check, money order, cash, or nationally recognized credit card or
7 debit card. If payment is made by credit or debit card, the Department may add an
8 amount equal to the amount of the service charge incurred by the Department, as a
9 convenience fee for the acceptance of the credit or debit card. For purposes of this
10 subsection, "nationally recognized credit or debit card" means any instrument or device,
11 whether known as a credit card, credit plate, charge plate, debit card, or by any other
12 name issued with or without fee by an issuer for the use of the cardholder in obtaining

1 goods, service, or anything of value on credit which is accepted by over one thousand
2 merchants in this state. The Department shall promulgate rules to allow for the
3 implementation of payment of fees by credit or debit card.

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

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

15 D. Upon the return of any check by reason of the refusal of the bank upon which
16 the check was drawn to honor the same, the Oklahoma Department of Labor may file a
17 bogus check complaint with the appropriate district attorney who shall refer the
18 complaint to the Bogus Check Restitution Program established by Section 111 of Title 22
19 of the Oklahoma Statutes. Funds collected by the program, after collection of the fee
20 authorized by Section 114 of Title 22 of the Oklahoma Statutes, shall be transmitted to
21 the Oklahoma Department of Labor and credited to the liability for which the returned
22 check was drawn and to the administrative service fee provided by this section.

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

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

14 (b) Every applicant for a license shall have been a resident of the State of
15 Oklahoma for at least one (1) year immediately preceding the filing of such application,
16 and shall have had at least one (1) year of experience as a placement ~~counselor~~ counselor
17 in a licensed employment agency either within or without the state. In the case of
18 corporation applicants, at least one of the incorporators and one of the principal officers
19 thereof, together with the person who is to be responsible for the general management of
20 the office shall meet the above requirements as to Oklahoma residence and experience.

21 (c) Every applicant for a license shall file with the Administrator a written
22 application stating the name and address of the applicant; the street and number of the

1 building in which the employment agency is to be conducted; the name of the person who
2 is to be responsible for the general management of the office; the names and addresses of
3 all those financially interested therein; the name under which the business is to be
4 conducted; whether or not the applicant is pecuniarily interested in any other business or
5 businesses, and if so the nature of same and where carried on. Said applicant shall also
6 state on the application whether or not he is engaged at the time of making application
7 or at any previous time has been engaged or financially interested in an employment
8 agency business in Oklahoma or any other state; and, if so, the name and address of such
9 employment agency or agencies and the dates he was so engaged or interested. If
10 applicant is now or has previously been employed in any employment agency he shall
11 state the name and address of such agency, the name of the person conducting such
12 agency, the dates employed, and in what capacity. All applications shall be sworn to,
13 under oath, and shall remain confidential in the files of the Administrator.

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

1 (e) The applicant shall give as reference the names and addresses of at least three
2 (3) persons of reputed business or professional integrity. If applicant is a corporation, the
3 application shall state the names and addresses of the officers and directors of said
4 corporation and shall be signed and sworn to by the president and secretary, with seal
5 affixed. If applicant is a copartnership, the application shall state the names and
6 addresses of all partners therein and shall be signed and sworn to by all of them. The
7 Administrator or Director shall be qualified to take sworn statements of applicants,
8 under oath.

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

1 general statute of the state governing appeals from decisions of administrative agencies
2 in individual proceedings.

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

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

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

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

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

16 (l) The Administrator shall notify all license holders of the expiration date of their
17 licenses at least ten (10) days prior thereto, and application for renewal shall be
18 accompanied by the required license fee and bond.

19 (m) In the event the Administrator shall find that an employment agency has
20 violated any of the provisions of this act, or that any other good and sufficient reason
21 therefor has arisen within the meaning and purpose of this act, he may suspend or
22 revoke said license or refuse to grant a new license upon the termination thereof; but in

1 any case no action shall be taken until a written notice has been served on said
2 employment agency specifying the charges against said agency, and a fair public hearing,
3 in which the procedure prescribed for individual proceedings by the general
4 administrative procedure acts of the state shall apply wherever not in conflict with the
5 specific procedures herein prescribed, has been given same within thirty (30) days after
6 such written notice has been posted by registered mail to the licensee. If, after such
7 hearing, the Administrator shall find cause to suspend, revoke or refuse to issue a
8 license, the employment agency shall be given written notice of the Administrator's
9 decision and the basis therefor, which decision shall become final at the end of thirty (30)
10 days from the date of such notice, unless during the said thirty-day period the licensee
11 shall take an appeal to the superior or district court of the county in which the license
12 was issued from the Administrator's order, with opportunity for stay as provided in the
13 general statutes of the state governing appeals from administrative orders in individual
14 proceedings. All appeals from the Administrator's decisions and orders shall be taken in
15 the manner prescribed by law.

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

1 (o) No license granted under the terms of this act shall be transferable, but an
2 employment agency may, with the approval of the Administrator, at any time incorporate
3 or admit a partner or partners to the business, or make changes in the corporate name,
4 or sell the business; but no employment agency shall permit any person not mentioned in
5 the application for license to become connected with such agency, either as a partner or
6 as an officer of a corporation, unless the Administrator's written consent thereto shall
7 first have been obtained. Such consent may be withheld only for any reason for which an
8 original application for license might have been rejected if the person or persons in
9 question had been mentioned therein. Nothing in this act shall be construed to prevent
10 any executor, administrator or heir of a deceased licensee from carrying on the
11 employment agency's business for the remainder of the period for which licensed, or
12 pending its sale to a qualified purchaser.

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

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

20 Section 141.16

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

22 (1) with manway state inspector \$50.00

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1		<u>\$75.00</u>
2	(2) without manway state inspector	\$25.00
3		<u>\$50.00</u>
4	(3) any size special - or owner/user inspector	\$25.00
5		<u>\$50.00</u>
6	(4) <u>each hot water supply heater</u>	<u>\$25.00</u>
7	b. Only one certificate of operation fee per year may be charged; except	
8	an additional fee equal to the certificate of operation fee may be	
9	charged for witnessing a hydrostatic test required after repairs,	
10	provided a fee equal to the total fees identified in division (1) or (2) of	
11	subparagraph a of this paragraph, whichever is appropriate, and	
12	subparagraph f of paragraph 2 of this subsection may be charged when	
13	the pressure-retaining item is not prepared and ready pursuant to	
14	rules promulgated by the Commissioner of Labor at the time of the	
15	inspection.	
16	2. Other Fees	
17	a. hydrostatic test of steam pipeline per day	\$150.00
18	(for each additional half-day or part thereof)	\$75.00
19	b. shop review fees	\$1,250.00
20		<u>\$1,750.00</u>
21	c. licensing fees	
22	(1) repair, service, install (annually)	\$50.00

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1		<u>\$100.00</u>
2	(2) installer technician (one-time	
3	issuance) <u>(biennially)</u>	\$50.00
4		<u>\$100.00</u>
5	(3) boiler operator (biennially)	\$50.00
6		<u>\$100.00</u>
7	d. certificate of competency fee	\$15.00
8		<u>\$25.00</u>
9	e. examination fee	\$50.00
10	f. boiler or pressure vessel inspection fee for	
11	certificate inspections by state inspectors	\$100.00
12	g. authorized inspector services for weld repairs or	
13	alterations, per eight-hour day or part thereof	\$300.00
14	h. a fee as established by rule may be assessed for the	
15	issuance of duplicate licenses and certificates, not to	
16	exceed	\$10.00

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

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

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

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

- 14 a. Twenty-five Dollars (\$25.00) of each certificate of operation fee
15 collected under subparagraph a of paragraph 1 of subsection A of this
16 section.
- 17 b. all fees listed in subparagraphs b, g and h of paragraph 2 of subsection
18 A of this section.
- 19 c. Fifty Dollars (\$50.00) of each licensing fee collected under
20 subparagraph c of paragraph 2 of subsection A of this section, and
- 21 d. Ten Dollars (\$10.00) of each certificate of competency fee collected
22 under subparagraph d of paragraph 2 of subsection A of this section.

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

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

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

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

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

19 B. No person shall discharge, discriminate or take adverse personnel action against
20 any employee because such employee has filed any complaint, or instituted or caused to
21 be instituted any proceeding under or related to this act, or has testified or is about to

1 testify in any such proceeding, or because of the exercise by such employee on behalf of
2 himself or herself or others of any right affected by this act.

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

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

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

- 15 1. Designate an employee who shall coordinate all safety programs of the employer;
- 16 2. Provide safety classes to each type or class of employee no less than quarterly,
17 except that public schools shall only be required to provide safety classes or instruction to
18 their employees during the school year. Provided further, public school employees who
19 are certified personnel and are in compliance with federal OSHA occupational safety and
20 health standards shall be exempt from such safety classes or instruction and shall not be
21 included in the computation of the number of employees set forth in this subsection ~~E~~ of
22 ~~this section~~ for determining the requirement of such safety classes or instruction; and

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

4 The provisions of this subsection shall not apply to any hospital which is subject to
5 the rules of the U.S. Department of Health and Human Services, Health Care Financing
6 Administration (HCFA), as set forth in 42 CFR, Parts 405, 412, 416, 417, 440, 441, 456,
7 482 and 489; Medicare and Medicaid Programs; Conditions of Participation for Hospitals,
8 Final Regulations.

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

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

15 B. Any person who violates any of the provisions of the Oklahoma Occupational
16 Health and Safety Standards Act, upon conviction, shall be guilty of a misdemeanor and
17 in addition thereto may be enjoined from continuing such violation. Each day upon
18 which such violation occurs shall constitute a separate violation.

19 C. The Attorney General, on the request of the Commissioner, shall bring an action
20 against any person violating any of the provisions of the Oklahoma Occupational Health
21 and Safety Standards Act or violating any order or determination of the Commissioner
22 promulgated pursuant to the Oklahoma Occupational Health and Safety Standards Act.

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

8 1. Serious violations – up to One Thousand Dollars (\$1,000.00) per violation;

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

10 3. De minimus – no penalty;

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

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

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

20 E. The Commissioner of Labor or designee shall assess and collect any civil penalty
21 incurred under subsection D of this section and, in the Commissioner’s discretion, may
22 remit, mitigate or negotiate said penalty. In determining the amount of the penalty to be

1 assessed, or the amount agreed upon in any negotiation, consideration shall be given to
2 the appropriateness of such penalty in light of the life of the business of the employer
3 charged, the gravity of the violation, and the extent to which the employer charged has
4 complied with the provisions of the Oklahoma Occupational Health and Safety Standards
5 Act or has otherwise attempted to remedy the consequences of the violation. Individual
6 proceedings shall be conducted pursuant to the provisions of the Administrative
7 Procedures Act.

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

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

18 Section 414. A. The Commissioner shall not assert enforcement jurisdiction
19 pursuant to Section 401 et seq. of this title over any occupational safety or health issue
20 with respect to which a federal standard has been issued pursuant to Section (6) of Public
21 Law 91-596, also known as the Williams-Steiger Occupational Safety and Health Act of
22 1970.

1 B. The Commissioner shall provide competent occupational safety and health
2 consultation, education and training for private and public employers in coordination
3 with the Oklahoma Department of Career and Technology Education and other available
4 community resources.

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

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

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

1 F. The Commissioner may, in providing services to private employers upon request,
2 refer private employers for participation in other safety and health consultation,
3 education and training programs including but not limited to the programs authorized by
4 Section ~~7(C)~~ 21(d) of Public Law 91-596.

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

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

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

14 J. As used in this section:

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

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

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

1 Section 452. A. No contractor shall abate any friable material containing asbestos
2 without having first obtained a license to do so from the Commissioner of Labor. The
3 Commissioner shall issue an asbestos abatement license to a qualified contractor upon
4 proper application, as determined by the Commissioner. The annual fee for such license
5 shall be Five Hundred Dollars (\$500.00). A nonrefundable initial application fee of One
6 Thousand Dollars (\$1,000.00) shall be charged. The Commissioner may deny a license to
7 applicants whose past abatement performance for abatement of friable asbestos does not
8 comply with federal and other states' requirements. A minimum waiting period of one
9 hundred twenty (120) days will be required before issuance of a license to permit the
10 Commissioner to perform a work performance investigation of the applicant.

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

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

16 B. The state and political subdivisions thereof, counties and political subdivisions
17 thereof and municipalities and political subdivisions thereof, and their supervisors and
18 employees, shall be exempt from any certification fees required by this section when such
19 entities act as a contractor. Any contractor not performing abatement work which falls
20 under the jurisdiction of the Commissioner during the period of the issued license shall
21 be considered a new applicant for purposes of licensing and training.

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

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

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

14 E. No state agency or political subdivision thereof, county or political subdivision
15 thereof, or municipalities or political subdivisions thereof shall solicit or receive any
16 estimate or bid for abatement of asbestos from any person or party who is not a licensed
17 asbestos abatement contractor.

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

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

- 4 a. Fifty Dollars (\$50.00) of each annual fee for examining and certifying
5 workers employed by a contractor for asbestos abatement collected
6 under subsection A of this section, and
7 b. all license duplication fees collected under this section.

8 G. There is hereby created in the State Treasury a revolving fund for the
9 Department of Labor to be designated the "Oklahoma Asbestos Control Revolving Fund".
10 The fund shall be a continuing fund, not subject to fiscal year limitations, and shall
11 consist of all monies collected by the Department and specifically designated for deposit
12 by the provisions of the Oklahoma Asbestos Control Act. Expenditures from said fund
13 shall be made upon warrants issued by the State Treasurer against claims filed as
14 prescribed by law with the Director of State Finance for approval and payment.

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

17 Section 456. A. In addition to any administrative or civil penalty, any person who
18 violates any of the provisions of the Oklahoma Asbestos Control Act or who violates any
19 rule or order promulgated pursuant thereto shall be guilty of a misdemeanor and may be
20 enjoined from continuing such action. Upon conviction thereof, said person shall be
21 punished by imprisonment in the county jail for not more than six (6) months and by a

1 fine of not less than One Hundred Dollars (\$100.00). Each day's violations shall
2 constitute a separate violation.

3 B. The Attorney General shall, upon request of the Commissioner, bring an action
4 for injunction against any person violating any provision of the Oklahoma Asbestos
5 Control Act or violating any order or determination of the Commissioner. In any action
6 for injunction, any finding of the Commissioner, after notice, shall be prima facie
7 evidence of the facts found therein.

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

10 D. In addition to any other penalty prescribed by law, any person who violates any
11 of the provisions of the Oklahoma Asbestos Control Act or who violates any rule or order
12 promulgated pursuant thereto shall be liable for a civil penalty, to be assessed by the
13 Commissioner of Labor or designee, of not more than One Thousand Dollars (\$1,000.00)
14 per offense. The Commissioner of Labor or designee shall assess and collect any civil
15 penalty incurred under this subsection and, in the Commissioner's discretion, may remit,
16 mitigate or negotiate said penalty. In determining the amount of the penalty to be
17 assessed, or the amount agreed upon in any negotiation, consideration shall be given to
18 the appropriateness of such penalty in light of the life of the business of the person
19 charged, the gravity of the violation, and the extent to which the person charged has
20 complied with the provisions of the Oklahoma Asbestos Control Act or rules or orders
21 promulgated pursuant thereto or has otherwise attempted to remedy the consequences of

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 the violation. Individual proceedings shall be conducted pursuant to the provisions of the
2 Administrative Procedures Act.

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

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

7 1. "Amusement ride" means a device or combination of devices or elements that
8 carry, convey, or direct a person or persons over or through a fixed or restricted course or
9 within a defined area for the primary purpose of amusement or entertainment.

10 Amusement ride includes any amusement park device that uses treated water as the
11 means of transportation, including the structure and water quality of the device.

12 Amusement ride does not include the operation of articles of husbandry incidental to any
13 agricultural operation or the operation of amusement devices of a permanent nature
14 which are subject to building regulations issued by cities or counties and existing
15 applicable safety orders;

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

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

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

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

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

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

10 \$50.00

11 2. The inspection fee shall be:

12 a. Kiddie Rides \$25.00

13 \$50.00

14 b. Major Rides \$50.00

15 \$100.00

16 c. Inflatable Ride \$ 25.00

17 d. Water Park Ride \$100.00

18 e. Water Quality \$200.00

19 f. Return Trip Fee \$100.00

20 g. Other Rides per hour \$100.00

21 \$125.00

22 3. The annual waiver fee shall be:

1 The Commissioner may accept such insurance inspection as evidence sufficient to
2 issue a certificate of inspection for the rides.

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

6 2. The Commissioner shall account for and deposit all fee revenue received and
7 listed in this paragraph to the Safety Standards Revolving Fund created pursuant to
8 subsection F of this section:

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

19 F. There is hereby created in the State Treasury a revolving fund for the
20 Department of Labor to be designated the "Safety Standards Revolving Fund". The fund
21 shall be a continuing fund, not subject to fiscal year limitations, and shall consist of
22 monies collected by the Department and specifically designated for deposit pursuant to

1 the Amusement Ride Safety Act, the Oklahoma Welding Act and the Oklahoma Boiler
2 and Pressure Vessel Safety Act. Expenditures from said fund shall be made upon
3 warrants issued by the State Treasurer against claims filed as prescribed by law with the
4 Director of State Finance for approval and payment.

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

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

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

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

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

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

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

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

- 12 1. The term of office of one of the members shall expire July 1, 2009;
- 13 2. The term of office of one of the members shall expire July 1, 2010;
- 14 3. The term of office of one of the members shall expire July 1, 2011; and
- 15 4. The term of office of two of the members shall expire July 1, 2012.

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

18 C. The Commissioner of Labor may remove any member of the Board for
19 incompetence, neglect of duty, or malfeasance in office upon first giving the member a
20 copy of the charges and an opportunity to be heard. A vacancy on the Board shall be
21 filled for the unexpired term by appointment made by the Commissioner of Labor.

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

1 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
2 FINANCIAL SERVICES, dated 02-28-08 - DO PASS, As Amended.