

3 **Senate Bill No. 1531**

4 **As Amended**

5 SENATE BILL NO. 1531 - By: LEFTWICH of the Senate and McDANIEL
6 (Randy) of the House.

7 [labor - Employment Security Act of 1980 - effective date]

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

9 SECTION 1. AMENDATORY Section 1, Chapter 452, O.S.L.

10 2002 (40 O.S. Supp. 2007, Section 1-108), is amended to read as

11 follows:

12 Section 1-108. A. The term "employer" shall include any Indian
13 tribe for which service in employment is performed, as defined in
14 the Employment Security Act of 1980.

15 B. The term "employment" shall include service performed in the
16 employ of an Indian tribe, as defined in the Federal Unemployment
17 Tax Act (FUTA), 26 U.S.C., Section 3306(u), provided such service is
18 excluded from "employment" as defined in FUTA solely by reason of 26
19 U.S.C., Section 3306(c)(7), and is not otherwise excluded from
20 employment under the Employment Security Act of 1980. For purposes
21 of this section, the exclusions from employment in subparagraphs (c)
22 and (e) of paragraph (7) of Section 1-210 of this title shall be
23 applicable to services performed in the employ of an Indian tribe.

1 C. The terms "Indian tribe" and "tribal unit" shall have the
2 meanings ascribed to them in federal law. "Tribal unit" includes
3 subdivisions, subsidiaries, and business enterprises wholly owned by
4 an Indian tribe.

5 D. Benefits based on service in employment defined in this
6 section shall be payable in the same amount, on the same terms, and
7 subject to the same conditions as benefits payable on the basis of
8 other service subject to the Employment Security Act of 1980,
9 provided wages used to establish the claim were paid during a time
10 in which the account of the Indian tribe for which services were
11 rendered was not terminated pursuant to subparagraph a of paragraph
12 1 of subsection F of this section.

13 E. 1. An Indian tribe or tribal unit subject to the Employment
14 Security Act of 1980 shall pay contributions under the same terms
15 and conditions as required of nongovernmental employers for profit
16 subject to the Employment Security Act of 1980 unless the tribe
17 elects to pay into the State Unemployment Compensation Fund amounts
18 equal to the amount of benefits attributable to service in the
19 employ of the Indian tribe.

20 2. An Indian tribe or tribal unit electing to make payments in
21 lieu of contributions shall so notify the Oklahoma Employment
22 Security Commission in writing. ~~After making the election before~~
23 the last day of January of the calendar year in which the tribe

1 wishes to begin making reimbursement payments. If the Commission
2 determines the Indian tribe is eligible to exercise its option, the
3 Indian tribe shall be liable for reimbursement payments in lieu of
4 contributions in the same manner and subject to the same provisions
5 that apply to reimbursing nonprofit organizations as provided in
6 Part 8 of Article 3 of the Employment Security Act of 1980,
7 including formation of group accounts, and the proportionate
8 allocation of benefit costs, except that one hundred percent (100%)
9 of the extended benefits attributable to the Indian tribe shall be
10 reimbursed. Indian tribes shall determine whether reimbursement for
11 benefits paid shall be elected by the tribe as a whole, by
12 individual tribal units, or by combinations of individual tribal
13 units. If any provision contained in Part 8 of Article 3 of the
14 Employment Security Act of 1980, including the administrative rules
15 implementing that Part, contradicts a provision of this section, the
16 provision of this section shall control.

17 3. An Indian tribe or tribal unit shall be billed for the full
18 amount of benefits attributable to service in the employ of the
19 Indian tribe or tribal unit on the same schedule as other employing
20 units that have elected to make payments in lieu of contributions.

21 F. 1. a. If an Indian tribe or tribal unit thereof fails to
22 file the required reports and pay all late filing
23 penalties or fails to make required payments under the

1 Employment Security Act of 1980, including payment of
2 all interest, penalties, surcharges, or fees, a notice
3 of reporting or payment delinquency shall be mailed to
4 the Indian tribe at its last-known address. If the
5 delinquency is not corrected within ninety (90) days
6 of the date of mailing of the notice of delinquency,
7 the account of the Indian tribe shall be terminated
8 and notice of termination shall be mailed to the tribe
9 at its last-known address, together with a statement
10 of protest rights available pursuant to Section 3-115
11 of this title. If the account of an Indian tribe is
12 terminated pursuant to this subparagraph, the Indian
13 tribe shall not be considered an "employer" for
14 purposes of subsection A of this section, and services
15 performed for the Indian tribe shall not be considered
16 "employment" for purposes of subsection B of this
17 section.

18 b. The Oklahoma Employment Security Commission may
19 reinstate the account of any Indian tribe that loses
20 coverage under subparagraph a of this subsection if
21 the tribe pays all contributions, payments in lieu of
22 contributions, interest, penalties, surcharges, and
23 fees that are due and owing. Upon reinstatement, the

1 tribe shall again be considered an "employer" for
2 purposes of subsection A of this section and services
3 performed for the tribe shall again be considered
4 "employment" for purposes of subsection B of this
5 section.

6 2. a. Failure of an Indian tribe or tribal unit to make
7 required payments, including assessments of interest,
8 penalties, surcharges, and fees within ninety (90)
9 days of the due date for payment shall cause the
10 Indian tribe to lose the option to make payments in
11 lieu of contributions, as described in subsection E of
12 this section, for the following tax year unless
13 payment in full is received before January 31 of the
14 next tax year.

15 b. Any Indian tribe that loses the option to make
16 payments in lieu of contributions due to late payment
17 or nonpayment, as described in subparagraph a of this
18 paragraph, shall have the option reinstated if, after
19 a period of one (1) year, all contribution payments
20 have been timely made, provided no contributions,
21 payments in lieu of contributions for benefits paid,
22 interest, penalties, surcharges, or fees remain
23 outstanding.

1 G. The notice of payment or reporting delinquency to Indian
2 tribes or their tribal units, referred to in subparagraph a of
3 paragraph 1 of subsection F of this section, shall include
4 information that failure to make full payment and file required
5 reports within the prescribed time frame shall cause:

- 6 1. The Indian tribe to be liable for taxes under FUTA;
- 7 2. The Indian tribe to lose the option to make payments in lieu
8 of contributions;
- 9 3. The Indian tribe to be excepted from the definition of
10 "employer", as provided in subsection A of this section; and
- 11 4. Services performed in the employ of the Indian tribe to be
12 excepted from the definition of "employment", as provided in
13 subsection B of this section.

14 H. Extended benefits paid that are attributable to service in
15 the employ of an Indian tribe and not reimbursed by the United
16 States government shall be financed in their entirety by the Indian
17 tribe.

18 I. If an Indian tribe fails to make required payments under the
19 Employment Security Act of 1980, including the payment of all
20 interest, penalties, surcharges, and fees, within ninety (90) days
21 of the mailing of the notice of payment delinquency, the Oklahoma
22 Employment Security Commission shall immediately notify the United

1 States Internal Revenue Service and the United States Department of
2 Labor.

3 J. The provisions of subsections K and L of this section shall
4 provide a transition for the implementation of Section 166 of Public
5 Law 106-144 enacted by the Congress of the United States and
6 effective December 21, 2000, so that Indian tribes may qualify for
7 federal tax credits and employees of Indian tribes may be eligible
8 for benefits.

9 K. Any Indian tribe which did not have an active account with
10 the Oklahoma Employment Security Commission from January 1, 2001, to
11 the effective date of this section, but which desires to be covered
12 for benefits for that period of time, may elect to be subject to one
13 of the following, if the tribe notifies the Commission of the
14 election in writing:

15 1. To pay contributions. If the tribe elects to make payments
16 for contributions, interest or penalties shall not be assessed
17 against such tribe for the period from January 1, 2001, to the
18 effective date of this section if full payment for all contributions
19 due is made within twenty (20) days after an account is established
20 for the tribe; or

21 2. To make payments in lieu of contributions. If the tribe
22 elects to make payments in lieu of contributions, interest or
23 penalties shall not be assessed against such tribe for the period

1 from January 1, 2001, to the effective date of this section if all
2 reports that are due for that period are filed within twenty (20)
3 days after an account is established for the tribe.

4 L. Any Indian tribe which did not have an active account with
5 the Oklahoma Employment Security Commission from January 1, 2001, to
6 the effective date of this section and does not desire to be covered
7 for benefits for that period shall be covered by the provisions of
8 subsections A through I of this section. The coverage for any such
9 tribe shall be prospective only and shall not entitle any employee
10 of the tribe to benefits for any period prior to the effective date
11 of this section.

12 M. Indian tribes paying contributions prior to the date of this
13 section shall not be able to make an election to make payments in
14 lieu of contributions for the period from January 1, 2001, to the
15 effective date of this section. Any change in election shall be
16 prospective only.

17 N. Participation by any Indian tribe in the state unemployment
18 insurance system shall not operate as a waiver of the sovereign
19 immunity of the tribe.

20 SECTION 2. AMENDATORY 40 O.S. 2001, Section 1-208, as
21 last amended by Section 1, Chapter 176, O.S.L. 2006 (40 O.S. Supp.
22 2007, Section 1-208), is amended to read as follows:

23 Section 1-208.

1 EMPLOYER.

2 "Employer" means:

3 1. Any employing unit, except as provided under paragraphs 10
4 and 11 of this section, which:

5 a. for some portion of a day, but not necessarily
6 simultaneously, in each of twenty (20) different
7 calendar weeks, whether or not such weeks are or were
8 consecutive, within either the calendar year or the
9 preceding calendar year, and for the purpose of this
10 definition if any week includes both December 31 and
11 January 1, the days up to January 1 shall be deemed
12 one (1) calendar week and the days beginning January 1
13 another such week, has or had in employment one or
14 more individuals, irrespective of whether the same
15 individuals are or were employed in each such day, or
16 b. in any calendar quarter, in either the calendar year
17 or preceding calendar year paid for service in
18 employment wages of One Thousand Five Hundred Dollars
19 (\$1,500.00) or more;

20 2. Any individual or employing unit, whether or not an
21 employing unit at the time of the acquisition, which acquired
22 substantially all of the organization, employees, trade, business,
23 or assets thereof, of another which at the time of such acquisition

1 was an employer subject to the Employment Security Act of 1980; or
2 which acquired a part of the organization, employees, trade, or
3 business of another employing unit which at the time of such
4 acquisition was an employer subject to the Employment Security Act
5 of 1980;

6 3. Any individual or employing unit, whether or not an
7 employing unit at the time of acquisition, which acquired
8 substantially all of the organization, employees, trade, business,
9 or assets thereof, of another employing unit, if the employment
10 record of such individual or employing unit subsequent to such
11 acquisition, together with the employment record of the acquired
12 unit prior to such acquisition, both within the same calendar year,
13 would be sufficient to constitute an employing unit and employer
14 subject to the Employment Security Act of 1980 under paragraph 1 of
15 this section; or any individual or employing unit which acquired
16 substantially all of the organization, employees, trade, business,
17 or assets of another employing unit if such employing unit
18 subsequent to such acquisition, and such acquired unit prior to such
19 acquisition, both within the same calendar quarter, together paid
20 for service in employment wages totaling One Thousand Five Hundred
21 Dollars (\$1,500.00) or more;

22 4. Any employing unit which, together with one or more other
23 employing units, is owned or controlled, by legally enforceable

1 means or otherwise, directly by the same interest, or which owns or
2 controls one or more other employing units, by legally enforceable
3 means or otherwise, and which, if treated as a single unit with such
4 other employing unit, would be an employer under paragraph (1) of
5 this section;

6 5. Any employing unit which, having become an employer under
7 paragraph 1, 2, 3, 4, 6, 8, 10, ~~or 11~~ or 12 of this section has not,
8 under Section 3-202 of this title, ceased to be an employer subject
9 to the Employment Security Act of 1980;

10 6. For the effective period of its election pursuant to Section
11 3-203 of this title any other employing unit which has elected to
12 become subject to the Employment Security Act of 1980;

13 7. Any department of this state, any other state, and all
14 instrumentalities thereof, including any political subdivisions and
15 their instrumentalities, for which service in employment, as defined
16 in paragraph (3) of Section 1-210 of this title, is performed,
17 except as provided under paragraphs 10 and 11 of this section;

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

22 9. For purposes of paragraphs 1, 8, 10 and 11 of this section,
23 employment shall include service which would constitute employment

1 but for the fact that the service is deemed to be performed entirely
2 within another state pursuant to an election under an arrangement
3 entered into in accordance with Section 4-702 of this title by the
4 Oklahoma Employment Security Commission and an agency charged with
5 the administration of any other state or federal unemployment
6 compensation law;

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

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

21 12. Any employing unit which is not an employer by reason of
22 any other provisions of the Employment Security Act of 1980 shall
23 nevertheless be an "employer" if either:

- 1 a. within the calendar year or preceding calendar year,
2 service is or was performed, with respect to which the
3 employing unit is liable for any federal tax against
4 which credit may be taken by the employing unit for
5 contributions required to be paid by it into a state
6 unemployment fund, or
7 b. the employing unit is required to be an "employer" as
8 a condition for approval of the Employment Security
9 Act of 1980 for full tax credit to be allowed against
10 the tax imposed by the Federal Unemployment Tax Act,
11 26 U.S.C., Section 3301 et seq.; or

12 13. If two or more employers share common ownership,
13 management, or control, the Commission may combine their merit
14 rating accounts, including their actual contribution and benefit
15 experience, annual payrolls, and contribution rates into one
16 account.

17 SECTION 3. AMENDATORY 40 O.S. 2001, Section 1-210, as
18 last amended by Section 2, Chapter 176, O.S.L. 2006 (40 O.S. Supp.
19 2007, Section 1-210), is amended to read as follows:

20 Section 1-210.

21 EMPLOYMENT.

22 "Employment" means:

1 (1) Any service, including service in interstate commerce,
2 performed by:

3 (a) any officer of a corporation; or

4 (b) any individual who, under the usual common-law rules
5 applicable in determining the employer-employee
6 relationship, has the status of an employee.

7 (2) (a) any service, including service in interstate commerce,
8 performed by any individual other than an individual
9 who is an employee under paragraph (1) of this section
10 who performs services for remuneration for any person:

11 (i) as an agent-driver or commission-driver engaged
12 in distributing meat products, vegetable
13 products, fruit products, bakery products,
14 beverages other than milk, or laundry or dry
15 cleaning services, for his or her principal; or

16 (ii) as a traveling or city salesperson, other than as
17 an agent-driver or commission-driver, engaged
18 upon a full-time basis in the solicitation on
19 behalf of, and the transmission to, his or her
20 principal, except for sideline sales activities
21 on behalf of some other person, of orders from
22 wholesalers, retailers, contractors, or operators
23 of hotels, restaurants or other similar

1 establishments for merchandise for resale or
2 supplies for use in their business operations;

3 (b) provided, the term "employment" shall include services
4 described in divisions (i) and (ii) of subparagraph
5 (a) of this paragraph if:

6 (i) the contract of service contemplates that
7 substantially all of the services are to be
8 performed personally by such individual;

9 (ii) the individual does not have a substantial
10 investment in facilities used in connection with
11 the performance of the services, other than in
12 facilities for transportation; and

13 (iii) the services are not in the nature of a single
14 transaction that is not part of a continuing
15 relationship with the person for whom the
16 services are performed.

17 (3) Service performed in the employ of this state or any of its
18 instrumentalities or any political subdivision thereof or any of its
19 instrumentalities or any instrumentality of more than one of the
20 foregoing or any instrumentality of any of the foregoing and one or
21 more other states or political subdivisions; provided, that such
22 service is excluded from "employment" as defined in the Federal

1 Unemployment Tax Act, 26 U.S.C., Section 3306(c)(7), and is not
2 excluded from "employment" under paragraph (7) of this section.

3 (4) Service performed by an individual in the employ of a
4 community chest, fund, foundation or corporation, organized and
5 operated exclusively for religious, charitable, scientific, testing
6 for public safety, literary or educational purposes, or for the
7 prevention of cruelty to children or animals, no part of the net
8 earnings of which inures to the benefit of any private shareholder
9 or individual, no substantial part of the activities of which is
10 carrying on propaganda, or otherwise attempting to influence
11 legislation and which does not participate in, or intervene in,
12 including the publishing or distributing of statements, any
13 political campaign on behalf of any candidate for public office;
14 provided that such organization had four or more individuals in
15 employment for some portion of a day in each of twenty (20)
16 different weeks, whether or not such weeks were consecutive, within
17 either the calendar year or preceding calendar year, regardless of
18 whether they were employed at the same moment of time.

19 (5) Service performed by an individual in agricultural labor as
20 defined in subparagraph (a) of paragraph (15) of this section when:

- 21 (a) the service is performed for a person who:
22 (i) during any calendar quarter in either the
23 calendar year or the preceding calendar year,

1 paid remuneration in cash of Twenty Thousand
2 Dollars (\$20,000.00) or more to individuals
3 employed in agricultural labor; or

4 (ii) for some portion of a day in each of twenty (20)
5 different calendar weeks, whether or not the
6 weeks were consecutive, in either the calendar
7 year or the preceding calendar year, employed in
8 agricultural labor ten or more individuals,
9 regardless of whether they were employed at the
10 same moment of time.

11 (b) for the purposes of this paragraph any individual who
12 is a member of a crew furnished by a crew leader to
13 perform service in agricultural labor for any other
14 person shall be treated as an employee of the crew
15 leader:

16 (i) if the crew leader holds a valid certificate of
17 registration under the Farm Labor Contractor
18 Registration Act of 1963, Public Law 95-562, 29
19 U.S.C., Sections 1801 through 1872; or
20 substantially all the members of the crew operate
21 or maintain tractors, mechanized harvesting or
22 crop-dusting equipment, or any other mechanized

1 equipment, which is provided by the crew leader;
2 and
3 (ii) if the individual is not an employee of the other
4 person within the meaning of paragraph (1) of
5 this section or subparagraph (d) of this
6 paragraph.
7 (c) for the purposes of this paragraph, in the case of any
8 individual who is furnished by a crew leader to
9 perform service in agricultural labor for any other
10 person and who is not treated as an employee of the
11 crew leader under subparagraph (b) of this paragraph:
12 (i) the other person and not the crew leader shall be
13 treated as the employer of the individual; and
14 (ii) the other person shall be treated as having paid
15 cash remuneration to the individual in an amount
16 equal to the amount of cash remuneration paid to
17 the individual by the crew leader, either on his
18 or her own behalf or on behalf of the other
19 person, for the service in agricultural labor
20 performed for the other person.
21 (d) for the purposes of this paragraph, the term "crew
22 leader" means an individual who:

- 1 (i) furnishes individuals to perform service in
2 agricultural labor for any other person;
- 3 (ii) pays, either on his or her own behalf or on
4 behalf of another person, the individuals so
5 furnished by the crew leader for the service in
6 agricultural labor performed by them; and
- 7 (iii) has not entered into a written agreement with the
8 other person (farm operator) under which the
9 individual is designated as an employee of the
10 other person.

11 (6) The term "employment" shall include domestic service in a
12 private home, local college club or local chapter of a college
13 fraternity or sorority performed for a person who paid cash
14 remuneration of One Thousand Dollars (\$1,000.00) or more in the
15 calendar year or the preceding calendar year to individuals employed
16 in such domestic service in any calendar quarter.

17 (7) For the purposes of paragraphs (3) and (4) of this section
18 the term "employment" does not apply to service performed:

- 19 (a) in the employ of:
- 20 (i) a church or convention or association of
21 churches; or
- 22 (ii) an organization which is operated primarily for
23 religious purposes and which is operated,

1 supervised, controlled, or principally supported
2 by a church or convention or association of
3 churches;

4 (b) by a duly ordained, commissioned or licensed minister
5 of a church in the exercise of his or her ministry or
6 by a member of a religious order in the exercise of
7 duties required by the order;

8 (c) in the employ of a governmental entity referred to in
9 paragraph (3) of this section if the service is
10 performed by an individual in the exercise of duties:

11 (i) as an elected official;

12 (ii) as a member of a legislative body, or a member of
13 the judiciary of a state or political
14 subdivision;

15 (iii) as a member of the State National Guard or Air
16 National Guard;

17 (iv) as an employee serving on a temporary basis in
18 case of fire, storm, snow, earthquake, flood or
19 similar emergency;

20 (v) in a position which, under or pursuant to the
21 laws of this state, is designated as a major
22 nontenured policymaking or advisory position, or
23 a policymaking or advisory position the

1 performance of the duties of which ordinarily
2 does not require more than eight (8) hours per
3 week;

4 (vi) as an election official or election worker if the
5 amount of remuneration received by the individual
6 during the calendar year for services as an
7 election official or election worker is less than
8 One Thousand Dollars (\$1,000.00);

9 (d) by an individual receiving rehabilitation or
10 remunerative work while participating or enrolled in a
11 program in a facility that:

12 (i) conducts a program of rehabilitation for
13 individuals whose earning capacity is impaired by
14 age, physical or mental deficiency, or injury; or

15 (ii) conducts a program that provides remunerative
16 work for individuals who, because of their
17 impaired mental or physical capacity cannot be
18 readily absorbed into the competitive labor
19 market;

20 (e) as part of an unemployment work-relief or work-
21 training program assisted or financed in whole or in
22 part by any federal agency or an agency of a state or

1 political subdivision thereof, by an individual
2 receiving such work-relief or work-training; or
3 (f) by an inmate of a custodial or penal institution.

4 (8) The term "employment" shall include the service of an
5 individual who is a citizen of the United States, performed outside
6 the United States, except in Canada, in the employ of an American
7 employer other than service which is deemed "employment" under the
8 provisions of paragraphs (11) or (12) of this section or the
9 parallel provisions of another state's law, if:

- 10 (a) the employer's principal place of business in the
11 United States is located in this state;
- 12 (b) the employer has no place of business in the United
13 States, but:
 - 14 (i) the employer is an individual who is a resident
15 of this state;
 - 16 (ii) the employer is a corporation which is organized
17 under the laws of this state; or
 - 18 (iii) the employer is a partnership or a trust and the
19 number of the partners or trustees who are
20 residents of this state is greater than the
21 number who are residents of any one other state;
- 22 (c) none of the criteria of subparagraphs (a) and (b) of
23 this paragraph are met but the employer has elected

1 coverage in this state or, the employer having failed
2 to elect coverage in any state, the individual has
3 filed a claim for benefits, based on such service,
4 under the law of this state;

5 (d) an "American employer", for purposes of this
6 subsection, means a person who is:

7 (i) an individual who is a resident of the United
8 States;

9 (ii) a partnership if two-thirds or more of the
10 partners are residents of the United States;

11 (iii) a trust, if all of the trustees are residents of
12 the United States; or

13 (iv) a corporation organized under the laws of the
14 United States or of any state; and

15 (e) the term "United States", for the purposes of this
16 subsection, includes the states, the District of
17 Columbia, the Commonwealth of Puerto Rico and the
18 Virgin Islands.

19 (9) Notwithstanding paragraph (11) of this section, all service
20 performed by an officer or member of the crew of an American vessel
21 on or in connection with the vessel, if the operating office, from
22 which the operations of the vessel operating on navigable waters
23 within, or within and without, the United States are ordinarily and

1 regularly supervised, managed, directed and controlled is within
2 this state.

3 (10) Notwithstanding any other provisions of the Employment
4 Security Act of 1980, "employment":

5 (a) includes any service with respect to which a tax is
6 required to be paid under any federal law imposing a
7 tax against which credit may be taken for
8 contributions required to be paid into a state
9 unemployment fund; and

10 (b) includes any service which is required to be
11 "employment" for full tax credit to be allowed against
12 the tax imposed by the Federal Unemployment Tax Act of
13 1954, Public Law 591, Chapter 736, as amended, 26
14 U.S.C., Section 3301 et seq.

15 (11) The term "employment" shall include an individual's entire
16 service, performed within or both within and without this state if:

17 (a) the service is localized in this state; or

18 (b) the service is not localized in any state but some of
19 the service is performed in this state and:

20 (i) the individual's base of operations, or, if there
21 is no base of operations, then the place from
22 which the individual's employment is directed or
23 controlled is in this state; or

1 (ii) the individual's base of operations or place from
2 which the service is directed or controlled is
3 not in any state in which some part of the
4 service is performed but the individual's
5 residence is in this state.

6 (12) (a) Services covered by an election pursuant to Section 3-
7 203 of this title; and

8 (b) services covered by an arrangement pursuant to Section
9 4-701 et seq. of this title between the Oklahoma
10 Employment Security Commission and the agency charged
11 with the administration of any other state or federal
12 unemployment compensation law, pursuant to which all
13 services performed by an individual for an employing
14 unit are deemed to be performed entirely within this
15 state, shall be deemed to be employment if the
16 Commission has approved an election of the employing
17 unit for whom such services are performed, pursuant to
18 which the entire service of such individual during the
19 period covered by such election is deemed to be
20 insured work.

21 (13) Service shall be deemed to be localized within a state if:

22 (a) the service is performed entirely within such state;

23 or

1 (b) the service is performed both within and without such
2 state, but the service performed without such state is
3 incidental to the individual's service within the
4 state; for example, is temporary or transitory in
5 nature or consists of isolated transactions.

6 (14) Notwithstanding any other provision of this subsection,
7 services performed by an individual for wages or under any contract
8 of hire shall be deemed to be employment subject to the Employment
9 Security Act of 1980 unless and until it is shown to the
10 satisfaction of the Commission that:

11 (a) such individual has been and will continue to be free
12 from control or direction over the performance of the
13 services, both under the contract of hire and in fact;
14 and

15 (b) such individual is customarily engaged in an
16 independently established business; or

17 (c) such service is outside the usual course of the
18 business for which the service is performed and that
19 the service is performed outside of all the places of
20 business of the enterprise for which the service is
21 performed.

22 (15) The term "employment" shall not include:

- 1 (a) services performed by an individual in agricultural
2 labor, except as provided under paragraph (5) of this
3 section. Services performed by an individual who is a
4 nonresident alien admitted to the United States to
5 perform agricultural labor, pursuant to 8 U.S.C.
6 Sections 1101(a), 1184(c) and 1188. For purposes of
7 this subparagraph, the term "agricultural labor" means
8 remunerated service performed in agricultural labor as
9 defined in the Federal Unemployment Tax Act, 26
10 U.S.C., Section 3306(k);
- 11 (b) domestic service, except as provided under paragraph
12 (6) of this section, in a private home, local college
13 club, or local chapter of a college fraternity or
14 sorority;
- 15 (c) service performed by an individual in the employ of
16 his or her son, daughter, or spouse, and service
17 performed by a child under the age of twenty-one (21)
18 in the employ of his or her father or mother, or both
19 father and mother;
- 20 (d) service performed in the employ of the United States
21 government or an instrumentality of the United States
22 exempt under the Constitution of the United States
23 from the contributions imposed by the Employment

1 Security Act of 1980, except that to the extent that
2 the Congress of the United States shall permit states
3 to require any instrumentalities of the United States
4 to make payments into an unemployment fund under a
5 state unemployment compensation law, all of the
6 provisions of the Employment Security Act of 1980
7 shall be applicable to such instrumentalities, and to
8 services performed for such instrumentalities, in the
9 same manner, to the same extent, and on the same terms
10 as to all other employers, employing units,
11 individuals and services; provided that if this state
12 shall not be certified for any year by the Secretary
13 of Labor of the United States under the Federal
14 Internal Revenue Code, 26 U.S.C., Section 3304(c), the
15 payments required of such instrumentalities with
16 respect to the year shall be refunded by the
17 Commission from the fund in the same manner and within
18 the same period as is provided in Section 3-304 of
19 this title with respect to contributions erroneously
20 collected;

21 (e) service with respect to which unemployment
22 compensation is payable under an unemployment
23 compensation system established by an act of Congress;

- 1 (f) service performed in the employ of a foreign
2 government, including service as a consul or other
3 officer or employee or a nondiplomatic representative;
- 4 (g) service performed in the employ of an instrumentality
5 wholly owned by a foreign government:
- 6 (i) if the service is of a character similar to that
7 performed in foreign countries by employees of
8 the United States government or of an
9 instrumentality thereof, and
- 10 (ii) if the Commission finds that the United States
11 Secretary of State has certified to the United
12 States Secretary of the Treasury that the foreign
13 government, with respect to whose instrumentality
14 exemption is claimed, grants an equivalent
15 exemption with respect to similar service
16 performed in the foreign country by employees of
17 the United States government and of
18 instrumentalities thereof;
- 19 (h) service covered by an arrangement between the
20 Commission and the agency charged with the
21 administration of any other state or federal
22 unemployment compensation law pursuant to which all
23 services performed by an individual for an employing

1 unit during the period covered by such employing
2 unit's duly approved election, are deemed to be
3 performed entirely within the jurisdiction of such
4 other state or federal agency;

5 (i) service performed as a student nurse in the employ of
6 a hospital or a nurses' training school by an
7 individual who is enrolled and is regularly attending
8 classes in a nurses' training school chartered or
9 approved pursuant to state law; and service performed
10 as an intern in the employ of a hospital by an
11 individual who has completed a four-year course in a
12 medical school chartered or approved pursuant to state
13 law;

14 (j) service performed by an individual for a person, firm,
15 association, trust, partnership or corporation as an
16 insurance agent, or as an insurance solicitor or as a
17 licensed real estate agent, if all such service
18 performed by such individual for such person is
19 performed for remuneration solely by way of
20 commissions or fees;

21 (k) service performed by an individual under the age of
22 eighteen (18) in the delivery and distribution of
23 newspapers or shopping news, not including delivery or

1 distribution to any point for subsequent delivery or
2 distribution, and services performed by an individual
3 eighteen (18) years of age or older who meets the
4 definition of a "direct seller" as defined in 26
5 U.S.C., Section 3508(b)(2), that states in pertinent
6 part:

7 (i) the individual must be engaged in the delivery or
8 distribution of newspapers or shopping news,
9 including any services directly related to such
10 trade or business,

11 (ii) substantially all the remuneration, whether or
12 not paid in cash, for the performance of the
13 services described in clause (i) of this
14 subdivision is directly related to sales or other
15 output, including the performance of services,
16 rather than the number of hours worked, and

17 (iii) the services performed by the individual are
18 performed pursuant to a written contract between
19 the person and the person for whom the services
20 are performed and the contract provides that the
21 person will not be treated as an employee with
22 respect to the services;

- 1 (l) service performed in the employ of a school, college
2 or university, if the service is performed:
- 3 (i) by a student who is enrolled and is regularly
4 attending classes at the school, college, or
5 university, or
- 6 (ii) by the spouse of the student, if the spouse is
7 advised, at the time the spouse commences to
8 perform the service, that:
- 9 (I) the employment of the spouse to perform the
10 service is provided under a program to
11 provide financial assistance to the student
12 by the school, college, or university, and
- 13 (II) the employment will not be covered by any
14 program of unemployment insurance;
- 15 (m) service performed by an individual who is enrolled at
16 a nonprofit or public educational institution which
17 normally maintains a regular faculty and curriculum
18 and normally has a regularly organized body of
19 students in attendance at the place where its
20 educational activities are carried on as a student in
21 a full-time program, taken for credit at the
22 institution, which combines academic instruction with
23 work experience, if the service is an integral part of

1 the program, and the institution has so certified to
2 the employer, except that this provision shall not
3 apply to service performed in a program established
4 for or on behalf of an employer or group of employers;
5 (n) service performed in the employ of a hospital, if the
6 service is performed by a patient of the hospital;
7 (o) services performed by cooperative extension personnel
8 holding federal appointments employed by state
9 institutions of higher learning;
10 (p) earnings of employees being paid by state warrants who
11 are presently covered by the Federal Unemployment
12 Compensation Act, 5 U.S.C., Section 8501 et seq., by
13 virtue of their federal status;
14 (q) cosmetology services performed by an individual in a
15 beauty shop, as defined by Section 199.1 of Title 59
16 of the Oklahoma Statutes, pursuant to an agreement
17 whereby the owner of the beauty shop leases or rents
18 facilities for cosmetology to such individual;
19 (r) barbering services performed by an individual in a
20 barber shop, as defined by Section 61.5 of Title 59 of
21 the Oklahoma Statutes, pursuant to an agreement
22 whereby the owner of the barber shop leases or rents
23 facilities for barbering to such individual;

- 1 (s) in-home services performed in a medical care program
2 such as the ~~nontechnical medical care program~~ personal
3 care services program, or social services program, as
4 certified and approved by the Department of Human
5 Services or the ~~Federal Health Care Financing~~
6 ~~Administration~~ Center for Medicare and Medicaid
7 Services or as a participant in a work or training
8 program administered by the Department of Human
9 Services;
- 10 (t) riding services performed by a jockey and services
11 performed by a trainer of race horses in an approved
12 race licensed by the Oklahoma Horse Racing Commission;
- 13 (u) service performed by an individual whose remuneration
14 consists solely of commissions, overrides, bonuses,
15 and differentials related to sales or other output
16 derived from in-person sales to, or solicitation of
17 orders from, ultimate consumers primarily in the home,
18 or otherwise than in a permanent retail establishment;
- 19 (v) service performed by a person, commonly referred to as
20 "owner-operator", who owns or leases a truck-tractor
21 or truck for hire, provided the owner-operator
22 actually operates the truck-tractor or truck and,
23 further, that the entity contracting with the owner-

1 operator is not the lessor of the truck-tractor or
2 truck;

3 (w) services performed as a chopper of cotton who weeds or
4 thins cotton crops by hand or hoe. This subsection
5 shall be interpreted and applied consistently with the
6 Federal Unemployment Tax Act, 26 U.S.C., Sections
7 3304(a)(6)(A) and 3306(k); or

8 (x) services performed for a private for-profit person or
9 entity by an individual as a landman:

10 (i) if the individual is engaged primarily in
11 negotiating for the acquisition or divestiture of
12 mineral rights or negotiating business agreements
13 that provide for the exploration for or
14 development of minerals,

15 (ii) if substantially all remuneration paid in cash or
16 otherwise for the performance of the services is
17 directly related to the completion by the
18 individual of the specific tasks contracted for
19 rather than to the number of hours worked by the
20 individual, and

21 (iii) if the services performed by the individual are
22 performed under a written contract between the
23 individual and the person for whom the services

1 are performed; provided that the individual is to
2 be treated as an independent contractor and not
3 as an employee with respect to the services
4 provided under the contract.

5 SECTION 4. AMENDATORY 40 O.S. 2001, Section 1-224, as
6 last amended by Section 2, Chapter 254, O.S.L. 2007 (40 O.S. Supp.
7 2007, Section 1-224), is amended to read as follows:

8 Section 1-224.

9 FILE.

10 A. When any document is required to be filed by the provisions
11 of the Employment Security Act of 1980 or the rules promulgated
12 under the authority of the Employment Security Act of 1980 with the
13 Oklahoma Employment Security Commission, any of its representatives,
14 or the Board of Review for the Oklahoma Employment Security
15 Commission, the term "file", "files", or "filed" shall be defined as
16 follows:

17 1. Hand-delivered to ~~an~~ the central administrative office of
18 the Oklahoma Employment Security Commission by the close of business
19 on or before the date due;

20 2. Telefaxed to ~~an office of~~ the telefax number indicated on
21 the determination letter, order or other document issued by the
22 Oklahoma Employment Security Commission by midnight on or before the
23 date due. Timely telefaxing shall be determined by the date and

1 time ~~printed~~ recorded by the Commission's telefax ~~machine on the~~
2 ~~document received or the date and time on the sender's transmittal~~
3 ~~sheet~~ equipment;

4 3. Mailed with sufficient postage and properly addressed to an
5 ~~office of~~ the address indicated on the determination letter, order
6 or other document issued by the Oklahoma Employment Security
7 Commission on or before the date due. Timely mailing shall be
8 determined by the postmark; or

9 4. Electronically transmitted via data lines to the Oklahoma
10 Employment Security Commission, as directed by the instructions on
11 the determination letter, order or other document issued by the
12 Commission, by midnight on or before the date due. Timely
13 transmission shall be determined by the Commission's transmission
14 log file.

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

20 SECTION 5. AMENDATORY Section 2, Chapter 102, O.S.L.
21 2004 (40 O.S. Supp. 2007, Section 1-226), is amended to read as
22 follows:

1 Section 1-226. A. "Initial Claim" means a new claim
2 application submitted by a claimant to establish a benefit year for
3 unemployment insurance benefits.

4 B. "Additional initial claim" means a claim application which
5 reactivates a claim during an existing benefit year and certifies to
6 a period of employment which occurred subsequent to the date of the
7 filing of the last initial, additional or reopened claim.

8 C. "Reopened claim" means a claim application which reactivates
9 a claim during an existing benefit year when a claimant stopped
10 filing for benefits before his or her claim was exhausted, but in
11 which there occurred no intervening employment from the date of the
12 filing of the last initial, additional or reopened claim.

13 D. "Continued claim series" means an uninterrupted series of
14 weekly claims filed by a claimant during the benefit year.

15 SECTION 6. AMENDATORY 40 O.S. 2001, Section 2-209, as
16 amended by Section 3, Chapter 102, O.S.L. 2004 (40 O.S. Supp. 2007,
17 Section 2-209), is amended to read as follows:

18 Section 2-209. Benefits based on service in employment defined
19 in paragraphs (2), (3) or (4) of Section 1-210 of this title,
20 including any federally operated educational institutions, shall be
21 payable in the same amount, on the same terms and subject to the
22 same conditions as benefits payable on the basis of other service
23 subject to the Employment Security Act of 1980, except that:

1 (1) With respect to service performed in an instructional,
2 research or principal administrative capacity for an educational
3 institution, benefits shall not be paid based on such services for
4 any week of unemployment commencing during the period between two
5 (2) successive academic years, or during a similar period between
6 two regular but not successive terms, or during a period of paid
7 sabbatical leave provided for in the individual's contract, to any
8 individual if such individual performs such services in the first of
9 such academic years or terms and if there is a contract or a
10 reasonable assurance that such individual will perform services in
11 any such capacity for any educational institution in the second of
12 such academic years or terms.

13 (2) With respect to services performed in any other capacity
14 for an educational institution, benefits shall not be paid on the
15 basis of such services to any individual for any week which
16 commences during a period between two (2) successive academic years
17 or terms if such individual performs such services in the first of
18 such academic years or terms and there is a reasonable assurance
19 that such individual will perform such services in the second of
20 such academic years or terms, except that if compensation is denied
21 to any individual under this paragraph and such individual was not
22 offered an opportunity to perform such services for the educational
23 institution for the second of such academic years or terms, such

1 individual shall be entitled to a retroactive payment of
2 compensation for each week for which the individual filed a timely
3 claim for compensation and for which compensation was denied solely
4 by reason of this clause.

5 (3) With respect to any services described in paragraphs (1)
6 and (2) of this section, benefits shall not be payable on the basis
7 of services in any such capacities to any individual for any week
8 which commences during an established and customary vacation period
9 or holiday recess if such individual performs such services in the
10 period immediately before such vacation period or holiday recess,
11 and there is a reasonable assurance that such individual will
12 perform such services in the period immediately following such
13 vacation period or holiday recess.

14 (4) With respect to any services described in paragraphs (1)
15 and (2) of this section, benefits shall not be payable on the basis
16 of services in any such capacities as specified in paragraphs (1),
17 (2) and (3) of this section to any individual who performed such
18 services in an educational institution while in the employ of an
19 educational service agency. For purposes of this paragraph, the
20 term "educational service agency" means a governmental agency or
21 governmental entity which is established and operated exclusively
22 for the purpose of providing such services to one or more
23 educational institutions.

1 (5) With respect to services to which paragraphs (2), (3) or
2 (4) of Section 1-210 of this title apply, if such services are
3 provided to or on behalf of an educational institution, benefits
4 shall not be payable under the same circumstances and subject to the
5 same terms and conditions as described in paragraphs (1), (2), (3)
6 and (4) of this section.

7 (6) If an individual has employment with an educational
8 institution and has employment with a noneducation employer or
9 employers during the base period of the individual's benefit year,
10 the individual may become eligible for benefits during the between-
11 term ~~disqualification~~ denial period, based only on the
12 noneducational employment.

13 SECTION 7. AMENDATORY 40 O.S. 2001, Section 2-404, is
14 amended to read as follows:

15 Section 2-404.

16 LEAVING WORK VOLUNTARILY. A. An individual shall be
17 disqualified for benefits for leaving his or her last work
18 voluntarily without good cause connected to the work, if so found by
19 the Commission. ~~Disqualification~~

20 B. When adjudicating a separation from employment in an initial
21 claim or additional initial claim, disqualification under this
22 subsection shall continue for the full period of unemployment next
23 ensuing after ~~he has~~ the individual left ~~his~~ work voluntarily

1 without good cause connected to the work and until ~~such~~ the
2 individual has become reemployed and has earned wages equal to or in
3 excess of ten (10) times his or her weekly benefit amount.

4 C. When adjudicating a separation from employment during a
5 continued claim series, disqualification under this subsection shall
6 be for the week of the occurrence of leaving work voluntarily
7 without good cause connected to the work.

8 D. Good cause shall include but not be limited to unfair
9 treatment of the employee or the creating of unusually difficult
10 working conditions by the employer.

11 SECTION 8. AMENDATORY 40 O.S. 2001, Section 2-503, as
12 amended by Section 4, Chapter 102, O.S.L. 2004 (40 O.S. Supp. 2007,
13 Section 2-503), is amended to read as follows:

14 Section 2-503.

15 CLAIMS, NOTICES AND OBJECTIONS.

16 A. Claims for benefits shall be made in accordance with such
17 rule as the Oklahoma Employment Security Commission may prescribe.

18 B. Promptly after ~~the~~ an initial claim or ~~the~~ an additional
19 initial claim is filed, the Commission shall give written notice of
20 the claim to the last employer of the claimant for whom he or she
21 worked at least fifteen (15) working days. Promptly after the
22 Commission is notified of the claimant's separation from an
23 employment obtained by a claimant during a continued claim series,

1 the Commission shall give written notice of the claim to the last
2 separating employer. Notices to separating employers during a
3 continued claim series will be given to the last employer in the
4 claim week without regard to length of employment.

5 C. Promptly after the claim is paid for the fifth week of
6 benefits the Commission shall give written notice of the claim to
7 all other employers of the claimant during the claimant's base
8 period. The notice will be given pursuant to Section 3-106 of this
9 title.

10 D. Notices shall be deemed given when the Commission deposits
11 the same in the United States mail addressed to the employer's last-
12 known address. Notice shall be presumed prima facie to have been
13 given to the employer to whom addressed on the date stated in the
14 written notice.

15 E. Within ten (10) days after the date on the notice or the
16 date of the postmark on the envelope in which the notice was sent,
17 whichever is later, an employer may file with the Commission at the
18 address prescribed in the notice written objections to the claim
19 setting forth specifically the facts which:

20 1. Make the claimant ineligible for benefits under Sections 2-
21 201 through 2-209 of this title;

22 2. Disqualify the claimant from benefits under Sections 2-401
23 through 2-418 of this title; or

1 3. Relieve such employer from being charged for the benefits
2 wages of such claimant.

3 SECTION 9. AMENDATORY 40 O.S. 2001, Section 2-610, as
4 amended by Section 10, Chapter 176, O.S.L. 2006 (40 O.S. Supp. 2007,
5 Section 2-610), is amended to read as follows:

6 Section 2-610.

7 JUDICIAL REVIEW.

8 (1) Within the ten (10) days after the day a notice of decision
9 of the Board of Review is mailed to the parties, the Oklahoma
10 Employment Security Commission, or any party to the proceedings
11 before the Board of Review, may obtain judicial review thereof by
12 filing in the district court of the county in which the claimant
13 resides, or if the claimant is not a resident of the State of
14 Oklahoma then in the district court of Oklahoma County, a petition
15 for review of such decision, against the Board of Review. In such
16 petition for review all other parties to the proceeding before the
17 Board of Review and the Commission shall be made codefendants. Such
18 petition for review need not be verified but shall state
19 specifically the grounds upon which such review is sought. A copy
20 of the petition for review shall be served upon a member of the
21 Board of Review or upon such persons as the Board of Review may
22 designate and the petitioner shall also deliver to the person so
23 served as many copies of the petition as there are defendants. The

1 Board of Review shall forthwith send by mail to each other party to
2 the proceeding a copy of such petition, and such mailing shall be
3 deemed to be service upon all such parties. In any proceeding under
4 this section the findings of the Board of Review as to the facts, if
5 supported by evidence, shall be conclusive and the jurisdiction of
6 the court shall be confined to questions of law. No additional
7 evidence shall be received by the court, but the court may remand
8 the case and order additional evidence to be taken before the Board
9 of Review, and the Board may, after hearing the additional evidence,
10 modify its findings of fact or conclusions, and file the additional
11 or modified findings and conclusions, together with the transcript
12 of the additional record, with the court.

13 (2) Within sixty (60) days of the ~~filing~~ date of service of the
14 petition on the Board of Review, the Board of Review shall certify
15 and file with the court a certified copy of the record of the case,
16 including all documents and papers and a transcript of all testimony
17 taken in the matter, together with the Board of Review's findings,
18 conclusions, and decision therein.

19 (3) Such proceedings shall be heard in a summary manner and
20 shall be given precedence over all other civil cases. An appeal may
21 be taken from the decision of the district court to the Supreme
22 Court of this state in the same manner as is provided in other civil
23 cases. It shall not be necessary as a condition precedent to

1 judicial review of any decision of the Board of Review to enter
2 exceptions to the rulings of such Board, and no bond shall be
3 required as a condition of initiating a proceeding for judicial
4 review or entering an appeal from the decision of the court upon
5 such review. Upon the final termination of such judicial
6 proceeding, the Board of Review shall enter an order in accordance
7 with the mandate of the court.

8 SECTION 10. AMENDATORY Section 17, Chapter 452, O.S.L.
9 2002, as amended by Section 5, Chapter 177, O.S.L. 2003 (40 O.S.
10 Supp. 2007, Section 2-618), is amended to read as follows:

11 Section 2-618.

12 LEVY ON INCOME AND MONETARY ASSETS.

13 A. As used in this section, the following words have the
14 following meanings:

15 1. "Bank" means any state bank or banking association, national
16 bank or banking association, savings and loan company, credit union,
17 or any other financial institution;

18 2. "Bank account" means any checking or savings account the
19 debtor has with any bank;

20 3. "Debtor" means any person that is the subject of a warrant
21 of levy and lien issued pursuant to Section 2-617 of this title;

1 4. "Earnings" means any form of payment to an individual
2 including, but not limited to, salary, wages, commission, or other
3 compensation; and

4 5. "Employer" means any type of business or organization that
5 owes earnings to a debtor.

6 B. If any debtor shall fail to pay his or her indebtedness to
7 the Oklahoma Employment Security Commission and after the debtor has
8 been notified of the amount due and demand for payment has been
9 made, it shall be lawful for the Commission to collect the amount
10 owed by levy upon the debtor's employer or any bank account of the
11 debtor.

12 C. To levy upon an employer of the debtor, the Commission must
13 serve a Notice of Levy on the employer along with the warrant of
14 levy and lien that sets out the amount owing on the benefit
15 overpayment of the debtor, with interest. The levy will have the
16 same priority, and be subject to the same exceptions, as a
17 continuing earnings garnishment provided for in Section 1173.4 of
18 Title 12 of the Oklahoma Statutes. The following procedures will
19 apply to a Notice of Levy served on an employer:

20 1. The employer shall answer the Notice of Levy on a form
21 provided by the Commission. The employer shall follow the procedure
22 for answering a continuing earnings garnishment as set out in

1 subsection F of Section 1173.4 of Title 12 of the Oklahoma Statutes;
2 and

3 2. The Notice of Levy shall be a lien on the debtor's property
4 in the same manner as provided for in subsection G of Section 1173.4
5 of Title 12 of the Oklahoma Statutes. The Notice of Levy shall also
6 be subject to the procedures and time limits set out in subsections
7 H, I, J and K of Section 1173.4 of Title 12 of the Oklahoma
8 Statutes, except that when a document is required to be filed with
9 the clerk of the court, the document will instead be filed with the
10 Commission as directed on the forms provided.

11 D. To levy upon a debtor's bank account, the Commission must
12 serve a Notice of Levy on the bank in which the debtor has an
13 account, along with the warrant of levy and lien issued against the
14 debtor. The following procedures will apply to a Notice of Levy
15 served on a bank:

16 1. Upon receiving the Notice of Levy and the warrant of levy
17 and lien issued against the debtor, the bank shall deliver all of
18 the debtor's interest in the money in the debtor's bank account at
19 the time of service of the levy, subject to the banker's lien or
20 right of set off or any other priority claim of the bank, up to the
21 amount of indebtedness indicated on the warrant of levy and lien
22 plus accrued interest pursuant to Section 2-613 of this title and

1 any fees for service of process, to the Commission office indicated
2 in the Notice of Levy;

3 2. The delivery of this money shall occur within ten (10) days
4 of the date of service of the Notice of Levy;

5 3. If there is no money in the debtor's bank account at the
6 time the Notice of Levy is served, or if the bank account has been
7 closed, an officer of the bank on which the Notice of Levy is served
8 shall make a statement to that effect on the Notice of Levy. The
9 statement shall be notarized and returned to the office of the
10 Commission that is indicated in the Notice of Levy;

11 4. Any bank that fails or refuses to surrender money or rights
12 to money in a bank account subject to levy, upon being served with a
13 Notice of Levy and supporting warrant of levy and lien of the
14 Commission, shall be liable to the Commission in a sum equal to the
15 amount of money or rights to money not so surrendered, but not
16 exceeding the amount of the debtor's indebtedness for the collection
17 of which the levy has been made, together with accrued interest
18 pursuant to Section 2-613 of this title, and the cost of service of
19 the Notice of Levy. Any amount recovered in this manner shall be
20 credited against the liability of the debtor for the benefit
21 overpayment indebtedness, for which the levy was made; and

22 5. Any bank in possession of money or rights to money subject
23 to levy, upon which a levy has been made, that surrenders the money

1 or rights to money to the Commission shall be discharged from any
2 obligation or liability to the debtor and any other person or entity
3 with respect to such money or rights to money arising from the
4 surrender or payment.

5 E. Service of the Notice of Levy and the warrant of levy and
6 lien shall be made in the same manner as provided in Section 2004 of
7 Title 12 of the Oklahoma Statutes for service of process in civil
8 actions.

9 F. If a sheriff's department is enlisted to serve the Notice of
10 Levy, that sheriff's department shall be entitled to a service fee
11 of Fifty Dollars (\$50.00) that is to be paid by the Commission and
12 added to the debtor's indebtedness.

13 G. Claims for exemptions and any other matter relating to the
14 levy shall be filed ~~within ten (10) days of the date of service of~~
15 ~~the levy. The claim shall be filed~~ with the Appeal Tribunal of the
16 Oklahoma Employment Security Commission. An order of exemption may
17 relate back no more than thirty (30) days before the filing of the
18 claim for exemption and shall extend no further than the expiration
19 date or termination of the levy. Appeal from the Appeal Tribunal
20 decision shall be governed by the appeal procedures set out in Part
21 6 of Article 2 of the Employment Security Act of 1980, and the
22 Administrative Rules of the Oklahoma Employment Security Commission
23 pertaining thereto.

1 **SECTION 11. NEW LAW A new section of law to be codified**
2 **in the Oklahoma Statutes as Section 3-118 of Title 40, unless there**
3 **is created a duplication in numbering, reads as follows:**

4 On or before December 31, 2008, the Oklahoma Employment Security
5 Commission shall provide a method for employers to file the
6 Employer's Quarterly Contributions and Wage Report for Oklahoma
7 state unemployment taxes through the Internet. As of the same date,
8 the Commission shall provide a method for employers to pay Oklahoma
9 state unemployment taxes through an electronic payment system
10 utilizing the Internet.

11 **SECTION 12. AMENDATORY 40 O.S. 2001, Section 554, as**
12 **amended by Section 4, Chapter 1, 1st Extraordinary Session, O.S.L.**
13 **2005 (40 O.S. Supp. 2007, Section 554), is amended to read as**
14 **follows:**

15 Section 554. Employers who choose to conduct drug or alcohol
16 testing may only request or require an applicant or employee to
17 undergo testing under the following circumstances:

18 1. Applicant testing: A public or private employer may request
19 or require a job applicant, upon a conditional offer of employment,
20 to undergo drug or alcohol testing and may use a refusal to undergo
21 testing or a confirmed positive test result as a basis for refusal
22 to hire, provided that such testing does not violate the provisions
23 of the Americans with Disabilities Act of 1990, 42 U.S.C., Section

1 12101 et seq., and provided that such testing is required for all
2 applicants who have received a conditional offer of employment for a
3 particular employment classification;

4 2. Reasonable suspicion testing: A public or private employer
5 may request or require an employee to undergo drug or alcohol
6 testing if the employer has a reasonable suspicion that the employee
7 has violated the employer's written policy;

8 3. Post-accident testing: A public or private employer may
9 require an employee to undergo drug or alcohol testing if the
10 employee or another person has sustained a work-related injury or
11 the employer's property has been damaged, including damage to
12 equipment, in an amount reasonably estimated at the time of the
13 accident to exceed Five Hundred Dollars (\$500.00). For purposes of
14 workers' compensation ~~or unemployment compensation~~, no employee who
15 tests positive for the presence of substances defined and consumed
16 pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes,
17 alcohol, illegal drugs, or illegally used chemicals shall be
18 eligible for such compensation unless the employee proves by a
19 preponderance of the evidence that the substances, alcohol, illegal
20 drugs, or illegally used chemicals were not the proximate cause of
21 the injury or accident;

22 4. Random testing: A public or private employer may request or
23 require an employee to undergo drug or alcohol testing on a random

1 selection basis, except that a public employer may require random
2 testing only of employees who:

- 3 a. are police or peace officers,
- 4 b. have drug interdiction responsibilities,
- 5 c. are authorized to carry firearms,
- 6 d. are engaged in activities which directly affect the
7 safety of others, or
- 8 e. work in direct contact with inmates in the custody of
9 the Department of Corrections or work in direct
10 contact with juvenile delinquents or children in need
11 of supervision in the custody of the Department of
12 Human Services;

13 5. Scheduled, periodic testing: A public or private employer
14 may request or require an employee to undergo drug or alcohol
15 testing if the test is conducted as a routine part of a routinely
16 scheduled employee fitness-for-duty medical examination or is
17 scheduled routinely for all members of an employment classification
18 or group and which is part of the employer's written policy, except
19 that a public employer may require scheduled, periodic testing only
20 of employees who:

- 21 a. are police or peace officers,
- 22 b. have drug interdiction responsibilities,
- 23 c. are authorized to carry firearms,

- 1 d. are engaged in activities which directly affect the
2 safety of others, or
- 3 e. work in direct contact with inmates in the custody of
4 the Department of Corrections or work in direct
5 contact with juvenile delinquents or children in need
6 of supervision in the custody of the Department of
7 Human Services; and

8 6. Post-rehabilitation testing: A public or private employer
9 may request or require an employee to undergo drug or alcohol
10 testing without prior notice for a period of up to two (2) years
11 commencing with the employee's return to work, following a confirmed
12 positive test or following participation in a drug or alcohol
13 dependency treatment program under an employee benefit plan or at
14 the request of the employer.

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

16 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & LABOR, dated 2-18-08 -
17 DO PASS, As Amended and Coauthored.