

1 ENGROSSED SENATE  
2 BILL NO. 1280

By: Anderson of the Senate

3 and

4 Peters of the House

5  
6  
7 An Act relating to labor; amending 40 O.S. 2001,  
8 Section 1-210, as last amended by Section 3, Chapter  
9 132, O.S.L. 2008 (40 O.S. Supp. 2009, Section 1-210),  
10 which relates to definitions; modifying definition of  
11 employment; modifying certain exemption for  
12 Department of Human Services personal care programs;  
13 providing an effective date; and declaring an  
14 emergency.

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

16 SECTION 1. AMENDATORY 40 O.S. 2001, Section 1-210, as  
17 last amended by Section 3, Chapter 132, O.S.L. 2008 (40 O.S. Supp.  
18 2009, Section 1-210), is amended to read as follows:

19 Section 1-210. EMPLOYMENT.

20 "Employment" means:

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

23 (a) any officer of a corporation; or

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

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

5 (i) as an agent-driver or commission-driver engaged  
6 in distributing meat products, vegetable  
7 products, fruit products, bakery products,  
8 beverages other than milk, or laundry or dry  
9 cleaning services, for his or her principal; or

10 (ii) as a traveling or city salesperson, other than as  
11 an agent-driver or commission-driver, engaged  
12 upon a full-time basis in the solicitation on  
13 behalf of, and the transmission to, his or her  
14 principal, except for sideline sales activities  
15 on behalf of some other person, of orders from  
16 wholesalers, retailers, contractors, or operators  
17 of hotels, restaurants or other similar  
18 establishments for merchandise for resale or  
19 supplies for use in their business operations;

20 (b) provided, the term "employment" shall include services  
21 described in divisions (i) and (ii) of subparagraph  
22 (a) of this paragraph if:  
23  
24

- 1 (i) the contract of service contemplates that  
2 substantially all of the services are to be  
3 performed personally by such individual;
- 4 (ii) the individual does not have a substantial  
5 investment in facilities used in connection with  
6 the performance of the services, other than in  
7 facilities for transportation; and
- 8 (iii) the services are not in the nature of a single  
9 transaction that is not part of a continuing  
10 relationship with the person for whom the  
11 services are performed.

12 (3) Service performed in the employ of this state or any of its  
13 instrumentalities or any political subdivision thereof or any of its  
14 instrumentalities or any instrumentality of more than one of the  
15 foregoing or any instrumentality of any of the foregoing and one or  
16 more other states or political subdivisions; provided, that such  
17 service is excluded from "employment" as defined in the Federal  
18 Unemployment Tax Act, 26 U.S.C., Section 3306(c)(7), and is not  
19 excluded from "employment" under paragraph (7) of this section.

20 (4) Service performed by an individual in the employ of a  
21 community chest, fund, foundation or corporation, organized and  
22 operated exclusively for religious, charitable, scientific, testing  
23 for public safety, literary or educational purposes, or for the  
24 prevention of cruelty to children or animals, no part of the net

1 earnings of which inures to the benefit of any private shareholder  
2 or individual, no substantial part of the activities of which is  
3 carrying on propaganda, or otherwise attempting to influence  
4 legislation and which does not participate in, or intervene in,  
5 including the publishing or distributing of statements, any  
6 political campaign on behalf of any candidate for public office;  
7 provided that such organization had four or more individuals in  
8 employment for some portion of a day in each of twenty (20)  
9 different weeks, whether or not such weeks were consecutive, within  
10 either the calendar year or preceding calendar year, regardless of  
11 whether they were employed at the same moment of time.

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

14 (a) the service is performed for a person who:

15 (i) during any calendar quarter in either the  
16 calendar year or the preceding calendar year,  
17 paid remuneration in cash of Twenty Thousand  
18 Dollars (\$20,000.00) or more to individuals  
19 employed in agricultural labor; or

20 (ii) for some portion of a day in each of twenty (20)  
21 different calendar weeks, whether or not the  
22 weeks were consecutive, in either the calendar  
23 year or the preceding calendar year, employed in  
24 agricultural labor ten or more individuals,

1                   regardless of whether they were employed at the  
2                   same moment of time.

3           (b) for the purposes of this paragraph any individual who  
4           is a member of a crew furnished by a crew leader to  
5           perform service in agricultural labor for any other  
6           person shall be treated as an employee of the crew  
7           leader:

8           (i) if the crew leader holds a valid certificate of  
9           registration under the Farm Labor Contractor  
10          Registration Act of 1963, Public Law 95-562, 29  
11          U.S.C., Sections 1801 through 1872; or  
12          substantially all the members of the crew operate  
13          or maintain tractors, mechanized harvesting or  
14          crop-dusting equipment, or any other mechanized  
15          equipment, which is provided by the crew leader;  
16          and

17          (ii) if the individual is not an employee of the other  
18          person within the meaning of paragraph (1) of  
19          this section or subparagraph (d) of this  
20          paragraph.

21          (c) for the purposes of this paragraph, in the case of any  
22          individual who is furnished by a crew leader to  
23          perform service in agricultural labor for any other  
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1 person and who is not treated as an employee of the  
2 crew leader under subparagraph (b) of this paragraph:

- 3 (i) the other person and not the crew leader shall be  
4 treated as the employer of the individual; and  
5 (ii) the other person shall be treated as having paid  
6 cash remuneration to the individual in an amount  
7 equal to the amount of cash remuneration paid to  
8 the individual by the crew leader, either on his  
9 or her own behalf or on behalf of the other  
10 person, for the service in agricultural labor  
11 performed for the other person.

12 (d) for the purposes of this paragraph, the term "crew  
13 leader" means an individual who:

- 14 (i) furnishes individuals to perform service in  
15 agricultural labor for any other person;  
16 (ii) pays, either on his or her own behalf or on  
17 behalf of another person, the individuals so  
18 furnished by the crew leader for the service in  
19 agricultural labor performed by them; and  
20 (iii) has not entered into a written agreement with the  
21 other person (farm operator) under which the  
22 individual is designated as an employee of the  
23 other person.  
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1 (6) The term "employment" shall include domestic service in a  
2 private home, local college club or local chapter of a college  
3 fraternity or sorority performed for a person who paid cash  
4 remuneration of One Thousand Dollars (\$1,000.00) or more in the  
5 calendar year or the preceding calendar year to individuals employed  
6 in such domestic service in any calendar quarter.

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

9 (a) in the employ of:

10 (i) a church or convention or association of  
11 churches; or

12 (ii) an organization which is operated primarily for  
13 religious purposes and which is operated,  
14 supervised, controlled, or principally supported  
15 by a church or convention or association of  
16 churches;

17 (b) by a duly ordained, commissioned or licensed minister  
18 of a church in the exercise of his or her ministry or  
19 by a member of a religious order in the exercise of  
20 duties required by the order;

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

24 (i) as an elected official;

1 (ii) as a member of a legislative body, or a member of  
2 the judiciary of a state or political  
3 subdivision;

4 (iii) as a member of the State National Guard or Air  
5 National Guard;

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

9 (v) in a position which, under or pursuant to the  
10 laws of this state, is designated as a major  
11 nontenured policymaking or advisory position, or  
12 a policymaking or advisory position the  
13 performance of the duties of which ordinarily  
14 does not require more than eight (8) hours per  
15 week;

16 (vi) as an election official or election worker if the  
17 amount of remuneration received by the individual  
18 during the calendar year for services as an  
19 election official or election worker is less than  
20 One Thousand Dollars (\$1,000.00);

21 (d) by an individual receiving rehabilitation or  
22 remunerative work while participating or enrolled in a  
23 program in a facility that:  
24

1 (i) conducts a program of rehabilitation for  
2 individuals whose earning capacity is impaired by  
3 age, physical or mental deficiency, or injury; or  
4 (ii) conducts a program that provides remunerative  
5 work for individuals who, because of their  
6 impaired mental or physical capacity cannot be  
7 readily absorbed into the competitive labor  
8 market;

9 (e) as part of an unemployment work-relief or work-  
10 training program assisted or financed in whole or in  
11 part by any federal agency or an agency of a state or  
12 political subdivision thereof, by an individual  
13 receiving such work-relief or work-training; or  
14 (f) by an inmate of a custodial or penal institution.

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

21 (a) the employer's principal place of business in the  
22 United States is located in this state;

23 (b) the employer has no place of business in the United  
24 States, but:

- 1 (i) the employer is an individual who is a resident  
2 of this state;
- 3 (ii) the employer is a corporation which is organized  
4 under the laws of this state; or
- 5 (iii) the employer is a partnership or a trust and the  
6 number of the partners or trustees who are  
7 residents of this state is greater than the  
8 number who are residents of any one other state;
- 9 (c) none of the criteria of subparagraphs (a) and (b) of  
10 this paragraph are met but the employer has elected  
11 coverage in this state or, the employer having failed  
12 to elect coverage in any state, the individual has  
13 filed a claim for benefits, based on such service,  
14 under the law of this state;
- 15 (d) an "American employer", for purposes of this  
16 subsection, means a person who is:
- 17 (i) an individual who is a resident of the United  
18 States;
- 19 (ii) a partnership if two-thirds or more of the  
20 partners are residents of the United States;
- 21 (iii) a trust, if all of the trustees are residents of  
22 the United States; or
- 23 (iv) a corporation organized under the laws of the  
24 United States or of any state; and

1 (e) the term "United States", for the purposes of this  
2 subsection, includes the states, the District of  
3 Columbia, the Commonwealth of Puerto Rico and the  
4 Virgin Islands.

5 (9) Notwithstanding paragraph (11) of this section, all service  
6 performed by an officer or member of the crew of an American vessel  
7 on or in connection with the vessel, if the operating office, from  
8 which the operations of the vessel operating on navigable waters  
9 within, or within and without, the United States are ordinarily and  
10 regularly supervised, managed, directed and controlled is within  
11 this state.

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

14 (a) includes any service with respect to which a tax is  
15 required to be paid under any federal law imposing a  
16 tax against which credit may be taken for  
17 contributions required to be paid into a state  
18 unemployment fund; and

19 (b) includes any service which is required to be  
20 "employment" for full tax credit to be allowed against  
21 the tax imposed by the Federal Unemployment Tax Act of  
22 1954, Public Law 591, Chapter 736, as amended, 26  
23 U.S.C., Section 3301 et seq.  
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1 (11) The term "employment" shall include an individual's entire  
2 service, performed within or both within and without this state if:

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

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

6 (i) the individual's base of operations, or, if there  
7 is no base of operations, then the place from  
8 which the individual's employment is directed or  
9 controlled is in this state; or

10 (ii) the individual's base of operations or place from  
11 which the service is directed or controlled is  
12 not in any state in which some part of the  
13 service is performed but the individual's  
14 residence is in this state.

15 (12) (a) Services covered by an election pursuant to Section 3-  
16 203 of this title; and

17 (b) services covered by an arrangement pursuant to Section  
18 4-701 et seq. of this title between the Oklahoma  
19 Employment Security Commission and the agency charged  
20 with the administration of any other state or federal  
21 unemployment compensation law, pursuant to which all  
22 services performed by an individual for an employing  
23 unit are deemed to be performed entirely within this  
24 state,

1 shall be deemed to be employment if the Commission has approved  
2 an election of the employing unit for whom such services are  
3 performed, pursuant to which the entire service of such individual  
4 during the period covered by such election is deemed to be insured  
5 work.

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

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

8 or

9 (b) the service is performed both within and without such  
10 state, but the service performed without such state is  
11 incidental to the individual's service within the  
12 state; for example, is temporary or transitory in  
13 nature or consists of isolated transactions.

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

19 (a) such individual has been and will continue to be free  
20 from control or direction over the performance of the  
21 services, both under the contract of hire and in fact;  
22 and

23 (b) such individual is customarily engaged in an  
24 independently established business; or

1 (c) such service is outside the usual course of the  
2 business for which the service is performed and that  
3 the service is performed outside of all the places of  
4 business of the enterprise for which the service is  
5 performed.

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

7 (a) services performed by an individual in agricultural  
8 labor, except as provided under paragraph (5) of this  
9 section. Services performed by an individual who is a  
10 nonresident alien admitted to the United States to  
11 perform agricultural labor, pursuant to 8 U.S.C.  
12 Sections 1101(a), 1184(c) and 1188. For purposes of  
13 this subparagraph, the term "agricultural labor" means  
14 remunerated service performed in agricultural labor as  
15 defined in the Federal Unemployment Tax Act, 26  
16 U.S.C., Section 3306(k);

17 (b) domestic service, except as provided under paragraph  
18 (6) of this section, in a private home, local college  
19 club, or local chapter of a college fraternity or  
20 sorority;

21 (c) service performed by an individual in the employ of  
22 his or her son, daughter, or spouse, and service  
23 performed by a child under the age of twenty-one (21)

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1 in the employ of his or her father or mother, or both  
2 father and mother;

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

1           this title with respect to contributions erroneously  
2           collected;

3           (e) service with respect to which unemployment  
4           compensation is payable under an unemployment  
5           compensation system established by an act of Congress;

6           (f) service performed in the employ of a foreign  
7           government, including service as a consul or other  
8           officer or employee or a nondiplomatic representative;

9           (g) service performed in the employ of an instrumentality  
10          wholly owned by a foreign government:

11          (i) if the service is of a character similar to that  
12          performed in foreign countries by employees of  
13          the United States government or of an  
14          instrumentality thereof, and

15          (ii) if the Commission finds that the United States  
16          Secretary of State has certified to the United  
17          States Secretary of the Treasury that the foreign  
18          government, with respect to whose instrumentality  
19          exemption is claimed, grants an equivalent  
20          exemption with respect to similar service  
21          performed in the foreign country by employees of  
22          the United States government and of  
23          instrumentalities thereof;

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1 (h) service covered by an arrangement between the  
2 Commission and the agency charged with the  
3 administration of any other state or federal  
4 unemployment compensation law pursuant to which all  
5 services performed by an individual for an employing  
6 unit during the period covered by such employing  
7 unit's duly approved election, are deemed to be  
8 performed entirely within the jurisdiction of such  
9 other state or federal agency;

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

19 (j) service performed by an individual for a person, firm,  
20 association, trust, partnership or corporation as an  
21 insurance agent, or as an insurance solicitor or as a  
22 licensed real estate agent, if all such service  
23 performed by such individual for such person is  
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1 performed for remuneration solely by way of  
2 commissions or fees;

3 (k) service performed by an individual under the age of  
4 eighteen (18) in the delivery and distribution of  
5 newspapers or shopping news, not including delivery or  
6 distribution to any point for subsequent delivery or  
7 distribution, and services performed by an individual  
8 eighteen (18) years of age or older who meets the  
9 definition of a "direct seller" as defined in 26  
10 U.S.C., Section 3508(b)(2), that states in pertinent  
11 part:

12 (i) the individual must be engaged in the delivery or  
13 distribution of newspapers or shopping news,  
14 including any services directly related to such  
15 trade or business,

16 (ii) substantially all the remuneration, whether or  
17 not paid in cash, for the performance of the  
18 services described in clause (i) of this  
19 subdivision is directly related to sales or other  
20 output, including the performance of services,  
21 rather than the number of hours worked, and

22 (iii) the services performed by the individual are  
23 performed pursuant to a written contract between  
24 the person and the person for whom the services

1 are performed and the contract provides that the  
2 person will not be treated as an employee with  
3 respect to the services;

4 (l) service performed in the employ of a school, college  
5 or university, if the service is performed:

6 (i) by a student who is enrolled and is regularly  
7 attending classes at the school, college, or  
8 university, or

9 (ii) by the spouse of the student, if the spouse is  
10 advised, at the time the spouse commences to  
11 perform the service, that:

12 (I) the employment of the spouse to perform the  
13 service is provided under a program to  
14 provide financial assistance to the student  
15 by the school, college, or university, and

16 (II) the employment will not be covered by any  
17 program of unemployment insurance;

18 (m) service performed by an individual who is enrolled at  
19 a nonprofit or public educational institution which  
20 normally maintains a regular faculty and curriculum  
21 and normally has a regularly organized body of  
22 students in attendance at the place where its  
23 educational activities are carried on as a student in  
24 a full-time program, taken for credit at the

1 institution, which combines academic instruction with  
2 work experience, if the service is an integral part of  
3 the program, and the institution has so certified to  
4 the employer, except that this provision shall not  
5 apply to service performed in a program established  
6 for or on behalf of an employer or group of employers;

7 (n) service performed in the employ of a hospital, if the  
8 service is performed by a patient of the hospital;

9 (o) services performed by cooperative extension personnel  
10 holding federal appointments employed by state  
11 institutions of higher learning;

12 (p) earnings of employees being paid by state warrants who  
13 are presently covered by the Federal Unemployment  
14 Compensation Act, 5 U.S.C., Section 8501 et seq., by  
15 virtue of their federal status;

16 (q) cosmetology services performed by an individual in a  
17 beauty shop, as defined by Section 199.1 of Title 59  
18 of the Oklahoma Statutes, pursuant to an agreement  
19 whereby the owner of the beauty shop leases or rents  
20 facilities for cosmetology to such individual;

21 (r) barbering services performed by an individual in a  
22 barber shop, as defined by Section 61.5 of Title 59 of  
23 the Oklahoma Statutes, pursuant to an agreement  
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1           whereby the owner of the barber shop leases or rents  
2           facilities for barbering to such individual;

3           (s) ~~in-home services performed in a medical care program~~  
4           ~~such as the personal care services program, or social~~  
5           ~~services program, as certified and approved by the~~  
6           ~~Department of Human Services or the Center for~~  
7           ~~Medicare and Medicaid Services~~ or as a participant in  
8           a work or training program administered by the  
9           Department of Human 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-

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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  
24 are performed; provided that the individual is to

1 be treated as an independent contractor and not  
2 as an employee with respect to the services  
3 provided under the contract.

4 SECTION 2. This act shall become effective July 1, 2010.

5 SECTION 3. It being immediately necessary for the preservation  
6 of the public peace, health and safety, an emergency is hereby  
7 declared to exist, by reason whereof this act shall take effect and  
8 be in full force from and after its passage and approval.

9 Passed the Senate the 22nd day of February, 2010.

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11 \_\_\_\_\_  
12 Presiding Officer of the Senate

13 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
14 2010.

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16 \_\_\_\_\_  
17 Presiding Officer of the House  
18 of Representatives  
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