

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 756

By: Newberry of the Senate

and

6 McDaniel (Randy) of the
7 House

8
9
10 COMMITTEE SUBSTITUTE

11 An Act relating to the Oklahoma Employment Security
12 Commission; amending 40 O.S. 2001, Sections 1-210, as
13 last amended by Section 1, Chapter 328, O.S.L. 2010,
14 1-221, 2-418, 2-605, 2-606, as last amended by
15 Section 8, Chapter 216, O.S.L. 2010, 2-607, 2-608, 2-
16 609, 2-610, as last amended by Section 9, Chapter
17 132, O.S.L. 2008, 2-612, Section 15, Chapter 452,
18 O.S.L. 2002, 3-106, as last amended by Section 5,
19 Chapter 460, O.S.L. 2009, 3-307, 4-203 and 4-508, as
20 last amended by Section 1, Chapter 330, O.S.L. 2010
21 (40 O.S. Supp. 2010, Sections 1-210, 2-606, 2-610, 2-
22 616, 3-106 and 4-508), which relate to employment and
23 benefit definitions, indefinite disqualification,
24 notice to referee, appeal from tribunal referee
decisions, rules in appeals, conclusiveness of
decisions, rule of decision, judicial review, payment
of benefits, notice of overpayment, remittance,
salary, confidential information; modifying
definitions; exempting certain religious schools for
certain purpose; clarifying certain disqualification;
deleting certain disqualification for extended
benefits; modifying reference; modifying appeal
procedure to Board of Review; extending time to file
for judicial proceeding; deleting formal hearing;
deleting place of certain hearing in intrastate
appeal; modifying reference; making gender neutral;

1 deleting authority to remove entire proceeding to
2 Board of Review; making certain findings of fact and
3 certified questions of law reviewable by the Board of
4 Review; requiring written decision by Board of
5 Review; making decision on certified question of law
6 subject to judicial review; extending time for
7 judicial review; providing for codefendants in
8 certain case style; modifying service requirement for
9 Board of Review and parties; deleting provision for
10 hearing additional evidence; requiring record of case
11 to include properly admitted evidence; directing
12 benefits upon certain decision; deleting reference;
13 authorizing administrative fee for electronic fund
14 transfer for insufficient funds; setting fee amount;
15 changing Board of Review salary from monthly to
16 biweekly; requiring vendors to keep certain
17 information confidential under terms of certain
18 contracts; providing an effective date; and declaring
19 an emergency.

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

SECTION 1. AMENDATORY 40 O.S. 2001, Section 1-210, as
last amended by Section 1, Chapter 328, O.S.L. 2010 (40 O.S. Supp.
2010, Section 1-210), is amended to read as follows:

Section 1-210. EMPLOYMENT.

"Employment" means:

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

(a) any officer of a corporation; or

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

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

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

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

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

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

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

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

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

23 (4) Service performed by an individual in the employ of a
24 community chest, fund, foundation or corporation, organized and

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

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

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

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

23 (ii) for some portion of a day in each of twenty (20)
24 different calendar weeks, whether or not the

1 weeks were consecutive, in either the calendar
2 year or the preceding calendar year, employed in
3 agricultural labor ten or more individuals,
4 regardless of whether they were employed at the
5 same moment of time.

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

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

20 (ii) if the individual is not an employee of the other
21 person within the meaning of paragraph (1) of
22 this section or subparagraph (d) of this
23 paragraph.
24

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

6 (i) the other person and not the crew leader shall be
7 treated as the employer of the individual; and

8 (ii) the other person shall be treated as having paid
9 cash remuneration to the individual in an amount
10 equal to the amount of cash remuneration paid to
11 the individual by the crew leader, either on his
12 or her own behalf or on behalf of the other
13 person, for the service in agricultural labor
14 performed for the other person.

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

17 (i) furnishes individuals to perform service in
18 agricultural labor for any other person;

19 (ii) pays, either on his or her own behalf or on
20 behalf of another person, the individuals so
21 furnished by the crew leader for the service in
22 agricultural labor performed by them; and

23 (iii) has not entered into a written agreement with the
24 other person (farm operator) under which the

1 individual is designated as an employee of the
2 other person.

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

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

11 (a) in the employ of:

12 (i) a church or convention or association of
13 churches; ~~or~~

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

19 (iii) an elementary or secondary school which is
20 operated primarily for religious purposes, which
21 is described in 26 U.S.C. Section 501 (c) (3),
22 and which is exempt from tax under 26 U.S.C.
23 Section 501(a);
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1 (b) by a duly ordained, commissioned or licensed minister
2 of a church in the exercise of his or her ministry or
3 by a member of a religious order in the exercise of
4 duties required by the order;

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

8 (i) as an elected official;

9 (ii) as a member of a legislative body, or a member of
10 the judiciary of a state or political
11 subdivision;

12 (iii) as a member of the State National Guard or Air
13 National Guard;

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

17 (v) in a position which, under or pursuant to the
18 laws of this state, is designated as a major
19 nontenured policymaking or advisory position, or
20 a policymaking or advisory position the
21 performance of the duties of which ordinarily
22 does not require more than eight (8) hours per
23 week;

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

6 (d) by an individual who is participating or enrolled in a
7 program of an organization that provides
8 rehabilitation through work for individuals whose
9 earning capacity is impaired by age, physical or
10 mental deficiency, or injury, or a program of an
11 organization that provides work for individuals who,
12 because of their impaired mental or physical capacity
13 cannot be readily absorbed into the competitive labor
14 market; provided that the services are performed by a
15 program participant on real property owned or leased
16 directly by the organization or by a program
17 participant working under a special certificate issued
18 by the U.S. Secretary of Labor pursuant to 29 U.S.C.,
19 Section 214(c) and 29 C.F.R., Section 525.1 et seq.;

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
23 political subdivision thereof or of an Indian tribe,
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1 by an individual receiving such work-relief or work-
2 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
24 coverage in this state or, the employer having failed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (ii) the individual's base of operations or place from
23 which the service is directed or controlled is
24 not in any state in which some part of the

1 service is performed but the individual's
2 residence is in this state.

3 (12) (a) Services covered by an election pursuant to Section 3-
4 203 of this title; and

5 (b) services covered by an arrangement pursuant to Section
6 4-701 et seq. of this title between the Oklahoma
7 Employment Security Commission and the agency charged
8 with the administration of any other state or federal
9 unemployment compensation law, pursuant to which all
10 services performed by an individual for an employing
11 unit are deemed to be performed entirely within this
12 state,

13 shall be deemed to be employment if the Commission has approved an
14 election of the employing unit for whom such services are performed,
15 pursuant to which the entire service of such individual during the
16 period covered by such election is deemed to be insured work.

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

18 (a) the service is performed entirely within such state;
19 or

20 (b) the service is performed both within and without such
21 state, but the service performed without such state is
22 incidental to the individual's service within the
23 state; for example, is temporary or transitory in
24 nature or consists of isolated transactions.

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

6 (a) such individual has been and will continue to be free
7 from control or direction over the performance of the
8 services, both under the contract of hire and in fact;
9 and

10 (b) such individual is customarily engaged in an
11 independently established business; or

12 (c) such service is outside the usual course of the
13 business for which the service is performed and that
14 the service is performed outside of all the places of
15 business of the enterprise for which the service is
16 performed.

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

18 (a) services performed by an individual in agricultural
19 labor, except as provided under paragraph (5) of this
20 section. Services performed by an individual who is a
21 nonresident alien admitted to the United States to
22 perform agricultural labor, pursuant to 8 U.S.C.
23 Sections 1101(a), 1184(c) and 1188. For purposes of
24 this subparagraph, the term "agricultural labor" means

1 remunerated service performed in agricultural labor as
2 defined in the Federal Unemployment Tax Act, 26
3 U.S.C., Section 3306(k);

4 (b) domestic service, except as provided under paragraph
5 (6) of this section, in a private home, local college
6 club, or local chapter of a college fraternity or
7 sorority;

8 (c) service performed by an individual in the employ of
9 his or her son, daughter, or spouse, and service
10 performed by a child under the age of twenty-one (21)
11 in the employ of his or her father or mother, or both
12 father and mother;

13 (d) service performed in the employ of the United States
14 government or an instrumentality of the United States
15 exempt under the Constitution of the United States
16 from the contributions imposed by the Employment
17 Security Act of 1980, except that to the extent that
18 the Congress of the United States shall permit states
19 to require any instrumentalities of the United States
20 to make payments into an unemployment fund under a
21 state unemployment compensation law, all of the
22 provisions of the Employment Security Act of 1980
23 shall be applicable to such instrumentalities, and to
24 services performed for such instrumentalities, in the

1 same manner, to the same extent, and on the same terms
2 as to all other employers, employing units,
3 individuals and services; provided that if this state
4 shall not be certified for any year by the Secretary
5 of Labor of the United States under the Federal
6 Internal Revenue Code, 26 U.S.C., Section 3304(c), the
7 payments required of such instrumentalities with
8 respect to the year shall be refunded by the
9 Commission from the fund in the same manner and within
10 the same period as is provided in Section 3-304 of
11 this title with respect to contributions erroneously
12 collected;

13 (e) service with respect to which unemployment
14 compensation is payable under an unemployment
15 compensation system established by an act of Congress;

16 (f) service performed in the employ of a foreign
17 government, including service as a consul or other
18 officer or employee or a nondiplomatic representative;

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

21 (i) if the service is of a character similar to that
22 performed in foreign countries by employees of
23 the United States government or of an
24 instrumentality thereof, and

1 (ii) if the Commission finds that the United States
2 Secretary of State has certified to the United
3 States Secretary of the Treasury that the foreign
4 government, with respect to whose instrumentality
5 exemption is claimed, grants an equivalent
6 exemption with respect to similar service
7 performed in the foreign country by employees of
8 the United States government and of
9 instrumentalities thereof;

10 (h) service covered by an arrangement between the
11 Commission and the agency charged with the
12 administration of any other state or federal
13 unemployment compensation law pursuant to which all
14 services performed by an individual for an employing
15 unit during the period covered by such employing
16 unit's duly approved election, are deemed to be
17 performed entirely within the jurisdiction of such
18 other state or federal agency;

19 (i) service performed as a student nurse in the employ of
20 a hospital or a nurses' training school by an
21 individual who is enrolled and is regularly attending
22 classes in a nurses' training school chartered or
23 approved pursuant to state law; and service performed
24 as an intern in the employ of a hospital by an

1 individual who has completed a four-year course in a
2 medical school chartered or approved pursuant to state
3 law;

4 (j) service performed by an individual for a person, firm,
5 association, trust, partnership or corporation as an
6 insurance agent, or as an insurance solicitor or as a
7 licensed real estate agent, if all such service
8 performed by such individual for such person is
9 performed for remuneration solely by way of
10 commissions or fees;

11 (k) service performed by an individual under the age of
12 eighteen (18) in the delivery and distribution of
13 newspapers or shopping news, not including delivery or
14 distribution to any point for subsequent delivery or
15 distribution, and services performed by an individual
16 eighteen (18) years of age or older who meets the
17 definition of a "direct seller" as defined in 26
18 U.S.C., Section 3508(b)(2), that states in pertinent
19 part:

20 (i) the individual must be engaged in the delivery or
21 distribution of newspapers or shopping news,
22 including any services directly related to such
23 trade or business,
24

1 (ii) substantially all the remuneration, whether or
2 not paid in cash, for the performance of the
3 services described in clause (i) of this
4 subdivision is directly related to sales or other
5 output, including the performance of services,
6 rather than the number of hours worked, and

7 (iii) the services performed by the individual are
8 performed pursuant to a written contract between
9 the person and the person for whom the services
10 are performed and the contract provides that the
11 person will not be treated as an employee with
12 respect to the services;

13 (1) service performed in the employ of a school, college
14 or university, if the service is performed:

15 (i) by a student who is enrolled and is regularly
16 attending classes at the school, college, or
17 university, or

18 (ii) by the spouse of the student, if the spouse is
19 advised, at the time the spouse commences to
20 perform the service, that:

21 (I) the employment of the spouse to perform the
22 service is provided under a program to
23 provide financial assistance to the student
24 by the school, college, or university, and

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

3 (m) service performed by an individual who is enrolled at
4 a nonprofit or public educational institution which
5 normally maintains a regular faculty and curriculum
6 and normally has a regularly organized body of
7 students in attendance at the place where its
8 educational activities are carried on as a student in
9 a full-time program, taken for credit at the
10 institution, which combines academic instruction with
11 work experience, if the service is an integral part of
12 the program, and the institution has so certified to
13 the employer, except that this provision shall not
14 apply to service performed in a program established
15 for or on behalf of an employer or group of employers;

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

18 (o) services performed by cooperative extension personnel
19 holding federal appointments employed by state
20 institutions of higher learning;

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

1 (q) cosmetology services performed by an individual in a
2 beauty shop, as defined by Section 199.1 of Title 59
3 of the Oklahoma Statutes, pursuant to an agreement
4 whereby the owner of the beauty shop leases or rents
5 facilities for cosmetology to such individual;

6 (r) barbering services performed by an individual in a
7 barber shop, as defined by Section 61.5 of Title 59 of
8 the Oklahoma Statutes, pursuant to an agreement
9 whereby the owner of the barber shop leases or rents
10 facilities for barbering to such individual;

11 (s) services performed as a participant in a work or
12 training program administered by the Department of
13 Human Services;

14 (t) riding services performed by a jockey and services
15 performed by a trainer of race horses in preparation
16 for and during an approved race meeting licensed by
17 the Oklahoma Horse Racing Commission;

18 (u) service performed by an individual whose remuneration
19 consists solely of commissions, overrides, bonuses,
20 and differentials related to sales or other output
21 derived from in-person sales to, or solicitation of
22 orders from, ultimate consumers primarily in the home,
23 or otherwise than in a permanent retail establishment;

1 (v) service performed by a person, commonly referred to as
2 "owner-operator", who owns or leases a truck-tractor
3 or truck for hire, provided the owner-operator
4 actually operates the truck-tractor or truck and,
5 further, that the entity contracting with the owner-
6 operator is not the lessor of the truck-tractor or
7 truck;

8 (w) services performed as a chopper of cotton who weeds or
9 thins cotton crops by hand or hoe. This subsection
10 shall be interpreted and applied consistently with the
11 Federal Unemployment Tax Act, 26 U.S.C., Sections
12 3304 (a) (6) (A) and 3306 (k); or

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

15 (i) if the individual is engaged primarily in
16 negotiating for the acquisition or divestiture of
17 mineral rights or negotiating business agreements
18 that provide for the exploration for or
19 development of minerals,

20 (ii) if substantially all remuneration paid in cash or
21 otherwise for the performance of the services is
22 directly related to the completion by the
23 individual of the specific tasks contracted for
24

1 rather than to the number of hours worked by the
2 individual, and

3 (iii) if the services performed by the individual are
4 performed under a written contract between the
5 individual and the person for whom the services
6 are performed; provided that the individual is to
7 be treated as an independent contractor and not
8 as an employee with respect to the services
9 provided under the contract.

10 SECTION 2. AMENDATORY 40 O.S. 2001, Section 1-221, is
11 amended to read as follows:

12 Section 1-221. BENEFIT WAGES. "Benefit wages" means the
13 taxable wages earned by a claimant during the claimant's base period
14 which are not in excess of the current maximum weekly benefit
15 amount, as determined under Section 2-104 of this title, multiplied
16 by the maximum number of weeks for which benefits could be paid to
17 any individual (now twenty-six (26) weeks) multiplied by three (3);
18 provided, however, no wages shall be included as "benefit wages"
19 unless and until the claimant has been paid benefits for five (5)
20 weeks in one (1) benefit year.

21 SECTION 3. AMENDATORY 40 O.S. 2001, Section 2-418, is
22 amended to read as follows:

23 Section 2-418. SEEK AND ACCEPT WORK - INDEFINITE
24 DISQUALIFICATION.

1 A. An individual shall be disqualified to receive benefits for
2 the full period of unemployment next ensuing after the individual
3 shall have failed to do any of the following:

4 1. Accept an offer of suitable work, as defined by Section 2-
5 408 of this title, from an employer including any former employer;

6 2. Apply for or accept suitable work, as defined by Section 2-
7 408 of this title, when so directed by the ~~Employment Office of the~~
8 Commission; or

9 3. Accept employment pursuant to a hiring hall agreement when
10 so offered.

11 Such disqualification shall continue until the individual has become
12 reemployed and has earned wages equal to or in excess of ten (10)
13 times his or her weekly benefit amount.

14 B. Any individual who shall have failed in any of the
15 requirements of subsection A of this section due to illness, death
16 of a family member or other extenuating circumstance beyond his or
17 her control shall be disqualified for regular benefits under this
18 section only for the week of the occurrence of such circumstance
19 beyond his or her control. ~~Any individual who is disqualified under~~
20 ~~this subsection only for the week of the occurrence of such~~
21 ~~circumstance beyond his or her control shall not thereafter be or~~
22 ~~become eligible for extended benefits for the purposes of Sections~~
23 ~~2-701 through 2-724 of Title 40 of the Oklahoma Statutes until such~~

1 ~~individual has become reemployed and has earned wages equal to at~~
2 ~~least ten times his or her weekly benefit amount.~~

3 SECTION 4. AMENDATORY 40 O.S. 2001, Section 2-605, is
4 amended to read as follows:

5 Section 2-605. NOTICE OF REFEREE DECISION.

6 The parties shall be promptly notified of such referee's
7 decision and shall be furnished with a copy of the decision,
8 including the findings and conclusions in support thereof. Such
9 decision shall be final unless, within ten (10) days after the date
10 of mailing of notice thereof to the parties' last-known addresses,
11 or, in the absence of such mailing, within ten (10) days after the
12 delivery of such notice, further review before the Board of Review
13 is initiated pursuant to Section 2-606 of this title.

14 SECTION 5. AMENDATORY 40 O.S. 2001, Section 2-606, as
15 last amended by Section 8, Chapter 216, O.S.L. 2010 (40 O.S. Supp.
16 2010, Section 2-606), is amended to read as follows:

17 Section 2-606. APPEALS FROM TRIBUNAL REFEREE DECISIONS TO
18 BOARD OF REVIEW.

19 The Board of Review shall review the record of an appeal filed
20 by any of the parties entitled to notice on a determination of an
21 appeal tribunal referee. An appeal to the Board of Review may be
22 filed in any manner allowed by Section 1-224 of this title. On
23 appeal, the Board of Review may affirm, modify, reverse, or remand
24 any decision of an appeal tribunal referee on the basis of evidence

1 previously submitted, or on the basis of additional evidence ~~as it~~
2 ~~may adduce, or, at its direction,~~ received by an appeal tribunal
3 referee on remand. ~~The Board of Review may conduct a formal hearing~~
4 ~~upon a request of a party or on its own motion. Any formal hearing~~
5 ~~shall be conducted by one or more members of the Board of Review as~~
6 ~~it may determine or by a hearing officer designated by the Board of~~
7 ~~Review.~~ The Board of Review shall promptly notify the parties of
8 its ~~findings and~~ decision in writing, and ~~such~~ the decision shall be
9 final unless within ~~ten (10)~~ thirty (30) days after the mailing of
10 ~~notice thereof~~ the decision to the parties' last-known addresses, a
11 proceeding for judicial review is initiated pursuant to Section 2-
12 610 of this title.

13 SECTION 6. AMENDATORY 40 O.S. 2001, Section 2-607, is
14 amended to read as follows:

15 Section 2-607. RULES AND PROCEDURES IN APPEALS.

16 ~~The Board of Review and appeal referees shall conduct any~~
17 ~~hearing or appeal in such manner as to ascertain the substantial~~
18 ~~rights of the parties.~~ The Board of Review shall adopt reasonable
19 rules governing the manner of filing appeals and the conduct of
20 hearings and appeals before the Board of Review, consistent with the
21 provisions of the Employment Security Act of 1980. The Oklahoma
22 Employment Security Commission shall adopt and, from time to time,
23 may modify and amend rules governing appeals before the ~~Appeals~~
24 Appeal Tribunal of the Commission and its referees, ~~which rules~~

1 ~~shall provide for one hearing before a referee near the place of the~~
2 ~~last employment involved in an intrastate appeal.~~ When the same or
3 substantially similar evidence is relevant and material to the
4 matters in issue in claims by more than one individual or in claims
5 by a single individual with respect to two (2) or more weeks of
6 unemployment, the same time and place for considering each such
7 claim may be fixed, hearings thereon jointly conducted, a single
8 record of the proceedings made, and evidence introduced with respect
9 to one proceeding considered as introduced in the others, provided
10 that in the judgment of the appeal tribunal referee having
11 jurisdiction of the proceeding, such consolidation would not be
12 prejudicial to any party. No person shall participate as an appeal
13 tribunal referee or member of the Board of Review on any case in
14 which the person has a personal interest. A record shall be kept of
15 all testimony and proceedings before an appeal tribunal referee ~~or~~
16 ~~the Board of Review in connection with an appeal,~~ but the testimony
17 need not be transcribed unless judicial review is initiated.
18 Witnesses subpoenaed pursuant to this section shall be allowed fees
19 at a rate fixed by the Commission, and fees of witnesses subpoenaed
20 on behalf of the Commission, the employer, or any claimant, ~~or the~~
21 ~~Board of Review,~~ shall be deemed part of the expense of
22 administering the Employment Security Act of 1980.

23 SECTION 7. AMENDATORY 40 O.S. 2001, Section 2-608, is
24 amended to read as follows:

1 Section 2-608. CONCLUSIVENESS OF DETERMINATIONS AND DECISIONS.

2 Except insofar as reconsideration of any determination is had
3 under Section 2-506 of this title, any right, fact, or matter in
4 issue, directly passed upon or necessarily involved in a
5 determination or redetermination which has become final, or in a
6 decision on appeal under this subsection which has become final,
7 shall be conclusive for all the purposes of this act as between the
8 Commission, the claimant, and all employers who had notice of such
9 determination, redetermination, or decision. Subject to appeal
10 proceedings and judicial review as provided in this ~~act~~ title, any
11 determination, redetermination or decision as to rights to benefits
12 shall be conclusive for all the purposes of this act and shall not
13 be subject to collateral attack by any party.

14 SECTION 8. AMENDATORY 40 O.S. 2001, Section 2-609, is
15 amended to read as follows:

16 Section 2-609. RULE OF DECISION.

17 ~~The~~ A final decision ~~decision~~ of the Board of Review, or of a
18 an Appeal Tribunal referee, and the principles of law declared in
19 arriving at such decision, unless expressly or impliedly overruled
20 by a later decision of the Board of Review or by a court of
21 competent jurisdiction, shall be binding upon the Commission and
22 Appeal Tribunal referees in subsequent proceedings which involve the
23 same questions of law; provided, ~~however, that~~ if in connection with
24 any subsequent proceeding a an Appeal Tribunal referee has serious

1 doubt as to the correctness of any principle so declared he or she
2 may certify his or her findings of fact in ~~such~~ the case, together
3 with the question of law involved, to the Board of Review, which,
4 after giving notice and reasonable opportunity for ~~hearing~~ briefing
5 to all parties to ~~such~~ the proceeding, shall ~~thereupon certify~~
6 return to the Commission ~~or such~~ adjudicator, the Appeal Tribunal
7 referee and ~~such~~ the parties its answer to the question submitted by
8 written decision. ~~If the question thus certified to the Board~~
9 ~~arises in connection with a claim for benefits, the Board of Review~~
10 ~~in its discretion may remove to itself the entire proceedings on~~
11 ~~such claim, and, after proceeding in accordance with the~~
12 ~~requirements of this Part with respect to proceedings before a~~
13 ~~referee, shall render its decision upon the entire claim. Any~~
14 ~~decision made under this section after removal of the proceeding to~~
15 ~~the Board shall be a decision of~~ by the Board of Review and on a
16 certified question shall be subject to judicial review pursuant to
17 Section 2-610 of this title.

18 SECTION 9. AMENDATORY 40 O.S. 2001, Section 2-610, as
19 last amended by Section 9, Chapter 132, O.S.L. 2008 (40 O.S. Supp.
20 2010, Section 2-610), is amended to read as follows:

21 Section 2-610. JUDICIAL REVIEW.

22 ~~(1)~~ A. Within the ~~ten (10)~~ thirty (30) days after the day a
23 notice of decision of the Board of Review is mailed to the parties,
24 the Oklahoma Employment Security Commission, or any party to the

1 proceedings before the Board of Review, may obtain judicial review
2 thereof by filing in the district court of the county in which the
3 claimant resides, or if the claimant is not a resident of the State
4 of Oklahoma then in the District Court of Oklahoma County, a
5 petition for review of ~~such the~~ decision, ~~against~~ of the Board of
6 Review. ~~In such petition for review all other parties to the~~
7 ~~proceeding before the Board of Review and the Commission shall be~~
8 ~~made codefendants.~~ Such The petition for review shall set out the
9 names of all codefendants in the style of the case, which shall
10 include:

- 11 1. The Board of Review;
- 12 2. The Oklahoma Employment Security Commission; and
- 13 3. All other parties to the proceeding before the Board of
14 Review.

15 The petition for review need not be verified but shall state
16 specifically the grounds upon which ~~such the~~ review is sought. A
17 copy of the petition for review shall be served upon ~~a member of the~~
18 Board of Review ~~or upon such persons as the Board of Review may~~
19 ~~designate~~ at its official address and the petitioner shall also
20 deliver to the ~~person so served~~ Board of Review as many copies of
21 the petition as there are defendants. The Board of Review shall
22 ~~forthwith~~ send ~~by mail~~ to each ~~other~~ party to the proceeding a copy
23 of ~~such the~~ petition by mail, and ~~such the~~ mailing shall be deemed
24 to be service upon all ~~such the~~ parties. In any proceeding under

1 this section the findings of the Board of Review as to the facts, if
2 supported by evidence, shall be conclusive and the jurisdiction of
3 the court shall be confined to questions of law. No additional
4 evidence shall be received by the court, but the court may remand
5 the case and order additional evidence to be taken ~~before the Board~~
6 ~~of Review, and the Board may, after hearing the additional evidence,~~
7 ~~modify its findings of fact or conclusions, and file the additional~~
8 ~~or modified findings and conclusions, together with the transcript~~
9 ~~of the additional record, with the court~~ by the Appeal Tribunal of
10 the Oklahoma Employment Security Commission.

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

17 ~~(3)~~ ~~Such~~ C. The proceedings shall be heard in a summary manner
18 and shall be given precedence over all other civil cases. An appeal
19 may be taken from the decision of the district court to the Supreme
20 Court of this state in the same manner as is provided in other civil
21 cases. It shall not be necessary as a condition precedent to
22 judicial review of any decision of the Board of Review to enter
23 exceptions to the rulings of ~~such~~ the Board, and no bond shall be
24 required as a condition of initiating a proceeding for judicial

1 review or entering an appeal from the decision of the court ~~upon~~
2 ~~such review~~. Upon the final termination of ~~such~~ the judicial
3 proceeding, the Board of Review shall enter an order in accordance
4 with the mandate of the district or appellate court.

5 SECTION 10. AMENDATORY 40 O.S. 2001, Section 2-612, is
6 amended to read as follows:

7 Section 2-612. PAYMENT OF BENEFITS. Benefits shall be promptly
8 paid on any claim in accordance with a determination or
9 redetermination or the decision of a referee, the Board of Review or
10 a reviewing court upon the issuance of ~~such~~ the determination,
11 redetermination or decision, regardless of the pendency of ~~the~~
12 ~~period to file~~ an appeal, or petition for judicial review that is
13 provided ~~with respect thereto in this section, as the case may be,~~
14 ~~or the pendency of any such filing, or petition~~ by the Employment
15 Security Act of 1980, unless and until ~~such~~ the determination,
16 redetermination, or decision has been modified or reversed by a
17 subsequent redetermination or decision, in which event benefits
18 shall be paid or denied for weeks of unemployment thereafter in
19 accordance with ~~such~~ the modifying or reversing redetermination or
20 decision. No injunction, supersedeas, stay or other writ or process
21 suspending the payment of ~~such~~ the benefits shall be issued by any
22 court, but if ~~such~~ the determination, redetermination or decision is
23 finally modified or reversed to deny benefits no employer's account
24 shall remain charged with benefit wages pursuant to the erroneous

1 determination, redetermination or decision and benefits shall not be
2 paid for any weeks of unemployment involved in ~~such~~ the modification
3 or reversal that begin after ~~such~~ the final decision.

4 SECTION 11. AMENDATORY Section 15, Chapter 452, O.S.L.
5 2002 (40 O.S. Supp. 2010, Section 2-616), is amended to read as
6 follows:

7 Section 2-616. If the Oklahoma Employment Security Commission
8 or its representative determines that an individual has been
9 overpaid unemployment benefits pursuant to ~~paragraph 1 or 2 of~~
10 Section 2-613 of ~~Title 40 of the Oklahoma Statutes~~ this title, the
11 individual shall be sent a notice of overpayment determination. If
12 the individual disagrees with this determination, the individual may
13 file an appeal of the determination with the Appeal Tribunal within
14 twenty (20) days after the date of the mailing of the notice to the
15 individual's last-known address or, if the notice is not mailed,
16 within twenty (20) days after the date of the delivery of the
17 notice. If the individual fails to appeal the determination within
18 the time provided, then the determination will be deemed final and
19 no further appeal shall be allowed.

20 SECTION 12. AMENDATORY 40 O.S. 2001, Section 3-106, as
21 last amended by Section 5, Chapter 460, O.S.L. 2009 (40 O.S. Supp.
22 2010, Section 3-106), is amended to read as follows:

23 Section 3-106.

24 BENEFIT WAGES CHARGED AND RELIEF THEREFROM.

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

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

- 22 1. The date on which the employment was terminated;
- 23 2. Full particulars as to the circumstances of the termination
24 including the reason given by the individual for voluntarily leaving

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

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

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

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

15 D. Within fourteen (14) days after the mailing of the
16 determination provided for in subsection C of this section, the
17 employer may file with the Commission or its representative a
18 written protest to the determination and request an oral hearing de
19 novo to present evidence in support of its protest. The Commission
20 or its representative shall, by written notice, advise the employer
21 of the date of the hearing, which shall not be less than ten (10)
22 days from the date of mailing of the written notice. At the
23 discretion of the Commission, this hearing shall be conducted by the
24 Commission or its representative appointed by the Commission for

1 this purpose. Pursuant to the hearing, the Commission or its
2 representative shall, as soon as practicable, make a written order
3 setting forth its findings of fact and conclusions of law, and shall
4 send it to the employer.

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

9 F. The employer or the Commission may appeal the order of the
10 Commission or its representative to the district court by filing a
11 petition for review with the clerk of that court within thirty (30)
12 days after the date the order was mailed to all parties. The
13 mailing date shall be specifically stated in the order.

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

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

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

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

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

11 5. Was discharged by an employer for unsatisfactory performance
12 during an initial employment probationary period. As used in this
13 paragraph, "probationary period" means a period of time set forth in
14 an established probationary plan which applies to all employees or a
15 specific group of employees and does not exceed ninety (90) calendar
16 days from the first day a new employee begins work. The employee
17 must be informed of the probationary period within the first seven
18 (7) work days. There must be conclusive evidence to establish that
19 the individual was separated due to unsatisfactory work performance
20 ~~and not separated because of lack of work due to temporary,~~
21 ~~seasonal, casual, or other similar employment not of regular,~~
22 ~~permanent, and year round nature;~~

23
24

1 6. Left employment to attend training approved under the Trade
2 Act of 1974 and is allowed unemployment benefits pursuant to Section
3 2-416 of this title; or

4 7. Was separated from employment for compelling family
5 circumstances as defined in Section ~~2~~ 2-210 of this ~~act~~ title.

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

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

22 J. If the Commission receives a notice of amounts paid as
23 benefits by another state under a reciprocal agreement, and the
24 notice is received after three (3) years from the effective date of

1 the underlying benefit claim, no benefit wage charge will be made
2 against the employer identified in the notice, or if a benefit wage
3 charge is made based on such a notice, the employer will be relieved
4 of the charge when the facts are brought to the attention of the
5 Commission.

6 SECTION 13. AMENDATORY 40 O.S. 2001, Section 3-307, is
7 amended to read as follows:

8 Section 3-307. A. All remittance, under Section 1-101 et seq.
9 of ~~Title 40 of the Oklahoma Statutes~~ this title, shall be made
10 payable to the Oklahoma Employment Security Commission, at Oklahoma
11 City, Oklahoma, by bank draft, check, cashier's check, electronic
12 fund transfer, money order, or money, and the Commission shall issue
13 its receipt, for cash or money payment, to the payor. No remittance
14 other than cash shall be in final discharge of liability due the
15 Commission unless and until it shall have been paid in cash. All
16 monies collected shall be deposited with the State Treasurer. There
17 shall be assessed, in addition to any other penalties provided for
18 by law, an administrative service fee of Twenty-five Dollars
19 (\$25.00) on each check returned to the Commission or any agent
20 thereof by reason of the refusal of the bank upon which such check
21 was drawn to honor the same. There shall be assessed, in addition
22 to any other penalties provided for by law, an administrative
23 service fee of Twenty-five Dollars (\$25.00) on each electronic fund

24

1 transfer that fails due to insufficient funds in the payor's
2 account.

3 B. Upon the return of any check by reason of the refusal of the
4 bank upon which such check was drawn to honor the same, the
5 Commission may file a bogus check complaint with the appropriate
6 district attorney who shall refer the complaint to the Bogus Check
7 Restitution Program established by Section 111 of Title 22 of the
8 Oklahoma Statutes. Funds collected through the program after
9 collection of the fee authorized by Section 114 of Title 22 of the
10 Oklahoma Statutes for deposit in the Bogus Check Restitution Program
11 Fund in the county treasury shall be transmitted to the Commission
12 and credited to the liability for which the returned check was drawn
13 and to the administrative service fee provided by this section.

14 SECTION 14. AMENDATORY 40 O.S. 2001, Section 4-203, is
15 amended to read as follows:

16 Section 4-203. SALARY. Each member of the Board of Review
17 shall be paid from the Employment Security Administration Fund a
18 salary of Thirty Thousand Dollars (\$30,000.00) per annum, payable ~~in~~
19 ~~twelve (12) monthly installments~~ biweekly, plus actual and necessary
20 traveling expenses incurred in the performance of his or her duties
21 as provided in the State Travel Reimbursement Act.

22 SECTION 15. AMENDATORY 40 O.S. 2001, Section 4-508, as
23 last amended by Section 1, Chapter 330, O.S.L. 2010 (40 O.S. Supp.
24 2010, Section 4-508), is amended to read as follows:

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

3 A. Except as otherwise provided by law, information obtained
4 from any employing unit or individual pursuant to the administration
5 of the Employment Security Act of 1980, the Workforce Investment Act
6 of 1998, and determinations as to the benefit rights of any
7 individual shall be kept confidential and shall not be disclosed or
8 be open to public inspection in any manner revealing the
9 individual's or employing unit's identity. Any claimant or employer
10 or agent of such person as authorized in writing shall be supplied
11 with information from the records of the Oklahoma Employment
12 Security Commission, to the extent necessary for the proper
13 presentation of the claim or complaint in any proceeding under the
14 Employment Security Act of 1980, with respect thereto.

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

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

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

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

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

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

23 5. The disclosing of information or evidence to the Attorney
24 General or any district attorney when the information or evidence is

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

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

14 7. The furnishing of information to other state agencies for
15 the limited purpose of aiding in the collection of debts owed by
16 individuals to the requesting agencies or the Oklahoma Employment
17 Security Commission;

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

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

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

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

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

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

21 14. The release to employees of the Center for Economic and
22 Management Research of the University of Oklahoma, the Center for
23 Economic and Business Development at Southwestern Oklahoma State
24 University, or a center of economic and business research or

1 development at a comprehensive or regional higher education
2 institution within the Oklahoma State System of Higher Education of
3 information required to identify economic trends. The information
4 obtained shall be kept confidential by the higher education
5 institution and shall not be disclosed or be open to public
6 inspection. The higher education institution may release aggregated
7 data, provided that such aggregation meets disclosure requirements
8 of the Commission;

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

15 16. The release to employees of the Department of Mental Health
16 and Substance Abuse Services of information required to evaluate the
17 effectiveness of mental health and substance abuse treatment and
18 state or local programs utilized to divert persons from inpatient
19 treatment. The information obtained shall be kept confidential by
20 the Department and shall not be disclosed or be open to public
21 inspection. The Department of Mental Health and Substance Abuse
22 Services, however, may release aggregated data, either by treatment
23 facility, program or larger aggregate units, provided that such

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1 aggregation meets disclosure requirements of the Oklahoma Employment
2 Security Commission;

3 17. The release to employees of the Attorney General, the
4 Oklahoma State Bureau of Investigation, and the Insurance Department
5 for use in the investigation of insurance fraud and health care
6 fraud;

7 18. The release to employees of public housing agencies for
8 purposes of determining eligibility pursuant to 42 U.S.C., Section
9 503(i);

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

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

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

23 22. The release of employer tax information and benefit claim
24 information to the Oklahoma Health Care Authority for use in

1 determining eligibility for a program that will provide subsidies
2 for health insurance premiums for qualified employers, employees,
3 self-employed persons, and unemployed persons;

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

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

14 25. The release of information to vendors that contract with
15 the Oklahoma Employment Security Commission to provide for the
16 issuance of debit cards, to conduct electronic fund transfers, to
17 perform computer programming operations, or to perform computer
18 maintenance or replacement operations; provided the vendor agrees to
19 protect and safeguard the information it receives and to destroy the
20 information when no longer needed for the purposes set out in the
21 contract.

22 D. Subpoenas to compel disclosure of information made
23 confidential by this statute shall not be valid, except for
24 administrative subpoenas issued by federal, state, or local

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

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

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

20 SECTION 16. This act shall become effective July 1, 2011.

21 SECTION 17. It being immediately necessary for the preservation
22 of the public peace, health and safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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