ENROLLED SENATE
BILL NO. 756

By: Newberry of the Senate

and

McDaniel (Randy) of the House

An Act relating to the Oklahoma Employment Security Commission; amending 40 O.S. 2001, Sections 1-210, as last amended by Section 1, Chapter 328, O.S.L. 2010, 1-221, 2-418, 2-605, 2-606, as last amended by Section 8, Chapter 216, O.S.L. 2010, 2-607, 2-608, 2-609, 2-610, as last amended by Section 9, Chapter 132, O.S.L. 2008, 2-612, Section 15, Chapter 452, O.S.L. 2002, 3-106, as last amended by Section 5, Chapter 460, O.S.L. 2009, 3-307, 4-203 and 4-508, as last amended by Section 1, Chapter 330, O.S.L. 2010 (40 O.S. Supp. 2010, Sections 1-210, 2-606, 2-610, 2-616, 3-106 and 4-508), which relate to employment and benefit definitions, indefinite disqualification, 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; deleting authority to remove entire proceeding to Board of Review; making certain findings of fact and certified questions of law reviewable by the Board of Review; requiring written decision by Board of

Review; making decision on certified question of law subject to judicial review; extending time for judicial review; providing for codefendants in certain case style; modifying service requirement for Board of Review and parties; deleting provision for hearing additional evidence; requiring record of case to include properly admitted evidence; directing benefits upon certain decision; deleting reference; authorizing administrative fee for electronic fund transfer for insufficient funds; setting fee amount; changing Board of Review salary from monthly to biweekly; and requiring vendors to keep certain information confidential under terms of certain contracts.

SUBJECT: Employment Security Act of 1980

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

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

(2) (a) any service, including service in interstate commerce, performed by any individual other than an individual

who is an employee under paragraph (1) of this section who performs services for remuneration for any person:

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

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

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

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

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

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

(3) Service performed in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or

more other states or political subdivisions; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act, 26 U.S.C., Section 3306(c)(7), and is not excluded from "employment" under paragraph (7) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) has not entered into a written agreement with the other person (farm operator) under which the individual is designated as an employee of the other person.

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

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

(a) in the employ of:

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

(ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; <u>or</u>

<u>(iii) an elementary or secondary school which is operated primarily for religious purposes, which is described in 26 U.S.C., Section 501(c)(3), and which is exempt from tax under 26 U.S.C., Section 501(a);</u>

(b) by a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or

by a member of a religious order in the exercise of duties required by the order;

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

(i) as an elected official;

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

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

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

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

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

(d) by an individual who is participating or enrolled in a program of an organization that provides rehabilitation through work for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury, or a program of an organization that provides work for individuals who, because of their impaired mental or physical capacity cannot be readily absorbed into the competitive labor

market; provided that the services are performed by a program participant on real property owned or leased directly by the organization or by a program participant working under a special certificate issued by the U.S. Secretary of Labor pursuant to 29 U.S.C., Section 214(c) and 29 C.F.R., Section 525.1 et seq.;

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof <u>or of an Indian tribe</u>, by an individual receiving such work-relief or work-training; or

(f) by an inmate of a custodial or penal institution.

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

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

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

(i) the employer is an individual who is a resident of this state;

(ii) the employer is a corporation which is organized under the laws of this state; or

(iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state;

(c) none of the criteria of subparagraphs (a) and (b) of this paragraph are met but the employer has elected

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

defined in the Federal Unemployment Tax Act, 26 U.S.C., Section 3306(k);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1-221. BENEFIT WAGES.

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

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

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

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

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

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

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

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

B. Any individual who shall have failed in any of the requirements of subsection A of this section due to illness, death of a family member or other extenuating circumstance beyond his or her control shall be disqualified for regular benefits under this section only for the week of the occurrence of such circumstance beyond his or her control. ~~Any individual who is disqualified under this subsection only for the week of the occurrence of such circumstance beyond his or her control shall not thereafter be or become eligible for extended benefits for the purposes of Sections 2-701 through 2-724 of Title 40 of the Oklahoma Statutes until such individual has become reemployed and has earned wages equal to at least ten times his or her weekly benefit amount.~~

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

Section 2-605. NOTICE OF REFEREE DECISION.

The parties shall be promptly notified of such referee's decision and shall be furnished with a copy of the decision, including the findings and conclusions in support thereof. Such

decision shall be final unless, within ten (10) days after the date of mailing of notice thereof to the parties' last-known addresses, or, in the absence of such mailing, within ten (10) days after the delivery of such notice, further review before the Board of Review is initiated pursuant to Section 2-606 of this title.

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

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

The Board of Review shall review the record of an appeal filed by any of the parties entitled to notice on a determination of an appeal tribunal referee. An appeal to the Board of Review may be filed in any manner allowed by Section 1-224 of this title. On appeal, the Board of Review may affirm, modify, reverse, or remand any decision of an appeal tribunal referee on the basis of evidence previously submitted, or on the basis of additional evidence ~~as it may adduce, or, at its direction,~~ received by an appeal tribunal referee on remand. ~~The Board of Review may conduct a formal hearing upon a request of a party or on its own motion. Any formal hearing shall be conducted by one or more members of the Board of Review as it may determine or by a hearing officer designated by the Board of Review.~~ The Board of Review shall promptly notify the parties of its ~~findings and~~ decision in writing, and ~~such~~ the decision shall be final unless within ~~ten (10)~~ thirty (30) days after the mailing of ~~notice thereof~~ the decision to the parties' last-known addresses, a proceeding for judicial review is initiated pursuant to Section 2-610 of this title.

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

Section 2-607. RULES AND PROCEDURES IN APPEALS.

~~The Board of Review and appeal referees shall conduct any hearing or appeal in such manner as to ascertain the substantial rights of the parties.~~ The Board of Review shall adopt reasonable rules governing the manner of filing appeals and the conduct of hearings and appeals before the Board of Review, consistent with the

provisions of the Employment Security Act of 1980. The Oklahoma Employment Security Commission shall adopt and, from time to time, may modify and amend rules governing appeals before the ~~Appeals~~ Appeal Tribunal of the Commission and its referees~~, which rules shall provide for one hearing before a referee near the place of the last employment involved in an intrastate appeal~~. When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual or in claims by a single individual with respect to two (2) or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, provided that in the judgment of the appeal tribunal referee having jurisdiction of the proceeding, such consolidation would not be prejudicial to any party. No person shall participate as an appeal tribunal referee or member of the Board of Review on any case in which the person has a personal interest. A record shall be kept of all testimony and proceedings before an appeal tribunal referee ~~or the Board of Review in connection with an appeal~~, but the testimony need not be transcribed unless judicial review is initiated. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the Commission, and fees of witnesses subpoenaed on behalf of the Commission, the employer, or any claimant, ~~or the Board of Review,~~ shall be deemed part of the expense of administering the Employment Security Act of 1980.

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

Section 2-608. CONCLUSIVENESS OF DETERMINATIONS AND DECISIONS.

Except insofar as reconsideration of any determination is had under Section 2-506 of this title, any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination which has become final, or in a decision on appeal under this subsection which has become final, shall be conclusive for all the purposes of this act as between the Commission, the claimant, and all employers who had notice of such determination, redetermination, or decision. Subject to appeal proceedings and judicial review as provided in this ~~act~~ title, any determination, redetermination or decision as to rights to benefits

shall be conclusive for all the purposes of this act and shall not be subject to collateral attack by any party.

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

Section 2-609. RULE OF DECISION.

~~The~~ A final ~~decisions~~ decision of the Board of Review, or of ~~a~~ an Appeal Tribunal referee, and the principles of law declared in arriving at such decision, unless expressly or impliedly overruled by a later decision of the Board of Review or by a court of competent jurisdiction, shall be binding upon the Commission and Appeal Tribunal referees in subsequent proceedings which involve the same questions of law; provided, ~~however, that~~ if in connection with any subsequent proceeding ~~a~~ an Appeal Tribunal referee has serious doubt as to the correctness of any principle so declared he or she may certify his or her findings of fact in ~~such~~ the case, together with the question of law involved, to the Board of Review, which, after giving notice and reasonable opportunity for ~~hearing~~ briefing to all parties to ~~such~~ the proceeding, shall ~~thereupon certify~~ return to the Commission ~~or such~~ adjudicator, the Appeal Tribunal referee and ~~such~~ the parties its answer to the question submitted by written decision. ~~If the question thus certified to the Board arises in connection with a claim for benefits, the Board of Review in its discretion may remove to itself the entire proceedings on such claim, and, after proceeding in accordance with the requirements of this Part with respect to proceedings before a referee, shall render its decision upon the entire claim.~~ Any decision made ~~under this section after removal of the proceeding to the Board shall be a decision of~~ by the Board of Review ~~and~~ on a certified question shall be subject to judicial review pursuant to Section 2-610 of this title.

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

Section 2-610. JUDICIAL REVIEW.

~~(1)~~ A. Within the ~~ten (10)~~ thirty (30) days after the day a notice of decision of the Board of Review is mailed to the parties,

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

1. The Board of Review;

2. The Oklahoma Employment Security Commission; and

3. All other parties to the proceeding before the Board of Review.

The petition for review need not be verified but shall state specifically the grounds upon which ~~such~~ the review is sought. A copy of the petition for review shall be served upon ~~a member of~~ the Board of Review ~~or upon such persons as the Board of Review may designate~~ at its official address and the petitioner shall also deliver to the ~~person so served~~ Board of Review as many copies of the petition as there are defendants. The Board of Review shall ~~forthwith~~ send ~~by mail~~ to each ~~other~~ party to the proceeding a copy of ~~such~~ the petition by mail, and ~~such~~ the mailing shall be deemed to be service upon all ~~such~~ the parties. In any proceeding under this section the findings of the Board of Review as to the facts, if supported by evidence, shall be conclusive and the jurisdiction of the court shall be confined to questions of law. No additional evidence shall be received by the court, but the court may remand the case and order additional evidence to be taken ~~before the Board of Review, and the Board may, after hearing the additional evidence, modify its findings of fact or conclusions, and file the additional or modified findings and conclusions, together with the transcript of the additional record, with the court~~ by the Appeal Tribunal of the Oklahoma Employment Security Commission.

~~(2)~~ B. Within sixty (60) days of the date of service of the petition on the Board of Review, the Board of Review shall ~~certify~~

~~and~~ file with the court a certified copy of the record of the case, including all documents and papers properly admitted into evidence and a transcript of all testimony taken in the matter, together with the Board of Review's findings, conclusions, and decision ~~therein~~.

~~(3) Such~~ C. The proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases. An appeal may be taken from the decision of the district court to the Supreme Court of this state in the same manner as is provided in other civil cases. It shall not be necessary as a condition precedent to judicial review of any decision of the Board of Review to enter exceptions to the rulings of ~~such~~ the Board, and no bond shall be required as a condition of initiating a proceeding for judicial review or entering an appeal from the decision of the court ~~upon such review~~. Upon the final termination of ~~such~~ the judicial proceeding, the Board of Review shall enter an order in accordance with the mandate of the district or appellate court.

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

Section 2-612. PAYMENT OF BENEFITS.

Benefits shall be promptly paid on any claim in accordance with a determination or redetermination or the decision of a referee, the Board of Review or a reviewing court upon the issuance of ~~such~~ the determination, redetermination or decision, regardless of the pendency of ~~the period to file~~ an appeal, or petition for judicial review that is provided ~~with respect thereto in this section, as the case may be, or the pendency of any such filing, or petition~~ by the Employment Security Act of 1980, unless and until ~~such~~ the determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with ~~such~~ the modifying or reversing redetermination or decision. No injunction, supersedeas, stay or other writ or process suspending the payment of ~~such~~ the benefits shall be issued by any court, but if ~~such~~ the determination, redetermination or decision is finally modified or reversed to deny benefits no employer's account shall remain charged with benefit wages pursuant to the erroneous determination, redetermination or decision and benefits shall not be paid for any weeks of

unemployment involved in ~~such~~ the modification or reversal that begin after ~~such~~ the final decision.

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

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

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

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

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

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

1. The date on which the employment was terminated;

2. Full particulars as to the circumstances of the termination including the reason given by the individual for voluntarily leaving the employment, or the nature of the misconduct for which discharged, as the case may be;

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

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

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

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

setting forth its findings of fact and conclusions of law, and shall send it to the employer.

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

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

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

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

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

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

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

5. Was discharged by an employer for unsatisfactory performance during an initial employment probationary period. As used in this

paragraph, "probationary period" means a period of time set forth in an established probationary plan which applies to all employees or a specific group of employees and does not exceed ninety (90) calendar days from the first day a new employee begins work. The employee must be informed of the probationary period within the first seven (7) work days. There must be conclusive evidence to establish that the individual was separated due to unsatisfactory work performance ~~and not separated because of lack of work due to temporary, seasonal, casual, or other similar employment not of regular, permanent, and year round nature~~;

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

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

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

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

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

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

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

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

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

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

Section 4-203. SALARY.

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

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

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

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

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

C. The provisions of this section shall not prevent the Commission from disclosing the following information and no liability whatsoever, civil or criminal, shall attach to any member

of the Commission or any employee thereof for any error or omission in the disclosure of such information:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. The release of wage and benefit claim information, at the discretion of the Commission, to an agency of this state or its political subdivisions, or any nonprofit corporation that operates a program or activity designated as a partner in the Workforce Investment Act One-Stop delivery system pursuant to 29 U.S.C.A.,

Section 2481 (b), based on a showing of need made to the Commission and after an agreement concerning the release of information is entered into with the entity receiving the information;

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

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

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

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

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

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

D. Subpoenas to compel disclosure of information made confidential by this statute shall not be valid, except for administrative subpoenas issued by federal, state, or local governmental agencies that have been granted subpoena power by

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

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

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

Passed the Senate the 10th day of May, 2011.

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Presiding Officer of the Senate

Passed the House of Representatives the 21st day of April, 2011.

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Presiding Officer of the House
of Representatives