

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 1808, by striking the stricken title, enacting clause and entire body of the bill and substituting the attached floor substitute.

Submitted by:

Senator Newberry

Newberry-NP-FS-Req#3467
2/25/2014 6:00 PM

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 FLOOR SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1808

By: Newberry of the Senate

and

Mulready of the House

7
8
9 FLOOR SUBSTITUTE

10 [unemployment benefits - claims and misconduct -
11 certification statements - Review Board - denial of
12 benefits for misconduct - codification - effective
13 date]

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

15 SECTION 1. AMENDATORY 40 O.S. 2011, Section 2-203, as
16 amended by Section 1, Chapter 148, O.S.L. 2013 (40 O.S. Supp. 2013,
17 Section 2-203), is amended to read as follows:

18 Section 2-203. CLAIM.

19 A. An unemployed individual must file an initial claim for
20 unemployment benefits by calling an Oklahoma Employment Security
21 Commission claims representative in a Commission Call Center, by
22 completing the required forms through the Internet Claims service
23 provided by the Commission, or by completing all forms necessary to
24 process an initial claim in a local office of the Commission or any

1 alternate site designated by the Commission to take unemployment
2 benefit claims. The Commission may obtain additional information
3 regarding an individual's claim through any form of
4 telecommunication, writing, or interview. An unemployed individual
5 must file a claim in writing or by telecommunication for benefits
6 with respect to each week in accordance with such rule as the
7 Commission may prescribe.

8 B. 1. During the process of filing an initial claim for
9 unemployment benefits, the claimant shall be made aware of the
10 definition of misconduct set out in Section 2-406 of this title, and
11 the claimant shall affirmatively certify that the answers given to
12 all questions in the initial claim process are true and correct to
13 the best of the claimant's knowledge and that no information has
14 been intentionally withheld or misrepresented in an attempt by the
15 claimant to receive benefits to which he or she is not entitled.

16 2. The certification statement required in paragraph 1 of this
17 subsection shall be available through the Internet Claims service
18 provided by the Commission and by a form to be completed by the
19 claimant in a local office of the Commission or at any alternate
20 site designated by the Commission to take unemployment benefit
21 claims.

22 C. With respect to each week, he or she must provide the
23 Commission with a true and correct statement of all material facts
24 relating to: his or her unemployment; ability to work; availability

1 for work; activities or conditions which could restrict the
2 individual from seeking or accepting full-time employment
3 immediately; applications for or receipt of workers' compensation
4 benefits; employment and earnings; and the reporting of other income
5 from retirement, pension, disability, self-employment, education or
6 training allowances.

7 D. No claim will be allowed or paid unless the claimant resides
8 within a state or foreign country with which the State of Oklahoma
9 has entered into a reciprocal or cooperative arrangement pursuant to
10 Part 7 of Article IV of the Employment Security Act of 1980.

11 E. The Commission may require the individual to produce
12 documents or information relevant to the claim for benefits. If the
13 individual has the ability to produce the documents or information
14 and fails to produce it, the individual's claim for unemployment
15 benefits may be disqualified indefinitely by the Commission until
16 the information is produced. The Commission may require the
17 individual to personally appear at a location for a purpose relevant
18 to the individual's unemployment claim or job search. If the
19 individual fails to appear, the individual's claim for unemployment
20 benefits may be disqualified indefinitely by the Commission until
21 the individual makes a personal appearance as directed. An
22 individual that has been disqualified indefinitely by the provisions
23 of this subsection may receive payment for any week between the
24 initial failure and the compliance with this subsection if the

1 claimant is otherwise eligible and has made a timely filing for each
2 intervening week.

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 2-406B of Title 40, unless there
5 is created a duplication in numbering, reads as follows:

6 The Board of Review in the Oklahoma Employment Security Commission
7 shall cause an automatic review by random sample to be made of
8 thirty percent (30%) of its unemployment benefit cases where
9 misconduct was alleged and decided either in favor of or against the
10 employer. The Board of Review shall either affirm or reverse the
11 decision on each case subject to an automated review. If the Board
12 of Review reverses the decision in any case subject to an automatic
13 review, the employer shall not be subject to a detrimental rate
14 change regarding such case.

15 SECTION 3. AMENDATORY 40 O.S. 2011, Section 2-406, as
16 amended by Section 2, Chapter 148, O.S.L. 2013 (40 O.S. Supp. 2013,
17 Section 2-406), is amended to read as follows:

18 Section 2-406. DISCHARGE FOR MISCONDUCT.

19 A. An individual shall be disqualified for benefits if he or
20 she has been discharged for misconduct connected with his or her
21 last work. If discharged for misconduct, the employer shall have
22 the burden to prove that the employee engaged in misconduct as
23 defined by this section. Such burden of proof is satisfied by the
24 employer, or its designated representative, providing a signed

1 affidavit, or presenting such other evidence which properly
2 demonstrates the misconduct which resulted in the discharge. Once
3 this burden is met, the burden then shifts to the discharged
4 employee to prove that the facts are inaccurate or that the facts as
5 stated do not constitute misconduct as defined by this section.
6 Disqualification under this section shall continue for the full
7 period of unemployment next ensuing after he or she has been
8 discharged for misconduct connected with his or her work and until
9 such individual has become reemployed and has earned wages equal to
10 or in excess of ten (10) times the weekly benefit amount.

11 B. "Misconduct" ~~shall~~ is any act or omission by an employee
12 which constitutes a material or substantial breach of the employee's
13 job duties or responsibilities or obligations pursuant to his or her
14 employment or contract of employment. Acts which constitute
15 misconduct under this Section include, but shall not be limited to,
16 the following:

17 1. ~~Unexplained~~ Unapproved or excessive absenteeism or
18 tardiness;

19 2. ~~Willful or wanton indifference~~ Indifference to, breach of,
20 or neglect of the duties required which result in a material or
21 substantial breach of the employee's job duties or responsibilities;

22 3. ~~Willful or wanton breach of any duty required by the~~
23 ~~employer;~~

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1 4. ~~The mismanagement of a position of employment by action or~~
2 ~~inaction;~~

3 5. Actions or omissions that place in jeopardy the health,
4 life, or property of self or others;

5 6. 4. Dishonesty;

6 7. 5. Wrongdoing;

7 8. 6. Violation of a law; or

8 9. 7. A violation of a policy or rule ~~adopted~~ enacted to
9 ensure orderly ~~work or~~ and proper job performance or for the safety
10 of self or others.

11 C. Any misconduct violation as defined in subsection B of this
12 section shall not require a prior warning from the employer. As
13 long as the employee knew, or should have reasonably known, that a
14 rule or policy of the employer was violated, the employee shall not
15 be eligible for benefits.

16 D. Any finding by a state or federal agency of any failure by
17 the employee to meet the applicable civil, criminal or professional
18 standards of the employee's profession shall create a rebuttable
19 presumption of such misconduct, and benefits shall be denied, unless
20 the employee can show, with clear and convincing evidence, that such
21 misconduct did not occur, or the Commission determines that such
22 failure did not constitute misconduct as defined herein. However,
23 if any state or federal agency finds that the employee committed a

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1 criminal act, that finding shall serve as conclusive proof of
2 misconduct, and benefits shall be denied.

3 SECTION 4. This act shall become effective November 1, 2014.

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