

1 ENGROSSED SENATE AMENDMENT  
TO

2 ENGROSSED HOUSE  
3 BILL NO. 2253

By: McDaniel (Randy) of the  
House

4 and

5 Newberry of the Senate

6  
7  
8 An Act relating to labor; amending 40 O.S. 2011,  
9 Sections 1-218, 1-223, 2-607, 2-613, as amended by  
10 Section 6, Chapter 196, O.S.L. 2012, 2-617, 3-107 and  
11 3-111.1, as amended by Section 10, Chapter 71, O.S.L.  
12 2013 (40 O.S. Supp. 2015, Sections 2-613 and 3-  
13 111.1), \*\*\*\* modifying unemployment tax rate;  
14 providing definition; modifying transfer of rates and  
15 experiences; modifying filings by professional  
16 employer organizations; providing for transfer of  
17 experience history for professional employer  
18 organizations; creating the OESC Technology Fund\*\*\*\*  
19 providing for codification; and providing an  
20 effective date.

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23 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and  
24 entire bill and insert

"An Act relating to labor; amending 40 O.S. 2011,  
Sections 1-218, 1-223, 2-607, 2-609, as amended by  
Section 8, Chapter 220, O.S.L. 2014, 2-613, as  
amended by Section 6, Chapter 196, O.S.L. 2012, 2-  
617, 3-107 and 3-111.1, as amended by Section 10,  
Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2015, Sections  
2-609, 2-613 and 3-111.1), and Section 14, Chapter  
249, O.S.L. 2015 and Section 2, Chapter 221, O.S.L.  
2014 (40 O.S. Supp. 2015, Sections 3-110.1 and 3-  
120), which relate to the Employment Security Act of  
1980; modifying definition; removing obsolete  
language; providing for definitions; requiring  
Oklahoma Employment Security Commission to create and  
maintain certain manual; prohibiting certain

1 decisions from being binding under certain  
2 circumstances; authorizing voluntary repayment of  
3 overpayment with private funds; modifying references;  
4 removing obsolete language; modifying unemployment  
5 tax rate; providing definition; modifying transfer of  
6 rates and experiences; modifying filings by  
7 professional employer organizations; providing for  
8 transfer of experience history for professional  
9 employer organizations; repealing 40 O.S. 2011,  
10 Section 3-103, as last amended by Section 12, Chapter  
11 249, O.S.L. 2015 (40 O.S. Supp. 2015, Section 3-103),  
12 which relates to percentages of wages payable;  
13 repealing 40 O.S. 2011, Section 3-111, as last  
14 amended by Section 1, Chapter 180, O.S.L. 2015 (40  
15 O.S. Supp. 2015, Section 3-111), which relates to  
16 successor and predecessor employers; providing for  
17 codification; and providing an effective date.

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

SECTION 1. AMENDATORY 40 O.S. 2011, Section 1-218, is  
amended to read as follows:

Section 1-218. WAGES.

"Wages" means all remuneration for services from whatever  
source, including commissions and bonuses and the cash value of all  
remuneration in any medium other than cash, and includes dismissal  
payments which the employer is required by law or contract to make.  
Gratuities customarily received by an individual in the course of  
work from persons other than the employing unit shall be treated as  
wages received from the employing unit. The reasonable cash value  
of remuneration in any medium other than cash, and the reasonable  
amount of gratuities, shall be estimated and determined in

1 accordance with rules prescribed by the Oklahoma Employment Security  
2 Commission. The term wages shall not include:

3 1. The amount of any payment, with respect to services  
4 performed to or on behalf of an individual in its employ under a  
5 plan or system established by an employing unit which makes  
6 provision for individuals in its employ generally, or for a class or  
7 classes of such individuals, including any amount paid by an  
8 employing unit for insurance or annuities, or into a fund to provide  
9 for any such payment, on account of:

10 a. retirement, other than employee contributions or  
11 deferrals ~~after December 31, 2002,~~ under a qualified  
12 plan as described in 26 U.S.C., Section 401(k) ~~and,~~  
13 ~~after December 31, 2005, under a qualified plan as~~  
14 ~~described in 26 U.S.C., Sections 403(b), 408(k), 457,~~  
15 ~~and 7701(j), and, after December 31, 2010, under a~~  
16 ~~qualified plan as described in 26 U.S.C., Section or~~  
17 408(p),

18 b. sickness or accident disability,

19 c. medical and hospitalization expenses in connection  
20 with sickness or accident disability,

21 d. death, provided the individual in its employ:

22 (1) has not the option to receive, instead of  
23 provision for such death benefit, any part of  
24 such payment, or if such death benefit is

1 insured, any part of the premium or contributions  
2 to premiums paid by the employing unit, and

3 (2) has not the right, under the provisions of the  
4 plan or system or policy of insurance providing  
5 for such death benefit, to assign such benefit,  
6 or to receive cash consideration in lieu of such  
7 benefit either upon withdrawal from the plan or  
8 system providing for such benefit or upon  
9 termination of such plan or system or policy of  
10 insurance or of the individual's services with  
11 such employing unit, or

12 e. a bona fide thrift or savings fund, providing:

13 (1) such payment is conditioned upon a payment of a  
14 substantial sum by such individuals in its  
15 employ, and

16 (2) that such sum paid by the employing unit cannot  
17 under the provisions of such plan be withdrawn by  
18 an individual more frequently than once in any  
19 twelve-month period, except upon an individual's  
20 separation from that employment;

21 2. Any payment made to, or on behalf of, an employee or his or  
22 her beneficiary under a cafeteria plan of the type described in 26  
23 U.S.C., Section 125 and referred to in 26 U.S.C., Section  
24 3306(b) (5) (G);

1           3. Any payment made, or benefit furnished, to or for the  
2 benefit of an employee if at the time of such payment or such  
3 furnishing it is reasonable to believe that the employee will be  
4 able to exclude such payment or benefit from income under an  
5 educational assistance program as described in 26 U.S.C., Section  
6 127 or a dependent care assistance program as described in 26  
7 U.S.C., Section 129 and as referred to in 26 U.S.C., Section  
8 3306(b) (13);

9           4. The payment by an employing unit, without deduction from the  
10 remuneration of the individual in its employ, of the tax imposed  
11 upon such individual in its employ under 26 U.S.C., Section 3101  
12 with respect to domestic services in a private home of the employer  
13 or for agricultural labor;

14           5. Dismissal payments which the employer is not required by law  
15 or contract to make;

16           6. The value of any meals and lodging furnished by or on behalf  
17 of an employer to an individual in its employ; provided the meals  
18 and lodging are furnished on the business premises of the employer  
19 for the convenience of the employer; or

20           7. Payments made under an approved supplemental unemployment  
21 benefit plan.

22           SECTION 2.           AMENDATORY           40 O.S. 2011, Section 1-223, is  
23 amended to read as follows:

24           Section 1-223.   TAXABLE WAGES.

1       ~~A. Prior to January 1, 2000, "taxable wages" means the wages~~  
2 ~~paid to an individual with respect to employment during a calendar~~  
3 ~~year for services covered by the Employment Security Act of 1980 or~~  
4 ~~other state unemployment compensation acts which shall equal fifty~~  
5 ~~percent (50%) of the state's average annual wage for the second~~  
6 ~~preceding calendar year as determined by the Commission, rounded to~~  
7 ~~the nearest multiple of One Hundred Dollars (\$100.00).~~

8       ~~B. Beginning January 1, 2000, "taxable~~ "Taxable wages" means  
9 the wages paid to an individual with respect to employment during a  
10 calendar year for services covered by the Employment Security Act of  
11 1980 or other state unemployment compensation acts which shall equal  
12 the applicable percentage of the state's average annual wage for the  
13 second preceding calendar year as determined by the Commission,  
14 rounded to the nearest multiple of One Hundred Dollars (\$100.00).  
15 The applicable percentage is determined by the conditional factor in  
16 place during the calendar year for which the taxable wage is being  
17 calculated. The conditional factor is determined pursuant to the  
18 provisions of Section 3-113 of this title. The applicable  
19 percentages are as follows:

20       1. Forty percent (40%) during any calendar year in which the  
21 balance in the Unemployment Compensation Fund is in excess of the  
22 amount required to initiate conditional contribution rates, pursuant  
23 to the provisions of Section 3-113 of this title;

1        2. Forty-two and one-half percent (42.5%) during calendar years  
2 in which condition "a" exists;

3        3. Forty-five percent (45%) during calendar years in which  
4 condition "b" exists;

5        4. Forty-seven and one-half percent (47.5%) during calendar  
6 years in which condition "c" exists; and

7        5. Fifty percent (50%) during calendar years in which condition  
8 "d" exists.

9        SECTION 3.        NEW LAW        A new section of law to be codified  
10 in the Oklahoma Statutes as Section 1-229 of Title 40, unless there  
11 is created a duplication in numbering, reads as follows:

12        ASSIGNED TAX RATE AND EARNED TAX RATE.

13        A. "Assigned tax rate" means the tax rate assigned to an  
14 employer pursuant to Section 3-110.1 of Title 40 of the Oklahoma  
15 Statutes when the employer does not have sufficient experience  
16 history to meet the At-Risk Rule set out in paragraph 3 of Section  
17 10 of this act.

18        B. "Earned tax rate" means the tax rate calculated for an  
19 employer with sufficient experience history to meet the At-Risk Rule  
20 set out in paragraph 3 of Section 10 of this act with the tax rate  
21 calculated pursuant to the provisions of Part 1 of Article 3 of the  
22 Employment Security Act of 1980.

23        SECTION 4.        AMENDATORY        40 O.S. 2011, Section 2-607, is  
24 amended to read as follows:

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

2 The Board of Review shall adopt reasonable rules governing the  
3 manner of filing appeals and the conduct of hearings and appeals  
4 before the Board of Review, consistent with the provisions of the  
5 Employment Security Act of 1980. The Oklahoma Employment Security  
6 Commission shall adopt and, from time to time, may modify and amend  
7 rules governing appeals before the Appeal Tribunal of the Commission  
8 and its referees. The Oklahoma Employment Security Commission shall  
9 create and maintain a precedent manual to reflect current statutes  
10 and statutory changes along with current case law that is applicable  
11 to questions of law which may arise during hearing or appeals. The  
12 precedent manual shall be updated by the Commission within thirty  
13 (30) days of the effective date of any statutory changes and shall  
14 be available at the offices of the Commission and on any Internet  
15 website maintained by the Commission. When the same or  
16 substantially similar evidence is relevant and material to the  
17 matters in issue in claims by more than one individual or in claims  
18 by a single individual with respect to two (2) or more weeks of  
19 unemployment, the same time and place for considering each such  
20 claim may be fixed, hearings thereon jointly conducted, a single  
21 record of the proceedings made, and evidence introduced with respect  
22 to one proceeding considered as introduced in the others, provided  
23 that in the judgment of the appeal tribunal referee having  
24 jurisdiction of the proceeding, such consolidation would not be

1 prejudicial to any party. No person shall participate as an appeal  
2 tribunal referee or member of the Board of Review on any case in  
3 which the person has a personal interest. A record shall be kept of  
4 all testimony and proceedings before an appeal tribunal referee, but  
5 the testimony need not be transcribed unless judicial review is  
6 initiated. Witnesses subpoenaed pursuant to this section shall be  
7 allowed fees at a rate fixed by the Commission, and fees of  
8 witnesses subpoenaed on behalf of the Commission, the employer, or  
9 any claimant, shall be deemed part of the expense of administering  
10 the Employment Security Act of 1980.

11 SECTION 5. AMENDATORY 40 O.S. 2011, Section 2-609, as  
12 amended by Section 8, Chapter 220, O.S.L. 2014 (40 O.S. Supp. 2015,  
13 Section 2-609), is amended to read as follows:

14 Section 2-609. RULE OF DECISION.

15 A final decision of the Board of Review, ~~or of an Appeal~~  
16 ~~Tribunal referee,~~ and the principles of law declared in arriving at  
17 such decision, unless expressly or impliedly overruled by the  
18 passage of a more recent statute, by a later decision of the Board  
19 of Review, or by a court of competent jurisdiction, shall be binding  
20 upon the Commission and Appeal Tribunal referees in subsequent  
21 proceedings which involve the same questions of law or fact. In no  
22 event shall a decision of the Board of Review, or by a court of  
23 competent jurisdiction, decided prior to a change in law by the  
24 Legislature supersede or be binding upon the Commission, Appeal

1 Tribunal referees, Board of Review, or any court of competent  
2 jurisdiction in proceedings subsequent to the passage of statutory  
3 changes.

4 SECTION 6. AMENDATORY 40 O.S. 2011, Section 2-613, as  
5 amended by Section 6, Chapter 196, O.S.L. 2012 (40 O.S. Supp. 2015,  
6 Section 2-613), is amended to read as follows:

7 Section 2-613. BENEFIT OVERPAYMENTS.

8 An overpayment of unemployment benefits shall be classified in  
9 one of three ways with recovery and recoupment to be conducted as  
10 follows:

11 1. Fraud overpayment: in which an individual intentionally  
12 makes a false statement or representation or fails to disclose a  
13 material fact, and has received any sum as benefits to which the  
14 individual was not entitled. The individual shall be liable to  
15 repay this sum, plus a penalty of twenty-five percent (25%) of the  
16 amount of the original overpayment and interest at the rate of one  
17 percent (1%) per month on the unpaid balance of the overpayment, to  
18 the Oklahoma Employment Security Commission. Three-fifths (3/5) of  
19 the penalty amount collected shall be deposited in the Unemployment  
20 Trust Fund for the State of Oklahoma and the remaining two-fifths  
21 (2/5) shall be deposited in the Oklahoma Employment Security  
22 Commission Revolving Fund. The interest shall cease to accrue when  
23 the total accrued interest equals the amount of the overpayment. If  
24 an overpayment is modified, the interest shall cease to accrue when

1 the total accrued interest equals the amount of the modified  
2 overpayment. The Commission shall deduct the principal sum from any  
3 future benefits payable to the individual;

4 2. Claimant error overpayment: in which an individual, by  
5 mistake of law or fact, makes a false statement or representation or  
6 fails to disclose a material fact and has received any sum as  
7 benefits to which the individual was not entitled. The individual  
8 shall be liable to repay this sum, plus interest at the rate of one  
9 percent (1%) per month on the unpaid balance of the overpayment, to  
10 the Commission. The interest shall cease to accrue when the total  
11 accrued interest equals the amount of the overpayment. If an  
12 overpayment is modified, the interest shall cease to accrue when the  
13 total accrued interest equals the amount of the modified  
14 overpayment. The Commission shall deduct the principal sum from any  
15 future benefits payable to the individual; or

16 3. Administrative overpayment - in which:

- 17 a. an individual has received any sum as benefits under  
18 the Employment Security Act of 1980 due to an error by  
19 the Commission or an employer, or  
20 b. an individual has received benefits and, under a  
21 redetermination or a reversal of a decision on appeal,  
22 the individual has been found to be not entitled to  
23 benefits.

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1 The individual shall be liable to have this sum deducted from any  
2 future benefits payable to the individual with respect to the  
3 benefit year current at the time of the receipt and the next  
4 subsequent benefit year that begins within one (1) year after the  
5 expiration of the benefit year current at the time of the receipt.  
6 No interest shall accrue on administrative overpayments. An  
7 individual may voluntarily repay an administrative overpayment with  
8 private funds.

9 SECTION 7. AMENDATORY 40 O.S. 2011, Section 2-617, is  
10 amended to read as follows:

11 Section 2-617. WARRANT OF LEVY AND LIEN.

12 A. If the notice of overpayment determination issued pursuant  
13 to Section ~~15~~ 2-616 of this ~~act~~ title becomes final due to a lack of  
14 appeal or if the determination is affirmed on appeal, and if the  
15 amount due is not paid within ninety (90) days of the date that the  
16 determination becomes final, then the Oklahoma Employment Security  
17 Commission may issue a warrant of levy and lien under its official  
18 seal, which shall state the name and ~~social security~~ Social Security  
19 number of the debtor and list the amount of indebtedness with  
20 interest. The warrant of levy and lien shall be for all purposes  
21 the equivalent of a judgment of a court of record.

22 B. The Commission may file a copy of the warrant of levy and  
23 lien with the county clerk of the county or counties in which the  
24 individual has property and thereupon the county clerk shall index

1 the warrant of levy and lien in the same manner as judgments using  
2 the name of the individual named in the warrant of levy and lien,  
3 indicating that it is due to an overpayment of unemployment  
4 insurance benefits, showing the amount due with interest, the date  
5 upon which the warrant of levy and lien was filed, and shall index  
6 the warrant of levy and lien against the real property described  
7 therein, if any is described. If the county clerk charges a fee for  
8 the filing of the warrant of levy and lien, the Commission may add  
9 the amount of the fee to the indebtedness owing by the individual  
10 named in the warrant of levy and lien.

11 C. The filing of the notice in the office of the county clerk  
12 of the county in which the individual resides shall constitute and  
13 be evidence and notice of the state's lien upon the title to any  
14 interest in any real or personal property of the individual named in  
15 the notice. The lien shall be in addition to any and all other  
16 liens existing in favor of the state to secure the payment of any  
17 unpaid indebtedness, interest, penalty, fees and costs, and the lien  
18 shall be paramount and superior to all other liens of whatsoever  
19 kind or character, attaching to any of the property subsequent to  
20 the date of the recording and shall be in addition to any other lien  
21 provided for in this act. This lien shall be permanent and  
22 continuing without any requirement for executions under Section 735  
23 of Title 12 of the Oklahoma Statutes or any other similar statute.  
24 This lien shall continue on personal property of the individual

1 until the amount of the indebtedness, interest, fees and costs are  
2 paid. This lien shall continue on real property until released by  
3 payment or for a maximum of ten (10) years after the date of its  
4 filing.

5 D. The Commission may file a copy of the notice with the court  
6 clerk in the county in which the individual is employed or resides,  
7 and it shall be filed in the same manner as a judgment of a court of  
8 record for the purpose of pursuing any post-judgment collection  
9 procedure that is deemed appropriate. The Commission may send the  
10 notice to the sheriff in a county in which the individual owns real  
11 or personal property for execution. Upon receiving the notice, the  
12 sheriff shall proceed to execute the notice in all respects and with  
13 like effect and in same manner prescribed by law in respect to  
14 executions against property upon judgment of the court of record;  
15 and the sheriff shall execute and deliver to the purchaser a bill of  
16 sale or deed, as the case may be. Any purchaser, other than the  
17 state, shall be entitled, upon application to the court having  
18 jurisdiction of the property, to have confirmation (the procedure  
19 for which shall be the same as is now provided for the confirmation  
20 of a sale under execution) of the sale prior to the issuance of a  
21 bill of sale or deed. The state shall be authorized to make bids at  
22 any such sale to the amount of indebtedness, interest, costs, and  
23 fees accrued. In the event the bid of the state is successful, the  
24 sheriff shall issue a proper muniment of title to the Commission,

1 and the Commission shall hold the title for the use and benefit of  
2 the state. The state may sell any property obtained in this manner  
3 through the procedures available for the sale of excess property of  
4 the state. Any money received by the Commission through the sale of  
5 property in this manner shall be credited against the indebtedness  
6 of the individual. The sheriff shall be entitled to the same fee  
7 for executing the notice as the sheriff would be entitled to receive  
8 if executing an execution issued by the court clerk of the county  
9 upon a judgment of a court of record.

10 SECTION 8. AMENDATORY 40 O.S. 2011, Section 3-107, is  
11 amended to read as follows:

12 Section 3-107. BENEFIT WAGE RATIO.

13 ~~A. For any tax year occurring before January 1, 2007, the~~  
14 ~~benefit wage ratio of each employer shall be a percentage equal to~~  
15 ~~the total of the employer's benefit wages in the experience period~~  
16 ~~divided by the employer's total taxable payroll for the experience~~  
17 ~~period on which contributions have been paid to the Oklahoma~~  
18 ~~Employment Security Commission on or before January 31 of the~~  
19 ~~calendar year with respect to which the employer's benefit wage~~  
20 ~~ratio is determined.~~

21 ~~B. For any tax year occurring after December 21, 2006, the~~ The  
22 benefit wage ratio of each employer shall be a percentage equal to  
23 the total of the employer's benefit wages in the experience period  
24 divided by the employer's total taxable payroll for the experience

1 period on which contributions have been paid to the Commission on or  
2 before July 31 of the calendar year immediately preceding the year  
3 for which the ~~contribution tax~~ tax rate is being calculated.

4 SECTION 9. AMENDATORY Section 14, Chapter 249, O.S.L.  
5 2015 (40 O.S. Supp. 2015, Section 3-110.1), is amended to read as  
6 follows:

7 Section 3-110.1. ~~MINIMUM CONTRIBUTIONS~~ UNEMPLOYMENT TAX RATE.

8 ~~A. Each employer, unless otherwise prescribed in Section 3-~~  
9 ~~111.1, 3-701 or 3-801 of this title, shall pay unemployment tax as~~  
10 ~~follows:~~

11 1. All employers shall have a an assigned tax rate of one and  
12 one-half percent (1.5%) until the calendar year following the eighth  
13 consecutive calendar quarter in which the employer employed at least  
14 one individual in covered employment, at which time the employer  
15 shall sufficient experience history exists in the employer's account  
16 to meet the At-Risk Rule set out in paragraph 3 of this section. If  
17 the account meets the At-Risk Rule, the employer will qualify for an  
18 earned tax rate calculated pursuant to the provisions of Part 1 of  
19 Article III of the Employment Security Act of 1980-;

20 ~~B. 2. If an employer qualifies~~ qualified for an earned tax rate  
21 under subsection A paragraph 1 of this section, or under a prior  
22 law, and subsequently ceases to employ at least one person, at the  
23 time the employer's tax rate is being determined for a subsequent  
24 year the employer account lacks sufficient experience history to

1 meet the At-Risk Rule of paragraph 3 of this section, the employer  
2 shall revert to the ~~minimum contribution~~ assigned tax rate of one  
3 and one-half percent (1.5%) ~~if, throughout the one (1) calendar year~~  
4 ~~immediately preceding the calculation of the employer's contribution~~  
5 ~~rate, there was no individual who could have filed a claim in each~~  
6 ~~quarter of that year establishing a base period, as defined by~~  
7 ~~Section 1-202 of Title 40 of the Oklahoma Statutes, which would~~  
8 ~~include wages from that employer.~~ The employer shall pay at the  
9 ~~minimum contribution~~ assigned tax rate until the provisions of  
10 ~~subsection A~~ paragraph 1 of this section are met; and

11 3. "At-Risk Rule" means an employer is required to be at-risk  
12 for a claim of unemployment benefits before an earned tax rate is  
13 calculated. An employer shall meet the At-Risk Rule and be eligible  
14 for an earned tax rate if, throughout the calendar year immediately  
15 preceding the year for which the employer's tax rate is being  
16 determined, there was an individual who could have filed a claim for  
17 unemployment benefits in each quarter of that year establishing a  
18 base period, as defined by Section 1-202 of this title, which would  
19 include wages from that employer.

20 SECTION 10. AMENDATORY 40 O.S. 2011, Section 3-111.1, as  
21 amended by Section 10, Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2015,  
22 Section 3-111.1), is amended to read as follows:

23 Section 3-111.1. SUCCESSOR AND PREDECESSOR EMPLOYERS - SPECIAL  
24 RULES ON TRANSFER OF RATES AND EXPERIENCE.

1 A. Notwithstanding any other provision of law, the following  
2 shall apply regarding assignments of rates and transfers of  
3 experience:

4 1. If an employer transfers its trade or business, or a ~~portion~~  
5 separate and distinct establishment, or unit thereof, to another  
6 employer or an entity that does not meet the definition of an  
7 employer at the time of the transfer and, ~~at the time of the~~  
8 ~~transfer,~~ there is substantially common ownership, management or  
9 control of the two employers or entities at the time of the  
10 transfer, then the experience rating account attributable to the  
11 transferred trade or business shall be combined with the experience  
12 rating account of the employer to whom such business is so  
13 transferred. The employer transferring its trade or business shall  
14 be the predecessor employer and the employer or entity acquiring the  
15 transferred trade or business shall be the successor employer.  
16 The successor employer shall acquire the experience rating account  
17 of the predecessor employer, including the predecessor's actual tax  
18 and benefit experience, annual payrolls and tax rate. The successor  
19 employer shall also become jointly and severally liable with the  
20 predecessor employer for all current or delinquent taxes, interest,  
21 penalties and fees owed to the Oklahoma Employment Security  
22 Commission by the predecessor employer. In the case of the transfer  
23 of a separate and distinct establishment or unit within the  
24 predecessor employer, the successor employer shall acquire that

1 portion of the items identified above that relate to the  
2 establishment or unit acquired or its pro-rata share; and

3 2. Whenever a person who is not an employer under the  
4 Employment Security Act of 1980 at the time it acquires the trade or  
5 business of an employer, the experience rating account of the  
6 acquired business shall not be transferred to ~~such~~ that person if  
7 the Commission finds that the person acquired the business solely or  
8 primarily for the purpose of obtaining a lower tax rate ~~of~~  
9 ~~contributions~~. Instead, the person shall be assigned ~~the minimum~~  
10 ~~contribution~~ a tax rate under Section ~~3-110~~ 3-110.1 of ~~Title 40 of~~  
11 ~~the Oklahoma Statutes~~ this title. In determining whether the  
12 business was acquired solely or primarily for the purpose of  
13 obtaining a lower tax rate ~~of contributions~~, the Commission shall  
14 ~~use~~ examine objective factors which may include the cost of  
15 acquiring the business, whether the person continued the business  
16 enterprise of the acquired business, how long ~~such~~ the business  
17 enterprise was continued, or whether a substantial number of new  
18 employees were hired for performance of duties unrelated to the  
19 business activity conducted prior to acquisition.

20 B. 1. If a person knowingly violates or attempts to violate  
21 paragraph 1 or 2 of subsection A of this section or any other  
22 provision of the Employment Security Act of 1980 related to  
23 determining the assignment of the ~~contribution~~ tax rate, or if a  
24 person knowingly advises another person in a way that results in a

1 violation of such provision, the person shall be subject to the  
2 following penalties:

3 a. if the person is an employer, then the employer shall  
4 be assessed a penalty equal to ten percent (10%) of  
5 the actual taxes due in the calendar quarter in which  
6 the employer violated or attempted to violate the  
7 provisions of this section and a penalty equal to ten  
8 percent (10%) of the actual taxes due in each of the  
9 following three (3) calendar quarters. The funds in  
10 payment of this penalty shall be deposited in the  
11 Oklahoma Employment Security Commission Revolving Fund  
12 established under Section 4-901 of ~~Title 40 of the~~  
13 ~~Oklahoma Statutes~~ this title,

14 b. if the person is not an employer, the person shall be  
15 subject to a civil money penalty of at least One  
16 Hundred Dollars (\$100.00) and not more than Five  
17 Thousand Dollars (\$5,000.00) to be determined by the  
18 Assessment Board of the Oklahoma Employment Security  
19 Commission. Any fine shall be deposited in the  
20 Oklahoma Employment Security Commission Revolving Fund  
21 established under Section 4-901 of ~~Title 40 of the~~  
22 ~~Oklahoma Statutes~~ this title.

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1           2. For purposes of this section, the term "knowingly" means  
2 having actual knowledge of or acting with deliberate ignorance or  
3 reckless disregard for the prohibition involved.

4           3. For the purposes of this section, the term "violates or  
5 attempts to violate" includes, but is not limited to, intent to  
6 evade, misrepresentation or willful nondisclosure.

7           4. In addition to the penalty imposed by paragraph 1 of this  
8 subsection, any person who violates the provisions of this section  
9 shall be guilty of a misdemeanor and may be imprisoned for up to one  
10 (1) year.

11           C. The Commission shall establish procedures to identify the  
12 transfer or acquisition of a business for purposes of this section.

13           D. For purposes of this section:

14           1. "Person" has the meaning given such term by 26 U.S.C.,  
15 Section 7701(a)(1); and

16           2. "Trade or business" shall include the ~~employers~~ employer's  
17 workforce.

18           E. This section shall be interpreted and applied in such a  
19 manner as to meet the minimum requirements contained in any guidance  
20 or regulations issued by the United States Department of Labor.

21           SECTION 11.           AMENDATORY           Section 2, Chapter 221, O.S.L.  
22 2014 (40 O.S. Supp. 2015, Section 3-120), is amended to read as  
23 follows:  
24

1       Section 3-120.   REQUIRED FILINGS BY PROFESSIONAL EMPLOYER  
2 ORGANIZATIONS - PAYMENT OF CONTRIBUTIONS - CHANGE OF ELECTION.

3       A. Each Professional Employer Organization, or PEO, shall file  
4 all reports and pay all contributions required by the Employment  
5 Security Act of 1980 and the Rules of the Oklahoma Employment  
6 Security Commission under one of the following two options. The PEO  
7 may choose the option under which it will report and pay. All PEOs  
8 that do not exercise their option within the compliance date in  
9 subsections C and D of this section shall be assigned to option 1  
10 below. All current client accounts and client accounts set up or  
11 acquired after the election shall be reported and paid according to  
12 the option elected by the PEO or the option assigned to the PEO if  
13 no election is made. The two options are as follows:

14       1. The PEO shall file quarterly tax returns to report the wages  
15 of all covered employees of all its clients and pay all  
16 contributions due on those wages under one account of the PEO; or

17       2. The PEO shall file quarterly tax returns to report the wages  
18 of all covered employees under the direction and control of each  
19 client and pay all contributions due on those wages under the  
20 account assigned to that client by the Oklahoma Employment Security  
21 Commission; provided:

22           a. a PEO choosing this option shall notify the Oklahoma  
23               Employment Security Commission in writing,

- 1           b.    a PEO choosing this option shall assist the Commission  
2                    in the process of the separation and identification of  
3                    the contribution history, the benefit experience  
4                    history, and the payroll of each of its clients, and  
5                    the Commission shall transfer that experience to the  
6                    client account,
- 7           c.    the Commission shall determine the ~~contribution tax~~  
8                    rate of each client account separately based upon the  
9                    client's contribution history, benefit experience  
10                  history and actual payroll, ~~and~~
- 11          d.    if there is not sufficient experience in the client  
12                  account after the transfer of experience to establish  
13                  a ~~contribution tax~~ rate, the account will be assigned  
14                  ~~the minimum contribution~~ a tax rate pursuant to  
15                  Section ~~3-110~~ 3-110.1 of ~~Title 40 of the Oklahoma~~  
16                  ~~Statutes~~ this title, and
- 17          e.    a PEO choosing this option shall produce all  
18                  documentation and information necessary for the  
19                  Oklahoma Employment Security Commission to create the  
20                  client account within sixty (60) days of choosing this  
21                  option. If the information needed by the Commission  
22                  is not produced within this sixty-day period, the PEO  
23                  shall revert to reporting under the option provided  
24                  for in paragraph 1 of subsection A of this section.

1 B. Within thirty (30) days after the end of each calendar  
2 quarter, each PEO shall file a list of all its clients setting out  
3 the federal employer identification number, the name, the client's  
4 contact information and the current registration certificate of the  
5 PEO issued pursuant to Section 600.4 of ~~Title 40 of the Oklahoma~~  
6 ~~Statutes~~ this title. The client list shall be filed in a format  
7 prescribed by the Oklahoma Employment Security Commission.  
8 Materials submitted pursuant to this section shall be deemed records  
9 submitted pursuant to the Oklahoma Professional Employer  
10 Organization Recognition and Registration Act and shall be treated  
11 as confidential and subject to the provisions of subsection C of  
12 Section 600.6 of ~~Title 40 of the Oklahoma Statutes~~ this title and  
13 Section 4-508 of ~~Title 40 of the Oklahoma Statutes~~ this title.

14 C. Any PEO with a current employer tax account with the  
15 Oklahoma Employment Security Commission as of the effective date of  
16 this act shall comply with the provisions of this section no later  
17 than January 1, 2015.

18 D. Any PEO that does not have a current employer tax account  
19 with the Oklahoma Employment Security Commission as of the effective  
20 date of this act shall comply with the provisions of this section  
21 upon becoming liable for contributions under the Employment Security  
22 Act of 1980.

23 E. After the initial election or assignment of the option  
24 provided for in subsection A of this section, a PEO shall be

1 permitted to change its election one time only. The change of  
2 election shall be made by the PEO in writing. The election shall  
3 become effective in the calendar year following the date the  
4 Commission approves the election of the PEO. If the Commission  
5 approves a change of election, all contribution history, benefit  
6 experience history and payroll of each client shall be transferred  
7 to the pooled account, if the option in paragraph 1 of subsection A  
8 of this section is chosen, or the individual client accounts, if the  
9 option in paragraph 2 of subsection A of this section is chosen.

10 SECTION 12. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 3-121 of Title 40, unless there  
12 is created a duplication in numbering, reads as follows:

13 PROFESSIONAL EMPLOYER ORGANIZATIONS - TRANSFER OF EXPERIENCE  
14 HISTORY.

15 If a Professional Employer Organization, or PEO, chooses the  
16 option to file quarterly tax returns under the account assigned to  
17 its client pursuant to paragraph 2 of subsection A of Section 3-120  
18 of Title 40 of the Oklahoma Statutes, and if the client has an  
19 experience history from a previous account assigned to that client  
20 that can be used in calculating an earned tax rate pursuant to the  
21 provisions of Article 3, Part 1, of the Employment Security Act of  
22 1980, then that experience history shall be transferred to the  
23 account assigned to that client as a co-employer of that PEO.

24



1 ENGROSSED HOUSE  
2 BILL NO. 2253

By: McDaniel (Randy) of the  
House

3 and

4 Newberry of the Senate  
5

6 An Act relating to labor; amending 40 O.S. 2011,  
7 Sections 1-218, 1-223, 2-607, 2-613, as amended by  
8 Section 6, Chapter 196, O.S.L. 2012, 2-617, 3-107 and  
9 3-111.1, as amended by Section 10, Chapter 71, O.S.L.  
10 2013 (40 O.S. Supp. 2015, Sections 2-613 and 3-  
11 111.1), and Section 14, Chapter 249, O.S.L. 2015 and  
12 Section 2, Chapter 221, O.S.L. 2014 (40 O.S. Supp.  
13 2015, Sections 3-110.1 and 3-120), which relate to  
14 the Employment Security Act of 1980; modifying  
15 definition; removing obsolete language; providing for  
16 definitions; providing for disqualification of  
17 benefits; requiring Oklahoma Employment Security  
18 Commission to create and maintain certain manual;  
19 authorizing voluntary repayment of overpayment with  
20 private funds; removing obsolete language; providing  
21 for rate reduction for technology reinvestment  
22 apportionment; modifying unemployment tax rate;  
23 providing definition; modifying transfer of rates and  
24 experiences; modifying filings by professional  
employer organizations; providing for transfer of  
experience history for professional employer  
organizations; creating the OESC Technology Fund;  
providing for expenditures from fund; providing for  
custodian and treasurer of fund; authorizing  
technology reinvestment apportionment; repealing 40  
O.S. 2011, Section 3-103, as last amended by Section  
12, Chapter 249, O.S.L. 2015 (40 O.S. Supp. 2015,  
Section 3-103), which relates to percentages of wages  
payable; repealing 40 O.S. 2011, Section 3-111, as  
last amended by Section 1, Chapter 180, O.S.L. 2015  
(40 O.S. Supp. 2015, Section 3-111), which relates to  
successor and predecessor employers; providing for  
codification; and providing an effective date.

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

2 SECTION 1. AMENDATORY 40 O.S. 2011, Section 1-218, is  
3 amended to read as follows:

4 Section 1-218. WAGES.

5 "Wages" means all remuneration for services from whatever  
6 source, including commissions and bonuses and the cash value of all  
7 remuneration in any medium other than cash, and includes dismissal  
8 payments which the employer is required by law or contract to make.  
9 Gratuities customarily received by an individual in the course of  
10 work from persons other than the employing unit shall be treated as  
11 wages received from the employing unit. The reasonable cash value  
12 of remuneration in any medium other than cash, and the reasonable  
13 amount of gratuities, shall be estimated and determined in  
14 accordance with rules prescribed by the Oklahoma Employment Security  
15 Commission. The term wages shall not include:

16 1. The amount of any payment, with respect to services  
17 performed to or on behalf of an individual in its employ under a  
18 plan or system established by an employing unit which makes  
19 provision for individuals in its employ generally, or for a class or  
20 classes of such individuals, including any amount paid by an  
21 employing unit for insurance or annuities, or into a fund to provide  
22 for any such payment, on account of:

23 a. retirement, other than employee contributions or  
24 deferrals ~~after December 31, 2002,~~ under a qualified

1 plan as described in 26 U.S.C., Section 401(k) ~~and,~~  
2 ~~after December 31, 2005, under a qualified plan as~~  
3 ~~described in 26 U.S.C., Sections 403(b), 408(k), 457,~~  
4 ~~and 7701(j), and, after December 31, 2010, under a~~  
5 ~~qualified plan as described in 26 U.S.C., Section or~~  
6 408(p),

7 b. sickness or accident disability,

8 c. medical and hospitalization expenses in connection  
9 with sickness or accident disability,

10 d. death, provided the individual in its employ:

11 (1) has not the option to receive, instead of  
12 provision for such death benefit, any part of  
13 such payment, or if such death benefit is  
14 insured, any part of the premium or contributions  
15 to premiums paid by the employing unit, and

16 (2) has not the right, under the provisions of the  
17 plan or system or policy of insurance providing  
18 for such death benefit, to assign such benefit,  
19 or to receive cash consideration in lieu of such  
20 benefit either upon withdrawal from the plan or  
21 system providing for such benefit or upon  
22 termination of such plan or system or policy of  
23 insurance or of the individual's services with  
24 such employing unit, or

1 e. a bona fide thrift or savings fund, providing:

2 (1) such payment is conditioned upon a payment of a  
3 substantial sum by such individuals in its  
4 employ, and

5 (2) that such sum paid by the employing unit cannot  
6 under the provisions of such plan be withdrawn by  
7 an individual more frequently than once in any  
8 twelve-month period, except upon an individual's  
9 separation from that employment;

10 2. Any payment made to, or on behalf of, an employee or his or  
11 her beneficiary under a cafeteria plan of the type described in 26  
12 U.S.C., Section 125 and referred to in 26 U.S.C., Section  
13 3306(b) (5) (G);

14 3. Any payment made, or benefit furnished, to or for the  
15 benefit of an employee if at the time of such payment or such  
16 furnishing it is reasonable to believe that the employee will be  
17 able to exclude such payment or benefit from income under an  
18 educational assistance program as described in 26 U.S.C., Section  
19 127 or a dependent care assistance program as described in 26  
20 U.S.C., Section 129 and as referred to in 26 U.S.C., Section  
21 3306(b) (13);

22 4. The payment by an employing unit, without deduction from the  
23 remuneration of the individual in its employ, of the tax imposed  
24 upon such individual in its employ under 26 U.S.C., Section 3101

1 with respect to domestic services in a private home of the employer  
2 or for agricultural labor;

3 5. Dismissal payments which the employer is not required by law  
4 or contract to make;

5 6. The value of any meals and lodging furnished by or on behalf  
6 of an employer to an individual in its employ; provided the meals  
7 and lodging are furnished on the business premises of the employer  
8 for the convenience of the employer; or

9 7. Payments made under an approved supplemental unemployment  
10 benefit plan.

11 SECTION 2. AMENDATORY 40 O.S. 2011, Section 1-223, is  
12 amended to read as follows:

13 Section 1-223. TAXABLE WAGES.

14 ~~A. Prior to January 1, 2000, "taxable wages" means the wages~~  
15 ~~paid to an individual with respect to employment during a calendar~~  
16 ~~year for services covered by the Employment Security Act of 1980 or~~  
17 ~~other state unemployment compensation acts which shall equal fifty~~  
18 ~~percent (50%) of the state's average annual wage for the second~~  
19 ~~preceding calendar year as determined by the Commission, rounded to~~  
20 ~~the nearest multiple of One Hundred Dollars (\$100.00).~~

21 B. Beginning January 1, 2000, "taxable Taxable wages" means  
22 the wages paid to an individual with respect to employment during a  
23 calendar year for services covered by the Employment Security Act of  
24 1980 or other state unemployment compensation acts which shall equal

1 the applicable percentage of the state's average annual wage for the  
2 second preceding calendar year as determined by the Commission,  
3 rounded to the nearest multiple of One Hundred Dollars (\$100.00).  
4 The applicable percentage is determined by the conditional factor in  
5 place during the calendar year for which the taxable wage is being  
6 calculated. The conditional factor is determined pursuant to the  
7 provisions of Section 3-113 of this title. The applicable  
8 percentages are as follows:

9 1. Forty percent (40%) during any calendar year in which the  
10 balance in the Unemployment Compensation Fund is in excess of the  
11 amount required to initiate conditional contribution rates, pursuant  
12 to the provisions of Section 3-113 of this title;

13 2. Forty-two and one-half percent (42.5%) during calendar years  
14 in which condition "a" exists;

15 3. Forty-five percent (45%) during calendar years in which  
16 condition "b" exists;

17 4. Forty-seven and one-half percent (47.5%) during calendar  
18 years in which condition "c" exists; and

19 5. Fifty percent (50%) during calendar years in which condition  
20 "d" exists.

21 SECTION 3. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1-229 of Title 40, unless there  
23 is created a duplication in numbering, reads as follows:

24 ASSIGNED TAX RATE AND EARNED TAX RATE.

1       A. "Assigned tax rate" means the tax rate assigned to an  
2 employer pursuant to Section 3-110.1 of Title 40 of the Oklahoma  
3 Statutes when the employer does not have sufficient experience  
4 history to meet the At-Risk Rule set out in paragraph 3 of Section  
5 3-110.1 of Title 40 of the Oklahoma Statutes.

6       B. "Earned tax rate" means the tax rate calculated for an  
7 employer with sufficient experience history to meet the At-Risk Rule  
8 set out in paragraph 3 of Section 3-110.1 of Title 40 of the  
9 Oklahoma Statutes with the tax rate calculated pursuant to the  
10 provisions of Part 1 of Article 3 of the Employment Security Act of  
11 1980.

12       SECTION 4.       AMENDATORY       40 O.S. 2011, Section 2-607, is  
13 amended to read as follows:

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

15       The Board of Review shall adopt reasonable rules governing the  
16 manner of filing appeals and the conduct of hearings and appeals  
17 before the Board of Review, consistent with the provisions of the  
18 Employment Security Act of 1980. The Oklahoma Employment Security  
19 Commission shall adopt and, from time to time, may modify and amend  
20 rules governing appeals before the Appeal Tribunal of the Commission  
21 and its referees. The Oklahoma Employment Security Commission shall  
22 create and maintain a precedent manual to reflect current statutes  
23 and statutory changes along with current case law that is applicable  
24 to questions of law which may arise during hearing or appeals. The

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

24

1 SECTION 5. AMENDATORY 40 O.S. 2011, Section 2-613, as  
2 amended by Section 6, Chapter 196, O.S.L. 2012 (40 O.S. Supp. 2015,  
3 Section 2-613), is amended to read as follows:

4 Section 2-613. BENEFIT OVERPAYMENTS.

5 An overpayment of unemployment benefits shall be classified in  
6 one of three ways with recovery and recoupment to be conducted as  
7 follows:

8 1. Fraud overpayment: in which an individual intentionally  
9 makes a false statement or representation or fails to disclose a  
10 material fact, and has received any sum as benefits to which the  
11 individual was not entitled. The individual shall be liable to  
12 repay this sum, plus a penalty of twenty-five percent (25%) of the  
13 amount of the original overpayment and interest at the rate of one  
14 percent (1%) per month on the unpaid balance of the overpayment, to  
15 the Oklahoma Employment Security Commission. Three-fifths (3/5) of  
16 the penalty amount collected shall be deposited in the Unemployment  
17 Trust Fund for the State of Oklahoma and the remaining two-fifths  
18 (2/5) shall be deposited in the Oklahoma Employment Security  
19 Commission Revolving Fund. The interest shall cease to accrue when  
20 the total accrued interest equals the amount of the overpayment. If  
21 an overpayment is modified, the interest shall cease to accrue when  
22 the total accrued interest equals the amount of the modified  
23 overpayment. The Commission shall deduct the principal sum from any  
24 future benefits payable to the individual;

1           2. Claimant error overpayment: in which an individual, by  
2 mistake of law or fact, makes a false statement or representation or  
3 fails to disclose a material fact and has received any sum as  
4 benefits to which the individual was not entitled. The individual  
5 shall be liable to repay this sum, plus interest at the rate of one  
6 percent (1%) per month on the unpaid balance of the overpayment, to  
7 the Commission. The interest shall cease to accrue when the total  
8 accrued interest equals the amount of the overpayment. If an  
9 overpayment is modified, the interest shall cease to accrue when the  
10 total accrued interest equals the amount of the modified  
11 overpayment. The Commission shall deduct the principal sum from any  
12 future benefits payable to the individual; or

13           3. Administrative overpayment - in which:

14           a. an individual has received any sum as benefits under  
15 the Employment Security Act of 1980 due to an error by  
16 the Commission or an employer, or

17           b. an individual has received benefits and, under a  
18 redetermination or a reversal of a decision on appeal,  
19 the individual has been found to be not entitled to  
20 benefits.

21 The individual shall be liable to have this sum deducted from any  
22 future benefits payable to the individual with respect to the  
23 benefit year current at the time of the receipt and the next  
24 subsequent benefit year that begins within one (1) year after the

1 expiration of the benefit year current at the time of the receipt.  
2 No interest shall accrue on administrative overpayments. An  
3 individual may voluntarily repay an administrative overpayment with  
4 private funds.

5 SECTION 6. AMENDATORY 40 O.S. 2011, Section 2-617, is  
6 amended to read as follows:

7 Section 2-617. WARRANT OF LEVY AND LIEN.

8 A. If the notice of overpayment determination issued pursuant  
9 to Section ~~15~~ 2-616 of this ~~act~~ title becomes final due to a lack of  
10 appeal or if the determination is affirmed on appeal, and if the  
11 amount due is not paid within ninety (90) days of the date that the  
12 determination becomes final, then the Oklahoma Employment Security  
13 Commission may issue a warrant of levy and lien under its official  
14 seal, which shall state the name and ~~social security~~ Social Security  
15 number of the debtor and list the amount of indebtedness with  
16 interest. The warrant of levy and lien shall be for all purposes  
17 the equivalent of a judgment of a court of record.

18 B. The Commission may file a copy of the warrant of levy and  
19 lien with the county clerk of the county or counties in which the  
20 individual has property and thereupon the county clerk shall index  
21 the warrant of levy and lien in the same manner as judgments using  
22 the name of the individual named in the warrant of levy and lien,  
23 indicating that it is due to an overpayment of unemployment  
24 insurance benefits, showing the amount due with interest, the date

1 upon which the warrant of levy and lien was filed, and shall index  
2 the warrant of levy and lien against the real property described  
3 therein, if any is described. If the county clerk charges a fee for  
4 the filing of the warrant of levy and lien, the Commission may add  
5 the amount of the fee to the indebtedness owing by the individual  
6 named in the warrant of levy and lien.

7 C. The filing of the notice in the office of the county clerk  
8 of the county in which the individual resides shall constitute and  
9 be evidence and notice of the state's lien upon the title to any  
10 interest in any real or personal property of the individual named in  
11 the notice. The lien shall be in addition to any and all other  
12 liens existing in favor of the state to secure the payment of any  
13 unpaid indebtedness, interest, penalty, fees and costs, and the lien  
14 shall be paramount and superior to all other liens of whatsoever  
15 kind or character, attaching to any of the property subsequent to  
16 the date of the recording and shall be in addition to any other lien  
17 provided for in this act. This lien shall be permanent and  
18 continuing without any requirement for executions under Section 735  
19 of Title 12 of the Oklahoma Statutes or any other similar statute.  
20 This lien shall continue on personal property of the individual  
21 until the amount of the indebtedness, interest, fees and costs are  
22 paid. This lien shall continue on real property until released by  
23 payment or for a maximum of ten (10) years after the date of its  
24 filing.

1 D. The Commission may file a copy of the notice with the court  
2 clerk in the county in which the individual is employed or resides,  
3 and it shall be filed in the same manner as a judgment of a court of  
4 record for the purpose of pursuing any post-judgment collection  
5 procedure that is deemed appropriate. The Commission may send the  
6 notice to the sheriff in a county in which the individual owns real  
7 or personal property for execution. Upon receiving the notice, the  
8 sheriff shall proceed to execute the notice in all respects and with  
9 like effect and in same manner prescribed by law in respect to  
10 executions against property upon judgment of the court of record;  
11 and the sheriff shall execute and deliver to the purchaser a bill of  
12 sale or deed, as the case may be. Any purchaser, other than the  
13 state, shall be entitled, upon application to the court having  
14 jurisdiction of the property, to have confirmation (the procedure  
15 for which shall be the same as is now provided for the confirmation  
16 of a sale under execution) of the sale prior to the issuance of a  
17 bill of sale or deed. The state shall be authorized to make bids at  
18 any such sale to the amount of indebtedness, interest, costs, and  
19 fees accrued. In the event the bid of the state is successful, the  
20 sheriff shall issue a proper muniment of title to the Commission,  
21 and the Commission shall hold the title for the use and benefit of  
22 the state. The state may sell any property obtained in this manner  
23 through the procedures available for the sale of excess property of  
24 the state. Any money received by the Commission through the sale of

1 property in this manner shall be credited against the indebtedness  
2 of the individual. The sheriff shall be entitled to the same fee  
3 for executing the notice as the sheriff would be entitled to receive  
4 if executing an execution issued by the court clerk of the county  
5 upon a judgment of a court of record.

6 SECTION 7. AMENDATORY 40 O.S. 2011, Section 3-107, is  
7 amended to read as follows:

8 Section 3-107. BENEFIT WAGE RATIO.

9 ~~A. For any tax year occurring before January 1, 2007, the~~  
10 ~~benefit wage ratio of each employer shall be a percentage equal to~~  
11 ~~the total of the employer's benefit wages in the experience period~~  
12 ~~divided by the employer's total taxable payroll for the experience~~  
13 ~~period on which contributions have been paid to the Oklahoma~~  
14 ~~Employment Security Commission on or before January 31 of the~~  
15 ~~calendar year with respect to which the employer's benefit wage~~  
16 ~~ratio is determined.~~

17 ~~B. For any tax year occurring after December 21, 2006, the The~~  
18 ~~benefit wage ratio of each employer shall be a percentage equal to~~  
19 ~~the total of the employer's benefit wages in the experience period~~  
20 ~~divided by the employer's total taxable payroll for the experience~~  
21 ~~period on which contributions have been paid to the Commission on or~~  
22 ~~before July 31 of the calendar year immediately preceding the year~~  
23 ~~for which the ~~contribution~~ tax rate is being calculated.~~

24

1 SECTION 8. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3-109.3 of Title 40, unless  
3 there is created a duplication in numbering, reads as follows:

4 RATE REDUCTION FOR TECHNOLOGY REINVESTMENT APPORTIONMENT.

5 Notwithstanding the provisions of Sections 3-109, 3-110.1 and 3-  
6 113 of Title 40 of the Oklahoma Statutes, for the time period  
7 beginning January 1, 2017, and ending December 31, 2026, the tax  
8 rate computed for or assigned to an employer shall be reduced by two  
9 percent (2%). Provided, the tax rate of employers assigned a tax  
10 rate pursuant to Section 3-110.1 of Title 40 of the Oklahoma  
11 Statutes shall not be reduced to less than one percent (1%).  
12 Provided further, employers who qualify for an earned tax rate  
13 calculated pursuant to Section 3-109 of Title 40 of the Oklahoma  
14 Statutes, and are given the highest tax rate in the rate table for  
15 the given year, shall not be eligible for the rate reduction  
16 provided for in this section.

17 SECTION 9. AMENDATORY Section 14, Chapter 249, O.S.L.  
18 2015 (40 O.S. Supp. 2015, Section 3-110.1), is amended to read as  
19 follows:

20 Section 3-110.1 ~~MINIMUM CONTRIBUTIONS~~ UNEMPLOYMENT TAX RATE.

21 A. Each employer, unless otherwise prescribed in Section 3-111,  
22 3-111.1, 3-701 or 3-801 of this title, shall pay unemployment tax as  
23 follows:

24

1        1. All employers shall have a an assigned tax rate of one and  
2 one-half percent (1.5%) until ~~the calendar year following the eighth~~  
3 ~~consecutive calendar quarter in which the employer employed at least~~  
4 ~~one individual in covered employment, at which time the employer~~  
5 ~~shall~~ sufficient experience history exists in the employer's account  
6 to meet the At-Risk Rule set out in paragraph 3 of this section. If  
7 the account meets the At-Risk Rule, the employer will qualify for an  
8 earned tax rate calculated pursuant to the provisions of Part 1 of  
9 Article III of the Employment Security Act of 1980-;

10        ~~B.~~ 2. If an employer ~~qualifies~~ qualified for an earned tax rate  
11 under ~~subsection A~~ paragraph 1 of this section, or under a prior  
12 law, and subsequently ceases to employ at least one person, at the  
13 time the employer's tax rate is being determined for a subsequent  
14 year the employer account lacks sufficient experience history to  
15 meet the At-Risk Rule of paragraph 3 of this section, the employer  
16 shall revert to the ~~minimum contribution~~ assigned tax rate of one  
17 and one-half percent (1.5%) ~~if, throughout the one (1) calendar year~~  
18 ~~immediately preceding the calculation of the employer's contribution~~  
19 ~~rate, there was no individual who could have filed a claim in each~~  
20 ~~quarter of that year establishing a base period, as defined by~~  
21 ~~Section 1-202 of Title 40 of the Oklahoma Statutes, which would~~  
22 ~~include wages from that employer.~~ The employer shall pay at the  
23 ~~minimum contribution~~ assigned tax rate until the provisions of  
24 ~~subsection A~~ paragraph 1 of this section are met; and

1        3. "At-Risk Rule" means an employer is required to be at-risk  
2 for a claim of unemployment benefits before an earned tax rate is  
3 calculated. An employer shall meet the At-Risk Rule and be eligible  
4 for an earned tax rate if, throughout the calendar year immediately  
5 preceding the year for which the employer's tax rate is being  
6 determined, there was an individual who could have filed a claim for  
7 unemployment benefits in each quarter of that year establishing a  
8 base period, as defined by Section 1-202 of this title, which would  
9 include wages from that employer.

10        SECTION 10.        AMENDATORY        40 O.S. 2011, Section 3-111.1, as  
11 amended by Section 10, Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2015,  
12 Section 3-111.1), is amended to read as follows:

13        Section 3-111.1    SUCCESSOR AND PREDECESSOR EMPLOYERS - SPECIAL  
14 RULES ON TRANSFER OF RATES AND EXPERIENCE.

15        A. Notwithstanding any other provision of law, the following  
16 shall apply regarding assignments of rates and transfers of  
17 experience:

18        1. If an employer transfers its trade or business, or a ~~portion~~  
19 separate and distinct establishment, or unit thereof, to another  
20 employer or an entity that does not meet the definition of an  
21 employer at the time of the transfer and, ~~at the time of the~~  
22 ~~transfer,~~ there is substantially common ownership, management or  
23 control of the two employers or entities at the time of the  
24 transfer, then the experience rating account attributable to the

1 transferred trade or business shall be combined with the experience  
2 rating account of the employer to whom such business is so  
3 transferred. The employer transferring its trade or business shall  
4 be the predecessor employer and the employer or entity acquiring the  
5 transferred trade or business shall be the successor employer; and

6 2. Whenever a person who is not an employer under the  
7 Employment Security Act of 1980 at the time it acquires the trade or  
8 business of an employer, the experience rating account of the  
9 acquired business shall not be transferred to ~~such~~ that person if  
10 the Commission finds that the person acquired the business solely or  
11 primarily for the purpose of obtaining a lower tax rate ~~of~~  
12 ~~contributions~~. Instead, the person shall be assigned ~~the minimum~~  
13 ~~contribution~~ a tax rate under Section ~~3-110~~ 3-110.1 of ~~Title 40 of~~  
14 ~~the Oklahoma Statutes~~ this title. In determining whether the  
15 business was acquired solely or primarily for the purpose of  
16 obtaining a lower tax rate ~~of contributions~~, the Commission shall  
17 ~~use~~ examine objective factors which may include the cost of  
18 acquiring the business, whether the person continued the business  
19 enterprise of the acquired business, how long ~~such~~ the business  
20 enterprise was continued, or whether a substantial number of new  
21 employees were hired for performance of duties unrelated to the  
22 business activity conducted prior to acquisition.

23 B. 1. If a person knowingly violates or attempts to violate  
24 paragraph 1 or 2 of subsection A of this section or any other

1 provision of the Employment Security Act of 1980 related to  
2 determining the assignment of the ~~contribution~~ tax rate, or if a  
3 person knowingly advises another person in a way that results in a  
4 violation of such provision, the person shall be subject to the  
5 following penalties:

6 a. if the person is an employer, then the employer shall  
7 be assessed a penalty equal to ten percent (10%) of  
8 the actual taxes due in the calendar quarter in which  
9 the employer violated or attempted to violate the  
10 provisions of this section and a penalty equal to ten  
11 percent (10%) of the actual taxes due in each of the  
12 following three (3) calendar quarters. The funds in  
13 payment of this penalty shall be deposited in the  
14 Oklahoma Employment Security Commission Revolving Fund  
15 established under Section 4-901 of ~~Title 40 of the~~  
16 ~~Oklahoma Statutes~~ this title,

17 b. if the person is not an employer, the person shall be  
18 subject to a civil money penalty of at least One  
19 Hundred Dollars (\$100.00) and not more than Five  
20 Thousand Dollars (\$5,000.00) to be determined by the  
21 Assessment Board of the Oklahoma Employment Security  
22 Commission. Any fine shall be deposited in the  
23 Oklahoma Employment Security Commission Revolving Fund  
24

1 established under Section 4-901 of ~~Title 40 of the~~  
2 ~~Oklahoma Statutes~~ this title.

3 2. For purposes of this section, the term "knowingly" means  
4 having actual knowledge of or acting with deliberate ignorance or  
5 reckless disregard for the prohibition involved.

6 3. For the purposes of this section, the term "violates or  
7 attempts to violate" includes, but is not limited to, intent to  
8 evade, misrepresentation or willful nondisclosure.

9 4. In addition to the penalty imposed by paragraph 1 of this  
10 subsection, any person who violates the provisions of this section  
11 shall be guilty of a misdemeanor and may be imprisoned for up to one  
12 (1) year.

13 C. The Commission shall establish procedures to identify the  
14 transfer or acquisition of a business for purposes of this section.

15 D. For purposes of this section:

16 1. "Person" has the meaning given such term by 26 U.S.C.,  
17 Section 7701(a)(1); and

18 2. "Trade or business" shall include the ~~employers~~ employer's  
19 workforce.

20 E. This section shall be interpreted and applied in such a  
21 manner as to meet the minimum requirements contained in any guidance  
22 or regulations issued by the United States Department of Labor.  
23  
24

1 SECTION 11. AMENDATORY Section 2, Chapter 221, O.S.L.  
2 2014 (40 O.S. Supp. 2015, Section 3-120), is amended to read as  
3 follows:

4 Section 3-120. REQUIRED FILINGS BY PROFESSIONAL EMPLOYER  
5 ORGANIZATIONS - PAYMENT OF CONTRIBUTIONS - CHANGE OF ELECTION.

6 A. Each Professional Employer Organization, or PEO, shall file  
7 all reports and pay all contributions required by the Employment  
8 Security Act of 1980 and the Rules of the Oklahoma Employment  
9 Security Commission under one of the following two options. The PEO  
10 may choose the option under which it will report and pay. All PEOs  
11 that do not exercise their option within the compliance date in  
12 subsections C and D of this section shall be assigned to option 1  
13 below. All current client accounts and client accounts set up or  
14 acquired after the election shall be reported and paid according to  
15 the option elected by the PEO or the option assigned to the PEO if  
16 no election is made. The two options are as follows:

17 1. The PEO shall file quarterly tax returns to report the wages  
18 of all covered employees of all its clients and pay all  
19 contributions due on those wages under one account of the PEO; or

20 2. The PEO shall file quarterly tax returns to report the wages  
21 of all covered employees under the direction and control of each  
22 client and pay all contributions due on those wages under the  
23 account assigned to that client by the Oklahoma Employment Security  
24 Commission; provided:

- 1 a. a PEO choosing this option shall notify the Oklahoma  
2 Employment Security Commission in writing,
- 3 b. a PEO choosing this option shall assist the Commission  
4 in the process of the separation and identification of  
5 the contribution history, the benefit experience  
6 history, and the payroll of each of its clients, and  
7 the Commission shall transfer that experience to the  
8 client account,
- 9 c. the Commission shall determine the ~~contribution tax~~  
10 rate of each client account separately based upon the  
11 client's contribution history, benefit experience  
12 history and actual payroll, ~~and~~
- 13 d. if there is not sufficient experience in the client  
14 account after the transfer of experience to establish  
15 a ~~contribution tax~~ rate, the account will be assigned  
16 ~~the minimum contribution a tax~~ rate pursuant to  
17 Section ~~3-110~~ 3-110.1 of ~~Title 40 of the Oklahoma~~  
18 ~~Statutes~~ this title, and
- 19 e. a PEO choosing this option shall produce all  
20 documentation and information necessary for the  
21 Oklahoma Employment Security Commission to create the  
22 client account within sixty (60) days of choosing this  
23 option. If the information needed by the Commission  
24 is not produced within this sixty-day period, the PEO

1                   shall revert to reporting under the option provided  
2                   for in paragraph 1 of subsection A of this section.

3           B.   Within thirty (30) days after the end of each calendar  
4 quarter, each PEO shall file a list of all its clients setting out  
5 the federal employer identification number, the name, the client's  
6 contact information and the current registration certificate of the  
7 PEO issued pursuant to Section 600.4 of ~~Title 40 of the Oklahoma~~  
8 ~~Statutes~~ this title. The client list shall be filed in a format  
9 prescribed by the Oklahoma Employment Security Commission.

10 Materials submitted pursuant to this section shall be deemed records  
11 submitted pursuant to the Oklahoma Professional Employer  
12 Organization Recognition and Registration Act and shall be treated  
13 as confidential and subject to the provisions of subsection C of  
14 Section 600.6 of ~~Title 40 of the Oklahoma Statutes~~ this title and  
15 Section 4-508 of ~~Title 40 of the Oklahoma Statutes~~ this title.

16           C.   Any PEO with a current employer tax account with the  
17 Oklahoma Employment Security Commission as of the effective date of  
18 this act shall comply with the provisions of this section no later  
19 than January 1, 2015.

20           D.   Any PEO that does not have a current employer tax account  
21 with the Oklahoma Employment Security Commission as of the effective  
22 date of this act shall comply with the provisions of this section  
23 upon becoming liable for contributions under the Employment Security  
24 Act of 1980.

1 E. After the initial election or assignment of the option  
2 provided for in subsection A of this section, a PEO shall be  
3 permitted to change its election one time only. The change of  
4 election shall be made by the PEO in writing. The election shall  
5 become effective in the calendar year following the date the  
6 Commission approves the election of the PEO. If the Commission  
7 approves a change of election, all contribution history, benefit  
8 experience history and payroll of each client shall be transferred  
9 to the pooled account, if the option in paragraph 1 of subsection A  
10 of this section is chosen, or the individual client accounts, if the  
11 option in paragraph 2 of subsection A of this section is chosen.

12 SECTION 12. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 3-121 of Title 40, unless there  
14 is created a duplication in numbering, reads as follows:

15 PROFESSIONAL EMPLOYER ORGANIZATIONS - TRANSFER OF EXPERIENCE  
16 HISTORY.

17 If a Professional Employer Organization, or PEO, chooses the  
18 option to file quarterly tax returns under the account assigned to  
19 its client pursuant to paragraph 2 of subsection A of Section 3-120  
20 of Title 40 of the Oklahoma Statutes, and if the client has an  
21 experience history from a previous account assigned to that client  
22 that can be used in calculating an earned tax rate pursuant to the  
23 provisions of Article 3, Part 1, of the Employment Security Act of  
24

1 1980, then that experience history shall be transferred to the  
2 account assigned to that client as a co-employer of that PEO.

3 SECTION 13. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 6-201 of Title 40, unless there  
5 is created a duplication in numbering, reads as follows:

6 OESC TECHNOLOGY FUND.

7 A. There is hereby created in the State Treasury a revolving  
8 fund for the Oklahoma Employment Security Commission to be  
9 designated the "OESC Technology Fund". The OESC Technology Fund  
10 shall be separate and distinct from the Unemployment Compensation  
11 Fund and shall consist of:

12 1. All monies received from employers and paid pursuant to  
13 Section 16 of this act; and

14 2. Financial instruments, certificates of deposit, bonds and  
15 securities acquired by and through the use of monies in the OESC  
16 Technology Fund.

17 B. The OESC Technology Fund shall be a continuing fund, not  
18 subject to fiscal year limitations. All monies accruing to the  
19 credit of the OESC Technology Fund are hereby appropriated and shall  
20 be budgeted and expended solely for the purposes of modernizing the  
21 business processes and technology of the Oklahoma Employment  
22 Security Commission as set forth in Section 14 of this act.  
23 Expenditures from the OESC Technology Fund shall be made upon  
24 warrants issued by the State Treasurer against claims filed, as

1 prescribed by law, with the Director of the Office of Management and  
2 Enterprise Services for approval and payment.

3 SECTION 14. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 6-202 of Title 40, unless there  
5 is created a duplication in numbering, reads as follows:

6 EXPENDITURES FROM FUND.

7 A. The monies in the OESC Technology Fund shall be used for the  
8 following purposes:

9 1. To purchase or lease new technology systems hardware for the  
10 Oklahoma Employment Security Commission to be used in its mission to  
11 provide employment services, unemployment insurance and economic  
12 research for the citizens of this state as well as the  
13 administration of these programs;

14 2. To purchase or lease any auxiliary or peripheral equipment  
15 necessary for the operation of the new technology systems;

16 3. To pay for the maintenance of all OESC technology system  
17 hardware;

18 4. To purchase or lease any and all software needed for the  
19 operation of the new technology systems;

20 5. To pay for all OESC technology system software license fees;

21 6. To pay for all programming and analysis necessary to make  
22 the new technology system operational;

23

24

1       7. To pay for all testing, designing, engineering, planning,  
2 networking and training to make the new technology system  
3 operational;

4       8. To pay for all shipping and installation charges for the  
5 technology system and its auxiliary and peripheral equipment;

6       9. To contract with vendors and hire personnel as necessary to  
7 accomplish the modernization effort;

8       10. To analyze business processes and develop requirements for  
9 Requests for Proposals;

10       11. To fund project planning, project management, strategy  
11 development and project consulting services; and

12       12. To make refunds of money erroneously collected and  
13 deposited in the OESC Technology Fund.

14       B. If any money remains in this fund after the new technology  
15 system has been brought online and made fully operational, that  
16 excess money shall be transferred to the Unemployment Compensation  
17 Fund.

18       SECTION 15.       NEW LAW       A new section of law to be codified  
19 in the Oklahoma Statutes as Section 6-203 of Title 40, unless there  
20 is created a duplication in numbering, reads as follows:

21       CUSTODIAN AND TREASURER OF FUND.

22       A. The State Treasurer shall be the custodian and treasurer of  
23 the OESC Technology Fund.

24

1 B. The State Treasurer shall deposit the monies belonging to  
2 the OESC Technology Fund that are in his or her custody subject to  
3 the provisions of Section 16 of this act.

4 C. The State Treasurer, as custodian of the OESC Technology  
5 Fund, shall hold, invest, transfer, sell, deposit and release those  
6 monies, properties or securities in a manner approved by the  
7 Oklahoma Employment Security Commission. Provided, however, that  
8 those monies shall be invested in the classes of securities legal  
9 for investment of public monies of this state. Provided further,  
10 the investment shall at all times be so made that all assets of the  
11 OESC Technology Fund shall always be readily convertible into cash  
12 when needed for any expenditure authorized in Section 14 of this  
13 act.

14 SECTION 16. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 6-204 of Title 40, unless there  
16 is created a duplication in numbering, reads as follows:

17 TECHNOLOGY REINVESTMENT APPORTIONMENT.

18 A. 1. For the period from January 1, 2017, to December 31,  
19 2026, each employer subject to the provisions of Sections 3-109, 3-  
20 110.1 and 3-113 of Title 40 of the Oklahoma Statutes shall be  
21 required to pay an OESC Technology Reinvestment Apportionment equal  
22 to two percent (2%) of the unemployment taxes that would be owed to  
23 the Oklahoma Employment Security Commission before any rate  
24 reduction is made pursuant to Section 8 of this act. This

1 apporportionment shall be in addition to any contribution which that  
2 employer is required to make pursuant to the provisions of the  
3 Employment Security Act of 1980.

4 2. The apporportionment provided for in this section shall not be  
5 considered part of any unemployment taxes required of an individual  
6 employer pursuant to the Employment Security Act of 1980, nor shall  
7 it be considered for purposes of determining the individual  
8 employer's tax rate.

9 B. Employers assigned a tax rate pursuant to Section 3-110.1 of  
10 Title 40 of the Oklahoma Statutes shall pay an OESC Technology  
11 Reinvestment Apporportionment equal to the rate reduction granted them  
12 pursuant to Section 8 of this act.

13 C. Employers who qualify for an earned tax rate calculated  
14 pursuant to Section 3-109 of Title 40 of the Oklahoma Statutes, and  
15 are given the highest tax rate in the rate table for the given year,  
16 shall be exempt from the provisions of this section.

17 D. Employers making payments in lieu of contributions pursuant  
18 to Sections 3-702, 3-705 and 3-806 of Title 40 of the Oklahoma  
19 Statutes shall be exempt from the provisions of this section.

20 E. The apporportionment shall be made and collected by the  
21 Oklahoma Employment Security Commission for deposit, on a monthly  
22 basis, to the credit of the OESC Technology Fund. Provided, all  
23 monies received by the Oklahoma Employment Security Commission for  
24

1 the account of the OESC Technology Fund, upon receipt, shall be  
2 deposited in a clearance account.

3 F. The Oklahoma Employment Security Commission shall promulgate  
4 such rules as may be necessary to implement the provisions of  
5 Sections 8 and 13 through 16 of this act.

6 G. The Oklahoma Employment Security Commission shall create an  
7 annual report detailing the collection of the apportionment funds  
8 and the expenditures from the OESC Technology Fund. The report  
9 shall be filed on or before March 31 of each year following the  
10 effective date of this act, and shall continue until all money in  
11 the OESC Technology Fund is expended. The report shall be filed  
12 with the Governor, the President Pro Tempore of the Senate, the  
13 Speaker of the House of Representatives, the State Treasurer, the  
14 State Auditor and Inspector, and the Director of the Office of  
15 Management and Enterprise Services.

16 SECTION 17. REPEALER 40 O.S. 2011, Section 3-103, as  
17 last amended by Section 12, Chapter 249, O.S.L. 2015 (40 O.S. Supp.  
18 2015, Section 3-103), is hereby repealed.

19 SECTION 18. REPEALER 40 O.S. 2011, Section 3-111, as  
20 last amended by Section 1, Chapter 180, O.S.L. 2015 (40 O.S. Supp.  
21 2015, Section 3-111), is hereby repealed.

22 SECTION 19. This act shall become effective November 1, 2016.  
23  
24

