

1 ENGROSSED SENATE AMENDMENT  
TO  
2 ENGROSSED HOUSE  
3 BILL NO. 3164

By: Hickman and 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 Section 2-404.2, which relates to the Employment  
10 Security Act of 1980; modifying work for a limited  
11 duration of time; providing for workers to have  
12 voluntarily quit work under certain circumstances;  
and providing an effective date.

13 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and  
14 entire bill and insert

15 "An Act relating to labor; creating procedure for  
16 seasonal workers; allowing benefits in certain  
17 periods; making employer apply for certain  
18 designation; setting procedure for determination and  
19 appeal; requiring certain notice to employer within  
20 certain time; authorizing termination as seasonal  
employer; defining terms; construing certain employer  
and employee relationships; providing for  
codification; and providing an effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 2-422 of Title 40, unless there  
24 is created a duplication in numbering, reads as follows:

1       A. Unemployment benefits based on services by a seasonal worker  
2 performed in seasonal employment are payable only for weeks of  
3 unemployment that occur during the normal seasonal work period.  
4 Benefits shall not be paid based on services performed in seasonal  
5 employment for any week of unemployment that begins during the  
6 period between two (2) successive normal seasonal work periods to  
7 any individual if that individual performs the service in the first  
8 of the normal seasonal work periods and if there is a reasonable  
9 assurance that the individual will perform the service for a  
10 seasonal employer in the second of the normal seasonal work periods.  
11 The notice of reasonable assurance must be given by the employer to  
12 the employee in writing on or before the last day of work in the  
13 season. If benefits are denied to an individual for any week solely  
14 as a result of this section and the individual is not offered an  
15 opportunity to perform in the second normal seasonal work period for  
16 which reasonable assurance of employment had been given, the  
17 individual is entitled to a retroactive payment of benefits under  
18 this section for each week that the individual previously filed a  
19 timely claim for benefits. An individual may apply for any  
20 retroactive benefits under this section in accordance with the  
21 provisions of Article 2 of the Employment Security Act of 1980.

22       B. Not less than twenty (20) days before the estimated  
23 beginning date of a normal seasonal work period, an employer may  
24 apply to the Commission in writing for designation as a seasonal

1 employer. At the time of application, the employer shall  
2 conspicuously display a copy of the application on the employer's  
3 premises. Within ninety (90) days after receipt of the application,  
4 the Commission shall determine if the employer is a seasonal  
5 employer. The employer may appeal this decision pursuant to the  
6 provisions of Section 3-115 of Title 40 of the Oklahoma Statutes. A  
7 determination of the Commission concerning the status of an employer  
8 as a seasonal employer, or the decision of the Assessment Board or a  
9 court of this state through the administrative appeal process, which  
10 has become final, may be introduced in any proceeding involving a  
11 claim for benefits, and the facts found and decision issued in the  
12 determination or decision shall be conclusive unless substantial  
13 evidence to the contrary is introduced by or on behalf of the  
14 claimant.

15 C. If the employer is determined to be a seasonal employer, the  
16 employer shall give notice to each employee of the employer's status  
17 as a seasonal employer and the beginning and ending dates of the  
18 employer's normal seasonal work periods, and this notice shall be  
19 given to the employee within the first seven (7) days of employment.  
20 On or before the last day of work in the season, if the employer  
21 intends to issue a notice of reasonable assurance of employment for  
22 the next season, the employer shall also give notice to each  
23 employee advising that the employee must timely file an initial  
24 application for unemployment benefits at the end of the current

1 seasonal work period and file timely weekly continued claims  
2 thereafter to preserve his or her right to receive retroactive  
3 unemployment benefits if he or she is not reemployed by the seasonal  
4 employer in the subsequent normal seasonal work period. The notices  
5 must be on a separate document written in clear and concise language  
6 that states these provisions. Failure of the employer to give  
7 adequate notice as required by this subsection will result in the  
8 termination of the employer as a seasonal employer under subsection  
9 D of this section.

10 D. The Commission may issue a determination terminating an  
11 employer's status as a seasonal employer on the Commission's own  
12 motion for good cause, or upon the written request of the employer.  
13 The effective date of a termination determination under this  
14 subsection shall be set by the Commission. A determination under  
15 this subsection may be appealed pursuant to the provisions of  
16 Section 3-115 of Title 40 of the Oklahoma Statutes.

17 E. An employer whose status as a seasonal employer is  
18 terminated under subsection D of this section may not reapply for a  
19 seasonal employer status determination until after a regularly  
20 recurring normal seasonal work period has begun and ended.

21 F. If a seasonal employer informs an employee who received  
22 assurance of being rehired that, despite the assurance, the employee  
23 will not be rehired at the beginning of the employer's next normal  
24 seasonal work period, this section does not prevent the employee

1 from receiving unemployment benefits in the same manner and to the  
2 same extent he or she would receive benefits under the Employment  
3 Security Act of 1980 from an employer who has not been determined to  
4 be a seasonal employer.

5 G. A successor of a seasonal employer is considered to be a  
6 seasonal employer unless the successor provides the Commission,  
7 within one hundred twenty (120) days after the transfer, with a  
8 written request for termination of its status as a seasonal employer  
9 in accordance with subsection D of this section.

10 H. At the time an employee is hired by a seasonal employer, the  
11 employer shall notify the employee in writing if the employee will  
12 be a seasonal worker. The employer shall provide the worker with  
13 written notice of any subsequent change in the employee's status as  
14 a seasonal worker. If an employee of a seasonal employer is denied  
15 benefits because that employee is a seasonal worker, the employee  
16 may contest that designation by filing an appeal pursuant to the  
17 provisions of Part 6 of Article 2 of the Employment Security Act of  
18 1980.

19 I. As used in this section:

20 1. "Construction industry" means the work activity designated  
21 in Sector Group 23 - Construction of the North American Industrial  
22 Classification System published by the Executive Office of the  
23 President, Office of Management and Budget, 2012 edition;

1        2. "Normal seasonal work period" means that period, or those  
2 periods, of time during which an individual is employed in seasonal  
3 employment, as determined by the Commission;

4        3. "Seasonal employment" means the employment of one or more  
5 individuals primarily hired to perform services during regularly  
6 recurring periods of twenty-six (26) weeks or less in any fifty-two  
7 -week period other than services in the construction industry;

8        4. "Seasonal employer" means an employer, other than an  
9 employer in the construction industry, who applies to the Commission  
10 for designation as a seasonal employer and who the Commission  
11 determines to be an employer whose operations and business require  
12 employees engaged in seasonal employment; and

13        5. "Seasonal worker" means a worker who has been paid wages by  
14 a seasonal employer for work performed only during the normal  
15 seasonal work period.

16        SECTION 2.        NEW LAW        A new section of law to be codified  
17 in the Oklahoma Statutes as Section 205 of Title 40, unless there is  
18 created a duplication in numbering, reads as follows:

19        A. For purposes of this act:

20        1. "Franchisor" means any person who grants a franchise and  
21 participates in the franchise relationship. Unless otherwise  
22 stated, it includes subfranchisors. For purposes of this  
23 definition, a "subfranchisor" means a person who functions as a  
24

1 franchisor by engaging in both pre-sale activities and post-sale  
2 performance.

3 2. "Franchisee" means any person who is granted a franchise.

4 3. "Franchise" means any continuing commercial relationship or  
5 arrangement, whatever it may be called, in which the terms of the  
6 offer or contract specify, or the franchise seller promises or  
7 represents, orally or in writing, that:

8 a. the franchisee will obtain the right to operate a  
9 business that is identified or associated with the  
10 franchisor's trademark, or to offer, sell, or  
11 distribute goods, services, or commodities that are  
12 identified or associated with the franchisor's  
13 trademark,

14 b. the franchisor will exert or has authority to exert a  
15 significant degree of control over the franchisee's  
16 method of operation, or provide significant assistance  
17 in the franchisee's method of operation, and

18 c. as a condition of obtaining or commencing operation of  
19 the franchise, the franchisee makes a required payment  
20 or commits to make a required payment to the  
21 franchisor or its affiliate.

22 B. A franchisor shall not be considered the employer of a  
23 franchisee or a franchisee's employees.  
24

C. The employees of a franchisee shall not be considered employees of the franchisor neither shall the employees of a franchisor be considered employees of a franchisee.

SECTION 3. This act shall become effective November 1, 2016."

Passed the Senate the 18th day of April, 2016.

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Presiding Officer of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
2016.

Presiding Officer of the House  
of Representatives