ENGROSSED HOUSE
BILL NO. 2253 By: McDaniel (Randy) of the House

and

Newberry of the Senate

An Act relating to labor; amending 40 O.S. 2011, Sections 1-218, 1-223, 2-607, 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 2-613 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; providing for disqualification of benefits; requiring Oklahoma Employment Security Commission to create and maintain certain manual; authorizing voluntary repayment of overpayment with private funds; removing obsolete language; providing for rate reduction for technology reinvestment apportionment; modifying unemployment tax rate; providing definition; modifying transfer of rates and 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.

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

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

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

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

b. sickness or accident disability,

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

d. death, provided the individual in its employ:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1-223. TAXABLE WAGES.

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

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

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

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

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

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

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

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

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

ASSIGNED TAX RATE AND EARNED TAX RATE.

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

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

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

Section 2-607. RULES AND PROCEDURES IN APPEALS.

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

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

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

Section 2-613. BENEFIT OVERPAYMENTS.

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

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

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

3. Administrative overpayment - in which:

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

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

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

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

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

Section 2-617. WARRANT OF LEVY AND LIEN.

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

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

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

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

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

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

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

Section 3-107. BENEFIT WAGE RATIO.

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

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

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

RATE REDUCTION FOR TECHNOLOGY REINVESTMENT APPORTIONMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. For purposes of this section:

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

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

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

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

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

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

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

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

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

b. a PEO choosing this option shall assist the Commission in the process of the separation and identification of the contribution history, the benefit experience history, and the payroll of each of its clients, and the Commission shall transfer that experience to the client account,

c. the Commission shall determine the ~~contribution~~ tax rate of each client account separately based upon the client's contribution history, benefit experience history and actual payroll, ~~and~~

d. if there is not sufficient experience in the client account after the transfer of experience to establish a ~~contribution~~ tax rate, the account will be assigned ~~the minimum contribution~~ a tax rate pursuant to Section ~~3-110~~ 3-110.1 of ~~Title 40 of the Oklahoma Statutes~~ this title, and

e. a PEO choosing this option shall produce all documentation and information necessary for the Oklahoma Employment Security Commission to create the client account within sixty (60) days of choosing this option. If the information needed by the Commission is not produced within this sixty-day period, the PEO

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

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

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

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

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

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

PROFESSIONAL EMPLOYER ORGANIZATIONS - TRANSFER OF EXPERIENCE HISTORY.

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

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

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

OESC TECHNOLOGY FUND.

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

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

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

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

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

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

EXPENDITURES FROM FUND.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CUSTODIAN AND TREASURER OF FUND.

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

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

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

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

TECHNOLOGY REINVESTMENT APPORTIONMENT.

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

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

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

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

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

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

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

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

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

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

SECTION 17. REPEALER 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), is hereby repealed.

SECTION 18. REPEALER 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), is hereby repealed.

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

Passed the House of Representatives the 29th day of February, 2016.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ___ day of _____, 2016.

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Presiding Officer of the Senate