

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend House Bill No. 2204, by striking the title, enacting clause and entire body of the bill and substituting the attached floor substitute.

Submitted by:

Senator Newberry

Newberry-NP-FS-Req#3403
4/23/2012 3:54 PM

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

FLOOR SUBSTITUTE
FOR ENGROSSED

HOUSE BILL NO. 2204

By: McDaniel (Randy), McNiel
and Russ of the House

and

Newberry of the Senate

FLOOR SUBSTITUTE

[labor - amending 10 sections in Title 40 -
Employment Security Act of 1980 - Oklahoma Employment
Security Commission - codification -
emergency]

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

SECTION 1. AMENDATORY 40 O.S. 2011, Section 2-204, is
amended to read as follows:

Section 2-204. REGISTRATION FOR EMPLOYMENT.

The unemployed individual must register for work ~~at and~~
~~thereafter continue to report at an employment office~~ within seven
(7) days of filing his or her initial claim for unemployment
benefits in accordance with such rules as the Commission may
prescribe, except that the Commission may, ~~by rule,~~ waive ~~or alter~~
~~either or both~~ the requirements of this section as to individuals
attached to regular jobs ~~and as to such other cases or,~~ situations

1 involving mass layoffs, or individuals in areas not served by an
2 established employment office, ~~with respect to which~~ or Internet
3 service when it finds that compliance with ~~such~~ these requirements
4 would be oppressive, or would be inconsistent with the purpose of
5 ~~this act~~ the Employment Security Act of 1980.

6 SECTION 2. AMENDATORY 40 O.S. 2011, Section 2-207, is
7 amended to read as follows:

8 Section 2-207. WAGE REQUIREMENT DURING BASE PERIOD.

9 A. The unemployed individual, during the individual's base
10 period, shall have been paid:

11 1. Taxable wages of not less than One Thousand Five Hundred
12 Dollars (\$1,500.00); and

13 2. Total wages of not less than one and one-half (1 1/2) times
14 the amount of wages during that quarter of the individual's base
15 period in which the wages were highest.

16 B. Notwithstanding the ~~preceding provision, an individual with~~
17 ~~base period wages equal to or more than the highest annual amount of~~
18 ~~taxable wages that applies to any calendar year in which the claim~~
19 ~~for unemployment benefits was filed~~ provisions in subsection A of
20 this section, an unemployed individual shall be eligible for
21 benefits if, during the individual's base period, he or she shall
22 have been paid:

23 1. Taxable wages of any amount; and
24

1 2. Total wages equal to or more than the annual amount of
2 taxable wages that applies to any calendar year in which the claim
3 for unemployment benefits was filed.

4 ~~B.~~ C. 1. If an individual lacks sufficient base period wages
5 under subsection A or B of this section to establish a claim for
6 benefits, any wages paid in the individual's alternative base period
7 shall be considered as the individual's base period wages.

8 2. If the Commission has not received wage information from the
9 individual's employer for the most recent calendar quarter of the
10 alternative base period, the Commission shall accept an affidavit
11 from the individual supported by wage information such as check
12 stubs, deposit slips, or other supporting documentation to determine
13 wages paid.

14 3. A determination of benefits based on an alternative base
15 period shall be adjusted when the quarterly wage report is received
16 from the employer, if the wage information in the report differs
17 from that reported by the individual.

18 4. If alternative base period wages are established by
19 affidavit of the individual, the employer to which the wages are
20 attributed will have the right to protest the wages reported. If a
21 protest is made, the employer must provide documentary evidence of
22 wages paid to the individual. The Commission will determine the
23 wages paid based on the preponderance of the evidence presented by
24 each party.

1 5. Provided, no wages used to establish a claim under an
2 alternative base period shall be subsequently used to establish a
3 second benefit year.

4 SECTION 3. AMENDATORY 40 O.S. 2011, Section 2-406.1, is
5 amended to read as follows:

6 Section 2-406.1. A. 1. An employee discharged on the basis of
7 a refusal to undergo drug or alcohol testing or a ~~confirmed~~ positive
8 drug or alcohol test conducted in accordance with the provisions of
9 the Standards for Workplace Drug and Alcohol Testing Act shall be
10 considered to have been discharged for misconduct and shall be
11 disqualified for benefits pursuant to the provisions of Section 2-
12 406 of this title.

13 2. In any challenge to a positive drug or alcohol test, the
14 claimant has the burden to prove a breach in the chain of custody.
15 The employer must provide the chain of custody documentation at the
16 request of any claimant challenging his or her test result.

17 3. When the claimant fails to request a confirmation test
18 pursuant to Section 556 of this title, the claimant shall not be
19 eligible for benefits.

20 B. In any claim brought by the discharged employee for
21 compensation, a ~~copy~~ written report of the drug or alcohol test
22 results shall be accepted as prima facie evidence of the
23 administration and results of the drug or alcohol test. If
24 challenged by the claimant as provided in paragraph 2 of subsection

1 A of this section, the written report of the drug or alcohol test
2 results shall be acceptable for presentation as evidence with the
3 chain of custody of the sample properly documented.

4 SECTION 4. AMENDATORY 40 O.S. 2011, Section 2-503, is
5 amended to read as follows:

6 Section 2-503. CLAIMS, NOTICES AND OBJECTIONS.

7 A. Claims for benefits shall be made in accordance with ~~such~~
8 ~~rule as~~ all rules that the Oklahoma Employment Security Commission
9 may prescribe.

10 B. Promptly after an initial claim or an additional initial
11 claim is filed, the Commission shall give written notice of the
12 claim to the last employer of the claimant for whom he or she worked
13 at least fifteen (15) working days. Promptly after the Commission
14 is notified of the claimant's separation from an employment obtained
15 by a claimant during a continued claim series, the Commission shall
16 give written notice of the claim to the last separating employer.
17 Notices to separating employers during a continued claim series will
18 be given to the last employer in the claim week without regard to
19 length of employment.

20 C. Promptly after the claim is paid for the fifth week of
21 benefits the Commission shall give written notice of the claim to
22 all other employers of the claimant during the claimant's base
23 period. The notice will be given pursuant to Section 3-106 of this
24 title.

1 D. Notices shall be deemed given when the Commission deposits
2 the same in the United States mail addressed to the employer's last-
3 known address. Notice shall be presumed prima facie to have been
4 given to the employer to whom addressed on the date stated in the
5 written notice. If the employer has elected to be notified by
6 electronic means according to procedures set out in Oklahoma
7 Employment Security Commission rules, notice shall be deemed to be
8 given when the Commission transmits the notification by electronic
9 means.

10 E. Within ten (10) days after the date on the notice or the
11 date of the postmark on the envelope in which the notice was sent,
12 whichever is later, an employer may file with the Commission at the
13 address prescribed in the notice written objections to the claim
14 setting forth specifically the facts which:

15 1. Make the claimant ineligible for benefits under Sections 2-
16 201 through ~~2-209~~ 2-210 of this title;

17 2. Disqualify the claimant from benefits under Sections 2-401
18 through 2-418 of this title; or

19 3. Relieve such employer from being charged for the benefits
20 wages of such claimant.

21 SECTION 5. AMENDATORY 40 O.S. 2011, Section 2-507, is
22 amended to read as follows:

23 Section 2-507. NOTICE OF DETERMINATIONS.
24

1 Notice of a determination upon a claim shall be given promptly
2 to the claimant by delivery thereof or by mailing ~~such~~ the notice to
3 the claimant's last-known address or by electronic means if the
4 claimant elected this form of notification through procedures set
5 out by Oklahoma Employment Security Commission rules. Notice of a
6 determination shall also be given promptly to the last employer of
7 the claimant, for whom the claimant worked at least fifteen (15)
8 working days, that objected to the claim in accordance with the
9 provisions of subsection E of Section 2-503 of this title and to
10 each other employer who timely filed a written objection to the
11 claim. If the employer has elected to be notified by electronic
12 means according to procedures set out in Oklahoma Employment
13 Security Commission rules, notice shall be deemed to be given when
14 the Commission transmits the notification by electronic means.

15 SECTION 6. AMENDATORY 40 O.S. 2011, Section 2-613, is
16 amended to read as follows:

17 Section 2-613. BENEFIT OVERPAYMENTS.

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

21 1. Fraud overpayment: in which an individual intentionally
22 makes a false statement or representation or fails to disclose a
23 material fact, and has received any sum as benefits to which the
24 individual was not entitled. The individual shall be liable to

1 repay this sum, plus a penalty of twenty-five percent (25%) of the
2 amount of the original overpayment and interest at the rate of one
3 percent (1%) per month on the unpaid balance of the overpayment, to
4 the Oklahoma Employment Security Commission. Three-fifths (3/5) of
5 the penalty amount collected shall be deposited in the Unemployment
6 Trust Fund for the State of Oklahoma and the remaining two-fifths
7 (2/5) shall be deposited in the Oklahoma Employment Security
8 Commission Revolving Fund. The interest shall cease to accrue when
9 the total accrued interest equals the amount of the overpayment. If
10 an overpayment is modified, the interest shall cease to accrue when
11 the total accrued interest equals the amount of the modified
12 overpayment. The Commission shall deduct the principal sum from any
13 future benefits payable to the individual;

14 2. Claimant error overpayment: in which an individual, by
15 mistake of law or fact, makes a false statement or representation or
16 fails to disclose a material fact and has received any sum as
17 benefits to which the individual was not entitled. The individual
18 shall be liable to repay this sum, plus interest at the rate of one
19 percent (1%) per month on the unpaid balance of the overpayment, to
20 the Commission. The interest shall cease to accrue when the total
21 accrued interest equals the amount of the overpayment. If an
22 overpayment is modified, the interest shall cease to accrue when the
23 total accrued interest equals the amount of the modified
24

1 overpayment. The Commission shall deduct the principal sum from any
2 future benefits payable to the individual; or

3 3. Administrative overpayment - in which:

- 4 a. an individual has received any sum as benefits under
5 ~~this act~~ the Employment Security Act of 1980 due to an
6 error by the Commission or an employer, or
7 b. an individual has received benefits and, under a
8 redetermination or a reversal of a decision on appeal,
9 the individual has been found to be not entitled to
10 benefits.

11 The individual shall be liable to have this sum deducted from any
12 future benefits payable to the individual with respect to the
13 benefit year current at the time of the receipt and the next
14 subsequent benefit year that begins within one (1) year after the
15 expiration of the benefit year current at the time of the receipt.
16 No interest shall accrue on administrative overpayments.

17 SECTION 7. AMENDATORY 40 O.S. 2011, Section 3-102, is
18 amended to read as follows:

19 Section 3-102. CONTRIBUTIONS.

20 A. Contributions shall accrue and become payable by each
21 employer for each calendar year in which the employer is subject to
22 ~~this act~~ the Employment Security Act of 1980, with respect to wages
23 for employment. Such contributions shall become due and be paid by
24 each employer to the Oklahoma Employment Security Commission for the

1 Unemployment Compensation Fund in accordance with such rules as the
2 Commission may prescribe, and shall not be deducted, in whole or in
3 part, from the wages of individuals in the employer's employ.

4 B. In the payment of any contributions, a fractional part of a
5 cent shall be disregarded unless it amounts to one-half cent
6 (\$0.005) or more, in which case it shall be increased to one cent
7 (\$0.01).

8 C. Each employer shall be notified of its contribution rate for
9 a given calendar year on or before September 30 of the previous
10 calendar year. The ~~rate notice shall become conclusive and binding~~
11 ~~upon~~ be mailed to the employer unless within twenty (20) days after
12 ~~the mailing of the notice of the contribution rate, to~~ at the
13 ~~employer's last-known address,~~ If the employer files a written
14 ~~request for a review and redetermination setting forth the~~
15 ~~employer's reasons for the review. The~~ has elected to be notified
16 by electronic means according to procedures set out in Oklahoma
17 Employment Security Commission rules, notice shall be deemed to be
18 given when the Commission transmits the notification by electronic
19 means. The employer shall file an appeal to the rate notice within
20 twenty (20) days after the mailing of the notice of the contribution
21 rate, or the date of transmission by electronic means. Upon the
22 filing of a timely appeal, the Commission shall provide for a review
23 and issue a determination to the employer. If the employer does not
24

1 file a timely appeal, the contribution rate of the employer shall
2 become conclusive and binding.

3 D. Within fourteen (14) days after the date of mailing of the
4 notice of the determination, the employer may file with the
5 Commission at the address prescribed in the notice the employer's
6 specific written objections to the contribution rate so determined.
7 The matter will be heard upon those specific written objections by a
8 representative appointed by the Commission. The decision shall be
9 made in writing and notice shall be mailed to the employer. The
10 employer may appeal to the district court by filing a petition for
11 review with the clerk of that court within thirty (30) days after
12 the date of mailing stated upon the notice of decision.

13 SECTION 8. AMENDATORY 40 O.S. 2011, Section 3-106, is
14 amended to read as follows:

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

16 A. The Oklahoma Employment Security Commission shall give
17 notice to each base period employer of a claimant promptly after the
18 claimant is issued his or her fifth week of benefits by the
19 Commission or promptly after the Commission receives notice of the
20 amounts paid as benefits by another state under a reciprocal
21 arrangement. Notice shall be deemed given under this subsection
22 when the Commission deposits the same with the United States Postal
23 Service addressed to the employer at an address designated by the
24 employer to receive the notice or at the employer's last-known

1 address. If the employer has elected to be notified by electronic
2 means according to procedures set out in Oklahoma Employment
3 Security Commission rules, notice shall be deemed to be given when
4 the Commission transmits the notification by electronic means.

5 Notice shall be presumed prima facie to have been given to the
6 employer to whom addressed on the date stated in the written notice.
7 This notice shall give the name and ~~Social Security Number~~ social
8 security number of the claimant, the date the claim was filed, and
9 the amount of benefit wages charged to the employer in each quarter
10 of the base period.

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

17 1. The date on which the employment was terminated;

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

22 3. Full particulars as to the regular scheduled part-time or
23 full-time employment of the employee including the starting date,
24

1 and ending date if any, of the continuous period of such part-time
2 or full-time employment; and

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

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

11 D. Within fourteen (14) days after the mailing of the
12 determination provided for in subsection C of this section, the
13 employer may file with the Commission or its representative a
14 written protest to the determination and request an oral hearing de
15 novo to present evidence in support of its protest. The Commission
16 or its representative shall, by written notice, advise the employer
17 of the date of the hearing, which shall not be less than ten (10)
18 days from the date of mailing of the written notice. At the
19 discretion of the Commission, this hearing shall be conducted by the
20 Commission or its representative appointed by the Commission for
21 this purpose. Pursuant to the hearing, the Commission or its
22 representative shall, as soon as practicable, make a written order
23 setting forth its findings of fact and conclusions of law, and shall
24 send it to the employer.

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

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

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

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

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

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

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

7 5. Was discharged by an employer for unsatisfactory performance
8 during an initial employment probationary period. As used in this
9 paragraph, "probationary period" means a period of time set forth in
10 an established probationary plan which applies to all employees or a
11 specific group of employees and does not exceed ninety (90) calendar
12 days from the first day a new employee begins work. The employee
13 must be informed of the probationary period within the first seven
14 (7) work days. There must be conclusive evidence to establish that
15 the individual was separated due to unsatisfactory work performance;

16 6. Left employment to attend training approved under the Trade
17 Act of 1974 and is allowed unemployment benefits pursuant to Section
18 2-416 of this title; or

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

21 H. If an employer recalls an employee deemed unemployed as
22 defined by the Employment Security Act of 1980 and the employee
23 continues to be employed or the employee voluntarily terminates
24 employment or is discharged for misconduct within the benefit year,

1 the employer shall be entitled to have the benefit wage charged
2 against the employer's experience rating for the employee reduced by
3 the ratio of the number of weeks of remaining eligibility of the
4 employee to the total number of weeks of entitlement.

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

13 J. If the Commission receives a notice of amounts paid as
14 benefits by another state under a reciprocal agreement, and the
15 notice is received after three (3) years from the effective date of
16 the underlying benefit claim, no benefit wage charge will be made
17 against the employer identified in the notice, or if a benefit wage
18 charge is made based on such a notice, the employer will be relieved
19 of the charge when the facts are brought to the attention of the
20 Commission.

21 SECTION 9. AMENDATORY 40 O.S. 2011, Section 3-115, is
22 amended to read as follows:

23 Section 3-115. APPEAL OF DETERMINATIONS.
24

1 A. If a determination is made by the Oklahoma Employment
2 Security Commission on any aspect of an employer's account, and a
3 method of appeal or protest of the determination is not set out in
4 the statute or rule under which the determination was made, the
5 employer may appeal or protest the determination under the procedure
6 set forth in subsection B of this section.

7 B. 1. All determinations affecting an employer account must be
8 made by the Commission in writing in a Notice of Determination and
9 mailed to the employer at the employer's last-known address with the
10 mailing date and appeal rights set out in the document. If the
11 employer has elected to be notified by electronic means according to
12 procedures set out in Oklahoma Employment Security Commission rules,
13 notice shall be deemed to be given when the Commission transmits the
14 notification by electronic means.

15 2. Within twenty (20) days after the mailing or transmission of
16 the Notice of Determination as provided for in paragraph 1 of this
17 subsection, the employer may file with the Commission, or its
18 representative, a written request for a review and redetermination
19 setting forth the employer's reasons therefor. If any employer
20 fails to file a written request for review and redetermination
21 within twenty (20) days, then the initial determination of the
22 Commission shall be final, and no further appeal or protest shall be
23 allowed.

1 3. If a written request for review and redetermination is
2 filed, the Commission shall provide for a review and issue a Notice
3 of Redetermination in the matter. The employer may appeal the
4 redetermination by filing a written protest within fourteen (14)
5 days of the date of the mailing of the Notice of Redetermination.
6 If the employer fails to file a written protest within the time
7 allowed, the redetermination of the Commission shall be final and no
8 further appeal or protest shall be allowed.

9 4. Upon the timely filing of a written protest, the Commission
10 shall provide for an oral hearing de novo to allow the employer to
11 present evidence in support of the protest. The Commission or its
12 representatives shall, by written notice, advise the employer of the
13 date of the hearing, which shall not be less than ten (10) days from
14 the date of the mailing of the written notice. At the discretion of
15 the Commission, this hearing shall be conducted by the Commission,
16 or by a representative appointed by the Commission for this purpose.

17 5. Pursuant to the hearing, the Commission or its
18 representative shall, as soon as practicable, make a written order
19 setting forth its findings of fact and conclusions of law, and shall
20 mail it to the employer at the employer's last-known address with
21 the mailing date and appeal rights set out in the document.

22 6. The employer or the Commission may appeal the order to the
23 district court of the county in which the employer has its principal
24 place of business by filing a Petition for Review with the clerk of

1 the court within thirty (30) days after the date the order was
2 mailed to all parties. If the employer does not have a principal
3 place of business in any county in Oklahoma, then the Petition for
4 Review shall be filed with the Oklahoma County District Court. All
5 appeals shall be governed by Part 4 of Article 3 of the Employment
6 Security Act of 1980. If the employer fails to file an appeal to
7 the district court within the time allowed, the order shall be final
8 and no further appeal shall be allowed.

9 SECTION 10. AMENDATORY 40 O.S. 2011, Section 3-309, is
10 amended to read as follows:

11 Section 3-309. COLLECTION OF DELINQUENT CONTRIBUTIONS,
12 PENALTIES ~~OR,~~ INTEREST OR FEES.

13 ~~Upon a hearing with notice~~ When a determination that an employer
14 owes delinquent contributions, penalties, interest or fees becomes
15 final, the Oklahoma Employment Security Commission shall be entitled
16 to proceed by ~~garnishment~~ levy to collect any delinquent
17 contribution and to collect any penalty, interest or fees due and
18 owing as a result of the delinquency. Provided, that upon proper
19 application under the procedures outlined herein, the ~~court~~
20 Assessment Board of the Oklahoma Employment Security Commission may
21 issue an order continuing or modifying the ~~garnishment~~ levy for the
22 collection of delinquent contributions, penalties, interest or fees.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-500 of Title 40, unless there is created a duplication in numbering, reads as follows:

LEVY ON ACCOUNTS.

As used in Part 5 of Article 3 of the Employment Security Act of 1980:

1. "Bank" means any state bank or banking association, national bank or banking association, savings and loan company, credit union, or any other financial institution;

2. "Bank account" means any checking or savings account the tax debtor has with any bank;

3. "Contract proceeds" means any payment or exchange of assets due to a tax debtor from any contract the tax debtor is a party to or a beneficiary of;

4. "Contracting entity" means any person, partnership, corporation, limited liability company or legal entity of any kind that owes money to a tax debtor due to the provisions of a contract the entity is bound by;

5. "Earnings" means any form of payment to any individual including, but not limited to, salary, wages, commissions, or other compensation;

6. "Employer" means any person, partnership, corporation, limited liability company or legal entity of any kind that owes earnings to a tax debtor; and

1 7. "Tax debtor" means any person, partnership, corporation,
2 limited liability company or legal entity of any kind that owes the
3 Oklahoma Employment Security Commission any amount for delinquent
4 state unemployment taxes, interest, penalties, fees or surcharge.

5 SECTION 12. AMENDATORY 40 O.S. 2011, Section 3-509, is
6 amended to read as follows:

7 Section 3-509. LEVY ON BANK ACCOUNTS.

8 A. ~~As used in Part 5 of Article 3 of the Employment Security~~
9 ~~Act of 1980:~~

10 1. ~~"Bank" means any state bank or banking association, national~~
11 ~~bank or banking association, savings and loan company, credit union,~~
12 ~~or any other financial institution;~~

13 2. ~~"Bank account" means any checking or savings account the tax~~
14 ~~debtor has with any bank; and~~

15 3. ~~"Tax debtor" means any person, partnership, corporation, or~~
16 ~~legal entity of any kind that owes the Oklahoma Employment Security~~
17 ~~Commission any amount for delinquent state unemployment taxes,~~
18 ~~interest, penalty, fees, or surcharge.~~

19 B. If any tax debtor shall fail to pay his or her indebtedness
20 to the Oklahoma Employment Security Commission after the tax debtor
21 has been notified of the amount due and demand for payment has been
22 made, it shall be lawful for the Oklahoma Employment Security
23 Commission to collect the amount owed by levy upon any bank account
24 of the tax debtor.

1 ~~C.~~ B. To levy upon a tax debtor's bank account, the Oklahoma
2 Employment Security Commission must serve a Notice of Levy on the
3 bank in which the tax debtor has an account, along with the tax
4 warrants covering all calendar quarters in which the tax debtor owes
5 unemployment taxes, interest, penalty, fees, or surcharge.

6 ~~D.~~ C. Service of the Notice of Levy and tax warrants shall be
7 made on the bank in the same manner as provided in Section 2004 of
8 Title 12 of the Oklahoma Statutes for service of process in civil
9 actions.

10 ~~E.~~ D. Upon receiving the Notice of Levy and any tax warrants
11 issued against the tax debtor, the bank shall deliver all of the tax
12 debtor's interest in the money in the tax debtor's bank account at
13 the time of the service of the levy, subject to the banker's lien or
14 right of setoff, or any other priority claim of the bank, up to the
15 amount of indebtedness indicated on the tax warrants plus accrued
16 interest pursuant to subsection A of Section 3-301 of Title 40 of
17 the Oklahoma Statutes and any fees for service of process, to the
18 representative of the Commission indicated on the Notice of Levy.
19 The delivery of this money shall occur within ten (10) days of the
20 date of service of the Notice of Levy.

21 ~~F.~~ E. If there is no money in the tax debtor's bank account at
22 the time the Notice of Levy is served, or if the bank account has
23 been closed, an officer of the bank on which the Notice of Levy is
24 served shall make a statement to that effect on the Notice of Levy.

1 The statement must be notarized and returned to the representative
2 of the Oklahoma Employment Security Commission named in the Notice
3 of Levy.

4 ~~G.~~ F. The Sheriff's Department that serves the Notice of Levy
5 on the bank shall be entitled to a service fee of Fifty Dollars
6 (\$50.00) that is to be paid by the Oklahoma Employment Security
7 Commission and added to the tax debtor's indebtedness as a fee in
8 the latest calendar quarter for which the tax debtor has any type of
9 indebtedness.

10 SECTION 13. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 3-511 of Title 40, unless there
12 is created a duplication in numbering, reads as follows:

13 A. If any tax debtor shall fail to pay his or her indebtedness
14 to the Oklahoma Employment Security Commission after the tax debtor
15 has been notified of the amount due and demand for payment has been
16 made, it shall be lawful for the Oklahoma Employment Security
17 Commission to collect the amount owed by levy upon any earnings or
18 contract proceeds of the tax debtor.

19 B. To levy upon the earnings of a tax debtor or contract
20 proceeds owed to a tax debtor, the Oklahoma Employment Security
21 Commission must serve a Notice of Levy on the employer who employs
22 the tax debtor or the contracting entity that owes money under
23 contract to the tax debtor, along with the tax warrants covering all
24 quarters in which the tax debtor owes unemployment taxes, interest,

1 penalties, fees or surcharge. The levy will have the same priority,
2 and be subject to the same exceptions, as a continuing earnings
3 garnishment provided for in Section 1173.4 of Title 12 of the
4 Oklahoma Statutes. The following procedures will apply to a Notice
5 of Levy served on an employer or contracting entity:

6 1. The employer or contracting entity shall answer the Notice
7 of Levy on a form provided by the Commission. The employer or
8 contracting entity shall follow the procedure for answering a
9 continuing earnings garnishment as set out in subsection F of
10 Section 1173.4 of Title 12 of the Oklahoma Statutes;

11 2. The Notice of Levy shall be a lien on the debtor's property
12 in the same manner as provided for in subsection G of Section 1173.4
13 of Title 12 of the Oklahoma Statutes. The Notice of Levy shall also
14 be subject to the procedures and time limits set out in subsections
15 H, I, J and K of Section 1173.4 of Title 12 of the Oklahoma
16 Statutes, except that when a document is required to be filed with
17 the clerk of the court, the document will instead be filed with the
18 Commission as directed on the forms provided; and

19 3. The employer or contracting entity shall deliver all funds
20 subject to the levy up to the amount of indebtedness indicated on
21 the tax warrants plus accrued interest pursuant to subsection A of
22 Section 3-301 of Title 40 of the Oklahoma Statutes and any fees for
23 service of process to the representative of the Commission indicated
24 on the Notice of Levy. The delivery of this money shall occur

1 within ten (10) days of the date the earnings or contract proceeds
2 are due to be paid to the tax debtor.

3 C. Service of the Notice of Levy and tax warrants shall be made
4 on the employer or contracting entity in the same manner as provided
5 in Section 2004 of Title 12 of the Oklahoma Statutes for service of
6 process in civil actions.

7 D. The sheriff's department that serves the Notice of Levy on
8 the employer or contracting entity shall be entitled to a service
9 fee of Fifty Dollars (\$50.00) that is to be paid by the Oklahoma
10 Employment Security Commission and added to the tax debtor's
11 indebtedness as a fee in the latest calendar quarter for which the
12 tax debtor has any type of indebtedness.

13 E. Claims for Exemption and any other matter related to the
14 levy shall be filed with the Assessment Board of the Oklahoma
15 Employment Security Commission. An Order of Exemption may relate
16 back no more than thirty (30) days before the filing of the Claim
17 for Exemption and shall extend no further than the expiration date
18 or termination of the levy. Appeal from the Assessment Board shall
19 be governed by the appeal procedures set out in Part 4 of Article
20 III of the Employment Security Act of 1980, and the Administrative
21 Rules of the Oklahoma Employment Security Commission pertaining
22 thereto.

1 SECTION 14. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4-319 of Title 40, unless there
3 is created a duplication in numbering, reads as follows:

4 In order to encourage the improvement and modernization of
5 employment, training, and placement services for veterans, and to
6 recognize local offices, divisions, or units of the Oklahoma
7 Employment Security Commission for excellence in the provision of
8 services to veterans, or for having made demonstrable improvements
9 in the provision of services to veterans, the Veterans Services
10 Division of the Oklahoma Employment Security Commission is directed
11 to establish a recognition program for these entities. The Oklahoma
12 Employment Security Commission is hereby authorized to award funds
13 to a local office, division, or unit meeting criteria established by
14 the Veterans Services Division of the Oklahoma Employment Security
15 Commission, provided funds exist from United States Department of
16 Labor grants for the payment of the awards. The funds awarded under
17 this section shall be held by the Finance and Administrative
18 Services Division on behalf of the local office, division, or unit,
19 and can be utilized to purchase supplies, equipment, furniture, or
20 other goods that would assist the employees of the local office,
21 division, or unit. The money shall be drawn using purchase orders
22 through the normal requisition system at the discretion of the
23 supervisor of the local office, division, or unit.

1 SECTION 15. AMENDATORY 40 O.S. 2011, Section 4-508, is
2 amended to read as follows:

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

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

17 B. Upon receipt of written request by any employer who
18 maintains a Supplemental Unemployment Benefit (SUB) Plan, the
19 Commission or its designated representative may release to such
20 employer information regarding weekly benefit amounts paid its
21 workers during a specified temporary layoff period, provided such
22 Supplemental Unemployment Benefit (SUB) Plan requires benefit
23 payment information before Supplemental Unemployment Benefits can be
24 paid to such workers. Any information disclosed under this

1 provision shall be utilized solely for the purpose outlined herein
2 and shall be held strictly confidential by the employer.

3 C. The provisions of this section shall not prevent the
4 Commission from disclosing the following information and no
5 liability whatsoever, civil or criminal, shall attach to any member
6 of the Commission or any employee thereof for any error or omission
7 in the disclosure of such information:

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

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

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

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

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

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

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

20 8. The release to employees of the Department of Transportation
21 or any Metropolitan Planning Organization as defined in 23 U.S.C.,
22 Section 134 and 49 U.S.C., Section 5303 of information required for
23 use in federally mandated regional transportation planning, which is
24 performed as a part of its official duties;

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

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

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

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

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

1 14. The release to employees of the Center for Economic and
2 Management Research of the University of Oklahoma, the Center for
3 Economic and Business Development at Southwestern Oklahoma State
4 University, or a center of economic and business research or
5 development at a comprehensive or regional higher education
6 institution within the Oklahoma State System of Higher Education of
7 information required to identify economic trends. The information
8 obtained shall be kept confidential by the higher education
9 institution and shall not be disclosed or be open to public
10 inspection. The higher education institution may release aggregated
11 data, provided that such aggregation meets disclosure requirements
12 of the Commission;

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

19 16. The release to employees of the Department of Mental Health
20 and Substance Abuse Services of information required to evaluate the
21 effectiveness of mental health and substance abuse treatment and
22 state or local programs utilized to divert persons from inpatient
23 treatment. The information obtained shall be kept confidential by
24 the Department and shall not be disclosed or be open to public

1 inspection. The Department of Mental Health and Substance Abuse
2 Services, however, may release aggregated data, either by treatment
3 facility, program or larger aggregate units, provided that such
4 aggregation meets disclosure requirements of the Oklahoma Employment
5 Security Commission;

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

10 18. The release to employees of public housing agencies for
11 purposes of determining eligibility pursuant to 42 U.S.C., Section
12 503(i);

13 19. The release of wage and benefit claim information, at the
14 discretion of the Commission, to an agency of this state or its
15 political subdivisions, or any nonprofit corporation that operates a
16 program or activity designated as a partner in the Workforce
17 Investment Act One-Stop delivery system pursuant to 29 U.S.C.A.,
18 Section 2481 (b), based on a showing of need made to the Commission
19 and after an agreement concerning the release of information is
20 entered into with the entity receiving the information;

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

23
24

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

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

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

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

18 ~~or~~

19 25. The release of information to vendors that contract with
20 the Oklahoma Employment Security Commission to provide for the
21 issuance of debit cards, to conduct electronic fund transfers, to
22 perform computer programming operations, or to perform computer
23 maintenance or replacement operations; provided the vendor agrees to
24 protect and safeguard the information it receives and to destroy the

1 information when no longer needed for the purposes set out in the
2 contract;

3 26. The release to employees of the Office of Juvenile Affairs
4 of information for use in assessing results and outcomes of clients
5 served as well as the effectiveness of state and local juvenile and
6 justice programs including prevention and treatment programs. The
7 information obtained shall be kept confidential by the Office of
8 Juvenile Affairs and shall not be disclosed or be open to public
9 inspection. The Office of Juvenile Affairs may release aggregated
10 data for programs or larger aggregate units, provided that the
11 aggregation meets disclosure requirements of the Oklahoma Employment
12 Security Commission; or

13 27. The release of information to vendors that contract with
14 the State of Oklahoma for the purpose of providing a public
15 electronic labor exchange system that will support the Oklahoma
16 Employment Security Commission's operation of an employment service
17 system to connect employers with job seekers and military veterans.
18 This labor exchange system would enhance the stability and security
19 of Oklahoma's economy as well as support the provision of veterans'
20 priority of service. The vendors may perform computer programming
21 operations, perform computer maintenance or replacement operations,
22 or host the electronic solution; provided each vendor agrees to
23 protect and safeguard all information received, that no information
24 shall be disclosed to any third party, that the use of the

1 information shall be restricted to the scope of the contract, and
2 that the vendor shall properly dispose of all information when no
3 longer needed for the purposes set out in the contract.

4 D. Subpoenas to compel disclosure of information made
5 confidential by this statute shall not be valid, except for
6 administrative subpoenas issued by federal, state, or local
7 governmental agencies that have been granted subpoena power by
8 statute or ordinance. Confidential information maintained by the
9 Commission can be obtained by order of a court of record that
10 authorizes the release of the records in writing. All
11 administrative subpoenas or court orders for production of documents
12 must provide a minimum of twenty (20) days from the date it is
13 served for the Commission to produce the documents. If the date on
14 which production of the documents is required is less than twenty
15 (20) days from the date of service, the subpoena or order shall be
16 considered void on its face as an undue burden or hardship on the
17 Commission.

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

22 F. It is further provided that the provisions of this section
23 shall be strictly interpreted and shall not be construed as
24

1 permitting the disclosure of any other information contained in the
2 records and files of the Commission.

3 SECTION 16. AMENDATORY 40 O.S. 2011, Section 5-108, is
4 amended to read as follows:

5 Section 5-108. OTHER PENALTIES IN THIS ACT.

6 Other penalties are provided in the following sections of this
7 title:

8 Employer violations of employee rights - Section 2-301

9 Impermissible charges to claimants - Section 2-302

10 Disqualification of benefit claims for fraud - Section 2-402

11 Recovery of benefits paid upon false statement - Section 2-613

12 SUTA dumping prohibition - Section 3-111.1

13 Fraud overpayment penalty - Section 2-613

14 SECTION 17. AMENDATORY 40 O.S. 2011, Section 552, as
15 last amended by Section 2, Chapter 180, O.S.L. 2011, is amended to
16 read as follows:

17 Section 552. As used in the Standards for Workplace Drug and
18 Alcohol Testing Act:

19 1. "Alcohol" means ethyl alcohol or ethanol;

20 2. "Applicant" means a person who has applied for a position
21 with an employer and received a conditional offer of employment;

22 3. "Board" means the State Board of Health;

23 4. "Confirmation test" means a drug or alcohol test on a sample
24 to substantiate the results of a prior drug or alcohol test on the

1 same sample and which uses different chemical principles and is of
2 equal or greater accuracy than the prior drug or alcohol test.

3 Where a breathalyzer test is utilized, a confirmation test means a
4 second sample test that confirms the prior result. Where a single-
5 use test is utilized, a confirmation test means a second test
6 confirmed by a testing facility;

7 5. "Department" means the State Department of Health;

8 6. "Drug" means amphetamines, cannabinoids, cocaine,
9 phencyclidine (PCP), hallucinogens, methaqualone, opiates,
10 barbiturates, benzodiazepines, synthetic narcotics, designer drugs,
11 or a metabolite of any of the substances listed herein;

12 7. "Drug or alcohol test" means a chemical test administered
13 for the purpose of determining the presence or absence of a drug or
14 its metabolites or alcohol in a person's bodily tissue, fluids or
15 products. Adulteration of a specimen or of a drug or alcohol test
16 shall be considered as a refusal to test;

17 8. "Employee" means any person who supplies labor for
18 remuneration to his or her employer in this state and shall not
19 include an independent contractor, subcontractor or employees of an
20 independent contractor; provided, however, an independent
21 contractor, subcontractor, or employees of an independent
22 contractor, may be subject to a workplace drug or alcohol testing
23 policy under the terms of the contractual agreement when the drug or
24

1 alcohol testing policy applies to other workers at the job site or
2 workers who are in the same or similar classification or group;

3 9. "Employer" means any person, firm, corporation, partnership,
4 association, nonprofit organization or public employer, which has
5 one or more employees within this state, or which has offered or may
6 offer employment to one or more individuals in this state;

7 10. "Public employer" means the State of Oklahoma or any
8 political subdivision thereof, including any department, agency,
9 board, commission, institution, authority, public trust,
10 municipality, county, district or instrumentalities thereof;

11 11. "Review officer" means a person, qualified by the State
12 Board of Health, who is responsible for receiving results from a
13 testing facility which have been generated by an employer's drug or
14 alcohol testing program, and who has knowledge and training to
15 interpret and evaluate an individual's test results together with
16 the individual's medical history and any other relevant information;

17 12. "Sample" means tissue, fluid or product of the human body
18 chemically capable of revealing the presence of drugs or alcohol in
19 the human body; and

20 13. "Testing facility" means a facility which provides
21 laboratory services to test samples for the presence of drugs or
22 alcohol.

23 SECTION 18. AMENDATORY 40 O.S. 2011, Section 554, is
24 amended to read as follows:

1 Section 554. Employers may conduct drug and alcohol testing in
2 accordance with the Standards for Workplace Drug and Alcohol Testing
3 Act. Employers who choose to conduct drug or alcohol testing may
4 only request or require an applicant or employee to undergo testing
5 under any of the following circumstances:

6 1. Applicant and transfer/reassignment testing: A public or
7 private employer may request or require an applicant to undergo drug
8 or alcohol testing and may use a refusal to undergo testing or a
9 positive test result as a basis for refusal to hire. A public or
10 private employer may also request or require an employee who
11 transfers to a different position or job, or who is reassigned to a
12 different position or job, to undergo drug or alcohol testing;

13 2. For-cause testing: A public or private employer may request
14 or require an employee to undergo drug or alcohol testing at any
15 time it reasonably believes that the employee may be under the
16 influence of drugs or alcohol, including, but not limited to, the
17 following circumstances:

- 18 a. drugs or alcohol on or about the employee's person or
19 in the employee's vicinity,
- 20 b. conduct on the employee's part that suggests
21 impairment or influence of drugs or alcohol,
- 22 c. a report of drug or alcohol use while at work or on
23 duty,

- d. information that an employee has tampered with drug or alcohol testing at any time,
- e. negative performance patterns, or
- f. excessive or unexplained absenteeism or tardiness;

3. Post-accident testing: A public or private employer may require an employee to undergo drug or alcohol testing if the employee or another person has sustained an injury while at work or ~~the employer's~~ property has been damaged while at work, including damage to equipment. For purposes of workers' compensation, no employee who tests positive for the presence of substances defined and consumed pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes, alcohol, illegal drugs, or illegally used chemicals, or refuses to take a drug or alcohol test required by the employer, shall be eligible for such compensation;

4. Random testing: A public or private employer may request or require an employee or all members of an employment classification or group to undergo drug or alcohol testing at random and may limit its random testing programs to particular employment classifications or groups, except that a public employer may require random testing only of employees who:

- a. are police or peace officers,
- b. have drug interdiction responsibilities,
- c. are authorized to carry firearms,

- d. are engaged in activities which directly affect the safety of others,
- e. are working for a public hospital including any hospital owned or operated by a municipality, county, or public trust, or
- f. work in direct contact with inmates in the custody of the Department of Corrections or work in direct contact with juvenile delinquents or children in need of supervision in the custody of the Department of Human Services;

5. Scheduled, fitness-for-duty, return from leave and other periodic testing: A public or private employer may request or require an employee to undergo drug or alcohol testing if the test is conducted as a routine part of a routinely scheduled employee fitness-for-duty medical examination, or is requested or required by the employer in connection with an employee's return to duty from leave of absence, or which is scheduled routinely as part of the employer's written policy, except that a public employer may require scheduled, periodic testing only of employees who:

- a. are police or peace officers,
- b. have drug interdiction responsibilities,
- c. are authorized to carry firearms,
- d. are engaged in activities which directly affect the safety of others,

- 1 e. are working for a public hospital including any
2 hospital owned or operated by a municipality, county,
3 or public trust, or
- 4 f. work in direct contact with inmates in the custody of
5 the Department of Corrections or work in direct
6 contact with juvenile delinquents or children in need
7 of supervision in the custody of the Department of
8 Human Services; and

9 6. Post-rehabilitation testing: A public or private employer
10 may request or require an employee to undergo drug or alcohol
11 testing for a period of up to two (2) years commencing with the
12 employee's return to work, following a positive test or following
13 participation in a drug or alcohol dependency treatment program.

14 SECTION 19. AMENDATORY 40 O.S. 2011, Section 557, is
15 amended to read as follows:

16 Section 557. A. The State Board of Health shall have the power
17 and duty to promulgate, prescribe, amend and repeal rules for the
18 licensure and regulation of testing facilities, which shall include,
19 but not be limited to, the following:

20 1. Qualifications of testing facilities which shall include the
21 requirement that facilities doing urine analysis tests be certified
22 for forensic urine drug testing pursuant to guidelines or
23 regulations of the federal Department of Health and Human Services
24 or be accredited for forensic urine drug testing by the College of

1 American Pathologists or other organizations recognized by the State
2 Board of Health;

3 2. Qualifications of testing facility personnel; and

4 3. Procedures for the testing facility to provide the necessary
5 documentation of testing procedures and test results to the employer
6 requesting testing services as may be required by a court or
7 administrative proceeding.

8 B. Nothing in the Standards for Workplace Drug and Alcohol
9 Testing Act shall be construed as prohibiting an employer from
10 adopting a policy which allows for testing for drugs or alcohol by
11 another method which is reasonably calculated to detect the presence
12 of drugs or alcohol, including, but not limited to, breathalyzer
13 testing, testing by use of a single-use test device, known as an on-
14 site or quick testing device, to collect, handle, store and ship a
15 sample collected for testing. ~~Provided, however, a breathalyzer~~
16 ~~test shall not be grounds for immediate termination absent a~~
17 ~~confirmation test.~~

18 SECTION 20. AMENDATORY 40 O.S. 2011, Section 560, is
19 amended to read as follows:

20 Section 560. A. Records of all drug and alcohol test results
21 and related information maintained by the employer shall be the
22 property of the employer and, upon the request of the applicant or
23 employee tested, shall be made available for inspection and copying
24 to the applicant or employee. ~~An~~ Except as provided in subsection B

1 of this section, an employer shall not release such records to any
2 person other than the applicant, employee or the ~~employer's~~ review
3 officer, ~~unless the applicant or employee, in writing following~~
4 ~~receipt of the test results, has expressly granted permission for~~
5 ~~the employer to release such records in order to comply with a valid~~
6 ~~judicial or administrative order. A written record of the chain of~~
7 ~~custody of the sample shall be maintained from the time of the~~
8 ~~collection of the sample until the sample is no longer required.~~

9 B. Records of all drug and alcohol test results and related
10 information maintained by the employer may be released by the
11 employer for any of the following purposes:

12 1. As admissible evidence by an employer or the individual
13 tested in a case or proceeding before a court of record or
14 administrative agency if either the employer or the individual
15 tested are named parties in the case or proceeding;

16 2. In order to comply with a valid judicial or administrative
17 order; or

18 3. To an employer's employees, agents and representatives who
19 need access to such records in the administration of the Standards
20 For Workplace Drug and Alcohol Testing Act.

21 C. A testing facility, or any agent, representative or designee
22 of the facility, or any review officer, shall not disclose to any
23 employer, based on the analysis of a sample collected from an
24 applicant or employee for the purpose of testing for the presence of

1 drugs or alcohol, any information relating to the general health,
2 pregnancy or other physical or mental condition of the applicant or
3 employee.

4 A testing facility shall release the results of the drug or
5 alcohol test, and any analysis and information related thereto, to
6 the individual tested upon request.

7 SECTION 21. AMENDATORY 40 O.S. 2011, Section 562, is
8 amended to read as follows:

9 Section 562. A. An employer's policy shall state the
10 disciplinary actions that may be taken upon a refusal to undergo a
11 drug or alcohol test or for a positive test for the presence of
12 drugs or alcohol.

13 B. An employer may take disciplinary action, up to and
14 including discharge, against an employee who refuses to undergo drug
15 or alcohol testing conducted in accordance with the provisions of
16 Section 551 et seq. of this title or who tests positive for the
17 presence of drugs or alcohol.

18 C. ~~An employee discharged on the basis of a refusal to undergo~~
19 ~~drug or alcohol testing or a positive drug or alcohol test shall be~~
20 ~~considered to have been discharged for misconduct for purposes of~~
21 ~~unemployment compensation benefits as provided for in Section 2-406A~~
22 ~~of this title. In order to prove misconduct, the employer need only~~
23 ~~provide proof of a testing policy and either a refusal to take a~~
24 ~~drug or alcohol test or a positive test result.~~

1 ~~D.~~ Notwithstanding any provision of law for confidentiality of
2 drug or alcohol testing results, nothing in the Standards for
3 Workplace Drug and Alcohol Testing Act shall preclude an employer,
4 contracting with another employer, from sharing drug or alcohol
5 testing results of any tested person who works pursuant to such
6 contractual agreement.

7 SECTION 22. REPEALER 40 O.S. 2011, Section 552, as
8 amended by Section 1, Chapter 134, O.S.L. 2005, is hereby repealed.

9 SECTION 23. It being immediately necessary for the preservation
10 of the public peace, health and safety, an emergency is hereby
11 declared to exist, by reason whereof this act shall take effect and
12 be in full force from and after its passage and approval.

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