

An Act

ENROLLED SENATE
BILL NO. 794

By: Leewright of the Senate

and

Wallace of the House

An Act relating to the Oklahoma Employment Security Commission; amending 40 O.S. 2011, Section 1-210, as last amended by Section 2, Chapter 342, O.S.L. 2019 (40 O.S. Supp. 2020, Section 1-210), which relates to employment; modifying statutory language; deleting gender references; amending 40 O.S. 2011, Section 1-224, as amended by Section 2, Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2020, Section 1-224), which relates to filing; making e-file preference for filing; requiring notice for other filing methods; deleting statutory language; amending 40 O.S. 2011, Section 2-203, as last amended by Section 3, Chapter 251, O.S.L. 2019 (40 O.S. Supp. 2020, Section 2-203), which relates to claims; providing digital portal for claims; amending 40 O.S. 2011, Section 2-209, as last amended by Section 2, Chapter 14, O.S.L. 2018 (40 O.S. Supp. 2020, Section 2-209), which relates to benefits for nonprofit employers; exempting certain persons from certain benefits; amending 40 O.S. 2011, Section 2-406, as last amended by Section 3, Chapter 220, O.S.L. 2014 (40 O.S. Supp. 2020, Section 2-406), which relates to discharge for misconduct; modifying statutory language; amending Section 1, Chapter 338, O.S.L. 2016 (40 O.S. Supp. 2020, Section 2-422), which relates to seasonal workers; providing certain benefits between seasonal and nonseasonal periods; providing for claims on terminated seasonal employees; amending 40 O.S. 2011, Section 2-503, as last amended by Section 5, Chapter 251, O.S.L. 2019 (40 O.S. Supp. 2020, Section 2-503), which relates to notice and objections; construing certain notices;

providing certain notices by e-filing; stating time for notices; permitting objections by e-filing; listing reasons for objection; amending 40 O.S. 2011, Section 2-610, which relates to judicial review; modifying language; amending 40 O.S. 2011, Section 2-616, as amended by Section 7, Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2020, Section 2-616), which relates to overpayment; distinguishing fraud and claimant error in overpayment; providing appeal process; stating time for appeal; making determination final without appeal; amending 40 O.S. 2011, Section 2-801, as amended by Section 9, Chapter 14, O.S.L. 2018 (40 O.S. Supp. 2020, Section 2-801), which relates to child support collection; modifying methods for notification of child support; deleting statutory language; amending 40 O.S. 2011, Section 3-106.1, which relates to benefit wages charged; exempting certain benefit wages for pandemic; amending 40 O.S. 2011, Section 3-307, which relates to remittances; providing for automatic clearinghouse payments; authorizing certain payment methods; establishing a fiduciary duty to return overpayments to employers; allowing for forfeiture after certain time; construing when fiduciary duty is complete; prohibiting employer request for overpayment return after certain time; directing deposit of certain returns to certain account; amending 40 O.S. 2011, Section 4-108, which relates to executive director; deleting authority to appoint certain persons; deleting authority to reinstate personnel; amending 40 O.S. 2011, Section 4-311, which relates to published rules; requiring reports be published on website; amending 40 O.S. 2011, Section 4-312, as amended by Section 130, Chapter 304, O.S.L. 2012 (40 O.S. Supp. 2020, Section 4-312), which relates to personnel compensation; deleting authority to delegate powers; amending 40 O.S. 2011, Section 4-508, as last amended by Section 10, Chapter 251, O.S.L. 2019 (40 O.S. Supp. 2020, Section 4-508), which relates to confidential information; deleting Metropolitan Planning Organization for receipt of certain information; adding Oklahoma Department of

Career and Technology Education and Oklahoma State Regents for Higher Education for receipt of certain information; authorizing certain partners of the Workforce Innovation and Opportunity Act to receive certain information; amending 40 O.S. 2011, Section 5-107, which relates to wrongful disclosure of information; expanding wrongful disclosure of information; providing for codification; and providing an effective date.

SUBJECT: Oklahoma Employment Security Commission

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

SECTION 1. AMENDATORY 40 O.S. 2011, Section 1-210, as last amended by Section 2, Chapter 342, O.S.L. 2019 (40 O.S. Supp. 2020, Section 1-210), is amended to read as follows:

Section 1-210. EMPLOYMENT.

"Employment" means:

(1) Any service, including service in interstate commerce, performed by:

(a) any officer of a corporation; or

(b) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, as provided in paragraph (14) of this section, has the status of an employee.

(2) (a) any service, including service in interstate commerce, performed by any individual other than an individual who is an employee under paragraph (1) of this section who performs services for remuneration for any person:

(i) as an agent-driver or commission-driver engaged in distributing meat products, vegetable

products, fruit products, bakery products, beverages other than milk, or laundry or dry cleaning services, for ~~his or her~~ the individual's principal; or

(ii) as a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, ~~his or her~~ an individual's principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants or other similar establishments for merchandise for resale or supplies for use in their business operations;

(b) provided, the term "employment" shall include services described in divisions (i) and (ii) of subparagraph (a) of this paragraph if:

(i) the contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(ii) the individual does not have a substantial investment in facilities used in connection with the performance of the services, other than in facilities for transportation; and

(iii) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(3) Service performed in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act, 26 U.S.C., Section 3306(c)(7), and is not excluded from "employment" under paragraph (7) of this section.

(4) Service performed by an individual in the employ of a community chest, fund, foundation or corporation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation and which does not participate in, or intervene in, including the publishing or distributing of statements, any political campaign on behalf of any candidate for public office; provided that such organization had four or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within either the calendar year or preceding calendar year, regardless of whether they were employed at the same moment of time.

(5) Service performed by an individual in agricultural labor as defined in subparagraph (a) of paragraph (15) of this section when:

(a) the service is performed for a person who:

(i) during any calendar quarter in either the calendar year or the preceding calendar year, paid remuneration in cash of Twenty Thousand Dollars (\$20,000.00) or more to individuals employed in agricultural labor; or

(ii) for some portion of a day in each of twenty (20) different calendar weeks, whether or not the weeks were consecutive, in either the calendar year or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time.

(b) for the purposes of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader:

- (i) if the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, Public Law 95-562, 29 U.S.C., Sections 1801 through 1872; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and
 - (ii) if the individual is not an employee of the other person within the meaning of paragraph (1) of this section or subparagraph (d) of this paragraph.
- (c) for the purposes of this paragraph, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under subparagraph (b) of this paragraph:
 - (i) the other person and not the crew leader shall be treated as the employer of the individual; and
 - (ii) the other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader, either on ~~his~~ or her the individual's own behalf or on behalf of the other person, for the service in agricultural labor performed for the other person.
- (d) for the purposes of this paragraph, the term "crew leader" means an individual who:
 - (i) furnishes individuals to perform service in agricultural labor for any other person;
 - (ii) pays, either on ~~his or her~~ the individual's own behalf or on behalf of another person, the

individuals so furnished by the crew leader for the service in agricultural labor performed by them; and

- (iii) has not entered into a written agreement with the other person (farm operator) under which the individual is designated as an employee of the other person.

(6) The term "employment" shall include domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person or entity who paid cash remuneration of One Thousand Dollars (\$1,000.00) or more to individuals employed in domestic service in any calendar quarter in the calendar year or the preceding calendar year.

(7) For the purposes of paragraphs (3) and (4) of this section the term "employment" does not apply to service performed:

(a) in the employ of:

- (i) a church or convention or association of churches;
- (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or
- (iii) an elementary or secondary school which is operated primarily for religious purposes, which is described in 26 U.S.C., Section 501(c)(3), and which is exempt from tax under 26 U.S.C., Section 501(a);

(b) by a duly ordained, commissioned or licensed minister of a church in the exercise of ~~his or her~~ ministry or by a member of a religious order in the exercise of duties required by the order;

- (c) in the employ of a governmental entity referred to in paragraph (3) of this section if the service is performed by an individual in the exercise of duties:
 - (i) as an elected official;
 - (ii) as a member of a legislative body, or a member of the judiciary of a state or political subdivision;
 - (iii) as a member of the State National Guard or Air National Guard;
 - (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
 - (v) in a position which, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week;
 - (vi) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than One Thousand Dollars (\$1,000.00);
- (d) by an individual who is participating or enrolled in a program of an organization that provides rehabilitation through work for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury, or a program of an organization that provides work for individuals who, because of their impaired mental or physical capacity cannot be readily absorbed into the competitive labor market; provided that the services are performed by a program participant on real property owned or leased directly by the organization or by a program

participant working under a special certificate issued by the U.S. Secretary of Labor pursuant to 29 U.S.C., Section 214(c) and 29 C.F.R., Section 525.1 et seq.;

- (e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work-relief or work-training; or
- (f) by an inmate of a custodial or penal institution.

(8) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, in the employ of an American employer other than service which is deemed "employment" under the provisions of paragraph (11) or (12) of this section or the parallel provisions of another state's law, if:

- (a) the employer's principal place of business in the United States is located in this state;
- (b) the employer has no place of business in the United States, but:
 - (i) the employer is an individual who is a resident of this state;
 - (ii) the employer is a corporation which is organized under the laws of this state; or
 - (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state;
- (c) none of the criteria of subparagraphs (a) and (b) of this paragraph are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has

filed a claim for benefits, based on such service, under the laws of this state;

- (d) an "American employer", for purposes of this subsection, means a person who is:
 - (i) an individual who is a resident of the United States;
 - (ii) a partnership if two-thirds (2/3) or more of the partners are residents of the United States;
 - (iii) a trust, if all of the trustees are residents of the United States; or
 - (iv) a corporation organized under the laws of the United States or of any state; and
- (e) the term "United States", for the purposes of this subsection, includes the states, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

(9) Notwithstanding paragraph (11) of this section, all service performed by an officer or member of the crew of an American vessel on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

(10) Notwithstanding any other provisions of the Employment Security Act of 1980, "employment":

- (a) includes any service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; and
- (b) includes any service which is required to be "employment" for full tax credit to be allowed against

the tax imposed by the Federal Unemployment Tax Act of 1954, Public Law 591, Chapter 736, as amended, 26 U.S.C., Section 3301 et seq.

(11) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

- (a) the service is localized in this state; or
- (b) the service is not localized in any state but some of the service is performed in this state and:
 - (i) the individual's base of operations, or, if there is no base of operations, then the place from which the individual's employment is directed or controlled is in this state; or
 - (ii) the individual's base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

- (12) (a) Services covered by an election pursuant to Section 3-203 of this title; and
- (b) services covered by an arrangement pursuant to Section 4-701 et seq. of this title between the Oklahoma Employment Security Commission and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state,

shall be deemed to be employment if the Commission has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

- (13) Service shall be deemed to be localized within a state if:

- (a) the service is performed entirely within such state;
or
- (b) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

(14) Notwithstanding any other provision of this subsection, services performed by an individual for wages shall be deemed to be employment subject to the Employment Security Act of 1980 if the services are performed by the individual in an employer-employee relationship with the employer using the 20-factor test used by the Internal Revenue Service of the United States Department of Treasury in Revenue Ruling 87-41, 1987-1 C.B. 296. The Oklahoma Employment Security Commission shall have the ~~exclusive~~ exclusive authority to make a determination of whether an individual is an independent contractor or employee.

(15) The term "employment" shall not include:

- (a) services performed by an individual in agricultural labor, except as provided under paragraph (5) of this section. Services performed by an individual who is a nonresident alien admitted to the United States to perform agricultural labor, pursuant to 8 U.S.C., Sections 1101(a), 1184(c) and 1188. For purposes of this subparagraph, the term "agricultural labor" means remunerated service performed in agricultural labor as defined in the Federal Unemployment Tax Act, 26 U.S.C., Section 3306(k);
- (b) domestic service, except as provided under paragraph (6) of this section, in a private home, local college club, or local chapter of a college fraternity or sorority;
- (c) service performed by an individual in the employ of his or her son, daughter, or spouse, and service performed by a child under the age of twenty-one (21)

in the employ of his or her father or mother, or both father and mother;

- (d) service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by the Employment Security Act of 1980, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of the Employment Security Act of 1980 shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals and services; provided that if this state shall not be certified for any year by the Secretary of Labor of the United States under the Federal Internal Revenue Code, 26 U.S.C., Section 3304(c), the payments required of such instrumentalities with respect to the year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in Section 3-304 of this title with respect to contributions erroneously collected;
- (e) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress;
- (f) service performed in the employ of a foreign government, including service as a consul or other officer or employee or a nondiplomatic representative;
- (g) service performed in the employ of an instrumentality wholly owned by a foreign government:
 - (i) if the service is of a character similar to that performed in foreign countries by employees of

the United States government or of an instrumentality thereof, and

(ii) if the Commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;

(h) service covered by an arrangement between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within the jurisdiction of such other state or federal agency;

(i) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

(j) service performed by an individual for a person, firm, association, trust, partnership or corporation as an insurance agent, or as an insurance solicitor or as a licensed real estate agent, if all such service performed by such individual for such person is performed for remuneration solely by way of commissions or fees;

- (k) service performed by an individual under the age of eighteen (18) in the delivery and distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, and services performed by an individual eighteen (18) years of age or older who meets the definition of a "direct seller" as defined in 26 U.S.C., Section 3508(b)(2), that states in pertinent part:
 - (i) the individual must be engaged in the delivery or distribution of newspapers or shopping news, including any services directly related to such trade or business,
 - (ii) substantially all the remuneration, whether or not paid in cash, for the performance of the services described in division (i) of this subparagraph is directly related to sales or other output, including the performance of services, rather than the number of hours worked, and
 - (iii) the services performed by the individual are performed pursuant to a written contract between the person and the person for whom the services are performed and the contract provides that the person will not be treated as an employee with respect to the services;
- (l) service performed in the employ of a school, college or university, if the service is performed:
 - (i) by a student who is enrolled and is regularly attending classes at the school, college, or university, or
 - (ii) by the spouse of the student, if the spouse is advised, at the time the spouse commences to perform the service, that:

- (I) the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, college, or university, and
 - (II) the employment will not be covered by any program of unemployment insurance;
- (m) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has so certified to the employer, except that this provision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;
- (n) service performed in the employ of a hospital, if the service is performed by a patient of the hospital;
- (o) services performed by cooperative extension personnel holding federal appointments employed by state institutions of higher learning;
- (p) earnings of employees being paid by state warrants who are presently covered by the Federal Unemployment Compensation Act, 5 U.S.C., Section 8501 et seq., by virtue of their federal status;
- (q) cosmetology services performed by an individual in a beauty shop, as defined by Section 199.1 of Title 59 of the Oklahoma Statutes, pursuant to an agreement whereby the owner of the beauty shop leases or rents facilities for cosmetology to such individual;
- (r) barbering services performed by an individual in a barber shop, as defined by Section 61.5 of Title 59 of

the Oklahoma Statutes, pursuant to an agreement whereby the owner of the barber shop leases or rents facilities for barbering to such individual;

- (s) services performed as a participant in a work or training program administered by the Department of Human Services;
- (t) riding services performed by a jockey and services performed by a trainer of ~~race horses~~ racehorses in preparation for and during an approved race meeting licensed by the Oklahoma Horse Racing Commission;
- (u) service performed by an individual whose remuneration consists solely of commissions, overrides, bonuses, and differentials related to sales or other output derived from in-person sales to, or solicitation of orders from, ultimate consumers primarily in the home, or otherwise than in a permanent retail establishment;
- (v) service performed by a person, commonly referred to as "owner-operator", who owns or leases a truck-tractor or truck for hire, provided the owner-operator actually operates the truck-tractor or truck and, further, that the entity contracting with the owner-operator is not the lessor of the truck-tractor or truck;
- (w) services performed as a chopper of cotton who weeds or thins cotton crops by hand or hoe. This subsection shall be interpreted and applied consistently with the Federal Unemployment Tax Act, 26 U.S.C., Sections 3304(a)(6)(A) and 3306(k);
- (x) services performed for a private for-profit person or entity by an individual as a landman:
 - (i) if the individual is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or negotiating business agreements that provide for the exploration for or development of minerals,

- (ii) if substantially all remuneration paid in cash or otherwise for the performance of the services is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual, and
- (iii) if the services performed by the individual are performed under a written contract between the individual and the person for whom the services are performed; provided that the individual is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract; or
- (y) services performed by persons working under an AmeriCorps grant from the Corporation for National Service made pursuant to the National and Community Service Act of 1990 (NCSA) codified at 42 U.S.C., Section 12501 et seq.

SECTION 2. AMENDATORY 40 O.S. 2011, Section 1-224, as amended by Section 2, Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2020, Section 1-224), is amended to read as follows:

Section 1-224. FILE.

A. For purposes of this section, "OESC 2020-21 business process transformation" means a change from paper process to integrated digital technology. Upon completion of the OESC 2020-21 business process transformation, electronic e-filing will be the Commission's preferred filing method for tendering and receiving documents. All claimants and employers tendering documents to the Commission will be expected to tender the documents electronically. If the claimant or employer has elected to utilize other means of transmittal, it will be the responsibility of the claimant or employer to notify the Commission of this preference.

B. When any document is required to be filed by the provisions of the Employment Security Act of 1980 or the rules promulgated under the authority of the Employment Security Act of 1980 with the

Oklahoma Employment Security Commission, any of its representatives, or the Board of Review for the Oklahoma Employment Security Commission, the term "file", "files", or "filed" shall be defined as follows:

1. Hand-delivered to the central administrative office of the Oklahoma Employment Security Commission by the close of business on or before the date due;

2. Telefaxed to the telefax number indicated on the determination letter, order or other document issued by the Oklahoma Employment Security Commission by midnight on or before the date due. Timely telefaxing shall be determined by the date and time recorded by the Commission's telefax equipment;

3. Mailed with sufficient postage and properly addressed to the address indicated on the determination letter, order or other document issued by the Oklahoma Employment Security Commission on or before the date due. Timely mailing shall be determined by the postmark. If there is no proof from the post office of the date of mailing, the date of receipt by the Commission shall constitute the date of filing; or

4. ~~Electronically transmitted via data lines~~ Electronic e-filing to the Oklahoma Employment Security Commission, as directed by the instructions on the determination letter, order or other document issued by the Commission, by midnight on or before the date due. Timely transmission shall be determined by the Commission's transmission log file.

~~B.~~ C. If the Employment Security Act of 1980 or the rules promulgated under the Employment Security Act of 1980 require that a document be filed with a court or any other agency of this state, the term "file", "files" or "filed" shall be defined by the statutes, rules or practice governing that court or agency.

SECTION 3. AMENDATORY 40 O.S. 2011, Section 2-203, as last amended by Section 3, Chapter 251, O.S.L. 2019 (40 O.S. Supp. 2020, Section 2-203), is amended to read as follows:

Section 2-203. CLAIM.

A. An unemployed individual must file an initial claim for unemployment benefits ~~by calling an Oklahoma Employment Security Commission claims representative in a Commission Call Center,~~ by completing the required forms through the Internet Claims service provided by the Commission, or by completing all forms necessary to process an initial claim in a local office of the Commission or any alternate site designated by the Commission to take unemployment benefit claims. The Commission may obtain additional information regarding an individual's claim through any form of telecommunication, writing, or interview. An unemployed individual must file a claim ~~in writing or~~ by telecommunication ~~for~~ or by Internet utilizing the digital services portal to create an account to access benefits with respect to each week in accordance with such rule as the Commission may prescribe.

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

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

C. With respect to each week, ~~he or she~~ the claimant must provide the Commission with a true and correct statement of all material facts relating to: ~~his or her~~ unemployment; ability to work; availability for work; activities or conditions which could restrict the individual from seeking or immediately accepting full-time employment or part-time work if subsection 4 (4) of Section 2-408 of this title applies; applications for or receipt of workers' compensation benefits; employment and earnings; and the reporting of other income from retirement, pension, disability, self-employment, education or training allowances.

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

E. The Commission may require the individual to produce documents or information relevant to the claim for benefits. If the individual fails to produce it, the individual's claim for unemployment benefits may be disqualified indefinitely by the Commission until the information is produced. An individual that has been disqualified indefinitely by the provisions of this subsection may receive payment for any week between the initial failure and the compliance with this subsection if the claimant is otherwise eligible and has made a timely filing for each intervening week.

SECTION 4. AMENDATORY 40 O.S. 2011, Section 2-209, as last amended by Section 2, Chapter 14, O.S.L. 2018 (40 O.S. Supp. 2020, Section 2-209), is amended to read as follows:

Section 2-209. BENEFITS FOR EMPLOYEES OF GOVERNMENTAL OR NONPROFIT EMPLOYERS.

Benefits based on service in employment defined in paragraph (3) or (4) of Section 1-210 of this title, including any federally operated educational institutions, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to the Employment Security Act of 1980, except that:

(1) With respect to service performed in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on services for any week of unemployment commencing during the period between two (2) successive academic years, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs services in the first academic year or term and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second academic year or term;

(2) With respect to services performed in any other capacity for an educational institution, benefits shall not be paid on the basis of services to any individual for any week which commences during a period between two (2) successive academic years or terms if the individual performs services in the first academic year or term and there is a reasonable assurance that the individual will perform services in any such capacity in the second academic year or term, except that if compensation is denied to any individual pursuant to this paragraph and the individual was not offered an opportunity to perform services for the educational institution for the second academic year or term, the individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause;

(3) With respect to any services described in paragraphs (1) and (2) of this section, benefits shall not be payable on the basis of services in any capacities to any individual for any week which commences during an established and customary vacation period or holiday recess if the individual performs services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform services in any such capacity in the period immediately following the vacation period or holiday recess;

(4) With respect to any services described in paragraphs (1) and (2) of this section, benefits shall not be payable on the basis of services in any capacities as specified in paragraphs (1), (2) and (3) of this section to any individual who performed services in an educational institution while in the employ of an educational service agency. For purposes of this paragraph, the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions; ~~and~~

(5) If services are provided to or on behalf of an educational institution by a private for-profit entity or an entity described in paragraph (3) or (4) of Section 1-210 of this title that is not an educational institution or an educational service agency, the employees providing these services shall not be subject to the terms

and conditions as described in paragraphs (1), (2), (3) and (4) of this section; and

(6) If an individual has employment with an educational institution and has employment with a noneducational employer or employers during the base period of the individual's benefit year, the individual may become eligible for benefits during the between-term denial period, based only on the noneducational employment.

SECTION 5. AMENDATORY 40 O.S. 2011, Section 2-406, as last amended by Section 3, Chapter 220, O.S.L. 2014 (40 O.S. Supp. 2020, Section 2-406), is amended to read as follows:

Section 2-406. DISCHARGE FOR MISCONDUCT.

A. An individual shall be disqualified for benefits if ~~he or she~~ the individual has been discharged for misconduct connected with ~~his or her~~ the individual's last work. If discharged for misconduct, the employer shall have the burden to prove that the employee engaged in misconduct as defined by this section. Such burden of proof is satisfied by the employer, or its designated representative, providing a signed affidavit, or presenting such other evidence which properly demonstrates the misconduct which resulted in the discharge. Once this burden is met, the burden then shifts to the discharged employee to prove that the facts are inaccurate or that the facts as stated do not constitute misconduct as defined by this section. Disqualification under this section shall continue for the full period of unemployment next ensuing after ~~he or she~~ the employee has been discharged for misconduct connected with ~~his or her~~ the employee's work and until such individual has become reemployed and has earned wages equal to or in excess of ten (10) times the weekly benefit amount.

B. Acts which constitute misconduct under this section shall be limited to the following:

1. Any intentional act or omission by an employee which constitutes a material or substantial ~~breach~~ breach of the employee's job duties or responsibilities or obligations pursuant to ~~his or her~~ the employee's employment or contract of employment;

2. Unapproved or excessive absenteeism or tardiness;

3. Indifference to, breach of, or neglect of the duties required which result in a material or substantial breach of the employee's job duties or responsibilities;

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

5. Dishonesty;

6. Wrongdoing;

7. Violation of a law; or

8. A violation of a policy or rule enacted to ensure orderly and proper job performance or for the safety of self or others.

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

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

SECTION 6. AMENDATORY Section 1, Chapter 338, O.S.L. 2016 (40 O.S. Supp. 2020, Section 2-422), is amended to read as follows:

Section 2-422. A. Unemployment benefits based on services by a seasonal worker performed in seasonal employment are payable only for weeks of unemployment that occur during the normal seasonal work period. Benefits shall not be paid based on services performed in seasonal employment for any week of unemployment that begins during the period between two (2) successive normal seasonal work periods to any individual if that individual performs the service in the

first of the normal seasonal work periods and if there is a reasonable assurance that the individual will perform the service for a seasonal employer in the second of the normal seasonal work periods. The notice of reasonable assurance shall be given by the employer to the employee in writing on or before the last day of work in the season. If benefits are denied to an individual for any week solely as a result of this section and the individual is not offered an opportunity to perform in the second normal seasonal work period for which reasonable assurance of employment had been given, the individual is entitled to a retroactive payment of benefits under this section for each week that the individual previously filed a timely claim for benefits. An individual may apply for any retroactive benefits under this section in accordance with the provisions of Article 2 of the Employment Security Act of 1980.

B. If an individual has been employed by a nonseasonal employer during the base period of the individual's benefit year, the individual may become eligible for benefits during that between-season denial period based only on the wages of the nonseasonal employment.

C. Not less than twenty (20) days before the estimated beginning date of a normal seasonal work period, an employer may apply to the Commission in writing for designation as a seasonal employer. At the time of application, the employer shall conspicuously display a copy of the application on the employer's premises. Within ninety (90) days after receipt of the application, the Commission shall determine if the employer is a seasonal employer. The employer may appeal this decision pursuant to the provisions of Section 3-115 of Title 40 of the Oklahoma Statutes this title. A determination of the Commission concerning the status of an employer as a seasonal employer, or the decision of the Assessment Board or a court of this state through the administrative appeal process, which has become final, may be introduced in any proceeding involving a claim for benefits, and the facts found and decision issued in the determination or decision shall be conclusive unless substantial evidence to the contrary is introduced by or on behalf of the claimant.

~~C.~~ D. If the employer is determined to be a seasonal employer, the employer shall give notice to each employee of the employer's status as a seasonal employer and the beginning and ending dates of

the employer's normal seasonal work periods, and this notice shall be given to the employee within the first seven (7) days of employment. On or before the last day of work in the season, if the employer intends to issue a notice of reasonable assurance of employment for the next season, the employer shall also give notice to each employee advising that the employee shall timely file an initial application for unemployment benefits at the end of the current seasonal work period and file timely weekly continued claims thereafter to preserve ~~his or her~~ the employee's right to receive retroactive unemployment benefits if ~~he or she~~ such employee is not reemployed by the seasonal employer in the subsequent normal seasonal work period. The ~~notices~~ notice must be on a separate document written in clear and concise language that states these provisions. Failure of the employer to give adequate notice as required by this subsection will result in the termination of the employer as a seasonal employer under subsection ~~D~~ E of this section and the allowance of any claim in which the claimant did not receive the required notice.

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

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

~~F.~~ G. If a seasonal employer informs an employee who received assurance of being rehired that, despite the assurance, the employee will not be rehired at the beginning of the employer's next normal seasonal work period, this section does not prevent the employee from receiving unemployment benefits in the same manner and to the same extent he or she would receive benefits under the Employment Security Act of 1980 from an employer who has not been determined to be a seasonal employer.

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

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

~~I.~~ J. As used in this section:

1. "Construction industry" means the work activity designated in Sector Group 23 - Construction of the North American Industrial Classification System (NAICS) published by the Executive Office of the President, Office of Management and Budget, ~~2012~~ 2017 edition;

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

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

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

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

SECTION 7. AMENDATORY 40 O.S. 2011, Section 2-503, as last amended by Section 5, Chapter 251, O.S.L. 2019 (40 O.S. Supp. 2020, Section 2-503), is amended to read as follows:

Section 2-503. CLAIMS, NOTICES AND OBJECTIONS.

A. Claims for benefits shall be made in accordance with all rules that the Oklahoma Employment Security Commission may prescribe.

B. Promptly after an initial claim or an additional initial claim is filed, the Commission shall give ~~written~~ notice of the claim to the last employer of the claimant for whom ~~he or she~~ the claimant worked at least fifteen (15) working days. The required fifteen (15) working days are not required to be consecutive. Provided, that promptly after the Commission is notified of the claimant's separation from an employment obtained by a claimant during a continued claim series, the Commission shall give ~~written~~ notice of the claim to the last separating employer. Notices to separating employers during a continued claim series will be given to the last employer in the claim week without regard to length of employment. Each notice shall contain an admonition that failure to respond to the notice could affect the employer's tax rate.

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

D. Notices shall be deemed to have been given ~~when the Commission deposits the same in the United States mail addressed to the employer's last-known address. Notice shall be presumed prima facie to have been given to the employer to whom addressed on the date stated in the written notice at the last-known address and by the date of the postmark on the envelope in which the notice was sent.~~ If the employer has elected to be notified by electronic means according to procedures set out in Oklahoma Employment Security Commission rules, notice shall be deemed to be given when the Commission transmits the ~~notification~~ notice by electronic means.

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

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

2. Disqualify the claimant from benefits under Sections 2-401 through 2-417 and 2-419 of this title; or

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

F. An untimely employer objection to a claim for unemployment benefits made pursuant to subsection E of this section may be allowed for good cause shown.

SECTION 8. AMENDATORY 40 O.S. 2011, Section 2-610, is amended to read as follows:

Section 2-610. JUDICIAL REVIEW.

A. Within the thirty (30) days after the day a notice of decision of the Board of Review is mailed to the parties, the Oklahoma Employment Security Commission, or any party to the proceedings before the Board of Review, may obtain judicial review by filing in the district court of the county in which the claimant resides, or if the claimant is not a resident of the State of Oklahoma then in the District Court of Oklahoma County, a petition for review of the decision of the Board of Review. The petition for review shall set out the names of all codefendants in the style of the case, which shall include:

1. The Board of Review;

2. The Oklahoma Employment Security Commission; and

3. All other parties to the proceeding before the Board of Review.

The petition for review need not be verified but shall state specifically the grounds upon which the review is sought. A copy of the petition for review shall be served upon the Board of Review at its official address and the petitioner shall also deliver to the Board of Review as many copies of the petition as there are defendants. The Board of Review shall ~~send~~ issue to each party to the proceeding a copy of the petition ~~by mail,~~ and the ~~mailing~~ issuance shall be deemed to be service upon all the parties. In any proceeding under this section the findings of the Board of Review as to the facts, if supported by evidence, shall be conclusive and the jurisdiction of the court shall be confined to questions of law. No additional evidence shall be received by the court, but the court may remand the case and order additional evidence to be taken by the Appeal Tribunal of the Oklahoma Employment Security Commission.

B. Within sixty (60) days of the date of service of the petition on the Board of Review, the Board of Review shall file with the court a certified copy of the record of the case, including all documents and papers properly admitted into evidence and a transcript of all testimony taken in the matter, together with the Board of Review's findings, conclusions, and decision.

C. The proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases. An appeal may be taken from the decision of the district court to the Supreme Court of this state in the same manner as is provided in other civil cases. It shall not be necessary as a condition precedent to judicial review of any decision of the Board of Review to enter exceptions to the rulings of the Board, and no bond shall be required as a condition of initiating a proceeding for judicial review or entering an appeal from the decision of the court. Upon the final termination of the judicial proceeding, the Board of Review shall enter an order in accordance with the mandate of the district or appellate court.

SECTION 9. AMENDATORY 40 O.S. 2011, Section 2-616, as amended by Section 7, Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2020, Section 2-616), is amended to read as follows:

Section 2-616. NOTICE OF OVERPAYMENT DETERMINATION.

A. If the Oklahoma Employment Security Commission or its representative determines that an individual has been overpaid unemployment benefits pursuant to Section 2-613 of this title for fraud overpayment or claimant error overpayment, the individual shall be sent a notice of overpayment determination. If the individual disagrees with this determination, the individual may file an appeal of the determination with the Appeal Tribunal within twenty (20) days after the date of the mailing of the notice to the individual's last-known address or, if the notice is not mailed, within twenty (20) days after the date of the delivery of the notice. If the individual fails to appeal the determination within the time provided, without good cause, then the determination will be deemed final and no further appeal shall be allowed.

B. If the Oklahoma Employment Security Commission or its representative determines that an individual has been overpaid unemployment benefits pursuant to paragraph 3 of Section 2-613 of this title relating to administrative overpayment, the individual shall be sent a notice of overpayment determination. If the individual disagrees with this determination, the individual may file an appeal of the determination with the Appeal Tribunal within ten (10) days after the date of mailing of the notice to the individual's last-known address or, if the notice is not mailed, within ten (10) days after the date of the delivery of the notice. If the individual fails to appeal the determination within the time provided, without good cause, the determination will be deemed final and no further appeal shall be allowed.

SECTION 10. AMENDATORY 40 O.S. 2011, Section 2-801, as amended by Section 9, Chapter 14, O.S.L. 2018 (40 O.S. Supp. 2020, Section 2-801), is amended to read as follows:

Section 2-801. CHILD SUPPORT OBLIGATIONS.

~~A. Beginning October 1, 1982, any individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations. If any such individual discloses that he or she owes child support obligations, and is determined to be eligible for unemployment compensation, the Commission shall notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for~~

~~unemployment compensation~~ The Commission may enter into an agreement with the Department of Human Services for information required pursuant to Section 240.12 of Title 56 of the Oklahoma Statutes to identify persons that owe child support obligations.

B. The Commission shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations÷

~~(1) the amount specified by the individual to the Commission to be deducted and withheld under this subsection, if neither paragraphs (2) or (3) of this subsection are applicable, or~~

~~(2) the amount, if any, determined by the Department of Human Services pursuant to an agreement submitted to the Commission under 42 U.S.C., Section 654(19)(B)(i) by the state or local child support enforcement agency, unless paragraph (3) of this subsection is applicable, or~~

~~(3) any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, which shall mean any writ, order, summons or other similar process in the nature of garnishment, which:~~

~~(a) is issued by:~~

~~(i) a court of competent jurisdiction within any state, territory or possession of the United States,~~

~~(ii) a court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor such process, or~~

~~(iii) an authorized official pursuant to an order of such a court of competent jurisdiction or pursuant to state or local law, and~~

~~(b) is directed to, and the purpose of which is to compel, a governmental entity, which holds monies which are otherwise payable to an individual, to make a payment~~

~~from such monies to another party in order to satisfy a legal obligation of such individual to provide child support.~~

~~C. All income withholding orders or other legal process issued to collect child support through a deduction from unemployment benefits and all other documents necessary to complete the deduction shall be served on the appropriate state or local child support enforcement agency and on the Oklahoma Employment Security Commission.~~

~~D.~~ Any amount deducted and withheld under subsection B of this section shall be paid by the Commission to the ~~appropriate state or local child support enforcement agency~~ Centralized Support Registry pursuant to Section 413 of Title 43 of the Oklahoma Statutes.

~~E.~~ D. Any amount deducted and withheld under subsection B of this section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state ~~or local~~ child support enforcement agency in satisfaction of the individual's child support obligations.

~~F.~~ E. For purposes of subsections A through ~~E~~ D of this section, the term "unemployment compensation" means any compensation payable under the Employment Security Act of 1980, Section 1-101 of this title, including amounts payable by the Commission pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

~~G.~~ F. This section applies only if appropriate arrangements have been made for reimbursement by the state ~~or local~~ child support enforcement agency for the administrative costs, as determined by the Commission, incurred by the Commission under this section which are attributable to child support obligations being enforced by the state ~~or local~~ child support enforcement agency.

~~H.~~ G. For purposes of this section:

(1) "Child support obligations" means only obligations which are being enforced pursuant to a plan described in 42 U.S.C., Section 654, which has been approved by the Secretary of Health and Human Services under 42 U.S.C., Section 651 et seq.

(2) "State ~~or local~~ child support enforcement agency" means ~~any agency of a state or a political subdivision thereof,~~ the Oklahoma Department of Human Services, which pursuant to Section 237 of Title 56 of the Oklahoma Statutes is the single state agency in Oklahoma operating pursuant to a plan described in 42 U.S.C., Section 654, which has been approved by the Secretary of Health and Human Services under 42 U.S.C., Section 651 et seq.

(3) Deductions from unemployment insurance authorized by subsection B of this section in satisfaction of child support obligations are only those obligations defined in paragraph (1) of this subsection, and the recipient of ~~said~~ the deductions shall be defined as only a state ~~or local~~ child support enforcement agency operating pursuant to an approved plan described in 42 U.S.C., Section 654 and referenced in paragraph (2) of this subsection.

SECTION 11. AMENDATORY 40 O.S. 2011, Section 3-106.1, is amended to read as follows:

Section 3-106.1 RELIEF FROM BENEFIT WAGES CHARGED - ADDENDUM.

A. For purposes of this section, "pandemic" means a health state of emergency declared by the Governor.

B. The benefit wages charged to an employer for a given calendar year shall be the total of the benefit wages stated in the notices given to the employer by the Commission. Provided,~~that on and after April 19, 1995,~~ an employer's benefit wages shall not include wages paid by the employer to any employee who was separated from ~~his or her~~ employment as a direct result of a natural disaster, pandemic, fire, flood, or explosion that causes employees to be separated from one employer's employment. ~~The Commission shall adopt emergency rules for immediate implementation of this section and subsequently adopt permanent rules for review by the 1996 Legislature.~~

SECTION 12. AMENDATORY 40 O.S. 2011, Section 3-307, is amended to read as follows:

Section 3-307. A. All remittance~~,~~ under Section 1-101 et seq. of this title~~,~~ shall be made payable to the Oklahoma Employment

Security Commission, at Oklahoma City, Oklahoma, by ~~bank~~ automatic clearinghouse (ACH) debit/credit, financial institution, draft, check, cashier's check, electronic fund transfer, credit card, money order, or money, and the Commission shall issue its receipt, for cash or money payment, to the payor. No remittance other than cash shall be in final discharge of liability due the Commission unless and until it shall have been paid in cash. All monies collected shall be deposited with the State Treasurer. There shall be assessed, in addition to any other penalties provided for by law, an administrative service fee of Twenty-five Dollars (\$25.00) on each check returned to the Commission or any agent thereof by reason of the refusal of the ~~bank~~ financial institution upon which such check was drawn to honor the same. There shall be assessed, in addition to any other penalties provided for by law, an administrative service fee of Twenty-five Dollars (\$25.00) on each electronic fund transfer that fails due to insufficient funds in the payor's account.

B. Upon the return of any check by reason of the refusal of the ~~bank~~ financial institution upon which such check was drawn to honor the same, the Commission may file a bogus check complaint with the appropriate district attorney who shall refer the complaint to the Bogus Check Restitution Program established by Section 111 of Title 22 of the Oklahoma Statutes. Funds collected through the program after collection of the fee authorized by Section 114 of Title 22 of the Oklahoma Statutes for deposit in the Bogus Check Restitution Program Fund in the county treasury shall be transmitted to the Commission and credited to the liability for which the returned check was drawn ~~and to~~ along with the administrative service fee provided by this section.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-311 of Title 40, unless there is created a duplication in numbering, reads as follows:

FORFEITURE OF TERMINATED EMPLOYER UNEMPLOYMENT TAX ACCOUNT OVERPAYMENTS.

A. It is the fiduciary duty of the Oklahoma Employment Security Commission to return overpayments received in the employer's unemployment tax account. Upon the termination of the employer's unemployment tax account, the Commission will issue a refund of any

remaining credit balance by mailing it to the last address provided by the employer. If an employer's unemployment tax account has been terminated and has a credit balance that has been at that level for a period of one hundred eighty (180) days or more without a refund being requested from the employer, the Commission will reduce the balance of that unemployment tax account to zero (0) and consider the credit to be forfeited after the Commission has exercised its fiduciary duty.

B. Once the Commission has completed its fiduciary duty in facilitating the return of the credit to the employer, based upon the most current mailing address provided by the employer, the Commission can assume its fiduciary duty is completed. If the refund of the overpayment is returned to the Commission, the employer shall consider the funds forfeited and will be prohibited from requesting the credit balance in the future. All returns of overpayment shall be returned to the clearing account as set forth in Section 3-604 of Title 40 of the Oklahoma Statutes.

SECTION 14. AMENDATORY 40 O.S. 2011, Section 4-108, is amended to read as follows:

Section 4-108. EXECUTIVE DIRECTOR.

~~A. The chief executive officer of the Commission shall be the Executive Director who shall be appointed by and serve at the pleasure of the Commission. The Executive Director shall have such compensation and further duties as the Commission may establish. The Executive Director may appoint in the unclassified service a Deputy Director and an Associate Director hire, promote and terminate personnel, and shall fix the qualifications and duties of such position. The Executive Director may also appoint in the unclassified service secretaries to the Executive Director, Deputy Director, and Associate Director personnel.~~

~~B. If a person has acquired grade, rank and career status under the merit system of personnel administration within the Oklahoma Employment Security Commission before being appointed as Executive Director, Deputy Director, Associate Director, or unclassified secretary, that person shall:~~

~~1. Upon termination from the unclassified position, have the right to be reinstated to the position within the Oklahoma Employment Security Commission which was held prior to such appointment, or to an equivalent position, unless the person was terminated for a reason that would justify termination of a classified employee or disqualify the person for reinstatement under the Oklahoma Personnel Act or the rules implementing it; and~~

~~2. Be entitled during the unclassified appointment to continue to participate without interruption in any fringe benefit programs available to career employees including, but not limited to, retirement and insurance programs.~~

SECTION 15. AMENDATORY 40 O.S. 2011, Section 4-311, is amended to read as follows:

Section 4-311. COMMISSION SHALL PUBLISH RULES.

The Oklahoma Employment Security Commission shall cause ~~to be printed for distribution to the public~~ the text of this act Section 1-101 et seq. of this title, the Commission's rules, its annual reports to the Governor, and any other material the Commission deems relevant and suitable ~~and shall furnish the same to any person upon application therefor~~ to be published on the Commission website in a manner that can be accessed by the general public.

SECTION 16. AMENDATORY 40 O.S. 2011, Section 4-312, as amended by Section 130, Chapter 304, O.S.L. 2012 (40 O.S. Supp. 2020, Section 4-312), is amended to read as follows:

Section 4-312. PERSONNEL AND COMPENSATION.

Subject to other provisions of ~~this act~~ Section 1-101 et seq. of this title, the Oklahoma Employment Security Commission is authorized to appoint, fix the compensation and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under ~~this act~~ Section 1-101 et seq. of this title. ~~The Commission may delegate to any such persons such power and authority as it deems reasonable and proper for the effective administration of this act, and may in its discretion bond any person handling moneys or signing checks hereunder.~~ The Commission is authorized and directed

to maintain the existing merit system covering all persons employed in the administration of this act and shall have authority, by rule, to provide for all matters which are appropriate to the establishment and maintenance of ~~such a merit system~~ on the basis of efficiency and fitness. The Commission is authorized to adopt ~~such~~ rules as may be necessary to meet personnel standards ~~promulgated by the Office of Management and Enterprise Services~~ pursuant to the Social Security Act, as amended, and the Act of Congress entitled "An Act to provide for the establishment of a national employment system, and for other purposes", approved June 6, 1933, as amended, ~~and to provide for the maintenance of the merit system required under this section in conjunction with any merit system applicable to any other state agency or agencies which meets the personnel standards promulgated by the Office of Management and Enterprise Services.~~

SECTION 17. AMENDATORY 40 O.S. 2011, Section 4-508, as last amended by Section 10, Chapter 251, O.S.L. 2019 (40 O.S. Supp. 2020, Section 4-508), is amended to read as follows:

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

A. Except as otherwise provided by law, information obtained from any employing unit or individual pursuant to the administration of the Employment Security Act of 1980, any workforce system program administered or monitored by the Oklahoma Employment Security Commission, and determinations as to the benefit rights of any individual shall be kept confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant, ~~or~~ employer, or agent of either as authorized in writing, shall be supplied with information from the records of the Oklahoma Employment Security Commission, to the extent necessary for the proper presentation of the claim or complaint in any proceeding under the Employment Security Act of 1980, with respect thereto.

B. Upon receipt of written request by any employer who maintains a Supplemental Unemployment Benefit (SUB) Plan, the Commission or its designated representative may release to that employer information regarding weekly benefit amounts paid its workers during a specified temporary layoff period, provided the

Supplemental Unemployment Benefit (SUB) Plan requires benefit payment information before Supplemental Unemployment Benefits can be paid to the workers. Any information disclosed under this provision shall be utilized solely for the purpose outlined herein and shall be held strictly confidential by the employer.

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

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

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

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

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

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

and a violation by the Attorney General or district attorney by otherwise releasing the information shall be a felony;

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

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

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

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

10. The release of information to employees of the Attorney General, the Department of Labor, the Workers' Compensation Commission, and the Insurance Department for use in investigation of workers' compensation fraud;

11. The release of information to employees of any Oklahoma state, Oklahoma county, Oklahoma municipal or Oklahoma tribal law enforcement agency for use in criminal investigations and the location of missing persons or fugitives from justice;

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

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

14. The release of information to employees of the Oklahoma Department of Career and Technology Education, the Oklahoma State Regents for Higher Education, the Center for Economic and Management Research of the University of Oklahoma, the Center for Economic and Business Development at Southwestern Oklahoma State University, or a center of economic and business research or development at a comprehensive or regional higher education institution within The Oklahoma State System of Higher Education ~~of information~~ required to identify economic trends or educational outcomes. The information obtained shall be kept confidential by the Oklahoma Department of Career and Technology Education, the Oklahoma State Regents for Higher Education and the higher education institution and shall not be disclosed or be open to public inspection. The Oklahoma Department of Career and Technology Education, the Oklahoma State Regents for Higher Education and the higher education institution may release aggregated data, provided that the aggregation meets disclosure requirements of the Commission;

15. The release of information to employees of the Office of Management and Enterprise Services ~~of information~~ required to identify economic trends. The information obtained shall be kept confidential by the Office of Management and Enterprise Services and shall not be disclosed or be open to public inspection. The Office of Management and Enterprise Services may release aggregate data, provided that the aggregation meets disclosure requirements of the Oklahoma Employment Security Commission;

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

disclosed or be open to public inspection. The Department of Mental Health and Substance Abuse Services, however, may release aggregated data, either by treatment facility, program or larger aggregate units, provided that the aggregation meets disclosure requirements of the Oklahoma Employment Security Commission;

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

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

19. The release of wage and benefit claim information, at the discretion of the Commission, to an agency of this state or its political subdivisions that operate a program or activity designated as a required partner in the Workforce Innovation and Opportunity Act One-Stop delivery system pursuant to 29 U.S.C.A., Section 3151(b)(1), based on a showing of need made to the Commission and after an agreement concerning the release of information is entered into with the entity receiving the information. For the limited purpose of completing performance accountability reports required by the Workforce Innovation and Opportunity Act, only those designated required partners that meet the 20 CFR Section 603.2(d) definition of public official may contract with a private agent or contractor pursuant to 20 CFR Section 603.5(f) for the purpose of the private agent or contractor receiving confidential unemployment compensation information to the extent necessary to complete the performance accountability reports;

20. The release of information to the State Wage Interchange System, at the discretion of the Commission;

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

22. The release of employer tax information and benefit claim information to the Oklahoma Health Care Authority for use in determining eligibility for a program that will provide subsidies

for health insurance premiums for qualified employers, employees, self-employed persons⁷ and unemployed persons;

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

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

25. The release of information to vendors that contract with the Oklahoma Employment Security Commission to provide for the issuance of debit cards, to conduct electronic fund transfers, to perform computer programming operations, or to perform computer maintenance or replacement operations; provided the vendor agrees to protect and safeguard the information it receives and to destroy the information when no longer needed for the purposes set out in the contract;

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

27. The release of information to vendors that contract with the State of Oklahoma for the purpose of providing a public electronic labor exchange system that will support the Oklahoma Employment Security Commission's operation of an employment service system to connect employers with job seekers and military veterans. This labor exchange system would enhance the stability and security of Oklahoma's economy as well as support the provision of veterans' priority of service. The vendors may perform computer programming

operations, perform computer maintenance or replacement operations, or host the electronic solution; provided each vendor agrees to protect and safeguard all information received, that no information shall be disclosed to any third party, that the use of the information shall be restricted to the scope of the contract, and that the vendor shall properly dispose of all information when no longer needed for the purposes set out in the contract; or

28. The release of employer tax information and benefit claim information to employees of a county public defender's office in the State of Oklahoma and the Oklahoma Indigent Defense System for the purpose of determining financial eligibility for the services provided by such entities.

D. Subpoenas to compel disclosure of information made confidential by this statute shall not be valid, except for administrative subpoenas issued by federal, state, or local governmental agencies that have been granted subpoena power by statute or ordinance. Confidential information maintained by the Commission can be obtained by order of a court of record that authorizes the release of the records in writing. All administrative subpoenas or court orders for production of documents must provide a minimum of twenty (20) days from the date it is served for the Commission to produce the documents. If the date on which production of the documents is required is less than twenty (20) days from the date of service, the subpoena or order shall be considered void on its face as an undue burden or hardship on the Commission. All administrative subpoenas, court orders or notarized waivers of confidentiality authorized by paragraph 2 of subsection C of this section shall be presented with a request for records within ninety (90) days of the date the document is issued or signed, and the document can only be used one time to obtain records.

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

F. It is further provided that the provisions of this section shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Commission.

SECTION 18. AMENDATORY 40 O.S. 2011, Section 5-107, is amended to read as follows:

Section 5-107. WRONGFUL DISCLOSURE OF INFORMATION.

If any employee or member of the Board of Review or the Oklahoma Employment Security Commission or any employee of the Commission, ~~in violation of~~ or any employee of a governmental unit, private business or nonprofit entity that is allowed access to information under Section 4-508 of this title, makes any disclosure of confidential information ~~obtained from any employing unit or individual in the administration of this act~~ or otherwise violates Section 4-508 of this title, or if any person who has obtained any list of applicants for work, or of claimants or recipients of benefits, under ~~this act~~ Section 5-101 et seq. of this title shall use or permit the use of such list for any political purpose, ~~he~~ such individual shall be guilty of a misdemeanor and shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or imprisoned for not longer than ninety (90) days, or both.

SECTION 19. This act shall become effective November 1, 2021.

Passed the Senate the 29th day of April, 2021.

Presiding Officer of the Senate

Passed the House of Representatives the 13th day of April, 2021.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____