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§40-1. Commissioner of Labor - Powers and duties.

A. The Commissioner of Labor shall be the Chief Executive Officer of the Department of Labor, and shall supervise the work of that Department.

B. It shall be the duty of the Commissioner of Labor to:

1. foster, promote, and develop the welfare of the wage earners of this state;
2. improve working conditions of the wage earners;
3. advance opportunities of wage earners for profitable employment; and
4. carry into effect all laws in relation to labor enacted by the Legislature for which responsibility is assigned to the Commissioner of Labor.

C. The Commissioner of Labor may administer oaths, issue subpoenas for the attendance of witnesses and take testimony in all matters relating to the proper enforcement of all laws over which the Commissioner has supervision pursuant to the provisions of the laws of this state.

R.L.1910, § 3703; Laws 1910-11, c. 128, p. 281, § 1; Laws 1980, c. 159, § 7, emerg. eff. April 2, 1980; Laws 1991, c. 122, § 1, eff. July 1, 1991.

§40-1.1. Reciprocal agreements with labor departments of other states - Actions upon claims arising in other states.

A. The Commissioner of Labor may enter into reciprocal agreements with the Labor Department or corresponding agency of another state, or with the person, board, officer, or commission authorized to act on behalf of that department or agency having jurisdiction for the collection of wages unlawfully withheld from employees by out-of-state employers and for the collection of other debts lawfully owed to the State Department of Labor.

B. The Commissioner of Labor shall, upon the written request of the Department of Labor or other corresponding agency of any other state or of any person, board, officer or commission of such state authorized to act for and on behalf of such labor department or corresponding agency, maintain actions in the courts of this state

upon assigned claims for wages, judgments and demands arising in such other state in the same manner and to the same extent that such actions by the Commissioner of Labor are authorized when arising in this state; provided, however, that such actions may be commenced and maintained only in those cases where such other state by appropriate legislation or by reciprocal agreement extends a like comity to cases arising in the state.
Added by Laws 1991, c. 122, § 2, eff. July 1, 1991.

§40-1-101. Short title.

SHORT TITLE. This act shall be known and may be cited as the Employment Security Act of 1980.
Added by Laws 1980, c. 323, § 1-101, eff. July 1, 1980.

§40-1-102. Purpose of Act.

(1) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act or under the unemployment compensation law of any state or of the federal government, either for himself or for any other person, 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 by imprisonment for not longer than ninety (90) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense for each week of benefits.

(2) Upon conviction sentences may be suspended or upon a plea of guilty judgment and sentencing may be deferred only upon the condition of full restitution to the Commission of all benefits so obtained or the excess of any benefits so increased.
Laws 1980, c. 323, § 1-102, eff. July 1, 1980.

§40-1-103. Declaration of state public policy.

DECLARATION OF STATE PUBLIC POLICY. As a guide to the interpretation and application of this act, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This objective can be furthered by operating free public employment offices in affiliation with nationwide system of employment services, by devising appropriate methods for reducing the volume of unemployment and by the systematic accumulation of funds during

periods of employment, thus maintaining purchasing power and limiting the serious social consequences of unemployment. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police power of the state for the establishment and maintenance of free public employment offices and for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.
Added by Laws 1980, c. 323, § 1-103, eff. July 1, 1980.

§40-1-104. Saving clause.

SAVING CLAUSE. A. The Legislature reserves the right to amend or repeal all or any part of the Employment Security Act at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by the Employment Security Act, or by acts done pursuant thereto, shall exist subject to the power of the Legislature to amend or repeal the Employment Security Act at any time.

B. If any provision of the Employment Security Act necessary for certification for administrative grants under the Social Security Act or tax credits under the Federal Unemployment Tax Act are determined to be inconsistent with federal requirements by a delegate of the Secretary of Labor, the Commission, with the concurrence of the Oklahoma Attorney General, is authorized to administer such provisions consistently with federal requirements until the Legislature has an opportunity to enact appropriate legislation during its next regularly scheduled session.

Added by Laws 1980, c. 323, § 1-104, eff. July 1, 1980. Amended by Laws 1982, c. 304, § 1, operative Oct. 1, 1982.

§40-1-106. Section captions.

SECTION CAPTIONS. Section captions are parts of this act.
Added by Laws 1980, c. 323, § 1-106, eff. July 1, 1980.

§40-1-107. Construction against implicit repeal.

CONSTRUCTION AGAINST IMPLICIT REPEAL. This act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Added by Laws 1980, c. 323, § 1-107, eff. July 1, 1980.

§40-1-108. Indian tribes or tribal units - Benefits - Contributions or payments - Extended benefits - Delinquencies - No waiver of sovereign immunity.

A. The term "employer" shall include any Indian tribe for which service in employment is performed, as defined in the Employment Security Act of 1980.

B. The term "employment" shall include service performed in the employ of an Indian tribe, as defined in the Federal Unemployment Tax Act (FUTA), 26 U.S.C., Section 3306(u), provided such service is excluded from "employment" as defined in FUTA solely by reason of 26 U.S.C., Section 3306(c)(7), and is not otherwise excluded from employment under the Employment Security Act of 1980. For purposes of this section, the exclusions from employment in subparagraphs (c) and (e) of paragraph (7) of Section 1-210 of this title shall be applicable to services performed in the employ of an Indian tribe.

C. The terms "Indian tribe" and "tribal unit" shall have the meanings ascribed to them in federal law. "Tribal unit" includes subdivisions, subsidiaries, and business enterprises wholly owned by an Indian tribe.

D. Benefits based on service in employment defined in this section 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, provided wages used to establish the claim were paid during a time in which the account of the Indian tribe for which services were rendered was not terminated pursuant to subparagraph a of paragraph 1 of subsection F of this section.

E. 1. An Indian tribe or tribal unit subject to the Employment Security Act of 1980 shall pay contributions under the same terms and conditions as required of nongovernmental employers for profit subject to the Employment Security Act of 1980 unless the tribe elects to pay into the State Unemployment Compensation Fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

2. An Indian tribe or tribal unit electing to make payments in lieu of contributions shall so notify the Oklahoma Employment Security Commission in writing before the last day of January of the calendar year in which the tribe wishes to begin making reimbursement payments. If the Commission determines the Indian tribe is eligible to exercise its option, the Indian tribe shall be liable for reimbursement payments in lieu of contributions in the same manner and subject to the same provisions that apply to reimbursing nonprofit organizations as provided in Part 8 of Article 3 of the Employment Security Act of 1980, including formation of group accounts, and the proportionate allocation of benefit costs, except that one hundred percent (100%) of the extended benefits attributable to the Indian tribe shall be reimbursed. Indian tribes shall determine whether reimbursement for benefits paid shall be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units. If any provision contained

in Part 8 of Article 3 of the Employment Security Act of 1980, including the administrative rules implementing that Part, contradicts a provision of this section, the provision of this section shall control.

3. An Indian tribe or tribal unit shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

- F. 1. a. If an Indian tribe or tribal unit thereof fails to file the required reports and pay all late filing penalties or fails to make required payments under the Employment Security Act of 1980, including payment of all interest, penalties, surcharges, or fees, a notice of reporting or payment delinquency shall be mailed to the Indian tribe at its last-known address. If the delinquency is not corrected within ninety (90) days of the date of mailing of the notice of delinquency, the account of the Indian tribe shall be terminated and notice of termination shall be mailed to the tribe at its last-known address, together with a statement of protest rights available pursuant to Section 3-115 of this title. If the account of an Indian tribe is terminated pursuant to this subparagraph, the Indian tribe shall not be considered an "employer" for purposes of subsection A of this section, and services performed for the Indian tribe shall not be considered "employment" for purposes of subsection B of this section.
- b. The Oklahoma Employment Security Commission may reinstate the account of any Indian tribe that loses coverage under subparagraph a of this subsection if the tribe pays all contributions, payments in lieu of contributions, interest, penalties, surcharges, and fees that are due and owing. Upon reinstatement, the tribe shall again be considered an "employer" for purposes of subsection A of this section and services performed for the tribe shall again be considered "employment" for purposes of subsection B of this section.
2. a. Failure of an Indian tribe or tribal unit to make required payments, including assessments of interest, penalties, surcharges, and fees within ninety (90) days of the due date for payment shall cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in subsection E of this section, for the following tax year unless

payment in full is received before January 31 of the next tax year.

- b. Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subparagraph a of this paragraph, shall have the option reinstated if, after a period of one (1) year, all contribution payments have been timely made, provided no contributions, payments in lieu of contributions for benefits paid, interest, penalties, surcharges, or fees remain outstanding.

G. The notice of payment or reporting delinquency to Indian tribes or their tribal units, referred to in subparagraph a of paragraph 1 of subsection F of this section, shall include information that failure to make full payment and file required reports within the prescribed time frame shall cause:

1. The Indian tribe to be liable for taxes under FUTA;
2. The Indian tribe to lose the option to make payments in lieu of contributions;
3. The Indian tribe to be excepted from the definition of "employer", as provided in subsection A of this section; and
4. Services performed in the employ of the Indian tribe to be excepted from the definition of "employment", as provided in subsection B of this section.

H. Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the United States government shall be financed in their entirety by the Indian tribe.

I. If an Indian tribe fails to make required payments under the Employment Security Act of 1980, including the payment of all interest, penalties, surcharges, and fees, within ninety (90) days of the mailing of the notice of payment delinquency, the Oklahoma Employment Security Commission shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

J. The provisions of subsections K and L of this section shall provide a transition for the implementation of Section 166 of Public Law 106-554 enacted by the Congress of the United States and effective December 21, 2000, so that Indian tribes may qualify for federal tax credits and employees of Indian tribes may be eligible for benefits.

K. Any Indian tribe which did not have an active account with the Oklahoma Employment Security Commission from January 1, 2001, to the effective date of this section, but which desires to be covered for benefits for that period of time, may elect to be subject to one of the following, if the tribe notifies the Commission of the election in writing:

1. To pay contributions. If the tribe elects to make payments for contributions, interest or penalties shall not be assessed against such tribe for the period from January 1, 2001, to the effective date of this section if full payment for all contributions due is made within twenty (20) days after an account is established for the tribe; or

2. To make payments in lieu of contributions. If the tribe elects to make payments in lieu of contributions, interest or penalties shall not be assessed against such tribe for the period from January 1, 2001, to the effective date of this section if all reports that are due for that period are filed within twenty (20) days after an account is established for the tribe.

L. Any Indian tribe which did not have an active account with the Oklahoma Employment Security Commission from January 1, 2001, to the effective date of this section and does not desire to be covered for benefits for that period shall be covered by the provisions of subsections A through I of this section. The coverage for any such tribe shall be prospective only and shall not entitle any employee of the tribe to benefits for any period prior to the effective date of this section.

M. Indian tribes paying contributions prior to the date of this section shall not be able to make an election to make payments in lieu of contributions for the period from January 1, 2001, to the effective date of this section. Any change in election shall be prospective only.

N. Participation by any Indian tribe in the state unemployment insurance system shall not operate as a waiver of the sovereign immunity of the tribe.

Added by Laws 2002, c. 452, § 1, eff. July 1, 2002. Amended by Laws 2008, c. 132, § 1, eff. Nov. 1, 2008.

§40-1-109. Unemployment benefits impact study.

If a proposed new law or amendment to an existing law will have the effect of expanding unemployment benefits available to unemployment benefit claimants, the Oklahoma Employment Security Commission shall study the fiscal impact the benefit expansion will have upon Oklahoma's Unemployment Trust Fund established pursuant to 42 U.S.C., Section 1104. The impact study shall be presented to each house of the Legislature before the final vote on the bill containing the provision and shall be sent to the Governor before final approval of the bill containing the provision.

Added by Laws 2013, c. 71, § 1, eff. Nov. 1, 2013.

§40-1-201. General definitions.

GENERAL DEFINITIONS. As used in the Employment Security Act of 1980:

1. "Additional initial claim" means a claim application which reactivates a claim during an existing benefit year and certifies to a period of employment which occurred subsequent to the date of the filing of the last initial, additional, or reopened claim;

2. "Alternative base period" means the most recent four (4) completed calendar quarters immediately preceding the first day of an individual's benefit year. In the event that an individual's claim uses an alternative base period to meet the wage requirement under Section 2-207 of this title, this alternative base period shall be substituted for base period for all other purposes under the Employment Security Act of 1980;

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

4. "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year;

5. "Benefit year" with respect to any individual means the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Any claim for benefits shall be deemed a valid claim for the purpose of this section if the individual has been paid the wages for insured work required under the Employment Security Act of 1980;

6. "Benefit wages" means the taxable wages earned by a claimant during the claimant's base period which are not in excess of the current maximum weekly benefit amount, as determined under Section 2-104 of this title, multiplied by the maximum number of weeks for which benefits could be paid to any individual pursuant to Section 2-106 of this title, multiplied by three (3); provided, however, no wages shall be included as benefit wages unless and until the claimant has been paid benefits for five (5) weeks in one (1) benefit year;

7. "Benefits" means the money payments payable to an individual as provided in the Employment Security Act of 1980 with respect to his or her unemployment, including extended benefits. The federal share of such extended benefits shall not be construed as benefits for the purposes of computing contribution rates under the Employment Security Act of 1980;

8. "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commission may by regulation prescribe;

9. "Client" shall have the same meaning as provided in paragraph 1 of Section 600.2 of this title;
10. "Coemployer" shall have the same meaning as provided in paragraph 2 of Section 600.2 of this title;
11. "Coemployment relationship" shall have the same meaning as provided in paragraph 3 of Section 600.2 of this title;
12. "Commission" means the Oklahoma Employment Security Commission;
13. "Commissioner" means a member of the Commission;
14. "Continued claim series" means an uninterrupted series of weekly claims filed by a claimant during the benefit year;
15. "Contributions" means the money payments, including taxes and reimbursements, required by the Employment Security Act of 1980 to be paid into the Unemployment Compensation Fund by an employer;
16. "Covered employee" shall have the same meaning as provided in paragraph 5 of Section 600.2 of this title;
17. "Digital portal filing" means electronic communication through the agency digital portal;
18. "Earned tax rate" means the tax rate calculated for an employer with sufficient experience history to meet the At-Risk Rule set out in paragraph 3 of Section 3-110.1 of this title, with the tax rate calculated pursuant to the provisions of Section 3-101 et seq. of this title;
19. "Electronic e-filing" means filing by email or fax to email;
20. "Eligibility period" of an individual for extended benefits means the period consisting of the weeks in his or her benefit year, as defined by the Employment Security Act of 1980, which begin in an extended benefit period and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period;
21. "Employer" shall have the same meaning as provided in Section 1-208 of this title;
22. "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state;
23. "Employment" shall have the same meaning as provided in Section 1-210 of this title;
24. "Employment office" means a free public employment office or branch thereof operated by this or any other state as a part of a state-controlled system of public employment offices or by a federal

agency charged with the administration of an unemployment compensation program or free public employment offices;

25. "Employment Security Administration Fund" means the fund established in Section 4-602 of this title from which administration expenses under the Employment Security Act of 1980 shall be paid;

26. "Exhaustee" shall have the same meaning as provided in Section 2-712 of this title;

27. "Experience period" means the most recent twelve (12) consecutive completed calendar quarters occurring before July 1 of the year immediately preceding the year for which the employer's contribution rate is being calculated;

28. "Extended base period" means the four (4) quarters prior to the claimant's base period. These four (4) quarters may be substituted for base period quarters on a quarter-by-quarter basis to establish a valid claim regardless of whether the wages have been used to establish a prior claim, except any wages earned that would render the Commission out of compliance with applicable federal law shall be excluded if used in a prior claim;

29. "Extended benefit period" shall have the same meaning as provided in Section 2-703 of this title;

30. "File", "files", or "filed" shall have the same meaning as provided in Section 1-224 of this title;

31. "Mail", "mails", "mailed", or "mailing" means communication sent by a postal service with sufficient postage;

32. "Foreign limited liability company" shall be defined by the provisions of the Oklahoma Limited Liability Company Act;

33. "Fund" means the Unemployment Compensation Fund established in Section 3-601 of this title;

34. "Hospital" means any hospital required to be licensed under the Oklahoma Public Health Code, Section 1-101 et seq. of Title 63 of the Oklahoma Statutes, and includes state mental hospitals and any other mental hospital or institution;

35. "Initial claim" means a new claim application submitted by a claimant to establish a benefit year for unemployment insurance benefits;

36. "Institution of higher education" shall have the same meaning as provided in Section 1-214 of this title;

37. "Insured work" means employment for employers as defined by the Employment Security Act of 1980;

38. "Lessor employing unit" means any independently established business entity which engages in the business of providing leased employees to any other employer, individual, organization, partnership, corporation, or other legal entity, referred to herein as a client lessee;

39. "Limited liability company" shall be defined by the provisions of the Oklahoma Limited Liability Company Act;

40. "Probationary period" means a period of time set forth in an established probationary plan, which applies to all employees or a specific group of employees, and does not exceed ninety (90) calendar days from the first day a new employee begins work;

41. "Professional Employer Organization" or "PEO" means an organization that is subject to the Oklahoma Professional Employer Organization Recognition and Registration Act and which meets the definition set out in paragraph 9 of Section 600.2 of this title;

42. "Rate of insured employment" shall have the same meaning as provided in Section 2-708 of this title;

43. "Regular benefits" means benefits payable to an individual under the Employment Security Act of 1980, or under any other state law including dependents' allowances and benefits payable to federal civilian employees;

44. "Reopened claim" means a claim application which reactivates a claim during an existing benefit year when a claimant stopped filing for benefits before his or her claim was exhausted, but in which there occurred no intervening employment from the date of the filing of the last initial, additional, or reopened claim;

45. "State" includes, in addition to the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

46. "State law" means the unemployment insurance law of any state, approved by the Secretary of Labor of the United States under Section 3304 of the Internal Revenue Code of 1954;

47. "Supplemental unemployment benefit plan" means a plan that provides for an employer to make payments to its employees during a permanent or temporary layoff that will supplement unemployment benefits received by the employees. The purpose of a supplemental unemployment benefit plan is to allow an employer to sustain the purchasing power of its employees or former employees during a layoff;

48. "Taxable wages" means the wages paid to an individual with respect to employment during a calendar year for services covered by the Employment Security Act of 1980 or other state unemployment compensation acts which shall equal the applicable percentage of the state's average annual wage for the second preceding calendar year as determined by the Commission, rounded to the nearest multiple of One Hundred Dollars (\$100.00);

49. "Wages" shall have the same meaning as provided in Section 1-218 of this title;

50. "Wages paid" means wages actually paid to the worker; provided, however, that in the event of any distribution of an employer's assets through insolvency, receivership, composition, assignment for the benefit of creditors, or termination of business, wages earned but not actually paid shall be considered as paid; and

51. "Week" means such period of seven (7) consecutive days, as the Commission may by regulation prescribe.
Added by Laws 1980, c. 323, § 1-201, eff. July 1, 1980. Amended by Laws 2022, c. 360, § 1, eff. Nov. 1, 2022; Laws 2024, c. 114, § 1, eff. Nov. 1, 2024.

§40-1-202. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-202.1. Extended Base Period.

EXTENDED BASE PERIOD.

If an individual lacks sufficient base period wages because of a job-related injury for which the individual received total temporary disability payments awarded by the Workers' Compensation Court, upon written application by the claimant, an extended base period will be substituted for the current base period on a quarter-by-quarter basis as needed to establish a valid claim. Benefits paid on the basis of an extended base period, which would not otherwise be payable, shall be noncharged.

Added by Laws 1997, c. 30, § 1, eff. July 1, 1997. Renumbered from § 1-202A of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006. Amended by Laws 2022, c. 360, § 2, eff. Nov. 1, 2022.

§40-1-202.2. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-202A. Renumbered as § 1-202.1 of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006.

§40-1-202B. Renumbered as § 1-202.2 of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006.

§40-1-203. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-204. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-205. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-206. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-207. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-208. Employer.

EMPLOYER.

"Employer" means:

1. Any employing unit, except as provided under paragraphs 10 and 11 of this section, which:

- a. for some portion of a day, but not necessarily simultaneously, in each of twenty (20) different calendar weeks, whether or not such weeks are or were consecutive, within either the calendar year or the preceding calendar year, and for the purpose of this definition if any week includes both December 31 and January 1, the days up to January 1 shall be deemed one (1) calendar week and the days beginning January 1 another such week, has or had in employment one or more individuals, irrespective of whether the same individuals are or were employed in each such day, or
- b. in any calendar quarter, in either the calendar year or preceding calendar year paid for service in employment wages of One Thousand Five Hundred Dollars (\$1,500.00) or more;

2. Any individual or employing unit, whether or not an employing unit at the time of the acquisition, which acquired substantially all of the organization, employees, trade, business, or assets thereof, of another which at the time of such acquisition was an employer subject to the Employment Security Act of 1980; or which acquired a part of the organization, employees, trade, or business of another employing unit which at the time of such acquisition was an employer subject to the Employment Security Act of 1980;

3. Any individual or employing unit, whether or not an employing unit at the time of acquisition, which acquired substantially all of the organization, employees, trade, business, or assets thereof, of another employing unit, if the employment record of such individual or employing unit subsequent to such acquisition, together with the employment record of the acquired unit prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit and employer subject to the Employment Security Act of 1980 under paragraph 1 of this section; or any individual or employing unit which acquired substantially all of the organization, employees, trade, business, or assets of another employing unit if such employing unit subsequent to such acquisition, and such acquired unit prior to such acquisition, both within the same calendar quarter, together paid for service in employment wages totaling One Thousand Five Hundred Dollars (\$1,500.00) or more;

4. Any employing unit which, together with one or more other employing units, is owned or controlled, by legally enforceable means or otherwise, directly by the same interest, or which owns or controls one or more other employing units, by legally enforceable means or otherwise, and which, if treated as a single unit with such other employing unit, would be an employer under paragraph 1 of this section;

5. Any employing unit which, having become an employer under paragraph 1, 2, 3, 4, 6, 8, 10, 11 or 12 of this section has not, under Section 3-202 of this title, ceased to be an employer subject to the Employment Security Act of 1980;

6. For the effective period of its election pursuant to Section 3-203 of this title any other employing unit which has elected to become subject to the Employment Security Act of 1980;

7. Any department of this state, any other state, and all instrumentalities thereof, including any political subdivisions and their instrumentalities, for which service in employment, as defined in paragraph (3) of Section 1-210 of this title, is performed, except as provided under paragraphs 10 and 11 of this section;

8. Any employing unit for which service in employment, as defined in paragraph (4) of Section 1-210 of this title, is performed, except as provided under paragraphs 10 and 11 of this section;

9. For purposes of paragraphs 1, 8, 10 and 11 of this section, employment shall include service which would constitute employment but for the fact that the service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into in accordance with Section 4-702 of this title by the Oklahoma Employment Security Commission and an agency charged with the administration of any other state or federal unemployment compensation law;

10. Any employing unit for which agricultural labor as defined in paragraph (5) of Section 1-210 of this title is performed. In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraph 1, 7, 8 or 11 of this section, the wages earned or the employment of an employee performing service in agricultural labor shall not be taken into account;

11. Any employing unit for which domestic service in employment as defined in paragraph (6) of Section 1-210 of this title is performed. In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraph 1, 7, 8 or 10 of this section, the wages earned or the employment of an employee performing domestic service shall not be taken into account;

12. Any employing unit which is not an employer by reason of any other provisions of the Employment Security Act of 1980 shall nevertheless be an "employer" if either:

- a. within the calendar year or preceding calendar year, service is or was performed, with respect to which the employing unit is liable for any federal tax against which credit may be taken by the employing unit for contributions required to be paid by it into a state unemployment fund, or

- b. the employing unit is required to be an "employer" as a condition for approval of the Employment Security Act of 1980 for full tax credit to be allowed against the tax imposed by the Federal Unemployment Tax Act, 26 U.S.C., Section 3301 et seq.; or

13. If two or more employers share common ownership, management, or control, the Commission may combine their merit rating accounts, including their actual contribution and benefit experience, annual payrolls, and contribution rates into one account.

Added by Laws 1980, c. 323, § 1-208, eff. July 1, 1980. Amended by Laws 1990, c. 333, § 1, emerg. eff. May 31, 1990; Laws 1993, c. 219, § 1, eff. Sept. 1, 1993; Laws 1997, c. 30, § 2, eff. July 1, 1997; Laws 2005, c. 182, § 1, eff. Nov. 1, 2005; Laws 2006, c. 176, § 1, eff. July 1, 2006; Laws 2008, c. 132, § 2, eff. Nov. 1, 2008.

§40-1-208.1. Motor carrier not employer of lessor or driver.

MOTOR CARRIER NOT EMPLOYER OF LESSOR OR DRIVER.

In no event will a motor carrier be determined to be the employer of a lessor as defined in Section 166a or 230.29 of Title 47 of the Oklahoma Statutes, or of a driver receiving compensation from a lessor.

Added by Laws 1986, c. 223, § 23, emerg. eff. June 9, 1986. Amended by Laws 2002, c. 452, § 3, eff. Nov. 1, 2002. Renumbered from § 1-208A of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006.

§40-1-208A. Renumbered as § 1-208.1 of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006.

§40-1-209. Employing unit.

EMPLOYING UNIT.

All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of the Employment Security Act of 1980, except as provided under paragraphs 10 and 11 of Section 1-208 of this title.

Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment, which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of Section 1-208 or Section 3-203 of this title, the employing unit shall for all the purposes of the Employment Security Act of 1980 be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment; except that each such contractor or subcontractor who is

an employer by reason of Section 1-208 or Section 3-203 of this title shall alone be liable for the contributions measured by wages paid to individuals employed by the contractor or subcontractor, and except that any employing unit which shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of Section 1-208 or Section 3-203 of this title may recover the same from such contractor or subcontractor.

Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of the Employment Security Act of 1980, whether such individual was hired or paid directly by such employing unit or by such agent or employee of an employing unit, provided the employing unit had actual or constructive knowledge of the employment.

Added by Laws 1980, c. 323, § 1-209, eff. July 1, 1980. Amended by Laws 2002, c. 452, § 4, eff. Nov. 1, 2002; Laws 2010, c. 216, § 1, eff. July 1, 2010; Laws 2022, c. 360, § 3, eff. Nov. 1, 2022.

§40-1-209.1. Lessor employing unit.

LESSOR EMPLOYING UNIT. A. Any employer or any individual, organization, partnership, corporation or other legal entity which meets the definition of lessor employing unit shall be liable for contribution on wages paid by the lessor employing unit to individuals performing services for client lessees of the lessor employing unit.

B. Unless the lessor employing unit has timely complied with the provisions of this section, any employer, individual, organization, partnership, corporation or other legal entity leasing employees from any lessor employing unit shall be jointly and severally liable for any unpaid contributions, interest, penalties and fees due under this section from any lessor employing unit attributable to wages for services performed for the client lessee entity by the employees leased to the client lessee entity.

C. In order to relieve client lessees from joint and several liability imposed under this section, any lessor employing unit as defined herein may post and maintain a surety bond issued by a corporate surety authorized to do business in this state in an amount equivalent to the contributions for which the lessor employing unit was liable in the last calendar year in which it accrued contributions, or One Hundred Thousand Dollars (\$100,000.00), whichever amount is the greater, to ensure prompt payment of contributions, interest, penalties and fees for which the lessor employing unit may be or may become liable under this section.

D. Any lessor employing unit as defined herein which is currently engaged in the business of leasing employees to client

lessees shall comply with the provisions of this section by January 1, 1991.

E. Any lessor employing unit not engaged in the business of leasing employees to client lessees on or before May 31, 1990, shall comply with the requirements herein before entering into lease agreements with client lessees.

Added by Laws 1990, c. 333, § 2, emerg. eff. May 31, 1990. Amended by Laws 1993, c. 219, § 2, eff. Sept. 1, 1993. Renumbered from § 1-209A of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006. Amended by Laws 2022, c. 360, § 4, eff. Nov. 1, 2022.

§40-1-209.2. Professional Employee Organization.

A. For purposes of the Employment Security Act of 1980, the Professional Employee Organization (PEO) and its client shall be considered coemployers of the covered employees that are under the direction and control of the client.

B. If a PEO fails to become or remain registered under the Oklahoma Professional Employer Organization Recognition and Registration Act, the entity shall be considered a third-party administrator of the client account. As a third-party administrator, a power of attorney will be required to obtain information from the client's account.

Added by Laws 2014, c. 221, § 1, eff. Nov. 1, 2014. Amended by Laws 2022, c. 360, § 5, eff. Nov. 1, 2022.

§40-1-209A. Renumbered as § 1-209.1 of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006.

§40-1-210. Employment.

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 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, 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 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 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 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 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 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.

Added by Laws 1980, c. 323, § 1-210, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 1, emerg. eff. June 25, 1981; Laws 1982, c. 105, § 1, eff. Oct. 1, 1982; Laws 1982, c. 304, § 2, eff. Oct. 1, 1982; Laws 1984, c. 252, § 1, emerg. eff. May 29, 1984; Laws 1986, c. 205, § 1, emerg. eff. June 6, 1986; Laws 1989, c. 165, § 1, eff. Nov. 1, 1989; Laws 1990, c. 235, § 1, eff. Sept. 1, 1990; Laws 1993, c. 198, § 21, eff. Sept. 1, 1993; Laws 1993, c. 360, § 5, emerg. eff. June 10, 1993; Laws 1994, c. 195, § 1, emerg. eff. May 16, 1994; Laws 1995, c. 340, § 2, eff. July 1, 1995; Laws 1997, c. 30, § 3, eff. July 1, 1997; Laws 1997, c. 391, § 1, eff. July 1, 1997; Laws 1998, c. 161, § 1, eff. July 1, 1998; Laws 2002, c. 452, § 5, eff. Nov. 1, 2002; Laws 2004, c. 102, § 1, eff. Nov. 1, 2004; Laws 2006, c. 176, § 2, eff. July 1, 2006; Laws 2008, c. 132, § 3, eff. Nov. 1, 2008; Laws 2010, c. 216, § 2, eff. July 1, 2010; Laws 2010, c. 328, § 1, eff. July 1, 2010; Laws 2011, c. 256, § 1; Laws 2015, c. 249, § 1, eff. Nov. 1, 2015; Laws 2019, c. 342, § 2, eff. Jan. 1, 2020; Laws 2021, c. 424, § 1, eff. Nov. 1, 2021.

§40-1-211. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-212. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-213. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-214. Institution of higher education.

INSTITUTION OF HIGHER EDUCATION. "Institution of higher education" means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this section.

Added by Laws 1980, c. 323, § 1-214, eff. July 1, 1980.

§40-1-215. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-216. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-217. Unemployed.

UNEMPLOYED. A. An individual shall be deemed unemployed with respect to any week during which:

1. The individual performed no services; and

2. No wages are payable to the individual.

B. For an initial or additional initial claim filing, an individual shall be deemed unemployed:

1. With respect to any week of less than full-time work, if the wages payable to the individual are less than his or her weekly benefit amount plus One Hundred Dollars (\$100.00); and

2. If the individual has incurred a loss of wages or reductions in hours equal to or greater than fifteen percent (15%) of the income or hours worked, based on his or her customary work experience or contract of hire.

C. For filing made during a continued claim series, an individual shall be deemed unemployed with respect to any week of less than full-time work if the wages payable to the individual are

less than his or her weekly benefit amount plus One Hundred Dollars (\$100.00).

D. For the purpose of this section only, any vacation leave payments or sick leave payments, which such individual may receive or be entitled to from his or her employer or former employer, arising by reason of separation from employment, shall be deemed not to be wages as the term wages is used in this section.

E. A finding that an individual has satisfied the hour and wage threshold as defined in this section shall not preclude a potential investigation or disqualification for benefits as provided in Section 2-101 et seq. of this title if the employer files a timely protest to the initial or additional initial claim.

Added by Laws 1980, c. 323, § 1-217, eff. July 1, 1980. Amended by Laws 1994, c. 41, § 1, eff. July 1, 1994; Laws 2022, c. 360, § 6, eff. Nov. 1, 2022.

§40-1-218. Wages.

WAGES.

"Wages" means all remuneration for services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, and includes dismissal payments which the employer is required by law or contract to make. Gratuities customarily received by an individual in the course of work from persons other than the employing unit shall be treated as wages received from the employing unit. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the Oklahoma Employment Security Commission. If the Internal Revenue Code, at 26 USCA, Section 1 et seq., provides that a payment made by an employer to an employee is considered to be wages, that payment shall also be considered wages by the Oklahoma Employment Security Commission for the purposes of this act. The term wages shall not include:

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

- a. retirement, other than employee contributions or deferrals under a qualified plan as described in 26 U.S.C., Section 401(k), 403(b), 408(k), 457, 7701(j) or 408(p),
- b. sickness or accident disability,
- c. medical and hospitalization expenses in connection with sickness or accident disability,

- d. death, provided the individual in its employ:
 - (1) has not the option to receive, instead of provision for such death benefit, any part of such payment, or if such death benefit is insured, any part of the premium or contributions to premiums paid by the employing unit, and
 - (2) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive cash consideration in lieu of such benefit either upon withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of the individual's services with such employing unit, or
- e. a bona fide thrift or savings fund, providing:
 - (1) such payment is conditioned upon a payment of a substantial sum by such individuals in its employ, and
 - (2) that such sum paid by the employing unit cannot under the provisions of such plan be withdrawn by an individual more frequently than once in any twelve-month period, except upon an individual's separation from that employment;

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

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

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

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

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

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

Added by Laws 1980, c. 323, § 1-218, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 2, emerg. eff. June 25, 1981; Laws 1982, c. 304, § 3, operative Oct. 1, 1982; Laws 1983, c. 270, § 1, emerg. eff. June 23, 1983; Laws 1993, c. 219, § 4, eff. Sept. 1, 1993; Laws 1997, c. 30, § 4, eff. July 1, 1997; Laws 2002, c. 452, § 6, eff. Nov. 1, 2002; Laws 2005, c. 182, § 2, eff. Nov. 1, 2005; Laws 2007, c. 354, § 1, eff. Nov. 1, 2007; Laws 2010, c. 216, § 3, eff. July 1, 2010; Laws 2016, c. 287, § 1, eff. Nov. 1, 2016; Laws 2019, c. 251, § 1, eff. July 1, 2019.

§40-1-219. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-220. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-221. Benefit wages.

BENEFIT WAGES.

"Benefit wages" means the taxable wages earned by a claimant during the claimant's base period which are not in excess of the current maximum weekly benefit amount, as determined under Section 2-104 of this title, multiplied by the maximum number of weeks for which benefits could be paid to any individual, pursuant to Section 2-106 of this title, multiplied by three (3); provided, however, no wages shall be included as "benefit wages" unless and until the claimant has been paid benefits for five (5) weeks in one (1) benefit year.

Added by Laws 1980, c. 323, § 1-221, eff. July 1, 1980. Amended by Laws 1994, c. 195, § 2, emerg. eff. May 16, 1994; Laws 1995, c. 340, § 3, eff. Jan. 1, 1996; Laws 2011, c. 256, § 2; Laws 2022, c. 287, § 1, eff. Jan. 1, 2023.

NOTE: This section was purportedly repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-222. Repealed by Laws 1998, c. 161, § 15, eff. July 1, 1998.

§40-1-223. Taxable wages - Conditional factors and percentages.

TAXABLE WAGES - CONDITIONAL FACTORS AND PERCENTAGES.

The applicable percentage of the state's average annual wage is determined by the conditional factor in place during the calendar year for which the taxable wage is being calculated. The conditional factor is determined pursuant to the provisions of Section 3-113 of this title. The applicable percentages are as follows:

1. Forty percent (40%) during any calendar year in which the balance in the Unemployment Compensation Fund is in excess of the

amount required to initiate conditional contribution rates, pursuant to the provisions of Section 3-113 of this title;

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

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

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

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

Added by Laws 1983, c. 270, § 2, emerg. eff. June 23, 1983. Amended by Laws 1994, c. 195, § 3, emerg. eff. May 16, 1994; Laws 1998, c. 161, § 2, eff. July 1, 1998; Laws 2016, c. 287, § 2, eff. Nov. 1, 2016; Laws 2022, c. 360, § 7, eff. Nov. 1, 2022.

§40-1-224. File.

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 the provisions of the Employment Security Act of 1980 or the rules promulgated under the authority of the act require any document to be filed with the Oklahoma Employment Security Commission or its affiliate entities, the term "file", "files", or "filed" shall mean:

1. Mailing by means calculated to ensure receipt by the Oklahoma Employment Security Commission on or before the date due. Timely mailing shall be determined by the United States Postal Service postmark. If there is no such legible postmark, the date of receipt by the Commission shall constitute the date of filing;

2. 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; or

3. Digital portal filing by midnight on or before the date due. Timely transmission shall be determined by the Commission's transmission log file.

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. Added by Laws 1997, c. 30, § 5, eff. July 1, 1997. Amended by Laws 1998, c. 161, § 3, eff. July 1, 1998; Laws 2005, c. 182, § 3, eff. Nov. 1, 2005; Laws 2007, c. 354, § 2, eff. Nov. 1, 2007; Laws 2008, c. 132, § 4, eff. Nov. 1, 2008; Laws 2013, c. 71, § 2, eff. Nov. 1, 2013; Laws 2021, c. 424, § 2, eff. Nov. 1, 2021; Laws 2022, c. 360, § 8, eff. Nov. 1, 2022; Laws 2024, c. 114, § 2, eff. Nov. 1, 2024.

§40-1-225. Supplemental unemployment benefit plan.

SUPPLEMENTAL UNEMPLOYMENT BENEFIT PLAN.

A. A supplemental unemployment benefit plan for a temporary layoff must meet the following requirements:

1. The plan shall provide for a payment from the employer to the employee each week during the temporary layoff to supplement unemployment benefits received by the employee;

2. The plan must be part of an agreement entered into between the employer and employee, or between the employer and a collective bargaining agent on behalf of the employee, before the date the layoff is effective;

3. The employer must be able to give a reasonable assurance that the separated employees will be able to return to work at the end of the temporary layoff;

4. The employer must inform the Commission of the beginning and ending dates of the layoff and keep the Commission informed of any changes in circumstances while any claims for unemployment benefits are in existence; and

5. The plan must provide for equal treatment of all employees covered by the plan who are included in the layoff.

The requirements of Sections 2-417 and 2-418 of this title shall be waived for any claimant of unemployment benefits who is receiving supplemental benefits under this subsection.

B. A supplemental unemployment benefit plan for a permanent layoff must meet the following requirements:

1. The plan shall provide for a payment from the employer to the former employee during each week unemployment benefits are paid to the former employee, in order to supplement the unemployment benefits received by the former employee;

2. The plan must be part of an agreement entered into between the employer and former employee, or between the employer and a collective bargaining agent on behalf of the former employee, before the date the layoff is effective; and

3. The plan must provide for equal treatment of all former employees covered by the plan who are included in the layoff.

The requirements of Sections 2-417 and 2-418 of this title shall be applicable to any claimant of unemployment benefits who is receiving supplemental benefits under this subsection.

C. The amount of supplemental unemployment benefit plan payments will not be deducted from the weekly benefit amount of an unemployment benefit claim.

D. All supplemental unemployment benefit plans must be approved by the Director of the Unemployment Insurance Division of the Oklahoma Employment Security Commission. The Director's determination will be in writing and mailed to the employer and the collective bargaining agent of the employees, if any exists, at their last-known addresses, within twenty (20) days of the receipt of the employer's plan. If an employer or collective bargaining agent disagrees with the determination, an appeal can be taken pursuant to Section 3-115 of this title.

Added by Laws 2002, c. 452, § 7, eff. Nov. 1, 2002. Amended by Laws 2006, c. 176, § 3, eff. July 1, 2006; Laws 2019, c. 251, § 2, eff. July 1, 2019; Laws 2022, c. 360, § 9, eff. Nov. 1, 2022.

§40-1-225A. Repealed by Laws 2007, c. 354, § 18, eff. Nov. 1, 2007.

§40-1-226. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-227. Experience period.

EXPERIENCE PERIOD. "Experience period" means the most recent twelve (12) consecutive completed calendar quarters occurring before July 1 of the year immediately preceding the year for which the employer's contribution rate is being calculated.

Added by Laws 2006, c. 176, § 4, eff. July 1, 2006. Amended by Laws 2017, c. 345, § 1, eff. July 1, 2017.

§40-1-228. Limited liability companies.

LIMITED LIABILITY COMPANIES.

For unemployment tax purposes, wages, salaries, or draws paid to limited liability company members, relatives of the members, and employees shall be taxed in the same manner as required by the Federal Unemployment Tax Act, Title 26 U.S.C., Chapter 23, and the Internal Revenue Code, Title 26 U.S.C., Chapters 1 through 99.

Added by Laws 2015, c. 249, § 2, eff. Nov. 1, 2015. Amended by Laws 2022, c. 360, § 10, eff. Nov. 1, 2022.

§40-1-229. Assigned tax rate and earned tax rate.

ASSIGNED TAX RATE AND EARNED TAX RATE.

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

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

Added by Laws 2016, c. 287, § 3, eff. Nov. 1, 2016. Amended by Laws 2017, c. 345, § 2, eff. July 1, 2017.

§40-1-230. Notice given.

NOTICE GIVEN. A. Notice shall be deemed given when the Oklahoma Employment Security Commission notifies by one of the following means:

1. Mail;
2. Email or fax to email; or
3. Upload to the agency digital portal.

There is a rebuttable presumption that notice has been given on the date stated in the communication.

B. The Commission's preferred method of notification shall be electronic delivery through the agency digital portal or email. If claimants or employers wish to opt in to delivery by the agency digital portal or email, they may notify the Commission by one of the methods listed in subsection A of this section.

Added by Laws 2022, c. 360, § 11, eff. Nov. 1, 2022.

§40-1-231. Limitations on duration of benefits.

LIMITATIONS ON DURATION OF BENEFITS.

A. For purposes of this section, "state average unemployment insurance claims" means the weekly average of Continued UI Claims for the thirteen (13) weeks beginning with the first file week ending in the month of July in the calendar year prior to the current calendar year as published by the Oklahoma Employment Security Commission or the agency responsible for collecting and publishing unemployment insurance claims data.

B. On January 1, 2025, for unemployment compensation claims submitted during a calendar year, the duration of benefits is limited to:

1. a. Sixteen (16) weeks if the state's average unemployment insurance claims are at or below five thousand (5,000) claims,
 - b. An additional two (2) weeks shall be added in addition to the sixteen (16) weeks for each fifteen thousand (15,000) increments if the state's average unemployment insurance claims are above five thousand (5,000) claims, or
 - c. Up to the maximum of twenty (20) weeks; or

2. In the event that the weekly claims data of continued claims administered by the Oklahoma Employment Security Commission exceeds

forty thousand (40,000) claims, the maximum duration of benefits shall immediately be raised to twenty-six (26) weeks. This maximum benefit duration shall be in place until the weekly claims data of continued UI claims falls below forty thousand (40,000) claims at which time the maximum duration of benefits shall be determined pursuant to paragraph 1 of subsection B of this section.

Added by Laws 2022, c. 287, § 3, eff. Jan. 1, 2023. Amended by Laws 2024, c. 114, § 3, eff. Nov. 1, 2024.

NOTE: Editorially renumbered from § 1-230 of this title to avoid a duplication in numbering.

§40-1-301. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-1-302. Index of other definitions.

INDEX OF OTHER DEFINITIONS. Other definitions in this act and the sections in which they appear are:

"Crew leader" - Section 1-210(5)(d)

"American employer" - Section 1-210(9)(d)

"United States" - Section 1-210(9)(e)

"Suitable work" - Section 2-408(2)

Added by Laws 1980, c. 323, § 1-302, emerg. eff. June 13, 1980.

§40-2-101. Applicability.

APPLICABILITY. The provisions of this part shall be applicable to the computation of benefits under this act.

Added by Laws 1980, c. 323, § 2-101, eff. July 1, 1980.

§40-2-102. Rounding provision.

ROUNDING PROVISION. Any benefit amount, any maximum benefit amount, or any payment amount computed under the provisions of this article that is not a multiple of One Dollar (\$1.00) shall be computed to the next lower multiple of One Dollar (\$1.00).

Added by Laws 1980, c. 323, § 2-102, eff. July 1, 1980. Amended by Laws 1983, c. 270, § 3, emerg. eff. June 23, 1983.

§40-2-103. Benefits paid from fund.

BENEFITS PAID FROM FUND.

All benefits provided herein shall be payable from the fund. All benefits shall be paid in accordance with the rules as the Oklahoma Employment Security Commission may prescribe.

Added by Laws 1980, c. 323, § 2-103, eff. July 1, 1980. Amended by Laws 1993, c. 219, § 5, eff. Sept. 1, 1993; Laws 2006, c. 176, § 5, eff. July 1, 2006.

§40-2-104. Computation of benefit amount.

COMPUTATION OF BENEFIT AMOUNT.

A. The weekly benefit amount of an individual shall be an amount equal to one twenty-third (1/23) of the taxable wages paid to the individual during that quarter of his base period in which the taxable wages were highest. If the amount is more than the maximum weekly benefit amount, it shall be reduced to the maximum weekly benefit amount or if the amount is less than Sixteen Dollars (\$16.00), it shall be increased to Sixteen Dollars (\$16.00).

B. The maximum weekly benefit amount shall be:

1. Sixty percent (60%) of the average weekly wage of the second preceding calendar year during any calendar year in which the balance in the Unemployment Compensation Fund is in excess of the amount required to initiate conditional contribution rates, pursuant to the provisions of Section 3-113 of this title;

2. Fifty-seven and one-half percent (57.5%) of the average weekly wage of the second preceding calendar year during calendar years in which condition "a", as set forth in paragraph (1) of Section 3-113 of this title, exists;

3. Fifty-five percent (55%) of the average weekly wage of the second preceding calendar year during calendar years in which condition "b", as set forth in paragraph (2) of Section 3-113 of this title, exists;

4. Fifty-two and one-half percent (52.5%) of the average weekly wage of the second preceding calendar year during calendar years in which condition "c", as set forth in paragraph (3) of Section 3-113 of this title, exists; and

5. Fifty percent (50%) of the average weekly wage of the second preceding calendar year during calendar years in which condition "d", as set forth in paragraph (4) of Section 3-113 of this title, exists.

C. Before the last day of June of each year the Commission shall determine the average weekly wage of the preceding calendar year in the following manner:

1. The sum of the total monthly employment reported for the calendar year shall be divided by twelve (12) to determine the average monthly employment;

2. The sum of the total wages reported for the previous calendar year shall be divided by the average monthly employment to determine the average annual wage; and

3. The average annual wage shall be divided by fifty-two (52) to determine the average weekly wage.

Added by Laws 1980, c. 323, § 2-104, eff. July 1, 1980. Amended by Laws 1983, c. 270, § 4, emerg. eff. June 23, 1983; Laws 1998, c. 161, § 4, eff. July 1, 1998; Laws 2017, c. 345, § 3, eff. July 1, 2017.

§40-2-105. Wages subtracted from benefit amount.

WAGES SUBTRACTED FROM BENEFIT AMOUNT.

Each eligible individual who is unemployed with respect to any week ending after July 1, 1994, shall be paid with respect to such week a benefit in an amount equal to the weekly benefit amount of the individual less that part of the wages, if any, payable to the individual with respect to such week which is in excess of One Hundred Dollars (\$100.00). Each individual claiming benefits shall report all wages that the individual has been or will be paid for work performed during any week in which the individual claims unemployment benefits, regardless of the source or amount. Added by Laws 1980, c. 323, § 2-105, eff. July 1, 1980. Amended by Laws 1994, c. 41, § 2, eff. July 1, 1994; Laws 1994, c. 349, § 2, eff. July 1, 1994; Laws 1998, c. 161, § 5, eff. July 1, 1998.

§40-2-105.1. Furlough and work stoppage - Back pay subtracted from benefit amount - Redetermination of benefit eligibility.

A. Reimbursed pay or back pay received by a claimant shall be subtracted from the benefit amount drawn by a claimant in each week in which:

1. The claimant is placed on furlough or work stoppage by his or her employer;
2. The claimant is not paid wages or salary during the pendency of the furlough or work stoppage;
3. The furlough or work stoppage is due to a lapse in appropriations, funding or budget shortfall affecting the employer;
4. After the furlough or work stoppage concludes, the claimant is reimbursed his or her full pay for the period during which the furlough or work stoppage occurred; and
5. The employer considers the employee as having been in a pay status during the furlough or work stoppage.

B. If reimbursed pay or back pay is required to be subtracted from the claimant's benefit amount pursuant to subsection A of this section, the eligibility for benefits of each week in question shall be redetermined pursuant to Section 2-506 of Title 40 of the Oklahoma Statutes and the amount of reimbursed pay or back pay received by the claimant shall be deducted from any unemployment benefits drawn during the pendency of the furlough or work stoppage. Any party to the redetermination may appeal pursuant to Section 2-603 of Title 40 of the Oklahoma Statutes. Any overpayment of benefits established under this section shall be collected in the same manner as an overpayment established under paragraph 2 of Section 2-613 of Title 40 of the Oklahoma Statutes.

Added by Laws 2014, c. 220, § 4, eff. Nov. 1, 2014.

§40-2-106. Maximum benefit amount.

MAXIMUM BENEFIT AMOUNT.

On January 1, 2023, an otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of:

1. a. If prior to January 1, 2023, twenty-six (26) times the weekly benefit amount of the individual,
- b. If between January 1, 2023, and January 1, 2025, sixteen (16) times the weekly benefit amount of the individual, or
- c. If after January 1, 2025, between sixteen (16) and twenty (20) times the weekly benefit amount dependent upon the state's average unemployment insurance claims pursuant to Section 3 of this act;

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

- a. twenty-five percent (25%) during any calendar year in which the balance in the Unemployment Compensation Fund is in excess of the amount required to initiate conditional contribution rates, pursuant to the provisions of Section 3-113 of this title,
- b. twenty-three and three-fourths percent (23.75%) during calendar years in which condition "a" exists,
- c. twenty-two and one-half percent (22.5%) during calendar years in which condition "b" exists,
- d. twenty-one and one-fourth percent (21.25%) during calendar years in which condition "c" exists, and
- e. twenty percent (20%) during calendar years in which condition "d" exists; or

3. The applicable percentage of the individual's wages for insured work paid during the base period of the individual. The applicable percentage is determined by the conditional factor in place during the calendar year in which the individual files for benefits. The conditional factor is determined pursuant to the provisions of Section 3-113 of this title. The applicable percentages for this paragraph are as follows:

- a. fifty percent (50%) during any calendar year in which the balance in the Unemployment Compensation Fund is in excess of the amount required to initiate conditional contribution rates, pursuant to the provisions of Section 3-113 of this title,

- b. forty-seven and one-half percent (47.5%) during calendar years in which condition "a" exists,
- c. forty-five percent (45%) during calendar years in which condition "b" exists,
- d. forty-two and one-half percent (42.5%) during calendar years in which condition "c" exists, and
- e. forty percent (40%) during calendar years in which condition "d" exists.

Added by Laws 1980, c. 323, § 2-106, eff. July 1, 1980. Amended by Laws 1983, c. 270, § 5, emerg. eff. June 23, 1983; Laws 1986, c. 205, § 2, emerg. eff. June 6, 1986; Laws 1998, c. 161, § 6, eff. July 1, 1998; Laws 2022, c. 287, § 2, eff. Jan. 1, 2023.

§40-2-107. Benefits - Portion of a week.

BENEFITS - PORTION OF A WEEK. Notwithstanding any other provisions of this act, the Commission may by rule prescribe that the existence of unemployment, eligibility for benefits and the amount of benefits payable shall be determined, in the case of any otherwise eligible claimant who, within a week of unemployment, is separated from, or secures, work on a regular attachment basis, for that portion of the week occurring before or after such separation from or securing of work, provided such rules are reasonably calculated to secure general results substantially similar to those provided by this act with respect to weeks of unemployment.

Added by Laws 1980, c. 323, § 2-107, eff. July 1, 1980. Amended by Laws 1993, c. 219, § 6, eff. Sept. 1, 1993.

§40-2-108. Benefits - Approved training.

BENEFITS - APPROVED TRAINING.

A. Notwithstanding any other provisions of law, no otherwise eligible individual shall be denied benefits for any week because the individual is in training with the approval of the Oklahoma Employment Security Commission, nor shall such individual be denied benefits with respect to any week in which the individual is in training with the approval of the Commission by reason of the application of provisions of law relating to availability for work, active search for work, failure to apply for, or a refusal to accept, suitable work. Such approval for training shall be determined by consideration of all the following factors:

1. The individual's skills are obsolete or such that there are minimal opportunities for employment;
2. Training is for an occupation for which there is a substantial and recurring demand; and
3. The individual possesses aptitudes or skills which can be supplemented by retraining within a reasonable time.

B. Any individual in training approved by the Commission will produce satisfactory evidence of continued attendance and

satisfactory progress, when requested by the Commission. Failure to comply shall result in a disqualification of benefits for each week of occurrence.

Added by Laws 1980, c. 323, § 2-108, eff. July 1, 1980. Amended by Laws 1995, c. 340, § 4, eff. July 1, 1995; Laws 2015, c. 249, § 3, eff. Nov. 1, 2015.

§40-2-109. Employment requirement in preceding benefit year.

EMPLOYMENT REQUIREMENT IN PRECEDING BENEFIT YEAR.

No individual may receive benefits in a benefit year unless, subsequent to the beginning of the immediately preceding benefit year during which the individual received benefits, the individual performed service and earned remuneration for such service in an amount equal to at least ten (10) times the individual's weekly benefit amount in the current benefit year.

Added by Laws 1980, c. 323, § 2-109, eff. July 1, 1980. Amended by Laws 2007, c. 354, § 3, eff. Nov. 1, 2007.

§40-2-201. Applicability.

APPLICABILITY. The provisions of this part apply to eligibility to receive benefits under this act.

Added by Laws 1980, c. 323, § 2-201, eff. July 1, 1980.

§40-2-202. Conditions for eligibility.

CONDITIONS FOR ELIGIBILITY. An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he satisfies the provisions of this Part 2.

Added by Laws 1980, c. 323, § 2-202, eff. July 1, 1980.

§40-2-203. Claim.

CLAIM.

A. An unemployed individual must file an initial claim for unemployment benefits 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 by telecommunication 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. With respect to each week, the claimant must provide the Commission with a true and correct statement of all material facts relating to 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) 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.

C. 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 Section 4-701 et seq. of this title.

D. 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.

Added by Laws 1980, c. 323, § 2-203, eff. July 1, 1980. Amended by Laws 1993, c. 219, § 7, eff. Sept. 1, 1993; Laws 1997, c. 30, § 6, eff. July 1, 1997; Laws 2002, c. 452, § 8, eff. Nov. 1, 2002; Laws 2003, c. 177, § 1, eff. Nov. 1, 2003; Laws 2010, c. 216, § 4, eff. July 1, 2010; Laws 2013, c. 148, § 1, eff. Nov. 1, 2013; Laws 2014, c. 4, § 7, emerg. eff. April 2, 2014; Laws 2014, c. 220, § 1, eff. Nov. 1, 2014; Laws 2015, c. 249, § 4, eff. Nov. 1, 2015; Laws 2019, c. 251, § 3, eff. July 1, 2019; Laws 2021, c. 424, § 3, eff. Nov. 1, 2021; Laws 2022, c. 360, § 12, eff. Nov. 1, 2022.

NOTE: Laws 2013, c. 71, § 3 repealed by Laws 2014, c. 4, § 8, emerg. eff. April 2, 2014.

§40-2-204. Registration for employment.

REGISTRATION FOR EMPLOYMENT.

The unemployed individual must register for work 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 waive the requirements of this section as to individuals attached to regular jobs, situations involving mass layoffs, or individuals in areas not served by an established employment office or Internet service when it finds that compliance with these requirements would be oppressive, or would be inconsistent with the purpose of the Employment Security Act of 1980.

Added by Laws 1980, c. 323, § 2-204, eff. July 1, 1980. Amended by Laws 1993, c. 219, § 8, eff. Sept. 1, 1993; Laws 2012, c. 196, § 1, emerg. eff. May 8, 2012.

§40-2-205. Repealed by Laws 1990, c. 333, § 20, emerg. eff. May 31, 1990.

§40-2-205.1. Ability to work and acceptance of employment.

The unemployed individual must be able to perform work duties in keeping with his or her education, training and experience. He or she must also be available to seek and accept work at any time and may not be engaged in any activity that would restrict his or her seeking or accepting employment.

The fact that an individual is enrolled in school shall not, in and of itself, render an individual ineligible for unemployment benefits. Such individual who is involuntarily unemployed and otherwise eligible for benefits and who offers to quit school, adjust class hours or change shifts in order to secure employment shall be entitled to benefits.

Added by Laws 1990, c. 333, § 3, emerg. eff. May 31, 1990.

Renumbered from § 2-205A of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006. Amended by Laws 2022, c. 360, § 13, eff. Nov. 1, 2022.

§40-2-205A. Renumbered as § 2-205.1 of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006.

§40-2-206. Waiting period.

WAITING PERIOD. The unemployed individual must have been unemployed for a waiting period of one (1) week. No week shall be counted as a week of unemployment for the purposes of this section:

(1) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

(2) If benefits have been paid with respect thereto;

(3) Unless the individual was eligible for benefits with respect thereto.

Added by Laws 1980, c. 323, § 2-206, eff. July 1, 1980.

§40-2-207. Wage requirement during base period.

WAGE REQUIREMENT DURING BASE PERIOD.

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

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

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

B. Notwithstanding the provisions in subsection A of this section, an unemployed individual shall be eligible for benefits if, during the individual's base period, he or she shall have been paid:

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

C. 1. If an individual lacks sufficient base period wages to establish a claim for benefits under this section, any wages paid in the individual's alternative base period shall be considered as the individual's base period wages. Once the alternative base period wages are determined, those wage figures shall be used to determine eligibility for benefits under subsection A or B of this section.

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

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

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

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

Added by Laws 1980, c. 323, § 2-207, eff. July 1, 1980. Amended by Laws 1983, c. 270, § 6, emerg. eff. June 23, 1983; Laws 1995, c. 340, § 5, eff. July 1, 1995; Laws 2002, c. 452, § 9, eff. Nov. 1, 2002; Laws 2009, c. 460, § 1, eff. Nov. 1, 2009; Laws 2010, c. 216, § 5, eff. July 1, 2010; Laws 2012, c. 196, § 2, emerg. eff. May 8, 2012; Laws 2018, c. 14, § 1, eff. Nov. 1, 2018.

§40-2-208. Aliens.

ALIENS. (1) Effective January 1, 1978, benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services or otherwise is permanently residing in the United States under color of law at the time such services were performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the

Immigration and Nationality Act. Provided, that any modifications to the provisions of Section 3304(a) (14) of the Federal Unemployment Tax Act as provided by Public Law 95-19 which specify other conditions or other effective dates than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be deemed applicable under the provisions of this subsection.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

Added by Laws 1980, c. 323, § 2-208, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 4, emerg. eff. June 25, 1981.

§40-2-209. Benefits for employees of governmental or nonprofit employers.

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;

(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. Added by Laws 1980, c. 323, § 2-209, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 5, emerg. eff. June 25, 1981; Laws 1982, c. 304, § 4, operative Oct. 1, 1982; Laws 1984, c. 252, § 2, emerg. eff. May 29, 1984; Laws 1986, c. 205, § 3, emerg. eff. June 6, 1986; Laws 2004, c. 102, § 3, eff. Nov. 1, 2004; Laws 2008, c. 132, § 6, eff. Nov. 1, 2008; Laws 2017, c. 345, § 4, eff. July 1, 2017; Laws 2018, c. 14, § 2, eff. Nov. 1, 2018; Laws 2021, c. 424, § 4, eff. Nov. 1, 2021.

§40-2-209.1. Repealed by Laws 2019, c. 179, § 1, emerg. eff. April 25, 2019.

§40-2-210. Separation from work due to compelling family circumstances.

In addition to the eligibility provisions provided by this act, an individual shall be eligible to receive unemployment benefits, if monetarily and otherwise eligible, if the claimant was separated from work due to compelling family circumstances. For purposes of this section:

1. "Immediate family member" means the claimant's spouse, parents and dependent children;
2. "Illness" means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant paid or unpaid leave;
3. "Disability" means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant paid or unpaid leave. Disability encompasses all types of disability, including:
 - a. mental and physical disabilities,
 - b. permanent and temporary disabilities, and
 - c. partial and total disabilities; and
4. "Compelling family circumstances" means:
 - a. if the claimant was separated from employment with the employer because of the illness or disability of the claimant and, based on available information, the Oklahoma Employment Security Commission finds that it was medically necessary for the claimant to stop working or change occupations,
 - b. the claimant was separated from work due to the illness or disability of an immediate family member,
 - c. if the spouse of the claimant was transferred or obtained employment in another city or state, and the family is required to move to the location of that job that is outside of commuting distance from the prior employment of the claimant, and the claimant separates from employment in order to move to the new employment location of the spouse,
 - d. if the claimant separated from employment due to domestic violence or abuse, verified by any reasonable evidence, which causes the individual to reasonably believe that the individual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family, or
 - e. if the claimant separated from employment to move with the claimant's spouse to a new location, and if the spouse of the claimant:

- (1) was a member of the U.S. Military, the U.S. Military Reserve, or the National Guard,
- (2) was on active duty within ninety (90) days of the date of discharge,
- (3) has a service-connected disability,
- (4) was discharged under honorable conditions from the military service, and
- (5) takes up residence at a location more than fifty (50) miles away from the claimant's former employer for the purpose of reentering civilian life.

Added by Laws 2009, c. 460, § 2, eff. Nov. 1, 2009. Amended by Laws 2014, c. 220, § 5, eff. Nov. 1, 2014.

§40-2-301. Waiver void.

WAIVER VOID. Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this act shall be void. Any agreement by any individual in the employ of any person or employing unit to pay all or any portion of an employer's contributions, required under this act from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him or require or accept any waiver of any right hereunder by any individual in his employ, discriminate in regard to the hiring or tenure of work on any term or condition of work of any individual on account of his claiming benefits under this act, or in any manner obstruct or impede the filing of claims for benefits. Any employer or officer or agent of an employer who violates any provision of this section shall, for each offense, be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) or be imprisoned for not more than six (6) months, or both such fine and imprisonment.

Added by Laws 1980, c. 323, § 2-301, eff. July 1, 1980.

§40-2-302. Fee - No charge by Commission or its employees - Counsel fee subject to approval - Choice of representative.

A. No individual claiming benefits shall be charged fees or costs of any kind in any proceeding under this act by the Board of Review, the Commission, or its representatives, or by any court or any officer thereof, except that a court may assess costs against the claimant or employer if the court determines that the proceedings for judicial review have been instituted or continued without reasonable grounds. Any individual claiming benefits in any proceeding before the Commission or the Board of Review or its representatives or a court may be represented by counsel but no such counsel shall either charge or receive for such services more than an amount approved by the Board of Review. Any person who violates

any provision of this section shall, for each such offense, be fined not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or imprisoned for not more than six (6) months, or both such fine and imprisonment.

B. Parties to any proceeding before the Commission or Board of Review may be represented in that proceeding by the individual of his or her choice regardless of whether or not that individual is an attorney duly licensed to practice law by the Supreme Court of the State of Oklahoma. Parties to any proceeding before a court of record of this state may appear pro se or the party must be represented by an attorney duly licensed to practice law by the Supreme Court of this state.

Added by Laws 1980, c. 323, § 2-302, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 6, emerg. eff. June 25, 1981; Laws 2003, c. 163, § 1, eff. Nov. 1, 2003.

§40-2-303. Assignments void, exemption from process.

ASSIGNMENTS VOID, EXEMPTION FROM PROCESS.

No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under the Employment Security Act of 1980 shall be valid. All such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt. Benefits received by an individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts during the time the individual was unemployed, except debts for child support obligations pursuant to Section 2-801 of this title, and debts created due to food purchase assistance overissuances for which the individual is liable pursuant to Section 2-803 of this title. Benefits shall be subject to tax levies issued by the Internal Revenue Service in accordance with 26 U.S.C., Section 6331(h) provided an agreement is entered into between the Internal Revenue Service and the Oklahoma Employment Security Commission, and approved by the United States Department of Labor, that provides for the payment of all administrative costs associated with processing the tax levies. No waiver of any exemption provided for in this section shall be valid.

Added by Laws 1980, c. 323, § 2-303, eff. July 1, 1980. Amended by Laws 1982, c. 304, § 5, operative Oct. 1, 1982; Laws 1997, c. 30, § 7, eff. July 1, 1997; Laws 1998, c. 161, § 7, eff. July 1, 1998; Laws 2018, c. 14, § 4, eff. Nov. 1, 2018.

§40-2-304. Deduction of health insurance premiums.

Notwithstanding the provisions of Sections 2-301 and 2-303 of Title 40 of the Oklahoma Statutes, nothing shall be construed to prohibit the deduction of an amount from unemployment compensation otherwise payable to an individual to pay for health insurance

premiums if such individual elected to have such deduction made and such deduction is made under a program approved by the United States Secretary of Labor. For purposes of this section, the term "premium" shall only include the sum of money agreed to be paid by the insured individual to the underwriter as consideration for the insurance.

Added by Laws 1984, c. 252, § 3, emerg. eff. May 29, 1984.

§40-2-305. Deduction of individual income tax withholdings.

DEDUCTION OF INDIVIDUAL INCOME TAX WITHHOLDINGS.

Notwithstanding the provisions of Sections 2-301 and 2-303 of this title, nothing shall be construed to prohibit the deduction of an amount from unemployment compensation, otherwise payable to an individual, to pay the withholding of federal or state individual income tax, if that individual elected to have such a deduction made and that deduction is made under a program approved by the United States Secretary of Labor. For the purposes of this section, if an individual elects to have this deduction taken from his or her weekly benefits, the federal withholding will be deducted at the percentage specified in the Federal Internal Revenue Code at 26 U.S.C., Section 3402(p)(2), and three percent (3%) of the total benefit amount will be deducted to pay the state withholding.

Added by Laws 1995, c. 340, § 6, eff. Jan. 1, 1997. Amended by Laws 2002, c. 452, § 10, eff. Nov. 1, 2002.

§40-2-401. Application of Part 4.

APPLICATION OF PART 4. This part applies to disqualification for benefits.

Added by Laws 1980, c. 323, § 2-401, eff. July 1, 1980.

§40-2-402. Fraud.

FRAUD.

A. If the Oklahoma Employment Security Commission determines that any individual has made a false statement or representation or has failed to disclose a material fact in violation of Section 5-102 of this title, the individual shall be ineligible to receive unemployment compensation for the week that determination is made by the Commission and for the next following fifty-one (51) weeks, and no benefit year shall be established during such period of ineligibility. After a determination has been made that an individual has violated Section 5-102 of this title in a particular benefit year, if the Commission determines that another violation of that section has occurred in any subsequent benefit year, the individual shall be ineligible to receive unemployment compensation for the week in which the subsequent determination is made by the Commission and for the next following one hundred three (103) weeks,

and no benefit year shall be established during such period of ineligibility.

B. If the Commission makes a determination as described in subsection A of this section, the individual shall be disqualified for each week benefits were paid as a result of a false statement or representation or a failure to disclose a material fact, and the individual shall be deemed overpaid for the entire amount of benefits paid as a result of claimant fraud.

C. The ineligibility and disqualification set forth in subsections A and B of this section are in addition to the penalty provided by Section 5-102 of this title, and shall be invoked irrespective of whether such individual is prosecuted for violation of Section 5-102 of this title, when the Commission makes such a determination of ineligibility or disqualification.

D. A determination of fraud must be made within two (2) years of the date on which the violation occurred.

Added by Laws 1980, c. 323, § 2-402, eff. July 1, 1980. Amended by Laws 2002, c. 452, § 11, eff. Nov. 1, 2002.

§40-2-403. Repealed by Laws 1990, c. 333, § 20, emerg. eff. May 31, 1990.

§40-2-404. Leaving work voluntarily.

LEAVING WORK VOLUNTARILY.

A. An individual shall be disqualified for benefits for leaving his or her last work voluntarily without good cause connected to the work, if so found by the Commission.

B. When adjudicating a separation from employment in an initial claim or additional initial claim, disqualification under this section shall continue for the full period of unemployment next ensuing after the individual left work voluntarily without good cause connected to the work and until the individual has become reemployed and has earned wages equal to or in excess of ten (10) times his or her weekly benefit amount.

C. When adjudicating a separation from employment during a continued claim series, disqualification under this section shall be for the week of the occurrence of leaving work voluntarily without good cause connected to the work.

Added by Laws 1980, c. 323, § 2-404, eff. July 1, 1980. Amended by Laws 2008, c. 132, § 7, eff. Nov. 1, 2008; Laws 2013, c. 71, § 4, eff. Nov. 1, 2013.

§40-2-404.1. Leaving work voluntarily of temporary employee.

A. For the purposes of this section:

1. "Temporary help firm" means a firm that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences,

temporary skill shortages, seasonal workloads and special assignments and projects;

2. "Temporary employee" means an employee assigned to work for the clients of a temporary help firm; and

3. "Good cause" means a reason that is significant and would compel an average reasonable worker, who would otherwise want a suitable job assignment with a client of the temporary help firm, to fail to contact the temporary help firm, to refuse an offered assignment, or to be unavailable for assignment; and

4. "Suitable job assignment" means work, either full-time or part-time for one or more days or portions thereof, that is in keeping with the education, training, experience, and ability of the individual to perform.

B. A temporary employee of a temporary help firm will be deemed to have left his or her last work voluntarily without good cause connected with the work if the temporary employee:

1. Does not contact the temporary help firm for reassignment on completion of an assignment. The temporary help firm shall establish the manner for a temporary employee to communicate that his or her assignment has ended and that he or she is available for reassignment at any time;

2. Refuses a suitable job assignment, without good cause;

3. Communicates his or her decision to cease seeking assignment for any period of time;

4. Becomes unavailable to accept a suitable job assignment, without good cause; or

5. Accepts employment with a client of the temporary help firm.

On and after the effective date of this act, the provisions of this subsection shall apply only if the temporary employee has been advised of the obligations and been provided a copy of a separate document written in clear and concise language that states the provisions in this section and that unemployment benefits may be denied for failure to comply.

C. For the purposes of the Employment Security Act of 1980, the temporary help firm is deemed to be the employer of the temporary employee.

Added by Laws 1995, c. 340, § 7, eff. July 1, 1995. Renumbered from § 2-404A of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006. Amended by Laws 2013, c. 105, § 1, eff. July 1, 2013.

§40-2-404.2. Work of a limited duration of time.

WORK OF A LIMITED DURATION OF TIME.

A. When an employer employs a worker for a limited duration of time specified by the employer, the worker is considered to have been laid off due to lack of work at the end of the time period set by the employer, provided that the worker's separation was due only to the completion of the work or the expiration of the time period.

B. When an employer employs a worker for a limited duration of time specified by the worker, the worker is considered to have voluntarily quit work at the end of the time period set by the worker, provided that the worker's separation was due only to the expiration of the time period.

Added by Laws 2003, c. 177, § 2, eff. Nov. 1, 2003. Renumbered from § 2-404B of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006.

§40-2-404A. Renumbered as § 2-404.1 of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006.

§40-2-404B. Renumbered as § 2-404.2 of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006.

§40-2-405. Determining good cause.

DETERMINING GOOD CAUSE.

Good cause for voluntarily leaving work under Section 2-404 of this title may include, among other factors, the following:

1. A job working condition that had changed to such a degree it was so harmful, detrimental, or adverse to the individual's health, safety, or morals, that leaving the work was justified;

2. Substantially unfair treatment of the employee or the creating of substantially difficult working conditions by the employer; or

3. If the claimant, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits waiver of his or her right to retain the employment when there is a layoff, has elected to be separated and the employer has consented thereto.

Added by Laws 1980, c. 323, § 2-405, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 7, emerg. eff. June 25, 1981; Laws 1997, c. 30, § 8, eff. July 1, 1997; Laws 1998, c. 161, § 8, eff. July 1, 1998; Laws 2003, c. 177, § 3, eff. Nov. 1, 2003; Laws 2005, c. 182, § 4, eff. Nov. 1, 2005; Laws 2006, c. 176, § 6, eff. July 1, 2006; Laws 2009, c. 460, § 3, eff. Nov. 1, 2009; Laws 2013, c. 71, § 5, eff. Nov. 1, 2013.

§40-2-406. Discharge for misconduct.

DISCHARGE FOR MISCONDUCT.

A. An individual shall be disqualified for benefits if the individual has been discharged for misconduct connected with 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 the employee has been discharged for misconduct connected with 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 of the employee's job duties or responsibilities or obligations pursuant to 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. 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.

Added by Laws 1980, c. 323, § 2-406, eff. July 1, 1980. Amended by Laws 2013, c. 148, § 2, eff. Nov. 1, 2013; Laws 2014, c. 220, § 3, eff. Nov. 1, 2014; Laws 2021, c. 424, § 5, eff. Nov. 1, 2021.

§40-2-406.1. Discharge for refusal to undergo drug or alcohol testing or positive test.

A. 1. An employee discharged on the basis of a refusal to undergo drug or alcohol testing or a positive drug or alcohol test conducted in accordance with the provisions of the Standards for

Workplace Drug and Alcohol Testing Act shall be considered to have been discharged for misconduct and shall be disqualified for benefits pursuant to the provisions of Section 2-406 of this title.

2. In any challenge to a positive drug or alcohol test, the claimant has the burden to prove that the test was not properly conducted. The employer must provide the chain of custody documentation at the request of any claimant challenging his or her test result.

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

B. In any claim brought by the discharged employee for compensation, a written report of the drug or alcohol test results shall be accepted as prima facie evidence of the administration and results of the drug or alcohol test. If challenged by the claimant as provided in paragraph 2 of subsection A of this section, the written report of the drug or alcohol test results shall be acceptable for presentation as evidence with the chain of custody of the sample properly documented.

Added by Laws 1993, c. 355, § 16, emerg. eff. June 10, 1993.

Amended by Laws 2006, c. 176, § 7, eff. July 1, 2006. Renumbered from § 2-406A of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006. Amended by Laws 2007, c. 78, § 1, eff. Nov. 1, 2007; Laws 2012, c. 196, § 3, emerg. eff. May 8, 2012; Laws 2013, c. 148, § 3, eff. Nov. 1, 2013.

§40-2-406.2. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-2-406A. Renumbered as § 2-406.1 of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006.

§40-2-407. Repealed by Laws 1994, c. 166, § 4, eff. Sept. 1, 1994.

§40-2-408. Suitable work.

SUITABLE WORK.

(1) In determining whether or not any work is suitable for an individual, there shall be considered among other factors and in addition to those enumerated in Section 2-409 the length of his unemployment, his prospects for obtaining work in his customary occupation, the distance of available work from his residence and prospects for obtaining local work.

(2) Suitable work shall be defined as employment in an occupation in keeping with the individual's prior work experience, education or training, or having no prior work experience, special education or training for occupations available in the general area

then, employment for which the individual would have the physical and mental ability to perform.

(3) Upon receipt of fifty percent (50%) of his benefits, suitable work shall not be limited to his customary or registered occupation.

(4) If the majority of the weeks of work in an individual's base period includes part-time work, the individual shall not be denied unemployment benefits under any provisions of this act relating to availability for work, active search for work, or failure to accept work, solely because the individual is seeking only part-time work. The phrase "seeking only part-time work", as used in this subsection, means the individual claiming unemployment benefits is available for a number of hours per week that are comparable to the individual's part-time work experience in the base period.

Added by Laws 1980, c. 323, § 2-408, eff. July 1, 1980. Amended by Laws 2009, c. 460, § 4, eff. Nov. 1, 2009.

§40-2-409. Conditions exempting otherwise suitable work.

CONDITIONS EXEMPTING OTHERWISE SUITABLE WORK. Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(4) If the new work involved a substantial degree of risk to his health, safety or morals.

Added by Laws 1980, c. 323, § 2-409, eff. July 1, 1980.

§40-2-410. Participation in labor disputes.

PARTICIPATION IN LABOR DISPUTES. (1) An individual shall be disqualified to receive benefits for any week with respect to which the Commission finds that his unemployment is due to a stoppage of work which exists at the factory, establishment or other premises at which he is or was last employed, because of a labor dispute.

(2) This section shall not apply if it is shown that:

(a) He is not participating in or directly interested in the labor dispute which caused the stoppage of work;

(b) He does not belong to a grade or class of workers of which, immediately before the commencement of the

stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute; or

(c) The employer has locked out his employees.

(3) Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment or other premises. Added by Laws 1980, c. 323, § 2-410, eff. July 1, 1980.

§40-2-411. Retirement payments.

RETIREMENT PAYMENTS.

1. Except for any payment or benefit payment made pursuant to the federal Social Security Act, an individual shall be disqualified for benefits for any week which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity or any other similar periodic retirement payment which is based on the previous work of such individual if:

- a. such pension, retirement or retired pay, annuity or similar payment is under a plan maintained, or contributed to, by a base period and chargeable employer, and
- b. in the case of such a payment not made under the Railroad Retirement Act of 1974, 45 U.S.C., Section 231 et seq., services performed for such employer by the individual after the beginning of the base period, or remuneration for such services, affect eligibility for or increase the amount of, such pension, retirement or retired pay, annuity or similar payment.

2. If the total of such remuneration is less than the benefits which would otherwise be due under the Employment Security Act of 1980, Section 1-101 et seq. of this title, the individual shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

3. If payments referred to in this section are being received by an individual under the federal Social Security Act, the Commission shall take into account the individual's contribution to Social Security and make no reduction in the weekly benefit amount. Added by Laws 1980, c. 323, § 2-411, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 8, emerg. eff. June 25, 1981; Laws 1982, c. 304, § 6, operative Oct. 1, 1982; Laws 1993, c. 46, § 1, emerg. eff. April 9, 1993; Laws 1995, c. 340, § 8, eff. July 1, 1995; Laws 2007, c. 354, § 4, eff. Nov. 1, 2007; Laws 2010, c. 179, § 4, emerg. eff. April 28, 2010; Laws 2018, c. 14, § 5, eff. Nov. 1, 2018.

§40-2-412. Receiving benefits from another state.

RECEIVING BENEFITS FROM ANOTHER STATE. An individual shall be disqualified for benefits for any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States. Provided, that if the appropriate agency of such other state or of the United States in which the individual was seeking benefits, but had not received benefits, finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply.

Added by Laws 1980, c. 323, § 2-412, eff. July 1, 1980.

§40-2-413. Inmates during confinement.

INMATES DURING CONFINEMENT. No inmate of the State Department of Corrections shall during confinement be eligible to receive benefits under this act.

Added by Laws 1980, c. 323, § 2-413, eff. July 1, 1980.

§40-2-414. Pregnant women not disqualified.

PREGNANT WOMEN NOT DISQUALIFIED. Nothing in this act shall prohibit pregnant women, who otherwise qualify for benefits under this title, from receiving said benefits for the full number of weeks to which they are entitled.

Added by Laws 1980, c. 323, § 2-414, eff. July 1, 1980.

§40-2-415. Participating in sports or athletic events.

PARTICIPATING IN SPORTS OR ATHLETIC EVENTS. Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons or similar periods if such individual performed such services in the first of such season or similar periods and there is a reasonable assurance that such individual will perform such services in the latter part of such seasons or similar periods.

Added by Laws 1980, c. 323, § 2-415, emerg. eff. June 13, 1980.

§40-2-416. Prohibition against disqualification of individuals taking approved training under Trade Act.

PROHIBITION AGAINST DISQUALIFICATION OF INDIVIDUALS TAKING APPROVED TRAINING UNDER TRADE ACT.

No individual shall be denied benefits for any week because such individual is in training approved under 19 U.S.C., Section 2296 (a) (1) of the Trade Act of 1974. An individual shall not be denied benefits by reason of leaving work to begin or continue such training, provided the work left is not suitable employment, or

because of the application, to any such week in training, of the provisions of the Employment Security Act of 1980 or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this section, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the adversely affected past employment of the individual, as defined for purposes of the Trade Act of 1974, and wages for such work at not less than eighty percent (80%) of the average weekly wage of the individual as determined for the purposes of the Trade Act of 1974.

Added by Laws 1982, c. 304, § 7, eff. Oct. 1, 1982. Amended by Laws 2006, c. 176, § 8, eff. July 1, 2006; Laws 2007, c. 354, § 5, eff. Nov. 1, 2007.

§40-2-417. Seek and accept work - Week of occurrence disqualification.

SEEK AND ACCEPT WORK - WEEK OF OCCURRENCE DISQUALIFICATION.

A. An individual shall be disqualified to receive benefits for each week in which the individual shall have failed to do any of the following:

1. Diligently search for suitable employment at a pay rate generally available in that area of the state in keeping with his or her prior experience, education and training;
2. Make application for the minimum number of weekly work search efforts as required by the Oklahoma Employment Security Commission; or
3. Present oneself as an applicant for employment in a manner designed to encourage favorable employment consideration.

B. The requirements of subsection A of this section shall be waived if the individual has been summoned to appear for jury duty before any court of the United States or of any state. The waiver will continue for as long as the individual remains on jury duty pursuant to the original summons.

Added by Laws 1994, c. 166, § 1, eff. Sept. 1, 1994. Amended by Laws 1995, c. 340, § 9, eff. July 1, 1995; Laws 2006, c. 176, § 9, eff. July 1, 2006; Laws 2015, c. 249, § 5, eff. Nov. 1, 2015; Laws 2024, c. 309, § 1, eff. Nov. 1, 2024.

§40-2-418. Seek and accept work - Indefinite disqualification.

SEEK AND ACCEPT WORK - INDEFINITE DISQUALIFICATION.

A. An individual shall be disqualified to receive benefits for the full period of unemployment next ensuing after the individual shall have failed to do any of the following:

1. Accept an offer of suitable work, as defined by Sections 2-408 and 2-409 of this title, from an employer including any former employer;

2. Apply for or accept suitable work, as defined by Sections 2-408 and 2-409 of this title, when so directed by the Oklahoma Employment Security Commission; or

3. Accept employment pursuant to a hiring hall agreement when so offered.

Such disqualification shall continue until the individual has become reemployed and has earned wages equal to or in excess of ten times his or her weekly benefit amount.

B. An employer who provides evidence of an offer of suitable work pursuant to paragraph 1 of subsection A of this section shall be proof of the failure of the individual to meet this requirement, and shall result in the immediate cessation of benefits until a determination can be made by the Commission. The Commission shall conduct a timely investigation of any such claim and verify the offer of suitable work.

C. Any individual who shall have failed in any of the requirements of this section due to illness, death of a family member, or other extenuating circumstance beyond his or her control shall be disqualified for regular benefits under this section only for the week of the occurrence of such circumstance beyond his or her control.

D. The Commission shall maintain or work with another public entity to maintain access to a skills test and an online jobs system that allows employers in this state to post job openings, to include job description, necessary qualifications, expected hours of work, and estimated compensation package for each job. The Commission may require each claimant for benefits to take a skills test and create an account and resume in the online jobs system. An individual shall be disqualified to receive benefits for the full period of unemployment for failing to meet any skills requirements set forth by the Commission.

E. An individual shall be disqualified to receive benefits for the full period of unemployment next ensuing after the individual shall have failed to do any of the following:

1. Diligently search for suitable employment at a pay rate generally available in that area of the state in keeping with his or her prior experience, education and training;

2. Make the minimum number of applications for work as required by the Commission with employers who could reasonably be expected to have work available; or

3. Present oneself as an applicant for employment in a manner designed to encourage favorable employment consideration.

Added by Laws 1994, c. 166, § 2, eff. Sept. 1, 1994. Amended by Laws 2011, c. 256, § 3; Laws 2013, c. 148, § 4, eff. Nov. 1, 2013; Laws 2018, c. 14, § 6, eff. Nov. 1, 2018; Laws 2024, c. 309, § 2, eff. Nov. 1, 2024.

§40-2-419. Acceptance of accelerated buyout of employment contract - Definition.

An individual shall be disqualified for unemployment benefits if that individual has accepted an accelerated buyout of a written employment contract from the employer. Disqualification under this section shall continue for the full period of unemployment next ensuing after the individual has accepted the contract buyout connected with the work of the individual and until such individual has become reemployed and has earned wages equal to or in excess of ten times the weekly benefit amount of the individual.

For purposes of this section, "accelerated buyout" shall mean a purchase of the remaining terms of a written employment contract in a single payment of One Hundred Thousand Dollars (\$100,000.00) or more.

Added by Laws 2004, c. 88, § 1, emerg. eff. April 13, 2004.

§40-2-420. Failure to personally appear as directed.

FAILURE TO PERSONALLY APPEAR AS DIRECTED.

The Oklahoma Employment Security Commission may require the individual to personally appear at a location for a purpose relevant to the individual's unemployment claim, job search, or reemployment services. If the individual fails to appear, the individual's claim for unemployment benefits will be disqualified indefinitely by the Commission until the individual makes a personal appearance as directed. An individual who has been disqualified indefinitely by the provisions of this section shall be disqualified for all weeks between the initial failure and the compliance with this section.

Added by Laws 2015, c. 249, § 6, eff. Nov. 1, 2015.

§40-2-421. Failure to participate in reemployment services through profiling.

FAILURE TO PARTICIPATE IN REEMPLOYMENT SERVICES THROUGH PROFILING.

The Oklahoma Employment Security Commission shall establish and utilize a system of Re-employment Services and Eligibility Assessment selection for all ex-military service claimants and for unemployment benefit claimants who will be likely to exhaust unemployment benefits and who will need job-search assistance services to make a successful transition to new employment. Any claimant who has been referred to re-employment services pursuant to the selection system and who fails to participate in the re-employment services made available to the claimant, shall be disqualified to receive benefits for each week in which the failure occurs, unless the Commission determines that:

1. The claimant has previously completed the re-employment services within the benefit year; or

2. There is good cause for the claimant's failure to participate in re-employment services.

Added by Laws 2015, c. 249, § 7, eff. Nov. 1, 2015. Amended by Laws 2019, c. 251, § 4, eff. July 1, 2019.

§40-2-422. Seasonal workers and employers.

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 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.

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 the employee's right to receive retroactive unemployment benefits if such employee is not reemployed by the seasonal employer in the subsequent normal seasonal work period. The 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 E of this section and the allowance of any claim in which the claimant did not receive the required notice.

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 this title.

F. An employer whose status as a seasonal employer is terminated under subsection 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.

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.

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 E of this section.

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.

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, 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.

Added by Laws 2016, c. 338, § 1, eff. Nov. 1, 2016. Amended by Laws 2021, c. 424, § 6, eff. Nov. 1, 2021.

§40-2-501. Applicability.

APPLICABILITY. This part applies to procedures for benefits. Added by Laws 1980, c. 323, § 2-501, eff. July 1, 1980.

§40-2-502. Posting of information.

POSTING OF INFORMATION. Each employer shall post and maintain in places readily accessible to its employees, statements concerning benefit rights, claims for benefits and any other matters relating to the administration of this act as the Commission may by rule prescribe. Each employer shall supply to its employees copies of statements or other materials relating to claims for benefits when and as the Commission may by rule prescribe. Statements and other materials shall be supplied by the Commission to all Oklahoma employers through the Internet website of the Commission, without cost to the employer.

Added by Laws 1980, c. 323, § 2-502, eff. July 1, 1980. Amended by Laws 1993, c. 219, § 9, eff. Sept. 1, 1993; Laws 2010, c. 216, § 6, eff. July 1, 2010.

§40-2-503. Claims, notices, and objections.

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 notice of the claim to the last employer of the claimant for whom the claimant worked at least fifteen (15) working days. These days are not required to be consecutive. Provided, that promptly after the Commission is notified of the claimant's separation from employment obtained during a continued claim series, the Commission shall give 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 by electronic means, or by mail.

D. Notice shall be deemed to have been given when the Commission transmits the notice by electronic means or by mail.

E. Within ten (10) days after the date the notice is sent, an employer may file a statement of objections to the claim setting forth specifically the facts which:

1. Disclose the name and Social Security number of the employee;
2. Make the claimant ineligible for benefits under Sections 2-201 through 2-210 of this title;
3. Disqualify the claimant from benefits under Sections 2-401 through 2-419 of this title; or
4. Relieve the employer from being charged for the benefit 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.

Added by Laws 1980, c. 323, § 2-503, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 9, emerg. eff. June 25, 1981; Laws 1993, c. 219, § 10, eff. Sept. 1, 1993; Laws 1995, c. 340, § 10, eff. Jan. 1, 1996; Laws 1997, c. 30, § 9, eff. July 1, 1997; Laws 2004, c. 102, § 4, eff. Nov. 1, 2004; Laws 2008, c. 132, § 8, eff. Nov. 1, 2008; Laws 2012, c. 196, § 4, emerg. eff. May 8, 2012; Laws 2013, c. 71, §

6, eff. Nov. 1, 2013; Laws 2014, c. 220, § 6, eff. Nov. 1, 2014; Laws 2018, c. 14, § 7, eff. Nov. 1, 2018; Laws 2019, c. 251, § 5, eff. July 1, 2019; Laws 2021, c. 424, § 7, eff. Nov. 1, 2021; Laws 2022, c. 360, § 14, eff. Nov. 1, 2022; Laws 2024, c. 114, § 4, eff. Nov. 1, 2024.

§40-2-503.1. Filing of employer protest and documents.

FILING OF EMPLOYER PROTEST AND DOCUMENTS.

A. An employer may file a statement of objections to the claim of a former employee at any time from the moment of discharge or separation from employment until the expiration of the ten-day time period set out in subsection E of Section 2-503 of this title. The statement of objections must contain a statement of specific facts and documentation which:

1. Disclose the name and Social Security number of the employee;
2. Make the claimant ineligible for benefits under Sections 2-201 through 2-210 of this title;
3. Disqualify the claimant for benefits under Sections 2-401 through 2-419 of this title; or
4. Relieve the employer from being charged for the benefit wages of this claimant.

B. Any timely statement of objection filed shall be considered a valid protest to a claim for unemployment benefits and the employer shall be considered an interested party to the claim. A statement of objection filed outside the time period or in any manner other than as set out in subsection A of this section shall not be considered a valid protest to a claim for unemployment of the former employee, and the employer shall not be considered an interested party to the claim.

Added by Laws 2015, c. 249, § 8, eff. April 30, 2016. Amended by Laws 2022, c. 360, § 15, eff. Nov. 1, 2022; Laws 2024, c. 114, § 5, eff. Nov. 1, 2024.

§40-2-504. Determinations of benefits.

A. DETERMINATIONS OF BENEFITS. A determination upon a claim for benefits shall be made promptly by a representative of the Oklahoma Employment Security Commission. It shall include a statement as to whether, and in what amount claimant is entitled to benefits for the week with respect to which the determination is made. In the event the claimant is determined to be ineligible for or disqualified from benefits under Part 2 or Part 4 of this Article, the determination shall state the reasons therefor. The initial determination in a benefit year shall include a statement as to whether the claimant has been paid the wages required under this act, and if so, the beginning and ending dates of the benefit year,

the weekly benefit amount, and the maximum total amount of benefits payable to him or her with respect to such benefit year.

B. The Commission shall do the following to verify the eligibility of an initial claim for benefits before paying benefits to that claim:

1. Require the claimant to submit proof of identity prior to his or her claim by using an identity verification source or service offered by the Commission to verify the identity of all claimants; and

2. To prevent and detect fraudulent activity, eligibility of claims will be verified using a diverse set of data deemed beneficial by the Commission, including but not limited to IP addresses and various other demographic data.

C. The Commission shall investigate any information that may indicate claimant ineligibility prior to paying benefits for the week in which the information was identified and any subsequent week. The Commission may cross-check all claims against any data sets deemed beneficial by the Commission in order to verify eligibility for benefits, including but not limited to:

1. The National Association of State Workforce Agencies' Integrity Data Hub;

2. The United States Department of Health and Human Services National Directory of New Hires;

3. The state directory of new hires;

4. Any inmate database maintained by the Oklahoma Department of Corrections;

5. The Social Security Administration's Prisoner Update Processing System;

6. The Centers for Disease Control and Prevention's National Vital Statistics System's Death Record Database;

7. Death records maintained by the Oklahoma Department of Health; and

8. The U.S. Citizenship and Immigration Services' Systematic Alien Verification for Entitlements (SAVE) database.

Added by Laws 1980, c. 323, § 2-504, eff. July 1, 1980. Amended by Laws 2024, c. 309, § 3, eff. Nov. 1, 2024.

§40-2-505. Determinations in labor dispute cases.

DETERMINATIONS IN LABOR DISPUTE CASES. Whenever any claim involves the application of the provisions of Section 2-410, the representative of the Commission first considering the claim shall, if so directed by the Commission, promptly transmit such claim and all filed objections thereto to an appeal tribunal which shall make a determination upon the issues involved under that section. Such appeal tribunal shall make the determination thereon after affording the claimant and each employer who filed an objection an opportunity for a hearing in accordance with the provisions of this section with

respect to hearings and determinations of appeal tribunals. The parties shall be promptly notified of the determination, together with the reasons therefor. Such determination shall be the final decision on the claim, unless, within ten (10) days after the mailing of notice to a party's last-known address, appeal is filed with the Board of Review.

Added by Laws 1980, c. 323, § 2-505, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 10, emerg. eff. June 25, 1981.

§40-2-506. Redeterminations.

REDETERMINATIONS.

The Oklahoma Employment Security Commission may reconsider a determination only when it finds that an error in computation or identity has occurred in connection therewith, or that wages of the claimant pertinent to such determination, but not considered in connection therewith, have been newly determined, or that reimbursed pay or back pay was received by a claimant under circumstances that would reduce the amount of benefits drawn, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentation or mistake of material facts, but no such redetermination shall be made after the expiration of the benefit year established by the initial determination, except that a determination made because of a false statement or representation or failure to disclose a material fact in violation of Section 5-102 or 5-103 of this title may be redetermined within two (2) years from the date of such false statement or representation or failure to disclose. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in the Employment Security Act of 1980 with respect to notice of an original determination. If the amount of benefits is increased upon such redetermination, an appeal therefrom solely with respect to the matters involved in such increase may be filed in the manner and subject to the limitations provided in Part 5 of Article 2 of the Employment Security Act of 1980. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to review in connection with an appeal by claimant from any determination upon a subsequent claim for benefits which may be affected in amount or duration by such redetermination. Subject to the same limitations and for the same reasons, the Commission may reconsider the determination in any case in which the final decision has been rendered by an appeal tribunal, the Board of Review or a court, and may apply to the body or court which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

Added by Laws 1980, c. 323, § 2-506, eff. July 1, 1980. Amended by Laws 2007, c. 354, § 6, eff. Nov. 1, 2007; Laws 2014, c. 220, § 7, eff. Nov. 1, 2014.

§40-2-507. Notice of determinations.

NOTICE OF DETERMINATIONS.

Notice of a determination upon a claim shall be given promptly to the claimant by delivery thereof or by mailing the notice to the claimant's last-known address or by electronic means if the claimant elected this form of notification through procedures set out by Oklahoma Employment Security Commission rules. Notice of a determination shall also be given promptly to the last employer of the claimant, for whom the claimant worked at least fifteen (15) working days, that objected to the claim in accordance with the provisions of subsection E of Section 2-503 of this title and to each other employer who timely filed a written objection to the claim. 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 by electronic means.

Added by Laws 1980, c. 323, § 2-507, emerg. eff. June 13, 1980.

Amended by Laws 1981, c. 259, § 11, emerg. eff. June 25, 1981; Laws 1997, c. 30, § 11, eff. July 1, 1997; Laws 2012, c. 196, § 5, emerg. eff. May 8, 2012.

§40-2-601. Applicability.

APPLICABILITY. This part applies to appeals from determinations of the Commission or its representatives to its appeals tribunal, to appeals from decisions of its appeals tribunal to the Board of Review and to judicial review of decisions of the Board of Review.

Added by Laws 1980, c. 323, § 2-601, eff. Oct. 1, 1980.

§40-2-602. Appeal referees.

APPEAL REFEREES. (1) The Executive Director, with approval by the Commission, shall appoint one or more referees who shall constitute the appeal tribunal. The referees shall act under the direct supervision of the Executive Director.

(2) Each appeal from a determination made by the Commission or one of its representatives shall be assigned to a referee who shall conduct a hearing after notice to the parties, receive the evidence in such hearing and decide the appeal.

Added by Laws 1980, c. 323, § 2-602, eff. Oct. 1, 1980. Amended by Laws 1982, c. 304, § 8, operative Oct. 1, 1982; Laws 1991, c. 295, § 1, eff. Sept. 1, 1991.

§40-2-603. Appeal tribunal.

APPEAL TRIBUNAL.

The claimant or any other party entitled to notice of a determination may file an appeal from the determination with the appeal tribunal within ten (10) calendar days after the date of mailing of the notice to the claimant's or other party's last-known address or, if the notice is not mailed, within ten (10) calendar days after the date of delivery of the notice. The claimant or other party may file an appeal in any manner allowed by Section 1-224 of this title or by telephone to the Commission's call center. In order to be considered timely, filing of an appeal made by telephone through a claims representative must be completed before the end of normal business hours.

Added by Laws 1980, c. 323, § 2-603, eff. Oct. 1, 1980. Amended by Laws 2002, c. 452, § 12, eff. Nov. 1, 2002; Laws 2010, c. 216, § 7, eff. July 1, 2010; Laws 2024, c. 114, § 6, eff. Nov. 1, 2024.

§40-2-604. Hearing.

HEARING. The appeal referee to whom the appeal is assigned, after affording the parties reasonable opportunity for a fair hearing, shall make findings and conclusions, and on the basis thereof affirm, modify, or reverse such determination; provided, however, that whenever an appeal involves a question as to whether services were performed by claimant in employment or for an employer, or as to amount of wages reported by an employer for claimant, the tribunal referee shall give special notice of such issue and of the pendency of the appeal by mail to the employer and to the Commission, both of whom shall thenceforth be parties to the proceeding and be afforded a reasonable opportunity to adduce evidence bearing on such questions; provided, that any party who enters an appearance before the tribunal referee waives the requirement of special notice by mail.

Added by Laws 1980, c. 323, § 2-604, eff. Oct. 1, 1980.

§40-2-605. Notice of referee decision.

NOTICE OF REFEREE DECISION.

The parties shall be promptly notified of such referee's decision and shall be furnished with a copy of the decision, including the findings and conclusions in support thereof. The decision shall be provided to the party by the agency's digital portal or email unless the party notifies the agency that they opted out from receiving notices by email pursuant to Section 11 of this act. Such decision shall be final unless, within ten (10) days after the date notice is deemed given, further review before the Board of Review is initiated pursuant to Section 2-606 of this title.

Added by Laws 1980, c. 323, § 2-605, eff. Oct. 1, 1980. Amended by Laws 2011, c. 256, § 4; Laws 2022, c. 360, § 16, eff. Nov. 1, 2022.

§40-2-606. Appeals from tribunal referee decisions to Board of Review.

APPEALS FROM TRIBUNAL REFEREE DECISIONS TO BOARD OF REVIEW.

The Board of Review shall review the record of an appeal filed by any of the parties entitled to notice on a determination of an appeal tribunal referee. On appeal, the Board of Review may affirm, modify, reverse, or remand any decision of an appeal tribunal referee on the basis of evidence previously submitted, or on the basis of additional evidence received by an appeal tribunal referee on remand. The Board of Review shall promptly notify the parties of its decision in writing, and the decision shall be final unless within thirty (30) days after notice is deemed given, a proceeding for judicial review is initiated pursuant to Section 2-610 of this title.

Added by Laws 1980, c. 323, § 2-606, eff. Oct. 1, 1980. Amended by Laws 1982, c. 304, § 9, operative Oct. 1, 1982; Laws 2004, c. 102, § 5, eff. Nov. 1, 2004; Laws 2010, c. 216, § 8, eff. July 1, 2010; Laws 2011, c. 256, § 5; Laws 2022, c. 360, § 17, eff. Nov. 1, 2022.

§40-2-607. Rules and procedures in appeals.

RULES AND PROCEDURES IN APPEALS.

The Board of Review shall adopt reasonable rules governing the manner of filing appeals and the conduct of hearings and appeals before the Board of Review, consistent with the provisions of the Employment Security Act of 1980. The Oklahoma Employment Security Commission shall adopt and, from time to time, may modify and amend rules governing appeals before the Appeal Tribunal of the Commission and its referees. The Oklahoma Employment Security Commission shall create and maintain a precedent manual to reflect current statutes and statutory changes along with current case law that is applicable to questions of law which may arise during hearing or appeals. The precedent manual shall be updated by the Commission within thirty (30) days of the effective date of any statutory changes and shall be available at the offices of the Commission and on any Internet website maintained by the Commission. When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual or in claims by a single individual with respect to two (2) or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, provided that in the judgment of the appeal tribunal referee having jurisdiction of the proceeding, such consolidation would not be prejudicial to any party. No person shall participate as an appeal tribunal referee or member of the Board of Review on any case in which the person has a personal interest. A record shall be kept of

all testimony and proceedings before an appeal tribunal referee, but the testimony need not be transcribed unless judicial review is initiated. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the Commission, and fees of witnesses subpoenaed on behalf of the Commission, the employer, or any claimant, shall be deemed part of the expense of administering the Employment Security Act of 1980.

Added by Laws 1980, c. 323, § 2-607, eff. Oct. 1, 1980. Amended by Laws 1982, c. 304, § 10, operative Oct. 1, 1982; Laws 1990, c. 333, § 4, emerg. eff. May 31, 1990; Laws 1998, c. 161, § 9, eff. July 1, 1998; Laws 2011, c. 256, § 6; Laws 2016, c. 287, § 4, eff. Nov. 1, 2016.

§40-2-608. Conclusiveness of determinations and decisions.

CONCLUSIVENESS OF DETERMINATIONS AND DECISIONS.

Except insofar as reconsideration of any determination is had under Section 2-506 of this title, any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination which has become final, or in a decision on appeal under this subsection which has become final, shall be conclusive for all the purposes of this act as between the Commission, the claimant, and all employers who had notice of such determination, redetermination, or decision. Subject to appeal proceedings and judicial review as provided in this title, any determination, redetermination or decision as to rights to benefits shall be conclusive for all the purposes of this act and shall not be subject to collateral attack by any party.

Added by Laws 1980, c. 323, § 2-608, eff. Oct. 1, 1980. Amended by Laws 2011, c. 256, § 7.

§40-2-609. Rule of decision.

RULE OF DECISION.

A final decision of the Board of Review and the principles of law declared in arriving at such decision, unless expressly or impliedly overruled by the passage of a more recent statute, by a later decision of the Board of Review, or by a court of competent jurisdiction, shall be binding upon the Commission and Appeal Tribunal referees in subsequent proceedings which involve the same questions of law or fact. In no event shall a decision of the Board of Review, or by a court of competent jurisdiction, decided prior to a change in law by the Legislature supersede or be binding upon the Commission, Appeal Tribunal referees, Board of Review, or any court of competent jurisdiction in proceedings subsequent to the passage of statutory changes.

Added by Laws 1980, c. 323, § 2-609, eff. Oct. 1, 1980. Amended by Laws 2011, c. 256, § 8; Laws 2014, c. 220, § 8, eff. Nov. 1, 2014; Laws 2016, c. 287, § 5, eff. Nov. 1, 2016.

§40-2-610. Judicial review.

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 issue to each party to the proceeding a copy of the petition and the 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.

Added by Laws 1980, c. 323, § 2-610, eff. Oct. 1, 1980. Amended by Laws 2006, c. 176, § 10, eff. July 1, 2006; Laws 2008, c. 132, § 9, eff. Nov. 1, 2008; Laws 2011, c. 256, § 9; Laws 2021, c. 424, § 8, eff. Nov. 1, 2021.

§40-2-610.1. Conclusiveness of proceedings.

Any findings of fact or law, judgment, conclusion or final order made by the Oklahoma Employment Security Commission, its referees, the Appeal Tribunal or Board of Review in an unemployment insurance proceeding shall not be conclusive or binding in any separate or subsequent action or proceeding, and shall not be used as evidence in any separate or subsequent action or proceeding, between an individual and his or her present or prior employer in any other forum regardless of whether or not the prior action was between the same or related parties or involved the same facts.

Added by Laws 1991, c. 295, § 2, eff. Sept. 1, 1991. Renumbered from § 2-610A of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006.

§40-2-610A. Renumbered as § 2-610.1 of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006.

§40-2-611. Commission is a party.

COMMISSION IS A PARTY. The Commission shall be a party to and entitled to notice in any proceeding involving a claim for benefits before a referee or the Board of Review. In any proceeding for judicial review the Commission may be represented by any attorney employed by the Commission or designated by it for that purpose or, at the Commission's request, by the Attorney General.

Added by Laws 1980, c. 323, § 2-611, eff. Oct. 1, 1980.

§40-2-612. Payment of benefits.

PAYMENT OF BENEFITS.

Benefits shall be promptly paid on any claim in accordance with a determination or redetermination or the decision of a referee, the Board of Review or a reviewing court upon the issuance of the determination, redetermination or decision, regardless of the pendency of an appeal, or petition for judicial review that is provided by the Employment Security Act of 1980, unless and until the determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with the modifying or reversing redetermination or decision. No injunction, supersedeas, stay or other writ or process suspending the payment of the benefits shall

be issued by any court, but if the determination, redetermination or decision is finally modified or reversed to deny benefits no employer's account shall remain charged with benefit wages pursuant to the erroneous determination, redetermination or decision and benefits shall not be paid for any weeks of unemployment involved in the modification or reversal that begin after the final decision. Added by Laws 1980, c. 323, § 2-612, eff. Oct. 1, 1980. Amended by Laws 2011, c. 256, § 10.

§40-2-613. Benefit overpayments.

BENEFIT OVERPAYMENTS.

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

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

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

3. Administrative overpayment - in which:

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

- b. an individual has received benefits and the decision to grant benefits was reversed at a higher level of appeal.

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

Added by Laws 1980, c. 323, § 2-613, eff. Oct. 1, 1980. Amended by Laws 1981, c. 259, § 12, emerg. eff. June 25, 1981; Laws 1986, c. 205, § 5, emerg. eff. June 6, 1986; Laws 1987, c. 10, § 2, emerg. eff. March 31, 1987; Laws 1992, c. 318, § 1, eff. July 1, 1992; Laws 2002, c. 452, § 13, eff. Nov. 1, 2002; Laws 2005, c. 182, § 5, eff. Nov. 1, 2005; Laws 2012, c. 196, § 6, emerg. eff. May 8, 2012; Laws 2016, c. 287, § 6, eff. Nov. 1, 2016; Laws 2018, c. 14, § 8, eff. Nov. 1, 2018.

§40-2-614. Waiver of appeal time.

WAIVER OF APPEAL TIME.

All time periods provided for appeals pursuant to the provisions of Article 2 of the Employment Security Act of 1980 may be waived for good cause shown up to one (1) year after the date of the determination or redetermination; provided, this waiver shall not apply to appeals to district court of decisions of the Board of Review.

Added by Laws 1983, c. 270, § 7, emerg. eff. June 23, 1983. Amended by Laws 1992, c. 318, § 2, eff. July 1, 1992; Laws 2003, c. 177, § 4, eff. Nov. 1, 2003; Laws 2019, c. 251, § 6, eff. July 1, 2019.

§40-2-615. Waiver of interest.

Any interest, or any portion thereof, that accrues pursuant to the provisions of Section 2-613 of Title 40 of the Oklahoma Statutes, may be waived by the Oklahoma Employment Security Commission provided the failure of the claimant to remit payment at the time a determination of overpayment was made:

1. Is explained to the satisfaction of the Commission;
2. Resulted from a mistake by the claimant of either the law or the facts concerning the repayment of overpayment benefits; or
3. Was caused by insolvency of the claimant.

No waiver of interest shall be granted unless a request for waiver is filed with the Commission within a three-year period from the date the interest accrued. No waiver of interest shall be granted to a claimant if it is determined that the claimant received an overpayment of benefits through fraud.

Added by Laws 2002, c. 452, § 14, eff. Nov. 1, 2002.

§40-2-616. Notice of overpayment determination.

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.

Added by Laws 2002, c. 452, § 15, eff. Nov. 1, 2002. Amended by Laws 2011, c. 256, § 11; Laws 2013, c. 71, § 7, eff. Nov. 1, 2013; Laws 2021, c. 424, § 9, eff. Nov. 1, 2021.

§40-2-617. Warrant of levy and lien.

WARRANT OF LEVY AND LIEN.

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

B. The Commission may file a copy of the warrant of levy and lien with the county clerk of the county or counties in which the individual has property and thereupon the county clerk shall index the warrant of levy and lien in the same manner as judgments using the name of the individual named in the warrant of levy and lien, indicating that it is due to an overpayment of unemployment insurance benefits, showing the amount due with interest, the date upon which the warrant of levy and lien was filed, and shall index the warrant of levy and lien against the real property described therein, if any is described. If the county clerk charges a fee for the filing of the warrant of levy and lien, the Commission may add the amount of the fee to the indebtedness owing by the individual named in the warrant of levy and lien.

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

D. The Commission may file a copy of the notice with the court clerk in the county in which the individual is employed or resides, and it shall be filed in the same manner as a judgment of a court of record for the purpose of pursuing any post-judgment collection procedure that is deemed appropriate. The Commission may send the notice to the sheriff in a county in which the individual owns real or personal property for execution. Upon receiving the notice, the sheriff shall proceed to execute the notice in all respects and with like effect and in same manner prescribed by law in respect to executions against property upon judgment of the court of record; and the sheriff shall execute and deliver to the purchaser a bill of sale or deed, as the case may be. Any purchaser, other than the state, shall be entitled, upon application to the court having jurisdiction of the property, to have confirmation (the procedure for which shall be the same as is now provided for the confirmation of a sale under execution) of the sale prior to the issuance of a

bill of sale or deed. The state shall be authorized to make bids at any such sale to the amount of indebtedness, interest, costs, and fees accrued. In the event the bid of the state is successful, the sheriff shall issue a proper muniment of title to the Commission, and the Commission shall hold the title for the use and benefit of the state. The state may sell any property obtained in this manner through the procedures available for the sale of excess property of the state. Any money received by the Commission through the sale of property in this manner shall be credited against the indebtedness of the individual. The sheriff shall be entitled to the same fee for executing the notice as the sheriff would be entitled to receive if executing an execution issued by the court clerk of the county upon a judgment of a court of record.

Added by Laws 2002, c. 452, § 16, eff. Nov. 1, 2002. Amended by Laws 2016, c. 287, § 7, eff. Nov. 1, 2016.

§40-2-618. Levy on income and monetary assets.

LEVY ON INCOME AND MONETARY ASSETS.

A. As used in this section, the following words have the following meanings:

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 debtor has with any bank;

3. "Debtor" means any person that is the subject of a warrant of levy and lien issued pursuant to Section 2-617 of this title;

4. "Earnings" means any form of payment to an individual including, but not limited to, salary, wages, commission, or other compensation; and

5. "Employer" means any type of business or organization that owes earnings to a debtor.

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

C. To levy upon an employer of the debtor, the Commission must serve a Notice of Levy on the employer along with the warrant of levy and lien that sets out the amount owing on the benefit overpayment of the debtor, with interest. The levy will have the same priority, and be subject to the same exceptions, as a continuing earnings garnishment provided for in Section 1173.4 of Title 12 of the Oklahoma Statutes. The following procedures will apply to a Notice of Levy served on an employer:

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

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

3. Any employer that fails or refuses to surrender money or rights to money belonging to its employee in the employer's possession, or that fails or refuses to make the appropriate deduction from wages pursuant to a levy provided for by this statute upon being served with a Notice of Levy and supporting warrant of levy and lien of the Commission, shall be liable to the Commission in a sum equal to the amount of money, rights to money, or wage deduction not so surrendered, but not exceeding the amount of the debtor's indebtedness for the collection of which the levy has been made, together with accrued interest pursuant to Section 2-613 of this title, and the cost of service of the Notice of Levy. Any amount recovered in this manner shall be credited against the liability of the debtor for the benefit overpayment indebtedness, for which the levy was made; and

4. Any employer in possession of money or rights to money subject to levy upon which a levy has been made that surrenders the money or rights to money to the Commission shall be discharged from any obligation or liability to the debtor and any other person or entity with respect to such money or rights to money arising from the surrender or payment.

D. To levy upon a debtor's bank account, the Commission must serve a Notice of Levy on the bank in which the debtor has an account, along with the warrant of levy and lien issued against the debtor. The following procedures will apply to a Notice of Levy served on a bank:

1. Upon receiving the Notice of Levy and the warrant of levy and lien issued against the debtor, the bank shall deliver all of the debtor's interest in the money in the debtor's bank account at the time of service of the levy, subject to the banker's lien or right of set off or any other priority claim of the bank, up to the amount of indebtedness indicated on the warrant of levy and lien plus accrued interest pursuant to Section 2-613 of this title and any fees for service of process, to the Commission office indicated in the Notice of Levy;

2. The delivery of this money shall occur within ten (10) days of the date of service of the Notice of Levy;

3. If there is no money in the debtor's bank account at the time the Notice of Levy is served, or if the bank account has been closed, an officer of the bank on which the Notice of Levy is served shall make a statement to that effect on the Notice of Levy. The statement shall be notarized and returned to the office of the Commission that is indicated in the Notice of Levy;

4. Any bank that fails or refuses to surrender money or rights to money in a bank account subject to levy, upon being served with a Notice of Levy and supporting warrant of levy and lien of the Commission, shall be liable to the Commission in a sum equal to the amount of money or rights to money not so surrendered, but not exceeding the amount of the debtor's indebtedness for the collection of which the levy has been made, together with accrued interest pursuant to Section 2-613 of this title, and the cost of service of the Notice of Levy. Any amount recovered in this manner shall be credited against the liability of the debtor for the benefit overpayment indebtedness, for which the levy was made; and

5. Any bank in possession of money or rights to money subject to levy, upon which a levy has been made, that surrenders the money or rights to money to the Commission shall be discharged from any obligation or liability to the debtor and any other person or entity with respect to such money or rights to money arising from the surrender or payment.

E. Service of the Notice of Levy and the warrant of levy and lien shall be made in the same manner as provided in Section 2004 of Title 12 of the Oklahoma Statutes for service of process in civil actions.

F. If a sheriff's department is enlisted to serve the Notice of Levy, that sheriff's department shall be entitled to a service fee of Fifty Dollars (\$50.00) that is to be paid by the Commission and added to the debtor's indebtedness.

G. Claims for exemptions and any other matter relating to the levy shall be filed with the Appeal Tribunal of the Oklahoma Employment Security Commission. An order of exemption may relate back no more than thirty (30) days before the filing of the claim for exemption and shall extend no further than the expiration date or termination of the levy. Appeal from the Appeal Tribunal decision shall be governed by the appeal procedures set out in Part 6 of Article 2 of the Employment Security Act of 1980, and the Administrative Rules of the Oklahoma Employment Security Commission pertaining thereto.

Added by Laws 2002, c. 452, § 17, eff. Nov. 1, 2002. Amended by Laws 2003, c. 177, § 5, eff. Nov. 1, 2003; Laws 2008, c. 132, § 10, eff. Nov. 1, 2008; Laws 2015, c. 249, § 9, eff. Nov. 1, 2015.

§40-2-619. Treasury offset program - Benefit overpayment collections.

TREASURY OFFSET PROGRAM - BENEFIT OVERPAYMENT COLLECTIONS.

A. The Oklahoma Employment Security Commission shall be authorized to collect unemployment benefit overpayment indebtedness through the Tax Offset Program of the U.S. Department of the Treasury pursuant to 26 U.S.C., Section 6402(f) and 31 CFR, Section 285.8. The Commission may submit overpayment indebtedness due to fraud that was established pursuant to paragraph 1 of Section 2-613 of Title 40 of the Oklahoma Statutes and overpayment indebtedness due to claimant error that was established under paragraph 2 of Section 2-613 of Title 40 of the Oklahoma Statutes, if the claimant error overpayment was due to a failure to report earnings.

B. Before submitting an indebtedness to the U.S. Department of the Treasury for collection through the Tax Offset Program, the Oklahoma Employment Security Commission shall notify the debtor in writing of the amount of the debt and the date the indebtedness was established. The notification shall give the debtor sixty (60) days from the date of mailing of the notice to present evidence to the Commission that all or a part of the indebtedness is not legally enforceable or is otherwise invalid.

C. If the debtor responds to the notice by presenting evidence, the Commission shall evaluate the evidence and review its records of the indebtedness. Based on this evaluation and review, the Commission may modify the amount of the indebtedness. Once the evaluation and review process is complete, the indebtedness shall be submitted to the U.S. Department of the Treasury for collection through the Tax Offset Program.

D. If no evidence is presented by the debtor within the sixty-day time period allowed by the notice, the amount of the indebtedness will be submitted to the U.S. Department of the Treasury for collection through the Tax Offset Program.

E. If the Oklahoma Employment Security Commission receives an erroneous payment from the U.S. Department of the Treasury, the Oklahoma Employment Security Commission shall return the payment to the U.S. Department of the Treasury. If the money that was erroneously paid to the Oklahoma Employment Security Commission had been credited to an unemployment benefit overpayment indebtedness, that indebtedness shall be reinstated to the amount that existed before the payment was credited.

Added by Laws 2015, c. 249, § 10, eff. Nov. 1, 2015.

§40-2-701. Definitions of terms applicable to extended benefits.

DEFINITIONS OF TERMS APPLICABLE TO EXTENDED BENEFITS. The words and phrases used in this Part shall, unless the context clearly requires otherwise, have the meanings prescribed in this part.

Added by Laws 1980, c. 323, § 2-701, eff. July 1, 1980.

§40-2-702. Applicability.

APPLICABILITY. The provisions of this part shall apply to the Extended Benefits Program.

Added by Laws 1980, c. 323, § 2-702, eff. July 1, 1980.

§40-2-703. Extended benefit period.

EXTENDED BENEFIT PERIOD. "Extended benefit period" means a period which shall:

(1) begin with the third week after the first week for which there is a state "on" indicator; and

(2) end with either of the following weeks, whichever occurs later:

(a) the third week after the first week for which there is a state "off" indicator, or

(b) the thirteenth consecutive week of such period.

No extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

Added by Laws 1980, c. 323, § 2-703, eff. July 1, 1980. Amended by Laws 1982, c. 304, § 11, operative Oct. 1, 1982.

§40-2-706. State "on" indicator.

STATE "ON" INDICATOR.

There is a "state 'on' indicator" for this state for a week if the Oklahoma Employment Security Commission determines, in accordance with the regulations of the Secretary of Labor of the United States, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment, not seasonally adjusted:

1. Equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two (2) calendar years, and equaled or exceeded five percent (5%); or

2. Equaled or exceeded six percent (6%).

Any optional or revised "state 'on' indicator" or indicators or optional waiver by a state of any such indicator or part of any such indicator provided for by Congress for any period of time shall be considered to be in effect in Oklahoma for such period of time.

Added by Laws 1980, c. 323, § 2-706, eff. July 1, 1980. Amended by Laws 1982, c. 304, § 12, operative Oct. 1, 1982; Laws 2002, c. 452, § 18, eff. Nov. 1, 2002.

§40-2-707. State "off" indicator.

STATE "OFF" INDICATOR.

There is a "state 'off' indicator" for this state for a week if the Commission determines, in accordance with the regulations of the Secretary of Labor of the United States, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment, not seasonally adjusted was either:

1. Less than six percent (6%) and was less than one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two (2) calendar years; or

2. Less than five percent (5%).

Any optional or revised "state 'off' indicator" or indicators or optional waiver by a state of any such indicator or part of any such indicator provided for by Congress for any period of time shall be considered to be in effect in Oklahoma for such period of time.

Added by Laws 1980, c. 323, § 2-707, eff. July 1, 1980. Amended by Laws 1982, c. 304, § 13, operative Oct. 1, 1982; Laws 2002, c. 452, § 19, eff. Nov. 1, 2002.

§40-2-708. Rate of insured unemployment.

RATE OF INSURED UNEMPLOYMENT. "Rate of insured unemployment", for purposes of Sections 2-706 and 2-707 of this title, means the percentage derived by dividing:

(1) the average weekly number of weeks claimed for weeks of unemployment for regular benefits, including interstate claims filed in this state with respect to the most recent thirteen-consecutive-week period, as determined by the Commission on the basis of its reports to the Secretary of Labor of the United States, by

(2) the average monthly employment covered under this act for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen-week period.

Added by Laws 1980, c. 323, § 2-708, eff. July 1, 1980. Amended by Laws 1982, c. 304, § 14, operative Oct. 1, 1982.

§40-2-709. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-2-710. Extended benefits.

EXTENDED BENEFITS. "Extended benefits" mean benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. Chapter 85, payable to an individual under the provisions of this Part 7 for weeks of unemployment, as defined by this act, in his eligibility period.

Added by Laws 1980, c. 323, § 2-710, eff. July 1, 1980.

§40-2-711. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-2-712. Exhaustee.

EXHAUSTEE. A. "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(1) has received, prior to such week, all the regular benefits payable to him according to the monetary determination for his current benefit year that includes such week under this act, or of any other state law; or

(2) has received, prior to such week, all the regular benefits available to him in his current benefit year that includes such week under this act or of any other state law after a cancellation of some or all of his wage credits or the partial or total reduction of his right to regular compensation; or

(3) his benefit year having expired prior to such week, has insufficient wages or employment, or both, on the basis of which he could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he is precluded from receiving regular benefits by reason of the provisions of Part 1 of Article 2 or the provision of any other state law that meets the requirements of Section 3304(a)(7) of the Internal Revenue Code of 1954; and

(4) has no right to unemployment benefits or allowances, as the case may be, under the following federal laws: The Railroad Unemployment Insurance Act, the Trade Expansion Act, and the Automotive Products Trade Act; and

(5) has not received and is not seeking for such week unemployment benefits under the law of Canada, but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is an exhaustee.

B. For purposes of paragraphs (1) and (2) of subsection A, an individual shall be deemed to have received in his current benefit year all of the regular benefits payable to him according to the monetary determination or available to him, as the case may be, even though:

(1) as a result of a pending appeal with respect to wages or employment or both that were not included in the original monetary determination with respect to such benefit year, he may subsequently be determined to be entitled to more regular benefits; or

(2) having established a benefit year, no regular benefits are payable to him during such year because his wage credits were cancelled or his right to regular compensation was totally reduced as the result of the application of a disqualification.

Added by Laws 1980, c. 323, § 2-712, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 13, emerg. eff. June 25, 1981.

§40-2-713. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-2-714. Extended benefits.

EXTENDED BENEFITS. Except when the result would be inconsistent with the other provisions of this section, as provided in the rules of the Commission, the provisions of this act which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits including, but not limited to, claim filing, claimant reporting and registration, information to claimants, notices to claimants of their weekly and total extended benefit amounts determinations, redeterminations, appeals and review, week for which benefits are paid, disqualifications and eligibility requirements, but excluding those provisions which apply to any waiting period, monetary qualifying or requalifying requirements and the computation of weekly and total amounts of regular benefits.

Added by Laws 1980, c. 323, § 2-714, eff. July 1, 1980. Amended by Laws 1993, c. 219, § 11, eff. Sept. 1, 1993.

§40-2-715. Eligibility for extended benefits.

ELIGIBILITY FOR EXTENDED BENEFITS.

A. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in the eligibility period of the individual only if the Commission finds that with respect to such week:

1. The individual is an "exhaustee" as defined in Section 2-712 of this title; and

2. Except as otherwise provided by this section, the individual has satisfied the requirements of the Employment Security Act of 1980, for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification under the Employment Security Act of 1980, Section 1-101 et seq. of this title, for the receipt of benefits.

B. An individual shall not be eligible for extended benefits unless, in the base period with respect to which the individual exhausted all rights to regular benefits, the individual shall have been paid wages for insured work of not less than one and one-half (1 1/2) times the amount of wages during that quarter of the base period of the individual in which the wages were the highest.

C. Any payment of extended benefits under the Employment Security Act of 1980 shall not be made to any individual for any week of unemployment in his or her eligibility period during which the individual:

1. Fails to accept any offer of suitable work;

2. Fails to apply for any suitable work to which referred by the state employment service; or

3. Fails to actively engage in seeking suitable work.

D. Suitable work shall be defined as any work which is within such individual's capabilities, except that if the individual furnishes satisfactory evidence that the individual's prospects for

obtaining work in his or her customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the provisions of Section 2-408 of this title with respect to regular benefit claimants.

1. Any work which is within the capabilities of such individual means that the individual has the physical and mental capacity to do the work and the background and experience which would enable the individual to perform the job.

2. Work for an extended benefit claimant shall not be considered suitable if the gross weekly pay of the job does not exceed the extended weekly benefit amount payable to the individual for a week of total unemployment plus the amount of any Supplemental Unemployment Benefits (SUB), as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1954, 26 U.S.C., Section 501, payable for such week and equal the higher of the federal minimum wage provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938, 29 U.S.C., Section 206, without regard to any exemption or any applicable state or local minimum wage.

E. If any individual is ineligible for extended benefits for any week by reason of a failure described in subsection B of this section, such individual shall be ineligible to receive extended benefits for the week in which such failure occurred and until the individual has been employed during at least four (4) different weeks which begin after such failure and has earned wages equal to or in excess of four (4) times his weekly benefit amount.

F. 1. Extended benefits shall not be denied to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work if the position was not offered to such individual in writing or was not listed with the state employment service.

2. Extended benefits shall not be denied to any individual for any week by reason of a failure to accept an offer of or apply for suitable work if such failure would not result in a denial of benefits under the provisions of Sections 2-408, 2-409, 2-417 and 2-418 of this title to the extent that such provisions are not inconsistent with the provisions of this section.

3. Extended benefits shall not be denied to any individual for any week by reason of a failure to accept an offer of or apply for suitable work if the work failed to meet any of the requirements of Section 2-409 of this title.

G. An individual shall be treated as actively engaged in seeking work during any week if such individual has engaged in a systematic and sustained effort to obtain work during such week, and such individual provides tangible evidence to the state employment service that he has engaged in such an effort during such week.

H. An individual filing an interstate claim shall not be eligible for extended benefits after the first two (2) weeks of extended benefits that are payable if no extended benefit period is in effect for such week in the state where the claim is filed.

I. The state employment service shall refer any claimant entitled to extended benefits to any suitable work which meets the criteria prescribed in this section.

Added by Laws 1980, c. 323, § 2-715, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 14, emerg. eff. June 25, 1981; Laws 1982, c. 304, § 15, operative Oct. 1, 1982; Laws 1984, c. 252, § 4, emerg. eff. May 29, 1984; Laws 1993, c. 88, § 1, emerg. eff. April 18, 1993; Laws 1994, c. 166, § 3, eff. Sept. 1, 1994; Laws 1995, c. 340, § 11, eff. July 1, 1995; Laws 2002, c. 452, § 20, eff. Nov. 1, 2002. NOTE: Laws 1994, c. 73, § 1 repealed by Laws 1994, c. 166, § 4, eff. Sept. 1, 1994.

§40-2-716. Weekly extended benefit amount.

WEEKLY EXTENDED BENEFIT AMOUNT. (1) The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him for a week of total unemployment during his current benefit year, or if he has no current benefit year, his most recent benefit year. If the individual had more than one (1) weekly amount of regular benefits for total unemployment during such benefit year, the weekly amount of extended benefits for total unemployment shall be the average of such weekly benefit amounts.

(2) The weekly benefit amount of extended benefits payable for a week of less than total unemployment shall be based on the weekly benefit amount determined pursuant to subsection (1) of this section. Provided, that for any week during a period in which federal payments to states under Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. Such reduced weekly extended benefit amount, if not a full dollar amount, shall be rounded to the nearest lower full dollar amount.

Added by Laws 1980, c. 323, § 2-716, eff. July 1, 1980. Amended by Laws 1986, c. 205, § 6, emerg. eff. June 6, 1986.

§40-2-717. Total amount of extended benefits payable.

TOTAL AMOUNT OF EXTENDED BENEFITS PAYABLE. The total extended benefit amount payable to any eligible individual with respect to

his applicable benefit year shall be the least of the following amounts:

(1) fifty percent (50%) of the total amount of regular benefits which were payable to him under this act, during his applicable benefit year;

(2) thirteen (13) times his average weekly benefit amount as determined in subsection (1) of this section which was payable to him under this act, for a week of total unemployment during such benefit year;

(3) thirty-nine (39) times his average weekly benefit amount as determined in subsection (1) of Section 2-716 payable to him under this act, for a week of total unemployment during such benefit year, reduced by the regular benefits paid, or deemed paid, to him during such benefit year.

(4) If an individual is entitled to more extended benefits as a result of an appeal which afforded him more regular benefits, an appropriate change shall be made in the individual's total extended benefit amount.

(5) If an individual who has received extended benefits for a week or weeks of unemployment is determined to be entitled to more regular benefits with respect to such week or weeks as the result of an appeal, the extended benefits paid to him shall be treated as if they were regular benefits up to the greater amount of regular benefits to which he has been determined to be entitled. If the individual is entitled to more extended benefits as a result of being entitled to more regular benefits, the total extended benefit amount payable to him shall be amended accordingly.

Added by Laws 1980, c. 323, § 2-717, eff. July 1, 1980.

§40-2-718. Public announcement of extended benefit period.

PUBLIC ANNOUNCEMENT OF EXTENDED BENEFIT PERIOD. Whenever an extended benefit period is to become effective in this state, as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of state "off" indicators, the Commission shall make an appropriate public announcement.

Added by Laws 1980, c. 323, § 2-718, eff. July 1, 1980. Amended by Laws 1982, c. 304, § 16, operative Oct. 1, 1982.

§40-2-719. Commission to make computations.

COMMISSION TO MAKE COMPUTATIONS. Computations required by the provisions of this part shall be made by the Commission, in accordance with regulations prescribed by the Secretary of Labor of the United States.

Added by Laws 1980, c. 323, § 2-719, eff. July 1, 1980.

§40-2-720. Commission to ensure compliance.

COMMISSION TO ENSURE COMPLIANCE. In the administration of the provisions of this Part which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, and the Unemployment Compensation Amendments of 1976, the Commission shall take such action as may be necessary to ensure that the provisions are so interpreted and applied so as to meet the requirements of such federal act as interpreted by the Department of Labor of the United States, and to secure to this state the full reimbursement of the federal share of extended benefits paid under this act that are reimbursable under the federal act.
Added by Laws 1980, c. 323, § 2-720, eff. July 1, 1980.

§40-2-721. Employers not liable for reimbursed payments.

EMPLOYERS NOT LIABLE FOR REIMBURSED PAYMENTS. Notwithstanding any other provisions of this act no employer shall be liable for payments in lieu of contributions with respect to extended benefit payments which are wholly reimbursed to the state by the federal government.

Added by Laws 1980, c. 323, § 2-721, eff. July 1, 1980.

§40-2-722. Reimbursement deposited in fund.

REIMBURSEMENT DEPOSITED IN FUND. Reimbursement of the federal share shall be deposited in the Unemployment Compensation Fund created by this act.

Added by Laws 1980, c. 323, § 2-722, eff. July 1, 1980.

§40-2-723. Overpayments, restitution, offset, and recoupment.

OVERPAYMENTS, RESTITUTION AND OFFSET. The provisions of this act applicable to recovery of overpayments, including restitution, offset, and recoupment shall apply to overpayments of extended benefits. If there is recovery of extended benefits, that proportion of the amount restored or offset which represents the federal share of the original payments shall be restored to the appropriate federal account.

Added by Laws 1980, c. 323, § 2-723, eff. July 1, 1980. Amended by Laws 2010, c. 216, § 9, eff. July 1, 2010.

§40-2-724. Limitation on amount of combined unemployment insurance and Trade Act benefits received.

LIMITATION ON AMOUNT OF COMBINED UNEMPLOYMENT INSURANCE AND TRADE ACT BENEFITS RECEIVED. If the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that the individual would be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment

allowances within that benefit year, multiplied by the weekly benefit amount for extended benefits of the individual.
Added by Laws 1982, c. 304, § 17, operative Oct. 1, 1982.

§40-2-801. Child support obligations.

CHILD SUPPORT OBLIGATIONS.

A. 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 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 child support enforcement agency.

C. Any amount deducted and withheld under subsection B of this section shall be paid by the Commission to the Centralized Support Registry pursuant to Section 413 of Title 43 of the Oklahoma Statutes.

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 child support enforcement agency in satisfaction of the individual's child support obligations.

E. For purposes of subsections A through 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.

F. This section applies only if appropriate arrangements have been made for reimbursement by the state 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 child support enforcement agency.

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 child support enforcement agency" means 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 the deductions shall be defined as only a state 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.

Added by Laws 1982, c. 304, § 18, operative Oct. 1, 1982. Amended by Laws 1990, c. 235, § 2, eff. Sept. 1, 1990; Laws 2018, c. 14, § 9, eff. Nov. 1, 2018; Laws 2021, c. 424, § 10, eff. Nov. 1, 2021.

§40-2-802. Reports by employers to Employment Security Commission - New hire registry.

REPORTS BY EMPLOYERS TO EMPLOYMENT SECURITY COMMISSION - NEW HIRE REGISTRY.

A. Employers doing business in the State of Oklahoma shall report to the Oklahoma Employment Security Commission, the hiring or employment of any person who resides or works in this state to whom the employer anticipates paying earnings.

B. Such report shall contain the employee's name, address, social security number, date of employment, state of employment, along with the employer's name, address, and federal identification number.

C. The report must be made within twenty (20) days of hiring, or twice monthly, not less than twelve (12) nor more than sixteen (16) days apart if reported electronically or magnetically. The report may be made by mailing a copy of the employee's W-4 form, by submitting a fax transmission of the employee's W-4 form, by submitting electronic media in a format that can be used by the Commission, or by any other means authorized by the Commission.

D. The Child Support Enforcement Division shall be the official New Hire Registry for the State of Oklahoma and will obtain the new hire information from the Oklahoma Employment Security Commission.

E. The Child Support Enforcement Division shall enter into agreements with state agencies administering unemployment, employment services, workforce system programs, workers' compensation, public assistance, Medicaid, food stamps, vocational rehabilitation, and other programs specified by federal law or regulation, to provide such information upon request.

F. Used in this section:

1. "Employee" means an individual who is an employee as defined by the Internal Revenue Code of 1986, 26 U.S.C., Section 3401 et seq. "Employee" does not mean an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of such agency has determined that reporting with respect

to that employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission;

2. "Employer" means an individual or other entity who is an employer as defined by the Internal Revenue Code of 1986, 26 U.S.C., Section 3401(d) and includes any governmental entity and any labor organization; and

3. "Labor organization" means an entity as defined by the National Labor Relations Act, 29 U.S.C., Section 152(5) including, but not limited to, any entity known as a "hiring hall" which is used by the organization and an employer to carry out requirements described in Section 8(f)(3) of the National Labor Relations Act, 29 U.S.C., Section 158(f)(3), of an agreement between the organization and the employer.

Added by Laws 1994, c. 356, § 34, eff. Sept. 1, 1994. Amended by Laws 1997, c. 402, § 8, eff. July 1, 1997; Laws 2001, c. 329, § 1, emerg. eff. June 1, 2001; Laws 2002, c. 452, § 21, eff. Nov. 1, 2002; Laws 2015, c. 249, § 11, eff. Nov. 1, 2015.

§40-2-803. Food purchase assistance overissuances.

FOOD PURCHASE ASSISTANCE OVERISSUANCES.

A. An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not he or she owes an uncollected overissuance of food purchase assistance benefits, as defined in 7 U.S.C., Section 2022(c)(1). The Oklahoma Employment Security Commission shall notify the state food purchase assistance agency enforcing such obligations of any individual who discloses that he or she owes food purchase assistance overissuances and who is determined to be eligible for unemployment compensation.

B. The Commission shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance:

1. The amount specified by the individual to the Commission to be deducted and withheld under this section;

2. The amount, if any, determined pursuant to an agreement submitted to the state food purchase assistance agency under 7 U.S.C., Section 2022(c)(3)(A); or

3. Any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to 7 U.S.C., Section 2022(c)(3)(B).

C. Any amount deducted and withheld under this section shall be paid by the Commission to the appropriate state food purchase assistance agency.

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 the individual

to the state food purchase assistance agency as repayment of the individual's uncollected overissuance.

E. For purposes of this section, the term "unemployment compensation" means any compensation payable under this act including amounts payable by the Commission pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

F. This section applies only if arrangements have been made for reimbursement by the state food purchase assistance agency for the administrative costs incurred by the Commission under this section which are attributable to the repayment of uncollected overissuances to the state food purchase assistance agency.

Added by Laws 1997, c. 30, § 10, eff. July 1, 1997. Amended by Laws 2018, c. 14, § 10, eff. Nov. 1, 2018.

§40-2-900. Repealed by Laws 2014, c. 220, § 11, eff. Nov. 1, 2014.

§40-2-901. Repealed by Laws 2014, c. 220, § 11, eff. Nov. 1, 2014.

§40-2-902. Repealed by Laws 2014, c. 220, § 11, eff. Nov. 1, 2014.

§40-2-903. Repealed by Laws 2014, c. 220, § 11, eff. Nov. 1, 2014.

§40-2-904. Repealed by Laws 2014, c. 220, § 11, eff. Nov. 1, 2014.

§40-2-905. Repealed by Laws 2014, c. 220, § 11, eff. Nov. 1, 2014.

§40-2-906. Repealed by Laws 2014, c. 220, § 11, eff. Nov. 1, 2014.

§40-2-907. Repealed by Laws 2014, c. 220, § 11, eff. Nov. 1, 2014.

§40-2-908. Repealed by Laws 2014, c. 220, § 11, eff. Nov. 1, 2014.

§40-2-909. Repealed by Laws 2014, c. 220, § 11, eff. Nov. 1, 2014.

§40-2-910. Repealed by Laws 2014, c. 220, § 11, eff. Nov. 1, 2014.

§40-3. Obstructing work of labor officials.

No person shall interfere with, obstruct or hinder by force or otherwise the Commissioner of Labor, his deputies, assistants, or special agents, or factory inspectors while in the performance of their duties, or refuse to properly answer questions asked by such officers pertaining to the laws over which he has supervision under the provisions of this act, or refuse them admittance to any place where and when labor is being performed which is affected by the provisions of this act.

Laws 1910-11, c. 128, p. 283, § 3.

§40-3-101. Applicability.

APPLICABILITY.

(1) The provisions of this Article 3 apply to the payment of contributions by employers.

(2) The provisions of this Part 1 apply to employers other than employers who are subject to Part 7, or employers who have elected to reimburse under Part 8 of this article, or employers who have elected to reimburse under paragraph 2 of subsection E of Section 1-108 of this title.

Added by Laws 1980, c. 323, § 3-101, eff. July 1, 1980. Amended by Laws 2006, c. 176, § 11, eff. July 1, 2006.

§40-3-102. Contributions.

CONTRIBUTIONS.

A. Contributions shall accrue and become payable by each employer for each calendar year in which the employer is subject to the Employment Security Act of 1980, with respect to wages for employment. Such contributions shall become due and be paid by each employer to the Oklahoma Employment Security Commission for the Unemployment Compensation Fund in accordance with such rules as the Commission may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in the employer's employ.

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

C. Each employer shall be notified of its contribution rate for a given calendar year on or before September 30 of the previous calendar year. The notice shall be mailed to the employer at the employer's last-known address. 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 by electronic means. The employer shall file an appeal to the rate notice within twenty (20) days after the mailing of the notice of the contribution rate, or the date of transmission by electronic means. Upon the filing of a timely appeal, the Commission shall provide for a review and issue a determination to the employer. If the employer does not file a timely appeal, the contribution rate of the employer shall become conclusive and binding.

D. Within twenty (20) days after the date of mailing of the notice of the determination, the employer may file with the Commission at the address prescribed in the notice the employer's specific written objections to the contribution rate so determined. The matter will be heard upon those specific written objections by a representative appointed by the Commission. The decision shall be

made in writing and notice shall be mailed to the employer. The employer may appeal to the district court by filing a petition for review with the clerk of that court within thirty (30) days after the date of mailing stated upon the notice of decision.

Added by Laws 1980, c. 323, § 3-102, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 15, emerg. eff. June 25, 1981; Laws 1993, c. 219, § 12, eff. Sept. 1, 1993; Laws 1997, c. 30, § 12, eff. July 1, 1997; Laws 2006, c. 176, § 12, eff. July 1, 2006; Laws 2012, c. 196, § 7, emerg. eff. May 8, 2012; Laws 2019, c. 251, § 7, eff. July 1, 2019.

§40-3-103. Repealed by Laws 2016, c. 287, § 13, eff. Nov. 1, 2016.

§40-3-104. Repealed by Laws 2013, c. 71, § 14, eff. Nov. 1, 2013.

§40-3-105. Benefit wages - Quarter charged.

BENEFIT WAGES - QUARTER CHARGED.

When in any benefit year a claimant is paid benefits for his or her fifth compensable week of unemployment or is paid benefits as defined in paragraph 3 of Section 4-702 of this title, his or her taxable wages during his or her base period shall be treated, for the purpose of this part, as though they had been paid in the calendar quarter in which the fifth compensable week of unemployment benefits are paid.

Added by Laws 1980, c. 323, § 3-105, eff. July 1, 1980. Amended by Laws 1983, c. 270, § 9, emerg. eff. June 23, 1983; Laws 1995, c. 340, § 13, eff. Jan. 1, 1996; Laws 2014, c. 220, § 9, eff. Nov. 1, 2014.

§40-3-106. Benefit wages charged and relief therefrom.

BENEFIT WAGES CHARGED AND RELIEF THEREFROM.

A. The Oklahoma Employment Security Commission shall give notice to each base period employer after the claimant has been issued his or her fifth week of benefits by the Commission or after the Commission receives notice of the amounts paid as benefits by another state under a reciprocal arrangement. This notice shall give the name and Social Security number of the claimant, the date the claim was filed, and the amount of benefit wages charged to the employer in each quarter of the base period.

B. Within twenty (20) days from the date stated on the notice, the employer may file an objection to being charged benefit wages as set forth in subsection G of this section. The employer's written objection must set forth specifically:

1. The date employment was terminated;
2. Specific details of the termination including the reason given by the individual for voluntarily leaving the employment, or the nature of the misconduct for discharge;

3. Specific details of the regular scheduled part-time or full-time employment of the employee including the starting date, and ending date if any, of the continuous period of employment; and

4. Other information as called for by the notice.

C. Upon receipt of the employer's objection, the Commission shall make a determination and notify the employer as to whether or not the employer is entitled to be relieved from benefit wage charges. Additionally, the twenty-day time period for filing an objection as provided for in subsection B of this section may be waived for good cause shown.

D. Within twenty (20) days after the issuing of the determination provided for in subsection C of this section, the employer may file with the Assessment Board a protest to the determination and request an oral hearing de novo to present evidence in support of its protest. The Assessment Board shall advise the employer of the date of the hearing, which shall not be less than ten (10) days from the date of notice. At the discretion of the Commission, this hearing shall be conducted by the Assessment Board. After the hearing, the Assessment Board shall notify the employer of its findings.

E. If any employer does not file a timely appeal of the determination to the Assessment Board, the determination shall be final.

F. The employer or the Commission may appeal the Assessment Board's order of the Commission or its representative to the district court by filing a petition for review with the district court clerk within thirty (30) days after the date the order was issued to all parties.

G. 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. Provided, that an employer shall be relieved of a benefit wage charge if the employer proves to the satisfaction of the Commission that the benefit wage charge includes wages paid by the employer to any employee or former employee, who:

1. Voluntarily left employment without good cause connected to the work;

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

3. Was a regular scheduled employee of the separating employer prior to the week the employee separated from other employment, and continued to work for the employer through the fifth compensable week of unemployment of the established benefit year;

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

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

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

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

H. If an employer recalls an employee deemed unemployed as defined by the Employment Security Act of 1980 and the employee continues to be employed or the employee voluntarily terminates employment or is discharged for misconduct within the benefit year, the employer shall be entitled to have the benefit wage charged against the employer's experience rating for the employee reduced by the ratio of the number of weeks of remaining eligibility of the employee to the total number of weeks of entitlement.

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

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

K. An employer shall not be eligible to be relieved of a benefit wage charge under paragraphs 1 and 2 of subsection G of this section if the employer was sent a notice of benefit claim, pursuant to Section 2-503 of this title, and failed to timely file protest to the benefit claim.

Added by Laws 1980, c. 323, § 3-106, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 16, emerg. eff. June 25, 1981; Laws 1982, c. 150, § 1, emerg. eff. April 12, 1982; Laws 1983, c. 270, § 10, emerg. eff. June 23, 1983; Laws 1990, c. 333, § 5, emerg. eff. May

31, 1990; Laws 1991, c. 120, § 1, emerg. eff. April 29, 1991; Laws 1991, c. 254, § 15, eff. July 1, 1991; Laws 1992, c. 318, § 3, eff. July 1, 1992; Laws 1995, c. 340, § 14, eff. Jan. 1, 1996; Laws 1997, c. 30, § 13, eff. July 1, 1997; Laws 1998, c. 161, § 10, eff. July 1, 1998; Laws 2002, c. 452, § 22, eff. Nov. 1, 2002; Laws 2003, c. 177, § 6, eff. Nov. 1, 2003; Laws 2004, c. 102, § 6, eff. Nov. 1, 2004; Laws 2005, c. 182, § 6, eff. Nov. 1, 2005; Laws 2006, c. 176, § 13, eff. July 1, 2006; Laws 2007, c. 354, § 7, eff. Nov. 1, 2007; Laws 2009, c. 460, § 5, eff. Nov. 1, 2009; Laws 2011, c. 256, § 12; Laws 2012, c. 196, § 8, emerg. eff. May 8, 2012; Laws 2015, c. 249, § 13, eff. Nov. 1, 2015; Laws 2019, c. 251, § 8, eff. July 1, 2019; Laws 2022, c. 360, § 18, eff. Nov. 1, 2022.

§40-3-106.1. Relief from benefit wages charged - Addendum.

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, an employer's benefit wages shall not include wages paid by the employer to any employee who was separated from 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.

Added by Laws 1995, c. 340, § 15, emerg. eff. June 9, 1995. Amended by Laws 2021, c. 424, § 11, eff. Nov. 1, 2021.

§40-3-106.2. Separating employers - Relief from benefit wage charges.

SEPARATING EMPLOYERS - RELIEF FROM BENEFIT WAGE CHARGES.

A separating employer will not be charged with benefit wages, or will be relieved of the charge upon notification of the Oklahoma Employment Security Commission, if the former employee who is the subject of the charge was separated from employment under one of the circumstances listed in subsection G of Section 3-106 of Title 40 of the Oklahoma Statutes.

Added by Laws 2006, c. 176, § 14, eff. July 1, 2006.

§40-3-107. Benefit wage ratio.

BENEFIT WAGE RATIO.

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

Added by Laws 1980, c. 323, § 3-107, eff. July 1, 1980. Amended by Laws 2006, c. 176, § 15, eff. July 1, 2006; Laws 2016, c. 287, § 8, eff. Nov. 1, 2016.

§40-3-108. State experience factor.

STATE EXPERIENCE FACTOR.

The total benefits paid from the Unemployment Compensation Fund during the experience period, less all amounts credited to the Fund other than employers' contributions, interest, penalties, fees and interest earned on the Fund, divided by the statewide total of benefit wages of all employers for the experience period, after adjustments to the nearest multiple of one percent (1%) shall be termed the "state experience factor." The state experience factor for any year shall be determined prior to the due date of the first contribution payment on wages for employment in that year.

Added by Laws 1980, c. 323, § 3-108, eff. July 1, 1980. Amended by Laws 1993, c. 219, § 13, eff. Sept. 1, 1993; Laws 2006, c. 176, § 16, eff. July 1, 2006.

§40-3-109. Experience rate.

EXPERIENCE RATE. The contribution rate for each employer for each calendar quarter after July 1, 2010, to be applied to the employer's current payroll shall be in accordance with the following table based upon the state experience factor and his benefit wage ratio:

When the State
Experience
Factor

Is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
1%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
2	5.0	10.0	15.0	20.0	25.0	30.0	35.0	40.0	45.0	50.0
3	3.3	6.7	10.0	13.3	16.7	20.0	23.3	26.7	30.0	33.3
4	2.5	5.0	7.5	10.0	12.5	15.0	17.5	20.0	22.5	25.0
5	2.0	4.0	6.0	8.0	10.0	12.0	14.0	16.0	18.0	20.0
6	1.7	3.3	5.0	6.7	8.3	10.0	11.7	13.3	15.0	16.7
7	1.4	2.9	4.3	5.7	7.1	8.6	10.0	11.4	12.9	14.3
8	1.3	2.5	3.8	5.0	6.3	7.5	8.8	10.0	11.3	12.5
9	1.1	2.2	3.3	4.4	5.6	6.7	7.8	8.9	10.0	11.1
10	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
11	0.9	1.8	2.7	3.6	4.5	5.5	6.4	7.3	8.2	9.1
12	0.8	1.7	2.5	3.3	4.2	5.0	5.8	6.7	7.5	8.3
13	0.8	1.5	2.3	3.1	3.8	4.6	5.4	6.2	6.9	7.7
14	0.7	1.4	2.1	2.9	3.6	4.3	5.0	5.7	6.4	7.1
15	0.7	1.3	2.0	2.7	3.3	4.0	4.7	5.3	6.0	6.7
16	0.6	1.3	1.9	2.5	3.1	3.8	4.4	5.0	5.6	6.3
17	0.6	1.2	1.8	2.4	2.9	3.5	4.1	4.7	5.3	5.9
18	0.6	1.1	1.7	2.2	2.8	3.3	3.9	4.4	5.0	5.6

19	0.5	1.1	1.6	2.1	2.6	3.2	3.7	4.2	4.7	5.3
20	0.5	1.0	1.5	2.0	2.5	3.0	3.5	4.0	4.5	5.0
21	0.5	1.0	1.4	1.9	2.4	2.9	3.3	3.8	4.3	4.8
22	0.5	0.9	1.4	1.8	2.3	2.7	3.2	3.6	4.1	4.5
23	0.4	0.9	1.3	1.7	2.2	2.6	3.0	3.5	3.9	4.3
24	0.4	0.8	1.3	1.7	2.1	2.5	2.9	3.3	3.8	4.2
25	0.4	0.8	1.2	1.6	2.0	2.4	2.8	3.2	3.6	4.0
26	0.4	0.8	1.2	1.5	1.9	2.3	2.7	3.1	3.5	3.8
27	0.4	0.7	1.1	1.5	1.9	2.2	2.6	3.0	3.3	3.7
28	0.4	0.7	1.1	1.4	1.8	2.1	2.5	2.9	3.2	3.6
29	0.3	0.7	1.0	1.4	1.7	2.1	2.4	2.8	3.1	3.4
30	0.3	0.7	1.0	1.3	1.7	2.0	2.3	2.7	3.0	3.3
31	0.3	0.6	1.0	1.3	1.6	1.9	2.3	2.6	2.9	3.2
32	0.3	0.6	0.9	1.3	1.6	1.9	2.2	2.5	2.8	3.1
33	0.3	0.6	0.9	1.2	1.5	1.8	2.1	2.4	2.7	3.0
34	0.3	0.6	0.9	1.2	1.5	1.8	2.1	2.4	2.6	2.9
35	0.3	0.6	0.9	1.1	1.4	1.7	2.0	2.3	2.6	2.9
36	0.3	0.6	0.8	1.1	1.4	1.7	1.9	2.2	2.5	2.8
37	0.3	0.5	0.8	1.1	1.4	1.6	1.9	2.2	2.4	2.7
38	0.3	0.5	0.8	1.1	1.3	1.6	1.8	2.1	2.4	2.6
39	0.3	0.5	0.8	1.0	1.3	1.5	1.8	2.1	2.3	2.6
40	0.3	0.5	0.8	1.0	1.3	1.5	1.8	2.0	2.3	2.5
41	0.2	0.5	0.7	1.0	1.2	1.5	1.7	2.0	2.2	2.4
42	0.2	0.5	0.7	1.0	1.2	1.4	1.7	1.9	2.1	2.4
43	0.2	0.5	0.7	0.9	1.2	1.4	1.6	1.9	2.1	2.3
44	0.2	0.5	0.7	0.9	1.1	1.4	1.6	1.8	2.0	2.3
45	0.2	0.4	0.7	0.9	1.1	1.3	1.6	1.8	2.0	2.2
46	0.2	0.4	0.7	0.9	1.1	1.3	1.5	1.7	2.0	2.2
47	0.2	0.4	0.6	0.9	1.1	1.3	1.5	1.7	1.9	2.1
48	0.2	0.4	0.6	0.8	1.0	1.3	1.5	1.7	1.9	2.1
49	0.2	0.4	0.6	0.8	1.0	1.2	1.4	1.6	1.8	2.0
50	0.2	0.4	0.6	0.8	1.0	1.2	1.4	1.6	1.8	2.0

The Employer's Contribution Rate Shall Be:

	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1.0
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When the State
Experience
Factor

Is: If the Employer's Benefit Wage Ratio Does Not Exceed:

1%	110%	120%	130%	140%	150%	160%	170%	180%	190%	200%
2	55.0	60.0	65.0	70.0	75.0	80.0	85.0	90.0	95.0	100.0
3	36.7	40.0	43.3	46.7	50.0	53.3	56.7	60.0	63.3	66.7
4	27.5	30.0	32.5	35.0	37.5	40.0	42.5	45.0	47.5	50.0
5	22.0	24.0	26.0	28.0	30.0	32.0	34.0	36.0	38.0	40.0
6	18.3	20.0	21.7	23.3	25.0	26.7	28.3	30.0	31.7	33.3
7	15.7	17.1	18.6	20.0	21.4	22.9	24.3	25.7	27.1	28.6
8	13.8	15.0	16.3	17.5	18.8	20.0	21.3	22.5	23.8	25.0
9	12.2	13.3	14.4	15.6	16.7	17.8	18.9	20.0	21.1	22.2

10	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	20.0
11	10.0	10.9	11.8	12.7	13.6	14.5	15.5	16.4	17.3	18.2
12	9.2	10.0	10.8	11.7	12.5	13.3	14.2	15.0	15.8	16.7
13	8.5	9.2	10.0	10.8	11.5	12.3	13.1	13.8	14.6	15.4
14	7.9	8.6	9.3	10.0	10.7	11.4	12.1	12.9	13.6	14.3
15	7.3	8.0	8.7	9.3	10.0	10.7	11.3	12.0	12.7	13.3
16	6.9	7.5	8.1	8.8	9.4	10.0	10.6	11.3	11.9	12.5
17	6.5	7.1	7.6	8.2	8.8	9.4	10.0	10.6	11.2	11.8
18	6.1	6.7	7.2	7.8	8.3	8.9	9.4	10.0	10.6	11.1
19	5.8	6.3	6.8	7.4	7.9	8.4	8.9	9.5	10.0	10.5
20	5.5	6.0	6.5	7.0	7.5	8.0	8.5	9.0	9.5	10.0
21	5.2	5.7	6.2	6.7	7.1	7.6	8.1	8.6	9.0	9.5
22	5.0	5.5	5.9	6.4	6.8	7.3	7.7	8.2	8.6	9.1
23	4.8	5.2	5.7	6.1	6.5	7.0	7.4	7.8	8.3	8.7
24	4.6	5.0	5.4	5.8	6.3	6.7	7.1	7.5	7.9	8.3
25	4.4	4.8	5.2	5.6	6.0	6.4	6.8	7.2	7.6	8.0
26	4.2	4.6	5.0	5.4	5.8	6.2	6.5	6.9	7.3	7.7
27	4.1	4.4	4.8	5.2	5.6	5.9	6.3	6.7	7.0	7.4
28	3.9	4.3	4.6	5.0	5.4	5.7	6.1	6.4	6.8	7.1
29	3.8	4.1	4.5	4.8	5.2	5.5	5.9	6.2	6.6	6.9
30	3.7	4.0	4.3	4.7	5.0	5.3	5.7	6.0	6.3	6.7
31	3.5	3.9	4.2	4.5	4.8	5.2	5.5	5.8	6.1	6.5
32	3.4	3.8	4.1	4.4	4.7	5.0	5.3	5.6	5.9	6.3
33	3.3	3.6	3.9	4.2	4.5	4.8	5.2	5.5	5.8	6.1
34	3.2	3.5	3.8	4.1	4.4	4.7	5.0	5.3	5.6	5.9
35	3.1	3.4	3.7	4.0	4.3	4.6	4.9	5.1	5.4	5.7
36	3.1	3.3	3.6	3.9	4.2	4.4	4.7	5.0	5.3	5.6
37	3.0	3.2	3.5	3.8	4.1	4.3	4.6	4.9	5.1	5.4
38	2.9	3.2	3.4	3.7	3.9	4.2	4.5	4.7	5.0	5.3
39	2.8	3.1	3.3	3.6	3.8	4.1	4.4	4.6	4.9	5.1
40	2.8	3.0	3.3	3.5	3.8	4.0	4.3	4.5	4.8	5.0
41	2.7	2.9	3.2	3.4	3.7	3.9	4.1	4.4	4.6	4.9
42	2.6	2.9	3.1	3.3	3.6	3.8	4.0	4.3	4.5	4.8
43	2.6	2.8	3.0	3.3	3.5	3.7	4.0	4.2	4.4	4.7
44	2.5	2.7	3.0	3.2	3.4	3.6	3.9	4.1	4.3	4.5
45	2.4	2.7	2.9	3.1	3.3	3.6	3.8	4.0	4.2	4.4
46	2.4	2.6	2.8	3.0	3.3	3.5	3.7	3.9	4.1	4.3
47	2.3	2.6	2.8	3.0	3.2	3.4	3.6	3.8	4.0	4.3
48	2.3	2.5	2.7	2.9	3.1	3.3	3.5	3.8	4.0	4.2
49	2.2	2.4	2.7	2.9	3.1	3.3	3.5	3.7	3.9	4.1
50	2.2	2.4	2.6	2.8	3.0	3.2	3.4	3.6	3.8	4.0

The Employer's Contribution Rate Shall Be:

1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0
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When the State
Experience
Factor

Is: If the Employer's Benefit Wage Ratio Does Not Exceed:

1%	210%	220%	230%	240%	250%	260%	270%	280%	290%	300%
2	105.0	110.0	115.0	120.0	125.0	130.0	135.0	140.0	145.0	150.0
3	70.0	73.3	76.7	80.0	83.3	86.7	90.0	93.3	96.7	100.0
4	52.5	55.0	57.5	60.0	62.5	65.0	67.5	70.0	72.5	75.0
5	42.0	44.0	46.0	48.0	50.0	52.0	54.0	56.0	58.0	60.0
6	35.0	36.7	38.3	40.0	41.7	43.3	45.0	46.7	48.3	50.0
7	30.0	31.4	32.9	34.3	35.7	37.1	38.6	40.0	41.4	42.9
8	26.3	27.5	28.8	30.0	31.3	32.5	33.8	35.0	36.3	37.5
9	23.3	24.4	25.6	26.7	27.8	28.9	30.0	31.1	32.2	33.3
10	21.0	22.0	23.0	24.0	25.0	26.0	27.0	28.0	29.0	30.0
11	19.1	20.0	20.9	21.8	22.7	23.6	24.5	25.5	26.4	27.3
12	17.5	18.3	19.2	20.0	20.8	21.7	22.5	23.3	24.2	25.0
13	16.2	16.9	17.7	18.5	19.2	20.0	20.8	21.5	22.3	23.1
14	15.0	15.7	16.4	17.1	17.9	18.6	19.3	20.0	20.7	21.4
15	14.0	14.7	15.3	16.0	16.7	17.3	18.0	18.7	19.3	20.0
16	13.1	13.8	14.4	15.0	15.6	16.3	16.9	17.5	18.1	18.8
17	12.4	12.9	13.5	14.1	14.7	15.3	15.9	16.5	17.1	17.6
18	11.7	12.2	12.8	13.3	13.9	14.4	15.0	15.6	16.1	16.7
19	11.1	11.6	12.1	12.6	13.2	13.7	14.2	14.7	15.3	15.8
20	10.5	11.0	11.5	12.0	12.5	13.0	13.5	14.0	14.5	15.0
21	10.0	10.5	11.0	11.4	11.9	12.4	12.9	13.3	13.8	14.3
22	9.5	10.0	10.5	10.9	11.4	11.8	12.3	12.7	13.2	13.6
23	9.1	9.6	10.0	10.4	10.9	11.3	11.7	12.2	12.6	13.0
24	8.8	9.2	9.6	10.0	10.4	10.8	11.3	11.7	12.1	12.5
25	8.4	8.8	9.2	9.6	10.0	10.4	10.8	11.2	11.6	12.0
26	8.1	8.5	8.8	9.2	9.6	10.0	10.4	10.8	11.2	11.5
27	7.8	8.1	8.5	8.9	9.3	9.6	10.0	10.4	10.7	11.1
28	7.5	7.9	8.2	8.6	8.9	9.3	9.6	10.0	10.4	10.7
29	7.2	7.6	7.9	8.3	8.6	9.0	9.3	9.7	10.0	10.3
30	7.0	7.3	7.7	8.0	8.3	8.7	9.0	9.3	9.7	10.0
31	6.8	7.1	7.4	7.7	8.1	8.4	8.7	9.0	9.4	9.7
32	6.6	6.9	7.2	7.5	7.8	8.1	8.4	8.8	9.1	9.4
33	6.4	6.7	7.0	7.3	7.6	7.9	8.2	8.5	8.8	9.1
34	6.2	6.5	6.8	7.1	7.4	7.6	7.9	8.2	8.5	8.8
35	6.0	6.3	6.6	6.9	7.1	7.4	7.7	8.0	8.3	8.6
36	5.8	6.1	6.4	6.7	6.9	7.2	7.5	7.8	8.1	8.3
37	5.7	5.9	6.2	6.5	6.8	7.0	7.3	7.6	7.8	8.1
38	5.5	5.8	6.1	6.3	6.6	6.8	7.1	7.4	7.6	7.9
39	5.4	5.6	5.9	6.2	6.4	6.7	6.9	7.2	7.4	7.7
40	5.3	5.5	5.8	6.0	6.3	6.5	6.8	7.0	7.3	7.5
41	5.1	5.4	5.6	5.9	6.1	6.3	6.6	6.8	7.1	7.3
42	5.0	5.2	5.5	5.7	6.0	6.2	6.4	6.7	6.9	7.1
43	4.9	5.1	5.3	5.6	5.8	6.0	6.3	6.5	6.7	7.0
44	4.8	5.0	5.2	5.5	5.7	5.9	6.1	6.4	6.6	6.8
45	4.7	4.9	5.1	5.3	5.6	5.8	6.0	6.2	6.4	6.7
46	4.6	4.8	5.0	5.2	5.4	5.7	5.9	6.1	6.3	6.5
47	4.5	4.7	4.9	5.1	5.3	5.5	5.7	6.0	6.2	6.4

48	4.4	4.6	4.8	5.0	5.2	5.4	5.6	5.8	6.0	6.3
49	4.3	4.5	4.7	4.9	5.1	5.3	5.5	5.7	5.9	6.1
50	4.2	4.4	4.6	4.8	5.0	5.2	5.4	5.6	5.8	6.0

The Employer's Contribution Rate Shall Be:

2.1	2.2	2.3	2.4	2.5	2.6	2.7	2.8	2.9	3.0
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When the State Experience Factor

Is: If the Employer's Benefit Wage Ratio Does Not Exceed:

1%	310%	320%	330%	340%	350%	360%	370%	380%	390%	400%
2	155.0	160.0	165.0	170.0	175.0	180.0	185.0	190.0	195.0	200.0
3	103.3	106.7	110.0	113.3	116.7	120.0	123.3	126.7	130.0	133.3
4	77.5	80.0	82.5	85.0	87.5	90.0	92.5	95.0	97.5	100.0
5	62.0	64.0	66.0	68.0	70.0	72.0	74.0	76.0	78.0	80.0
6	51.7	53.3	55.0	56.7	58.3	60.0	61.7	63.3	65.0	66.7
7	44.3	45.7	47.1	48.6	50.0	51.4	52.9	54.3	55.7	57.1
8	38.8	40.0	41.3	42.5	43.8	45.0	46.3	47.5	48.8	50.0
9	34.4	35.6	36.7	37.8	38.9	40.0	41.1	42.2	43.3	44.4
10	31.0	32.0	33.0	34.0	35.0	36.0	37.0	38.0	39.0	40.0
11	28.2	29.1	30.0	30.9	31.8	32.7	33.6	34.5	35.5	36.4
12	25.8	26.7	27.5	28.3	29.2	30.0	30.8	31.7	32.5	33.3
13	23.8	24.6	25.4	26.2	26.9	27.7	28.5	29.2	30.0	30.8
14	22.1	22.9	23.6	24.3	25.0	25.7	26.4	27.1	27.9	28.6
15	20.7	21.3	22.0	22.7	23.3	24.0	24.7	25.3	26.0	26.7
16	19.4	20.0	20.6	21.3	21.9	22.5	23.1	23.8	24.4	25.0
17	18.2	18.8	19.4	20.0	20.6	21.2	21.8	22.4	22.9	23.5
18	17.2	17.8	18.3	18.9	19.4	20.0	20.6	21.1	21.7	22.2
19	16.3	16.8	17.4	17.9	18.4	18.9	19.5	20.0	20.5	21.1
20	15.5	16.0	16.5	17.0	17.5	18.0	18.5	19.0	19.5	20.0
21	14.8	15.2	15.7	16.2	16.7	17.1	17.6	18.1	18.6	19.0
22	14.1	14.5	15.0	15.5	15.9	16.4	16.8	17.3	17.7	18.2
23	13.5	13.9	14.3	14.8	15.2	15.7	16.1	16.5	17.0	17.4
24	12.9	13.3	13.8	14.2	14.6	15.0	15.4	15.8	16.3	16.7
25	12.4	12.8	13.2	13.6	14.0	14.4	14.8	15.2	15.6	16.0
26	11.9	12.3	12.7	13.1	13.5	13.8	14.2	14.6	15.0	15.4
27	11.5	11.9	12.2	12.6	13.0	13.3	13.7	14.1	14.4	14.8
28	11.1	11.4	11.8	12.1	12.5	12.9	13.2	13.6	13.9	14.3
29	10.7	11.0	11.4	11.7	12.1	12.4	12.8	13.1	13.4	13.8
30	10.3	10.7	11.0	11.3	11.7	12.0	12.3	12.7	13.0	13.3
31	10.0	10.3	10.6	11.0	11.3	11.6	11.9	12.3	12.6	12.9
32	9.7	10.0	10.3	10.6	10.9	11.3	11.6	11.9	12.2	12.5
33	9.4	9.7	10.0	10.3	10.6	10.9	11.2	11.5	11.8	12.1
34	9.1	9.4	9.7	10.0	10.3	10.6	10.9	11.2	11.5	11.8
35	8.9	9.1	9.4	9.7	10.0	10.3	10.6	10.9	11.1	11.4
36	8.6	8.9	9.2	9.4	9.7	10.0	10.3	10.6	10.8	11.1
37	8.4	8.6	8.9	9.2	9.5	9.7	10.0	10.3	10.5	10.8
38	8.2	8.4	8.7	8.9	9.2	9.5	9.7	10.0	10.3	10.5

39	7.9	8.2	8.5	8.7	9.0	9.2	9.5	9.7	10.0	10.3
40	7.8	8.0	8.3	8.5	8.8	9.0	9.3	9.5	9.8	10.0
41	7.6	7.8	8.0	8.3	8.5	8.8	9.0	9.3	9.5	9.8
42	7.4	7.6	7.9	8.1	8.3	8.6	8.8	9.0	9.3	9.5
43	7.2	7.4	7.7	7.9	8.1	8.4	8.6	8.8	9.1	9.3
44	7.0	7.3	7.5	7.7	8.0	8.2	8.4	8.6	8.9	9.1
45	6.9	7.1	7.3	7.6	7.8	8.0	8.2	8.4	8.7	8.9
46	6.7	7.0	7.2	7.4	7.6	7.8	8.0	8.3	8.5	8.7
47	6.6	6.8	7.0	7.2	7.4	7.7	7.9	8.1	8.3	8.5
48	6.5	6.7	6.9	7.1	7.3	7.5	7.7	7.9	8.1	8.3
49	6.3	6.5	6.7	6.9	7.1	7.3	7.6	7.8	8.0	8.2
50	6.2	6.4	6.6	6.8	7.0	7.2	7.4	7.6	7.8	8.0

The Employer's Contribution Rate Shall Be:

3.1	3.2	3.3	3.4	3.5	3.6	3.7	3.8	3.9	4.0
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When the State
Experience
Factor

Is: If the Employer's Benefit Wage Ratio Does Not Exceed:

1%	410%	420%	430%	440%	450%	460%	470%	480%	490%	500%
2	205.0	210.0	215.0	220.0	225.0	230.0	235.0	240.0	245.0	250.0
3	136.7	140.0	143.3	146.7	150.0	153.3	156.7	160.0	163.3	166.7
4	102.5	105.0	107.5	110.0	112.5	115.0	117.5	120.0	122.5	125.0
5	82.0	84.0	86.0	88.0	90.0	92.0	94.0	96.0	98.0	100.0
6	68.3	70.0	71.7	73.3	75.0	76.7	78.3	80.0	81.7	83.3
7	58.6	60.0	61.4	62.9	64.3	65.7	67.1	68.6	70.0	71.4
8	51.3	52.5	53.8	55.0	56.3	57.5	58.8	60.0	61.3	62.5
9	45.6	46.7	47.8	48.9	50.0	51.1	52.2	53.3	54.4	55.6
10	41.0	42.0	43.0	44.0	45.0	46.0	47.0	48.0	49.0	50.0
11	37.3	38.2	39.1	40.0	40.9	41.8	42.7	43.6	44.5	45.5
12	34.2	35.0	35.8	36.7	37.5	38.3	39.2	40.0	40.8	41.7
13	31.5	32.3	33.1	33.8	34.6	35.4	36.2	36.9	37.7	38.5
14	29.3	30.0	30.7	31.4	32.1	32.9	33.6	34.3	35.0	35.7
15	27.3	28.0	28.7	29.3	30.0	30.7	31.3	32.0	32.7	33.3
16	25.6	26.3	26.9	27.5	28.1	28.8	29.4	30.0	30.6	31.3
17	24.1	24.7	25.3	25.9	26.5	27.1	27.6	28.2	28.8	29.4
18	22.8	23.3	23.9	24.4	25.0	25.6	26.1	26.7	27.2	27.8
19	21.6	22.1	22.6	23.2	23.7	24.2	24.7	25.3	25.8	26.3
20	20.5	21.0	21.5	22.0	22.5	23.0	23.5	24.0	24.5	25.0
21	19.5	20.0	20.5	21.0	21.4	21.9	22.4	22.9	23.3	23.8
22	18.6	19.1	19.5	20.0	20.5	20.9	21.4	21.8	22.3	22.7
23	17.8	18.3	18.7	19.1	19.6	20.0	20.4	20.9	21.3	21.7
24	17.1	17.5	17.9	18.3	18.8	19.2	19.6	20.0	20.4	20.8
25	16.4	16.8	17.2	17.6	18.0	18.4	18.8	19.2	19.6	20.0
26	15.8	16.2	16.5	16.9	17.3	17.7	18.1	18.5	18.8	19.2
27	15.2	15.6	15.9	16.3	16.7	17.0	17.4	17.8	18.1	18.5
28	14.6	15.0	15.4	15.7	16.1	16.4	16.8	17.1	17.5	17.9
29	14.1	14.5	14.8	15.2	15.5	15.9	16.2	16.6	16.9	17.2

30	13.7	14.0	14.3	14.7	15.0	15.3	15.7	16.0	16.3	16.7
31	13.2	13.5	13.9	14.2	14.5	14.8	15.2	15.5	15.8	16.1
32	12.8	13.1	13.4	13.8	14.1	14.4	14.7	15.0	15.3	15.6
33	12.4	12.7	13.0	13.3	13.6	13.9	14.2	14.5	14.8	15.2
34	12.1	12.4	12.6	12.9	13.2	13.5	13.8	14.1	14.4	14.7
35	11.7	12.0	12.3	12.6	12.9	13.1	13.4	13.7	14.0	14.3
36	11.4	11.7	11.9	12.2	12.5	12.8	13.1	13.3	13.6	13.9
37	11.1	11.4	11.6	11.9	12.2	12.4	12.7	13.0	13.2	13.5
38	10.8	11.1	11.3	11.6	11.8	12.1	12.4	12.6	12.9	13.2
39	10.5	10.8	11.0	11.3	11.5	11.8	12.1	12.3	12.6	12.8
40	10.3	10.5	10.8	11.0	11.3	11.5	11.8	12.0	12.3	12.5
41	10.0	10.2	10.5	10.7	11.0	11.2	11.5	11.7	12.0	12.2
42	9.8	10.0	10.2	10.5	10.7	11.0	11.2	11.4	11.7	11.9
43	9.5	9.8	10.0	10.2	10.5	10.7	10.9	11.2	11.4	11.6
44	9.3	9.5	9.8	10.0	10.2	10.5	10.7	10.9	11.1	11.4
45	9.1	9.3	9.6	9.8	10.0	10.2	10.4	10.7	10.9	11.1
46	8.9	9.1	9.3	9.6	9.8	10.0	10.2	10.4	10.7	10.9
47	8.7	8.9	9.1	9.4	9.6	9.8	10.0	10.2	10.4	10.6
48	8.5	8.8	9.0	9.2	9.4	9.6	9.8	10.0	10.2	10.4
49	8.4	8.6	8.8	9.0	9.2	9.4	9.6	9.8	10.0	10.2
50	8.2	8.4	8.6	8.8	9.0	9.2	9.4	9.6	9.8	10.0

The Employer's Contribution Rate Shall Be:

4.1	4.2	4.3	4.4	4.5	4.6	4.7	4.8	4.9	5.0
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When the State
Experience
Factor

Is: If the Employer's Benefit Wage Ratio Does Not Exceed:

1%	510%	520%	530%	540%
2	255.0	260.0	265.0	270.0
3	170.0	173.3	176.7	180.0
4	127.5	130.0	132.5	135.0
5	102.0	104.0	106.0	108.0
6	85.0	86.7	88.3	90.0
7	72.9	74.3	75.7	77.1
8	63.8	65.0	66.3	67.5
9	56.7	57.8	58.9	60.0
10	51.0	52.0	53.0	54.0
11	46.4	47.3	48.2	49.1
12	42.5	43.3	44.2	45.0
13	39.2	40.0	40.8	41.5
14	36.4	37.1	37.9	38.6
15	34.0	34.7	35.3	36.0
16	31.9	32.5	33.1	33.8
17	30.0	30.6	31.2	31.8
18	28.3	28.9	29.4	30.0
19	26.8	27.4	27.9	28.4
20	25.5	26.0	26.5	27.0

21	24.3	24.8	25.2	25.7
22	23.2	23.6	24.1	24.5
23	22.2	22.6	23.0	23.5
24	21.3	21.7	22.1	22.5
25	20.4	20.8	21.2	21.6
26	19.6	20.0	20.4	20.8
27	18.9	19.3	19.6	20.0
28	18.2	18.6	18.9	19.3
29	17.6	17.9	18.3	18.6
30	17.0	17.3	17.7	18.0
31	16.5	16.8	17.1	17.4
32	15.9	16.3	16.6	16.9
33	15.5	15.8	16.1	16.4
34	15.0	15.3	15.6	15.9
35	14.6	14.9	15.1	15.4
36	14.2	14.4	14.7	15.0
37	13.8	14.1	14.3	14.6
38	13.4	13.7	13.9	14.2
39	13.1	13.3	13.6	13.8
40	12.8	13.0	13.3	13.5
41	12.4	12.7	12.9	13.2
42	12.1	12.4	12.6	12.9
43	11.9	12.1	12.3	12.6
44	11.6	11.8	12.0	12.3
45	11.3	11.6	11.8	12.0
46	11.1	11.3	11.5	11.7
47	10.9	11.1	11.3	11.5
48	10.6	10.8	11.0	11.3
49	10.4	10.6	10.8	11.0
50	10.2	10.4	10.6	10.8

The Employer's Contribution Rate Shall Be:

5.1 5.2 5.3 5.4

If the employer's benefit wage ratio exceeds the amount in the last column of the table on the line for the current year's state experience factor, his contribution rate shall be five and five-tenths percent (5.5%).

Added by Laws 1980, c. 323, § 3-109, eff. July 1, 1980. Amended by Laws 1983, c. 270, § 11, emerg. eff. June 23, 1983; Laws 1986, c. 205, § 7, emerg. eff. June 6, 1986; Laws 2010, c. 216, § 10, eff. July 1, 2010.

§40-3-109.1. Rate reduction.

RATE REDUCTION. Notwithstanding the provisions of Sections 3-103, 3-109, 3-110 and 3-113 of this title, for the time period beginning July 1, 1998, and ending December 31, 2001, the contribution rate assigned to an employer shall be reduced by fifty percent (50%); provided: the tax rate of employers assigned a tax

rate pursuant to Sections 3-103 and 3-110 of this title shall not be reduced to less than one percent (1%); employers who qualify for an earned rate calculated pursuant to Section 3-109 of this title, and are given a rate of five and one-half percent (5.5%) shall be reduced to no less than five and four-tenths percent (5.4%); and employers who qualify for an earned rate calculated pursuant to Section 3-109 of this title, and are given a rate of one-tenth of one percent (0.1%), shall be reduced to a rate of zero percent (0.0%).

Added by Laws 1997, c. 30, § 14, eff. July 1, 1997. Amended by Laws 1998, c. 161, § 11, eff. July 1, 1998; Laws 1999, c. 382, § 1, eff. July 1, 1999.

§40-3-109.2. Rate reduction for computer fund assessment.

RATE REDUCTION FOR COMPUTER FUND ASSESSMENT.

Notwithstanding the provisions of Sections 3-103, 3-109, 3-110, and 3-113 of Title 40 of the Oklahoma Statutes, for the time period beginning July 1, 1997, and ending June 30, 1998, the contribution rate assigned to an employer shall be reduced by fifty percent (50%). Provided, the tax rate of employers assigned a tax rate pursuant to Sections 3-103 and 3-110 of Title 40 of the Oklahoma Statutes shall not be reduced to less than one percent (1%). Provided further, employers who qualify for an earned rate calculated pursuant to Section 3-109 of Title 40 of the Oklahoma Statutes, and are given a rate of five and one-half percent (5.5%), shall not be eligible for the rate reduction provided for in this section.

Added by Laws 1997, c. 391, § 3, eff. July 1, 1997.

§40-3-109.3. Rate reduction for technology reinvestment apportionment.

RATE REDUCTION FOR TECHNOLOGY REINVESTMENT APPORTIONMENT.

Notwithstanding the provisions of Sections 3-109, 3-110.1 and 3-113 of this title, for the time period beginning January 1, 2023, and ending December 31, 2027, the tax rate computed for or assigned to an employer shall be reduced by five percent (5%).

Added by Laws 2017, c. 345, § 8, eff. July 1, 2017. Amended by Laws 2023, c. 346, § 1, eff. Nov. 1, 2023.

§40-3-110. Repealed by Laws 2015, c. 249, § 20, eff. Nov. 1, 2015.

§40-3-110.1. Unemployment tax rate.

UNEMPLOYMENT TAX RATE.

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

1. All employers shall have an assigned tax rate of one and one-half percent (1.5%) until sufficient experience history exists

in the employer's account to meet the At-Risk Rule set out in paragraph 3 of this section. If the account meets the At-Risk Rule, the employer will qualify for an earned tax rate calculated pursuant to the provisions of Part 1 of Article III of the Employment Security Act of 1980;

2. If an employer qualified for an earned tax rate under paragraph 1 of this section, or under a prior law, and at the time the employer's tax rate is being determined for a subsequent year the employer account lacks sufficient experience history to meet the At-Risk Rule of paragraph 3 of this section, the employer shall revert to the assigned tax rate of one and one-half percent (1.5%). The employer shall pay at the assigned tax rate until the provisions of paragraph 1 of this section are met; and

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

Added by Laws 2015, c. 249, § 14, eff. Nov. 1, 2015. Amended by Laws 2016, c. 287, § 9, eff. Nov. 1, 2016.

§40-3-111. Repealed by Laws 2016, c. 287, § 14, eff. Nov. 1, 2016.

§40-3-111.1. Successor and predecessor employers - Special rules on transfer of rates and experience.

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

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

1. If an employer transfers its trade or business, or a separate and distinct establishment, or unit thereof, to another employer or an entity that does not meet the definition of an employer at the time of the transfer and there is substantially common ownership, management or control of the two employers or entities at the time of the transfer, then the experience rating account attributable to the transferred trade or business shall be combined with the experience rating account of the employer to whom such business is so transferred. The employer transferring its trade or business shall be the predecessor employer and the employer or entity acquiring the transferred trade or business shall be the successor employer. The successor employer shall acquire the experience rating account of the predecessor employer, including the

predecessor's actual tax and benefit experience, annual payrolls and tax rate. The successor employer shall also become jointly and severally liable with the predecessor employer for all current or delinquent taxes, interest, penalties and fees owed to the Oklahoma Employment Security Commission by the predecessor employer. In the case of the transfer of a separate and distinct establishment or unit within the predecessor employer, the successor employer shall acquire that portion of the items identified above that relate to the establishment or unit acquired or its pro-rata share; and

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

B. 1. If a person knowingly violates or attempts to violate paragraph 1 or 2 of subsection A of this section or any other provision of the Employment Security Act of 1980 related to determining the assignment of the tax rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

- a. if the person is an employer, then the employer shall be assessed a penalty equal to ten percent (10%) of the actual taxes due in the calendar quarter in which the employer violated or attempted to violate the provisions of this section and a penalty equal to ten percent (10%) of the actual taxes due in each of the following three (3) calendar quarters. The funds in payment of this penalty shall be deposited in the Oklahoma Employment Security Commission Revolving Fund established under Section 4-901 of this title,
- b. if the person is not an employer, the person shall be subject to a civil money penalty of at least One Hundred Dollars (\$100.00) and not more than Five Thousand Dollars (\$5,000.00) to be determined by the Assessment Board of the Oklahoma Employment Security Commission. Any fine shall be deposited in the

Oklahoma Employment Security Commission Revolving Fund established under Section 4-901 of this title.

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

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

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

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

D. For purposes of this section:

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

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

E. This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor. Added by Laws 2005, c. 182, § 8, eff. Nov. 1, 2005. Amended by Laws 2013, c. 71, § 10, eff. Nov. 1, 2013; Laws 2016, c. 287, § 10, eff. Nov. 1, 2016.

§40-3-112. Repealed by Laws 2015, c. 249, § 20, eff. Nov. 1, 2015.

§40-3-113. Conditional factors.

CONDITIONAL FACTORS.

For each calendar year commencing after December 31, 2006, except for those employers with a benefit wage ratio of zero (0) and as otherwise provided in this section, the contribution rate for each employer for the calendar year shall be increased, in the circumstances and in the amounts as follows:

(1) - Condition "a" - If the balance of the unemployment compensation fund is less than three and one-half (3 1/2) times, but not less than three (3) times, the net benefits paid for the most recent twenty (20) consecutive completed calendar quarters divided by five (5), on July 1 of any given year, the contribution rate for the next calendar year for each employer whose benefit wage ratio with respect to that year is zero percent (0%) shall be increased by one-tenth of one percent (1/10 of 1%) of wages paid by the employer during the year; the contribution rate for each employer whose benefit rate wage ratio with respect to that year is more than zero percent (0%), but not more than one-tenth of one percent (1/10 of 1%), shall be increased by two-tenths of one percent (2/10 of 1%) of wages paid by the employer during the year and the contribution rate

for each employer whose benefit wage ratio with respect to that year is more than one-tenth of one percent (1/10 of 1%), shall be increased by three-tenths of one percent (3/10 of 1%) of wages paid by the employer during that year.

(2) - Condition "b" - If the balance of the unemployment compensation fund is less than three (3) times, but not less than two and one-half (2 1/2) times, the net benefits paid for the most recent twenty (20) consecutive completed calendar quarters divided by five (5), as of July 1 of any given year, the contribution rate for the next calendar year for each employer shall be increased by thirty-three and one-third percent (33 1/3%) of the rate; provided that the total rate, if not a multiple of one-tenth of one percent (1/10 of 1%), shall be computed to the next higher multiple of one-tenth of one percent (1/10 of 1%) of wages paid by the employer during that year; provided, further, that the contribution rate for each employer whose benefit wage ratio with respect to that year is zero percent (0%) shall be increased by two-tenths of one percent (2/10 of 1%) of wages paid by the employer during that year; the contribution rate for each employer whose benefit wage ratio with respect to that year is more than zero percent (0%), but not more than one-tenth of one percent (1/10 of 1%), shall be increased by three-tenths of one percent (3/10 of 1%) of wages paid by the employer during that year; and the contribution rate for each employer whose benefit wage ratio with respect to that year is more than one-tenth of one percent (1/10 of 1%), shall be increased by at least four-tenths of one percent (4/10 of 1%) of wages paid by the employer during that year.

(3) - Condition "c" - If the balance of the unemployment compensation fund is less than two and one-half (2 1/2) times, but not less than two (2) times, the net benefits paid for the most recent twenty (20) consecutive completed calendar quarters divided by five (5), as of July 1 of any given year, the contribution rate for the next calendar year for each employer shall be increased by one-half (1/2) of that rate; provided that the total rate, if not a multiple of one-tenth of one percent (1/10 of 1%), shall be computed to the next higher multiple of one-tenth of one percent (1/10 of 1%) of wages paid by the employer during that year; provided, further, that the contribution rate for each employer whose benefit wage ratio with respect to that year is zero percent (0%) shall be increased by three-tenths of one percent (3/10 of 1%) of wages paid by the employer during that year; the contribution rate for each employer whose benefit wage ratio with respect to that year is more than zero percent (0%), but not more than one-tenth of one percent (1/10 of 1%), shall be increased by four-tenths of one percent (4/10 of 1%) of wages paid by the employer during that year; and the contribution rate for each employer whose benefit wage ratio with respect to that year is more than one-tenth of one percent (1/10 of

1%), shall be increased by at least five-tenths of one percent (5/10 of 1%) of wages paid by the employer during that year.

(4) - Condition "d" - If the balance of the unemployment compensation fund is less than two (2) times the net benefits paid for the most recent twenty (20) consecutive completed calendar quarters divided by five (5), as of July 1 of any given year, the contribution rate for the next calendar year for each employer shall be increased by sixty-six and two-thirds percent (66 2/3 %) of the rate; provided that the total rate, if not a multiple of one-tenth of one percent (1/10 of 1%) shall be computed to the next higher multiple of one-tenth of one percent (1/10 of 1%) of wages paid by the employer during that year; provided, further, that the contribution rate for each employer whose benefit wage ratio with respect to that year is zero percent (0%) shall be increased by four-tenths of one percent (4/10 of 1%) of wages paid by the employer during that year; the contribution rate for each employer whose benefit wage ratio with respect to that year is more than zero percent (0%), but not more than one-tenth of one percent (1/10 of 1%), shall be increased by five-tenths of one percent (5/10 of 1%) of wages paid by the employer during that year; the contribution rate for each employer whose benefit wage ratio with respect to that year is more than one-tenth of one percent (1/10 of 1%), shall be increased by at least six-tenths of one percent (6/10 of 1%) of wages paid by the employer during that year.

(5) The contribution rate, excluding any surcharge, for an employer whose contribution rate is three and four-tenths percent (3.4%) or more shall not be increased by more than two (2) percentage points in any two (2) consecutive years. The contribution rate, excluding any surcharge, for an employer whose contribution rate is less than three and four-tenths percent (3.4%) shall not be increased to more than five and four-tenths percent (5.4%) in one (1) year.

For the purposes of this section "net benefits paid for the most recent twenty (20) consecutive completed calendar quarters" means the total amount of monies withdrawn from this state's account in the unemployment trust fund in the United States Treasury for each of the most recent twenty (20) consecutive completed calendar quarters, plus the balance in the benefit account at the start of the period, less the balance in the benefit account at the end of the period. The contribution rate for those employers with a benefit wage ratio of zero (0) shall be two-tenths of one percent (2/10 of 1%) during those years when the fund is in conditions "a", "b", and "c", and shall be three-tenths of one percent (3/10 of 1%) during those years when the fund is in condition "d".

(6) Beginning January 1, 1996, except for this paragraph and paragraph (7) of this section, the provisions of this section shall be suspended until the Unemployment Trust Fund reaches a High Cost

Multiple of one and one-fourth (1 1/4). The Oklahoma Employment Security Commission shall determine the High Cost Multiple at the end of each calendar year and shall include the result of its computation in a regularly published periodical together with other employment-related data. As used in this section, "High Cost Multiple" shall be a figure computed as follows:

- (a) first, net fund reserves in the Unemployment Compensation Fund as of the date of each computation required by this section shall be divided by total wages earned in insured employment for the twelve (12) months preceding the date of the quarterly High Cost Multiple computation,
- (b) second, the result of the computation from subparagraph (a) of this paragraph shall be divided by a figure which is a quotient derived from the computation of the High-Cost Rate contained in subparagraph (c) of this paragraph, and
- (c) third, the highest ratio of total state benefit payments experienced previously in any twelve (12) consecutive months to total wages earned in insured employment for the same period shall be the High-Cost Rate.

The result of all computations contained in subparagraphs (a) through (c) of this paragraph, performed in the sequence as specified in this section, shall be known as the High Cost Multiple;

(7) Prior to the beginning of each calendar year, the Commission shall prepare an estimate of the financial condition of the trust fund. If the estimate for the year shows the balance, at any time during the year, will fall below the High Cost Multiple as defined in paragraph (6) of this section, then the Commission shall reinstate the suspended provisions of this section.

Added by Laws 1980, c. 323, § 3-113, eff. July 1, 1980. Amended by Laws 1983, c. 270, § 12, emerg. eff. June 23, 1983; Laws 1986, c. 205, § 8, emerg. eff. June 6, 1986; Laws 1987, c. 10, § 3, emerg. eff. March 31, 1987; Laws 1995, c. 340, § 18, eff. Jan. 1, 1996; Laws 2006, c. 176, § 18, eff. July 1, 2006; Laws 2021, c. 56, § 1, eff. July 1, 2021.

§40-3-114. Estimate of Financial Condition of Fund - Surcharge.

ESTIMATE OF FINANCIAL CONDITION OF FUND - SURCHARGE. Prior to the beginning of each calendar quarter, the Oklahoma Employment Security Commission shall prepare an estimate of the financial condition of the fund for the quarter. If the estimate for any quarter shows a balance at any time during the quarter of less than Twenty-five Million Dollars (\$25,000,000.00), the Commission shall assess and collect a surcharge for that calendar quarter in an

amount sufficient to keep the balance at Twenty-five Million Dollars (\$25,000,000.00), except as otherwise provided in this section.

The surcharge shall be charged to each employer in proportion to the employer's total tax liability as of the last completed quarter for the current calendar year and shall not exceed thirty-three and one-third percent (33 1/3%) per taxable year.

In a state of emergency declared by the Governor, the Oklahoma Legislature, the United States President or the U.S. Congress, the Commission shall have the following authority:

1. If a state of emergency directly and adversely impacts the fund and if the estimate for any quarter in a declared state of emergency shows a balance at any time during the quarter of less than Twenty-five Million Dollars (\$25,000,000.00), the Commission shall have authority to:

- a. claim up to twenty-five percent (25%) of the federal emergency relief funds made available to the state, if any,
- b. decrease the surcharge to be charged to each employer to a percentage rate that is sufficient to bring the balance of the fund to Twenty-five Million Dollars (\$25,000,000.00),
- c. borrow federal funds in amounts determined necessary by the Commission,
- d. allow the balance of the fund to remain less than Twenty-five Million Dollars (\$25,000,000.00) but not less than Ten Million Dollars (\$10,000,000.00), or
- e. use any combination of the provisions of subparagraph a, b, c or d of this subsection to supplement the fund; and

2. When a state of emergency does not directly impact the fund, the Commission shall adhere to the required duty to assess and collect a surcharge for that calendar quarter in an amount sufficient to keep the fund balance at Twenty-five Million Dollars (\$25,000,000.00).

Added by Laws 1983, c. 270, § 14, emerg. eff. June 23, 1983.

Amended by Laws 1986, c. 205, § 9, emerg. eff. June 6, 1986; Laws 1992, c. 318, § 4, eff. July 1, 1992; Laws 2021, c. 56, § 2, eff. July 1, 2021.

§40-3-115. Appeal of determinations.

APPEAL OF DETERMINATIONS.

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

B. 1. All determinations affecting an employer account must be made by the Commission in writing in a Notice of Determination and mailed to the employer at the employer's last-known address with the mailing date and appeal rights set out in the document. 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 by electronic means.

2. Within twenty (20) days after the mailing or transmission of the Notice of Determination as provided for in paragraph 1 of this subsection, the employer may file with the Commission, or its representative, a written request for a review and redetermination setting forth the employer's reasons therefor. If any employer fails to file a written request for review and redetermination within twenty (20) days without good cause, then the initial determination of the Commission shall be final, and no further appeal or protest shall be allowed.

3. If a written request for review and redetermination is filed, the Commission shall provide for a review and issue a Notice of Redetermination in the matter. The employer may appeal the redetermination by filing a written appeal within twenty (20) days of the date of the mailing of the Notice of Redetermination. If the employer fails to file a written appeal within twenty (20) days without good cause, the redetermination of the Commission shall be final and no further appeal shall be allowed.

4. Upon the timely filing of a written appeal, the Commission shall provide for an oral hearing to allow the employer to present evidence in support of the appeal. The standard of review on appeal shall be de novo. The Commission or its representatives shall, by written notice, advise the employer of the date of the hearing, which shall not be less than ten (10) days from the date of the mailing of the written notice. At the discretion of the Commission, this hearing shall be conducted by the Commission, or by a representative appointed by the Commission for this purpose. The appealing party shall bear the initial burden of proof at the hearing.

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

6. The employer or the Commission may appeal the order to the district court of the county in which the employer has its principal place of business by filing a Petition for Review with the clerk of the court within thirty (30) days after the date the order was mailed to all parties. If the employer does not have a principal place of business in any county in this state, then the Petition for

Review shall be filed with the Oklahoma County District Court. All appeals shall be governed by Part 4 of Article 3 of the Employment Security Act of 1980. If the employer fails to file an appeal to the district court within the time allowed, the order shall be final and no further appeal shall be allowed.

C. Untimely requests for review and redetermination pursuant to paragraph 2 of subsection B of this section and written protests for appeals filed pursuant to paragraph 3 of subsection B of this section may be allowed for good cause shown, if the request for good cause is filed in writing with the Commission within one (1) year of the date of the determination or redetermination that is the basis of the request for untimely filing.

Added by Laws 1997, c. 30, § 18, eff. July 1, 1997. Amended by Laws 2006, c. 176, § 19, eff. July 1, 2006; Laws 2007, c. 354, § 8, eff. Nov. 1, 2007; Laws 2012, c. 196, § 9, emerg. eff. May 8, 2012; Laws 2013, c. 71, § 12, eff. Nov. 1, 2013; Laws 2019, c. 251, § 9, eff. July 1, 2019; Laws 2022, c. 360, § 19, eff. Nov. 1, 2022.

§40-3-116. Reconsideration of determination.

RECONSIDERATION OF DETERMINATION.

A. The Oklahoma Employment Security Commission may reconsider a determination of the basis of:

1. An error in computation;
2. An error in identity;
3. Misrepresentation of material facts;
4. Mistake of material facts;
5. An error in interpretation or application of the law; or
6. A timely request made pursuant to paragraph 2 of subsection B of Section 3-115 of Title 40 of the Oklahoma Statutes.

B. A redetermination shall be made within three (3) years of the last day of the month following the calendar quarter that is subject to the redetermination.

C. Notice and appeal of a redetermination shall be governed by the provisions of Section 3-115 of Title 40 of the Oklahoma Statutes.

Added by Laws 2007, c. 354, § 9, eff. Nov. 1, 2007.

§40-3-117. Findings of fact or law.

FINDINGS OF FACT OR LAW.

Any findings of fact or law, judgment, conclusion or final order made by the Oklahoma Employment Security Commission or its representatives under Article 3 of the Employment Security Act of 1980 shall be conclusive and binding for all purposes concerning this act. The findings of fact or law, judgment, conclusion or final order of the Oklahoma Employment Security Commission or its representatives shall not be conclusive or binding in any separate or subsequent action or proceeding that does not involve the

Oklahoma Employment Security Commission and shall not be used as evidence in any separate or subsequent action or proceeding in any other forum regardless of whether or not the prior action was between the same or related parties or involved the same facts. Added by Laws 2007, c. 354, § 10, eff. Nov. 1, 2007.

§40-3-118. Repealed by Laws 2022, c. 360, § 23, eff. Nov. 1, 2022.

§40-3-119. Repealed by Laws 2009, c. 2, § 9, emerg. eff. March 12, 2009.

§40-3-120. Required filings by professional employer organizations - Payment of contributions - Change of election.

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

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

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

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

- a. a PEO choosing this option shall notify the Oklahoma Employment Security Commission in writing,
- b. a PEO choosing this option shall assist the Commission in the process of the separation and identification of the contribution history, the benefit experience history, and the payroll of each of its clients, and the Commission shall transfer that experience to the client account,
- c. the Commission shall determine the tax rate of each client account separately based upon the client's contribution history, benefit experience history and actual payroll,

- d. if there is not sufficient experience in the client account after the transfer of experience to establish a tax rate, the account will be assigned a tax rate pursuant to Section 3-110.1 of this title, and
- e. a PEO choosing this option shall produce all documentation and information necessary for the Oklahoma Employment Security Commission to create the client account within sixty (60) days of choosing this option. If the information needed by the Commission is not produced within this sixty-day period, the PEO shall revert to reporting under the option provided for in paragraph 1 of subsection A of this section.

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

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

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

E. After the initial election or assignment of the option provided for in subsection A of this section, a PEO shall be permitted to change its election one time only. The change of election shall be made by the PEO in writing. The election shall become effective in the calendar year following the date the Commission approves the election of the PEO. If the Commission approves a change of election, all contribution history, benefit experience history and payroll of each client shall be transferred to the pooled account, if the option in paragraph 1 of subsection A of this section is chosen, or the individual client accounts, if the option in paragraph 2 of subsection A of this section is chosen. Added by Laws 2014, c. 221, § 2, eff. Nov. 1, 2014. Amended by Laws 2016, c. 287, § 11, eff. Nov. 1, 2016.

§40-3-121. Professional Employer Organizations - Transfer of experience history.

PROFESSIONAL EMPLOYER ORGANIZATIONS - TRANSFER OF EXPERIENCE HISTORY.

If a Professional Employer Organization, or PEO, chooses the option to file quarterly tax returns under the account assigned to its client pursuant to paragraph 2 of subsection A of Section 3-120 of this title, and if the client has an experience history from a previous account assigned to that client that can be used in calculating an earned tax rate pursuant to the provisions of Article 3, Part 1, of the Employment Security Act of 1980, then that experience history shall be transferred to the account assigned to that client as a coemployer of that PEO. In addition, if taxable wages were reported by a client in a previous account of the client within the calendar year in which the PEO coemployer account is set up, then the PEO coemployer account shall be given credit for the taxable wages paid on each employee in the immediately previous account under which client wages were reported.

Added by Laws 2016, c. 287, § 12, eff. Nov. 1, 2016. Amended by Laws 2017, c. 345, § 5, eff. July 1, 2017.

§40-3-201. Repealed by Laws 2024, c. 114, § 7, eff. Nov. 1, 2024.

§40-3-202. Termination of coverage.

TERMINATION OF COVERAGE.

Termination of coverage with respect to 1977 or prior years shall be determined in accordance with provisions applicable to those years. Except as otherwise provided in Section 3-203 of this title, an employing unit shall cease to be an employer subject to this act only as of the first day of any calendar year and only if it files with the Commission, during January of such year, a written application for termination of coverage, and the Commission finds that there were (1) no calendar quarter within the preceding calendar year in which such employing unit paid for service in employment wages of One Thousand Five Hundred Dollars (\$1,500.00) or more or (2) no twenty (20) different days, each day being in a different calendar week within the preceding calendar year, within which such employing unit employed one or more individuals in employment subject to this act; provided further that religious, charitable, educational or other organizations covered under paragraph 8 of Section 1-208 of this title shall be so terminated if the Commission finds that there were no twenty (20) different days, each day being in a different calendar week within the preceding calendar year, within which such employing unit employed four or more individuals in employment subject to this act. Provided further that agricultural labor as covered under paragraph 10 of Section 1-208 of this title shall be so terminated if the Commission

finds that there were (1) no calendar quarter within the preceding calendar year in which such employing unit paid wages of Twenty Thousand Dollars (\$20,000.00) or more, or (2) no twenty (20) different days, each day being in a different calendar week within the preceding calendar year, within which such employing unit employed ten (10) or more individuals in employment subject to this act; provided further that domestic service as covered under paragraph 11 of Section 1-208 of this title shall be terminated if the Commission finds that there were no calendar quarters within the preceding calendar year in which such employing unit paid wages of One Thousand Dollars (\$1,000.00) or more. Provided, however, that if the Federal Congress shall, by amendment to the Federal Unemployment Tax Act, redefine the term employer to include employing units not qualified as employers under this section, all of the provisions of this act shall be applicable to such employing units. For the purposes of this section, the two or more employing units mentioned in paragraph 2, 3 or 4 of Section 1-208 of this title shall be treated as a single employing unit.

Added by Laws 1980, c. 323, § 3-202, eff. July 1, 1980. Amended by Laws 2005, c. 182, § 9, eff. Nov. 1, 2005.

§40-3-203. Election by employer.

ELECTION BY EMPLOYER.

A. An employing unit, not otherwise subject to the Employment Security Act of 1980, which files with the Oklahoma Employment Security Commission its written election to become an employer subject hereto for not less than two (2) calendar years shall, with the written approval of the election by the Commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in the approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to the two (2) required calendar years, only if during January of that year it has filed with the Commission a written application for termination of coverage as provided in this section.

B. Any employing unit for which services that do not constitute employment as defined in the Employment Security Act of 1980 are performed may file with the Commission a written election that all such services with respect to which payments are not required under an employment security law of any other state or of the federal government and which are performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment by an employer for all the purposes of the Employment Security Act of 1980 for not less than two (2) calendar years. Upon the written approval of the election by the Commission, the services shall be deemed to constitute employment subject to the Employment Security Act of 1980 from and after the date stated in the approval. The services shall cease to be deemed

employment subject hereto as of January 1 of any calendar year subsequent to the two (2) required calendar years, only if during January of that year the employing unit has filed with the Commission a written application for termination of the coverage.

C. The Commission may terminate the election of an employer or employing unit made pursuant to subsection A or B of this section at any time the Commission determines that the employer or employing unit is not abiding by all requirements of the Employment Security Act of 1980 and the rules for the administration of that act, or if the employer or employing unit that has made an election for coverage becomes delinquent in the payment of its unemployment tax contributions, interest, penalties or fees.

D. If the Commission makes a determination that an application of an employer or employing unit submitted under subsections A or B of this section should be denied, or that a voluntary election should be terminated under subsection C of this section, the Commission shall notify the affected employer or employing unit in writing. The notification of the determination shall be delivered to the employer, or mailed to the employer's last-known address.

E. A determination made under this section may be appealed pursuant to the provisions of Section 3-115 of this title. Added by Laws 1980, c. 323, § 3-203, eff. July 1, 1980. Amended by Laws 1993, c. 219, § 15, eff. Sept. 1, 1993; Laws 1997, c. 30, § 19, eff. July 1, 1997; Laws 2006, c. 176, § 20, eff. July 1, 2006.

§40-3-301. Penalty and interest on past-due contributions.

PENALTY AND INTEREST ON PAST-DUE CONTRIBUTIONS.

A. If contributions are not paid on the date on which they are due and payable as prescribed by the Oklahoma Employment Security Commission, the whole or part thereafter remaining unpaid shall bear interest at the rate of one percent (1%) per month for each month or fraction thereof from and after such date until payment is received by the Commission. The date on which payment of contributions is deemed to have been received may be determined by such rules as the Commission may prescribe.

B. If any employer fails or refuses to file contribution and wage reports required under the provisions of this act within fifteen (15) days after written notice has been mailed to the employer by the Commission or its representative regardless of whether or not any wages or taxable wages were paid, there shall accrue a penalty of Two Hundred Dollars (\$200.00). In addition to such penalty, there shall be a penalty of ten percent (10%) added to the total contributions due, collected and paid. Such penalties shall be in addition to any interest due. The provisions of this subsection shall not apply to employers that are subject to subsection B of Section 3-806 of this title.

Added by Laws 1980, c. 323, § 3-301, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 17, operative July 1, 1981; Laws 1990, c. 333, § 7, emerg. eff. May 31, 1990; Laws 1993, c. 219, § 16, eff. Sept. 1, 1993; Laws 2006, c. 176, § 21, eff. July 1, 2006; Laws 2023, c. 346, § 2, eff. Nov. 1, 2023.

§40-3-302. Collections.

COLLECTIONS. A. If any employer defaults in any payment of contributions, interest, penalty or fees thereon, the amount due may be collected by civil action in the name of the State of Oklahoma. Civil actions brought under this section to collect contributions, interest, penalty or fees thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act.

B. The courts of this state shall in like manner entertain actions to collect contributions, interest, penalty or fees thereon for which liability has accrued under the unemployment compensation law of any other state or of the federal government.

C. No suit, including an action for a declaratory judgment, shall be maintained and no writ or process shall be issued by any court of this state which has the purpose or effect of restraining, delaying, or forestalling the collection of any contributions, interest, penalties and fees under this act or substituting any collection procedure for those prescribed in this act.

Added by Laws 1980, c. 323, § 3-302, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 18, emerg. eff. June 25, 1981; Laws 1993, c. 219, § 17, eff. Sept. 1, 1993.

§40-3-303. Priorities under legal dissolutions or distributions.

PRIORITIES UNDER LEGAL DISSOLUTIONS OR DISTRIBUTIONS. In the event of any distribution of an employer's assets pursuant to an order of any court or under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceedings, all contributions, interest, penalties and fees imposed by the provisions of this act are hereby declared to constitute a lien in favor of the state upon all franchises, property, and the rights to property, whether real or personal, then belonging to or thereafter acquired by the person, firm, corporation, partnership or association owing the contribution, whether such property is employed by such person, firm, corporation, partnership or association in the prosecution of business, or is in the hands of an assignee, trustee, or receiver for the benefit of creditors, from the date of the filing by the Commission of a notice of claim of said lien in the office of the county clerk of the county in which such property is located. Said lien shall be in addition to any lien accrued by the filing of a tax

warrant as provided in this act. Said lien shall be prior, superior and paramount to all other liens, or encumbrances of whatsoever kind or character, attaching to any of said property subsequent to the filing of such notice of claim of lien, except liens for other taxes, in which event said lien shall be coequal, and claims for wages of not more than Two Hundred Fifty Dollars (\$250.00) to each claimant, earned within six (6) months of the commencement of any proceeding distributing an employer's assets pursuant to an order of the court under the laws of this state. Said lien shall continue until the amount of contribution, interest, penalty and fees due and owing, and interest subsequently accruing thereon, is paid. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in that act for taxes due any state of the United States.

Added by Laws 1980, c. 323, § 3-303, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 19, emerg. eff. June 25, 1981; Laws 1993, c. 219, § 18, eff. Sept. 1, 1993.

§40-3-304. Refunds.

REFUNDS. If not later than three (3) years after the date on which a specific report or return was required to be filed, an employer, who has paid all amounts owing for that specific quarter, may make application for an adjustment in connection with that report or payment, or for a refund thereof because an adjustment cannot be made, and if the Commission shall determine that payment of the contributions, interest, penalty fees or any portion thereof was erroneous, the Commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by the employer, or if such adjustment cannot be made, the Commission shall refund from the fund, without interest, the amount erroneously paid. For like cause and within the same period, adjustment or refund may be so made on the Commission's own initiative.

Added by Laws 1980, c. 323, § 3-304, eff. July 1, 1980. Amended by Laws 1992, c. 318, § 5, eff. July 1, 1992; Laws 1993, c. 219, § 19, eff. Sept. 1, 1993.

§40-3-305. Assessments.

ASSESSMENTS.

A. If any employer shall fail to make any report or return as required by the Employment Security Act of 1980, the Oklahoma Employment Security Commission or its duly authorized representative, from any information in the possession of or obtainable by the Commission, may determine the amount of contribution due from such employer, and shall mail a copy of the

assessment to the last-known address of the delinquent employer. The assessment so made shall not preclude the Commission or its representative from making field audits of the books and records, wherever located, of the employer and from making further adjustments, corrections or assessments. The assessments provided for herein must be made, and a copy thereof delivered to the employer or mailed to the last-known address of the employer, within three (3) years after the date on which the report or return was required to be filed.

B. Assessments under this section may be appealed pursuant to the provisions of Section 3-115 of this title.

Added by Laws 1980, c. 323, § 3-305, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 20, emerg. eff. June 25, 1981; Laws 1990, c. 333, § 8, emerg. eff. May 31, 1990; Laws 1992, c. 318, § 6, eff. July 1, 1992; Laws 1997, c. 30, § 16, eff. July 1, 1997; Laws 2006, c. 176, § 22, eff. July 1, 2006.

§40-3-306. Jeopardy assessments.

JEOPARDY ASSESSMENTS. A. If the Commission, notwithstanding that a return or report, or that contributions with respect thereto may not yet be due, and whether prior to or after the close of the period when any contribution may be due under the provisions of this act, believes that:

1. An employer intends to depart or remove from the state, or conceal himself or any of his property subject to a lien for the payment of contributions;
2. An employer intends to discontinue business; or
3. An employer intends to do any other act tending to prejudice or render wholly or partially ineffectual proceedings to compute, assess or collect any contribution levied under the provisions of this act,

the Commission shall declare the period for which any contributions may become due to have terminated for such employer, and shall immediately assess the contributions from any information in his possession, notify the employer and demand immediate payment thereof. In the event of any failure or refusal to pay the contributions, by the employer upon the demand of the Commission, the contributions shall immediately become delinquent and the Commission shall proceed to collect the same as in other cases of delinquent contributions.

B. The order of the Commission assessing the contributions may be appealed from as provided in Part 4 of this Article 3, or the employer may furnish to the Commission, under rules prescribed by it, security that he will make any return or report thereafter to be required to be filed with the Commission, and pay the contributions with respect to the period for which such contributions will become due. After security is approved and accepted, and such further and

other security with respect to the contributions covered thereby is given as the Commission may, from time to time, find necessary and require, the payment of such contributions shall not be enforced by any proceedings prior to the expiration of the time otherwise allowed for paying such contributions.

C. In cases where the assessment here authorized is made prior to the close of the period for which contributions become due, and in case the employer elects to pay his contribution rather than to file a bond as herein provided for, the employer may pay the Commission the sum assessed, together with additions to contributions imposed by law, and at the time of making such payment shall notify the Commission of his intention, at the close of the period for which such contributions would have become due, to file suit for recovery. Upon receipt of such notice, an account shall be set up showing the amount paid until the termination of thirty (30) days following the close of the period for which such contributions were due, and if within such period, namely, within thirty (30) days following the close of the period for which such contributions were due, the employer files suit for recovery, the account shall be further maintained pending the final determination of such suit, after which it shall be terminated or refund made by the Commission in accordance with the provisions of Section 3-304 of this title. Added by Laws 1980, c. 323, § 3-306, eff. July 1, 1980. Amended by Laws 1993, c. 219, § 20, eff. Sept. 1, 1993.

§40-3-307. Remittances - Deposit of monies - Returned checks - Bogus check complaint.

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 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 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 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 along with the administrative service fee provided by this section.

C. The Commission shall promulgate rules for the deadlines of payment of unemployment taxes and the method of payment. Added by Laws 1990, c. 333, § 9, emerg. eff. May 31, 1990. Amended by Laws 2011, c. 256, § 13; Laws 2021, c. 424, § 12, eff. Nov. 1, 2021; Laws 2022, c. 360, § 20, eff. Nov. 1, 2022.

§40-3-308. Perjury - Punishment.

Any person, or member of any firm or association, or any officer, agent, or employee of any corporation, who shall knowingly make false answer to any question which may be put to him by the Oklahoma Employment Security Commission, touching the business or property of any such person, firm, association, or corporation, or the valuation thereof, or who shall make or present any false statement filed with said Commission or required to be filed by this title or by any state unemployment compensation law, shall be guilty of perjury, and upon conviction, shall be punished as provided for in Section 4-506 of Title 40 of the Oklahoma Statutes.

Added by Laws 1990, c. 333, § 10, emerg. eff. May 31, 1990.

§40-3-309. Collection of delinquent contributions, penalties, interest or fees.

COLLECTION OF DELINQUENT CONTRIBUTIONS, PENALTIES, INTEREST OR FEES.

When a determination that an employer owes delinquent contributions, penalties, interest or fees becomes final, the Oklahoma Employment Security Commission shall be entitled to proceed by levy to collect any delinquent contribution and to collect any penalty, interest or fees due and owing as a result of the delinquency. Provided, that upon proper application under the procedures outlined herein, the Assessment Board of the Oklahoma Employment Security Commission may issue an order continuing or modifying the levy for the collection of delinquent contributions, penalties, interest or fees.

Added by Laws 1990, c. 333, § 11, emerg. eff. May 31, 1990. Amended by Laws 1993, c. 219, § 21, eff. Sept. 1, 1993; Laws 2012, c. 196, § 10, emerg. eff. May 8, 2012.

§40-3-310. Waiver of penalty or interest.

A. Any penalty or interest, or any portion thereof, assessed because an employer or employee fails to file a report or remit payment as required by Section 1-101 et seq. of this title may be waived by the Oklahoma Employment Security Commission provided the failure of the employer or employee to file a report or remit payment:

1. Is satisfactorily explained to the Commission;

2. Has resulted from a mistake by the employer or employee of either the law or the facts subjecting the employer or employee to file the report or remit payment; or

3. Results from insolvency.

B. Provided, no waiver of penalty or interest assessed for failure to file a report or remit payment as required by this act shall be granted unless the request for waiver is filed with the Commission within a three-year period from the date the penalty or interest was assessed or accrued.

Added by Laws 1992, c. 318, § 12, eff. July 1, 1992. Renumbered from § 5-109 of this title by Laws 1993, c. 219, § 36, eff. Sept. 1, 1993. Amended by Laws 1994, c. 195, § 5, emerg. eff. May 16, 1994; Laws 2006, c. 176, § 23, eff. July 1, 2006.

§40-3-311. Forfeiture of terminated employer unemployment tax account overpayments.

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 that is equal to or greater than One Hundred Dollars (\$100.00) 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 this title.

Added by Laws 2021, c. 424, § 13, eff. Nov. 1, 2021. Amended by Laws 2023, c. 346, § 3, eff. Nov. 1, 2023.

§40-3-401. Appeals to district court.

APPEALS TO DISTRICT COURT.

After the administrative appeal hearing process provided for in Article III of this title is complete, any order, ruling or finding that directly affects an employer or the Oklahoma Employment Security Commission may be appealed by the affected entity to the district court of the county of residence, or principal place of business, of the employer; provided, however, if the employer is a nonresident of this state, then to the district court of Oklahoma County.

Added by Laws 1980, c. 323, § 3-401, eff. July 1, 1980. Amended by Laws 2002, c. 452, § 23, eff. Nov. 1, 2002.

§40-3-402. Repealed by Laws 1998, c. 161, § 15, eff. July 1, 1998.

§40-3-403. Petition for review and transcript of Commission proceedings.

PETITION FOR REVIEW AND TRANSCRIPT OF COMMISSION PROCEEDINGS.

Within thirty (30) days after the date of mailing of the order, ruling, or finding complained of, the party desiring to appeal shall file in the office of the clerk of the district court of the county that has the proper jurisdiction, a Petition for Review specifying the grounds upon which the appeal is based. The Petition for Review shall set out the names of all parties to the case in the style of the case, which shall include:

1. The petitioner or entity filing the petition;
2. The Assessment Board as a respondent; and
3. All other parties in the proceeding before the Assessment Board as respondents.

If a Petition for Review is not filed within the time allowed by this section, the administrative order, ruling or finding will become final and the district court will not have jurisdiction to consider the appeal. The appealing party shall serve a file-stamped copy of the Petition for Review on all opposing parties or their attorneys and the Director of the Appellate Division of the Oklahoma Employment Security Commission. The Director of the Appellate Division shall then cause a certified transcript of the hearing to be made which shall consist of all testimony of the parties, all documentary evidence and other evidence introduced at the hearing, and all decisions, judgments, or orders rendered as a result of the hearing. The Director of the Appellate Division shall then cause the certified transcript to be filed in the appropriate district

court within sixty (60) days of receipt of the Petition for Review. Copies of the transcript shall be mailed by the Director of the Appellate Division to all parties named in the style of the case on the Petition for Review.

Added by Laws 1980, c. 323, § 3-403, eff. July 1, 1980. Amended by Laws 1998, c. 161, § 12, eff. July 1, 1998; Laws 2007, c. 354, § 11, eff. Nov. 1, 2007; Laws 2013, c. 71, § 13, eff. Nov. 1, 2013.

§40-3-404. Commission's conclusions of facts conclusive.

COMMISSION'S CONCLUSIONS OF FACTS CONCLUSIVE. In any judicial review under this part the findings of the Commission, or its duly authorized representative, as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Added by Laws 1980, c. 323, § 3-404, eff. July 1, 1980.

§40-3-405. Deposit of assessment required.

DEPOSIT OF ASSESSMENT REQUIRED.

As a condition precedent to the right of an employer to prosecute an appeal, and as a jurisdictional prerequisite of the district court to entertain the appeal, it is specifically provided that, if the appeal be from an order, judgment, finding, or ruling of the Oklahoma Employment Security Commission or its duly authorized representative, the employer shall pay to the Commission all amounts owing in the employer's account. Any amounts so paid shall, pending the final determination of the appeal, be reflected by the Commission in the employer's account, and if, upon a final determination of the appeal the order of the Commission is reversed or modified and it is determined that the contribution or part thereof was erroneously assessed, or the contributions, penalties, interest or fees should not be owed to the Commission, the amount paid by the employer shall be refunded to the employer by the Commission.

Added by Laws 1980, c. 323, § 3-405, eff. July 1, 1980. Amended by Laws 1993, c. 219, § 22, eff. Sept. 1, 1993; Laws 2002, c. 452, § 24, eff. Nov. 1, 2002.

§40-3-406. Bond in lieu of cash deposit.

BOND IN LIEU OF CASH DEPOSIT. In lieu of the cash payment provided for in Section 3-405 of this title, the employer may file with the Commission a surety bond issued by an insurance company that is licensed by the Oklahoma Insurance Department to issue surety bonds in this state. The surety bond must be issued in an amount that is double the amount of the contribution, penalties, interest and fees assessed or owing, and include the conditions that the employer will faithfully and diligently prosecute the appeal to a final determination, and, in the event the order, judgment, ruling

or finding of the Commission or its duly authorized representative be affirmed on appeal, will pay the contributions, interest, penalty, costs and fees assessed against, or owing by, the employer. Added by Laws 1980, c. 323, § 3-406, eff. July 1, 1980. Amended by Laws 1992, c. 318, § 7, eff. July 1, 1992; Laws 1993, c. 219, § 23, eff. Sept. 1, 1993.

§40-3-407. Repealed by Laws 2005, c. 182, § 15, eff. Nov. 1, 2005.

§40-3-408. Part construed to provide legal remedy.

PART CONSTRUED TO PROVIDE LEGAL REMEDY. This part shall be construed to provide a legal remedy by action at law in cases where any contribution, or the method of collection or enforcement thereof or any order, ruling, finding or judgment of the Commission or its duly authorized representative, is complained of or is sought to be enjoined in any action in any court of this state or the United States of America.

Added by Laws 1980, c. 323, § 3-408, eff. July 1, 1980.

§40-3-500. Levy on accounts.

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

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

Added by Laws 2012, c. 196, § 11, emerg. eff. May 8, 2012.

§40-3-501. Commission to issue warrants.

COMMISSION TO ISSUE WARRANTS. If any contribution imposed by the provisions of this act, or any portion of said contribution, be not paid before the same becomes delinquent, the Commission may immediately issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell any real or personal property of any delinquent employer found within his county for the payment of the delinquent contribution, interest, penalty and fees and the cost of executing the warrant, and to return such warrant to the Commission, and to pay it any moneys collected by virtue thereof, by a time to be therein specified, not more than sixty (60) days from the date of the warrant.

Added by Laws 1980, c. 323, § 3-501, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 21, emerg. eff. June 25, 1981; Laws 1993, c. 219, § 24, eff. Sept. 1, 1993.

§40-3-502. Filing warrant with county clerk.

FILING WARRANT WITH COUNTY CLERK. The Commission may also file a copy of its warrant with the county clerk of the county or counties in which the employer has property and thereupon the county clerk shall index the warrant in the same manner as judgments using the name of the delinquent employer named in the warrant, a short name for the contribution, or tax imposed, and the amount of the contributions, interest, penalty and fees for which the warrant was issued, and the date upon which the copy was filed, and shall index the warrant against the real property described therein, if any is described. If the county clerk charges a fee for the filing of the warrant, the Commission may add the amount of the fee to the indebtedness owing by the delinquent employer named in the warrant. Added by Laws 1980, c. 323, § 3-502, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 22, emerg. eff. June 25, 1981; Laws 1993, c. 219, § 25, eff. Sept. 1, 1993; Laws 1995, c. 340, § 19, eff. July 1, 1995.

§40-3-503. Filed warrant is lien.

FILED WARRANT IS LIEN. The filing of said warrant in the office of the county clerk of said county shall constitute and be evidence and notice of the state's lien upon the title to any interest in any real or personal property of the delinquent employer against whom such warrant is issued. Such lien shall be in addition to any and all other liens existing in favor of the state to secure the payment of such unpaid contribution, interest, penalty, fees and costs, and such lien shall be paramount and superior to all other liens of whatsoever kind or character, attaching to any of said property subsequent to the date of such recording and shall be in addition to any other lien provided for in this act. This lien on personal

property shall be permanent and continuing without any requirement for executions under Section 735 of Title 12 of the Oklahoma Statutes or any other similar statute. This lien on personal property of the State of Oklahoma shall continue until the amount of the tax, contribution, penalty, interest and fees are paid. This lien shall continue on real property until released by payment or for a maximum of ten (10) years after the date of its filing. Added by Laws 1980, c. 323, § 3-503, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 23, emerg. eff. June 25, 1981; Laws 1982, c. 81, § 1; Laws 1993, c. 219, § 26, eff. Sept. 1, 1993.

§40-3-504. Sheriff to execute warrant in same manner as judgment.

SHERIFF TO EXECUTE WARRANT IN SAME MANNER AS JUDGMENT. Upon receiving such warrant the sheriff shall proceed to execute said warrant in all respects with like effect and in the same manner prescribed by law in respect to executions against property upon judgment of the court of record; and such sheriff shall execute and deliver to the purchaser a bill of sale or deed, as the case may be. Any purchaser, other than the State of Oklahoma, shall be entitled, upon application to the court having jurisdiction of the property, to have confirmation (the procedure for which shall be the same as is now provided for the confirmation of a sale under execution) of such sale prior to the issuance of a bill of sale or deed. The State of Oklahoma shall be authorized to make bids at any such sale to the amount of contributions, penalties, interest, costs and fees accrued. In the event such bid is successful, the sheriff shall issue a proper muniment of title to the Commission, which said Commission shall hold such title for the use and benefit of the State of Oklahoma; and any delinquent employer, or transferee of such delinquent employer, shall have the right, at any time within one (1) year from the date of such sale, to redeem such property, upon the payment of all contributions, penalties, interest, costs and fees accrued to the date of redemption. Such applicant shall not be entitled to a credit upon such contributions, penalties, interest, costs and fees, by reason of any revenue that might have accrued to the State of Oklahoma or other purchaser under sale prior to such redemption. After the expiration of the period of redemption herein provided, the State of Oklahoma may sell such property at public auction, upon giving thirty (30) days' notice, published in a newspaper of general circulation in the county where such property is located, to the highest and best bidder for cash; and upon a sale had thereof, or when a redemption is made, the Commission for and on behalf of the State of Oklahoma shall issue its bill of sale or quit claim deed to the successful bidder or to the redemptioner. The sheriff shall be entitled to the same fee for his services in executing the warrant, as he would be entitled to

receive if he were executing an execution issued by the court clerk of said county upon a judgment of a court of record.

Added by Laws 1980, c. 323, § 3-504, eff. July 1, 1980. Amended by Laws 1993, c. 219, § 27, eff. Sept. 1, 1993.

§40-3-505. Failure of sheriff to execute warrant.

FAILURE OF SHERIFF TO EXECUTE WARRANT. If any sheriff shall refuse or neglect to levy upon and sell any real or personal property of any delinquent employer as directed by any warrant issued by the Commission, or shall refuse or neglect, on demand, to pay over to the Commission, its representatives or attorneys, all moneys by him collected or received under any warrant issued by the said Commission, at any time after collecting or receiving the same, such sheriff or other officer shall, upon motion of the Commission in court, and after thirty (30) days' notice thereof, in writing, be amerced in the amount for which any such warrant was issued, together with all penalties and costs and with an additional penalty of ten percent (10%) thereon, to and for the use of the State of Oklahoma. Every surety of any sheriff or officer shall be made a party to the judgment rendered as aforesaid against the sheriff or other officer.

Added by Laws 1980, c. 323, § 3-505, eff. July 1, 1980.

§40-3-506. State may be made party defendant.

STATE MAY BE MADE PARTY DEFENDANT. In any action involving the title to real estate, or the ownership or right to possession of personal property, the State of Oklahoma may be made a party defendant for the purpose of determining any lien claimed by it upon the property involved therein; and in any such action, service of summons upon the Commission or any member thereof shall be a sufficient service and binding upon the State of Oklahoma.

Added by Laws 1980, c. 323, § 3-506, eff. July 1, 1980.

§40-3-507. Injunctions.

INJUNCTIONS. When any reports required under this act have not been filed or may be insufficient to furnish all the information required by the Commission, or when the contributions imposed by this act have not been paid, the Commission may institute, in the name of the State of Oklahoma, upon the relation of the Commission, any necessary action or proceeding to enjoin such persons, firm, association or corporation from continuing operations until such reports have been filed or contributions paid as required, and in all proper cases injunction shall be issued without a bond being required from the state.

Added by Laws 1980, c. 323, § 3-507, eff. July 1, 1980.

§40-3-508. Appointment of receiver.

APPOINTMENT OF RECEIVER. Upon a proper showing in any action under Section 3-507 that contributions are in danger of being lost or rendered uncollectible by reason of the mismanagement, dissipation or concealment of the property by the taxpayer and a request for the appointment of a receiver for the management of the taxpayer is made, a receiver shall be appointed.
Added by Laws 1980, c. 323, § 3-508, eff. July 1, 1980.

§40-3-509. Levy on bank accounts.

LEVY ON BANK ACCOUNTS.

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

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

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

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

E. If there is no money in the tax debtor's bank account at the time the Notice of Levy is served, or if the bank account has been closed, an officer of the bank on which the Notice of Levy is served shall make a statement to that effect on the Notice of Levy. The statement must be notarized and returned to the representative of the Oklahoma Employment Security Commission named in the Notice of Levy.

F. The Sheriff's Department that serves the Notice of Levy on the bank shall be entitled to a service fee of Fifty Dollars (\$50.00) that is to be paid by the Oklahoma Employment Security Commission and added to the tax debtor's indebtedness as a fee in

the latest calendar quarter for which the tax debtor has any type of indebtedness.

Added by Laws 1992, c. 318, § 9, eff. July 1, 1992. Amended by Laws 2012, c. 196, § 12, emerg. eff. May 8, 2012.

§40-3-510. Enforcement of bank levy.

ENFORCEMENT OF BANK LEVY. A. Any bank that fails or refuses to surrender any money or rights to money in a bank account subject to levy, upon being served with a Notice of Levy and supporting tax warrants of the Oklahoma Employment Security Commission, shall be liable to the Oklahoma Employment Security Commission in a sum equal to the amount of money or rights to money not so surrendered, but not exceeding the amount of the tax debtor's indebtedness for the collection of which the levy has been made, together with accrued interest pursuant to subsection A of Section 3-301 of this title, and the cost of service of the Notice of Levy. Any amount recovered under this subsection shall be credited against the liability for taxes, interest, penalty, fees, and surcharge, for the collection of which the levy was made.

B. Any bank in possession of money or rights to money subject to levy, upon which a levy has been made, that surrenders such money or rights to money to the Oklahoma Employment Security Commission shall be discharged from any obligation or liability to the tax debtor and any other person or entity with respect to such money or rights to money arising from the surrender or payment.

Added by Laws 1992, c. 318, § 10, eff. July 1, 1992.

§40-3-511. Levy upon earnings of tax debtor.

LEVY UPON EARNINGS OF TAX DEBTOR.

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

B. To levy upon the earnings of a tax debtor or contract proceeds owed to a tax debtor, the Oklahoma Employment Security Commission must serve a Notice of Levy on the employer who employs the tax debtor or the contracting entity that owes money under contract to the tax debtor, along with the tax warrants covering all quarters in which the tax debtor owes unemployment taxes, interest, penalties, fees or surcharge. The levy will have the same priority, and be subject to the same exceptions, as a continuing earnings garnishment provided for in Section 1173.4 of Title 12 of the Oklahoma Statutes. The following procedures will apply to a Notice of Levy served on an employer or contracting entity:

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

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

3. The employer or contracting entity shall deliver all funds subject to the levy up to the amount of indebtedness indicated on the tax warrants plus accrued interest pursuant to subsection A of Section 3-301 of this title and any fees for service of process to the representative of the Commission indicated on the Notice of Levy. The delivery of this money shall occur within ten (10) days of the date the earnings or contract proceeds are due to be paid to the tax debtor;

4. Any employer that fails or refuses to surrender money or rights to money belonging to its employee in the employer's possession, or that fails or refuses to make the appropriate deduction from wages pursuant to a levy provided for by this statute upon being served with a Notice of Levy and supporting warrant of levy and lien of the Commission, shall be liable to the Commission in a sum equal to the amount of money, rights to money, or wage deduction not so surrendered, but not exceeding the amount of the debtor's indebtedness for the collection of which the levy has been made, together with accrued interest and penalty pursuant to Section 3-301 of this title, and the cost of service of the Notice of Levy. Any amount recovered in this manner shall be credited against the liability of the debtor for which the levy was made; and

5. Any employer in possession of money or rights to money subject to levy upon which a levy has been made that surrenders the money or rights to money to the Commission shall be discharged from any obligation or liability to the debtor and any other person or entity with respect to such money or rights to money arising from the surrender or payment.

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

D. The sheriff's department that serves the Notice of Levy on the employer or contracting entity shall be entitled to a service fee of Fifty Dollars (\$50.00) that is to be paid by the Oklahoma

Employment Security Commission and added to the tax debtor's indebtedness as a fee in the latest calendar quarter for which the tax debtor has any type of indebtedness.

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

Added by Laws 2012, c. 196, § 13, emerg. eff. May 8, 2012. Amended by Laws 2015, c. 249, § 15, eff. Nov. 1, 2015.

§40-3-512. Treasury offset program - Delinquent unemployment taxes.

TREASURY OFFSET PROGRAM - DELINQUENT UNEMPLOYMENT TAXES.

A. The Oklahoma Employment Security Commission shall be authorized to collect state unemployment tax indebtedness established pursuant to Article 3 of the Employment Security Act of 1980, through the Tax Offset Program of the U.S. Department of the Treasury pursuant to 26 U.S.C., Section 6402(f) and 31 CFR, Section 285.8.

B. Before submitting an indebtedness to the U.S. Department of the Treasury for collection through the Tax Offset Program, the Oklahoma Employment Security Commission shall notify the debtor in writing of the amount of the debt and the time period the indebtedness accrued. The notification shall give the debtor sixty (60) days from the date of mailing of the notice to present evidence to the Commission that all or a part of the indebtedness is not legally enforceable or is otherwise invalid.

C. If the debtor responds to the notice by presenting evidence, the Commission shall evaluate the evidence and review its records of the indebtedness. Based on this evaluation and review, the Commission may modify the amount of the indebtedness. Once the evaluation and review process is complete, the indebtedness shall be submitted to the U.S. Department of Treasury for collection through the Tax Offset Program.

D. If no evidence is presented by the debtor within the sixty-day time period allowed by the notice, the amount of the indebtedness will be submitted to the U.S. Department of the Treasury for collection through the Tax Offset Program.

E. If the Oklahoma Employment Security Commission receives an erroneous payment from the U.S. Department of the Treasury, the Oklahoma Employment Security Commission shall return the payment to the U.S. Department of the Treasury. If the money that was

erroneously paid to the Oklahoma Employment Security Commission had been credited to a state unemployment tax indebtedness, that indebtedness shall be reinstated to the amount that existed before the payment was credited.

Added by Laws 2015, c. 249, § 16, eff. Nov. 1, 2015.

§40-3-601. Establishment of unemployment compensation fund.

ESTABLISHMENT OF UNEMPLOYMENT COMPENSATION FUND. There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, the Unemployment Compensation Fund, which shall be administered by the Commission exclusively for the purpose of this act. This fund shall consist of (1) all contributions collected pursuant to this act, together with any interest thereon collected pursuant to this act; (2) all penalties collected pursuant to the provisions of this act; (3) interest earned upon any moneys in the fund; (4) any property or securities acquired through the use of moneys belonging to the fund; (5) all earnings of such property or securities; and (6) all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided.

Added by Laws 1980, c. 323, § 3-601, eff. July 1, 1980.

§40-3-602. State Treasurer custodian of fund.

STATE TREASURER CUSTODIAN OF FUND. The State Treasurer shall be ex officio the treasurer and custodian of the fund who shall administer such fund in accordance with the directions of the Commission and shall issue his warrants upon it in accordance with such rules as the Commission shall prescribe.

Added by Laws 1980, c. 323, § 3-602, eff. July 1, 1980. Amended by Laws 1993, c. 219, § 28, eff. Sept. 1, 1993.

§40-3-603. State Treasurer to maintain three accounts.

STATE TREASURER TO MAINTAIN THREE ACCOUNTS. The State Treasurer shall maintain within the Fund three separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account.

Added by Laws 1980, c. 323, § 3-603, eff. July 1, 1980.

§40-3-604. Clearing account.

CLEARING ACCOUNT. All monies payable to the fund, upon receipt thereof by the Commission, shall be forwarded to the Treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to this act shall be payable from the clearing account upon warrants or electronic fund transfers issued under the direction of the Commission.

Added by Laws 1980, c. 323, § 3-604, eff. July 1, 1980. Amended by Laws 2010, c. 216, § 11, eff. July 1, 2010.

§40-3-605. Unemployment trust fund.

UNEMPLOYMENT TRUST FUND. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to Section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding.

Added by Laws 1980, c. 323, § 3-605, eff. July 1, 1980.

§40-3-606. Benefit account.

BENEFIT ACCOUNT. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund in the United States Treasury. Moneys in the clearing and benefit account may be deposited in any depository bank in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank. Such moneys shall be secured by said depository bank by collateral in the full amount of funds on deposit. Such security shall consist of (1) United States Government obligations, direct or guaranteed, and (2) direct obligations of the State of Oklahoma. Such collateral security shall be pledged at not to exceed the face value of the obligation and shall be kept separate and distinct from any collateral security pledged to secure other funds of the state. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment compensation fund. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered for losses sustained by the fund shall be deposited therein.

Added by Laws 1980, c. 323, § 3-606, eff. July 1, 1980.

§40-3-607. Requisitions from unemployment trust account.

REQUISITIONS FROM UNEMPLOYMENT TRUST ACCOUNT. Moneys requisitioned from this state's account in the unemployment trust fund shall be used exclusively for the payment of benefits. The Commission shall, from time to time, requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as it deems necessary for

the payment of such benefits for a reasonable future period. Upon receipt thereof such moneys shall be deposited in the benefit account.

Added by Laws 1980, c. 323, § 3-607, eff. July 1, 1980.

§40-3-608. Expenditures not subject to specific appropriation requirements.

EXPENDITURES NOT SUBJECT TO SPECIFIC APPROPRIATION REQUIREMENTS.

(1) Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued for the payment of benefits and refunds shall bear the signature of a representative of the Commission duly authorized for that purpose.

(2) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the Commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the unemployment trust fund.
Added by Laws 1980, c. 323, § 3-608, eff. July 1, 1980.

§40-3-609. Discontinuance of unemployment trust fund.

DISCONTINUANCE OF UNEMPLOYMENT TRUST FUND. The provisions of this part to the extent that they relate to the unemployment trust fund in the Treasury of the United States, shall be operative only so long as such unemployment trust fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals.

Added by Laws 1980, c. 323, § 3-609, eff. July 1, 1980.

§40-3-610. Management of funds of unemployment trust fund.

MANAGEMENT OF FUNDS OF UNEMPLOYMENT TRUST FUND. If and when the unemployment trust fund in the Treasury of the United States, ceases to exist, or such separate book account of the unemployment trust fund is no longer maintained, all moneys belonging to the unemployment compensation fund of this state shall be administered by the Commission as a trust fund for the purpose of paying benefits under this act, and the Commission shall have authority to hold, invest, transfer, sell, deposit, and release such moneys, and any properties, securities, or earnings acquired as an incident to such

administration; provided, that such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States of America or guaranteed both as to interest and principal by the United States; provided further, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The Treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the Commission.

Added by Laws 1980, c. 323, § 3-610, eff. July 1, 1980.

§40-3-701. Applicability.

APPLICABILITY. The provisions of this part shall apply to the financing of benefits to employees of the state and political subdivisions thereof and their instrumentalities.

Added by Laws 1980, c. 323, § 3-701, eff. July 1, 1980.

§40-3-702. Payments by the state subdivisions and instrumentalities in lieu of contributions.

PAYMENTS BY THE STATE SUBDIVISIONS AND INSTRUMENTALITIES IN LIEU OF CONTRIBUTIONS. In lieu of contributions required of employers under the Employment Security Act of 1980, as provided by this act, the State of Oklahoma and its instrumentalities shall pay each quarter beginning after March 31, 1978, including any political subdivision and its instrumentalities after December 31, 1977, one percent (1%) of taxable wages, as defined in this act, paid to employees covered by this act. Such payments made in lieu of contributions shall be paid on or before the last day of the month following the calendar quarter to be reported and shall be paid into the Unemployment Compensation Fund.

Added by Laws 1980, c. 323, § 3-702, eff. July 1, 1980. Amended by Laws 1994, c. 195, § 6, emerg. eff. May 16, 1994.

§40-3-703. Benefits and extended benefits paid from unemployment security fund.

BENEFITS AND EXTENDED BENEFITS PAID FROM UNEMPLOYMENT SECURITY FUND. All regular benefits and extended benefits, as defined by this act, paid to individuals who were employees of the state and political subdivisions and their instrumentalities and which were based on wages paid by the state and political subdivisions and their instrumentalities shall be paid from the benefit account of the Unemployment Compensation Fund.

Added by Laws 1980, c. 323, § 3-703, eff. July 1, 1980.

§40-3-704. Benefits based on wages paid both by the state and other employers.

BENEFITS BASED ON WAGES PAID BOTH BY THE STATE AND OTHER EMPLOYERS. If benefits paid an individual are based on wages paid by both the state and one or more other employers subject to this act, the amount to be included as state benefit payments shall bear the same ratio to the total benefits paid to the individual as the base period wages as defined by this act, paid to the individual by the state bear to the total amount of base period wages paid to the individual by all his base period employers, as defined by this act. Added by Laws 1980, c. 323, § 3-704, eff. July 1, 1980.

§40-3-705. Election to become liable for reimbursement payments.

ELECTION TO BECOME LIABLE FOR REIMBURSEMENT PAYMENTS. (1) Any governmental organization, as described in Section 1-208(7) and (8) including their instrumentalities, which is or becomes subject to this act after December 31, 1977, may elect to become liable for reimbursement payments in lieu of contributions in the same manner and subject to the same provisions that apply to reimbursing nonprofit organizations as provided in Part 8 of Article 3, including formation of group accounts, and the proportionate allocation of benefit costs, applicable to reimbursing nonprofit organizations as provided in Part 8 of Article 3, except that one hundred percent (100%) of the extended benefits attributable to governmental entities will be reimbursed after January 1, 1979. In lieu of making reimbursement payments in the manner provided in Part 8 of Article 3, a governmental organization authorized to raise revenue as provided in Article X, Section 28, of the Oklahoma Constitution may elect by resolution filed with the Commission to make reimbursement payments after receipt of the notice of the full amount due that is equal to the regular benefits and extended benefits paid by the Commission during each quarter after January 1, 1978, and is attributable to service in the employ of the governmental organization.

(2) If such amount is not paid into the unemployment compensation fund by such governmental organization by the due date, the Commission may file in the office of the court clerk of the county in which the situs of the governmental organization is located a certified copy of its notice of the full amount due, regardless of any minimum, and including any interest or penalty that may be assessed.

(3) The amount so certified shall be entered on the judgment docket of the district court and shall have the same force and be subject to the same law as judgments of the district court and paid in the manner provided for payment of judgments against subdivisions of government as set forth in Sections 365.1 through 365.6 of Title 62 of the Oklahoma Statutes. The Commission is hereby authorized to sell and assign to the State Treasurer any judgments against such governmental organization as herein provided.

Added by Laws 1980, c. 323, § 3-705, eff. July 1, 1980.

§40-3-706. Benefits that do not apply in the computation of state experience factor.

BENEFITS THAT DO NOT APPLY IN THE COMPUTATION OF STATE EXPERIENCE FACTOR. Benefits paid to former employees of governmental entities, except for benefits paid to such employees based upon wages paid by other than governmental entities, shall not be considered as benefits for the purpose of Section 3-108, nor shall any wages of governmental entities be used as benefit wages for the purpose of Section 3-108.

Added by Laws 1980, c. 323, § 3-706, eff. July 1, 1980.

§40-3-707. State pledge.

STATE PLEDGE. The State of Oklahoma recognizes its obligation under this act and hereby pledges the faith of the state that funds which are to be dispersed by the state to any organization, instrumentality of the state or its political subdivisions will be available to insure payments required under this act.

Added by Laws 1980, c. 323, § 3-707, eff. July 1, 1980.

§40-3-708. Delinquent payments.

DELINQUENT PAYMENTS. If the Commission finds that any organization, instrumentality of the state or its political subdivisions, including public trusts, has become delinquent with payments required under the act and following the Commission's written request for such payment, has for sixty (60) days or more thereafter refused or failed to pay amounts due and required under this act, the Commission shall notify the State Budget Director of such delinquency and total amount due. The Budget Director shall authorize payment of such amounts from any funds deposited with the State Treasurer, which would otherwise be due from the state to such organization, instrumentality or political subdivision.

Added by Laws 1980, c. 323, § 3-708, eff. July 1, 1980.

§40-3-801. Applicability.

APPLICABILITY.

Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this part. For the purpose of this part, a nonprofit organization is an organization or group of organizations defined in paragraph (4) of Section 1-210 of this title.

Added by Laws 1980, c. 323, § 3-801, eff. July 1, 1980. Amended by Laws 1997, c. 30, § 17, eff. July 1, 1997.

§40-3-802. Contributions.

CONTRIBUTIONS. Any such nonprofit organization which is, or becomes, subject to this act, on or after January 1, 1972, shall report and pay contributions to the Commission in the same time, manner and amounts as required of nongovernmental employers for profit subject to this act subject, except as herein provided, to the same rights, remedies, obligations and penalties as a nongovernmental employer for profit.
Added by Laws 1980, c. 323, § 3-802, eff. July 1, 1980.

§40-3-803. Election to make payments in lieu of contributions.

ELECTION TO MAKE PAYMENTS IN LIEU OF CONTRIBUTIONS. A nonprofit organization may elect, in accordance with this section, in lieu of contributions, to pay to the Commission for the unemployment compensation fund an amount equal to the amount of regular benefits and of one-half (1/2) of the extended benefits paid in accordance with this act that is attributable to service in the employ of such nonprofit organization for weeks of unemployment which begin during the effective period of such election, regardless of reason for separation.

Added by Laws 1980, c. 323, § 3-803, eff. July 1, 1980.

§40-3-804. Period of election - Organizations subject to act after January 1, 1972.

PERIOD OF ELECTION - ORGANIZATIONS SUBJECT TO ACT AFTER JANUARY 1, 1972. Any nonprofit organization which becomes subject to this act on or after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than the remainder of the calendar year in which subjectivity occurs and the next two (2) succeeding calendar years by filing a written notice of its election with the Commission not later than thirty (30) days immediately following the date of the determination of such subjectivity.

Added by Laws 1980, c. 323, § 3-804, eff. July 1, 1980.

§40-3-805. Written notice of termination of election required.

WRITTEN NOTICE OF TERMINATION OF ELECTION REQUIRED. Any nonprofit organization which makes an election in accordance with Section 3-804 of this act will continue to be liable for payments in lieu of contributions until it files with the Commission a written notice terminating its election not later than the last day of January immediately following the beginning of the calendar year for which such termination shall first be effective. After such termination such employer shall be treated as a newly subject nongovernmental employer for profit under the Oklahoma Employment Security Act for purposes of determining such organization's contribution rate.

Added by Laws 1980, c. 323, § 3-805, eff. July 1, 1980.

§40-3-806. Payment of in-lieu contributions.

PAYMENT OF IN-LIEU CONTRIBUTIONS.

A. At the end of each calendar quarter the Oklahoma Employment Security Commission shall notify in writing each nonprofit organization, or the agent of a group of nonprofit organizations, which has elected to make payments in lieu of contributions, the amount, if any, equal to the full amount of regular benefits plus one-half (1/2) of the amount of extended benefits paid by the Commission during the quarter that is attributable to service in the employ of the organization or the members of a group of the organizations. The full amount shall include all amounts paid as benefits that are attributable to base period wages paid by the organization, including any benefit amounts paid in error. The notification shall be deemed and treated as an assessment of contributions and the payment of the amount owing shall be collected as contributions, interest, penalty and fees, if any, are collected, in accordance with the provisions of the Employment Security Act of 1980. The employer, or group of employers, shall have the rights and remedies provided by the Employment Security Act of 1980 with respect to assessments of contributions, including the right of protest, hearing and appeal. The Commission shall make its assessment or amend its assessment within three (3) years of the ending date of the calendar quarter to which the assessment or amendment applies. If no protest is filed or if filed and confirmed by the Commission or its authorized representatives, said assessment shall be immediately due and payable and shall bear interest after forty-five (45) days at the rate of one percent (1%) per month until paid. If any nonprofit organization or group of organizations fails or refuses to pay said assessment after same has become delinquent within forty-five (45) days after written request has been mailed to the organization or the agent of the group by the Commission or its representative, a penalty of five percent (5%) of the amount due shall be added thereto, collected and paid. All collections made shall be deposited in the Unemployment Compensation Fund.

B. The electing organization, or group of organizations, shall file reports of wages paid, in the same time and manner as required of nongovernmental employers for profit. If any electing organization, or group of organizations, fails or refuses to file its wage report within fifteen (15) days after written notice, a penalty of Twenty Dollars (\$20.00) for each day until the report is filed with a maximum of Two Hundred Dollars (\$200.00) is hereby imposed against the organization or group and shall be collected and paid.

C. Payments made by any nonprofit organization under the provisions of this section shall not be deducted or deductible, in

whole or in part, from the remuneration of individuals in the employ of the organization.

Added by Laws 1980, c. 323, § 3-806, eff. July 1, 1980. Amended by Laws 1981, c. 259, § 24, emerg. eff. June 25, 1981; Laws 1990, c. 333, § 12, emerg. eff. May 31, 1990; Laws 1993, c. 219, § 29, eff. Sept. 1, 1993; Laws 2007, c. 354, § 12, eff. Nov. 1, 2007; Laws 2010, c. 216, § 12, eff. July 1, 2010; Laws 2023, c. 346, § 4, eff. Nov. 1, 2023.

§40-3-807. Payment of in-lieu contributions - Benefits based on wages paid by more than one employer.

PAYMENT OF IN-LIEU CONTRIBUTIONS - BENEFITS BASED ON WAGES PAID BY MORE THAN ONE EMPLOYER. (1) Each employer that is liable for payments in lieu of contributions shall pay to the Commission for the fund the amount of regular benefits plus the amount of one-half (1/2) of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer under this act and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subsection (2) or subsection (3) of this section.

(2) If benefits paid to an individual are based on wages paid by one or more employers that are liable for contributions under this act, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages, as defined by this act, paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers, as defined by this act.

(3) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(4) Amounts paid that are to be reimbursed under this section shall not be considered as benefits for the purposes of this act, nor shall any benefit wages be created under this act by such payments.

Added by Laws 1980, c. 323, § 3-807, eff. July 1, 1980.

§40-3-808. Election to become reimbursing employer.

ELECTION TO BECOME REIMBURSING EMPLOYER. Any nonprofit organization which had been liable for paying contributions for a

period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the Commission not later than the last day of January immediately following the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next calendar year.
Added by Laws 1980, c. 323, § 3-808, eff. July 1, 1980.

§40-3-809. Repealed by Laws 2017, c. 345, § 14, eff. July 1, 2017.

§40-3-810. Commission to provide notice of determinations.

COMMISSION TO PROVIDE NOTICE OF DETERMINATIONS. The Commission, in accordance with such rules as it may prescribe, shall notify each nonprofit organization, or group of organizations, of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of this act.

Added by Laws 1980, c. 323, § 3-810, eff. July 1, 1980. Amended by Laws 1993, c. 219, § 31, eff. Sept. 1, 1993.

§40-4-101. Applicability.

APPLICABILITY. This part shall apply to the Oklahoma Employment Security Commission.

Added by Laws 1980, c. 323, § 4-101, emerg. eff. June 13, 1980.

§40-4-102. Composition.

COMPOSITION. There is hereby created a Commission to be known as the Oklahoma Employment Security Commission. The Commission shall consist of five (5) members, appointed by the Governor, by and with the consent of the Oklahoma State Senate, two of whom shall represent employers, two shall represent employees, and one shall represent the public. The representative of the public shall be the Chairman of the Commission. New appointments shall be made within ninety (90) days after any vacancy occurs in the membership.

Added by Laws 1980, c. 323, § 4-102, emerg. eff. June 13, 1980.

§40-4-103. Qualifications.

QUALIFICATIONS. Each member of such Commission shall be a citizen of the United States, and at the time of appointment shall be, and for more than five (5) years shall have been, a bona fide resident and qualified voter of the State of Oklahoma, and shall be not less than thirty (30) years of age at the time of appointment.

During his term of membership on the Commission, no member shall serve as an officer or committee member of any political party organization.

Added by Laws 1980, c. 323, § 4-103, emerg. eff. June 13, 1980.

§40-4-104. Term of office.

TERM OF OFFICE. Each member shall hold office for a term of six (6) years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of enactment of this act shall expire, as designated by the Governor at the time of appointment, two at the end of two (2) years, one a representative of employers, and one a representative of employees; two at the end of four (4) years, one a representative of employers, one a representative of employees; and one, the representative of the public, at the end of six (6) years after the date of enactment of this act. The members of the Commission who are serving at the time this bill is enacted shall continue to serve for the remainders of their respective terms without interruption by reason of this enactment.

Added by Laws 1980, c. 323, § 4-104, emerg. eff. June 13, 1980.

§40-4-105. Removal by the Governor.

REMOVAL BY THE GOVERNOR. The Governor may, at any time, after notice and hearing, remove any Commissioner for cause, and such Commissioner sought to be thus removed shall, if he so desires, be given a copy of the charges brought against him, and be given an opportunity of being publicly heard in person, or by counsel, upon not less than ten (10) days' notice. Such hearing shall be had before the Governor of the State of Oklahoma. If such Commissioner be removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such Commissioner, and a complete record of the Governor's proceedings and his findings thereon.

Added by Laws 1980, c. 323, § 4-105, emerg. eff. June 13, 1980.

§40-4-106.1. Compensation and travel expenses.

In addition to reimbursement for travel expenses pursuant to the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes, each Commissioner shall receive Fifty Dollars (\$50.00) for each Commission meeting attended, not to exceed Six Hundred Dollars (\$600.00) per annum.

Added by Laws 1992, c. 318, § 8, eff. July 1, 1992.

§40-4-107. Quorum.

QUORUM. Any three Commissioners shall constitute a quorum. No vacancy shall impair the right of the remaining Commissioners to exercise all of the powers of the Commission.

Added by Laws 1980, c. 323, § 4-107, emerg. eff. June 13, 1980.

§40-4-108. Executive Director.

EXECUTIVE DIRECTOR.

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 hire, promote and terminate personnel, and shall fix the qualifications and duties of such personnel. Added by Laws 1980, c. 323, § 4-108, emerg. eff. June 13, 1980. Amended by Laws 1982, c. 304, § 20, operative Oct. 1, 1982; Laws 1992, c. 318, § 11, eff. July 1, 1992; Laws 1995, c. 340, § 23, eff. July 1, 1995; Laws 2003, c. 177, § 7, eff. Nov. 1, 2003; Laws 2005, c. 182, § 10, eff. Nov. 1, 2005; Laws 2021, c. 424, § 14, eff. Nov. 1, 2021.

§40-4-109. Service of process.

SERVICE OF PROCESS.

If the Oklahoma Employment Security Commission is sued, or if its officers or employees are sued in their official capacities, the service of all legal process pursuant to Section 2004 of Title 12 of the Oklahoma Statutes and of all extrajudicial notices which may be required in writing shall be made on the Executive Director at the official office of the Commission as set out in Administrative Rule 240:1-1-5. This section shall not apply to appeals brought under Article 2, Part 6 and Article 3, Part 4 of the Employment Security Act of 1980. Service of process in Article 2, Part 6 and Article 3, Part 4, shall be made pursuant to the procedures set out by the statutes in those parts and the administrative rules implementing those statutes. This section shall not be construed to waive any immunity created by constitution or statute that applies to the Oklahoma Employment Security Commission, its officers or employees or this state.

Added by Laws 2007, c. 354, § 13, eff. Nov. 1, 2007.

§40-4-201. Applicability.

APPLICABILITY. This part shall apply to the creation, appointment, salary and qualifications of the Board of Review. Added by Laws 1980, c. 323, § 4-201, emerg. eff. June 13, 1980.

§40-4-202. Creation.

CREATION. There shall be created at such time as is necessary for the proper administration of this act a Board of Review, consisting of three members appointed by the Governor for terms of six (6) years, except that the terms of the members first taking office shall be two (2), four (4) and six (6) years, respectively, as designated by the Governor at the time of appointment, and except

that vacancies shall be filled by appointment by the Governor for the unexpired term.

Added by Laws 1980, c. 323, § 4-202, emerg. eff. June 13, 1980.

§40-4-203. Salary.

SALARY.

Each member of the Board of Review shall be paid from the Employment Security Administration Fund a salary of Thirty Thousand Dollars (\$30,000.00) per annum, payable biweekly, plus actual and necessary traveling expenses incurred in the performance of his or her duties as provided in the State Travel Reimbursement Act.

Added by Laws 1980, c. 323, § 4-203, emerg. eff. June 13, 1980.

Amended by Laws 1981, c. 259, § 25, emerg. eff. June 25, 1981; Laws 1982, c. 304, § 21, operative Oct. 1, 1982; Laws 1990, c. 266, § 96, operative July 1, 1990; Laws 1999, c. 306, § 3, eff. July 1, 1999; Laws 2011, c. 256, § 14.

§40-4-204. No member to serve as an officer in a political organization.

NO MEMBER TO SERVE AS AN OFFICER IN A POLITICAL ORGANIZATION. No member of the Board of Review shall serve as an officer or committee member of any political party organization during his term of office.

Added by Laws 1980, c. 323, § 4-204, emerg. eff. June 13, 1980.

§40-4-205. Temporary members.

TEMPORARY MEMBERS. In the event of the disqualification of one member of the Board of Review from the hearing and determination of a claim for benefits, the Governor shall designate a fourth, temporary member to serve as an alternative member. In the event of the disqualification of two or more members of the Board of Review from the hearing and determination on a claim for benefits, the Governor shall designate by appointment temporary members to serve as alternate members. Such alternates shall be paid traveling expenses incurred in the performance of their duties as provided in the State Travel Reimbursement Act. The Governor may at any time, after notice and hearing, remove any member for cause.

Added by Laws 1980, c. 323, § 4-205, emerg. eff. June 13, 1980.

Amended by Laws 1985, c. 178, § 17, operative July 1, 1985; Laws 2022, c. 360, § 21, eff. Nov. 1, 2022.

§40-4-301. Applicability.

APPLICABILITY. This part shall apply to the powers and duties of the Commission.

Added by Laws 1980, c. 323, § 4-301, emerg. eff. June 13, 1980.

§40-4-302. Commission shall publish rules and other material.

COMMISSION SHALL PUBLISH RULES AND OTHER MATERIAL. It shall be the duty of the Commission to administer this act; and it shall have the power and authority to adopt, amend, or rescind such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and to take such other action as it deems necessary or suitable to that end.

Added by Laws 1980, c. 323, § 4-302, emerg. eff. June 13, 1980.

Amended by Laws 1990, c. 333, § 13, emerg. eff. May 31, 1990.

§40-4-303. Repealed by Laws 1990, c. 333, § 20, emerg. eff. May 31, 1990.

§40-4-304. Commission to determine its own organization and procedure.

COMMISSION TO DETERMINE ITS OWN ORGANIZATION AND PROCEDURE. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this act.

Added by Laws 1980, c. 323, § 4-304, emerg. eff. June 13, 1980.

§40-4-305. Official seal.

OFFICIAL SEAL. The Commission shall have an official seal which shall be judicially noticed.

Added by Laws 1980, c. 323, § 4-305, emerg. eff. June 13, 1980.

§40-4-306. Report to Governor.

REPORT TO GOVERNOR. Not later than the fifteenth day of February of each year, the Commission shall submit to the Governor a report covering the administration and operation of this act during the preceding calendar year and shall make such recommendations for amendments to this act as the Commission shall deem proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the Commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period.

Added by Laws 1980, c. 323, § 4-306, emerg. eff. June 13, 1980.

§40-4-307. Changes in benefits or contribution rates.

CHANGES IN BENEFITS OR CONTRIBUTION RATES. Whenever the Commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor, who may make to the Legislature recommendations with respect thereto.

Added by Laws 1980, c. 323, § 4-307, emerg. eff. June 13, 1980.

§40-4-308. Repealed by Laws 1990, c. 333, § 20, emerg. eff. May 31, 1990.

§40-4-309. Repealed by Laws 1990, c. 333, § 20, emerg. eff. May 31, 1990.

§40-4-310. Repealed by Laws 1990, c. 333, § 20, emerg. eff. May 31, 1990.

§40-4-310.1. Adoption and promulgation of rules.

ADOPTION AND PROMULGATION OF RULES. The adoption and promulgation of all rules by the Oklahoma Employment Security Commission shall be in accordance with the procedures set forth in Article I of the Administrative Procedures Act.

Added by Laws 1990, c. 333, § 14, emerg. eff. May 31, 1990. Amended by Laws 2006, c. 176, §24, eff. July 1, 2006. Renumbered from § 4-310A of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006.

§40-4-310A. Renumbered as § 4-310.1 of this title by Laws 2006, c. 176, § 29, eff. July 1, 2006.

§40-4-311. Commission shall publish rules.

COMMISSION SHALL PUBLISH RULES.

The Oklahoma Employment Security Commission shall cause the text of 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 to be published on the Commission website in a manner that can be accessed by the general public.

Added by Laws 1980, c. 323, § 4-311, emerg. eff. June 13, 1980. Amended by Laws 1990, c. 333, § 15, emerg. eff. May 31, 1990; Laws 1993, c. 219, § 32, eff. Sept. 1, 1993; Laws 2021, c. 424, § 15, eff. Nov. 1, 2021.

§40-4-312. Personnel and compensation.

PERSONNEL AND COMPENSATION.

Subject to other provisions of 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 Section 1-101 et seq. of this title. 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 a merit system on the basis of efficiency and fitness. The Commission is authorized to adopt rules as may be necessary to meet personnel standards 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. Added by Laws 1980, c. 323, § 4-312, emerg. eff. June 13, 1980. Amended by Laws 1990, c. 333, § 16, emerg. eff. May 31, 1990; Laws 2012, c. 304, § 130; Laws 2021, c. 424, § 16, eff. Nov. 1, 2021.

§40-4-313. Commission to cooperate and comply with federal law.

COMMISSION TO COOPERATE AND COMPLY WITH FEDERAL LAW. In the administration of this act the Oklahoma Employment Security Commission shall cooperate to the fullest extent consistent with the provisions of this act, with the Social Security Act, as amended, and is authorized and directed to take such action, through the adoption of appropriate rules, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of such act, under the provisions of Sections 1602 and 1603 of the Federal Unemployment Tax Act and under the provisions of the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with States in the promotion of such system, and for other purposes", approved June 6, 1933, as amended. The Commission shall comply with the regulations of the Secretary of Labor relating to the receipt or expenditure by this state of monies granted under any of such acts and shall make such reports, in such form and containing such information as the Secretary of Labor may from time to time require, and shall comply with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports.

The Commission may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

Added by Laws 1980, c. 323, § 4-313, emerg. eff. June 13, 1980. Amended by Laws 1990, c. 333, § 17, emerg. eff. May 31, 1990.

§40-4-314. Repealed by Laws 2019, c. 251, § 14, eff. July 1, 2019.

§40-4-315. Repealed by Laws 2005, c. 182, § 15, eff. Nov. 1, 2005.

§40-4-316. Purchase of real property.

PURCHASE OF REAL PROPERTY. If the Commission determines, to its satisfaction, that suitable quarters, office space or facilities are not readily obtainable, the Commission may enter into an agreement with the board of county commissioners of any county, with any state agency or public trust, or with any private person or entity, for the purchase of real property and any improvements or buildings thereon, for the purpose of providing office space to the Commission. The Commission shall not enter into any agreement under

the provisions of this section unless one hundred percent (100%) federal financial participation is obtainable. All such agreements shall contain provisions regarding the financial participation therein by the parties to the agreement, the payments made for the purchase of such property, and the ownership of such real property, improvements and buildings thereon after payment of the cost of construction or renovation has been completed. All such provisions shall be consistent with the requirements necessary for the Commission to obtain or receive federal funds for such purpose. No purchase of any building shall occur without approval of the Legislature.

Added by Laws 1994, c. 349, § 1, eff. July 1, 1994.

§40-4-317. Employee recognition program.

EMPLOYEE RECOGNITION PROGRAM.

In order to establish a public employee benefit program to encourage outstanding performance in the workplace, the Oklahoma Employment Security Commission is hereby directed to establish an on-the-job employee performance recognition program which encourages outstanding job performance and productivity. The Commission is authorized to expend from monies available to it so much thereof as may be necessary for the purchase of recognition awards for presentation to the members of work units or individual employees with exceptional job performance records or for other significant contributions to the operation of the Commission. Recognition awards shall consist of any type of award authorized by the provisions of Section 4121 of Title 74 of the Oklahoma Statutes. Added by Laws 2002, c. 452, § 25, eff. Nov. 1, 2002. Amended by Laws 2006, c. 176, § 25, eff. July 1, 2006.

§40-4-318. Employee performance recognition program - Veterans Service Division.

In order to encourage the improvement and modernization of employment, training, and placement services for veterans, and to recognize eligible employees for excellence in the provision of services to veterans, or for having made demonstrable improvements in the provision of services to veterans, the Veterans Service Division of the Oklahoma Employment Security Commission is directed to establish an employee performance recognition program. The Commission is hereby authorized to grant cash awards of up to Five Thousand Dollars (\$5,000.00) to the eligible employees meeting criteria established by the Veterans Service Division of the Oklahoma Employment Security Commission, provided funds exist from United States Department of Labor grants for the payment of the awards. For the purposes of this act, "eligible employees" means any of the following:

1. A disabled veterans outreach program specialist;

2. A local veterans employment representative; or

3. An individual providing employment, training and placement services to veterans under the workforce system programs or through an Employment Service delivery system.

Added by Laws 2006, c. 176, § 26, eff. July 1, 2006. Amended by Laws 2015, c. 249, § 17, eff. Nov. 1, 2015.

§40-4-319. Recognition programs.

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

Added by Laws 2012, c. 196, § 14, emerg. eff. May 8, 2012.

§40-4-401. Repealed by Laws 2007, c. 354, § 18, eff. Nov. 1, 2007.

§40-4-402. Repealed by Laws 2007, c. 354, § 18, eff. Nov. 1, 2007.

§40-4-403. Repealed by Laws 2007, c. 354, § 18, eff. Nov. 1, 2007.

§40-4-404. Repealed by Laws 2007, c. 354, § 18, eff. Nov. 1, 2007.

§40-4-405. Repealed by Laws 2007, c. 354, § 18, eff. Nov. 1, 2007.

§40-4-501. Applicability.

APPLICABILITY. This part shall apply to the maintenance and production of work records by employers.

Added by Laws 1980, c. 323, § 4-501, emerg. eff. June 13, 1980.

§40-4-502. Employing units to maintain records open to Commission.

EMPLOYING UNITS TO MAINTAIN RECORDS OPEN TO COMMISSION. Each employing unit shall keep true and accurate work records, for such periods of time and containing such information as the Commission may prescribe. Such records shall be maintained for a period of four (4) years and shall be open to inspection and be subject to being copied by the Commission or its authorized representatives at any reasonable time.

Added by Laws 1980 c. 323, § 4-502, emerg. eff. June 13, 1980.

§40-4-503. Sworn or unsworn reports.

SWORN OR UNSWORN REPORTS. The Commission, its authorized representatives, or the Board of Review may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which its authorized representatives deem necessary for the effective administration of this act.

Added by Laws 1980, c. 323, § 4-503, emerg. eff. June 13, 1980.

§40-4-504. Oaths, depositions, certifications of official acts and subpoenas.

OATHS, DEPOSITIONS, CERTIFICATIONS OF OFFICIAL ACTS AND SUBPOENAS.

In the discharge of the duties imposed by the Employment Security Act of 1980, the Oklahoma Employment Security Commission, the chairman of an appeal tribunal, the members of the Board of Review, and any duly authorized representative of any of them shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of the Employment Security Act of 1980 or for purposes of monitoring a workforce system program.

Added by Laws 1980, c. 323, § 4-504, emerg. eff. June 13, 1980.

Amended by Laws 2007, c. 354, § 14, eff. Nov. 1, 2007; Laws 2015, c. 249, § 18, eff. Nov. 1, 2015.

§40-4-505. Refusal to obey Commission subpoenas - Judicial orders.

REFUSAL TO OBEY COMMISSION SUBPOENAS - JUDICIAL ORDERS. In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission, the Board of Review, the chairman of an appeal tribunal, or any duly authorized representative of any of them shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission, the Board of Review, the chairman of an appeal tribunal

or any duly authorized representative of any of them, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by said court as a contempt thereof.

Added by Laws 1980, c. 323, § 4-505, emerg. eff. June 13, 1980.

§40-4-506. Penalties for failure to attend lawful inquiries or obey Commission subpoenas.

PENALTIES FOR FAILURE TO ATTEND LAWFUL INQUIRIES OR OBEY COMMISSION SUBPOENAS. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in its power so to do, in obedience to a subpoena of the Commission, the Board of Review, the chairman of an appeal tribunal, or any duly-authorized representative of any of them, shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment.

Added by Laws 1980, c. 323, § 4-506, emerg. eff. June 13, 1980.

Amended by Laws 1982, c. 304, § 22, operative Oct. 1, 1982.

§40-4-507. Self-incrimination.

SELF-INCRIMINATION. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Commission, the Board of Review, the chairman of an appeal tribunal, or any duly authorized representative of any of them, or in obedience to the subpoena of any of them in any cause or proceeding before the Commission, the Board of Review, or an appeal tribunal, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Added by Laws 1980, c. 323, § 4-507, emerg. eff. June 13, 1980.

§40-4-508. Information to be kept confidential - Disclosure.

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, 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 Department of Transportation 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 State Treasurer's office 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 state, county, municipal or 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, required for the development of International Trade for employers doing business in this state;

13. The release of information to employees of the Oklahoma State Regents for Higher Education 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 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 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 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, the Bureau of Labor Statistics of the U.S. Department of Labor, and its agents employed by the Oklahoma Department of Labor 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 persons 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 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 this state 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.

Added by Laws 1980, c. 323, § 4-508, emerg. eff. June 13, 1980.
Amended by Laws 1981, c. 259, § 26, emerg. eff. June 25, 1981; Laws 1982, c. 304, § 23, operative Oct. 1, 1982; Laws 1984, c. 251, § 1, emerg. eff. May 29, 1984; Laws 1990, c. 235, § 3, eff. Sept. 1,

1990; Laws 1993, c. 349, § 35, eff. Sept. 1, 1993; Laws 1994, c. 195, § 8, emerg. eff. May 16, 1994; Laws 1995, c. 340, § 20, eff. July 1, 1995; Laws 1997, c. 30, § 20, eff. July 1, 1997; Laws 1997, c. 359, § 15, eff. July 1, 1997; Laws 2000, c. 348, § 3, eff. Nov. 1, 2000; Laws 2001, c. 363, § 28, eff. July 1, 2001; Laws 2002, c. 452, § 26, eff. Nov. 1, 2002; Laws 2003, c. 177, § 8, eff. Nov. 1, 2003; Laws 2005, c. 182, § 12, eff. Nov. 1, 2005; Laws 2006, c. 176, § 27, eff. July 1, 2006; Laws 2007, c. 354, § 15, eff. Nov. 1, 2007; Laws 2010, c. 216, § 13, eff. July 1, 2010; Laws 2010, c. 330, § 1, eff. July 1, 2010; Laws 2011, c. 256, § 15; Laws 2012, c. 196, § 15, emerg. eff. May 8, 2012; Laws 2012, c. 304, § 132; Laws 2014, c. 220, § 10, eff. Nov. 1, 2014; Laws 2014, c. 282, § 1, eff. Nov. 1, 2014; Laws 2015, c. 249, § 19, eff. Nov. 1, 2015; Laws 2017, c. 345, § 6, eff. July 1, 2017; Laws 2019, c. 251, § 10, eff. July 1, 2019; Laws 2021, c. 424, § 17, eff. Nov. 1, 2021; Laws 2022, c. 360, § 22, eff. Nov. 1, 2022.

NOTE: Laws 1997, c. 133, § 453 repealed by Laws 1999, 1st Ex. Sess., c. 5, § 452, eff. July 1, 1999. Laws 2002, c. 160, § 1 repealed by Laws 2003, c. 3, § 19, emerg. eff. March 19, 2003.

§40-4-509. Information to be furnished to public agencies.

INFORMATION TO BE FURNISHED TO PUBLIC AGENCIES.

A. Subject to such restrictions as the Oklahoma Employment Security Commission may by rule prescribe, information maintained by the Commission may be made available to any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or the Internal Revenue Service of the United States Department of the Treasury, the United States Social Security Administration or the Oklahoma Tax Commission. Any information obtained in connection with the administration of the employment service may be made available to:

1. Persons or agencies for purposes appropriate to the operation of a public employment service; or
2. Any 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., Section 3151(b)(1), in accordance with a written agreement entered into between the partner and the Commission.

B. Upon request, the Commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits pursuant to the provisions of the Employment Security Act of 1980. The Commission shall furnish

to public agencies collecting debts created by food purchase assistance overissuances or administering Transitional Assistance to Needy Families (TANF) or child support programs, promptly upon request and in the most economical, effective and timely manner, information as to:

1. Whether an individual has applied for, is receiving or has received unemployment insurance and the amount;

2. The individual's current address;

3. Whether the individual has refused employment and if so a description of the job including the terms, conditions and rate of pay; and

4. Any other information that might be useful in locating any individual who may have a food purchase assistance overissuance or an obligation for support.

Added by Laws 1980, c. 323, § 4-509, emerg. eff. June 13, 1980.

Amended by Laws 1983, c. 275, § 1, emerg. eff. June 24, 1983; Laws 1990, c. 309, § 10, eff. Sept. 1, 1990; Laws 1993, c. 219, § 34, eff. Sept. 1, 1993; Laws 1997, c. 30, § 21, eff. July 1, 1997; Laws 2002, c. 452, § 27, eff. Nov. 1, 2002; Laws 2017, c. 345, § 7, eff. July 1, 2017; Laws 2018, c. 14, § 11, eff. Nov. 1, 2018.

§40-4-510. Commission may request examination of return of national bank.

COMMISSION MAY REQUEST EXAMINATION OF RETURN OF NATIONAL BANK.

The Commission may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this act, and may in connection with such request transmit any such report or return to the Comptroller of the Currency of the United States as provided in Section 1606(c) of the Federal Internal Revenue Code.

Added by Laws 1980, c. 323, § 4-510, emerg. eff. June 13, 1980.

§40-4-511. Communications to Commission privileged - Not subject to slander or libel.

COMMUNICATIONS TO COMMISSION PRIVILEGED - NOT SUBJECT TO SLANDER OR LIBEL. All letters, reports, communications and other matters, written or oral from employer or former employer or claimant, to the Commission or any of its agents or to any board which have been written, sent, or made in connection with the requirements and administration of this act, shall be absolutely privileged and shall not be the subject matter or basis for any suit for slander or libel in any court, but no employer or claimant or their representatives testifying before the Commission or any board provided for in this act shall be exempt from punishment for perjury.

Added by Laws 1980, c. 323, § 4-511, emerg. eff. June 13, 1980.

§40-4-601. Applicability.

APPLICABILITY. This part shall apply to the Employment Security Administration Fund.

Added by Laws 1980, c. 323, § 4-601, emerg. eff. June 13, 1980.

§40-4-602. Fund created.

FUND CREATED. There is hereby created in the State Treasury a special fund to be known as the Employment Security Administration Fund. All moneys which are deposited or paid into this fund shall be continuously available to the Commission for expenditure in accordance with the provisions of this act, and shall not lapse at any time or be transferred to any other fund.

Added by Laws 1980, c. 323, § 4-602, emerg. eff. June 13, 1980.

§40-4-603. Moneys expended in accordance with Secretary of Labor.

MONEYS EXPENDED IN ACCORDANCE WITH SECRETARY OF LABOR. All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this state for the purposes described in Part 8 of this Article shall be expended by the Commission solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of this act.

Added by Laws 1980, c. 323, § 4-603, emerg. eff. June 13, 1980.

§40-4-604. Composition of fund.

COMPOSITION OF FUND. The fund shall consist of all moneys appropriated by this state, all moneys received from the United States of America, or any agency thereof, and all moneys received from any other source for such purpose, and shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this act.

Added by Laws 1980, c. 323, § 4-604, emerg. eff. June 13, 1980.

§40-4-605. Maintenance of administrative fund.

MAINTENANCE OF ADMINISTRATIVE FUND.

All monies in this fund shall be deposited in a special fund in the State Treasury. Such monies shall be secured by collateral in the full amount of the funds on deposit in the same kind and manner the State Treasurer is required to secure other funds of the state on deposit.

Added by Laws 1980, c. 323, § 4-605, emerg. eff. June 13, 1980.
Amended by Laws 1997, c. 30, § 22, eff. July 1, 1997; Laws 1997, c. 391, § 2, eff. July 1, 1997.

§40-4-606. State Treasurer liable on official bond.

STATE TREASURER LIABLE ON OFFICIAL BOND. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Employment Security Administration Fund provided for under this act. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Employment Security Administration Fund shall be deposited in said fund.
Added by Laws 1980, c. 323, § 4-606, emerg. eff. June 13, 1980.

§40-4-607. Reimbursement of fund.

REIMBURSEMENT OF FUND. This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future, and applied to the replacement of any moneys received after July 1, 1941, from the Secretary of Labor under Title III of the Social Security Act, any unencumbered balances in the Employment Security Administration Fund as of that date, any moneys thereafter granted to this state pursuant to the provisions of the Wagner-Peyser Act, and any moneys made available by the state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, which the Secretary of Labor finds have, because of any action or contingency, been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of this act. Such moneys shall be promptly replaced by moneys appropriated for such purpose from the general funds of this state to the Employment Security Administration Fund for expenditures as provided in this Part. The Commission shall promptly report to the Governor, and the Governor to the Legislature, the amount required for such replacement. This section shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.
Added by Laws 1980, c. 323, § 4-607, emerg. eff. June 13, 1980.

§40-4-608. Reed Act distributions.

REED ACT DISTRIBUTIONS.

A. Monies credited to the account of this state in the Unemployment Trust Fund, described in Section 3-605 of this title,

by the Secretary of the Treasury of the United States pursuant to 42 U.S.C., Section 1103, may be used for the payment of unemployment benefits to qualified claimants in this state, or may be appropriated by the Legislature following the procedure set out in 42 U.S.C., Section 1103 (c) (2), for the administration of the unemployment compensation law and public employment offices in this state.

B. Monies credited to the account of this state in the Unemployment Trust Fund, described in Section 3-605 of this title, by the Secretary of the Treasury of the United States pursuant to 42 U.S.C., Section 1103, with respect to federal fiscal years 1999, 2000, and 2001, shall be used solely for the administration of the Unemployment Compensation Program in this state. Added by Laws 1998, c. 161, § 13, eff. July 1, 1998. Amended by Laws 2002, c. 452, § 28, eff. Nov. 1, 2002.

§40-4-701. Applicability.

APPLICABILITY. This part shall apply to reciprocal arrangements with agencies of other states, of the federal government, or with foreign governments.

Added by Laws 1980, c. 323, § 4-701, emerg. eff. June 13, 1980.

§40-4-702. Reciprocal arrangements authorized.

RECIPROCAL ARRANGEMENTS AUTHORIZED. The Commission is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

1. Services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states in which:

a. any parts of such individual's service is performed,
b. such individual has his residence, or
c. the employing unit maintains a place of business,
provided there is in effect, as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state;

2. The Commission shall cooperate with the Department of Labor of the United States to the fullest extent consistent with the provisions of this act, and shall take such action, through the adoption of appropriate rules, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act, 42 U.S.C., Section 301 et seq., that relate to unemployment compensation, the Federal Unemployment Tax Act, 26 U.S.C., Section

3301 et seq., the Wagner-Peyser Act, 29 U.S.C., Section 49 et seq., the Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C., Section 3304 et seq., the Workforce Investment Act of 1998, 29 U.S.C., Section 2801 et seq., and any federal comprehensive manpower act and any other similar or related federal acts;

3. The Commission shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under said Oklahoma Employment Security Act, as amended by this act, with his wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for:

- a. applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws, and
- b. avoiding the duplicate use of wage and employment by reason of such combining; and

4. Contributions due under this act with respect to wages for insured work shall for the purposes of this act be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions and the actual earnings thereon as the Commission finds will be fair and reasonable as to all affected interests. Added by Laws 1980, c. 323, § 4-702, emerg. eff. June 13, 1980. Amended by Laws 1993, c. 219, § 35, eff. Sept. 1, 1993; Laws 2010, c. 216, § 14, eff. July 1, 2010.

§40-4-703. Reimbursements to be deemed benefits.

REIMBURSEMENTS TO BE DEEMED BENEFITS. Reimbursements paid from the fund pursuant to subsection (3) of Section 4-702 of this act shall be deemed to be benefits for the purpose of this act. The Commission is authorized to make to other state or federal agencies and to receive from such other state or federal agencies reimbursements from or to the fund in accordance with arrangements entered into pursuant to Section 4-702 of this act.

Added by Laws 1980, c. 323, § 4-703, emerg. eff. June 13, 1980.

§40-4-704. Cooperation authorized.

COOPERATION AUTHORIZED. The administration of this act and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this state and such other states and the appropriate federal agencies in

exchanging services, and making available facilities and information. The Commission is therefore authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this act as it deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law, and, in like manner, to accept and utilize information, services and facilities made available to this state by the agency charged with the administration of any such other unemployment compensation or public employment service law.

Added by Laws 1980, c. 323, § 4-704, emerg. eff. June 13, 1980.

§40-4-705. Cooperative arrangements with foreign governments.

COOPERATIVE ARRANGEMENTS WITH FOREIGN GOVERNMENTS. To the extent permissible under the laws and Constitution of the United States, the Commission is authorized to enter into or cooperate in arrangements whereby facilities and services provided under the unemployment compensation law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the employment security law of this state or under a similar law of such government.

Added by Laws 1980, c. 323, § 4-705, emerg. eff. June 13, 1980.

§40-4-801. Applicability.

APPLICABILITY. This part applies to the Oklahoma State Employment Service.

Added by Laws 1980, c. 323, § 4-801, emerg. eff. June 13, 1980.

§40-4-802. Establishment.

ESTABLISHMENT. The Oklahoma State Employment Service is hereby established in the Employment Security Division of the Commission. The Commission, in the conduct of such service, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this act and for the purposes of performing such functions as are within the purview of the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes," approved June 6, 1933, (48 Stat. 113; U.S.C., title 29, Section 49 (c)) as amended, hereinafter referred to as the "Wagner-Peyser Act." The provisions of the said Act of Congress are hereby accepted by this state, and the Commission is hereby designated and constituted the agency of this state for the purposes of said act.

Added by Laws 1980, c. 323, § 4-802, emerg. eff. June 13, 1980.

§40-4-803. Moneys to be paid into the Employment Security Administration.

MONEYS TO BE PAID INTO THE EMPLOYMENT SECURITY ADMINISTRATION FUND. All moneys received by this state under the Wagner-Peyser Act shall be paid into the Employment Security Administration Fund and shall be expended solely for the maintenance of the state system of public employment offices.

Added by Laws 1980, c. 323, § 4-803, emerg. eff. June 13, 1980.

§40-4-804. Cooperative agreements.

COOPERATIVE AGREEMENTS. For the purpose of establishing and maintaining free public employment offices, and promoting the use of their facilities, the Commission is authorized to enter into agreements with the Railroad Retirement Board, or any other agency of the United States, or of this or any other state, charged with the administration of any law whose purposes are reasonably related to the purposes of this act, and as a part of such agreements may accept moneys, services or quarters as a contribution to the maintenance of the state system of public employment offices or as reimbursement for services performed. All moneys received for such purposes shall be paid into the Employment Security Administration Fund.

Added by Laws 1980, c. 323, § 4-804, emerg. eff. June 13, 1980.

§40-4-901. Oklahoma Employment Security Commission Revolving Fund.

There is hereby created in the State Treasury a revolving fund for the Oklahoma Employment Security Commission, to be designated the "Oklahoma Employment Security Commission Revolving Fund". The revolving fund shall consist of all penalties and interest received by the Oklahoma Employment Security Commission. Said revolving fund shall be a continuing fund, not subject to fiscal year limitations and shall not be subject to legislative appropriation. Expenditures from said revolving fund shall be made pursuant to the laws of this state and the statutes relating to the Oklahoma Employment Security Commission and shall be for administration expenses of the Oklahoma Employment Security Commission and for any other purpose which the Legislature directs. Warrants for expenditures from said fund shall be drawn by the State Treasurer, based on claims signed by an authorized employee or employees of the Oklahoma Employment Security Commission and approved for payment by the Director of the Office of Management and Enterprise Services.

Added by Laws 1986, c. 205, § 10, emerg. eff. June 6, 1986. Amended by Laws 1989, c. 313, § 10, operative July 1, 1989; Laws 2012, c. 304, § 133.

§40-5-101. Applicability.

APPLICABILITY. This part applies to penalties for violations of this act.

Added by Laws 1980, c. 323, § 5-101, eff. July 1, 1980.

§40-5-102. False statement for benefits, failure to disclose material fact.

FALSE STATEMENT FOR BENEFITS, FAILURE TO DISCLOSE MATERIAL FACT.

A. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act or under the unemployment compensation law of any state or of the federal government, either for the individual or for any other person, shall, upon conviction, 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 by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense for each week of benefits.

B. If a person is convicted of the crime described in subsection A of this section in a particular benefit year, and in any subsequent benefit year that person again commits the crime described in subsection A of this section, that person shall be guilty of a misdemeanor and shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than one hundred eighty (180) days, or by both fine and imprisonment. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense for each week of benefits.

C. Upon conviction sentences may be suspended or upon a plea of guilty judgment and sentencing may be deferred only upon the condition of full restitution to the Commission of all benefits so obtained or the excess of any benefits so increased.

Added by Laws 1980, c. 323, § 5-102, eff. July 1, 1980. Amended by Laws 2002, c. 452, § 29, eff. Nov. 1, 2002.

§40-5-103. Violations by employers.

VIOLATIONS BY EMPLOYERS. Any employer or any officer or agent of an employer or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under this act or under the unemployment compensation law of any state or of the federal government, or who willfully fails or refuses to make or to

furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, 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 by imprisonment for not longer than ninety (90) days, or by both fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense. Added by Laws 1980, c. 323, § 5-103, eff. July 1, 1980.

§40-5-104. Violations of act, and regulations for which no specific penalty is otherwise provided.

VIOLATIONS OF ACT, AND REGULATIONS FOR WHICH NO SPECIFIC PENALTY IS OTHERWISE PROVIDED. Any person who shall willfully violate any provision of this act or any order, rule, or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed in this act nor provided by any other applicable statute, 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 by imprisonment for not longer than ninety (90) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

Added by Laws 1980, c. 323, § 5-104, eff. July 1, 1980.

§40-5-107. Wrongful disclosure of information.

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, 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 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 Section 5-101 et seq. of this title shall use or permit the use of such list for any political purpose, 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.

Added by Laws 1980, c. 323, § 5-107, eff. July 1, 1980. Amended by Laws 2021, c. 424, § 18, eff. Nov. 1, 2021.

§40-5-108. Other penalties in this act.

OTHER PENALTIES IN THIS ACT.

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

Employer violations of employee rights - Section 2-301

Impermissible charges to claimants - Section 2-302

Disqualification of benefit claims for fraud - Section 2-402

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

SUTA dumping prohibition - Section 3-111.1

Fraud overpayment penalty - Section 2-613

Added by Laws 1980, c. 323, § 5-108, eff. July 1, 1980. Amended by Laws 2005, c. 182, § 13, eff. Nov. 1, 2005; Laws 2012, c. 196, § 16, emerg. eff. May 8, 2012.

§40-5-109. Renumbered as § 3-310 of this title by Laws 1993, c. 219, § 36, eff. Sept. 1, 1993.

§40-5-201. Applicability.

APPLICABILITY. The provisions of this part apply to representation in court in civil or criminal actions of this act. Added by Laws 1980, c. 323, § 5-201, eff. July 1, 1980.

§40-5-202. Civil actions.

CIVIL ACTIONS. In any civil action to enforce the provisions of this act the Commission, the Board of Review, and the state may be represented by any qualified attorney who is employed by the Commission and is designated by it for this purpose, or at the Commission's request by the Attorney General, or if the action is brought in the courts of any other state by any attorney qualified to appear in the courts of that state.

Added by Laws 1980, c. 323, § 5-202, eff. July 1, 1980.

§40-5-203. Criminal actions.

CRIMINAL ACTIONS. All criminal actions for violation of any provisions of this act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the Attorney General of the state, or by the prosecuting attorney of any county in which the employing unit has a place of business or the violator resides.

Added by Laws 1980, c. 323, § 5-203, eff. July 1, 1980.

§40-6-101. OESC Computer Fund.

OESC COMPUTER FUND.

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

1. All monies received from employers and paid pursuant to Section 6-104 of this title;

2. All other sums, from whatever source, received by the Commission and paid into the OESC Computer Fund; and

3. Property and securities acquired by and through the use of monies in the OESC Computer Fund.

B. The OESC Computer Fund shall be a continuing fund, not subject to fiscal year limitations. All monies accruing to the credit of the OESC Computer Fund are hereby appropriated and may be budgeted and expended for the purposes set forth in Section 6-102 of this title. Expenditures from the OESC Computer Fund shall be made upon warrants issued by the State Treasurer against claims filed, as prescribed by law, with the Director of the Office of Management and Enterprise Services for approval and payment.

Added by Laws 1997, c. 391, § 4, eff. July 1, 1997. Amended by Laws 2012, c. 304, § 134.

§40-6-102. Expenditures from fund.

EXPENDITURES FROM FUND.

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

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

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

3. To purchase or lease any and all software needed for the operation of the new computer system;

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

5. To pay for all designing, engineering, planning, networking, and training to make the new computer system operational;

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

7. To make refunds of contributions erroneously collected and deposited in the OESC Computer Fund.

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

C. If the Commission receives a grant from the United States Department of Labor to be used to make the Commission's computer system compliant with the year 2000, or if the Commission receives a grant from the United States Department of Labor to upgrade or modify its Interactive Voice Response System (IVRS), then the Commission will, upon receipt of the federal grant money, deduct an

equal amount of money from the OESC Computer Fund and transfer it to the Unemployment Compensation Fund.

Added by Laws 1997, c. 391, § 5, eff. July 1, 1997.

§40-6-103. Custodian and treasurer of fund.

CUSTODIAN AND TREASURER OF FUND.

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

B. The State Treasurer shall deposit the monies belonging to the OESC Computer Fund, that are in his or her custody, subject to the provisions of Section 7 of this act.

C. The State Treasurer, as custodian of the OESC Computer Fund, shall hold, invest, transfer, sell, deposit, and release those monies, properties, or securities in a manner approved by the Oklahoma Employment Security Commission. Provided, however, that those monies shall be invested in the classes of securities legal for investment of public monies of this state. Provided further, the investment shall at all times be so made that all assets of the OESC Computer Fund shall always be readily convertible into cash when needed for any expenditure authorized in Section 5 of this act. Added by Laws 1997, c. 391, § 6, eff. July 1, 1997.

§40-6-104. Computer fund assessments.

COMPUTER FUND ASSESSMENTS.

A. 1. For the period from July 1, 1997, to June 30, 1998, each employer subject to the provisions of Sections 3-103, 3-109 and 3-110 of Title 40 of the Oklahoma Statutes shall be required to pay an OESC Computer Fund assessment equal to fifty percent (50%) of the unemployment contributions that would be owed to the Oklahoma Employment Security Commission before any rate reduction is made pursuant to Section 3 of this act. This assessment shall be in addition to any contribution which that employer is required to make pursuant to the provisions of the Employment Security Act of 1980.

2. The assessment provided for in this section shall not be considered part of any contribution required of an individual employer pursuant to the Employment Security Act of 1980, nor shall it be considered for purposes of determining the individual employers contribution rate.

B. Employers assigned a tax rate pursuant to Sections 3-103 and 3-110 of Title 40 of the Oklahoma Statutes shall pay an OESC Computer Fund assessment equal to the rate reduction granted them pursuant to Section 3 of this act.

C. Employers who qualify for an earned rate calculated pursuant to Section 3-109 of Title 40 of the Oklahoma Statutes, and are given a rate of five and one-half percent (5.5%), shall be exempt from the provisions of this section.

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

E. The assessment shall be made and collected by the Oklahoma Employment Security Commission for deposit, on a quarterly basis, to the credit of the OESC Computer Fund. Provided, all monies received by the Oklahoma Employment Security Commission for the account of the OESC Computer Fund, upon receipt, shall be deposited in a clearance account in a financial institution located in this state.

F. Once the sum of Twenty Million Dollars (\$20,000,000.00) is collected through this assessment, any amount of money collected through this assessment in excess of Twenty Million Dollars (\$20,000,000.00) shall be transferred to the Unemployment Compensation Fund.

G. The Oklahoma Employment Security Commission shall promulgate such rules as may be necessary to implement the provisions of Sections 3 through 7 of this act.

Added by Laws 1997, c. 391, § 7, eff. July 1, 1997.

§40-6-201. OESC Technology Fund.

OESC TECHNOLOGY FUND.

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

1. All monies received from employers and paid pursuant to Section 6-204 of this title; and

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

B. The OESC Technology Fund shall be a continuing fund, not subject to fiscal year limitations. All monies accruing to the credit of the OESC Technology Fund are hereby appropriated and shall be budgeted and expended solely for the purposes of modernizing the business processes and technology of the Oklahoma Employment Security Commission as set forth in Section 6-202 of this title. Expenditures from the OESC Technology Fund shall be made upon warrants issued by the State Treasurer against claims filed, as prescribed by law, with the Director of the Office of Management and Enterprise Services for approval and payment.

Added by Laws 2017, c. 345, § 9, eff. July 1, 2017. Amended by Laws 2019, c. 251, § 11, eff. July 1, 2019.

§40-6-202. Expenditures from fund.

EXPENDITURES FROM FUND.

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Prior to expenditures authorized by paragraphs 1, 4, 6, 7, 9, 10 and 11 of subsection A of this section, the Chief Information Officer of the Office of Management and Enterprise Services shall be consulted for recommendations. The Office of Management and Enterprise Services shall provide periodic oversight of the technology modernization efforts and may assist the Oklahoma Employment Security Commission in any manner necessary to accomplish the purposes of this fund, including requiring the Oklahoma Employment Security Commission to provide regular reports to the Office of Management and Enterprise Services on the technology modernization efforts.

Added by Laws 2017, c. 345, § 10, eff. July 1, 2017. Amended by Laws 2023, c. 346, § 5, eff. Nov. 1, 2023.

§40-6-203. Custodian and treasurer of fund.

CUSTODIAN AND TREASURER OF FUND.

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

B. The State Treasurer shall deposit the monies belonging to the OESC Technology Fund that are in his or her custody subject to the provisions of Section 6-204 of this title.

C. The State Treasurer, as custodian of the OESC Technology Fund, shall hold, invest, transfer, sell, deposit and release those monies, properties or securities in a manner approved by the Oklahoma Employment Security Commission. Provided, however, that those monies shall be invested in the classes of securities legal for investment of public monies of this state. Provided further, the investment shall at all times be so made that all assets of the OESC Technology Fund shall always be readily convertible into cash when needed for any expenditure authorized in Section 6-202 of this title.

Added by Laws 2017, c. 345, § 11, eff. July 1, 2017. Amended by Laws 2019, c. 251, § 12, eff. July 1, 2019.

§40-6-204. Technology reinvestment apportionment.

TECHNOLOGY REINVESTMENT APPORTIONMENT.

A. 1. For the period beginning January 1, 2023, and ending December 31, 2027, each employer subject to the provisions of Sections 3-109, 3-110.1 and 3-113 of this title shall be required to pay an OESC Technology Reinvestment Apportionment equal to five percent (5%) of the unemployment taxes that would be owed to the Oklahoma Employment Security Commission before any rate reduction is made pursuant to Section 3-109.3 of this title. This apportionment shall be in addition to any contribution which that employer is required to make pursuant to the provisions of the Employment Security Act of 1980.

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

B. Employers assigned a tax rate pursuant to Section 3-110.1 of this title shall pay an OESC Technology Reinvestment Apportionment equal to the rate reduction granted them pursuant to Section 3-109.3 of this title.

C. Employers making payments in lieu of contributions pursuant to Sections 3-702, 3-705 and 3-806 of this title shall be exempt from the provisions of this section.

D. The apportionment shall be made and collected by the Oklahoma Employment Security Commission for deposit, on a monthly basis, to the credit of the OESC Technology Fund. Provided, all monies received by the Oklahoma Employment Security Commission for the account of the OESC Technology Fund, upon receipt, shall be deposited in a clearance account.

E. The Oklahoma Employment Security Commission shall promulgate such rules as may be necessary to implement the provisions of Sections 3-109.3 and 6-201 through 6-205 of this title.

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

Added by Laws 2017, c. 345, § 12, eff. July 1, 2017. Amended by Laws 2019, c. 251, § 13, eff. July 1, 2019; Laws 2023, c. 346, § 6, eff. Nov. 1, 2023.

§40-6-205. Technology Fund balance.

TECHNOLOGY FUND BALANCE.

The balance of the OESC Technology Fund on July 1 of any given year shall be used in the calculation of conditional factors pursuant to Section 3-113 of this title as long as the OESC Technology Fund has a balance greater than zero (0).

The balance of the fund shall not exceed Twenty-five Million Dollars (\$25,000,000.00) prior to June 30, 2024, or be greater than the calculated amount of Twenty-five Million Dollars (\$25,000,000.00). All funds in excess of these amounts shall be transferred to the Unemployment Compensation Fund.

The calculation shall be conducted in the following manner: The balance of the OESC Technology Fund as of July 1 of any given year shall be aggregated with the balance of the Unemployment Compensation Fund as of July 1 of the same year, with the resulting sum to be used in the calculation of the conditional factors as set out in Section 3-113 of this title. The aggregate of the two fund balances shall only be for the purpose of the calculation and in no way shall balances in these two funds be commingled.

Added by Laws 2017, c. 345, § 13, eff. July 1, 2017. Amended by Laws 2023, c. 346, § 7, eff. Nov. 1, 2023.

§40-9-101. Effective date.

EFFECTIVE DATE. (1) Except as otherwise provided in this article, this act becomes effective on July 1, 1980.

(2) Article 4 on Administration takes effect upon enactment of this act.

(3) Part 6 of Article 2 on Appeals takes effect on October 1, 1980; provided however, the Oklahoma Employment Security Commission may by resolution provide that Part 6 of Article 2 on Appeals

becomes effective at an earlier date than October 1, 1980, if the Commission by resolution adopts an earlier date.

Added by Laws 1980, c. 323, § 9-101, eff. July 1, 1980.

§40-9-102. Repeal.

REPEAL. The Oklahoma Employment Security Act, 40 O.S. 1971, Sections 211 through 238.1, both inclusive, as amended, is hereby repealed subject to the provisions of Section 9-103, except that 40 O.S. 1971, Section 226 (a) and (b) are not repealed.

Added by Laws 1980, c. 323, § 9-102, eff. July 1, 1980.

§40-9-103. Transitional provisions.

TRANSITIONAL PROVISIONS. (1) Notwithstanding the repeal of the Oklahoma Employment Security Act by Section 9-102 of this title, all liabilities accruing thereunder, including both civil and criminal liabilities, including but not limited to liabilities for contributions, liabilities for refunds, liabilities for repayment and liabilities for interest and penalties, shall not be extinguished by the repeal of the Oklahoma Employment Security Act and such liabilities shall be liabilities under this act and shall be administered and enforced as liabilities under this act.

(2) Unemployment experience, wage records and contribution records under the Oklahoma Employment Security Act, 40 O.S. 1971, Section 211 through Section 238.1, both inclusive, as amended, shall be deemed and shall constitute the same things under this act unless and except this act expressly provides otherwise.

Added by Laws 1980, c. 323, § 9-103, eff. July 1, 1980. Amended by Laws 2010, c. 216, § 15, eff. July 1, 2010.

§40-9-104. Emergency.

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

Added by Laws 1980, c. 323, § 9-104, eff. July 1, 1980.

§40-11. Branch office at Tulsa.

The Commissioner of Labor is hereby authorized to establish a branch office to be located in Tulsa, Oklahoma.

Laws 1981, c. 246, § 6, emerg. eff. June 25, 1981.

§40-35. Repealed by Laws 2017, c. 51, § 6, eff. Nov. 1, 2017.

§40-38. Repealed by Laws 2017, c. 51, § 6, eff. Nov. 1, 2017.

§40-46. Refusal of service to employer not fulfilling contracts.

Any court of competent jurisdiction, after having determined that any employer in this state is not fulfilling contracts made through employment agents, may order all employment agents in the state to refuse further service to such employer.
Added by Laws 1917, c. 181, p. 342, § 11. Amended by Laws 2017, c. 51, § 1, eff. Nov. 1, 2017.

§40-47. Bringing in or transferring persons for purpose of employment through employment agency.

Every person, company, corporation or association doing business in this state, who shall have persons brought into this state or transferred from one point to another within the state, for the purpose of employment through or by means of any employment agency operating in this or any other state, shall immediately fulfill the terms of the contract made between such persons shipped in for the purpose of employment and the employment agency, or shall, within twelve (12) hours after the arrival of such persons desiring employment, in case of failure or refusal to furnish such employment provide such persons with transportation to their original starting point, and such meals and lodging as may be necessary for the proper sustenance of such persons until they arrive at their destination. Failure to comply with this section shall subject the offending parties to a fine of not less than Fifty Dollars (\$50.00), nor more than One Hundred Dollars (\$100.00) for each offense.
Laws 1917, c. 181, p. 342, § 12.

§40-52. Definitions.

For the purpose of and when used in this act:

(a) "Employee", as used in this act, shall mean any person performing or applying for work or service of any kind or character for hire.

(b) "Employer" shall mean any person employing or seeking to employ any person for hire.

(c) "Fees" shall mean anything of value, including any money or other valuable consideration exacted, charged, collected or received directly or indirectly, or paid or promised to be paid for any services or act described or enumerated in subsection (e) of this section.

(d) "Employment" shall mean the act of employing or state of being employed, engaged, or hired.

(e) "Private employment agency" shall mean any business operated in this state by any person, firm or corporation for profit which secures employment or by any form of advertising holds itself out to applicants as able to secure employment or to provide information or service of any kind purporting to promote, lead to or result in employment for the applicant with any employer other than itself, where any applicant may become liable for the payment of a

fee to the private employment agency, either directly or indirectly.
"Private employment agency" does not include:

- (1) Any educational, religious, charitable, fraternal or benevolent organization which charges no fee for services rendered in securing employment or providing information about employment; or
- (2) Any employment service operated by this state, the Government of the United States, or any city, county, or town, or any agency thereof; or
- (3) Any temporary help service that at no time advertises or represents that its employee, with the approval of the temporary help service, may be employed by one of its client companies on a permanent basis; or
- (4) Any newspaper of general circulation or other business engaged primarily in communicating information that does not purport to adapt the information provided to the needs or desires of an individual subscriber; or
- (5) Employment offices that charge no fee to the applicant other than union dues or to the employer and which are used solely for the hiring of employees under a valid union contract by the employer subscribing to this contract; or
- (6) Any organization that charges fees only for services other than securing employment; provided that such services are performed pursuant to a contract which includes a statement, in a type size no smaller than ten point, directly above the place for the signature of the client that reads as follows: "I have read and received a copy of this contract which I understand makes me legally obligated to pay a fee, I further understand that this contract does not guarantee employment"; or
- (7) Resume services whose service includes only the preparation and production of resumes, and does not purport to offer services that will result in employment; or
- (8) A person employing individuals to render part-time or temporary personal services to, for, or under the direction of a third person, if the person employing the individuals, in addition to wages or salaries, pays federal social security taxes, state and federal unemployment insurance, carries workers' compensation insurance as required by state law, and has responsibility for the acts of his employees while rendering services to or under the direction of a third person.

(f) "Temporary employment" shall mean any period of employment terminating at any time within sixty (60) days from date of employment.

(g) "Permanent employment" shall mean all employment exceeding sixty (60) days duration.

(h) "Person" shall mean any individual, copartnership, corporation, or other legal entity.

Added by Laws 1967, c. 384, § 1, emerg. eff. May 23, 1967. Amended by Laws 1988, c. 250, § 1, emerg. eff. June 27, 1988; Laws 2017, c. 51, § 2, eff. Nov. 1, 2017.

§40-53. Repealed by Laws 2017, c. 51, § 6, eff. Nov. 1, 2017.

§40-54. Fees.

(a) The service fee charged for helping to secure permanent employment shall not exceed the following schedule: Fifteen percent (15%) of the first full month's gross compensation if the position pays Seventy-nine Dollars and ninety-nine cents (\$79.99) or less; twenty percent (20%) of the first full month's gross compensation if the position pays Eighty Dollars (\$80.00) through One Hundred Nineteen Dollars and ninety-nine cents (\$119.99); thirty percent (30%) of the first full month's gross compensation if the position pays One Hundred Twenty Dollars (\$120.00) through One Hundred Forty-nine Dollars and ninety-nine cents (\$149.99); forty percent (40%) of the first full month's gross compensation if the position pays One Hundred Fifty Dollars (\$150.00) through Two Hundred Seventy-four Dollars and ninety-nine cents (\$274.99); forty-five percent (45%) of the first full month's gross compensation if the position pays Two Hundred Seventy-five Dollars (\$275.00) through Four Hundred Ninety-nine Dollars and ninety-nine cents (\$499.99). For procuring employment paying gross compensation of Five Hundred Dollars (\$500.00) or more per month, the fee shall be determined by written agreement between all parties concerned. The fee schedule shall be posted in a conspicuous place in each employment agency office.

(b) In no event shall the fee for temporary employment exceed that for permanent placement. Any period of employment terminating at any time within sixty (60) days from the date of employment shall constitute temporary employment and a fee of not more than twenty percent (20%) of the amount earned shall be charged. All employment exceeding sixty (60) days' duration shall be considered a permanent placement. No licensed employment agency shall collect a fee before an applicant has obtained employment. No fee shall be charged for registering with an employment agency or for instituting a search or investigation, or for other employment-related aids. Where the remuneration is in the form of a straight commission, the first three (3) months' gross earnings shall be divided by three to establish an average monthly compensation against which to compute

the fee. No finance company or other purchaser of employment contracts shall be considered a holder in due course of such paper until after the temporary employment period shall have run and permanent employment shall have been established, and in no event shall the applicant for employment be liable for any charge to a finance company in addition to the legal placement fee as hereinabove set forth.

(c) This section shall not apply to an employment agency acting as a search consultant that is retained and compensated solely by the employer on a retainer or consulting basis.

Added by Laws 1967, c. 384, § 3, emerg. eff. May 23, 1967. Amended by Laws 1977, c. 11, § 1; Laws 1982, c. 313, § 1, operative Oct. 1, 1982; Laws 2017, c. 51, § 3, eff. Nov. 1, 2017.

§40-55. Rules and regulations.

(a) Every employment agency shall enter into a written agreement with every applicant for services to be rendered and the time and method of payment, and on which there shall appear the definition of "Temporary Employment", "Permanent Employment" and "Method of Payment". Provided, that nothing herein shall be construed to prohibit an employment agency from making arrangements by wire or telephone without said employee having first entered into a written agreement with the agency; and provided further, if by oversight or intention an applicant fails to sign an employment contract, but is placed and accepts such employment, the employment agency shall be entitled to its fee for such placement. Every employment agency shall provide the applicant with a copy of any written agreement between the applicant and the agency. All contracts or agreements shall clearly state the fee and in no case shall the employment agency collect more than the stated fee or agreed percentage of the first year's total income.

(b) In all instances wherein permanent employment is terminated within the definition of temporary employment, every employment agency shall give to every person from whom an overpayment of fee has been received, if requested within six (6) months of such termination, a refund in the amount of such overpayment, such refund to be made promptly within ten (10) days following the agency's receipt of verification from the employer of the inclusive dates of employment and the total gross earnings of the employee. This subsection shall not apply to any employment agency acting as a search consultant that is retained and compensated solely by the employer on a retainer or consulting basis.

(c) Every employment agency shall give to every person from whom a payment is received for services or assistance rendered or to be rendered a receipt bearing the name and address of the employment agency, the name of the employee, amount of the payment, date of payment, and for what it is paid. Each such receipt shall be

numbered and bound in duplicate form. The duplicate copy shall be kept for two (2) years at the office of the employment agency.

(d) A record shall be kept of the name and address of every employee accepting employment, the name and address of the employer with whom employment is accepted, the nature of the employment, the rate of wage or salary to be paid the employee, the amount of the employment agency's service charge, the dates and amounts of payments, the date and amount of refund, if any, and for what, together with a space for remarks under which shall be recorded anything of an individual nature to amplify the foregoing account or record and as information in the event of any question arising concerning the transaction. Such records shall be open to inspection by any court of competent jurisdiction for the purpose of enforcing the provisions of this act.

(e) No employment agency shall direct an applicant to employment without having obtained, either orally or in writing, permission or authorization of the employer. No applicant for employment shall be required by any agency to list prospective employers to whom he shall previously have been referred by other agencies.

(f) No applicant for employment shall knowingly make false or misleading statements to an employment agency regarding age, education, training, experience or references; and no employment agency shall be held responsible for misinformation given it by an applicant and transmitted by it in good faith to an employer.

(g) No employment agency shall advertise openings for which it does not hold orders from employers or knowingly cause to be printed, published or circulated misleading, false or fraudulent information about employment opportunities.

(h) Other than the prescribed placement fee, no employment agency shall require either the employee or employer to contribute to the cost of its employment-related services, advertising, or incidental expenses. This subsection shall not apply to any employment agency acting as a search consultant that is retained and compensated solely by the employer on a retainer or consulting basis.

(i) No employment agency shall place, or cause to be placed, promotional advertising in any media without licensee's identification as to agency and address.

(j) No employment agency shall send any person to a prospective employer who is conducting a "lockout" against all or part of his employees, or whose employees or a part of them are out on strike, without first apprising said person of the existence of such lockout or strike.

(k) Any licensed agency, or agent thereof, who shall be guilty of dividing fees with any superintendent, manager, foreman or other employees of any person, company, corporation or association for

whom employees are furnished, shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in Section 57 of this title.

(l) No licensed agency shall furnish employment to or refer any child to any vocation or establishment in violation of the laws regulating the labor of children or their compulsory attendance at school.

(m) No employment agency shall discriminate in the employment of its personnel because of the race, national origin, sex or religious belief of the applicant seeking employment with the agency.

Added by Laws 1967, c. 384, § 4, emerg. eff. May 23, 1967. Amended by Laws 1974, c. 62, § 2; Laws 1982, c. 313, § 2, operative Oct. 1, 1982; Laws 2017, c. 51, § 4, eff. Nov. 1, 2017.

§40-57. Enforcement.

Any applicant or employee may seek criminal enforcement of this act through request made to any district attorney or the Attorney General of the State of Oklahoma. Any person convicted of violating the provisions of this act shall be guilty of a misdemeanor and shall be fined not less than Fifty Dollars (\$50.00), nor more than One Hundred Dollars (\$100.00), or the fee charged for the service, whichever is greater, for each offense, or be imprisoned in the county jail for a period of not exceeding six (6) months, or both such fine and imprisonment, at the discretion of the court.

Added by Laws 1967, c. 384, § 6, emerg. eff. May 23, 1967. Amended by Laws 1974, c. 62, § 3; Laws 2017, c. 51, § 5, eff. Nov. 1, 2017.

§40-61. Disclosure of information by employer - Presumption of good faith - Immunity from liability.

A. An employer may disclose information about a current or former employee's job performance to a prospective employer of the current or former employee upon request of the prospective employer and with consent of the current or former employee, or upon request of the current or former employee. A state agency, as defined in Section 840-2.5 of Title 74 of the Oklahoma Statutes, may disclose information regarding a current or former employee's job performance to another state agency which is a prospective employer of the current or former employee without the employee's consent. The employer is presumed to be acting in good faith, unless lack of good faith is shown by a preponderance of the evidence. The current or former employer shall be immune from civil liability for the disclosure or any consequences of such disclosure unless the presumption of good faith is rebutted upon a showing that the information disclosed by the current or former employer was false

and the employer providing the information had knowledge of its falsity or acted with malice or reckless disregard for the truth.

B. The provisions of this section shall apply to any employee, agent, or other representative of the current or former employer, including a state agency, who is authorized to provide and who provides information in accordance with the provisions of this section.

C. Failure to comply with any provision of this section shall not give rise to any liability or causes of action which did not exist prior to July 1, 1995. This section shall only apply to causes of action accruing on and after July 1, 1995.

Added by Laws 1995, c. 340, § 22, eff. July 1, 1995. Amended by Laws 1998, c. 235, § 1, eff. July 1, 1998.

§40-71. Restrictions on employment of children under sixteen.

No child under the age of sixteen (16) shall be permitted to work in any occupation or in any establishment other than those occupations permitted by the "Fair Labor Standards Act of 1938", as amended, 29 U.S.C., Sections 201 through 219, and any regulations related thereto.

It shall be the duty of the Commissioner of Labor upon investigation by himself or the agents of his department, or upon the complaint of the Board of Health, to determine what occupations are injurious to health or morals or especially hazardous to life or limb, and to notify employers in such occupations of his decision, which decision shall be final until such occupations shall be defined by law or by final judgment in a court of competent jurisdiction as safe for health, morals, life or limb.

R.L.1910, § 3728; Laws 1929, c. 35, p. 35, § 1; Laws 1978, c. 244, § 11, eff. July 1, 1978; Laws 1991, c. 172, § 1, eff. Sept. 1, 1991.

§40-72. Repealed by Laws 1991, c. 172, § 15, eff. Sept. 1, 1991.

§40-72.1. Occupations prohibited for children under sixteen.

A. No child under sixteen (16) years of age shall be employed or permitted to work at any of the following occupations:

1. Manufacturing, mining, or processing occupations, including occupations requiring performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;

2. Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

3. The operation of motor vehicles or service as helpers on such vehicles;

4. Public messenger service;

5. Occupations declared to be particularly hazardous to the health and well-being of minors under sixteen (16) years of age by federal laws and regulations or as declared by the Commissioner of Labor; and

6. Occupations, except office work or sales work, in connection with:

- a. transportation of persons or property by rail, highway, air, water, pipeline or other means,
- b. warehousing and storage,
- c. communications and public utilities, and
- d. construction including demolition and repair.

B. This section shall not apply to:

1. Children working either on farms or for parents or any entity in which a parent owns an equity interest;

2. Children engaged in the sale or delivery of newspapers to consumers; or

3. Children engaged in voluntary service for a charitable organization recognized exempt under the Internal Revenue Code of 1986, as amended, Section 501(c), if the organization receives written permission from a parent or legal guardian of any such child.

Added by Laws 1991, c. 172, § 2, eff. Sept. 1, 1991. Amended by Laws 1991, c. 295, § 4, eff. Sept. 1, 1991; Laws 2015, c. 39, § 1, eff. Nov. 1, 2015.

§40-73. Repealed by Laws 1991, c. 172, § 15, eff. Sept. 1, 1991.

§40-74. Educational qualifications required of child before employment.

No child under the age of sixteen (16) years shall be employed or permitted to work in any of the occupations specified in Section 71 of this title unless such child is able to read and write, or shall have attended some school during the preceding year for the time that attendance is compulsory under the laws.

R.L.1910, § 3731; Laws 1991, c. 172, § 3, eff. Sept. 1, 1991.

§40-75. Hours of employment of children - Rest periods.

A. No child under the age of sixteen (16) years shall be employed or permitted to work in any gainful occupation, other than agriculture or domestic service, for more than:

1. Three (3) hours in any one (1) school day, except that if the employer is not covered by the Fair Labor Standards Act, a child may work eight (8) hours or less on a school day which precedes a nonschool day;

2. Eight (8) hours on a nonschool day;

3. Eighteen (18) hours in any one (1) week when school is in session; or

4. Forty (40) hours in any one (1) week when school is not in session, except that if the employer is not covered by the Fair Labor Standards Act, a child may work forty (40) hours in any one (1) week when school is in session if attendance is not compulsory.

B. As used in this section, "in session" means the period beginning on the first Tuesday after Labor Day through May 31 of the following year.

C. Children under the age of sixteen (16) years must be permitted a one (1) hour cumulative rest period for each eight (8) consecutive hours worked. However, no such child shall work more than five (5) consecutive hours unless permitted a one-half (1/2) hour cumulative rest period.

R.L. 1910, § 3732. Amended by Laws 1991, c. 172, § 4, eff. Sept. 1, 1991; Laws 1993, c. 137, § 1, eff. Sept. 1, 1993; Laws 1997, c. 391, § 8, eff. July 1, 1997.

§40-76. Night work.

No person under the age of sixteen (16) years shall be employed or permitted to work in any of the occupations set out in Section 71 of this title between the hours of seven o'clock p.m. and seven o'clock a.m.; except, during the summer (June 1 through Labor Day) and, if the employer is not covered by the Fair Labor Standards Act, during the remainder of the year on days followed by a nonschool day when the prohibited hours will be between the hours of nine o'clock p.m. and seven o'clock a.m.

R.L. 1910, § 3733; Laws 1929, c. 35, p. 35, § 2; Laws 1955, p. 240, § 1; Laws 1976, c. 151, § 1; Laws 1991, c. 172, § 5, eff. Sept. 1, 1991; Laws 1993, c. 137, § 2, eff. Sept. 1, 1993.

§40-77. Schooling certificates - Duties of employers.

Before any child under the age of sixteen (16) years shall be employed in any occupation specified in Section 71 of this title, it shall be the duty of the parent or guardian of such child to procure and furnish the employer of such child an age and schooling certificate as hereinafter provided in this article. It shall be the duty of every person, firm or corporation owning or operating any of the establishments specified in Section 71 of this title, or employers in such occupation, to keep on file for the inspection of the Commissioner or his designee, truant officers, or other persons charged with the administration of this article, such age and schooling certificate, for every child under sixteen (16) years of age employed in such occupation, and to keep on file where such children are employed a register with a complete list of children under sixteen (16) years of age so employed, together with the age of each child as set forth in the age and schooling certificate

opposite the name of such child, and also to keep on file in such place or establishment, in such form as the Commissioner or his designee may prescribe, the time of opening and closing of such factory or other establishment, the number of hours of labor required or permitted in such establishment, the hours of commencing and stopping work, and the time allowed for meals, and, if there be two or more shifts in such establishment, the number of hours in each shift during which the employees are required or permitted to work. On termination of the employment of a child so registered, and whose certificate is so filed, such certificate shall be forthwith surrendered by the employer to the child or its parent, guardian or custodian; provided that this section shall not apply to the employment of children who are not residents of the State of Oklahoma, to perform in any duly licensed theatre, motion picture theatre or other place of public amusement.

R.L.1910, § 3734; Laws 1929, c. 35, p. 36, § 3; Laws 1991, c. 172, § 6, eff. Sept. 1, 1991.

§40-78. Evidence of age of child - Certificate of physical fitness.

The Commissioner or his designee, truant officer, or other person charged with the administration of this article, may make demand on an employer in whose factory or establishment a child apparently under the age of sixteen (16) years is employed or permitted or suffered to work, and whose employment certificate is not then filed as required by this section, that such employer shall either furnish him, within ten (10) days, evidence satisfactory to him that such child is in fact over sixteen (16) years of age, or shall cease to employ or permit or suffer such child to work in such factory or establishment. Such officer may require from such employer the same evidence of age of such child as is required on the issuance of an employment certificate; and the employer furnishing such evidence shall not be required to furnish any further evidence of the age of the child. In case such employer shall fail to produce and deliver to such officer, within ten (10) days after such demand, such evidence of age herein required by him, and shall thereafter continue to employ such child to work in such factory or establishment, proof of the giving of such notice and of such failure to produce and file such evidence shall be prima facie evidence in any prosecution brought for violation of this provision of this article that such child is under sixteen (16) years of age and is unlawfully employed: Provided, that the Commissioner or his designee shall have the power to demand a certificate of physical fitness from some licensed physician in good standing in this state in case of children who may appear to him physically unable to perform the labor at which they may be engaged, and shall have power to prohibit the employment of any minor that cannot obtain such a certificate.

R.L.1910, § 3735; Laws 1991, c. 172, § 7, eff. Sept. 1, 1991.

§40-79. Age and schooling certificates - Proof of age.

The age and schooling certificate shall be approved by the principal, headmaster, or equivalent administrative officer of the school which the child attends or should be attending or by one of the child's parents if the child is being schooled at home, who shall, for the purpose of this article, be empowered to administer an oath. The principal, headmaster, or equivalent administrative officer of the school which the child attends or should be attending or by one of the child's parents if the child is being schooled at home, shall approve such certificate only upon the application in person of the child desiring employment accompanied by its parents, guardian or custodian, and after having received, examined and approved documentary evidence of age, showing that the child is fourteen (14) years of age, or over, which evidence shall consist of one of the following named proofs of age, duly attested, and the proof accepted shall be specified in the certificate issued to the child; the proof specified in subdivision (a) shall be required first, but if this is not available then one of the proofs specified in the succeeding subdivisions shall be required and in the order designated until the age of the child be established, as follows:

(a) A birth certificate or transcript thereof issued by a registrar of vital statistics or other officer charged with the duty of recording births which certificate or transcript thereof shall be prima facie evidence of the age of the child.

(b) A certificate of baptism or transcript thereof, showing the date of birth and place of baptism of the child.

(c) A passport showing the age of the child; or a certificate of arrival in the United States, issued by the United States immigration officer and showing the age of the child; or a life insurance policy at least one (1) year old showing the age of the child or other credible evidence as may be approved by the Commissioner.

Every employment certificate shall be signed, in the presence of the officer issuing the same by the child in whose name it is issued.

R.L.1910, § 3736; Laws 1917, c. 182, p. 344, § 1; Laws 1991, c. 172, § 8, eff. Sept. 1, 1991.

§40-80. School attendance certificate to be presented - Duplicate of schooling certificate - Blank form - Form of certificate.

The age and schooling certificate shall not be approved until the parent or guardian of such child shall present a school attendance certificate as hereinafter prescribed. A duplicate of such age and schooling certificate shall be filled out and sent by the school officer, before whom the same is made, to the

Commissioner of Labor. The blank forms for school attendance certificate and for the age and schooling certificate shall be supplied to the principal, headmaster, or equivalent administrative officer of the school or to one of the child's parents if the child is being schooled at home by the State Superintendent of Public Instruction as hereinafter indicated.

SCHOOL ATTENDANCE CERTIFICATE.

..... (Name of School).
..... (City and County).
..... (Date).

This certifies that (name of child) can read and write and that according to the records of this school and in my belief is now (number of years and months) old, and has attended school during the full school term of the preceding year.

..... (Name of parent or guardian).
..... (Residence).
..... (Signature of teacher).

AGE AND SCHOOLING CERTIFICATE.

This certifies that I am (father, mother or guardian) of (name of child) s.s.#, and that he (or she) was born at (town or city), (county), (state or country), on the (day, month and year of birth), and is now (number of years and months old).

.....
(Signature of parent or guardian).
..... (Date).

..... (City or town or county).

Personally appeared before me the above-mentioned (name of person signing), and made oath that the foregoing certificate is true to the best of his (or her) knowledge and belief.

I hereby approve the foregoing certificate of (name of child), height (feet and inches), weight (pounds), complexion (fair or dark), hair (color), eyes (color), having no sufficient reason to doubt that he (or she) is of the age therein certified.

OWNER OF CERTIFICATE.

This certificate belongs to (name of child), and is to be surrendered to him (or her) whenever he (or she) leaves the service of the employer holding the same, but if not claimed by said child within thirty days after leaving said service, shall be sent to the Commissioner of Labor.

.....,
(Signature of officer, with name of city,

town or county, and date.)

R.L.1910, § 3738; Laws 1991, c. 172, § 9, eff. Sept. 1, 1991.

§40-81. Repealed by Laws 1991, c. 172, § 15, eff. Sept. 1, 1991.

§40-82. Repealed by Laws 1991, c. 172, § 15, eff. Sept. 1, 1991.

§40-83. Repealed by Laws 1991, c. 172, § 15, eff. Sept. 1, 1991.

§40-84. Repealed by Laws 1991, c. 172, § 15, eff. Sept. 1, 1991.

§40-85. Repealed by Laws 1991, c. 172, § 15, eff. Sept. 1, 1991.

§40-86. Repealed by Laws 1991, c. 172, § 15, eff. Sept. 1, 1991.

§40-87. Repealed by Laws 1991, c. 172, § 15, eff. Sept. 1, 1991.

§40-88. Penalties for violating this chapter.

Any person who is in willful violation of any of the provisions of Section 71 et seq. of this title shall, upon conviction, be guilty of a misdemeanor and, for each offense, shall be subject to a fine of not more than Five Hundred Dollars (\$500.00), or imprisonment for not less than ten (10) nor more than thirty (30) days, or both such fine and imprisonment.

R.L.1910, § 3742. Amended by Laws 1991, c. 172, § 10, eff. Sept. 1, 1991; Laws 1997, c. 391, § 9, eff. July 1, 1997.

§40-89. Enforcement of chapter - Administrative penalties.

A. It shall be the duty of the Commissioner of Labor to enforce the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes.

B. 1. In addition to any other penalty prescribed by law, any person who is in violation of Section 71 et seq. of Title 40 of the Oklahoma Statutes shall be liable for an administrative fine, to be assessed by the Commissioner of Labor, of not more than One Hundred Dollars (\$100.00) for each offense. The maximum administrative fine shall not exceed One Thousand Dollars (\$1,000.00) for all related violations. All administrative fines collected pursuant to this section shall be deposited in the Department of Labor Revolving Fund, created pursuant to Section 141.19 of Title 40 of the Oklahoma Statutes.

2. In lieu of the penalty provided for in paragraph 1 of this subsection, the Commissioner or a representative of the Commissioner may issue a warning for a first offense to a person who is in violation of Section 71 et seq. of Title 40 of the Oklahoma Statutes. The warning shall cite the violation committed by the

person and, where appropriate, state the time period in which the violation must be remedied.

C. After a violator is cited or fined for two unrelated offenses of failure to comply with the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes, the Commissioner of Labor shall have the authority to issue cease and desist orders, in accordance with the rules of the Department of Labor, against the violator until such time as compliance with the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes is met. Any order to cease and desist issued by the Commissioner may be enforced in district court. Upon application of the Commissioner, the district court may issue an injunction without bond for the purpose of enforcing this section.

D. The Commissioner of Labor shall assess and collect administrative fines incurred under subsection B of this section and, at the Commissioner's discretion, may remit, mitigate, or negotiate the fines. In determining the fine to be assessed, or the amount agreed upon in any negotiation, consideration shall be given to the appropriateness of the fine in light of the gravity of the violation and the extent to which the person charged has attempted to remedy the consequences of the violation. Individual proceedings shall be conducted pursuant to the provisions of subsection E of this section.

E. For the purpose of determining if an administrative fine should be assessed, a hearing shall be conducted in accordance with the provisions of the Administrative Procedures Act, by a hearing officer designated by the Commissioner of Labor. A final order by the hearing officer may be appealed to the district court in the county in which the violation occurred pursuant to the provisions of the Administrative Procedures Act.

Added by Laws 1997, c. 391, § 10, eff. July 1, 1997.

§40-141.1. Short title - Definitions.

This act shall be known and may be cited as the "Boiler and Pressure Vessel Safety Act", and, except as otherwise herein provided, shall apply to all boilers and pressure vessels. For the purpose of this act, the following definitions apply:

1. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum, for external use to itself, by the direct application of heat. The term "boiler" includes fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and complete within themselves:

- a. "power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than fifteen (15) pounds per square inch gauge, or as further

- defined in American Society of Mechanical Engineers Boiler and Pressure Vessel Code Section I,
- b. "high-temperature water boiler" means a water boiler intended for operation at pressures in excess of one hundred sixty (160) pounds per square inch gauge; or temperatures in excess of two hundred fifty degrees Fahrenheit (250° F), or as further defined in American Society of Mechanical Engineers Boiler and Pressure Vessel Code Section I,
 - c. "low pressure steam boiler" means a steam boiler operating at pressures not exceeding fifteen (15) pounds per square inch gauge, or as further defined in American Society of Mechanical Engineers Boiler and Pressure Vessel Code Section IV,
 - d. "hot water heating boiler" means a heating boiler operating at pressures not exceeding one hundred sixty (160) pounds per square inch gauge - one thousand one hundred three (1,103) kilopascals and/or temperatures not exceeding two hundred fifty degrees Fahrenheit (250° F), one hundred twenty-one degrees Celsius (121° C), at or near the boiler outlet, or as further defined in American Society of Mechanical Engineers Boiler and Pressure Vessel Code Section IV,
 - e. "hot water supply boiler" means a supply boiler operating at pressures not exceeding one hundred sixty (160) pounds per square inch gauge - one thousand one hundred three (1,103) kilopascals and/or temperatures not exceeding two hundred fifty degrees Fahrenheit (250° F), one hundred twenty-one degrees Celsius (121° C), at or near the boiler outlet, or as further defined in American Society of Mechanical Engineers Boiler and Pressure Vessel Code Section IV, and
 - f. "hot water supply heater" means a closed vessel in which water is heated by the combustion of fuels, electricity or any other source and withdrawn for use external to the system at pressures not exceeding one hundred sixty (160) pounds per square inch gauge and shall include all controls and devices necessary to prevent water temperature from exceeding two hundred ten degrees Fahrenheit (210° F), ninety-eight point nine degrees Celsius (98.9°C);

2. "Pressure vessel" means a vessel in which pressure is obtained from an external source or by the application of heat other than those vessels defined in paragraph 1 of this section or as further defined in American Society of Mechanical Engineers Boiler and Pressure Vessel Code Section VIII, Division I;

3. "Certificate of operation" means an annual certificate, unless otherwise provided for in this act, issued by the Commissioner of Labor permitting the operation of a boiler or pressure vessel which has been inspected as provided for in this act;

4. "Steam lines" means piping of welded construction in which steam is contained and/or transported at a pressure in excess of fifteen (15) pounds per square inch gauge; and

5. "Commissioner" means the Commissioner of Labor or the Commissioner's duly authorized representative.

Added by Laws 1982, c. 252, § 1. Amended by Laws 2003, c. 101, § 1, eff. Nov. 1, 2003.

§40-141.2. Exemptions - Exhibitor boilers.

A. This act shall not apply to the following boilers, hot water heaters and pressure vessels:

1. Pressure vessels used for the transportation of compressed gases if constructed and operated in compliance with specifications and regulations of the United States Department of Transportation or of the Corporation Commission of Oklahoma and any unfired pressure vessels used as containers for liquefied petroleum gases and subject to the jurisdiction of the United States Department of Transportation or the Oklahoma Liquefied Petroleum Gas Administration or successor agencies;

2. Pressure vessels containing air located on vehicles operating pursuant to regulations of other jurisdiction authorities;

3. Pressure vessels having an internal or external operating pressure not exceeding fifteen (15) pounds per square inch gauge - one hundred three (103) kilopascals gauge with no limit on size;

4. Pressure vessels having an inside diameter not exceeding six (6) inches (152mm) with no limitation on pressure;

5. Pressure vessels with a nominal water containing capacity of one hundred twenty (120) gallons or four hundred fifty (450) liters or less, to be used for domestic supply purposes, for containing water under pressure including those containing air, the compression of which serves only as a cushion;

6. Pressure vessels containing water heated by steam or other indirect means when none of the following limitations is exceeded:

a. a heat input of two hundred thousand (200,000) British thermal units per hour - fifty-eight thousand six hundred (58,600) watts,

b. a water temperature of two hundred ten degrees Fahrenheit (210° F), or

c. a water containing capacity of one hundred twenty (120) gallons - four hundred fifty (450) liters;

7. Pressure vessels which may be classified as pressure containers which are integral parts of components of rotating or

reciprocating mechanical devices such as pumps, compressors, turbines, generators, engines and hydraulic or pneumatic cylinders where the primary design considerations and/or stresses are derived from the functional requirements of the device, or structures whose primary function is the transport of fluids from one location to another within a system of which it is an integral part, i.e., piping systems;

8. Hot water supply boilers which are directly fired with oil, gas or electricity when none of the following limitations are exceeded:

- a. a heat input of two hundred thousand (200,000) British thermal units per hour - fifty-eight thousand six hundred (58,600) watts,
- b. a water temperature of two hundred ten degrees Fahrenheit (210° F), or
- c. a water containing capacity of one hundred twenty (120) gallons - four hundred fifty (450) liters;

9. Boilers and pressure vessels under federal control and railroad locomotive boilers;

10. Pressure vessels located on remote sites and limited to oil and natural gas gathering facilities or processing plants that have fewer than ten buildings intended for human occupancy per one-fourth (1/4) square mile and where the closest building is at least two hundred twenty (220) yards from any vessel;

11. Pressure vessels in the care, custody and control of research facilities and used solely for research purposes which require one or more details of noncode construction or which involve destruction or reduced life expectancy of those vessels; and

12. Hot water supply heaters as defined in subparagraph f of paragraph 1 of Section 141.1 of this title, with piping connections to the potable water supply system which are intended to supply hot water for domestic or commercial purposes other than space heating. However, the Commissioner shall make routine inspections and issue necessary orders regarding existing hot water supply heaters located in facilities or installations owned or operated by the State of Oklahoma or its agencies, counties, municipalities or school districts.

B. The following boilers and pressure vessels shall be exempt from Sections 141.13 through 141.16 of this title:

1. Pressure vessels not exceeding fifteen (15) cubic feet in volume and two hundred fifty (250) pounds per square inch gauge pressure;

2. Low pressure steam boilers, hot water heating boilers, hot water supply boilers, hot water supply heaters or pressure vessels which are located in private residences or in apartment houses of less than six-family units; and

3. Pressure vessels operated entirely full of water or other liquid which is not materially more hazardous than water, provided the temperature of the vessel contents does not exceed one hundred fifty degrees Fahrenheit (150° F) or a pressure of two hundred (200) pounds per square inch gauge.

C. 1. Either a special inspector or an inspector licensed by the Department of Labor shall inspect exhibitor boilers on an annual basis when exhibitor boilers are being operated at public events. Exhibitor boilers maintained by owner/operators for private use and not for operation for the public shall be exempt from inspection by this state. Annual inspections by this state or a special inspector shall consist of the following:

- a. an internal and external visual,
- b. threaded openings in the boiler may be inspected, when deemed appropriate, by the inspector after conducting an internal and external visual,
- c. a hydrostatic pressure test at one and twenty-five one-hundredths (1.25) times the maximum allowable working pressure,
- d. the maximum allowable working pressure shall not exceed one hundred eighty-five (185) pounds per square inch (psi),
- e. the ash pan and grates on a dry bottom vessel shall be removed to allow a visual inspection of the crown sheet,
- f. a visual inspection of the crown sheet on wet bottom boilers,
- g. all boilers shall have a fusible plug that is constructed to the American Society of Mechanical Engineers (ASME) code and indicated by an ASME marking on the filler material. It shall protrude one (1) inch into the water on a fireside fusible plug and no more than one (1) inch on a waterside fusible plug,
- h. the pressure relief valve shall be National Board capacity certified,
- i. a gage glass shall be present with a guard to protect the glass, drain valve or petcock, be piped to a safe location, and be operational,
- j. try cocks shall be located in correlation to the minimum required water level,
- k. a pressure gage that has been tested and proven accurate at the time of the annual pressure test,
- l. all piping shall be schedule 80, black pipe (SA-53 B or SA-105 B) from the boiler to the first valve,
- m. the boiler shall be equipped with two means of supplying feed water while under pressure, and

- n. all welding to the boiler shall be done by a certified repair organization as accredited and described in Part RA of the National Boiler Inspection Code (NBIC).

2. Exhibitor boilers shall have a nondestructive exam performed once every five (5) years for determining repairs and thin areas that need to be repaired. An inspector from the Department of Labor may perform a random nondestructive exam annually. Results from the exam may be used by the inspector to waive any time remaining on the five-year period. A nondestructive exam shall meet the following requirements:

- a. on a dry bottom boiler, no less than 150 readings shall be taken,
- b. on a wet bottom boiler, no less than 180 readings shall be taken,
- c. this exam shall include the areas surrounding the crown sheet stays and any areas subject to corrosion,
- d. a loss of metal that is greater than forty percent (40%) of the original boiler plate thickness in an area greater than three (3) inches in diameter shall be considered to be a thin area and shall need to be repaired prior to any operation,
- e. exams shall be by a certified professional pursuant to applicable provisions of law of this state,
- f. no exam shall be by a certified professional that has a vested interest in the boiler that is being examined,
- g. the exam results shall be made available to the organization where the boiler is being exhibited, if requested, and
- h. the exam results shall be made available at the time of the annual inspection to the inspector, if requested.

For purposes of this subsection, "exhibitor boiler" shall mean a boiler which is operated in this state for nonprofit purposes including, but not limited to, exhibitions, fairs, parades, farm machinery shows, or any other event of a historical or educational nature. An exhibitor boiler includes steam locomotives, traction and portable steam engines, and stationary boilers of the firetube, watertube, model or miniature, and may be riveted, riveted and welded, or all welded construction, if used within the state for nonprofit purposes.

D. Pressure vessels, associated piping, and connections located on oil and gas lease sites shall fall under the exclusive jurisdiction of the Corporation Commission. The Corporation Commission shall be responsible for the inspection of oil and gas lease pressure vessels to ensure the vessels, associated piping, and

connections are properly operated and maintained in a manner deemed appropriate by the Corporation Commission.

Added by Laws 1982, c. 252, § 2. Amended by Laws 2002, c. 250, § 1, eff. July 1, 2002.

§40-141.3. Rules and regulations - Formulation - Promulgation.

A. Formulation. The Commissioner of Labor shall formulate and adopt definitions, rules and regulations for the safe construction, installation, inspection, operation, maintenance and repair of boilers and pressure vessels in this state.

1. The definitions, rules and regulations so formulated for new construction shall be based upon and follow generally accepted national engineering standards, formula and practices related to boiler and pressure vessel construction and safety. The Commissioner of Labor may adopt an existing American National Standard known as the Boiler and Pressure Code of the American Society of Mechanical Engineers, with the addenda and code cases, and may also adopt subsequent revisions in the form of addenda and code cases of that standard provided such revisions are acceptable to the Commissioner. When so adopted, the same shall be deemed incorporated into, and to constitute a part of the whole of the definitions, rules and regulations of the Commissioner of Labor;

2. The Commissioner of Labor shall formulate rules and regulations to ensure that boiler and pressure vessel manufacturers, jobbers, dealers or individuals selling, renting or leasing or offering for sale, rent or lease or operation, any boiler or pressure vessel which is within the scope of this act meets the requirements of this act, rules and regulations hereinafter adopted. Any manufacturer, jobber, dealer or individual found to be in violation of this section shall be subject to any current penalty as herein provided;

3. The Commissioner of Labor shall formulate rules and regulations which may permit the use of boilers and pressure vessels which were in operation in this state prior to the date upon which the first rules and regulations under this act pertaining to existing installations become effective, or during the twelve-month period immediately thereafter; and

4. The rules for inspection, maintenance and repair of installed boilers and pressure vessels shall be based upon and follow generally accepted national standards as promulgated by the National Board of Boiler and Pressure Vessel Inspectors or by the American Petroleum Institute Pressure Vessel Inspection Code as a minimum as relates to boiler and pressure vessels.

B. Promulgation. The rules and regulations and any subsequent amendments thereto formulated or adopted by the Commissioner of Labor shall be adopted in accordance with the Oklahoma Administrative Procedures Act, except that the rules applying to the

construction of new boilers and pressure vessels shall not become mandatory until six (6) months after their promulgation by the Commissioner.

Added by Laws 1982, c. 252, § 3.

§40-141.4. Application of rules and regulations.

A. Twelve (12) months from the date upon which the rules and regulations under this act become effective, all new boilers and pressure vessels for use in this state shall conform to such rules and regulations.

B. If a boiler or pressure vessel is of special design or construction, and cannot comply with the construction requirements of the rules and regulations of this act, a special installation and operating permit may be granted by the Commissioner of Labor at his discretion, provided the user presents evidence acceptable to the Commissioner.

C. Welded steam lines - Downstream steam lines fabricated or repaired by welding, operated at in excess of fifteen (15) pounds per square inch gauge shall be fabricated, inspected and tested in accordance with applicable rules and regulations.

Added by Laws 1982, c. 252, § 4.

§40-141.5. Maximum allowable working pressure - Determination - Exemptions - Special Permit.

A. The maximum allowable working pressure of a boiler stamped with the American Society of Mechanical Engineers Code symbol or a pressure vessel stamped with the American Society of Mechanical Engineers or American Petroleum Institute - American Society of Mechanical Engineers Code symbol shall be determined by the applicable sections of the code under which it was constructed and stamped.

B. The maximum allowable working pressure of a boiler or pressure vessel which is not stamped and does not carry the ASME or the API-ASME Code symbol shall be computed in accordance with standard engineering practice using a factor of safety established by rules adopted by the Commissioner of Labor.

C. This act shall not be construed as in any way preventing the use, sale or reinstallation of a boiler or pressure vessel referred to in subsection B of this section, provided the Commissioner of Labor gives a specific ruling that such boiler or pressure vessel conforms to its rules and regulations, and provided further, upon inspection it has been found to be in safe condition.

D. If a boiler or pressure vessel is of historical significance and cannot comply with the construction requirements of the rules and regulations of this act, a special installation and operating permit may be granted by the Commissioner.

Added by Laws 1982, c. 252, § 5.

§40-141.6. License required - Exemptions - Fee - Evidence of qualifications - Hearings - Violations.

A. All firms or corporations engaged in the service, repair and/or installation of boilers or pressure vessels located in this state shall be licensed by the Commissioner to perform such work. Provided, no license shall be required for any firms or corporations engaged in the service, repair and/or installation of hot water supply heaters as provided in paragraph 12 of subsection A of Section 141.2 of this title. The Commissioner of Labor shall abide by any existing code of installation presently adopted or as may be hereinafter adopted by this state or its agencies or by any county, municipality or school district as pertains to hot water supply heaters. The annual license fee shall be payable in advance on or before January 31 of each calendar year. Each firm or corporation must furnish evidence suitable to the Commissioner that they are qualified to perform such work.

B. All hearings for the issuance or revocations of license under this section shall comply with the Oklahoma Administrative Procedures Act.

C. Any person who shall violate any of the provisions of this act or who violates any rule or order of the Commissioner pursuant to this act shall be guilty of a misdemeanor, and in addition thereto, may be enjoined from continuing such action. Each day upon which such violation occurs shall constitute a separate violation.

D. The Commissioner of Labor may promulgate rules establishing a schedule of administrative penalties and fines for violations of the Boiler and Pressure Vessel Safety Act and/or the Boiler and Pressure Vessel Rules which may be in addition to or in lieu of the criminal penalties provided in this section. The promulgation of an administrative fine schedule shall grant the Commissioner authority to impose those administrative fines for any violation of the Boiler and Pressure Vessel Safety Act and/or the Boiler and Pressure Vessel Rules. Funds collected as payment from a violator for administrative fines imposed for a violation of the Boiler and Pressure Vessel Safety Act and/or the Boiler and Pressure Vessel Rules shall be deposited to the Department of Labor Administrative Penalty Revolving Fund.

Added by Laws 1982, c. 252, § 6. Amended by Laws 2023, c. 241, § 1, eff. Nov. 1, 2023.

§40-141.7. Bureau of boiler inspection - Establishment - Personnel - Powers and duties.

There is hereby established a bureau of boiler inspection in the Department of Labor under the direction of the chief boiler inspector, who shall have at the time of appointment a valid commission issued in accordance with the constitution and bylaws of

the National Board of Boiler and Pressure Vessel Inspectors and shall be responsible to the Commissioner of Labor or his duly authorized representative for the supervision, inspection and testing of boilers and pressure vessels throughout the state.

B. The bureau of boiler inspection shall be furnished with sufficient personnel, deputy inspectors and clerical aides to perform the assigned duties with the limits prescribed by the Commissioner of Labor.

C. Powers. The chief boiler inspector and deputy inspectors, under the supervision of the Commissioner of Labor, shall:

1. Take action necessary for the enforcement of this act and these rules and regulations;

2. Keep a complete record of the name and address of the owner or user, location, type, dimensions, maximum allowable working pressure, age, dates of installation and last-recorded inspection of all boilers and pressure vessels to which this act applies;

3. Make available upon request copies of the rules and regulations promulgated by the Department;

4. Issue, suspend or revoke for cause, certificates of operation as provided for in Section 14 of this act; and

5. Cause the prosecution of violators of the provisions of this act, rules and regulations.

Added by Laws 1982, c. 252, § 7.

§40-141.8. Deputy boiler inspectors.

A. The chief boiler inspector shall employ deputy inspectors, subject to approval of the Commissioner of Labor, who shall be responsible to the chief boiler inspector and who shall have at the time of appointment a valid commission issued in accordance with the constitution and bylaws of the National Board of Boiler and Pressure Vessel Inspectors.

B. The deputy inspectors may at the Commissioner's discretion be appointed in a trainee status provided the trainees successfully complete the examination as defined in Section 141.10 of this title and receive a valid National Board Commission within twenty-four (24) months after appointment.

Added by Laws 1982, c. 252, § 8. Amended by Laws 2018, c. 36, § 1, eff. Nov. 1, 2018.

§40-141.9. Certificates of competency designating special inspectors and owner-user inspectors of boiler and pressure vessels - Exemption from liability.

A. 1. Certificates of competency designating special inspectors of boilers and pressure vessels shall be issued by the Commissioner upon request of any authorized inspection agency, which has been licensed or registered by the appropriate authority of this state. All such authorized inspection agencies shall provide boiler

and pressure vessel insurance coverage and be actively engaged in writing this type coverage in this state.

2. Before receiving a certificate of competency, each inspector shall receive a passing grade on the examination provided for by Section 141.10 of this title, or shall hold a commission or certificate of competency as an inspector of boilers or pressure vessels from a state that has a standard of examination equal to that of this state, or a commission as an inspector of boilers and pressure vessels issued by the National Board of Boiler and Pressure Vessel Inspectors.

3. Special inspectors shall not receive any salary or expenses from this state, and a certificate of competency shall be valid only as long as such special inspectors are in full-time employment of an authorized inspection agency.

4. Special inspectors may inspect all boilers and pressure vessels insured by their respective authorized inspection agency.

5. The inspections required pursuant to the Boiler and Pressure Vessel Safety Act that are conducted incidental to the issuance or renewal of boiler and machinery insurance shall not subject an insurer, whether domestic or foreign, its agents or its employees to liability for damages for any act or omission in the course of performing inspections as provided by this section. This section shall not apply if the gross negligence of the insurer, its agent or its employee created the condition that was the proximate cause of the injury, death or loss.

6. The insurance company shall apply on or before January 31 of each year for renewal of certificates of competency for each special inspector employed who inspects boilers and pressure vessels insured in this state. The fee must accompany application.

B. 1. Certificates of competency designating owner-user inspectors of boilers or pressure vessels or both shall be issued by the Commissioner upon request of any company operating boilers or pressure vessels or both in this state. The owner-user shall maintain a regularly established inspection department which is under the supervision of one or more technically competent individuals whose qualifications and whose organization and inspection procedures are in accordance with paragraph 4 of subsection A of Section 141.3 of this title and acceptable to the Commissioner of Labor. Boilers and pressure vessels shall be inspected regularly and in accordance with applicable provisions of the rules and regulations adopted by the Commissioner pursuant to this act.

2. Before receiving a certificate of competency, each inspector shall attain a passing grade on the examination provided for by Section 141.10 of this title, or shall hold a certificate of competency as an inspector from a state that has a standard of examination equal to that of this state, or who holds a valid

commission issued in accordance with the constitution and bylaws of the National Board of Boiler and Pressure Vessel Inspectors.

3. A certificate of competency as an owner-user inspector shall be issued only if, in addition to meeting the requirements in paragraph 2 of this subsection, the inspector is continuously employed by the company and is responsible for making inspection of boilers and pressure vessels used by such company.

4. Owner-user inspectors shall not receive any salary or expenses from this state and a certificate of competency shall be valid only as long as such owner-user inspector is employed full time by a qualified owner-user inspection agency, in accordance with the applicable provisions of the rules and regulations adopted pursuant to this act.

5. The owner-user inspection agency will apply on or before January 31 of each year for renewal of competency for each owner-user inspector employed in this state. The fee must accompany application.

6. Such owner-user inspectors may inspect all pressure vessels operated by their respective companies and, when so inspected, the owners and users of such pressure vessels shall be exempt from the payment to the state of the inspection fees provided for in Section 141.16 of this title.

Added by Laws 1982, c. 252, § 9. Amended by Laws 2018, c. 82, § 1, eff. Nov. 1, 2018.

§40-141.10. Examination of inspectors.

A. The examination for chief boiler inspector, deputy inspectors, special inspectors or owner-user inspectors, except those owner-user inspectors within the scope of the American Petroleum Institute Pressure Vessel Inspection Code, shall be written and shall be held in accordance with the constitution and bylaws of the National Board of Boiler and Pressure Vessel Inspectors.

B. A written examination for owner-user inspectors within the scope of the American Petroleum Institute Pressure Vessel Inspection Code shall be administered by the Department of Labor based upon the content of the American Petroleum Institute Pressure Vessel Inspection Code and the American Society of Mechanical Engineers Boiler and Pressure Vessel Codes pertaining to pressure vessels.

Added by Laws 1982, c. 252, § 10. Amended by Laws 2018, c. 36, § 2, eff. Nov. 1, 2018.

§40-141.11. Suspension of inspector's certificate of competency.

An inspector's certificate of competency may be suspended by the Commissioner of Labor after due investigation for the incompetence or untrustworthiness of the inspector or for the willful falsification of any matter or statement contained in his

application, or a report of any inspections made by him. Written notice of any such suspension shall be transmitted by the Commissioner of Labor to the inspector and his employer not more than ten (10) days following the suspension. A person whose certificate of competency has been suspended shall be entitled to an appeal as provided by the Oklahoma Administrative Procedures Act. Added by Laws 1982, c. 252, § 11.

§40-141.12. Lost, stolen or destroyed certificate of competency.

If a certificate of competency is lost, stolen or destroyed, a new certificate of competency may be issued without reexamination. Added by Laws 1982, c. 252, § 12.

§40-141.13. Inspection of certain boilers and pressure vessels.

A. The Commissioner of Labor or the chief boiler inspector, or any deputy inspector, shall have free access, during reasonable hours, to any premises in the state where a boiler or pressure vessel is being constructed for use in, or is being installed in this state for the purpose of ascertaining whether such boiler or pressure vessel is being constructed and installed in accordance with the provisions of the Boiler and Pressure Vessel Safety Act.

B. Each boiler and pressure vessel covered by the Boiler and Pressure Vessel Safety Act shall be thoroughly inspected as to its construction, installation and condition as follows:

1. Power boilers and high pressure high temperature water boilers shall receive an inspection annually which shall be an internal inspection where construction permits; otherwise it shall be as complete an inspection as possible. Such boilers shall also be externally inspected annually preferably while under pressure;

2. Low pressure steam or vapor heating boilers shall receive an external inspection annually with an internal inspection at least every two (2) years where construction permits;

3. Hot water heating and hot water supply boilers shall receive an external inspection annually with an internal inspection at the discretion of the inspector;

4. Hot water supply heaters shall receive a certificate inspection annually, if possible, but biennially as a minimum;

5. Pressure vessels, excluding those within the scope of the American Petroleum Institute Pressure Vessel Inspection Code, subject to internal corrosion and waste heat steam generators shall receive an internal inspection triennially where construction permits. Pressure vessels not subject to internal corrosion shall receive an inspection at intervals set by the Commissioner. Frequency of external inspections of pressure vessels shall be set by the Commissioner;

6. A grace period of two (2) months beyond the periods specified in paragraphs 1, 2, 3, 4 and 5 of this subsection is

permitted between inspections; however, the inspection due date shall not be affected; provided, however, for an entity with two or more boilers or pressure vessels, the Commissioner may allow all inspections of the boilers or pressure vessels to be conducted at that location at the same time;

7. The Commissioner of Labor may provide for longer periods between inspections in the rules for specific boilers and pressure vessels; and

8. Under the provisions of the Boiler and Pressure Vessel Safety Act, the Commissioner of Labor is responsible to provide rules for the safety of life, limb and property and therefore has jurisdiction over the interpretation and application of the inspection requirements as provided for in the rules. Inspection during construction and installation shall certify as to the minimum requirement for safety as defined in the American Society of Mechanical Engineers Code or other construction standards acceptable to the Commissioner of Labor. Inspection requirements of operating equipment shall be in accordance with generally accepted practice and compatible with the actual service condition, such as:

- a. previous experience, based on records of inspection, performance and maintenance,
- b. location, with respect to personnel hazard,
- c. quality of inspection and operating personnel,
- d. provision for related safe operating controls, and
- e. interrelation with other operations outside the scope of the Boiler and Pressure Vessel Safety Act.

Based upon the documentation of such actual service conditions by the owner or user of the operating equipment, the Commissioner of Labor may, at his discretion, permit variations in the inspection requirements.

C. The inspections herein required shall be made by the Commissioner, chief boiler inspector, deputy inspector or a special inspector as provided for in the Boiler and Pressure Vessel Safety Act except that hot water supply heaters may be inspected by state-licensed boiler operators or state-licensed plumbers or plumbing contractors. The Commissioner of Labor may designate by rule the hot water supply heaters, by design type, that are not subject to inspection.

D. Owner-user inspection of boilers and pressure vessels is permitted provided the owner-user inspection service is regularly established and is under the supervision of one or more individuals whose qualifications are satisfactory to the Commissioner of Labor and the owner-user causes the pressure vessels to be inspected in conformance with the National Board Inspection Code or American Petroleum Institute Pressure Vessel Inspection Code as applicable.

E. If, at the discretion of the inspector, a hydrostatic test shall be deemed necessary, it shall be made by the owner or user or

his licensed representative and witnessed by an inspector as authorized by the Boiler and Pressure Vessel Safety Act, before a certificate of operation is issued.

F. All boilers, other than cast iron sectional boilers, and pressure vessels to be installed in this state after the twelve-month period from the date upon which the rules of the Commissioner become effective, shall be inspected during construction as required by the applicable rules by an inspector authorized to inspect boilers and pressure vessels in this state, or if constructed outside of the state, by an inspector holding a valid commission issued by the National Board of Boiler and Pressure Vessel Inspectors.

G. No person, firm or corporation shall in any manner interfere with the performance of the official duties of any inspector authorized by the Boiler and Pressure Vessel Safety Act.

Added by Laws 1982, c. 252, § 13. Amended by Laws 2000, c. 295, § 6, eff. Nov. 1, 2000; Laws 2016, c. 93, § 1, eff. Nov. 1, 2016; Laws 2018, c. 36, § 3, eff. Nov. 1, 2018.

§40-141.14. Inspection report - Inspection record - Certificate of operation - Suspension of certificate.

A. 1. Each authorized inspection agency employing special inspectors meeting the requirements of subsection A of Section 9 of this act shall, within thirty (30) days following each inspection made by such inspectors, file an exact copy of the report of the inspection with the chief boiler inspector upon appropriate forms as promulgated by the Commissioner of Labor; and

2. Each company operating pressure vessels covered by owner-user inspections service meeting the requirements of subsection B of Section 9 of this act shall maintain in its files an inspection record which shall list, by number and such abbreviated description as may be necessary for identification, each pressure vessel covered by this act, the date of the last inspection of each pressure vessel and the approximate date for the next inspection. The inspection record shall be available for examination by the chief inspector or his authorized representative during business hours. Each such company shall, in addition, file annually with the chief inspector a statement, signed by the individual having supervision over the inspections made during the period covered thereby, stating the number of pressure vessels covered by this act inspected during the year and certifying that each such inspection was conducted pursuant to the inspection requirements provided for by this act.

Such annual statement shall be accompanied by a fee equal to that shown in subparagraph c of paragraph 2 of subsection A of Section 16 of this act.

B. If the report filed pursuant to subsection A of this section shows that a boiler or pressure vessel is found to comply with the

rules and regulations of the Commissioner of Labor and upon direct payment to the Department of Labor by the owner or user of the fee prescribed shall issue the owner or user a certificate of operation. The certificate of operation shall be valid for a period consistent with the inspection frequency as required by Section 13 of this act. In the case of those boilers and pressure vessels covered by paragraphs 1, 2, 3 and 4 of subsection B of Section 13 of this act for which the Commissioner of Labor has established or extended the operating period between required inspections, pursuant to the provisions of paragraph 7 or 8 of subsection B of Section 13 of this act, the certificate of operation shall be valid for a period of not more than two (2) months beyond the period set by the Commissioner. Certificates of operation for boilers shall be posted under glass, or similarly protected, in the room containing the boiler. Pressure vessel certificates of operation shall be posted in like manner, if convenient, or filed where they will be readily accessible for examination by the Commissioner, chief boiler inspector or deputy inspector.

C. The chief boiler inspector or deputy inspectors may at any time suspend a certificate of operation if the boiler or pressure vessel for which it is issued is deemed a menace to the public safety, or when the boiler or pressure vessel is found not to comply with the rules and regulations herein provided. Each suspension of a certificate of operation shall continue in effect until such boiler or pressure vessel shall have been made to conform to the rules and regulations, and until said certificate of operation shall have been reinstated.

Added by Laws 1982, c. 252, § 14.

§40-141.15. Certificate of operation required - Violations.

After twelve (12) months for power boilers, twenty-four (24) months for low pressure steam heating, hot water heating and hot water supply boilers, and thirty-six (36) months for pressure vessels following the date on which this act becomes effective, it shall be unlawful for any person, firm, partnership or corporation to operate in this state a boiler or pressure vessel covered by this act, including boilers and pressure vessels covered by owner-user inspection service provided for in Section 14, without a valid certificate of operation. The operation of a boiler or pressure vessel without such certificate of operation, or at a pressure exceeding that specified in such certificate of operation or in violation of this act or the rules and regulations promulgated under it, shall constitute a misdemeanor on the part of the owner, user or operator thereof. Each day of such unlawful operation shall be deemed a separate offense.

Added by Laws 1982, c. 252, § 15.

§40-141.16. Fees - Department of Labor Revolving Fund

A. The Commissioner of Labor may promulgate rules establishing a schedule of administrative fees for the registration, inspection and operation of boilers, pressure vessels and steam lines. The following fees shall remain in effect until rules become effective, at which time the fees contained in this subsection shall be superseded by rule. Fees collected by the Department of Labor for the registration, inspection and operation of boilers, pressure vessels and steam lines shall be deposited as provided in subsection C of this section.

1. a. Annual certificate of operation fee shall be as follows:
 - (1) with manway state inspector \$75.00
 - (2) without manway state inspector \$50.00
 - (3) any size special - or owner/user inspector \$50.00
 - (4) each public hot water supply heater (biennially) \$5.00
 - (5) each public boiler inspection/certification \$25.00
- b. Only one certificate of operation fee per year may be charged; except an additional fee equal to the certificate of operation fee may be charged for witnessing a hydrostatic test required after repairs, provided a fee equal to the total fees identified in division (1) or (2) of subparagraph a of this paragraph, whichever is appropriate, and subparagraph f of paragraph 2 of this subsection may be charged when the pressure-retaining item is not prepared and ready pursuant to rules promulgated by the Commissioner of Labor at the time of the inspection.
2. Other Fees
 - a. hydrostatic test of steam pipeline per day \$150.00
(for each additional half-day or part thereof) \$75.00
 - b. shop review fees \$3,000.00
 - c. licensing fees
 - (1) repair, service, install (annually) \$50.00
 - (2) boiler operator (biennially) \$50.00
 - d. certificate of competency fee \$15.00
 - e. examination fee \$50.00
 - f. boiler or pressure vessel inspection fee for certificate inspections by state inspectors \$155.00

- g. authorized inspector services for weld repairs or alterations, per eight-hour day or part thereof \$300.00
- h. a fee as established by rule may be assessed for the issuance of duplicate licenses and certificates, not to exceed \$10.00

B. All institutions owned or operated by the State of Oklahoma or its agencies or by any county, municipality or school district, and such institutions or agencies, and all owners or users of boilers or pressure vessels of historical significance as specified in subsection D of Section 141.5 of this title are exempt from the payment of only those fees provided for in paragraph 2 of subsection A of this section.

C. The Commissioner shall account for and deposit fee revenue received pursuant to this section to the credit of the Department of Labor Revolving Fund, except Two Hundred Fifty-four Thousand Two Hundred Sixty-five Dollars (\$254,265.00) of the fee revenue received each fiscal year shall be transferred to the State Treasury to the credit of the General Revenue Fund.

D. All fees shall be paid directly to the Department of Labor. Added by Laws 1982, c. 252, § 16. Amended by Laws 1991, c. 215, § 14, eff. July 1, 1991; Laws 1992, c. 305, § 1, emerg. eff. May 27, 1992; Laws 2001, c. 57, § 1, eff. July 1, 2001; Laws 2004, c. 554, § 1, eff. Sept. 1, 2004; Laws 2008, c. 260, § 1, eff. July 1, 2008; Laws 2009, c. 414, § 1, eff. July 1, 2009; Laws 2010, c. 414, § 2, eff. July 1, 2010; Laws 2014, c. 336, § 1, eff. Nov. 1, 2014; Laws 2016, c. 93, § 2, eff. Nov. 1, 2016.

§40-141.17. Bond.

The chief boiler inspector and deputy inspectors shall be bonded in the sum of Five Thousand Dollars (\$5,000.00) conditioned upon faithful performance of duty and true account of all money and proper disposition of all said money.

Added by Laws 1982, c. 252, § 17.

§40-141.18. Accidents and incidents - Investigation and inquiry - Notice.

A. The Department of Labor has total jurisdiction over the investigation or inquiry into accidents and incidents arising within the definitions of this act.

B. It shall be mandatory for all owners, users or operators to immediately notify the Department of Labor and secure the total accident or incident area by whatever means is practical until such time as the Department of Labor representative or a designee of the Commissioner arrives on the scene, except in case of the protection of life or limb as a result of said accident or incident.

Added by Laws 1982, c. 252, § 18.

§40-141.19. Department of Labor Revolving Fund

There is hereby created in the State Treasury a revolving fund for the Department of Labor to be designated the "Department of Labor Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies designated for deposit in such fund. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Department of Labor for operations and expenses relating to its statutory duties and responsibilities. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

Added by Laws 1996, c. 362, § 2, eff. Sept. 1, 1996. Amended by Laws 2012, c. 304, § 135; Laws 2016, c. 82, § 1, eff. Nov. 1, 2016.

§40-141.19a. Discontinuation of revolving funds.

A. On the effective date of this act, the Workers' Compensation Enforcement Revolving Fund, the Safety Standards Revolving Fund and the Elevator Safety Fund shall be discontinued, and all funds in the Workers' Compensation Enforcement Revolving Fund, the Safety Standards Revolving Fund and the Elevator Safety Fund shall be transferred to the Department of Labor Revolving Fund, created in Section 141.19 of Title 40 of the Oklahoma Statutes.

B. After the effective date of this act, any revenue placed to the credit of the Workers' Compensation Enforcement Revolving Fund, the Safety Standards Revolving Fund and the Elevator Safety Fund shall be placed in the Department of Labor Revolving Fund.

Added by Laws 2010, c. 414, § 1, eff. July 1, 2010.

§40-141.20. Petty cash fund.

A. The Director of the Office of Management and Enterprise Services is hereby authorized, upon request by the Commissioner of Labor, to establish a petty cash fund for the Department of Labor in an amount not to exceed Four Hundred Dollars (\$400.00), to be used for the purpose of making change for persons obtaining licenses and transacting other business with the Department.

B. The fund shall be established and replenished from any monies available to the Department for operating expenses.

C. The Director of the Office of Management and Enterprise Services shall prescribe all forms, systems, and procedures for administering the fund.

Added by Laws 1999, c. 404, § 1, emerg. eff. June 10, 1999. Amended by Laws 2012, c. 304, § 136.

§40-142.1. Regulation of compressed natural gas fueling stations - Implementation and enforcement of Alternative Fuels Technician Certification Act - Transfer of duties and authority to Department of Labor.

A. On the effective date of this act, all powers, duties, responsibilities, records and equipment of the Corporation Commission relating exclusively to the regulation of compressed natural gas fueling stations are hereby transferred and shall be placed under the authority of the Department of Labor.

B. On the effective date of this act, all powers, duties, responsibilities, records and equipment of the Office of Management and Enterprise Services relating exclusively to the implementation and enforcement of the Alternative Fuels Technician Certification Act are hereby transferred and shall be placed under the authority of the Department of Labor. To the extent practicable, the transfer shall include all computer hardware and software used in regulating the functions listed in this subsection.

C. The Corporation Commission, the Commissioner of Labor and the Director of the Office of Management and Enterprise Services may contract for additional legal and administrative services as necessary to effectuate the transfers as provided for in this section.

D. 1. All unexpended funds, property, furnishings, equipment, supplies, records, and outstanding financial obligations and encumbrances of the Corporation Commission relating to the regulation of natural gas fueling stations and of the Office of Management and Enterprise Services relating to the implementation and enforcement of the Alternative Fuels Technician Certification Act shall be transferred to the Department of Labor for the continuing performance of duties relating to the regulation of natural gas fueling stations and implementation and enforcement of the Alternative Fuels Technician Certification Act. No funds, property, furnishings, equipment, supplies or records may be expended or used for any purpose other than the performance of duties and responsibilities as directed and required in this act.

2. Any funds, properties, furnishings, equipment, supplies, or records related in any manner to the regulation of natural gas fueling stations and implementation and enforcement of the Alternative Fuels Technician Certification Act which may not be in the current possession of the Corporation Commission or the Office of Management and Enterprise Services on the effective date of this act, but which come into the possession of the Corporation Commission or the Office of Management and Enterprise Services after the transfer of authority to the Department of Labor as provided in this act, shall immediately be transferred to the Department of Labor. Items subject to the immediate transfer shall include, but

are not limited to, any misdirected licensing fees or payments of outstanding administrative fines.

E. The Corporation Commission and the Director of the Office of Management and Enterprise Services shall not enter into any contract or agreement relating to the regulation of natural gas fueling stations or implementation and enforcement of the Alternative Fuels Technician Certification Act extending beyond the effective date of the transfer without approval by the Commissioner of Labor.

F. All licenses, registrations, certifications and accreditations issued by the Office of Management and Enterprise Services pursuant to the Alternative Fuels Technician Certification Act that are in effect on the effective date of this act shall remain in full force and effect and shall be enforceable by the Department of Labor.

G. The Director of the Office of Management and Enterprise Services shall coordinate the transfer of funds, allotments, purchase orders and outstanding financial obligations and encumbrances relating to the regulation of natural gas fueling stations and the implementation and enforcement of the Alternative Fuels Technician Certification Act as transferred pursuant to the provisions of this act.

H. Upon the effective date of this act, all administrative rules promulgated by the Office of Management and Enterprise Services relating to the implementation and enforcement of the Alternative Fuels Technician Certification Act shall be enforceable by the Commissioner of Labor. The rules shall continue in force and effect after the effective date of this act, and the Commissioner of Labor shall have authority to amend, repeal, recodify or make additions to the rules pursuant to the Administrative Procedures Act.

Added by Laws 2014, c. 328, § 1.

§40-142.2. Inspection by Department of Labor.

A. The Department of Labor shall have authority to have access to and inspect any equipment including compression equipment and storage tanks, practices or methods used by or in association with any public access compressed natural gas fueling station or pump or any hydrogen fueling station or pump.

B. The Department may promulgate rules as necessary to implement the provisions of this section.

Added by Laws 2013, c. 95, § 1, emerg. eff. April 22, 2013. Amended by Laws 2014, c. 328, § 2. Renumbered from § 348 of Title 52 by Laws 2014, c. 328, § 14. Amended by Laws 2022, c. 84, § 1, eff. Nov. 1, 2022.

NOTE: Editorially renumbered from § 142.1 of this title to avoid a duplication in numbering.

§40-142.3. Short title - Alternative Fuels Technician Certification Act.

This act shall be known and may be cited as the "Alternative Fuels Technician Certification Act".

Added by Laws 1990, c. 294, § 1, operative July 1, 1990. Renumbered from § 420.51 of Title 52 by Laws 1991, c. 235, § 24, eff. July 1, 1991. Amended by Laws 2014, c. 328, § 3. Renumbered from § 130.11 of Title 74 by Laws 2014, c. 328, § 15.

NOTE: Editorially renumbered from § 142.2 of this title to avoid a duplication in numbering.

§40-142.4. Legislative intent.

It is the intent of the Oklahoma Legislature that the State Board of Career and Technology Education develop curriculum for the training of technicians for the installation and conversion of engines to be fueled by alternative fuels as the technologies are developed. It is further the intent of the Oklahoma Legislature that Oklahoma State University Institute of Technology-Okmulgee develop curriculum for the training of technicians for the installation, service, modification, repair or renovation of fill stations. It is further the intent of the Oklahoma Legislature to enact legislation which promotes the development of technology in a manner that ensures the health and safety of the citizens of this state.

Added by Laws 1990, c. 294, § 2, operative July 1, 1990. Renumbered from § 420.52 of Title 52 by Laws 1991, c. 235, § 24, eff. July 1, 1991. Amended by Laws 1994, c. 379, § 5, eff. Sept. 1, 1994; Laws 2001, c. 83, § 1, eff. Nov. 1, 2001; Laws 2008, c. 54, § 8, eff. July 1, 2008. Renumbered from § 130.12 of Title 74 by Laws 2014, c. 328, § 16.

NOTE: Editorially renumbered from § 142.3 of this title to avoid a duplication in numbering.

NOTE: Laws 2001, c. 33, § 170 repealed by Laws 2001, c. 414, § 16, eff. Nov. 1, 2001.

§40-142.5. Definitions.

As used in the Alternative Fuels Technician Certification Act:

1. "Alternative fuels" means liquefied petroleum gas, natural gas and liquid fuels produced from natural gas, methanol, ethanol, electricity, coal-derived liquid fuels, hydrogen, biodiesel and fuels derived from biological materials;

2. "Alternative fuels equipment technician" means any person who installs, modifies, repairs or renovates equipment used in the conversion of any engines to engines fueled by alternative fuels. This includes originally equipped manufactured engines dedicated to operate on an alternative fuel;

3. "Alternative fuels compression technician" means any person who installs, services, modifies, repairs or renovates fill stations;

4. "Committee" means the Committee of Alternative Fuels Technician Examiners;

5. "Compressed natural gas vehicular fuel system" means an object or objects mounted, installed, attached or otherwise placed upon or within a vehicle or vehicle trailer to supply or assist in the supply of compressed natural gas as a fuel to an internal combustion engine or engines;

6. "Electric vehicle technician" means any person who installs, modifies, repairs, performs maintenance on, or renovates onboard charging systems, motors, controllers, power sources, or the drive systems of vehicles powered by electricity that is greater than eighty (80) volts. This includes vehicles originally equipped as electric vehicles, vehicles converted from gliders, and vehicles converted from internal combustion engine vehicles;

7. "Fill station" means the equipment and conveyance property that provides the delivery and, if required, compression of an alternative fuel other than electricity; and

8. "Glider" means a vehicle built without an engine or fuel system for the purpose of converting it to an electric vehicle.

Added by Laws 1990, c. 294, § 3, operative July 1, 1990. Amended by Laws 1991, c. 235, § 8, eff. July 1, 1991. Renumbered from § 420.53 of Title 52 by Laws 1991, c. 235, § 24, eff. July 1, 1991. Amended by Laws 1993, c. 224, § 4, eff. Sept. 1, 1993; Laws 1994, c. 379, § 6, eff. Sept. 1, 1994; Laws 1998, c. 160, § 5, eff. Nov. 1, 1998; Laws 1998, c. 343, § 1, emerg. eff. June 5, 1998; Laws 2001, c. 83, § 2, eff. Nov. 1, 2001; Laws 2009, c. 371, § 6, emerg. eff. May 29, 2009. Renumbered from § 130.13 of Title 74 by Laws 2014, c. 328, § 17. Amended by Laws 2015, c. 181, § 1, emerg. eff. April 27, 2015. NOTE: Editorially renumbered from § 142.4 of this title to avoid a duplication in numbering.

NOTE: Laws 1998, c. 320, § 2 repealed by Laws 1999, c. 1, § 45, emerg. eff. Feb. 24, 1999.

§40-142.6. Committee of Alternative Fuels Technician Examiners - Members - Terms - Vacancies - Duties - Expenses - Quorum.

A. There is hereby established the Committee of Alternative Fuels Technician Examiners which shall consist of eight (8) members. All members of the Committee shall be residents of this state.

B. Five voting members of the Committee shall be appointed by the Commissioner of Labor as follows:

1. Three members shall be alternative fuels technicians selected from a list of names submitted by the State Board of Career and Technology Education, with at least one member being an

alternative fuels equipment technician and at least one member being an alternative fuels compression technician;

2. One member shall be a person involved in compressed natural gas technology in an oil and/or gas industry; and

3. One member shall be a person involved in liquefied petroleum gas technology in an oil and/or gas industry.

C. Two additional voting members shall be appointed by the Commissioner of Labor, one of whom shall be an electric vehicle technician, and one of whom shall be a person involved in manufacturing, conversion, or research in the electric vehicle industry.

D. All members shall each have at least two (2) years of active experience in alternative fuels technology. The terms of the voting members initially appointed to the Committee shall be staggered as follows:

1. One alternative fuels technician shall be appointed for a term of two (2) years;

2. One alternative fuels technician shall be appointed for a term of three (3) years;

3. One alternative fuels technician shall be appointed for a term of four (4) years;

4. One person involved in compressed natural gas technology in an oil and/or gas industry shall be appointed for a term of three (3) years;

5. One person involved in liquefied petroleum gas technology in an oil and/or gas industry shall be appointed for a term of four (4) years;

6. One electric vehicle technician shall be appointed for a term of two (2) years; and

7. One person involved in manufacturing, conversion, or research in the electric vehicle industry shall be appointed for a term of three (3) years.

Thereafter, each voting member of the Committee shall be appointed for a term of five (5) years, or until their successors are appointed and qualified.

The nonvoting member shall be designated by the Commissioner of Labor to serve as Recording Secretary to the Committee.

E. Vacancies which may occur in the membership of the Committee shall be filled by appointment of the Commissioner of Labor. Each person who has been appointed to fill a vacancy shall serve for the remainder of the term for which the member such person succeeds was appointed and until a successor has been appointed and has qualified. Members of the Committee may be removed from office by the Commissioner of Labor for cause in the manner provided by law for the removal of officers not subject to impeachment.

F. The Committee shall assist and advise the Commissioner of Labor on all matters relating to the formulation of rules and

standards in accordance with the Alternative Fuels Technician Certification Act. The Commissioner of Labor or designee shall administer the examinations of applicants for certification as alternative fuels equipment technicians, alternative fuels compression technicians, and electric vehicle technicians provided that such examinations shall be in accordance with the provisions of the Alternative Fuels Technician Certification Act.

G. All members of the Committee shall be reimbursed for expenses incurred while in the performance of their duties in accordance with the State Travel Reimbursement Act.

H. A majority of the total membership of the Committee shall constitute a quorum for the transaction of business.

Added by Laws 1990, c. 294, § 4, operative July 1, 1990. Amended by Laws 1991, c. 235, § 9, eff. July 1, 1991. Renumbered from § 420.54 of Title 52 by Laws 1991, c. 235, § 24, eff. July 1, 1991. Amended by Laws 1994, c. 379, § 7, eff. Sept. 1, 1994; Laws 1998, c. 160, § 6, eff. Nov. 1, 1998; Laws 2001, c. 33, § 171, eff. July 1, 2001; Laws 2012, c. 304, § 825; Laws 2014, c. 328, § 4. Renumbered from § 130.14 of Title 74 by Laws 2014, c. 328, § 18. Amended by Laws 2015, c. 181, § 2, emerg. eff. April 27, 2015; Laws 2016, c. 132, § 1, emerg. eff. April 21, 2016.

NOTE: Editorially renumbered from § 142.5 of this title to avoid a duplication in numbering.

§40-142.7. Examinations for certification of technicians.

A. Examinations for certification as alternative fuels equipment technicians shall be uniform and practical in nature for alternative fuels equipment technician certification and shall be sufficiently strict to test the qualifications and fitness of the applicants for certificates.

B. Examinations for certification as alternative fuels compression technicians shall be uniform and practical in nature for alternative fuels compression technician certification and shall be sufficiently strict to test the qualifications and fitness of the applicants for certificates.

C. Examinations for certification as electric vehicle technicians shall be uniform and practical in nature for electric vehicle technician certification and shall be sufficiently strict to test the qualifications and fitness of the applicants for certificates.

D. Examinations shall be in whole or in part in writing. Any applicant initially failing to pass the examination shall not be permitted to take another examination for a period of thirty (30) days. Any applicant subsequently failing to pass the examination shall not be permitted to take another examination for a period of thirty (30) days.

E. The Department of Labor shall enforce the provisions of this section.

Added by Laws 1990, c. 294, § 5, operative July 1, 1990. Amended by Laws 1991, c. 235, § 10, eff. July 1, 1991. Renumbered from § 420.55 of Title 52 by Laws 1991, c. 235, § 24, eff. July 1, 1991. Amended by Laws 1994, c. 379, § 8, eff. Sept. 1, 1994; Laws 1998, c. 160, § 7, eff. Nov. 1, 1998; Laws 2012, c. 304, § 826; Laws 2014, c. 328, § 5. Renumbered from § 130.15 of Title 74 by Laws 2014, c. 328, § 19. Amended by Laws 2015, c. 181, § 3, emerg. eff. April 27, 2015.

NOTE: Editorially renumbered from § 142.6 of this title to avoid a duplication in numbering.

§40-142.8. Certificate - Qualifications - Transfer or loan of certificate - Standards for storage and handling of liquefied petroleum gases and for electric vehicle charge stations.

A. The Department of Labor shall issue a certificate as an alternative fuels equipment technician to any person who:

1. Has been licensed by the Oklahoma Liquefied Petroleum Gas Board and has successfully passed the appropriate examination as provided in the Alternative Fuels Technician Certification Act or has been certified by the Committee as either having successfully passed the appropriate examination or having a valid license or certificate issued by another governmental entity with licensing or certification requirements similar to those provided in the Alternative Fuels Technician Certification Act; and

2. Has paid the certification fee and otherwise complied with the provisions of the Alternative Fuels Technician Certification Act.

B. The Department of Labor shall issue a certificate as an alternative fuels compression technician to any person who:

1. Has successfully passed the appropriate examination as provided in the Alternative Fuels Technician Certification Act or has been certified by the Committee as having a valid license or certificate issued by another governmental entity with licensing or certification requirements similar to those provided in the Alternative Fuels Technician Certification Act; and

2. Has paid the certification fee and otherwise complied with the provisions of the Alternative Fuels Technician Certification Act.

C. The Department of Labor shall issue a certificate as an electric vehicle technician to any person who:

1. Has been certified by the Committee as either having successfully passed the appropriate examination or having a valid license or certificate issued by another governmental entity with licensing or certification requirements similar to those provided in the Alternative Fuels Technician Certification Act; and

2. Has paid the certification fee and otherwise complied with the provisions of the Alternative Fuels Technician Certification Act.

D. In the case of a company, partnership or corporation engaged in the business of installing, servicing, repairing, modifying or renovating equipment used in the conversion of engines to engines fueled by alternative fuels, a separate certificate shall be issued by the Department of Labor to that individual company, partnership or corporation. This certificate is for the express purpose of recognizing that the company, partnership or corporation is an authorized alternative fuels conversion business and employs state-certified alternative fuels equipment technicians. Any violations by a certified alternative fuels equipment technician shall be deemed a violation by the certified company, partnership or corporation employing such certified technician. A company, partnership or corporation engaged in the business of installing, servicing, repairing, modifying or renovating equipment used in the conversion of engines to engines fueled by alternative fuels shall provide the Department of Labor with proof of liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) general liability.

E. In the case of a company, partnership or corporation engaged in the business of installing, servicing, repairing, modifying or renovating fill stations, a separate certificate shall be issued by the Department of Labor to that individual company, partnership or corporation. This certificate is for the express purpose of recognizing that the company, partnership or corporation is an authorized fill-station installation business and employs state-certified alternative fuels compression technicians or electric vehicle technicians. Any violations by a certified alternative fuels compression technician or electric vehicle technician shall be deemed a violation by the certified company, partnership or corporation employing such certified technician. A company, partnership or corporation engaged in the business of installing, servicing, repairing, modifying or renovating fill stations shall provide the Department of Labor with proof of liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) general liability.

F. In conjunction with subsection A of this section, the Department of Labor shall issue an Alternative Fuels Equipment Installation Certification to any public entity or private company, partnership or corporation that operates commercial, private or public fleets of vehicles and employs ten or more auto service technicians per location. The certification shall be based on the ability of the applicant to provide their own alternative fuels equipment technician training program which shall be certified by the Department of Labor, Committee of Alternative Fuels Technician

Examiners. This subsection shall not apply to allow certification of any alternative fuels compression technician training programs.

G. All alternative fuels equipment technician certificates, alternative fuels compression technician certificates, and electric vehicle technician certificates shall be nontransferable and it shall be unlawful for any person certified pursuant to the provisions of the Alternative Fuels Technician Certification Act to loan or allow the use of such certificate by any other person, except as specifically provided in the Alternative Fuels Technician Certification Act.

H. The standards for the storage and handling of liquefied petroleum gases in the codes adopted by the Oklahoma Uniform Building Code Commission pursuant to the Oklahoma Uniform Building Code Act shall be the accepted codes and standards for this state. The standards for the installation of compressed natural gas vehicular fuel systems adopted by the National Fire Protection Association and published in its Pamphlet No. 52 shall be the accepted standards for this state. The accepted standards for this state for electric vehicle charge stations shall be the codes adopted by the Oklahoma Uniform Building Code Commission. The standards for the design, construction, installation, repair, use and inspection of alternative fuel fueling stations, including residential fueling appliances and facilities, in the codes adopted by the Oklahoma Uniform Building Code Commission pursuant to the Oklahoma Uniform Building Code Commission Act shall be the accepted codes and standards for this state. The Commissioner of Labor is authorized, and it shall be the duty of the Commissioner to adopt and promulgate such rules or specifications relating to safety in the manufacture, assembly, sale, installation and use of vehicular alternative fuel systems. The Commissioner of Labor is further authorized to modify or amend such rules or specifications as he or she deems reasonable and necessary.

I. The Department of Labor may issue an alternative fuels trainee certificate to any person who submits a trainee application to the Department within fifteen (15) business days of being hired by a licensed alternative fuels conversion company. An alternative fuels trainee shall be employed by a licensed alternative fuels conversion company located in Oklahoma. A trainee shall work under the direct supervision of a licensed alternative fuels equipment technician. There shall be no more than two alternative fuels trainees per licensed alternative fuels equipment technician at any licensed Oklahoma alternative fuels conversion company at any one time. An individual that holds a trainee license may engage in any licensed category pursuant to the Alternative Fuels Technician Certification Act while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

J. The Department of Labor may issue an alternative fuels compression trainee certificate to any person who submits a trainee application to the Department within fifteen (15) business days of being hired by a licensed alternative fuels fill-station installation business. An alternative fuels compression trainee shall be employed by a licensed alternative fuels fill-station installation business located in Oklahoma. A trainee shall work under the direct supervision of a licensed alternative fuels compression technician. There shall be no more than two alternative fuels compression trainees per licensed alternative fuels compression technician at any licensed Oklahoma alternative fuels fill-station installation business or the job site or sites of any such alternative fuels fill-station installation business at any one time. An individual who holds a trainee license may engage in any licensed category pursuant to the Alternative Fuels Technician Certification Act while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

Added by Laws 1990, c. 294, § 6, operative July 1, 1990. Amended by Laws 1991, c. 235, § 11, eff. July 1, 1991. Renumbered from § 420.56 of Title 52 by Laws 1991, c. 235, § 24, eff. July 1, 1991. Amended by Laws 1993, c. 224, § 5, eff. Sept. 1, 1993; Laws 1994, c. 379, § 9, eff. Sept. 1, 1994; Laws 1998, c. 160, § 8, eff. Nov. 1, 1998; Laws 2012, c. 304, § 827; Laws 2014, c. 328, § 6. Renumbered from § 130.16 of Title 74 by Laws 2014, c. 328, § 20. Amended by Laws 2015, c. 181, § 4, emerg. eff. April 27, 2015; Laws 2016, c. 132, § 2, emerg. eff. April 21, 2016.

NOTE: Editorially renumbered from § 142.7 of this title to avoid a duplication in numbering.

§40-142.9. Applications for examination, certification or renewal of certification - Fees.

A. 1. All applications for examination, certification or renewal of certification shall be made in writing to the Department of Labor on forms provided, if necessary, by the Department of Labor. All applications shall be accompanied by the appropriate fee.

2. If a person holds a valid Class I Dealer Permit properly issued by the Oklahoma Liquefied Petroleum Gas Board, pursuant to Section 420.4 of Title 52 of the Oklahoma Statutes, the requirements of this section for certification or renewal of certification shall not be required.

B. The following shall be the fees charged under the Alternative Fuels Technician Certification Act.

Alternative Fuels Equipment Technician Examination	\$50.00
Alternative Fuels Compression Technician Examination	\$50.00
Electric Vehicle Technician Examination	\$50.00

Alternative Fuels Equipment Technician Certificate	\$50.00
Alternative Fuels Compression Technician Certificate	\$50.00
Alternative Fuels Equipment or Compression Training Certificate	\$25.00
Electric Vehicle Technician Certificate	\$50.00
Certificate renewal, if made within thirty (30) days after expiration:	
Alternative Fuels Equipment Technician Certificate	\$50.00
Alternative Fuels Compression Technician Certificate	\$50.00
Alternative Fuels Equipment or Compression Training Certificate	\$25.00
Electric Vehicle Technician Certificate	\$50.00
Penalty for Late Certification Renewal:	
Alternative Fuels Equipment Technician Certificate	\$10.00
Alternative Fuels Compression Technician Certificate	\$10.00
Electric Vehicle Technician Certificate	\$10.00
Company, Partnership or Corporation Certificate	\$100.00
Annual Renewal for Company, Partnership or Corporation Certificate	\$100.00
Training Program Certification (one-time fee)	\$500.00
Alternative Fuels Installation Certification Per Location	\$1,000.00
Annual Renewal of Alternative Fuels Installation Certification Per Location	\$250.00
	for each dispenser meter at the location not to exceed \$1,000.00 per location

Added by Laws 1990, c. 294, § 7, operative July 1, 1990. Amended by Laws 1991, c. 235, § 12, eff. July 1, 1991. Renumbered from § 420.57 of Title 52 by Laws 1991, c. 235, § 24, eff. July 1, 1991. Amended by Laws 1993, c. 224, § 6, eff. Sept. 1, 1993; Laws 1994, c. 379, § 10, eff. Sept. 1, 1994; Laws 1997, c. 234, § 5, eff. Nov. 1, 1997; Laws 1998, c. 160, § 9, eff. Nov. 1, 1998; Laws 1999, c. 366, § 6, eff. July 1, 1999; Laws 2012, c. 304, § 828; Laws 2014, c. 328, § 7. Renumbered from § 130.17 of Title 74 by Laws 2014, c. 328, § 21. Amended by Laws 2015, c. 181, § 5, emerg. eff. April 27, 2015; Laws 2016, c. 132, § 3, emerg. eff. April 21, 2016.

NOTE: Editorially renumbered from § 142.8 of this title to avoid a duplication in numbering.

§40-142.10. Recertification - Rules and guidelines.

The Commissioner of Labor shall adopt rules and guidelines for the expiration of certificates for alternative fuels equipment technicians, alternative fuels compression technicians, and electric vehicle technicians, and for determining the recertification of

alternative fuels equipment technicians, alternative fuels compression technicians, and electric vehicle technicians.

Added by Laws 1990, c. 294, § 8, operative July 1, 1990. Amended by Laws 1991, c. 235, § 13, eff. July 1, 1991. Renumbered from § 420.58 of Title 52 by Laws 1991, c. 235, § 24, eff. July 1, 1991. Amended by Laws 1994, c. 379, § 11, eff. Sept. 1, 1994; Laws 1998, c. 160, § 10, eff. Nov. 1, 1998; Laws 2012, c. 304, § 829; Laws 2014, c. 328, § 8. Renumbered from § 130.18 of Title 74 by Laws 2014, c. 328, § 22.

NOTE: Editorially renumbered from § 142.9 of this title to avoid a duplication in numbering.

§40-142.11. Alternative Fuels Technician Examiners - Complaints - Investigations - False or fraudulent representation - Suspension or revocation of certificate - Administrative hearing - Record of action - Reversal of revocation.

A. The Commissioner of Labor or designee may suspend or revoke any license, certificate or registration for cause upon recommendation of the Committee of Alternative Fuels Technician Examiners and shall comply with the provisions of the Administrative Procedures Act.

B. The Commissioner of Labor or designee may, upon the motion of the Commissioner or designee, and shall, upon written complaint filed by any person, investigate the business transactions of any certified alternative fuels equipment or compression technician, or electric vehicle technician. The results of the investigation may be presented to the Committee and the Committee may recommend suspension or revocation of the license, certificate or registration. The Commissioner of Labor or designee shall suspend or revoke any certificate or registration obtained by false or fraudulent representation. The Commissioner of Labor or designee shall also suspend or revoke any certificate or registration for any of the following:

1. Making a material misstatement in the application for a certificate or registration, or the renewal of a certificate or registration;

2. Loaning or illegally using a certificate;

3. Demonstrating incompetence to act as an alternative fuels equipment technician, alternative fuels compression technician, or electric vehicle technician;

4. Violating any provisions of the Alternative Fuels Technician Certification Act, or any rule or order prescribed by the Department of Labor; or

5. Willfully failing to perform normal business obligations without justifiable cause.

Any person whose alternative fuels equipment technician certificate, alternative fuels compression technician certificate,

or electric vehicle technician certificate has been revoked by the Commissioner of Labor or designee may apply for a new certificate one (1) year from the date of such revocation.

C. Before final action under subsections A and B of this section, the Committee shall provide thirty (30) days written notice to the applicant or licensee involved of the intended action and give sufficient opportunity for the person to request an administrative hearing and to be represented by an attorney. If requested, a hearing shall be scheduled by the Commissioner as provided in the Administrative Procedures Act.

D. In the event the Commissioner denies the application for, or revokes or suspends, any certificate or imposes any reprimand, a record of the action shall be in writing and officially signed by the Commissioner. The original copy shall be filed with the Department of Labor and a copy mailed to the affected applicant or licensee within two (2) days of the final action taken by the Commissioner.

E. Notice of the suspension or revocation of any license shall be made public record.

F. A suspended certificate shall be subject to expiration and may be renewed as provided by the Alternative Fuels Technician Certification Act, regardless of the term of suspension. A renewal of a suspended certificate shall not remove the suspension term.

G. Except as otherwise provided, a revoked certificate terminates on the date of revocation and cannot be reinstated. The Commissioner may reverse the revocation action. Any licensee whose certificate is revoked may apply for a new certificate. The licensee shall meet all requirements for a certificate as stated in the Alternative Fuels Technician Certification Act. The Committee may recommend issuance or denial of a new certificate. In determining whether to issue or deny a new certificate, the Committee shall consider, but not be limited to, the nature, circumstances, and gravity of the violation or violations leading to revocation, the degree of culpability, and any show of good faith in attempting to achieve compliance with the provisions of the Alternative Fuels Technician Certification Act, and whether the applicant has demonstrated good moral character.

Added by Laws 1990, c. 294, § 9, operative July 1, 1990. Amended by Laws 1991, c. 235, § 14, eff. July 1, 1991. Renumbered from § 420.59 of Title 52 by Laws 1991, c. 235, § 24, eff. July 1, 1991. Amended by Laws 1994, c. 379, § 12, eff. Sept. 1, 1994; Laws 1998, c. 160, § 11, eff. Nov. 1, 1998; Laws 2012, c. 304, § 830; Laws 2014, c. 328, § 9. Renumbered from § 130.19 of Title 74 by Laws 2014, c. 328, § 23. Amended by Laws 2015, c. 181, § 6, emerg. eff. April 27, 2015.

NOTE: Editorially renumbered from § 142.10 of this title to avoid a duplication in numbering.

§40-142.12. Work of technician by noncertified person.

After September 1, 1991, it shall be unlawful for any person to perform the work or offer, by advertisement or otherwise, to perform the work of an alternative fuels equipment technician until such person has qualified and is certified as an alternative fuels equipment technician. Beginning September 1, 1995, it shall be unlawful for any person to perform work or offer, by advertisement or otherwise, to perform the work of an alternative fuels compression technician until such person has qualified and is certified as an alternative fuels compression technician. Beginning November 1, 1998, it shall be unlawful for any person to perform the work or offer, by advertisement or otherwise, to perform the work of an electric vehicle technician until such person has qualified and is certified as an electric vehicle technician. Electric vehicles that have a manufacturer's warranty shall be serviced by an authorized new car dealer. Any vehicle manufacturer's training center located in the state, which offers alternative fuel and electric vehicle courses meeting new car manufacturing requirements, shall be exempted from this act. Provided, nothing in the Alternative Fuels Technician Certification Act shall be construed to prohibit a noncertified person from converting the engine of a farm tractor, as defined in Section 1-118 of Title 47 of the Oklahoma Statutes, to an engine fueled by alternative fuels, as long as such farm tractor is not operated on the roads and highways of this state.

Added by Laws 1990, c. 294, § 10, operative July 1, 1990. Amended by Laws 1991, c. 235, § 15, eff. July 1, 1991. Renumbered from § 420.60 of Title 52 by Laws 1991, c. 235, § 24, eff. July 1, 1991. Amended by Laws 1994, c. 379, § 13, eff. Sept. 1, 1994; Laws 1998, c. 160, § 12, eff. Nov. 1, 1998. Renumbered from § 130.20 of Title 74 by Laws 2014, c. 328, § 24.

NOTE: Editorially renumbered from § 142.11 of Title 40 to avoid a duplication in numbering.

§40-142.13. Change of address of holder of certificate or registration.

Any holder of a certificate or registration issued in accordance with the provisions of the Alternative Fuels Technician Certification Act shall promptly notify the Department of Labor of any change in such holder's address.

Added by Laws 1990, c. 294, § 11, operative July 1, 1990. Amended by Laws 1991, c. 235, § 16, eff. July 1, 1991. Renumbered from § 420.61 of Title 52 by Laws 1991, c. 235, § 24, eff. July 1, 1991. Amended by Laws 2012, c. 304, § 831; Laws 2014, c. 328, § 10. Renumbered from § 130.21 of Title 74 by Laws 2014, c. 328, § 25.

NOTE: Editorially renumbered from § 142.12 of Title 40 to avoid a duplication in numbering.

§40-142.14. Alternative Fuels Technician Certification Revolving Fund - Alternative Fuels Inspection Fees and Fines Revolving Fund.

A. All monies received by the Department of Labor under the Alternative Fuels Technician Certification Act and derived from Alternative Fuels Technician certification fees and related enforcement actions and fines shall be deposited with the State Treasurer and credited to the "Alternative Fuels Technician Certification Revolving Fund". The revolving fund shall be a continuing fund not subject to fiscal year limitations and shall be under the control and management of the Department of Labor. Expenditures from this fund shall be made pursuant to the purposes of the Alternative Fuels Technician Certification Act and shall include, but not be limited to, payment of operating costs, costs of programs designed to promote public awareness of the alternative fuels industry, expenditures for the preparation and printing of regulations, bulletins or other documents and the furnishing of copies of the documents to those persons engaged in the alternative fuels industry or the public, and expenses the Department of Labor incurs to support program operations. Warrants for expenditures shall be drawn by the State Treasurer based on claims signed and approved for payment by the Director of the Office of Management and Enterprise Services.

B. All monies received by the Department of Labor under the Alternative Fuels Technician Certification Act and derived from the inspection of alternative fuel fill stations and related enforcement actions shall be deposited with the State Treasurer and credited to the "Alternative Fuels Inspection Fees and Fines Revolving Fund". The revolving fund shall be a continuing fund not subject to fiscal year limitations and shall be under the control and management of the Department of Labor. Expenditures from the fund shall be made pursuant to the purposes of the Alternative Fuel Fill Station Inspection and Licensing Program under the Alternative Fuels Technician Certification Act and shall include, but not be limited to, payment of administrative costs and other operational costs supporting the program, payment of costs designed to promote public awareness of the alternative fuels industry, expenditures for the preparation and printing of regulations, bulletins or other documents and the furnishing of copies of the documents to those persons engaged in the alternative fuels industry or the public. Warrants for expenditures shall be drawn by the State Treasurer based on claims signed and approved for payment by the Director of the Office of Management and Enterprise Services.

Added by Laws 1990, c. 294, § 12, operative July 1, 1990. Amended by Laws 1991, c. 235, § 17, eff. July 1, 1991. Renumbered from §

420.62 of Title 52 by Laws 1991, c. 235, § 24, eff. July 1, 1991. Amended by Laws 2003, c. 372, § 12, eff. July 1, 2003; Laws 2010, c. 413, § 28, eff. July 1, 2010; Laws 2012, c. 304, § 832; Laws 2014, c. 328, § 11. Renumbered from § 130.22 of Title 74 by Laws 2014, c. 328, § 26. Amended by Laws 2015, c. 181, § 7, emerg. eff. April 27, 2015.

NOTE: Editorially renumbered from § 142.13 of this title to avoid a duplication in numbering.

§40-142.15. Violations - Criminal penalties.

Any person convicted of violating any provision of the Alternative Fuels Technician Certification Act shall be guilty of a misdemeanor. The continued violation of any provision of the Alternative Fuels Technician Certification Act during each day shall be deemed to be a separate offense. Upon conviction thereof the person shall be punished by imprisonment in the county jail not to exceed one (1) year, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment for each offense. The Commissioner of Labor or designee may request the appropriate district attorney to prosecute such violation and seek an injunction against such practice.

Added by Laws 1990, c. 294, § 13, operative July 1, 1990.

Renumbered from § 420.63 of Title 52 by Laws 1991, c. 235, § 24, eff. July 1, 1991. Renumbered from § 130.23 of Title 74 by Laws 2014, c. 328, § 27. Amended by Laws 2015, c. 181, § 8, emerg. eff. April 27, 2015.

NOTE: Editorially renumbered from § 142.14 of this title to avoid a duplication in numbering.

§40-142.16. Violations - Civil penalties - Determination of penalty amount - Surrender of certificate in lieu of fine - Administrative hearing.

A. Any person who has been determined by the Commissioner of Labor or designee to have violated any provision of the Alternative Fuels Technician Certification Act or any rule or order issued pursuant to the provisions of the Alternative Fuels Technician Certification Act may be liable for a civil penalty of not more than One Hundred Dollars (\$100.00) for each day that said violation occurs. The maximum civil penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The amount of the penalty shall be assessed by the Commissioner of Labor or designee pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the Commissioner of Labor or designee shall include, but not be limited to, consideration of the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the

degree of culpability, and any show of good faith in attempting to achieve compliance with the provisions of the Alternative Fuels Technician Certification Act. All monies collected from such civil penalties shall be deposited with the State Treasurer of Oklahoma and placed in the Alternative Fuels Technician Certification Revolving Fund.

C. Any certificate holder may elect to surrender his certificate in lieu of said fine but shall be forever barred from obtaining a reissuance of said certificate.

D. In addition to, or in lieu of, the civil penalties set forth in subsections A and B of this section, the Commissioner of Labor or designee, at the discretion of the Commissioner or designee, may assess the following fines for violations of the act:

1. Failure to meet the applicable adopted minimum standards in the installation, modification, repair, maintenance, or renovation of an alternative fuel fill station, an electric vehicle charge station or alternative fuel vehicle equipment, per occurrence: \$200.00
2. Performing the work or offering, by advertisement or otherwise, to perform the work of an alternative fuels equipment technician without valid certification, per occurrence: \$200.00
3. Performing the work or offering, by advertisement or otherwise, to perform the work of an alternative fuels compression technician without valid certification, per occurrence: \$200.00
4. Performing the work or offering, by advertisement or otherwise, to perform the work of an electric vehicle technician without valid certification, per occurrence: \$200.00
5. Performing the work or offering, by advertisement or otherwise, to perform the work of an alternative fuels installation company, partnership or corporation without valid certification, per occurrence: \$500.00

E. Payment for the fines set forth in subsection D of this section shall be due within thirty (30) days of issuance of a citation by the Commissioner or designee. Any person wishing to contest any of the aforementioned fines shall petition the Commissioner or designee for an administrative hearing, in writing, within thirty (30) days of issuance of the fine or fines. If requested, the hearing shall then be scheduled by the Commissioner or designee as provided in the Administrative Procedures Act.

F. Nothing in this section shall be construed to prevent revocation or suspension of a certificate pursuant to Section 142.11 of this title.

Added by Laws 1990, c. 294, § 14, operative July 1, 1990.
Renumbered from § 420.64 of Title 52 by Laws 1991, c. 235, § 24,
eff. July 1, 1991. Renumbered from § 130.24 of Title 74 by Laws
2014, c. 328, § 28. Amended by Laws 2015, c. 181, § 9, emerg. eff.
April 27, 2015.

NOTE: Editorially renumbered from § 142.15 of this title to avoid a
duplication in numbering.

§40-160. Mandated minimum wage - Minimum number of vacation or sick
leave days.

As a matter of public policy and due to an overriding state
interest, the Legislature hereby occupies and preempts the entire
field of legislation in this state touching in any way mandated
minimum wage and employee benefits regarding mandatory minimum
number of vacation or sick leave days. Notwithstanding any
exemption from state statutes previously allowed for certain
municipalities pursuant to Section 1-101 of Title 11 of the Oklahoma
Statutes, no municipality or other political subdivision of this
state shall establish a mandatory minimum number of vacation or sick
leave days, whether paid or unpaid, or a minimum wage rate which an
employer would be required to pay or grant employees. Any existing
or future ordinances, orders or regulations in this field, except as
may be specifically provided in this section, are null and void.

The provisions of this section shall not affect the minimum
number of vacation or sick leave days, whether paid or unpaid,
authorized by a municipality for its employees as a benefit of
employment.

Added by Laws 2014, c. 40, § 1, eff. July 1, 2014.

§40-165.1. Definitions.

As used only in Sections 165.1 through 165.11 of this title:

1. "Employer" means every individual, partnership, firm,
association, corporation, the legal representative of a deceased
individual, or the receiver, trustee or successor of an individual,
firm, partnership, association or corporation, employing any person
in this state;

2. "Employee" means any person permitted to work by an
employer;

3. "Exempt employee" means those management level employees
exempt under the provisions of Section 213 of the Fair Labor
Standards Act, as amended, 29 U.S.C. Section 213, from the
provisions of Sections 206 and 207 of said act;

4. "Financial institution" means a bank, savings bank, savings
and loan association or credit union whose deposits are insured by
the Federal Deposit Insurance Corporation, the National Credit Union
Administration, or any successor institution;

5. "Payroll card" means a card or other device used by an employee to access wages from a payroll card account;

6. "Payroll card account" means a prepaid account that is directly or indirectly established through an employer and to which transfers of the employee's wages, salary, or other compensation are made on a recurring basis;

7. "Wages" means compensation owed by an employer to an employee for labor or services rendered including salaries, commissions, holiday and vacation pay, overtime pay, severance or dismissal pay, bonuses and other similar advantages agreed upon between the employer and the employee, which are earned and due, or provided by the employer to his or her employees in an established policy, whether the amount is determined on a time, task, piece, commission or other basis of calculation;

8. "Commissioner" means the Commissioner of Labor; and

9. "Bona fide disagreement" means an honest and sincere belief or assertion based on a dispute of a determinative fact or application of law under this title which is supported by relevant evidence.

Added by Laws 1955, p. 240, § 1, emerg. eff. June 6, 1955. Amended by Laws 1982, c. 304, § 24, operative Oct. 1, 1982; Laws 1990, c. 333, § 18, emerg. eff. May 31, 1990; Laws 2005, c. 359, § 1, eff. Nov. 1, 2005; Laws 2022, c. 156, § 1, eff. Nov. 1, 2022.

§40-165.2. Semimonthly or monthly payment of wages on regular paydays - Payment in money - Itemized statement of deductions - Prohibited payments - Dishonored checks.

Every employer in this state shall pay all wages due their employees, other than exempt employees and employees of nonprivate foundations qualified pursuant to 26 U.S.C. 509(a)(1) and 26 U.S.C. 170(b)(1)(A)(vi), at least twice each calendar month on regular paydays designated in advance by the employer. State, county and municipal employees, exempt employees, school district employees, technology center school district employees and employees of nonprivate foundations qualified pursuant to 26 U.S.C. 509(a)(1) and 26 U.S.C. 170(b)(1)(A)(vi) shall be paid a minimum of once each calendar month. The amount due such employees shall be paid in lawful money of the United States including payment by electronic means, and the employee shall not be deemed to have waived any right or rights mentioned in this section because of any contract to the contrary. Each employer in this state, in its discretion, may pay all wages due to an employee by deposit on the payday at a financial institution of the employee's choice or, if the employee does not consent or designate a financial institution, to a payroll card account. With each payment of wages earned by such employee, the employer shall issue to such employee a brief itemized statement of any and all deductions therefrom. An interval of not more than

eleven (11) days may elapse between the end of the pay period worked and the regular payday designated by the employer. The employer shall be allowed three (3) days after such payday in which to comply with this section.

No such employer shall issue, in payment of or as evidence of indebtedness due an employee any check, cashier's check, draft, time check, store order, scrip, or other acknowledgment of indebtedness unless the same is payable or redeemable upon demand without discount and for face value in lawful money of the United States. If an employer pays an employee with a check which is subsequently returned to the employee or an agent thereof by reason of the refusal of the bank upon which such check was drawn to honor the same due to insufficient funds or a stop payment notice, the employer shall reimburse the employee for any fees or costs incurred by the employee due to the refusal to honor the check within fourteen (14) days of the employer's notice of the bank's refusal to honor the check.

Added by Laws 1955, p. 241, § 2, emerg. eff. June 6, 1955. Amended by Laws 1967, c. 346, § 1, emerg. eff. May 18, 1967; Laws 1982, c. 304, § 25, operative Oct. 1, 1982; Laws 1990, c. 333, § 19, emerg. eff. May 31, 1990; Laws 2002, c. 160, § 2, eff. Nov. 1, 2002; Laws 2006, c. 277, § 2, eff. Nov. 1, 2006; Laws 2009, c. 164, § 1, eff. Nov. 1, 2009; Laws 2013, c. 45, § 1, eff. July 1, 2013; Laws 2022, c. 156, § 2, eff. Nov. 1, 2022.

§40-165.2a. Administrative fine.

The Commissioner of Labor or designee is hereby authorized to assess an administrative fine of Five Hundred Dollars (\$500.00) against an employer operating in this state who is found to have violated Sections 165.1 through 165.11 of Title 40 of the Oklahoma Statutes if such violations occur on two or more occasions within any six-month period. All administrative fines collected pursuant to this section shall be deposited to the Department of Labor Revolving Fund.

Added by Laws 2002, c. 226, § 1, emerg. eff. May 9, 2002. Amended by Laws 2003, c. 293, § 1, emerg. eff. May 27, 2003.

§40-165.3. Termination of employee - Payment - Failure to pay.

A. Whenever an employee's employment terminates, the employer shall pay the employee's wages in full, less offsets and less any amount over which a bona fide disagreement exists, as defined by Section 165.1 of this title, at the next regular designated payday established for the pay period in which the work was performed either through the regular pay channels or by certified mail postmarked within the deadlines herein specified if requested by the employee, unless provided otherwise by a collective bargaining agreement that covers the employee.

B. If an employer fails to pay an employee wages as required under subsection A of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of two percent (2%) of the unpaid wages for each day upon which such failure shall continue after the day the wages were earned and due if the employer willfully withheld wages over which there was no bona fide disagreement; or in an amount equal to the unpaid wages, whichever is smaller; provided, however, that for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he thereafter shall have been adjudicated bankrupt upon such petition.

Laws 1955, p. 241, § 3, emerg. eff. June 6, 1955; Laws 1968, c. 270, § 1, emerg. eff. April 30, 1968; Laws 1974, c. 12, § 1, emerg. eff. April 3, 1974; Laws 1982, c. 304, § 26, operative Oct. 1, 1982; Laws 2005, c. 359, § 2, eff. Nov. 1, 2005.

§40-165.3a. Payment of wages to surviving spouse and children.

Other than an employee provided with an option of beneficiary designation with respect to his wages and benefits by his employer, all wages earned by an employee, not exceeding Three Thousand Dollars (\$3,000.00), shall, upon the employee's death, become due and payable to the employee's surviving spouse, or if there is no surviving spouse, the dependent children, or their guardians or the conservators of their estates, in equal shares, without the necessity of a probate court action.

Added by Laws 1993, c. 263, § 1, emerg. eff. May 27, 1993. Amended by Laws 1994, c. 114, § 1, emerg. eff. April 24, 1994.

§40-165.4. Bona fide disagreements.

A. In order to successfully allege a bona fide disagreement over the amount of wages, the employer shall:

1. Pay such amount as the employer concedes to be due, without condition, within the time required by Sections 165.2 and 165.3 of this title; and

2. Provide to the employee, within fifteen (15) days of either receipt of a wage claim form from the Department of Labor or certified mail receipt of written demand from an employee, written explanation of the relevant facts and/or evidence which supports the belief of the employer that the wages in dispute are not owed.

B. Acceptance by the employee of any payment made under this section shall not constitute a release as to the balance of the wage claim.

C. Payment in accordance with this section shall constitute payment for the purposes of complying with Sections 165.2 and 165.3 of this title only in those instances where there exists a bona fide

disagreement over the amount of wages as defined by Section 165.1 of this title.

D. The Commissioner may set the contested amounts for administrative hearing pursuant to Section 165.7 of this title. Laws 1955, p. 241, § 4, emerg. eff. June 6, 1955; Laws 1993, c. 263, § 2, emerg. eff. May 27, 1993; Laws 2005, c. 359, § 3, eff. Nov. 1, 2005.

§40-165.5. Private agreements.

Except as hereinafter provided under Section 10, no provision of this act shall in any way be contravened or set aside by private agreement.

Laws 1955, p. 241, § 5.

§40-165.6. Contractors as employers.

Whenever any person herein called the contractor shall contract with another for the performance of any work which the contractor has undertaken to perform, the contractor shall be deemed an employer and shall become civilly liable to employees engaged in performance of work under such contract for the payment of wages (but not for the payment of liquidated damages) as required by Sections 2 and 4 of this act whenever and to the extent that the employer of such employees fails to pay such wages; provided, however, that the employer of such employees shall be liable to the contractor for wages paid to such employees by the contractor under this section.

Laws 1955, p. 242, § 6.

§40-165.7. Enforcement and administration - Administrative proceedings - Orders - Appeals - Actions.

A. The Commissioner of Labor shall enforce and administer the provisions of this act and in any case where a civil action may be brought for the collection of a wage claim, the Commissioner of Labor may provide for an administrative proceeding to determine the validity and enforce collection of the claim. The administrative proceeding shall be conducted according to the Administrative Procedures Act.

B. In any case when the Commissioner has received a wage complaint, the Commissioner may seek collection of such claim through administrative proceedings in a manner provided in this section. The Commissioner may join in a single administrative proceeding any number of wage claims against the same employer. The Commissioner shall serve upon the employer an order of determination directing the employer to pay to the Commissioner the amount of the wage claim and any penalty amounts. Service shall be made by regular mail to the employer's last-known address. The order of determination shall include:

1. A reference to the particular sections of the statutes or rules involved;

2. A short and concise statement of the basis for the amounts determined to be owed to each wage claimant;

3. A statement that the employer within twenty (20) days after receipt of the order of determination must pay in full the wage claim and any penalties assessed on appeal to district court; and

4. A statement that unless a written request for reconsideration is received by the Commissioner or the order is appealed to district court within the time specified, the order of determination shall become final.

C. Upon failure of the employer to pay the amount specified in the order of determination or to request reconsideration or appeal to district court, the order of determination shall become final.

D. A hearing shall be held in accordance with the applicable provisions of the Administrative Procedures Act by the Commissioner or the Commissioner's designee. The Commissioner shall adopt rules for such hearing. In any hearing before the Commissioner's designee, the designee is authorized to issue the final order in the case.

E. Final administrative orders issued in a wage claim proceeding are subject to appeal pursuant to the Administrative Procedures Act.

F. When an order under this section becomes final by operation of law or an appeal, and the amount due is not paid within twenty (20) days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the county clerk's lien record. The order may be collected as any other money judgment.

G. The remedies provided by Sections 165.1 through 165.11 of this title shall be additional to and not in substitution for and in no manner impair other remedies. Additionally, one or more individuals who are aggrieved by violation of any provision of Sections 165.1 through 165.11 of this title shall be entitled to bring an action in his or their own name to enforce the provisions of such sections.

Laws 1955, p. 242, § 7, emerg. eff. June 6, 1955; Laws 1993, c. 263, § 3, emerg. eff. May 27, 1993.

§40-165.8. Penalties.

It shall be a misdemeanor for any employer to violate any of the provisions of Sections 165.1 through 165.11 of this title. Amended by Laws 1982, c. 304, § 27, operative Oct. 1, 1982.

§40-165.9. Actions to recover unpaid wages and damages - Parties - Costs and attorney's fees.

A. Action by an employee to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and on behalf of all employees similarly situated for such wages. Any employee, or his representative, shall have the power to settle and adjust his claim for unpaid wages.

B. The court in any action brought under this section may, in addition to any judgment awarded to the plaintiff or plaintiffs, defendant or defendants, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees.
Amended by Laws 1982, c. 304, § 28, operative Oct. 1, 1982; Laws 1988, c. 250, § 2, emerg. eff. June 27, 1988.

§40-165.10. Partial invalidity.

If any provisions of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances shall not be affected thereby.

Laws 1955, p. 242, § 10.

§40-165.11. Failure to pay benefits or furnish wage supplements pursuant to agreements.

A. In addition to any other penalty or punishment otherwise prescribed by law, any employer who is a voluntary party to or subject to a bona fide written agreement to pay or provide benefits or wage supplements to employees or to a third party or fund for the benefit of employees and who willfully fails, neglects or refuses to pay the amount or amounts necessary to provide such benefits or furnish such supplements within thirty (30) days after such payments are required to be made by law or by agreement, shall be guilty of a misdemeanor, and each such failure to make payment as required herein shall constitute a separate offense. Where such employer is a corporation, the president, secretary, treasurer or officers exercising corresponding functions shall each be guilty of a misdemeanor.

B. As used in this section, the term "benefits or wage supplements" includes, but is not limited to, reimbursement for expenses as agreed prior to contracting said expenses; health, welfare and retirement benefits; and vacation, separation or holiday pay.

Laws 1975, c. 107, §§ 1, 2, eff. Oct. 1, 1975.

§40-166. Conspiracy.

No agreement, combination or contract by or between two or more persons to do or procure to be done, or not to do or procure not to

be done, any act in contemplation or furtherance of any trade dispute between employers and employees, shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy, if such act committed by one person would not be punishable as a crime, nor shall such agreement, combination or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto. Nothing in this article, shall exempt from punishment otherwise than is herein excepted, any person guilty of conspiracy for which punishment is provided by any other law of the state, but such other law shall, as to the agreement, combination and contracts heretofore referred to, be construed as if this article, was therein contained: Provided, that nothing in this article, shall be construed to authorize force or violence.
R.L.1910, § 3764.

§40-167. False Statements as to conditions of employment.

It shall be unlawful for any employer of labor doing business in the state, to induce, influence, persuade or engage workmen to change from one place to another in the state, or to bring workmen of any class or calling into this state to work in any of the departments of labor, through or by means of false or deceptive representations, false advertising or false pretenses concerning the kind and character of the work to be done, or amount and character of the compensation to be paid for such work or the sanitary or other conditions of employment or as to the existence or nonexistence of a strike or other trouble pending between employer and employees, at the time of or prior to such engagement. Failure to state in an advertisement, proposal or contract for the employment of workmen that there is a strike, lockout or other labor trouble at the place of the proposed employment, when in fact such strike, lockout or other labor troubles then actually exist at such place, shall be deemed a false advertisement and misrepresentation for the purposes of this section.

R.L.1910, § 3765.

§40-168. Penalty.

Any employer of labor of any kind doing business in this state, as well as its agent, attorney or servant, found guilty of violating the preceding section, or any part thereof, shall be fined not less than Five Hundred Dollars (\$500.00) and not exceeding Two Thousand Dollars (\$2,000.00), or confined in the county jail not less than one (1) month and not exceeding one (1) year or both such fine and imprisonment.

R.L.1910, § 3766.

§40-169. Hiring armed guards without permit a felony.

Any person who shall hire, aid, abet or assist in hiring through private detective agencies or otherwise, persons to guard with arms or deadly weapons of any kind, other persons or property, or any person who shall come into this state armed with deadly weapons of any kind for any such purpose, without a permit, in writing, from the Governor, shall be guilty of a felony, and on conviction thereof shall be imprisoned in the State Penitentiary not less than one (1) year nor more than five (5) years. Provided, that nothing herein contained shall be construed to interfere with the right of any person, corporations, society, association or organization in guarding and protecting their property as provided by law; but this section shall be construed only to apply in cases where workmen are brought into the state or induced to go from one place to another in the state by any false pretenses, false advertising, or deceptive representation, or brought into the state under arms or removed from one place to another in the state under arms.

R.L. 1910, § 3767. Amended by Laws 1997, c. 133, § 454, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 331, eff. July 1, 1999.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 454 from July 1, 1998, to July 1, 1999.

§40-170. Workman may recover for misrepresentation.

Any workman who shall be influenced, induced or persuaded to engage with any persons mentioned in Section 3765, through or by means of any of the things therein prohibited, shall have the right of action for recovery of all damages that he has sustained in consequence of the false or deceptive representation, false advertisement and false pretenses used to induce him to change his place of employment, against any companies, corporations, or other employers of labor, directly or indirectly causing such damages, and, in addition to all actual damages such workman may have sustained, he shall be entitled to recover such reasonable attorney's fees as the jury shall fix, to be taxed as costs in any judgment recovered.

R.L.1910, § 3768.

§40-171. Public service corporation to give letter to employee leaving service.

Whenever any employee of any public service corporation, or of a contractor, who works for such corporation, doing business in this state, shall be discharged or voluntarily quits the service of such employer, it shall be the duty of the superintendent or manager, or contractor, upon request of such employee to issue to such employee a letter, setting forth the nature of the service rendered by such employee to such corporation or contractor, and the duration thereof, and truly stating the cause for which such employee was discharged from or quit such service, and, if any such

superintendent, manager or contractor shall fail or refuse to issue such letter, to such employee, when so requested, or shall willfully or negligently refuse or fail to state the facts correctly, such superintendent, manager or contractor shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars (\$100.00), and not more than Five Hundred Dollars (\$500.00), and by imprisonment in the county jail for a period of not less than one (1) month and not exceeding one (1) year: Provided, that such letter shall be written, in its entirety, upon a plain sheet of white paper to be selected by such employee. No printed blank shall be used, and if such letter be written upon a typewriter, it shall be signed with pen and black ink and immediately beneath such signature shall be affixed the official stamp, or seal, of said superintendent, manager or other officer of such corporation or contractor, in an upright position. There shall be no figures, words or letters used, upon such piece of paper, except such as are plainly essential, either in the date line, address, the body of the letter or the signature and seal or stamp thereafter, and no such letter shall have any picture, imprint, character, design, device, impression or mark, either in the body thereof or upon the face or back thereof and any person of whom such letter is required who fails to comply with the foregoing requirements shall be liable to the penalties above prescribed.
R.L.1910, § 3769.

§40-172. Blacklisting.

No firm, corporation or individual shall blacklist or require a letter of relinquishment, or publish, or cause to be published, or blacklisted, any employee, mechanic or laborer, discharged from or voluntarily leaving the service of such company, corporation or individual, with intent and for the purpose of preventing such employee, mechanic or laborer, from engaging in or securing similar or other employment from any other corporation, company or individual.

R.L.1910, § 3770.

§40-173. Penalty.

Any person, firm or corporation violating the preceding section shall be fined in any sum not less than One Hundred Dollars (\$100.00), nor more than Five Hundred Dollars (\$500.00), and any person so blacklisted shall have a right of action to recover damages.

R.L.1910, § 3771.

§40-173.1. Employers' use of social security numbers - Health benefit plan membership identification cards.

A. 1. Any employing entity located in this state shall not do any of the following:

- a. publicly post or publicly display in any manner the social security number of an employee. For purposes of this paragraph, "publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public,
 - b. print the social security number of an employee on any card required for the employee to access information, products or services provided by the employing entity,
 - c. require an employee to transmit their social security number over the Internet, unless the connection is secure or the social security number is encrypted,
 - d. require an employee to use their social security number to access an Internet web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet web site, or
 - e. print the social security number of an employee on any materials that are mailed to the employee, unless state or federal law requires the social security number to be on the document to be mailed.
- Notwithstanding this paragraph, social security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the social security number.

2. The provisions of this subsection shall not apply to the state or any political subdivision of the state.

B. The provisions of this section shall not apply to a health benefit plan membership identification card issued or renewed prior to January 1, 2005. After January 1, 2005, the provisions of this section shall be applicable to all health benefit plan membership cards upon issuance or renewal.

C. This section shall not prevent the collection, use, or release of a social security number as otherwise required by state or federal law or the use of a social security number for internal verification or administrative purposes. An employee may also provide an employing entity with written permission to use their social security number for any of the uses otherwise prohibited by this section.

Added by Laws 2004, c. 296, § 1, eff. Nov. 1, 2004

§40-173.2. Prohibited actions regarding personal social media accounts - Exemptions - Civil actions.

A. No employer, as defined by paragraph 1 of Section 1301 of Title 25 of the Oklahoma Statutes, located in this state shall:

1. Require an employee or prospective employee to disclose a user name and password or other means of authentication for accessing a personal online social media account through an electronic communications device;

2. Require an employee or prospective employee to access the employee's or prospective employee's personal online social media account in the presence of the employer in a manner that enables the employer to observe the contents of such accounts if the account's contents are not available to the general public, except pursuant to an investigation as provided in subsection D of this act;

3. Take retaliatory personnel action that materially and negatively affects the terms and conditions of employment against an employee solely for refusal to give the employer the user name or password to the employee's personal online social media account; or

4. Refuse to hire a prospective employee solely as a result of the prospective employee's refusal to give the employer the user name and password to the prospective employee's personal online social media account.

B. An employer may request or require an employee to disclose any user name and password for accessing:

1. Any computer system, information technology network, or electronic communications device provided or subsidized by the employer; or

2. Any accounts or services provided by the employer or by virtue of the employee's employment relationship with the employer or that the employee uses for business purposes.

C. If, through the use of an electronic device or program that monitors an employer's network or the use of employer provided devices, an employer inadvertently receives an employee's user name and password or other authentication information, the employer is not liable for having such information, but may not use the information to access an employee's personal online social media account.

D. Nothing in this section shall prevent an employer from:

1. Conducting an investigation:

- a. for the purpose of ensuring compliance with applicable laws, regulatory requirements or prohibitions against work-related employee misconduct based on the receipt of specific information about activity on a personal online social media account or personal online social media service by an employee or other source, or
- b. of an employee's actions based on the receipt of specific information about the unauthorized transfer of an employer's proprietary information, confidential information or financial data to a personal online

social media account or personal online social media service by an employee or other source;

2. Conducting an investigation as specified in subparagraphs a and b of paragraph 1 of this subsection includes requiring the employee's cooperation to share the content that has been reported in order to make a factual determination.

E. Nothing in this section shall be construed to prevent an employer from complying with the requirements of state or federal statutes, rules or regulations, case law, or rules of self-regulatory organizations.

F. Nothing in this section shall be construed to prohibit an employer from accessing its computer system or information technology network, including electronic communications devices owned by the employer. Neither this section nor any other Oklahoma law shall prohibit an employer from reviewing or accessing personal online social media accounts that an employee may choose to use while utilizing an employer's computer system, information technology network or an employer's electronic communication device.

G. An employee or prospective employee may bring a civil action against an employer who violates this section in a court located in the county in which the alleged violation occurred. Such action shall be brought within six (6) months after the alleged violation occurred. The employee or prospective employee may seek injunctive relief to restrain the employer from continuing to act in violation of this section, but must show by clear and convincing evidence that the employer violated this act. The only damages recoverable for a violation of this act are Five Hundred Dollars (\$500.00) per violation. No punitive or emotional damages are recoverable, and this section may not be utilized for the basis of a public policy tort.

H. As used in this section:

1. "Electronic communications device" means a device that uses electronic signals to create, transmit or receive information, including computers, telephones, personal digital assistants and other similar devices; and

2. "Personal online social media account" means an online account that is used by an employee or prospective employee exclusively for personal communications that an individual establishes and uses through an electronic application, service or platform used to generate or store content, including, but not limited to, videos, still photographs, blogs, video blogs, instant messages, audio recordings or email that is not available to the general public.

Added by Laws 2014, c. 315, § 1, eff. Nov. 1, 2014.

§40-173.3. Employer liability for not reviewing personal social media accounts.

No business or employer shall be held liable in any regard for not reviewing an employee's personal online social media accounts as defined herein. Furthermore, no business or employer shall be held liable in any regard for not requesting, accessing or reviewing the personal online social media accounts of any employee. The employer's failure to access such information shall not be admissible in any legal proceeding.
Added by Laws 2014, c. 315, § 2, eff. Nov. 1, 2014.

§40-174. Scaffolding, etc., to be safeguarded.

All scaffolds, hoists, cranes, stays, ladders, supports, or other mechanical contrivances erected or constructed by any person, firm or corporation in the state, for use in the erection, repairing, alteration, removal, or painting of any house, building, bridge, viaduct, steel tank, standpipe, or other structure, shall be erected and constructed in a safe, suitable, and proper manner, and shall be so erected and constructed, placed and operated as to give proper and adequate protection to life and limb of any person or persons employed or engaged thereon, or passing under or by the same, and in such manner as to prevent the falling of any material that may be used or deposited thereon. Scaffolding or staging swung or suspended from an overhead support more than twenty (20) feet from the ground or floor, shall have, where practicable, a safety rail properly secured and braced, rising at least thirty-four (34) inches above the floor or main portion of such scaffolding or staging and extending along the entire length of the outside and ends thereto and such scaffolding or staging shall be so fastened as to prevent the same from swaying from the building or structure.
R.L.1910, § 3772.

§40-175. Temporary floorings in steel frame buildings.

If in the erection of an iron or steel framed building, the spaces between the girders or floor beams of any floor are not filled or covered by the permanent construction of said floors before another story is added to the building, a close plank flooring shall be placed and maintained over such spaces, during the construction of each story, from the time when the beams or girders are placed in position; but openings protected by a strong hand railing not less than four (4) feet high may be left through said floors for the passage of workmen and material.
R.L.1910, § 3773.

§40-176. Penalty for neglect to place temporary floors.

Any person engaged in and having supervision and charge of the building, erection, or construction of any block, building or structure who shall neglect or refuse to place or have placed upon the joists of each and every story of such block, building or

structure as soon as the joists are in position, counter floors of such quality and strength as to render perfectly safe the going to and fro thereon of all mechanics, laborers, and other persons engaged upon the work of construction or in supervising the same or in the building or placing of materials therefor, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be fined in any sum not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00), and each and every day that such person, contractor, agent, factor or architect shall neglect or refuse to have such floors so placed as aforesaid, after written notice by the building inspector or from any person whose life or personal safety may be endangered by such neglect or refusal shall be held and considered a separate offense, severally liable to the penalties aforesaid.
R.L.1910, § 3774.

§40-177. Contractor or person in charge to comply with preceding sections - Penalty for violations - Prohibition of use of scaffolds, etc.

Any contractor or other person having charge of the erection, construction, repairing, alteration, removal or painting of any building, bridge, viaduct, steel tank, standpipe or other structure, within the provisions of the three preceding sections, shall comply with the terms thereof, and any such contractor or other person violating any of the provisions of the three preceding sections shall, upon conviction thereof, be fined not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00), or imprisoned for not less than thirty (30) days nor more than one (1) year, or both such fine and imprisonment, in the discretion of the Court. In addition to the penalties herein provided, in the event of refusal or neglect of any person, firm or corporation, or his, or its agent, to comply with the provisions of the three preceding sections, the use of any such scaffold, hoist, crane, stays, ladder, support, or other mechanical contrivance, or the erection, repairing, alteration, removal or painting of any building, bridge, viaduct, steel tank, or other structure, may be prohibited by the Labor Commissioner, or inspector deputized by him, and a notice to that effect shall be posted upon the premises. Such notice shall not be removed until such scaffold, hoist, crane, stays, ladder, support or other mechanical contrivance or temporary floorings are properly and safely constructed.

R.L.1910, § 3775; Laws 1919, c. 149, p. 217, § 1.

§40-178. Damages for injury.

An employer shall be responsible in damages for personal injury caused to an employee, who, was himself in the exercise of due care and diligence at the time he was injured, by reason of any defect in

the condition of the machinery or appliances connected with or used in the business of the employer which arose, or had not been discovered or remedied owing to the negligence of the employer, or of any person entrusted by him with the duty of inspection, repair, or of seeing that the machinery or appliances were in proper condition.

R.L.1910, § 3776.

§40-179. Railroad repair tracks to be sheltered.

It shall be unlawful for any railroad, corporation, or other person, who owns, controls or operates any lines of railroad in the state, to build, construct or repair railroad equipment without first erecting and maintaining at every division point a building or shed over the repair tracks; same to be provided with a floor where such construction or repair is permanently done, so as to provide that all men employed in the construction and repair of cars, trucks, and other railroad equipment, shall be under shelter during snows, sleet, rain, and other inclement weather.

R.L.1910, § 3777.

§40-180. Penalty.

Every person or corporation, or manager, superintendent, foreman or agent of any person or corporation, who shall fail or refuse to comply with the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00); and each day that said person or corporation, or its manager, superintendent, foreman or agent shall refuse or fail to comply with the provisions of said section shall constitute a separate and distinct violation thereof.

R.L.1910, § 3778.

§40-181. Repairing of steam boilers unlawful, when.

It shall be unlawful for any railroad, company or any other person, firm, or corporation, using steam boilers, to command, order or permit by themselves or their agents, any of their employees to enter any steam boiler, firebox or smoke chamber thereto, for the purpose of repairing or cleaning the same or for any other purpose when the same is under steam pressure.

R.L.1910, § 3779.

§40-182. Violation of Section 181 a felony.

Any officer, superintendent, foreman, boss, or other person in authority, who, on behalf of any railroad, corporation, or any other person, firm or corporation, using steam boilers, violating any of the provisions of Section 181 of this title, shall be deemed guilty of a felony, and shall upon conviction, be punished by imprisonment

for a period of not less than one (1) year nor more than two (2) years.

R.L. 1910, § 3780. Amended by Laws 1997, c. 133, § 455, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 332, eff. July 1, 1999.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 455 from July 1, 1998, to July 1, 1999.

§40-183. Employer guilty of manslaughter, when - Penalty.

Should any employee enter such boiler, firebox, or smoke chamber, while the same is under pressure of steam, at the command or order of his employer, or the agent of such employer, and while inside of such boiler, firebox or smoke chamber, meet with an accident resulting in his death, the person or persons commanding or ordering him to enter such boiler, firebox, or smoke chamber, shall be guilty of manslaughter in the second degree.

R.L.1910, § 3781.

§40-184. Damages.

The fact that the employee, entering such steam boiler, firebox, or smoke chamber, had knowledge of the unsafe condition of such steam boiler and danger in so doing, and meeting with an accident, shall not deprive him of a right of action against such employer for damages, and should said accident result in the death of such employee, then the wife, or next of kin, shall have a right of action against such employer for any damages she, they, or the estate of such deceased employee, may sustain by reason of the death of such employee, which action may be commenced in any court of competent jurisdiction.

R.L.1910, § 3782.

§40-185. Leave of absence to railroad employees.

From and after the effective date of this act, all railroad companies operating in the State of Oklahoma are hereby required to grant leave of absence to their employees who desire to run for or seek public office, or who are required to serve in any government position, military or civil, or who have been elected or appointed to public office, or who are required to serve jury duty in the courts of this state. During such leave of absence such employee shall retain and accumulate seniority, and at the termination of such service shall be reinstated with full seniority, and without an interrupted service record, or without any rights or privileges denied him. Provided, however, that at the end of the period of his leave of absence granted hereunder, said employee shall report for duty within fifteen (15) days thereafter.

Laws 1941, p. 131, § 1.

§40-186. Employee defined.

The term "employee" as used herein shall mean any person who has established his or her seniority with any railroad company for one (1) year or more without interrupted service.
Laws 1941, p. 131, § 2.

§40-187. Revocation of charter for violation.

Any railroad company failing to carry out and adhere to the provisions of this act shall have its charter, authorizing it to do business in this state, revoked by the Secretary of State.
Laws 1941, p. 131, § 3.

§40-188. Equipment.

On and after April 15, 1958, it shall be unlawful for any person, firm or corporation operating or controlling any railroad running through or within the State of Oklahoma and engaged in the business of a common carrier to operate a track motor car, or transport its employees in a track motor car, which is not equipped with a substantial top for the protection of said employees from rain, snow, sleet and hail, and equipped with a transparent windshield sufficient in width and height to protect said employees therefrom, which windshield shall be of safety glass. Such a motor car shall also be equipped with an electric windshield wiper that will remove rain, snow and other moisture from the windshield thereof, and said windshield wiper shall be so devised that the driver of said motor car can start or stop said windshield wiper while he is driving the same.
Laws 1953, p. 319, § 1; Laws 1957, p. 480, § 1.

§40-189. Transparent section.

Each such windshield shall contain a transparent section reasonably sufficient in width and height to give the operator of such car a view of the track ahead.
Laws 1953, p. 319, § 2.

§40-190. Enforcement.

It shall be the duty of the Corporation Commission of the State of Oklahoma to enforce this act.
Laws 1953, p. 319, § 3; Laws 1957, p. 480, § 2.

§40-191. Restrictions on requirement of physical examination - Report not basis of damages.

It shall be unlawful for any person, partnership, association, or corporation, either for himself, herself, or itself, or in a representative or fiduciary capacity, to require any employee or applicant for employment, as a condition of employment or continued employment, to submit to, or take, a physical or medical examination, without providing such examination at no cost therefor

to such employee or applicant for employment, or without furnishing, upon the request of the employee or applicant for employment within thirty (30) days after such examination, free of charge, to such employee or applicant for employment, a true and correct copy, either original or duplicate original, of the examiner's report of such examination. It shall further be unlawful for any such person, partnership, association or corporation to require any employee or applicant for employment to pay, either directly or indirectly, any part of the cost of any such examination, report, or copy of report. Provided that the report of any physical examination furnished in accordance with this section shall not be made the basis or predicate for any action in damages against the physician and surgeon making and furnishing such report.

Laws 1949, p. 286, § 2.

§40-192. Violations of act.

Each and every violation of any provision of Section 1 of this act shall constitute a misdemeanor, punishable by a fine in any amount not exceeding One Hundred Dollars (\$100.00).

Laws 1949, p. 286, § 2.

§40-193. Repealed by Laws 2010, c. 394, § 1.

§40-194. Penalty.

Any corporation, partnership, firm or person contracting to do work for the State of Oklahoma who shall fail to employ at least ninety percent (90%) of the nonprofessional personnel used in the performance of said contract who are qualified residents, as defined above, of the State of Oklahoma, shall be guilty of a misdemeanor and upon conviction thereof shall pay a fine of One Hundred Dollars (\$100.00). Each day work is done in performance of said contract in violation of this act shall be a separate offense.

Laws 1957, p. 524, § 2.

§40-195. Exemption.

This act shall not apply when the same is in conflict with federal statutes, or regulations authorized by federal statutes.

Laws 1957, p. 525, § 3.

§40-195.1. Discrimination prohibited in public work contracts.

All contracts of the State of Oklahoma for the construction of public works shall contain, and be construed as containing, a clause providing that discrimination by reason of race, creed or color will not be practiced by the contractor in employment of those who furnish labor or materials, nor will it be permitted by the department or agency procuring the construction of the public work for which the contract is executed.

Laws 1968, c. 277, § 1, emerg. eff. April 30, 1968.

§40-196.1. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.2. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.2a. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.3. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.4. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.5. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.5a. Repealed by Laws 1988, c. 225, § 26.

§40-196.5b. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.6. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.7. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.8. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.9. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.9a. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.10. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.10a. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.11. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.11a. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.12. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.13. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-196.14. Unconstitutional - Repealed.

NOTE: Entire Oklahoma Minimum Wages on Public Works Act (40 O.S. 1991, §§ 196.1 through 196.14) was held unconstitutional in the case of City of Oklahoma City v. State ex rel. Oklahoma Dept. of Labor, Okla., 918 P.2d 26 (1995).

NOTE: This section repealed by Laws 2015, c. 71, § 1, eff. Nov. 1, 2015.

§40-197.1. Declarations.

The welfare of the State of Oklahoma demands that the working people of Oklahoma be protected from conditions of labor which have a pernicious effect on their health or morals. The State of Oklahoma, therefore, exercising herein its police and sovereign power, declares that inadequate wages and insanitary conditions of labor exert such pernicious effect.

Laws 1965, c. 427, § 1, emerg. eff. July 8, 1965.

§40-197.2. Minimum wages established.

It shall be unlawful to employ workers in any industry or occupation within the State of Oklahoma under conditions of labor detrimental to their health or morals and it shall be unlawful to employ workers in any industry within the State of Oklahoma at wages which are not adequate for their maintenance. Except as otherwise provided in the Oklahoma Minimum Wage Act, no employer within the State of Oklahoma shall pay any employee a wage of less than the current federal minimum wage for all hours worked.

Amended by Laws 1983, c. 60, § 1, eff. Nov. 1, 1983.

§40-197.3. Wage and Hour Commission - Membership - Tenure - Compensation - Chairman.

A. The Wage and Hour Commission is hereby terminated and all powers and duties of such Commission are transferred to the Commissioner of Labor. All personnel, funds, financial obligations and encumbrances, records, equipment, furniture, fixtures, files and supplies under the control of the Wage and Hour Commission are transferred to the Commissioner of Labor as of the effective date of this act.

B. The Commissioner of Labor shall establish, pursuant to this act, such standards of wages and conditions of labor for employees

within the State of Oklahoma as shall be reasonable and not detrimental to health and morals.

Laws 1965, c. 427, § 3, emerg. eff. July 8, 1965; Laws 1978, c. 47, § 1, eff. July 1, 1978.

§40-197.4. Definitions.

As used in this act:

(a) "Commissioner" means the Commissioner of Labor;

(b) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges or allowances as may be permitted by law;

(c) "Employ" includes to suffer or to permit to work;

(d) "Employer" means any individual, partnership, association, corporation, business trust, or any person or group of persons, hiring more than ten full-time employees or equivalent at any one location or place of business; provided, however, if an employer has less than ten full-time employees or equivalent at any one location or place of business but does a gross business of more than One Hundred Thousand Dollars (\$100,000.00) annually, said employer shall not be exempt under the provisions of this act.

This act shall not apply to employers subject to the Fair Labor Standards Act of 1938, as amended, and who are paying the minimum wage under the provisions of said act, nor to employers whose employees are exempt under paragraph (e) of this section.

(e) "Employee" includes any individual employed by an employer but shall not include:

(1) An individual employed on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment;

(2) Any individual employed in domestic service in or about a private home;

(3) Any individual employed by the United States government;

(4) Any individual working as a volunteer in a charitable, religious or other nonprofit organization;

(5) Any newspaper vendor or carrier;

(6) Any employee of any carrier subject to regulation by Part I of the Interstate Commerce Act;

(7) Any employee of any employer who is subject to the provisions of any Federal Fair Labor Standards Act or to any Federal Wage and Hour Law now in effect or enacted hereafter; and who is paying the minimum wage under the provisions of this act;

(8) Any employee employed in a bona fide executive, administrative or professional capacity, or in the capacity of outside salesman;

(9) Any person employed as part-time employee not on permanent status. A part-time employee is defined as an employee who is employed less than twenty-five (25) hours a week;

(10) Any person who is less than eighteen (18) years of age and is not a high school graduate or a graduate of a vocational training program, and any person who is less than twenty-two (22) years of age and who is a student regularly enrolled in a high school, college, university or vocational training program;

(11) Any individual employed in a feedstore operated primarily for the benefit and use of farmers and ranchers; or

(12) Any individual working as a reserve force deputy sheriff.

Laws 1965, c. 427, § 4; Laws 1971, c. 87, § 1, eff. July 1, 1971; Laws 1977, c. 266, § 3, eff. Oct. 1, 1977; Laws 1978, c. 47, § 2, eff. July 1, 1978; Laws 1981, c. 72, § 4.

§40-197.5. Employees covered by act.

Every employer shall pay to each of his employees who have reached eighteen (18) years of age wages at a rate of not less than Two Dollars (\$2.00) per hour. Regardless of other provisions of the Oklahoma Minimum Wage Act, every employee of the State of Oklahoma or any lessee or concessionaire thereof is hereby specifically covered by the Oklahoma Minimum Wage Act.

Amended by Laws 1983, c. 60, § 2, eff. Nov. 1, 1983.

§40-197.6. Posting of notice.

On and after August 1, 1965, every employer, subject to this act, shall post a notice or notices of the pertinent provisions of this act in such form as may be prescribed and furnished by the Commissioner of Labor. The notice shall be not less than eight and one-half (8 1/2) inches by eleven (11) inches in size and shall be displayed in such a manner so as to be accessible to all employees in each establishment under the control of the employer. The Commissioner, or his or her duly authorized representative, may, for the purpose of determining whether such notice has been properly posted, enter, during business hours, upon the premises of any employer subject to this act.

Added by Laws 1965, c. 427, § 6, emerg. eff. July 8, 1965. Amended by Laws 1978, c. 47, § 3, eff. July 1, 1978; Laws 2009, c. 164, § 2, eff. Nov. 1, 2009.

§40-197.7. Investigation of complaints.

Upon verified complaint by an employee or former employee that an employer has violated the provisions of Section 197.5 of this title by failure to pay the minimum wage thereby established, the Commissioner, or his authorized representative, is hereby empowered to make such investigation as deemed necessary to ascertain the facts concerning such charge. The Commissioner shall have the power to administer oaths and affirmations, require sworn statements, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence memoranda, and other records deemed necessary as evidence in connection with the investigation of any alleged violation of Section 197.5 of this title. All information obtained by the Commissioner, or his duly authorized representatives, shall be confidential and, except for the finding of the need for additional wages, as provided by Section 197.8 of this title, and information which is necessarily disclosed in court proceedings provided by Section 197.9 or 197.10 of this title, such information shall not be disclosed to any person.

Laws 1965, c. 427, § 7, emerg. eff. July 8, 1965; Laws 1978, c. 47, § 4, eff. July 1, 1978.

§40-197.8. Findings - Payment of amount due.

The Commissioner, after investigation, shall promptly make his finding in writing as to whether or not additional wages are due the employee. If the Commissioner finds that additional wages are due, ten percent (10%) of such amount due shall be added as penalty for such wage deficiency. The Commissioner shall mail said findings to the employer and to the employee by certified mail. Payment by the employer and acceptance by the employee of the amount so determined by the Commissioner shall absolve the employer of any further liability to the employee with respect to wages claimed by the employee for the period he was employed by the employer.

Laws 1965, c. 427, § 8, emerg. eff. July 8, 1965; Laws 1978, c. 47, § 5, eff. July 1, 1978.

§40-197.9. Findings by court - Double damages - Costs and attorney fees - Defenses.

Any employer who is found by a court of competent jurisdiction to have paid an employee wages less than those to which such employee is entitled, under or by virtue of this act, shall be liable to such employee for double the full amount of such wages, less any amount actually paid to such employee by the employer, and for court costs, and such reasonable attorney fees as may be allowed by the court, which in no case shall be less than One Hundred Dollars (\$100.00). Any agreement between such employee and the

employer to work for less than such wage rate shall be no defense to such action.

Laws 1965, c. 427, § 9, emerg. eff. July 8, 1965.

§40-197.10. Assignment of wage claim.

At the request of any employee who has been found by the Commissioner to have been paid wages less than those to which such employee is entitled, under or by virtue of this act, the Commissioner shall take an assignment of such wage claim in trust for the assigning employee and shall bring legal action necessary to collect such claim; and if the Commissioner prevails in such action the employer shall be liable to pay the Department of Labor double the full amount of such wages, and the court costs. The Commissioner shall not be required to pay a filing fee in connection with any such action. The Commissioner in such an action shall be represented by the Attorney General.

Added by Laws 1965, c. 427, § 10, emerg. eff. July 8, 1965. Amended by Laws 1978, c. 47, § 6, eff. July 1, 1978.

§40-197.11. Exceptions.

The Commissioner, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations provide for:

(a) the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Commissioner, at such wages lower than the minimum wage applicable and subject to such limitations as to time, number, proportion, and length of service as the Commissioner shall prescribe; and

(b) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the Commissioner, at such wages lower than the minimum wage and for such period as shall be fixed in such certificates; and

(c) any individual employed by any state, county, city, town, municipal corporation or quasi-municipal corporation, political subdivision, or any instrumentality thereof; and

(d) students and regular attendants at any institution of higher learning, either public or private.

Added by Laws 1965, c. 427, § 11, emerg. eff. July 8, 1965. Amended by Laws 1978, c. 47, § 7, eff. July 1, 1978.

§40-197.12. Rules, regulations and standards.

The Commissioner is hereby authorized and empowered to adopt such rules, regulations and standards as he deems necessary and appropriate to carry out the provisions of this act; provided that the adoption of all such rules, regulations and standards and all

administrative proceedings of the Commissioner shall be governed by applicable provisions of Sections 301-325, inclusive, of Title 75 of the Oklahoma Statutes.

Added by Laws 1965, c. 427, § 12, emerg. eff. July 8, 1965. Amended by Laws 1978, c. 47, § 8, eff. July 1, 1978.

§40-197.13. Penalty for failure to pay minimum compensation.

Any employer, or the officer or agent of any corporation, who pays or agrees to pay to any employee less than the rate of compensation required by Sections 197.2 and 197.5 of this title, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

Amended by Laws 1983, c. 60, § 3, eff. Nov. 1, 1983.

§40-197.14. Penalty for failure to post notice.

Any employer failing to post the notice required by Section 6 of this act shall be punished by a fine of not to exceed Twenty-five Dollars (\$25.00), and each week he fails to post such notice shall constitute a separate offense.

Laws 1965, c. 427, § 14, emerg. eff. July 8, 1965.

§40-197.15. Citation.

This act shall be known and may be cited as the "Oklahoma Minimum Wage Act".

Laws 1965, c. 427, § 15, emerg. eff. July 8, 1965.

§40-197.16. Tips, gratuities, meals or lodging - Credit for.

To compute the minimum wage of any employee coming within the purview of this act, credit toward the minimum required wage must be given for any tips or gratuities, meals or lodging received by the employee up to but not exceeding fifty percent (50%) of said wage.

Laws 1971, c. 70, § 2, eff. July 1, 1971; Laws 1980, c. 203, § 2, eff. Oct. 1, 1980.

§40-197.17. Uniforms - Credit for.

Business establishments that furnish uniforms to their employees may take credit against the minimum wage in an amount equal to the reasonable cost of furnishing the uniforms.

Laws 1971, c. 70, § 3, eff. July 1, 1971.

§40-198.1. Payment of discriminatory wages based on employee's sex prohibited.

It shall be unlawful for any employer within the State of Oklahoma to willfully pay wages to women employees at a rate less than the rate at which he pays any employee of the opposite sex for

comparable work on jobs which have comparable requirements relating to skill, effort and responsibility, except where such payment is made pursuant to a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a differential based on any factor other than sex.

Laws 1965, c. 494, § 1, emerg. eff. July 15, 1965.

§40-198.2. Enforcement - Penalties.

It shall be the duty of the Commissioner of Labor to enforce the provisions of this act. Whenever the Commissioner is informed of any violations thereof, it shall be his duty to investigate same and, in his discretion, said Commissioner is hereby authorized to institute proceedings for the enforcement of penalties herein provided before any court of competent jurisdiction. Any employer who violates the provisions of this act shall be deemed guilty of a misdemeanor and shall upon conviction thereof, be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00).

Laws 1965, c. 494, § 2, emerg. eff. July 15, 1965.

§40-199. Certain actions against employees prohibited.

A. It shall be a misdemeanor for any employer, as defined in Section 165.1 of this title, or his agent to discharge, penalize or in any other manner discriminate against any employee because:

1. The employee has filed a complaint with his employer, or the Commissioner of Labor or his authorized representative, to enforce any provision of Sections 71 through 198.2 of this title;

2. The employee has caused to be instituted a proceeding or investigation related to an alleged violation of any provision of Sections 71 through 198.2 of this title; or

3. The employee has testified or is about to testify in an investigation or proceeding under this title.

B. Every employer, as defined in Section 165.1 of this title, or his agent shall be guilty of a misdemeanor if:

1. The filing of a complaint with the employer, Commissioner of Labor or his authorized representative, or the taking of any action directly related to the complaint by any employee is a substantial and material factor in the discharge, penalization of or any other discrimination against the employee by the employer or his agent; or

2. The employer or his agent has acted in a manner which has the effect of discouraging, restraining, coercing or interfering with any employee in the exercise of the employee's rights contained in Sections 71 through 198.2 of this title.

C. Every person convicted of violating a prohibition of this section shall be fined not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00) or imprisoned in the county jail

for not less than five (5) days nor more than thirty (30) days, or both.

Added by Laws 1977, c. 266, § 4, eff. Oct. 1, 1977.

§40-199.1. Recruiting of employment to replace employees involved in a strike or lockout prohibited - Exceptions.

It shall be unlawful for any person, partnership, agency, firm or corporation, labor organization or officer or agent thereof, to knowingly recruit, procure, supply or refer any person (excluding persons who are permanent employees of the employer involved in such strike or lockout) who has customarily and repeatedly offered himself for employment in the place of employees involved in strikes or lockouts for employment in place of an employee in a business or industry where a strike or lockout exists.

The provisions of this act shall not apply to services or work performed by a salaried or supervisory employee of a business or industry where a strike or lockout exists, or a person, firm or corporation in his or its usual trade, occupation or business; provided that such trade, occupation or business is not usually the furnishing of strikebreakers in any labor strike or lockout; and provided further, that the said person, firm, or corporation hiring, recruiting, securing or offering to secure employment shall, if a person or an unincorporated firm, be a bona fide resident of the State of Oklahoma for a period of six (6) months prior to the strike or lockout, or if a corporation, be chartered or duly licensed to do business in the State of Oklahoma for a period of six (6) months prior to the strike or lockout.

Laws 1973, c. 165, § 1.

§40-199.2. Acceptance of employment to replace employees involved in a strike or lockout prohibited.

It shall be unlawful for any person (excluding persons who are permanent employees of the employer involved in such strike or lockout) who has customarily and repeatedly offered himself for employment in place of employees involved in a strike or lockout to knowingly take, or offer to take, the place in employment of employees involved in a strike or lockout.

Laws 1973, c. 165, § 2.

§40-199.3. Notice as to strike or lockout.

It shall be unlawful for any person, partnership, agency, firm or corporation, or officer or agent thereof, to recruit, solicit or advertise for employees, or refer persons (excluding employees or persons who are permanent employees of the employer involved in such strike or lockout) to employment, in place of employees involved in a strike or lockout, without adequate notice to such person, or in such advertisement, that there is a strike or lockout at the place

at which employment is offered, and that the employment offered is in place of employee involved in such strike or lockout.
Laws 1973, c. 165, § 3.

§40-199.4. Penalties.

Any person, partnership, agency, firm or corporation violating this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00), or by imprisonment in the county jail for not less than sixty (60) days nor more than one (1) year, or both, at the discretion of the court.
Laws 1973, c. 165, § 4.

§40-200. Searches of employee-owned vehicles.

Employers of this state that conduct employee-owned vehicle searches of its employees shall conduct such search on the property of the employer only. Searches that are conducted on property not owned or rented by the employer shall require a search warrant issued according to law.
Added by Laws 2003, c. 222, § 1, eff. Nov. 1, 2003.

§40-226. Penalties.

(a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act or under the unemployment compensation law of any state or of the federal government, either for himself or for any other person, 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 by imprisonment for not longer than ninety (90) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under this act or under the unemployment compensation law of any state or of the federal government, or who wilfully fails or refuses to make or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, 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 by imprisonment for not longer than ninety (90) days,

or by both fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall wilfully violate any provision of this act or any order, rule, or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed in this act nor provided by any other applicable statute, 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 by imprisonment for not longer than ninety (90) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) If any employer fails or refuses to file contribution and wage reports required under the provisions of this act within fifteen (15) days after written notice has been mailed to the employer by the Commission or its representative, a penalty of ten percent (10%) on the total contributions due shall be added thereto, collected and paid. Penalty collected pursuant to this subsection shall be paid into the Unemployment Compensation Fund.

(e) If an employer fails or refuses to pay any contributions required under the provisions of this act after such contributions have become delinquent within thirty (30) days after written request for such payment had been mailed to the employer by the Commission or its representative, a penalty of five percent (5%) on the total contributions due shall be added thereto, collected and paid. Penalty collected pursuant to this subsection shall be paid into the Unemployment Compensation Fund.

(f) If any employee or member of the Board of Review or the Commission or any employee of the Commission, in violation of the provisions of Section 221 (1), makes any disclosure of information obtained from any employing unit or individual in the administration of this act, or if any person who has obtained any list of applicants for work, or of claimants or recipients of benefits, under this act shall use or permit the use of such list for any political purpose, he 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.

Laws 1977, c. 20, § 4; Laws 1980, c. 323, § 9-102, emerg. eff. June 15, 1980.

§40-360. Short title - Oklahoma Employment First Act - Definitions.

A. This act shall be known and may be cited as the "Oklahoma Employment First Act".

B. All state agencies shall coordinate efforts and shall collaborate within and among such agencies to ensure that state

programs, policies, procedures and funding support competitive integrated employment of individuals with disabilities. All state agencies shall, whenever feasible, share data and information across systems in order to track progress toward full implementation of this act.

C. State agencies are authorized to adopt rules to implement this act.

D. As used in this act:

1. "Competitive employment" means work in the competitive labor market, or self-employment, that is performed on a full-time or part-time basis in an integrated setting with the opportunity for advancement and for which a person with a disability is compensated at or above the minimum wage but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by persons without disabilities;

2. "Disability" means, with respect to an individual:

- a. a physical or mental impairment that substantially limits one or more major life activities of such individual,
- b. a record of such an impairment, or
- c. being regarded as having such an impairment as defined in the Americans with Disabilities Act of 1990, as amended;

3. "Integrated setting" means, with respect to an employment outcome, a setting typically found in the community in which applicants or eligible individuals interact with persons without disabilities, other than those who are providing services to those applicants or eligible individuals, to the same extent that individuals without disabilities in comparable positions interact with other persons; and

4. "Working age" means sixteen (16) years of age or older in accordance with Section 71 of Title 40 of the Oklahoma Statutes. Added by Laws 2015, c. 76, § 1, eff. Nov. 1, 2015.

§40-401. Short title.

Sections 401 through 424 of this title shall be known and may be cited as the Oklahoma Occupational Health and Safety Standards Act. Amended by Laws 1984, c. 147, § 1, operative July 1, 1984.

§40-402. Occupational health and safety - Definitions.

As used in the Oklahoma Occupational Health and Safety Standards Act:

1. "Employer" means the state and all its political subdivisions which has in its employ one or more individuals performing services for it in employment; and

2. "Employee" means a person permitted to work by an employer in employment; and

3. "Place of employment" means the plant or premises in or about which an employee is permitted to work; and

4. "Department" means the Oklahoma Department of Labor; and

5. "Commissioner" means the Commissioner of Labor; and

6. "Division" means the Health and Safety Education and Training Division; and

7. "Standard" has the same meaning as, and includes, the words "regulation", "code", and "rule"; and

8. "National consensus standards" means any occupational safety or health standard adopted under a consensus method by a nationally recognized standards-producing organization; and

9. "Employment" includes all services for pay pursuant to a contract of hire except service in agricultural employment.

Laws 1970, c. 287, § 2, operative July 1, 1970; Laws 1984, c. 147, § 2, operative July 1, 1984; Laws 1992, c. 305, § 2, emerg. eff. May 27, 1992.

§40-403. Employer's duties and responsibilities.

A. Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, commensurate with the Occupational Safety and Health Act of 1970.

B. No person shall discharge, discriminate or take adverse personnel action against any employee because such employee has filed any complaint, or instituted or caused to be instituted any proceeding under or related to this act, or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or herself or others of any right affected by this act.

C. Within forty-eight (48) hours after the occurrence of an employment accident which is fatal to one or more employees or which results in hospitalization of five or more employees, the employer of any employees so injured or killed shall report the accident in writing to the Oklahoma City office of the Oklahoma Department of Labor, in a manner prescribed by the Department. The Commissioner of Labor may require such additional reports as he deems necessary, including the official death certificate from the Oklahoma State Department of Health.

D. No rule or standard promulgated under this act shall, or shall be deemed to, establish legal standards of conduct or legal duties, the violation of which standards or duties would constitute negligence or gross negligence in any civil proceeding.

E. Every employer having twenty-five (25) or more full- or part-time employees shall:

1. Designate an employee who shall coordinate all safety programs of the employer;

2. Provide safety classes to each type or class of employee no less than quarterly, except that public schools shall only be required to provide safety classes or instruction to their employees during the school year. Provided further, public school employees who are certified personnel and are in compliance with federal OSHA occupational safety and health standards shall be exempt from such safety classes or instruction and shall not be included in the computation of the number of employees set forth in subsection E of this section for determining the requirement of such safety classes or instruction; and

3. Cooperate with the Department of Labor including allowing any announced inspection of the premises for the purpose of determining compliance with this subsection.

The provisions of this subsection shall not apply to any hospital which is subject to the rules of the U.S. Department of Health and Human Services, Health Care Financing Administration (HCFA), as set forth in 42 CFR Parts 405, 412, 416, 417, 440, 441, 456, 482 and 489; Medicare and Medicaid Programs; Conditions of Participation for Hospitals, Final Regulations. Laws 1970, c. 287, § 3, operative July 1, 1970; Laws 1992, c. 305, § 3, emerg. eff. May 27, 1992; Laws 1993, c. 349, § 19, eff. Sept. 1, 1993; Laws 1994, c. 163, § 1, emerg. eff. May 6, 1994.

§40-404. Removal or damage of safeguards - Failure to obey safety orders.

No employee shall willfully remove, displace, damage, destroy or carry off any safety device or safeguard furnished or provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person. No employee or agent of employees shall interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment, or of any other person lawfully within such place of employment, or fail to follow and obey orders necessary to protect the life, health and safety of such employees and any other person lawfully within such place of employment.

Laws 1970, c. 287, § 4, operative July 1, 1970.

§40-405.1. Department of Labor Administrative Penalty Revolving Fund - Oklahoma Asbestos Control Act violations.

A. There is hereby created in the State Treasury a revolving fund for the Department of Labor to be designated the "Department of Labor Administrative Penalty Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all administrative fines collected by the Department for violations of the Oklahoma Occupational Health and Safety Standards Act and the Oklahoma Asbestos Control Act, and any rules promulgated thereto. All monies accruing to the credit of the fund, except

those monies specified in subsection B of this section, are hereby directed to be transferred by the Commissioner of Labor to the State Treasurer for deposit and credit to the General Revenue Fund at the end of each fiscal year.

B. The Department of Labor shall retain up to Thirty Thousand Dollars (\$30,000.00) of monies accruing to the credit of the Department of Labor Administrative Penalty Revolving Fund, derived from citations for violations of the Oklahoma Occupational Health and Safety Standards Act, per fiscal year. Said monies shall only be used in support of this act for the production and dissemination of workplace safety educational materials, for workplace safety educational presentations and training, or for the acquisition of workplace safety equipment, to be provided by the Department of Labor, at its discretion, to employers as defined in Section 402 of this title. Said monies shall not be expended for Department of Labor employee salaries or benefits or for Department of Labor administrative costs.

Added by Laws 2016, c. 82, § 3, eff. Nov. 1, 2016. Amended by Laws 2019, c. 17, § 1, eff. Nov. 1, 2019.

§40-405.2. Department of Labor Administrative Penalty Revolving Fund - Elevator Safety Act violations

There is hereby created in the State Treasury a revolving fund for the Department of Labor to be designated the "Department of Labor Administrative Penalty Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all administrative fines collected by the Department for violations of the Elevator Safety Act, and any rules promulgated thereto. All monies accruing to the credit of the fund are hereby directed to be transferred by the Commissioner of Labor to the State Treasurer for deposit and credit to the General Revenue Fund at the end of each fiscal year.

Added by Laws 2016, c. 93, § 11, eff. Nov. 1, 2016.

NOTE: Editorially renumbered from § 405.1 of this title to avoid duplication in numbering.

§40-407. Adoption of health and safety standards - Promulgation - Limitation.

A. The Commissioner pursuant to the provisions of Sections 301 through 326 of Title 75 of the Oklahoma Statutes may prescribe, adopt, promulgate, amend and rescind health and safety standards, which shall be derived from national consensus standards designed for the prevention of accidents in all places of employment and for the protection of the life, health and safety of employees.

B. Authority to promulgate health and safety standards is limited to that not granted to other state departments or other legally constituted state boards or commissions.

Amended by Laws 1984, c. 147, § 3, operative July 1, 1984.

§40-410. Administration and enforcement.

A. The Commissioner shall administer and enforce the provisions of the Oklahoma Occupational Health and Safety Standards Act.

1. It is not intended that the Oklahoma Occupational Health and Safety Standards Act be an issue or be involved in any labor dispute, or be used or asserted to advantage in collective bargaining by employer or employee, or by their respective representatives.

2. The Commissioner shall cause to be inspected any place of employment to ensure the presence of a functioning safety and health program which meets the requirements of Title 40 of the Oklahoma Statutes and adopted and referenced standards.

B. Subject to the provisions of subsection A of this section, authorized employees of the Department may enter and inspect places of employment, including premises and buildings under construction, demolition or repair, at all reasonable times, in order to investigate such facts, conditions, practices or matters as deemed appropriate, and to determine if any person is violating any provisions of the Oklahoma Occupational Health and Safety Standards Act or any standard promulgated pursuant to the Oklahoma Occupational Health and Safety Standards Act.

C. Upon receipt by the Department of a signed complaint of violation of any of the provisions of the Oklahoma Occupational Health and Safety Standards Act or of any standard promulgated pursuant to the Oklahoma Occupational Health and Safety Standards Act, an authorized employee shall investigate the alleged violation and inform the complainant of the result of the investigation.

D. If upon inspection or investigation, or whenever the Commissioner determines a violation of the Oklahoma Occupational Health and Safety Standards Act or of any standard, rule, or regulation promulgated pursuant to the provisions of the Oklahoma Occupational Health and Safety Standards Act has occurred, the Commissioner shall give written notice to the alleged violator specifying the cause of the determination. Such notice shall require that the violations be corrected and specify the terms of such correction or that the alleged violator appear before the Commissioner at a time and place specified in the notice and answer the charges. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection G of this section.

E. The Commissioner or his designee shall afford the alleged violator an opportunity for a fair hearing in accordance with the provisions of subsection H of this section. On the basis of the evidence produced at the hearing, the Commissioner shall make findings of fact and conclusions of law and enter an order thereon. The Commissioner shall give written notice of such order to the

alleged violator and to such other persons as shall have appeared at the hearing and made written request for notice of the order. The order of the Commissioner shall become final and binding on all parties unless appealed to the district court as provided in Sections 301 through 326 of Title 75 of the Oklahoma Statutes within thirty (30) days after notice has been sent to the parties.

F. Whenever the Commissioner finds that an emergency exists requiring immediate action to protect the public health or welfare pursuant to the provisions of the Oklahoma Occupational Health and Safety Standards Act, the Commissioner may without notice or hearing issue an order stating the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with said order immediately but on application to the Commissioner shall be afforded a hearing within ten (10) days of receipt of said notice. On the basis of such hearing, the Commissioner shall continue such order in effect, revoke it, or modify it. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the district court of the county in which the place of employment is located within thirty (30) days. Such appeal when docketed shall have priority over all cases pending on said docket, except criminal cases. If compliance with said emergency order is not immediately taken, the Commissioner or his duly authorized employee may also request the district attorney of Oklahoma County, or the district attorney in any other district where service can be obtained, to file legal proceedings to enjoin the acts or practices contained in the emergency order to enforce immediate compliance with said order.

G. Except as otherwise expressly provided by law, any notice, order, or other instrument issued by or pursuant to authority of the Commissioner may be served on any person affected thereby personally, by publication, or by mailing a copy of the notice, order, or other instrument by registered mail directed to the person affected at his last-known post office address as shown by the files or records of the Commissioner. Proof of service shall be made as in the case of service of a summons or by publication in a civil action or may be made by the affidavit of the person who did the mailing. Such proof of service shall be filed in the office of the Commissioner.

Every certificate or affidavit of service made and filed as in this section provided shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

H. The hearings authorized by this section may be conducted by the Commissioner or the Commissioner may designate hearing officers who shall have the power and authority to conduct such hearings in

the name of the Commissioner at any time and place. Such hearings shall be conducted in conformity with and records made thereof as provided by the provisions of Sections 301 through 326 of Title 75 of the Oklahoma Statutes.

I. The employer to whom a health and safety order is directed shall notify the Department of his compliance therewith in a manner specified by the Department.

J. If an employer fails to comply with a health and safety order issued pursuant to this section, the Commissioner may grant an additional time for compliance therewith, modify, alter or dismiss the health and safety order or refer the matter to the Board. Laws 1970, c. 287, § 10, operative July 1, 1970; Laws 1984, c. 147, § 4, operative July 1, 1984; Laws 1992, c. 305, § 4, emerg. eff. May 27, 1992.

§40-412. Violations - Penalties

A. Any person failing to comply with any standard or interfering with, impeding or obstructing in any manner the administration of standards pursuant to the provisions of the Oklahoma Occupational Health and Safety Standards Act, upon conviction, shall be guilty of a misdemeanor.

B. Any person who violates any of the provisions of the Oklahoma Occupational Health and Safety Standards Act, upon conviction, shall be guilty of a misdemeanor and in addition thereto may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate violation.

C. The Attorney General, on the request of the Commissioner, shall bring an action against any person violating any of the provisions of the Oklahoma Occupational Health and Safety Standards Act or violating any order or determination of the Commissioner promulgated pursuant to the Oklahoma Occupational Health and Safety Standards Act.

D. The Commissioner of Labor may promulgate rules establishing a schedule of administrative penalties and fines for violations of the Oklahoma Occupational Health and Safety Standards Act which may be in addition to or in lieu of the criminal penalties provided in this section. The promulgation of an administrative fine schedule shall grant the Commissioner authority to impose those administrative fines for any violation of the Oklahoma Occupational Health and Safety Standards Act. Funds collected as payment from a violator for administrative fines imposed for a violation of the Oklahoma Occupational Health and Safety Standards Act shall be deposited to the Department of Labor Administrative Penalty Revolving Fund created in Section 3 of this act.

Added by Laws 1970, c. 287, § 12, operative July 1, 1970. Amended by Laws 1984, c. 147, § 5, operative July 1, 1984; Laws 1992, c.

305, § 5, emerg. eff. May 27, 1992; Laws 2016, c. 82, § 2, eff. Nov. 1, 2016.

§40-413. Public policy.

The following is declared to be the public policy of the state:Occupational considerations recommend the establishment and implementation of effective injury control measures. A unified, continuing, professional effort is required. A dynamic program of health and safety education and training is the best known solution to the control of occupational accidents.

Laws 1970, c. 287, § 13, operative July 1, 1970.

§40-414. Occupational safety and health consultation program for private employers.

A. The Commissioner shall not assert enforcement jurisdiction pursuant to Section 401 et seq. of this title over any occupational safety or health issue with respect to which a federal standard has been issued pursuant to Section (6) of Public Law 91-596, also known as the Williams-Steiger Occupational Safety and Health Act of 1970.

B. The Commissioner shall provide competent occupational safety and health consultation, education and training for private and public employers in coordination with the Oklahoma Department of Career and Technology Education and other available community resources.

C. Such consultation shall be provided on a priority basis to those private employers which, based on their certification, have occupational injury and illness rates exceeding the national average incidence rate for private employers of similar character.

D. No such consultation shall be provided except upon written request by the private employer.

E. Except when a condition of "imminent danger" exists, no reports, communication, or other information regarding safety and health hazards discovered by the Commissioner, pursuant to the administration of Section 401 et seq. of this title, or his representative in the workplaces of private employers, shall be reported to any enforcement authority whatsoever without the prior approval of the employer.

F. The Commissioner may, in providing services to private employers upon request, refer private employers for participation in other safety and health consultation, education and training programs including but not limited to the programs authorized by Section 7(C)1 of Public Law 91-596.

G. The Commissioner may, upon request, refer qualifying private employers to programs operated by the U.S. Department of Labor for recognition or for exemption from inspection by the U.S. Department of Labor Occupational Safety and Health Administration.

H. The Commissioner shall certify successful participation in the occupational safety and health consultation, education and training program pursuant to the provisions of Section 924.2 of Title 36 of the Oklahoma Statutes.

I. The Commissioner may promulgate such rules and regulations as may be necessary to implement the provisions of this section.

J. As used in this section:

1. "Private employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any state or political subdivision of a state; and

2. "Imminent danger" means any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death, or serious physical harm immediately.

Added by Laws 1970, c. 287, § 14, operative July 1, 1970. Amended by Laws 1986, c. 222, § 1, eff. Nov. 1, 1986; Laws 1988, c. 317, § 3, eff. Nov. 1, 1988; Laws 1992, c. 305, § 6, emerg. eff. May 27, 1992; Laws 2001, c. 33, § 35, eff. July 1, 2001.

§40-415.1. Repealed by Laws 2005, 1st Ex.Sess., c. 1., § 34, eff. July 1, 2005.

§40-415.2. Repealed by Laws 2005, 1st Ex.Sess., c. 1., § 34, eff. July 1, 2005.

§40-416. Establishment of staff - Duties.

The Commissioner shall establish within the Department an experienced and competent staff to discharge the duties and responsibilities provided in Sections 13 through 17 of this act. Laws 1970, c. 287, § 16, operative July 1, 1970.

§40-417. Reports by employers of statistical data - Summary.

(1) To assure the availability of accurate, timely statistical data concerning occupational health and safety in Oklahoma, all employers as defined in Section 402 of this title shall submit reports, on a form and in a manner prescribed by the Commissioner of Labor. Reports shall include only those injuries arising from employment within the State of Oklahoma.

(2) The Department may exempt from this requirement those classes of employers for whose operations adequate records of safety experience are already available or the Department may exempt any employer from this requirement when, in the judgment of the Commissioner, the submission of annual reports by such employer is not necessary to carry out the purposes of this act and would be an undue burden upon such employer because of size, the nature of its operation or other special circumstances.

(3) The Department shall publish each year a detailed summary of the statistical data received from employers. A copy of such summary shall be available on request to each reporting establishment required to file reports of disabling work injuries and shall be made available to anyone having a legitimate interest in the subject matter of the report.

Added by Laws 1970, c. 287, § 17, operative July 1, 1970. Amended by Laws 1985, c. 348, § 5, emerg. eff. July 31, 1985; Laws 1988, c. 317, § 4, eff. Nov. 1, 1988; Laws 1992, c. 305, § 7, emerg. eff. May 27, 1992; Laws 2002, c. 50, § 2, eff. Nov. 1, 2002; Laws 2013, c. 254, § 28, eff. Jan. 1, 2015.

§40-417.1. Special Occupational Health and Safety.

There is hereby created in the State Treasury a fund for the Department of Labor to be designated the "Special Occupational Health and Safety Fund". The fund shall be subject to legislative appropriation and shall consist of monies collected pursuant to Section 418 of Title 40 of the Oklahoma Statutes.

Added by Laws 1986, c. 223, § 24, operative July 1, 1986.

§40-418. Payments to Commission - Refunds - Collection of payments - Disposition of funds.

(1) Each insurance carrier writing workers' compensation insurance in this state and each self-insured employer authorized to make workers' compensation payments directly to employees shall pay to the Oklahoma Tax Commission up to a sum equal to three-fourths of one percent ($3/4$ of 1%) of the total workers' compensation losses, excluding medical payments and temporary total disability compensation, based on the records of the Workers' Compensation Court of Existing Claims or the Workers' Compensation Commission, paid out or payable during each quarter-year period of the calendar year, said percentage to be fixed by the Commissioner of Labor and based upon the Commissioner's certification that the proceeds thereof are reasonable and necessary to accomplish the objectives of the Oklahoma Occupational Health and Safety Standards Act. Such payments to the Oklahoma Tax Commission shall be made not later than the fifteenth day of the month following the close of the quarter-year in which compensation is paid or becomes payable. Payments made, under the provisions of this section, shall be considered losses for the purpose of computing workers' compensation rates.

(2) The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made under the provisions of the Oklahoma Occupational Health and Safety Standards Act.

(3) In making and entering awards for compensation, the Workers' Compensation Court of Existing Claims or the Workers' Compensation Commission shall determine and fix the amounts that

shall be paid to the Oklahoma Tax Commission under the provisions of this section. The total amount so determined and fixed shall have the same force and effect as an award of the Workers' Compensation Court of Existing Claims or the Workers' Compensation Commission for compensation and all provisions of law relating to the collection of awards of said court or Commission shall apply to such judgments or awards.

(4) It shall be the duty of the Oklahoma Tax Commission to collect the payments provided for herein, and said Commission is hereby given authority to bring an action for the recovery of any delinquent and unpaid payment or payments. In the alternative, the Oklahoma Tax Commission may enforce payments by proceeding in accordance with the provisions of Section 79 of Title 85A of the Oklahoma Statutes.

(5) Except as otherwise provided in paragraph (7) of this section, the Oklahoma Tax Commission shall, monthly, as the same are collected, pay to the State Treasurer of this state, to the credit of the Special Occupational Health and Safety Fund, all monies collected under the provisions of this section. Monies shall be paid out of said Fund exclusively for the operation and administration of the Oklahoma Occupational Health and Safety Standards Act and for other necessary expenses of the Department of Labor pursuant to appropriations by the Oklahoma Legislature.

(6) The Commissioner shall determine the needs of the program, considering statistical data on disabling work injuries, depth and scope of the program as evidenced by the needs and demands of employers and the present, planned and anticipated budgetary needs of the program, and submit same to the Legislature.

(7) In no event shall the total fiscal year amount paid to the credit of the Special Occupational Health and Safety Fund pursuant to this section exceed the 3-year average of the total fiscal year amounts apportioned fiscal years 2015, 2016 and 2017. Any amount in excess of the 3-year average shall be placed to the credit of the General Revenue Fund.

Added by Laws 1970, c. 287, § 18, operative July 1, 1970. Amended by Laws 1975, c. 287, § 4, emerg. eff. June 5, 1975; Laws 1985, c. 181, § 222, operative July 1, 1985; Laws 1986, c. 223, § 25, operative July 1, 1986; Laws 2013, c. 254, § 29, eff. Jan. 1, 2015; Laws 2017, c. 354, § 1, eff. July 1, 2017; Laws 2018, c. 210, § 1.

§40-418.2. Repealed by Laws 2009, c. 322, § 15.

§40-419. Penalty.

Any employer or insurance company willfully failing to comply with any of the provisions of Sections 17 and 18 is guilty of a misdemeanor.

Laws 1970, c. 287, § 19, operative July 1, 1970.

§40-424. Qualifications for personnel of Department of Labor.

The provisions as to qualifications of persons in positions or jobs created or provided for under provisions of Sections 401 through 423 of Title 40 of the Oklahoma Statutes, the Oklahoma Occupational Health and Safety Standards Act of 1970, shall not apply to officers or employees of the Department of Labor, it being intended that their qualifications for such positions or jobs be determined by the Commissioner of Labor.

Laws 1971, c. 356, § 1, emerg. eff. June 26, 1971.

§40-425. Repealed by Laws 2010, c. 394, § 1.

§40-435. Break time and accommodations for expressing milk or breast-feeding.

A. 1. An employer other than a state agency may provide reasonable unpaid break time each day to an employee who needs to breast-feed or express breast milk for her child to maintain milk supply and comfort. The break time, if possible, shall run concurrently with any break time, paid or unpaid, already provided to the employee. An employer is not required to provide break time under this section if to do so would create an undue hardship on the operations of the employer.

2. Every state agency shall allow an employee who is lactating reasonable paid break time each day to use the designated lactation room for the purpose of maintaining milk supply and comfort.

B. An employer may make a reasonable effort to provide a private, secure, and sanitary room or other location in close proximity to the work area, other than a toilet stall, where an employee can express her milk or breast-feed her child.

C. The Department of Health shall issue periodic reports on breast-feeding rates, complaints received, and benefits reported by both working breast-feeding mothers and employers.

D. As used in this section:

1. "Employer" means a person engaged in business who has one or more employees, including the state and any political subdivision of the state;

2. "Employee" means any person engaged in service to an employer in the business of the employer;

3. "Reasonable" means any effort that would not impose an undue hardship on the operation of the employer's business; and

4. "Undue hardship" means any action that requires significant difficulty or expense when considered in relation to factors such as the size of the business, its financial resources, and the nature and structure of its operation.

Added by Laws 2006, c. 85, § 1, eff. Nov. 1, 2006. Amended by Laws 2020, c. 62, § 1, eff. Nov. 1, 2020.

§40-450. Short title.

Sections 265 through 270 of this act shall be known and may be cited as the "Oklahoma Asbestos Control Act".

Added by Laws 1993, c. 145, § 264, eff. July 1, 1993.

§40-451. Definitions

As used in the Oklahoma Asbestos Control Act:

1. "Friable asbestos material" means any material that contains asbestos of more than one percent (1%) or more that can be crumbled, pulverized or reduced to powder by hand pressure;

2. "Friable asbestos material abatement" means the removal, encapsulation or enclosure of friable asbestos containing material;

3. "Friable asbestos material encapsulation" means the application of a bonding agent called a sealant, which penetrates and hardens the asbestos material or covers the surface of the material with a protective coating, thus preventing fiber release from the asbestos material;

4. "Friable asbestos material removal" means the actual physical removal of any friable asbestos containing material from a facility, when the asbestos is either attached to or detached from any device or structure;

5. "Contractor" means any public or private entity that engages in friable asbestos containing material abatement in any facility in this state except private residences or apartment houses of less than six family units;

6. "Commissioner" means the Commissioner of Labor.

Added by Laws 1982, c. 101, § 1, eff. Oct. 1, 1982. Amended by Laws 1985, c. 270, § 1; Laws 1993, c. 145, § 265, eff. July 1, 1993; Laws 2016, c. 82, § 4, eff. Nov. 1, 2016.

§40-452. License required - Fee - Exemptions

A. No contractor shall abate any friable material containing asbestos without having first obtained a license to do so from the Commissioner of Labor. The Commissioner shall issue an asbestos abatement license to a qualified contractor upon proper application, as determined by the Commissioner. The Commissioner of Labor may promulgate rules establishing a schedule of administrative fees for the application, licensing, examination, certification of asbestos abatement contractors and workers employed by a contractor for asbestos abatement, as well as a fee to be paid by contractors to the Department of Labor for each separate containment area, glovebag, or miniature containment area of any asbestos abatement project. The fees stated in this section on the effective date of this act shall remain in effect until such rules become effective, at which time the fees stated in this section shall be superseded by rule. The annual fee for such license shall be Five Hundred Dollars

(\$500.00). The fee shall be deposited into the Department of Labor Revolving Fund. A nonrefundable initial application fee of One Thousand Dollars (\$1,000.00) shall be charged and deposited into the Department of Labor Revolving Fund. The Commissioner may deny a license to applicants whose past abatement performance for abatement of friable asbestos does not comply with federal and other states' requirements. A minimum waiting period shall be established at the discretion of the Commissioner of Labor and will be required before issuance of a license to permit the Commissioner to perform a work performance investigation of the applicant.

The annual fee for examining and certifying workers employed by a contractor for asbestos abatement shall be Twenty-five Dollars (\$25.00). The fee shall be deposited in the Department of Labor Revolving Fund. Uncertified workers shall not be used on any asbestos abatement projects.

B. The state and political subdivisions thereof, counties and political subdivisions thereof and municipalities and political subdivisions thereof, and their supervisors and employees, shall not be exempt from any certification fees required by this section when such entities act as a contractor.

C. A fee of Six Hundred Dollars (\$600.00) shall be paid by contractors to the Department of Labor for each separate containment area of any asbestos abatement project. The fee collected shall be deposited by the Department of Labor into the Department of Labor Revolving Fund. There shall be a minimum number of inspections of each containment area as deemed necessary by the Commissioner of Labor. For projects which are not a part of a definite containment area, or are performed with multiple glovebags or miniature containments, a fee of Two Hundred Dollars (\$200.00), plus Five Dollars (\$5.00) per such glovebag or miniature containment, shall be paid to the Department of Labor for deposit into the Department of Labor Revolving Fund.

Asbestos abatement projects performed on properties owned by the state or any political subdivision thereof shall not be exempt from this fee.

D. Any asbestos abatement contractor transporting asbestos-containing material shall be required to provide to the Commissioner a Certificate of Insurance by a carrier licensed to do business in the State of Oklahoma demonstrating a minimum of One Million Dollars (\$1,000,000.00) of environmental impairment insurance.

E. No state agency or political subdivision thereof, county or political subdivision thereof, or municipalities or political subdivisions thereof shall solicit or receive any estimate or bid for abatement of asbestos from any person or party who is not a licensed asbestos abatement contractor.

Added by Laws 1982, c. 101, § 2, eff. Oct. 1, 1982. Amended by Laws 1985, c. 270, § 2; Laws 1987, c. 208, § 82, operative Nov. 1, 1987;

Laws 1987, c. 236, § 92, operative Nov. 1, 1987; Laws 1988, c. 250, § 3, emerg. eff. June 27, 1988; Laws 1991, c. 215, § 16, eff. July 1, 1991; Laws 1993, c. 145, § 267, eff. July 1, 1993; Laws 2016, c. 82, § 5, eff. Nov. 1, 2016.

§40-453. Powers and duties of Commissioner.

A. The Commissioner of Labor shall have the power and duty to:

1. Develop and promulgate rules for the abatement of friable asbestos materials which shall be consistent with general industry standards;

2. Instruct and examine contractors, employees and supervisors on the safe abatement of friable asbestos materials;

3. Hire sufficient personnel to carry out the provisions of this act consistent with funds allocated and full-time-equivalent employees authorized;

4. Inspect all asbestos abatement projects, to issue, modify and revoke orders; to issue cease and desist orders; and to require mandamus and seek injunctive relief for enforcement of orders;

5. Inspect public buildings for the presence of friable asbestos materials;

6. Collect samples to determine the presence and condition of friable asbestos materials in public buildings;

7. Recommend appropriate abatement measures for friable asbestos materials in public buildings;

8. Make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under the Oklahoma Asbestos Control Act including, but not limited to, contracts with the United States, other states, agencies, and political subdivisions of this state;

9. Accept grants from the United States government, its agencies and instrumentalities, and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary and desirable;

10. Supervise, administer, and enforce the provisions of the Oklahoma Asbestos Control Act rules promulgated thereunder;

11. Hold hearings;

12. Institute legal proceedings, including suits for injunctions for the enforcement of his orders, rules, and for the enforcement of penalties;

13. Investigate any violations of the Oklahoma Asbestos Control Act;

14. Exercise all incidental powers which are necessary to carry out the provisions of the Oklahoma Asbestos Control Act; and

15. To perform such other duties as the Commissioner of Labor may determine are essential to the protection of health from hazards posed by friable asbestos materials.

B. The violations of any rule shall be grounds for the Commissioner to evoke any penalties set forth in Section 456 of this title.

C. The Commissioner of Labor shall be the primary authority regarding the regulation of asbestos abatement in the State of Oklahoma at the abatement site through the completion of the on-site abatement.

Added by Laws 1982, c. 101, § 3, eff. Oct. 1, 1982. Amended by Laws 1985, c. 270, § 3; Laws 1993, c. 145, § 266, eff. July 1, 1993; Laws 2015, c. 106, § 1, emerg. eff. April 20, 2015.

§40-454. Suspension, revocation or refusal to issue license - Hearing - Appeal.

If the Commissioner finds that a contractor has violated any of the provisions of the Oklahoma Asbestos Control Act or any rule promulgated pursuant to the Oklahoma Asbestos Control Act, the Commissioner may suspend, revoke or refuse to issue the license of the contractor after a hearing held for such purpose. Such hearing shall be held within thirty (30) days after written notice has been sent to the contractor by certified mail. If, after such hearing, the Commissioner finds cause to suspend, revoke or refuse to issue a license, the contractor shall be given written notice of the decision of the Commissioner and the basis therefor. The decision shall become final at the end of thirty (30) days from the date of such notice, unless appealed to the district court. All appeals from the Commissioner's order shall be taken in the manner prescribed by law.

Added by Laws 1982, c. 101, § 4, eff. Oct. 1, 1982. Amended by Laws 1993, c. 145, § 270, eff. July 1, 1993.

§40-455. Inspections and investigations.

The Commissioner of Labor or an authorized representative shall have the power and authority to enter at reasonable times upon any property for the purpose of inspecting and investigating contractors relating to the abatement of any friable material containing asbestos pursuant to the Oklahoma Asbestos Control Act.

Added by Laws 1982, c. 101, § 5, eff. Oct. 1, 1982. Amended by Laws 1985, c. 270, § 4; Laws 1993, c. 145, § 268, eff. July 1, 1993.

§40-456. Violations - Penalties - Injunction

A. In addition to any administrative or civil penalty, any person who violates any of the provisions of the Oklahoma Asbestos Control Act or who violates any rule or order promulgated pursuant thereto shall be guilty of a misdemeanor and may be enjoined from continuing such action. Upon conviction thereof, the violator shall be punished by imprisonment in the county jail for not more than six (6) months or by a fine of not less than One Hundred Dollars

(\$100.00), or both such fine and imprisonment. Each day's violations shall constitute a separate violation.

B. The Attorney General shall, upon request of the Commissioner, bring an action for injunction against any person violating any provision of the Oklahoma Asbestos Control Act or violating any order or determination of the Commissioner. In any action for injunction, any finding of the Commissioner, after notice, shall be prima facie evidence of the facts found therein.

C. A district attorney, upon request of the Commissioner, shall prosecute any violation of the Oklahoma Asbestos Control Act.

D. The Commissioner of Labor may promulgate rules establishing a schedule of administrative penalties and fines for violations of the Oklahoma Asbestos Control Act which may be in addition to or in lieu of the criminal penalties provided in this section. The promulgation of an administrative fine schedule shall grant the Commissioner authority to impose those administrative fines for any violation of the Oklahoma Asbestos Control Act. Funds collected as payment from a violator for administrative fines imposed for a violation of the Oklahoma Asbestos Control Act shall be deposited to the Department of Labor Administrative Penalty Revolving Fund created in Section 3 of this act.

Added by Laws 1982, c. 101, § 6, eff. Oct. 1, 1982. Amended by Laws 1993, c. 145, § 269, eff. July 1, 1993; Laws 2016, c. 82, § 6, eff. Nov. 1, 2016.

§40-457. Repealed by Laws 2015, c. 106, § 2, emerg. eff. April 20, 2015.

§40-460. Rules and regulations.

The Commissioner of Labor shall promulgate rules and regulations for the safe installation, repair, maintenance, use, operation and inspection of all amusement rides necessary for the protection of the general public using amusement rides.

Added by Laws 1982, c. 145, § 1.

§40-460.1. Rules for definition of "alteration".

A. Pursuant to the authority granted to the Commissioner of Labor under Section 460 of Title 40 of the Oklahoma Statutes to promulgate rules for the safe installation, repair, maintenance, use, operation, and inspection of all amusement rides necessary for the protection of the general public using amusement rides, the Commissioner of Labor shall promulgate rules regarding the definition of alteration.

B. Rules promulgated pursuant to subsection A of this section shall include the following language:

"Alteration" means any change in either the structural or operational characteristics of the amusement ride which will alter

its performance from that specified in the design criteria of the manufacturer.

Added by Laws 2000, c. 295, § 1, eff. Nov. 1, 2000.

§40-460.2. Rules regarding amusement ride maintenance, inspection, and repair records.

A. Pursuant to the authority granted to the Commissioner of Labor under Section 460 of Title 40 of the Oklahoma Statutes to promulgate rules for the safe installation, repair, maintenance, use, operation, and inspection of all amusement rides necessary for the protection of the general public using amusement rides, the Commissioner of Labor shall promulgate rules regarding amusement ride maintenance, inspection, and repair records.

B. Rules promulgated pursuant to subsection A of this section shall include the following language:

The owner of an amusement ride shall maintain up-to-date maintenance, inspection, and repair records between inspection periods for each amusement ride in the manner provided by the Commissioner of Labor. The records shall contain a copy of all inspection reports commencing with the last annual inspection, a description of all maintenance performed, and a description of any mechanical or structural failures or operational breakdowns and the types of actions taken to rectify these conditions.

Added by Laws 2000, c. 295, § 2, eff. Nov. 1, 2000.

§40-460.3. Rules regarding use of signage - Definition of "sign".

A. Pursuant to the authority granted to the Commissioner of Labor under Section 460 of Title 40 of the Oklahoma Statutes to promulgate rules for the safe installation, repair, maintenance, use, operation, and inspection of all amusement rides necessary for the protection of the general public using amusement rides, the Commissioner of Labor shall promulgate rules regarding the use of signage concerning amusement rides.

B. Rules promulgated pursuant to subsection A of this section shall include the following language:

1. An amusement ride owner shall display signs indicating the applicable safety responsibilities of riders as set forth by the Commissioner of Labor and the location of stations to report injuries. The signs must be located at:

- a. each station for reporting an injury,
- b. each first aid station, and
- c. at each premises entrance and exit;

2. An amusement ride owner shall post a sign at each amusement ride that includes:

- a. operational instruction, if any,
- b. safety guidelines for rider, if any,
- c. restrictions of the use of the amusement ride, if any,

- d. behavior or activities that are prohibited, if any, and
- e. a legend providing that "State law requires riders to obey all warnings and directions for this ride and behave in a manner that will not cause or contribute to injuring themselves or others. Failure to comply is punishable by fine and imprisonment.";

3. Any sign required by this rule must be prominently displayed at a conspicuous location, clearly visible to the public and bold and legible in design; and

4. As used in this rule, "sign" means any symbol or language reasonably calculated to communicate information to a rider or the parent or guardian of a rider, including placards, prerecorded messages, live public address, stickers, pictures, video, verbal information, and visual signals.

Added by Laws 2000, c. 295, § 3, eff. Nov. 1, 2000.

§40-460.4. Rules regarding use of amusement rides by riders - Definition of "rider".

A. Pursuant to the authority granted to the Commissioner of Labor under Section 460 of Title 40 of the Oklahoma Statutes to promulgate rules for the safe installation, repair, maintenance, use, operation, and inspection of all amusement rides necessary for the protection of the general public using amusement rides, the Commissioner of Labor shall promulgate rules regarding the use of amusement rides by riders.

B. Rules promulgated pursuant to subsection A of this section shall include the following language:

1. A rider shall:

- a. obey the reasonable safety rules posted in accordance with law and oral instructions for an amusement ride issued by the owner or the employee of the owner, unless:
 - (1) the safety rules are contrary to law or rules, or
 - (2) the oral instructions are contrary to law or rules or the safety rules, and
- b. refrain from acting in any manner that may cause or contribute to injuring the rider or others, including:
 - (1) exceeding the limits of ability of the rider,
 - (2) interfering with safe operation of the amusement ride,
 - (3) not engaging any safety devices that are provided,
 - (4) disconnecting or disabling a safety device except at the express instruction of the ride operator,
 - (5) altering or enhancing the intended speed, course, or direction of an amusement ride,

- (6) using the controls of an amusement ride designed solely to be operated by the ride operator,
- (7) extending arms and legs beyond the carrier or seating area except at the express direction of the ride operator,
- (8) throwing, dropping, or expelling an object from or toward an amusement ride except as permitted by the ride operator,
- (9) getting on or off an amusement ride except at the designated time and area, if any, at the direction of the ride operator or in an emergency, and
- (10) not reasonably controlling the speed or direction of the person of the rider or an amusement ride that requires the rider to control or direct the person of the rider or a device;

2. A rider may not get on or attempt to get on an amusement ride unless the rider or the parent or guardian of the rider reasonably determines that the rider:

- a. has sufficient knowledge to use, get on, and get off the amusement ride safely without instruction or has requested and received before getting on the ride sufficient information to get on, use, and get off safely,
- b. has located, reviewed, and understood any signs in the vicinity of the ride and has satisfied any posted height, medical, or other restrictions,
- c. knows the range and limits of the ability of the rider and knows the requirements of the amusement ride will not exceed those limits,
- d. is not under the influence of alcohol or any drug that affects the ability of the rider to safely use the amusement ride or obey the posted rules or oral instructions, and
- e. is authorized by the amusement ride owner or the authorized employee of the amusement ride owner to get on the amusement ride; and

3. As used in this rule, "rider" means any person who is:

- a. waiting in the immediate vicinity to get on an amusement ride,
- b. getting on an amusement ride,
- c. using an amusement ride,
- d. getting off an amusement ride, or
- e. leaving an amusement ride and still in its immediate vicinity.

Added by Laws 2000, c. 295, § 4, eff. Nov. 1, 2000.

§40-461. Definitions.

As used in Sections 460 through 473 of this title:

1. "Amusement ride" means a device or combination of devices or elements that carry, convey, or direct a person or persons over or through a fixed or restricted course or within a defined area for the primary purpose of amusement or entertainment. Amusement ride includes any amusement park device that uses water as the means of transportation, including the structure of the device. Amusement ride does not include the operation of articles of husbandry incidental to any agricultural operation or the operation of amusement devices of a permanent nature which are subject to building regulations issued by cities or counties and existing applicable safety orders. Amusement ride shall be divided into the following four categories:

- a. "permanent amusement device" means a device which is used, or intended to be used, as an amusement device that is erected to remain a lasting part of the premises,
- b. "temporary amusement device" means a device which is used as an amusement device that is regularly relocated with or without disassembly,
- c. "inflatable amusement device" means an inflatable amusement device as defined in Section 472 of this title, and
- d. "other amusement device" means amusement devices registered with the Department of Labor that have proof of insurance.

The Commissioner of Labor may, by administrative regulation, designate other rides and attractions that are not included in the definition of amusement ride;

2. "Operator" or "owner" means a person who owns or controls or has the duty to control the operation of an amusement ride and includes the state and every state agency, and each county, city and all private or public corporations and political subdivisions;

3. "Certificate of inspection" means a certificate issued by the Commissioner of Labor which indicates that an inspection of the ride has been performed pursuant to rules and regulations adopted by the Department of Labor; and

4. "Permanent amusement park ride" means an amusement ride which is stationary or cannot be easily moved and which is located on the same premises on which it is operated for no less than ninety (90) days.

Added by Laws 1982, c. 145, § 2. Amended by Laws 2003, c. 102, § 1, eff. Nov. 1, 2003; Laws 2008, c. 260, § 2, eff. July 1, 2008; Laws 2017, c. 330, § 1, eff. Nov. 1, 2017.

§40-462. Certificate of inspection - Inspections.

A. The Commissioner of Labor shall determine the date and frequency of inspections based on the type of amusement ride. No permanent or temporary amusement device may operate without an initial inspection. On or before a date specified by the Commissioner of Labor, an operator or owner shall apply for a certificate of inspection on a form furnished by the Commissioner of Labor.

B. "Other amusement devices" as defined in Section 461 of this title shall be registered annually with the Department of Labor, and the owner or operator shall provide to the Department of Labor proof of insurance as provided under Section 467 of this title. The Commissioner of Labor may promulgate rules providing for registration of such devices.

C. The owner or operator may make application to the Commissioner for less frequent inspections than are required under subsection B of this section. The Commissioner, upon investigation and/or hearing of the matter, may grant a waiver, provided equal public safety is maintained. Such waiver shall provide specific requirements for inspection in lieu of the requirements of subsection B of this section. The Commissioner shall promulgate rules for the determination of a waiver provided such rules place an affirmative responsibility on the owner/operator for the preservation of public safety.

D. The Commissioner of Labor may cause the inspection herein provided for to be made by the Commissioner's safety inspectors or by any qualified amusement ride inspector employed by an insurance company.

E. If, after inspection, an amusement ride is found to comply with the rules and regulations of the Commissioner of Labor, the Commissioner of Labor shall issue a certificate of inspection which shall authorize the operator or owner to operate the rides.
Added by Laws 1982, c. 145, § 3, eff. Oct. 1, 1982. Amended by Laws 1994, c. 272, § 6, operative July 1, 1994; Laws 2017, c. 330, § 2, eff. Nov. 1, 2017.

§40-463. Fees - Certification of rides - Certificate of insurance

A. The Commissioner of Labor may promulgate rules establishing a schedule of administrative fees for the registration and inspection of amusement and other rides. The following fees shall remain in effect until such rules become effective, at which time the fees contained in this section shall be superseded by rule. Fees collected by the Department of Labor for the registration and inspection of amusement and other rides shall be deposited into the Department of Labor Revolving Fund.

1. The annual ride registration fee shall be: \$25.00
2. The inspection fee shall be:
 - a. Amusement Rides \$50.00

b. Other Rides per hour

\$100.00

B. The Commissioner of Labor shall not issue an original certificate of inspection for an amusement ride until he receives certification in writing that such amusement rides meet the requirements established by the Commissioner of Labor for amusement rides. The Commissioner of Labor shall designate by rule and regulation pursuant to Section 460 of this title the qualifications of the inspectors making the inspections required by this section.

C. Any permanent amusement park ride owner or operator shall file a copy of a certificate of insurance with the Commissioner of Labor on or before February 1 of each year. Such certificate of insurance shall be in such form as to reflect the safety inspection requirements for obtaining such insurance and the date of the last inspection. The amount of the premium and the amount of coverage shall not be required to be disclosed in the certificate.

The Commissioner may accept such certificate and insurance inspection as evidence sufficient to issue a certificate of inspection for the permanent amusement park ride.

D. The Governing Board of the State Fair of Oklahoma, the Tulsa State Fair, and the Muskogee State Fair shall file a copy of a certificate of insurance with the Commissioner of Labor before the rides are put into operation at each location for the use of the public. Such certificate shall be in such form as to reflect the safety inspection requirements for obtaining such insurance and the date of the inspection.

The Commissioner may accept such insurance inspection as evidence sufficient to issue a certificate of inspection for the rides.

Added by Laws 1982, c. 145, § 4, eff. Oct. 1, 1982. Amended by Laws 1983, c. 101, § 1, emerg. eff. May 9, 1983; Laws 1991, c. 122, § 3, eff. July 1, 1991; Laws 1991, c. 215, § 15, eff. July 1, 1991; Laws 1993, c. 270, § 47, eff. Sept. 1, 1993; Laws 2016, c. 100, § 1, eff. Nov. 1, 2016.

§40-464. Notice of erection of ride or additions or alterations.

Before a new amusement ride is erected, or whenever any additions or alterations are made which change the structure, mechanism, classification or capacity of any amusement ride, the operator or owner shall file with the Commissioner of Labor a notice of his intention and any plans or diagrams requested by the Commissioner of Labor.

Added by Laws 1982, c. 145, § 5.

§40-465. Temporary cessation of ride - Orders - Enforcement.

A. The Commissioner of Labor may issue a written order for the temporary cessation of operation of an amusement ride if it has been determined after inspection to be hazardous or unsafe. Operations

shall not resume until such conditions are corrected to the satisfaction of the Commissioner of Labor. The Commissioner of Labor or his authorized inspector may inspect any amusement ride without notice.

B. In addition to other powers confirmed by this act, the Commissioner or his authorized representative shall have power to order any person, firm, corporation, corporate officers, trustees or any managing official of any municipal corporation, state agency or political subdivision to cease violating any provision of this act, or rule or regulations issued pursuant to this act. A certified copy of such order shall be mailed to the person or entity so violating the provisions of this act.

C. Any order issued by the Commissioner or his authorized representative may be enforced in the district court in an action for an injunction or writ of mandamus upon the petition of the district attorney or Attorney General. Provided further, an injunction, without bond, may be granted by the district court to the Commissioner, for the purpose of enforcing this act.

Added by Laws 1982, c. 145, § 6.

§40-466. Modification of rules and regulations - Grounds.

The Commissioner of Labor may modify the application of rules or regulations to an operator who demonstrates a hardship resulting from such application if the public safety will remain secure. Any owner or operator may make a written request to the Commissioner of Labor specifying the hardships which are his grounds for requesting such modification. Any authorization by the Commissioner of Labor shall be in writing and shall describe the conditions under which the modifications shall be permitted. A permanent record of all modifications shall be kept in the Department of Labor for public inspection.

Added by Laws 1982, c. 145, § 7.

§40-467. Liability insurance.

No person shall operate an amusement ride unless at the time there exists a policy of insurance in an amount of not less than One Million Dollars (\$1,000,000.00) insuring the owner or operator against liability for injury suffered by persons riding the amusement ride.

Added by Laws 1982, c. 145, § 8, eff. Oct. 1, 1982. Amended by Laws 2000, c. 295, § 5, eff. Nov. 1, 2000.

§40-468. Political subdivisions - Regulation of rides - Inspections.

A. Nothing contained in this act shall prevent cities and counties from regulating amusement rides nor prevent them from enacting ordinances in addition to the rules and regulations

promulgated by the Commissioner of Labor which may be more restrictive than this act with respect to amusement rides.

B. If a political subdivision presents satisfactory evidence to the Commissioner of Labor that it can perform the inspections required by this act, the Commissioner of Labor may delegate his power of inspection.

C. The delegation of power is subject to an agreement entered into by the Commissioner of Labor and the agency, political subdivision or municipality.

D. The Commissioner of Labor may revoke the agreement or retain the right to monitor the inspection.

Added by Laws 1982, c. 145, § 9.

§40-469. Violations - Penalties

A. Any violation of the provisions of Sections 460 through 468 of this title shall be a misdemeanor. Conviction thereof shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or by not more than one (1) year in the county jail, or both such fine and imprisonment. Each day of violation shall constitute a separate offense.

B. The Commissioner of Labor may promulgate rules establishing a schedule of administrative penalties and fines for violations of Sections 460 through 468 of this title which may be in addition to or in lieu of the criminal penalties provided in this section. The promulgation of an administrative fine schedule shall grant the Commissioner authority to impose those administrative fines for any violation of Sections 460 through 468 of this title. Funds collected as payment from a violator for administrative fines imposed for a violation of Sections 463 through 468 of this title shall be deposited to the Department of Labor Administrative Penalty Revolving Fund created in Section 2 of this act.

Added by Laws 1982, c. 145, § 10. Amended by Laws 2016, c. 100, § 3, eff. Nov. 1, 2016.

§40-470. Department of Labor Administrative Penalty Revolving Fund

There is hereby created in the State Treasury a revolving fund for the Department of Labor to be designated the "Department of Labor Administrative Penalty Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all administrative fines collected by the Department for violations of amusement ride safety pursuant to Sections 463 through 469 of Title 40 of the Oklahoma Statutes and the rules promulgated thereto. All monies accruing to the credit of the fund are hereby directed to be transferred by the Commissioner of Labor to the State Treasurer for deposit and credit to the General Revenue Fund at the end of each fiscal year.

Added by Laws 2016, c. 100, § 2, eff. Nov. 1, 2016.

§40-471. Repealed by Laws 2009, c. 179, § 3.

§40-472. Definitions.

A. As used in this section:

1. "ASTM Standards" means the American Society for Testing of Materials International (ASTM) standards entitled "Standard Practice for Ownership and Operation of Amusement Rides and Devices" currently designated F 770, and any amendments, supplements, replacements or substitutions therefor;

2. "Operating fact sheet" means a written description and summary of the manufacturer's recommended operating instructions and specifications and the ride operation policies, procedures, safety procedures and emergency procedures prepared in accordance with the ASTM Standards;

3. "Amusement ride operator" or "ride operator" means a person who is physically in control of the starting, stopping and performance of the amusement ride while in operation; provided however, ride operator shall not include persons fulfilling ancillary functions in connection with the amusement ride such as taking tickets or assisting passengers in loading and unloading;

4. "Amusement ride" means an amusement ride as defined in Section 461 of Title 40 of the Oklahoma Statutes; provided however, the term amusement ride shall not include inflatable amusement devices; and

5. "Inflatable amusement device" means an amusement ride or device consisting of air-filled structures designed for commercial use where the public pays a price to rent or use such a device as specified by the manufacturer, and may include, but not be limited to, bounce, climb, slide or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers and rely upon air pressure to maintain their shape.

B. All amusement rides must be under the control of a competent ride operator or competent ride operators at all times when the amusement ride is in operation. The ride operator must have been issued a certificate of training pursuant to subsection F of this section evidencing that the ride operator has been trained pursuant to subsections C and D of this section within one (1) year from the time of his or her operation of the amusement ride or rides in question. Each such ride operator must wear a name tag identifying the ride operator by name and identifying the fact that such person is a trained ride operator.

C. Each owner/operator shall provide or cause to be provided training for each ride operator in the safe operation of the amusement ride being operated. The minimum requirement for training shall be that specified in the then most current ASTM Standard.

Such training shall include, but not be limited to, the following, where applicable:

1. Instruction on ride or device operating procedures pursuant to the operating fact sheet and any manufacturer's operating manual, supplements, alerts and bulletins applicable to the amusement ride;
2. Instructions on specific duties of the assigned position;
3. Instructions on general safety procedures;
4. Instructions on emergency procedures; and
5. Demonstration of the physical ride or device operation.

D. Each owner/operator shall ensure that each ride operator on a ride-specific basis has:

1. Read and understood the operating fact sheet and has satisfactorily demonstrated with on-the-job training and testing that such ride operator is competent and understands the operating fact sheet;
2. Demonstrated how to do pre-startup operational ride checks and daily maintenance inspection;
3. Demonstrated understanding emergency procedures relating to the amusement ride in question and has knowledge of use and function of normal and emergency operating controls; and
4. Demonstrated the physical operation of the amusement ride in question in a safe and satisfactory manner.

E. Each owner/operator shall maintain written records evidencing the compliance with subsections C and D of this section with respect to each ride operator and each amusement ride for which such operator has been trained. These written records shall be maintained on the premises where the amusement ride or amusement rides are being operated and made available upon reasonable request by Department of Labor amusement ride inspectors.

F. In addition to the written records required pursuant to subsection E of this section, the owner/operator shall:

1. Provide to each ride operator trained pursuant to subsections C and D of this section a written certificate stating that the holder of this certificate has been trained in accordance with the requirements of this section. This certificate shall be dated the date on which the training and demonstration of these skills were completed. The certificate may include additional amusement rides as to which such ride operator has been trained, provided that the separate date and location of such training is specified. Each certificate will indicate the applicant's name, address, date of birth and each of the amusement rides such operator is approved to operate and the signatures of the owner/operator representative and the ride operator; and
2. Maintain the originals or duplicates of the above certificate on the premises and available for inspection by Department of Labor amusement ride inspectors.

G. The Commissioner of Labor may, where there is reasonable grounds to believe that a ride operator is operating an amusement ride while under the influence of drugs or alcohol, require such ride operator to submit for voluntary drug and alcohol testing by a competent, qualified facility and pursuant to standards and procedures consistent with operating a motor vehicle in this state. Failure to submit to a voluntary drug or alcohol test under such circumstance shall result in the termination of such ride operator's certification for a period of ninety (90) days. A positive test for drugs and alcohol pursuant to the foregoing shall result in a loss of such certification for a period of at least thirty (30) days and until the applicant passes a subsequent drug and alcohol test, which retest shall be at the expense of the applicant.

Added by Laws 2009, c. 179, § 1.

§40-473. Rules ineffective upon repeal of Section 471.

Any rules promulgated pursuant to Section 471 of Title 40 of the Oklahoma Statutes, repealed by Section 3 of this act, shall be null and void and shall have no effect.

Added by Laws 2009, c. 179, § 2.

§40-481. Establishment - Purpose - Administration - Public works jobs included in program - Criteria for work experience assignments - Public projects contracted by private sector contractor which may be included - Eligible participants - Voluntariness of participation.

A. There shall be established a Jobs Recovery Program in accordance with this act. The purpose of the Jobs Recovery Program shall be to provide public works jobs and training for individuals not otherwise able to obtain employment, provided they meet the requirements specified in subsection F of this section, in order to assist them in obtaining regular public or private employment.

B. The Oklahoma Employment Security Commission shall administer this program subject to the requirements of this act and availability of funds.

C. Public works jobs which shall be a part of this program shall include, but not be limited to, the following:

1. Building, rebuilding or repairing roadbeds, bridges and sidewalks;

2. Building, rebuilding, remodeling or repairing public schools and public buildings;

3. Maintaining and improving state and municipal parks, historical sites and cemeteries; and

4. Building, rebuilding, remodeling or repairing jails, juvenile facilities and prisons.

D. To the extent possible, the prior training, experience, skills and abilities of a participant of this program shall be

utilized in making appropriate work experience assignments. The Jobs Recovery Program established under this act shall provide:

1. Appropriate standards for health, safety and other conditions applicable to the performance of work;
2. That the program does not result in displacement of persons currently employed, or the filling of established unfilled position vacancies;
3. Reasonable conditions of work, taking into account the geographic region, the residence of the participants and the proficiency of the participants;
4. That participants will not be required, without their consent, to travel an unreasonable distance from their homes or remain away from their homes overnight; and
5. Appropriate workers' compensation protection to each participant performing work under this program.

E. The Jobs Recovery Program may include any public project which is contracted by a private sector contractor, subject to the following requirements:

1. A contractor who commits to utilize on a particular project a labor force of which at least one-half is comprised of participants of this program shall be preferred in the awarding of public contracts when his bid and the bid of a nonparticipating contractor are equal in all respects and are the low bids. To the extent permitted by law public funds from this program will compensate the contractor for at least one-half of the labor costs for participants in the Jobs Recovery Program for a period not exceeding six (6) months for any project;
2. Contractors participating in this program shall meet the requirements as stipulated in subsection D of this section; and
3. Contractors participating in this program shall give priority consideration to qualified participants of this program when established position vacancies occur.

F. Eligible participants for the Jobs Recovery Program shall be those unemployed persons who have exhausted all state and federal unemployment benefits, as certified by the Oklahoma Employment Security Commission, and/or those economically disadvantaged.

G. Notwithstanding any other provision of law, participation in the Jobs Recovery Program under this act shall be voluntary only, and in no event shall any person be subject to legal sanctions for nonparticipation.

Added by Laws 1988, c. 219, § 1, emerg. eff. June 21, 1988.

§40-482. Federal and private sector funds to be sought.

A. The Oklahoma Employment Security Commission shall seek any federal funds available for the implementation of the Jobs Recovery Program, including, but not limited to, funds available from grants or work and training programs.

B. The Oklahoma Employment Security Commission shall seek any private sector funds available for the implementation of the Jobs Recovery Program, including, but not limited to, funds available from donations or grants.

Added by Laws 1988, c. 219, § 2, emerg. eff. June 21, 1988.

§40-483. Administration of Job Training Partnership Act - Transfer to Employment Security Commission.

The duties and responsibilities currently performed by the Oklahoma Department of Commerce with regards to administration of the Job Training Partnership Act of 1982, 29 U.S.C., Section 1501 et seq., and all related property, records and personnel, are hereby transferred to the Oklahoma Employment Security Commission.

Employees transferred to the Oklahoma Employment Security Commission shall be classified and subject to the provisions of the Merit System of Personnel Administration as provided for in the Oklahoma Personnel Act. Such employees shall retain membership in the Health Insurance Plan, Dental Insurance Plan and Life Insurance Plan created pursuant to the Oklahoma Employees Insurance and Benefits Act, or Health Maintenance Organization (HMO) Plans approved by the State and Education Employees Group Insurance Board.

Added by Laws 1989, c. 313, § 11, operative July 1, 1989. Amended by Laws 1992, c. 19, § 1, emerg. eff. March 30, 1992; Laws 2014, c. 73, § 1, eff. July 1, 2014.

§40-500. Nonsmoking as condition of employment.

A. It shall be unlawful for an employer to:

1. Discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual is a nonsmoker or smokes or uses tobacco products during nonworking hours; or

2. Require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours.

B. Nothing in this section shall prohibit an employer from offering incentives to an employee to participate in wellness programs, including, but not limited to, smoking cessation programs, in conjunction with the employer providing the employee health insurance coverage.

Added by Laws 1991, c. 172, § 11, emerg. eff. May 8, 1991. Amended by Laws 1991, c. 295, § 3, emerg. eff. May 29, 1991; Laws 2013, c. 103, § 2, eff. Nov. 1, 2013, and c. 269, § 25, eff. Nov. 1, 2013.

NOTE: Laws 2013, c. 103, § 2 and Laws 2013, c. 269, § 25 made virtually identical changes to this section.

§40-501. Construction of act - Conditions relating to smoking.

The provisions of Sections 11 through 14 of this act shall not be construed to prevent an employer from prescribing conditions with regard to smoking while on the job or on the premises of the employer.

Added by Laws 1991, c. 172, § 12, emerg. eff. May 8, 1991.

§40-502. Application of act - Restriction on smoking as bona fide occupational requirement or part of collective bargaining agreement.

The provisions of Sections 11 through 14 of this act shall not apply when the restriction on smoking relates to a bona fide occupational requirement or an applicable collective bargaining agreement which prohibits or allows off-duty use of tobacco products.

Added by Laws 1991, c. 172, § 13, emerg. eff. May 8, 1991.

§40-503. Action for damages - Costs and attorney fees.

A. The sole remedy for any individual claiming to be aggrieved by a violation of Section 11 of this act shall be a civil action for damages which shall include all wages and benefits deprived the individual by reason of the violation.

B. The court shall award the prevailing party in such action court costs and reasonable attorney fees.

Added by Laws 1991, c. 172, § 14, emerg. eff. May 8, 1991.

§40-551. Standards for Workplace Drug and Alcohol Testing Act.

Sections 551 through 563 of this title shall be known and may be cited as the "Standards for Workplace Drug and Alcohol Testing Act". Added by Laws 1993, c. 355, § 1, emerg. eff. June 10, 1993. Amended by Laws 2011, c. 180, § 1, eff. Nov. 1, 2011.

§40-552. Definitions.

As used in the Standards for Workplace Drug and Alcohol Testing Act:

1. "Alcohol" means ethyl alcohol or ethanol;
2. "Applicant" means a person who has applied for a position with an employer and received a conditional offer of employment;
3. "Board" means the State Board of Health;
4. "Confirmation test" means a drug or alcohol test on a sample to substantiate the results of a prior drug or alcohol test on the same sample and which uses different chemical principles and is of equal or greater accuracy than the prior drug or alcohol test. Where a breathalyzer test is utilized, a confirmation test means a second sample test that confirms the prior result. Where a single-use test is utilized, a confirmation test means a second test confirmed by a testing facility. A breath or blood specimen may be used for the confirmation test for alcohol. A urine, saliva or blood specimen may be used for the confirmation test for drugs;

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

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

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

8. "Employee" means any person who supplies labor for remuneration to his or her employer in this state and shall not include an independent contractor, subcontractor or employees of an independent contractor; provided, however, an independent contractor, subcontractor, or employees of an independent contractor, may be subject to a workplace drug or alcohol testing policy under the terms of the contractual agreement when the drug or alcohol testing policy applies to other workers at the job site or workers who are in the same or similar classification or group;

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

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

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

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

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

Added by Laws 1993, c. 355, § 2, emerg. eff. June 10, 1993. Amended by Laws 2000, c. 335, § 1, emerg. eff. June 6, 2000; Laws 2005, c. 190, § 5, eff. Sept. 1, 2005; Laws 2011, c. 180, § 2, eff. Nov. 1, 2011; Laws 2012, c. 196, § 17, emerg. eff. May 8, 2012; Laws 2019, c. 11, § 24.

NOTE: Laws 2005, c. 134, § 1 repealed by Laws 2012, c. 196, § 22, emerg. eff. May 8, 2012.

§40-553. Construction of act.

A. The Standards for Workplace Drug and Alcohol Testing Act shall not be construed as requiring or encouraging employers to conduct drug or alcohol testing.

B. Except as provided in subsection C of this section, employers who choose to conduct drug or alcohol testing of job applicants or persons employed in this state shall be governed by the provisions of this act and the rules promulgated pursuant thereto.

C. Drug or alcohol testing required by and conducted pursuant to federal law or regulation shall be exempt from the provisions of the Standards for Workplace Drug and Alcohol Testing Act and the rules promulgated pursuant thereto.

D. This act shall not be construed as preventing the negotiation of collective bargaining agreements that provide greater protection to employees or applicants than is provided by this act. Added by Laws 1993, c. 355, § 3, emerg. eff. June 10, 1993.

§40-554. Drug or alcohol testing by employers - Restrictions.

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

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

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

- a. drugs or alcohol on or about the employee's person or in the employee's vicinity,
- b. conduct on the employee's part that suggests impairment or influence of drugs or alcohol,
- c. a report of drug or alcohol use while at work or on 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 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,
- 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; and

6. Post-rehabilitation testing: A public or private employer may request or require an employee to undergo drug or alcohol testing for a period of up to two (2) years commencing with the employee's return to work, following a positive test or following participation in a drug or alcohol dependency treatment program. Added by Laws 1993, c. 355, § 4, emerg. eff. June 10, 1993. Amended by Laws 2001, 1st Ex. Sess., c. 3, § 1, emerg. eff. Oct. 23, 2001; Laws 2005, 1st Ex. Sess., c. 1, § 4, eff. July 1, 2005; Laws 2008, c. 132, § 11, eff. Nov. 1, 2008; Laws 2011, c. 180, § 3, eff. Nov. 1, 2011; Laws 2012, c. 196, § 18, emerg. eff. May 8, 2012.

§40-555. Written policy required - Notice of policy changes - Distribution.

A. Any employer that requests or requires an applicant or employee to undergo drug or alcohol testing shall first adopt a written policy setting forth the specifics of its drug or alcohol testing program, which may include, but is not limited to, the following information:

1. A statement of the employer's policy respecting drug or alcohol use by employees;

2. Which applicants and employees are subject to testing;

3. Circumstances under which testing may be requested or required;

4. Substances which may be tested. It shall be sufficient for an employer to state in the written policy that the substances tested shall be for drugs and alcohol;

5. Testing methods and collection procedures to be used;

6. Consequences of refusing to undergo testing;

7. Potential adverse personnel action which may be taken as a result of a positive test result;

8. The ability of an applicant and employee to explain, in confidence, the test results;

9. The ability of an applicant and employee to obtain copies of all information and records related to that individual's testing;

10. Confidentiality requirements; and

11. The available appeal procedures.

B. An employer who implements a drug or alcohol testing policy or changes its policy, shall provide at least ten (10) days' notice to its employees and shall provide a copy of its policy to each applicant upon his or her acceptance of employment by:

1. Hand-delivery of a paper copy of the policy or changes to the policy;

2. Mailing a paper copy of the policy or changes to the policy through the U.S. Postal Service or a parcel delivery service to the last address given by the employee or applicant;

3. Electronically transmitting a copy of the policy through an e-mail or by posting on the employer's website or intranet site; or

4. Posting a copy in a prominent employee access area.

Added by Laws 1993, c. 355, § 5, emerg. eff. June 10, 1993. Amended by Laws 2007, c. 78, § 2, eff. Nov. 1, 2007; Laws 2008, c. 132, § 12, eff. Nov. 1, 2008; Laws 2011, c. 180, § 4, eff. Nov. 1, 2011.

§40-556. Time of employer testing - Payment of costs.

Any drug or alcohol testing by an employer shall be deemed work time for purposes of compensation and benefits for current employees.

An employer shall pay all costs of testing for drugs or alcohol required by the employer. Provided, however, if an employee or applicant requests a confirmation test of a sample within twenty-four (24) hours of receiving notice of a positive test in order to challenge the results of a positive test, the employee or applicant shall pay all costs of the confirmation test, unless the confirmation test reverses the findings of the challenged positive test. In such case, the employer shall reimburse the individual for the costs of the confirmation test.

Added by Laws 1993, c. 355, § 6, emerg. eff. June 10, 1993. Amended by Laws 2011, c. 180, § 5, eff. Nov. 1, 2011.

§40-557. Licensure and regulation of testing facilities - Alternative testing methods.

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

1. Qualifications of testing facilities which shall include the requirement that facilities doing urine analysis tests be certified for forensic urine drug testing pursuant to guidelines or regulations of the federal Department of Health and Human Services or be accredited for forensic urine drug testing by the College of American Pathologists or other organizations recognized by the State Board of Health;

2. Qualifications of testing facility personnel; and

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

B. Nothing in the Standards for Workplace Drug and Alcohol Testing Act shall be construed as prohibiting an employer from adopting a policy which allows for testing for drugs or alcohol by

another method which is reasonably calculated to detect the presence of drugs or alcohol, including, but not limited to, breathalyzer testing, testing by use of a single-use test device, known as an on-site or quick testing device, to collect, handle, store and ship a sample collected for testing.

Added by Laws 1993, c. 355, § 7, emerg. eff. June 10, 1993. Amended by Laws 2006, c. 277, § 3, eff. Nov. 1, 2006; Laws 2011, c. 180, § 6, eff. Nov. 1, 2011; Laws 2012, c. 196, § 19, emerg. eff. May 8, 2012.

§40-558. Licensing of testing facilities - Fees - Administrative fines.

A. On and after July 1, 1994, no testing facility shall provide laboratory services to an employer to test for the presence or absence of drugs or alcohol unless it meets the qualifications established for testing facilities pursuant to Section 7 of this act and is licensed by the State Department of Health to perform such tests. The State Board of Health shall promulgate rules relating to the issuance of such license, including rules governing license revocation, suspension and nonrenewal.

B. The fees for licensure of testing facilities by the State Department of Health shall be set by the State Board of Health and shall not be more than One Hundred Fifty Dollars (\$150.00) annually.

C. Any testing facility providing laboratory services to an employer to test for the evidence of drugs or alcohol which is not licensed by the State Department of Health pursuant to this section shall be subject to an administrative fine of not more than Five Hundred Dollars (\$500.00) for each offense. Each test performed by the unlicensed testing facility in violation of this section shall constitute a separate offense.

Added by Laws 1993, c. 355, § 8, emerg. eff. June 10, 1993.

§40-559. Sample collection and testing - Conditions.

All sample collection and testing for drugs and alcohol pursuant to the provisions of this act shall be conducted in accordance with the following conditions:

1. Samples shall be collected and tested only by individuals deemed qualified by the State Board of Health and may be collected on the premises of the employer;

2. Only samples deemed appropriate by the State Board of Health for drug and alcohol testing shall be collected;

3. The collection of samples shall be performed under reasonable and sanitary conditions;

4. A sample shall be collected in sufficient quantity for splitting into two separate specimens, pursuant to rules of the State Board of Health, to provide for any subsequent independent

analysis in the event of challenge of the test results of the main specimen;

5. Samples shall be collected and tested with due regard to the privacy of the individual being tested. In the instances of urinalysis, no employer or representative, agent or designee of the employer shall directly observe an applicant or employee in the process of producing a urine sample; provided, however, collection shall be in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;

6. Sample collection shall be documented, and the documentation procedures shall include:

- a. labeling of samples so as reasonably to preclude the probability of erroneous identification of test results, and
- b. an opportunity for the applicant or employee to provide notification of any information which the applicant or employee considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant information;

7. Sample collection, storage, and transportation to the testing facility shall be performed so as reasonably to preclude the probability of sample contamination or adulteration;

8. Sample testing shall conform to scientifically accepted analytical methods and procedures. Testing shall include confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy as approved by Board rule, at the cutoff levels as determined by Board rule, before the result of any test may be used as a basis for refusal to hire a job applicant or any action by an employer pursuant to Section 12 of this act; and

9. A written record of the chain of custody of the sample shall be maintained from the time of the collection of the sample until the sample is no longer required.

Added by Laws 1993, c. 355, § 9, emerg. eff. June 10, 1993.

§40-559.1. Results of single-use tests – Report of information to employer's review officer.

A. A testing facility shall report single-use test results that meet the standard to be sent to the laboratory for confirmation testing to an employer's review officer, or a designee of the employer's review officer, as soon as the results for the single-use test become available or the next working day. The final conclusion of the testing, which shall include the results of the single-use tests, confirmatory tests, or quality control data, shall be reviewed and the test certified as an accurate report by the

responsible individual. The report shall identify the drugs and metabolites tested for, whether positive or negative, and the cutoff for each, the specimen number assigned by the employer, and the testing facility specimen identification number.

B. The drug screen testing facility shall report as negative all specimens which are negative on the single-use test or negative on the confirmatory test. Only specimens confirmed positive shall be reported as positive for a specific drug.

C. The review officer may request from the certified laboratory, and the certified laboratory shall provide, quantitation of test results. The review officer shall not disclose quantitation of test results to the employer but shall report only whether the test was positive or negative.

D. The drug screen testing facility may transmit results to the review officer by electronic means, including teleprinters, facsimile, or computer, in a manner designed to ensure confidentiality of the information. Results shall not be provided verbally by telephone. The drug screen testing facility shall ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

E. The certified laboratory shall send to the review officer the positive drug test results, which shall be signed by the individual responsible for the day-to-day management of the certified laboratory or the individual responsible for attesting to the validity of the test reports.

Added by Laws 2023, c. 261, § 1, eff. Nov. 1, 2023.

§40-560. Drug and alcohol test records - Disclosure.

A. Records of all drug and alcohol test results and related information maintained by the employer shall be the property of the employer and, upon the request of the applicant or employee tested, shall be made available for inspection and copying to the applicant or employee. Except as provided in subsection B of this section, an employer shall not release such records to any person other than the applicant, employee or the review officer.

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

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

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

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

C. A testing facility, or any agent, representative or designee of the facility, or any review officer, shall not disclose to any employer, based on the analysis of a sample collected from an applicant or employee for the purpose of testing for the presence of drugs or alcohol, any information relating to the general health, pregnancy or other physical or mental condition of the applicant or employee.

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

Added by Laws 1993, c. 355, § 10, emerg. eff. June 10, 1993.

Amended by Laws 2011, c. 180, § 7, eff. Nov. 1, 2011; Laws 2012, c. 196, § 20, emerg. eff. May 8, 2012.

§40-561. Repealed by Laws 2011, c. 180, § 10, eff. Nov. 1, 2011.

§40-562. Disciplinary actions.

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

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

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

Added by Laws 1993, c. 355, § 12, emerg. eff. June 10, 1993.

Amended by Laws 2011, c. 180, § 8, eff. Nov. 1, 2011; Laws 2012, c. 196, § 21, emerg. eff. May 8, 2012.

§40-563. Willful violation of act - Civil actions - Remedies.

A. Any person aggrieved by a willful violation of the Standards for Workplace Drug and Alcohol Testing Act may institute a civil action in a court of competent jurisdiction within one (1) year of the alleged willful violation or be barred from obtaining the relief provided for in subsection B of this section. A willful violation of the Standards for Workplace Drug and Alcohol Testing Act requires proof by the preponderance of the evidence that the employer had a specific intent to violate the act.

B. A prevailing party may be awarded lost wages to which the person would have been entitled and an additional equal amount as liquidated damages. Interim earnings or amounts earnable with

reasonable diligence by the aggrieved person shall operate to reduce the lost wages otherwise allowable. Reasonable costs and attorney fees may be awarded to the prevailing party, whether plaintiff or defendant.

Added by Laws 1993, c. 355, § 13, emerg. eff. June 10, 1993.

Amended by Laws 2011, c. 180, § 9, eff. Nov. 1, 2011.

§40-564. Repealed by Laws 2011, c. 180, § 10, eff. Nov. 1, 2011.

§40-565. Repealed by Laws 2011, c. 180, § 10, eff. Nov. 1, 2011.

§40-600.1. Short title - Legislative findings.

A. This act shall be known and may be cited as the "Oklahoma Professional Employer Organization Recognition and Registration Act".

B. The Legislature hereby finds:

1. That professional employer organizations provide a valuable service to commerce and the citizens of this state by increasing the opportunities of employers to develop cost-effective methods of satisfying their personnel requirements and providing employees with access to certain employment benefits which might otherwise not be available to them;

2. That professional employer organizations operating in this state should be properly recognized and regulated by the Department of Insurance of this state, as provided in this act; and

3. That any allocation of the employer's duties and responsibilities pursuant to this act will preserve all rights to which their covered employees would be entitled under a traditional employment relationship.

Added by Laws 2002, c. 64, § 1, eff. Nov. 1, 2002.

§40-600.2. Definitions.

1. "Client" means any person who enters into a coemployment relationship as a coemployer with a professional employer organization (PEO);

2. "Coemployer" means either a PEO or a client;

3. "Coemployment relationship" means:

a. as between coemployers, a relationship whereby the rights, duties and obligations of an employer which arise out of an employment relationship have been allocated between coemployers pursuant to a professional employer agreement and the Oklahoma Professional Employer Organization Recognition and Registration Act, and which is intended to be an ongoing relationship, rather than a temporary or project specific relationship, and

- b. as between each PEO and a covered employee as to which a professional employer agreement applies, an employment relationship whereby:
 - (1) such PEO is entitled to enforce those rights, and obligated to perform those duties and obligations, allocated to such PEO by the professional employer agreement and the Oklahoma Professional Employer Organization Recognition and Registration Act, and
 - (2) such covered employee is entitled to enforce against such PEO those duties and obligations allocated to the PEO by the professional employer agreement and the Oklahoma Professional Employer Organization Recognition and Registration Act;
- c. as between each client and a covered employee to which a professional employer agreement applies and employment relationship whereby:
 - (1) such client is entitled to enforce those rights, and obligated to provide and perform those employer obligations allocated to such client by the professional employer agreement and the Oklahoma Professional Employer Organization Recognition and Registration Act and whereby such client is responsible for any employer right or obligation not otherwise allocated by the professional employer agreement of the Oklahoma Professional Employer Organization Recognition and Registration Act, and
 - (2) such covered employee is entitled to enforce against such client those duties and obligations allocated to the client by the professional employer agreement and the Oklahoma Professional Employer Organization Recognition and Registration Act and any other duties and obligations of an employer not otherwise allocated by the professional employer agreement or the Oklahoma Professional Employer Organization Recognition and Registration Act;

4. "Commissioner" means the Insurance Commissioner of the State of Oklahoma;

5. "Covered Employee" means an individual having a coemployment relationship with a PEO and a client who have entered into a professional employer agreement with respect to such person, and shall include the client's officers, directors, shareholders, partners and managers to the extent such persons act as operational managers or perform services for the client;

6. "Department" means the Department of Insurance of the State of Oklahoma;

7. "Person" means any individual, partnership, corporation, limited liability company, association, or any other form of legally recognized entity;

8. "Professional employer agreement" means a written contract by and between a client and a PEO under which the PEO and the client agree to establish a coemployment relationship and which satisfies the requirements of subsection C of Section 7 of this act;

9. "Professional Employer Organization" or PEO means any person engaged in the business of providing professional employer services. A person engaged in the business of providing professional employer services shall be subject to registration under the Oklahoma Professional Employer Organization Recognition and Registration Act regardless of its use of the term "professional employer organization", "PEO", "staff leasing company", "registered staff leasing company", "employee leasing company", or any other name;

10. "Professional employer services" means the service of entering into coemployment relationships under the Oklahoma Professional Employer Organization Recognition and Registration Act, in which, except in isolated instances, all or a majority of the employees providing services to a client or to a division or work unit of client are covered employees;

11. "Registrant" means a PEO registered under the Oklahoma Professional Employer Organization Recognition and Registration Act; and

12. "Temporary help services" means a service whereby a person hires workers and assigns them to a person for a temporary time period or nonpermanent basis to support or supplement the other person's workforce in special work situations such as, but not limited to, employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects. Temporary help services shall not be deemed professional employer services. Added by Laws 2002, c. 64, § 2, eff. Nov. 1, 2002.

§40-600.3. Effect of act on collective bargaining agreements, licensing, and tax credits.

A. Collective bargaining agreements. Nothing contained in the Oklahoma Professional Employer Organization Recognition and Registration Act or in any professional employer agreement shall affect, modify or amend any collective bargaining agreement, or the rights or obligations of any client, PEO, or covered employee under the National Labor Relations Act.

B. Licensing. Nothing contained in the Oklahoma Professional Employer Organization Recognition and Registration Act or any professional employer agreement shall affect, modify or amend any

state, local, or federal licensing, registration, or certification requirement applicable to any client or covered employee.

C. Licensed employees. A covered employee who must be licensed, registered, or certified according to law or regulation is deemed solely an employee of the client for purposes of any such license, registration, or certification requirement.

D. Licensed activities. A PEO shall not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity solely by entering into and maintaining a coemployment relationship with a covered employee who is subject to such requirements or regulation.

E. Tax credits and other incentives. For purposes of determination of tax credits and other economic incentives provided by this state and based on employment, covered employees shall be deemed employees solely of the client. A client shall be entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of covered employees of such client. Each PEO will provide, upon request by a client, employment information reasonably required by any agency or department of this state responsible for administration of any such tax credit or economic incentive and necessary to support any request, claim, application, or other action by a client seeking any such tax credit or economic incentive.

Added by Laws 2002, c. 64, § 3, eff. Nov. 1, 2002.

§40-600.4. Registration - De minimus exemption.

A. Registration required. Except as otherwise provided in the Oklahoma Professional Employer Organization Recognition and Registration Act, no person shall, unless the person is registered as a PEO or PEO Group under the Oklahoma Professional Employer Organization Recognition and Registration Act, provide, advertise, or otherwise hold itself out as providing professional employer services in this state.

B. Registration information.

1. Each PEO or PEO Group required to be registered under the Oklahoma Professional Employer Organization Recognition and Registration Act shall electronically submit a complete registration application to the Insurance Commissioner in a manner and form prescribed by the Commissioner, along with any applicable fees. Pursuant to paragraph 2 of this subsection, a PEO or PEO Group may use a qualified assurance organization as approved by the Commissioner to provide services related to the registration of the PEO or PEO Group. A PEO or PEO Group may authorize an assurance organization to act on behalf of the PEO or PEO Group in complying with the registration requirements set forth in the Oklahoma Professional Employer Organization Recognition and Registration Act,

including, but not limited to, electronic filings of information and payment of registration fees. At a minimum, PEOs, PEO Groups or an approved assurance organization acting on behalf of the PEO or PEO Group, shall provide the following information:

- a. the name or names under which the PEO or PEO Group conducts business,
- b. the address of the principal place of business of the PEO or PEO Group and the address of each office it maintains in this state,
- c. the PEO's or PEO Group's taxpayer or employer identification number,
- d. a list by jurisdiction of each name under which the PEO or PEO Group has operated in the preceding five (5) years, including any alternative names, names of predecessors and, if known, successor business entities,
- e. a statement of ownership, which shall include the name and evidence of the business experience of any person that, individually or acting in concert with one or more other persons, owns or controls, directly or indirectly, twenty-five percent (25%) or more of the equity interests of the PEO or PEO Group,
- f. a statement of management, which shall include the name and evidence of the business experience of any person who serves as president, chief executive officer, or otherwise has the authority to act as senior executive officer of the PEO or PEO Group, and
- g. a financial statement setting forth the financial condition of the PEO or PEO Group, as of a date not earlier than three hundred sixty-five (365) days prior to the date submitted to the Commissioner, prepared in accordance with generally accepted accounting principles, and audited or reviewed by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located. A PEO Group may submit combined or consolidated audited or reviewed financial statements to meet the requirements of this section.

2. The financial statement required by subparagraph g of paragraph 1 of this subsection may be dated as of a date that is not earlier than three hundred sixty-five (365) days before the date on which the application is submitted in the event the PEO or PEO Group provides the following:

- a. evidence that is acceptable to the Commissioner that it is licensed or registered in good standing in another state with equal or greater requirements than

- the requirements of the Oklahoma Professional Employer Organization Recognition and Registration Act,
- b. quarterly financial statements of management for each calendar quarter as of the most recent audit that demonstrate continuing financial operations acceptable to the Commissioner, and
 - c. the certification of an independent Certified Public Accountant that as of the end of the most recent calendar quarter, the PEO or PEO Group has paid all of its state and federal payroll taxes, health and workers' compensation premiums, and contributions to employee retirement plans in a timely and appropriate manner.

3. For purposes of the Oklahoma Professional Employer Organization Recognition and Registration Act, "assurance organization" means an independent entity approved by the Commissioner to certify the qualifications of a PEO or PEO Group for registration under this section and Section 600.6 of this title and any related requirements and procedures. To be considered for approval as an independent and qualified assurance organization, the assurance organization shall submit a written request for approval to the Commissioner. The written request shall include, but not be limited to, the following:

- a. evidence that the assurance organization is independent and has an established national program for the accreditation and financial assurance of PEOs and PEO Groups based on requirements similar to the requirements of the Oklahoma Professional Employer Organization Recognition and Registration Act, and any rules promulgated for the implementation of the Oklahoma Professional Employer Organization Recognition and Registration Act,
- b. evidence that the assurance organization has documented qualifications, standards, procedures, and financial assurance acceptable to the Commissioner and is licensed or otherwise approved by one or more states to certify the qualifications of PEOs or PEO Groups,
- c. an agreement to provide information, compliance monitoring services, and a level of financial assurance as deemed acceptable by the Commissioner,
- d. an agreement to provide the Commissioner with an application that has been executed by each PEO or PEO Group requesting alternative registration under this section and Section 600.6 of this title and related requirements and procedures in a form approved by the Commissioner. The application shall:

- (1) authorize the assurance organization to share with the Commissioner any application and compliance reporting information required under the Oklahoma Professional Employer Organization Recognition and Registration Act that has been provided to the assurance organization by the PEO or PEO Group,
 - (2) authorize the Commissioner to accept information shared by the assurance organization for registration or renewal of registration of the PEO or PEO Group as if the information was provided directly to the Commissioner by the PEO or PEO Group,
 - (3) provide the certification of the PEO or PEO Group that the information provided by the assurance organization to the Commissioner is true and complete and that the PEO or PEO Group is in full and complete compliance with all requirements of the Oklahoma Professional Employer Organization Recognition and Registration Act, and
 - (4) provide the certification of the assurance organization that the PEO or PEO Group is in compliance with the standards and procedures of the assurance organization which are similar to the requirements of the Oklahoma Professional Employer Organization Recognition and Registration Act and is qualified for registration or renewal of registration under the Oklahoma Professional Employer Organization Recognition and Registration Act,
- e. an agreement to provide written notice to the Commissioner within two (2) business days of determination by the assurance organization of the failure of a PEO or PEO Group to meet the qualifications for registration under the Oklahoma Professional Employer Organization Recognition and Registration Act or determination by the assurance organization of the failure of the PEO or PEO Group to meet the qualifications for accreditation or certification by the assurance organization, and
- f. an agreement to share with the Commissioner in a timely manner the information and supporting documentation provided to the assurance organization by the PEO or PEO Group similar to the information and documentation required for registration or renewal of registration under the Oklahoma Professional Employer Organization Recognition and Registration Act.

4. Each person, PEO, or PEO Group shall electronically submit, in a form and manner prescribed by the Commissioner, along with any applicable fees, any change of legal business name, "doing business as" or assumed name, address, or contact email address within thirty (30) days after the change occurred. Any submission of a change of legal name, "doing business as" or assumed name, address, or contact email address received more than thirty (30) days after the change occurred shall be accompanied by a fee of Fifty Dollars (\$50.00).

C. Renewal. 1. A registration expires one (1) year following the registration unless it is renewed pursuant to this subsection. Before expiration of the registration, a registrant may renew the registration for an additional one-year term if the registrant:

- a. remains in good standing and otherwise is entitled to be registered pursuant to the Oklahoma Professional Employer Organization Recognition and Registration Act,
- b. files with the Commissioner a renewal application on a form prescribed by the Commissioner, and
- c. pays to the Commissioner a renewal fee as provided for in Section 600.5 of this title.

2. A registration expired for failure to submit a renewal application may be reinstated within ninety (90) days after the expiration date by electronically submitting a fee in an amount that is twice the amount of the renewal fee and a renewal application in the form and manner prescribed by the Insurance Commissioner, along with any transaction or other applicable fees. The Commissioner shall require a person, PEO, or PEO Group whose registration has been expired for more than ninety (90) days to reapply as if a new applicant and pay an application fee equal to an amount that is twice the initial application fee in addition to any fines imposed. All applications received after the registration has been expired for more than ninety (90) days shall include a detailed report of professional employer services provided in this state during the period of expired registration.

D. Group registration. Any two or more PEOs held under common control of any other person or persons acting in concert may be registered as a PEO Group. A PEO Group may satisfy any reporting and financial requirements of this registration law on a consolidated basis.

E. Electronic filing and compliance. A PEO, PEO Group or an approved independent and qualified assurance organization as provided for in subsection B of this section may electronically submit filings in conformance with Sections 15-101 through 15-121 of Title 12A of the Oklahoma Statutes. Electronically submitted filings include, but are not limited to, applications, documents, reports, and other filings required under the Oklahoma Uniform Electronic Transactions Act.

F. De minimis exemption.

1. A PEO is exempt from the registration requirements payable under the Oklahoma Professional Employer Organization Recognition and Registration Act if such PEO:

- a. submits a properly executed request for exemption on a form provided by the Department,
- b. is domiciled outside this state and is licensed or registered as a professional employer organization in another state that has the same or greater requirements as the Oklahoma Professional Employer Organization Recognition and Registration Act,
- c. does not maintain an office in this state or solicit in any manner clients located or domiciled within this state, and
- d. does not have more than twenty-five covered employees employed or domiciled in this state.

2. An exemption of a professional employer organization from the registration requirements under the Oklahoma Professional Employer Organization Recognition and Registration Act shall be valid for one (1) year, subject to renewal.

G. List. The Commissioner shall maintain a list of professional employer organizations registered or exempted under the Oklahoma Professional Employer Organization Recognition and Registration Act and a list of approved assurance organizations.

H. Forms. The Commissioner may prescribe forms necessary to promote the efficient administration of this section.

I. The Commissioner is authorized to promulgate reasonable rules necessary for the administration and implementation of this section.

J. Every person, PEO, or PEO Group, upon receipt of any inquiry from the Commissioner, shall, within twenty (20) days from the date of receipt of the inquiry, furnish the Commissioner with an adequate response to the inquiry.

K. The Commissioner may reject an application for registration, renewal of registration, or for an exemption from registration if the Commissioner finds that:

1. The application is not fully completed or properly executed;
2. Documents required to supplement the application are not included in the application packet or are inadequate;
3. The registration fee is not submitted with the application;
4. The applicant or any person named in the application misrepresents material in the application;
5. The applicant, or any of its officers, is determined by the Commissioner to lack good moral character, business integrity, or financial responsibility; or

6. The controlling person has violated a provision of the Oklahoma Professional Employer Organization Recognition and Registration Act or rules promulgated thereto. Added by Laws 2002, c. 64, § 4, eff. Nov. 1, 2002. Amended by Laws 2010, c. 222, § 53, eff. Nov. 1, 2010; Laws 2012, c. 238, § 1, eff. Nov. 1, 2012; Laws 2023, c. 217, § 1, eff. Nov. 1, 2023.

§40-600.5. Registration fees.

A. Initial registration. Upon filing an initial registration statement under the Oklahoma Professional Employer Organization Recognition and Registration Act, a PEO shall pay an initial registration fee of Five Hundred Dollars (\$500.00).

B. Initial Group Registration. Upon filing an initial Group registration statement pursuant to the Oklahoma Professional Employer Organization Recognition and Registration Act, the PEO Group shall pay an initial registration fee of Five Hundred Dollars (\$500.00) per member of the PEO Group.

C. Renewal. Upon each annual renewal of a registration statement filed under the Oklahoma Professional Employer Organization Recognition and Registration Act, a PEO shall pay a renewal fee of Two Hundred Fifty Dollars (\$250.00).

D. Renewal. Upon each annual renewal of a Group registration statement filed under the Oklahoma Professional Employer Organization Recognition and Registration Act, a PEO Group shall pay a renewal fee of Two Hundred Fifty Dollars (\$250.00) per member of the PEO Group.

E. Exemption. Each PEO exempt from registration under the terms of this subsection shall pay an exemption fee in the amount of Two Hundred Fifty Dollars (\$250.00) upon initial application for exemption and upon each annual renewal of the exemption. Added by Laws 2002, c. 64, § 5, eff. Nov. 1, 2002. Amended by Laws 2010, c. 222, § 54, eff. Nov. 1, 2010.

§40-600.6. Financial and tax requirements - Confidentiality.

A. Net worth and bonding. Each PEO shall maintain either:

1. A minimum net worth of Fifty Thousand Dollars (\$50,000.00), as reflected in the financial statements submitted to the Commissioner with the initial registration and each annual renewal; or

2. A bond or securities with a minimum market value of Fifty Thousand Dollars (\$50,000.00), held by a depository designated by the Commissioner, securing payment by the PEO of all taxes, wages, benefits or other entitlement due to or with respect to a covered employee, if the PEO does not make such payments when due. Any bond or securities deposited under this subsection shall not be included for the purpose of calculation of the minimum net worth required by this subsection.

B. Payroll tax payments. A PEO shall submit to the Commissioner, within ninety (90) days after the end of each calendar quarter, a statement by an independent certified public accountant that all applicable state payroll taxes for covered employees located in this state have been paid on a timely basis for that quarter.

C. Record confidentiality. All records, reports and other information obtained from a PEO under the Oklahoma Professional Employer Organization Recognition and Registration Act, except to the extent necessary for the proper administration of the Oklahoma Professional Employer Organization Recognition and Registration Act by the Department, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties.

Added by Laws 2002, c. 64, § 6, eff. Nov. 1, 2002.

§40-600.7. Contract requirements - Rights and duties of employer, employee, and client - Notice - Workers' compensation - Benefit plans - Liability - Sales tax.

A. Contractual relationship. Except as specifically provided in the Oklahoma Professional Employer Organization Recognition and Registration Act, the coemployment relationship between the client and the PEO, and between each coemployer and each covered employee, shall be governed by the professional employer agreement. Nothing contained in any professional employer agreement or the Oklahoma Professional Employer Organization Recognition and Registration Act shall be deemed to:

1. Diminish, abolish or remove rights of covered employees as to clients or obligations of such client as to a covered employee, existing prior to the effective date of a professional employer agreement;

2. Terminate an employment relationship existing prior to the effective date of a professional employer agreement; or

3. Create any new or additional enforcement right of a covered employee against a PEO not specifically allocated to such PEO in the professional employer agreement or the Oklahoma Professional Employer Organization Recognition and Registration Act.

B. Allocation of rights, duties and obligations. Except as specifically provided in the Oklahoma Professional Employer Organization Recognition and Registration Act or in the professional employer agreement, in each coemployment relationship:

1. The client shall be entitled to exercise all rights, and shall be obligated to perform all duties and responsibilities, otherwise applicable to an employer in an employment relationship; and

2. The PEO shall be entitled to exercise only those rights, and obligated to perform only those duties and responsibilities,

specifically required by the Oklahoma Professional Employer Organization Recognition and Registration Act or set forth in the professional employer agreement. The rights, duties, and obligations of the PEO as coemployer with respect to any covered employee shall be limited to those arising pursuant to the professional employer agreement and the Oklahoma Professional Employer Organization Recognition and Registration Act during the term of coemployment by the PEO of such covered employee.

C. Professional employer agreement requirements. Each professional employer agreement shall include, at a minimum, the following:

1. The PEO shall reserve a right of direction and control over the covered employees; provided, that the client may retain the right to exercise such direction and control over covered employees as is necessary to conduct the client's business, to discharge any fiduciary responsibility which it may have, or to comply with any applicable licensure requirements;

2. The PEO shall have responsibility to pay wages and salaries to covered employees; to withhold, collect, report, and remit payroll-related and unemployment taxes; and, to the extent the PEO has assumed responsibility in the professional employer agreement, to make payments for employee benefits for covered employees;

3. Both the PEO and the client shall retain authority to hire, terminate, and discipline the covered employees; and

4. The responsibility to obtain workers' compensation coverage for covered employees, from a carrier licensed to do business in this state and otherwise in compliance with all applicable requirements, shall be specifically allocated to either the client or the PEO. If such responsibility is allocated to the PEO under any such agreement, such agreement shall require that the PEO maintain and provide to the client, at the termination of the agreement if requested by the client, records regarding the premium and loss experience related to workers' compensation insurance provided to covered employees pursuant to such agreement.

D. Notice to covered employees. With respect to each professional employer agreement entered into by a PEO, such PEO shall provide written notice to each covered employee affected by such agreement of the general nature of the coemployment relationship between and among the PEO, the client, and such covered employee.

E. Workers' compensation. Both client and the PEO shall be considered the employer for the purpose of coverage under the Workers' Compensation Act and both the PEO and its client shall be entitled to protection of the exclusive remedy provision of the Workers' Compensation Act irrespective of which coemployer obtains such workers' compensation coverage.

F. Benefit plans.

1. A client and a PEO shall each be deemed an employer for purposes of sponsoring retirement and welfare benefit plans for its covered employees.

2. A welfare benefit plan offered to the covered employees of a single PEO shall not be considered a multiple employer welfare arrangement, or MEWA, as provided for in Section 633 of Title 36 of the Oklahoma Statutes, and shall be exempt from the licensing requirements contained in Section 634 of Title 36 of the Oklahoma Statutes.

3. For purposes of the Small Employer Health Reform Act, a PEO shall be considered the employer of all of its covered employees and all covered employees of one or more clients participating in a health benefit plan sponsored by a single PEO shall be considered employees of the PEO.

4. If a PEO offers to its covered employees any health benefit plan which is not fully insured by an authorized insurer, the plan shall:

- a. utilize a third-party administrator licensed to do business in this state,
- b. hold all plan assets, including participant contributions, in a trust account, and
- c. provide sound reserves for such plan as determined using generally accepted actuarial standards.

G. Limitations on liability. Except to the extent otherwise provided in a professional employer agreement:

1. A PEO shall not be liable for the acts, errors, or omissions of a client, or of any covered employee when such covered employee is acting under the direction and control of a client;

2. A client shall not be liable for the acts, errors, or omissions of a PEO, or of any covered employee of the client and a PEO when such covered employee is acting under the direction and control of the PEO;

3. Nothing in this subsection shall serve to limit any contractual liability or obligation specifically provided in a professional employer agreement, nor shall this subsection in any way limit the liabilities and obligations of any PEO or client as defined elsewhere in the Oklahoma Professional Employer Organization Recognition and Registration Act; and

4. A covered employee is not, solely as the result of being a covered employee of a PEO, an employee of the PEO for purposes of general liability, insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation, or liquor liability insurance carried by the PEO unless the covered employees are included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract, or bond.

H. Services not insurance. The sale of professional employer services provided by PEOs registered under the Oklahoma Professional Employer Organization Recognition and Registration Act shall not constitute the sale of insurance for purposes of Oklahoma Insurance Law.

I. Sales taxes. Covered employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee.

Added by Laws 2002, c. 64, § 7, eff. Nov. 1, 2002.

§40-600.8. Unemployment compensation contributions.

A. For purposes of the Employment Security Act of 1980, covered employees of a PEO are considered employees of the PEO during the term of the applicable professional employer agreement.

B. The PEO shall report and pay all required contributions to the unemployment compensation fund in accordance with the methods set out in Section 2 of this act.

Added by Laws 2002, c. 64, § 8, eff. Nov. 1, 2002. Amended by Laws 2014, c. 221, § 3, eff. Nov. 1, 2014.

§40-600.9. Refusal to register - Suspension or revocation of registration.

The Insurance Commissioner may, after notice and opportunity for hearing, refuse to register any person, suspend or revoke the registration of any professional employer organization, or impose administrative fines as provided for in the Oklahoma Professional Employer Organization Recognition and Registration Act if the Commissioner finds:

1. That the registrant or applicant has violated any of the provisions of this section, rules lawfully promulgated by the Commissioner, or the conditions of financial assurances required by this act;

2. That the registrant or applicant has engaged in a fraudulent, deceptive, or dishonest practice; or

3. For good and sufficient cause, that the registrant or applicant is unfit to be a professional employer organization within the meaning of this act or of any of the rules lawfully promulgated by the Commissioner.

Added by Laws 2012, c. 238, § 2, eff. Nov. 1, 2012.

§40-701. Contract between minor and union.

A. Except as provided by subsection B of this section, any contract or agreement between a minor and a union is not a valid contract or agreement and shall be null and void for any purpose including, but not limited to, official recognition by a union for

purposes of intent or interest by a minor to join, vote, or consent to any action of the union.

B. Any contract or agreement between a minor and a union shall be signed and adjoined by the parent or legal guardian of the minor. The minor, or parent or legal guardian of the minor, shall have the right to rescind the contract or agreement within ninety (90) days of the date of the contract or agreement.

C. Any funds received by a union in an attempt to contractually obligate a minor, without meeting the provisions set forth in subsection B of this section, shall be fully refunded to the minor within thirty (30) days after receipt of written notice from the minor, or parent or legal guardian of the minor. If the full amount of funds received by the union has not been refunded to the minor, or parent or legal guardian of the minor within thirty (30) days, the full amount of funds due shall double each successive thirty-day-period until such refund is made in full to the minor, or parent or legal guardian of the minor.

Laws 2011, c. 68, § 1, eff. Nov. 1, 2011.

§40-800. Occupational Licensing Review Act.

This act shall be known and may be cited as the "Occupational Licensing Review Act".

Added by Laws 2018, c. 242, § 1, eff. July 1, 2018.

§40-800.1. Occupational Licensing Advisory Commission -
Dissolution.

There is hereby created the Occupational Licensing Advisory Commission.

The Commission shall consist of twelve (12) members to be appointed and serve as follows:

1. The Commissioner of Labor shall serve coterminous with his or her office;

2. Two members of the House of Representatives shall be appointed by the Majority Leader of the House of Representatives. Each member shall serve an initial term of three (3) years;

3. One member of the House of Representatives shall be appointed by the Minority Leader of the House of Representatives, who shall serve an initial term of two (2) years;

4. Two members of the Senate shall be appointed by the Majority Leader of the Senate. Each member shall serve an initial term of three (3) years;

5. One member of the Senate shall be appointed by the Minority Leader of the Senate, who shall serve an initial term of two (2) years;

6. The Chief Information Officer of the Office of Management and Enterprise Services shall serve coterminous with his or her position;

7. Three members shall be appointed by the Governor, who shall represent an occupation or profession licensed in the state, and who shall each serve an initial term of one year. One appointee shall be a member of the medical community, which may include but is not limited to a licensed physician, pharmacist or psychologist. One appointee shall be a member of a trade profession, which may include but is not limited to a licensed alarm or locksmith professional or electrician. One appointee shall be a member of the business community, which may include but is not limited to a licensed public accountant or member of the real estate industry; and

8. One member shall be appointed by the Governor who shall represent a not-for-profit organization that advocates for low-income persons or disadvantaged persons and who shall serve an initial term of one year.

The Commission shall be subject to the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.

During membership on the Commission, no appointed member shall serve on any board, agency, committee or commission that regulates or governs the occupation or profession such member is appointed to represent.

Members shall serve staggered three-year terms, except for the initial term of office. Upon the expiration of a member's term of office, such member may be reappointed. No member shall serve more than two consecutive full three-year terms. Any member vacancy shall be filled in the same manner by the appointing authority for the unexpired term. A member may be removed by either the appointing authority or a majority of the Commission members for failure to attend meetings or for cause.

The Commissioner of Labor, or his or her designee, shall chair each meeting. The Department of Labor shall provide staff and administrative support to the Commission.

Seven members shall constitute a quorum for purposes of conducting the business of the Commission. Meetings shall be called by the chair and may be held by electronic media or in any location deemed appropriate by the chair.

The purpose of the Commission is to conduct a review of each occupational or professional licensing act in this state not less than once every four (4) years and make recommendations to the Legislature. The first meeting of the Commission shall be held before September 30, 2018, to develop a four-year schedule showing when each licensing act will be reviewed. Any new licensing act or new category of license enacted by the Legislature for regulation by an existing licensing board, agency or commission shall be added to the four-year schedule and shall be initially reviewed within ninety (90) days of enactment.

Annually the Commission shall hold at least one public meeting to present its findings on any occupational or professional license

it has reviewed. At the public meeting, the Commission shall allow public comments, make recommendations, and may vote whether to recommend to the Legislature that such license be maintained, modified, or repealed. The results of any public meeting held for the purpose of making legislative recommendations shall be provided in a written report to the Governor, President Pro Tempore of the Senate, and the Speaker of the House of Representatives prior to the legislative deadline set for requesting legislation for the upcoming legislative session. The report shall be made available on the Department of Labor's website for public inspection.

The provisions of this section shall cease to have the force and effect of law and the Commission shall be dissolved by operation of law on December 31, 2022.

Added by Laws 2018, c. 242, § 2, eff. July 1, 2018. Amended by Laws 2022, c. 401, § 1, eff. July 1, 2022.

§40-801. Voluntary Veterans' Preference Employment Policy Act.

A. This section shall be known and may be cited as the "Voluntary Veterans' Preference Employment Policy Act".

B. As used in this section:

1. "DD 214" means United States Department of Defense Form 214 or a similarly effective form issued by the Department relating to separation from military service;

2. "Private employer" means a business entity in the private sector of this state with one or more employees;

3. "Veteran" means a person who served on active duty in the Armed Forces of the United States who was discharged or released with an honorable discharge and registered with the veterans registry created by the Oklahoma Department of Veterans Affairs; and

4. "Veterans' preference employment policy" means a private employer's voluntary preference for hiring, promoting or retaining a veteran over another qualified applicant or employee.

C. A private employer may have a voluntary veterans' preference employment policy. The policy:

1. Shall be in writing; and

2. Shall be applied uniformly to employment decisions regarding hiring, promotion or retention during a reduction in force.

D. An employer may require that a veteran submit a DD 214 to a private employer with a veterans' preference employment policy to be eligible for the preference.

E. The granting of a veterans' preference pursuant to the provisions of this section shall not be deemed to violate any local or state equal employment opportunity law or regulation.

F. The Department of Veterans Affairs shall assist any private employer in determining if an applicant is a veteran to the extent permitted by law.

Added by Laws 2015, c. 45, § 1, eff. Nov. 1, 2015. Amended by Laws 2017, c. 229, § 7, eff. Nov. 1, 2020.

§40-900. Short title – Oklahoma Workforce Transformation Act.

This act shall be known and may be cited as the “Oklahoma Workforce Transformation Act”.

Added by Laws 2023, c. 361, § 1.

§40-901. Definitions.

As used in this act:

1. “Commission” means the Oklahoma Workforce Commission;
2. “Person” means any individual, group of individuals, or any partnership, corporation, association, cooperative, or employee thereof, or any other legal entity; and
3. “Governor’s Council for Workforce and Economic Development” means the State’s Workforce Investment Board established under the authority of Executive Order 2005-27 and Section 5003.10d of Title 74 of the Oklahoma Statutes.

Added by Laws 2023, c. 361, § 2.

§40-902. Creation of Oklahoma Workforce Commission.

There is hereby created the Oklahoma Workforce Commission. The purpose of the Commission is to coordinate the development of the workforce needed to grow Oklahoma’s economy and Oklahomans’ prosperity. To accomplish this purpose, the Commission is empowered to the fullest extent permitted by law to coordinate the funding and activities of each element of the state’s workforce development programs, systems, and entities; to achieve better alignment, accountability, and results for the state’s workforce development efforts; and to act as the principal point of contact regarding workforce development for public officials, businesses, and the public. In carrying out its work, the Commission shall consult officials, leaders, and experts in workforce development including, but not limited to, state and local agencies, departments, educational institutions, boards, commissions, the private sector, and other leaders and experts. The Commission shall convene advisory committees consisting of relevant state and local agencies, departments, educational institutions, boards, commissions, the private sector, and other officials as the Commission deems appropriate. It is the intent of the Legislature that the Commission shall serve as a coordinating body for workforce development entities in the state and that workforce development entities will fully participate in and cooperate with the Commission’s activities, but the Commission shall not directly exercise governing control of state and local agencies, departments, educational institutions, boards, commissions, and other workforce development entities except as otherwise prescribed by law.

Added by Laws 2023, c. 361, § 3.

§40-903. Commission membership.

A. The Oklahoma Workforce Commission shall consist of nine (9) members. The nine members shall be private sector leaders conducting business in this state:

1. Three members to be appointed by the President Pro Tempore of the Senate;

2. Three members to be appointed by the Speaker of the House of Representatives; and

3. Three members to be appointed by the Governor, one of whom shall be designated by the Governor to serve as chair of the Commission.

B. The members of the Commission shall be qualified electors of this state and shall not be employed by any government entity or have been employed by a government entity within the preceding one-year period.

C. For the initial appointments of Commissioners, each appointing authority shall make one appointment for a one-year term, one appointment for a two-year term, and one appointment for a three-year term. Thereafter, the terms of the Commissioners shall be for three (3) years. Commissioners may be appointed to subsequent terms without limit as to number.

D. Vacancies on the Commission shall be filled for the unexpired term of office in the same manner as the original appointment. The appointed members shall serve at the pleasure of the appointing authorities.

E. In addition to the chair appointed by the Governor, the Commission may establish and elect additional officers by a majority vote of the Commissioners. The chair shall preside over meetings of the Commission and officers shall perform duties as may be required by the Commission. The first meeting of the Commission shall be called by the chair no later than sixty (60) days after the effective date of this act.

F. No member of the Commission shall receive a salary for duties performed as a member of the Commission; however, members are eligible to receive reimbursement for expenses and travel reimbursement as provided for in the State Travel Reimbursement Act.

G. Members serving on the Commission shall be eligible to serve on any other state board or commission if such member is otherwise qualified to hold such appointed office, notwithstanding the provisions of Section 6 of Title 51 of the Oklahoma Statutes.

H. A quorum of five members shall be required to conduct official business of the Commission.

Added by Laws 2023, c. 361, § 4.

§40-904. Powers, duties, and responsibilities.

The Oklahoma Workforce Commission shall have the following powers, duties, and responsibilities:

1. To administer the provisions of this act or any duty as directed by statute;

2. To establish an office for the Commission within this state;

3. To elect whatever other officers may be necessary to direct operations of the Commission;

4. To employ or contract for personnel and administrative support as the Commission deems appropriate to carry out the purpose and provisions of this act, including but not limited to a nonprofit corporation to carry out the Commission's objectives, an Executive Director or other chief executive officer and any other employees or contractors the Commission deems appropriate, and to prescribe their duties and fix their compensation;

5. To administer the Workforce Coordination Revolving Fund created in Section 255.4 of Title 62 of the Oklahoma Statutes;

6. To approve or disapprove the budget of the Commission;

7. To promulgate rules to carry out the provisions of this act;

8. To enter into contracts or agreements for studies, professional services, grant administration and procurement, research projects, supplies, or any other services the Commission deems necessary to carry out its purpose, and to incur those expenses necessary to carry out those purposes;

9. To cooperate with any private, local, state, or national commission, organization, agency, or group and to make contracts and agreements for joint programs beneficial to Oklahoma's workforce development efforts;

10. To accept donations, grants, contributions, and gifts from any public or private source and deposit such in the Workforce Coordination Revolving Fund, created in Section 255.4 of Title 62 of the Oklahoma Statutes;

11. To oversee and direct to the extent permitted by law the activities and administration of the Governor's Council for Workforce and Economic Development, including but not limited to the creation and submission of state plans to the federal government pursuant to the provisions of the Workforce Innovation and Opportunity Act;

12. To collect data from federal, state, and local agencies, departments, educational institutions, boards, commissions, or any other entities including, but not limited to:

a. number of participants in workforce development programming,

b. cost per participant,

c. wages before and after participation in programs,

d. degree or certificate conferred on each participant,

e. number of jobs open needing degrees or certificates,

f. labor force and economic information, and

- g. any other information the Commission deems appropriate to guide funding decisions, facilitate its work or the work of workforce development entities in the state, or to understand the impact of the state's workforce efforts and programming;

13. To create and maintain a public dashboard and create reports with data concerning workforce development efforts in the state. All state and local agencies, departments, educational institutions, boards, commissions, and other public entities shall cooperate with information and data requests from the Commission or its designees. It is the intent of the Legislature that the Oklahoma Workforce Commission serve as the centralized data and information repository for workforce development activities for the state; and

14. To make recommendations to the Legislature to improve workforce development programs in the state.

Added by Laws 2023, c. 361, § 5.