

1 **SENATE FLOOR VERSION**

2 February 20, 2020

3 SENATE BILL NO. 1628

By: Daniels

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7 An Act relating to the Employment Security Act of
8 1980; amending 40 O.S. 2019, Section 1-210, as last
9 amended by Section 2, Chapter 342, O.S.L. 2019 (40
10 O.S. Supp. 2019, Section 1-210), which relates to
11 definitions; modifying language; amending 40 O.S.
12 2019, Section 1-217, which relates to unemployed;
13 reformatting language; changing certain loss of work
14 requirement; amending 40 O.S. 2011, Section 2-203, as
15 last amended by Section 3, Chapter 251, O.S.L. 2019
16 (40 O.S. Supp. 2019, Section 2-203), which relates to
17 claims; changing certain filing systems; amending 40
18 O.S. 2011, Section 2-209, as last amended by Section
19 2, Chapter 14, O.S.L. 2018 (40 O.S. Supp. 2019,
20 Section 2-209), which relates to nonprofit employees;
21 excepting certain educational services; amending 40
22 O.S. 2011, Section 2-406, as last amended by Section
23 3, Chapter 220, O.S.L. 2014 (40 O.S. Supp. 2019,
24 Section 2-406), which relates to discharge for
misconduct; correcting spelling; amending Section 1,
Chapter 338, O.S.L. 2016 (40 O.S. Supp. 2019, Section
2-422), which relates to seasonal workers; clarifying
work during base period; providing procedure for
overpayment in certain amounts; allowing certain
account balances be brought to zero; amending 40 O.S.
2011, Section 3-307, which relates to deposit of
monies; authorizing Commission to set certain
deadline by rule; providing for unemployment tax
accounts of certain amount; allowing certain accounts
be brought to zero; amending 40 O.S. 2011, Section 4-
508, as last amended by Section 10, Chapter 251,
O.S.L. 2019 (40 O.S. Supp. 2019, Section 4-508),
which relates to information to be kept confidential;
removing certain organization; amending 40 O.S. 2011,
Section 5-107, which relates to wrongful disclosure
of information; adding certain employees; updating

1 statutory reference; repealing Section 2, Chapter
2 220, O.S.L. 2014 (40 O.S. Supp. 2019, Section 2-
3 406.2), which relates to case review and annual
4 report; providing for codification; and providing an
5 effective date.

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

7 SECTION 1. AMENDATORY 40 O.S. 2011, Section 1-210, as
8 last amended by Section 2, Chapter 342, O.S.L. 2019 (40 O.S. Supp.
9 2019, Section 1-210), is amended to read as follows:

10 Section 1-210. EMPLOYMENT.

11 "Employment" means:

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

14 (a) any officer of a corporation; or

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

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

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

1 products, fruit products, bakery products,
2 beverages other than milk, or laundry or dry
3 cleaning services, for his or her principal; or
4 (ii) as a traveling or city salesperson, other than as
5 an agent-driver or commission-driver, engaged
6 upon a full-time basis in the solicitation on
7 behalf of, and the transmission to, his or her
8 principal, except for sideline sales activities
9 on behalf of some other person, of orders from
10 wholesalers, retailers, contractors, or operators
11 of hotels, restaurants or other similar
12 establishments for merchandise for resale or
13 supplies for use in their business operations;

14 (b) provided, the term "employment" shall include services
15 described in divisions (i) and (ii) of subparagraph

16 (a) of this paragraph if:

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

20 (ii) the individual does not have a substantial
21 investment in facilities used in connection with
22 the performance of the services, other than in
23 facilities for transportation; and
24

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

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

13 (4) Service performed by an individual in the employ of a
14 community chest, fund, foundation or corporation, organized and
15 operated exclusively for religious, charitable, scientific, testing
16 for public safety, literary or educational purposes, or for the
17 prevention of cruelty to children or animals, no part of the net
18 earnings of which inures to the benefit of any private shareholder
19 or individual, no substantial part of the activities of which is
20 carrying on propaganda, or otherwise attempting to influence
21 legislation and which does not participate in, or intervene in,
22 including the publishing or distributing of statements, any
23 political campaign on behalf of any candidate for public office;
24 provided that such organization had four or more individuals in

1 employment for some portion of a day in each of twenty (20)
2 different weeks, whether or not such weeks were consecutive, within
3 either the calendar year or preceding calendar year, regardless of
4 whether they were employed at the same moment of time.

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

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

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

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

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

1 (i) if the crew leader holds a valid certificate of
2 registration under the Farm Labor Contractor
3 Registration Act of 1963, Public Law 95-562, 29
4 U.S.C., Sections 1801 through 1872; or
5 substantially all the members of the crew operate
6 or maintain tractors, mechanized harvesting or
7 crop-dusting equipment, or any other mechanized
8 equipment, which is provided by the crew leader;
9 and

10 (ii) if the individual is not an employee of the other
11 person within the meaning of paragraph (1) of
12 this section or subparagraph (d) of this
13 paragraph.

14 (c) for the purposes of this paragraph, in the case of any
15 individual who is furnished by a crew leader to
16 perform service in agricultural labor for any other
17 person and who is not treated as an employee of the
18 crew leader under subparagraph (b) of this paragraph:

19 (i) the other person and not the crew leader shall be
20 treated as the employer of the individual; and

21 (ii) the other person shall be treated as having paid
22 cash remuneration to the individual in an amount
23 equal to the amount of cash remuneration paid to
24 the individual by the crew leader, either on his

1 or her own behalf or on behalf of the other
2 person, for the service in agricultural labor
3 performed for the other person.

4 (d) for the purposes of this paragraph, the term "crew
5 leader" means an individual who:

6 (i) furnishes individuals to perform service in
7 agricultural labor for any other person;

8 (ii) pays, either on his or her own behalf or on
9 behalf of another person, the individuals so
10 furnished by the crew leader for the service in
11 agricultural labor performed by them; and

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

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

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

24 (a) in the employ of:

1 (i) a church or convention or association of
2 churches;
3 (ii) an organization which is operated primarily for
4 religious purposes and which is operated,
5 supervised, controlled, or principally supported
6 by a church or convention or association of
7 churches; or

8 (iii) an elementary or secondary school which is
9 operated primarily for religious purposes, which
10 is described in 26 U.S.C., Section 501(c)(3), and
11 which is exempt from tax under 26 U.S.C., Section
12 501(a);

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

17 (c) in the employ of a governmental entity referred to in
18 paragraph (3) of this section if the service is
19 performed by an individual in the exercise of duties:

20 (i) as an elected official;

21 (ii) as a member of a legislative body, or a member of
22 the judiciary of a state or political
23 subdivision;

24

1 (iii) as a member of the State National Guard or Air
2 National Guard;

3 (iv) as an employee serving on a temporary basis in
4 case of fire, storm, snow, earthquake, flood or
5 similar emergency;

6 (v) in a position which, under or pursuant to the
7 laws of this state, is designated as a major
8 nontenured policymaking or advisory position, or
9 a policymaking or advisory position the
10 performance of the duties of which ordinarily
11 does not require more than eight (8) hours per
12 week;

13 (vi) as an election official or election worker if the
14 amount of remuneration received by the individual
15 during the calendar year for services as an
16 election official or election worker is less than
17 One Thousand Dollars (\$1,000.00);

18 (d) by an individual who is participating or enrolled in a
19 program of an organization that provides
20 rehabilitation through work for individuals whose
21 earning capacity is impaired by age, physical or
22 mental deficiency, or injury, or a program of an
23 organization that provides work for individuals who,
24 because of their impaired mental or physical capacity

1 cannot be readily absorbed into the competitive labor
2 market; provided that the services are performed by a
3 program participant on real property owned or leased
4 directly by the organization or by a program
5 participant working under a special certificate issued
6 by the U.S. Secretary of Labor pursuant to 29 U.S.C.,
7 Section 214(c) and 29 C.F.R., Section 525.1 et seq.;

8 (e) as part of an unemployment work-relief or work-
9 training program assisted or financed in whole or in
10 part by any federal agency or an agency of a state or
11 political subdivision thereof or of an Indian tribe,
12 by an individual receiving such work-relief or work-
13 training; or

14 (f) by an inmate of a custodial or penal institution.

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

21 (a) the employer's principal place of business in the
22 United States is located in this state;

23 (b) the employer has no place of business in the United
24 States, but:

1 (i) the employer is an individual who is a resident
2 of this state;

3 (ii) the employer is a corporation which is organized
4 under the laws of this state; or

5 (iii) the employer is a partnership or a trust and the
6 number of the partners or trustees who are
7 residents of this state is greater than the
8 number who are residents of any one other state;

9 (c) none of the criteria of subparagraphs (a) and (b) of
10 this paragraph are met but the employer has elected
11 coverage in this state or, the employer having failed
12 to elect coverage in any state, the individual has
13 filed a claim for benefits, based on such service,
14 under the laws of this state;

15 (d) an "American employer", for purposes of this
16 subsection, means a person who is:

17 (i) an individual who is a resident of the United
18 States;

19 (ii) a partnership if two-thirds (2/3) or more of the
20 partners are residents of the United States;

21 (iii) a trust, if all of the trustees are residents of
22 the United States; or

23 (iv) a corporation organized under the laws of the
24 United States or of any state; and

1 (e) the term "United States", for the purposes of this
2 subsection, includes the states, the District of
3 Columbia, the Commonwealth of Puerto Rico and the
4 Virgin Islands.

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

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

14 (a) includes any service with respect to which a tax is
15 required to be paid under any federal law imposing a
16 tax against which credit may be taken for
17 contributions required to be paid into a state
18 unemployment fund; and

19 (b) includes any service which is required to be
20 "employment" for full tax credit to be allowed against
21 the tax imposed by the Federal Unemployment Tax Act of
22 1954, Public Law 591, Chapter 736, as amended, 26
23 U.S.C., Section 3301 et seq.
24

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

3 (a) the service is localized in this state; or

4 (b) the service is not localized in any state but some of
5 the service is performed in this state and:

6 (i) the individual's base of operations, or, if there
7 is no base of operations, then the place from
8 which the individual's employment is directed or
9 controlled is in this state; or

10 (ii) the individual's base of operations or place from
11 which the service is directed or controlled is
12 not in any state in which some part of the
13 service is performed but the individual's
14 residence is in this state.

15 (12) (a) Services covered by an election pursuant to Section 3-
16 203 of this title; and

17 (b) services covered by an arrangement pursuant to Section
18 4-701 et seq. of this title between the Oklahoma
19 Employment Security Commission and the agency charged
20 with the administration of any other state or federal
21 unemployment compensation law, pursuant to which all
22 services performed by an individual for an employing
23 unit are deemed to be performed entirely within this
24 state,

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

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

6 (a) the service is performed entirely within such state;

7 or

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

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

23 (15) The term "employment" shall not include:
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1 (a) services performed by an individual in agricultural
2 labor, except as provided under paragraph (5) of this
3 section. Services performed by an individual who is a
4 nonresident alien admitted to the United States to
5 perform agricultural labor, pursuant to 8 U.S.C.,
6 Sections 1101(a), 1184(c) and 1188. For purposes of
7 this subparagraph, the term "agricultural labor" means
8 remunerated service performed in agricultural labor as
9 defined in the Federal Unemployment Tax Act, 26
10 U.S.C., Section 3306(k);

11 (b) domestic service, except as provided under paragraph
12 (6) of this section, in a private home, local college
13 club, or local chapter of a college fraternity or
14 sorority;

15 (c) service performed by an individual in the employ of
16 his or her son, daughter, or spouse, and service
17 performed by a child under the age of twenty-one (21)
18 in the employ of his or her father or mother, or both
19 father and mother;

20 (d) service performed in the employ of the United States
21 government or an instrumentality of the United States
22 exempt under the Constitution of the United States
23 from the contributions imposed by the Employment
24 Security Act of 1980, except that to the extent that

1 the Congress of the United States shall permit states
2 to require any instrumentalities of the United States
3 to make payments into an unemployment fund under a
4 state unemployment compensation law, all of the
5 provisions of the Employment Security Act of 1980
6 shall be applicable to such instrumentalities, and to
7 services performed for such instrumentalities, in the
8 same manner, to the same extent, and on the same terms
9 as to all other employers, employing units,
10 individuals and services; provided that if this state
11 shall not be certified for any year by the Secretary
12 of Labor of the United States under the Federal
13 Internal Revenue Code, 26 U.S.C., Section 3304(c), the
14 payments required of such instrumentalities with
15 respect to the year shall be refunded by the
16 Commission from the fund in the same manner and within
17 the same period as is provided in Section 3-304 of
18 this title with respect to contributions erroneously
19 collected;

20 (e) service with respect to which unemployment
21 compensation is payable under an unemployment
22 compensation system established by an act of Congress;
23
24

- 1 (f) service performed in the employ of a foreign
2 government, including service as a consul or other
3 officer or employee or a nondiplomatic representative;
- 4 (g) service performed in the employ of an instrumentality
5 wholly owned by a foreign government:
- 6 (i) if the service is of a character similar to that
7 performed in foreign countries by employees of
8 the United States government or of an
9 instrumentality thereof, and
- 10 (ii) if the Commission finds that the United States
11 Secretary of State has certified to the United
12 States Secretary of the Treasury that the foreign
13 government, with respect to whose instrumentality
14 exemption is claimed, grants an equivalent
15 exemption with respect to similar service
16 performed in the foreign country by employees of
17 the United States government and of
18 instrumentalities thereof;
- 19 (h) service covered by an arrangement between the
20 Commission and the agency charged with the
21 administration of any other state or federal
22 unemployment compensation law pursuant to which all
23 services performed by an individual for an employing
24 unit during the period covered by such employing

1 unit's duly approved election, are deemed to be
2 performed entirely within the jurisdiction of such
3 other state or federal agency;

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

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

20 (k) service performed by an individual under the age of
21 eighteen (18) in the delivery and distribution of
22 newspapers or shopping news, not including delivery or
23 distribution to any point for subsequent delivery or
24 distribution, and services performed by an individual

1 eighteen (18) years of age or older who meets the
2 definition of a "direct seller" as defined in 26
3 U.S.C., Section 3508(b) (2), that states in pertinent
4 part:

5 (i) the individual must be engaged in the delivery or
6 distribution of newspapers or shopping news,
7 including any services directly related to such
8 trade or business,

9 (ii) substantially all the remuneration, whether or
10 not paid in cash, for the performance of the
11 services described in division (i) of this
12 subparagraph is directly related to sales or
13 other output, including the performance of
14 services, rather than the number of hours worked,
15 and

16 (iii) the services performed by the individual are
17 performed pursuant to a written contract between
18 the person and the person for whom the services
19 are performed and the contract provides that the
20 person will not be treated as an employee with
21 respect to the services;

22 (1) service performed in the employ of a school, college
23 or university, if the service is performed:

24

1 (i) by a student who is enrolled and is regularly
2 attending classes at the school, college, or
3 university, or

4 (ii) by the spouse of the student, if the spouse is
5 advised, at the time the spouse commences to
6 perform the service, that:

7 (I) the employment of the spouse to perform the
8 service is provided under a program to
9 provide financial assistance to the student
10 by the school, college, or university, and

11 (II) the employment will not be covered by any
12 program of unemployment insurance;

13 (m) service performed by an individual who is enrolled at
14 a nonprofit or public educational institution which
15 normally maintains a regular faculty and curriculum
16 and normally has a regularly organized body of
17 students in attendance at the place where its
18 educational activities are carried on as a student in
19 a full-time program, taken for credit at the
20 institution, which combines academic instruction with
21 work experience, if the service is an integral part of
22 the program, and the institution has so certified to
23 the employer, except that this provision shall not
24

1 apply to service performed in a program established
2 for or on behalf of an employer or group of employers;

3 (n) service performed in the employ of a hospital, if the
4 service is performed by a patient of the hospital;

5 (o) services performed by cooperative extension personnel
6 holding federal appointments employed by state
7 institutions of higher learning;

8 (p) earnings of employees being paid by state warrants who
9 are presently covered by the Federal Unemployment
10 Compensation Act, 5 U.S.C., Section 8501 et seq., by
11 virtue of their federal status;

12 (q) cosmetology services performed by an individual in a
13 beauty shop, as defined by Section 199.1 of Title 59
14 of the Oklahoma Statutes, pursuant to an agreement
15 whereby the owner of the beauty shop leases or rents
16 facilities for cosmetology to such individual;

17 (r) barbering services performed by an individual in a
18 barber shop, as defined by Section 61.5 of Title 59 of
19 the Oklahoma Statutes, pursuant to an agreement
20 whereby the owner of the barber shop leases or rents
21 facilities for barbering to such individual;

22 (s) services performed as a participant in a work or
23 training program administered by the Department of
24 Human Services;

1 (t) riding services performed by a jockey and services
2 performed by a trainer of race horses in preparation
3 for and during an approved race meeting licensed by
4 the Oklahoma Horse Racing Commission;

5 (u) service performed by an individual whose remuneration
6 consists solely of commissions, overrides, bonuses,
7 and differentials related to sales or other output
8 derived from in-person sales to, or solicitation of
9 orders from, ultimate consumers primarily in the home,
10 or otherwise than in a permanent retail establishment;

11 (v) service performed by a person, commonly referred to as
12 "owner-operator", who owns or leases a truck-tractor
13 or truck for hire, provided the owner-operator
14 actually operates the truck-tractor or truck and,
15 further, that the entity contracting with the owner-
16 operator is not the lessor of the truck-tractor or
17 truck;

18 (w) services performed as a chopper of cotton who weeds or
19 thins cotton crops by hand or hoe. This subsection
20 shall be interpreted and applied consistently with the
21 Federal Unemployment Tax Act, 26 U.S.C., Sections
22 3304(a)(6)(A) and 3306(k);

23 (x) services performed for a private for-profit person or
24 entity by an individual as a landman:

1 (i) if the individual is engaged primarily in
2 negotiating for the acquisition or divestiture of
3 mineral rights or negotiating business agreements
4 that provide for the exploration for or
5 development of minerals,

6 (ii) if substantially all remuneration paid in cash or
7 otherwise for the performance of the services is
8 directly related to the completion by the
9 individual of the specific tasks contracted for
10 rather than to the number of hours worked by the
11 individual, and

12 (iii) if the services performed by the individual are
13 performed under a written contract between the
14 individual and the person for whom the services
15 are performed; provided that the individual is to
16 be treated as an independent contractor and not
17 as an employee with respect to the services
18 provided under the contract; or

19 (y) services performed by persons working under an
20 AmeriCorps grant from the Corporation for National
21 Service made pursuant to the National and Community
22 Service Act of 1990 (NCSA) codified at 42 U.S.C.,
23 Section 12501 et seq.

1 SECTION 2. AMENDATORY 40 O.S. 2011, Section 1-217, is
2 amended to read as follows:

3 Section 1-217. UNEMPLOYED. An individual shall be deemed
4 "unemployed" with:

5 1. With respect to any week during which he or she performed no
6 services and with respect to which no wages are payable to him ~~or~~
7 with or her; or

8 2. With respect to any week of less than full-time work as
9 defined by Commission rules, if the wages payable to him or her with
10 respect to such week are less than his or her weekly benefit amount
11 plus One Hundred Dollars (\$100.00), and if the claimant can show
12 that the claimant has suffered at least a fifteen percent (15%) loss
13 of work hours or pay within the eight weeks immediately preceding
14 the filing of the claimant's initial claim for the current benefit
15 year and the loss persisted through the week the initial or any
16 additional initial claim is filed; ~~provided that for~~ and

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

22 SECTION 3. AMENDATORY 40 O.S. 2011, Section 2-203, as
23 last amended by Section 3, Chapter 251, O.S.L. 2019 (40 O.S. Supp.
24 2019, Section 2-203), is amended to read as follows:

1 Section 2-203. CLAIM.

2 A. An unemployed individual must file an initial claim for
3 unemployment benefits ~~by calling an Oklahoma Employment Security~~
4 ~~Commission claims representative in a Commission Call Center,~~ by
5 completing the required forms through the Internet Claims service
6 provided by the Commission, or by completing all forms necessary to
7 process an initial claim in a local office of the Commission or any
8 alternate site designated by the Commission to take unemployment
9 benefit claims. The Commission may obtain additional information
10 regarding an individual's claim through any form of
11 telecommunication, Internet system, writing, or interview. An
12 unemployed individual must file a claim ~~in writing or by~~
13 ~~telecommunication~~ for benefits with respect to each week through the
14 internet claims service or interactive voice response system
15 provided by the commission, in accordance with such rule as the
16 Commission may prescribe. Claimants with language barriers or
17 accessibility issues shall be allowed to file claims by telephone
18 through the Commission service center.

19 B. 1. During the process of filing an initial claim for
20 unemployment benefits, the claimant shall be made aware of the
21 definition of misconduct set out in Section 2-406 of this title, and
22 the claimant shall affirmatively certify that the answers given to
23 all questions in the initial claim process are true and correct to
24 the best of the claimant's knowledge and that no information has

1 | been intentionally withheld or misrepresented in an attempt by the
2 | claimant to receive benefits to which he or she is not entitled.

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

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

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

23 | E. The Commission may require the individual to produce
24 | documents or information relevant to the claim for benefits. If the

1 individual fails to produce it, the individual's claim for
2 unemployment benefits may be disqualified indefinitely by the
3 Commission until the information is produced. An individual that
4 has been disqualified indefinitely by the provisions of this
5 subsection may receive payment for any week between the initial
6 failure and the compliance with this subsection if the claimant is
7 otherwise eligible and has made a timely filing for each intervening
8 week.

9 SECTION 4. AMENDATORY 40 O.S. 2011, Section 2-209, as
10 last amended by Section 2, Chapter 14, O.S.L. 2018 (40 O.S. Supp.
11 2019, Section 2-209), is amended to read as follows:

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

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

20 (1) With respect to service performed in an instructional,
21 research or principal administrative capacity for an educational
22 institution, benefits shall not be paid based on services for any
23 week of unemployment commencing during the period between two (2)
24 successive academic years, or during a similar period between two

1 regular but not successive terms, or during a period of paid
2 sabbatical leave provided for in the individual's contract, to any
3 individual if the individual performs services in the first academic
4 year or term and if there is a contract or a reasonable assurance
5 that the individual will perform services in any such capacity for
6 any educational institution in the second academic year or term;

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

21 (3) With respect to any services described in paragraphs (1)
22 and (2) of this section, benefits shall not be payable on the basis
23 of services in any capacities to any individual for any week which
24 commences during an established and customary vacation period or

1 holiday recess if the individual performs services in the period
2 immediately before the vacation period or holiday recess, and there
3 is a reasonable assurance that the individual will perform services
4 in any such capacity in the period immediately following the
5 vacation period or holiday recess;

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

16 (5) If services are provided to or on behalf of an educational
17 institution by a private for-profit entity or an entity described in
18 paragraphs 3 or 4 of Section 1-210 of this title that is not an
19 educational institution or an educational service agency, the
20 employees providing these services shall not be subject to the terms
21 and conditions as described in paragraphs (1), (2), (3), and (4) of
22 this section.

23 (6) If an individual has employment with an educational
24 institution and has employment with a noneducational employer or

1 employers during the base period of the individual's benefit year,
2 the individual may become eligible for benefits during the between-
3 term denial period, based only on the noneducational employment.

4 SECTION 5. AMENDATORY 40 O.S. 2011, Section 2-406, as
5 last amended by Section 3, Chapter 220, O.S.L. 2014 (40 O.S. Supp.
6 2019, Section 2-406), is amended to read as follows:

7 Section 2-406. DISCHARGE FOR MISCONDUCT.

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

24

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

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

7 2. Unapproved or excessive absenteeism or tardiness;

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

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

13 5. Dishonesty;

14 6. Wrongdoing;

15 7. Violation of a law; or

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

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

23 D. Any finding by a state or federal agency of any failure by
24 the employee to meet the applicable civil, criminal or professional

1 standards of the employee's profession shall create a rebuttable
2 presumption of such misconduct, and benefits shall be denied, unless
3 the employee can show, with clear and convincing evidence, that such
4 misconduct did not occur, or the Commission determines that such
5 failure did not constitute misconduct as defined herein.

6 SECTION 6. AMENDATORY Section 1, Chapter 338, O.S.L.
7 2016 (40 O.S. Supp. 2019, Section 2-422), is amended to read as
8 follows:

9 Section 2-422. A. Unemployment benefits based on services by a
10 seasonal worker performed in seasonal employment are payable only
11 for weeks of unemployment that occur during the normal seasonal work
12 period. Benefits shall not be paid based on services performed in
13 seasonal employment for any week of unemployment that begins during
14 the period between two (2) successive normal seasonal work periods
15 to any individual if that individual performs the service in the
16 first of the normal seasonal work periods and if there is a
17 reasonable assurance that the individual will perform the service
18 for a seasonal employer in the second of the normal seasonal work
19 periods. The notice of reasonable assurance shall be given by the
20 employer to the employee in writing on or before the last day of
21 work in the season. If benefits are denied to an individual for any
22 week solely as a result of this section and the individual is not
23 offered an opportunity to perform in the second normal seasonal work
24 period for which reasonable assurance of employment had been given,

1 the individual is entitled to a retroactive payment of benefits
2 under this section for each week that the individual previously
3 filed a timely claim for benefits. An individual may apply for any
4 retroactive benefits under this section in accordance with the
5 provisions of Article 2 of the Employment Security Act of 1980.

6 B. If an individual has been employed by a non-seasonal
7 employer or employers during the base period of the individual's
8 benefit year, the individual may become eligible for benefits during
9 that between-season denial period based only on the wages of the
10 non-seasonal employment.

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

1 determination or decision shall be conclusive unless substantial
2 evidence to the contrary is introduced by or on behalf of the
3 claimant.

4 ~~C.~~ D. If the employer is determined to be a seasonal employer,
5 the employer shall give notice to each employee of the employer's
6 status as a seasonal employer and the beginning and ending dates of
7 the employer's normal seasonal work periods, and this notice shall
8 be given to the employee within the first seven (7) days of
9 employment. On or before the last day of work in the season, if the
10 employer intends to issue a notice of reasonable assurance of
11 employment for the next season, the employer shall also give notice
12 to each employee advising that the employee shall timely file an
13 initial application for unemployment benefits at the end of the
14 current seasonal work period and file timely weekly continued claims
15 thereafter to preserve his or her right to receive retroactive
16 unemployment benefits if he or she is not reemployed by the seasonal
17 employer in the subsequent normal seasonal work period. The notices
18 must be on a separate document written in clear and concise language
19 that states these provisions. Failure of the employer to give
20 adequate notice as required by this subsection will result in the
21 termination of the employer as a seasonal employer under subsection
22 ~~D.~~ E of this section and the allowance of any claim in which the
23 claimant did not receive the required notice.

24

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

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

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

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

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

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

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

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

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

22 4. "Seasonal employer" means an employer, other than an
23 employer in the construction industry, who applies to the Commission
24 for designation as a seasonal employer and whom the Commission

1 determines to be an employer whose operations and business require
2 employees engaged in seasonal employment; and

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

6 SECTION 7. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2-620 of Title 40, unless there
8 is created a duplication in numbering, reads as follows:

9 OVERPAYMENT INDEBTEDNESS - AMOUNT OF TEN DOLLARS (\$10.00) OR
10 LESS

11 A. If any overpayment indebtedness account has a debit or
12 credit balance of Ten Dollars (\$10.00) or less and it has been at
13 that level for more than one (1) year without a payment being
14 received or refund requested, the Oklahoma Employment Security
15 Commission may close that overpayment account with a zero balance.

16 B. In cases of a debit balance, once the account is brought to
17 a zero balance under the provisions of this section, the claimant
18 shall not be liable any further for the debt.

19 C. In cases of a credit balance, once the account is brought to
20 a zero balance and closed, the claimant shall be foreclosed from
21 seeking a refund of the credit. All credits removed shall be
22 deposited in the clearing account set forth in Section 3-604 of
23 Title 40 of the Oklahoma Statutes.

24

1 SECTION 8. AMENDATORY 40 O.S. 2011, Section 3-307, is
2 amended to read as follows:

3 Section 3-307. A. All remittance, under Section 1-101 et seq.
4 of this title, shall be made payable to the Oklahoma Employment
5 Security Commission, at Oklahoma City, Oklahoma, by bank draft,
6 check, cashier's check, electronic fund transfer, credit card, money
7 order, or money, and the Commission shall issue its receipt, for
8 cash or money payment, to the payor. No remittance other than cash
9 shall be in final discharge of liability due the Commission unless
10 and until it shall have been paid in cash. All monies collected
11 shall be deposited with the State Treasurer. There shall be
12 assessed, in addition to any other penalties provided for by law, an
13 administrative service fee of Twenty-five Dollars (\$25.00) on each
14 check returned to the Commission or any agent thereof by reason of
15 the refusal of the bank upon which such check was drawn to honor the
16 same. There shall be assessed, in addition to any other penalties
17 provided for by law, an administrative service fee of Twenty-five
18 Dollars (\$25.00) on each electronic fund transfer that fails due to
19 insufficient funds in the payor's account.

20 B. Upon the return of any check by reason of the refusal of the
21 bank upon which such check was drawn to honor the same, the
22 Commission may file a bogus check complaint with the appropriate
23 district attorney who shall refer the complaint to the Bogus Check
24 Restitution Program established by Section 111 of Title 22 of the

1 Oklahoma Statutes. Funds collected through the program after
2 collection of the fee authorized by Section 114 of Title 22 of the
3 Oklahoma Statutes for deposit in the Bogus Check Restitution Program
4 Fund in the county treasury shall be transmitted to the Commission
5 and credited to the liability for which the returned check was drawn
6 and to the administrative service fee provided by this section.

7 C. The deadlines for payment of unemployment taxes and the
8 method of payment shall be set by Commission rules.

9 SECTION 9. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 3-311 of Title 40, unless there
11 is created a duplication in numbering, reads as follows:

12 UNEMPLOYMENT TAX ACCOUNT -AMOUNT OF TEN DOLLARS (\$10.00) OR LESS

13 A. If a terminated employment account has a debit or credit
14 balance of Ten Dollars (\$10.00) or less and it has been at that
15 level for more than one (1) year without a payment being received or
16 refund requested, the Oklahoma Employment Security Commission may
17 reduce the balance of that unemployment tax account to zero.

18 B. In cases of a debit balance, once the account is brought to
19 a zero balance under the provisions of this section, the tax payor
20 shall not be liable any further for the debt.

21 C. In cases of a credit balance, once the account is brought to
22 a zero balance, the tax payor shall be foreclosed from seeking a
23 refund of the credit. All credits removed shall be deposited in the
24

1 clearing account set forth in Section 3-604 of Title 40 of the
2 Oklahoma Statutes.

3 SECTION 10. AMENDATORY 40 O.S. 2011, Section 4-508, as
4 last amended by Section 10, Chapter 251, O.S.L. 2019 (40 O.S. Supp.
5 2019, Section 4-508), is amended to read as follows:

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

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

21 B. Upon receipt of written request by any employer who
22 maintains a Supplemental Unemployment Benefit (SUB) Plan, the
23 Commission or its designated representative may release to that
24 employer information regarding weekly benefit amounts paid its

1 workers during a specified temporary layoff period, provided the
2 Supplemental Unemployment Benefit (SUB) Plan requires benefit
3 payment information before Supplemental Unemployment Benefits can be
4 paid to the workers. Any information disclosed under this provision
5 shall be utilized solely for the purpose outlined herein and shall
6 be held strictly confidential by the employer.

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

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

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

19 3. The Oklahoma Department of Commerce may have access to data
20 obtained pursuant to the Employment Security Act of 1980 pursuant to
21 rules promulgated by the Commission. The information obtained shall
22 be held confidential by the Department and any of its agents and
23 shall not be disclosed or be open to public inspection. The
24 Oklahoma Department of Commerce, however, may release aggregated

1 data, either by industry or county, provided that the aggregation
2 meets disclosure requirements of the Commission;

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

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

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

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

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

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

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

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

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

21 13. The release to employees of the Oklahoma State Regents for
22 Higher Education of information required for use in the default
23 prevention efforts and/or collection of defaulted student loans
24 guaranteed by the Oklahoma Guaranteed Student Loan Program. Any

1 information disclosed under this provision shall be utilized solely
2 for the purpose outlined herein and shall be held strictly
3 confidential by the Oklahoma State Regents for Higher Education;

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

16 15. The release to employees of the Office of Management and
17 Enterprise Services of information required to identify economic
18 trends. The information obtained shall be kept confidential by the
19 Office of Management and Enterprise Services and shall not be
20 disclosed or be open to public inspection. The Office of Management
21 and Enterprise Services may release aggregate data, provided that
22 the aggregation meets disclosure requirements of the Commission;

23 16. The release to employees of the Department of Mental Health
24 and Substance Abuse Services of information required to evaluate the

1 effectiveness of mental health and substance abuse treatment and
2 state or local programs utilized to divert persons from inpatient
3 treatment. The information obtained shall be kept confidential by
4 the Department and shall not be disclosed or be open to public
5 inspection. The Department of Mental Health and Substance Abuse
6 Services, however, may release aggregated data, either by treatment
7 facility, program or larger aggregate units, provided that the
8 aggregation meets disclosure requirements of the Oklahoma Employment
9 Security Commission;

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

14 18. The release to employees of public housing agencies for
15 purposes of determining eligibility pursuant to 42 U.S.C., Section
16 503(i);

17 19. The release of wage and benefit claim information, at the
18 discretion of the Commission, to an agency of this state or its
19 political subdivisions that operate a program or activity designated
20 as a required partner in the Workforce Innovation and Opportunity
21 Act One-Stop delivery system pursuant to 29 U.S.C.A., Section
22 3151(b)(1), based on a showing of need made to the Commission and
23 after an agreement concerning the release of information is entered
24 into with the entity receiving the information;

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

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

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

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

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

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

1 protect and safeguard the information it receives and to destroy the
2 information when no longer needed for the purposes set out in the
3 contract;

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

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

1 shall be disclosed to any third party, that the use of the
2 information shall be restricted to the scope of the contract, and
3 that the vendor shall properly dispose of all information when no
4 longer needed for the purposes set out in the contract; or

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

10 D. Subpoenas to compel disclosure of information made
11 confidential by this statute shall not be valid, except for
12 administrative subpoenas issued by federal, state, or local
13 governmental agencies that have been granted subpoena power by
14 statute or ordinance. Confidential information maintained by the
15 Commission can be obtained by order of a court of record that
16 authorizes the release of the records in writing. All
17 administrative subpoenas or court orders for production of documents
18 must provide a minimum of twenty (20) days from the date it is
19 served for the Commission to produce the documents. If the date on
20 which production of the documents is required is less than twenty
21 (20) days from the date of service, the subpoena or order shall be
22 considered void on its face as an undue burden or hardship on the
23 Commission. All administrative subpoenas, court orders or notarized
24 waivers of confidentiality authorized by paragraph 2 of subsection C

1 of this section shall be presented with a request for records within
2 ninety (90) days of the date the document is issued or signed, and
3 the document can only be used one time to obtain records.

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

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

12 SECTION 11. AMENDATORY 40 O.S. 2011, Section 5-107, is
13 amended to read as follows:

14 Section 5-107. WRONGFUL DISCLOSURE OF INFORMATION.

15 If any employee or member of the Board of Review or the
16 Commission or any employee of the Commission, ~~in violation of or any~~
17 employee of a governmental unit, private business or non-profit
18 entity that is allowed access to information under Section 4-508 of
19 this title, makes any disclosure of confidential information
20 ~~obtained from any employing unit or individual in the administration~~
21 ~~of this act~~ or otherwise violates Section 4-508 of this title, or if
22 any person who has obtained any list of applicants for work, or of
23 claimants or recipients of benefits, under ~~this act~~ Section 5-101 et
24 seq. of this title shall use or permit the use of such list for any

1 political purpose, he or she shall be guilty of a misdemeanor and
2 shall be punished by a fine of not less than Fifty Dollars (\$50.00)
3 nor more than Five Hundred Dollars (\$500.00), or imprisoned for not
4 longer than ninety (90) days, or both.

5 SECTION 12. REPEALER Section 2, Chapter 220, O.S.L. 2014
6 (40 O.S. Supp. 2019, Section 2-406.2), is hereby repealed.

7 SECTION 13. This act shall become effective November 1, 2020.

8 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
9 February 20, 2020 - DO PASS

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