

An Act

ENROLLED SENATE
BILL NO. 335

By: Daniels of the Senate

and

Martinez of the House

An Act relating to Oklahoma Employment Security Commission; amending 40 O.S. 2011, Sections 1-218, as amended by Section 1, Chapter 287, O.S.L. 2016, 1-225, 2-203, as last amended by Section 4, Chapter 249, O.S.L. 2015, Section 7, Chapter 249, O.S.L. 2015, 2-503, as last amended by Section 7, Chapter 14, O.S.L. 2018, 2-614, 3-102, as amended by Section 7, Chapter 196, O.S.L. 2012, 3-106, as last amended by Section 13, Chapter 249, O.S.L. 2015, 3-115, as last amended by Section 12, Chapter 71, O.S.L. 2013, 4-508, as last amended by Section 6, Chapter 345, O.S.L. 2017, and Sections 9, 11 and 12, Chapter 345, O.S.L. 2017 (40 O.S. Supp. 2018, Sections 1-218, 2-203, 2-421, 2-503, 3-102, 3-106, 3-115, 4-508, 6-201, 6-203, and 6-204), which relate to wage, supplemental unemployment benefit plan, claims, failure to participate in reemployment services, notices, waiver of appeal time, objections, benefit wages charged, appeal of determination, confidential information and the OESC technology fund; construing wages; modifying references, expanding reporting requirement; creating system for ex-military claimants; modifying language; limiting waiver time; expanding time for objections and hearing; making burden of proof on appealing party; repealing 40 O.S. 2011, Section 4-314, as amended by Section 131, Chapter 304, O.S.L. 2012 (40 O.S. Supp. 2018, Section 4-314), which relates to the petty cash fund; providing an effective date; and declaring an emergency.

SUBJECT: Oklahoma Employment Security Commission

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

SECTION 1. AMENDATORY 40 O.S. 2011, Section 1-218, as amended by Section 1, Chapter 287, O.S.L. 2016 (40 O.S. Supp. 2018, Section 1-218), is amended to read as follows:

Section 1-218.

WAGES.

"Wages" means all remuneration for services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, and includes dismissal payments which the employer is required by law or contract to make. Gratuities customarily received by an individual in the course of work from persons other than the employing unit shall be treated as wages received from the employing unit. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the Oklahoma Employment Security Commission. 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.

SECTION 2. AMENDATORY 40 O.S. 2011, Section 1-225, is amended to read as follows:

Section 1-225.

SUPPLEMENTAL UNEMPLOYMENT BENEFIT PLAN.

A. "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.

B. 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 ~~Section~~ 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.

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

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

E. 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.

SECTION 3. AMENDATORY 40 O.S. 2011, Section 2-203, as last amended by Section 4, Chapter 249, O.S.L. 2015 (40 O.S. Supp. 2018, Section 2-203), is amended to read as follows:

Section 2-203.

CLAIM.

A. An unemployed individual must file an initial claim for unemployment benefits by calling an Oklahoma Employment Security Commission claims representative in a Commission Call Center, by completing the required forms through the Internet Claims service provided by the Commission, or by completing all forms necessary to process an initial claim in a local office of the Commission or any alternate site designated by the Commission to take unemployment benefit claims. The Commission may obtain additional information regarding an individual's claim through any form of telecommunication, writing, or interview. An unemployed individual must file a claim in writing or by telecommunication for benefits

with respect to each week in accordance with such rule as the Commission may prescribe.

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

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

C. With respect to each week, he or she must provide the Commission with a true and correct statement of all material facts relating to: his or her unemployment; ability to work; availability for work; activities or conditions which could restrict the individual from seeking or immediately accepting full-time employment immediately 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.

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

E. The Commission may require the individual to produce documents or information relevant to the claim for benefits. If the individual fails to produce it, the individual's claim for unemployment benefits may be disqualified indefinitely by the Commission until the information is produced. An individual that has been disqualified indefinitely by the provisions of this subsection may receive payment for any week between the initial

failure and the compliance with this subsection if the claimant is otherwise eligible and has made a timely filing for each intervening week.

SECTION 4. AMENDATORY Section 7, Chapter 249, O.S.L. 2015 (40 O.S. Supp. 2018, Section 2-421), is amended to read as follows:

Section 2-421.

FAILURE TO PARTICIPATE IN REEMPLOYMENT SERVICES THROUGH PROFILING.

The Oklahoma Employment Security Commission shall establish and utilize a system of ~~profiling~~ Re-employment Services and Eligibility Assessment selection for all ex-military service claimants and for ~~all~~ unemployment benefit claimants ~~that will identify 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 ~~reemployment~~ re-employment services pursuant to the ~~profiling~~ selection system and who fails to participate in the ~~reemployment~~ 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 ~~reemployment~~ re-employment services within the benefit year; or

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

SECTION 5. AMENDATORY 40 O.S. 2011, Section 2-503, as last amended by Section 7, Chapter 14, O.S.L. 2018 (40 O.S. Supp. 2018, Section 2-503), is amended to read as follows:

Section 2-503.

CLAIMS, NOTICES AND OBJECTIONS.

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

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

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

D. Notices shall be deemed given when the Commission deposits the same in the United States mail addressed to the employer's last-known address. Notice shall be presumed prima facie to have been given to the employer to whom addressed on the date stated in the written notice. 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.

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

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

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

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

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

SECTION 6. AMENDATORY 40 O.S. 2011, Section 2-614, is amended to read as follows:

Section 2-614.

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.

SECTION 7. AMENDATORY 40 O.S. 2011, Section 3-102, as amended by Section 7, Chapter 196, O.S.L. 2012 (40 O.S. Supp. 2018, Section 3-102), is amended to read as follows:

Section 3-102.

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 ~~fourteen (14)~~ 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.

SECTION 8. AMENDATORY 40 O.S. 2011, Section 3-106, as last amended by Section 13, Chapter 249, O.S.L. 2015 (40 O.S. Supp. 2018, Section 3-106), is amended to read as follows:

Section 3-106.

BENEFIT WAGES CHARGED AND RELIEF THEREFROM.

A. The Oklahoma Employment Security Commission shall give notice to each base period employer of a claimant promptly after the claimant is issued his or her fifth week of benefits by the

Commission or promptly after the Commission receives notice of the amounts paid as benefits by another state under a reciprocal arrangement. Notice shall be deemed given under this subsection when the Commission deposits the same with the United States Postal Service addressed to the employer at an address designated by the employer to receive the notice or 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. Notice shall be presumed prima facie to have been given to the employer to whom addressed on the date stated in the written notice. 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 upon the notice provided for in subsection A of this section, the employer may file with the Commission written objections to being charged with the benefit wages upon one or more of the grounds for objection set forth in subsection G of this section. The employer's written objection must set forth specifically:

1. The date on which the employment was terminated;
2. Full particulars as to the circumstances of the termination including the reason given by the individual for voluntarily leaving the employment, or the nature of the misconduct for which discharged, as the case may be;
3. Full particulars as to 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 such part-time or full-time employment; and
4. Such other information as called for by the notice.

C. Upon receipt of the employer's written objections, the Commission shall make a determination as to whether or not the employer is entitled to be relieved from the charging of benefit wages. The Commission shall promptly notify the employer of that determination. Provided further, the twenty-day time period for

filing written objections with the Commission as provided for in subsection B of this section may be waived for good cause shown.

D. Within ~~fourteen (14)~~ twenty (20) days after the mailing of the determination provided for in subsection C of this section, the employer may file with the Commission or its representative a written protest to the determination and request an oral hearing de novo to present evidence in support of its protest. The Commission or its representative 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 mailing of the written notice. At the discretion of the Commission, this hearing shall be conducted by the Commission or its representative appointed by the Commission for this purpose. 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 send it to the employer.

E. If any employer fails to file a written protest within the period of ~~fourteen (14)~~ twenty (20) days, as provided by subsection D of this section, then the determination shall be final, and no appeal shall thereafter be allowed.

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

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

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

3. Was a regular scheduled employee of that 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 in his or her established benefit year;

4. Was separated from his or her 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 charged with benefit wages 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.

SECTION 9. AMENDATORY 40 O.S. 2011, Section 3-115, as last amended by Section 12, Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2018, Section 3-115), is amended to read as follows:

Section 3-115.

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 protest within ~~fourteen (14)~~ twenty (20) days of the date of the mailing of the Notice of Redetermination. If the employer fails to file a written protest within ~~the time allowed~~ twenty (20) days without good cause, the redetermination of the Commission shall be final and no further appeal or protest shall be allowed.

4. Upon the timely filing of a written protest, the Commission shall provide for an oral hearing de novo to allow the employer to present evidence in support of the protest. 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 Oklahoma, 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.

SECTION 10. AMENDATORY 40 O.S. 2011, Section 4-508, as last amended by Section 6, Chapter 345, O.S.L. 2017 (40 O.S. Supp. 2018, Section 4-508), is amended to read as follows:

Section 4-508.

INFORMATION TO BE KEPT CONFIDENTIAL - DISCLOSURE.

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

B. Upon receipt of written request by any employer who maintains a Supplemental Unemployment Benefit (SUB) Plan, the Commission or its designated representative may release to that employer information regarding weekly benefit amounts paid its workers during a specified temporary layoff period, provided the Supplemental Unemployment Benefit (SUB) Plan requires benefit payment information before Supplemental Unemployment Benefits can be paid to the workers. Any information disclosed under this provision shall be utilized solely for the purpose outlined herein and shall be held strictly confidential by the employer.

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

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

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

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

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

5. The disclosing of information or evidence to the Attorney General or any district attorney when the information or evidence is to be used by the officials or other parties to the proceedings to prosecute or defend allegations of violations of the Employment

Security Act of 1980. The information disclosed to the Attorney General or any district attorney shall be kept confidential by them and not be disclosed except when presented to a court in a prosecution of a violation of Section 1-101 et seq. of this title, and a violation by the Attorney General or district attorney by otherwise releasing the information shall be a felony;

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

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

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

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

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

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

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

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

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

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

17. The release 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 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;

20. The release of information to the ~~wage record interchange system~~ State Wage Interchange System, at the discretion of the Commission;

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

22. The release of employer tax information and benefit claim information to the Oklahoma Health Care Authority for use in determining eligibility for a program that will provide subsidies for health insurance premiums for qualified employers, employees, self-employed 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 to employees of the Office of Juvenile Affairs of information for use in assessing results and outcomes of clients served as well as the effectiveness of state and local juvenile and justice programs including prevention and treatment programs. The information obtained shall be kept confidential by the Office of Juvenile Affairs and shall not be disclosed or be open to public inspection. The Office of Juvenile Affairs may release aggregated data for programs or larger aggregate units, provided that the aggregation meets disclosure requirements of the Oklahoma Employment Security Commission;

27. The release of information to vendors that contract with the State of Oklahoma for the purpose of providing a public electronic labor exchange system that will support the Oklahoma Employment Security Commission's operation of an employment service system to connect employers with job seekers and military veterans. This labor exchange system would enhance the stability and security of Oklahoma's economy as well as support the provision of veterans' priority of service. The vendors may perform computer programming operations, perform computer maintenance or replacement operations, or host the electronic solution; provided each vendor agrees to protect and safeguard all information received, that no information shall be disclosed to any third party, that the use of the information shall be restricted to the scope of the contract, and that the vendor shall properly dispose of all information when no longer needed for the purposes set out in the contract; or

28. The release of employer tax information and benefit claim information to employees of a county public defender's office in the State of Oklahoma and the Oklahoma Indigent Defense System for the

purpose of determining financial eligibility for the services provided by such entities.

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

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

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

SECTION 11. AMENDATORY Section 9, Chapter 345, O.S.L. 2017 (40 O.S. Supp. 2018, Section 6-201), is amended to read as follows:

Section 6-201.

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 12 of this act~~ 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 10 of this act~~ 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.

SECTION 12. AMENDATORY Section 11, Chapter 345, O.S.L. 2017 (40 O.S. Supp. 2018, Section 6-203), is amended to read as follows:

Section 6-203.

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 12 of this act~~ 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 10 of this act~~ Section 6-202 of this title.

SECTION 13. AMENDATORY Section 12, Chapter 345, O.S.L. 2017 (40 O.S. Supp. 2018, Section 6-204), is amended to read as follows:

Section 6-204.

TECHNOLOGY REINVESTMENT APPORTIONMENT.

A. 1. For the period from January 1, 2018, to December 31, 2022, each employer subject to the provisions of Sections 3-109, 3-110.1 and 3-113 of Title 40 of the Oklahoma Statutes shall be required to pay an OESC Technology Reinvestment Apportionment equal to 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 8 of this act~~ 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 Title 40 of the Oklahoma Statutes shall pay an OESC Technology Reinvestment Apportionment equal to the rate reduction granted them pursuant to ~~Section 8 of this act~~ Section 3-109.3 of this title.

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

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

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

F. The Oklahoma Employment Security Commission shall promulgate such rules as may be necessary to implement the provisions of ~~Sections 8 through 13 of this act~~ Sections 3-109.3 and 6-201 to 6-205 of this title.

G. The Oklahoma Employment Security Commission shall create an annual report detailing the collection of the apportionment funds and the expenditures from the OESC Technology Fund. The report shall be filed on or before March 31 of each year following the effective date of this act, and shall continue until all money in the OESC Technology Fund is expended or transferred pursuant to subsection C of ~~Section 10 of this act~~ Section 6-202 of this title. The report shall be filed with the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the State Treasurer, the State Auditor and Inspector, and the Director of the Office of Management and Enterprise Services.

SECTION 14. REPEALER 40 O.S. 2011, Section 4-314, as amended by Section 131, Chapter 304, O.S.L. 2012 (40 O.S. Supp. 2018, Section 4-314), is hereby repealed.

SECTION 15. This act shall become effective July 1, 2019.

SECTION 16. It being immediately necessary for the preservation of the public peace, health or 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.

Passed the Senate the 20th day of February, 2019.

Presiding Officer of the Senate

Passed the House of Representatives the 24th day of April, 2019.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

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

By: _____

Approved by the Governor of the State of Oklahoma this _____

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

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

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

By: _____