An Act

ENROLLED HOUSE
BILL NO. 2204

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

and

Newberry, Allen and Ivester of the Senate

An Act relating to unemployment compensation; amending 40 O.S. 2011, Sections 2-204, 2-207, 2-406.1, 2-503, 2-507, 2-613, 3-102, 3-106, 3-115, 3-309, 3-509, 4-508, 5-108, 552, as last amended by Section 2, Chapter 180, O.S.L. 2011, 554, 557, 560, and 562, which relate to the Employment Security Act of 1980 and the Standards For Workplace Drug and Alcohol Testing Act; modifying registration for employment; updating references; deleting language; providing for alternative method to qualify for benefits; placing certain burden of proof on claimant for certain challenge; requiring certain documentation for certain challenge; construing denial of benefits for failure to make certain request; providing for evidence under certain challenge; allowing certain notices, determinations, and charges be given by electronic means; stating penalty for fraudulent claims; providing for certain percentages be deposited in certain funds; providing for appeal of contribution rate within certain time; construing certain notice date; providing for levy and collection of certain delinquencies; defining terms; stating procedures to collect from certain tax debtors; providing for lien on certain property; stating sheriff service fee; allowing certain exemption; authorizing certain recognition programs; allowing certain award be made to local office, unit or division of the Oklahoma Employment Security Commission for certain purpose; allowing certain organizations to obtain certain employment information; stating other penalties; modifying

certain definition; construing method for certain persons for certain purposes; allowing release of certain test results for certain purposes; repealing 40 O.S. 2011, Section 552, as amended by Section 1, Chapter 134, O.S.L. 2005, which is a duplicate section and which relates to definitions for the Standards For Workplace Drug and Alcohol Testing Act; providing for codification; and declaring an emergency.

SUBJECT: Labor

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

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

Section 2-204. REGISTRATION FOR EMPLOYMENT.

The unemployed individual must register for work ~~at and thereafter continue to report at an employment office~~ within seven (7) days of filing his or her initial claim for unemployment benefits in accordance with such rules as the Commission may prescribe, except that the Commission may~~, by rule,~~ waive ~~or alter either or both~~ the requirements of this section as to individuals attached to regular jobs ~~and as to such other cases or~~, situations involving mass layoffs, or individuals in areas not served by an established employment office~~, with respect to which~~ or Internet service when it finds that compliance with ~~such~~ these requirements would be oppressive, or would be inconsistent with the purpose of ~~this act~~ the Employment Security Act of 1980.

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

Section 2-207. WAGE REQUIREMENT DURING BASE PERIOD.

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

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

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

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

1. Taxable wages of any amount; and

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. AMENDATORY 40 O.S. 2011, 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 ~~such rule as~~ 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. 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.

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 ~~2-209~~ 2-210 of this title;

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

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

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

Section 2-507. NOTICE OF DETERMINATIONS.

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

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

Section 2-613. BENEFIT OVERPAYMENTS.

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

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

2. Claimant error overpayment: in which an individual, by mistake of law or fact, makes a false statement or representation or fails to disclose a material fact and has received any sum as

benefits to which the individual was not entitled. The individual shall be liable to repay this sum, plus interest at the rate of one percent (1%) per month on the unpaid balance of the overpayment, to the Commission. The interest shall cease to accrue when the total accrued interest equals the amount of the overpayment. If an overpayment is modified, the interest shall cease to accrue when the total accrued interest equals the amount of the modified overpayment. The Commission shall deduct the principal sum from any future benefits payable to the individual; or

3. Administrative overpayment - in which:

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

b. an individual has received benefits and, under a redetermination or a reversal of a decision on appeal, the individual has been found to be not entitled to benefits.

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

SECTION 7. AMENDATORY 40 O.S. 2011, 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 ~~this act~~ 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 ~~rate~~ notice shall ~~become conclusive and binding upon~~ be mailed to the employer ~~unless within twenty (20) days after the mailing of the notice of the contribution rate, to~~ at the employer's last-known address~~,~~. If the employer ~~files a written request for a review and redetermination setting forth the employer's reasons for the review. The~~ 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) 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, 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~~ 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) 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) 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 ~~said~~ 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.

SECTION 9. AMENDATORY 40 O.S. 2011, 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, 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) 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, 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.

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.

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

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

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

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

LEVY ON ACCOUNTS.

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

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

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

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

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

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

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

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

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

Section 3-509. LEVY ON BANK ACCOUNTS.

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

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

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

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

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

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

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

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

~~F.~~ E. If there is no money in the tax debtor's bank account at the time the Notice of Levy is served, or if the bank account has been closed, an officer of the bank on which the Notice of Levy is served shall make a statement to that effect on the Notice of Levy. The statement must be notarized and returned to the representative of the Oklahoma Employment Security Commission named in the Notice of Levy.

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

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

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

B. To levy upon the earnings of a tax debtor or contract proceeds owed to a tax debtor, the Oklahoma Employment Security Commission must serve a Notice of Levy on the employer who employs the tax debtor or the contracting entity that owes money under contract to the tax debtor, along with the tax warrants covering all quarters in which the tax debtor owes unemployment taxes, interest, penalties, fees or surcharge. The levy will have the same priority, and be subject to the same exceptions, as a continuing earnings garnishment provided for in Section 1173.4 of Title 12 of the Oklahoma Statutes. The following procedures will apply to a Notice of Levy served on an employer or contracting entity:

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

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

3. The employer or contracting entity shall deliver all funds subject to the levy up to the amount of indebtedness indicated on the tax warrants plus accrued interest pursuant to subsection A of Section 3-301 of Title 40 of the Oklahoma Statutes and any fees for service of process to the representative of the Commission indicated on the Notice of Levy. The delivery of this money shall occur within ten (10) days of the date the earnings or contract proceeds are due to be paid to the tax debtor.

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

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

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

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

In order to encourage the improvement and modernization of employment, training, and placement services for veterans, and to recognize local offices, divisions, or units of the Oklahoma Employment Security Commission for excellence in the provision of services to veterans, or for having made demonstrable improvements in the provision of services to veterans, the Veterans Services Division of the Oklahoma Employment Security Commission is directed to establish a recognition program for these entities. The Oklahoma Employment Security Commission is hereby authorized to award funds

to a local office, division, or unit meeting criteria established by the Veterans Services Division of the Oklahoma Employment Security Commission, provided funds exist from United States Department of Labor grants for the payment of the awards. The funds awarded under this section shall be held by the Finance and Administrative Services Division on behalf of the local office, division, or unit, and can be utilized to purchase supplies, equipment, furniture, or other goods that would assist the employees of the local office, division, or unit. The money shall be drawn using purchase orders through the normal requisition system at the discretion of the supervisor of the local office, division, or unit.

SECTION 15. AMENDATORY 40 O.S. 2011, 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, the Workforce Investment Act of 1998, 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 such person 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 such employer information regarding weekly benefit amounts paid its workers during a specified temporary layoff period, provided such Supplemental Unemployment Benefit (SUB) Plan requires benefit payment information before Supplemental Unemployment Benefits can be paid to such 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 such 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 such 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 State Insurance Fund, the Department of Labor, the Workers' Compensation Court, and the Insurance Department for use in investigation of workers' compensation fraud;

11. The release to employees of the Oklahoma State Bureau of Investigation or release to employees of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control 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 such aggregation meets disclosure requirements of the Commission;

15. The release to employees of the Office of State Finance of information required to identify economic trends. The information obtained shall be kept confidential by the Office of State Finance and shall not be disclosed or be open to public inspection. The Office of State Finance may release aggregate data, provided that such 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 such 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, or any nonprofit corporation that operates a program or activity designated as a partner in the Workforce Investment Act One-Stop delivery system pursuant to 29 U.S.C.A., Section 2481 (b), 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, 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; ~~or~~

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; or

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.

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.

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

Section 5-108. OTHER PENALTIES IN THIS ACT.

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

Employer violations of employee rights - Section 2-301

Impermissible charges to claimants - Section 2-302

Disqualification of benefit claims for fraud - Section 2-402

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

SUTA dumping prohibition - Section 3-111.1

Fraud overpayment penalty - Section 2-613

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

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

1. "Alcohol" means ethyl alcohol or ethanol;

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

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

4. "Confirmation test" means a drug or alcohol test on a sample to substantiate the results of a prior drug or alcohol test on the same sample and which uses different chemical principles and is of equal or greater accuracy than the prior drug or alcohol test. Where a breathalyzer test is utilized, a confirmation test means a second sample test that confirms the prior result. Where a single-use test is utilized, a confirmation test means a second test confirmed by a testing facility;

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

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

7. "Drug or alcohol test" means a chemical test administered for the purpose of determining the presence or absence of a drug or its metabolites or alcohol in a person's bodily tissue, fluids or

products. Adulteration of a specimen or of a drug or alcohol test shall be considered as a refusal to test;

8. "Employee" means any person who supplies labor for remuneration to his or her employer in this state and shall not include an independent contractor, subcontractor or employees of an independent contractor; provided, however, an independent contractor, subcontractor, or employees of an independent contractor, may be subject to a workplace drug or alcohol testing policy under the terms of the contractual agreement when the drug or alcohol testing policy applies to other workers at the job site or workers who are in the same or similar classification or group;

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

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

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

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

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

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

Section 554. Employers may conduct drug and alcohol testing in accordance with the Standards for Workplace Drug and Alcohol Testing Act. Employers who choose to conduct drug or alcohol testing may

only request or require an applicant or employee to undergo testing under any of the following circumstances:

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

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

a. drugs or alcohol on or about the employee's person or in the employee's vicinity,

b. conduct on the employee's part that suggests impairment or influence of drugs or alcohol,

c. a report of drug or alcohol use while at work or on duty,

d. information that an employee has tampered with drug or alcohol testing at any time,

e. negative performance patterns, or

f. excessive or unexplained absenteeism or tardiness;

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

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

a. are police or peace officers,

b. have drug interdiction responsibilities,

c. are authorized to carry firearms,

d. are engaged in activities which directly affect the safety of others,

e. are working for a public hospital including any hospital owned or operated by a municipality, county, or public trust, or

f. work in direct contact with inmates in the custody of the Department of Corrections or work in direct contact with juvenile delinquents or children in need of supervision in the custody of the Department of Human Services;

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

a. are police or peace officers,

b. have drug interdiction responsibilities,

c. are authorized to carry firearms,

d. are engaged in activities which directly affect the safety of others,

e. are working for a public hospital including any hospital owned or operated by a municipality, county, or public trust, or

f. work in direct contact with inmates in the custody of the Department of Corrections or work in direct contact with juvenile delinquents or children in need of supervision in the custody of the Department of Human Services; and

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

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

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

1. Qualifications of testing facilities which shall include the requirement that facilities doing urine analysis tests be certified for forensic urine drug testing pursuant to guidelines or regulations of the federal Department of Health and Human Services or be accredited for forensic urine drug testing by the College of American Pathologists or other organizations recognized by the State Board of Health;

2. Qualifications of testing facility personnel; and

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

B. Nothing in the Standards for Workplace Drug and Alcohol Testing Act shall be construed as prohibiting an employer from adopting a policy which allows for testing for drugs or alcohol by another method which is reasonably calculated to detect the presence of drugs or alcohol, including, but not limited to, breathalyzer testing, testing by use of a single-use test device, known as an on-

site or quick testing device, to collect, handle, store and ship a sample collected for testing. ~~Provided, however, a breathalyzer test shall not be grounds for immediate termination absent a confirmation test.~~

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

Section 560. A. Records of all drug and alcohol test results and related information maintained by the employer shall be the property of the employer and, upon the request of the applicant or employee tested, shall be made available for inspection and copying to the applicant or employee. ~~An~~ Except as provided in subsection B of this section, an employer shall not release such records to any person other than the applicant, employee or the ~~employer's~~ review officer~~, unless the applicant or employee, in writing following receipt of the test results, has expressly granted permission for the employer to release such records in order to comply with a valid judicial or administrative order. A written record of the chain of custody of the sample shall be maintained from the time of the collection of the sample until the sample is no longer required~~.

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

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

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

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

C. A testing facility, or any agent, representative or designee of the facility, or any review officer, shall not disclose to any employer, based on the analysis of a sample collected from an applicant or employee for the purpose of testing for the presence of drugs or alcohol, any information relating to the general health, pregnancy or other physical or mental condition of the applicant or employee.

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

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

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

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

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

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

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

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

Passed the House of Representatives the 2nd day of May, 2012.

Presiding Officer of the House of Representatives

Passed the Senate the 25th day of April, 2012.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 3rd **day of** May, 20 12, **at** 1:40 **o'clock** P **M.**

By: Jessica R. Bryan

Approved by the Governor of the State of Oklahoma the 8th **day of** May, 20 12, **at** 11:25 **o'clock** A **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 8th **day of** May, 20 12, **at** 1:33 **o'clock** P **M.**

By: Michelle R Day