

Minority Report
B-Engrossed
House Bill 2201

Ordered by the Senate April 17
Including House Amendments dated March 6 and Senate Minority
Report Amendments dated April 17

Sponsored by nonconcurring members of the Senate Committee on Commerce and Workforce Development: Senators
TELFER, GEORGE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Changes effective date of election to exclude officers of corporation from eligibility for unemployment insurance coverage to first day of current calendar quarter or preceding calendar quarter. Applies to elections of coverage by corporations occurring on or after January 1, 2010.

[Establishes personal liability of certain officers, employees, members or partners for amounts due under Employment Department Law in case of default by employer.]

Establishes personal liability for certain officers, members or partners who are convicted of crime in connection with default by employer for amounts due under Employment Department Law. Establishes personal liability for employees who are convicted of theft in connection with default by employer.

A BILL FOR AN ACT

1
2 Relating to unemployment insurance administration; creating new provisions; and amending ORS
3 657.044, 657.552 and 657.681.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 657.044 is amended to read:

6 657.044. (1) As used in this chapter, "employment" does not include service performed for:

7 (a) A corporation by corporate officers who are directors of the corporation, who have a sub-
8 stantial ownership interest in the corporation and who are members of the same family if the cor-
9 poration elects not to provide coverage for those individuals. The election shall be in writing and
10 shall be effective on the first day of the [*calendar quarter*] **current calendar quarter or of the**
11 **calendar quarter preceding the calendar quarter** in which the request was submitted.

12 (b) A limited liability company by a member, including members who are managers, as defined
13 in ORS 63.001.

14 (c) A limited liability partnership by a partner as described in ORS chapter 67.

15 (2) The provisions of this section do not apply to service performed for:

16 (a) A nonprofit employing unit;

17 (b) This state;

18 (c) A political subdivision of this state; or

19 (d) An Indian tribe.

20 (3) As used in this section, "members of the same family" means persons who are members of
21 a family as parents, stepparents, grandparents, spouses, sons-in-law, daughters-in-law, brothers, sis-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 ters, children, stepchildren, adopted children or grandchildren.

2 **SECTION 2.** Section 3 of this 2009 Act is added to and made a part of ORS chapter 657.

3 **SECTION 3.** (1) In the case of default by an employer, as provided in ORS 657.515, a
4 person described in subsection (2) of this section who, as an officer, member, partner or
5 employee, is under a duty to perform the actions required by employers under this chapter
6 shall be personally liable for amounts due under this chapter.

7 (2) This section applies to each person:

8 (a) Who is:

9 (A) An officer or employee of a corporation;

10 (B) A member or employee of a limited liability company; or

11 (C) A partner in or employee of a limited liability partnership; and

12 (b) Who is:

13 (A) Other than an employee, a responsible party as described in subsection (3) of this
14 section who has been convicted of a crime in connection with the default described in sub-
15 section (1) of this section; or

16 (B) An employee who is a responsible party as described in subsection (3) of this section
17 who has been convicted of theft in connection with the default described in subsection (1)
18 of this section.

19 (3) A responsible party is a person who, in connection with the employer's business, in-
20 cluding the default described in subsection (1) of this section:

21 (a) Managed debt;

22 (b) Made or participated in making fiscal decisions;

23 (c) Directed day-to-day business operations;

24 (d) Signed checks;

25 (e) Prepared and signed tax returns; or

26 (f) Is a principal recorded on documents filed with the office of the Secretary of State.

27 (4) Each person described in subsection (2) of this section is jointly and severally liable
28 for amounts assessed under this section.

29 (5) If the Director of the Employment Department determines that an amount is due
30 under this section, the director shall issue a notice of assessment to each person liable under
31 this section mailed to the person's last-known address of record with the director.

32 (6) If the director has reason to believe that a person liable under this section is insol-
33 vent, the director may issue a jeopardy assessment as provided by ORS 657.681 (4).

34 (7) Amounts assessed under this section may be reviewed in the manner provided by ORS
35 657.681 (5).

36 **SECTION 4.** ORS 657.552 is amended to read:

37 657.552. (1) Except in the case of failure without good cause to file a return, fraud or intent to
38 evade any provision of this chapter or authorized [*regulations*] **rules**, every notice of assessment
39 shall be given within four years after the last day of the month following the close of the calendar
40 quarter during which the contribution liability included in the assessment accrued. An employer **or**
41 **person liable under section 3 of this 2009 Act** may waive this limitation period or may consent
42 to its extension.

43 (2) In case of failure without good cause to file a return, every notice of assessment shall be
44 given within eight years after the last day of the month following the close of the calendar quarter
45 during which the contribution liability included in the assessment accrued. An employer **or person**

1 **liable under section 3 of this 2009 Act** may waive this limitation period or may consent to its
2 extension.

3 (3) [No] **An** action or suit [*shall*] **may not** be commenced to collect any amount of contributions,
4 interest or penalties due under assessment unless such action or suit is commenced within three
5 years from the date of the assessment, except in the case of fraud or intent to evade any provision
6 of this chapter or authorized regulations, an action or suit may be commenced at any time.

7 (4) If the cause of action or suit accrues or has accrued against any employer **or person liable**
8 **under section 3 of this 2009 Act** who is out of the state or concealed therein, such action or suit
9 may be commenced within three years after the return of the employer **or person** into the state,
10 or the time of the concealment of the employer **or person** has ended.

11 **SECTION 5.** ORS 657.681 is amended to read:

12 657.681. (1) If an employer files a report for the purpose of determining the amount of contri-
13 butions due under this chapter but fails to pay contributions or interest, the Director of the Em-
14 ployment Department or authorized representative may assess the amount of contributions or
15 interest due on the basis of the information submitted and shall give written notice of the assess-
16 ment to the employer mailed to the **employer's** last-known address of record with the director. In
17 the event that such report is subsequently found to be incorrect additional assessments may be
18 made, subsection (5) of this section to the contrary notwithstanding.

19 (2) If an employer fails to file a report when required by the director for the purpose of deter-
20 mining the amount of contribution due under this chapter, the director or authorized representative
21 may make an estimate based upon any information of the amount of wages paid for employment in
22 the period or periods for which no report was filed and upon the basis of such estimate shall com-
23 pute and assess the amount of employer contributions payable by the employer. Written notice of
24 the assessment **to the employer** shall be mailed to the **employer's** last-known address [*of the em-*
25 *ployer*] of record with the director.

26 (3) If the director or authorized representative is not satisfied with a report made by an em-
27 ployer for the purpose of determining the amount of contribution due under this chapter, the direc-
28 tor or authorized representative may compute the amount required to be paid upon the basis of facts
29 contained in the report or upon the basis of any information obtainable and may make an assessment
30 of the amount of the deficiency. Written notice of such deficiency assessment **to the employer** shall
31 be mailed to the **employer's** last-known address [*of the employer*] of record with the director.

32 (4) If the director or authorized representative has reason to believe that an employer **or person**
33 **liable under section 3 of this 2009 Act** is insolvent, or that the collection of any contributions will
34 be jeopardized by delaying collection, the director or authorized representative may thereupon make
35 an immediate assessment of the estimated amount of accrued contributions, noting upon the assess-
36 ment that it is a jeopardy assessment levied under this subsection, and may proceed to enforce col-
37 lection immediately, but interest shall not begin to accrue upon such contributions until the due
38 date nor shall court costs be taxed against such employer **or person liable under section 3 of this**
39 **2009 Act** on any action to enforce collection commenced prior to the due date. The director or au-
40 thorized representative may, in levying the assessment, demand a bond or deposit of such security
41 as is necessary to [*insure*] **ensure** collection of the amount of such assessment. Written notice of the
42 assessment **to the employer or person liable under section 3 of this 2009 Act** shall be mailed to
43 the **employer's or person's** last-known address [*of the employer*] of record with the director.

44 (5) All assessments provided for in this section shall finally fix the amount of contributions due
45 and payable unless the employer **or person liable under section 3 of this 2009 Act** shall within

1 20 days after the mailing of the notice of assessment apply to the director for a hearing, or unless
2 the director or authorized representative on the motion of the director or authorized representative
3 reviews the same prior to a decision of the administrative law judge thereon pursuant to hearing.
4 An employer **or person liable under section 3 of this 2009 Act** who fails to apply for a hearing
5 upon an assessment within the time provided or, having applied, fails to appear and be heard after
6 due notice of such hearing, shall be precluded from raising any defense to any action, suit or pro-
7 ceeding brought by the director for the recovery of contributions based upon such assessment which
8 could have been raised in the hearing. The amount of contributions so assessed under this section
9 shall be subject to the penalties and interest provided by ORS 657.515 and 657.663.

10 **SECTION 6. The amendments to ORS 657.044 by section 1 of this 2009 Act apply to**
11 **elections of coverage by corporations occurring on or after January 1, 2010.**

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