

(Including Amendments to Resolve Conflicts)

B-Engrossed House Bill 2203

Ordered by the Senate May 11
Including House Amendments dated March 3 and Senate Amendments
dated May 11

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Employment Department)

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.

Provides that in case of conflict between provision of Employment Department Law and other provision of state law, Employment Department Law controls. Limits employment that will end individual's disqualification from receipt of unemployment benefits to employment subject to Employment Department Law or equivalent law in another state or Canada, employment required to be covered under Federal Unemployment Tax Act and employment by federal government. **Exempts from disqualification of unemployment benefits individual who has immediate family member that individual reasonably believes will become victim of or that is victim of domestic violence, stalking or sexual assault.**

Broadens definition of "eligibility period" for purposes relating to receipt of benefits during period of unemployment. Modifies definition on December 27, 2009. Sunsets changes to definition on May 30, 2010.

Broadens definition of "eligible dislocated workers" for purposes relating to qualification for dislocated worker program. Modifies circumstances under which eligible dislocated worker may receive benefits necessary for worker to continue or complete approved training program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to unemployment insurance; creating new provisions; amending ORS 657.176, 657.265,
3 657.321, 657.335 and 657.340; repealing ORS 657.337 and 657.342; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 657.**

6 **SECTION 2. For purposes of this chapter, if any provision of state law conflicts with any**
7 **provision of this chapter, this chapter shall control.**

8 **SECTION 3. ORS 657.176 is amended to read:**

9 657.176. (1) An authorized representative designated by the Director of the Employment De-
10 partment shall promptly examine each claim to determine whether an individual is subject to dis-
11 qualification as a result of a separation, termination, leaving, resignation, or disciplinary suspension
12 from work or as a result of failure to apply for or accept work and shall promptly enter a director's
13 decision if required by ORS 657.267. The authorized representative may address issues raised by
14 information before the authorized representative, including but not limited to the nature of the
15 separation, notwithstanding the way the parties characterize those issues.

16 (2) An individual shall be disqualified from the receipt of benefits until the individual has per-
17 formed service in employment[, *as defined in ORS 657.030 (2), in this state or in employment, as de-*

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 *fined by a law equivalent to ORS 657.030 (2), in any other state or Canada] subject to this chapter*
2 **or the equivalent law of another state or Canada or as defined in ORS 657.030 (2)** or as an
3 employee of the federal government, for which remuneration is received that equals or exceeds four
4 times the individual's weekly benefit amount subsequent to the week in which the act causing the
5 disqualification occurred, if the authorized representative designated by the director finds that the
6 individual:

7 (a) Has been discharged for misconduct connected with work;

8 (b) Has been suspended from work for misconduct connected with work;

9 (c) Voluntarily left work without good cause;

10 (d) Failed without good cause to apply for available suitable work when referred by the em-
11 ployment office or the director;

12 (e) Failed without good cause to accept suitable work when offered;

13 (f) Has been discharged or suspended for being absent or tardy in reporting to work and the
14 absence or tardiness occurred as a result of the unlawful use of any drug unless the person was
15 participating in a recognized drug rehabilitation program at the time of the absence or tardiness,
16 or is so participating within 10 days after the date of the discharge or suspension, and the person
17 provides to the Employment Department documentation of program participation. As used in this
18 paragraph, "unlawful use" does not include the use of a drug taken under the supervision of a li-
19 censed health care professional and in accordance with the prescribed directions for consumption,
20 or other uses authorized by the laws of this state;

21 (g) Has been discharged or suspended for being absent or tardy in reporting to work and the
22 absence or tardiness occurred as the result of the use of alcohol on a second or any subsequent
23 occasion within a period of 12 months unless the person was participating in a recognized alcohol
24 rehabilitation program at the time of the absence or tardiness, or is so participating within 10 days
25 after the date of the discharge or suspension, and the person provides to the department documen-
26 tation of program participation; or

27 (h) Has committed a disqualifying act described in subsection (9) or (10) of this section.

28 (3) If the authorized representative designated by the director finds that an individual was dis-
29 charged for misconduct because of the individual's commission of a felony or theft in connection
30 with the individual's work, all benefit rights based on wages earned prior to the date of the dis-
31 charge shall be canceled if the individual's employer notifies the director of the discharge within
32 10 days following issuance of the notice provided for in ORS 657.265 or 30 days following issuance
33 of the notice provided for in ORS 657.266, and:

34 (a) The individual has admitted commission of the felony or theft to an authorized representative
35 of the director;

36 (b) The individual has signed a written admission of the felony or theft and the written admis-
37 sion has been presented to an authorized representative of the director; or

38 (c) The felony or theft has resulted in a conviction by a court of competent jurisdiction.

39 (4) An individual disqualified under subsection (2) of this section shall have the individual's
40 maximum benefit amount reduced by eight times the individual's weekly benefit amount. However,
41 in no event shall the individual's maximum benefit amount be reduced to less than the individual's
42 weekly benefit amount unless the individual has previously received benefits during the individual's
43 benefit year.

44 (5) An individual may not be disqualified from receiving benefits under subsection (2)(c) or (e)
45 of this section or under ORS 657.200 if the individual ceases work or fails to accept work when a

1 collective bargaining agreement between the individual's bargaining unit and the individual's em-
2 ployer is in effect and the employer unilaterally modifies the amount of wages payable under the
3 agreement, in breach of the agreement.

4 (6) For purposes of applying subsection (2) of this section, when an individual has notified an
5 employer that the individual will leave work on a specific date and it is determined that:

6 (a) The separation would be for reasons that constitute good cause;

7 (b) The individual voluntarily left work without good cause prior to the date of the impending
8 good cause voluntary leaving date; and

9 (c) The actual voluntary leaving of work occurred no more than 15 days prior to the planned
10 date of voluntary leaving,

11
12 then the separation from work shall be adjudicated as if the actual voluntary leaving had not oc-
13 curred and the planned voluntary leaving had occurred. However, the individual shall be ineligible
14 for benefits for the period including the week in which the actual voluntary leaving occurred
15 through the week prior to the week of the planned good cause voluntary leaving date.

16 (7) For purposes of applying subsection (2) of this section, when an employer has notified an
17 individual that the individual will be discharged on a specific date and it is determined that:

18 (a) The discharge would not be for reasons that constitute misconduct connected with the work;

19 (b) The individual voluntarily left work without good cause prior to the date of the impending
20 discharge; and

21 (c) The voluntary leaving of work occurred no more than 15 days prior to the date of the im-
22 pending discharge,

23
24 then the separation from work shall be adjudicated as if the voluntary leaving had not occurred and
25 the discharge had occurred. However, the individual shall be ineligible for benefits for the period
26 including the week in which the voluntary leaving occurred through the week prior to the week in
27 which the individual would have been discharged.

28 (8) For purposes of applying subsection (2) of this section, when an individual has notified an
29 employer that the individual will leave work on a specific date and it is determined that:

30 (a) The voluntary leaving would be for reasons that do not constitute good cause;

31 (b) The employer discharged the individual, but not for misconduct connected with work, prior
32 to the date of the planned voluntary leaving; and

33 (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving,

34
35 then the separation from work shall be adjudicated as if the discharge had not occurred and the
36 planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the
37 period including the week in which the actual discharge occurred through the week prior to the
38 week of the planned voluntary leaving date.

39 (9)(a) For the purposes of subsection (2) of this section, an individual is considered to have
40 committed a disqualifying act when the individual:

41 (A) Fails to comply with the terms and conditions of a reasonable written policy established by
42 the employer or through collective bargaining, which may include blanket, random, periodic and
43 probable cause testing, that governs the use, sale, possession or effects of drugs or alcohol in the
44 workplace;

45 (B) Fails or refuses to take a drug or alcohol test as required by the employer's reasonable

- 1 written policy;
- 2 (C) Refuses to cooperate with or subverts or attempts to subvert a drug or alcohol testing pro-
3 cess in any employment-related test required by the employer's reasonable written policy, including
4 but not limited to:
- 5 (i) Refusal or failure to complete proper documentation that authorizes the test;
- 6 (ii) Refusal or failure to sign a chain of custody form;
- 7 (iii) Presentation of false identification;
- 8 (iv) Placement of an adulterant in the individual's specimen for testing, when the adulterant is
9 identified by a testing facility; or
- 10 (v) Interference with the accuracy of the test results by conduct that includes dilution or
11 adulteration of a test specimen;
- 12 (D) Is under the influence of intoxicants while performing services for the employer;
- 13 (E) Possesses a drug unlawfully or in violation of the employer's reasonable written policy dur-
14 ing work;
- 15 (F) Tests positive for alcohol or an unlawful drug in connection with employment; or
- 16 (G) Refuses to enter into or violates the terms of a last chance agreement with the employer.
- 17 (b)(A) Except as provided in subparagraph (B) of this paragraph, an individual is not considered
18 to have committed a disqualifying act under this subsection if the individual, on the date of sepa-
19 ration or within 10 days after the date of separation, is participating in a recognized drug or alcohol
20 rehabilitation program and provides documentation of participation in the program to the depart-
21 ment.
- 22 (B) This paragraph does not apply to an individual who has refused to enter into or has violated
23 the terms of a last chance agreement with the employer.
- 24 (c) It is no defense or excuse under this section that the individual's separation resulted from
25 alcohol use, marijuana use, unlawful drug use, alcoholism or drug addiction.
- 26 (d) The department shall adopt rules to carry out the provisions of this subsection.
- 27 (10) For the purposes of subsection (2) of this section, an individual is considered to have com-
28 mitted a disqualifying act when the individual voluntarily leaves work, fails to apply for available
29 suitable work when referred by the employment office or the director or fails to accept suitable
30 work when offered:
- 31 (a) Because the employer has or introduces a reasonable written drug-free workplace policy that
32 is consistent with subsection (9)(a)(A) of this section;
- 33 (b) Because the employer requires the employee to consent to present or future drug or alcohol
34 tests under a reasonable written policy that is consistent with subsection (9)(a)(A) of this section;
- 35 (c) To avoid taking a drug or alcohol test under a reasonable written policy that is consistent
36 with subsection (9)(a)(A) of this section; or
- 37 (d) To avoid meeting the requirements of a last chance agreement.
- 38 (11) An individual may not be disqualified from receiving benefits under subsection (2)(c) of this
39 section and shall be deemed laid off if the individual:
- 40 (a) Works under a collective bargaining agreement;
- 41 (b) Elects to be laid off when the employer has decided to lay off employees; and
- 42 (c) Is placed on the referral list under the collective bargaining agreement.
- 43 (12) An individual may not be disqualified from receiving benefits under subsection (2)(c), (d) or
44 (e) of this section or be considered unavailable for purposes of ORS 657.155 if:
- 45 (a) The individual **or a member of the individual's immediate family** is a victim[, *or is the*

1 *parent or guardian of a minor child who is a victim,*] of domestic violence, stalking or sexual
2 assault[;], **or the individual believes that the individual or a member of the individual's im-**
3 **mediate family could become a victim of domestic violence, stalking or sexual assault; and**

4 (b) The individual leaves work, fails to apply for available suitable work or fails to accept suit-
5 able work when offered **in order** to protect the individual or [*the minor child*] **a member of the**
6 **individual's immediate family** from [*further*] domestic violence, stalking or sexual assault that the
7 individual reasonably believes will occur [*at the workplace or elsewhere; and*] **as a result of the**
8 **individual's continued employment or acceptance of work.**

9 [*(c) The individual pursues reasonable available alternatives to leaving work, failing to apply for*
10 *available suitable work or failing to accept suitable work when offered.*]

11 (13) For purposes of this section:

12 (a) "Adulterant" means a substance that does not occur naturally in urine, or that occurs na-
13 turally in urine but not at the concentrations detected. "Adulterant" includes but is not limited to
14 glutaraldehyde, nitrite concentrations above physiological levels, hypochlorite or soap.

15 (b) "Drug" means a controlled substance as defined in ORS 475.005.

16 (c) "Last chance agreement" means a reasonable agreement:

17 (A) Between an employer and an employee who has violated the employer's reasonable written
18 policy, has engaged in drug or alcohol use connected with work or has admitted to alcohol abuse,
19 marijuana use or unlawful drug use; and

20 (B) That permits the employee to return to work under conditions that may require the em-
21 ployee to:

22 (i) Abstain from alcohol use, marijuana use and unlawful drug use; and

23 (ii) Attend and comply with the requirements of a rehabilitation or education program accepta-
24 ble to the employer.

25 (d) An individual is "under the influence of intoxicants" when the level of alcohol, marijuana
26 or unlawful drugs present in the individual's body exceeds the amount prescribed in a collective
27 bargaining agreement, or the amount prescribed in the employer's reasonable written policy if there
28 is no applicable collective bargaining agreement provision.

29 **SECTION 4.** ORS 657.265 is amended to read:

30 657.265. When a claimant files an initial claim or an additional claim, the Employment Depart-
31 ment promptly shall give written notice of the claim filing to the claimant's most recent employing
32 unit. If the claimant did not receive or will not receive remuneration **from qualifying employment,**
33 **as described in ORS 657.176,** in an amount greater than or equal to four times the claimant's
34 weekly benefit amount from the claimant's most recent employing unit, the Employment Department
35 shall notify the claimant's next previous employing unit or units until the Employment Department
36 has notified [*those*] **all** of the claimant's former employing units [*which*] **that,** in the aggregate, have
37 paid or will pay the claimant remuneration **from qualifying employment, as described in ORS**
38 **657.176,** in an amount [*which*] **that** is equal to or exceeds four times the claimant's weekly benefit
39 amount.

40 **SECTION 5.** ORS 657.321 is amended to read:

41 657.321. As used in ORS 657.321 to 657.329 unless the context requires otherwise:

42 (1) "Eligibility period" of an individual means the period consisting of:

43 (a) The weeks in the individual's benefit year that begin in an extended benefit period and[, *if*
44 *the benefit year ends within such extended benefit period,*] any **subsequent** weeks [*thereafter*] that
45 begin in [*such*] **the extended benefit period**[.]; **or**

1 **(b) Any week that begins:**

2 **(A) After the date the individual exhausts all rights to Emergency Unemployment Com-**
3 **pensation; and**

4 **(B) During an extended benefit period that began on or before the date described in**
5 **subparagraph (A) of this paragraph.**

6 (2) "Exhaustee" means an individual who, with respect to any week of unemployment in the in-
7 dividual's eligibility period:

8 (a) Has received prior to such week, all of the regular benefits that were available to the indi-
9 vidual under this chapter or any other state law (including dependents' allowances and benefits
10 payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in the current
11 benefit year that includes such week (provided that an individual shall be deemed to have received
12 all of the regular benefits that were available to the individual, although as a result of a pending
13 appeal with respect to wages or employment that were not considered in the original monetary de-
14 termination in the current benefit year, the individual may subsequently be determined to be entitled
15 to added regular benefits); or

16 (b)(A) The individual's benefit year having expired prior to such week, has no, or insufficient,
17 wages and employment to establish a new benefit year that would include such week;

18 (B) Has no right to unemployment benefits or allowances under the Railroad Unemployment
19 Insurance Act and such other federal laws as are specified in regulations issued by the United
20 States Secretary of Labor; and

21 (C) Has not received and is not seeking, or the appropriate agency has finally determined that
22 the individual is not entitled to receive, unemployment benefits under the unemployment compen-
23 sation law of Canada.

24 (3)(a) "Extended benefit period" means a period that:

25 (A) Begins with the third week after a week for which there is a state "on" indicator; and

26 (B) Ends with the third week after the first week for which there is a state "off" indicator or
27 the 13th consecutive week of such period, whichever occurs later.

28 (b) Notwithstanding the provisions of paragraph (a) of this subsection, no extended benefit pe-
29 riod may begin by reason of a state "on" indicator before the 14th week following the end of a prior
30 extended benefit period that was in effect with respect to this state.

31 (c) There is a state "on" indicator for any week for which the Director of the Employment De-
32 partment determines in accordance with regulations of the United States Secretary of Labor that for
33 the period consisting of such week and the immediately preceding 12 weeks, the rate of insured
34 unemployment (not seasonally adjusted):

35 (A) Equaled or exceeded five percent and equaled or exceeded 120 percent of the average of
36 such rates for the corresponding 13-week periods ending in each of the preceding two calendar
37 years;

38 (B) Equaled or exceeded six percent; or

39 (C) With respect to benefits for weeks of unemployment beginning after March 6, 1993:

40 (i) The average rate of total unemployment (seasonally adjusted), as determined by the United
41 States Secretary of Labor, for the period consisting of the most recent three months for which data
42 for all states are published before the close of such week equals or exceeds 6.5 percent; and

43 (ii) The average rate of total unemployment in the state (seasonally adjusted), as determined by
44 the United States Secretary of Labor, for the three-month period referred to in sub-subparagraph (i)
45 of this subparagraph, equals or exceeds 110 percent of such average for either or both of the cor-

1 responding three-month periods ending in the two preceding calendar years.

2 (d) There is a state “off” indicator for any week for which the director determines in accordance
3 with regulations of the United States Secretary of Labor that for the period consisting of such week
4 and the immediately preceding 12 weeks, none of the options specified in subsection (3)(c) of this
5 section results in an “on” indicator.

6 (4) “Extended benefits” means benefits (including benefits payable to federal civilian employees
7 and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions
8 of this chapter for weeks of unemployment in the individual’s eligibility period.

9 (5) “High unemployment period” means any period during which an extended benefit period
10 would be in effect if subsection (3)(c)(C)(i) of this section were applied by substituting “eight
11 percent” for “6.5 percent.”

12 (6) “Rate of insured unemployment,” for the purpose of subsection (3)(c) and (d) of this section,
13 means the percentage derived by dividing:

14 (a) The average weekly number of regular continued weeks of unemployment claimed by indi-
15 viduals in this state with respect to the most recent 13-consecutive-week period, as determined by
16 the director on the basis of reports to the United States Secretary of Labor, by

17 (b) The average monthly employment covered under this chapter for the first four of the most
18 recent six completed calendar quarters before the end of such 13-week period.

19 (7) “Regular benefits” means benefits payable to an individual under this chapter or under any
20 other state law (including benefits payable to federal civilian employees and to ex-servicemen pur-
21 suant to 5 U.S.C. chapter 85) other than extended benefits.

22 (8) “State law” means the unemployment insurance law of any state, approved by the United
23 States Secretary of Labor under section 3304 of the Internal Revenue Code.

24 **SECTION 6.** ORS 657.321, as amended by section 5 of this 2009 Act, is amended to read:

25 657.321. As used in ORS 657.321 to 657.329 unless the context requires otherwise:

26 (1) “Eligibility period” of an individual means the period consisting of:

27 (a) The weeks in the individual’s benefit year that begin in an extended benefit period and any
28 subsequent weeks that begin in the extended benefit period; or

29 (b) Any week that begins:

30 (A) After the date the individual exhausts all rights to Emergency Unemployment Compensation;
31 and

32 (B) During an extended benefit period that began on or before the date described in subpara-
33 graph (A) of this paragraph, **provided the individual received extended benefits for one or more**
34 **weeks of unemployment during the period from February 22, 2009, through December 26,**
35 **2009.**

36 (2) “Exhaustee” means an individual who, with respect to any week of unemployment in the in-
37 dividual’s eligibility period:

38 (a) Has received prior to such week, all of the regular benefits that were available to the indi-
39 vidual under this chapter or any other state law (including dependents’ allowances and benefits
40 payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in the current
41 benefit year that includes such week (provided that an individual shall be deemed to have received
42 all of the regular benefits that were available to the individual, although as a result of a pending
43 appeal with respect to wages or employment that were not considered in the original monetary de-
44 termination in the current benefit year, the individual may subsequently be determined to be entitled
45 to added regular benefits); or

1 (b)(A) The individual's benefit year having expired prior to such week, has no, or insufficient,
2 wages and employment to establish a new benefit year that would include such week;

3 (B) Has no right to unemployment benefits or allowances under the Railroad Unemployment
4 Insurance Act and such other federal laws as are specified in regulations issued by the United
5 States Secretary of Labor; and

6 (C) Has not received and is not seeking, or the appropriate agency has finally determined that
7 the individual is not entitled to receive, unemployment benefits under the unemployment compen-
8 sation law of Canada.

9 (3)(a) "Extended benefit period" means a period that:

10 (A) Begins with the third week after a week for which there is a state "on" indicator; and

11 (B) Ends with the third week after the first week for which there is a state "off" indicator or
12 the 13th consecutive week of such period, whichever occurs later.

13 (b) Notwithstanding the provisions of paragraph (a) of this subsection, no extended benefit pe-
14 riod may begin by reason of a state "on" indicator before the 14th week following the end of a prior
15 extended benefit period that was in effect with respect to this state.

16 (c) There is a state "on" indicator for any week for which the Director of the Employment De-
17 partment determines in accordance with regulations of the United States Secretary of Labor that for
18 the period consisting of such week and the immediately preceding 12 weeks, the rate of insured
19 unemployment (not seasonally adjusted):

20 (A) Equaled or exceeded five percent and equaled or exceeded 120 percent of the average of
21 such rates for the corresponding 13-week periods ending in each of the preceding two calendar
22 years;

23 (B) Equaled or exceeded six percent; or

24 (C) With respect to benefits for weeks of unemployment beginning after March 6, 1993:

25 (i) The average rate of total unemployment (seasonally adjusted), as determined by the United
26 States Secretary of Labor, for the period consisting of the most recent three months for which data
27 for all states are published before the close of such week equals or exceeds 6.5 percent; and

28 (ii) The average rate of total unemployment in the state (seasonally adjusted), as determined by
29 the United States Secretary of Labor, for the three-month period referred to in sub-subparagraph (i)
30 of this subparagraph, equals or exceeds 110 percent of such average for either or both of the cor-
31 responding three-month periods ending in the two preceding calendar years.

32 (d) There is a state "off" indicator for any week for which the director determines in accordance
33 with regulations of the United States Secretary of Labor that for the period consisting of such week
34 and the immediately preceding 12 weeks, none of the options specified in subsection (3)(c) of this
35 section results in an "on" indicator.

36 (4) "Extended benefits" means benefits (including benefits payable to federal civilian employees
37 and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions
38 of this chapter for weeks of unemployment in the individual's eligibility period.

39 (5) "High unemployment period" means any period during which an extended benefit period
40 would be in effect if subsection (3)(c)(C)(i) of this section were applied by substituting "eight
41 percent" for "6.5 percent."

42 (6) "Rate of insured unemployment," for the purpose of subsection (3)(c) and (d) of this section,
43 means the percentage derived by dividing:

44 (a) The average weekly number of regular continued weeks of unemployment claimed by indi-
45 viduals in this state with respect to the most recent 13-consecutive-week period, as determined by

1 the director on the basis of reports to the United States Secretary of Labor, by

2 (b) The average monthly employment covered under this chapter for the first four of the most
3 recent six completed calendar quarters before the end of such 13-week period.

4 (7) "Regular benefits" means benefits payable to an individual under this chapter or under any
5 other state law (including benefits payable to federal civilian employees and to ex-servicemen pur-
6 suant to 5 U.S.C. chapter 85) other than extended benefits.

7 (8) "State law" means the unemployment insurance law of any state, approved by the United
8 States Secretary of Labor under section 3304 of the Internal Revenue Code.

9 **SECTION 7.** ORS 657.321, as amended by section 6 of this 2009 Act, is amended to read:

10 657.321. As used in ORS 657.321 to 657.329 unless the context requires otherwise:

11 (1) "Eligibility period" of an individual means the period consisting of[:]

12 [(a)] the weeks in the individual's benefit year that begin in an extended benefit period and, **if**
13 **the benefit year ends within the extended benefit period**, any subsequent weeks that begin in
14 the extended benefit period[; or]

15 [(b) Any week that begins:]

16 [(A) After the date the individual exhausts all rights to Emergency Unemployment Compensation;
17 and]

18 [(B) During an extended benefit period that began on or before the date described in subparagraph
19 (A) of this paragraph, provided the individual received extended benefits for one or more weeks of
20 unemployment during the period from February 22, 2009, through December 26, 2009].

21 (2) "Exhaustee" means an individual who, with respect to any week of unemployment in the in-
22 dividual's eligibility period:

23 (a) Has received prior to such week, all of the regular benefits that were available to the indi-
24 vidual under this chapter or any other state law (including dependents' allowances and benefits
25 payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in the current
26 benefit year that includes such week (provided that an individual shall be deemed to have received
27 all of the regular benefits that were available to the individual, although as a result of a pending
28 appeal with respect to wages or employment that were not considered in the original monetary de-
29 termination in the current benefit year, the individual may subsequently be determined to be entitled
30 to added regular benefits); or

31 (b)(A) The individual's benefit year having expired prior to such week, has no, or insufficient,
32 wages and employment to establish a new benefit year that would include such week;

33 (B) Has no right to unemployment benefits or allowances under the Railroad Unemployment
34 Insurance Act and such other federal laws as are specified in regulations issued by the United
35 States Secretary of Labor; and

36 (C) Has not received and is not seeking, or the appropriate agency has finally determined that
37 the individual is not entitled to receive, unemployment benefits under the unemployment compen-
38 sation law of Canada.

39 (3)(a) "Extended benefit period" means a period that:

40 (A) Begins with the third week after a week for which there is a state "on" indicator; and

41 (B) Ends with the third week after the first week for which there is a state "off" indicator or
42 the 13th consecutive week of such period, whichever occurs later.

43 (b) Notwithstanding the provisions of paragraph (a) of this subsection, no extended benefit pe-
44 riod may begin by reason of a state "on" indicator before the 14th week following the end of a prior
45 extended benefit period that was in effect with respect to this state.

1 (c) There is a state “on” indicator for any week for which the Director of the Employment De-
2 partment determines in accordance with regulations of the United States Secretary of Labor that for
3 the period consisting of such week and the immediately preceding 12 weeks, the rate of insured
4 unemployment (not seasonally adjusted):

5 (A) Equaled or exceeded five percent and equaled or exceeded 120 percent of the average of
6 such rates for the corresponding 13-week periods ending in each of the preceding two calendar
7 years;

8 (B) Equaled or exceeded six percent; or

9 (C) With respect to benefits for weeks of unemployment beginning after March 6, 1993:

10 (i) The average rate of total unemployment (seasonally adjusted), as determined by the United
11 States Secretary of Labor, for the period consisting of the most recent three months for which data
12 for all states are published before the close of such week equals or exceeds 6.5 percent; and

13 (ii) The average rate of total unemployment in the state (seasonally adjusted), as determined by
14 the United States Secretary of Labor, for the three-month period referred to in sub-subparagraph (i)
15 of this subparagraph, equals or exceeds 110 percent of such average for either or both of the cor-
16 responding three-month periods ending in the two preceding calendar years.

17 (d) There is a state “off” indicator for any week for which the director determines in accordance
18 with regulations of the United States Secretary of Labor that for the period consisting of such week
19 and the immediately preceding 12 weeks, none of the options specified in subsection (3)(c) of this
20 section results in an “on” indicator.

21 (4) “Extended benefits” means benefits (including benefits payable to federal civilian employees
22 and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions
23 of this chapter for weeks of unemployment in the individual’s eligibility period.

24 (5) “High unemployment period” means any period during which an extended benefit period
25 would be in effect if subsection (3)(c)(C)(i) of this section were applied by substituting “eight
26 percent” for “6.5 percent.”

27 (6) “Rate of insured unemployment,” for the purpose of subsection (3)(c) and (d) of this section,
28 means the percentage derived by dividing:

29 (a) The average weekly number of regular continued weeks of unemployment claimed by indi-
30 viduals in this state with respect to the most recent 13-consecutive-week period, as determined by
31 the director on the basis of reports to the United States Secretary of Labor, by

32 (b) The average monthly employment covered under this chapter for the first four of the most
33 recent six completed calendar quarters before the end of such 13-week period.

34 (7) “Regular benefits” means benefits payable to an individual under this chapter or under any
35 other state law (including benefits payable to federal civilian employees and to ex-servicemen pur-
36 suant to 5 U.S.C. chapter 85) other than extended benefits.

37 (8) “State law” means the unemployment insurance law of any state, approved by the United
38 States Secretary of Labor under section 3304 of the Internal Revenue Code.

39 **SECTION 8.** ORS 657.335 is amended to read:

40 657.335. As used in ORS 657.335 to 657.360:

41 (1) “Eligible dislocated workers” means individuals who **are not disqualified from benefits**
42 **under ORS 657.176 and who:**

43 (a) Have been terminated or laid off or who have received a notice of termination or layoff, are
44 eligible for or have exhausted their entitlement to unemployment compensation and are unlikely to
45 return to their previous industry or occupation;

1 (b) Have been terminated or have received a notice of termination of employment, as a result
2 of any permanent closure of or any substantial layoff at a plant, facility or enterprise;

3 (c) Are long term unemployed and have limited opportunities for employment or reemployment
4 in the same or a similar occupation in the area in which such individuals reside, including older
5 individuals who may have substantial barriers to employment by reason of age;

6 (d) Were self-employed, including farmers and ranchers, and are unemployed as a result of gen-
7 eral economic conditions in the community in which they reside or because of natural disasters;
8 [or]

9 (e) Returned to service in the Oregon National Guard or the military reserve forces of the
10 United States following active duty service [*as set forth in ORS 657.340 (3)(d)*];

11 **(f) Have separated from a declining industry; or**

12 **(g) Have been involuntarily and indefinitely separated from employment as a result of a**
13 **permanent reduction of operations at their place of employment.**

14 (2) "Professional technical training" means professional and technical training or retraining and
15 basic education, including literacy skills, designed to prepare individuals for gainful employment in
16 recognized or new occupations or to prepare individuals to become self-employed. The term does not
17 include programs of instruction for an individual (including transfer credit programs of instruction
18 given at community colleges) which are primarily intended to lead toward a baccalaureate or higher
19 degree or training that has for its purpose the preparation of individuals for employment in occu-
20 pations which require a baccalaureate or higher degree from institutions of higher education unless
21 approved by the Director of the Employment Department.

22 **SECTION 9.** ORS 657.340 is amended to read:

23 657.340. (1) Dislocated workers approved for professional technical training may not be denied
24 unemployment insurance benefits solely because they are attending professional technical training,
25 nor shall such individual be denied benefits by reason of leaving work to enter such training if the
26 work left was part-time or temporary or paid less than 80 percent of the individual's average weekly
27 wage during the base year.

28 (2) Notwithstanding provisions of this chapter relating to availability for work, actively seeking
29 work or refusal to accept suitable work, dislocated workers approved for professional technical
30 training and otherwise eligible for benefits are not ineligible for such benefits or waiting week credit
31 because of attendance in professional technical training.

32 (3)(a) Eligible dislocated workers who file valid unemployment compensation claims, upon ex-
33 haustion of regular benefits, are eligible[*subject to the availability of funds,*] for supplemental ben-
34 efits from 1 to 26 times the individual's most recent weekly benefit amount based upon the amount
35 needed to continue or complete approved professional technical training.

36 (b) Supplemental benefits shall be paid under the same terms and conditions as regular benefits
37 under this chapter, except that the Director of the Employment Department may extend the benefit
38 year of an individual attending an approved professional technical training program a sufficient
39 number of weeks to allow the individual to complete the training program.

40 (c) Supplemental benefits [*under ORS 657.335 to 657.360*] may be paid only when the eligible
41 dislocated worker is not eligible to receive extended benefits as provided in ORS 657.321 to 657.329
42 or additional benefits as provided in ORS 657.331 to 657.334.

43 [*d) Supplemental benefits may be paid only to eligible dislocated workers whose unemployment,*
44 *as determined by the director:*]

45 [*A) Is substantially due to the lack of employment opportunities in the workers' local labor market*

1 *resulting from:]*

2 *[(i) High energy costs;]*

3 *[(ii) Extended drought conditions and the attendant economic conditions;]*

4 *[(iii) Secondary effects of foreign trade; or]*

5 *[(iv) A shift of production to another state or territory of the United States; or]*

6 *[(B) Resulted from the workers' return to service in the Oregon National Guard or military reserve*
7 *forces of the United States following a change in status from serving under Title 32 to serving under*
8 *Title 10 of the United States Code at a time designated by the President of the United States by exec-*
9 *utive order as a period of combatant activities.]*

10 (4) The receipt of supplemental benefits is conditioned upon the individual's demonstrating sat-
11 isfactory progress and attendance in professional technical training.

12 **SECTION 10. (1) The amendments to ORS 657.176 and 657.265 by sections 3 and 4 of this**
13 **2009 Act apply to claims for benefits filed on or after the effective date of this 2009 Act.**

14 (2) The amendments to ORS 657.321 by section 5 of this 2009 Act apply to weeks, as de-
15 fined in ORS 657.010 (15), beginning on or after February 22, 2009, and ending on or before
16 December 26, 2009.

17 (3) The amendments to ORS 657.321 by section 6 of this 2009 Act apply to weeks, as de-
18 fined in ORS 657.010 (15), beginning on or after December 27, 2009, and ending on or before
19 May 29, 2010.

20 (4) The amendments to ORS 657.321 by section 7 of this 2009 Act apply to weeks, as de-
21 fined in ORS 657.010 (15), beginning on or after May 30, 2010.

22 **SECTION 11. ORS 657.337 and 657.342 are repealed.**

23 **SECTION 12. Notwithstanding section 24, chapter ___, Oregon Laws 2009 (Enrolled House**
24 **Bill 2109) (amending ORS 657.337), if House Bill 2109 becomes law, ORS 657.337 is repealed by**
25 **section 11 of this 2009 Act.**

26 **SECTION 13. This 2009 Act being necessary for the immediate preservation of the public**
27 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
28 **on its passage.**

29