

Senate Bill 645

Sponsored by Senator GIROD

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 **as introduced**.

Allows employer to adopt comprehensive drug-free workplace program, including drug and alcohol testing policies. Establishes requirements for program and policies, including requirements for collection of samples and testing procedures.

Exempts employer from civil actions under certain conditions when employer has adopted comprehensive drug-free workplace program. Modifies definition of "compensable injury" in workers' compensation law. Modifies application of disability law in relation to illegal use of drugs.

Requires applicant for medical marijuana registry identification card to notify employer before using marijuana. Provides that Oregon Medical Marijuana Act does not require employer to make workplace accommodation regardless of where marijuana use occurs.

A BILL FOR AN ACT

1
2 Relating to drug-free workplace policies; creating new provisions; and amending ORS 475.309,
3 475.340, 656.005, 657.176, 659A.124 and 659A.127.

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

5 **SECTION 1. Definitions. As used in sections 1 to 9 of this 2011 Act, unless the context**
6 **otherwise requires:**

7 (1) "Alcohol" means ethanol, isopropanol or methanol.

8 (2) "Comprehensive drug-free workplace program" means employer policies and benefits
9 described in section 2 of this 2011 Act.

10 (3) "Drug" means a substance considered unlawful under the schedules of the controlled
11 substances section of the Comprehensive Drug Abuse Prevention and Control Act of 1970,
12 21 U.S.C. 812, or a add of the substance.

13 (4) "Employee" means an individual in the service of an employer.

14 (5)(a) "Employer" includes any person, firm, company, corporation, labor organization,
15 employment agency or joint labor-management committee that has one or more full-time
16 employees employed in the same business, or in or about the same establishment, under any
17 contract of hire, express or implied, oral or written.

18 (b) "Employer" does not include the United States or a public body, as defined in ORS
19 174.109.

20 (6) "Good faith" means reasonable reliance on fact, or that which is held out to be fac-
21 tual, without the intent to deceive or be deceived and without reckless or malicious disregard
22 for the truth.

23 (7) "Prospective employee" means an individual who has made application to an employer,
24 whether written or oral, to become an employee.

25 (8) "Sample" means urine, blood, breath, saliva, hair or other substances from the indi-
26 vidual being tested.

27 **SECTION 2. Comprehensive drug-free workplace program. An employer may voluntarily**

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 establish a comprehensive drug-free workplace program that includes:

2 (1) A written policy as described in section 3 of this 2011 Act.

3 (2) An awareness program to inform employees of the dangers of drug and alcohol use
4 in the workplace. The awareness program must meet the following requirements:

5 (a) If the employer has an employee assistance program, the employer shall inform the
6 employees of the benefits and services of the employee assistance program through the
7 posting of notices or alternative means. In addition, the employer shall give the employees
8 notice of any policies and procedures regarding access to and use of the employee assistance
9 program.

10 (b) If the employer does not have an employee assistance program, the employer shall
11 give the employees information about drug and alcohol abuse programs and about persons
12 or organizations available to assist employees with drug or alcohol problems.

13 (3) Training of supervisory personnel who are involved with drug or alcohol testing under
14 the comprehensive drug-free workplace program.

15 **SECTION 3. Employer policy on testing.** (1) As used in this section, "testing" includes
16 testing or retesting for the presence or evidence of use of drugs or alcohol.

17 (2)(a) An employer may carry out testing only after adopting a written policy on testing
18 and informing employees of the policy.

19 (b) The employer may inform the employees of the policy by distributing a copy of the
20 policy to each employee subject to testing or making the policy available to employees in the
21 same manner as the employer informs employees of other personnel practices, such as in-
22 cluding the policy in a personnel handbook or manual, posting the policy in a place accessible
23 to employees or providing electronic access to the policy through an intranet or other elec-
24 tronic transmission.

25 (c) An employer may not carry out testing under this section until at least 30 days after
26 the employer has informed the employees of the written policy on testing.

27 (3) The written policy on testing must, at a minimum, include:

28 (a) A statement of the employer's policy regarding drug and alcohol use by employees.

29 (b) A description of those employees or prospective employees who are subject to testing.

30 (c) The circumstances under which testing may be required.

31 (d) The substances for which testing may be required.

32 (e) A description of the testing methods and collection procedures to be used, including
33 an employee's right to a confirmatory test to be reviewed by a licensed physician or doctor
34 of osteopathy after an initial positive drug or alcohol test result.

35 (f) The consequences of a refusal to submit to testing.

36 (g) The adverse employment action that may be taken based on employee conduct, the
37 testing procedure or test results.

38 (h) A statement of the employer's policy regarding the confidentiality of test results.

39 (4) An employer may require the collection and testing of an employee's or prospective
40 employee's sample for any job-related purpose, consistent with business necessity and the
41 terms of the employer's written policy on testing, including:

42 (a) Investigation of an individual employee for the presence of drugs or alcohol;

43 (b) Investigation of a prospective employee for the presence of drugs;

44 (c) Investigation of an accident in the workplace;

45 (d) Maintenance of safety for employees, customers, clients or the public at large;

1 (e) Maintenance of productivity, the quality of products or services, or security of prop-
2 erty or information;

3 (f) Reasonable suspicion that an employee may be affected by the use of drugs or alcohol
4 and that the use may adversely affect the employee's job performance or the work environ-
5 ment; and

6 (g) Follow-up testing after an employee's drug or alcohol treatment or rehabilitation.

7 (5) In addition to testing required under subsection (4) of this section, an employer may
8 require employees or groups of employees to undergo testing on a group, unannounced,
9 random or chance basis.

10 (6) This section may not be construed to discourage, restrict, limit, prohibit or require
11 on-site testing.

12 **SECTION 4. Collection of samples.** (1) An employer may test an employee for the pres-
13 ence of drugs or alcohol. An employer may test a prospective employee for the presence of
14 drugs.

15 (2) To test reliably, an employer may require an employee or prospective employee to
16 provide a sample and to present reliable individual identification to the person collecting the
17 sample. Collection of the sample must conform to acceptable scientific practices. The em-
18 ployer may designate the type of sample to be used for testing.

19 (3) Sample collection shall be performed in a manner that guarantees the individual's
20 privacy to the maximum extent consistent with ensuring that the sample is not contam-
21 inated, adulterated or misidentified.

22 (4) An employer shall pay the entire actual costs for drug and alcohol testing required
23 of employees and prospective employees.

24 **SECTION 5. Testing procedures.** (1) Sample collection and testing for drugs and alcohol
25 shall be performed under reasonable and sanitary conditions. The individual collecting sam-
26 ples shall document the sample, including labeling the sample to preclude to the extent rea-
27 sonable the possibility of misidentification of the individual tested in relation to the test
28 result provided, and shall provide the individual tested with an opportunity to provide med-
29 ical information that may be relevant to the test, including identifying current or recently
30 used prescription and nonprescription drugs.

31 (2) Sample collection, storage and transportation to the place of testing must be per-
32 formed in a manner reasonably designed to preclude the possibility of sample contamination,
33 adulteration or misidentification.

34 (3) Sample testing must comply with scientifically accepted analytical methods and pro-
35 cedures.

36 (4) Drug testing, including on-site drug testing, must include confirmation of a positive
37 drug test result if the employer intends to take any adverse employment action based on the
38 positive drug test result. The confirmation test must use a different analytical process than
39 was used in the initial drug test. The confirmation test must be a chromatographic technique
40 such as gas chromatography-mass spectrometry or another comparably reliable analytical
41 method.

42 (5) A drug test conducted under this section for a drug for which the United States De-
43 partment of Health and Human Services has established a cutoff level is considered to have
44 yielded a positive result if the test establishes the presence of the drug at levels equal to or
45 greater than that cutoff level. For a drug for which the United States Department of Health

1 and Human Services has not established a cutoff level, the employer shall, in the written
 2 policy on testing, inform employees of the cutoff level that the employer will use to establish
 3 the presence of the drug.

4 **SECTION 6. Disciplinary or rehabilitative procedures.** (1) An employer may take adverse
 5 employment action based on:

6 (a) A positive drug or alcohol test result that indicates a violation of the employer's
 7 written policy on testing;

8 (b) The refusal of an employee or prospective employee to provide a sample for drug
 9 testing;

10 (c) The refusal of an employee to provide a sample for alcohol testing; or

11 (d) Conduct by an employee that interferes with the testing process, including but not
 12 limited to:

13 (A) Refusal or failure to complete proper documentation that authorizes the test;

14 (B) Refusal or failure to sign a chain of custody form;

15 (C) Presentation of false identification;

16 (D) Placement of an adulterant in the employee's sample, when the adulterant is identi-
 17 fied by a testing facility; or

18 (E) Interference with the accuracy of the test results by conduct that includes dilution
 19 of a sample.

20 (2) Adverse employment action under subsection (1) of this section may include, but is
 21 not limited to:

22 (a) A requirement that the employee enroll and participate in an employer provided or
 23 employer approved rehabilitation, treatment or counseling program as a condition of em-
 24 ployment. The program may include additional drug and alcohol testing. Costs of participat-
 25 ing in the program may or may not be covered by the employer's health plan or policies.

26 (b) Suspension of the employee, with or without pay, for a designated period.

27 (c) Termination of employment.

28 (d) In the case of drug testing, refusal to hire a prospective employee.

29 (e) Other adverse employment action.

30 **SECTION 7. Confidentiality of results; access to records.** A communication received by
 31 an employer relevant to drug or alcohol test results and received through the employer's
 32 testing program is a confidential and privileged communication and may not be disclosed
 33 except:

34 (1) To the tested employee or tested prospective employee or another person designated
 35 in writing by the employee or prospective employee;

36 (2) To a union representing the employee;

37 (3) To individuals designated by an employer to receive and evaluate test results or hear
 38 the explanation of the employee or prospective employee;

39 (4) To an authorized substance abuse treatment program or an employee assistance
 40 program;

41 (5) To respond to a claim by the employee, including but not limited to a claim for
 42 workers' compensation benefits or unemployment insurance compensation, a complaint be-
 43 fore an administrative agency or a claim in litigation; or

44 (6) As ordered by a court or administrative agency.

45 **SECTION 8. Cause of action against employer.** (1) Except as provided in this section, a

1 cause of action does not arise against an employer who establishes a comprehensive drug-
 2 free workplace program described in section 2 of this 2011 Act and a drug or alcohol testing
 3 program in accordance with the testing and policy safeguards provided for under sections 1
 4 to 9 of this 2011 Act for any of the following:

5 (a) Testing for drugs or alcohol.

6 (b) Taking action based in whole or in part on:

7 (A) A positive drug or alcohol test result indicating the presence of drugs or alcohol; or

8 (B) A refusal of an employee or prospective employee to submit to a drug or alcohol test.

9 (c) Failing to test for drugs or alcohol, or failing to test for a specific drug or other
 10 controlled substance.

11 (d) Failing to detect any specific drug or other controlled substance.

12 (e) Terminating or suspending a substance abuse prevention or testing program or policy.

13 (f) Taking action related to a false negative drug or alcohol test result.

14 (2) Except as provided in subsection (4) of this section, a cause of action does not arise
 15 against an employer who has established a program of drug or alcohol testing in accordance
 16 with the testing and policy safeguards provided for under sections 1 to 9 of this 2011 Act,
 17 unless the following conditions exist:

18 (a) The employer's action was based on a false positive drug or alcohol test result; and

19 (b) The employer knew or clearly should have known that the test result was in error
 20 and the employer ignored the correct test result because of a reckless, malicious or negligent
 21 disregard for the truth or a willful intent to deceive or be deceived.

22 (3) A cause of action for defamation, libel, slander or damage to reputation does not arise
 23 against an employer who has established a program of drug or alcohol testing in accordance
 24 with the testing and policy safeguards provided for under sections 1 to 9 of this 2011 Act,
 25 unless the following conditions exist:

26 (a) The employer disclosed test results to a person other than the employer, an author-
 27 ized employee, agent or representative of the employer, the tested employee or the tested
 28 prospective employee, an authorized agent or representative of the employee or prospective
 29 employee, an authorized substance abuse treatment program or an employee assistance
 30 program;

31 (b) The test results incorrectly indicate the presence of drugs or alcohol; and

32 (c) The employer recklessly disclosed the test results.

33 (4) In any cause of action based upon a false positive drug or alcohol test result:

34 (a) The results of a drug or alcohol test conducted in compliance with the testing and
 35 policy safeguards provided for under sections 1 to 9 of this 2011 Act are presumed to be valid;
 36 and

37 (b) The employer is not liable for monetary damages if the employer's reliance on the
 38 false positive test result was reasonable and in good faith.

39 **SECTION 9.** The Director of the Employment Department may adopt rules consistent
 40 with sections 1 to 9 of this 2011 Act to provide guidance, standards and procedures related
 41 to sections 1 to 9 of this 2011 Act. Nothing in this section may be construed to give the di-
 42 rector enforcement authority or enforcement duties related to sections 1 to 9 of this 2011
 43 Act.

44 **SECTION 10.** ORS 656.005 is amended to read:

45 656.005. (1) "Average weekly wage" means the Oregon average weekly wage in covered em-

1 ployment, as determined by the Employment Department, for the last quarter of the calendar year
2 preceding the fiscal year in which the injury occurred.

3 (2) “Beneficiary” means an injured worker, and the husband, wife, child or dependent of a
4 worker, who is entitled to receive payments under this chapter. “Beneficiary” does not include:

5 (a) A spouse of an injured worker living in a state of abandonment for more than one year at
6 the time of the injury or subsequently. A spouse who has lived separate and apart from the worker
7 for a period of two years and who has not during that time received or attempted by process of law
8 to collect funds for support or maintenance is considered living in a state of abandonment.

9 (b) A person who intentionally causes the compensable injury to or death of an injured worker.

10 (3) “Board” means the Workers’ Compensation Board.

11 (4) “Carrier-insured employer” means an employer who provides workers’ compensation cover-
12 age with the State Accident Insurance Fund Corporation or an insurer authorized under ORS
13 chapter 731 to transact workers’ compensation insurance in this state.

14 (5) “Child” includes a posthumous child, a child legally adopted prior to the injury, a child to-
15 ward whom the worker stands in loco parentis, a child born out of wedlock and a stepchild, if such
16 stepchild was, at the time of the injury, a member of the worker’s family and substantially dependent
17 upon the worker for support. A dependent child who is an invalid is a child, for purposes of benefits,
18 regardless of age, so long as the child was an invalid at the time of the accident and thereafter re-
19 mains an invalid substantially dependent on the worker for support. For purposes of this chapter,
20 a dependent child who is an invalid is considered to be a child under 18 years of age.

21 (6) “Claim” means a written request for compensation from a subject worker or someone on the
22 worker’s behalf, or any compensable injury of which a subject employer has notice or knowledge.

23 (7)(a) A “compensable injury” is an accidental injury, or accidental injury to prosthetic appli-
24 ances, arising out of and in the course of employment requiring medical services or resulting in
25 disability or death; an injury is accidental if the result is an accident, whether or not due to acci-
26 dental means, if it is established by medical evidence supported by objective findings, subject to the
27 following limitations:

28 (A) No injury or disease is compensable as a consequence of a compensable injury unless the
29 compensable injury is the major contributing cause of the consequential condition.

30 (B) If an otherwise compensable injury combines at any time with a preexisting condition to
31 cause or prolong disability or a need for treatment, the combined condition is compensable only if,
32 so long as and to the extent that the otherwise compensable injury is the major contributing cause
33 of the disability of the combined condition or the major contributing cause of the need for treatment
34 of the combined condition.

35 (b) “Compensable injury” does not include:

36 (A) Injury to any active participant in assaults or combats which are not connected to the job
37 assignment and which amount to a deviation from customary duties;

38 (B) Injury incurred while engaging in or performing, or as the result of engaging in or per-
39 forming, any recreational or social activities primarily for the worker’s personal pleasure; or

40 (C) Injury the major contributing cause of which is demonstrated to be by a preponderance of
41 the evidence the injured worker’s consumption of alcoholic beverages or the unlawful consumption
42 of any controlled substance, unless the employer permitted, encouraged or had actual knowledge of
43 such consumption. **Evidence of a positive post-accident drug test administered within 32 hours**
44 **after an accident, or evidence of a positive post-accident alcohol test administered within**
45 **eight hours after an accident, establishes a rebuttable presumption that the injured worker’s**

1 **consumption was a major contributing cause of the injury.**

2 (c) A “disabling compensable injury” is an injury which entitles the worker to compensation for
3 disability or death. An injury is not disabling if no temporary benefits are due and payable, unless
4 there is a reasonable expectation that permanent disability will result from the injury.

5 (d) A “nondisabling compensable injury” is any injury which requires medical services only.

6 (8) “Compensation” includes all benefits, including medical services, provided for a compensable
7 injury to a subject worker or the worker’s beneficiaries by an insurer or self-insured employer pur-
8 suant to this chapter.

9 (9) “Department” means the Department of Consumer and Business Services.

10 (10) “Dependent” means any of the following-named relatives of a worker whose death results
11 from any injury: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson,
12 granddaughter, brother, sister, half sister, half brother, niece or nephew, who at the time of the
13 accident, are dependent in whole or in part for their support upon the earnings of the worker.
14 Unless otherwise provided by treaty, aliens not residing within the United States at the time of the
15 accident other than father, mother, husband, wife or children are not included within the term “de-
16 pendent.”

17 (11) “Director” means the Director of the Department of Consumer and Business Services.

18 (12)(a) “Doctor” or “physician” means a person duly licensed to practice one or more of the
19 healing arts in any country or in any state, territory or possession of the United States within the
20 limits of the license of the licentiate.

21 (b) Except as otherwise provided for workers subject to a managed care contract, “attending
22 physician” means a doctor, physician or physician assistant who is primarily responsible for the
23 treatment of a worker’s compensable injury and who is:

24 (A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the
25 Oregon Medical Board or an oral and maxillofacial surgeon licensed by the Oregon Board of
26 Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the
27 United States; or

28 (B) For a cumulative total of 60 days from the first visit on the initial claim or for a cumulative
29 total of 18 visits, whichever occurs first, to any of the medical service providers listed in this sub-
30 paragraph, a:

31 (i) Doctor or physician licensed by the State Board of Chiropractic Examiners for the State of
32 Oregon under ORS chapter 684 or a similarly licensed doctor or physician in any country or in any
33 state, territory or possession of the United States;

34 (ii) Podiatric physician and surgeon licensed by the Oregon Medical Board under ORS 677.805
35 to 677.840 or a similarly licensed doctor or physician in any country or in any state, territory or
36 possession of the United States;

37 (iii) Physician assistant licensed by the Oregon Medical Board in accordance with ORS 677.505
38 to 677.525 or a similarly licensed physician assistant in any country or in any state, territory or
39 possession of the United States; or

40 (iv) Doctor of naturopathy or naturopathic physician licensed by the Oregon Board of
41 Naturopathic Medicine under ORS chapter 685 or a similarly licensed doctor or physician in any
42 country or in any state, territory or possession of the United States.

43 (c) Except as otherwise provided for workers subject to a managed care contract, “attending
44 physician” does not include a physician who provides care in a hospital emergency room and refers
45 the injured worker to a primary care physician for follow-up care and treatment.

1 (d) "Consulting physician" means a doctor or physician who examines a worker or the worker's
2 medical record to advise the attending physician or nurse practitioner authorized to provide
3 compensable medical services under ORS 656.245 regarding treatment of a worker's compensable
4 injury.

5 (13)(a) "Employer" means any person, including receiver, administrator, executor or trustee, and
6 the state, state agencies, counties, municipal corporations, school districts and other public corpo-
7 rations or political subdivisions, who contracts to pay a remuneration for and secures the right to
8 direct and control the services of any person.

9 (b) Notwithstanding paragraph (a) of this subsection, for purposes of this chapter, the client of
10 a temporary service provider is not the employer of temporary workers provided by the temporary
11 service provider.

12 (c) As used in paragraph (b) of this subsection, "temporary service provider" has the meaning
13 for that term provided in ORS 656.850.

14 (14) "Insurer" means the State Accident Insurance Fund Corporation or an insurer authorized
15 under ORS chapter 731 to transact workers' compensation insurance in this state or an assigned
16 claims agent selected by the director under ORS 656.054.

17 (15) "Consumer and Business Services Fund" means the fund created by ORS 705.145.

18 (16) "Invalid" means one who is physically or mentally incapacitated from earning a livelihood.

19 (17) "Medically stationary" means that no further material improvement would reasonably be
20 expected from medical treatment, or the passage of time.

21 (18) "Noncomplying employer" means a subject employer who has failed to comply with ORS
22 656.017.

23 (19) "Objective findings" in support of medical evidence are verifiable indications of injury or
24 disease that may include, but are not limited to, range of motion, atrophy, muscle strength and
25 palpable muscle spasm. "Objective findings" does not include physical findings or subjective re-
26 sponses to physical examinations that are not reproducible, measurable or observable.

27 (20) "Palliative care" means medical service rendered to reduce or moderate temporarily the
28 intensity of an otherwise stable medical condition, but does not include those medical services ren-
29 dered to diagnose, heal or permanently alleviate or eliminate a medical condition.

30 (21) "Party" means a claimant for compensation, the employer of the injured worker at the time
31 of injury and the insurer, if any, of such employer.

32 (22) "Payroll" means a record of wages payable to workers for their services and includes
33 commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or
34 similar advantage received from the employer. However, "payroll" does not include overtime pay,
35 vacation pay, bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments
36 to reward workers for safe working practices. Bonus pay is limited to payments which are not an-
37 ticipated under the contract of employment and which are paid at the sole discretion of the em-
38 ployer. The exclusion from payroll of bonus payments to reward workers for safe working practices
39 is only for the purpose of calculations based on payroll to determine premium for workers' com-
40 pensation insurance, and does not affect any other calculation or determination based on payroll for
41 the purposes of this chapter.

42 (23) "Person" includes partnership, joint venture, association, limited liability company and
43 corporation.

44 (24)(a) "Preexisting condition" means, for all industrial injury claims, any injury, disease, con-
45 genital abnormality, personality disorder or similar condition that contributes to disability or need

1 for treatment, provided that:

2 (A) Except for claims in which a preexisting condition is arthritis or an arthritic condition, the
3 worker has been diagnosed with such condition, or has obtained medical services for the symptoms
4 of the condition regardless of diagnosis; and

5 (B)(i) In claims for an initial injury or omitted condition, the diagnosis or treatment precedes
6 the initial injury;

7 (ii) In claims for a new medical condition, the diagnosis or treatment precedes the onset of the
8 new medical condition; or

9 (iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the diagnosis or treatment
10 precedes the onset of the worsened condition.

11 (b) "Preexisting condition" means, for all occupational disease claims, any injury, disease, con-
12 genital abnormality, personality disorder or similar condition that contributes to disability or need
13 for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim
14 for worsening in such claims pursuant to ORS 656.273 or 656.278.

15 (c) For the purposes of industrial injury claims, a condition does not contribute to disability or
16 need for treatment if the condition merely renders the worker more susceptible to the injury.

17 (25) "Self-insured employer" means an employer or group of employers certified under ORS
18 656.430 as meeting the qualifications set out by ORS 656.407.

19 (26) "State Accident Insurance Fund Corporation" and "corporation" mean the State Accident
20 Insurance Fund Corporation created under ORS 656.752.

21 (27) "Subject employer" means an employer who is subject to this chapter as provided by ORS
22 656.023.

23 (28) "Subject worker" means a worker who is subject to this chapter as provided by ORS
24 656.027.

25 (29) "Wages" means the money rate at which the service rendered is recompensed under the
26 contract of hiring in force at the time of the accident, including reasonable value of board, rent,
27 housing, lodging or similar advantage received from the employer, and includes the amount of tips
28 required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of
29 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips
30 reported, whichever amount is greater. The State Accident Insurance Fund Corporation may estab-
31 lish assumed minimum and maximum wages, in conformity with recognized insurance principles, at
32 which any worker shall be carried upon the payroll of the employer for the purpose of determining
33 the premium of the employer.

34 (30) "Worker" means any person, including a minor whether lawfully or unlawfully employed,
35 who engages to furnish services for a remuneration, subject to the direction and control of an em-
36 ployer and includes salaried, elected and appointed officials of the state, state agencies, counties,
37 cities, school districts and other public corporations, but does not include any person whose services
38 are performed as an inmate or ward of a state institution or as part of the eligibility requirements
39 for a general or public assistance grant. For the purpose of determining entitlement to temporary
40 disability benefits or permanent total disability benefits under this chapter, "worker" does not in-
41 clude a person who has withdrawn from the workforce during the period for which such benefits are
42 sought.

43 (31) "Independent contractor" has the meaning for that term provided in ORS 670.600.

44 **SECTION 11.** ORS 657.176 is amended to read:

45 657.176. (1) An authorized representative designated by the Director of the Employment De-

1 partment shall promptly examine each claim to determine whether an individual is subject to dis-
2 qualification as a result of a separation, termination, leaving, resignation, or disciplinary suspension
3 from work or as a result of failure to apply for or accept work and shall promptly enter a director's
4 decision if required by ORS 657.267. The authorized representative may address issues raised by
5 information before the authorized representative, including but not limited to the nature of the
6 separation, notwithstanding the way the parties characterize those issues.

7 (2) An individual shall be disqualified from the receipt of benefits until the individual has per-
8 formed service in employment subject to this chapter or the equivalent law of another state or
9 Canada or as defined in ORS 657.030 (2) or as an employee of the federal government, for which
10 remuneration is received that equals or exceeds four times the individual's weekly benefit amount
11 subsequent to the week in which the act causing the disqualification occurred, if the authorized
12 representative designated by the director finds that the individual:

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

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

15 (c) Voluntarily left work without good cause;

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

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

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

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

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

34 (3) If the authorized representative designated by the director finds that an individual was dis-
35 charged for misconduct because of the individual's commission of a felony or theft in connection
36 with the individual's work, all benefit rights based on wages earned prior to the date of the dis-
37 charge shall be canceled if the individual's employer notifies the director of the discharge within
38 10 days following issuance of the notice provided for in ORS 657.265 or 30 days following issuance
39 of the notice provided for in ORS 657.266, and:

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

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

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

45 (4) An individual disqualified under subsection (2) of this section shall have the individual's

1 maximum benefit amount reduced by eight times the individual's weekly benefit amount. However,
2 in no event shall the individual's maximum benefit amount be reduced to less than the individual's
3 weekly benefit amount unless the individual has previously received benefits during the individual's
4 benefit year.

5 (5) An individual may not be disqualified from receiving benefits under subsection (2)(c) or (e)
6 of this section or under ORS 657.200 if the individual ceases work or fails to accept work when a
7 collective bargaining agreement between the individual's bargaining unit and the individual's em-
8 ployer is in effect and the employer unilaterally modifies the amount of wages payable under the
9 agreement, in breach of the agreement.

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

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

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

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

17
18 then the separation from work shall be adjudicated as if the actual voluntary leaving had not oc-
19 curred and the planned voluntary leaving had occurred. However, the individual shall be ineligible
20 for benefits for the period including the week in which the actual voluntary leaving occurred
21 through the week prior to the week of the planned good cause voluntary leaving date.

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

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

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

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

29
30 then the separation from work shall be adjudicated as if the voluntary leaving had not occurred and
31 the discharge had occurred. However, the individual shall be ineligible for benefits for the period
32 including the week in which the voluntary leaving occurred through the week prior to the week in
33 which the individual would have been discharged.

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

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

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

39 (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving,
40

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

45 (9)(a) For the purposes of subsection (2) of this section, an individual is considered to have

1 committed a disqualifying act when the individual:

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

6 (B) Fails or refuses to take a drug or alcohol test as required by the employer's reasonable
7 written policy;

8 (C) Refuses to cooperate with or subverts or attempts to subvert a drug or alcohol testing pro-
9 cess in any employment-related test required by the employer's reasonable written policy, including
10 but not limited to:

11 (i) Refusal or failure to complete proper documentation that authorizes the test;

12 (ii) Refusal or failure to sign a chain of custody form;

13 (iii) Presentation of false identification;

14 (iv) Placement of an adulterant in the individual's specimen for testing, when the adulterant is
15 identified by a testing facility; or

16 (v) Interference with the accuracy of the test results by conduct that includes dilution or
17 adulteration of a test specimen;

18 (D) Is under the influence of intoxicants while performing services for the employer;

19 (E) Possesses a drug unlawfully or in violation of the employer's reasonable written policy dur-
20 ing work;

21 (F) Tests positive for alcohol or an unlawful drug in connection with employment; or

22 (G) Refuses to enter into or violates the terms of a last chance agreement with the employer.

23 (b)(A) Except as provided in subparagraph (B) of this paragraph, an individual is not considered
24 to have committed a disqualifying act under this subsection if the individual, on the date of sepa-
25 ration or within 10 days after the date of separation, is participating in a recognized drug or alcohol
26 rehabilitation program and provides documentation of participation in the program to the depart-
27 ment.

28 (B) This paragraph does not apply to an individual who has refused to enter into or has violated
29 the terms of a last chance agreement with the employer.

30 (c) It is no defense or excuse under this section that the individual's separation resulted from
31 alcohol use, marijuana use, unlawful drug use, alcoholism or drug addiction.

32 (d) The department shall adopt rules to carry out the provisions of this subsection.

33 (10) For the purposes of subsection (2) of this section, an individual is considered to have com-
34 mitted a disqualifying act when the individual voluntarily leaves work, fails to apply for available
35 suitable work when referred by the employment office or the director or fails to accept suitable
36 work when offered:

37 (a) Because the employer has or introduces a reasonable written drug-free workplace policy that
38 is consistent with subsection (9)(a)(A) of this section;

39 (b) Because the employer requires the employee to consent to present or future drug or alcohol
40 tests under a reasonable written policy that is consistent with subsection (9)(a)(A) of this section;

41 (c) To avoid taking a drug or alcohol test under a reasonable written policy that is consistent
42 with subsection (9)(a)(A) of this section; or

43 (d) To avoid meeting the requirements of a last chance agreement.

44 (11) An individual may not be disqualified from receiving benefits under subsection (2)(c) of this
45 section and shall be deemed laid off if the individual:

- 1 (a) Works under a collective bargaining agreement;
 2 (b) Elects to be laid off when the employer has decided to lay off employees; and
 3 (c) Is placed on the referral list under the collective bargaining agreement.

4 (12) An individual may not be disqualified from receiving benefits under subsection (2)(c), (d) or
 5 (e) of this section or be considered unavailable for purposes of ORS 657.155 if:

6 (a) The individual or a member of the individual's immediate family is a victim of domestic vi-
 7 olence, stalking or sexual assault, or the individual believes that the individual or a member of the
 8 individual's immediate family could become a victim of domestic violence, stalking or sexual assault;
 9 and

10 (b) The individual leaves work, fails to apply for available suitable work or fails to accept suit-
 11 able work when offered in order to protect the individual or a member of the individual's immediate
 12 family from domestic violence, stalking or sexual assault that the individual reasonably believes will
 13 occur as a result of the individual's continued employment or acceptance of work.

14 (13) For purposes of this section:

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

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

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

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

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

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

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

28 **(d) "Reasonable written policy" includes a comprehensive drug-free workplace program**
 29 **established consistent with sections 1 to 9 of this 2011 Act.**

30 [(d)] (e) An individual is "under the influence of intoxicants" when the level of alcohol,
 31 marijuana or unlawful drugs present in the individual's body exceeds the amount prescribed in a
 32 collective bargaining agreement, or the amount prescribed in the employer's reasonable written
 33 policy if there is no applicable collective bargaining agreement provision.

34 **SECTION 12.** ORS 659A.124 is amended to read:

35 659A.124. (1) Subject to the provisions of subsection (2) of this section, the protections of ORS
 36 659A.112 do not apply to any job applicant or employee who is currently engaging in the illegal use
 37 of drugs if the employer takes action based on that conduct.

38 (2) The protections of ORS 659A.112 apply to the following individuals:

39 (a) An individual who has successfully completed a supervised drug rehabilitation program and
 40 is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and
 41 is no longer engaging in the illegal use of drugs.

42 (b) An individual who is participating in a supervised rehabilitation program and is no longer
 43 engaging in the illegal use of drugs.

44 (c) An individual who is erroneously regarded as engaging in the illegal use of drugs.

45 (3) An employer may adopt or administer reasonable policies or procedures, including but not

1 limited to drug testing, designed to ensure that an individual described in subsection (2)(a) or (b)
2 of this section is no longer engaging in the illegal use of drugs.

3 **(4) For purposes of this section, an applicant or employee must demonstrate that the**
4 **applicant or employee has not engaged in the illegal use of drugs for a period of no less than**
5 **30 days to be a person who is no longer engaging in the illegal use of drugs.**

6 **SECTION 13.** ORS 659A.127 is amended to read:

7 659A.127. ORS 659A.112 to 659A.139 do not affect the ability of an employer to do any of the
8 following:

9 (1) An employer may prohibit the transfer, offering, sale, purchase or illegal use of drugs at the
10 workplace by any employee. An employer may prohibit possession of drugs except for drugs pre-
11 scribed by a licensed health care professional.

12 (2) An employer may prohibit the use of alcohol at the workplace by any employee.

13 (3) An employer may require that employees not be under the influence of alcohol or illegally
14 used drugs at the workplace. **For purposes of this subsection, an employer may enforce a policy**
15 **that having any detectable level of alcohol or illegally used drugs, or their metabolites, in**
16 **an employee's system is proof that the employee is under the influence of alcohol or illegally**
17 **used drugs.**

18 (4) An employer may require that employees behave in conformance with the requirements es-
19 tablished under the federal Drug-Free Workplace Act of 1988.

20 (5) An employer may hold an employee who engages in the illegal use of drugs or who is an
21 alcoholic to the same qualification standards for employment, job performance and behavior to
22 which the employer holds other employees, even if the unsatisfactory performance or behavior is
23 related to the alcoholism of or the illegal use of drugs by the employee.

24 (6) An employer may require that employees comply with all federal and state statutes and
25 regulations regarding alcohol and the illegal use of drugs.

26 **SECTION 14.** ORS 475.309 is amended to read:

27 475.309. (1) Except as provided in ORS 475.316, 475.320 and 475.342, a person engaged in or as-
28 sisting in the medical use of marijuana is excepted from the criminal laws of the state for possession,
29 delivery or production of marijuana, aiding and abetting another in the possession, delivery or pro-
30 duction of marijuana or any other criminal offense in which possession, delivery or production of
31 marijuana is an element if the following conditions have been satisfied:

32 (a) The person holds a registry identification card issued pursuant to this section, has applied
33 for a registry identification card pursuant to subsection (9) of this section, is the designated primary
34 caregiver of the cardholder or applicant, or is the person responsible for a marijuana grow site that
35 is producing marijuana for the cardholder and is registered under ORS 475.304; and

36 (b) The person who has a debilitating medical condition, the person's primary caregiver and the
37 person responsible for a marijuana grow site that is producing marijuana for the cardholder and is
38 registered under ORS 475.304 are collectively in possession of, delivering or producing marijuana for
39 medical use in amounts allowed under ORS 475.320.

40 (2) The Oregon Health Authority shall establish and maintain a program for the issuance of
41 registry identification cards to persons who meet the requirements of this section. Except as pro-
42 vided in subsection (3) of this section, the authority shall issue a registry identification card to any
43 person who pays a fee in the amount established by the authority and provides the following:

44 (a) Valid, written documentation from the person's attending physician stating that the person
45 has been diagnosed with a debilitating medical condition and that the medical use of marijuana may

1 mitigate the symptoms or effects of the person’s debilitating medical condition;

2 (b) The name, address and date of birth of the person;

3 (c) The name, address and telephone number of the person’s attending physician;

4 (d) The name and address of the person’s designated primary caregiver, if the person has des-
5 ignated a primary caregiver at the time of application; and

6 (e) A written statement that indicates whether the marijuana used by the cardholder will be
7 produced at a location where the cardholder or designated primary caregiver is present or at an-
8 other location.

9 (3) The authority shall issue a registry identification card to a person who is under 18 years of
10 age if the person submits the materials required under subsection (2) of this section, and the custo-
11 dial parent or legal guardian with responsibility for health care decisions for the person under 18
12 years of age signs a written statement that:

13 (a) The attending physician of the person under 18 years of age has explained to that person
14 and to the custodial parent or legal guardian with responsibility for health care decisions for the
15 person under 18 years of age the possible risks and benefits of the medical use of marijuana;

16 (b) The custodial parent or legal guardian with responsibility for health care decisions for the
17 person under 18 years of age consents to the use of marijuana by the person under 18 years of age
18 for medical purposes;

19 (c) The custodial parent or legal guardian with responsibility for health care decisions for the
20 person under 18 years of age agrees to serve as the designated primary caregiver for the person
21 under 18 years of age; and

22 (d) The custodial parent or legal guardian with responsibility for health care decisions for the
23 person under 18 years of age agrees to control the acquisition of marijuana and the dosage and
24 frequency of use by the person under 18 years of age.

25 (4) A person applying for a registry identification card pursuant to this section may submit the
26 information required in this section to a county health department for transmittal to the authority.
27 A county health department that receives the information pursuant to this subsection shall transmit
28 the information to the authority within five days of receipt of the information. Information received
29 by a county health department pursuant to this subsection shall be confidential and not subject to
30 disclosure, except as required to transmit the information to the authority.

31 (5)(a) The authority shall verify the information contained in an application submitted pursuant
32 to this section and shall approve or deny an application within thirty days of receipt of the appli-
33 cation.

34 (b) In addition to the authority granted to the authority under ORS 475.316 to deny an applica-
35 tion, the authority may deny an application for the following reasons:

36 (A) The applicant did not provide the information required pursuant to this section to establish
37 the applicant’s debilitating medical condition and to document the applicant’s consultation with an
38 attending physician regarding the medical use of marijuana in connection with such condition, as
39 provided in subsections (2) and (3) of this section;

40 (B) The authority determines that the information provided was falsified; or

41 (C) The applicant has been prohibited by a court order from obtaining a registry identification
42 card.

43 (c) Denial of a registry identification card shall be considered a final authority action, subject
44 to judicial review. Only the person whose application has been denied, or, in the case of a person
45 under the age of 18 years of age whose application has been denied, the person’s parent or legal

1 guardian, shall have standing to contest the authority's action.

2 (d) Any person whose application has been denied may not reapply for six months from the date
3 of the denial, unless so authorized by the authority or a court of competent jurisdiction.

4 (6)(a) If the authority has verified the information submitted pursuant to subsections (2) and (3)
5 of this section and none of the reasons for denial listed in subsection (5)(b) of this section is appli-
6 cable, the authority shall issue a serially numbered registry identification card within five days of
7 verification of the information. The registry identification card shall state:

8 (A) The cardholder's name, address and date of birth;

9 (B) The date of issuance and expiration date of the registry identification card;

10 (C) The name and address of the person's designated primary caregiver, if any;

11 (D) Whether the marijuana used by the cardholder will be produced at a location where the
12 cardholder or designated primary caregiver is present or at another location; and

13 (E) Any other information that the authority may specify by rule.

14 (b) When the person to whom the authority has issued a registry identification card pursuant
15 to this section has specified a designated primary caregiver, the authority shall issue an identifica-
16 tion card to the designated primary caregiver. The primary caregiver's registry identification card
17 shall contain the information provided in paragraph (a) of this subsection.

18 (7)(a) A person who possesses a registry identification card shall:

19 (A) Notify the authority of any change in the person's name, address, attending physician or
20 designated primary caregiver.

21 (B) If applicable, notify the designated primary caregiver of the cardholder and the person re-
22 sponsible for the marijuana grow site that produces marijuana for the cardholder of any change in
23 status including, but not limited to:

24 (i) The assignment of another individual as the designated primary caregiver of the cardholder;

25 (ii) The assignment of another individual as the person responsible for a marijuana grow site
26 producing marijuana for the cardholder; or

27 (iii) The end of the eligibility of the cardholder to hold a valid registry identification card.

28 (C) Annually submit to the authority:

29 (i) Updated written documentation from the cardholder's attending physician of the person's
30 debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or
31 effects of the person's debilitating medical condition; and

32 (ii) The name of the person's designated primary caregiver if a primary caregiver has been
33 designated for the upcoming year.

34 (b) If a person who possesses a registry identification card fails to comply with this subsection,
35 the card shall be deemed expired. If a registry identification card expires, the identification card of
36 any designated primary caregiver of the cardholder shall also expire.

37 (8)(a) A person who possesses a registry identification card pursuant to this section and who
38 has been diagnosed by the person's attending physician as no longer having a debilitating medical
39 condition or whose attending physician has determined that the medical use of marijuana is
40 contraindicated for the person's debilitating medical condition shall return the registry identification
41 card and any other associated Oregon Medical Marijuana Program cards to the authority within 30
42 calendar days of notification of the diagnosis or notification of the contraindication.

43 (b) If, due to circumstances beyond the control of the registry identification cardholder, a
44 cardholder is unable to obtain a second medical opinion about the cardholder's continuing eligibility
45 to use medical marijuana before the 30-day period specified in paragraph (a) of this subsection has

1 expired, the authority may grant the cardholder additional time to obtain a second opinion before
2 requiring the cardholder to return the registry identification card and any associated cards.

3 (9) A person who has applied for a registry identification card pursuant to this section but
4 whose application has not yet been approved or denied, and who is contacted by any law enforce-
5 ment officer in connection with the person's administration, possession, delivery or production of
6 marijuana for medical use may provide to the law enforcement officer a copy of the written doc-
7 umentation submitted to the authority pursuant to subsection (2) or (3) of this section and proof of
8 the date of mailing or other transmission of the documentation to the authority. This documentation
9 shall have the same legal effect as a registry identification card until such time as the person re-
10 ceives notification that the application has been approved or denied.

11 (10) A registry identification cardholder has the primary responsibility of notifying the primary
12 caregiver and person responsible for the marijuana grow site that produces marijuana for the
13 cardholder of any change in status of the cardholder. If the authority is notified by the cardholder
14 that a primary caregiver or person responsible for a marijuana grow site has changed, the authority
15 shall notify the primary caregiver or the person responsible for the marijuana grow site by mail at
16 the address of record confirming the change in status and informing the caregiver or person that
17 their card is no longer valid and must be returned to the authority.

18 (11) The authority shall revoke the registry identification card of a cardholder if a court has
19 issued an order that prohibits the cardholder from participating in the medical use of marijuana or
20 otherwise participating in the Oregon Medical Marijuana Program under ORS 475.300 to 475.346.
21 The cardholder shall return the registry identification card to the authority within seven calendar
22 days of notification of the revocation. If the cardholder is a patient, the patient shall return the
23 patient's card and all other associated Oregon Medical Marijuana Program cards.

24 (12) The authority and employees and agents of the authority acting within the course and scope
25 of their employment are immune from any civil liability that might be incurred or imposed for the
26 performance of or failure to perform duties required by this section.

27 **(13) A person who has applied for a registry identification card under this section and**
28 **who is employed shall notify the person's employer before engaging in the medical use of**
29 **marijuana.**

30 **SECTION 15.** ORS 475.340 is amended to read:

31 475.340. Nothing in ORS 475.300 to 475.346 shall be construed to require:

32 (1) A government medical assistance program or private health insurer to reimburse a person
33 for costs associated with the medical use of marijuana; or

34 (2) An employer to [*accommodate*] **make a workplace accommodation under ORS 659A.103**
35 **to 659A.145 for the medical use of marijuana [*in any workplace*] no matter where that use**
36 **occurs.**

37 **SECTION 16.** **The section captions used in this 2011 Act are provided only for the con-**
38 **venience of the reader and do not become part of the statutory law of this state or express**
39 **any legislative intent in the enactment of this 2011 Act.**

40