

Senate Bill 191

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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**.

Authorizes Director of the Employment Department to impose penalty of up to 30 percent on overpayment of unemployment insurance benefits due to false statement, misrepresentation or nondisclosure of material fact. Directs payment of 15 percent penalty to Unemployment Compensation Trust Fund and any amount of penalty greater than 15 percent to Employment Department Special Fraud Control Fund. Directs payment of interest on benefits funded by federal government to United States Department of Labor. Applies to overpayment decisions of director issued on or after October 1, 2013.

Increases to five years period during which director may recover unemployment insurance benefits paid in error.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to overpayment of unemployment insurance benefits; creating new provisions; amending
3 ORS 657.310, 657.315, 657.320 and 657.400; and declaring an emergency.

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

5 **SECTION 1.** ORS 657.310 is amended to read:

6 657.310. (1) If the Director of the Employment Department decides that an individual received
7 any benefits under this chapter to which the individual is not entitled because the individual, re-
8 gardless of the individual's knowledge or intent, made or caused to be made a false statement or
9 misrepresentation of a material fact, or failed to disclose a material fact, the individual is liable:

10 (a) To repay the amount of the benefits to the director for the Unemployment Compensation
11 Trust Fund; or

12 (b) To have the amount of the benefits deducted from any future benefits otherwise payable to
13 the individual under this chapter.

14 (2) In addition to the liability described in subsection (1) of this section, an individual who has
15 been disqualified for benefits under ORS 657.215 is liable for a penalty [*in an amount equal to 15*]
16 **imposed at a rate prescribed by the director of at least 15, but not greater than 30,** percent
17 of the amount of benefits the individual received [*but*] to which the individual was not entitled.

18 (3) A decision of the director under this section does not authorize the recovery of the amount
19 of any benefits paid to an individual until the decision is final and the decision specifies:

20 (a) That the individual, by reason of the false statement, misrepresentation or nondisclosure, is
21 liable to repay the amount to the Unemployment Compensation Trust Fund;

22 (b) The nature of the false statement, misrepresentation or nondisclosure; and

23 (c) The week or weeks for which the benefits were paid.

24 (4)(a) Any amount subject to recovery and any penalty due under this section may be collected
25 by the director in a civil action against the individual brought in the name of the director.

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 **(b)** Judgment rendered shall bear interest at the rate provided in subsection (5) of this section.
 2 *[The amount collected, not including interest or the penalty, shall be paid into the Unemployment*
 3 *Compensation Trust Fund.]*

4 (5) Interest on any amount liable to be repaid under this section shall be paid and collected at
 5 the same time repayment of benefits is made by the individual *[to the Unemployment Compensation*
 6 *Trust Fund]*, at the rate of one percent per month **or fraction of a month**, beginning on the first
 7 day of the month following 60 days after the finality of the administrative decision establishing the
 8 overpayment. *[In computing interest under this subsection, a fraction of a month is counted as a full*
 9 *month.]*

10 (6)(a) Deductions from unemployment insurance benefits **pursuant to subsection (1)(b) of this**
 11 **section** shall be applied solely to the amount of the benefits liable to be repaid under this section.

12 **(b)** All other payments shall be applied first to court costs, then to penalties, then to interest,
 13 then to the amount liable to be repaid.

14 (7)(a) **The following amounts collected under this section shall be paid into the Unem-**
 15 **ployment Compensation Trust Fund:**

16 **(A) Amounts in repayment of benefits; and**

17 **(B) The portion of penalties imposed under subsection (2) of this section that is 15 per-**
 18 **cent of the amount of benefits received.**

19 **(b)** *[Interest and penalties collected under this section]* **The following amounts collected under**
 20 **this section** shall be paid into the Employment Department Special Fraud Control Fund in accord-
 21 ance with the provisions of ORS 657.400:

22 **(A) Interest other than interest described in paragraph (c) of this subsection; and**

23 **(B) The portion of penalties imposed under subsection (2) of this section that remains**
 24 **after subtraction of the portion of penalties described in paragraph (a)(B) of this**
 25 **subsection.**

26 **(c) Interest payable on any portion of benefits that were funded by the federal govern-**
 27 **ment shall be paid to the United States Department of Labor.**

28 **(8) The director shall adopt rules establishing standards and procedures for the repay-**
 29 **ment of benefits and payment of penalties and interest under this section.**

30 **SECTION 2.** ORS 657.315 is amended to read:

31 657.315. (1) If the Director of the Employment Department decides that an individual has been
 32 paid benefits to which the individual is not entitled because of an error not due to the individual
 33 providing a false statement or misrepresentation of a material fact or not disclosing a material fact,
 34 or because an initial decision to pay benefits is subsequently reversed by a decision finding the in-
 35 dividual is not eligible for the benefits, the individual is liable to have the amount deducted from
 36 any future benefits otherwise payable to the individual under this chapter for any week or weeks
 37 within *[52 weeks]* **five years** following the week in which the decision establishing the erroneous
 38 payment became final.

39 (2) A decision of the director under this section does not authorize the recovery of the amount
 40 of any benefits paid to an individual until the decision is final and the decision specifies that the
 41 individual is liable to have the amount deducted from any future benefits otherwise payable under
 42 this chapter for any week or weeks within *[52 weeks]* **five years** following the week in which the
 43 decision establishing the erroneous payment became final.

44 (3) Amounts paid to an individual in excess of the maximum benefits allowable pursuant to this
 45 chapter may be recovered in a civil action brought in the name of the director for such purpose.

1 **SECTION 3.** ORS 657.320 is amended to read:

2 657.320. (1)(a) If any amount paid to an individual as benefits, for which the individual has been
3 found liable under the provisions of ORS 657.310 to repay or to have deducted from benefits payable,
4 has neither been repaid nor deducted within a period of three years following the date the decision
5 establishing the overpayment became final, and is equal to or is less than the state maximum weekly
6 benefit amount or determined by the Director of the Employment Department to be uncollectible,
7 the overpayment together with the record of the overpayment and the resulting shortage, shall be
8 canceled, and the overpayment, excluding any amount chargeable to reimbursable employers, shall
9 be permanently charged to the fund.

10 (b) Notwithstanding paragraph (a) of this subsection, the overpayment may not be canceled if
11 the debt is being recovered by payments or deductions that were received within the last three
12 months or if repayment of the overpayment is required under ORS 657.213.

13 (2) If an amount paid to an individual as benefits, for which the individual has been found liable
14 under the provisions of ORS 657.315 (1) to have deducted from benefits payable, has not been waived
15 under ORS 657.317, paid or deducted from benefits otherwise payable to the individual for any week
16 or weeks within [52 weeks] **five years** following the week in which the decision establishing the
17 overpayment became final, the overpayment together with the record of the overpayment and the
18 resulting shortage, shall be canceled and the overpayment, excluding any amount chargeable to
19 reimbursable employers, shall be permanently charged to the fund.

20 (3) When in the judgment of the director the best interests of the Employment Department are
21 served in an effort to settle accounts, the director may waive, reduce or compromise any part or
22 all of the interest or penalty charged pursuant to ORS 657.310. The director may determine that
23 the amount of interest or penalty due and unpaid is uncollectible, and write the amount off. In
24 making the determination that interest or a penalty is uncollectible, the director shall consider,
25 among other factors:

26 (a) The administrative costs of continued collection efforts in relation to the amount due;

27 (b) The accessibility of the debtor for effective collection actions; and

28 (c) The debtor's financial condition and ability to pay the amount due, both current and
29 projected.

30 **SECTION 4.** ORS 657.400 is amended to read:

31 657.400. (1) There is established in the State Treasury, separate and distinct from the General
32 Fund, the Employment Department Special Fraud Control Fund. The Employment Department Spe-
33 cial Fraud Control Fund shall consist of moneys collected or received by the Employment Depart-
34 ment as follows:

35 (a) [All] Interest and penalties [collected] **described** under ORS 657.310 **(7)(b)**.

36 (b) All gifts to, interest on or profits earned by the Employment Department Special Fraud
37 Control Fund.

38 (2) The moneys in the Employment Department Special Fraud Control Fund are continuously
39 appropriated only to the Employment Department and may not be transferred or otherwise made
40 available to any other state agency.

41 (3) All amounts in the Employment Department Special Fraud Control Fund are to be used for
42 administrative costs associated with the prevention, discovery and collection of unemployment ben-
43 efit overpayments, as included in the biennial budget of the Employment Department and approved
44 by the Legislative Assembly.

45 **SECTION 5.** The amendments to ORS 657.310 by section 1 of this 2013 Act apply to deci-

1 sions of the Director of the Employment Department issued on or after October 1, 2013.

2 **SECTION 6.** This 2013 Act being necessary for the immediate preservation of the public
3 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
4 on its passage.

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