

House Bill 2695

Sponsored by Representative GOMBERG (Pre-session filed.)

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**.

Requires Commissioner of Bureau of Labor and Industries to disclose data and information commissioner uses to determine prevailing rate of wage. Prohibits disclosure of specified identification information.

Permits Employment Department to disclose data and information that department discloses to commissioner. Prohibits disclosure of specified identification information.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to information used to determine a prevailing rate of wage; amending ORS 279C.815 and
3 657.665; and declaring an emergency.

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

5 **SECTION 1.** ORS 279C.815 is amended to read:

6 279C.815. (1) As used in this section, "person" means an employer, a labor organization or an
7 official representative of an employee or employer association.

8 (2)(a) The Commissioner of the Bureau of Labor and Industries at least once each year shall
9 determine the prevailing rate of wage for workers in each trade or occupation in each locality de-
10 scribed in ORS 279C.800 by means of an independent wage survey and shall make this information
11 available at least twice each year. The commissioner may amend the rate at any time.

12 (b) If the data derived only from the survey described in paragraph (a) of this subsection appear
13 to the commissioner to be insufficient to determine the prevailing rate of wage, the commissioner
14 shall consider additional information such as collective bargaining agreements, other independent
15 wage surveys and the prevailing rates of wage determined by appropriate federal agencies or agen-
16 cies of adjoining states. If there is not a majority in the same trade or occupation paid at the same
17 rate, the average rate of hourly wage, including all fringe benefits, paid in the locality to workers
18 in the same trade or occupation is the prevailing rate. If the wage a contractor or subcontractor
19 pays to workers on a public works is based on a period of time other than an hour, the hourly wage
20 must be mathematically determined by the number of hours worked in that period of time.

21 (3) A person [*shall*] **may** make reports and returns to the Bureau of Labor and Industries that
22 the commissioner requires to determine the prevailing rates of wage, using forms the bureau pro-
23 vides and within the time the commissioner prescribes. The person or an authorized representative
24 of the person shall certify to the accuracy of the reports and returns.

25 (4)(a) [*Notwithstanding ORS 192.410 to 192.505,*] Reports and returns or other information pro-
26 vided to the commissioner under this section are [*confidential*] **subject to public disclosure and**
27 **may be made** [*and not*] available for inspection by the public **upon request in the manner pre-**
28 **scribed in ORS 192.410 to 192.505.**

29 (b) **Identification information that is confidential under ORS 657.665 (4)(s) may not be**

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 **disclosed under paragraph (a) of this subsection or ORS 192.410 to 192.505.**

2 (5) The commissioner may enter into a contract with a public or private party to obtain data
 3 and information the commissioner needs to determine the prevailing rate of wage. The contract may
 4 provide for the manner and extent of the market review of affected trades and occupations and for
 5 other requirements regarding timelines of reports, accuracy of data and information and supervision
 6 and review as the commissioner prescribes.

7 **SECTION 2.** ORS 657.665, as amended by section 1, chapter 26, Oregon Laws 2014, is amended
 8 to read:

9 657.665. (1) Except as provided in subsections (2) to (5) of this section, all information in the
 10 records of the Employment Department pertaining to the administration of the unemployment in-
 11 surance, employment service and labor market information programs:

12 (a) Is confidential and for the exclusive use and information of the Director of the Employment
 13 Department in administering the unemployment insurance, employment service and labor market
 14 information programs in Oregon.

15 (b) May not be used in any court action or in any proceeding pending in the court unless the
 16 director or the state is a party to the action or proceeding or unless the proceeding concerns the
 17 establishment, enforcement or modification of a support obligation and support services are being
 18 provided by the Division of Child Support or the district attorney pursuant to ORS 25.080.

19 (c) Is exempt from disclosure under ORS 192.410 to 192.505.

20 (2) The Employment Department shall disclose information:

21 (a) To any claimant or legal representative, at a hearing before an administrative law judge, to
 22 the extent necessary for the proper presentation of an unemployment insurance claim.

23 (b) Upon request to the United States Secretary of Labor. The Employment Department shall
 24 disclose the information in a form and containing the information that the United States Secretary
 25 of Labor may require. The information disclosed is confidential and may not be used for any other
 26 purpose.

27 (c) Pursuant to section 303(a)(7) of the Social Security Act, upon request to any agency of the
 28 United States charged with the administration of public works or assistance through public em-
 29 ployment. Under this paragraph, the Employment Department shall disclose the name, address, or-
 30 dinary occupation and employment status of each recipient of unemployment insurance benefits and
 31 a statement of the recipient's right to further benefits under this chapter. The information disclosed
 32 is confidential and may not be used for any other purpose.

33 (d) Pursuant to section 303(c)(1) of the Social Security Act, to the Railroad Retirement Board.
 34 Under this paragraph, the Employment Department shall disclose unemployment insurance records.
 35 The information disclosed is confidential and may not be used for any other purpose. The costs of
 36 disclosing information under this paragraph shall be paid by the board.

37 (e) Pursuant to section 303(d) of the Social Security Act, upon request to officers and employees
 38 of the United States Department of Agriculture and to officers or employees of any state Supple-
 39 mental Nutrition Assistance Program agency for the purpose of determining an individual's eligibil-
 40 ity for or the amount of supplemental nutrition assistance. The information disclosed is confidential
 41 and may not be used for any other purpose. The costs of disclosing information under this paragraph
 42 shall be paid by the United States Department of Agriculture.

43 (f) Pursuant to section 303(e)(1) and (2)(A)(ii) of the Social Security Act, to state or local child
 44 support enforcement agencies enforcing child support obligations under Title IV-D of the Social Se-
 45 curity Act for the purposes of establishing child support obligations, locating individuals owing child

1 support obligations and collecting child support obligations from those individuals. The information
 2 disclosed is confidential and may not be used for any other purpose. The costs of disclosing infor-
 3 mation under this paragraph shall be paid by the child support enforcement agency.

4 (g) Pursuant to sections 303(f) and 1137 of the Social Security Act, to agencies participating in
 5 the income and eligibility verification system for the purpose of verifying an individual's eligibility
 6 for benefits, or the amount of benefits, under unemployment insurance, temporary assistance for
 7 needy families, Medicaid, the Supplemental Nutrition Assistance Program, Supplemental Security
 8 Income, child support enforcement or Social Security programs. The information disclosed is confi-
 9 dential and may not be used for any other purpose. The costs of disclosing information under this
 10 paragraph shall be paid by the requesting agency.

11 (h) Pursuant to section 303(h) of the Social Security Act and section 3304(a)(16)(B) of the Federal
 12 Unemployment Tax Act, to the United States Department of Health and Human Services National
 13 Directory of New Hires. The information disclosed is confidential and may not be used for any other
 14 purpose. The costs of disclosing information under this paragraph shall be paid by the United States
 15 Department of Health and Human Services.

16 (i) Pursuant to section 303(i) of the Social Security Act, to officers and employees of the United
 17 States Department of Housing and Urban Development and to representatives of a public housing
 18 agency for the purpose of determining an individual's eligibility for benefits, or the amount of ben-
 19 efits, under a housing assistance program of the United States Department of Housing and Urban
 20 Development. The information disclosed is confidential and may not be used for any other purpose.
 21 The costs of disclosing information under this paragraph shall be paid by the United States De-
 22 partment of Housing and Urban Development or the public housing agency.

23 (j) Pursuant to regulations of the United States Secretary of Health and Human Services issued
 24 under section 3304(a)(16)(A) of the Federal Unemployment Tax Act, and except as required by sec-
 25 tion 303 of the Social Security Act, to the state, a political subdivision or a federally recognized
 26 Indian tribe that has signed an agreement with the Department of Human Services to administer
 27 Part A of Title IV of the Social Security Act for the purpose of determining an individual's eligibility
 28 for assistance, or the amount of assistance, under a program funded under Part A of Title IV of the
 29 Social Security Act. The information disclosed is confidential and may not be used for any other
 30 purpose.

31 (k) Upon request, to the United States Attorney's Office. Under this paragraph, the Employment
 32 Department may disclose an individual's employment and wage information in response to a federal
 33 grand jury subpoena or for the purpose of collecting civil and criminal judgments, including
 34 restitution and special assessment fees. The information disclosed is confidential and may not be
 35 used for any other purpose. The costs of disclosing information under this paragraph shall be paid
 36 by the United States Attorney's Office.

37 (3) The Employment Department may disclose information secured from employing units:

38 (a) To agencies of this state, federal agencies and local government agencies to the extent nec-
 39 essary to properly carry out governmental planning, performance measurement, program analysis,
 40 socioeconomic analysis and policy analysis functions performed under applicable law. The informa-
 41 tion disclosed is confidential and may not be disclosed by the agencies in any manner that would
 42 identify individuals, claimants, employees or employing units. If the information disclosed under this
 43 paragraph is not prepared for the use of the Employment Department, the costs of disclosing the
 44 information shall be paid by the agency requesting the information.

45 (b) As part of a geographic information system. Points on a map may be used to represent eco-

1 nomic data, including the location, employment size class and industrial classification of businesses
2 in Oregon. Information presented as part of a geographic information system may not give specific
3 details regarding a business's address, actual employment or proprietary information. If the infor-
4 mation disclosed under this paragraph is not prepared for the use of the Employment Department,
5 the costs of disclosing the information shall be paid by the party requesting the information.

6 (c) In accordance with ORS 657.673.

7 (4) The Employment Department may:

8 (a) Disclose information to public employees in the performance of their duties under state or
9 federal laws relating to the payment of unemployment insurance benefits, the provision of employ-
10 ment services and the provision of labor market information.

11 (b) At the discretion of the Director of the Employment Department and subject to an intera-
12 gency agreement, disclose information to public officials in the performance of their official duties
13 administering or enforcing laws within their authority and to the agents or contractors of public
14 officials. The public official shall agree to assume responsibility for misuse of the information by
15 the official's agent or contractor.

16 (c) Disclose information pursuant to an informed consent, received from an employer or claim-
17 ant, to disclose the information.

18 (d) Disclose information to partners under the federal Workforce Investment Act of 1998 for the
19 purpose of administering state workforce programs under the Act. The information disclosed is
20 confidential and may not be used for any other purpose. The costs of disclosing information under
21 this paragraph shall be paid by the requesting partner.

22 (e) Disclose the names and addresses of employing units to the Bureau of Labor and Industries
23 for the purpose of disseminating information to employing units. The names and addresses disclosed
24 are confidential and may not be used for any other purpose. If the information disclosed under this
25 paragraph is not prepared for the use of the Employment Department, the costs of disclosing the
26 information shall be paid by the bureau.

27 (f) Disclose information to the Commissioner of the Bureau of Labor and Industries for the
28 purpose of performing duties under ORS 279C.800 to 279C.870, 658.005 to 658.245 or 658.405 to
29 658.503 or ORS chapter 652, 653 or 659A. The information disclosed may include the names and ad-
30 dresses of employers and employees and payroll data of employers and employees. The information
31 disclosed is confidential and may not be used for any other purpose. If the information disclosed
32 under this paragraph is not prepared for the use of the Employment Department, the costs of dis-
33 closing the information shall be paid by the bureau.

34 (g) Disclose information required under ORS 657.660 (3) and (4) to the Public Employees Re-
35 tirement System for the purpose of determining the eligibility of members of the retirement system
36 for disability retirement allowances under ORS chapter 238. The information disclosed is confiden-
37 tial and may not be used for any other purpose. The costs of disclosing information under this par-
38 agraph shall be paid by the Public Employees Retirement System.

39 (h) Disclose to the Oregon Business Development Commission information required by the com-
40 mission in performing its duty under ORS 285A.050 to verify changes in employment levels following
41 direct employer participation in Oregon Business Development Department programs or indirect
42 participation through municipalities under ORS 285B.410 to 285B.482. The information disclosed to
43 the commission may include an employer's employment level, total subject wages payroll and whole
44 hours worked. The information disclosed is confidential and may not be used for any other purpose.
45 The commission may not disclose the information in any manner that would identify an employing

1 unit or employee except to the extent necessary to carry out the commission's duty under ORS
2 285A.050. If the information disclosed under this paragraph is not prepared for the use of the Em-
3 ployment Department, the costs of disclosing the information shall be paid by the commission.

4 (i) Disclose information to the Department of Revenue for the purpose of performing its duties
5 under ORS 293.250 or under the revenue and tax laws of this state. The information disclosed may
6 include the names and addresses of employers and employees and payroll data of employers and
7 employees. The information disclosed is confidential and may not be disclosed by the Department
8 of Revenue in any manner that would identify an employing unit or employee except to the extent
9 necessary to carry out the department's duties under ORS 293.250 or in auditing or reviewing any
10 report or return required or permitted to be filed under the revenue and tax laws administered by
11 the department. The Department of Revenue may not disclose any information received to any pri-
12 vate collection agency or for any other purpose. If the information disclosed under this paragraph
13 is not prepared for the use of the Employment Department, the costs of disclosing the information
14 shall be paid by the Department of Revenue.

15 (j) Disclose information to the Department of Consumer and Business Services for the purpose
16 of performing its duties under ORS chapters 654 and 656. The information disclosed may include the
17 name, address, number of employees and industrial classification code of an employer and payroll
18 data of employers and employees. The information disclosed is confidential and may not be disclosed
19 by the Department of Consumer and Business Services in any manner that would identify an em-
20 ploying unit or employee except to the extent necessary to carry out the department's duties under
21 ORS chapters 654 and 656, including administrative hearings and court proceedings in which the
22 Department of Consumer and Business Services is a party. If the information disclosed under this
23 paragraph is not prepared for the use of the Employment Department, the costs of disclosing the
24 information shall be paid by the Department of Consumer and Business Services.

25 (k) Disclose information to the Construction Contractors Board for the purpose of performing
26 its duties under ORS chapter 701. The information disclosed to the board may include the names and
27 addresses of employers and status of their compliance with this chapter. If the information disclosed
28 under this paragraph is not prepared for the use of the Employment Department, the costs of dis-
29 closing the information shall be paid by the board.

30 (L) Disclose information to the State Fire Marshal to assist the State Fire Marshal in carrying
31 out duties under ORS 453.307 to 453.414. The information disclosed may include the name, address,
32 telephone number and industrial classification code of an employer. The information disclosed is
33 confidential and may not be disclosed by the State Fire Marshal in any manner that would identify
34 an employing unit except to the extent necessary to carry out duties under ORS 453.307 to 453.414.
35 If the information disclosed under this paragraph is not prepared for the use of the Employment
36 Department, the costs of disclosing the information shall be paid by the office of the State Fire
37 Marshal.

38 (m) Disclose information to the Higher Education Coordinating Commission for the purpose of
39 performing the commission's duties under ORS chapter 348 and Title IV of the Higher Education
40 Act of 1965. The information disclosed may include the names and addresses of employers and em-
41 ployees and payroll data of employers and employees. The information disclosed is confidential and
42 may not be disclosed by the commission in any manner that would identify an employing unit or
43 employee except to the extent necessary to carry out the commission's duties under ORS chapter
44 348 or Title IV of the Higher Education Act of 1965. If the information disclosed under this para-
45 graph is not prepared for the use of the Employment Department, the costs of disclosing the infor-

1 mation shall be paid by the commission.

2 (n) Disclose information to the Department of Transportation to assist the Department of
3 Transportation in carrying out the duties of the Department of Transportation relating to collection
4 of delinquent and liquidated debts, including taxes, under ORS 184.610 to 184.666, 184.670 to 184.733
5 and 805.263, ORS chapter 319 and the Oregon Vehicle Code. The information disclosed may include
6 the names and addresses of employers and employees and payroll data of employers and employees.
7 The information disclosed is confidential and may not be disclosed by the Department of Transpor-
8 tation in any manner that would identify an employing unit or employee except to the extent nec-
9 cessary to carry out the Department of Transportation's duties relating to collection of delinquent
10 and liquidated debts or in auditing or reviewing any report or return required or permitted to be
11 filed under the revenue and tax laws administered by the Department of Transportation. The De-
12 partment of Transportation may not disclose any information received to any private collection
13 agency or for any other purpose. If the information disclosed under this paragraph is not prepared
14 for the use of the Employment Department, the costs of disclosing the information shall be paid by
15 the Department of Transportation.

16 (o) Disclose information to the Department of Human Services and the Oregon Health Authority
17 to assist the Department of Human Services and the Oregon Health Authority in the collection of
18 debts that the Department of Human Services and the Oregon Health Authority are authorized by
19 law to collect. The information disclosed may include the names, addresses and payroll data of em-
20 ployers and employees. The information disclosed is confidential and may not be disclosed by the
21 Department of Human Services or the Oregon Health Authority in a manner that would identify an
22 employing unit or employee except to the extent necessary for the collection of debts as described
23 in this paragraph. The Department of Human Services and the Oregon Health Authority may not
24 disclose information received under this paragraph to a private collection agency or use the infor-
25 mation for a purpose other than the collection of debts as described in this paragraph. If the infor-
26 mation disclosed under this paragraph is not prepared for the use of the Employment Department,
27 the costs of disclosing the information shall be paid by the Department of Human Services or the
28 Oregon Health Authority.

29 (p) Disclose to the Alcohol and Drug Policy Commission information required by the commission
30 in evaluating and measuring the performance of alcohol and drug prevention and treatment pro-
31 grams under ORS 430.242 or the impact of the programs on employment. The information disclosed
32 to the commission may include total subject wages payroll and whole hours worked. The information
33 disclosed under this paragraph is confidential and may not be used for any other purpose. The
34 commission may not disclose the information in any manner that would identify an employing unit
35 or employee except to the extent necessary to carry out the commission's duties under ORS 430.242.
36 If the information disclosed under this paragraph is not prepared for the use of the Employment
37 Department, the costs of disclosing the information shall be paid by the commission.

38 (q) Disclose to any person establishment level information secured pursuant to this chapter from
39 federal, state and local government employing units. If the information disclosed under this para-
40 graph is not prepared for the use of the Employment Department, the costs of disclosing the infor-
41 mation shall be paid by the party requesting the information.

42 (r) Disclose to any person the industrial classification code assigned to an employing unit. If the
43 information disclosed under this paragraph is not prepared for the use of the Employment Depart-
44 ment, the costs of disclosing the information shall be paid by the party requesting the information.

45 **(s) Disclose to any person information, copies of survey forms and data records, related**

1 to the conduct of wage surveys pursuant to ORS 279C.815. The disclosed information may
 2 not include the names, addresses, unified business identifier numbers, contractor license
 3 numbers or any other identification information of individuals, firms or corporations sup-
 4 plying the information that is to be disclosed under this paragraph. If the information dis-
 5 closed under this paragraph is not prepared for the use of the Employment Department, the
 6 costs of disclosing the information shall be paid by the party requesting the information.

7 (5) The Employment Department may make public all decisions of the Employment Appeals
 8 Board.

9 (6) Any officer appointed by or any employee of the Director of the Employment Department
 10 who discloses confidential information, except with the authority of the director, pursuant to rules
 11 or as otherwise required by law, may be disqualified from holding any appointment or employment
 12 with the Employment Department.

13 (7) Any person or any officer or employee of an entity to whom information is disclosed by the
 14 Employment Department under this section who divulges or uses the information for any purpose
 15 other than that specified in the provision of law or agreement authorizing the use or disclosure may
 16 be disqualified from performing any service under contract or disqualified from holding any ap-
 17 pointment or employment with the state agency that engaged or employed that person, officer or
 18 employee. The Employment Department may immediately cancel or modify any information sharing
 19 agreement with an entity when a person or an officer or employee of that entity discloses confi-
 20 dential information, other than as specified in law or agreement.

21 **SECTION 3. This 2015 Act being necessary for the immediate preservation of the public**
 22 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 23 **on its passage.**
