Minority Report

A-Engrossed

Senate Bill 1532

Ordered by the Senate February 9
Including Senate Minority Report Amendments dated February 9

Sponsored by nonconcurring members of the Senate Committee on Workforce and General Government: Senators KNOPP, THATCHER

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.

[*Establishes tiered system for determination of minimum wage based on size and geographic location of employer. Suspends annual inflation adjustment for minimum wage rate until 2020. Establishes Wage Enforcement Fund. Creates Minimum Wage Advisory Committee.*]

[*Repeals state preemption of local minimum wage requirements.*]

[*Declares emergency, effective on passage.*]

Changes term from "minimum wage" to "state mandated minimum wage" throughout Oregon Revised Statutes and session laws. Establishes $0.25 increase in minimum wage for large employers and employers in certain counties. Exempts small employers, agricultural employers and other counties from increase. Allows local governments to opt out of increase. Describes criteria for employer location. Excludes temporary employees and youth employees from employee count.

Creates tax credit to compensate employers for cost of compliance with increase in minimum wage. Creates tax credit for employee earning minimum wage. Applies to tax years beginning on or after January 1, 2017, and before January 1, 2021.

Refers Act to people for their approval or rejection at next regular general election.

A BILL FOR AN ACT

Relating to minimum wage; creating new provisions; amending ORS 18.838, 18.840, 25.323, 25.333, 25.414, 137.103, 258.200, 314.752, 315.262, 318.031, 344.750, 411.892, 419C.461, 419C.465, 470.560, 653.025, 653.030, 653.070, 653.606, 656.802, 657.325 and 660.142 and section 2, chapter 564, Oregon Laws 2011; and providing that this Act shall be referred to the people for their approval or rejection.

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

SECTION 1. (1) The amendments to statutes and session law by sections 14 to 33 of this 2016 Act are intended to change the term "minimum wage" to "state mandated minimum wage."

(2) Any remaining reference in Oregon statutory law to "Oregon minimum wage," "state minimum wage," "Oregon hourly minimum wage," "minimum wage established under ORS 653.025," "minimum wage prescribed by ORS 653.025," "minimum wage specified in ORS 653.025" or "minimum wage rate required by ORS 653.025" shall be considered a reference to "state mandated minimum wage."

(3) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating "Oregon minimum wage," "state minimum wage," "Oregon hourly minimum wage," "minimum wage established under ORS 653.025," "minimum

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.

wage prescribed by ORS 653.025," "minimum wage specified in ORS 653.025" or "minimum wage rate required by ORS 653.025," wherever they occur in statutory law, other words designating "state mandated minimum wage."

SECTION 2. As used in ORS 653.025 and section 4 of this 2016 Act:

(1) "Nonurban or economically distressed county" means any of the following counties:

(a) Baker;

(b) Coos;

(c) Crook;

(d) Curry;

(e) Douglas;

(f) Gilliam;

(g) Grant;

(h) Harney;

(i) Jefferson;

(j) Josephine;

(k) Klamath;

(L) Lake;

(m) Malheur;

(n) Morrow;

(o) Sherman;

(p) Umatilla;

(q) Union;

(r) Wallowa;

(s) Wasco; or

(t) Wheeler.

(2) "Temporary employee" means an employee hired to cope with short-term or unexpected workload demands when the establishment of a permanently funded position is inappropriate or infeasible.

(3) "Youth employee" means an employee who is 19 years of age or younger during the calendar year.

SECTION 3. ORS 653.025 is amended to read:

653.025. (1) Except as provided by ORS 652.020 and the rules of the Commissioner of the Bureau of Labor and Industries issued under ORS 653.030 and 653.261, for each hour of work time that the employee is gainfully employed, no employer shall employ or agree to employ any employee at wages computed at a rate lower than:

[*(a) For calendar year 1997, $5.50.*]

[*(b) For calendar year 1998, $6.00.*]

[*(c) For calendar years after December 31, 1998, and before January 1, 2003, $6.50.*]

[*(d)*] **(a)** For calendar year 2003, $6.90.

[*(e)*] **(b)** [*For calendar years after 2003*] **From January 1, 2004, to December 31, 2016**, a rate adjusted for inflation **as calculated by the commissioner**.

(c) For calendar year 2017:

(A) For employers exempt under section 4 of this 2016 Act, $9.25 plus an adjustment for inflation as described in subsection (2) of this section.

(B) For employers not exempt under section 4 of this 2016 Act, either $9.50 or the rate

determined under subparagraph (A) of this paragraph, whichever is higher.

(d) For calendar years after 2017:

(A) For employers exempt under section 4 of this 2016 Act, a rate adjusted for inflation as described in subsection (2) of this section.

(B) For employers not exempt under section 4 of this 2016 Act, a rate adjusted for inflation as described in subsection (2) of this section.

(2)(a) The [*Oregon*] **state mandated** minimum wage shall be adjusted annually for inflation, as provided in paragraph (b) of this subsection.

(b) **Except as provided in subsection (1)(c) of this section,** no later than September 30 of each year, beginning in [*calendar year 2003*] **2016**, the commissioner shall calculate an adjustment of the wage amount specified in subsection (1) of this section based upon the increase**, if any,** [*(if any)*] from August of the preceding year to August of the year in which the calculation is made in the U.S. City Average Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the United States Department of Labor or its successor.

(c) The wage amount [*established*] **as adjusted** under this subsection shall[*:*]

[*(A)*] be rounded to the nearest five cents[*; and*]**.**

[*(B)*] **(d) The wage amount as adjusted under this subsection** [*Become*] **becomes** effective as the new [*Oregon*] **state mandated** minimum wage, replacing the [*dollar figure*] **state mandated minimum wage** specified in subsection (1) of this section, on January 1 of the following year.

SECTION 4. (1) The following employers are exempt from the state mandated minimum wage required by ORS 653.025 (1)(c)(B) and (d)(B):

(a) Employers who employ 50 or fewer employees;

(b) Employers engaged in the production of agricultural products or forest products; and

(c) Employers located in a nonurban or economically distressed county.

(2) A local government, as defined in ORS 653.017, may set minimum wage requirements for the local government and nongovernmental entities within the jurisdiction of the local government at the rate established by ORS 653.025 (1)(c)(A) and (d)(A).

(3) The commissioner shall adopt rules for determining an employer's location and number of employees for the purpose of this section as follows:

(a) The state mandated minimum wage owed to an employee shall be determined by the location of an employer regardless of where an employee performs work.

(b) An employer's location shall be determined by:

(A) The location of the employer's headquarters;

(B) The location of the employer's primary property; or

(C) The location at which the majority of the work is performed by the employer's employees.

(c) The number of employees of an employer may not include:

(A) A temporary employee who works fewer than 720 hours during the calendar year; or

(B) A youth employee who works fewer than 960 hours during the calendar year.

SECTION 5. (1) Section 4 of this 2016 Act is added to and made a part of ORS 653.010 to 653.261.

(2) Sections 6 to 9 of this 2016 Act are added to and made a part of ORS chapter 315.

SECTION 6. (1)(a) As used in this subsection:

(A) "Young professional" means an employee who is from 20 years of age to 26 years of age during the calendar year.

(B) "Youth employee" has the meaning given that term in section 2 of this 2016 Act.

(b) A credit against taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer for the costs of complying, after January 1, 2017, with the amendments to ORS 653.025 by section 3 of this 2016 Act. The amount of the credit in any one tax year is computed by calculating a percentage of the net increase in wages paid by a taxpayer to employees of the taxpayer as required under the amendments to ORS 653.025 by section 3 of this 2016 Act during the tax year, as follows:

(A) For the first 515 hours worked during the tax year by each employee who is a young professional, 75 percent.

(B) For the first 515 hours worked during the tax year by each employee who is a youth employee, 100 percent.

(C) Except as provided in subparagraph (A) or (B) of this paragraph, for any number of hours worked by any employee during the tax year, 50 percent.

(2) In order to qualify for the credit allowed under this section, a taxpayer must:

(a) Employ not more than 100 full-time employees, other than employees described in section 4 (3)(c) of this 2016 Act, at any point during the tax year; and

(b) Pay the taxpayer's employees in accordance with all applicable federal, state and local laws.

(3) If the amount allowable as a credit under this section, when added to the sum of the amount of estimated tax paid under ORS 314.515 and any other tax prepayment amounts, exceeds the taxes imposed by ORS chapters 314 and 317 for the tax year (reduced by any nonrefundable credits allowable for purposes of ORS chapter 317 for the tax year), the amount of the excess shall be refunded to the taxpayer as provided in ORS 314.415.

(4) A nonresident shall be allowed the credit under this section. The credit shall be computed in the same manner and be subject to the same limitations as the credit granted to a resident.

(5) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(6) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

SECTION 7. (1) A credit against taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer that has 50 or fewer employees at any time during the tax year and that, after January 1, 2017, pays any employee at or above the state mandated minimum wage required by ORS 653.025 (1)(c)(B) and (d)(B) for employers with more than 50 employees that are subject to the state mandated minimum wage required by ORS 653.025 (1)(c)(B) and (d)(B). The amount of the credit in any one tax year is computed by calculating the difference in total wages paid by a taxpayer to employees above that required of the taxpayer during the tax year.

(2) A taxpayer may qualify for the credit allowed under this section if the taxpayer pays the taxpayer's employees in accordance with all applicable federal, state and local laws.

(3) A nonresident shall be allowed the credit under this section. The credit shall be

computed in the same manner and be subject to the same limitations as the credit granted to a resident.

(4) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(5) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

SECTION 8. (1)(a) As used in this subsection, "youth employee" has the meaning given that term in section 2 of this 2016 Act.

(b) A credit against taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer for the costs of complying, after January 1, 2017, with the amendments to ORS 653.025 by section 3 of this 2016 Act. The amount of the credit in any one tax year is computed by multiplying by 15 percent the amount of wages paid to youth employees for the first 515 hours worked during the tax year by each employee who is a youth employee. The amount of any wages for which a credit is claimed for the tax year under section 6 or 7 of this 2016 Act shall be excluded from the calculation under this paragraph.

(2) In order to qualify for the credit under this section, a taxpayer must pay the taxpayer's employees in accordance with all applicable federal, state and local laws.

(3) A nonresident shall be allowed the credit under this section. The credit shall be computed in the same manner and be subject to the same limitations as the credit granted to a resident.

(4) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(5) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

SECTION 9. (1) A credit against taxes that are otherwise due under ORS chapter 316 is allowed to a taxpayer if:

(a) On other than a joint return, the taxpayer's total reported wages for the tax year, when divided by hours worked by the taxpayer, do not exceed the state mandated minimum wage required under ORS 653.025; or

(b) On a joint return, the sum of the reported wages of both taxpayers, when divided by the sum of hours worked by both taxpayers does not exceed the state mandated minimum wage required under ORS 653.025.

(2) The credit allowed under this section shall equal the taxes that would otherwise be imposed under ORS 316.037, prior to the calculation of any other credit.

(3) A nonresident shall be allowed the credit under this section. The credit shall be computed in the same manner and be subject to the same limitations as the credit granted to a resident.

(4) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,

or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(5) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

SECTION 10. ORS 314.752 is amended to read:

314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are allowable to the shareholders of the S corporation.

(2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on income of the shareholder of an S corporation, there shall be taken into account the shareholder's pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), recapture or recovery shall be passed through to shareholders in pro rata shares as determined in the manner prescribed under section 1377(a) of the Internal Revenue Code.

(3) The character of any item included in a shareholder's pro rata share under subsection (2) of this section shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(4) If the shareholder is a nonresident and there is a requirement applicable for the business tax credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS 316.117, then that provision shall apply to the nonresident shareholder.

(5) As used in this section, "business tax credit" means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture workforce housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy resource equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facilities), ORS 315.507 (electronic commerce) and ORS 315.533 (low income community jobs initiative) **and sections 6 to 8 of this 2016 Act (increased minimum wage)**.

SECTION 11. ORS 318.031 is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter 317 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.141, 315.156, 315.204, 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.507 and 315.533 **and sections 6 to 8 of this 2016 Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

SECTION 12. Sections 6 to 9 of this 2016 Act and the amendments to ORS 314.752 and 318.031 by sections 10 and 11 of this 2016 Act apply to tax years beginning on or after January 1, 2017, and before January 1, 2021.

SECTION 13. By September 30 of each year, the Department of Revenue shall report to the Legislative Assembly, in the manner provided by ORS 192.245, the cost for the prior year of the tax credit provided under section 6 of this 2016 Act.

SECTION 14. ORS 18.838 is amended to read:

18.838. Instructions to garnishees must be in substantially the following form:

INSTRUCTIONS TO GARNISHEE

Except as specifically provided in these instructions, you must complete and deliver the Garnishee Response within seven calendar days after you receive the writ of garnishment. If the writ does not comply with Oregon law, the writ is not effective to garnish any property of the Debtor, but you still must complete and deliver the Garnishee Response. You must complete and deliver the response even though you cannot determine from the writ whether you hold any property or owe any debt to the Debtor. If the seventh calendar day is a Saturday, Sunday or legal holiday, you must deliver your response on or before the next following day that is not a Saturday, Sunday or legal holiday.

The writ is not effective, and you need not make a Garnishee Response, if:

- You do not receive the writ within 60 days after the date of issuance shown on the face of the writ.

- You do not receive an original writ of garnishment or a copy of the writ.

Statutes that may affect your rights and duties under the writ can be found in ORS 18.600 to 18.850.

NOTE: The Garnishor may be the Creditor, the attorney for the Creditor or some other person who is authorized by law to issue the writ of garnishment. See the writ to determine who the Garnishor is.

STEP 1. FILL OUT THE GARNISHEE RESPONSE.

All garnishees who are required to deliver a garnishee response must fill in Part I of the Garnishee Response. Garnishees who employ the Debtor must also fill in Part II of the response. You should keep a copy of the response for your records.

Completing Part I of the Garnishee Response. If you discover before you deliver your response that a bankruptcy petition has been filed by or on behalf of the Debtor, and the bankruptcy petition was filed after a judgment was entered against the Debtor or after the debt otherwise became subject to garnishment (see the date specified in the writ), you must put a check by the appropriate

statement in Part I. If a bankruptcy petition has been filed, you should not make any payments to the Garnishor unless the court orders otherwise. You need not complete any other part of the response, but you still must sign the response and deliver it in the manner described in Step 2 of these instructions.

In all other cases you must list in Part I all money and personal property of the Debtor that is in your possession, control or custody at the time of delivery of the writ. You must also list all debts that you owe to the Debtor, whether or not those debts are currently due (e.g., money loaned to you by the Debtor that is to be repaid at a later time).

If you are the employer of the Debtor at the time the writ is delivered to you, you must put a check by the appropriate statement in Part I. In addition, you must complete Part II of the response.

If you believe that you may hold property of the Debtor or that you owe a debt to the Debtor, but you are not sure, you must put a check by the appropriate statement and provide an explanation. When you find out what property you hold that belongs to the Debtor, or you find out whether you owe money to the Debtor and how much, you must prepare and deliver an amended response. You must do this even if you find out that you have no property of the Debtor or that you do not owe anything to the Debtor.

If you determine that the writ, on its face, does not comply with Oregon laws governing writs of garnishment, or if you are unable to determine the identity of the Debtor from the information in the writ, then the writ is not effective to garnish any property of the Debtor. You must put a check by the appropriate statement in Part I and provide an explanation. You still must complete the response and deliver the response in the manner described in Step 2 of these instructions.

If you have received an order to withhold income that applies to the income of the Debtor and that order has priority over the garnishment, and if compliance with the order will reduce or eliminate the money or property that you would otherwise deliver under the garnishment, you must put a check by the appropriate statement in Part I. You still must fill out the remainder of the response and deliver the response in the manner described in Step 2 of these instructions. If you employ the Debtor, you still must complete Part II of the response.

If you receive notice of a challenge to the garnishment before you send your response, you must complete and deliver your response as otherwise required by these instructions. However, see Step 3 of these instructions regarding payment of money or delivery of property after receipt of notice of a challenge to the garnishment.

If you owe a debt to the Debtor and the Debtor owes a debt to the holder of an underlying lien on your property, you may be able to offset the amount payable to the underlying lienholder. See ORS 18.620. You must note that you have made the offset in Part I of the response (under "Other") and specify the amount that was offset.

Completing Part II of the Garnishee Response (employers only). You must fill in Part II of the response if you employ the Debtor on the date the writ of garnishment is delivered to you, or if you previously employed the Debtor and still owe wages to the Debtor on the date the writ is delivered to you.

Wages affected. Except as provided below, the writ garnishes all wages that you owe to the Debtor for work performed before the date you received the writ, even though the wages will not be paid until a later date. The writ also garnishes all wages that are attributable to services performed during the 90-day period following the date you received the writ, even though you would

not pay the Debtor for all or part of those services until after the end of the 90-day period. Wages subject to garnishment under the writ include all amounts paid by you as an employer, whether on an hourly, weekly or monthly basis, and include commission payments and bonuses.

Example 1: Debtor A is employed by you and is paid a monthly salary on the first day of each month. You receive a writ of garnishment on July 17. The writ garnishes all wages that you owe to Debtor A for work performed on or before July 17. If Debtor A was paid on July 1 for services performed in the month of June, the writ garnishes Debtor A's salary for the period beginning July 1 and ending October 15 (90 days after receipt of the writ).

The writ does not garnish any wages you owe to a Debtor for a specific pay period if:

(a) The writ is delivered to you within two business days before the Debtor's normal payday for the pay period;

(b) When the writ is delivered to you, the Debtor's wages are paid by direct deposit to a financial institution, or you use an independent contractor as payroll administrator for your payroll; and

(c) Before the writ was delivered to you, you issued instructions to the financial institution or the payroll administrator to pay the Debtor for the pay period.

If any wages are not garnishable by reason of the issuance of instructions to a financial institution or a payroll administrator as described above, you must so note in the Garnishee Response. Thereafter, you must pay to the Garnishor all wages that are subject to garnishment that are attributable to services performed by the Debtor during the 90-day period following the date you received the writ.

Calculation of wages subject to garnishment. A Wage Exemption Calculation form is attached to the writ of garnishment. You must use this form to calculate the amount of the Debtor's wages that is subject to garnishment. You should read the instructions printed on the Wage Exemption Calculation form to determine the normal wage exemption and the **state mandated** minimum wage exemption for each payment you make under the writ.

A Wage Exemption Calculation form must be sent with the first payment you make under the writ. For the 90-day period during which the writ is effective, you must also fill out and return a Wage Exemption Calculation form with a subsequent payment any time the initial calculation changes. Finally, you must fill out and return a Wage Exemption Calculation form with the final payment that you make under the writ.

Payment of amount subject to garnishment. Payments under the writ must be made at the following times, unless the amount owing on the judgment or other debt is fully paid before the final payment is made or the writ is released:

(a) You must make a payment to the Garnishor of all wages subject to garnishment at the time you next pay wages to the Debtor. Complete the wage exemption computation, using the Wage Exemption Calculation form, to determine the portion of the Debtor's wages that is subject to garnishment. Be sure to adjust the minimum exemption amount for any payment that covers less than a full pay period. You must include a copy of the Wage Exemption Calculation form with this first payment.

Example 2: Using the facts given in Example 1, when you next make any payment of wages

to Debtor A after you receive the writ on July 17, you must complete the Wage Exemption Calculation form and send the form to the Garnishor along with all amounts determined to be subject to garnishment that are attributable to the period covered by the payment. If you pay Debtor A on August 1, the payment will be for all wages attributable to the period beginning July 1 and ending July 31.

(b) Unless the writ of garnishment is satisfied or released, during the 90-day period following the date you received the writ, you must pay to the Garnishor all wages that are determined to be subject to garnishment whenever you issue a paycheck to the Debtor. If the Debtor is paid on a weekly basis, you must make payment under the writ on a weekly basis. If the Debtor is paid on a monthly basis, you must make payment under the writ on a monthly basis. If the amount paid to the Debtor varies from paycheck to paycheck, or changes at any time from the amount being paid at the time the writ was delivered to you, you must perform a new wage exemption computation to determine the amount of wages subject to garnishment under the writ. You must send a copy of the new Wage Exemption Calculation form with your payment to the Garnishor.

Example 3: Using the facts given above, as you make each subsequent payment of wages to Debtor A you must make a payment of that portion of the Debtor's wages that are subject to garnishment. If you continue to pay Debtor A on the first of each month, payments must be made on September 1 and October 1.

(c) Upon the expiration of the 90-day period, you must make a final payment to the Garnishor for all wages that were owing to the Debtor for the work performed by the Debtor through the 90th day following your receipt of the writ. This payment may be made at the time of the Debtor's next paycheck. You will need to complete another Wage Exemption Calculation form to determine the amount of the wages subject to garnishment.

Example 4: Using the facts given above, you must make a final payment for the wages owing to Debtor A for the period beginning October 1 and ending October 15. You may make this payment at the time you issue Debtor A's paycheck on November 1, but you must make the payment at any time you issue a paycheck to Debtor A after October 15. Be sure that in completing the wage exemption computation for the final payment you adjust the minimum exemption amount to take into account the fact that the period covered is only 15 days of the full month (see instructions on Wage Exemption Calculation form).

Processing fee. You may collect a $2 processing fee for each week of wages, or fraction of a week of wages, for which a payment is made under the writ. The fee must be collected after you make the last payment under the writ. The fee must be withheld from the wages of the debtor, and is in addition to the amounts withheld for payment to the garnishor under the writ or under any other writ you have received.

If you receive more than one writ of garnishment. If you receive a second writ of garnishment for the same Debtor from another Garnishor, the first writ will have priority for wages. The priority of the first writ lasts for the 90-day period following delivery of that writ to you, or until the first writ is paid in full, whichever comes first. In your response to the second writ, you must put a check

by the appropriate statement in Part II and indicate the date on which the first writ will expire (90 days after the date you received the writ). You should make no payments under the second writ until expiration of the first writ. The expiration date of the second writ is 90 days after the date you received the second writ; the expiration date is not affected by any delay in payment attributable to the priority of the first writ.

STEP 2. DELIVER THE GARNISHEE RESPONSE.

You must deliver your Garnishee Response and copies of the response in the manner provided in this step. The response and copies may be mailed or delivered personally.

You must complete and deliver the Garnishee Response within seven calendar days after you receive the writ of garnishment. If the seventh calendar day is a Saturday, Sunday or legal holiday, you must deliver your response on or before the next following day that is not a Saturday, Sunday or legal holiday.

If you are required to hold any property under the writ or make any payment under the writ, either at the time of making your response or later, you must:

(a) Send the original of your Garnishee Response to the Garnishor at the address indicated on the writ under Important Addresses.

(b) Send a copy of your Garnishee Response to the court administrator at the address indicated on the writ under Important Addresses.

(c) Send a copy of your Garnishee Response to the Debtor if an address is indicated on the writ under Important Addresses.

If you are not required to hold any property under the writ or make any payment under the writ, either at the time of making your response or later, you must:

(a) Send the original of your Garnishee Response to the Garnishor at the address indicated on the writ under Important Addresses.

(b) Send a copy of your Garnishee Response to the Debtor if an address is indicated on the writ under Important Addresses.

STEP 3. DELIVER THE FUNDS OR OTHER PROPERTY.

As long as the writ is in effect, you may be liable to the Creditor if you pay any debt or turn over any property to the Debtor except as specifically allowed by law. If you have any money or property of the Debtor in your possession, control or custody at the time of delivery of the writ, or owe any debt to the Debtor, you must pay the money or hold the property as required by this step. Exceptions to this requirement are listed below.

IF YOU ARE HOLDING MONEY FOR THE DEBTOR OR OWE A DEBT THAT IS CURRENTLY DUE, you must pay the money to the Garnishor with your response. You must send your payment to the Garnishor at the address indicated on the writ under Important Addresses. Make your check payable to the Garnishor.

IF YOU OWE A DEBT TO THE DEBTOR THAT WILL BECOME DUE WITHIN 45 DAYS AFTER THE DATE YOU RECEIVED THE WRIT, you must send your payment directly to the Garnishor at the address provided in the writ when the debt becomes due. Make your check payable to the Garnishor.

IF YOU ARE HOLDING PROPERTY THAT BELONGS TO THE DEBTOR, OR OWE A DEBT TO THE DEBTOR THAT WILL NOT BECOME DUE WITHIN 45 DAYS AFTER THE DATE YOU RECEIVED THE WRIT, you must keep the property or debt in your possession, control or custody until you receive written notice from the Sheriff. The Sheriff's notice will tell you what to do with the property or debt. If you have followed all of the instructions in the writ and you receive no notice from the Sheriff within 30 days after the date on which you delivered your Garnishee Response, you may treat the writ as being of no further force or effect.

EXCEPTIONS:

1. Challenge to garnishment or specific directions from court. If you are making any payments under the garnishment and before making a payment you receive notice of a challenge to the garnishment from the court, or receive a specific direction from the court to make payments to the court, you must send or deliver the payment directly to the court administrator. If the money is currently due when you receive the notice, send the payment promptly to the court. If the payment is for a debt that is payable within 45 days after you receive the writ, make the payment to the court promptly when it becomes due. If you make payment by check, make the check payable to the State of Oregon. Because you may be liable for any payment that does not reach the court, it is better not to send cash by mail.

A challenge to the garnishment does not affect your duty to follow the instructions you receive from the Sheriff for property that belongs to the Debtor and debts that you owe to the Debtor that do not become due within 45 days.

2. Previous writ of garnishment. If you receive a second writ of garnishment for the same Debtor from another Garnishor, the first writ will have priority and you need not make payments or deliver property under the second writ to the extent that compliance with the first writ will reduce or eliminate the payment of money or delivery of property that you would otherwise make under the garnishment. You must still deliver a Garnishee Response to the second writ, and must commence payment under the second writ as soon as the first writ is satisfied or expires.

3. Offset for payment of underlying lien. If you owe a debt to the Debtor and the Debtor owes a debt to the holder of an underlying lien on your property, you may be able to offset the amount payable to the underlying lienholder. See ORS 18.620.

4. Subsequent events:

(a) Bankruptcy. If you make your response and then discover that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor after the judgment was entered against the Debtor or after the debt otherwise became subject to garnishment (see date in writ), you may not make any further payments or delivery of property under the writ unless the court orders

otherwise. If you have not delivered all property that is subject to garnishment under this writ when you discover that a bankruptcy petition has been filed, you must mail the following notice to the Garnishor and to the Debtor.

(b) Order to withhold income. If you make your response and then receive an order to withhold income that has priority over the writ, you may make payments or deliver property under the writ only after payment of the amounts required under the order to withhold income. If you have not delivered all property that is subject to garnishment under this writ when you receive an order to withhold income that has priority, you must mail the following notice to the Garnishor and to the Debtor.

SUPPLEMENTAL GARNISHEE
RESPONSE

TO: The Garnishor and the Debtor

RE: Writ of garnishment received _____, 2__ (date), in the case of _____ (Plaintiff) vs. _____ (Defendant), Circuit Court of_____ County, Oregon, Case No. _____.

The undersigned Garnishee furnished a Garnishee Response to this writ of garnishment on _____, 2__ (date). Since that time (check appropriate statement):

__ I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor after the judgment was entered against the Debtor or after the debt otherwise became subject to garnishment.

__ I have received an order to withhold income of the Debtor by reason of a support obligation. Under ORS 25.375, the order to withhold income has priority over any other legal process under Oregon law against the same income. The withholding of income pursuant to the order to withhold income might reduce or eliminate subsequent payments under the garnishment. (Provide details, including the name of the agency serving the order to withhold, the date the order was served on you and the amounts to be withheld.)

Dated _____, 2__

_____
Name of Garnishee

_____
Signature

_____
Address

SPECIAL INSTRUCTIONS FOR BANKS
AND OTHER FINANCIAL INSTITUTIONS

Unless a Notice of Right to Garnish Federal Benefits from the United States Government or from a state child support enforcement agency is attached to or included in the garnishment, you must conduct a garnishment account review for each account that you hold for the debtor. If a Notice of Right to Garnish Federal Benefits from the United States Government or from a state child support enforcement agency is attached to or included in the garnishment, you should not conduct a garnishment account review, and should proceed upon the garnishment in the normal manner.

If you hold an account for the debtor, and any of the payments listed below has been deposited in the account by direct deposit or electronic payment during the lookback period described in ORS 18.784 (2) (the period that begins on the date preceding the date of your garnishment account review and that ends on the corresponding date of the month two months earlier, or on the last day of the month two months earlier if the corresponding date does not exist), an amount equal to the lesser of the sum of those payments or the total balance in the debtor's account is not subject to garnishment, and you may not deliver that amount to the garnishor:

(a) Federal benefit payments as defined in ORS 18.600 (payments from the United States Social Security Administration, the United States Department of Veterans Affairs, the United States Office of Personnel Management or the Railroad Retirement Board);

(b) Payments from a public or private retirement plan as defined in ORS 18.358;

(c) Public assistance or medical assistance, as defined in ORS 414.025, payments from the State of Oregon or an agency of the State of Oregon;

(d) Unemployment compensation payments from the State of Oregon or an agency of the State of Oregon;

(e) Black lung benefits payments from the United States Department of Labor; and

(f) Workers' compensation payments from a workers' compensation carrier.

If the Garnishor fails to pay the search fee required by ORS 18.790 and you do not employ the Debtor, you are not required to deliver a Garnishee Response and you may deal with any property of the Debtor as though the garnishment had not been issued.

If the Debtor owes a debt to you that was due at the time you received the writ of garnishment, you may be able to offset the amount of that debt. See ORS 18.795. You must note that you have made the offset in Part I of the Garnishee Response (under "Other") and specify the amount that was offset.

Before making a payment under the writ, you may first deduct any processing fee that you are allowed under ORS 18.790. If you are required to conduct a garnishment account review, you may not charge or collect a processing fee against any amount that is not subject to garnishment, and may not charge or collect a garnishment processing fee against any amounts in the account after the date that you conduct the review.

You need not deliver any property contained in a safe deposit box unless the Garnishor pays

you in advance for the costs that will be incurred in gaining entry to the box. See ORS 18.792.

If you are required to conduct a garnishment account review and you determine from the review that one or more of the payments listed in ORS 18.784 (3) have been deposited into the debtor's account by direct deposit or electronic payment during the lookback period described in ORS 18.784 (2), and that there is a positive balance in the account, you must issue a notice to the account holder in substantially the form set forth in ORS 18.847. The notice must be issued directly to the account holder or to a fiduciary who administers the account and receives communications on behalf of the account holder. The notice must be sent separately to the account holder and may not be included with other materials being provided to the account holder that do not relate to the garnishment. You must send the notice to the account holder within three business days after you complete the garnishment account review. You may issue one notice with information related to multiple accounts of a single account holder.

SECTION 15. ORS 18.840 is amended to read:

18.840. A wage exemption calculation form must be delivered to the garnishee with each writ of garnishment. A wage exemption calculation form must be in substantially the following form:

WAGE EXEMPTION CALCULATION

(to be filled out by employers only)

1. Debtor's gross wages for period covered by this payment..... $ _____
2. Total amount required to be withheld by law for amount in Line 1 (Federal and state withholding, Social Security, etc.)..... $ _____
3. Debtor's disposable wages (Subtract Line 2 from Line 1)..... $ _____
4. Normal exemption (Enter 75 percent of Line 3)..... $ _____
5. Minimum exemption (check one)

___ $218 (payment of wages weekly)

___ $435 (payment of wages every two weeks)

___ $468 (payment of wages half-monthly)

___ $936 (payment of wages monthly)

___ $_____ (Any other period longer than one week, including partial

payments for less than full pay
period) (Multiply $218 by number
of weeks or fraction of a week)

6. Wages exempt from garnishment
(Line 4 or 5,
whichever is greater)..... $ _____

7. Nonexempt wages
(Subtract Line 6
from Line 3)..... $ _____

8. Amount withheld for this pay period
pursuant to a support order under
support withholding process or under
another writ with priority..... $ _____

9. Wages subject to garnishment
(Subtract Line 8
from Line 7)..... $ _____

INSTRUCTIONS FOR WAGE
EXEMPTION CALCULATION FORM

If you employ the Debtor named in the writ of garnishment, you must fill out and return this Wage Exemption Calculation form. A Wage Exemption Calculation form must be sent with the first payment you make under the writ. For the 90-day period during which the writ is effective, you must also fill out and return a Wage Exemption Calculation form with a subsequent payment any time the initial calculation changes. Finally, you must fill out and return a Wage Exemption Calculation form with the final payment that you make under the writ.

Normal wage exemption. The wage exemption calculation is based on the amount of the payment you make under the writ of garnishment. The normal wage exemption in Line 4 is 75 percent of the employee's disposable wages in Line 3.

State mandated minimum wage exemption. The minimum exemption in Line 5 is also based on the amount of the payment you are making. The minimum exemption is designed to ensure that an employee receives at least a certain minimum amount in any one-week period. If the payment is for a one-week period (without regard to whether the period is a calendar week or any other seven-day period), the minimum exemption is $218. The minimum exemption is $435 if the payment is for a two-week period. If the payment is for one-half of one month (i.e., the Debtor is paid twice each month), the minimum exemption is $468. The minimum exemption for a monthly payment is $936.

If the payment you are making is based on some period of time other than one week, two weeks, half month or month, and the payment is for more than one week, you must calculate the minimum exemption by multiplying $218 by the number of weeks covered by the paycheck, including any fraction of a week. You should round the amount calculated to the nearest dollar.

Example 1: You pay Debtor A every 10 days. Each 10-day period is equal to 1.429 weeks (10 divided by 7). The minimum exemption is $312 ($218 × 1.429 rounded to the nearest dollar).

You must use this same calculation for computing the minimum exemption when making a payment for less than a full pay period (e.g., for the final payment at the end of the 90-day period covered by the writ).

Example 2: You pay Debtor A on a monthly basis. You are required to make a final payment under a writ of garnishment for the wages owing to Debtor A for the period beginning October 1 and ending October 15. This period is equal to 2.143 weeks (15 divided by 7). The minimum exemption is $467 ($218 × 2.143 rounded to the nearest dollar).

The amount of time actually worked by the Debtor during the period covered by the paycheck does not affect the calculation of the minimum exemption.

Example 3: You pay Debtor A on a weekly basis. Debtor A works two days per week. The minimum exemption is $218 for each weekly payment you make for Debtor A.

If the payment you are making is based on a period of time less than one week, the **state mandated** minimum wage exemption may not exceed $218 for any one-week period.

If you receive more than one writ of garnishment. If you receive more than one writ of garnishment for the same debtor, the writs have priority based on the date on which you receive them. If the full amount of wages subject to garnishment for a given pay period is paid on the first writ, you should not make any payment on subsequently received writs until the first writ expires. In some cases, it may be necessary to make payments on two or more writs for the same pay period.

Example 4. You have received two writs of garnishment for Debtor A. You pay Debtor A on a monthly basis. The first writ expires on October 16. The second writ will not expire until November 15. You will need to prepare two wage exemption calculation forms for Debtor A's October wages and make payments under both writs. The wage exemption calculation form for the first writ will be for the wages attributable to October 1 to October 15 as described in Example 2. The wage exemption calculation form for the second writ will be for all wages for the month of October, but the amounts withheld under the first writ must be subtracted on Line 8 to determine the October wages subject to garnishment under the second writ.

SECTION 16. ORS 25.323 is amended to read:

25.323. (1) Every child support order must include a medical support clause.

(2) Whenever a child support order that does not include a medical support clause is modified the modification must include a medical support clause.

(3) A medical support clause may require that medical support be provided in more than one form, and may make the requirement that medical support be provided in a particular form contingent on the availability of another form of medical support.

(4) A medical support clause must require that one or both parents provide private health care coverage for a child that is appropriate and available at the time the order is entered. If private health care coverage for a child is not appropriate and available at the time the order is entered,

the order must:

(a) Require that one or both parents provide private health care coverage for the child at any time thereafter when such coverage becomes available; and

(b) Either require the payment of cash medical support, or include findings on why cash medical support has not been required.

(5) For the purposes of subsection (4) of this section, private health care coverage is appropriate and available for a child if the coverage:

(a) Is accessible, as described in subsection (6) of this section;

(b) Is reasonable in cost and does not require the payment of unreasonable deductibles or copayments; and

(c) Provides coverage, at a minimum, for medical expenses, hospital expenses, preventive care, emergency care, acute care and chronic care.

(6) Private health care coverage is accessible for the purposes of subsection (5)(a) of this section if:

(a) The coverage will be available for at least one year, based on the work history of the parent providing the coverage; and

(b) The coverage either does not have service area limitations or the child lives within 30 miles or 30 minutes of a primary care provider who is eligible for payment under the coverage.

(7) A medical support clause may not order a providing party to pay cash medical support or to pay to provide health care coverage if the providing party's income is equal to or less than the [*Oregon*] **state mandated** minimum wage for full-time employment.

(8) Cash medical support and the cost of other medical support ordered under a medical support clause constitute a child support obligation and must be included in the child support calculation made under ORS 25.275.

SECTION 17. ORS 25.333 is amended to read:

25.333. (1) When the enforcing agency issues a medical support notice under ORS 25.325, the enforcing agency shall notify the parties by regular mail to the last known addresses of the parties:

(a) That the notice has been sent to the providing party's employer; and

(b) Of the providing party's rights and duties under the notice.

(2) A providing party may contest a medical support notice within 30 days after the date the premium is first withheld pursuant to the notice or, if the health benefit plan is provided at no cost to the providing party, the date the first premium is paid by the employer.

(3) The only basis for contesting a medical support notice is a mistake of fact. A "mistake of fact" means any of the following:

(a) No order to provide health care coverage under a health benefit plan has been issued in regard to the providing party's child;

(b) The amount to be withheld for premiums is greater than is permissible under ORS 25.331;

(c) The alleged providing party is not the party from whom health care coverage is required; or

(d) The providing party's income is equal to or less than [*Oregon*] **state mandated** minimum wage for full-time employment.

(4) The providing party may contest the medical support notice by requesting an administrative review. After receiving a request for review and within 45 days after the date the premium is first withheld pursuant to the medical support notice, the enforcing agency shall determine, based on an evaluation of the facts, whether the withholding for premiums may continue. The enforcing agency

shall inform the parties of the determination in writing and include information regarding the right to appeal the determination.

(5) Any appeal of the enforcing agency's determination under subsection (4) of this section is to the circuit court for a hearing under ORS 183.484.

(6) The initiation of proceedings to contest a medical support notice or an appeal of the enforcing agency's determination under this section does not stay the withholding of premiums.

SECTION 18. ORS 25.414 is amended to read:

25.414. (1) The withholder shall withhold from the obligor's disposable monthly income, other than workers' compensation under ORS chapter 656 or unemployment compensation under ORS chapter 657, the amount stated in the order to withhold. The entity issuing the order to withhold shall compute this amount subject to the following:

(a) If withholding is for current support only, the amount to be withheld is the amount specified as current support in the support order.

(b) If withholding is for current support and there is an arrearage, the amount to be withheld is 120 percent of the amount specified as current support in the support order.

(c) If withholding is only for arrearage, the amount to be withheld is one of the following:

(A) The amount of the last ordered monthly support.

(B) If there is no last ordered monthly support amount, the monthly support amount used to calculate the arrearage amount specified in the order or judgment for arrearage.

(C) If there is no last ordered monthly support amount and if there was no monthly support amount, an amount calculated under the formula established under ORS 25.275. For purposes of this subparagraph, this calculation shall be based on the obligor's current monthly gross income or, if the obligor's current monthly gross income is not known, the [*Oregon hourly*] **state mandated** minimum wage converted to a monthly amount based upon a 40-hour workweek, zero income for the obligee, and one joint child, regardless of how many children the parties may actually have. No rebuttals to this calculation may be allowed.

(d) Notwithstanding the amount determined to be withheld under paragraph (c) of this subsection, the obligor must retain disposable monthly income of at least 160 times the applicable federal minimum hourly wage prescribed by section 6 (a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) or any future minimum hourly wages prescribed in that section, if the order to withhold is issued for:

(A) Disability benefits payments from the United States Social Security Administration;

(B) Black lung benefits payments from the United States Department of Labor; or

(C) Disability benefits payments from the United States Department of Veterans Affairs.

(2) The amount to be withheld from unemployment compensation under ORS chapter 657 is calculated as follows:

(a) If withholding is for a current support order, regardless of the existence of arrearage, the amount to be withheld is the lesser of:

(A) Twenty-five percent of the benefits paid; or

(B) The current monthly support obligation. The entity issuing the order to withhold may convert the monthly support obligation amount to a percentage to be withheld from each benefits payment.

(b) If withholding is for arrearage only, the amount to be withheld is the lesser of:

(A) Fifteen percent of the benefits paid; or

(B) The amount of the last ordered monthly support obligation. The entity issuing the order to

withhold may convert the last ordered monthly support obligation amount to a percentage to be withheld from each benefits payment.

(c) The withholder may not charge or collect a processing fee when withholding from unemployment compensation.

(3) The amount to be withheld from workers' compensation under ORS chapter 656 is set forth in ORS 656.234.

(4) Notwithstanding any other provision of this section, when withholding is from a lump sum payment or benefit, including but not limited to retroactive workers' compensation benefits, lump sum retirement plan disbursements or withdrawals, insurance payments or settlements, severance pay, bonus payments or any other similar payments or benefits that are not periodic recurring income, the amount subject to withholding for payment of a support obligation may not exceed one-half of the amount of the lump sum payment or benefit.

(5)(a) Notwithstanding any other provision of this section, when the withholding is only for arrearage, the administrator shall set a lesser amount to be withheld if the obligor demonstrates the withholding is prejudicial to the obligor's ability to provide for a child the obligor has a duty to support or the obligor's ability to provide for the obligor's basic needs. The factors to be considered by the administrator in determining whether the obligor can provide for the obligor's basic needs include but are not limited to:

(A) The health expenses of the obligor;

(B) A verified disability affecting the obligor's ability to work;

(C) Whether the obligor's income remaining after withholding would be less than the self-support reserve established by rule of the Department of Justice under paragraph (c) of this subsection;

(D) The available resources of the obligor; and

(E) The number and basic needs of other persons in the obligor's household.

(b) The administrator shall establish a procedure to give advance and periodic notice to the obligor of the provisions of paragraph (a) of this subsection and of the means to reduce the amount stated in the order to withhold.

(c) The Department of Justice shall adopt rules to implement this subsection.

(6) Except as provided in subsection (2) of this section, the withholder may deduct from the obligor's disposable income a monthly processing fee not to exceed $5. The processing fee is in addition to the amount calculated to be withheld for support, unless the amount to be withheld for support is the maximum allowed under subsection (8) of this section, in which case the fee is deducted from the amount withheld as support.

(7) If there are multiple withholding orders against the same obligor, the amount to be withheld is the sum of each support order calculated independently.

(8) No withholding as calculated under this section, including the processing fee permitted in subsection (6) of this section, shall exceed 50 percent of the obligor's net disposable income. The limit established in this subsection applies whenever withholding is implemented under this section, whether by a single order or by multiple orders against the same obligor.

(9) When the obligor's income is not sufficient for the withholder to fully comply with each withholding order, the withholder shall withhold the maximum amount allowed under this section. If all withholding orders for a particular obligor are payable to or through the department, the withholder shall pay to the department the income withheld and the department shall determine priorities for allocating income withheld to multiple child support cases relative to that obligor. If one or more of the withholding orders for a particular obligor require payment other than to or

through the department, the withholder shall use the following to determine priorities for withholding and allocating income withheld to multiple child support cases:

(a) If the amount withheld from the obligor's income is sufficient to pay the current support due to each case but is not enough to fully comply with the withholding order for each case where past due support is owed, the withholder shall:

(A) Pay to each case the amount of support due for the current month; and

(B) Pay the remainder of the amount withheld in equal amounts to each case where past due support is owed. However, no case shall receive more than the total amount of current support and past due support owed to that case at the time the payment is made.

(b) If the amount withheld is not sufficient to pay the current support due to each case, each case shall be paid a proportionate share of the amount withheld. The withholder shall determine this for each case by dividing the monthly amount ordered as current support for that case by the combined monthly amount ordered as current support for all cases relative to the same obligor, and multiplying this percentage by the total amount withheld.

(10) An order to withhold income is not subject to the limitations of ORS 18.385.

(11) A withholder shall withhold funds as directed in the order to withhold, except that when a withholder receives an income-withholding order issued by another state, the withholder shall apply the income-withholding law of the state of the obligor's principal place of employment in determining:

(a) The withholder's fee for processing an income-withholding order;

(b) The maximum amount permitted to be withheld from the obligor's income;

(c) The time periods within which the withholder must implement the income-withholding order and forward the child support payment;

(d) The priorities for withholding and allocating income withheld for multiple child support obligees; and

(e) Any withholding terms or conditions not specified in the order.

SECTION 19. ORS 137.103 is amended to read:

137.103. As used in ORS 137.101 to 137.109:

(1) "Criminal activities" means any offense with respect to which the defendant is convicted or any other criminal conduct admitted by the defendant.

(2) "Economic damages":

(a) Has the meaning given that term in ORS 31.710, except that "economic damages" does not include future impairment of earning capacity; and

(b) In cases involving criminal activities described in ORS 163.263, 163.264 or 163.266, includes the greater of:

(A) The value to the defendant of the victim's services as defined in ORS 163.261; or

(B) The value of the victim's services, as defined in ORS 163.261, computed using the **state mandated** minimum wage established under ORS 653.025 and the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(3) "Restitution" means full, partial or nominal payment of economic damages to a victim. Restitution is independent of and may be awarded in addition to a compensatory fine awarded under ORS 137.101.

(4) "Victim" means:

(a) The person or decedent against whom the defendant committed the criminal offense, if the court determines that the person or decedent has suffered or did suffer economic damages as a re-

sult of the offense.

(b) Any person not described in paragraph (a) of this subsection whom the court determines has suffered economic damages as a result of the defendant's criminal activities.

(c) The Criminal Injuries Compensation Account, if it has expended moneys on behalf of a victim described in paragraph (a) of this subsection.

(d) An insurance carrier, if it has expended moneys on behalf of a victim described in paragraph (a) of this subsection.

(e) Upon the death of a victim described in paragraph (a) or (b) of this subsection, the estate of the victim.

(f) The estate, successor in interest, trust, trustee, successor trustee or beneficiary of a trust against which the defendant committed the criminal offense, if the court determines that the estate, successor in interest, trust, trustee, successor trustee or beneficiary of a trust suffered economic damages as a result of the offense.

(5) "Victim" does not include any coparticipant in the defendant's criminal activities.

SECTION 20. Section 2, chapter 564, Oregon Laws 2011, is amended to read:

Sec. 2. (1) As used in this section:

(a) "Discretionary local permit" includes local land use permits and licenses.

(b) "Discretionary state permit" does not include a permit or license issued by a state permitting agency pursuant to a federally delegated program.

(c) "Industrial use" means employment activities generating income from:

(A) The production, handling or distribution of goods including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment and research and development; and

(B) Services sold in a traded sector, as defined in ORS 285A.010.

(d) "State permitting agencies" means the Department of Environmental Quality, the Department of State Lands and the Department of Transportation.

(2) Industrial development projects of state significance are projects that:

(a) Create jobs with average wages above 180 percent of the **state mandated** minimum wage.

(b) Create a large number of new jobs in relation to the economy and population of the area directly impacted by the development.

(c) Create permanent jobs in industrial uses.

(d) Involve a significant investment of capital in relation to the economy and population of the area directly impacted by the development.

(e) Have community support, as indicated by a resolution of the governing body of the local government within whose land use jurisdiction the industrial development project would occur.

(f) Do not require:

(A) An exception taken under ORS 197.732 to a statewide land use planning goal;

(B) A change to the acknowledged comprehensive plan or land use regulations of the local government within whose land use jurisdiction the industrial development project would occur; or

(C) A federal environmental impact statement under the National Environmental Policy Act.

(3) In lieu of filing an application for a discretionary local permit under ORS 215.402 to 215.438 or 227.160 to 227.186, and in lieu of filing an application otherwise required by law for a discretionary state permit from a state permitting agency, a person may file an application with the Economic Recovery Review Council for expedited project review of an industrial development project after first filing with the council a notice of intent to seek expedited project review that includes

evidence that the proposed project meets the criteria for state significance set forth in subsection (2) of this section.

(4) The Economic Recovery Review Council, established under section 3 of this 2011 Act, may expedite the permitting of up to 10 industrial development projects of state significance per biennium through an expedited project review process in which the council reviews the proposed project to determine whether the project complies with the standards and criteria for applicable discretionary local permits and discretionary state permits. The expedited project review by the council must include:

(a) Review of the notice of intent filed under subsection (3) of this section and a preliminary determination of whether the proposed project qualifies as an industrial development project of state significance.

(b) Preparation and issuance of a project order, if on review of the notice of intent the proposed project appears to qualify as an industrial development project of state significance, that sets forth:

(A) The applicable standards and criteria for approval of each discretionary local permit or discretionary state permit that will be addressed in the expedited project review; and

(B) The deadline for an applicant to file a complete application.

(c) Review of the complete application.

(5) If the applicant files a complete application within the time specified by the council, the council shall:

(a) Provide notice of the application in the manner required by ORS 197.763 for a land use decision or in the manner required for a conditional use permit in the applicable acknowledged land use regulations of the local government within whose land use jurisdiction the proposed project would occur, whichever results in broader notice;

(b) Provide for a public hearing on the proposed project in the land use jurisdiction in which the proposed project would occur;

(c) Consider recommendations of the local government and state permitting agencies that would otherwise have jurisdiction to review the discretionary local permits and discretionary state permits for the proposed project in determining whether the project complies with applicable standards and criteria and in determining whether to impose conditions of approval for the project; and

(d) Apply the standards and criteria for each discretionary local permit and discretionary state permit required for the construction and operation of the proposed project and determine, within 120 days after the date a complete application is filed and based on the record and the applicable law, whether the project complies with the applicable standards and criteria.

(6) The council has jurisdiction to approve discretionary local permits and discretionary state permits. The council may not waive standards and criteria that apply to issuance of a discretionary local permit or a discretionary state permit. If the council determines that the proposed project complies with the applicable standards and criteria, the council shall issue a project certificate approving the development project. In addition to other conditions reasonably necessary to ensure that the proposed project complies with applicable standards and criteria, the council may impose a condition requiring commencement of construction by a date calculated to ensure that a particular site is developed for the project within a specific time period. If the council determines that the project does not, or can not, comply with applicable standards and criteria, the council shall issue a final order denying the application and explaining why the application was not approved.

(7) A state permitting agency or a local government may recommend conditions of approval reasonably necessary to ensure that the development project complies with applicable standards and

criteria.

(8) Expedited project review of an industrial development project is not subject to ORS 183.413 to 183.470.

(9) Issuance of a project certificate:

(a) Binds public bodies, as defined in ORS 174.109, in regard to approval of construction and operation of the development project.

(b) Satisfies requirements imposed on a state permitting agency by ORS 197.180 and administrative rules implementing ORS 197.180.

(10) After the council issues a project certificate, state permitting agencies and local governments shall:

(a) Issue discretionary local permits and discretionary state permits as required in the certificate; and

(b) Exercise enforcement authority over the permits, including conditions imposed in the certificate.

(11) The council shall charge the applicant a fee calculated to recover the costs reasonably incurred to conduct expedited project review, including the costs incurred by state permitting agencies and local governments that make recommendations to the council concerning whether the proposed project complies with applicable standards and criteria. If the fee charged by the council includes costs incurred by a state permitting agency or a local government, the council shall pay or reimburse the state permitting agency or the local government in the manner provided by ORS 469.360. The council may require the applicant to pay all or a portion of the fee before initiation of the expedited project review and may require progress payments as the review proceeds. The fee required by this section is in lieu of any fee or fees otherwise required for review of a discretionary local permit or a discretionary state permit addressed in the project certificate. The council shall deposit moneys received under this section in the Economic Recovery Review Council Fund established under section 5 of this 2011 Act.

(12) The Land Use Board of Appeals does not have jurisdiction to consider decisions, aspects of decisions or actions taken under sections 1 to 5 of this 2011 Act.

(13) A person who participated in the proceedings before the council may appeal a final order of the council to the Court of Appeals. The appeal shall proceed in the manner provided by ORS 197.850, 197.855 and 197.860. However, notwithstanding ORS 197.850 (9) or any other provision of law, the court shall reverse or remand the decision only if the court finds that:

(a) The council's determination that the proposed project qualifies as an industrial development project of state significance under subsection (2) of this section was clearly in error;

(b) There is a basis to vacate the decision as described in ORS 36.705 (1)(a) to (d) or a basis for modification or correction of an award as described in ORS 36.710; or

(c) The decision was unconstitutional.

SECTION 21. ORS 258.200 is amended to read:

258.200. (1) After receiving notice from the Secretary of State that a recount is to be made, the official directed to conduct the recount shall appoint counting boards from the list of electors qualified to vote in the county in which the recount is demanded. The official shall appoint as many counting boards as may be necessary to complete the recount within the shortest practicable time after the demand is filed. No member of the counting boards shall have been a candidate for any office voted upon at the election. The members of a counting board shall not all be members of the same political party.

(2) Each member of the counting board shall be compensated at a rate not less than the federal **minimum wage** or state **mandated** minimum wage, whichever is higher.

SECTION 22. ORS 315.262 is amended to read:

315.262. (1) As used in this section:

(a) "Child care" means care provided to a qualifying child of the taxpayer for the purpose of allowing the taxpayer to be gainfully employed, to seek employment or to attend school on a full-time or part-time basis, except that the term does not include care provided by:

(A) The child's parent or guardian, unless the care is provided in a certified or registered child care facility; or

(B) A person who has a relationship to the taxpayer that is described in section 152(a) of the Internal Revenue Code who has not yet attained 19 years of age at the close of the tax year.

(b) "Child care expenses" means the costs associated with providing child care to a qualifying child of a qualified taxpayer.

(c) "Disability" means a physical or cognitive condition that results in a person requiring assistance with activities of daily living.

(d) "Earned income" has the meaning given that term in section 32 of the Internal Revenue Code.

(e) "Qualified taxpayer" means a taxpayer:

(A) Who is an Oregon resident with at least $6,000 of earned income for the tax year or who is a nonresident of Oregon with at least $6,000 of earned income from Oregon sources for the tax year;

(B) With federal adjusted gross income for the tax year that does not exceed 250 percent of the federal poverty level;

(C) With Oregon adjusted gross income for the tax year that does not exceed 250 percent of the federal poverty level; and

(D) Who does not have more than the maximum amount of disqualified income under section 32(i) of the Internal Revenue Code that is allowed to a taxpayer entitled to the earned income tax credit for federal tax purposes.

(f) "Qualifying child" has the meaning given that term in section 152(c) of the Internal Revenue Code, determined without regard to section 152(c)(1)(D) of the Internal Revenue Code or section 152(e) of the Internal Revenue Code, except that it is limited to an individual who is under 13 years of age, or who is a child with a disability, as that term is defined in ORS 316.099.

(2) A taxpayer is not disqualified from claiming the credit under this section solely because the taxpayer's spouse has a disability, if the disability is such that it prevents the taxpayer's spouse from providing child care, being gainfully employed, seeking employment and attending school. The Department of Revenue may require that a physician verify the existence of the disability and its severity.

(3) A qualified taxpayer shall be allowed a credit against the taxes otherwise due under ORS chapter 316 equal to the applicable percentage of the qualified taxpayer's child care expenses (rounded to the nearest $50).

(4) The applicable percentage to be used in calculating the amount of the credit provided in this section shall be determined in accordance with the following table:

Applicable Percentage	Greater of Oregon Adjusted Gross Income or

	Federal Adjusted Gross Income, as Percent of Federal Poverty Level
40	200 or less
36	Greater than 200 and less than or equal to 210
32	Greater than 210 and less than or equal to 220
24	Greater than 220 and less than or equal to 230
16	Greater than 230 and less than or equal to 240
8	Greater than 240 and less than or equal to 250
0	Greater than 250 percent of federal poverty level

---

(5) The department may:

(a) Adopt rules for carrying out the provisions of this section; and

(b) Prescribe the form used to claim a credit and the information required on the form. The form may provide for verification of an individual's disability by a physician, if applicable, as described in subsection (2) of this section.

(6) In the case of a credit allowed under this section:

(a) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117.

(b) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(c) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

(d) In the case of a qualified taxpayer who is married, a credit shall be allowed under this section only if:

(A) The taxpayer files a joint return;

(B) The taxpayer files a separate return and is legally separated or subject to a separate maintenance agreement; or

(C) The taxpayer files a separate return and the taxpayer and the taxpayer's spouse reside in separate households on the last day of the tax year with the intent of remaining in separate households in the future.

(7) If the amount allowable as a credit under this section, when added to the sum of the amounts allowable as payment of tax under ORS 316.187 (withholding), ORS 316.583 (estimated tax), other tax prepayment amounts and other refundable credit amounts, exceeds the taxes imposed by ORS chapters 314 and 316 for the tax year (reduced by any nonrefundable credits allowable for purposes of

ORS chapter 316 for the tax year), the amount of the excess shall be refunded to the taxpayer as provided in ORS 316.502.

(8)(a) The minimum amount of earned income a taxpayer must earn in order to be a qualified taxpayer shall be adjusted for tax years beginning in each calendar year by multiplying $6,000 by the ratio of the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year over the monthly averaged index for the second quarter of the calendar year 1998.

(b) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(c) If any adjustment determined under paragraph (a) of this subsection is not a multiple of $50, the adjustment shall be rounded to the nearest multiple of $50.

(d) Notwithstanding paragraphs (a) to (c) of this subsection, the adjusted minimum amount of earned income a taxpayer must earn may not exceed the amount an individual would earn if the individual worked 1,040 hours at the **state mandated** minimum wage established under ORS 653.025 and in effect on January 1 of the calendar year in which begins the tax year of the taxpayer, rounded to the next lower multiple of $50.

SECTION 23. ORS 344.750 is amended to read:

344.750. In addition to the provisions of ORS 344.745, in each program:

(1) The State Apprenticeship and Training Council shall establish by rule appropriate youth apprentice or trainee ratios.

(2) The employer shall provide workers' compensation coverage for the youth apprentices and trainees as required by ORS 656.033.

(3) The youth apprentice or trainee shall begin at a wage that is not less than the state **mandated** minimum wage.

(4) Youth apprentices and trainees shall be evaluated for wage increases consistent with the policies established by the participating local apprenticeship or training committee.

(5) Youth apprentices and trainees shall not be employed on projects subject to the federal Davis-Bacon Act or on projects subject to ORS 279C.800 to 279C.870, except ORS 279C.820, 279C.825, 279C.865 and 279C.870.

(6) The youth apprentice's or trainee's combined in-school coursework and related training, as well as on-the-job training and other training experiences, shall not exceed 44 hours per week.

(7) Employment with the employer shall not exceed 20 hours per week while the student is enrolled in school classes. All or a portion of the on-the-job training shall be used to meet graduation requirements.

(8) Participating students who fail to regularly attend and make satisfactory progress in in-school courses and required related training or who leave high school prior to graduation or completion of their high school requirements shall automatically be removed from the youth apprenticeship program.

SECTION 24. ORS 411.892 is amended to read:

411.892. (1)(a) All employers, including public and private sector employers within the State of Oregon, are eligible to participate in the JOBS Plus Program. The Department of Human Services shall adopt by rule a method to disqualify employers from participating in the program. No employer is required to participate in the JOBS Plus Program. In the event that there are unassigned participants whom no employer desires to utilize, the participants may be assigned to work for a public

agency.

(b) The maximum number of program participants that any employer is authorized to receive at any one time may not exceed 10 percent of the total number of the employer's employees. However, each employer may receive one participant. The Director of Human Services may waive the limit in special circumstances.

(c) The Department of Human Services by rule shall establish criteria for excluding employers from participation for failure to abide by program requirements, showing a pattern of terminating participants prior to the completion of training or other demonstrated unwillingness to comply with the stated intent of the program.

(2) The Department of Human Services shall ensure that jobs made available to program participants:

(a) Do not require work in excess of 40 hours per week;

(b) Are not used to displace regular employees or to fill unfilled positions previously established; and

(c) Do not pay a wage that is substantially less than the wage paid for similar jobs in the local economy with appropriate adjustments for experience and training.

(3)(a) Eligibility for the program shall be limited to residents who are:

(A) Adults and caretaker relatives who are receiving temporary assistance for needy families benefits;

(B) Adult Supplemental Nutrition Assistance Program recipients except as described in subsection (5)(b) of this section; and

(C) Unemployed noncaretaker parents of children who are receiving temporary assistance for needy families benefits.

(b) In addition to those residents eligible for the program under paragraph (a) of this subsection, additional residents who are seeking employment may be eligible for the program if there are legislatively allocated funds available in the temporary assistance for needy families budget of the Department of Human Services.

(4)(a) Individuals desiring work through the program shall contact the nearest Department of Human Services office serving the county in which they reside if they are temporary assistance for needy families program or Supplemental Nutrition Assistance Program applicants or recipients or noncustodial parents of individuals receiving temporary assistance for needy families.

(b) With the assistance of the local JOBS Plus Implementation Councils and the JOBS Plus Advisory Board, the Department of Human Services shall develop a job inventory of sufficient size to accommodate all of the participants who desire to work in the program. In consultation with the participant, the department shall try to match the profile of each participant with the needs of an employer when assigning a participant to work with the employer.

(c) Either the employer or the participant may terminate the assignment by contacting the appropriate Department of Human Services office. In such event, the Department of Human Services shall reassess the needs of the participant and assign the participant to another JOBS Plus Program placement or another job opportunity and basic skills program component and, at the employer's request, provide the employer with another participant.

(d)(A) If after four months in a placement, a participant has not been hired for an unsubsidized position, the employer shall allow the worker to undertake eight hours of job search per week. Participating employers shall consider such time as hours worked for the purposes of paying wages.

(B) If after six months in a placement, a participant has not been hired for an unsubsidized po-

sition, the placement shall be terminated, and the caseworker shall reassess the participant's employment development plan.

(e) The Department of Human Services may pay placement and barrier removal payments to temporary assistance for needy families program and Supplemental Nutrition Assistance Program participants as necessary to enable participation in the JOBS Plus Program.

(f) The Department of Human Services shall accept eligible volunteers into the program prior to mandating program participation by eligible persons.

(5)(a) Assignment of participants to available jobs shall be based on a preference schedule developed by the Department of Human Services. Any temporary assistance for needy families recipient or supplemental nutrition assistance recipient may volunteer for the program.

(b) The following individuals may not be required to participate in the program:

(A) Recipients under the temporary assistance for needy families program and the Supplemental Nutrition Assistance Program who are eligible for Supplemental Security Income benefits or other ongoing state or federal maintenance benefits based on age or disability.

(B) Supplemental nutrition assistance applicants or recipients who are employed full-time or are college students eligible for supplemental nutrition assistance and enrolled full-time in a community college or an institution of higher education, or enrolled half-time in a community college or an institution of higher education and working at least 20 hours per week.

(C) Teenage parents who remain in high school if progressing toward a diploma. Teenage parents not in school are eligible for the JOBS Plus Program.

(c) The Department of Human Services shall provide life skills classes and opportunities to achieve General Educational Development (GED) certificates to appropriate participants in conjunction with working in the JOBS Plus Program.

(d) Subject to subsection (7) of this section, temporary assistance for needy families and supplemental nutrition assistance shall be suspended at the end of the calendar month in which an employer makes the first wage payment to a participant who is a custodial parent in a family that receives temporary assistance for needy families or to any adult member of a household receiving supplemental nutrition assistance. Failure of the participant to cooperate with the requirements of the JOBS Plus Program may result in the participant's removal, in accordance with rules adopted by the Department of Human Services, from the JOBS Plus Program and suspension of the participant's temporary assistance for needy families grant and supplemental nutrition assistance. A temporary assistance for needy families and supplemental nutrition assistance recipient who has been removed from the program for failing to cooperate shall be eligible to reapply to participate in the program and shall have eligibility for program services determined without regard to the length of time the person was not participating following removal.

(6)(a) Employers shall pay all participating individuals at least the hourly rate of the [*Oregon*] **state mandated** minimum wage.

(b) Sick leave, holiday and vacation absences shall conform to the individual employer's rules for temporary employees.

(c) Group health insurance benefits shall be provided by the employer to program participants if, and to the extent that, state or federal law requires the employer to provide such benefits.

(d) All persons participating in the JOBS Plus Program shall be considered to be temporary employees of the individual employer providing the work and shall be entitled only to benefits required by state or federal law.

(e) Employers shall provide workers' compensation coverage for each JOBS Plus Program par-

ticipant.

(7) In the event that the net monthly full-time wage paid to a participant would be less than the level of income from the temporary assistance for needy families program and the supplemental nutrition assistance amount equivalent that the participant would otherwise receive, the Department of Human Services shall determine and pay a supplemental payment as necessary to provide the participant with that level of net income. The department shall determine and pay in advance supplemental payments to participants on a monthly basis as necessary to ensure equivalent net program wages. Participants shall be compensated only for time worked.

(8) In addition to and not in lieu of the payments provided for under subsections (6) and (7) of this section, participants shall be entitled to retain the full child support payments collected by the Department of Justice.

(9) In conformity with existing state day care program regulations, child day care shall be provided for all program participants who require it.

(10) JOBS Plus Program employers shall:

(a) Endeavor to make JOBS Plus Program placements positive learning and training experiences;

(b) Maintain health, safety and working conditions at or above levels generally acceptable in the industry and no less than that of comparable jobs of the employer;

(c) Provide on-the-job training to the degree necessary for the participants to perform their duties;

(d) Recruit volunteer mentors from among their regular employees to assist the participants in becoming oriented to work and the workplace; and

(e) Sign an agreement to abide by all requirements of the program, including the requirement that the program not supplant existing jobs. All agreements shall include provisions noting the employer's responsibility to repay reimbursements in the event the employer violates program rules. When a professional placement service, professional employment organization or temporary employment agency is acting as an employer pursuant to subsection (13) of this section, agreements under this paragraph shall require a three-party agreement between the professional placement service, professional employment organization or temporary employment agency, the organization where the participant has been placed to perform services and the State of Oregon. The three-party agreement shall include provisions requiring that all JOBS Plus reimbursements received by the professional placement service, professional employment organization or temporary employment agency be credited to the organization where the participant has been placed to perform services.

(11) Program participant wages shall be subject to federal and state income taxes, Social Security taxes and unemployment insurance tax or reimbursement as applicable under ORS chapter 657, which shall be withheld and paid in accordance with state and federal law. Supplemental payments made pursuant to subsection (7) of this section shall not be subject to state income taxes under ORS chapter 316 and, to the extent allowed by federal law, shall not be subject to federal income taxes and Social Security taxes.

(12)(a) The Department of Human Services shall reimburse employers for the employers' share of Social Security, unemployment insurance and workers' compensation premiums paid on behalf of program participants referred to the employer by the Department of Human Services, as well as the **state mandated** minimum wage earnings paid by the employer to program participants referred to the employer by the Department of Human Services.

(b) If the Department of Human Services finds that an employer has violated any of the rules of the JOBS Plus Program, the department:

(A) Shall withhold any amounts due to employers under paragraph (a) of this subsection.

(B) May seek repayment of any amounts paid to employers under paragraph (a) of this subsection.

(13) For purposes of this section, "employer" shall include professional placement services, professional employment organizations and temporary employment agencies.

SECTION 25. ORS 419C.461 is amended to read:

419C.461. (1) When a youth offender has been found to be within the jurisdiction of the juvenile court for having committed an act that if committed by an adult would constitute a violation of ORS 164.383 or 164.386 or criminal mischief and the act consisted of defacing property by creating graffiti, the court, in addition to any other disposition, may order the youth offender to perform:

(a) Personal service, as provided in ORS 419C.465, consisting of removing graffiti; or

(b) If the victim does not agree to the personal service, community service consisting of removing graffiti at some location other than that defaced by the youth offender.

(2) In no case shall the youth offender, pursuant to this section, perform more hours of personal or community service than would be indicated by dividing the monetary damage caused by the youth offender by the [*legal*] **state mandated** minimum wage.

(3)(a) When a youth offender has been found to be within the jurisdiction of the juvenile court for having committed an act that if committed by an adult would constitute a violation of ORS 164.383, the court may find the parent, legal guardian or other person lawfully charged with the care or custody of the youth offender liable for actual damages to person or property caused by the youth offender. However, a parent who is not entitled to legal custody of the youth offender at the time of the act is not liable for the damages.

(b) The legal obligation of the parent, legal guardian or other person under this subsection may not exceed the liability provided in ORS 30.765.

(c) The court may, with the consent of the parent, legal guardian or other person, order the parent, legal guardian or other person to complete a parent effectiveness program approved by the court. Upon the parent's, legal guardian's or other person's completion of the program to the satisfaction of the court, the court may dismiss any other penalties imposed upon the parent, legal guardian or other person.

SECTION 26. ORS 419C.465 is amended to read:

419C.465. Upon agreement of the youth offender, the youth offender's parent or guardian and the victim of the youth offender's conduct, the court may order a youth offender to perform personal service for the victim as a condition of probation. Contact with a victim to determine whether the victim is willing to agree to such personal service shall be by a person to be designated by the court and may not be by the youth offender. The victim shall be advised by such person of any prior findings of juvenile court jurisdiction of the youth offender under ORS 419C.005. The court shall specify the nature and length of the service as the court finds appropriate. Personal service performed pursuant to the order shall constitute full or partial satisfaction of any restitution ordered by the court, as provided by agreement prior to the making of the order. However, in no case shall the youth offender, pursuant to this section, perform more hours of personal service than would be indicated by dividing the victim's monetary loss by the [*legal*] **state mandated** minimum wage.

SECTION 27. ORS 470.560 is amended to read:

470.560. (1) The State Department of Energy shall adopt rules establishing certification standards for primary contractors participating in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program. The department

shall design the standards to ensure that the project work performed by a primary contractor holding the certification and all the primary contractor's subcontractors is of high quality and will result in a high degree of customer satisfaction.

(2) The certification standards established by the department must, at a minimum, require that the primary contractor:

(a) Prove that the primary contractor and the primary contractor's subcontractors have sufficient skill to successfully install energy efficiency, renewable energy or weatherization projects.

(b) Not be a contractor listed by the Commissioner of the Bureau of Labor and Industries under ORS 279C.860 as ineligible to receive a contract or subcontract for public works.

(c) Be an equal opportunity employer or small business or be a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business, as those terms are defined in ORS 200.005.

(d) Demonstrate a history of compliance with the rules and other requirements of the Construction Contractors Board and of the Workers' Compensation Division and the Occupational Safety and Health Division of the Department of Consumer and Business Services.

(e) Employ at least 80 percent of employees used for energy efficiency and sustainable technology loan program projects from the local work force, if a sufficient supply of skilled workers is available locally.

(f) Demonstrate a history of compliance with federal and state wage and hour laws.

(g) Pay wages to employees used for energy efficiency and sustainable technology loan program projects at a rate equal to at least 180 percent of the state **mandated** minimum wage.

(3) The State Department of Energy shall consult with the Public Purpose Fund Administrator and utilities when developing certification standards for primary contractors.

(4) The Construction Contractors Board may issue a qualifying primary contractor a certification authorizing the primary contractor to participate in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program. A primary contractor seeking certification shall apply to the board as provided under ORS 701.119.

(5) The State Department of Energy shall identify certified primary contractors that provide employees with health insurance benefits as preferred service providers and may take other actions as practicable to encourage certified primary contractors to provide employees with health insurance benefits.

SECTION 28. ORS 653.030 is amended to read:

653.030. The Commissioner of the Bureau of Labor and Industries shall issue rules prescribing the employment of other types of persons at fixed minimum hourly wage rates lower than the **state mandated** minimum wage rate required by ORS 653.025, when the commissioner has determined that the application of ORS 653.025 would substantially curtail opportunities for employment for specific types of persons. The types of persons for whom a minimum hourly wage rate may be set are limited to persons with mental or physical disabilities or who are student-learners, as defined in ORS 653.070.

SECTION 29. ORS 653.070 is amended to read:

653.070. (1) As used in this section:

(a) "Bona fide professional training program" includes any professional training program approved by the Superintendent of Public Instruction pursuant to rules of the State Board of Education which provides for part-time employment training which may be scheduled for a part of the workday or workweek, for alternating weeks or for other limited periods during the year, supplemented by

and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related information given as a regular part of the student-learner's course by an accredited school, college or university.

(b) "Student-learner" means a student who is receiving instruction in an accredited school, college or university and who is employed on a part-time basis, pursuant to a bona fide professional training program.

(2) Notwithstanding ORS 653.025, employers shall pay student-learners at least 75 percent of the **state mandated** minimum wage prescribed by ORS 653.025.

(3) The number of hours of employment training for a student-learner at subminimum wages, when added to the hours of school instruction, shall not exceed eight hours on any day or 40 hours in any week.

(4) The Commissioner of the Bureau of Labor and Industries may adopt rules prescribing the procedures and requirements for application and issuance of special certificates authorizing the employment of student-learners at subminimum wages. The rules shall require that the following conditions be satisfied before the issuance of such special certificates:

(a) The employment of the student-learner at subminimum wages authorized by the special certificate must be necessary to prevent curtailment of opportunities for employment.

(b) The occupation for which the student-learner is receiving preparatory training must require a sufficient degree of skill to necessitate a substantial learning period.

(c) The training must not be for the purpose of acquiring manual dexterity and high production speed in repetitive operations.

(d) The employment of a student-learner must not have the effect of displacing a worker employed in the establishment.

(e) The employment of the student-learners at subminimum wages must not tend to impair or depress the wage rates or working standards established for experienced workers for work of a like or comparable character.

(f) The occupational needs of the community or industry warrant the training of student-learners.

(g) There are no serious outstanding violations of the provisions of a student-learner certificate previously issued to the employer, or serious violations of any other provisions of law by the employer which provide reasonable grounds to conclude that the terms of the certificate would not be complied with, if issued.

(h) The issuance of such a certificate would not tend to prevent the development of apprenticeship under ORS 660.002 to 660.210 or would not impair established apprenticeship standards in the occupation or industry involved.

(i) The number of student-learners to be employed in one establishment must not be more than a small proportion of its working force.

(5) Failure to comply with subsection (2) or (3) of this section shall subject the employer to a penalty of 75 percent of the **state mandated** minimum wage prescribed by ORS 653.025 for each hour of work time that the student-learner is gainfully employed. The Commissioner of the Bureau of Labor and Industries shall have a cause of action against the employer for the recovery of the penalty.

SECTION 30. ORS 653.606 is amended to read:

653.606. (1)(a) Employers that employ at least 10 employees working anywhere in this state shall implement a sick time policy that allows an employee to earn and use up to 40 hours of paid sick

time per year. Paid sick time shall accrue at the rate of at least one hour of paid sick time for every 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works.

(b) Employers that employ fewer than 10 employees working anywhere in this state shall implement a sick time policy that allows an employee to earn and use up to 40 hours of unpaid sick time per year. Unpaid sick time shall accrue at the rate of at least one hour of unpaid sick time for every 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works.

(c) Employers that employ at least 10 employees working anywhere in this state and front-load for employees at least 40 hours of paid sick time or paid time off at the beginning of each year used to calculate the accrual and usage of sick time or time off need not comply with subsections (1)(a) and (3) of this section.

(d) Employers that employ fewer than 10 employees working anywhere in this state and front-load for employees at least 40 hours of unpaid sick time or unpaid time off at the beginning of each year used to calculate the accrual and usage of sick time or time off need not comply with subsections (1)(b) and (3) of this section.

(2)(a) The number of employees employed by an employer shall be ascertained by determining that the per-day average number of employees is 10 or greater for each of 20 workweeks in the calendar year or the fiscal year of the employer immediately preceding the year in which the leave is to be taken.

(b) If the business of the employer was not in existence for the entire year preceding the determination made under paragraph (a) of this subsection, the number of employees shall be based on any 20 workweeks preceding the request for sick time, which may include workweeks in the current year, the preceding year or a combination of workweeks in the current year and the preceding year.

(3) An employee shall begin to earn and accrue sick time on the first day of employment with an employer. The employee may carry over up to 40 hours of unused sick time from one year to a subsequent year. However, an employer may adopt a policy that limits:

(a) An employee to accruing no more than 80 hours of sick time; or

(b) An employee to using no more than 40 hours of sick time in a year.

(4)(a) An employer is not required to carry over unused sick time if, by mutual consent, the employer and an employee agree that:

(A) If the employer has 10 or more employees working anywhere in this state, the employee will be paid for all unused paid sick time at the end of the year in which the sick time is accrued and the employer will credit the employee with an amount of paid sick time that meets the requirements of this section on the first day of the immediately subsequent year; or

(B) If the employer has fewer than 10 employees working anywhere in this state, the employer will credit the employee with an amount of sick time that meets the requirements of this section on the first day of the immediately subsequent year.

(b) The Commissioner of the Bureau of Labor and Industries shall adopt rules for the determination of the number of employees employed by an employer.

(5)(a) An employee is eligible to use sick time beginning on the 91st calendar day of employment with the employer and may use sick time as it is accrued.

(b) An employer may authorize an employee to use accrued sick time prior to the 91st calendar day of employment.

(c)(A) An employer that employs 10 or more employees working anywhere in this state shall pay an employee for accrued sick time used at the regular rate of pay of the employee.

(B) For an employee employed on a commission or piece-rate basis by an employer that employs 10 or more employees working anywhere in this state, the employer shall pay the employee for accrued sick time used at the employee's regular rate of pay. If the employee is paid on a commission or piece-rate basis and does not have a previously established regular rate of pay, the employer shall pay the employee at a rate equal to at least the **state mandated** minimum wage specified in ORS 653.025.

(6) An employee who is exempt from overtime requirements under 29 U.S.C. 213(a)(1) of the federal Fair Labor Standards Act of 1938 is presumed to work 40 hours in each workweek for the purpose of accrual of sick time unless the actual workweek of the employee is less than 40 hours, in which case sick time accrues based on the actual workweek of the employee.

(7) Nothing in ORS 653.601 to 653.661 requires an employer to compensate an employee for accrued unused sick time upon the employee's termination, resignation, retirement or other separation from employment.

(8) An employer may not require an employee to:

(a) Search for or find a replacement worker as a condition of the employee's use of accrued sick time; or

(b) Work an alternate shift to make up for the use of sick time.

(9) Upon mutual consent by the employee and the employer, an employee may work additional hours or shifts to compensate for hours or shifts during which the employee was absent from work without using accrued sick time for the hours or shifts missed. However, the employer may not require the employee to work additional hours or shifts authorized by this subsection. If the employee works additional hours or shifts, the employer must comply with any applicable federal, state or local laws regarding overtime pay.

(10) An employee retains accrued sick time if the employer sells, transfers or otherwise assigns the business or an interest in the business to another employer.

(11)(a) An employer shall restore previously accrued unused sick time to an employee who is reemployed by that employer within 180 days of separation from employment with the employer.

(b) If an employee leaves employment with an employer before the 91st day of employment and subsequently is reemployed by that employer within 180 days of separation from employment, the employer shall restore the accrued sick time balance the employee had when the employee left the employment of the employer and the employee may use accrued sick time after the combined total of days of employment with the employer exceeds 90 calendar days.

(12) If an employee is transferred to a separate division, entity or location of the employer but remains employed by that same employer, the employee is entitled to use all sick time accrued while working at the former division, entity or location of the employer and is entitled to retain or use all sick time as provided by ORS 653.601 to 653.661.

(13) Employers located in a city with a population exceeding 500,000 shall comply with ORS 653.601 to 653.661, except that:

(a) If an employer located in a city with a population exceeding 500,000 employs at least six employees working anywhere in this state, the employer shall implement a policy consistent with this section as it applies to employers with at least 10 employees working anywhere in this state.

(b) If an employer located in a city with a population exceeding 500,000 employs fewer than six employees working anywhere in this state, the employer shall implement a policy consistent with this section as it applies to employers with fewer than 10 employees working anywhere in this state.

SECTION 31. ORS 656.802 is amended to read:

656.802. (1)(a) As used in this chapter, "occupational disease" means any disease or infection arising out of and in the course of employment caused by substances or activities to which an employee is not ordinarily subjected or exposed other than during a period of regular actual employment therein, and which requires medical services or results in disability or death, including:

(A) Any disease or infection caused by ingestion of, absorption of, inhalation of or contact with dust, fumes, vapors, gases, radiation or other substances.

(B) Any mental disorder, whether sudden or gradual in onset, which requires medical services or results in physical or mental disability or death.

(C) Any series of traumatic events or occurrences which requires medical services or results in physical disability or death.

(b) As used in this chapter, "mental disorder" includes any physical disorder caused or worsened by mental stress.

(2)(a) The worker must prove that employment conditions were the major contributing cause of the disease.

(b) If the occupational disease claim is based on the worsening of a preexisting disease or condition pursuant to ORS 656.005 (7), the worker must prove that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease.

(c) Occupational diseases shall be subject to all of the same limitations and exclusions as accidental injuries under ORS 656.005 (7).

(d) Existence of an occupational disease or worsening of a preexisting disease must be established by medical evidence supported by objective findings.

(e) Preexisting conditions shall be deemed causes in determining major contributing cause under this section.

(3) Notwithstanding any other provision of this chapter, a mental disorder is not compensable under this chapter unless the worker establishes all of the following:

(a) The employment conditions producing the mental disorder exist in a real and objective sense.

(b) The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles.

(c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community.

(d) There is clear and convincing evidence that the mental disorder arose out of and in the course of employment.

(4) Death, disability or impairment of health of firefighters of any political division who have completed five or more years of employment as firefighters, caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as firefighters is an "occupational disease." Any condition or impairment of health arising under this subsection shall be presumed to result from a firefighter's employment. However, any such firefighter must have taken a physical examination upon becoming a firefighter, or subsequently thereto, which failed to reveal any evidence of such condition or impairment of health which preexisted employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the cause of the condition or impairment is unrelated to the firefighter's employment.

(5)(a) Death, disability or impairment of health of a nonvolunteer firefighter employed by a pol-

itical division or subdivision who has completed five or more years of employment as a nonvolunteer firefighter is an occupational disease if the death, disability or impairment of health:

(A) Is caused by brain cancer, colon cancer, stomach cancer, testicular cancer, prostate cancer, multiple myeloma, non-Hodgkin's lymphoma, cancer of the throat or mouth, rectal cancer, breast cancer or leukemia;

(B) Results from the firefighter's employment as a nonvolunteer firefighter; and

(C) Is first diagnosed by a physician after July 1, 2009.

(b) Any condition or impairment of health arising under this subsection is presumed to result from the firefighter's employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the condition or impairment was not caused or contributed to in material part by the firefighter's employment.

(c) Notwithstanding paragraph (b) of this subsection, the presumption established under paragraph (b) of this subsection may be rebutted by clear and convincing evidence that the use of tobacco by the nonvolunteer firefighter is the major contributing cause of the cancer.

(d) The presumption established under paragraph (b) of this subsection does not apply to prostate cancer if the cancer is first diagnosed by a physician after the firefighter has reached the age of 55. However, nothing in this paragraph affects the right of a firefighter to establish the compensability of prostate cancer without benefit of the presumption.

(e) The presumption established under paragraph (b) of this subsection does not apply to claims filed more than 84 months following the termination of the nonvolunteer firefighter's employment as a nonvolunteer firefighter. However, nothing in this paragraph affects the right of a firefighter to establish the compensability of the cancer without benefit of the presumption.

(f) The presumption established under paragraph (b) of this subsection does not apply to volunteer firefighters.

(g) Nothing in this subsection affects the provisions of subsection (4) of this section.

(h) For purposes of this subsection, "nonvolunteer firefighter" means a firefighter who performs firefighting services and receives salary, hourly wages equal to or greater than the state **mandated** minimum wage, or other compensation except for room, board, lodging, housing, meals, stipends, reimbursement for expenses or nominal payments for time and travel, regardless of whether any such compensation is subject to federal, state or local taxation. "Nominal payments for time and travel" includes, but is not limited to, payments for on-call time or time spent responding to a call or similar noncash benefits.

(6) Notwithstanding ORS 656.027 (6), any city providing a disability and retirement system by ordinance or charter for firefighters and police officers not subject to this chapter shall apply the presumptions established under subsection (5) of this section when processing claims for firefighters covered by the system.

SECTION 32. ORS 657.325 is amended to read:

657.325. (1) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in the individual's eligibility period only if the Director of the Employment Department finds that with respect to such week the individual:

(a) Is an exhaustee;

(b) Has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

(c) Has been paid wages by an employer or employers subject to the provisions of this chapter during the base period of the individual's applicable benefit year in an amount equal to or in excess of 40 times the individual's applicable weekly benefit amount.

(2) The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be an amount equal to the weekly benefit amount payable to the individual during the applicable benefit year.

(3) The maximum extended benefit amount payable to any eligible individual with respect to the applicable benefit year shall be:

(a) 50 percent of the total amount of regular benefits which were payable to the individual under this chapter in the applicable benefit year; or

(b) With respect to weeks beginning in a high unemployment period, 80 percent of the total amount of regular benefits which were payable to the individual under this chapter in the applicable benefit year.

(4) Notwithstanding subsection (1) of this section, extended benefits shall not be payable to any individual for any week pursuant to an interstate claim filed in any other state under the interstate benefit payment plan if an extended benefit period is not in effect for such week in such other state.

(5) The provisions of subsection (4) of this section shall not apply with respect to the first two weeks for which extended benefits would otherwise be payable to an individual pursuant to an interstate claim filed under the interstate benefit payment plan.

(6) Notwithstanding the provisions of subsections (1) to (5) and (12) of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment in the individual's eligibility period if the director finds that during such week:

(a) The individual failed to accept any offer of suitable work or failed to apply for any suitable work, as defined under subsection (8) of this section, to which the individual was referred by the director; or

(b) The individual failed to actively engage in seeking work as prescribed under subsection (10) of this section.

(7) Any individual who has been found ineligible for extended benefits by reason of the provisions in subsection (6) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until the individual has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times the extended weekly benefit amount.

(8)(a) For purposes of this section, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities, provided, however:

(A) That the gross average weekly remuneration payable for the work must exceed the sum of the individual's weekly benefit amount and the amount, if any, of supplemental unemployment benefits, as defined in section 501(c)(17)(D) of the Internal Revenue Code, payable to such individual for such week; and

(B) The work must pay wages which equal or exceed the higher of the state [*or*] **mandated minimum wage, the** local minimum wage or the minimum wage provided by section 6 (a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption;

(b) No individual shall be denied extended benefits for failure to accept an offer of or referral to any job which meets the definition of suitability as described herein if:

(A) The position was not offered to such individual in writing or was not listed with the Employment Department; or

(B) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants pursuant to ORS 657.190 to the extent that the criteria of suitability are not inconsistent with the provisions of this section; or

(C) The individual furnishes satisfactory evidence to the director that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in ORS 657.190 without regard to the definition specified in this subsection.

(9) Notwithstanding the provisions of subsection (8) of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by section 3304(a)(5) of the Internal Revenue Code and as set forth in ORS 657.195.

(10) For the purposes of subsection (6)(b) of this section, an individual shall be treated as actively engaged in seeking work during any week if:

(a) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(b) The individual furnishes tangible evidence of engaging in such effort during such week.

(11) The Employment Department shall refer any claimant entitled to extended benefits to any suitable work which meets the criteria prescribed in subsection (8) of this section.

(12) An individual shall not be eligible to receive extended benefits under this section if the individual has been disqualified for regular or extended benefits under ORS 657.176 (2) unless the individual has satisfied the disqualification as provided in ORS 657.176 (2).

(13) Subsections (6) to (11) of this section shall not apply to weeks of unemployment beginning after March 6, 1993, and before January 1, 1995.

SECTION 33. ORS 660.142 is amended to read:

660.142. (1) A training agent may not pay an apprentice at a rate less than that obtained by applying the schedule, set forth in the applicable standards, at the apprentice's level of apprenticeship, to the journeyworker hourly rate of wage currently in effect for journeyworkers in the occupation for which the apprentice is being trained, as determined by the appropriate local joint committee.

(2) The journeyworker hourly wage rate shall be the average hourly wage currently being paid by the training agents participating in a program to their skilled workers, that is, to those employees with demonstrated knowledge, experience and proficiency in that trade or occupation who are currently performing the type of work for which the apprentice is to be trained. Upon receipt of a committee's determination of its current journeyworker hourly rate of wage, the State Director of Apprenticeship and Training shall cause notice of the determination to be promptly mailed to all apprentices and training agents participating in the program. The determination shall be in effect from the date set forth in the determination or, lacking such date, from the first of the month following the mailing of the determination. However, neither the wage determination nor the effective date alters the terms or effect of an existing collective bargaining agreement.

(3) If a higher journeyworker hourly wage rate is prescribed by federal or state law for work on a particular project, the higher rate is controlling for purposes of determining apprentice wages applicable to that particular project.

(4) Nothing stated in ORS 660.002 to 660.210 shall be construed to supersede the minimum wage or overtime provisions of ORS chapters 652 and 653, or the rules adopted under ORS chapter 652

or 653. Anything to the contrary notwithstanding, the entry wage (that wage derived by applying the lowest percentage on the schedule to the current journeyworker hourly wage rate) may not be less than the federal or state **mandated** minimum wage rate, whichever is higher.

(5) The State Apprenticeship and Training Council may make such exceptions to the apprentice wage schedule or journeyworker hourly wage rate, and to the minimum numeric ratio of journeyworkers to apprentices, as it deems necessary or advisable to further the operation of apprenticeship and training programs in Department of Corrections and Oregon Youth Authority institutions.

SECTION 34. This 2016 Act shall be submitted to the people for their approval or rejection at the next regular general election held throughout the state.
