

House Bill 4021

Sponsored by Representative BOONE, Senator JOHNSON (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows certain employers to permit employees to work more than 60 hours in one workweek to cover for employee absences.

Allows certain employers to request or permit employees to work more than 60 hours in one workweek to account for sporadic increases in product demand.

Exempts employees performing maintenance activities from restrictions on maximum workweek hours.

Clarifies beginning of workweek for purposes of calculating weekly hours worked.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to work time limits; amending ORS 652.020, 653.261, 653.263 and 653.265; and declaring an
3 emergency.

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

5 **SECTION 1.** ORS 652.020 is amended to read:

6 652.020. (1) As used in this section:

7 (a) "Machinery" means material-handling equipment and power-driven machines powered by
8 electricity, nuclear or fossil fuels, hydroelectric power, geothermal power or another power source
9 other than by human hand, foot or breath.

10 (b) "Manufacturing" means the process of using machinery to transform materials, substances
11 or components into new products.

12 (c) "Manufacturing establishment" means an establishment engaged in manufacturing.

13 (d) "Perishable product" means any product that may spoil, deteriorate or undergo other mate-
14 rial changes that render it unsuitable for the use for which it was produced. "Perishable product"
15 includes agricultural crops, meat and fish.

16 (e) "**Sporadic increase in demand**" means an increase in the demand that may not be
17 attributed to a seasonal increase in demand that occurs at approximately the same time each
18 year.

19 [(e)] (f) "Undue hardship period" means the period of time during which perishable product must
20 be processed after harvesting, slaughter or catch.

21 [(f)] (g) "Workweek" means a fixed period of time established by an employer that reflects a
22 regularly recurring period of 168 hours or seven consecutive 24-hour periods. [A workweek may be-
23 gin on any day of the week and any hour of the day and need not coincide with a calendar week. The
24 beginning of the workweek may be changed if the change is intended to be permanent and is not de-
25 signed to evade overtime requirements.]

26 (2)(a) Except as provided in paragraphs (b) [and (c)] **to (e)** of this subsection and subsection (3)
27 of this section, an employer may not require or permit an employee employed in any mill, factory
28 or other manufacturing establishment in this state to work more than:

NOTE: Matter in **boldfaced** type in an amended section is new; matter [italic and bracketed] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (A) 10 hours in any one day; or

2 (B) 55 hours in any one workweek.

3 (b) An employer may permit an employee described in paragraph (a) of this subsection to work
4 up to 60 hours in one workweek if the employee requests or consents in writing to work more than
5 55 hours in the workweek.

6 (c) Notwithstanding paragraph (b) of this subsection, during the period of time that an employer
7 is eligible for an undue hardship period exemption under subsection (4) of this section, an employer
8 may permit an employee described in paragraph (a) of this subsection to work:

9 (A) Up to 84 hours per workweek for four workweeks; and

10 (B) Up to 80 hours per workweek for the remainder of the undue hardship period.

11 **(d) Notwithstanding paragraph (b) of this subsection, an employer may permit an em-**
12 **ployee described in paragraph (a) of this subsection to work up to 72 hours per workweek if**
13 **the employee requests in writing to work more than 55 hours in the workweek to cover for**
14 **a period of time during which another employee is absent on sick leave, holiday or vacation**
15 **leave.**

16 **(e) Notwithstanding paragraph (b) of this subsection, during a period of time in which**
17 **an employer of a manufacturing establishment experiences a sporadic increase in the demand**
18 **for products, the employer may request or permit an employee described in paragraph (a)**
19 **of this subsection to work up to 62 hours per workweek for four workweeks.**

20 [(d)] (f) Except as provided in subsection (3) of this section, an employer may not require or
21 permit an employee employed in a sawmill, planing mill, shingle mill or logging camp to work more
22 than:

23 (A) Eight hours, exclusive of one hour, more or less, in one day; or

24 (B) 48 hours in one workweek.

25 (3)(a) An employee may work overtime up to three hours more than the applicable limit for the
26 maximum allowable hours of employment in one day as described in subsection (2) of this section.

27 (b) An employer shall compensate an employee who works overtime hours described in para-
28 graph (a) of this subsection at one and one-half times the employee's regular rate of pay for each
29 overtime hour or portion of an hour the employee works.

30 (c) An employer shall calculate an employee's overtime compensation on a daily basis under
31 paragraph (b) of this subsection and on a weekly basis under ORS 653.261 (1) and pay the greater
32 of the two amounts if, during the same workweek, the employee works more than:

33 (A) The applicable limit for the maximum allowable hours of employment in one day as described
34 in subsection (2) of this section; and

35 (B) Forty hours in one workweek as described in ORS 653.261 (1).

36 (d) An employer that makes an overtime payment to an employee pursuant to paragraph (c) of
37 this subsection satisfies the overtime compensation requirements under this subsection and ORS
38 653.261 (1).

39 (4)(a) An employer is eligible for an undue hardship period exemption from the restrictions on
40 maximum workweek hours under subsection (2)(a) of this section if the employer, in the ordinary
41 course of the employer's business, processes perishable products. The undue hardship period ex-
42 emption shall be effective only during an undue hardship period. An employer may be eligible for
43 more than one undue hardship period exemption in a calendar year. However, the combined total
44 duration of the employer's undue hardship period exemptions may not exceed 21 workweeks in a
45 calendar year.

1 (b) To claim an undue hardship period exemption, an employer must provide notice of the undue
 2 hardship period to the Commissioner of the Bureau of Labor and Industries and obtain written
 3 consent from each employee whom the employer will request to work more than 55 hours in any
 4 workweek during the undue hardship period.

5 (c)(A) The notice the employer sends to the commissioner under paragraph (b) of this subsection
 6 must be in a form prescribed by the commissioner by rule and include a description of the reasons
 7 for the undue hardship period, the start and expected end dates of the undue hardship period and
 8 any other information required by the commissioner.

9 (B) The employee's written consent shall be in a form prescribed by the commissioner by rule
 10 and include:

11 (i) A description of the employer's reasons for the undue hardship period;

12 (ii) The start and expected end dates of the undue hardship period;

13 (iii) A statement that the employer may require the employee to work up to 84 hours per
 14 workweek for up to four workweeks during the undue hardship period;

15 (iv) A statement that the employer may require the employee to work up to 80 hours per
 16 workweek for the remainder of the undue hardship period;

17 (v) A statement that the employee consents to working up to 84 hours per workweek for up to
 18 four workweeks during the undue hardship period and up to 80 hours per workweek for the re-
 19 mainder of the undue hardship period;

20 (vi) Contact information for the Bureau of Labor and Industries; and

21 (vii) Any other information required by the commissioner.

22 (5) An employer may not:

23 (a) Require any employee employed in a mill, factory or other manufacturing establishment in
 24 this state to begin a work shift less than 10 hours after the end of the employee's previous work
 25 shift if the employee's previous work shift totaled eight or more hours, unless the employer requires
 26 the employee to work additional hours due to disruptions in business operations caused by a power
 27 outage, major equipment breakdown, severe weather or similar emergency outside the employer's
 28 control;

29 (b) Require or permit any employee to work in any place described in this section for more
 30 hours than the hours provided for in this section during any day of 24 hours;

31 (c) Permit an overseer, superintendent or other agent of the employer to violate this section;
 32 or

33 (d) Coerce an employee into consenting to work more than 55 hours in a given workweek.

34 (6) This section does not apply to:

35 (a) An employee performing work as a member of a logging train crew, as a guard or as a boiler
 36 operator;

37 (b) An employee engaged in the transportation of workers to and from work;

38 (c) An employee engaged in the care of quarters or livestock, the conducting of mess halls, the
 39 superintendence and direction of work or the loading and removal of finished forest product;

40 (d) An employee when engaged in making necessary repairs **or performing maintenance ac-**
 41 **tivities** or in the case of emergency where life or property is in imminent danger; or

42 (e) An employee employed in a mill, factory or other manufacturing establishment whose prin-
 43 cipal duties are administrative in nature or who is not otherwise engaged in the direct processing
 44 of goods in the usual course of the employee's duties.

45 (7) Subsections (2) to (5) of this section do not apply to employees who are represented by a

1 labor organization for purposes of collective bargaining with their employer, provided limits on the
 2 required hours of work and overtime payment have been agreed to between the employer and labor
 3 organization, or if no agreement is reached, then, for the purposes of this subsection, such limits and
 4 payments shall not be deemed to be changed from the previous collective bargaining agreement be-
 5 tween the employer and labor organization unless the employees have been locked out or are en-
 6 gaged in a strike or the employer has unilaterally implemented new terms and conditions of
 7 employment.

8 **(8)(a) For the purpose of calculating a workweek as defined in subsection (1) of this sec-**
 9 **tion, a workweek may begin on any day of the week and any hour of the day and need not**
 10 **coincide with a calendar week.**

11 **(b) The beginning of the workweek may be changed if the change is intended to be per-**
 12 **manent and is not designed to evade overtime requirements.**

13 ~~[(8)(a)]~~ **(9)(a)** In addition to any other remedy provided by law, an employee has a private cause
 14 of action against an employer if the employer violates subsection (2) or (3) of this section by re-
 15 quiring the employee to work more than:

16 (A) Three hours more than the applicable limit for the maximum allowable hours of employment
 17 in one day; or

18 (B) The applicable limit for the maximum allowable hours of employment in one workweek.

19 (b) If the employee prevails in an action under this section, the court may enter judgment
 20 against the employer for:

21 (A) Actual damages or \$3,000 per claim, whichever is greater;

22 (B) Equitable relief; and

23 (C) Liquidated damages in an amount equal to twice the employee's overtime wages earned
 24 during the period not allowed under subsection (2) or (3) of this section.

25 (c) In an action brought under this section, the court may award to the prevailing plaintiff costs,
 26 disbursements and reasonable attorney fees. Any attorney fee agreement is subject to approval by
 27 the court.

28 ~~[(9)(a)]~~ **(10)(a)** Notwithstanding ORS 652.900, in addition to any other penalty provided by law,
 29 the commissioner may assess the following civil penalties against an employer that the commissioner
 30 determines has coerced an employee into consenting to work more than 55 hours in one workweek:

31 (A) \$2,000 per violation if the employer coerced an employee into consenting under subsection
 32 (2)(b) of this section to work more than 55 hours in any given workweek; or

33 (B) \$3,000 per violation if the employer coerced an employee into consenting under subsection
 34 (4) of this section to work more than 55 hours per workweek in any given workweek during an un-
 35 due hardship period.

36 (b) Each violation described in paragraph (a) of this subsection is a separate and distinct offense.
 37 In the case of a continuing violation, each workweek's continuance is a separate and distinct vio-
 38 lation.

39 (c) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS
 40 183.745. All sums collected as penalties under this subsection shall be applied and paid over as
 41 provided in ORS 652.900.

42 **SECTION 2.** ORS 653.261 is amended to read:

43 653.261. (1)(a) The Commissioner of the Bureau of Labor and Industries may adopt rules pre-
 44 scribing such minimum conditions of employment, excluding minimum wages, in any occupation as
 45 may be necessary for the preservation of the health of employees. The rules may include, but are

1 not limited to, minimum meal periods and rest periods, and maximum hours of work, but not less
 2 than eight hours per day or 40 hours per workweek; however, after 40 hours of work in one
 3 workweek overtime may be paid, but in no case at a rate higher than one and one-half times the
 4 regular rate of pay of the employees when computed without benefit of commissions, overrides, spiffs
 5 and similar benefits.

6 (b) As used in this subsection, “workweek” means a fixed period of time established by an em-
 7 ployer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods.
 8 [A workweek may begin on any day of the week and any hour of the day and need not coincide with
 9 a calendar week. The beginning of the workweek may be changed if the change is intended to be
 10 permanent and is not designed to evade overtime requirements.]

11 **(c) For the purpose of calculating a workweek, a workweek may begin on any day of the**
 12 **week and any hour of the day and need not coincide with a calendar week.**

13 **(d) The beginning of the workweek may be changed if the change is intended to be per-**
 14 **manent and is not designed to evade overtime requirements.**

15 (2) Rules adopted by the commissioner pursuant to subsection (1) of this section do not apply
 16 to individuals employed by this state or a political subdivision or quasi-municipal corporation
 17 thereof if other provisions of law or collective bargaining agreements prescribe rules pertaining to
 18 conditions of employment referred to in subsection (1) of this section, including meal periods, rest
 19 periods, maximum hours of work and overtime.

20 (3) Rules adopted by the commissioner pursuant to subsection (1) of this section regarding meal
 21 periods and rest periods do not apply to nurses who provide acute care in hospital settings if pro-
 22 visions of collective bargaining agreements entered into by the nurses prescribe rules concerning
 23 meal periods and rest periods.

24 (4)(a) The commissioner shall adopt rules regarding meal periods for employees who serve food
 25 or beverages, receive tips and report the tips to the employer.

26 (b) In rules adopted by the commissioner under paragraph (a) of this subsection, the commis-
 27 sioner shall permit an employee to waive a meal period. However, an employer may not coerce an
 28 employee into waiving a meal period.

29 (c) Notwithstanding ORS 653.256 (1), in addition to any other penalty provided by law, the
 30 commissioner may assess a civil penalty not to exceed \$2,000 against an employer that the commis-
 31 sioner finds has coerced an employee into waiving a meal period in violation of this subsection. Each
 32 violation is a separate and distinct offense. In the case of a continuing violation, each day’s con-
 33 tinuance is a separate and distinct violation.

34 (d) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS
 35 183.745. All sums collected as penalties under this subsection shall be applied and paid over as
 36 provided in ORS 653.256 (4).

37 **SECTION 3.** ORS 653.263 is amended to read:

38 653.263. (1) As used in this section:

39 (a) “Seafood processor” means a cannery, drier or packing plant that processes seafood.

40 (b) “Workweek” means a fixed period of time established by an employer that reflects a regu-
 41 larly recurring period of 168 hours or seven consecutive 24-hour periods. [A workweek may begin
 42 on any day of the week and any hour of the day and need not coincide with a calendar week. The
 43 beginning of the workweek may be changed if the change is intended to be permanent and is not de-
 44 signed to evade overtime requirements.]

45 (2) An employer may not require or permit an employee employed by a seafood processor to

1 work more than 10 hours in any one day unless the employer compensates the employee as follows:

2 (a) One and one-half times the employee's regular rate of pay for each hour the employee works
3 over 10 hours in any one day if the employee is an hourly employee; or

4 (b) One and one-half times the regular price for all work done during the time the employee is
5 employed over 10 hours per day if the employee is a piece worker.

6 (3) This section does not apply to:

7 (a) An employee who is engaged in manufacturing, as defined in ORS 652.020; or

8 (b) An employee whose principal duties are administrative in nature or who does not otherwise,
9 in the usual course of the employee's duties, come into contact with the direct processing of goods.

10 **(4)(a) For the purpose of calculating a workweek as defined in subsection (1) of this sec-**
11 **tion, a workweek may begin on any day of the week and any hour of the day and need not**
12 **coincide with a calendar week.**

13 **(b) The beginning of the workweek may be changed if the change is intended to be per-**
14 **manent and is not designed to evade overtime requirements.**

15 **SECTION 4.** ORS 653.265 is amended to read:

16 653.265. (1) As used in this section:

17 (a) "Perishable product" means any product that may spoil, deteriorate or undergo other mate-
18 rial changes that render it unsuitable for the use for which it was produced. "Perishable product"
19 includes agricultural crops, meat and fish.

20 (b) "Undue hardship period" means the period of time during which perishable product must be
21 processed after harvesting, slaughter or catch.

22 (c) "Workweek" means a fixed period of time established by an employer that reflects a regu-
23 larly recurring period of 168 hours or seven consecutive 24-hour periods. [*A workweek may begin*
24 *on any day of the week and any hour of the day and need not coincide with a calendar week. The*
25 *beginning of the workweek may be changed if the change is intended to be permanent and is not de-*
26 *signed to evade overtime requirements.*]

27 (2)(a) Except as provided in paragraphs (b) to (d) of this subsection, an employer may not require
28 or permit an employee employed in any cannery, drier or packing plant in this state to work more
29 than:

30 (A) 10 hours in any one day; or

31 (B) 55 hours in one workweek.

32 (b) An employer may permit an employee described in paragraph (a) of this subsection to work
33 up to 60 hours in one workweek if the employee requests or consents in writing to work more than
34 55 hours in the workweek.

35 (c) Notwithstanding paragraph (b) of this subsection, during the period of time that an employer
36 is eligible for an undue hardship period exemption under subsection (5) of this section, an employer
37 may permit an employee described in paragraph (a) of this subsection to work:

38 (A) Up to 84 hours per workweek for four workweeks; and

39 (B) Up to 80 hours per workweek for the remainder of the undue hardship period.

40 (d) An employer may permit an employee described in paragraph (a) of this subsection to work
41 more than 10 hours in any one day if the employer compensates the employee as follows:

42 (A) One and one-half times the employee's regular rate of pay for each hour the employee works
43 over 10 hours in any one day if the employee is an hourly employee; or

44 (B) One and one-half times the regular price for all work done during the time the employee is
45 employed over 10 hours per day if the employee is a piece worker.

1 (3) An employer shall calculate an employee's overtime on a daily basis under subsection (2)(d)
 2 of this section and on a weekly basis under ORS 653.261 (1) and pay the greater of the two amounts
 3 if, during the same workweek, the employee works more than:

- 4 (a) 10 hours in one day as described in subsection (1) of this section; and
- 5 (b) 40 hours in one workweek as described in ORS 653.261 (1).

6 (4) An employer that makes an overtime payment to an employee pursuant to subsection (3) of
 7 this section satisfies the overtime compensation requirements under this section and ORS 653.261
 8 (1).

9 (5)(a) An employer is eligible for an undue hardship period exemption from the restrictions on
 10 work hours under subsection (2)(a) of this section if the employer, in the ordinary course of the
 11 employer's business, processes perishable products. The undue hardship period exemption shall be
 12 effective only during an undue hardship period. An employer may be eligible for more than one un-
 13 due hardship period exemption in a calendar year. However, the combined total duration of the
 14 employer's undue hardship period exemptions may not exceed 21 workweeks in a calendar year.

15 (b) To claim an undue hardship period exemption, an employer must provide notice of the undue
 16 hardship period to the Commissioner of the Bureau of Labor and Industries and obtain written
 17 consent from each employee whom the employer will request to work more than 55 hours in any
 18 workweek during the undue hardship period.

19 (c)(A) The notice the employer sends to the commissioner under paragraph (b) of this subsection
 20 must be in a form prescribed by the commissioner by rule and include a description of the reasons
 21 for the undue hardship period, the start and expected end dates of the undue hardship period and
 22 any other information required by the commissioner.

23 (B) The employee's written consent shall be in a form prescribed by the commissioner by rule
 24 and include:

- 25 (i) A description of the employer's reasons for the undue hardship period;
- 26 (ii) The start and expected end dates of the undue hardship period;
- 27 (iii) A statement that the employer may require the employee to work up to 84 hours per
 28 workweek for up to four workweeks during the undue hardship period;
- 29 (iv) A statement that the employer may require the employee to work up to 80 hours per
 30 workweek for the remainder of the undue hardship period;
- 31 (v) A statement that the employee consents to working up to 84 hours per workweek for up to
 32 four workweeks during the undue hardship period and up to 80 hours per workweek for the re-
 33 mainder of the undue hardship period;
- 34 (vi) Contact information for the Bureau of Labor and Industries; and
- 35 (vii) Any other information required by the commissioner.

36 (6) An employer may not coerce an employee into consenting to work more than 55 hours in a
 37 given workweek.

38 (7) This section does not apply to:

- 39 (a) An employee employed in a cannery, drier or packing plant that is located on a farm and
 40 primarily processes products produced on the farm;
- 41 (b) An employee employed in a cannery, drier or packing plant who is engaged in manufacturing,
 42 as that term is defined in ORS 652.020;
- 43 (c) An employee employed by a seafood processor, as that term is defined in ORS 653.263; or
- 44 (d) An employee employed in a cannery, drier or packing plant whose principal duties are ad-
 45 ministrative in nature or who is not otherwise, in the usual course of the employee's duties, engaged

1 in the direct processing of goods.

2 (8) Subsections (2) to (6) of this section do not apply to employees who are represented by a
 3 labor organization for purposes of collective bargaining with their employer, provided limits on the
 4 required hours of work and overtime payment have been agreed to between the employer and labor
 5 organization, or if no agreement is reached, then, for the purposes of this subsection, such limits and
 6 payments shall not be deemed to be changed from the previous collective bargaining agreement be-
 7 tween the employer and labor organization unless the employees have been locked out or are en-
 8 gaged in a strike or the employer has unilaterally implemented new terms and conditions of
 9 employment.

10 **(9)(a) For the purpose of calculating a workweek as defined in subsection (1) of this sec-**
 11 **tion, a workweek may begin on any day of the week and any hour of the day and need not**
 12 **coincide with a calendar week.**

13 **(b) The beginning of the workweek may be changed if the change is intended to be per-**
 14 **manent and is not designed to evade overtime requirements.**

15 [(9)(a)] **(10)(a)** Notwithstanding ORS 653.256, in addition to any other penalty provided by law,
 16 the commissioner may assess the following civil penalties against an employer:

17 (A) \$2,000 per violation if the commissioner determines the employer coerced an employee into
 18 consenting under subsection (2)(b) of this section to work more than 55 hours in any given
 19 workweek; and

20 (B) \$3,000 per violation if the commissioner determines the employer coerced an employee into
 21 consenting under subsection (5) of this section to work more than 55 hours per workweek in any
 22 given workweek during an undue hardship period.

23 (b) Each violation described in paragraph (a) of this subsection is a separate and distinct offense.
 24 In the case of a continuing violation, each workweek’s continuance is a separate and distinct vio-
 25 lation.

26 (c) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS
 27 183.745. All sums collected as penalties under this subsection shall be applied and paid over as
 28 provided in ORS 653.256.

29 [(10)(a)] **(11)(a)** In addition to any other remedy provided by law, an employee has a private
 30 cause of action against an employer if the employer violates subsection (2) of this section by re-
 31 quiring the employee to work more than the applicable limit for the maximum allowable hours of
 32 employment in one workweek.

33 (b) If the employee prevails in an action brought under this section, the court may enter judg-
 34 ment against the employer for:

35 (A) Actual damages or \$3,000 per claim, whichever is greater;

36 (B) Equitable relief; and

37 (C) Liquidated damages in an amount equal to twice the employee’s overtime wages earned
 38 during the period not allowed under subsection (2) of this section.

39 (c) In an action brought under this section, the court may award to the prevailing plaintiff costs,
 40 disbursements and reasonable attorney fees. Any attorney fee agreement is subject to approval by
 41 the court.

42 **SECTION 5. This 2018 Act being necessary for the immediate preservation of the public**
 43 **peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect**
 44 **on its passage.**