

A-Engrossed
Senate Bill 722

Ordered by the Senate March 15
Including Senate Amendments dated March 15

Sponsored by Senator COURTNEY, Representative MITCHELL; Senators JOHNSON, MONNES ANDERSON, STEINER HAYWARD, TAYLOR

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.

[Authorizes Director of Employment Department to prescribe rules that provide individual may not be excluded from being deemed unemployed solely because of service performed for employing unit under legal compulsion for which individual has not received pay on individual's regular payday. Provides that individual continues to be deemed unemployed until earlier of date on which individual begins to receive payment on regular payday or individual permanently ceases work for employing unit.]

Provides state-funded program to pay unemployment benefits to *[individuals on active duty in U.S. Coast Guard and stationed in this state who are legally compelled to provide regular service in U.S. Coast Guard]* **employees of United States and active duty members of Armed Forces of United States who are required to perform service** without *[receiving]* compensation due to lapse of federal appropriations and who would otherwise be eligible for unemployment compensation for **federal employees or ex-servicemembers** under federal law. Appropriates moneys to Employment Department for purposes of paying benefits and costs *[necessary]* **incurred by department** to administer benefit program.

Provides that back pay shall be considered earnings in determining benefits payable to individual for period for which back pay has been or is paid.

Permits Director of Employment Department to use additional methods for recovering benefits erroneously paid to claimant through no fault of claimant and requires director to waive recovery of such overpaid benefits if recovery would be against equity and good conscience. Requires director to make reasonable efforts to advise new claimants for benefits of procedures for recovery of benefits paid in error.

Prohibits reduction of back pay paid or awarded to an individual to reflect benefits that individual received during period for which back pay was paid or awarded.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to government benefits; creating new provisions; amending ORS 657.144, 657.150, 657.315,
3 657.317, 657.392 and 657.396; and declaring an emergency.

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

5 **SECTION 1. Sections 2, 3 and 12 of this 2019 Act are added to and made a part of ORS**
6 **chapter 657.**

7 **SECTION 2. (1) An individual is entitled to benefits under this section if the individual:**

8 (a) **Is an employee of the United States or a member of the Armed Forces of the United**
9 **States on active duty;**

10 (b) **Is being required to perform service for the United States or in the Armed Forces**
11 **of the United States;**

12 (c) **Is not receiving wages for the service because of a lapse of federal appropriations; and**

13 (d) **Would otherwise be eligible for, but is not receiving, unemployment compensation for**
14 **federal employees, or unemployment compensation for ex-servicemembers, as provided under**

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 **5 U.S.C. chapter 85.**

2 **(2) Except for the eligibility requirements under subsection (1) of this section and ORS**
3 **657.100, benefits under this section shall be subject to the same requirements and procedures**
4 **as regular benefits as defined in ORS 657.158.**

5 **(3) An individual who is entitled to benefits under this section shall continue to be so**
6 **entitled until the earlier of the date on which:**

7 **(a) The individual begins to receive wages on the individual's regular payday for service**
8 **performed for the United States or in the Armed Forces of the United States; or**

9 **(b) The individual's employment by the United States or active duty status in the Armed**
10 **Forces of the United States permanently ceases.**

11 **(4) Benefits are payable under this section only to the extent that funds are available in**
12 **the State Benefits for Federal Workers Fund established under section 3 of this 2019 Act.**

13 **(5) If the Employment Department recovers any overpayments of benefits paid under this**
14 **section, the department shall deposit the recovered amounts in the State Benefits for Fed-**
15 **eral Workers Fund.**

16 **(6) The Director of the Employment Department may adopt such rules as the director**
17 **considers necessary with respect to benefits payable under this section.**

18 **SECTION 3. (1) The State Benefits for Federal Workers Fund is established in the State**
19 **Treasury, separate and distinct from the General Fund. Notwithstanding ORS 657.815, all**
20 **moneys in the State Benefits for Federal Workers Fund are continuously appropriated to the**
21 **Employment Department for the purposes set forth in subsection (3) of this section.**

22 **(2) The State Benefits for Federal Workers Fund consists of:**

23 **(a) Moneys appropriated to the fund by the Legislative Assembly; and**

24 **(b) Recovered amounts deposited in the fund by the department under section 2 (5) of this**
25 **2019 Act.**

26 **(3) Moneys in the fund may be used solely to pay:**

27 **(a) Benefits under section 2 of this 2019 Act and under rules prescribed by the Director**
28 **of the Employment Department pursuant to section 2 of this 2019 Act; and**

29 **(b) The actual costs incurred by the department in administering section 2 of this 2019**
30 **Act and rules prescribed by the director pursuant to section 2 of this 2019 Act.**

31 **SECTION 4. There is appropriated to the Employment Department, for the biennium**
32 **ending June 30, 2019, out of the General Fund, the amount of \$1 for the purposes of making**
33 **the payments authorized under section 3 of this 2019 Act.**

34 **SECTION 5. ORS 657.150 is amended to read:**

35 **657.150. (1) An individual shall be paid benefits for weeks during the benefit year in an amount**
36 **[which] that is to be determined by taking into account the individual's work in subject employment**
37 **in the base year as provided in this section.**

38 **(2)(a) To qualify for benefits an individual must have:**

39 **(A) Worked in subject employment in the base year with total base year wages of \$1,000 or more**
40 **and have total base year wages equal to or in excess of one and one-half times the wages in the**
41 **highest quarter of the base year; and**

42 **(B) Have earned wages in subject employment equal to six times the individual's weekly benefit**
43 **amount in employment for service performed subsequent to the beginning of a preceding benefit year**
44 **if benefits were paid to the individual for any week in the preceding benefit year.**

45 **(b) If the individual does not meet the requirements of paragraph (a)(A) of this subsection, the**

1 individual may qualify for benefits if the individual has worked a minimum of 500 hours in employ-
2 ment subject to this chapter during the base year.

3 (3) If the wages paid to an individual are not based upon a fixed period of time or if wages are
4 paid at irregular intervals or in such manner as not to extend regularly over the period of employ-
5 ment, for the purposes of subsections (2) to (5) of this section, the individual's wages shall be allo-
6 cated in accordance with rules prescribed by the Director of the Employment Department. Such
7 rules shall, insofar as possible, produce results the same as those *[which]* **that** would exist if the
8 individual had been paid wages at regular intervals. The director may adopt rules to attribute hours
9 of work to an individual if the individual is not paid on an hourly basis or if the employer does not
10 report the number of hours worked.

11 (4)(a) An eligible individual's weekly benefit amount shall be 1.25 percent of the total wages
12 paid in the individual's base year. However, such amount shall not be less than the minimum, nor
13 more than the maximum weekly benefit amount.

14 [(a)] (b) The minimum weekly benefit amount shall be 15 percent (0.1500) of the state average
15 weekly covered wage for the preceding calendar year, effective for any benefit year commencing on
16 and after the week *[which]* **that** includes July 4, 1975, and the week that includes each July 4
17 thereafter.

18 [(b)] (c) The maximum weekly benefit amount shall be:

19 (A) Fifty-five percent (0.5500) of the state average weekly covered wage for calendar year 1979,
20 effective for any benefit year commencing with and after the week *[which]* **that** includes July 4,
21 1980, and through any benefit year commencing with the week *[which]* **that** includes June 27, 1981.

22 (B) Fifty-five percent (0.5500) of the state average weekly covered wage for calendar year 1980,
23 effective for any benefit year commencing with and after the week *[which]* **that** includes July 4,
24 1981, through any benefit year commencing with the week *[which]* **that** includes September 27, 1981.

25 (C) Fifty-eight percent (0.5800) of the state average weekly covered wage for calendar year 1980,
26 effective for any benefit year commencing with and after the week *[which]* **that** includes October
27 4, 1981, through any benefit year commencing with the week *[which]* **that** includes June 27, 1982.

28 (D) Sixty percent (0.6000) of the state average weekly covered wage for calendar year 1981, ef-
29 fective for any benefit year commencing with and after the week *[which]* **that** includes July 4, 1982,
30 through any benefit year commencing with the week *[which]* **that** includes June 27, 1983.

31 (E) Sixty-four percent (0.6400) of the state average covered weekly wage for the preceding cal-
32 endar year, effective for any benefit year commencing with and after the week *[which]* **that** includes
33 July 4, 1983, and the week *[which]* **that** includes each July 4 thereafter.

34 [(c)] (d) All weekly benefit amounts, if not a multiple of \$1, shall be computed to the next lower
35 multiple of \$1.

36 [(d)] (e) For the purposes of this subsection, the state average weekly covered wage means an
37 amount determined by the Employment Department by dividing the total wages paid by subject em-
38 ployers during the year by 52 times the average monthly employment reported by subject employers
39 for the year.

40 (5) Benefits paid to an eligible individual in a benefit year shall not exceed 26 times the
41 individual's weekly benefit amount, or one-third of the base year's wages paid, whichever is the
42 lesser. If such amount is not a multiple of \$1, it shall be computed to the next lower multiple of \$1.

43 (6) An eligible unemployed individual who has employment in any week shall have the
44 individual's weekly benefit amount reduced by the amount of earnings paid or payable that exceeds
45 whichever is the greater of the following amounts:

1 (a) Ten times the minimum hourly wage established by the laws of this state; or

2 (b) One-third of the individual's weekly benefit amount.

3 (7) Payment *[which]* **that** has been, is or will be paid to an individual for a holiday or vacation
4 shall be considered as earnings in the determination of the amount of benefits payable with respect
5 to the week in which the holiday or vacation falls in the same manner as provided in subsection (6)
6 of this section. However, if payment for the holiday or vacation is paid more than 45 days prior to
7 the holiday or vacation or is delayed more than 45 days following the end of the week in which the
8 holiday or vacation falls, the provisions of this section do not apply and previously reduced benefits
9 shall be adjusted accordingly.

10 **(8) Payment that has been or is paid to an individual as back pay shall be considered as**
11 **earnings in the determination of the amount of benefits payable with respect to the period**
12 **for which the back pay has been or is paid.**

13 *[(8)]* (9) Payment *[which]* **that** has been[,] or will be made to an individual as a member of a
14 reserve component of the Armed Forces of the United States, including the organized militia of the
15 State of Oregon, for the performance of inactive duty training shall not be considered as earnings
16 in the determination of the amount of benefits payable.

17 **SECTION 6.** ORS 657.315 is amended to read:

18 657.315. (1) If the Director of the Employment Department decides that an individual has been
19 paid benefits to which the individual is not entitled because of an error not due to the individual
20 providing a false statement or misrepresentation of a material fact or not disclosing a material fact,
21 or because an initial decision to pay benefits is subsequently reversed by a decision finding the in-
22 dividual is not eligible for the benefits, the individual is liable:

23 **(a) To repay the amount of the benefits to the director for the Unemployment Compensa-**
24 **tion Trust Fund within five years following the week in which the decision establishing the**
25 **erroneous payment became final; or**

26 **(b) To have the amount deducted from any future benefits otherwise payable to the individual**
27 **under this chapter or the equivalent law of another state for any week or weeks within five years**
28 **following the week in which the decision establishing the erroneous payment became final.**

29 (2) **Subject to ORS 657.269 and 657.270**, a decision of the director under this section does not
30 authorize the recovery of the amount of any benefits paid to an individual until the decision is final
31 *[and the decision specifies that the individual is liable to have the amount deducted from any future*
32 *benefits otherwise payable under this chapter or the equivalent law of another state for any week or*
33 *weeks within five years following the week in which the decision establishing the erroneous payment*
34 *became final].*

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

37 **(3) The director may bring a civil action against an individual to recover any amount for**
38 **which the individual is liable for repayment under this section.**

39 **SECTION 7.** ORS 657.317 is amended to read:

40 657.317. (1) The Director of the Employment Department shall waive recovery of benefits under
41 ORS 657.315 if the director finds that the benefits are recoverable due to a change in federal or
42 state law, the application of which has caused the disqualification of benefits previously paid.

43 (2) The director *[may]* **shall** waive recovery *[of benefits]* under ORS 657.315 **of overpaid benefits**
44 if the director finds that recovery of **the** benefits would be against equity and good conscience.

45 *[(3) If the United States Secretary of Labor serves notice that the provisions of subsection (1) or*

1 (2) of this section fail to meet the requirements of the Social Security Act or the Federal Unemployment
2 Tax Act, the nonconforming subsection is no longer of any force or effect.]

3 [(4)] (3) The director may waive establishment and recovery of overpaid benefits when no deci-
4 sion has been issued under ORS 657.310 or 657.315 and the amount of the overpayment is less than
5 one-half of the maximum weekly benefit amount in effect at the time the overpayment is discovered.

6 **SECTION 8.** ORS 657.392 is amended to read:

7 657.392. (1) If an individual is liable to repay benefits under ORS 657.310 **or 657.315**, the amount
8 liable to be repaid, interest **on the amount accruing under ORS 657.310** and penalties due shall
9 be a lien in favor of the Director of the Employment Department upon all property, whether real
10 or personal, belonging to such individual.

11 (2) The lien shall be perfected and attach:

12 (a) To real and personal property located within *[the]* a county, upon the recording of a warrant,
13 as provided in ORS 657.396, with the clerk of the county *[in which the property is located]*.

14 (b) To personal property wherever located within the state, upon:

15 (A) The recording of a warrant, as provided in ORS 657.396, with the clerk of any county; and

16 (B) The filing of a copy of the warrant with the Secretary of State as provided in ORS 657.394.

17 (3) The lien created by this section may be foreclosed by a suit in the circuit court in the
18 manner provided by law for the foreclosure of other liens on real or personal property.

19 **SECTION 9.** ORS 657.396 is amended to read:

20 657.396. (1) In any case in which the Director of the Employment Department may bring a civil
21 action for the collection of amounts liable to be repaid under ORS 657.310 **or 657.315**, interest **ac-**
22 **cruing under ORS 657.310** on those amounts or penalties, the Employment Department may instead:

23 (a) Assess a collection charge of \$5 if the amount liable to be repaid, the interest then due or
24 the penalty exceeds \$10.

25 (b) Issue a warrant for the amount liable to be repaid with the added interest, penalty, collection
26 charge and the sheriff's cost of executing the warrant. A copy of the warrant shall be mailed or
27 delivered to the debtor by the department at the debtor's last-known address.

28 (2) At any time after issuing a warrant under this section, the department may record the war-
29 rant in the County Clerk Lien Record of any county of this state. Recording of the warrant has the
30 effect described in ORS 205.125. After recording a warrant, the department may direct the sheriff
31 for the county in which the warrant is recorded to levy upon and sell the real and personal property
32 of the debtor found within that county, and to levy upon any currency of the debtor found within
33 that county, for the application of the proceeds or currency against the amount reflected in the
34 warrant and the sheriff's cost of executing the warrant. The sheriff shall proceed on the warrant in
35 the same manner prescribed by law for executions issued against property pursuant to a judgment,
36 and is entitled to the same fees as provided for executions issued against property pursuant to a
37 judgment. The fees of the sheriff shall be added to and collected as a part of the warrant liability.

38 (3) In the discretion of the department a warrant under this section may be directed to any
39 agent authorized by the department to collect amounts under this section, and in the execution of
40 the warrant the agent has all of the powers conferred by law upon sheriffs, but is entitled to no fee
41 or compensation in excess of actual expenses paid in the performance of such duty.

42 (4) *[Interest upon the amounts liable to be repaid and the penalty]* **For the collection of amounts**
43 **liable to be repaid under ORS 657.310, interest on those amounts and penalties** as set forth in
44 the warrant shall be paid and collected at the *[rate]* **rates** prescribed in ORS 657.310.

45 **SECTION 10.** The amendments to ORS 657.317, 657.392 and 657.396 by sections 7 to 9 of

1 **this 2019 Act apply to benefits determined on or after the effective date of this 2019 Act to**
2 **have been overpaid.**

3 **SECTION 11.** ORS 657.144 is amended to read:

4 657.144. (1) An individual filing a new claim for benefits under this chapter shall **be advised,**
5 at the time the claim is filed with the Employment Department, [*be advised*] that:

6 (a) Benefits are subject to federal and state income tax;

7 (b) Federal and state law may require that a recipient of benefits make quarterly estimated tax
8 payments during the tax year in which the benefits are received;

9 (c) Federal and state law may impose penalties on a recipient of benefits for the failure to timely
10 make estimated tax payments; and

11 (d) A recipient of benefits may elect under ORS 657.146 to have amounts withheld from the
12 recipient's payment of benefits for federal and state income tax purposes at the amount specified in:

13 (A) The federal Internal Revenue Code for the voluntary withholding of unemployment benefits
14 for federal income tax purposes; and

15 (B) ORS 657.146 for the voluntary withholding of unemployment benefits for state income tax
16 purposes.

17 (2) The **Director of the** Employment Department shall provide information [*to recipients of un-*
18 *employment insurance benefits*] about the state and federal earned income tax credits **to recipients**
19 **of unemployment insurance benefits.**

20 (3) **The director shall make reasonable efforts to ensure that an individual filing a new**
21 **claim for benefits under this chapter is advised, at the time the claim is filed with the de-**
22 **partment, that the individual may be subject to the procedures for recovery of benefits paid**
23 **in error set forth in ORS 657.315.**

24 **SECTION 12.** The amount of back pay paid by an employer, or awarded by a judge or
25 arbitrator, to an individual may not be reduced to reflect the amount of benefits that the
26 individual received during the period for which the back pay was paid or awarded.

27 **SECTION 13.** This 2019 Act being necessary for the immediate preservation of the public
28 peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect
29 on its passage.

30