

HB 2609-2
(LC 1569)
3/11/21 (ASD/ps)

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR (at the request of Representative Paul Holvey)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2609**

1 On page 1 of the printed bill, line 2, delete “and”.

2 Delete line 3 and insert “ORS 657.144, 657.315, 657.317, 657.320, 657.392 and
3 657.396; and declaring an emergency.”.

4 Delete lines 5 through 31 and delete page 2 and insert:

5 **“SECTION 1.** ORS 657.315 is amended to read:

6 “657.315. (1) If the Director of the Employment Department decides that
7 an individual has been paid benefits to which the individual is not entitled
8 because of an error not due to the individual providing a false statement or
9 misrepresentation of a material fact or not disclosing a material fact, or be-
10 cause an initial decision to pay benefits is subsequently reversed by a deci-
11 sion finding the individual is not eligible for the benefits, the individual is
12 liable:

13 **“(a) To repay the amount of the benefits to the director for the**
14 **Unemployment Compensation Trust Fund within five years following**
15 **the week in which the decision establishing the erroneous payment**
16 **became final; or**

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

21 **“(2) Subject to ORS 657.269 and 657.270, a decision of the director under**

1 this section does not authorize the recovery of the amount of any benefits
2 paid to an individual until the decision is final [*and the decision specifies*
3 *that the individual is liable to have the amount deducted from any future*
4 *benefits otherwise payable under this chapter or the equivalent law of another*
5 *state for any week or weeks within five years following the week in which the*
6 *decision establishing the erroneous payment became final*].

7 “[*(3) Amounts paid to an individual in excess of the maximum benefits al-*
8 *lowable pursuant to this chapter may be recovered in a civil action brought in*
9 *the name of the director for such purpose.*]

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

13 “**SECTION 2.** ORS 657.317 is amended to read:

14 “657.317. (1) The Director of the Employment Department shall waive re-
15 covery of **overpaid** benefits under ORS 657.315 if the director finds that the
16 benefits are recoverable due to a change in federal or state law, the appli-
17 cation of which has caused the disqualification of benefits previously paid.

18 “**(2)(a) Except as provided in paragraph (b) of this subsection,** the
19 director may waive recovery of **all or any part of overpaid** benefits **subject**
20 **to repayment or reduction** under ORS [*657.315*] **657.310 (1) or 657.315 (1)**
21 if the director finds that recovery of **the** benefits would be against equity
22 and good conscience.

23 “**(b) The director may not waive recovery under this subsection of**
24 **overpaid benefits that are liable for the penalty imposed under ORS**
25 **657.310 (2).**

26 “**(3) For purposes of ORS 657.310 (1)(b) and 657.315 (1)(b), the director**
27 **may deduct all or any part of the individual’s future weekly benefits.**

28 “[*(3) If the United States Secretary of Labor serves notice that the pro-*
29 *visions of subsection (1) or (2) of this section fail to meet the requirements of*
30 *the Social Security Act or the Federal Unemployment Tax Act, the noncon-*

1 *forming subsection is no longer of any force or effect.]*

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

6 “**SECTION 3.** ORS 657.392 is amended to read:

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

12 “(2) The lien shall be perfected and attach:

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

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

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

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

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

24 “**SECTION 4.** ORS 657.396 is amended to read:

25 “657.396. (1) In any case in which the Director of the Employment De-
26 partment may bring a civil action for the collection of amounts liable to be
27 repaid under ORS 657.310 **or 657.315**, interest **accruing under ORS 657.310**
28 on those amounts or penalties, the Employment Department may instead:

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

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

5 “(2) At any time after issuing a warrant under this section, the depart-
6 ment may record the warrant in the County Clerk Lien Record of any county
7 of this state. Recording of the warrant has the effect described in ORS
8 205.125. After recording a warrant, the department may direct the sheriff for
9 the county in which the warrant is recorded to levy upon and sell the real
10 and personal property of the debtor found within that county, and to levy
11 upon any currency of the debtor found within that county, for the applica-
12 tion of the proceeds or currency against the amount reflected in the warrant
13 and the sheriff’s cost of executing the warrant. The sheriff shall proceed on
14 the warrant in the same manner prescribed by law for executions issued
15 against property pursuant to a judgment, and is entitled to the same fees as
16 provided for executions issued against property pursuant to a judgment. The
17 fees of the sheriff shall be added to and collected as a part of the warrant
18 liability.

19 “(3) In the discretion of the department a warrant under this section may
20 be directed to any agent authorized by the department to collect amounts
21 under this section, and in the execution of the warrant the agent has all of
22 the powers conferred by law upon sheriffs, but is entitled to no fee or com-
23 pensation in excess of actual expenses paid in the performance of such duty.

24 “(4) *[Interest upon the amounts liable to be repaid and the penalty]* **For**
25 **the collection of amounts liable to be repaid under ORS 657.310, inter-**
26 **est on those amounts and penalties** as set forth in the warrant shall be
27 paid and collected at the *[rate]* **rates** prescribed in ORS 657.310.

28 **“SECTION 5. The amendments to ORS 657.317, 657.392 and 657.396**
29 **by sections 2 to 4 of this 2021 Act apply to benefits determined on or**
30 **after the effective date of this 2021 Act to have been overpaid.**

1 **“SECTION 6.** ORS 657.320 is amended to read:

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

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

16 “(2) If an amount paid to an individual as benefits, for which the indi-
17 vidual has been found liable under the provisions of ORS 657.315 (1) [*to have*
18 *deducted from benefits payable*], has not been waived under ORS 657.317, paid
19 or deducted from benefits otherwise payable to the individual for any week
20 or weeks within five years following the week in which the decision estab-
21 lishing the overpayment became final, the overpayment together with the
22 record of the overpayment and the resulting shortage, shall be canceled and
23 the overpayment, excluding any amount chargeable to reimbursable employ-
24 ers, shall be permanently charged to the fund.

25 “(3) When in the judgment of the director the best interests of the Em-
26 ployment Department are served in an effort to settle accounts, the director
27 may waive, reduce or compromise any part or all of the interest or penalty
28 charged pursuant to ORS 657.310. The director may determine that the
29 amount of interest or penalty due and unpaid is uncollectible, and write the
30 amount off. In making the determination that interest or a penalty is un-

1 collectible, the director shall consider, among other factors:

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

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

5 “(c) The debtor’s financial condition and ability to pay the amount due,
6 both current and projected.

7 **“SECTION 7.** ORS 657.144 is amended to read:

8 “657.144. (1) An individual filing a new claim for benefits under this
9 chapter shall **be advised**, at the time the claim is filed with the Employment
10 Department, [*be advised*] that:

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

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

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

17 “(d) A recipient of benefits may elect under ORS 657.146 to have amounts
18 withheld from the recipient’s payment of benefits for federal and state in-
19 come tax purposes at the amount specified in:

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

22 “(B) ORS 657.146 for the voluntary withholding of unemployment benefits
23 for state income tax purposes.

24 “(2) The **Director of the** Employment Department shall provide informa-
25 tion [*to recipients of unemployment insurance benefits*] about the state and
26 federal earned income tax credits **to recipients of unemployment insur-**
27 **ance benefits.**

28 “(3) **The director shall make reasonable efforts to ensure that an**
29 **individual filing a new claim for benefits under this chapter is advised,**
30 **at the time the claim is filed with the department, that the individual**

1 may be subject to the procedures for recovery of benefits paid in error
2 set forth in ORS 657.315.

3 **SECTION 8. This 2021 Act being necessary for the immediate**
4 **preservation of the public peace, health and safety, an emergency is**
5 **declared to exist, and this 2021 Act takes effect on its passage.”.**

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