

# Senate Bill 448

Sponsored by Senator BONHAM (Pre-session filed.)

## SUMMARY

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

Repeals provisions requiring employers to pay overtime to agricultural workers who work in excess of maximum allowable hours.

Repeals provisions related to refundable income or corporate excise tax credit allowed to employer for excess amount of wages paid as overtime pay for agricultural workers.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to the repeal of provisions related to requirements for agricultural overtime; amending ORS  
3 314.772, 316.502, 317.850, 318.031, 653.055 and 653.256 and section 16, chapter 82, Oregon Laws  
4 2022, and section 12, chapter 115, Oregon Laws 2022; repealing sections 12, 13, 14 and 15,  
5 chapter 82, Oregon Laws 2022, and sections 1, 2, 4, 7, 8, 9, 10, 11, 4a, 6a, 6b, 12a and 12b, chapter  
6 115, Oregon Laws 2022; and prescribing an effective date.

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

8 **SECTION 1.** ORS 653.055, as amended by section 5, chapter 115, Oregon Laws 2022, is amended  
9 to read:

10 653.055. (1) Any employer who pays an employee less than the wages to which the employee is  
11 entitled under ORS 653.010 to 653.261 [*or section 2, chapter 115, Oregon Laws 2022,*] is liable to the  
12 employee affected:

13 (a) For the full amount of the wages, less any amount actually paid to the employee by the  
14 employer; and

15 (b) For civil penalties provided in ORS 652.150.

16 (2) Any agreement between an employee and an employer to work at less than the wage rate  
17 required by ORS 653.010 to 653.261 [*or section 2, chapter 115, Oregon Laws 2022,*] is no defense to  
18 an action under subsection (1) of this section.

19 (3) The Commissioner of the Bureau of Labor and Industries has the same powers and duties in  
20 connection with a wage claim based on ORS 653.010 to 653.261 [*and section 2, chapter 115, Oregon*  
21 *Laws 2022,*] as the commissioner has under ORS 652.310 to 652.445 and in addition the commissioner  
22 may, without the necessity of assignments of wage claims from employees, initiate suits against  
23 employers to enjoin future failures to pay required minimum wages or overtime pay and to require  
24 the payment of minimum wages and overtime pay due employees but not paid as of the time of the  
25 filing of suit. The commissioner may join in a single proceeding and in one cause of suit any number  
26 of wage claims against the same employer. If the commissioner does not prevail in such action, the  
27 commissioner shall pay all costs and disbursements from the Bureau of Labor and Industries Ac-  
28 count.

29 (4) The court may award reasonable attorney fees to the prevailing party in any action brought  
30 by an employee under this section.

**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       **SECTION 2.** ORS 653.256, as amended by section 6, chapter 115, Oregon Laws 2022, is amended  
2 to read:

3       653.256. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau  
4 of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person that  
5 willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060, 653.261, 653.265, 653.606, 653.611,  
6 653.616, 653.621, 653.626, 653.631 or 653.636 or section 5, chapter 537, Oregon Laws 2015, [*or section*  
7 *2, chapter 115, Oregon Laws 2022,*] or any rule adopted thereunder.

8       (2) In addition to any other penalty provided by law, the commissioner may assess a civil penalty  
9 not to exceed \$1,000 against any person that intentionally violates ORS 653.077 or any rule adopted  
10 thereunder.

11       (3) Civil penalties authorized by this section shall be imposed in the manner provided in ORS  
12 183.745.

13       (4)(a) All sums collected as penalties under this section shall be first applied toward reimburse-  
14 ment of costs incurred in determining the violations, conducting hearings under this section and  
15 addressing and collecting the penalties.

16       (b) The remainder, if any, of the sums collected as penalties under subsection (1) of this section  
17 shall be paid over by the commissioner to the Department of State Lands for the benefit of the  
18 Common School Fund of this state. The department shall issue a receipt for the money to the com-  
19 missioner.

20       (c) The remainder, if any, of the sums collected as penalties under subsection (2) of this section  
21 shall be paid over by the commissioner to the Department of Human Services for the benefit of the  
22 Breastfeeding Mother Friendly Employer Project. The department shall issue a receipt for the  
23 moneys to the commissioner.

24       **SECTION 3.** ORS 316.502, as amended by section 13, chapter 115, Oregon Laws 2022, is  
25 amended to read:

26       316.502. (1) The net revenue from the tax imposed by this chapter, after deducting refunds and  
27 amounts described in ORS 285B.630 and 285C.635, shall be paid over to the State Treasurer and held  
28 in the General Fund as miscellaneous receipts available generally to meet any expense or obligation  
29 of the State of Oregon lawfully incurred.

30       (2) A working balance of unreceipted revenue from the tax imposed by this chapter may be re-  
31 tained for the payment of refunds, but such working balance shall not at the close of any fiscal year  
32 exceed the sum of \$1 million.

33       (3) Moneys are continuously appropriated to the Department of Revenue to make:

34       (a) The refunds authorized under subsection (2) of this section; and

35       (b) The refund payments in excess of tax liability authorized under ORS 315.174, 315.262, 315.264,  
36 315.266 and 316.090 and section 3, chapter 589, Oregon Laws 2021[, *and section 8, chapter 115,*  
37 *Oregon Laws 2022*].

38       **SECTION 4.** ORS 317.850, as amended by section 14, chapter 115, Oregon Laws 2022, is  
39 amended to read:

40       317.850. (1) The net revenue from the tax imposed by this chapter, after deduction of refunds,  
41 shall be paid over to the State Treasurer and held in the General Fund as miscellaneous receipts  
42 available generally to meet any expense or obligation of the State of Oregon lawfully incurred.

43       (2) A working balance of unreceipted revenue from the tax imposed by this chapter may be re-  
44 tained for the payment of refunds, but such working balance shall not at the close of any fiscal year  
45 exceed the sum of \$500,000.

1 (3) Moneys are continuously appropriated to the Department of Revenue to make[.]

2 [(a)] the refunds authorized under subsection (2) of this section[; and]

3 [(b) *The refund payments in excess of tax liability authorized under section 8, chapter 115, Oregon*  
4 *Laws 2022*].

5 **SECTION 5.** ORS 314.772, as amended by section 11, chapter 34, Oregon Laws 2022, and section  
6 15, chapter 115, Oregon Laws 2022, is amended to read:

7 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to a  
8 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
9 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
10 allowable to the shareholders of the S corporation.

11 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.763, on  
12 income of the shareholder of an S corporation, there shall be taken into account the shareholder's  
13 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but  
14 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-  
15 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the  
16 manner prescribed under section 1377(a) of the Internal Revenue Code.

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

20 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
21 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
22 316.117, then that provision shall apply to the nonresident shareholder.

23 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104  
24 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141  
25 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture  
26 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS  
27 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee  
28 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution  
29 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy  
30 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-  
31 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-  
32 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),  
33 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS  
34 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS  
35 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643  
36 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account  
37 contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone  
38 facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research  
39 expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774,  
40 Oregon Laws 2013 (alternative fuel vehicle contributions), **and** section 2, chapter 34, Oregon Laws  
41 2022 (small forest option)[, and section 8, chapter 115, Oregon Laws 2022 (*agricultural overtime*  
42 *pay*)].

43 **SECTION 6.** ORS 318.031, as amended by section 12, chapter 34, Oregon Laws 2022, and section  
44 16, chapter 115, Oregon Laws 2022, is amended to read:

45 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter

1 317 shall be administered as uniformly as possible (allowance being made for the difference in im-  
 2 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-  
 3 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,  
 4 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and  
 5 315.643 and section 2, chapter 34, Oregon Laws 2022, [*and section 8, chapter 115, Oregon Laws*  
 6 *2022,*] (all only to the extent applicable to a corporation) and ORS chapter 317.

7 **SECTION 7.** Section 12, chapter 115, Oregon Laws 2022, is amended to read:

8 **Sec. 12.** [*Section 8 of this 2022 Act*] **The repeal of sections 8, 9, 10 and 11, chapter 115,**  
 9 **Oregon Laws 2022,** applies to **all** tax years [*beginning on or after January 1, 2023*].

10 **SECTION 8.** Section 16, chapter 82, Oregon Laws 2022, is amended to read:

11 **Sec. 16.** (1) The amendments to ORS 284.368 by section 1, **chapter 82, Oregon Laws 2022,** [*of*  
 12 *this 2022 Act*] apply to fiscal years beginning on or after July 1, 2022.

13 (2) The amendments to sections 3 and 5, chapter 589, Oregon Laws 2021, by sections 3 and 4,  
 14 **chapter 82, Oregon Laws 2022,** [*of this 2022 Act*] apply to tax years beginning on or after January  
 15 1, 2022, and before January 1, 2024, and to estimated payments due on and after June 15, 2022.

16 (3) The amendments to section 2, chapter 527, Oregon Laws 2021, by section 8, **chapter 82,**  
 17 **Oregon Laws 2022,** [*of this 2022 Act*] apply to applications for precertification under section 4,  
 18 chapter 527, Oregon Laws 2021, and applications for exemption under section 5, chapter 527, Oregon  
 19 Laws 2021, without precertification, filed on or after [*the effective date of this 2022 Act*] **June 3,**  
 20 **2022.**

21 (4) Section 10 [*of this 2022 Act*], **chapter 82, Oregon Laws 2022,** applies to tax years beginning  
 22 on or after January 1, 2022, and before January 1, 2026.

23 [(5) *Sections 13 and 15 of this 2022 Act apply to tax years beginning on or after January 1, 2023,*  
 24 *and before January 1, 2029, and to any tax year to which a net operating loss arising in those tax*  
 25 *years is carried back.*]

26 **SECTION 9.** (1) **Sections 1, 4, 4a, 6a, 6b, 7, 8, 9, 10, 11, 12a and 12b, chapter 115, Oregon**  
 27 **Laws 2022, and sections 12, 13, 14 and 15, chapter 82, Oregon Laws 2022, are repealed.**

28 (2) **Section 2, chapter 115, Oregon Laws 2022, as amended by section 3, chapter 115,**  
 29 **Oregon Laws 2022, is repealed.**

30 **SECTION 10.** **This 2023 Act takes effect on the 91st day after the date on which the 2023**  
 31 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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