

A-Engrossed
Senate Bill 164

Ordered by the Senate March 22
Including Senate Amendments dated March 22

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of State Treasurer Tobias Read)

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.

Makes employer's failure to comply with requirements of Oregon Retirement Savings Plan unlawful practice. Allows employee to file complaint with Commissioner of Bureau of Labor and Industries alleging unlawful practice. Authorizes Oregon Retirement Savings Board to request that commissioner investigate employer's compliance with requirements of plan.

[Requires] **Provides that** commissioner *[to]* **may** investigate employer's compliance upon receipt of employee complaint or upon receipt of request of board.

Requires commissioner to inform board of *[commissioner's findings]* **any final order determinations** regarding employer's compliance. Requires board to include *[findings]* **final order determinations** in annual report.

Authorizes commissioner to assess civil penalty **up to certain amount** for unlawful practice. **Permits commissioner to adjust amount of civil penalty upon showing of mitigating or aggravating circumstances.** Requires that moneys recovered from penalty be applied first toward reimbursement of costs commissioner incurred in conducting inquires and investigations. Requires remaining amounts to be deposited in Oregon Retirement Savings Plan Administrative Fund.

[Takes effect on 91st day following adjournment sine die.]

A BILL FOR AN ACT

1
2 Relating to the Oregon Retirement Savings Board; creating new provisions; and amending ORS
3 178.205, 178.215 and 178.225.

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

5 **SECTION 1. Sections 2 to 4 of this 2019 Act are added to and made a part of ORS 178.200**
6 **to 178.245.**

7 **SECTION 2. (1) It is an unlawful practice under ORS chapter 659A for an employer to fail**
8 **to comply with the requirements of the plan developed under ORS 178.205.**

9 **(2) An employee may file a complaint with the Commissioner of the Bureau of Labor and**
10 **Industries in the manner provided by ORS 659A.820, alleging an unlawful practice under this**
11 **section. A complaint may not be filed earlier than two years following the date by which an**
12 **employer is required to register with the plan, as prescribed by the Oregon Retirement**
13 **Savings Board by rule.**

14 **SECTION 3. (1) Upon receiving an employee complaint under section 2 of this 2019 Act**
15 **or upon request of the Oregon Retirement Savings Board under ORS 178.205, the Commis-**
16 **sioner of the Bureau of Labor and Industries may make inquiries and investigations in the**
17 **same manner as provided under ORS 659A.835.**

18 **(2) If the commissioner issues a final order determining that an employer engaged in an**
19 **unlawful practice under section 2 of this 2019 Act, the commissioner may impose civil pen-**

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.

alties under section 5 of this 2019 Act.

SECTION 4. (1) The Commissioner of the Bureau of Labor and Industries shall inform the Oregon Retirement Savings Board of any final orders issued under section 3 of this 2019 Act.

(2) The board shall include the commissioner's final order determinations related to employers' compliance in the annual reports described in ORS 178.235.

SECTION 5. (1)(a) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess against an employer who has engaged in an unlawful practice under section 2 of this 2019 Act a civil penalty in an amount up to \$100 for each employee who is eligible to participate in the plan developed under ORS 178.205, not to exceed an aggregate amount of \$5,000 in a calendar year.

(b) The commissioner may, upon a showing of any mitigating or aggravating circumstances, adjust the amount of a civil penalty imposed under this section.

(2) Civil penalties assessed under this section shall be imposed in the manner provided in ORS 183.745.

(3) Civil penalties recovered under this section shall be applied first toward reimbursing costs incurred by the commissioner in conducting inquiries and investigations under section 3 of this 2019 Act. Any remaining amounts shall be deposited in the Oregon Retirement Savings Plan Administrative Fund established under ORS 178.225 and made available for administrative costs and expenses of the Oregon Retirement Savings Board.

SECTION 6. ORS 178.205 is amended to read:

178.205. (1) The Oregon Retirement Savings Board shall develop a defined contribution retirement plan for persons employed for compensation in this state and conduct a market and legal analysis of the plan.

(2) The board shall have the following powers:

(a) To establish, implement and maintain the plan developed under this section.

(b) To adopt rules for the general administration of the plan as provided in ORS 178.215.

(c) To direct the investment of the funds contributed to accounts in the plan consistent with the investment restrictions established by the board. The investment restrictions must be consistent with the objectives of the plan, and the board shall exercise the judgment and care then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs with due regard to the probable income and level of risk from certain types of investments of money, in accordance with the policies established by the board.

(d) To collect application, account or administrative fees to defray the costs of administering the plan.

(e) To make and enter into contracts, agreements or arrangements, and to retain, employ and contract for any of the following considered necessary or desirable, for carrying out the purposes set forth in ORS 178.200 to 178.245:

(A) Services of private and public financial institutions, depositories, consultants, investment advisers, investment administrators and third-party plan administrators.

(B) Research, technical and other services.

(C) Services of other state agencies to assist the board in its duties.

(f) To evaluate the need for, and procure as needed, pooled private insurance of the plan.

(g) To develop and implement an outreach plan to gain input and disseminate information regarding the plan and retirement savings in general.

1 **(h) To request that the Commissioner of the Bureau of Labor and Industries investigate**
2 **an employer under section 3 of this 2019 Act to determine the employer's compliance with**
3 **the requirements of the defined contribution retirement plan developed under this section,**
4 **if, after three attempts, using different means of communication when available, to bring the**
5 **employer into compliance, the board has reasonable grounds to believe that the employer**
6 **remains in violation of the requirements of the plan.**

7 **SECTION 7.** ORS 178.215 is amended to read:

8 178.215. The Oregon Retirement Savings Board shall adopt rules that:

9 (1) Establish the process for voluntary enrollment in the plan developed under ORS 178.205, in-
10 cluding procedures for automatic enrollment of employees and for employees to opt out of the plan.

11 (2) Establish the process for participants to make the default contributions to plan accounts and
12 to adjust the contribution levels.

13 (3) Establish the process for employers to withhold employee contributions to plan accounts
14 from employees' wages and send the contributions to the investment administrator for the plan.

15 (4) Establish the process for allowing employees to opt out of enrollment in the plan.

16 (5) Establish the process for participants to make nonpayroll contributions to plan accounts.

17 (6) Set minimum, maximum and default contribution levels in accordance with limits established
18 by the Internal Revenue Code.

19 (7) Establish the process for withdrawals from plan accounts.

20 (8) Establish the process and requirements for an employer to obtain an exemption from offering
21 the plan if the employer offers a qualified retirement plan, including but not limited to a plan qual-
22 ified under section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p)
23 or section 457(b) of the Internal Revenue Code.

24 (9) Mandate the contents and frequency of required disclosures to employees, employers and
25 other plan participants. These disclosures must include, but need not be limited to:

26 (a) The benefits and risks associated with making contributions to the plan;

27 (b) Instructions for making contributions to the plan;

28 (c) How to opt out of the plan;

29 (d) How to participate in the plan with a level of contributions other than the default rate;

30 (e) The process for withdrawal of retirement savings;

31 (f) How to obtain additional information about the plan;

32 (g) That employees seeking financial advice should contact financial advisers, that participating
33 employers are not in a position to provide financial advice and that participating employers are not
34 liable for decisions employees make pursuant to ORS 178.200 to 178.245;

35 (h) That the plan is not an employer-sponsored retirement plan; *[and]*

36 (i) That the plan accounts and rate of return are not guaranteed by the state[.]; **and**

37 **(j) That employees may file a complaint under section 2 of this 2019 Act to report an**
38 **employer's failure to offer an opportunity to contribute to the plan developed under ORS**
39 **178.205 or another qualified retirement plan.**

40 **SECTION 8.** ORS 178.225 is amended to read:

41 178.225. (1) The Oregon Retirement Savings Plan Administrative Fund is established in the State
42 Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Retirement
43 Savings Plan Administrative Fund shall be credited to the fund. Moneys in the fund are continuously
44 appropriated to the Oregon Retirement Savings Board.

45 (2) The Oregon Retirement Savings Plan Administrative Fund consists of:

- 1 (a) Moneys appropriated to the fund by the Legislative Assembly;
2 (b) Moneys transferred to the fund from the federal government, other state agencies or local
3 governments;
4 (c) Moneys from the payment of fees and the payment of other moneys due the board;
5 (d) Any gifts or donations made to the State of Oregon for deposit in the fund; [*and*]
6 (e) Earnings on moneys in the fund[.]; **and**
7 **(f) Moneys from civil penalties recovered under section 5 of this 2019 Act.**
8 (3) The board may use the moneys in the fund to pay the administrative costs and expenses of
9 the board and the plan developed under ORS 178.205 and for any other purpose described in ORS
10 178.200 to 178.245.

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