

Enrolled Senate Bill 1033

Sponsored by Senator MANNING JR (at the request of Oregon Military Department)

CHAPTER

AN ACT

Relating to active service; creating new provisions; and amending ORS 399.075, 399.238, 399.240, 399.242, 399.275, 653.269 and 659A.086.

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

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 396.

SECTION 2. As used in this chapter and ORS chapter 399:

(1) "Active service" includes:

(a) Active service of the state.

(b) Service performed on full-time duty status under Title 10 of the United States Code.

(c) Service performed on full-time duty status under Title 32 of the United States Code when performed under an authority other than the Governor.

(2) "Active service of the state" means service performed while on full-time duty status for training, operational duty or other service of the organized militia under the authority of the Governor, whether paid from state funds or federal funds under Title 32 of the United States Code.

(3) "State active duty" means full-time duty status for training, operational duty or other service, other than inactive duty, of the organized militia performed under the authority of the Governor and paid from state funds.

SECTION 3. ORS 399.075 is amended to read:

399.075. (1)(a) The Adjutant General, with the approval of the Governor, may order members of the organized militia [*to state active duty as defined in the Oregon Code of Military Justice*] **into active service of the state.** [*Members, while on state active duty, shall receive not less than the pay and allowances of their corresponding grades in the Armed Forces of the United States in accordance with a schedule approved by the Adjutant General for the period of time in state active duty. State active duty under this subsection includes, but is not limited to, support of federal, state and local drug eradication, interdiction and other counterdrug operations under a counterdrug support plan approved by the Governor, and reasons related to homeland security.*]

(b) Active service of the state may be for a purpose that includes, but is not limited to, carrying out state or federal drug interdiction and counter-drug law enforcement activities under a drug interdiction and counter-drug activities plan approved by the Governor. When participating in such [*support operations*] **activities**, and to the extent authorized by 32 U.S.C. 112, applicable regulations of the National Guard Bureau and the [*Oregon Counterdrug Support Plan*] **drug interdiction and counter-drug activities plan approved by the Governor**, the Oregon Military Department is designated as a law enforcement agency for the purpose of carrying out federal asset forfeiture laws only.

[(2) Members of the organized militia serving on courts-martial, courts of inquiry, efficiency boards, medical boards or other special duty requiring absence from their stations or business under competent orders may be reimbursed for necessary expenses incurred at the rate established for state employees under appropriate travel regulations issued by the Oregon Department of Administrative Services.]

[(3) In lieu of other provisions of this chapter, a medical examiner may be paid for services and necessary disbursements and a properly appointed judge advocate may be paid for legal services and necessary disbursements in any suit, action or proceeding, such amounts as shall be approved by the Governor.]

[(4) Members of the organized militia shall not receive from the state the pay or the pay and allowances provided for by this section when eligible for such pay and allowances from federal funds.]

[(5) Notwithstanding any of the provisions of this chapter, members of the organized militia may with their consent perform without pay or without pay and allowances any of the types of military duty prescribed in this chapter and ORS chapters 396 and 398 pursuant to orders issued by competent military authority; provided however, that necessary traveling expenses, subsistence and per diem allowances may be furnished such members within the discretion of the Adjutant General and within the amount appropriated therefor.]

(2) A member serving in active service of the state may not receive less than the pay and allowances of the member's corresponding grade in the Armed Forces of the United States in accordance with a schedule approved by the Adjutant General for the period of time in active service of the state.

(3) When federal funds are authorized to provide for pay and allowances under this section, state funds may not be used to provide for the pay and allowances.

(4) Notwithstanding subsection (2) of this section:

(a) A medical examiner may be paid for services and necessary disbursements in an amount approved by the Governor.

(b) An appointed judge advocate may be paid for legal services and necessary disbursements in any suit, action or proceeding in an amount approved by the Governor.

(c) A member may consent to perform active service of the state without pay and allowances, provided that the member may, within the discretion of the Adjutant General, be paid for necessary traveling expenses, subsistence and per diem allowances.

(5) A member serving on a court-martial, court of inquiry, efficiency board, medical board or other special duty requiring the member's absence from the member's duty station or business may be reimbursed for actual and necessary travel or other expenses incurred within the limits established for state employees by the Oregon Department of Administrative Services under ORS 292.210 to 292.250.

(6) All pay and allowances [provided for by this chapter], except per diem, mileage and expenses while traveling under orders, shall be subject to be applied to the payment of:

(a) Penalties and fines imposed by a military [courts, and to the payment of] court.

(b) Any shortage of or injury to state or United States property or funds for which a member of the organized militia is responsible or accountable and where such responsibility has been fixed by competent authority.

(7)(a) Except as provided in paragraph (b) of this subsection, [members] a member of the organized militia who [are] is ordered to state active duty shall be considered a temporary [employees] employee of the military department.

(b) [Members] A member of the organized militia who [are] is ordered to state active duty [are] is not subject to ORS chapter 240 and ORS 243.650 to 243.809.

(8) The limitations on employment imposed by ORS 238.082 (2) and (3) do not apply to a retired member of the Public Employees Retirement System who [has attained normal retirement age and is on state active duty] is ordered into active service of the state. Hours served by a person under this subsection shall not be counted for the purpose of the limitations on employment imposed by ORS 238.082 (2) and (3).

SECTION 4. ORS 399.238, 399.240, 399.275 and 399.280 are added to and made a part of ORS chapter 399.

SECTION 5. ORS 399.238 is amended to read:

399.238. (1) As used in this section, "service member" means:

(a) A member of the organized militia who is called into active service [*under ORS chapter 399] of the state.*

(b) A member of the Oregon National Guard who is called into active service [*outside this state] under Title 10 [or Title 32] of the United States Code.*

(c) A member of the Oregon National Guard who is called into active service under Title 32 of the United States Code to perform under an authority other than the Governor.

(2) A service member may, while in active service or within one year after that service ends, apply to a court or an administrative body:

(a) For relief with respect to any obligation or liability incurred by the member before the period of active service began. The court or administrative body, after appropriate notice and hearing, may grant relief unless the court or administrative body determines that the ability of the member to comply with the terms of the obligation or liability has not been materially affected by active service.

(b) For a stay of a civil or administrative proceeding in which the service member is a party. The court or administrative body, after appropriate notice, shall grant the stay unless the court or administrative body determines that the ability of the service member to appear is not materially affected by active service.

(3) The court or administrative body may not charge or collect any fee from a service member who applies to the court or administrative body for relief under this section.

(4) An application filed under this section may not be deemed as consent to jurisdiction in any action or proceeding.

(5) The period of a service member's active service may not be included in computing any period limited by law, rule or order for bringing any action or proceeding before a court or administrative body for or against the service member or the service member's heirs, executors, administrators or assigns.

SECTION 6. ORS 399.240 is amended to read:

399.240. (1) As used in this section:

(a) "Interest" includes service charges, renewal fees or other charges or fees associated with an obligation or liability.

(b) "Service member" means:

(A) A member of the organized militia who is called into active service of the state [*by the Governor under ORS 399.065 (1)] for 30 or more consecutive days.*

(B) A member of the Oregon National Guard who is called into active [*federal*] service under Title 10 of the United States Code.

(C) A member of the Oregon National Guard who is called into active service under Title 32 of the United States Code to perform under an authority other than the Governor for 30 or more consecutive days.

(2) Notwithstanding ORS 82.010, 83.095, 708A.255, 723.502, 723.730 and 725.340, an obligation or liability bearing interest at a rate in excess of six percent per year incurred by a service member before being called into active service may not, during any part of the period of active service, bear interest in excess of six percent per year except by court order.

(3) The service member shall provide written notice to the creditor requesting that the rate of interest be reduced to six percent per year and shall include proof of the official orders showing that the service member is being called into active service [*of the state by the Governor under ORS 399.065 (1) or into active federal service under Title 10 of the United States Code*].

(4) A creditor that receives a request under subsection (3) of this section to reduce a rate of interest may apply to the court for a determination that the ability of a service member to pay interest on an obligation or liability at a rate in excess of six percent per year is not materially af-

ected because of the active service of the member. If a court determines that the ability of a service member to pay interest on an obligation or liability at a rate in excess of six percent per year is not materially affected because of the active service of the member, the court may order an interest rate that is just.

(5) A creditor must recompute the payment schedule to amortize the balance of the obligation or liability over the remainder of the obligation or liability at a rate of interest determined under subsection (2) or (4) of this section.

SECTION 7. ORS 399.242 is amended to read:

399.242. (1) As used in this section, "service member" means:

(a) A member of the organized militia who is called into active service of the state [by the Governor under ORS 399.065 (1)] for 30 or more consecutive days.

(b) A member of the Armed Forces of the United States, as that term is defined in ORS 366.931, who is called into active [federal] service under Title 10 of the United States Code.

(c) A member of the Oregon National Guard who is called into active service under Title 32 of the United States Code to perform under an authority other than the Governor for 30 or more consecutive days.

(2)(a) Except as provided in subsection (6) of this section, a service member who has obtained the following services from a telecommunications service provider, an Internet service provider, a health club as defined in ORS 431A.450, a health spa as defined in ORS 646A.030 or a provider of television services may terminate or suspend the provision of services upon written notice and as provided in paragraph (b) of this subsection:

(A) Telecommunications services.

(B) Internet services.

(C) Health spa services as defined in ORS 646A.030.

(D) Exercise or athletic activities offered by a health club.

(E) Television services, including but not limited to cable television, direct satellite and other television-like services.

(b) The service member must provide proof to the service provider of the official orders showing that the service member has been called into active service:

(A) At the time written notice is given; or

(B) If precluded by military necessity or circumstances that make the provision of proof at the time of giving written notice unreasonable or impossible, within 90 days after written notice has been given.

(3) A termination or suspension of services under this section is effective on the day written notice is given under subsection (2) of this section.

(4)(a) A service member who terminates or suspends the provision of services under this section and who is no longer in active service may reinstate the provision of services on the same terms and conditions as originally agreed to with the service provider before the termination or suspension upon written notice to the provider that the service member is no longer in active service. Written notice under this subsection must be given within 90 days after termination of the service member's active service.

(b) Upon receipt of the written notice of reinstatement, the service provider shall resume the provision of services or, if the services are no longer available, provide substantially similar services within a reasonable time not to exceed 30 days from the date of receipt of the written notice of reinstatement.

(5) A service member who terminates, suspends or reinstates the provision of services under this section:

(a) May not be charged a penalty, fee, loss of deposit or any other additional cost because of the termination, suspension or reinstatement; and

(b) Is not liable for payment for any services after the effective date of the termination or suspension, or until the effective date of a reinstatement of services as described in subsection (4) of this section.

(6) A service member may terminate a contract for any service provided by a commercial mobile radio services provider in accordance with 50 U.S.C. 535a.

SECTION 8. ORS 399.275 is amended to read:

399.275. (1) As used in this section and ORS 399.280:

(a) "Eligible post-secondary institution" has the meaning given that term in ORS 348.180.

(b) "Surviving family member" means a spouse or dependent of a member of the Oregon National Guard who is killed while [*on active duty*] **in active service**.

(2) Subject to the availability of funds, the Oregon Military Department may contract with the Higher Education Coordinating Commission to:

(a) Disburse to eligible post-secondary institutions the dollar amount of tuition waivers authorized by this section and approved for payment by the department; and

(b) Provide to the department a compilation of the total dollar amount of the tuition waivers approved for each academic term included in the contract.

(3) The department shall regularly provide to the commission the names of members of the Oregon National Guard and surviving family members for whom tuition waivers may be approved.

(4) Any member of the Oregon National Guard or surviving family member who registers for classes at an eligible post-secondary institution may receive a tuition waiver of up to 100 percent of the resident tuition charges imposed by that institution, except that in the case of a not-for-profit independent institution, the tuition waiver may not exceed 100 percent of the resident tuition at Oregon State University.

(5)(a) A member of the Oregon National Guard may receive the tuition waiver authorized by this section at any time if the member maintains satisfactory performance with the Oregon National Guard and pursues a course of study in the eligible post-secondary institution in a manner that satisfies the usual requirements of the institution.

(b) A surviving family member may receive the tuition waiver authorized by this section if the surviving family member pursues a course of study in the eligible post-secondary institution in a manner that satisfies the usual requirements of the institution.

(c) The member of the Oregon National Guard or surviving family member is responsible for payment of the balance of the tuition charges not provided for by the tuition waiver program.

(6) When determining to whom the tuition waivers shall be granted, priority shall be given to those members of the Oregon National Guard who have previously received tuition waivers while serving in the Oregon National Guard and surviving family members who have previously received tuition waivers.

(7) The department shall apply qualifications and limitations to the tuition waiver program that are consistent with efficient and effective program management as determined by the Adjutant General.

SECTION 9. ORS 653.269 is amended to read:

653.269. The provisions of ORS 653.268 relating to pay for overtime shall not apply to:

(1) Labor employed in forest fire fighting.

(2) Employees of any irrigation system district actually engaged in the distribution of water for irrigation or domestic use.

(3) Employees of a public employer, as defined in ORS 243.650, who are employed in fire protection or law enforcement activities, including security personnel in corrections institutions, as those employees and activities are defined by rule of the Commissioner of the Bureau of Labor and Industries.

(4) Employees of a people's utility district organized under ORS chapter 261.

(5) Employees exempted from overtime:

(a) By a public employer as defined in ORS 243.650 because of the executive, administrative, supervisory or professional nature of their employment as the nature of such employment is defined by rule of the Commissioner of the Bureau of Labor and Industries; or

(b) By a collective bargaining agreement expressly waiving application of ORS 653.268.

(6) Employees of a public employer as defined in ORS 243.650 engaged in the operation of a hospital or an establishment that is an institution primarily engaged in the care of persons who are sick or aged or have mental illness or mental retardation and who reside on the premises if, before performance of the work and pursuant to an agreement between the employer and employee or between the employer and the bargaining representative of the employees when the employees are represented under a collective bargaining agreement, a work period of 14 consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for the employee's employment in excess of eight hours in any workday and in excess of 80 hours in such 14-day period, the employee receives compensation at a rate not less than one and one-half times the rate at which the employee is employed.

(7) Members of the organized militia while [*on state active duty*] **in active service of the state** in accordance with ORS 399.075.

SECTION 10. ORS 659A.086 is amended to read:

659A.086. (1) An employee shall be granted a leave of absence by the employer of the employee to perform active state service if:

(a) The employee is a member of the organized militia of this state and is called into active service of the state under [*ORS 399.065 (1) or state active duty under ORS 399.075*] **ORS 399.065 or 399.075.**

(b) The employee is a member of the organized militia of another state and is called into active state service by the Governor of the respective state.

(2) The employer shall grant the employee a leave of absence until release from active state service permits the employee to resume the duties of employment. The regular employment position of an employee on a leave of absence for active state service under this section is considered vacant only for the period of the leave of absence. The employee is not subject to removal or discharge from the position as a consequence of the leave of absence.

(3) Upon the termination of the leave of absence for active state service, an employee shall:

(a) Resume the duties of employment within seven calendar days; and

(b) Be restored to the employee's position or an equivalent position by the employer without loss of seniority, vacation credits, sick leave credits, service credits under a pension plan or any other employee benefit or right that had been earned at the time of the leave of absence.

(4) An employer is not required to pay wages or other monetary compensation to an employee during a leave of absence required under subsection (1) of this section.

(5) Notwithstanding subsection (4) of this section:

(a) The State of Oregon shall continue coverage under an employer-sponsored health plan to an employee of the State of Oregon and any other individual provided coverage under the employee's plan on the day before the date the employee goes on leave for a period not exceeding a total of 12 months during a leave of absence required under subsection (1) of this section.

(b) An employer other than the State of Oregon may continue coverage under an employer-sponsored health plan to an employee and any other individual provided coverage under the employee's plan on the day before the date the employee goes on leave during a leave of absence required under subsection (1) of this section.

(6)(a) Notwithstanding subsection (4) of this section, the State of Oregon, a county, a municipality or other political subdivision of this state may establish and administer a donated leave program that:

(A) Allows an employee who is on a leave of absence required under subsection (1) of this section to receive donated leave; and

(B) Allows an employee to voluntarily donate vacation time to an eligible employee on a leave of absence required under subsection (1) of this section.

(b) An employee who is on a leave of absence required under subsection (1) of this section and who receives donated leave under paragraph (a) of this subsection may receive an amount of donated leave that supplements any pay received as a member of the organized militia, but may not

receive more than the amount the employee was earning in total compensation on the date the employee began the leave of absence.

(7) For the purpose of calculating total compensation under subsection (6) of this section, the State of Oregon, a county, a municipality or other political subdivision of this state shall:

(a) Include any amounts attributable to hours of overtime that equal the average number of hours of overtime for the same employee class;

(b) Determine the average number of hours of overtime for an employee class based on a reasonable expectation of the average number of hours of overtime employees in that class would perform over the course of a calendar year; and

(c) Maintain records of the average number of hours of overtime for each employee class for each calendar year.

(8) As used in this section:

(a) **“Active service of the state” has the meaning given that term in section 2 of this 2023 Act.**

[(a)] (b) “Employee” means any individual, other than a copartner of the employer or an independent contractor, who renders personal services in this state to an employer who pays or agrees to pay wages or other compensation to the individual for those services.

[(b)] (c) “Employee class” means a group of similarly situated employees whose positions have been designated by their employer in a policy or a collective bargaining agreement as having common characteristics.

[(c)] (d) “Employer” means any person who employs one or more employees in this state. The term includes the State of Oregon or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter, but does not include the federal government.

[(d)] (e) “Total compensation” means the total of an employee’s base salary, differentials and overtime.

Passed by Senate April 5, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 9, 2023

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Dan Rayfield, Speaker of House

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Approved:

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Tina Kotek, Governor

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