

SB 912-1
(LC 4028)
3/7/23 (JAS/ps)

Requested by SENATE COMMITTEE ON LABOR AND BUSINESS (at the request of Employment Department)

**PROPOSED AMENDMENTS TO
SENATE BILL 912**

1 On page 1 of the printed bill, delete lines 5 through 18 and delete pages
2 2 through 8 and insert:

3 **“SECTION 1. Sections 2 to 8 of this 2023 Act are added to and made**
4 **a part of ORS chapter 657B.**

5 **“SECTION 2. Deduction of benefits paid in error not due to recipi-**
6 **ent fault; director discretion; civil action by director. (1)(a) If the Di-**
7 **rector of the Employment Department decides that a covered**
8 **individual has been paid benefits to which the covered individual is**
9 **not entitled because of an error not due to the covered individual**
10 **providing a false statement or misrepresentation of a material fact or**
11 **not disclosing a material fact, or because an initial decision to pay**
12 **benefits is subsequently reversed by a decision finding that the covered**
13 **individual is not eligible for the benefits, then the covered individual**
14 **is liable to have the amount of any benefits paid in error deducted**
15 **from any future benefits otherwise payable to the covered individual**
16 **under this chapter for any week or weeks within five years following**
17 **the week in which the decision establishing the erroneous payment**
18 **became final.**

19 **“(b) For purposes of paragraph (a) of this subsection, the director**
20 **may deduct all or any part of the covered individual’s future weekly**
21 **benefits.**

1 “(c) Any notice provided to a covered individual of the covered
2 individual’s liability for recovery of benefits under this section must
3 include a description of:

4 “(A) The basis for the director’s decision that benefits have been
5 overpaid; and

6 “(B) The consequences of the overpayment, including recovery of
7 the overpaid amount and the possibility of waiver under section 3 of
8 this 2023 Act.

9 “(2) Subject to ORS 657B.410, a decision of the director under this
10 section does not authorize the recovery of the amount of any benefits
11 paid to a covered individual until the decision is final.

12 “(3) The director may bring a civil action against a covered indi-
13 vidual to recover amounts paid to the covered individual in excess of
14 the maximum benefits allowable pursuant to this chapter.

15 “SECTION 3. Waiver of recovery of overpaid benefits. (1) The Di-
16 rector of the Employment Department shall waive recovery of over-
17 paid benefits under section 2 of this 2023 Act if the director finds that
18 the benefits are recoverable due to a change in state law, the applica-
19 tion of which has caused the disqualification of benefits previously
20 paid.

21 “(2) The director may not waive recovery under this section of
22 overpaid benefits that are subject to the penalty imposed under ORS
23 657B.120 (3).

24 “(3) The director may waive establishment and recovery of overpaid
25 benefits when no decision has been issued under ORS 657B.120 or sec-
26 tion 2 of this 2023 Act and the amount of the overpayment is equal to
27 or less than one-half of the maximum weekly benefit amount in effect
28 at the time the overpayment is discovered.

29 “(4) Any waiver granted under this section extinguishes all liability
30 of the debtor for the waived amounts.

1 **“SECTION 4. Ineligibility for benefits upon conviction of fraud in**
2 **obtaining benefits.** (1) If a person is convicted by a court of competent
3 jurisdiction of willfully making a false statement or misrepresentation,
4 or willfully failing to report a material fact, to obtain any benefits
5 under this chapter, in addition to any penalties imposed by the court,
6 the person shall:

7 **“(a) Be ineligible for benefits based upon wages paid to the person**
8 **in the calendar quarter in which the person was convicted and in all**
9 **prior calendar quarters; and**

10 **“(b) Be ineligible for benefits after the conviction until the person**
11 **has reimbursed the Paid Family and Medical Leave Insurance Fund**
12 **established under ORS 657B.430 for the full amount received as a result**
13 **of the false statement or misrepresentation or of the failure to report**
14 **a material fact.**

15 **“(2) The provisions of this section are in addition and supplemental**
16 **to the provisions of ORS 657B.120.**

17 **“SECTION 5. Cancellation of unrecoverable benefits.** (1)(a) If any
18 amount paid to a covered individual as benefits, for which the covered
19 individual has been found liable under the provisions of ORS 657B.120
20 to repay or to have deducted from benefits payable, has been neither
21 repaid nor deducted within a period of five years following the date the
22 decision establishing the overpayment became final, and is equal to
23 or less than one-half of the state maximum weekly benefit amount in
24 effect at the time the overpayment is discovered, or determined by the
25 Director of the Employment Department to be uncollectible, the
26 overpayment, together with the record of the overpayment and the
27 resulting shortage, may be canceled.

28 **“(b) Notwithstanding paragraph (a) of this subsection, the over-**
29 **payment may not be canceled if the debt is being recovered by pay-**
30 **ments or deductions that were received within the last three months**

1 or if repayment of the overpayment is required under section 4 of this
2 2023 Act.

3 “(2) If an amount paid to a covered individual as benefits, for which
4 the covered individual has been found liable under the provisions of
5 section 2 of this 2023 Act to have deducted from benefits payable, has
6 not been waived under section 3 of this 2023 Act, paid or deducted from
7 benefits otherwise payable to the covered individual for any week or
8 weeks within five years following the week in which the decision es-
9 tablishing the overpayment became final, the overpayment, together
10 with the record of the overpayment and the resulting shortage, shall
11 be canceled.

12 “(3) When in the judgment of the director the best interests of the
13 Employment Department are served in an effort to settle accounts, the
14 director may waive, reduce or compromise any part or all of the in-
15 terest or penalty charged pursuant to ORS 657B.120. The director may
16 determine that the amount of interest or penalty due and unpaid is
17 uncollectible, and write off the amount. In making the determination
18 that interest or a penalty is uncollectible, the director shall consider,
19 among other factors:

20 “(a) The administrative costs of continued collection efforts in re-
21 lation to the amount due;

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

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

26 “SECTION 6. Request for offset of moneys owed to debtor by De-
27 partment of Revenue against certain amounts owed by debtor; fees.

28 (1)(a) The Director of the Employment Department may pay a fee
29 charged by the Department of Revenue pursuant to ORS 293.250 for
30 processing a request to offset against liquidated state debt a state tax

1 refund owed to the debtor.

2 “(b) The net amount received from the Department of Revenue af-
3 ter deduction of fees charged under paragraph (a) of this subsection
4 shall be offset against the debt.

5 **“SECTION 7. Penalties for employers with employer-offered benefit**
6 **plans.** (1) If the Director of the Employment Department determines
7 that an employer that offers benefits pursuant to a plan approved
8 under ORS 657B.210 has at any time violated any requirements appli-
9 cable to plans approved under ORS 657B.210, the director may assess
10 the following penalties against the employer:

11 “(a) \$1,000 for the first violation.

12 “(b) \$2,000 for the second and each subsequent violation.

13 “(2) The director may waive collection of a penalty assessed under
14 subsection (1) of this section if the employer corrects the violation
15 within 30 days of receiving a notice of the violation and the notice is
16 for a first violation.

17 “(3) The director may waive collection of any penalties if the di-
18 rector determines the violation to be an inadvertent error by the em-
19 ployer.

20 “(4) Monetary penalties collected under this section shall be depos-
21 ited in the Paid Family and Medical Leave Insurance Fund established
22 under ORS 657B.430.

23 “(5) The decision of the director to assess a penalty under this sec-
24 tion shall become final unless within 20 days following the date of the
25 notice informing the employer of the penalty, the employer submits a
26 written request for a hearing under ORS 657B.410 to review the
27 director’s decision. A decision of the director to assess a penalty under
28 this section does not authorize the collection of the penalty until the
29 decision becomes final.

30 **“SECTION 8. Authority of director to compromise or adjust debts**

1 **or overpayments. When in the judgment of the Director of the Em-**
2 **ployment Department the best interests of the Employment Depart-**
3 **ment are served, the director may:**

4 “(1) Waive, reduce or compromise any balance of \$10 or less from
5 a contribution due under ORS 657B.150; or

6 “(2) Retain any overpayment of \$10 or less from a contribution paid
7 under ORS 657B.150.

8 “**SECTION 9.** ORS 657B.120 is amended to read:

9 “657B.120. (1) An employer may not willfully make or cause to be made
10 false statements or willfully fail to report a material fact regarding the claim
11 of an eligible employee or regarding an employee’s eligibility for family and
12 medical leave insurance benefits under this chapter.

13 “(2) The Director of the Employment Department may assess a civil pen-
14 alty in an amount not to exceed \$1,000 against an employer for each occur-
15 rence that violates subsection (1) of this section.

16 “(3) If the director determines that a covered individual willfully made a
17 false statement or willfully failed to report a material fact in order to obtain
18 benefits under this chapter, the covered individual is:

19 “(a) Disqualified from claiming benefits for one year; and

20 “(b) Liable for a penalty imposed at a rate prescribed by the director of
21 at least 15 percent, but not greater than 30 percent, of the amount of benefits
22 the **covered** individual received to which the **covered** individual was not
23 entitled.

24 “(4)(a) If the director determines that a covered individual has received
25 benefits to which the **covered** individual was not entitled, the director may:

26 “[a] (A) Seek repayment of benefits from the covered individual in a
27 manner prescribed by the director by rule; [and] or

28 “[b] (B) Have the amount of the benefits deducted from any future
29 benefits otherwise payable to the **covered** individual under ORS 657B.100.

30 “(b) For purposes of paragraph (a)(B) of this subsection, the direc-

1 tor may deduct all or any part of the covered individual's future
2 weekly benefits.

3 **“(c) Except as provided in paragraph (d) of this subsection, benefits**
4 **described in paragraph (a) of this subsection may be collected for any**
5 **week or weeks within five years following the week in which the de-**
6 **cision establishing the erroneous payment became final.**

7 **“(d) Notwithstanding paragraph (c) of this subsection, overpaid**
8 **benefits subject to the penalty imposed under subsection (3)(b) of this**
9 **section may be collected at any time.**

10 **“(e) Notice provided to a covered individual of the covered**
11 **individual's liability for recovery of benefits under this section must**
12 **include a description of:**

13 **“(A) The basis for the director's decision that benefits have been**
14 **overpaid; and**

15 **“(B) The consequences of the overpayment, including the methods**
16 **of recovery of the overpaid amount, with interest and penalties, and**
17 **the possibility of waiver under section 3 of this 2023 Act.**

18 **“(5) If benefits are paid because of an error that is not due to provision**
19 **of a false statement, nondisclosure of a material fact or misrepresentation**
20 **by a covered individual, the director may waive, in whole or in part, the**
21 **amount of any such payments for which recovery under subsection (4) of this**
22 **section would be against equity, good conscience or administrative efficiency.**

23 **“(6) A decision of the director under this section does not authorize the**
24 **recovery of the amount of any benefits paid to a covered individual until the**
25 **decision is final and the decision specifies:**

26 **“(a) That the covered individual, by reason of false statement,**
27 **nondisclosure or misrepresentation, is liable to repay the amount to the Paid**
28 **Family and Medical Leave Insurance Fund established under ORS 657B.430;**

29 **“(b) The nature of the false statement, nondisclosure or misrepresen-**
30 **tation;**

1 “(c) The week or weeks for which the benefits were paid; and

2 “(d) That any amount subject to recovery and any penalty due under this
3 section may be collected by the director in a civil action against the em-
4 ployer or covered individual brought in the name of the director.

5 **“(7)(a) The director may bring a civil action against a covered in-
6 dividual to collect any amount subject to recovery and any penalty due
7 under this section.**

8 **“(b) Any judgment rendered shall bear interest at the rate provided
9 in subsection (8) of this section.**

10 **“(8) Interest on any amount liable to be repaid under this section
11 shall be paid and collected at the same time repayment of benefits is
12 made by the covered individual, at the rate of one percent per month.
13 In computing the interest, a fraction of a month shall be counted as
14 a full month.**

15 **“(9)(a) Deductions from paid family and medical leave insurance
16 benefits pursuant to subsection (4) of this section shall be applied
17 solely to the amount of the benefits liable to be repaid under this
18 section.**

19 **“(b) All other payments shall be applied first to court costs, then
20 to penalties, then to interest, then to the amount liable to be repaid.**

21 **“(10) The following amounts collected under this section shall be
22 paid into the Paid Family and Medical Leave Insurance Fund estab-
23 lished under ORS 657B.430:**

24 **“(a) Amounts in repayment of benefits;**

25 **“(b) Amounts collected as interest under subsection (8) of this sec-
26 tion; and**

27 **“(c) The penalties imposed under subsection (3)(b) of this section.**

28 “[(7)] (11) The director shall adopt rules establishing standards and pro-
29 cedures for the repayment of benefits and payment of penalties and interest
30 under this section.

1 “[8] (12) An employer or covered individual may appeal a determination
2 made under this section as provided in ORS 657B.410.

3 **“SECTION 10.** ORS 657B.280 is amended to read:

4 “657B.280. (1) This section applies to:

5 “(a) An employer that fails to remit to the Department of Revenue any
6 amount of contributions due under ORS 657B.150;

7 “(b) An individual liable to repay any amount of benefits paid under this
8 chapter to which the individual was not entitled; [*and*]

9 “(c) A person liable under ORS 657B.330 for amounts due under this
10 chapter[.];

11 **“(d) A self-employed individual or tribal government that fails to**
12 **remit to the Department of Revenue any amount of contributions due**
13 **under ORS 657B.130;**

14 **“(e) An employer liable to repay any amount of grant moneys**
15 **awarded under ORS 657B.200 for which the employer was not eligible;**
16 **and**

17 **“(f) An individual or an employer liable for any amounts due under**
18 **this chapter.**

19 “(2) If a judgment or final administrative order is rendered in favor of the
20 Director of the Employment Department for amounts described in subsection
21 (1) of this section, the amounts shall be a lien in favor of the director upon
22 all property, whether real or personal, belonging to the employer, individual
23 or person.

24 “(3) The lien shall be perfected and attach:

25 “(a) To real and personal property located within the county, upon the
26 recording of a warrant, as provided in ORS 657B.300, with the clerk of the
27 county in which the property is located.

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

29 “(A) The recording of a warrant, as provided in ORS 657B.300, with the
30 clerk of any county; and

1 “(B) The filing of a copy of the warrant with the Secretary of State as
2 provided in ORS 657B.290.

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

6 **“SECTION 11.** ORS 657B.320 is amended to read:

7 “657B.320. (1) If an employer defaults with respect to any amount of con-
8 tributions required to be made by the employer to the Paid Family and
9 Medical Leave Insurance Fund established under ORS 657B.430 **or with re-**
10 **spect to the repayment of any grant moneys awarded to the employer**
11 **under ORS 657B.200 for which the employer was not eligible**, the unpaid
12 amount, together with interest and penalties, shall be collected by the Di-
13 rector of the Employment Department in a civil action against the employer
14 brought in the name of the director.

15 “(2)(a) Judgment rendered on a civil action brought under subsection (1)
16 of this section in favor of the director shall bear interest at the rate provided
17 in subsection (3) of this section.

18 “(b) An employer’s compliance with the requirements of ORS 657B.150
19 shall date from the time that contributions were collected from the employer
20 **or grants were received by the employer.**

21 “(c) The amount of contributions **or any grant repayment described in**
22 **subsection (1) of this section** collected from an employer, together with
23 interest and penalties, shall be paid into the fund.

24 “(3)(a) Interest upon any amounts due from an employer shall be paid and
25 collected at the rate of one and one-half percent per month from the date
26 prescribed for the payment to the fund. In computing the interest, a fraction
27 of a month shall be counted as a full month.

28 “(b) Interest shall be paid at the same time contributions **or grant re-**
29 **payments** are required to be paid by the employer to the fund.

30 “(4) If an employer fails to pay contributions required by ORS 657B.150

1 at the time prescribed by the director, the employer shall be in default.

2 **“(5) If an employer is awarded grant moneys under ORS 657B.200 for**
3 **which the employer was not eligible and the employer fails to repay**
4 **the moneys to the Employment Department within 30 days after re-**
5 **ceiving notice from the department explaining the employer’s obli-**
6 **gation to repay the moneys, the employer shall be in default.**

7 “[5] (6) If an employer that is in default with respect to payment of
8 contributions **or a grant repayment** fails to make payment within 10 days
9 after written demand has been made by the director, the employer shall be
10 subject to a penalty of 10 percent of the amount of the contributions **or the**
11 **grant repayment.** A demand for payment shall be deemed to have been made
12 when deposited in the mail addressed to the employer at the employer’s last
13 known address of record with the director.

14 “[6] (7)(a) If any part of a deficiency is due to fraud with intent to avoid
15 payment of contributions to the fund, then 50 percent of the total amount
16 of the deficiency, in addition to the deficiency, shall be assessed, collected
17 and paid, in the same manner as if it were a deficiency, and deposited in the
18 fund.

19 **“(b) If an employer’s award of grant moneys under ORS 657B.200**
20 **was obtained by fraud or misrepresentation by the employer, then 50**
21 **percent of the total amount of the grant award, in addition to the**
22 **amount of the grant repayment due to the department, shall be as-**
23 **essed, collected and paid, in the same manner as if it were a defi-**
24 **ciency, and deposited in the fund.**

25 “[7] (8) Civil actions brought in the name of the director under this
26 section to collect contributions, **grant repayments**, interest or penalties
27 from an employer shall be entitled to preference upon the calendar over all
28 civil cases that involve only private parties.

29 “[8)(a)] (9)(a) Notwithstanding the provisions of this section, the director
30 may agree to accept from an employer or former employer with a delinquent

1 account any amount the director finds reasonable under the circumstances
2 as consideration in settlement of the full amount of contributions, **grant**
3 **repayments**, interest or penalties due if the director finds that:

4 “(A) The total interest collectible on the delinquent account is in excess
5 of 25 percent of the principal;

6 “(B) The employer or former employer no longer conducts an active
7 business and has insufficient net assets to pay the full amount of all con-
8 tributions, **grant repayments**, interest or penalties due; and

9 “(C) The employer or former employer can pay some but not all of the
10 delinquent amounts.

11 “(b) Whenever a settlement agreement is made pursuant to paragraph (a)
12 of this subsection, a written record signed by the director shall be main-
13 tained in the files of the director. Such records shall set forth:

14 “(A) The name of the employer or former employer against whom the li-
15 ability was assessed;

16 “(B) The amount of the assessed liability;

17 “(C) The amount of the liability paid;

18 “(D) The amount of the liability canceled or waived; and

19 “(E) A sworn statement of the employer or former employer setting forth
20 the complete financial responsibility of the employer or former employer and
21 containing a full disclosure of all matters bearing upon the ability of the
22 employer or former employer to pay the full amount of the liability assessed.

23 “[~~(9)~~] **(10)** The director shall file a full and true copy of the record of each
24 settlement agreement with the Secretary of State as a public record.

25 “[~~(10)~~] **(11)** Any amount agreed to in settlement of the director’s claims
26 on behalf of the fund pursuant to subsection [~~(8)(a)~~] **(9)(a)** of this section
27 shall be first credited to the contributions **or grant repayments** due from
28 the employer or former employer, **whichever is applicable**, until the prin-
29 cipal amount of contributions **or grant repayments** due has been satisfied
30 and shall be deposited in the fund.

1 **“SECTION 12.** ORS 657B.410 is amended to read:

2 “657B.410. (1) The Director of the Employment Department shall establish
3 a process by which:

4 “(a) An employer may request a hearing to obtain review of a final deci-
5 sion of the director regarding **any of the following:**

6 **“(A)** Approval or denial of an employer’s application for approval of a
7 plan under ORS 657B.210[.];

8 **“(B) The assessment of penalties under section 7 of this 2023 Act;**
9 **or**

10 **“(C) A determination made under ORS 657B.120.**

11 “(b) A covered individual may request a hearing to obtain review of a
12 final decision of the director regarding **any of the following:**

13 “(A) Approval or denial of a claim submitted to the director for payment
14 of family and medical leave insurance benefits;

15 “(B) The weekly benefit amount payable to a covered individual as de-
16 termined under ORS 657B.050; or

17 “(C) Disqualification from the receipt of benefits including liability or
18 repayment of benefits as determined under ORS 657B.120 **and section 2 of**
19 **this 2023 Act.**

20 “(2) Notwithstanding ORS 183.315, the process established by the director
21 under this section shall comply with provisions for a contested case under
22 ORS chapter 183 and is subject to judicial review as provided in ORS 183.482.

23 **“SECTION 13. Applicability.** (1) **Sections 2 to 5 of this 2023 Act and**
24 **the amendments to ORS 657B.120 by section 9 of this 2023 Act apply**
25 **to benefits paid on or after September 3, 2023.**

26 **“(2) Section 6 of this 2023 Act applies to amounts owed by a debtor**
27 **on or after January 1, 2023.**

28 **“(3) Section 7 of this 2023 Act applies to penalties assessed on or**
29 **after September 3, 2023.**

30 **“(4) Section 8 of this 2023 Act applies to contributions due or paid**

1 on or after January 1, 2023.

2 “(5) The amendments to ORS 657B.280 by section 10 of this 2023 Act
3 apply to amounts due or liable to be repaid on or after January 1, 2023.

4 “(6) The amendments to ORS 657B.320 by section 11 of this 2023 Act
5 apply to grant moneys awarded on or after September 3, 2023.

6 “(7) The amendments to ORS 657B.410 by section 12 of this 2023 Act
7 apply to final decisions of the director issued on or after September
8 3, 2023.

9 “SECTION 14. The section captions used in this 2023 Act are pro-
10 vided only for the convenience of the reader and do not become part
11 of the statutory law of this state or express any legislative intent in
12 the enactment of this 2023 Act.

13 “SECTION 15. This 2023 Act takes effect on the 91st day after the
14 date on which the 2023 regular session of the Eighty-second Legislative
15 Assembly adjourns sine die.”.

16
