

Senate Bill 845

Sponsored by COMMITTEE ON WORKFORCE

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**.

Establishes penalty to be imposed by Employment Department on large employers whose employees receive health care coverage through medical assistance program. Appropriates penalties collected by department to Oregon Health Authority for specified purposes. Establishes remedy for employee who is retaliated against by employer for applying for or receiving medical assistance or premium tax credits under Patient Protection and Affordable Care Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to health care for low-income workers; creating new provisions; amending ORS 657.601,
3 657.610, 657.625, 657.630, 657.635, 657.640, 657.646, 657.660 and 657.665 and 659A.885; and de-
4 claring an emergency.

5 Whereas working Oregonians should have affordable, comprehensive health insurance coverage;
6 and

7 Whereas most working Oregonians obtain their health insurance coverage through their em-
8 ployment, but some working Oregonians receive coverage of their health care costs through the
9 medical assistance program or through qualified health plans purchased on the health insurance
10 exchange; and

11 Whereas the federal Patient Protection and Affordable Care Act (P.L. 111-148), as amended by
12 the Health Care and Education Reconciliation Act (P.L. 111-152) (Affordable Care Act), is expected
13 to reduce the number of Oregonians without health insurance coverage by providing coverage
14 through changes to the medical assistance program and the creation of the exchange; and

15 Whereas although the Affordable Care Act sets a standard for what constitutes affordable,
16 employment-based coverage and imposes penalties on any large employer whose full-time, nonsea-
17 sonal employees receive coverage through the exchange, federal law imposes no penalty on large
18 employers whose employees receive coverage through the taxpayer-funded medical assistance pro-
19 gram; and

20 Whereas employers who fail to provide affordable coverage to low-wage workers who are cov-
21 ered by medical assistance shift the cost of health care coverage from the employer to the taxpayer;
22 and

23 Whereas employers can avoid the employer responsibility penalty of the Affordable Care Act
24 by reducing wages, hours worked or both, so that workers are no longer full-time, full-year employ-
25 ees within the meaning of the Affordable Care Act; and

26 Whereas workers who face low wages, work part-time or both are too often eligible for
27 taxpayer-funded medical assistance instead of affordable, employer-based coverage; and

28 Whereas persons who are covered by health insurance have better health outcomes than those
29 who lack coverage; and

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 Whereas persons without health insurance coverage are more likely to be in poor health, more
2 likely to miss needed medications and treatment and more likely to have chronic conditions that are
3 not properly managed; and

4 Whereas persons without health insurance coverage are at risk of financial ruin because med-
5 ical debt is the second most common cause of personal bankruptcy in the United States; and

6 Whereas taxpayers, through state and local governments, fund county clinics, community clinics
7 and other safety net providers that provide care to those working people whose employers fail to
8 provide affordable health insurance coverage to their employees as well as to other uninsured per-
9 sons; and

10 Whereas controlling health care costs can be more readily achieved if a greater share of work-
11 ing people and their families have employer-sponsored health insurance so that cost shifting is
12 minimized; and

13 Whereas the social and economic burden created by the lack of health insurance coverage for
14 some workers and the coverage of other workers through the medical assistance program creates
15 a burden on other employers, the state, affected workers and the families of affected workers who
16 suffer ill health and risk financial ruin; now, therefore,

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

18 **SECTION 1. The purpose of sections 1 to 5 of this 2015 Act is to:**

19 **(1) Ensure that large employers pay a fair share penalty for health care coverage pro-**
20 **vided to their employees through the medical assistance program and to base that penalty**
21 **on the cost of employee-only health insurance provided by other large employers to their**
22 **employees.**

23 **(2) Encourage large employers to provide affordable health insurance coverage to low-**
24 **wage employees who would otherwise be enrolled in the medical assistance program and to**
25 **discourage employers from reducing hours, wages or both in order to avoid the employer**
26 **responsibility penalty of the Patient Protection and Affordable Care Act (P.L. 111-148), as**
27 **amended by the Health Care and Education Reconciliation Act (P.L. 111-152).**

28 **(3) Protect employees who receive medical assistance from retaliation by their employers**
29 **for seeking or obtaining medical assistance.**

30 **(4) Pay the state's share of the costs of medical assistance provided to working adults**
31 **who lack affordable employer-sponsored health insurance, improve reimbursement to the**
32 **health care providers who care for these workers and support the safety net providers that**
33 **care for the remaining uninsured workers.**

34 **SECTION 2. As used in sections 1 to 5 of this 2015 Act:**

35 **(1)(a) "Covered employee" means an individual who meets all of the following conditions:**

36 **(A) The individual is an employee of a large employer.**

37 **(B) The individual is enrolled in medical assistance on the basis of the individual's modi-**
38 **fied adjusted gross income in accordance with the Patient Protection and Affordable Care**
39 **Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act (P.L.**
40 **111-152).**

41 **(C) The individual is not enrolled in medical assistance by reason of a disability or being**
42 **over 65 years of age.**

43 **(b) A "covered employee" includes a leased employee or other individual under the di-**
44 **rection and control of the employer.**

45 **(2)(a) "Employer" means an employing unit as defined in ORS 657.020.**

1 (b) An employer includes all of the members of a controlled group of corporations.

2 (c) As used in this subsection, a “controlled group of corporations” means a controlled
3 group of corporations as defined in section 1563(a) of the Internal Revenue Code, except that
4 “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears
5 in section 1563(a)(1) of the Internal Revenue Code, and the determination shall be made
6 without regard to sections 1563(a)(4) and 1563(e)(3)(C) of the Internal Revenue Code.

7 (3) “Fund” means the Employer Responsibility for Medical Assistance Trust Fund, cre-
8 ated in section 5 of this 2015 Act.

9 (4)(a) “Large employer” includes:

10 (A) Any employer employing for wages or salary 50 or more persons to work in this state
11 during any calendar quarter in a year for which the employer responsibility penalty is cal-
12 culated; and

13 (B) Employers that are nonprofit entities for purposes of state or federal corporate in-
14 come taxes, for purposes of state or local property taxes or for any other tax purpose.

15 (b) “Large employer” does not include a public employer as defined in ORS 243.650.

16 (5) “Medical assistance” has the meaning given that term in ORS 414.025.

17 (6) “Safety net provider” means any provider of comprehensive primary care or acute
18 hospital inpatient services that provides these services to a significant total number of
19 medical assistance and medically indigent patients in relation to the total number of patients
20 served by the provider.

21 (7) “Wages” means wages as defined in ORS 657.105 and paid directly to an individual by
22 the individual’s employer.

23 **SECTION 3.** (1) Except as otherwise provided in section 4 of this 2015 Act, every large
24 employer shall pay to the Employment Department an employer responsibility penalty for
25 each covered employee, as determined under subsection (3) of this section.

26 (2) Each year the Department of Consumer and Business Services shall report to the
27 Employment Department the average cost of a full year of coverage under a silver level
28 health benefit plan offered through the health insurance exchange.

29 (3) For each large employer, the Employment Department shall:

30 (a) Multiply the amount reported by the Department of Consumer and Business Services
31 in subsection (2) of this section by the number of the employer’s employees who are enrolled
32 in a health benefit plan offered by the employer;

33 (b) Multiply the product calculated in paragraph (a) of this subsection by 0.9; and

34 (c) Impose a employer responsibility penalty on the employer that is equal to the product
35 calculated in paragraph (b) of this subsection.

36 (4) All moneys collected pursuant to this section shall be deposited in the Employer Re-
37 sponsibility for Medical Assistance Trust Fund created in section 5 of this 2015 Act.

38 **SECTION 4.** (1) The Employment Department has the power and duties necessary to ad-
39 minister the collection and enforcement of employer responsibility penalties required to be
40 remitted by large employers under this section and section 3 of this 2015 Act.

41 (2) A large employer shall pay to the department, for deposit into the Employer Respon-
42 sibility for Medical Assistance Trust Fund, any penalties imposed on the large employer
43 pursuant to section 3 of this 2015 Act.

44 (3) The department shall annually send to each large employer subject to an employer
45 responsibility penalty under section 3 of this 2015 Act a notice of any employer responsibility

1 penalty imposed and the date on which payment is due. The amount of the penalty shall be-
2 come conclusive and binding upon the employer unless, within 20 days after the mailing of
3 the notice to the last-known address of the employer as shown on the records of the de-
4 partment, or in the absence of mailing, within 20 days after the delivery of the notice, the
5 employer files a request for hearing. Hearings shall be conducted in accordance with ORS
6 chapter 183.

7 (4) Interest shall be assessed on employer responsibility penalties not paid on or before
8 payment is due at 10 percent per annum. Interest shall begin to accrue the day after the date
9 the payment is due and shall be deposited into the Employer Responsibility for Medical As-
10 sistance Trust Fund.

11 (5) If an employer responsibility penalty payment is more than 60 days overdue, a penalty
12 equal to the interest charged as described in subsection (4) of this section shall be assessed
13 and due for each month, or part thereof, that the employer responsibility penalty payment
14 is not received. Penalties collected under this subsection shall be deposited in the Employer
15 Responsibility for Medical Assistance Trust Fund.

16 (6) All penalties shall be paid to and collected by the department at such times and in
17 such manner as the department may prescribe and upon collection shall be deposited in the
18 Employer Responsibility for Medical Assistance Trust Fund.

19 (7) A large employer shall provide information to all newly hired and existing employees
20 regarding the availability of medical assistance for low-income employees and regarding the
21 employees' rights under section 7 of this 2015 Act. The department, in consultation with the
22 Oregon Health Authority, shall develop a simple, uniform notice containing the information.

23 (8) Any employer that is assessed an employer responsibility penalty under section 3 of
24 this 2015 Act is liable for the amount assessed.

25 **SECTION 5.** (1) The Employer Responsibility for Medical Assistance Trust Fund is hereby
26 created in the State Treasury separate and distinct from the General Fund.

27 (2) The fund consists of moneys collected pursuant to this section and section 4 of this
28 2015 Act.

29 (3) Moneys in the fund are appropriated to the Oregon Health Authority.

30 (4) Moneys in the fund shall be used for the following purposes:

31 (a) To provide payment for the state's share of medical assistance costs for covered
32 employees.

33 (b) To increase reimbursement to health care providers located in health profession
34 shortage areas or medically underserved areas as designated by the Office of Rural Health.
35 The supplemental payments shall be for both fee-for-service medical assistance and care
36 provided by coordinated care organizations.

37 (c) To make supplemental medical assistance payments to providers in practice settings
38 in which 30 percent or more of the patients are medical assistance recipients or uninsured.

39 (d) To provide reimbursement to safety net providers that provide care without expecta-
40 tion of compensation to those Oregonians who do not have minimum essential coverage as
41 defined in 26 U.S.C. 5000A.

42 (e) To fund medical residency programs.

43 (5) All costs to implement and administer sections 1 to 5 and 6 of this 2015 Act shall be
44 paid, upon appropriation by the Legislative Assembly, from moneys deposited in the fund,
45 including any necessary costs incurred by the authority, the Employment Department or any

1 other state government agency.

2 **SECTION 6.** (1) The Oregon Health Authority shall match Social Security numbers of
3 individuals enrolled in the medical assistance program with information provided by the
4 Employment Department to determine whether the individuals are covered employees as
5 defined in section 2 of this 2015 Act.

6 (2) The authority shall provide to the department information about employers who have
7 employees who receive medical assistance in order to permit the department to determine
8 and collect the employer responsibility penalty imposed pursuant to section 3 of this 2015
9 Act.

10 (3) Any and all documents and records that result from matching records with or pro-
11 viding information to the department shall be subject to the confidentiality requirements of
12 ORS 413.171 and 657.665.

13 (4) This section shall not be construed to supersede the requirements and protections in
14 ORS 192.586.

15 **SECTION 7.** (1) As used in this section:

16 (a) "Health insurance exchange" has the meaning give that term in ORS 741.300.

17 (b) "Large employer" has the meaning given that term in section 2 of this 2015 Act.

18 (c) "Medical assistance" has the meaning given that term in ORS 414.025.

19 (d) "Premium tax credits" means tax credits provided under section 36B of the Internal
20 Revenue Code to a person who is enrolled in a qualified health plan through a health insur-
21 ance exchange.

22 (2) It is an unlawful employment practice for a large employer to refuse to hire, dis-
23 charge, demote, suspend, retaliate or otherwise discriminate against an employee who applies
24 for or receives medical assistance or premium tax credits.

25 (3) An employee who alleges a violation of subsection (2) of this section may bring a civil
26 action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of
27 Labor and Industries in the manner provided by ORS 659A.820.

28 **SECTION 8.** ORS 657.601 is amended to read:

29 657.601. There is established an Employment Department. The department shall:

30 (1) Administer the unemployment insurance laws of this state to support Oregonians during pe-
31 riods of unemployment;

32 (2) Provide for the operation of a statewide employment service, including the establishment and
33 maintenance of a system of public employment offices to promote employment of Oregonians;

34 (3) Provide oversight, operation and management of a statewide comprehensive labor market and
35 occupational supply and demand information system to assist in the development of a diversified,
36 multiskilled workforce; [and]

37 (4) Provide child care advocacy, coordination of child care policy and planning, technical as-
38 sistance to child care providers and certification of child care facilities to assist the employment
39 of Oregonians and insure the health and well-being of the future workforce; **and**

40 **(5) Administer sections 1 to 5 of this 2015 Act.**

41 **SECTION 9.** ORS 657.610 is amended to read:

42 657.610. The Director of the Employment Department may:

43 (1) For purposes of administration and control, and with the approval of the Governor, organize
44 and reorganize the department in whatever manner the director considers appropriate to carry out
45 the duties, functions and powers of the department.

1 (2) Appoint all subordinate officers and employees of the department, whether classified or un-
 2 classified, and prescribe their duties and compensation, subject to applicable provisions of the State
 3 Personnel Relations Law.

4 (3) Delegate to departmental officers and employees such responsibility and authority as the
 5 director determines necessary.

6 (4)(a) Determine all questions of general policy for this chapter [*and ORS chapter 657A*] **and**
 7 **sections 1 to 5 of this 2015 Act;**

8 (b) Adopt rules for this chapter [*and ORS chapter 657A*] **and sections 1 to 5 of this 2015 Act;**
 9 and

10 (c) Administer and enforce this chapter [*and ORS chapter 657A*] **and sections 1 to 5 of this**
 11 **2015 Act.**

12 (5) Sue and be sued in the name of the director, and shall have a seal bearing the name of the
 13 Employment Department.

14 (6) Adopt proper rules to regulate the mode and manner of all investigations.

15 (7) Prescribe the time, place and manner of making claims for benefits under this chapter, the
 16 kind and character of notices required thereunder and the procedure for investigating and deciding
 17 claims.

18 (8) Enter into contracts relating to the federal Workforce Investment Act deemed necessary by
 19 the director to fulfill the mission of the department. The director may enter into contracts with
 20 other states or governments, public bodies or persons to provide or receive services. Contracts en-
 21 tered into by the director shall be executed in the name of the state, by and through the Employ-
 22 ment Department.

23 **SECTION 10.** ORS 657.625 is amended to read:

24 657.625. (1) The Director of the Employment Department shall cause to be printed in proper form
 25 for distribution the classification, rates, rules[, *regulations*] and rules of procedure and furnish the
 26 same to any person upon application [*therefor*]. The fact that such classifications, rates, rules[,
 27 *regulations*] and rules of procedure are printed ready for distribution to all who apply for the
 28 same[,] shall be a sufficient publication of the same as required by this chapter **and sections 1 to**
 29 **5 of this 2015 Act.**

30 (2) The director may also publish from time to time any special reports of the results of any
 31 investigation which the director may have conducted.

32 (3) The director shall publish in suitable form information concerning the rights of employees
 33 under this chapter **and section 7 of this 2015 Act** and such other information [*concerning this*
 34 *chapter and the regulations pursuant thereto*] as the director considers suitable and proper, and re-
 35 quire every employer to post [*such*] **the** publications at the place of employment of the employer.

36 **SECTION 11.** ORS 657.630 is amended to read:

37 657.630. The Director of the Employment Department may act in the director's own behalf or
 38 by any of the duly authorized agents or assistants of the director in the following:

39 (1) To hold sessions at any place within the state.

40 (2) To administer oaths.

41 (3) To issue and serve by the director's representative, or by any sheriff, subpoenas for the at-
 42 tendance of witnesses and the production of papers, contracts, books, accounts, documents and tes-
 43 timony. The director may require the attendance and testimony of employers, their officers and
 44 representatives before any hearing of the director and the production by employers of books, re-
 45 cords, papers and documents without payment or tender of witness fees on account of that attend-

1 ance.

2 (4) Generally to provide for the taking of testimony and for the recording of proceedings held
3 in accordance with this chapter **and sections 1 to 5 of this 2015 Act.**

4 **SECTION 12.** ORS 657.635 is amended to read:

5 657.635. The circuit court for any county or the judge thereof, on application of the Director
6 of the Employment Department or any of the assistants of the director, shall compel obedience to
7 subpoenas issued and served pursuant to ORS 657.630 and punish disobedience of any such subpoena
8 or any refusal to testify at any session authorized in this chapter **or sections 1 to 5 of this 2015**
9 **Act**, or to answer any lawful inquiry of said director or any of the assistants of the director, in the
10 same manner as a refusal to testify in the circuit court or the disobedience of the requirements of
11 a subpoena issued from said court is punished.

12 **SECTION 13.** ORS 657.640 is amended to read:

13 657.640. Upon request of the Director of the Employment Department, the Attorney General or,
14 under the direction of the Attorney General, the district attorney of any county[,] shall institute or
15 prosecute actions or proceedings for the enforcement of this chapter **and sections 1 to 5 of this**
16 **2015 Act**, when such actions or proceedings are within the county in which such district attorney
17 was elected, and shall defend in like manner all suits, actions and proceedings brought against the
18 director in the official capacity of the director.

19 **SECTION 14.** ORS 657.646 is amended to read:

20 657.646. In any case in which a judgment is rendered in favor of the Employment Department
21 for amounts due under this chapter **and sections 1 to 5 of this 2015 Act**, the Director of the Em-
22 ployment Department may issue a warrant to collect the amount of the judgment.

23 **SECTION 15.** ORS 657.660 is amended to read:

24 657.660. (1) Every employing unit shall keep true and accurate records of all persons employed
25 by it and such records of hours worked, wages paid and other statistics as prescribed by the Di-
26 rector of the Employment Department for the administration of this chapter **and sections 1 to 5**
27 **of this 2015 Act.**

28 (2) Such records shall be open to inspection by the director or an authorized representative of
29 the director at any reasonable time. No person shall refuse to allow the director or authorized
30 representative to inspect the payroll or other records or documents relative to the enforcement of
31 this chapter **and sections 1 to 5 of this 2015 Act.**

32 (3) The director may require from any employing unit such reports on the wages, hours, em-
33 ployment, unemployment and related matters concerning its employees as the director deems nec-
34 essary to the effective administration of this chapter **and sections 1 to 5 of this 2015 Act.**

35 (4) Every employing unit shall fully, correctly and promptly furnish the director all information
36 required by the director to carry out the purposes and provisions of this chapter **and sections 1**
37 **to 5 of this 2015 Act.**

38 **SECTION 16.** ORS 657.665, as amended by section 1, chapter 26, Oregon Laws 2014, is amended
39 to read:

40 657.665. (1) Except as provided in subsections (2) to (5) of this section, all information in the
41 records of the Employment Department pertaining to the administration of the unemployment in-
42 surance, employment service and labor market information programs **and sections 1 to 5 of this**
43 **2015 Act:**

44 (a) Is confidential and for the exclusive use and information of the Director of the Employment
45 Department in administering the unemployment insurance, employment service and labor market

1 information programs in Oregon **and sections 1 to 5 of this 2015 Act.**

2 (b) May not be used in any court action or in any proceeding pending in the court unless the
3 director or the state is a party to the action or proceeding or unless the proceeding concerns the
4 establishment, enforcement or modification of a support obligation and support services are being
5 provided by the Division of Child Support or the district attorney pursuant to ORS 25.080.

6 (c) Is exempt from disclosure under ORS 192.410 to 192.505.

7 (2) The Employment Department shall disclose information:

8 (a) To any claimant or legal representative, at a hearing before an administrative law judge, to
9 the extent necessary for the proper presentation of an unemployment insurance claim.

10 (b) Upon request to the United States Secretary of Labor. The Employment Department shall
11 disclose the information in a form and containing the information that the United States Secretary
12 of Labor may require. The information disclosed is confidential and may not be used for any other
13 purpose.

14 (c) Pursuant to section 303(a)(7) of the Social Security Act, upon request to any agency of the
15 United States charged with the administration of public works or assistance through public em-
16 ployment. Under this paragraph, the Employment Department shall disclose the name, address, or-
17 dinary occupation and employment status of each recipient of unemployment insurance benefits and
18 a statement of the recipient's right to further benefits under this chapter. The information disclosed
19 is confidential and may not be used for any other purpose.

20 (d) Pursuant to section 303(c)(1) of the Social Security Act, to the Railroad Retirement Board.
21 Under this paragraph, the Employment Department shall disclose unemployment insurance records.
22 The information disclosed is confidential and may not be used for any other purpose. The costs of
23 disclosing information under this paragraph shall be paid by the board.

24 (e) Pursuant to section 303(d) of the Social Security Act, upon request to officers and employees
25 of the United States Department of Agriculture and to officers or employees of any state Supple-
26 mental Nutrition Assistance Program agency for the purpose of determining an individual's eligibil-
27 ity for or the amount of supplemental nutrition assistance. The information disclosed is confidential
28 and may not be used for any other purpose. The costs of disclosing information under this paragraph
29 shall be paid by the United States Department of Agriculture.

30 (f) Pursuant to section 303(e)(1) and (2)(A)(ii) of the Social Security Act, to state or local child
31 support enforcement agencies enforcing child support obligations under Title IV-D of the Social Se-
32 curity Act for the purposes of establishing child support obligations, locating individuals owing child
33 support obligations and collecting child support obligations from those individuals. The information
34 disclosed is confidential and may not be used for any other purpose. The costs of disclosing infor-
35 mation under this paragraph shall be paid by the child support enforcement agency.

36 (g) Pursuant to sections 303(f) and 1137 of the Social Security Act, to agencies participating in
37 the income and eligibility verification system for the purpose of verifying an individual's eligibility
38 for benefits, or the amount of benefits, under unemployment insurance, temporary assistance for
39 needy families, Medicaid, the Supplemental Nutrition Assistance Program, Supplemental Security
40 Income, child support enforcement or Social Security programs. The information disclosed is confi-
41 dential and may not be used for any other purpose. The costs of disclosing information under this
42 paragraph shall be paid by the requesting agency.

43 (h) Pursuant to section 303(h) of the Social Security Act and section 3304(a)(16)(B) of the Federal
44 Unemployment Tax Act, to the United States Department of Health and Human Services National
45 Directory of New Hires. The information disclosed is confidential and may not be used for any other

1 purpose. The costs of disclosing information under this paragraph shall be paid by the United States
2 Department of Health and Human Services.

3 (i) Pursuant to section 303(i) of the Social Security Act, to officers and employees of the United
4 States Department of Housing and Urban Development and to representatives of a public housing
5 agency for the purpose of determining an individual's eligibility for benefits, or the amount of ben-
6 efits, under a housing assistance program of the United States Department of Housing and Urban
7 Development. The information disclosed is confidential and may not be used for any other purpose.
8 The costs of disclosing information under this paragraph shall be paid by the United States De-
9 partment of Housing and Urban Development or the public housing agency.

10 (j) Pursuant to regulations of the United States Secretary of Health and Human Services issued
11 under section 3304(a)(16)(A) of the Federal Unemployment Tax Act, and except as required by sec-
12 tion 303 of the Social Security Act, to the state, a political subdivision or a federally recognized
13 Indian tribe that has signed an agreement with the Department of Human Services to administer
14 Part A of Title IV of the Social Security Act for the purpose of determining an individual's eligibility
15 for assistance, or the amount of assistance, under a program funded under Part A of Title IV of the
16 Social Security Act. The information disclosed is confidential and may not be used for any other
17 purpose.

18 (k) Upon request, to the United States Attorney's Office. Under this paragraph, the Employment
19 Department may disclose an individual's employment and wage information in response to a federal
20 grand jury subpoena or for the purpose of collecting civil and criminal judgments, including
21 restitution and special assessment fees. The information disclosed is confidential and may not be
22 used for any other purpose. The costs of disclosing information under this paragraph shall be paid
23 by the United States Attorney's Office.

24 (3) The Employment Department may disclose information secured from employing units:

25 (a) To agencies of this state, federal agencies and local government agencies to the extent nec-
26 essary to properly carry out governmental planning, performance measurement, program analysis,
27 socioeconomic analysis and policy analysis functions performed under applicable law. The informa-
28 tion disclosed is confidential and may not be disclosed by the agencies in any manner that would
29 identify individuals, claimants, employees or employing units. If the information disclosed under this
30 paragraph is not prepared for the use of the Employment Department, the costs of disclosing the
31 information shall be paid by the agency requesting the information.

32 (b) As part of a geographic information system. Points on a map may be used to represent eco-
33 nomic data, including the location, employment size class and industrial classification of businesses
34 in Oregon. Information presented as part of a geographic information system may not give specific
35 details regarding a business's address, actual employment or proprietary information. If the infor-
36 mation disclosed under this paragraph is not prepared for the use of the Employment Department,
37 the costs of disclosing the information shall be paid by the party requesting the information.

38 (c) In accordance with ORS 657.673.

39 (4) The Employment Department may:

40 (a) Disclose information to public employees in the performance of their duties under state or
41 federal laws relating to the payment of unemployment insurance benefits, the provision of employ-
42 ment services and the provision of labor market information.

43 (b) At the discretion of the Director of the Employment Department and subject to an intera-
44 gency agreement, disclose information to public officials in the performance of their official duties
45 administering or enforcing laws within their authority and to the agents or contractors of public

1 officials. The public official shall agree to assume responsibility for misuse of the information by
2 the official's agent or contractor.

3 (c) Disclose information pursuant to an informed consent, received from an employer or claim-
4 ant, to disclose the information.

5 (d) Disclose information to partners under the federal Workforce Investment Act of 1998 for the
6 purpose of administering state workforce programs under the Act. The information disclosed is
7 confidential and may not be used for any other purpose. The costs of disclosing information under
8 this paragraph shall be paid by the requesting partner.

9 (e) Disclose the names and addresses of employing units to the Bureau of Labor and Industries
10 for the purpose of disseminating information to employing units. The names and addresses disclosed
11 are confidential and may not be used for any other purpose. If the information disclosed under this
12 paragraph is not prepared for the use of the Employment Department, the costs of disclosing the
13 information shall be paid by the bureau.

14 (f) Disclose information to the Commissioner of the Bureau of Labor and Industries for the
15 purpose of performing duties under ORS 279C.800 to 279C.870, 658.005 to 658.245 or 658.405 to
16 658.503 or ORS chapter 652, 653 or 659A. The information disclosed may include the names and ad-
17 dresses of employers and employees and payroll data of employers and employees. The information
18 disclosed is confidential and may not be used for any other purpose. If the information disclosed
19 under this paragraph is not prepared for the use of the Employment Department, the costs of dis-
20 closing the information shall be paid by the bureau.

21 (g) Disclose information required under ORS 657.660 (3) and (4) to the Public Employees Re-
22 tirement System for the purpose of determining the eligibility of members of the retirement system
23 for disability retirement allowances under ORS chapter 238. The information disclosed is confiden-
24 tial and may not be used for any other purpose. The costs of disclosing information under this par-
25 agraph shall be paid by the Public Employees Retirement System.

26 (h) Disclose to the Oregon Business Development Commission information required by the com-
27 mission in performing its duty under ORS 285A.050 to verify changes in employment levels following
28 direct employer participation in Oregon Business Development Department programs or indirect
29 participation through municipalities under ORS 285B.410 to 285B.482. The information disclosed to
30 the commission may include an employer's employment level, total subject wages payroll and whole
31 hours worked. The information disclosed is confidential and may not be used for any other purpose.
32 The commission may not disclose the information in any manner that would identify an employing
33 unit or employee except to the extent necessary to carry out the commission's duty under ORS
34 285A.050. If the information disclosed under this paragraph is not prepared for the use of the Em-
35 ployment Department, the costs of disclosing the information shall be paid by the commission.

36 (i) Disclose information to the Department of Revenue for the purpose of performing its duties
37 under ORS 293.250 or under the revenue and tax laws of this state. The information disclosed may
38 include the names and addresses of employers and employees and payroll data of employers and
39 employees. The information disclosed is confidential and may not be disclosed by the Department
40 of Revenue in any manner that would identify an employing unit or employee except to the extent
41 necessary to carry out the department's duties under ORS 293.250 or in auditing or reviewing any
42 report or return required or permitted to be filed under the revenue and tax laws administered by
43 the department. The Department of Revenue may not disclose any information received to any pri-
44 vate collection agency or for any other purpose. If the information disclosed under this paragraph
45 is not prepared for the use of the Employment Department, the costs of disclosing the information

1 shall be paid by the Department of Revenue.

2 (j) Disclose information to the Department of Consumer and Business Services for the purpose
3 of performing its duties under ORS chapters 654 and 656. The information disclosed may include the
4 name, address, number of employees and industrial classification code of an employer and payroll
5 data of employers and employees. The information disclosed is confidential and may not be disclosed
6 by the Department of Consumer and Business Services in any manner that would identify an em-
7 ploying unit or employee except to the extent necessary to carry out the department's duties under
8 ORS chapters 654 and 656, including administrative hearings and court proceedings in which the
9 Department of Consumer and Business Services is a party. If the information disclosed under this
10 paragraph is not prepared for the use of the Employment Department, the costs of disclosing the
11 information shall be paid by the Department of Consumer and Business Services.

12 (k) Disclose information to the Construction Contractors Board for the purpose of performing
13 its duties under ORS chapter 701. The information disclosed to the board may include the names and
14 addresses of employers and status of their compliance with this chapter. If the information disclosed
15 under this paragraph is not prepared for the use of the Employment Department, the costs of dis-
16 closing the information shall be paid by the board.

17 (L) Disclose information to the State Fire Marshal to assist the State Fire Marshal in carrying
18 out duties under ORS 453.307 to 453.414. The information disclosed may include the name, address,
19 telephone number and industrial classification code of an employer. The information disclosed is
20 confidential and may not be disclosed by the State Fire Marshal in any manner that would identify
21 an employing unit except to the extent necessary to carry out duties under ORS 453.307 to 453.414.
22 If the information disclosed under this paragraph is not prepared for the use of the Employment
23 Department, the costs of disclosing the information shall be paid by the office of the State Fire
24 Marshal.

25 (m) Disclose information to the Higher Education Coordinating Commission for the purpose of
26 performing the commission's duties under ORS chapter 348 and Title IV of the Higher Education
27 Act of 1965. The information disclosed may include the names and addresses of employers and em-
28 ployees and payroll data of employers and employees. The information disclosed is confidential and
29 may not be disclosed by the commission in any manner that would identify an employing unit or
30 employee except to the extent necessary to carry out the commission's duties under ORS chapter
31 348 or Title IV of the Higher Education Act of 1965. If the information disclosed under this para-
32 graph is not prepared for the use of the Employment Department, the costs of disclosing the infor-
33 mation shall be paid by the commission.

34 (n) Disclose information to the Department of Transportation to assist the Department of
35 Transportation in carrying out the duties of the Department of Transportation relating to collection
36 of delinquent and liquidated debts, including taxes, under ORS 184.610 to 184.666, 184.670 to 184.733
37 and 805.263, ORS chapter 319 and the Oregon Vehicle Code. The information disclosed may include
38 the names and addresses of employers and employees and payroll data of employers and employees.
39 The information disclosed is confidential and may not be disclosed by the Department of Transpor-
40 tation in any manner that would identify an employing unit or employee except to the extent nec-
41 essary to carry out the Department of Transportation's duties relating to collection of delinquent
42 and liquidated debts or in auditing or reviewing any report or return required or permitted to be
43 filed under the revenue and tax laws administered by the Department of Transportation. The De-
44 partment of Transportation may not disclose any information received to any private collection
45 agency or for any other purpose. If the information disclosed under this paragraph is not prepared

1 for the use of the Employment Department, the costs of disclosing the information shall be paid by
2 the Department of Transportation.

3 (o) Disclose information to the Department of Human Services and the Oregon Health Authority
4 to **enable the Employment Department to administer sections 1 to 5 of this 2015 Act and to**
5 assist the Department of Human Services and the Oregon Health Authority in the collection of debts
6 that the Department of Human Services and the Oregon Health Authority are authorized by law to
7 collect. The information disclosed may include the names, addresses and payroll data of employers
8 and employees. The information disclosed is confidential and may not be disclosed by the Depart-
9 ment of Human Services or the Oregon Health Authority in a manner that would identify an em-
10 ploying unit or employee except to the extent necessary for the [*collection of debts as*] **purposes**
11 described in this paragraph. The Department of Human Services and the Oregon Health Authority
12 may not disclose information received under this paragraph to a private collection agency or use
13 the information for a purpose other than the [*collection of debts as*] **purposes** described in this par-
14 agraph. If the information disclosed under this paragraph is not prepared for the use of the Em-
15 ployment Department, the costs of disclosing the information shall be paid by the Department of
16 Human Services or the Oregon Health Authority.

17 (p) Disclose to the Alcohol and Drug Policy Commission information required by the commission
18 in evaluating and measuring the performance of alcohol and drug prevention and treatment pro-
19 grams under ORS 430.242 or the impact of the programs on employment. The information disclosed
20 to the commission may include total subject wages payroll and whole hours worked. The information
21 disclosed under this paragraph is confidential and may not be used for any other purpose. The
22 commission may not disclose the information in any manner that would identify an employing unit
23 or employee except to the extent necessary to carry out the commission's duties under ORS 430.242.
24 If the information disclosed under this paragraph is not prepared for the use of the Employment
25 Department, the costs of disclosing the information shall be paid by the commission.

26 (q) Disclose to any person establishment level information secured pursuant to this chapter from
27 federal, state and local government employing units. If the information disclosed under this para-
28 graph is not prepared for the use of the Employment Department, the costs of disclosing the infor-
29 mation shall be paid by the party requesting the information.

30 (r) Disclose to any person the industrial classification code assigned to an employing unit. If the
31 information disclosed under this paragraph is not prepared for the use of the Employment Depart-
32 ment, the costs of disclosing the information shall be paid by the party requesting the information.

33 (5) The Employment Department may make public all decisions of the Employment Appeals
34 Board.

35 (6) Any officer appointed by or any employee of the Director of the Employment Department
36 who discloses confidential information, except with the authority of the director, pursuant to rules
37 or as otherwise required by law, may be disqualified from holding any appointment or employment
38 with the Employment Department.

39 (7) Any person or any officer or employee of an entity to whom information is disclosed by the
40 Employment Department under this section who divulges or uses the information for any purpose
41 other than that specified in the provision of law or agreement authorizing the use or disclosure may
42 be disqualified from performing any service under contract or disqualified from holding any ap-
43 pointment or employment with the state agency that engaged or employed that person, officer or
44 employee. The Employment Department may immediately cancel or modify any information sharing
45 agreement with an entity when a person or an officer or employee of that entity discloses confi-

1 dental information, other than as specified in law or agreement.

2 **SECTION 17.** ORS 659A.885 is amended to read:

3 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
4 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
5 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
6 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
7 court may order back pay in an action under this subsection only for the two-year period imme-
8 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
9 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
10 year period immediately preceding the filing of the action. In any action under this subsection, the
11 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
12 cept as provided in subsection (3) of this section:

13 (a) The judge shall determine the facts in an action under this subsection; and

14 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall
15 review the judgment pursuant to the standard established by ORS 19.415 (3).

16 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
17 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,
18 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
19 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
20 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
21 659A.318, 659A.320 or 659A.421 **or section 7 of this 2015 Act.**

22 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
23 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
24 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421:

25 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
26 compensatory damages or \$200, whichever is greater, and punitive damages;

27 (b) At the request of any party, the action shall be tried to a jury;

28 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
29 ment pursuant to the standard established by ORS 19.415 (1); and

30 (d) Any attorney fee agreement shall be subject to approval by the court.

31 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
32 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
33 compensatory damages or \$200, whichever is greater.

34 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
35 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
36 of this section, compensatory damages or \$250, whichever is greater.

37 (6) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
38 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
39 penalty in the amount of \$720.

40 (7) Any individual against whom any distinction, discrimination or restriction on account of
41 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
42 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
43 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
44 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
45 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor

1 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
 2 section:

3 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
 4 compensatory and punitive damages;

5 (b) The operator or manager of the place of public accommodation, the employee or person
 6 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all
 7 damages awarded in the action;

8 (c) At the request of any party, the action shall be tried to a jury;

9 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

10 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
 11 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
 12 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
 13 and

14 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the
 15 judgment pursuant to the standard established by ORS 19.415 (1).

16 (8) When the commissioner or the Attorney General has reasonable cause to believe that a
 17 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
 18 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
 19 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
 20 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
 21 manner as a person or group of persons may file a civil action under this section. In a civil action
 22 filed under this subsection, the court may assess against the respondent, in addition to the relief
 23 authorized under subsections (1) and (3) of this section, a civil penalty:

24 (a) In an amount not exceeding \$50,000 for a first violation; and

25 (b) In an amount not exceeding \$100,000 for any subsequent violation.

26 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 27 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 28 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 29 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 30 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 31 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 32 appealing an adverse decision of the trial court.

33 (10) In an action under subsection (1) or (8) of this section alleging a violation of ORS 659A.145
 34 or 659A.421 or discrimination under federal housing law:

35 (a) "Aggrieved person" includes a person who believes that the person:

36 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

37 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
 38 occur.

39 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
 40 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
 41 tifies that the case is of general public importance. The court may allow an intervenor prevailing
 42 party costs and reasonable attorney fees at trial and on appeal.

43 **SECTION 18. Sections 1 to 7 of this 2015 Act become operative on January 1, 2017.**

44 **SECTION 19. The Employment Department and the Oregon Health Authority may take**
 45 **any action prior to the operative date specified in section 18 of this 2015 Act that is necessary**

1 to carry out sections 1 to 7 of this 2015 Act on the operative date specified in section 18 of
2 this 2015 Act.

3 **SECTION 20.** This 2015 Act being necessary for the immediate preservation of the public
4 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
5 on its passage.
6
