

# Enrolled Senate Bill 93

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CHAPTER .....

## AN ACT

Relating to unemployment insurance coverage of nonprofit employing units; amending ORS 346.190, 418.075, 657.010, 657.043, 657.044, 657.047, 657.048, 657.050, 657.072, 657.167, 657.170, 657.221, 657.425, 657.505, 657.506 and 657.575; and repealing sections 4, 5 and 6, chapter 897, Oregon Laws 1989.

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

**SECTION 1.** ORS 657.072 is amended to read:

657.072. [(1)] "Employment" does not include service performed **for a nonprofit employing unit**[:]

[(a) *In the employ of:*

[(A) *A church or convention or association of churches; or*

[(B) *An organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches;]*

[(b) *By a duly ordained, commissioned or licensed minister of a church in the exercise of ministry or a member of a religious order in the exercise of duties required by such order; or]*

[(c) **by an individual receiving rehabilitation or remunerative work** in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market [*when such service is performed by an individual receiving such rehabilitation or remunerative work*].

[(2) *Provisions of subsection (1) of this section apply only to services performed for a nonprofit employing unit. A "nonprofit employing unit" means an organization, or group of organizations, described in section 501(c)(3) of the U.S. Internal Revenue Code which is exempt from income tax under section 501(a) of the U.S. Internal Revenue Code.*]

**SECTION 2. Sections 4, 5 and 6, chapter 897, Oregon Laws 1989, are repealed.**

**SECTION 3.** ORS 657.010 is amended to read:

657.010. As used in this chapter, unless the context requires otherwise:

(1) "Base year" means the first four of the last five completed calendar quarters preceding the benefit year.

(2) "Benefits" means the money allowances payable to unemployed persons under this chapter.

(3) "Benefit year" means a period of 52 consecutive weeks commencing with the first week with respect to which an individual files an initial valid claim for benefits, and thereafter the 52 con-

secutive weeks period beginning with the first week with respect to which the individual next files an initial valid claim after the termination of the individual's last preceding benefit year except that the benefit year shall be 53 weeks if the filing of an initial valid claim would result in overlapping any quarter of the base year of a previously filed initial valid claim.

(4) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31, or the approximate equivalent thereof, as the Director of the Employment Department may, by regulation, prescribe.

(5) "Contribution" or "contributions" means the taxes, as defined in subsection (12) of this section, that are the money payments required by this chapter, or voluntary payments permitted, to be made to the Unemployment Compensation Trust Fund.

(6) "Educational institution," including an institution of higher education as defined in subsection (9) of this section, means an institution:

(a) In which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher;

(b) That is accredited, registered, approved, licensed or issued a permit to operate as a school by the Department of Education or other government agency, or that offers courses for credit that are transferable to an approved, registered or accredited school;

(c) In which the course or courses of study or training that it offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation; and

(d) In which the course or courses of study or training are offered on a regular and continuing basis.

(7) "Employment office" means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

(8) "Hospital" means an organization that has been licensed, certified or approved by the Department of Human Services as a hospital.

(9) "Institution of higher education" means an educational institution that:

(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(b) Is legally authorized in this state to provide a program of education beyond high school;

(c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program that is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(d) Is a public or other nonprofit institution.

(10) "Nonprofit employing unit" means an organization, or group of organizations, described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(11) "State" includes, in addition to the states of the United States of America, the District of Columbia and Puerto Rico. However, for all purposes of this chapter the Virgin Islands shall be considered a state on and after the day on which the United States Secretary of Labor first approves the Virgin Islands' law under section 3304(a) of the Federal Unemployment Tax Act as amended by Public Law 94-566.

(12) "Taxes" means the money payments to the Unemployment Compensation Trust Fund required, or voluntary payments permitted, by this chapter.

(13) "Valid claim" means any claim for benefits made in accordance with ORS 657.260 if the individual meets the wages-paid-for-employment requirements of ORS 657.150.

(14) "Week" means any period of seven consecutive calendar days ending at midnight, as the director may, by regulation, prescribe. The director may by regulation prescribe that

**a “week” shall be “in,” “within,” or “during” the calendar quarter that includes the greater part of such week.**

*[(5) “Director” means the Director of the Employment Department.]*

*[(6) “Taxes” means the money payments to the Unemployment Compensation Trust Fund required, or voluntary payments permitted, by this chapter.]*

*[(7) “Employment office” means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.]*

*[(8) “Fund” means the Unemployment Compensation Trust Fund.]*

*[(9) “State” includes, in addition to the states of the United States of America, the District of Columbia and Puerto Rico. However, for all purposes of this chapter the Virgin Islands shall be considered a state on and after the day on which the United States Secretary of Labor first approves the Virgin Islands’ law under section 3304(a) of the Federal Unemployment Tax Act as amended by Public Law 94-566.]*

*[(10) “Week” means any period of seven consecutive calendar days ending at midnight, as the director may, by regulation, prescribe. The director may by regulation prescribe that a “week” shall be “in,” “within,” or “during” that calendar quarter which includes the greater part of such week.]*

*[(11) “Contribution” or “contributions” means the taxes, as defined in subsection (6) of this section, which are the money payments required by this chapter, or voluntary payments permitted, to be made to the Unemployment Compensation Trust Fund.]*

*[(12) “Valid claim” means any claim for benefits made in accordance with ORS 657.260 if the individual meets the wages-paid-for-employment requirements of ORS 657.150.]*

*[(13) “Department” means the Employment Department.]*

*[(14) “Institution of higher education” means an educational institution which:]*

*[(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;]*

*[(b) Is legally authorized in this state to provide a program of education beyond high school;]*

*[(c) Provides an educational program for which it awards a bachelor’s or higher degree, or provides a program which is acceptable for full credit towards such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and]*

*[(d) Is a public or other nonprofit institution.]*

*[(15) “Hospital” means an organization which has been licensed, certified or approved by the Department of Human Services as a hospital.]*

*[(16) “Educational institution,” including an institution of higher education as defined in subsection (14) of this section, means an institution:]*

*[(a) In which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher; and]*

*[(b) Which is accredited, registered, approved, licensed or issued a permit to operate as a school by the Department of Education or other government agency, or which offers courses for credit that are transferable to an approved, registered or accredited school; and]*

*[(c) In which the course or courses of study or training which it offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation; and]*

*[(d) In which the course or courses of study or training are offered on a regular and continuing basis.]*

**SECTION 4.** ORS 657.167 is amended to read:

657.167. (1) Benefits based on service in an instructional, research or principal administrative capacity for an educational institution or institution of higher education shall be payable to an individual in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter, except that benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years or, when an agreement provides instead for a similar period between two

regular terms whether or not successive or during a period of paid sabbatical leave provided for in the individual's contract and if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any institution in the second of such academic years or terms. All services by an individual for an institution shall be deemed in instructional, research or principal administrative capacity if at least 50 percent of the individual's time is spent in such activities.

(2) With respect to any services described in subsection (1) of this section, compensation payable on the basis of such services shall be denied to any individual for any week that commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is reasonable assurance that such individual will perform such services or any services described in ORS 657.221 (1) in the period immediately following such vacation period or holiday recess.

(3) With respect to any services described in subsection (1) of this section, benefits based on such services shall be denied as specified in subsections (1) and (2) of this section to any individual who performed such service in an institution while in the employ of an education service district established by ORS chapter 334, providing 50 percent or more of the individual's time is spent in instructional, research or principal administrative capacity in such institution.

(4) The provisions of subsections (1), (2) and (3) of this section apply only to service performed for:

(a) An educational institution or institution of higher education operated by a nonprofit employing unit[, *as defined in ORS 657.072 (2), by the*];

(b) **This** state[, *by*];

(c) A political subdivision **of this state**; or [*by*]

(d) An Indian tribe.

**SECTION 5.** ORS 657.170 is amended to read:

657.170. (1) If the Director of the Employment Department finds that during the base year of the individual any individual has been incapable of work during the greater part of any calendar quarter, such base year shall be extended a calendar quarter. Except as provided in subsection (2) of this section, no such extension of an individual's base year shall exceed four calendar quarters.

(2) If the director finds that during and prior to the individual's base year the individual has had a period of temporary total disability caused by illness or injury and has received compensation under ORS chapter 656 for a period of temporary total disability during the greater part of any calendar quarter, the individual's base year shall be extended as many calendar quarters as necessary to establish a valid claim, up to a maximum of four calendar quarters prior to the quarter in which the illness or injury occurred, if the individual:

(a) Files a claim for benefits not later than the fourth calendar week of unemployment following whichever is the latest of the following dates:

(A) The date the individual is released to return to work by the attending physician, as defined in ORS chapter 656, or a nurse practitioner authorized to provide compensable medical services under ORS 656.245; or

(B) The date of mailing of a notice of claim closure pursuant to ORS chapter 656; and

(b) Files such a claim within the three-year period immediately following the commencement of such period of illness or injury.

(3) Notwithstanding the provisions of this section, benefits payable as a result of the use of wages paid in a calendar quarter prior to the individual's current base year [*as defined in ORS 657.010 (1)*] shall not exceed one-third of such wages less benefits paid previously as a result of the use of such wages in computing a previous benefit determination.

**SECTION 6.** ORS 657.170, as amended by section 20, chapter 811, Oregon Laws 2003, is amended to read:

657.170. (1) If the Director of the Employment Department finds that during the base year of the individual any individual has been incapable of work during the greater part of any calendar quar-

ter, such base year shall be extended a calendar quarter. Except as provided in subsection (2) of this section, no such extension of an individual's base year shall exceed four calendar quarters.

(2) If the director finds that during and prior to the individual's base year the individual has had a period of temporary total disability caused by illness or injury and has received compensation under ORS chapter 656 for a period of temporary total disability during the greater part of any calendar quarter, the individual's base year shall be extended as many calendar quarters as necessary to establish a valid claim, up to a maximum of four calendar quarters prior to the quarter in which the illness or injury occurred, if the individual:

(a) Files a claim for benefits not later than the fourth calendar week of unemployment following whichever is the latest of the following dates:

(A) The date the individual is released to return to work by the attending physician, as defined in ORS chapter 656; or

(B) The date of mailing of a notice of claim closure pursuant to ORS chapter 656; and

(b) Files such a claim within the three-year period immediately following the commencement of such period of illness or injury.

(3) Notwithstanding the provisions of this section, benefits payable as a result of the use of wages paid in a calendar quarter prior to the individual's current base year [as defined in ORS 657.010 (1)] shall not exceed one-third of such wages less benefits paid previously as a result of the use of such wages in computing a previous benefit determination.

**SECTION 7.** ORS 418.075 is amended to read:

418.075. Aid, as defined in ORS 418.035, shall not be granted with respect to, or on behalf of, a dependent child as defined in ORS 418.070 (2)(a) if, and for as long as, the unemployed parent of such child refuses without good cause to accept employment in which the unemployed parent is able to engage and which is offered through any employment office defined in ORS 657.010 [(7)] or which is otherwise offered by any employer if such offer is determined by the Department of Human Services after notification by such employer to be a bona fide offer of such employment.

**SECTION 8.** ORS 657.043 is amended to read:

657.043. "Employment" does not include service performed by a person as a caddy at a golf course in an established program for the training and supervision of caddies under the direction of a person who is an employee of the golf course. However, the provisions of this section do not apply to services performed for:

(1) A nonprofit employing unit[, as defined in ORS 657.072, for];

(2) This state[, for];

(3) A political subdivision of this state; or [for]

(4) An Indian tribe.

**SECTION 9.** ORS 657.044 is amended to read:

657.044. (1) As used in this chapter, "employment" does not include service performed for:

(a) A corporation by corporate officers who are directors of the corporation, who have a substantial ownership interest in the corporation and who are members of the same family if the corporation elects not to provide coverage for those individuals. The election shall be in writing and shall be effective on the first day of the calendar quarter in which the request was submitted.

(b) A limited liability company by a member, including members who are managers, as defined in ORS 63.001.

(c) A limited liability partnership by a partner as described in ORS chapter 67.

(2) The provisions of this section do not apply to service performed for:

(a) A nonprofit employing unit[, as defined in ORS 657.072, for];

(b) This state[, for];

(c) A political subdivision of this state; or [for]

(d) An Indian tribe.

(3) As used in this section, "members of the same family" means persons who are members of a family as parents, stepparents, grandparents, spouses, sons-in-law, daughters-in-law, brothers, sisters, children, stepchildren, adopted children or grandchildren.

**SECTION 10.** ORS 657.047 is amended to read:

657.047. (1) As used in this chapter, “employment” does not include:

(a) Transportation by motor vehicle of logs, poles and piling by any person who both furnishes and maintains the vehicle used in such transportation; or

(b) Transportation performed by motor vehicle for a for-hire carrier by any person that leases their equipment to a for-hire carrier and that personally operates, furnishes and maintains the equipment and provides service thereto.

(2) For the purposes of this chapter, services performed in the operation of a motor vehicle specified in subsection (1) of this section shall be deemed to be performed for the person furnishing and maintaining the motor vehicle.

(3) As used in this section “for-hire carrier” has the meaning given that term in ORS 825.005.

(4) The provisions of subsections (1) and (2) of this section do not apply to services performed for:

(a) A nonprofit employing unit[, *as defined in ORS 657.072, for*];

(b) This state[, *for*];

(c) A political subdivision of this state; or [*for*]

(d) An Indian tribe.

**SECTION 11.** ORS 657.048 is amended to read:

657.048. (1) “Employment” does not include services performed by language translators or interpreters that are provided for others through an agent or broker.

(2) The provisions of this section do not apply to services performed for:

(a) A nonprofit employing unit[, *as described in ORS 657.072, for*];

(b) This state[, *for*];

(c) A political subdivision of this state; or [*for*]

(d) An Indian tribe.

**SECTION 12.** ORS 657.050 is amended to read:

657.050. (1) “Employment” does not include:

(a) Domestic service performed in a private home, local college club, or local chapter of a college fraternity or sorority unless such service is performed for an employing unit who paid to individuals employed in such domestic service cash remuneration of \$1,000 or more in a calendar quarter in the current calendar year or the preceding calendar year.

(b) Child care service provided through the Department of Human Services to an individual who is the recipient of public assistance.

(c) Service not in the course of the employer’s trade or business or that does not promote or advance the trade or business of the employer unless such service is performed in each of 18 weeks in a calendar year or total payroll for such service is \$225 or more during any calendar quarter.

(d) Child care service provided in the home of the child care provider by the provider.

(2) The provisions of subsection (1)(b) and (d) of this section do not apply to services performed for:

(a) A nonprofit employing unit[, *as defined in ORS 657.072, for*];

(b) This state[, *for*];

(c) A political subdivision of this state; or [*for*]

(d) An Indian tribe.

**SECTION 13.** ORS 657.221 is amended to read:

657.221. (1) Benefits based on services performed in other than an instructional, research or principal administrative capacity for an educational institution or institution of higher education shall be payable to an individual in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter. However:

(a) Benefits shall not be paid on the basis of such services for any week of unemployment that commences during a period between two successive academic years or terms if the individual performs such services in the first academic year or term and there is a reasonable assurance that the

individual will perform any such services in the second academic year or term for any institution; except that

(b) If benefits are denied to an individual for any week under paragraph (a) of this subsection and such individual was not offered an opportunity to perform such services for the institution for the second of such academic years or terms, such individual shall be entitled, if otherwise eligible, to payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of paragraph (a) of this subsection.

(2) With respect to the application of this section, the following shall apply:

(a) An employee who terminates an employee-employer relationship by electing not to accept an offer of work for a subsequent academic year or term, other than by reason of labor negotiations or a labor dispute in progress, shall be deemed to have voluntarily left work. The effective date of such leaving shall be the date the individual notifies the institution of the election not to accept the offer of work for the subsequent period, except that if such individual continues to work under the terms of a previously existing contract or agreement, the effective date of leaving shall be the last day worked for the institution.

(b) In the event the institution does not extend to the individual an offer of work or provide a reasonable assurance the individual is expected to return to work for the institution following the period between the academic years or terms, the separation from work shall be considered an involuntary leaving or layoff.

(3) With respect to any services described in subsection (1) of this section, compensation payable on the basis of such services shall be denied to any individual for any week that commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is reasonable assurance that such individual will perform such services or any services described in ORS 657.167 (1) in the period immediately following such vacation period or holiday recess.

(4) With respect to any services described in subsection (1) of this section, benefits based on such services shall be denied as specified in subsections (1) and (3) of this section to any individual who performed such services in an institution while in the employ of an education service district established by ORS chapter 334, providing 50 percent or more of the individual's time is in the performance of services in such institution.

(5) The provisions of subsections (1), (3) and (4) of this section shall only apply to service performed for an educational institution or institution of higher education operated by:

(a) A nonprofit employing unit, *as defined in ORS 657.072 (2), by the*;

(b) **This** state, *by*;

(c) A political subdivision; or *[by]*

(d) An Indian tribe.

**SECTION 14.** ORS 657.425 is amended to read:

657.425. (1) Any employing unit, for which individuals perform services that are not employment subject to this chapter, may file with the Director of the Employment Department a written election that all such excluded services are employment for all the purposes of this chapter.

(2) Notwithstanding subsection (1) of this section:

(a) A nonprofit employing unit, *[as defined in ORS 657.072,]* a state agency, a political subdivision or an Indian tribe may file a written election that all otherwise excluded services performed by individuals within the same grade, class or occupation or at a specific establishment or geographic area are employment subject to this chapter.

(b) An employing unit for which services are performed that are subject to the Federal Unemployment Tax Act may file a written election with the director that such services are employment for all purposes of this chapter.

(3) Elections filed pursuant to subsections (1) and (2) of this section are not effective unless approved by the director. Upon approval of the election by the director, the services are employment subject to this chapter effective the first day of the calendar quarter in which the election

was filed, or a later date when so specified in the election. Such election shall continue in effect until canceled but shall be for not less than two completed calendar years.

(4) An employing unit may cancel its election as of January 1 of any calendar year that is subsequent to two calendar years, only if such employing unit has filed, at least 30 days prior to such January 1, a written notice with the director of its intention to cancel such election. Upon timely notice of intention to cancel the election, such services shall cease to be employment subject to this chapter.

(5) The director may cancel the election of any employing unit and such elected services shall cease to be employment subject to this chapter at any time while such employing unit is in default in payment of taxes or other amounts due under this chapter.

**SECTION 15.** ORS 657.505 is amended to read:

657.505. (1) On and after January 1, 1936, taxes shall be payable by each employer then subject to this chapter. Taxes shall become payable by any other employer on and after the date on which the employer becomes subject to this chapter.

(2) An employer shall be liable for taxes on all wages paid for services performed on or after the first day of a calendar quarter.

(3) Taxes of an employer shall not become payable until this chapter has been approved by the Secretary of Labor, and notice of such approval has been given to the Governor as provided in section 3304 of the Federal Unemployment Tax Act.

(4) All taxes shall be paid to and collected by the Director of the Employment Department at such times and in such manner as the director may prescribe and upon collection, shall be deposited in the Unemployment Compensation Trust Fund.

(5) In lieu of taxes required of all other employers subject to this chapter, the state shall pay into the fund an amount equivalent to the amount of all regular benefits and all extended benefits paid out to claimants who during the applicable base year were paid wages by the state. Payments required under this section shall be payable from the General Fund of the state, except that if a claimant was paid wages by the state during the base year from a special or administrative fund provided for by law, the payment into the fund shall be made from such special or administrative fund with the approval of the Oregon Department of Administrative Services.

(6) Any political subdivision subject to this chapter shall, in lieu of taxes required of other employers subject to this chapter, pay into the fund an amount equivalent to the amount of all regular benefits and all extended benefits paid out to claimants who during the applicable base year were paid wages by the political subdivision.

(7)(a) Any nonprofit employing unit[, *as defined in ORS 657.072 (2), and*] **or** any Indian tribe subject to or electing coverage under this chapter shall pay taxes under the provisions of ORS 657.475 and 657.480. However:

(A) Such nonprofit employing unit may elect to make reimbursement payments into the Unemployment Compensation Trust Fund in an amount equivalent to the amount of regular benefits and one-half of extended benefits paid out to claimants who during the applicable base period were paid wages by such nonprofit employing unit. Such reimbursement payments shall be deemed to be taxes for all purposes of this chapter.

(B) Such Indian tribe may elect to make reimbursement payments into the Unemployment Compensation Trust Fund in an amount equivalent to the amount of regular benefits and all extended benefits paid out to claimants who during the applicable base period were paid wages by the Indian tribe. Such reimbursement payments shall be deemed to be taxes for all purposes of this chapter.

(b) A nonprofit employing unit or an Indian tribe may elect to make reimbursement payments by filing with the director a written notice to this effect within the 30-day period following the close of the calendar quarter in which the nonprofit employing unit or Indian tribe became an employer, or may make a timely election within 30 days after the director finds the nonprofit employing unit or Indian tribe in default with respect to payment of taxes if the director has not found the default to be due to an intent to postpone or avoid either payment of taxes due the Unemployment Compensation Trust Fund or the election to make reimbursement payments pursuant to this paragraph.

A nonprofit employing unit or an Indian tribe failing to submit a timely notice of election of reimbursement shall be liable for taxes on any wages paid for services performed for such nonprofit employing unit or Indian tribe for two calendar years. Such nonprofit employing unit or Indian tribe will remain liable for taxes for any calendar year thereafter unless a written notice of election of reimbursement is filed with the director by January 31 of such calendar year. The director shall for good cause extend the period within which a notice of election of reimbursement must be filed for an additional 30 days.

(c) Elections of reimbursement shall continue until canceled but shall be for a period of not less than two calendar years. Any nonprofit employing unit or Indian tribe may cancel such election, and pay taxes as any other employer, by filing with the director a written notice of its intention to cancel such election by January 31 of the year in which the cancellation is to be effective. The director may for good cause extend the period within which a notice of cancellation may be filed for an additional 30 days. Once a cancellation is effective the nonprofit employing unit or Indian tribe must pay taxes for two calendar years before it is again eligible for election of reimbursement. An employer whose election of reimbursement has been canceled shall thereafter be liable for taxes at the rate assigned an employer in accordance with ORS 657.435 until such employer is eligible for a rate based on the experience of the employer in accordance with the provisions of ORS 657.475 and 657.480.

(d) Each nonprofit employing unit that elects to reimburse the fund shall, within 30 days after the effective date of its election, either execute and file with the director a surety bond or deposit with the director money, an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or other security as approved by the director. The amount of the bond or deposit shall be two percent of the nonprofit employing unit's total wages paid for employment covered by this chapter for the four calendar quarters immediately preceding the effective date of the election. If the nonprofit employing unit did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be as determined by the director. The amount of the bond or deposit shall not exceed the amount of taxes the nonprofit employing unit would have been assessed at the maximum tax rate for the same period had not the nonprofit employing unit elected to make reimbursement payments. However, no surety bond or deposit shall be required of an institution of higher education, unless in the discretion of the director the director determines that a surety bond or deposit shall be required of such an institution.

(A) Any bond or letter of credit deposited under this paragraph shall be in force for a period of not less than two calendar years and shall be renewed with the approval of the director, at such times as the director may prescribe, but not less frequently than at two year intervals as long as the nonprofit employing unit continues to be liable for reimbursement payments. The director shall require adjustments to be made in a previously filed bond or letter of credit as the director deems appropriate. If the bond or letter of credit is to be increased, the bond or letter of credit shall be filed by the nonprofit employing unit within 30 days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any nonprofit employing unit covered by such bond or letter of credit to pay the full amount of reimbursements when due, together with any applicable interest and penalties, shall render the surety liable on said bond or the issuer liable on the letter of credit to the extent of the amount thereof including interest and penalties assessed pursuant to this chapter.

(B) Any deposit of money or security in accordance with this paragraph shall be retained by the director. Money shall be deposited in the Employment Tax Guarantee Fund. When liability under the election is terminated the deposit shall be returned to the nonprofit employing unit, less any deductions as hereinafter provided. The director may transfer moneys from the Employment Tax Guarantee Fund or sell securities deposited as necessary to satisfy any due and unpaid reimbursements and any applicable interest and penalties. The director shall require the nonprofit employing unit within 30 days following transfer of a money deposit or sale of securities to deposit sufficient additional money or securities to restore the original deposit in full. The director may, at any time, review the adequacy of the deposit made by any nonprofit employing unit. If, as a result of such

review, the director determines that an adjustment is necessary, the director shall require the nonprofit employing unit to make an additional deposit within 30 days of written notice of the termination or shall return to it such portion of the deposit as the director no longer considers necessary, whichever action is appropriate.

(C) If any nonprofit employing unit fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided in this section, the director may terminate such nonprofit employing unit's election to make reimbursement payments. The director may extend for good cause the applicable filing, deposit or adjustment period by not more than 30 days. A nonprofit employing unit having its election terminated under this section shall pay taxes for a period of two calendar years before it is again eligible for election to reimburse.

(8)(a) At the end of each calendar quarter, or at the end of any other period as prescribed by the director, the director shall determine the amount of payments in lieu of taxes or reimbursement payments required, under subsections (5), (6) and (7) of this section, and shall bill each employer for such amount. If a claimant during a base year was employed by an employer liable for payments in lieu of taxes or reimbursement payments and other employers subject to the tax rate provisions of this chapter, the amount to be paid into the fund by employers liable for payments in lieu of taxes or reimbursement payments shall be an amount that is in the same proportion that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that year.

(b) In determining the amount of payments in lieu of taxes or reimbursement payments, benefits paid for any reason shall be included if such benefits or any portion thereof were paid as a result of wages earned in the employ of an employer required to make reimbursing payments or payments in lieu of taxes. Such benefits paid include but are not limited to payments made as a result of a determination or payments erroneously or incorrectly paid or paid as a result of a determination of eligibility that is subsequently reversed. Any benefit payments described in this paragraph that are subsequently recovered by the Employment Department will be credited on a pro rata basis to the account of the employer that reimbursed the fund for such benefits.

(c) Payment of any bill rendered under paragraph (a) of this subsection shall be made not later than the last day of the month immediately following the month in which such bill was mailed to the last-known address of the employer or was otherwise delivered to it. The director may assess a nonprofit employing unit or an Indian tribe for past due taxes and such assessment shall be subject to the same interest, penalties, enforcement, appeal and any other provisions of this chapter that apply to taxes assessed pursuant to ORS 657.681.

(d) If a nonprofit employing unit is delinquent in making reimbursement payments as required under this section, the director may terminate the nonprofit employing unit's election and the nonprofit employing unit must pay taxes for two calendar years before it is again eligible for election of reimbursement. Any employer whose election is terminated under provisions of this subsection shall remain liable for reimbursement payments for any benefits paid based on wages received prior to the effective date of termination of the election.

(e)(A) If an Indian tribe fails to make reimbursement payments as required under this section, including assessments of interest and penalties, within 90 days of receipt of the delinquency or bill, the director shall terminate the Indian tribe's election and the Indian tribe must pay taxes for two calendar years before it is again eligible for election of reimbursement. Any employer whose election is terminated under the provisions of this subsection remains liable for reimbursement payments for any benefits paid based on wages received before the effective date of termination of the election.

(B) Services performed for an Indian tribe may not be treated as employment for purposes of this chapter if, after all collection activities considered necessary by the director have been exhausted, the Indian tribe or any unit of the Indian tribe fails to make required payments, including contributions, reimbursement payments and assessments of interest and penalties.

(C) Services performed for an Indian tribe that has lost coverage under subparagraph (B) of this paragraph may be treated as employment for purposes of this chapter if the Indian tribe makes all

required payments, including contributions, reimbursement payments and assessments of interest and penalties.

(D) For purposes of this section, an Indian tribe and any units of the Indian tribe that separately elect coverage are jointly and severally liable for all required payments, including contributions, reimbursement payments and assessments of interest and penalties.

(E) The director shall notify the United States Internal Revenue Service and the United States Department of Labor if an Indian tribe fails to make payments required under this section, including assessments of interest and penalties, within 90 days of receipt of a final notice of assessment.

(9) Notwithstanding the provisions of subsections (5), (6), (7) and (8) of this section, each employing unit that is required to make payments in lieu of taxes or has elected to make reimbursement payments may request permission to make advance or budget payments in accordance with rules adopted by the director.

(10) Two or more employers that have become liable for payments in lieu of taxes or reimbursement payments, in accordance with the provisions of subsections (5), (6) and (7) of this section, may file a joint application to the director for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this subsection. Upon the approval of the director of the application, the director shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the director receives the application and shall notify the group's agent of the effective date of the account. Such account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the director or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group. The director shall prescribe such rules as the director deems necessary with respect to application for establishment, maintenance and termination of group accounts. This subsection shall not be construed to make such agent the employer of such workers, or relieve any employer of the obligations of the employer to comply with the terms of this chapter, except to the extent that such obligations are discharged by such agent as provided thereunder.

**SECTION 16.** ORS 346.190 is amended to read:

346.190. (1) The Commission for the Blind shall establish and maintain a program of industries for the blind. For that purpose, it shall equip and operate one or more training centers, one or more workshops and home industry activities for the employment of suitable blind persons, and may devise ways and means for the sale and distribution of the products and services of the Industries for the Blind Program. The commission may conduct such investigation and research as it may deem advisable in selecting new types of industries suitable for visually impaired workers.

(2) The commission shall pay visually impaired workers who have completed their training suitable compensation for their work in the Industries for the Blind Program. The services performed by workers within the Industries for the Blind Program shall be considered services for a nonprofit organization [*as defined in ORS 657.072*].

(3) The commission may employ such sighted persons as workers in the Industries for the Blind Program as are necessary to operate the program to the extent that such sighted workers do not constitute more than 25 percent of the total workforce of the program. The services performed by such sighted workers shall be considered services for a nonprofit organization [*as defined in ORS 657.072*].

(4) Except for those persons employed in a supervisory or administrative capacity:

(a) ORS chapter 240 does not apply to workers in the Industries for the Blind Program. However, the commission may allow vacation and sick leave to the employees of the Industries for the Blind Program consistent with the schedules established under the State Personnel Relations Law.

(b) Notwithstanding ORS 238.015, a worker in the Industries for the Blind Program working on July 21, 1973, shall become a member of the Public Employees Retirement System at the beginning

of the first full pay period after the worker has completed 12 months' service uninterrupted by a total of more than 30 working days during the 12 months' period. This subsection shall not apply nor extend to workers entering the Industries for the Blind Program after July 21, 1973.

**(5) As used in this section, "nonprofit organization" means an organization, or group of organizations, described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.**

**SECTION 17.** ORS 657.506 is amended to read:

657.506. (1) The person or organization engaging the services of a musician or musicians shall be considered the employer for the purposes of this chapter, except when the services are performed pursuant to a written contract that expressly designates one or more musicians who sign the contract as responsible for the filing of any reports and the payment of any taxes based upon wages or earnings of a musician or musicians performing services under the contract. A written contract that so designates a musician or musicians as responsible shall be conclusive evidence that the person or organization engaging the services is not the employer of a musician or musicians performing services under the contract. The musician or musicians who sign a written contract designating them as responsible shall, for purposes of this chapter, be considered the employer of any musician performing services under the contract who did not sign the contract.

(2) The provisions of subsection (1) of this section do not apply to services performed for:

(a) A nonprofit *[organization, as defined in ORS 657.072, for]* **employing unit;**

(b) This state~~], for~~;

(c) A political subdivision of this state; or *[for]*

(d) An Indian tribe.

**SECTION 18.** ORS 657.575 is amended to read:

657.575. (1) Notwithstanding any other provision of this chapter, when a nonprofit employing unit *[as defined in ORS 657.072 (2)]* is found by the Director of the Employment Department to be in default with respect to payment of taxes required by this chapter, the nonprofit employing unit may elect to satisfy the deficiency together with any interest and penalties thereon, by making reimbursement payments into the Unemployment Compensation Trust Fund in an amount equivalent to the amount of regular benefits and one-half of extended benefits paid out to claimants who, during the period of noncompliance with this chapter, were paid wages by such nonprofit employing unit. However, the election to make reimbursement payments may not be made if the director finds that any part of the deficiency is due to an intent to postpone or avoid either payment of taxes due the Unemployment Compensation Trust Fund or the election to make reimbursement payments pursuant to ORS 657.505 (8).

(2) Reimbursement payments made pursuant to this section shall be deemed to satisfy any deficiency, together with any interest and penalties thereon. If a nonprofit employing unit elects to make reimbursement payments under this section, any payments previously made to satisfy that deficiency shall be credited to the reimbursement payments for which the nonprofit employing unit is liable. If all liabilities for benefit payments to claimants are met, any payments in excess of the reimbursement payments required, together with any interest and penalties thereon, shall be refunded to the nonprofit employing unit.

**Passed by Senate February 8, 2005**

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Secretary of Senate

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President of Senate

**Passed by House May 31, 2005**

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Speaker of House

**Received by Governor:**

.....M,....., 2005

**Approved:**

.....M,....., 2005

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2005

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