

# Chapter 653

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**MINIMUM WAGES**

**653.010 Definitions for ORS 653.010 to 653.261.** As used in ORS 653.010 to 653.261, unless the context requires otherwise:

(1) "Commission" means the Wage and Hour Commission.

(2) "Employ" includes to suffer or permit to work; however, "employ" does not include permitting voluntary service without compensation to a religious or charitable non-profit institution.

(3) "Employer" means any person who employs another person.

(4) "Labor Commissioner" means the Commissioner of the Bureau of Labor.

(5) "Minor" means any person under 18 years of age.

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employes are gainfully employed.

(7) "Outside salesman" means any employe who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in making sales, or obtaining orders, or obtaining contracts for services and whose hours of work of any other nature for the employer do not exceed 30 percent of the hours worked in the workweek by the non-exempt employes of the employer.

(8) "Wages" means compensation due to an employe by reason of his employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such deductions, charges or allowances as are permitted in ORS 653.035.

(9) "Work time" includes both time worked and time of authorized attendance.  
[1967 c.596 §2]

**653.015 Statement of policy.** It is declared to be the policy of the State of Oregon to establish minimum wage standards for workers at levels consistent with their health, efficiency and general well-being.  
[1967 c.596 §1]

**653.020 Excluded employes.** ORS 653.010 to 653.261 does not apply to any of the following employes:

(1) An individual employed in agriculture if:

(a) Such individual is employed by an employer who did not, during any calendar

quarter during the preceding year use more than 500 man-days of agricultural labor;

(b) Such individual is the parent, spouse, child or other member of his employer's immediate family;

(c) Such individual:

(A) Is employed as a hand harvest laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment;

(B) Commutes daily from his permanent residence to the farm on which he is so employed; and

(C) Has been employed in agricultural labor less than 13 weeks during the preceding calendar year;

(d) Such individual, other than an individual described in paragraph (c) of this subsection:

(A) Is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment;

(B) Is employed on the same farm as his parent or person standing in the place of his parent; and

(C) Is paid at the same piece rate as employes over 16 years of age on the same farm; or

(e) Such employe is principally engaged in the range production of livestock.

(2) An individual employed in domestic service in or about a family home.

(3) An individual engaged in administrative, executive or professional work who:

(a) Performs predominantly intellectual, managerial or creative tasks;

(b) Exercises discretion and independent judgment; and

(c) Earns more than \$350 a month from this work.

(4) An individual employed by the United States, or this state, or a political subdivision or quasi-municipal corporation thereof.

(5) An individual who is employed by an institution whose function is primarily education, and in which he is an enrolled student.

(6) An individual engaged in the capacity of an outside salesman or taxicab operator.

(7) Any person regulated under the Federal Fair Labor Standards Act.

(8) An individual employed to work in his own home.

(9) An individual domiciled at a place of employment for purpose of being available for emergency or occasional duties.

(10) An individual paid for specified hours of employment, the only purpose of which is to be available for recall to duty.

[1967 c.596 §3; 1971 c.758 §3; 1973 c.383 §1]

**653.022 "Man-day" defined for ORS 653.020.** As used in subsection (1) of ORS 653.020, "man-day" means any day during which an employe performs any agricultural labor for not less than one hour. For the purposes of this section, "employe" does not include any individual:

(1) Employed by an employer in agriculture if such individual is the parent, spouse, child or other member of the employer's immediate family; or

(2) Who is employed by an employer engaged in agriculture if such individual:

(a) Is employed as a hand harvest laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment;

(b) Commutes daily from his permanent residence to the farm on which he is so employed; and

(c) Has been employed in agriculture less than 13 weeks during the preceding calendar year.

[1971 c.758 §2]

**653.025 Minimum wage rate for persons 18 years of age and older.** Except as provided by ORS 652.020 and the rules of the commission issued under ORS 653.030 and 653.261, for each hour of work time that the employee is gainfully employed, no employer shall employ or agree to employ any employe 18 years of age or older at wages computed at a rate lower than as follows:

(1) For calendar year 1974, \$1.60.

(2) For calendar years after December 31, 1974, \$1.75.

[1967 c.596 §4; 1973 c.403 §3]

**653.027 Wage rate for persons under 18 years of age.** An employer who employs individuals under 18 years of age in agricultural labor and who pays such individuals by the amount of work produced or services rendered shall pay such individuals the

same rate of payment for the work produced or services required as paid to individuals over 18 years of age.

[1973 c.403 §2]

**653.030 Wage and Hour Commission may prescribe lower rates in certain cases.**

The commission shall issue rules prescribing the employment of other types of persons at fixed minimum hourly wage rates lower than the minimum wage rate required by ORS 653.025, when the commission has determined that the application of ORS 653.025 would substantially curtail opportunities for employment for specific types of persons. The types of persons for whom a minimum hourly wage rate may be set include, but are not limited to, persons who are mentally or physically handicapped or who have exceeded 65 years of age or who are minors under 18 years of age.

[1967 c.596 §5 (1); 1973 c.403 §4]

**653.035 Deducting value of lodging, meals and other benefits furnished by employer; treatment of commissions.** (1) Employers may deduct from the minimum wage to be paid employes under ORS 653.025, 653.030 or 653.261, the fair market value of lodging, meals or other facilities or services furnished by the employer for the private benefit of the employe.

(2) Employers may include commission payments to employes as part of the applicable minimum wage for any pay period in which the combined wage and commission earnings of the employe will comply with ORS 653.010 to 653.261. In any pay period where the combined wage and commission payments to the employe do not add up to the applicable minimum wage under ORS 653.010 to 653.261, the employer shall pay the minimum rate as prescribed in ORS 653.010 to 653.261.

[1967 c.596 §§6, 7]

**653.040 Powers of commission.** The commission, in addition to its other powers, may:

(1) Investigate and ascertain the wages of persons employed in any occupation or place of employment in the state.

(2) Require from an employer statements, including sworn statements, with respect to wages, hours, names and addresses and such other information pertaining to his employes or their employment as the commission considers necessary to carry out ORS 653.010 to 653.261.

(3) Make such rules as it considers appropriate to carry out the purposes of ORS 653.010 to 653.261, or necessary to prevent the circumvention or evasion of ORS 653.010 to 653.261 and to safeguard the minimum wage rates set under ORS 653.010 to 653.261. [1967 c.596 §8]

**653.045 Records to be kept by employers; itemization of deductions from wages.**

(1) Every employer required by ORS 653.025 or by any rule, order or permit issued under ORS 653.030 to pay a minimum wage to any of his employes shall make and keep available to the commission for not less than two years, a record or records containing:

(a) The name, address and occupation of each of his employes.

(b) The actual hours worked each week and each pay period by each employe.

(c) Such other information as the commission prescribes by its rules if necessary or appropriate for the enforcement of ORS 653.010 to 653.261 or of the rules, orders, and licenses issued thereunder.

(2) Each employer shall keep the records required by subsection (1) of this section open for inspection or transcription by the commission at any reasonable time.

(3) Every employer of one or more employes covered by ORS 653.010 to 653.261 shall supply each of his employes with itemized statements of amounts and purposes of deductions in the manner provided in ORS 652.610.

[1967 c.596 §9]

**653.050 Employers to post summary of law and copy of rules.** Every employer required by ORS 653.025 or by any rules, orders or permit issued under ORS 653.030 or 653.261 to pay a minimum wage to any of his employes shall keep a summary of ORS 653.010 to 653.261, approved by the commission, and copies of the applicable rules, posted in a conspicuous and accessible place in or about the premises where such employes are employed. Employers shall be furnished copies of these summaries and rules by the commission without charge.

[1967 c.596 §10]

**653.055 Liability of noncomplying employer; contrary agreements no defense; wage claims.** (1) Any employer who pays an employe less than the wages to which the employe is entitled under ORS 653.010 to 653.261 is liable to the employe affected:

(a) For the full amount of the wages,

less any amount actually paid to the employe by the employer; and

(b) For costs and such reasonable attorney fees as are allowed by the court.

(c) For civil penalties provided in ORS 652.150.

(2) Any agreement between an employe and an employer to work at less than the wage rate required by ORS 653.010 to 653.261 is no defense to an action under subsection (1) of this section.

(3) The Labor Commissioner has the same powers and duties in connection with a wage claim based on ORS 653.010 to 653.261 as he has under ORS 652.310 to 652.445.

[1967 c.596 §11]

**653.060 Discharging or discriminating against employe prohibited in certain cases.** No employer shall discharge or in any other manner discriminate against any employe:

(1) Because the employe has made complaint that he has not been paid wages in accordance with ORS 653.010 to 653.261.

(2) Because the employe has caused to be instituted or is about to cause to be instituted any proceedings under or related to ORS 653.010 to 653.261.

(3) Because the employe has testified or is about to testify in any such proceedings.

[1967 c.596 §12]

**653.065 Application of Administrative Procedures Act.** (1) All proceedings under ORS 653.010 to 653.261 shall be conducted in compliance with ORS 183.310 to 183.500.

(2) All rules of the commission under ORS 653.010 to 653.261 shall be issued in compliance with ORS 183.310 to 183.500.

[1967 c.596 §13]

**653.105** [Amended by 1953 c.123 §2; repealed by 1967 c.596 §15]

**653.110** [Repealed by 1967 c.596 §15]

**653.115** [Repealed by 1967 c.596 §15]

**653.120** [Repealed by 1967 c.596 §15]

**653.125** [Repealed by 1967 c.596 §15]

**653.205** [Amended by 1961 c.337 §1; repealed by 1967 c.596 §15]

**653.210** [Repealed by 1967 c.596 §15]

**653.215** [Repealed by 1967 c.596 §15]

**653.220** [Repealed by 1967 c.596 §15]

**653.225** [Repealed by 1967 c.596 §15]

**653.230** [Repealed by 1967 c.596 §15]

**653.235** [Repealed by 1967 c.596 §15]

**653.240** [Repealed by 1967 c.596 §15]

**653.245** [Repealed by 1967 c.596 §15]

653.250 [Repealed by 1967 c.596 §15]

653.255 [Repealed by 1967 c.596 §15]

653.260 [Repealed by 1967 c.596 §15]

## GENERAL EMPLOYMENT CONDITIONS

**653.261 Minimum employment conditions; exempt employments.** (1) The commission may issue rules prescribing such minimum conditions of employment, excluding minimum wages, in any occupation as may be necessary for the preservation of the health of employes. Such rules may include, but are not limited to, minimum meal periods and rest periods, and maximum hours of work, but not less than eight hours per day or 40 hours per week; however, after 40 hours of work in one week overtime may be paid, but in no case at a rate higher than one and one-half times the regular rate of pay of such employes when computed without benefit of commissions, overrides, spiffs and similar benefits.

(2) Nothing contained in ORS 653.010 to 653.261 shall be construed to confer authority upon the commission to regulate the hours of employment of employes engaged in production, harvesting, packing, curing, canning, freezing or drying any variety of agricultural crops, livestock, poultry or fish.  
[1967 c.596 §5(2), (3); 1971 c.492 §1]

**653.265 Overtime for persons employed in canneries, driers and packing plants.** When employed in canneries or driers or packing plants, excluding canneries or driers or packing plants located on farms and primarily processing products produced on such farms, employes shall be paid time and a half for time over 10 hours per day and piece workers shall be paid one and a half the regular prices for all work done during the time they are employed over 10 hours per day.  
[Amended by 1971 c.492 §2]

653.270 [Repealed by 1967 c.596 §15]

653.275 [Repealed by 1967 c.596 §15]

## EMPLOYMENT OF CHILDREN

**653.305 Inquiry and order on employment of minors.** (1) The commission may at any time inquire into wages or hours or conditions of labor of minors employed in any occupation in this state and determine suitable wages, but not to exceed the rate provided in ORS 653.025, and hours and conditions of labor for such minors.

(2) When the commission has made

such determination, it may issue an obligatory order in compliance with ORS 183.310 to 183.500.

(3) After such order is effective, no employer in the occupation affected shall employ a minor at less wages or for more hours or under different conditions of labor than are specified or required by the order; but no such order nor the commission shall authorize or permit the employment of any minor for more hours per day or per week than the maximum fixed by law or at times or under conditions prohibited by law.

[Amended by 1967 c.596 §16]

**653.307 Issuance of employment certificates by commission; effect of failure by employer to comply; school districts required to cooperate in certificate issuance.** (1) The Wage and Hour Commission shall provide a method for issuing employment certificates to minors and employment certificates to employers for the employment of minors in accordance with rules and regulations which it may hereafter adopt pursuant to the provisions of ORS chapter 183, and shall by such rules and regulations require reports from employers employing minors.

(2) Failure by an employer to comply with ORS 653.305 to 653.340 or with the regulations adopted by the Wage and Hour Commission pursuant to this section shall subject the employer to revocation of the right to hire minors in the future at the discretion of the Wage and Hour Commission, provided that an employer shall be granted a hearing before the Wage and Hour Commission prior to such action being taken.

(3) All school districts shall cooperate with the Wage and Hour Commission and make available upon request of the commission, information concerning the age and schooling of minors who have applied for or been issued an employment certificate.  
[1971 c.626 §2]

**653.310 Person under age 18 to work only if employer has employment certificate on file; list of minor employes.** No child under 18 years of age shall be employed or permitted to work in any employment listed in subsection (2) of ORS 653.320, unless the person employing him procures and keeps on file and accessible to the school authorities of the district where such child resides, and to the police and the commission an employment certificate as prescribed by the rules and regulations adopted by the Wage and Hour Commission pursuant to ORS 653.307, and

keeps a complete list of all such children employed therein.

[Amended by 1971 c.626 §3]

**653.315 Working hours for children under 16 years of age; exceptions; meal times; posting notice of hours.** (1) No child under 16 years of age shall be employed for longer than 10 hours for any one day, nor more than six days in any one week.

(2) No child under 16 years of age shall be employed at any work before 7 a.m. or after 6 p.m., except for those:

(a) Employed in agriculture.

(b) Employed in youth camps. The term "youth camps" means those camps operated and maintained primarily for the supervised recreation and education of youth of either sex during the public school vacation periods.

(c) Employed as newspaper carrier or vendor.

(d) Employed under a special permit which may be issued by the Wage and Hour Commission, after investigation and good cause shown therefor, allowing the minor to be employed after the hour of 6 p.m., but not after the hour of 10 p.m. nor before the hour of 7 a.m., in suitable work which is not detrimental to his physical and moral well-being. The Wage and Hour Commission or its representatives shall investigate periodically the conditions of labor for which the special permit has been issued, to determine whether or not the permit should be continued.

(e) Employed in or about private residences at domestic work, chores and child care. This exception does not extend to employment in places where child care or training is carried on as an occupation.

(3) Every child under 16 years of age is entitled to not less than 30 minutes for meal time at noon, but such meal time shall not be included as part of the work hours of the day.

(4) Every employer of children under 16 years of age shall post in a conspicuous place where such minors are employed, a printed notice stating the maximum work hours required in one week, and in every day of the week from such minors.

[Amended by 1957 c.419 §1; 1961 c.205 §1]

**653.320 Employment of children under 14 years; exceptions; notice of access to Wage and Hour Commission.** (1) No child under the age of 14 years shall be employed in any work, or labor of any form for wages or other compensation to whomsoever payable,

during the term when the public schools of the town, district or city in which he resides are in session.

(2) No child under 14 years of age shall be employed or permitted to work in, or in connection with, any factory, workshop, mercantile establishment, store, business office, restaurant, bakery, hotel or apartment house.

(3) The Wage and Hour Commission may allow children between the ages of 12 and 14 to be employed in any suitable work during any school vacation extending over a term of two weeks and may issue permits therefor. The commission shall exercise careful discretion as to the character of such employment and its effect on the physical and moral well-being of the child.

(4) Exceptions may be made by the Wage and Hour Commission exempting a minor or class of minors from the above provisions. The child so employed under this provision shall be given notice of confidential access to the Wage and Hour Commission.

[Amended by 1971 c.625 §1]

**653.325** [Repealed by 1967 c.527 §3]

**653.326 Employing vocationally trained minors in employment otherwise prohibited.**

(1) The Wage and Hour Commission may by special permit authorize a child under 18 years of age to engage in employment otherwise prohibited by law if the child has successfully completed vocational training for such employment conducted by any school district, or training that the commission considers equivalent thereto, and the child:

(a) Has graduated from high school; or

(b) Is employed during such time as public schools are not in session for a period exceeding 30 days.

(2) The commission or its representatives shall investigate periodically the conditions of the employment for which a special permit has been issued, to determine whether or not the permit should be continued.

[1967 c.347 §2]

**653.330 Employment of minors in certain logging operations prohibited.** No person shall employ or allow:

(1) Any person under the age of 18 years to act as engineer of or have charge of or operate any logging engines used in logging operations.

(2) Any person under the age of 16 years to act in the capacity of giving signals

to the engineer in logging operations or receiving and forwarding such signals.

**653.335 Elevator operators to be over 18.** No person shall employ or allow any person under the age of 18 years to run, operate or have charge of, any elevator used for the purpose of carrying either persons or property.

**653.340 Employment of minors as messengers and delivery boys.** (1) No person under the age of 18 years shall be employed or permitted to work as a messenger for a telegraph or messenger company or anyone engaged in such a business in the distribution, transmission or delivery of goods or messages before 5 a. m. or after 10 p. m.

(2) No person under the age of 16 years shall be employed or permitted to work in the telegraph, telephone or public messenger service.

653.405 [Repealed by 1971 c.626 §7]

653.410 [Repealed by 1971 c.626 §7]

653.415 [Repealed by 1971 c.626 §7]

653.420 [Repealed by 1971 c.626 §7]

653.425 [Repealed by 1971 c.626 §7]

653.430 [Repealed by 1971 c.626 §7]

653.435 [Repealed by 1971 c.626 §7]

653.440 [Repealed by 1971 c.626 §7]

653.445 [Amended by 1967 c.67 §23; repealed by 1971 c.626 §7]

## WAGE AND HOUR COMMISSION

**653.505 Wage and Hour Commission; appointment; confirmation; term; vacancies.** (1) The Wage and Hour Commission is established and shall be composed of three commissioners who shall be appointed by the Governor for the term of four years and until their successors are appointed and qualified. In selection of the members of the commission, the Governor shall give due consideration to the interests of labor, industry and the public. Not more than two of the members of said commission shall belong to the same political party.

(2) Upon the expiration of the term of any commissioner, the Governor shall appoint a successor.

(3) The Governor shall fill any vacancy on the commission by appointment for the unexpired portion of the term in which the vacancy occurs.

(4) All appointments of members of the commission by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570. [Amended by 1967 c.596 §17; 1973 c.792 §27]

**653.510 Organization of commission; chairman; quorum; compensation and expenses.** (1) On or before January 20 of each year, the commissioners shall elect a chairman. Each chairman shall hold his position until his successor is elected.

(2) A majority of the commissioners shall constitute a quorum to transact business. The act or decision of such majority is considered the act or decision of the commission. No vacancy shall impair the right of the remaining commissioners to exercise all the powers of the commission.

(3) Each commissioner is entitled to compensation and expenses as provided in ORS 292.495.

[Amended by 1961 c.337 §2; 1969 c.314 §68]

**653.515 Labor Commissioner as secretary; personnel and expenses.** (1) The Commissioner of the Bureau of Labor shall be the secretary and executive officer of the Wage and Hour Commission.

(2) The secretary of the commission may employ such clerical assistance and incur such expenses as may be necessary in performing his duties.

**653.520 Duties of commission generally; biennial report.** (1) The Wage and Hour Commission shall administer, execute and carry out the provisions of ORS 653.010 to 653.545 and 653.991.

(2) On or before January 1 of each odd-year, the commission shall make a succinct report to the Governor and legislature of its work and the proceedings under ORS 653.105 to 653.125, 653.205 to 653.250, 653.305 and 653.505 to 653.540 during the preceding two years.

**653.525 Rules and regulations of commission.** The commission may prepare, adopt and promulgate rules and regulations for the carrying into effect of ORS 653.105 to 653.125, 653.205 to 653.230, 653.240, 653.305, 653.315 and 653.505 to 653.540, including rules and regulations for the selection of members and the mode of procedure of conferences.

[Amended by 1961 c.205 §2]

**653.530 Meetings and hearings of commission; power to subpoena and administer**

**oaths; expenses of witnesses.** (1) The commission may hold meetings for the transaction of any of its business at such times and places as it may prescribe.

(2) The commission may hold public hearings at such times and places as it deems fit and proper for the purpose of investigating any of the matters it is authorized to investigate under ORS 653.125 or 653.535.

(3) At any such public hearing any person interested in the matter being investigated may appear and testify.

(4) The commission may subpoena and compel the attendance of any witness at any such public hearing or at any session of any conference called and held as provided in ORS 653.205 to 653.235. Any commissioner may administer an oath to any witness who testifies at any such public hearing or at any such session of any conference.

(5) All witnesses subpoenaed by the commission shall be paid the same mileage and per diem as are allowed by law to witnesses in civil cases before the Circuit Court of Multnomah County.

**653.535 Investigating compliance with orders; prosecution for violation.** The commission shall, from time to time, investigate and ascertain whether or not employers are observing and complying with its orders and take such steps as may be necessary to prosecute such employers as are not observing or complying with its orders.

**653.540 Assistance of Labor Commissioner.** The Commissioner of the Bureau of Labor shall, at all times, give to the commission any information or statistics in his office that would assist the commission in carrying out ORS 653.105 to 653.125, 653.205 to 653.250, 653.305, 653.505 to 653.535 and render such assistance to the commission as is consistent with the performance of his official duties.

**653.545 Visitation rights of commission; prosecution of offenses against child labor laws.** (1) The commission or anyone authorized by the commission in writing may visit the factories, workshops and mercantile establishments in their several towns and cities and ascertain whether any minors are employed therein contrary to ORS 653.310 to 653.320, 653.340 and the rules and regulations promulgated by the Wage and Hour Commission pursuant to ORS 653.307 and shall report any cases of illegal employment

to the proper school authorities and to the district attorney of the county. The commission may require that the employment certificates and lists of minors employed in such factories, workshops, or mercantile establishments, shall be produced for their inspection.

(2) The commission shall bring complaints for offenses under ORS 653.310 to 653.320 and 653.340 to the attention of the proper district attorney who shall prosecute such offenses.

[Amended by 1971 c.626 §4]

## PRIVATE RETIREMENT SYSTEMS

### (General Provisions)

**653.600 Definitions for ORS 653.600 to 653.700.** As used in ORS 653.600 to 653.700 and 653.992 unless the context requires otherwise:

(1) "Administrator" means:

(a) The person specifically so designated by the terms of the plan, trust agreement, contract, or other instrument under which the retirement system is operated; or

(b) In the absence of such designation, the employer.

(2) "Beneficiary" means a person designated by a participant or by the terms of a retirement system who is or may become entitled to a benefit thereunder.

(3) "Commissioner" means the Insurance Commissioner.

(4) "Employee" means any individual employed in this state by an employer.

(5) "Employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to a retirement system, and includes a group or association of employers acting for an employer in such capacity.

(6) "Fiduciary" means any person who exercises any power of control, or management with respect to the investment of any moneys or other property of a retirement system, or has authority or responsibility to do so. "Fiduciary" does not:

(a) Mean any person who has the power to appoint or remove a fiduciary provided that such person cannot exercise any direction or control over the fiduciary in the exercise of its functions.

(b) Include an insurance company authorized to do business in this state.

(7) "Participant" means any employe or former employe of an employer or any Oregon member of an employe organization

who is or may become eligible to receive a benefit of any type from a retirement system, or whose beneficiaries may be eligible to receive any such benefit.

(8) "Participant account" means an account established or maintained by the administrator of a retirement system under which a participant's own contributions or his share of the employer's contributions, together with the income, gains, and losses from investment thereof, whether or not realized, are charged or credited.

(9) "Party in interest" means any administrator, officer, trustee, custodian, counsel or employe of any retirement system, or a person providing services to any such system or an employer any of whose employes are covered by such a system or any person controlling, controlled by, or under common control with, such employer or officer or employe or agent of such employer, or such person, or a relative, partner, or joint venturer of any of the described persons.

(10) "Person" means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, unincorporated organization, association, or employe organization.

(11) "Retirement system" means any employe's pension, profit-sharing, stock bonus or similar benefit plan covering more than 25 participants which meets the requirements for qualification under section 401 of the federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employe's pension, profit-sharing, stock bonus or similar benefit plan meets the requirements for qualification under section 401 of the Internal Revenue Code shall be conclusive evidence that such plan is a retirement system until the date such determination letter is revoked in writing by the Internal Revenue Service, regardless of whether such revocation is retroactive in effect. In so far as applicable to any retirement system, the terms "trust," "trust agreement," and "trust instrument" include the formal plan or plan description excluding any summary thereof, the trust instrument or agreement, the policy of insurance or related contract, if any, and any written administrative rules, regulations and interpretations governing the operation of the retirement system.

[1973 c.564 §2]

**653.605 Policy.** It is the policy of ORS 653.600 to 653.700 and 653.992 to protect the interests of participants in retirement systems by requiring disclosure and reporting to participants and beneficiaries of vital information where such information has not been reported or disclosed to such participants and beneficiaries under applicable federal law.

[1973 c.564 §1]

**653.610 Application of law to governmental retirement systems.** ORS 653.600 to 653.700 and 653.992 do not apply to a retirement system administered by the United States, or by any territory or insular possession thereof, or by the State of Oregon, nor to the pension and retiring annuities system established by the State Board of Higher Education.

[1973 c.564 §6]

**653.615 Retirement system fiduciaries subject to duties and liabilities of trustees; exemption by rule of commission.** (1) Every person acting in the capacity of a fiduciary with respect to a retirement system shall be subject to the obligations, duties and liabilities imposed on trustees pursuant to law.

(2) The commissioner may establish rules exempting fiduciaries from subsection (1) of this section, with respect to those activities which the commissioner determines do not involve any significant risk that the moneys or other property of a retirement system will be applied for any purpose other than the exclusive benefit of the participants therein or the beneficiaries of such participants.

[1973 c.564 §3]

**653.620 Property of retirement system unassignable and exempt from bankruptcy or insolvency process.** The property of a retirement system, the portion of wages or salary of an employe deducted or to be deducted, the right of a participant or beneficiary to a benefit thereunder, and all his rights in the funds of the system, shall be exempt from attachment, garnishment, execution or the operation of any law relating to bankruptcy or insolvency and shall be unassignable.

[1973 c.564 §5]

**653.625 Release from or restriction of fiduciary obligations prohibited; applicability to preexisting systems.** (1) Except

as provided in subsection (2) of ORS 653.615, no fiduciary shall be relieved from any responsibility, obligation or duty under ORS 653.600 to 653.700 and 653.992 or any rule or order hereunder by agreement or otherwise. Nothing in ORS 653.600 to 653.700 and 653.992 shall preclude any agreement allocating specific duties or responsibilities among fiduciaries, or bar any agreement of insurance coverage or indemnification affecting fiduciaries, but no such agreement shall restrict the obligations of any fiduciary to a retirement system or to any participant or beneficiary.

(2) Subsection (1) of this section applies only to retirement systems created after October 5, 1973, but it is not intended to change any law otherwise applicable to systems created prior to that date.

[1973 c.564 §7]

**653.630 Administrator of system to publish reports; contents; actuary to certify statement of liabilities.** (1) The administrator of every retirement system shall publish an annual report within 150 days after the end of the calendar or fiscal year on which the records of the system are kept. Such report shall include:

(a) The amount contributed by each employer;

(b) The amount contributed by the employees;

(c) The amount of benefits paid or otherwise furnished;

(d) A statement of the assets, liabilities, receipts and disbursements of the system;

(e) A statement of the salaries, fees and commissions charged to the system, to whom paid, in what amount, and for what purposes; and

(f) The name and address of each administrator and fiduciary, his official position with respect to the system, his relationship to the employer, and any other office or position which he holds with any party in interest.

(2) A qualified actuary shall certify the statement of the liabilities of the system required under paragraph (d) of subsection (1) of this section. A "qualified actuary" is a person who is a member of the American Academy of Actuaries or such other person as the commissioner certifies as being qualified to perform the duties of an actuary required under this section.

[1973 c.564 §8]

**653.635 Manner of publishing annual report.** Publication of the annual report required by ORS 653.630 shall be made as follows:

(1) The administrator shall make a copy of such annual report available for examination by any participant or beneficiary in the principal office of the administrator, if situated in this state, and otherwise in the principal branch office situated in this state. If no office is situated in this state, the administrator shall mail a copy of such report to any participant or beneficiary who requests such copy in writing.

(2) The administrator, upon request of the commissioner, shall file with him a copy of such annual report and of any report required to be furnished pursuant to ORS 653.640.

(3) Whenever any administrator of a retirement system publishes as part of his annual report a detailed statement as required by ORS 653.630, a copy of that portion of the annual report shall be filed with the commissioner no later than the date for publication of the annual report of the retirement system. In lieu of such a filing a copy of the statement required, the administrator may file the equivalent filing required by the United States Internal Revenue Service.

[1973 c.564 §11]

**653.640 Participants to receive statement of accounts; contents of report.** The administrator of every retirement system which maintains participant accounts shall mail annually to each participant at his last-known address as it appears in the records of the retirement system a report setting forth the status of such participant's account as of the end of the preceding calendar or fiscal year on which the records of the system are kept. Each such report shall contain:

(1) (a) A statement of the fair market value where available, and otherwise the fair value as determined in good faith by the administrator of the participant's account as of the reporting date and as of the immediately preceding reporting date;

(b) In the case of a system which allocates securities the fair value of which is readily available to participants, a statement as of each of such dates of the aggregate securities so allocated; and

(2) A statement of the contributions

made during the reporting period by the participant, and the employer for the account of the participant.

[1973 c.564 §9]

**653.645 Commissioner to prescribe form of reports; use of forms meeting federal standards; exemption for systems subject to federal reporting law.** The commissioner may by rule specify the form of the reports required pursuant to ORS 653.600 to 653.700 and 653.992. In lieu of such form, the administrator may complete and publish any form or forms containing substantially the information prescribed by ORS 653.630 and 653.640 required to be filed by the employer with the Federal Government to satisfy any federal tax or welfare and pension plan disclosure and reporting requirements. Retirement systems which are required to file and do file annual reports pursuant to the Federal Welfare and Pension Plans Disclosure Act (Pub.L. 85-836; 72 Stat. 997), as amended, containing substantially the information required by ORS 653.630 shall be exempt from the requirement of preparing any other annual report pursuant to ORS 653.630 and from the requirement of filing the report required by ORS 653.650.

[1973 c.564 §10]

**653.650 System administrator to file investment transaction report; exemptions.** The administrator of every retirement system shall annually file with the commissioner a report setting forth all investment transactions conducted during the preceding calendar or fiscal year, and at the time of such filing pay to the commissioner a filing fee of \$25. The commissioner shall receive these reports and hold them available for inspection by participants and beneficiaries of the retirement system. However, the provisions of this section shall not apply to any of the following:

(1) A retirement system in which all such contributions are paid to a trustee or cotrustee qualified and doing business in this state and subject to the supervision of the Banking Division or in which all such contributions are paid to a trustee or cotrustee that is a bank and a member of a Federal Reserve Bank.

(2) A retirement system in which all contributions are paid to an insurer authorized to do business in this state.

(3) A retirement system which furnishes to all of its participants annually a statement in writing setting forth all investment transactions conducted during the preceding calendar or fiscal year.

(4) A retirement system in which all contributions are paid to a trustee or cotrustee qualified and doing business in this state and subject to the supervision of the Federal Home Loan Bank Board or doing business as a savings and loan association.

(5) A retirement system in which a portion of the contributions are paid to a trustee or cotrustee or an insurer designated in subsection (1) or (2) of this section and the remaining portion of the contributions are paid to another trustee or cotrustee or insurer who is also designated in subsection (1) or (2) of this section.

[1973 c.564 §12]

**653.655 Participants of system to be notified of location of report and of inspection right.** The participants of every retirement system shall be notified by the administrator as to the location of the reports published under ORS 653.630 and 653.650. Such notification shall also indicate the participant's right to inspect such reports and include a statement that the Corporation Commissioner is the state officer charged with the enforcement of ORS 653.600 to 653.700 and 653.992.

[1973 c.564 §13]

## ADMINISTRATION

**653.675 Rulemaking authority.** (1) The commissioner may make such rules as are necessary to carry out the purposes and intent of ORS 653.600 to 653.700 and 653.992.

(2) The Attorney General shall be counsel for the commissioner and shall render all legal services necessary for the administration of ORS 653.600 to 653.700 and 653.992.

(3) Any order, decision, or other action of the commissioner in the administration of ORS 653.600 to 653.700 and 653.992 is subject to review in accordance with ORS 183.480.

[1973 c.564 §14]

**653.680 Investigative powers of commissioner; exemption for federally inspected records; costs of investigation.** (1) For the purpose of discovering violations of ORS

653.600 to 653.700 and 653.992 and for securing information required by him, the commissioner may at any time investigate the affairs and examine the books, accounts, records and files of any retirement system and the administrator thereof. However, nothing in ORS 653.600 to 653.700 and 653.992 is intended to authorize an examination of the books or records of any bank or insurance company providing an insurance, investment, or related function of any retirement system if such books or records are subject to periodic examination by some other agency of the state or of the Federal Government.

(2) The actual cost of every investigation and examination shall be paid to the commissioner by the person examined and the commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction.

[1973 c.564 §15]

**653.685 Restraining violations; hearings; rescission of order.** Whenever the commissioner believes from evidence satisfactory to him that any individual has violated or is about to violate any provision of ORS 653.600 to 653.700 and 653.992, the commissioner may order the individual to desist and to refrain from the violation or threatened violation. If, after such an order has been made, a request for a hearing is filed in writing by the person to whom such order was directed, a hearing shall be held in accordance with the provisions of ORS chapter 183 as in a contested case. However, unless the hearing is commenced within 60 days after the request is made, or the person affected consents to a later date, the order is rescinded.

[1973 c.564 §17]

**653.690 Injunctive relief; jurisdiction; scope of court order.** Whenever the commissioner believes from evidence satisfactory to him that any individual has violated or is about to violate any provision of ORS 653.600 to 653.700 and 653.992, he may bring an action in the name of the state in the Circuit Court for Marion County against the individual to enjoin the individual from continuing the violation or engaging therein, or doing any act or acts in furtherance thereof. In the action a preliminary or permanent injunction, restraining order, or writ of mandamus may be granted and a receiver or conservator may

be appointed for the defendant or the assets of the retirement systems involved. The court shall not require the commissioner to post a bond.

[1973 c.564 §18]

**653.695 Order of commissioner when system is financially jeopardized; hearing; exemption for certain systems under governmental supervision.** If the commissioner, as a result of any examination or from any report made to him, finds that a retirement system is being administered in such a manner as to jeopardize the financial soundness of the retirement system or impair the likelihood of the payment of future benefits to participants of the system he may, after a hearing in accordance with ORS chapter 183 as in a contested case order the retirement system to cease operations and to liquidate, or he may, without such hearing take possession of the business and assets for the protection of the participants of the retirement system. However, the commissioner may not take such action as to any retirement system in which all contributions are paid to a trustee or cotrustee qualified and doing business in this state and subject to the supervision of the Banking Division, or in which all such contributions are paid to a trustee or cotrustee that is a bank and a member of a Federal Reserve Bank, or in which all such contributions are paid to an insurer authorized to do business in this state or in which a portion of the contributions are paid to such a trustee or cotrustee or an insurer and the remaining portion of the contributions are paid to another such trustee or cotrustee or insurer.

[1973 c.564 §19]

**653.700 Disposition of funds.** All filing fees received under ORS 653.650, shall be paid by the commissioner to the State Treasurer, at the end of every calendar month or oftener in his discretion, for deposit in the General Fund.

[1973 c.564 §20]

### PENALTIES

**653.990** [Subsections (1) and (2) enacted as 1967 c.596 §14; repealed by 1971 c.626 §7]

**653.991 Penalties.** Violation of any provision of this section or ORS 653.010 to 653.545 or of any rule or regulation adopted by the commission under ORS 653.307 shall be punishable as a misdemeanor.

[1971 c.626 §6]

**653.992 Penalty for retirement system violation.** (1) Any administrator who wilfully fails to render any report or perform other duties required under this section and ORS 653.600 to 653.700 shall upon conviction be punished by a fine of not more than \$100 for each day such report is withheld or such duty is not performed, but not more than \$5,000, or by imprisonment in the county jail for not more than one year, or be punished by both such fine and imprisonment.

(2) It is unlawful wilfully to publish a false report under this section and ORS 653.600 to 653.700. Any person who wilfully publishes such a false report shall upon conviction be fined not more than \$5,000, or imprisoned in the state penitentiary for not more than five years or in a county jail for not more than one year, or be punished by both such fine and imprisonment.

[1973 c.564 §16]

#### **CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.  
Done at Salem, Oregon,  
on November 1, 1973.

Thomas G. Clifford  
Legislative Counsel