

Requested by Representative WILLIAMSON

**PROPOSED AMENDMENTS TO  
HOUSE BILL 3087**

1 On page 1 of the printed bill, delete lines 6 through 25 and delete pages  
2 2 through 11 and insert:

3 **“SECTION 1. Definitions. As used in sections 1 to 18 of this 2017  
4 Act:**

5 **“(1) ‘Average weekly wage’ means the amount calculated by the  
6 Employment Department under ORS 657.150 (4)(d).**

7 **“(2) ‘Base year’ means the first four of the last five completed cal-  
8 endar quarters preceding the benefit year.**

9 **“(3) ‘Benefit year’ means the 12-month period beginning on the first  
10 day of the week in which a covered individual files an application for  
11 family and medical leave insurance benefits.**

12 **“(4) ‘Covered individual’ means:**

13 **“(a) An eligible employee who:**

14 **“(A) Files an application for family and medical leave insurance  
15 benefits; and**

16 **“(B) Contributes an amount determined by the Director of the De-  
17 partment of Consumer and Business Services to the Family and Med-  
18 ical Leave Insurance Fund during the base year prior to filing an  
19 application.**

20 **“(b) A self-employed individual who:**

21 **“(A) Elects coverage under section 14 of this 2017 Act;**

1       **“(B) Files an application for family and medical leave insurance**  
2 **benefits; and**

3       **“(C) Contributes an amount determined by the Director of the De-**  
4 **partment of Consumer and Business Services to the Family and Med-**  
5 **ical Leave Insurance Fund during the base year prior to filing an**  
6 **application.**

7       **“(5) ‘Covered service member’ means an employee who is eligible**  
8 **for leave under ORS 659A.093 or the federal Family and Medical Leave**  
9 **Act of 1993, as amended and in effect on the effective date of this 2017**  
10 **Act.**

11       **“(6) ‘Eligible employee’ means an employee who has worked for at**  
12 **least 90 days with the employer.**

13       **“(7) ‘Eligible employee’s average wage’ means an amount deter-**  
14 **mined by the director based on an eligible employee’s average wages**  
15 **per week during the base year.**

16       **“(8)(a) ‘Employee’ means an individual employed for remuneration**  
17 **or under any contract of hire, written or oral, express or implied, by**  
18 **an employer.**

19       **“(b) ‘Employee’ does not include:**

20       **“(A) An independent contractor as defined in ORS 670.600 who is**  
21 **not a covered individual.**

22       **“(B) A participant in a work training program administered under**  
23 **a state or federal assistance program.**

24       **“(C) A participant in a work-study program that provides students**  
25 **in secondary or post-secondary educational institutions with employ-**  
26 **ment opportunities for financial or vocational training.**

27       **“(D) A railroad worker exempted under the federal Railroad Un-**  
28 **employment Insurance Act.**

29       **“(E) A volunteer.**

30       **“(9)(a) ‘Employer’ means any person that employs one or more**

1 employees working anywhere in this state, a political subdivision of  
2 the state and any county, city, district, authority, public corporation  
3 or entity, and any instrumentality of a county, city, district, author-  
4 ity, public corporation or entity, organized and existing under law or  
5 charter.

6 “(b) ‘Employer’ does not include the federal government or a tribal  
7 government.

8 “(10) ‘Family and medical leave insurance benefits’ means the in-  
9 surance benefits provided under the terms of sections 1 to 18 of this  
10 2017 Act.

11 “(11) ‘Family member’ means:

12 “(a) A family member as defined in ORS 659A.150; or

13 “(b) An individual related by blood or affinity to the employee  
14 whose close association with the employee is the equivalent of a family  
15 member.

16 “(12) ‘Health care provider’ has the meaning given that term in ORS  
17 659A.150.

18 “(13) ‘Next of kin’ has the meaning given that term in 29 C.F.R.  
19 825.127.

20 “(14) ‘Parental leave’ means leave taken to care for a new child  
21 during the first year after the birth, adoption or placement through  
22 foster care of the child.

23 “(15) ‘Qualifying exigency leave’ has the meaning described in 29  
24 C.F.R. 825.126.

25 “(16) ‘Self-employment income’ has the meaning given that term in  
26 section 1402(b) of the Internal Revenue Code as amended and in effect  
27 on December 31, 2016.

28 “(17) ‘Self-employed individual’ is an individual who has self-  
29 employment income.

30 “(18) ‘Serious health condition’ has the meaning given that term in

1 the federal Family and Medical Leave Act of 1993.

2 “(19) ‘Wages’ has the meaning given that term in ORS 657.105.

3 “(20) ‘Week’ means a period of seven consecutive calendar days as  
4 determined by the director.

5 **“SECTION 2. Eligibility for benefits. (1) Family and medical leave  
6 insurance benefits are payable to an eligible employee, regardless of  
7 the number of employees employed by the employer, who:**

8 **“(a) Is taking parental leave;**

9 **“(b) Is caring for a family member with a serious health condition;**

10 **“(c) Has a serious health condition, including pregnancy;**

11 **“(d) Is caring for a covered service member who is the eligible  
12 employee’s next of kin;**

13 **“(e) Is taking military family leave described under ORS 659A.090  
14 to 659A.099;**

15 **“(f) Is taking qualifying exigency leave; or**

16 **“(g) Is taking leave for any reason set forth in ORS 659A.159.**

17 **“(2) Family and medical leave insurance benefits are payable to a  
18 covered individual who is not an employee for the purpose of state or  
19 federal leave described under subsection (1)(a) to (g) of this section but  
20 who takes leave for a reason described in subsection (1)(a) to (g) of this  
21 section.**

22 **“(3) A covered individual who receives family and medical leave  
23 insurance benefits under this section must, upon request by the em-  
24 ployer or the Director of the Department of Consumer and Business  
25 Services, provide verification of the need for leave in a manner con-  
26 sistent with ORS 659A.168 or in a manner determined by the director.**

27 **“SECTION 3. Duration of benefits. (1)(a) A covered individual may  
28 qualify for up to 12 weeks of family and medical leave insurance ben-  
29 efits per benefit year.**

30 **“(b) In addition to the 12 weeks of family and medical leave insur-**

1 **ance benefits described in paragraph (a) of this subsection, a covered**  
2 **individual may qualify for six weeks of benefits for parental leave.**

3 **“(2) Except as provided in section 6 of this 2017 Act, family and**  
4 **medical leave insurance benefits are not payable for leave of less than**  
5 **one week.**

6 **“(3) The first payment of benefits must be made to a covered indi-**  
7 **vidual within two weeks after the individual files a claim and subse-**  
8 **quent payments must be made every two weeks.**

9 **“(4) An employer may not require an eligible employee to take more**  
10 **leave than the eligible employee requests.**

11 **“(5) A covered individual may take less leave than available to the**  
12 **individual under this section.**

13 **“SECTION 4. Amount of benefits and taxation. (1) The Director of**  
14 **the Department of Consumer and Business Services shall determine**  
15 **the amount of family and medical leave insurance benefits an eligible**  
16 **employee qualifies for, as follows:**

17 **“(a) The director shall determine the eligible employee’s average**  
18 **wage based on the eligible employee’s wages earned during the base**  
19 **year.**

20 **“(b) The director shall set the weekly benefit amount at:**

21 **“(A) If the eligible employee’s average wage is more than the av-**  
22 **erage weekly wage, 90 percent of the average weekly wage plus 50**  
23 **percent of the difference between the eligible employee’s average wage**  
24 **and the average weekly wage.**

25 **“(B) If the eligible employee’s average wage is equal to or less than**  
26 **the average weekly wage, 90 percent of the eligible employee’s average**  
27 **wage.**

28 **“(c) The director shall establish a maximum weekly benefit amount**  
29 **of \$1,200, adjusted annually in conjunction with the adjustment made,**  
30 **if any, to the average weekly wage.**

1       “(d) The director may adjust the maximum weekly benefit amount  
2 described in paragraph (c) of this subsection on an annual basis if  
3 necessary to maintain fiscal solvency of the Family and Medical Leave  
4 Insurance Fund.

5       “(2) The director shall determine the amount of family and medical  
6 leave insurance benefits a self-employed individual qualifies for based  
7 on the self-employed individual’s contribution amount described in  
8 section 5 of this 2017 Act.

9       “(3) Family and medical leave insurance benefits are payable only  
10 to the extent that moneys are available in the Family and Medical  
11 Leave Insurance Fund for that purpose. Neither the state nor a state  
12 agency is liable for any amount in excess of this limit.

13       “(4) Except as otherwise provided in sections 1 to 18 of this 2017 Act  
14 or where the context requires otherwise, the provisions of ORS chap-  
15 ters 305 and 314 as to the audit and examination of returns, periods  
16 of limitation, determination of and notices of deficiencies, assess-  
17 ments, collections, liens, delinquencies, claims for refund and refunds,  
18 conferences, appeals to the Oregon Tax Court, stays of collection  
19 pending appeal, confidentiality of returns and the penalties relative  
20 thereto, and the procedures relating thereto, apply to the determi-  
21 nations of taxes, penalties and interest under sections 1 to 18 of this  
22 2017 Act.

23       “SECTION 5. Contributions. (1) The Director of the Department of  
24 Consumer and Business Services shall deposit moneys collected under  
25 this section into the Family and Medical Leave Insurance Fund. Sub-  
26 ject to the limits in this section, the amount of the contributions  
27 provided in this section may be adjusted to meet the needs of the  
28 Family and Medical Leave Insurance Fund for the expenditures of the  
29 Department of Consumer and Business Services in carrying out its  
30 functions and duties pursuant to sections 1 to 18 of this 2017 Act. In

1 making adjustments under this subsection, the department shall con-  
2 sider the cash balance of the Family and Medical Leave Insurance  
3 Fund and other factors as determined by the director.

4 “(2)(a) Payroll contributions from an employee may not exceed 0.5  
5 percent of the employee’s wages. Payroll contributions shall be paid  
6 by employers and employees in equal amounts at a rate determined  
7 by the director under subsection (3) of this section. The director shall  
8 evaluate and determine on an annual basis the amount of payroll  
9 contributions, timing of payroll contributions and maximum employee  
10 contributions necessary to finance sections 1 to 18 of this 2017 Act.

11 “(b) Contributions from a self-employed individual who elects cov-  
12 erage under section 14 of this 2017 Act must be equivalent to one per-  
13 cent of the individual’s self-employment income reported for tax  
14 purposes.

15 “(3) The director shall set rates for the collection of payroll contri-  
16 butions consistent with subsection (2) of this section in a manner such  
17 that:

18 “(a) At the end of the period for which the rates are effective, the  
19 balance of moneys in the Family and Medical Leave Insurance Fund  
20 is an amount not less than six months’ worth of projected expendi-  
21 tures from the fund for performance of the director’s functions and  
22 duties under sections 1 to 18 of this 2017 Act; and

23 “(b) The volatility of the rates assessed is minimized.

24 “(4) The director may adjust the assessment rate, subject to the  
25 limitations in subsection (2) of this section, if the director determines  
26 that a different rate is necessary to avoid unintentional program or  
27 benefit reductions in the time period immediately following the period  
28 for which the rate is being set.

29 “(5)(a) An employer shall remit the moneys described under sub-  
30 section (2) of this section in a manner determined by the director in

1 coordination with the Department of Revenue.

2 “(b) The Department of Revenue shall adopt rules to enforce col-  
3 lection under this section.

4 “(6)(a) Every employer required to make contributions under this  
5 section shall make and file a report of wages earned and payroll con-  
6 tributions and employer contributions made under this section upon  
7 a combined report form prescribed by the Department of Revenue.

8 “(b) The report shall be filed with the Department of Revenue at  
9 the times and in the manner prescribed in ORS 316.168 and 316.197.

10 “(c) The Department of Revenue may assess a penalty in an amount  
11 not to exceed \$1,000 for an employer’s failure to comply with this  
12 subsection.

13 “(7) Moneys collected under this section shall be deposited in the  
14 Family and Medical Leave Insurance Fund for the purpose of carrying  
15 out the functions and duties of the director under sections 1 to 18 of  
16 this 2017 Act.

17 “(8) A temporary employment agency that provides employees on a  
18 temporary basis to its customers is considered the employer for pur-  
19 poses of this section.

20 “(9)(a) If an employer quits business or sells out, exchanges or  
21 otherwise disposes of the business or stock of goods, any payroll con-  
22 tribution payable under this section is immediately due and payable,  
23 and the employer shall, within 10 calendar days, pay the payroll con-  
24 tributions due. Any person who becomes a successor to the business  
25 is liable for the full amount of the contribution.

26 “(b) The director shall adopt rules for compliance with sections 1  
27 to 18 of this 2017 Act related to payroll contributions from an  
28 employer’s successor in interest.

29 **“SECTION 6. Benefits for reduced leave. (1) A covered individual**  
30 **may use family and medical leave insurance benefits for leave taken**

1 in increments of less than one week, provided that:

2 “(a) Leave is taken in increments no shorter than eight hours;

3 “(b) Leave that is taken in an increment of less than one week is  
4 predictable on a weekly basis and verified by the covered individual  
5 under section 2 of this 2017 Act;

6 “(c) Benefit amounts, as calculated under section 4 of this 2017 Act,  
7 are prorated to increments of no less than eight hours; and

8 “(d) Benefits are payable after one week.

9 “(2) An eligible employee shall make a reasonable effort to schedule  
10 paid family and medical leave under this section so as not to unduly  
11 disrupt the operations of the employer. The eligible employee shall  
12 provide the employer with prior notice of the schedule on which the  
13 eligible employee will be taking the leave, to the extent practicable.

14 “(3) An employer or self-employed individual shall notify the Di-  
15 rector of the Department of Consumer and Business Services, upon  
16 request, of the actual amount of leave taken each week for the pur-  
17 pose of verifying the amount of benefits that are payable to the cov-  
18 ered individual.

19 “(4) Paid family and medical leave taken under this section shall  
20 not result in a reduction of the total amount of leave to which a cov-  
21 ered individual is entitled beyond the amount of leave actually taken.

22 “(5) Nothing in this section shall be construed to entitle a covered  
23 individual to a benefit amount that is more than required under sec-  
24 tion 3 of this 2017 Act.

25 **“SECTION 7. Notice to employer.** (1) Except as provided in sub-  
26 section (2) of this section, an employer may require an eligible em-  
27 ployee to give the employer written notice at least 30 days before  
28 commencing leave. The employer may require the employee to include  
29 an explanation of the need for the leave in the notice.

30 “(2) An eligible employee may commence taking leave without 30

1 days' advance notice if the leave is not foreseeable, including under  
2 the following circumstances:

3 “(a) An unexpected serious health condition of the employee or a  
4 family member of the employee;

5 “(b) An unexpected illness, injury or condition of a child of the  
6 employee that requires home care;

7 “(c) A premature birth, unexpected adoption or unexpected foster  
8 placement by or with the employee; or

9 “(d) The death of a family member of the employee.

10 “(3) If an employee commences leave without advance notice under  
11 subsection (2) of this section, the employee shall give notice to the  
12 employer as soon as practical in a manner determined by the Director  
13 of the Department of Consumer and Business Services. The notice  
14 described in this subsection may be given by a family member, health  
15 care provider or authorized representative on behalf of the employee  
16 taking the leave.

17 **“SECTION 8. Leave and employment protection. (1) After returning**  
18 **to work, an eligible employee is entitled to be restored to the position**  
19 **of employment held by the employee when the leave commenced if**  
20 **that position still exists, without regard to whether the employer filled**  
21 **the position with a replacement worker during the period of leave**  
22 **taken under section 3 of this 2017 Act. If the position held by the em-**  
23 **ployee at the time leave commenced no longer exists, the employee is**  
24 **entitled to be restored to any available equivalent position with**  
25 **equivalent employment benefits, pay and other terms and conditions**  
26 **of employment.**

27 “(2) During any leave taken pursuant to section 3 of this 2017 Act,  
28 the employer shall maintain any health care benefits the eligible em-  
29 ployee had prior to taking such leave for the duration of the leave as  
30 if the employee had continued in employment continuously from the

1 date the employee commenced the leave until the date the family and  
2 medical leave insurance benefits terminate.

3 **“(3) This section does not entitle any employee to:**

4 **“(a) Any accrual of seniority or employment benefits during a pe-**  
5 **riod of leave taken under section 3 of this 2017 Act; or**

6 **“(b) Any right, benefit or position of employment other than the**  
7 **rights, benefits and position that the employee would have been enti-**  
8 **tled to had the employee not taken the leave under section 3 of this**  
9 **2017 Act.**

10 **“(4) During a period of an eligible employee’s using family and**  
11 **medical leave insurance benefits, the Director of the Department of**  
12 **Consumer and Business Services or an employer may require the em-**  
13 **ployee or a family member, health care provider or authorized repre-**  
14 **sentative of the employee to report periodically to the director or the**  
15 **employer on the employee’s status and on the employee’s intention to**  
16 **return to work.**

17 **“(5) A violation of this section is an unlawful practice under ORS**  
18 **chapter 659A.**

19 **“SECTION 9. Retaliatory personnel actions prohibited. It is an un-**  
20 **lawful practice for a person to:**

21 **“(1) Interfere with a right to which an eligible employee is entitled**  
22 **under sections 1 to 18 of this 2017 Act; or**

23 **“(2) Retaliate or in any way discriminate against an individual with**  
24 **respect to hire or tenure or any other term or condition of employ-**  
25 **ment because the individual has inquired about the provisions of**  
26 **sections 1 to 18 of this 2017 Act, filed an application for coverage or**  
27 **invoked any provision of sections 1 to 18 of this 2017 Act.**

28 **“SECTION 10. Coordination of benefits. (1) For employees eligible**  
29 **for leave under ORS 659A.150 to 659A.186, leave taken under sections**  
30 **1 to 18 of this 2017 Act shall run concurrently with leave under ORS**

1 **659A.150 to 659A.186.**

2 **“(2)(a) Sections 1 to 18 of this 2017 Act do not diminish an**  
3 **employer’s obligation to comply with a collective bargaining agree-**  
4 **ment, an employer policy or local, state or federal law.**

5 **“(b) An eligible employee’s right to family and medical leave in-**  
6 **surance benefits under sections 1 to 18 of this 2017 Act may not be**  
7 **diminished by a collective bargaining agreement entered into or re-**  
8 **newed, or an employee policy adopted or retained, after the effective**  
9 **date of this 2017 Act.**

10 **“(c) The eligibility of an employee for benefits is not affected by a**  
11 **strike or lockout at the store, factory, establishment or other premises**  
12 **at which the employee is or was last employed.**

13 **“(d) An employee who has received benefits under sections 1 to 18**  
14 **of this 2017 Act may not lose any other employment benefits, including**  
15 **seniority or pension rights, accrued before the date that leave com-**  
16 **menced. However, this section does not entitle an employee to accrue**  
17 **employment benefits during a period of leave or to a right, benefit or**  
18 **position of employment other than a right, benefit or position to which**  
19 **the employee would have been entitled had the employee not taken**  
20 **leave.**

21 **“(3)(a) An employer may not require an employee to use paid sick**  
22 **time, paid vacation time or any other paid time off before or as a**  
23 **condition of using family and medical leave insurance benefits.**

24 **“(b) An eligible employee is entitled to use any paid accrued sick**  
25 **time or other paid leave without a reduction in paid family and med-**  
26 **ical leave insurance benefits.**

27 **“(4) Family and medical leave taken under sections 1 to 18 of this**  
28 **2017 Act does not include leave taken by an eligible employee who is**  
29 **unable to work because of a disabling compensable injury, as defined**  
30 **in ORS 656.005, unless the employee has refused a suitable offer of**

1 light duty or modified employment as defined by the Director of the  
2 Department of Consumer and Business Services.

3 “(5) An employer’s failure to provide information to the Department  
4 of Consumer and Business Services upon written request by the di-  
5 rector or the director’s authorized representative to assist with the  
6 processing of a claim under sections 1 to 18 of this 2017 Act shall  
7 constitute interference under section 9 of this 2017 Act.

8 **“SECTION 11. Notice to employees.** An employer shall display and  
9 provide written notice of employee rights under sections 1 to 18 of this  
10 2017 Act in a manner determined by the Director of the Department  
11 of Consumer and Business Services. Such notice shall include:

12 “(1) The employee’s right to apply for and receive family and med-  
13 ical leave insurance benefits under sections 1 to 18 of this 2017 Act and  
14 the terms under which the benefits may be used;

15 “(2) The criteria used to determine eligibility for and the amount  
16 of family and medical leave insurance benefits;

17 “(3) The procedure for filing a claim for benefits;

18 “(4) The right to job protection and benefits continuation under  
19 section 8 of this 2017 Act;

20 “(5) That discrimination and retaliatory personnel actions against  
21 an individual for requesting, applying for or using family and medical  
22 leave insurance benefits is prohibited under sections 8 and 9 of this  
23 2017 Act; and

24 “(6) That the employee has a right to file a complaint for violation  
25 of section 8 or 9 of this 2017 Act.

26 **“SECTION 12. Enforcement.** (1) Notwithstanding ORS 183.635, the  
27 Director of the Department of Consumer and Business Services shall  
28 establish a system for enforcement and appeal of contested cases in-  
29 volving family and medical leave insurance benefit claims under ORS  
30 chapter 183. In establishing the system, the director may utilize any

1 and all procedures and appeals mechanisms.

2 “(2) The director shall implement procedures to ensure  
3 confidentiality of all information related to any claims filed or appeals  
4 taken to the maximum extent permitted by applicable laws.

5 “(3) At the discretion of the director and subject to an interagency  
6 agreement, the director may disclose information to a public official  
7 in the performance of the public official’s official duties administering  
8 or enforcing laws within the public official’s authority and to an agent  
9 or contractor of a public official. The public official shall agree to as-  
10 sume responsibility for misuse of the information by the official’s  
11 agent or contractor.

12 “SECTION 13. Noncompliance and erroneous payments. (1) An em-  
13 ployer or individual acting on behalf of an employer may not willfully  
14 make or cause to be made false statements or willfully fail to report  
15 a material fact regarding the claim of an eligible employee or regard-  
16 ing an employee’s eligibility for benefits under sections 1 to 18 of this  
17 2017 Act.

18 “(2) The Director of the Department of Consumer and Business  
19 Services may assess a civil penalty in an amount not to exceed \$1,000  
20 against an employer for each occurrence that violates subsection (1)  
21 of this section.

22 “(3) A covered individual is disqualified from family and medical  
23 leave insurance benefits for one year if the individual is determined  
24 by the director to have willfully made a false statement or willfully  
25 failed to report a material fact to obtain benefits under sections 1 to  
26 18 of this 2017 Act.

27 “(4) If family and medical leave insurance benefits are paid erro-  
28 neously or as a result of willful misrepresentation, or if a claim for  
29 family and medical leave insurance benefits is rejected after benefits  
30 are paid except for matters that have been timely appealed, the di-

1 rector may seek repayment of benefits from the covered individual  
2 within one year of the original decision to allow benefits, in a manner  
3 provided by rule. The director shall exercise the director’s discretion  
4 to waive, in whole or in part, the amount of any such payments where  
5 the recovery would be against equity, good conscience or administra-  
6 tive efficiency.

7 **“SECTION 14. Elective coverage.** (1) A self-employed individual may  
8 elect coverage under sections 1 to 18 of this 2017 Act. The self-  
9 employed individual must file a notice of election in writing with the  
10 Director of the Department of Consumer and Business Services, as  
11 required by the director, and contribute to the Family and Medical  
12 Leave Insurance Fund in a manner determined by the director. The  
13 election becomes effective on the date of filing the notice. The self-  
14 employed individual must agree to supply any information concerning  
15 income that the director deems necessary.

16 **“(2)** A self-employed individual who has elected coverage may  
17 withdraw after three consecutive years of coverage, or at times as the  
18 director may prescribe by rule, including at a change in the self-  
19 employed individual’s employment status, by filing written notice with  
20 the director. The withdrawal may not take effect sooner than 30 days  
21 after filing the notice.

22 **“(3)** Notwithstanding subsection (2) of this section, a self-employed  
23 individual who has elected coverage may terminate coverage on the  
24 date of filing a voluntary or involuntary bankruptcy petition. The  
25 self-employed individual’s elective coverage terminates on the date the  
26 self-employed individual provides to the director documentation to  
27 support the self-employed individual’s filing of the bankruptcy petition  
28 and files written notice with the director. At any time thereafter, the  
29 self-employed individual may reelect coverage under this section.

30 **“SECTION 15. Administration.** (1) The Director of the Department

1 of Consumer and Business Services shall adopt rules for the estab-  
2 lishment and administration of sections 1 to 18 of this 2017 Act.

3 “(2) The director may contract with private entities and enter into  
4 interagency agreements to establish and administer sections 1 to 18  
5 of this 2017 Act.

6 “(3) All agencies of state government, as defined in ORS 174.111, are  
7 directed to assist the Department of Consumer and Business Services  
8 upon request in the performance of its duties under sections 1 to 18  
9 of this 2017 Act, including outreach, technical assistance and training.

10 “SECTION 16. Family and Medical Leave Insurance Fund. (1) The  
11 Family and Medical Leave Insurance Fund is established in the State  
12 Treasury, separate and distinct from the General Fund. The Family  
13 and Medical Leave Insurance Fund consists of moneys deposited in the  
14 fund under sections 1 to 18 of this 2017 Act and may include fees,  
15 revenues or other income deposited in the fund.

16 “(2) Interest earned by the fund shall be credited to the fund. All  
17 moneys in the fund are continuously appropriated to the Director of  
18 the Department of Consumer and Business Services for the purposes  
19 of carrying out sections 1 to 18 of this 2017 Act, including repayment  
20 of any funds used for start-up costs.

21 “(3) Notwithstanding any other provision of sections 1 to 18 of this  
22 2017 Act, if the director determines at any time that there are insuf-  
23 ficient moneys in the fund to pay the expenses of programs for which  
24 expenditure of the fund is authorized, the director may reduce the  
25 level of family and medical leave insurance benefits payable accord-  
26 ingly.

27 “(4) Whenever, in the judgment of the director, there is in the fund  
28 an amount of moneys in excess of the amount sufficient to meet the  
29 current expenditures for a self-sustaining insurance account, the di-  
30 rector shall have full power to invest, reinvest, manage, contract, sell

1 or exchange investments acquired with such excess funds to reduce  
2 contribution rates.

3 “(5) Contributions under section 5 of this 2017 Act that are intended  
4 for the fund and moneys in the fund may not be subject to execution,  
5 attachment or any other process or to the operation of any bankruptcy  
6 or insolvency law.

7 “(6) Expenditures from the fund may not be used for purposes other  
8 than the family and medical leave insurance program.

9 “SECTION 17. Reports. (1) The Director of the Department of Con-  
10 sumer and Business Services shall submit a report in the manner  
11 provided by ORS 192.245, and may include recommendations for legis-  
12 lation, to the interim committees of the Legislative Assembly related  
13 to workforce or business and labor no later than January 1, 2020, and  
14 every two years thereafter.

15 “(2) The director shall include in reports submitted after January  
16 1, 2022, analysis of data regarding program participation, reasons for  
17 leave, gender of covered individuals taking leave, contribution rates,  
18 balances in the Family and Medical Leave Insurance Fund, outreach  
19 efforts and, if applicable, family members for whom leave was taken  
20 to provide care.

21 “SECTION 18. Sharing technology. The Director of the Department  
22 of Consumer and Business Services is encouraged to use state data  
23 collection and technology to the extent possible and to integrate the  
24 program with existing state policies.

25 “SECTION 19. ORS 659A.156 is amended to read:

26 “659A.156. (1) All employees of a covered employer are eligible to take  
27 leave for one of the purposes specified in ORS 659A.159 (1)(b) to (e) except:

28 “(a) An employee who was employed by the covered employer for fewer  
29 than [180] **90** days immediately before the date on which the family leave  
30 would commence.

1 “(b) An employee who worked an average of fewer than 25 hours per week  
2 for the covered employer during the [180] 90 days immediately preceding the  
3 date on which the family leave would commence.

4 “(2) All employees of a covered employer are eligible to take leave for the  
5 purpose specified in ORS 659A.159 (1)(a) except an employee who was em-  
6 ployed by the covered employer for fewer than [180] 90 days immediately  
7 before the date on which the family leave would commence.

8 **“SECTION 20.** ORS 659A.885, as amended by section 5, chapter 73,  
9 Oregon Laws 2016, is amended to read:

10 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-  
11 tice specified in subsection (2) of this section may file a civil action in cir-  
12 cuit court. In any action under this subsection, the court may order  
13 injunctive relief and any other equitable relief that may be appropriate, in-  
14 cluding but not limited to reinstatement or the hiring of employees with or  
15 without back pay. A court may order back pay in an action under this sub-  
16 section only for the two-year period immediately preceding the filing of a  
17 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-  
18 bor and Industries, or if a complaint was not filed before the action was  
19 commenced, the two-year period immediately preceding the filing of the  
20 action. In any action under this subsection, the court may allow the pre-  
21 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-  
22 cept as provided in subsection (3) of this section:

23 “(a) The judge shall determine the facts in an action under this sub-  
24 section; and

25 “(b) Upon any appeal of a judgment in an action under this subsection,  
26 the appellate court shall review the judgment pursuant to the standard es-  
27 tablished by ORS 19.415 (3).

28 “(2) An action may be brought under subsection (1) of this section alleg-  
29 ing a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237  
30 (2), 475B.233, 476.574, 652.355, 653.060, 653.601 to 653.661, 659.852, 659A.030,

1 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103  
2 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,  
3 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277,  
4 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320,  
5 659A.355, 659A.421, 653.547 or 653.549.

6 “(3) In any action under subsection (1) of this section alleging a violation  
7 of ORS 25.337, 25.424, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,  
8 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,  
9 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or  
10 653.549 or **sections 8 and 9 of this 2017 Act:**

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

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

15 “(c) Upon appeal of any judgment finding a violation, the appellate court  
16 shall review the judgment pursuant to the standard established by ORS  
17 19.415 (1); and

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

19 “(4) In any action under subsection (1) of this section alleging a violation  
20 of ORS 652.355 or 653.060, the court may award, in addition to the relief  
21 authorized under subsection (1) of this section, compensatory damages or  
22 \$200, whichever is greater.

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

27 “(6) In any action under subsection (1) of this section alleging a violation  
28 of ORS 10.090 or 10.092, the court may award, in addition to the relief au-  
29 thorized under subsection (1) of this section, a civil penalty in the amount  
30 of \$720.

1       “(7) Any individual against whom any distinction, discrimination or re-  
2 striction on account of race, color, religion, sex, sexual orientation, national  
3 origin, marital status or age, if the individual is 18 years of age or older,  
4 has been made by any place of public accommodation, as defined in ORS  
5 659A.400, by any employee or person acting on behalf of the place or by any  
6 person aiding or abetting the place or person in violation of ORS 659A.406  
7 may bring an action against the operator or manager of the place, the em-  
8 ployee or person acting on behalf of the place or the aider or abettor of the  
9 place or person. Notwithstanding subsection (1) of this section, in an action  
10 under this subsection:

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

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

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

17       “(d) The court shall award reasonable attorney fees to a prevailing  
18 plaintiff;

19       “(e) The court may award reasonable attorney fees and expert witness fees  
20 incurred by a defendant who prevails only if the court determines that the  
21 plaintiff had no objectively reasonable basis for asserting a claim or no  
22 reasonable basis for appealing an adverse decision of a trial court; and

23       “(f) Upon any appeal of a judgment under this subsection, the appellate  
24 court shall review the judgment pursuant to the standard established by ORS  
25 19.415 (1).

26       “(8) When the commissioner or the Attorney General has reasonable cause  
27 to believe that a person or group of persons is engaged in a pattern or  
28 practice of resistance to the rights protected by ORS 659A.145 or 659A.421  
29 or federal housing law, or that a group of persons has been denied any of the  
30 rights protected by ORS 659A.145 or 659A.421 or federal housing law, the

1 commissioner or the Attorney General may file a civil action on behalf of  
2 the aggrieved persons in the same manner as a person or group of persons  
3 may file a civil action under this section. In a civil action filed under this  
4 subsection, the court may assess against the respondent, in addition to the  
5 relief authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

8 “(9) In any action under subsection (1) of this section alleging a violation  
9 of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing  
10 law, when the commissioner is pursuing the action on behalf of an aggrieved  
11 complainant, the court shall award reasonable attorney fees to the commis-  
12 sioner if the commissioner prevails in the action. The court may award rea-  
13 sonable attorney fees and expert witness fees incurred by a defendant that  
14 prevails in the action if the court determines that the commissioner had no  
15 objectively reasonable basis for asserting the claim or for appealing an ad-  
16 verse decision of the trial court.

17 “(10) In an action under subsection (1) or (8) of this section alleging a  
18 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-  
19 ing law:

20 “(a) ‘Aggrieved person’ includes a person who believes that the person:

21 “(A) Has been injured by an unlawful practice or discriminatory housing  
22 practice; or

23 “(B) Will be injured by an unlawful practice or discriminatory housing  
24 practice that is about to occur.

25 “(b) An aggrieved person in regard to issues to be determined in an action  
26 may intervene as of right in the action. The Attorney General may intervene  
27 in the action if the Attorney General certifies that the case is of general  
28 public importance. The court may allow an intervenor prevailing party costs  
29 and reasonable attorney fees at trial and on appeal.

30 **SECTION 21. Operative date. (1)(a) Sections 1 and 3 to 13 of this**

1 2017 Act and the amendments to ORS 659A.156 and 659A.885 by sections  
2 19 and 20 of this 2017 Act become operative on January 1, 2019.

3 “(b) Sections 2 and 14 of this 2017 Act become operative on January  
4 1, 2021.

5 “(2) The Department of Consumer and Business Services, the Bu-  
6 reau of Labor and Industries, the Employment Department and the  
7 Department of Revenue may take any action before the operative date  
8 specified in subsection (1) of this section that is necessary to enable  
9 the bureau and departments to exercise, on and after the operative  
10 date specified in subsection (1) of this section, the duties, functions  
11 and powers conferred on the bureau and departments by sections 1 to  
12 18 of this 2017 Act and the amendments to ORS 659A.156 and 659A.885  
13 by sections 19 and 20 of this 2017 Act.

14 “SECTION 22. Captions. The section captions used in this 2017 Act  
15 are provided only for the convenience of the reader and do not become  
16 part of the statutory law of this state or express any legislative intent  
17 in the enactment of this 2017 Act.

18 “SECTION 23. Effective date. This 2017 Act takes effect on the 91st  
19 day after the date on which the 2017 regular session of the Seventy-  
20 ninth Legislative Assembly adjourns sine die.”.

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