

Corrected Title

House Bill 3031

Sponsored by Representatives WILLIAMSON, FAHEY, HOLVEY, DOHERTY, HERNANDEZ, Senator MANNING JR; Representatives ALONSO LEON, BYNUM, EVANS, GORSEK, GREENLICK, KENY-GUYER, MARSH, MCLAIN, MEEK, MITCHELL, NERON, NOSSE, PILUSO, POWER, PRUSAK, SALINAS, SANCHEZ, SCHOUTEN, SMITH WARNER, WILLIAMS, Senators DEMBROW, FAGAN, FREDERICK, GELSER, GOLDEN, MONNES ANDERSON, RILEY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates family and medical leave insurance program to provide employee who is eligible for coverage with portion of wages while employee is on family and medical leave or military family leave. Requires employer and employee contributions to fund program. Allows self-employed individuals and tribal government employers to opt into program. Directs Director of Department of Consumer and Business Services to determine contribution amounts and weekly benefit amounts. Establishes Family and Medical Leave Insurance Fund and continuously appropriates moneys in fund to Department of Consumer and Business Services for purposes of Act.

Protects eligible employee's position of employment with employer while employee is on leave if employee has been employed with employer for minimum of 90 days before commencing leave. Prohibits employer from retaliating against employee who invokes program and from interfering with employee rights under program. Establishes right of employee for civil action for certain employer violations.

Amends Oregon family leave law to allow for leave after employee has been employed for 90 days with employer and to extend length of leave taken for bereavement.

Directs department to administer collection of, and reporting requirements for, payroll contributions. Requires director to work with other agencies and promulgate rules for administration of program. Establishes requirements for director to submit initial report to interim committees of Legislative Assembly no later than September 15, 2021. Beginning September 15, 2022, requires director to report to committees on September 15 of every even-numbered year thereafter. Requires department to conduct study regarding implementation of program with regard to self-employed individuals and tribal governments opting into program.

Becomes operative on January 1, 2021. Provides that eligibility provisions and provisions related to elective coverage for self-employed individuals and tribal governments become operative on January 1, 2023.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to family medical leave benefits; creating new provisions; amending ORS 657.100, 659A.156,
3 659A.162 and 659A.885; prescribing an effective date; and providing for revenue raising that re-
4 quires approval by a three-fifths majority.

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

SECTION 1. Definitions. As used in sections 1 to 19 of this 2019 Act:

6 (1) "Activities of daily living" has the meaning given that term in ORS 410.600.

7 (2) "Average weekly wage" means the amount calculated by the Employment Department
8 as the state average weekly covered wage under ORS 657.150 (4)(d) as determined not more
9 than once per year.

10 (3) "Base year" means the first four of the last five completed calendar quarters pre-
11 ceding the benefit year.

12 (4) "Benefit year" means the 12-month period beginning on the first day of the week in
13 which a covered individual applies for family and medical leave insurance coverage, as pro-
14

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **vided in section 2 of this 2019 Act.**

2 **(5) "Covered individual" means any one of the following who receives paid family and**
3 **medical leave insurance benefits:**

4 **(a) An eligible employee;**

5 **(b) A self-employed individual;**

6 **(c) An employee of a tribal government; or**

7 **(d) An unemployed individual who is not receiving unemployment insurance benefits un-**
8 **der ORS chapter 657.**

9 **(6) "Covered servicemember" has the meaning given that term in 29 U.S.C. 2611.**

10 **(7) "Eligible employee" means an employee who has earned at least \$300 in wages during**
11 **the base year.**

12 **(8) "Eligible employee's average wage" means an amount determined by the Director of**
13 **the Department of Consumer and Business Services on the basis of an eligible employee's**
14 **average wages per week during the base year.**

15 **(9)(a) "Employee" means an individual employed for remuneration or under any contract**
16 **of hire, written or oral, express or implied, by an employer.**

17 **(b) "Employee" does not include:**

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

19 **(B) A participant in a work training program administered under a state or federal as-**
20 **sistance program.**

21 **(C) A participant in a work-study program that provides students in secondary or post-**
22 **secondary educational institutions with employment opportunities for financial assistance or**
23 **vocational training.**

24 **(D) A railroad worker exempted under the federal Railroad Unemployment Insurance**
25 **Act.**

26 **(E) A volunteer.**

27 **(10)(a) "Employer" means any person employing one or more employees working any-**
28 **where in this state, the State of Oregon or any political subdivision thereof, or any county,**
29 **city, district, authority, public corporation or entity and any of their instrumentalities or-**
30 **ganized and existing under law or charter.**

31 **(b) "Employer" does not include the federal government or a tribal government.**

32 **(11) "Family and medical leave insurance benefits" means the insurance benefits provided**
33 **under sections 1 to 19 of this 2019 Act.**

34 **(12) "Family member" means:**

35 **(a) A family member as defined in ORS 659A.150;**

36 **(b) An individual who is biologically related to an employee;**

37 **(c) An individual who is legally recognized under the laws of this state as related to an**
38 **employee;**

39 **(d) An individual for whom an employee is responsible for providing health care, assist-**
40 **ance in accessing or managing medical treatment or support with the activities of daily liv-**
41 **ing;**

42 **(e) An individual who lives with an employee and with whom the employee shares re-**
43 **sponsibility for each other's common welfare; or**

44 **(f) Any other individual whose close association with an employee is equivalent to a**
45 **family relationship as evidenced by a nexus of factors including, but not limited to:**

1 (A) A shared responsibility for financial obligations;

2 (B) Signs of intent to marry;

3 (C) A child or children in common;

4 (D) The length of the personal relationship between the individual and the employee; or

5 (E) Common ownership of real or personal property.

6 (13) "Health care provider" has the meaning given that term in ORS 659A.150.

7 (14) "Parental leave" means leave taken to care for a new child during the first year after
8 the birth, adoption or placement through foster care of the child.

9 (15) "Qualifying exigency" includes:

10 (a) A need arising out of a family member's active duty service or notice of an impending
11 call or order to active duty in the Armed Forces of the United States, as that term is defined
12 in ORS 348.282; and

13 (b) A qualifying exigency as described in 29 C.F.R. 825.126.

14 (16) "Self-employed individual" is an individual who has self-employment income, as de-
15 fined in section 1402(b) of the Internal Revenue Code as amended and in effect on December
16 31, 2018.

17 (17) "Serious health condition" has the meaning given that term in 29 U.S.C. 2611.

18 (18) "Tribal government" has the meaning given that term in ORS 181A.680.

19 (19) "Wages" has the meaning given that term in ORS 657.105.

20 (20) "Week" means a period of seven consecutive calendar days as determined by the
21 Director of the Department of Consumer and Business Services.

22 **SECTION 2. Eligibility; payment of benefits; purposes for which leave may be taken.** (1)

23 The following may apply for family and medical leave insurance coverage in a manner de-
24 termined by the Department of Consumer and Business Services by rule:

25 (a) An eligible employee;

26 (b) A self-employed individual who elects coverage under section 15 of this 2019 Act; and

27 (c) An employee of a tribal government that elects coverage under section 15 of this 2019
28 Act.

29 (2) Family and medical leave insurance benefits are payable to:

30 (a) An eligible employee who:

31 (A) Applies for coverage under subsection (1) of this section; and

32 (B) During the base year prior to applying for coverage, contributes to the Family and
33 Medical Leave Insurance Fund established under section 17 of this 2019 Act an amount de-
34 termined by the Director of the Department of Consumer and Business Services under sec-
35 tion 5 of this 2019 Act;

36 (b) A self-employed individual who:

37 (A) Elects coverage under section 15 of this 2019 Act;

38 (B) Has earned at least \$300 in taxable income during the base year as a self-employed
39 individual;

40 (C) Applies for coverage under subsection (1) of this section; and

41 (D) During the base year prior to applying for coverage, contributes to the Family and
42 Medical Leave Insurance Fund established under section 17 of this 2019 Act an amount de-
43 termined by the director under section 5 of this 2019 Act;

44 (c) An employee of a tribal government who has applied for coverage under subsection
45 (1) of this section; or

1 (d) An unemployed individual who is not receiving unemployment insurance benefits un-
 2 der ORS chapter 657.

3 (3) Family and medical leave insurance benefits may not be paid to an individual de-
 4 scribed in subsection (2) of this section, unless the individual submits a claim in a manner
 5 determined by the department by rule for leave that is taken for any of the following pur-
 6 poses:

7 (a) Parental leave;

8 (b) Leave to care for a family member with a serious health condition;

9 (c) Leave for a serious health condition, including pregnancy;

10 (d) Leave to care for a covered servicemember;

11 (e) Leave for a purpose described in ORS 659A.093 for a family member;

12 (f) Leave because of a qualifying exigency for a family member; or

13 (g) Leave for any purpose set forth in ORS 659A.159.

14 (4) The first payment of family and medical leave insurance benefits must be made to a
 15 covered individual from the Family and Medical Leave Insurance Fund established under
 16 section 17 of this 2019 Act within two weeks after the covered individual files a claim for
 17 benefits. Subsequent payments must be made every two weeks.

18 (5) Except as provided in section 7 of this 2019 Act, family and medical leave insurance
 19 benefits are not payable for leave of less than one week.

20 (6) An eligible employee may retain the employee's status as an eligible employee and
 21 retain any family and medical leave insurance benefits that the employee has accrued from
 22 the employee's contributions under section 5 of this 2019 Act at any time the employee
 23 changes jobs, as long as the employee continues to be employed by an employer in this state.

24 (7) An individual may not be deemed "unemployed" within the meaning of ORS 657.100
 25 during the period that the individual is a covered individual and receiving family and medical
 26 leave insurance benefits.

27 (8)(a) A covered individual who receives family and medical leave insurance benefits un-
 28 der this section must, upon request by the covered individual's employer or the director,
 29 provide verification of the need for leave in a manner determined by the director.

30 (b) Upon request by an employer, the director shall provide any verification that the di-
 31 rector has received under paragraph (a) of this subsection to the employer in a manner that
 32 complies with all standards required by state and federal laws governing privacy and security
 33 of protected health information.

34 (c) For purposes of this subsection, "protected health information" has the meaning
 35 given that term in ORS 192.556.

36 **SECTION 3. Duration of benefits.** (1)(a) A covered individual may qualify for up to 12
 37 weeks of family and medical leave insurance benefits per benefit year.

38 (b) In addition to the 12 weeks of family and medical leave insurance benefits described
 39 in paragraph (a) of this subsection:

40 (A) A covered individual may qualify for up to 14 weeks of benefits for parental leave.

41 (B) A covered individual may qualify for up to six weeks of benefits for an illness, injury
 42 or condition related to pregnancy or childbirth that disables the eligible employee from per-
 43 forming any available job duties offered by the employer.

44 (c) The total amount of leave that a covered individual may take under this subsection
 45 may not exceed 32 weeks per benefit year.

1 (2)(a) An employer may not require an eligible employee to take more leave than the el-
 2 igible employee requests.

3 (b) A covered individual may take less leave than available to the covered individual un-
 4 der this section.

5 **SECTION 4. Amount of benefits.** (1) Except as provided in subsection (2) of this section,
 6 the Director of the Department of Consumer and Business Services shall determine the
 7 amount of family and medical leave insurance benefits that an eligible employee qualifies for,
 8 as follows:

9 (a) The director shall determine the eligible employee's average wage on the basis of the
 10 eligible employee's wages earned during the base year.

11 (b) The director shall set the weekly benefit amount at:

12 (A) If the eligible employee's average wage is more than the average weekly wage, 90
 13 percent of the average weekly wage plus 50 percent of the difference between the eligible
 14 employee's average wage and the average weekly wage.

15 (B) If the eligible employee's average wage is equal to or less than the average weekly
 16 wage, 90 percent of the eligible employee's average wage.

17 (c) The director shall establish a maximum weekly benefit amount of 130 percent of the
 18 average weekly wage.

19 (2) If an eligible employee is an employee who is paid for each hour of work at the min-
 20 imum wage rate required under ORS 653.025, the director shall set the weekly benefit amount
 21 at 100 percent of the eligible employee's average wage up to _____ percent of the average
 22 weekly wage.

23 (3) The director shall determine the amount of family and medical leave insurance bene-
 24 fits that a self-employed individual qualifies for on the basis of the self-employed individual's
 25 contribution amount described in section 5 of this 2019 Act.

26 (4) The director shall determine the amount of family and medical leave insurance bene-
 27 fits that an employee of a tribal government that elects coverage under section 15 of this
 28 2019 Act qualifies for on the basis of the tribal government's contribution amount described
 29 in section 5 of this 2019 Act.

30 (5) Family and medical leave insurance benefits are payable only to the extent that
 31 moneys are available in the Family and Medical Leave Insurance Fund for that purpose. The
 32 state, any political subdivision of the state or any state agency is not liable for any amount
 33 in excess of this limit.

34 **SECTION 5. Contributions.** (1)(a) All employers and eligible employees shall contribute
 35 to the Family and Medical Leave Insurance Fund established under section 17 of this 2019
 36 Act at a rate determined by the Director of the Department of Consumer and Business
 37 Services under subsection (2) of this section. Payroll contributions shall be paid by employers
 38 and eligible employees in equal amounts. Payroll contributions from an eligible employee may
 39 not exceed 0.5 percent of the employee's wages. The director shall evaluate and determine
 40 on an annual basis the amount of payroll contributions, timing of payroll contributions and
 41 maximum employee contributions necessary to finance sections 1 to 19 of this 2019 Act.

42 (b) Subject to section 15 (2) and (3) of this 2019 Act, a self-employed individual who has
 43 elected coverage under section 15 (1) of this 2019 Act shall contribute to the fund at a rate
 44 of one percent of the individual's taxable income as reported for purposes of ORS chapter
 45 316 for a period of not less than three years from the date that the election becomes effec-

1 tive.

2 (c) A tribal government that elects coverage under section 15 of this 2019 Act shall con-
 3 tribute to the fund at a rate determined by the director by rule.

4 (2) The director shall set rates for the collection of payroll contributions consistent with
 5 subsection (1) of this section and in a manner that:

6 (a) At the end of the period for which the rates are effective, the balance of moneys in
 7 the fund is an amount not less than six months' worth of projected expenditures from the
 8 fund for performance of the functions and duties of the director under sections 1 to 19 of this
 9 2019 Act; and

10 (b) The volatility of the contribution rates is minimized.

11 (3) Subject to the limitations described in subsections (1) and (2) of this section, the di-
 12 rector may adjust the contribution rates to meet the needs of the fund for the expenditures
 13 of the Department of Consumer and Business Services in carrying out the department's
 14 functions and duties pursuant to sections 1 to 19 of this 2019 Act. In making adjustments
 15 under this subsection, the director shall consider the cash balance of the fund and other
 16 factors as determined by the director.

17 (4) Employers shall hold any moneys collected under this section in trust for the State
 18 of Oregon and for the payment thereof to the Department of Revenue in the manner de-
 19 scribed in subsection (5) of this section.

20 (5)(a) Employers shall make and file a combined quarterly report of wages earned and
 21 contributions paid under this section upon a report form prescribed by the Department of
 22 Revenue.

23 (b) The report shall be filed with the Department of Revenue on or before the last day
 24 of the month following the quarter in which the report relates and shall be deemed received
 25 on the date of mailing.

26 (c) The report shall be accompanied by payment of any contributions due under this
 27 section in a manner determined by the Department of Revenue by rule.

28 (d) The Department of Consumer and Business Services may assess a civil penalty in an
 29 amount not to exceed \$1,000 for an employer's failure to comply with this subsection.

30 (6) If an employer fails to remit any moneys collected under this section, the Department
 31 of Consumer and Business Services may enforce collection by the issuance of a distraint
 32 warrant for the collection of the delinquent amount and all penalties, interest and collection
 33 charges accrued thereon. The warrant shall be issued and proceeded upon in the same
 34 manner and shall have the same force and effect as a judgment issued and proceeded upon
 35 as provided in ORS 205.125.

36 (7)(a) If an employer fails to pay sufficient payroll contributions under this section, the
 37 Department of Consumer and Business Services may issue a notice of liability to any officer,
 38 employee or member of the employer within three years of the due date of the contributions.

39 (b) Within 30 days from the date the notice of liability is mailed to the officer, employee
 40 or member of the employer, the officer, employee or member shall pay the amount due, plus
 41 penalties and interest, or shall request a hearing on the matter in writing to the Director
 42 of the Department of Consumer and Business Services. A hearing will not be granted unless
 43 the request specifies the grounds upon which the officer, employer or member requesting the
 44 hearing contests the liability.

45 (c) Hearings conducted under this subsection shall be held before an administrative law

1 judge assigned from the Office of Administrative Hearings established under ORS 183.605.
2 The procedure shall be that for a contested case under ORS chapter 183.

3 (d) More than one officer, employee or member of an employer may be held jointly and
4 severally liable for the payment of unpaid contributions.

5 (8) Moneys collected under this section shall be deposited in the fund for the purpose of
6 carrying out the functions and duties of the director under sections 1 to 19 of this 2019 Act.

7 (9)(a) If an employer quits business or sells out, exchanges or otherwise disposes of the
8 business or stock of goods, any payroll contribution payable under this section is immediately
9 due and payable, and the employer shall, within 10 calendar days, pay the payroll contribu-
10 tions due. Any person who becomes a successor to the business is liable for the full amount
11 of the payroll contribution.

12 (b) The director shall adopt rules for compliance with sections 1 to 19 of this 2019 Act
13 related to payroll contributions from an employer's successor in interest.

14 **SECTION 6. Employment agencies.** (1) As used in this section, "employment agency" has
15 the meaning given that term in ORS 658.005.

16 (2) When an employee has obtained employment through the services of an employment
17 agency:

18 (a) Except as provided in paragraph (b) of this subsection, the employment agency and
19 the organization where the employee has been placed to perform services shall both be con-
20 sidered the employer of the employee for purposes of sections 1 to 19 of this 2019 Act; and

21 (b) The employment agency, but not the organization where the employee has been placed
22 to perform services, shall be considered the employer for purposes of section 5 (1) to (6) of
23 this 2019 Act.

24 **SECTION 7. Benefits for reduced leave.** (1)(a) Except as provided in paragraph (b) of this
25 subsection, a covered individual may use family and medical leave insurance benefits for
26 leave that is taken in increments of less than 40 hours, provided that:

27 (A) Leave is taken in increments no shorter than eight hours;

28 (B) Leave that is taken in an increment of less than 40 hours is predictable on a weekly
29 basis and verified by the covered individual pursuant to section 2 of this 2019 Act;

30 (C) Benefit amounts, as determined under section 4 of this 2019 Act, are prorated to in-
31 crements of no less than eight hours; and

32 (D) Benefits are payable in increments of 40 hours.

33 (b) A covered individual may use family and medical leave insurance benefits for leave
34 that is taken in increments of less than eight hours if the covered individual is a part-time
35 employee or if the covered individual's scheduled work shift is less than eight hours and the
36 leave that is taken is not less than the hours scheduled in the work shift.

37 (2) An eligible employee shall make a reasonable effort to schedule leave under this sec-
38 tion so as not to unduly disrupt the operations of the employer. The eligible employee shall
39 provide the employer with prior notice of the schedule on which the eligible employee will
40 be taking the leave, to the extent practicable.

41 (3) An employer, self-employed individual or tribal government shall notify the Director
42 of the Department of Consumer and Business Services, upon request, of the actual amount
43 of leave taken each week for the purpose of verifying the amount of family and medical leave
44 insurance benefits that are payable to the covered individual.

45 (4) Family and medical leave taken under this section must not result in a reduction of

1 the total amount of leave to which a covered individual is entitled beyond the amount of
2 leave actually taken.

3 (5) Nothing in this section shall be construed to entitle a covered individual to an amount
4 of family and medical leave insurance benefits per benefit year that is more than required
5 under section 3 of this 2019 Act.

6 **SECTION 8. Notice to employer.** (1) Except as provided in subsection (2) of this section,
7 an employer may require an eligible employee to give the employer written notice at least
8 30 days before commencing leave. The employer may require the employee to include in the
9 notice an explanation of the need for the leave.

10 (2) An eligible employee may commence leave without 30 days' advance notice if the leave
11 is not foreseeable, including under the following circumstances:

12 (a) An unexpected serious health condition of the employee or a family member of the
13 employee;

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

16 (c) A premature birth, unexpected adoption or unexpected foster placement by or with
17 the employee; or

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

19 (3) If an eligible employee commences leave without advance notice under subsection (2)
20 of this section:

21 (a) The employee shall give notice to the employer as soon as practicable, but in no event
22 later than 45 days after the date on which the leave commenced, in a manner determined
23 by the Director of the Department of Consumer and Business Services; and

24 (b) The employee shall receive family and medical leave insurance benefits for the period
25 that begins on the date on which the leave commenced.

26 (4) The notice described in subsection (3) of this section may be given by a family mem-
27 ber, health care provider or authorized representative on behalf of the eligible employee
28 taking the leave.

29 **SECTION 9. Employment protection; retaliation prohibited.** (1) After returning to work
30 after a period of leave taken under section 2 of this 2019 Act, an eligible employee is entitled
31 to be restored to the position of employment held by the employee when the leave com-
32 menced if that position still exists, without regard to whether the employer filled the position
33 with a replacement worker during the period of leave. If the position held by the employee
34 at the time leave commenced no longer exists, the employee is entitled to be restored to any
35 available equivalent position with equivalent employment benefits, pay and other terms and
36 conditions of employment.

37 (2) During a period in which an eligible employee takes leave under section 2 of this 2019
38 Act, the employer shall maintain any health care benefits the employee had prior to taking
39 such leave for the duration of the leave as if the employee had continued in employment
40 continuously from the date the employee commenced the leave until the date the family and
41 medical leave insurance benefits terminate.

42 (3) An eligible employee who has taken leave under section 2 of this 2019 Act does not
43 lose any employment benefits, including seniority or pension rights, accrued before the date
44 that leave commenced.

45 (4) This section does not entitle an eligible employee to accrue employment benefits

1 during a period of leave taken under section 2 of this 2019 Act or to a right, benefit or posi-
 2 tion of employment other than a right, benefit or position to which the employee would have
 3 been entitled had the employee not taken leave.

4 (5) During a period in which an eligible employee takes leave under section 2 of this 2019
 5 Act, the Director of the Department of Consumer and Business Services or an employer may
 6 require the employee or a family member, health care provider or authorized representative
 7 of the employee to report periodically to the director or the employer on the employee's
 8 status and on the employee's intention to return to work.

9 (6) It is an unlawful practice for a person to:

10 (a) Violate subsections (1) to (3) of this section;

11 (b) Interfere with a right to which a covered individual is entitled under sections 1 to 19
 12 of this 2019 Act; or

13 (c) Retaliate or in any way discriminate against an individual with respect to hire or
 14 tenure or any other term or condition of employment because the individual has inquired
 15 about the provisions of sections 1 to 19 of this 2019 Act, applied for coverage under section
 16 2 of this 2019 Act or invoked any provision of sections 1 to 19 of this 2019 Act.

17 (7) An individual who alleges a violation of this section may bring a civil action under
 18 ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and
 19 Industries in the manner provided by ORS 659A.820.

20 (8) The protections for eligible employees provided under this section apply only to an
 21 eligible employee who was employed by the employer for at least 90 days before taking leave
 22 under section 2 of this 2019 Act.

23 SECTION 10. Coordination of benefits. (1) For employees eligible for leave under ORS
 24 659A.150 to 659A.186, leave taken under sections 1 to 19 of this 2019 Act shall run concu-
 25 rrently with leave under ORS 659A.150 to 659A.186.

26 (2)(a) Sections 1 to 19 of this 2019 Act do not diminish an employer's obligation to comply
 27 with a collective bargaining agreement, an employer policy or local, state or federal law.

28 (b) An eligible employee's right to family and medical leave insurance benefits under
 29 sections 1 to 19 of this 2019 Act may not be waived in or diminished by a collective bargaining
 30 agreement entered into or renewed, or an employee policy adopted or retained, after the ef-
 31 fective date of this 2019 Act.

32 (c) The eligibility of an employee for family and medical leave insurance benefits is not
 33 affected by a strike or lockout at the store, factory, warehouse, establishment or other
 34 premises at which the employee is or was last employed.

35 (d) Nothing in sections 1 to 19 of this 2019 Act requires the reopening or renegotiation
 36 of a collective bargaining agreement, prior to the date of expiration of the collective bar-
 37 gaining agreement, entered into before the effective date of this 2019 Act.

38 (3)(a) An employer may not require an eligible employee to use paid sick time, paid va-
 39 cation time or any other paid time off before or as a condition of using family and medical
 40 leave insurance benefits.

41 (b) An eligible employee is entitled to use any accrued paid sick time or other paid time
 42 off without a reduction in family and medical leave insurance benefits.

43 (4) Family and medical leave taken under sections 1 to 19 of this 2019 Act does not in-
 44 clude leave taken by an eligible employee who is unable to work because of a disabling
 45 compensable injury, as defined in ORS 656.005, unless the employee has refused a suitable

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

3 (5) An employer's failure to provide information to the Department of Consumer and
 4 Business Services upon written request by the director or the director's authorized repre-
 5 sentative to assist with the processing of a claim under sections 1 to 19 of this 2019 Act shall
 6 constitute interference under section 9 of this 2019 Act.

7 **SECTION 11. Notice to employees.** An employer shall display and provide written notice
 8 of employee rights under sections 1 to 19 of this 2019 Act in a manner determined by the
 9 Director of the Department of Consumer and Business Services. Such notice shall include:

10 (1) An eligible employee's right to apply for and receive family and medical leave insur-
 11 ance benefits under sections 1 to 19 of this 2019 Act and the terms under which the benefits
 12 may be used;

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

15 (3) The procedure for filing a claim for family and medical leave insurance benefits;

16 (4) The right to job protection and benefits continuation under section 9 of this 2019 Act;

17 (5) That discrimination and retaliatory personnel actions against an individual for in-
 18 quiring about, requesting, applying for or using family and medical leave insurance benefits
 19 is prohibited under section 9 of this 2019 Act; and

20 (6) That an individual has a right to bring a civil action or to file a complaint for violation
 21 of section 9 of this 2019 Act.

22 **SECTION 12. Records of employers; inspections.** (1) Employers must maintain payroll and
 23 employment records that reflect the total hours worked by all employees for the current
 24 calendar year plus the three prior calendar years.

25 (2) The Director of the Department of Consumer and Business Services may inspect the
 26 payroll and employment records of employers for the purpose of administering sections 1 to
 27 19 of this 2019 Act. Employers must provide the director with all pertinent payroll and em-
 28 ployment records upon request.

29 **SECTION 13. Enforcement and confidentiality.** (1) Notwithstanding ORS 183.635, the Di-
 30 rector of the Department of Consumer and Business Services shall establish a system for
 31 enforcement and appeal of contested cases involving family and medical leave insurance
 32 benefit claims under ORS chapter 183. In establishing the system, the director may utilize
 33 any and all procedures and appeals mechanisms.

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

37 (3) All information in the records of the Department of Consumer and Business Services
 38 pertaining to the administration of sections 1 to 19 of this 2019 Act:

39 (a) Is confidential and for the exclusive use and information of the director in adminis-
 40 tering sections 1 to 19 of this 2019 Act;

41 (b) May not be used in any court action or in any proceeding pending in the court unless
 42 the director or the State of Oregon is a party to the action or proceeding or unless the action
 43 or proceeding concerns the establishment, enforcement or modification of a support obli-
 44 gation and support services are being provided by the Division of Child Support of the De-
 45 partment of Justice or the district attorney pursuant to ORS 25.080; and

1 (c) Is exempt from disclosure under ORS 192.311 to 192.478.

2 (4) At the discretion of the director and subject to an interagency agreement, the direc-
 3 tor may disclose information to a public official in the performance of the public official's
 4 official duties administering or enforcing laws within the public official's authority and to
 5 an agent or contractor of a public official. The public official shall agree to assume respon-
 6 sibility for misuse of the information by the public official's agent or contractor.

7 (5) At the discretion of the director, the director may disclose information to a contrac-
 8 tor pursuant to a contract for actuarial services. The contractor shall agree to assume re-
 9 sponsibility for misuse of the information by the contractor's agent.

10 **SECTION 14. Noncompliance and erroneous payments.** (1) An employer or individual
 11 acting on behalf of an employer may not willfully make or cause to be made false statements
 12 or willfully fail to report a material fact regarding the claim of an eligible employee or re-
 13 garding an employee's eligibility for family and medical leave insurance benefits under
 14 sections 1 to 19 of this 2019 Act.

15 (2) The Director of the Department of Consumer and Business Services may assess a civil
 16 penalty in an amount not to exceed \$1,000 against an employer for each occurrence that vi-
 17 olates subsection (1) of this section.

18 (3) A covered individual is disqualified from family and medical leave insurance benefits
 19 for one year if the director determines that the covered individual willfully made a false
 20 statement or willfully failed to report a material fact to obtain benefits under sections 1 to
 21 19 of this 2019 Act.

22 (4) If family and medical leave insurance benefits are paid erroneously or as a result of
 23 willful misrepresentation, or if a claim for family and medical leave insurance benefits is
 24 rejected after benefits are paid except for matters that have been timely appealed, the di-
 25 rector:

26 (a) May seek repayment of benefits from a covered individual upon issuance of a final
 27 order in a manner provided by rule; and

28 (b) Shall exercise the director's discretion to waive, in whole or in part, the amount of
 29 any such payments where the recovery would be against equity, good conscience or admin-
 30 istrative efficiency.

31 **SECTION 15. Elective coverage.** (1) A self-employed individual may elect to be covered
 32 under sections 1 to 19 of this 2019 Act. The self-employed individual must file a notice of
 33 election in writing with the Director of the Department of Consumer and Business Services,
 34 as required by the director, and contribute to the Family and Medical Leave Insurance Fund
 35 established under section 17 of this 2019 Act in a manner determined by the director. The
 36 election becomes effective on the date of filing the notice. The self-employed individual shall
 37 agree to supply any information concerning taxable income that the director deems neces-
 38 sary.

39 (2) A self-employed individual who has elected coverage may terminate coverage at times
 40 as the director may prescribe by rule, including at a change in the self-employed individual's
 41 employment status, by filing written notice with the director. The termination may not take
 42 effect sooner than 30 days after filing the notice.

43 (3) Notwithstanding subsection (2) of this section, a self-employed individual who has
 44 elected coverage may terminate coverage on the date of filing a voluntary or involuntary
 45 bankruptcy petition. The self-employed individual's elective coverage terminates on the date

1 the self-employed individual provides to the director documentation to support the self-
 2 employed individual's filing of the bankruptcy petition and files written notice with the di-
 3 rector. At any time thereafter, the self-employed individual may reelect coverage under this
 4 section.

5 (4) A tribal government may elect to be covered under sections 1 to 19 of this 2019 Act
 6 in the same manner as provided in subsection (1) of this section.

7 **SECTION 16. Administration.** (1) The Director of the Department of Consumer and
 8 Business Services shall adopt rules for the implementation and administration of sections 1
 9 to 19 of this 2019 Act.

10 (2) The director may enter into interagency agreements to implement and administer
 11 sections 1 to 19 of this 2019 Act.

12 (3) All agencies of state government, as defined in ORS 174.111, are directed to assist the
 13 Department of Consumer and Business Services upon request in the performance of the
 14 department's duties under sections 1 to 19 of this 2019 Act, including outreach, technical
 15 assistance and training.

16 **SECTION 17. Family and Medical Leave Insurance Fund.** (1) The Family and Medical
 17 Leave Insurance Fund is established in the State Treasury, separate and distinct from the
 18 General Fund. The Family and Medical Leave Insurance Fund consists of moneys deposited
 19 in the fund under sections 1 to 19 of this 2019 Act and may include fees, revenues or other
 20 income deposited in the fund. Interest earned by the fund shall be credited to the fund.

21 (2) All moneys in the fund are continuously appropriated to the Department of Consumer
 22 and Business Services for the purposes of carrying out the provisions of sections 1 to 19 of
 23 this 2019 Act, including payment of family and medical leave insurance benefits under section
 24 2 of this 2019 Act and repayment of any funds used for start-up costs.

25 (3) Whenever, in the judgment of the director, there is in the fund an amount of moneys
 26 in excess of the amount sufficient to meet the current expenditures for a self-sustaining in-
 27 surance account, the director shall have full power to invest, reinvest, manage, contract, sell
 28 or exchange investments acquired with such excess funds to reduce contribution rates.

29 (4) Contributions under section 5 of this 2019 Act that are intended for the fund and
 30 moneys in the fund may not be subject to execution, attachment or any other process or to
 31 the operation of any bankruptcy or insolvency law.

32 (5) Expenditures from the fund may not be used for purposes other than carrying out the
 33 provisions of sections 1 to 19 of this 2019 Act.

34 **SECTION 18. Reports.** (1) Not later than September 15, 2021, the Director of the De-
 35 partment of Consumer and Business Services shall submit to the interim committees of the
 36 Legislative Assembly related to workforce or business and labor an initial report summariz-
 37 ing the progress of the Department of Consumer and Business Services toward implementing
 38 a family and medical leave insurance benefits program as described under sections 1 to 19
 39 of this 2019 Act.

40 (2) The director shall submit a report in the manner provided by ORS 192.245, and may
 41 include recommendations for legislation, to the interim committees of the Legislative As-
 42 sembly related to workforce or business and labor no later than September 15, 2022, and no
 43 later than September 15 of every even-numbered year thereafter.

44 (3) The department shall conduct a study to determine how to implement the provisions
 45 of sections 1 to 19 of this 2019 Act, as those provisions pertain to coverage elected by self-

1 employed individuals or tribal governments under section 15 of this 2019 Act. The study shall
 2 include procedures for determining the amount of payroll contributions that a self-employed
 3 individual or a tribal government must pay under section 5 of this 2019 Act and the amount
 4 of family and medical leave insurance benefits that may be made available. The director shall
 5 include in the report described in subsection (2) of this section recommendations that are
 6 based on the study.

7 (4) The director shall include in reports submitted after January 1, 2025, analyses of data
 8 regarding the number of individuals who apply for family and medical leave insurance cov-
 9 erage under sections 1 to 19 of this 2019 Act, reasons for the leave taken, gender of covered
 10 individuals taking leave, contribution rates, balances in the Family and Medical Leave In-
 11 surance Fund established under section 17 of this 2019 Act, outreach efforts and, if applica-
 12 ble, family members for whom leave was taken to provide care.

13 **SECTION 19. Sharing technology.** The Director of the Department of Consumer and
 14 Business Services is encouraged to use state data collection and technology to the extent
 15 possible and to integrate the provisions of sections 1 to 19 of this 2019 Act with existing state
 16 policies.

17 **SECTION 20. Short title.** Sections 1 to 19 of this 2019 Act shall be known and may be
 18 cited as the Family and Medical Leave Insurance Equity Act.

19 **SECTION 21.** ORS 657.100 is amended to read:

20 657.100. (1) An individual is deemed “unemployed” in any week during which the individual
 21 performs no services and with respect to which no remuneration for services performed is paid or
 22 payable to the individual, or in any week of less than full-time work if the remuneration paid or
 23 payable to the individual for services performed during the week is less than the individual’s weekly
 24 benefit amount.

25 (2) For the purposes of ORS 657.155 (1), an individual who performs full-time services in any
 26 week for an employing unit is not unemployed even though remuneration is neither paid nor payable
 27 to the individual for the services performed; however, nothing in this subsection shall prevent an
 28 individual from meeting the definition of “unemployed” as used in this section solely by reason of
 29 the individual’s performance of volunteer services without remuneration for a charitable institution
 30 or a governmental entity.

31 **(3) An individual may not be deemed “unemployed” under this section for any week in**
 32 **which the individual is receiving family and medical leave insurance benefits as defined in**
 33 **section 1 of this 2019 Act.**

34 [(3)] (4) The Director of the Employment Department shall prescribe rules as the director deems
 35 necessary with respect to the various types of unemployment.

36 **SECTION 22.** ORS 659A.156 is amended to read:

37 659A.156. (1) All employees of a covered employer are eligible to take leave for one of the pur-
 38 poses specified in ORS 659A.159 (1)(b) to (e) except:

39 (a) An employee who was employed by the covered employer for fewer than [180] 90 days im-
 40 mediately before the date on which the family leave would commence.

41 (b) An employee who worked an average of fewer than 25 hours per week for the covered em-
 42 ployer during the [180] 90 days immediately preceding the date on which the family leave would
 43 commence.

44 (2) All employees of a covered employer are eligible to take leave for the purpose specified in
 45 ORS 659A.159 (1)(a) except an employee who was employed by the covered employer for fewer than

1 [180] 90 days immediately before the date on which the family leave would commence.

2 **SECTION 23.** ORS 659A.162 is amended to read:

3 659A.162. (1) Except as specifically provided by ORS 659A.150 to 659A.186, an eligible employee
4 is entitled to up to a total of 12 weeks of family leave within any one-year period.

5 (2)(a) **Notwithstanding section 2 (3)(g) of this 2019 Act and** except as provided by paragraph
6 (b) of this subsection, an eligible employee is entitled to a total of two weeks of family leave for the
7 purposes described in ORS 659A.159 (1)(e).

8 (b) An eligible employee is entitled to the period of leave described in paragraph (a) of this
9 subsection upon the death of each family member of the employee [*within any one-year period*], ex-
10 cept that leave taken as provided by this subsection may not exceed the total period of family leave
11 authorized by subsection (1) of this section.

12 [(c) A covered employer may not require an eligible employee to take multiple periods of leave de-
13 scribed in ORS 659A.159 (1)(e) concurrently if more than one family member of the employee dies
14 during the one-year period.]

15 [(d)] (c) All leave taken for the purposes described in ORS 659A.159 (1)(e) shall be counted to-
16 ward the total period of family leave authorized by subsection (1) of this section.

17 (3)(a) In addition to the 12 weeks of family leave authorized by subsection (1) of this section,
18 [*a female*] **an** eligible employee may take a total of 12 weeks of leave within any one-year period for
19 an illness, injury or condition related to pregnancy or childbirth that disables the eligible employee
20 from performing any available job duties offered by the covered employer.

21 (b) An eligible employee who takes 12 weeks of family leave within a one-year period for the
22 purpose specified in ORS 659A.159 (1)(a) may take up to an additional 12 weeks of leave within the
23 one-year period for the purpose specified in ORS 659A.159 (1)(d).

24 (4) When two or more family members work for the same covered employer, the eligible em-
25 ployees may not take concurrent family leave unless:

26 (a) One employee needs to care for another employee who is a family member and who is suf-
27 fering from a serious health condition;

28 (b) One employee needs to care for a child who has a serious health condition while another
29 employee who is a family member is also suffering from a serious health condition; or

30 (c) The employees are taking leave described in ORS 659A.159 (1)(e).

31 (5) An eligible employee may take family leave for the purpose specified in ORS 659A.159 (1)(a)
32 in two or more nonconsecutive periods of leave only with the approval of the employer.

33 (6) Leave need not be provided to an eligible employee by a covered employer for the purpose
34 specified in ORS 659A.159 (1)(d) if another family member is available to care for the child.

35 (7) A covered employer may not reduce the amount of family leave available to an eligible em-
36 ployee under this section by any period the employee is unable to work because of a disabling
37 compensable injury.

38 (8)(a) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when
39 family leave for a serious health condition of an eligible employee or a family member of the eligible
40 employee may be taken intermittently or by working a reduced workweek. Rules adopted by the
41 commissioner under this paragraph shall allow taking of family leave on an intermittent basis or by
42 use of a reduced workweek to the extent permitted by federal law and to the extent that taking
43 family leave on an intermittent basis or by use of a reduced workweek does not result in the loss
44 of an eligible employee's exempt status under the federal Fair Labor Standards Act.

45 (b) The commissioner shall adopt rules governing when family leave for the purposes described

1 in ORS 659A.159 (1)(e) may be taken to the extent permitted by federal law and to the extent that
 2 taking family leave on an intermittent basis does not result in the loss of an eligible employee's
 3 exempt status under the federal Fair Labor Standards Act.

4 **SECTION 24.** ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and
 5 section 13, chapter 691, Oregon Laws 2017, is amended to read:

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

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

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

19 (2) An action may be brought under subsection (1) of this section alleging a violation of:

20 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
 21 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
 22 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 23 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
 24 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
 25 659A.318, 659A.320, 659A.355 or 659A.421 **or section 9 of this 2019 Act;** or

26 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

27 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 28 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 29 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 30 659A.290, 659A.318, 659A.355 or 659A.421 **or section 9 of this 2019 Act:**

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

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

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

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

37 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-
 38 olation of ORS 652.220, the court may award punitive damages if:

39 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted
 40 with malice or acted with willful and wanton misconduct; or

41 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 42 659A.850 for a violation of ORS 652.220.

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

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

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

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

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

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

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

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

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

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

28 (9) When the commissioner or the Attorney General has reasonable cause to believe that a
 29 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
 30 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
 31 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
 32 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
 33 manner as a person or group of persons may file a civil action under this section. In a civil action
 34 filed under this subsection, the court may assess against the respondent, in addition to the relief
 35 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

38 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 39 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 40 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 41 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 42 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 43 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 44 appealing an adverse decision of the trial court.

45 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145

1 or 659A.421 or discrimination under federal housing law:

2 (a) “Aggrieved person” includes a person who believes that the person:

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

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

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

10 **SECTION 25.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017,
11 and section 13, chapter 691, Oregon Laws 2017, is amended to read:

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

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

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

25 (2) An action may be brought under subsection (1) of this section alleging a violation of:

26 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
27 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
28 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
29 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
30 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
31 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421 **or section 9 of this 2019 Act**; or

32 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

33 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
34 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
35 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
36 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421 **or section 9 of this 2019 Act**:

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

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

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

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

43 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-
44 olation of ORS 652.220, the court may award punitive damages if:

45 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted

1 with malice or acted with willful and wanton misconduct; or

2 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
3 659A.850 for a violation of ORS 652.220.

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

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

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

13 (8) Any individual against whom any distinction, discrimination or restriction on account of
14 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
15 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
16 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
17 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
18 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
19 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
20 section:

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

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

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

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

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

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

34 (9) When the commissioner or the Attorney General has reasonable cause to believe that a
35 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
36 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
37 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
38 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
39 manner as a person or group of persons may file a civil action under this section. In a civil action
40 filed under this subsection, the court may assess against the respondent, in addition to the relief
41 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

44 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
45 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing

1 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 2 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 3 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 4 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 5 appealing an adverse decision of the trial court.

6 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145
 7 or 659A.421 or discrimination under federal housing law:

8 (a) “Aggrieved person” includes a person who believes that the person:

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

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

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

16 **SECTION 26. Operative dates.** (1)(a) **Sections 1 and 3 to 14 of this 2019 Act and the**
 17 **amendments to ORS 657.100, 659A.156, 659A.162 and 659A.885 by sections 21 to 25 of this 2019**
 18 **Act become operative on January 1, 2021.**

19 **(b) Sections 2 and 15 of this 2019 Act become operative on January 1, 2023.**

20 **(2) The Department of Consumer and Business Services, the Bureau of Labor and In-**
 21 **dustries, the Employment Department and the Department of Revenue may take any action**
 22 **before the operative dates specified in subsection (1) of this section that is necessary to en-**
 23 **able the bureau and departments to exercise, on or after the operative dates specified in**
 24 **subsection (1) of this section, the duties, functions and powers conferred on the bureau and**
 25 **departments by sections 1 to 15 of this 2019 Act and the amendments to ORS 657.100,**
 26 **659A.156, 659A.162 and 659A.885 by sections 21 to 25 of this 2019 Act.**

27 **SECTION 27. Captions.** **The section captions used in this 2019 Act are provided only for**
 28 **the convenience of the reader and do not become part of the statutory law of this state or**
 29 **express any legislative intent in the enactment of this 2019 Act.**

30 **SECTION 28. Effective date.** **This 2019 Act takes effect on the 91st day after the date on**
 31 **which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.**

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