

House Bill 2355

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Business and Labor for former Representative Nick Kahl)

SUMMARY

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

Establishes Short-Term Disability Insurance Program. Requires Bureau of Labor and Industries to administer program and adopt rules. Authorizes participation in voluntary plan if approved by bureau. Requires employers to withhold from employees' wages amounts necessary to pay premiums. Sets amount to be withheld for payment of premiums and authorizes Commissioner of Bureau of Labor and Industries to adjust rates. Sets benefit rates. Requires employers to file reports of hours worked by employees and amounts payable to bureau. Imposes penalties for certain violations.

Establishes Short-Term Disability Benefit Fund. Appropriates moneys in fund to bureau for purposes of Short-Term Disability Insurance Program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to short-term disability benefits; creating new provisions; amending ORS 316.168 and
3 316.171; appropriating money; and declaring an emergency.

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

5 **SECTION 1. Sections 1 to 14 of this 2011 Act may be cited as the Short-Term Disability**
6 **Insurance Act.**

7 **SECTION 2. (1) The Legislative Assembly finds that:**

8 (a) Many employees become unable to work for a period of time due to illness, nonin-
9 dustrial injury, pregnancy or childbirth.

10 (b) Employer-paid benefits meet only a small part of this need. Many employees do not
11 have access to or cannot afford private short-term disability insurance.

12 (c) Employees often find themselves ineligible for existing programs and unable to sup-
13 port themselves or their families.

14 (d) The establishment of short-term disability benefits will provide greater economic
15 stability and reduce the long-term impact on state income support programs by increasing
16 the ability of workers to take short-term disability leave to recover from a disabling illness,
17 nonindustrial injury or other condition while maintaining their employment.

18 (2) Sections 1 to 14 of this 2011 Act are enacted to provide partial wage replacement to
19 employees when illness, nonindustrial injury, pregnancy, childbirth or another disabling
20 condition temporarily prohibits the employee from being able to work.

21 **SECTION 3. As used in this 2011 Act:**

22 (1) "Application year" means the 12-month period beginning on the first day of the cal-
23 endar week in which an employee files an application for short-term disability benefits and
24 the 12-month period beginning with the first day of the calendar week in which the employee
25 files a subsequent application for short-term disability benefits after the expiration of the
26 employee's last preceding application year.

27 (2) "Base year" has the meaning given that term in ORS 657.010 (1).

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 (3) "Disability" means an illness, an injury or a physical or mental condition, that renders
2 an employee unable to perform the employee's regular or customary work. "Disability" in-
3 cludes, but is not limited to, any condition resulting from pregnancy, childbirth or related
4 medical conditions that cause the employee to be unable to perform the employee's regular
5 or customary work.

6 (4) "Employee" has the meaning given that term in ORS 657.015.

7 (5) "Employer" has the meaning given that term in ORS 657.025.

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

9 (7) "Other benefits" means:

10 (a) Temporary disability benefits provided under the workers' compensation law of any
11 state or of the federal government.

12 (b) Temporary disability benefits provided under the employer's liability law of any state
13 or of the federal government.

14 (c) Permanent disability benefits provided under the workers' compensation law of any
15 state or the federal government for the same injury or illness that is the basis for a claim
16 for short-term disability benefits under sections 1 to 14 of this 2011 Act.

17 (8) "Premium" means the payments required by section 6 of this 2011 Act.

18 (9) "Qualifying period" means the 180 days immediately preceding the first day of the
19 employee's application year.

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

21 **SECTION 4.** (1) The Bureau of Labor and Industries shall establish and administer a
22 Short-Term Disability Insurance Program.

23 (2) The bureau may adopt rules as necessary to implement and administer sections 1 to
24 14 of this 2011 Act.

25 **SECTION 5.** (1) Short-term disability benefits are payable under the Short-Term Disabil-
26 ity Insurance Program to an employee during a period in which the employee:

27 (a) Has a disability that has prevented the employee from being able to perform the
28 employee's regular or customary work for a waiting period of at least seven days.

29 (b) Files a claim for benefits as required by rules adopted by the Bureau of Labor and
30 Industries, including a statement signed by the employee's treating health care provider that
31 documents the sickness, injury or pregnancy of the employee and the health care provider's
32 opinion as to the expected duration of the disability. For subsequent periods of disability af-
33 ter the period covered by the initial statement or any preceding claim, an employee must file
34 a continued claim for those benefits supported by a statement of the treating health care
35 provider.

36 (c) Establishes that the employee has had amounts retained through payroll deduction
37 for the payment of premiums throughout the employee's qualifying period as provided under
38 section 6 of this 2011 Act.

39 (d) Establishes that the employee earned at least \$300 in wages from an employer during
40 the base year.

41 (e) Establishes an application year. An application year is not established if the qualifying
42 period includes assessments withheld for quarters before establishment of a previous appli-
43 cation year.

44 (f) Is not covered by a voluntary plan approved by the bureau as provided by section 14
45 of this 2011 Act.

1 (g) If required by the bureau, submits to a reasonable examination for the purpose of
 2 determining the employee's disability.

3 (2) An employee is not eligible for benefits under this section for any week for which the
 4 employee receives or is entitled to receive unemployment compensation or other benefits in
 5 the form of cash payments. If the amounts of other benefits are less than the amount the
 6 employee would otherwise receive as weekly short-term disability benefits under this 2011
 7 Act, the employee shall be entitled to receive for that week short-term disability benefits
 8 reduced by the amounts received for the other benefits. Nothing in this subsection shall be
 9 construed to authorize the delay of payment of short-term disability benefits except when
 10 the employee is receiving other benefits or when the bureau has received notice that the
 11 employer or insurer has agreed to commence the payment of other benefits.

12 (3)(a) An employee is disqualified from receiving short-term disability benefits under this
 13 section if the employee:

14 (A) Willfully makes a false statement or misrepresentation regarding a material fact or
 15 willfully fails to disclose a material fact to obtain short-term disability benefits;

16 (B) Seeks short-term disability benefits based on an intentionally self-inflicted disability;
 17 or

18 (C) Seeks short-term disability benefits based on a disability that resulted from the
 19 employee's commission of a felony.

20 (b) A disqualification for short-term disability benefits under this subsection is for two
 21 years, commencing on the first day of the calendar week in which the employee filed a claim
 22 for short-term disability benefits under this section. Any employee who is disqualified from
 23 receiving short-term disability benefits under this subsection is liable to the bureau for a
 24 penalty in an amount equal to 15 percent of the amount of short-term disability benefits re-
 25 ceived by the employee during the period of disqualification.

26 (4)(a) This section does not limit an employee's right to take leave from employment
 27 under other laws or employer policy.

28 (b) The eligibility of an employee for short-term disability benefits is not affected by a
 29 strike or lockout at the factory, establishment or other premises at which the employee is
 30 or was last employed.

31 (c) An employee who has received short-term disability benefits under this section may
 32 not lose any other employment benefits, including seniority or pension rights, accrued before
 33 the date that the employee commenced short-term disability leave. However, this section
 34 does not entitle an employee to accrue employment benefits during a period of short-term
 35 disability leave or to a right, benefit or position of employment other than a right, benefit
 36 or position to which the employee would have been entitled had the employee not taken
 37 short-term disability leave.

38 (d) This section does not diminish an employer's obligation to comply with a collective
 39 bargaining agreement, an employment benefits program or an approved voluntary plan that
 40 provides greater benefits to employees than the short-term disability benefits provided under
 41 this section.

42 (e) An agreement by an employee to waive the employee's rights under this section is
 43 void as contrary to public policy.

44 (f) Short-term disability benefits payable under this section may not be diminished by a
 45 collective bargaining agreement or another employment benefits program or plan entered

1 into or renewed after the effective date of this 2011 Act.

2 **SECTION 6.** (1) Unless an employer provides an approved voluntary plan, every employer
 3 shall retain from the wages earned by all employees an amount for payment of premiums
 4 of _____ and pay the moneys retained in the manner and at such intervals as the
 5 Commissioner of the Bureau of Labor and Industries establishes by rule.

6 (2) Moneys collected pursuant to subsection (1) of this section, and any accrued cash
 7 balances, shall be deposited in the Short-Term Disability Benefit Fund established under
 8 section 12 of this 2011 Act exclusively for the expenditures of the Bureau of Labor and In-
 9 dustries in carrying out the functions and duties of the bureau under sections 1 to 14 of this
 10 2011 Act.

11 (3)(a) The commissioner may adjust rates for amounts retained for the payment of pre-
 12 miums, not to exceed the amount established in subsection (1) of this section. The commis-
 13 sioner shall set rates of amounts retained for the payment of premiums in a manner that
 14 minimizes the volatility of the rates retained and that ensures that at the end of the period
 15 for which the rates are effective the cash balance in the fund shall be an amount approxi-
 16 mating 12 months of projected expenditures from the fund based on the functions and duties
 17 of the bureau under sections 1 to 14 of this 2011 Act.

18 (b) Factors to be considered in making adjustments under paragraph (a) of this sub-
 19 section to rates of amounts withheld for the payment of premiums include, but are not lim-
 20 ited to, the cash balance in the fund as determined by the commissioner and the estimated
 21 expenditures and revenues of the fund.

22 (4) Every employer required to pay premiums under this section shall make and file a
 23 report of employee hours worked and amounts due under this section upon a combined re-
 24 port form adopted by the Department of Revenue by rule. The report shall be filed with the
 25 department:

26 (a) At the times and in the manner prescribed for reports filed pursuant to ORS 316.168
 27 and 316.171; or

28 (b) Annually as required or allowed for reports filed pursuant to ORS 316.197 or 657.571.

29 (5) If the employer is a temporary employment agency that provides employees on a
 30 temporary basis to its customers, the temporary employment agency shall be considered to
 31 be the employer for purposes of this section.

32 (6)(a) Within 10 days of the date an employer quits business, merges, sells out or ex-
 33 changes or otherwise disposes of the business or stock of goods of the business, any amounts
 34 payable for premiums under this section become immediately due and payable. Any person
 35 who becomes a successor to the business is liable for the full amount of the premiums due
 36 and shall withhold from the purchase price a sum sufficient to pay any premiums due from
 37 the employer until the employer produces documentation from the bureau showing payment
 38 has been made in full of any premium due or that no premium is due. If the premium is not
 39 paid by the employer within 10 days after the date of the sale, exchange or disposal, the
 40 successor is liable for the payment of the full amount of premiums due. The successor's
 41 payment of the premiums due is, to the extent of the payment, a payment upon the purchase
 42 price, and if the payment made is greater than the purchase price, the amount of the dif-
 43 ference is a debt due the successor from the employer.

44 (b) A successor is not liable for any premiums due from the person from whom the suc-
 45 cessor has acquired a business or stock of goods if the successor gives written notice to the

1 bureau of the acquisition and no assessment is issued by the bureau within one year after
2 receipt of the notice against the former operator of the business.

3 (7)(a) Information contained in the files and records pertaining to an employee under this
4 section is confidential, is not a public record as defined in ORS 192.410 and is not open to
5 public inspection, other than to public employees in the performance of their official duties.
6 However, the employee to whom the records pertain or an authorized representative of the
7 employee may review the records or receive specific information from the records on the
8 presentation of signed authorization from the employee. At the bureau's discretion, other
9 persons may review records when those persons are rendering assistance to the bureau at
10 any stage of proceedings on any matter pertaining to the administration of this section.

11 (b) An employer must keep at its place of business records of employment that contain
12 the information needed by the bureau for purposes of this section. The records shall at all
13 times be open to the inspection of the bureau pursuant to rules adopted by the bureau.

14 **SECTION 7.** (1) The Bureau of Labor and Industries shall notify the employer of an em-
15 ployee filing a claim for short-term disability benefits under section 5 of this 2011 Act within
16 five business days of the date the claim was filed.

17 (2) Short-term disability benefits are payable for a maximum of 52 weeks.

18 (3) The first payment of short-term disability benefits shall be made to an employee by
19 the later of no more than two weeks after the claim is filed or the date the short-term dis-
20 ability leave began following a seven-day waiting period for which no benefits may be paid.
21 Subsequent payments shall be made bimonthly.

22 (4) Disability benefits shall be paid during the benefit year as follows:

23 (a) An eligible employee's weekly benefit amount shall be equal to 55 percent of the
24 employee's average weekly wages during the highest paid quarter of the base year, up to a
25 maximum of 64 percent of the state average covered weekly wage as determined by the
26 Employment Department for the preceding calendar year for an employee who worked at
27 least 2,000 hours in the base year, or a prorated amount for an employee who worked fewer
28 than 2,000 hours in the base year.

29 (b) An eligible employee who receives earnings from the employee's employer during the
30 period of the employee's short-term disability shall be paid short-term disability benefits for
31 any week or partial week in an amount not to exceed the employee's maximum weekly
32 short-term disability amount which together with the earnings does not exceed the weekly
33 wage of the employee, exclusive of wages paid for overtime work, immediately prior to the
34 commencement of the short-term disability.

35 (c) Payment which has been, is or will be paid to an employee for sick leave or holiday
36 or vacation leave shall be considered as earnings in the determination of the amount of
37 benefits payable with respect to the week in which the sick leave is taken or the holiday or
38 vacation leave falls. However, if payment for the sick leave or holiday or vacation leave is
39 paid more than 45 days prior to the holiday or vacation leave or is delayed more than 45 days
40 following the end of the week in which the holiday or vacation leave falls, the provisions of
41 this subsection do not apply and previously reduced benefits shall be adjusted accordingly.

42 (d) Payment which has been, is or will be paid to an individual as a member of a reserve
43 component of the Armed Forces of the United States, including the organized militia of the
44 State of Oregon, for the performance of inactive duty training shall not be considered as
45 earnings in the determination of the amount of short-term disability benefits payable.

1 (e) The minimum period of short-term disability leave for which benefits may be paid is
2 one week. The bureau may not pay a claim for benefits for a period of short-term disability
3 leave of less than one week.

4 (f) If an employee dies before receiving payment of short-term disability benefits, the
5 payment shall be made by the bureau to the surviving spouse or to the surviving child or
6 children of the employee if there is no surviving spouse. If there is no surviving spouse and
7 no surviving child or children, the payment shall be made and distributed consistent with the
8 terms of the decedent's will or, if the decedent dies intestate, consistent with the provisions
9 of ORS chapter 112.

10 (5) An authorized representative of the bureau shall promptly examine each new claim
11 for short-term disability benefits and determine:

12 (a) If the employee has had amounts retained for the payment of premiums that are
13 sufficient to qualify the claimant for payment of short-term disability benefits;

14 (b) The amount payable each week for short-term disability benefits;

15 (c) The maximum amount of short-term disability benefits payable for the application
16 year; and

17 (d) The period for which short-term disability benefits are payable.

18 (6) The initial determination under this section shall be applicable to all weeks of the
19 application year for which the claim was filed. However, the determination may be amended
20 with respect to any week or weeks of the application year.

21 (7) The bureau shall promptly give notice of an initial determination and any amended
22 determination made under this section to the employee. Unless the employee files a request
23 for hearing on the initial or amended determination with the bureau in accordance with rules
24 adopted by the bureau, the determination shall become final and the bureau shall pay or deny
25 short-term disability benefits in accordance with the determination, unless otherwise pro-
26 vided by law.

27 (8)(a) The bureau shall also make an initial determination of an employee's entitlement
28 to other benefits and shall notify the employer and employee if the bureau determines that
29 the employee is entitled to other benefits.

30 (b) Notice under this subsection from the bureau to the employer shall constitute notice
31 under ORS 656.265 for purposes of filing a workers' compensation claim. If the employer or
32 the insurance carrier disputes liability for the payment of other benefits, or the extent of the
33 benefits payable, the bureau's right to reimbursement shall be subject to the jurisdiction of
34 the Workers' Compensation Board.

35 (9) An employer or insurance carrier that subsequently assumes liability or is determined
36 to be liable for reimbursement to the bureau for short-term disability benefits which the
37 bureau has paid in lieu of other benefits shall be assessed for this liability by the bureau.
38 Interest on an amount recoverable under this section accrues at the rate specified in ORS
39 82.010, beginning on the first day of the month following 60 days after entry of the order
40 establishing the amount recoverable. The employer shall also pay a penalty of 10 percent of
41 the amount reimbursed to the bureau, payable in addition to and not from the amount re-
42 imbursement, if the board finds that the failure of the employer to pay benefits upon notice by
43 the bureau under this section was unreasonable. All funds received by the bureau pursuant
44 to this section shall be deposited in the Short-Term Disability Benefit Fund.

45 (10) Short-term disability benefits are payable under this section only to the extent that

1 moneys are available in the fund for that purpose. Neither the state nor the bureau is liable
2 for any amount in excess of this limitation.

3 (11) The bureau shall provide a tax form to each employee who has received short-term
4 disability benefits for the employee's use in paying federal income tax on the benefits and
5 shall advise an employee filing a new claim for short-term disability benefits, at the time of
6 filing the claim, that:

7 (a) Short-term disability benefits are subject to federal income tax; and

8 (b) Requirements exist pertaining to estimated tax payments.

9 **SECTION 8.** If an employee or employer is adversely impacted by a decision of the Bu-
10 reau of Labor and Industries with regard to the employee's claim for short-term disability
11 benefits and makes a timely request, the employee or employer is entitled to a hearing before
12 the Commissioner of the Bureau of Labor and Industries or the commissioner's designee in
13 accordance with the applicable provisions of ORS 183.415 to 183.500. The commissioner shall
14 adopt rules for conducting hearings under this section. The commissioner or commissioner's
15 designee shall issue a final order in the case. Final orders issued are subject to review by the
16 Court of Appeals as provided in ORS 183.480 and 183.482.

17 **SECTION 9.** (1) If an employee receives any short-term disability benefits under section
18 7 of this 2011 Act to which the employee is not entitled:

19 (a) The employee is liable to the Bureau of Labor and Industries for the amount of
20 short-term disability benefits received; and

21 (b) The amount of the short-term disability benefits received may be deducted by the
22 bureau from any future short-term disability benefits otherwise payable to the employee
23 under section 7 of this 2011 Act.

24 (2) If the bureau decides that an employee has been paid short-term disability benefits
25 to which the employee is not entitled because of an error, and that the employee is not
26 subject to disqualification under section 5 (3) of this 2011 Act, the amounts received in error
27 may be recovered by the bureau only by deductions from short-term disability benefits oth-
28 erwise payable to the employee under section 7 of this 2011 Act during the 52 weeks following
29 the date on which the order establishing the amount of the erroneous payment becomes
30 final. If amounts determined to be recoverable have not been recovered within that time, the
31 liability shall be canceled by the bureau and charged against the Short-Term Disability Ben-
32 efit Fund.

33 (3) Except as provided in subsection (4) of this section, if short-term disability benefits
34 determined to be recoverable under this section have not been recovered within three years
35 after the date that the order of the bureau establishing the liability of the employee becomes
36 final, and no amounts have been recovered and applied towards payment of the liability for
37 at least three months, the liability shall be canceled by the bureau and charged against the
38 fund.

39 (4) Any amount due under this section may be collected by the bureau in a civil action
40 against the employee brought in the name of the bureau.

41 (5) Interest on any short-term disability benefits recoverable under this section shall be
42 paid and collected at the same time repayment of short-term disability benefits is made by
43 the employee. Interest on an amount recoverable under this section accrues at the rate
44 specified in ORS 82.010, beginning on the first day of the month following 60 days after entry
45 of the order establishing the amount recoverable.

1 (6) Any amount collected under this section by the bureau shall be paid into the fund.

2 **SECTION 10.** (1) It is an unlawful employment practice for an employer, temporary em-
 3 ployment agency, employment agency, employee organization or other person to discharge,
 4 expel or otherwise discriminate against a person because:

5 (a) The person has filed, or communicated to the employer an intent to file, a claim for
 6 short-term disability benefits;

7 (b) The person has filed, or communicated to the employer an intent to file, a complaint
 8 or an appeal about short-term disability benefits; or

9 (c) Has testified or assisted, or is about to testify or assist, in any proceeding under
 10 sections 1 to 14 of this 2011 Act.

11 (2) The Bureau of Labor and Industries may assess a civil penalty not to exceed \$20,000
 12 against an employer that:

13 (a) Fails to withhold amounts necessary to pay premiums or fails to pay when due the
 14 moneys withheld as provided in section 6 of this 2011 Act; or

15 (b) Fails to comply with the provisions of sections 1 to 14 of this 2011 Act or rules
 16 adopted under sections 1 to 14 of this 2011 Act relating to reports or other requirements
 17 necessary to carry out the purposes of sections 1 to 14 of this 2011 Act.

18 (3) All civil penalties collected under this section shall be applied first toward re-
 19 imbursement of the costs incurred in investigating violations, conducting hearings and as-
 20 sessing and collecting penalties. All remaining amounts shall be paid into the Short-Term
 21 Disability Benefit Fund.

22 **SECTION 11.** (1) If an employer defaults with respect to any premium payment required
 23 to be made by the employer to the Short-Term Disability Benefit Fund under section 6 of this
 24 2011 Act, a person described in subsection (2) of this section who, as an officer, member,
 25 partner or employee, is under a duty to perform the actions required by employers under
 26 sections 1 to 14 of this 2011 Act shall be personally liable for amounts due under section 6
 27 of this 2011 Act. More than one person may be jointly and severally liable under this section.

28 (2) This section applies only to a person who is:

29 (a) An officer or employee of a corporation;

30 (b) A member or an employee of a limited liability corporation; or

31 (c) A partner in or an employee of a limited liability partnership.

32 (3) If the Commissioner of the Bureau of Labor and Industries determines that an
 33 amount is due under this section, the commissioner shall issue a notice of assessment to the
 34 person liable under this section which shall be mailed to the person's last-known address of
 35 record with the commissioner.

36 **SECTION 12.** The Short-Term Disability Benefit Fund is established in the State Treas-
 37 ury, separate and distinct from the General Fund. Interest earned by the fund shall be
 38 credited to the fund. All moneys from premiums received under section 6 of this 2011 Act
 39 shall be credited to the fund. Moneys in the fund are continuously appropriated to the Bu-
 40 reau of Labor and Industries for the purposes authorized by sections 1 to 14 of this 2011 Act.

41 **SECTION 13.** (1) An employer that is not subject to section 6 of this 2011 Act or a self-
 42 employed person may elect to provide short-term disability benefits to the employees of the
 43 employer or to the self-employed person under section 5 of this 2011 Act for an initial cov-
 44 erage period of not less than three years and subsequent coverage periods of not less than
 45 one year. The employer or self-employed person must file a written notice of election of

1 coverage under section 5 of this 2011 Act with the Bureau of Labor and Industries. The
 2 election becomes effective on the date the notice is filed.

3 (2) An employer or self-employed person that makes an election under this section may
 4 withdraw the election not more than 30 days after the end of the initial three-year coverage
 5 period, or at other times as the bureau may prescribe by rule. A withdrawal may take effect
 6 no sooner than 30 days after the filing of the notice.

7 (3) The bureau may cancel an election made under this section if the employer or self-
 8 employed person fails to remit required premiums or reports. The bureau may collect unpaid
 9 premiums and may levy an additional premium for the remainder of the coverage period. A
 10 cancellation under this subsection becomes effective 30 days after the issuance of a written
 11 notice of cancellation to the employer or self-employed person or before 30 days after the
 12 issuance of the notice of cancellation if so specified in the notice.

13 **SECTION 14.** (1) By mutual agreement, an employer and a majority of the employees
 14 employed in this state by the employer, or both an employer and a union covered under a
 15 collective bargaining agreement, may apply to the Bureau of Labor and Industries for ap-
 16 proval of a voluntary plan for the payment of short-term disability benefits to employees.

17 (2) The bureau shall approve any voluntary plan if:

18 (a) The rights afforded to the covered employees are greater than those provided for in
 19 sections 5 and 7 of this 2011 Act;

20 (b) The plan has been made available to all of the employees of the employer employed
 21 in this state or to all employees at any one distinct and separate establishment maintained
 22 by the employer in this state. "Employees" as used in this paragraph includes individuals in
 23 partial or other forms of short-time employment and employees not in employment as the
 24 bureau shall prescribe by rule;

25 (c) A majority of the employees of the employer employed in this state, a majority of the
 26 employees employed at any one distinct and separate establishment maintained by the em-
 27 ployer in this state or a union and employer through collective bargaining have consented
 28 to the plan;

29 (d) The employer has consented to the plan and has agreed to make the payroll de-
 30 ductions required, if any, and transmit the amounts deducted to the plan insurer, if any;

31 (e) The plan provides for the inclusion of future employees;

32 (f) The plan will be in effect for a period of not less than one year and, thereafter, con-
 33 tinuously unless the bureau finds that by mutual consent the employer and a majority of the
 34 employees employed in this state, or a union and employer through collective bargaining
 35 covered by the plan have given written notice of withdrawal from the plan;

36 (g) The amount of deductions from the wages of an employee in effect for any plan shall
 37 not be increased on other than the anniversary of the effective date of the plan; and

38 (h) The approval of the plan or plans will not result in a substantial selection of risks
 39 adverse to the Short-Term Disability Benefit Fund.

40 (3) Except as provided in subsection (4) of this section, neither an employee nor the em-
 41 ployer of the employee shall be liable for the employee contributions required under section
 42 6 of this 2011 Act with respect to wages paid by the employer while the employee is covered
 43 by an approved voluntary plan.

44 (4) Each voluntary plan shall pay the bureau for the fund _____ percent of the
 45 product obtained by multiplying the rate of worker contributions by the amount of the tax-

1 able wages paid to employees covered by the voluntary plan for short-term disability benefit
2 coverage for each calendar year. The payments shall not constitute a part of the voluntary
3 plan premium for purposes of any tax under any provision of law. Payments under this sub-
4 section shall be made according to the procedures established by rule by the bureau and de-
5 posited in the fund to cover administrative costs related to voluntary plans.

6 (5) Whenever an individual is entitled to short-term disability benefits but there is a
7 dispute over whether such benefits are payable from the fund or from a voluntary plan,
8 benefits shall be paid to the individual, pursuant to rules adopted by the bureau from the
9 source against which the claim was first filed, in an amount that is not less than the benefit
10 amount established under section 7 of this 2011 Act, pending the determination of the dis-
11 pute. If it is finally determined that the short-term disability benefits should have been paid
12 from a source other than the source that paid the short-term disability benefits, re-
13 imbursement shall be promptly made from the fund or the voluntary plan, as the case may
14 be, and the employee shall be promptly paid the accumulated excess, if any, to which the
15 employee is entitled. Reimbursement shall also be made to the extent of actual liability for
16 short-term disability benefits from the source determined to liable if it is determined that
17 benefits have been paid in error from one source which should have been paid from another
18 source.

19 **SECTION 15.** Section 12 of this 2011 Act becomes operative on July 1, 2012.

20 **SECTION 16.** (1) Employers shall first withhold quarterly premiums from employees'
21 earnings for quarters worked beginning on or after January 1, 2012.

22 (2) Employees may first file claims for benefits under section 7 of this 2011 Act on or
23 after July 1, 2012, for disability leave taken on or after July 1, 2012.

24 **SECTION 17.** ORS 316.168 is amended to read:

25 316.168. (1) Except as otherwise provided by law, every employer subject to the provisions of
26 ORS 316.162 to 316.221[,] or 656.506 [and] or ORS chapter 657 or sections 1 to 14 of this 2011
27 Act, or a payroll-based tax imposed by a mass transit district and administered by the Department
28 of Revenue under ORS 305.620, shall make and file a combined quarterly tax and assessment report
29 upon a form prescribed by the department.

30 (2) The report shall be filed with the Department of Revenue on or before the last day of the
31 month following the quarter to which the report relates and shall be deemed received on the date
32 of mailing, as provided in ORS 305.820.

33 (3) The report shall be accompanied by payment of any tax or assessment due and a combined
34 tax and assessment payment coupon prescribed by the department. The employer shall indicate on
35 the coupon the amount of the total payment and the portions of the payment to be paid to each of
36 the tax or assessment programs.

37 (4) The Department of Revenue shall credit the payment to the tax or assessment programs in
38 the amounts indicated by the employer on the coupon and shall promptly remit the payments to the
39 appropriate taxing or assessing body.

40 (5) If the employer fails to allocate the payment on the coupon, the department shall allocate
41 the payment to the proper tax or assessment programs on the basis of the percentage the payment
42 bears to the total amount due.

43 (6) The Department of Revenue shall distribute copies of the combined quarterly tax and as-
44 sessment report and the necessary tax or assessment payment information to each of the agencies
45 charged with the administration of a tax or assessment covered by the report.

1 (7) The Department of Revenue, the Employment Department and the Department of Consumer
2 and Business Services shall develop a system of account numbers and assign to each employer a
3 single account number representing all of the tax and assessment programs included in the combined
4 quarterly tax and assessment report.

5 **SECTION 18.** ORS 316.171 is amended to read:

6 316.171. Except as provided in [*this section and*] ORS 314.840, 316.168, 316.197, 316.202 and
7 657.571 **and sections 1 to 14 of this 2011 Act**, the statutes and regulations applicable to each
8 agency, requiring a report and imposing a tax, shall govern the audit and examination of reports
9 and returns, determination of deficiencies, assessments, claims for refund, penalties, interest, ad-
10 ministrative and judicial appeals and the procedures relating thereto.

11 **SECTION 19. This 2011 Act being necessary for the immediate preservation of the public**
12 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
13 **on its passage.**

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