

House Bill 2645

Sponsored by Representative WITT (Presession filed.)

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 alternative voluntary plan if approved by bureau. Requires employers to pay first seven days of short-term disability benefits directly to employee and 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 paid leave benefits; creating new provisions; amending ORS 316.171; appropriating
3 money; and declaring an emergency.

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

5 **SECTION 1. Sections 1 to 15 of this 2013 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 15 of this 2013 Act are enacted to provide partial wage replacement to**
19 **employees when illness, nonindustrial injury, pregnancy, childbirth or another disabling**
20 **condition temporarily renders the employee unable to work.**

21 **SECTION 3. As used in sections 1 to 15 of this 2013 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 on 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.**

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 a related
4 medical condition that causes 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 15 of this 2013 Act.

17 (d) Paid sick leave.

18 (8) "Premium" means the payments required by section 7 of this 2013 Act.

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

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

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

24 (2) The bureau may adopt rules as necessary to implement and administer sections 1 to
25 15 of this 2013 Act.

26 **SECTION 5.** (1) If an employee has been employed by the employer for at least 720 hours,
27 short-term disability benefits are payable under the Short-Term Disability Insurance Pro-
28 gram during a period in which the employee:

29 (a) Has a disability;

30 (b) Files a claim for benefits as required by rules adopted by the Bureau of Labor and
31 Industries, including a statement signed by the employee's treating health care provider that
32 documents the illness, injury or condition of the employee and the health care provider's
33 opinion as to the expected duration of the disability. For each subsequent period of disability
34 after the period covered by the initial statement, an employee must provide written verifi-
35 cation from the health care provider of the employee's continuing disability and the expected
36 duration of the disability;

37 (c) Establishes that the employee, throughout the employee's qualifying period, has had
38 amounts retained through payroll deduction for the payment of premiums as provided under
39 section 7 of this 2013 Act;

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

42 (e) Establishes an application year. An application year is not established if the qualifying
43 period includes assessments withheld for any period of time before establishment of a pre-
44 vious application year;

45 (f) Is not covered by a voluntary plan approved by the bureau as provided by section 15

1 of this 2013 Act; and

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

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

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

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

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

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

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

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

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

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

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

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

45 (f) Short-term disability benefits payable under this section may not be diminished by a

1 collective bargaining agreement or another employment benefits program or voluntary plan
 2 entered into or renewed after the effective date of this 2013 Act.

3 **SECTION 6.** (1) Payment for benefits for the first seven days of a claim for short-term
 4 disability benefits documented as required by section 5 of this 2013 Act shall be the respon-
 5 sibility of and shall be paid directly to the eligible employee by the employer.

6 (2) Payments made by the employer under this section shall equal the amount specified
 7 in section 8 of this 2013 Act.

8 (3) Beginning with the eighth day of eligibility, payments for short-term disability bene-
 9 fits shall be made as provided in section 8 of this 2013 Act.

10 **SECTION 7.** (1) Unless an employer provides an approved voluntary plan for the payment
 11 of short-term disability benefits, every employer shall retain from the wages earned by all
 12 employees an amount for payment of premiums of \$_____ and pay the moneys re-
 13 tained in the manner and at such intervals as the Commissioner of the Bureau of Labor and
 14 Industries establishes by rule.

15 (2) Moneys collected pursuant to subsection (1) of this section, and any accrued cash
 16 balances, shall be deposited in the Short-Term Disability Benefit Fund established under
 17 section 13 of this 2013 Act exclusively for the expenditures of the Bureau of Labor and In-
 18 dustries in carrying out the functions and duties of the bureau under sections 1 to 15 of this
 19 2013 Act.

20 (3)(a) The commissioner may adjust rates for amounts retained for the payment of pre-
 21 miums, not to exceed the amount established in subsection (1) of this section. The commis-
 22 sioner shall set rates for amounts retained for the payment of premiums in a manner that
 23 minimizes the volatility of the rates retained and that ensures that at the end of the period
 24 for which the rates are effective the cash balance in the fund shall be an amount approxi-
 25 mating 12 months of projected expenditures from the fund based on the functions and duties
 26 of the bureau under sections 1 to 15 of this 2013 Act.

27 (b) Factors to be considered in making adjustments under paragraph (a) of this sub-
 28 section to rates for amounts retained for the payment of premiums include, but are not
 29 limited to, the cash balance in the fund as determined by the commissioner and the esti-
 30 mated expenditures and revenues of the fund.

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

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

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

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

41 (6)(a) Within 10 days after the date an employer quits business, merges, sells out or ex-
 42 changes or otherwise disposes of the business or stock of goods of the business, any amounts
 43 payable for premiums under this section become immediately due and payable. Any person
 44 who becomes a successor to the business is liable for the full amount of the premiums due
 45 and shall withhold from the purchase price a sum sufficient to pay any premiums due from

1 the employer until the employer produces documentation from the bureau showing payment
 2 has been made in full of any premium due or that no premium is due. If the premium is not
 3 paid by the employer within 10 days after the date of the sale, exchange or disposal, the
 4 successor is liable for the payment of the full amount of premiums due. The successor's
 5 payment of the premiums due is, to the extent of the payment, a payment upon the purchase
 6 price, and if the payment made is greater than the purchase price, the amount of the dif-
 7 ference is a debt due the successor from the employer.

8 (b) A successor is not liable for any premiums due from the person from whom the suc-
 9 cessor has acquired a business or stock of goods if the successor gives written notice to the
 10 bureau of the acquisition and no assessment is issued by the bureau within one year after
 11 receipt of the notice against the former operator of the business.

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

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

23 **SECTION 8.** (1) The Bureau of Labor and Industries shall notify the employer of an em-
 24 ployee filing a claim for short-term disability benefits under section 5 of this 2013 Act within
 25 five business days after the date the claim is filed.

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

27 (3) The first payment of short-term disability benefits shall be made to an employee by
 28 the later of a date that is not more than two weeks after the claim is filed or the date the
 29 short-term disability leave began. Subsequent payments shall be made every two weeks.

30 (4) Disability benefits shall be paid during the application year as follows:

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

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

43 (c) Payment that has been, is or will be paid to an employee for sick leave or holiday or
 44 vacation leave shall be considered as earnings in the determination of the amount of short-
 45 term disability benefits payable with respect to the week in which the sick leave is taken or

1 the holiday or vacation leave falls.

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

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

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

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

17 (a) Whether the employee has had amounts retained through payroll deduction for the
 18 payment of premiums that are sufficient to qualify the claimant for payment of short-term
 19 disability benefits;

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

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

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

24 (6) The initial determination under subsection (5) of this section shall be applicable to all
 25 weeks of the application year for which the claim was filed. However, the determination may
 26 be amended with respect to any week or weeks of the application year.

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

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

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

41 (9) An employer or insurance carrier that subsequently assumes liability or is determined
 42 to be liable for reimbursement to the bureau for short-term disability benefits that the bu-
 43 reau has paid in lieu of other benefits shall be assessed for this liability by the bureau. In-
 44 terest on an amount recoverable under this subsection accrues at the rate specified in ORS
 45 82.010, beginning on the first day of the month following 60 days after entry of the order

1 establishing the amount recoverable. The employer or insurance carrier shall also pay a
 2 penalty of 10 percent of the amount reimbursed to the bureau, payable in addition to and not
 3 from the amount reimbursed, if the board finds that the failure of the employer or insurance
 4 carrier to pay benefits upon notice by the bureau under this section was unreasonable. All
 5 funds received by the bureau pursuant to this subsection shall be deposited in the Short-
 6 Term Disability Benefit Fund.

7 (10) Short-term disability benefits are payable under this section only to the extent that
 8 moneys are available in the fund for that purpose. Neither the state nor the bureau is liable
 9 for any amount in excess of this limitation.

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

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

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

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

24 **SECTION 10.** (1) If an employee receives any short-term disability benefits under section
 25 8 of this 2013 Act to which the employee is not entitled:

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

28 (b) The amount of the short-term disability benefits received may be deducted by the
 29 bureau from any future short-term disability benefits otherwise payable to the employee
 30 under section 8 of this 2013 Act.

31 (2) If the bureau decides that an employee has been paid short-term disability benefits
 32 to which the employee is not entitled because of an error, and that the employee is not
 33 subject to disqualification under section 5 (3) of this 2013 Act, the amounts received in error
 34 may be recovered by the bureau only by deductions from short-term disability benefits oth-
 35 erwise payable to the employee under section 8 of this 2013 Act during the 52 weeks following
 36 the date on which the order establishing the amount of the erroneous payment becomes
 37 final. If amounts determined to be recoverable have not been recovered within that time, the
 38 liability shall be canceled by the bureau and charged against the Short-Term Disability Ben-
 39 efit Fund.

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

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

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

8 (6) Any amount collected under this section by the bureau shall be deposited in the fund.

9 **SECTION 11.** (1) It is an unlawful employment practice for an employer, temporary em-
 10 ployment agency, employment agency, employee organization or other person to discharge,
 11 expel or otherwise discriminate against a person because:

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

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

16 (c) The person has testified or assisted, or is about to testify or assist, in any proceeding
 17 under sections 1 to 15 of this 2013 Act.

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

20 (a) Fails to make the payments required under section 6 of this 2013 Act or to withhold
 21 amounts necessary to pay premiums or fails to pay when due the moneys withheld as pro-
 22 vided in section 7 of this 2013 Act; or

23 (b) Fails to comply with the provisions of sections 1 to 15 of this 2013 Act or rules
 24 adopted under sections 1 to 15 of this 2013 Act relating to reports or other requirements
 25 necessary to carry out the purposes of sections 1 to 15 of this 2013 Act.

26 (3) All civil penalties collected under this section shall be applied first toward re-
 27 imbursement of the costs incurred in investigating violations, conducting hearings and as-
 28 ssuming and collecting penalties. All remaining amounts shall be deposited in the Short-Term
 29 Disability Benefit Fund.

30 **SECTION 12.** (1) If an employer defaults with respect to any direct payment required
 31 under section 6 of this 2013 Act or premium payment required to be made by the employer
 32 to the Short-Term Disability Benefit Fund under section 7 of this 2013 Act, a person de-
 33 scribed in subsection (2) of this section who, as an officer, member, partner or employee, is
 34 under a duty to perform the actions required by employers under sections 1 to 15 of this 2013
 35 Act shall be personally liable for amounts due under sections 6 and 7 of this 2013 Act. More
 36 than one person may be jointly and severally liable under this section.

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

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

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

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

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

45 **SECTION 13.** The Short-Term Disability Benefit Fund is established in the State Treas-

1 ury, separate and distinct from the General Fund. Interest earned by the Short-Term Disa-
 2 bility Benefit Fund shall be credited to the fund. All moneys from premiums received under
 3 section 7 of this 2013 Act shall be credited to the fund. Moneys in the fund are continuously
 4 appropriated to the Bureau of Labor and Industries for the purposes authorized by sections
 5 1 to 15 of this 2013 Act.

6 **SECTION 14.** (1) An employer that is not subject to section 7 of this 2013 Act or a self-
 7 employed person may elect to provide short-term disability benefits to the employees of the
 8 employer or to the self-employed person under section 5 of this 2013 Act for an initial cov-
 9 erage period of not less than three years and subsequent coverage periods of not less than
 10 one year. The employer or self-employed person must file a written notice of election to
 11 provide coverage under section 5 of this 2013 Act with the Bureau of Labor and Industries.
 12 The election becomes effective on the date the notice is filed.

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

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

23 **SECTION 15.** (1) By mutual agreement, an employer and a majority of the employees of
 24 the employer employed in this state, or both an employer and a union covered under a col-
 25 lective bargaining agreement, may apply to the Bureau of Labor and Industries for approval
 26 of a voluntary plan for the payment of short-term disability benefits to employees.

27 (2) The bureau shall approve a voluntary plan if:

28 (a) The rights afforded to the covered employees under the plan are greater than those
 29 provided for in sections 5, 6 and 8 of this 2013 Act;

30 (b) The plan has been made available to all of the employees of the employer employed
 31 in this state or to all employees of the employer at any one distinct and separate establish-
 32 ment maintained by the employer in this state. "Employees," as used in this paragraph, in-
 33 cludes individuals in partial or other forms of short-time employment and employees not in
 34 employment as the bureau shall prescribe by rule;

35 (c) A majority of the employees of the employer employed in this state, a majority of the
 36 employees of the employer employed at any one distinct and separate establishment main-
 37 tained by the employer in this state or a union and employer through collective bargaining
 38 have consented to the plan;

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

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

42 (f) The plan will be in effect for a period of not less than one year, unless the bureau
 43 finds that the employer and a majority of the employees of the employer employed in this
 44 state, by mutual consent, or a union and an employer through collective bargaining, have
 45 given written notice of withdrawal from the plan;

1 (g) The amount of deductions from the wages of an employee in effect for the plan may
 2 not be increased on other than the anniversary of the effective date of the plan; and

3 (h) The approval of the plan will not result in a substantial risk to the Short-Term Dis-
 4 ability Benefit Fund.

5 (3) Except as provided in subsection (4) of this section, neither an employee nor the em-
 6 ployer of the employee shall be liable for the employee contributions required under section
 7 7 of this 2013 Act with respect to wages paid by the employer while the employee is covered
 8 by an approved voluntary plan.

9 (4) Each voluntary plan shall pay annually to the bureau \$_____ percent of the
 10 amount obtained by multiplying the rate of worker contributions under the plan by the
 11 amount of the taxable wages paid during the calendar year to employees covered by the plan.
 12 The payments do not constitute a part of the voluntary plan premium for purposes of any
 13 tax under any provision of law. Payments under this subsection shall be made according to
 14 the procedures established by rule by the bureau and deposited in the fund to cover admin-
 15 istrative costs related to voluntary plans.

16 (5) Whenever an employee is entitled to short-term disability benefits but there is a dis-
 17 pute over whether such benefits are payable from the fund or from a voluntary plan, benefits
 18 shall be paid to the employee, pursuant to rules adopted by the bureau from the source
 19 against which the claim was first filed, in an amount that is not less than the benefit amount
 20 established under section 8 of this 2013 Act, pending the resolution of the dispute. If it is
 21 determined that the short-term disability benefits should have been paid from a source other
 22 than the source that paid the short-term disability benefits, reimbursement shall be
 23 promptly made from the fund or the voluntary plan, as the case may be, and the employee
 24 shall be promptly paid the accumulated excess, if any, to which the employee is entitled.
 25 Reimbursement shall also be made, to the extent of actual liability for short-term disability
 26 benefits, from the source determined to be liable if it is determined that benefits were paid
 27 in error from another source.

28 **SECTION 16.** Section 13 of this 2013 Act becomes operative on July 1, 2014.

29 **SECTION 17.** (1) Employers shall first withhold premiums from employees' earnings for
 30 periods worked beginning on or after January 1, 2014.

31 (2) Employees may first file claims for benefits under section 8 of this 2013 Act on or
 32 after July 1, 2014, for short-term disability leave taken on or after July 1, 2014.

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

34 316.171. Except as provided in [*this section and*] ORS 314.840, 316.168, 316.197, 316.202 and
 35 657.571 and sections 1 to 15 of this 2013 Act, the statutes and regulations applicable to each
 36 agency, requiring a report and imposing a tax, shall govern the audit and examination of reports
 37 and returns, determination of deficiencies, assessments, claims for refund, penalties, interest, ad-
 38 ministrative and judicial appeals and the procedures relating thereto.

39 **SECTION 19.** This 2013 Act being necessary for the immediate preservation of the public
 40 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
 41 on its passage.