

HOUSE AMENDMENTS TO HOUSE BILL 3087

By COMMITTEE ON EARLY CHILDHOOD AND FAMILY SUPPORTS

April 24

- 1 On page 1 of the printed bill, delete lines 6 through 25 and delete pages 2 through 11 and insert:
2 **“SECTION 1. Definitions. As used in sections 1 to 17 of this 2017 Act:**
3 **“(1) ‘Average weekly wage’ means the amount calculated by the Employment Department**
4 **under ORS 657.150 (4)(d) as determined not more than once per year.**
5 **“(2) ‘Base year’ means the first four of the last five completed calendar quarters pre-**
6 **ceding the benefit year.**
7 **“(3) ‘Benefit year’ means the 12-month period beginning on the first day of the week in**
8 **which a covered individual files an application for family and medical leave insurance bene-**
9 **fits.**
10 **“(4) ‘Covered individual’ means:**
11 **“(a) An eligible employee who:**
12 **“(A) Files an application for family and medical leave insurance benefits; and**
13 **“(B) Contributes an amount determined by the Director of the Department of Consumer**
14 **and Business Services to the Family and Medical Leave Insurance Fund during the base year**
15 **prior to filing an application; or**
16 **“(b) A self-employed individual who:**
17 **“(A) Elects coverage under section 13 of this 2017 Act;**
18 **“(B) Files an application for family and medical leave insurance benefits; and**
19 **“(C) Contributes an amount determined by the Director of the Department of Consumer**
20 **and Business Services to the Family and Medical Leave Insurance Fund during the base year**
21 **prior to filing an application.**
22 **“(5) ‘Covered service member’ means an employee who is eligible for leave under ORS**
23 **659A.093 or the federal Family and Medical Leave Act of 1993, as amended and in effect on**
24 **the effective date of this 2017 Act.**
25 **“(6) ‘Eligible employee’ means an employee who has worked for at least 90 days with the**
26 **employer.**
27 **“(7) ‘Eligible employee’s average wage’ means an amount determined by the director**
28 **based on an eligible employee’s average wages per week during the base year.**
29 **“(8)(a) ‘Employee’ means an individual employed for remuneration or under any contract**
30 **of hire, written or oral, express or implied, by an employer.**
31 **“(b) ‘Employee’ does not include:**
32 **“(A) An independent contractor as defined in ORS 670.600 who is not a covered individual.**
33 **“(B) A participant in a work training program administered under a state or federal as-**
34 **sistance program.**
35 **“(C) A participant in a work-study program that provides students in secondary or**

1 post-secondary educational institutions with employment opportunities for financial assist-
2 ance or vocational training.

3 “(D) A railroad worker exempted under the federal Railroad Unemployment Insurance
4 Act.

5 “(E) A volunteer.

6 “(9)(a) ‘Employer’ means any person that employs one or more employees working any-
7 where in this state, a political subdivision of the state and any county, city, district, au-
8 thority, public corporation or entity, and any instrumentality of a county, city, district,
9 authority, public corporation or entity, organized and existing under law or charter.

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

11 “(10) ‘Family and medical leave insurance benefits’ means the insurance benefits provided
12 under the terms of sections 1 to 17 of this 2017 Act.

13 “(11) ‘Family member’ means:

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

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

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

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

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

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

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

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

25 “(18) ‘Serious health condition’ has the meaning given that term in the federal Family
26 and Medical Leave Act of 1993.

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

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

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

33 “(a) Is taking parental leave;

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

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

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

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

38 “(f) Is taking qualifying exigency leave; or

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

40 “(2) Family and medical leave insurance benefits are payable to a covered individual who
41 is a self-employed individual and who takes leave for a reason described in subsection (1)(a)
42 to (g) of this section.

43 “(3) A covered individual who receives family and medical leave insurance benefits under
44 this section must, upon request by the covered individual’s employer or the Director of the
45 Department of Consumer and Business Services, provide verification of the need for leave in

1 a manner determined by the director. The director, upon request by an employer, shall pro-
2 vide any verification that the director has received under this subsection to the employer.

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

5 **“(b) In addition to the 12 weeks of family and medical leave insurance benefits described**
6 **in paragraph (a) of this subsection, a covered individual may qualify for six weeks of benefits**
7 **for parental leave.**

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

10 **“(3) The first payment of benefits must be made to a covered individual within two weeks**
11 **after the individual files a claim and subsequent payments must be made every two weeks.**

12 **“(4) An employer may not require an eligible employee to take more leave than the eli-**
13 **gible employee requests.**

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

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

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

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

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

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

27 **“(c) The director shall establish a maximum weekly benefit amount of 130 percent of the**
28 **average weekly wage.**

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

32 **“(2) The director shall determine the amount of family and medical leave insurance ben-**
33 **efits a self-employed individual qualifies for based on the self-employed individual’s contri-**
34 **bution amount described in section 5 of this 2017 Act.**

35 **“(3) Family and medical leave insurance benefits are payable only to the extent that**
36 **moneys are available in the Family and Medical Leave Insurance Fund for that purpose. The**
37 **state, any political subdivision of the state or any state agency is not liable for any amount**
38 **in excess of this limit.**

39 **“(4) Except as otherwise provided in sections 1 to 17 of this 2017 Act or where the context**
40 **requires otherwise, the provisions of ORS chapters 305 and 314 as to the audit and exam-**
41 **ination of returns, periods of limitation, determination of and notices of deficiencies, as-**
42 **sessments, collections, liens, delinquencies, claims for refund and refunds, conferences,**
43 **appeals to the Oregon Tax Court, stays of collection pending appeal, confidentiality of re-**
44 **turns and the penalties relative thereto, and the procedures relating thereto, apply to the**
45 **determinations of taxes, penalties and interest under sections 1 to 17 of this 2017 Act.**

1 **“SECTION 5. Contributions. (1) The Director of the Department of Consumer and Busi-**
2 **ness Services shall deposit moneys collected under this section into the Family and Medical**
3 **Leave Insurance Fund. Subject to the limits in this section, the amount of the contributions**
4 **provided in this section may be adjusted to meet the needs of the Family and Medical Leave**
5 **Insurance Fund for the expenditures of the Department of Consumer and Business Services**
6 **in carrying out its functions and duties pursuant to sections 1 to 17 of this 2017 Act. In**
7 **making adjustments under this subsection, the department shall consider the cash balance**
8 **of the Family and Medical Leave Insurance Fund and other factors as determined by the di-**
9 **rector.**

10 **“(2)(a) Payroll contributions from an eligible employee may not exceed 0.5 percent of the**
11 **employee’s wages. Payroll contributions shall be paid by employers and employees in equal**
12 **amounts at a rate determined by the director under subsection (3) of this section. The di-**
13 **rector shall evaluate and determine on an annual basis the amount of payroll contributions,**
14 **timing of payroll contributions and maximum employee contributions necessary to finance**
15 **sections 1 to 17 of this 2017 Act.**

16 **“(b) Contributions from a self-employed individual who elects coverage under section 13**
17 **of this 2017 Act must be equivalent to an amount determined by the director by rule.**

18 **“(3) The director shall set rates for the collection of payroll contributions consistent with**
19 **subsection (2) of this section in a manner such that:**

20 **“(a) At the end of the period for which the rates are effective, the balance of moneys in**
21 **the Family and Medical Leave Insurance Fund is an amount not less than six months’ worth**
22 **of projected expenditures from the fund for performance of the director’s functions and du-**
23 **ties under sections 1 to 17 of this 2017 Act; and**

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

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

29 **“(5) An employer shall remit the moneys described under subsection (2) of this section**
30 **in a manner determined by the director in coordination with the Department of Revenue.**

31 **“(6) Every employer or temporary employment agency that collects any amount under**
32 **this section shall hold the same in trust for the State of Oregon and for the payment thereof**
33 **to the Department of Revenue in the manner determined by the department by rule.**

34 **“(7) At any time an employer or temporary employment agency fails to remit any amount**
35 **collected, the Department of Revenue may enforce collection by the issuance of a distraint**
36 **warrant for the collection of the delinquent amount and all penalties, interest and collection**
37 **charges accrued thereon. The warrant shall be issued, recorded and proceeded upon in the**
38 **same manner and shall have the same force and effect as is prescribed with respect to war-**
39 **rants for the collection of delinquent income taxes.**

40 **“(8)(a) In the case of an employer or temporary employment agency that is assessed**
41 **pursuant to the provisions of ORS 305.265 (12) and 314.407 (1), the Department of Revenue**
42 **may issue a notice of liability to any officer, employee or member of the employer or tem-**
43 **porary employment agency within three years from the time of assessment. Within 30 days**
44 **from the date the notice of liability is mailed to the officer, employee or member, the officer,**
45 **employee or member shall pay the assessment, plus penalties and interest, or advise the**

1 department in writing of objections to the liability and, if desired, request a conference. A
2 conference shall be governed by the provisions of ORS 305.265 pertaining to a conference
3 requested from a notice of deficiency.

4 “(b) After a conference or, if no conference is requested, a determination of the issues
5 considering the written objections, the department shall mail the officer, employee or mem-
6 ber a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days
7 from the date the conference letter is mailed to the officer, employee or member, the officer,
8 employee or member shall pay the assessment, plus penalties and interest, or appeal to the
9 tax court in the manner provided for an appeal from a notice of assessment.

10 “(c) If the department does not receive payment or written objection to the notice of li-
11 ability within 30 days after the notice of liability was mailed, the notice of liability becomes
12 final. In that event, the officer, employee or member may appeal the notice of liability to the
13 tax court within 90 days after it became final in the manner provided for an appeal from a
14 notice of assessment.

15 “(9)(a) In the case of a failure to file a report on the due date, governed by the provisions
16 of ORS 305.265 (10) and 314.400, the Department of Revenue, in addition to any action de-
17 scribed in the provisions of ORS 305.265 (10) and 314.400, may send notices of determination
18 and assessment to any officer, employee or member any time within three years after the
19 assessment. The time of assessment against the officer, employee or member is 30 days after
20 the date the notice of determination and assessment is mailed. Within 30 days from the date
21 the notice of determination and assessment is mailed to the officer, employee or member,
22 the officer, employee or member shall pay the assessment, plus penalties and interest, or
23 advise the department in writing of objections to the assessment and, if desired, request a
24 conference. A conference shall be governed by the provisions of ORS 305.265 pertaining to a
25 conference requested from a notice of deficiency.

26 “(b) After a conference or, if no conference is requested, a determination of the issues
27 considering the written objections, the department shall mail the officer, employee or mem-
28 ber a conference letter affirming, canceling or adjusting the notice of determination and as-
29 sessment. Within 90 days from the date the conference letter is mailed to the officer,
30 employee or member, the officer, employee or member shall pay the assessment, plus pen-
31 alties and interest, or appeal in the manner provided for an appeal from a notice of assess-
32 ment.

33 “(c) If the department does not receive payment or written objection to the notice of
34 determination and assessment within 30 days after the notice of determination and assess-
35 ment was mailed, the notice of determination and assessment becomes final. In that event,
36 the officer, employee or member may appeal the notice of determination and assessment to
37 the tax court within 90 days after it became final in the manner provided for an appeal from
38 a notice of assessment.

39 “(10)(a) More than one officer or employee of a corporation may be held jointly and se-
40 verally liable for payment of unpaid contributions.

41 “(b) Notwithstanding the confidentiality provisions of section 11 of this 2017 Act, if more
42 than one officer or employee of a corporation may be held jointly and severally liable for
43 payment of unpaid contributions, the Department of Revenue may require any or all of the
44 officers, members or employees who may be held liable to appear before the department for
45 a joint determination of liability. The department shall notify each officer, member or em-

1 ployee of the time and place set for the determination of liability.

2 “(c) Each person notified of a joint determination under this subsection shall appear and
3 present such information as is necessary to establish that person’s liability or nonliability
4 for payment of unpaid contributions to the department. If a person who was notified fails to
5 appear, the department shall make its determination on the basis of all the information and
6 evidence presented. The department’s determination is binding on all persons notified and
7 required to appear under this subsection.

8 “(d)(A) If an appeal is taken to the Oregon Tax Court by any person determined to be
9 liable for unpaid contributions under this subsection, each person required to appear before
10 the department under this subsection shall be impleaded by the plaintiff. The department
11 may implead any officer, employee or member who may be held jointly and severally liable
12 for the payment of unpaid contributions. Each person impleaded under this paragraph shall
13 be made a party to the action before the tax court and shall make available to the tax court
14 the information that was presented before the department, as well as other information that
15 may be presented to the court.

16 “(B) The court may determine that one or more persons impleaded under this paragraph
17 are liable for unpaid contributions without regard to any earlier determination by the de-
18 partment that an impleaded person was not liable for unpaid contributions.

19 “(C) If a person required to appear before the court under this subsection fails or refuses
20 to appear or bring such information in part or in whole, or is outside the jurisdiction of the
21 tax court, the court shall make its determination on the basis of all the evidence introduced.
22 Notwithstanding the confidentiality provisions of section 11 of this 2017 Act, the evidence
23 constitutes a public record and shall be available to the parties and the court. The determi-
24 nation of the tax court is binding on all persons made parties to the action under this sub-
25 section.

26 “(e) This section may not be construed to preclude a determination by the department
27 or the Oregon Tax Court that more than one officer, employee or member are jointly and
28 severally liable for unpaid contributions.

29 “(11)(a) Every employer required to make contributions under this section shall make
30 and file a report of wages earned and payroll contributions and employer contributions made
31 under this section upon a combined report form prescribed by the Department of Revenue.

32 “(b) The report shall be filed with the department at the times and in the manner pre-
33 scribed in ORS 316.168 and 316.197.

34 “(c) The department may assess a penalty in an amount not to exceed \$1,000 for an
35 employer’s failure to comply with this subsection.

36 “(12) Moneys collected under this section shall be deposited in the Family and Medical
37 Leave Insurance Fund for the purpose of carrying out the functions and duties of the direc-
38 tor under sections 1 to 17 of this 2017 Act.

39 “(13) A temporary employment agency that provides employees on a temporary basis to
40 its customers is responsible for collection of payroll contributions under this section.

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

1 “(b) The director shall adopt rules for compliance with sections 1 to 17 of this 2017 Act
2 related to payroll contributions from an employer’s successor in interest.

3 “SECTION 6. Benefits for reduced leave. (1) A covered individual may use family and
4 medical leave insurance benefits for leave taken in increments of less than 40 hours, provided
5 that:

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

7 “(b) Leave that is taken in an increment of less than 40 hours is predictable on a weekly
8 basis and verified by the covered individual under section 2 of this 2017 Act;

9 “(c) Benefit amounts, as calculated under section 4 of this 2017 Act, are prorated to in-
10 crements of no less than eight hours; and

11 “(d) Benefits are payable in increments of 40 hours.

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

16 “(3) An employer or self-employed individual shall notify the Director of the Department
17 of Consumer and Business Services, upon request, of the actual amount of leave taken each
18 week for the purpose of verifying the amount of benefits that are payable to the covered
19 individual.

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

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

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

29 “(2) An eligible employee may commence taking leave without 30 days’ advance notice if
30 the leave is not foreseeable, including under the following circumstances:

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

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

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

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

38 “(3) If an employee commences leave without advance notice under subsection (2) of this
39 section:

40 “(a) The employee shall give notice to the employer as soon as practicable, but in no
41 event later than 45 days after the first date of illness or injury, in a manner determined by
42 the Director of the Department of Consumer and Business Services; and

43 “(b) The employee shall receive family and medical leave insurance benefits for the period
44 that begins on the first date of illness or injury.

45 “(4) The notice described in subsection (3) of this section may be given by a family

1 member, health care provider or authorized representative on behalf of the employee taking
2 the leave.

3 **“SECTION 8. Employment protection; retaliation prohibited.** (1) After returning to work,
4 an eligible employee is entitled to be restored to the position of employment held by the
5 employee when the leave commenced if that position still exists, without regard to whether
6 the employer filled the position with a replacement worker during the period of leave taken
7 under section 3 of this 2017 Act. If the position held by the employee at the time leave
8 commenced no longer exists, the employee is entitled to be restored to any available equiv-
9 alent position with equivalent employment benefits, pay and other terms and conditions of
10 employment.

11 **“(2) During any leave taken pursuant to section 3 of this 2017 Act, the employer shall**
12 **maintain any health care benefits the eligible employee had prior to taking such leave for the**
13 **duration of the leave as if the employee had continued in employment continuously from the**
14 **date the employee commenced the leave until the date the family and medical leave insur-**
15 **ance benefits terminate.**

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

17 **“(a) Any accrual of seniority or employment benefits during a period of leave taken under**
18 **section 3 of this 2017 Act; or**

19 **“(b) Any right, benefit or position of employment other than the rights, benefits and po-**
20 **sition that the employee would have been entitled to had the employee not taken the leave**
21 **under section 3 of this 2017 Act.**

22 **“(4) During a period of an eligible employee’s using family and medical leave insurance**
23 **benefits, the Director of the Department of Consumer and Business Services or an employer**
24 **may require the employee or a family member, health care provider or authorized repre-**
25 **sentative of the employee to report periodically to the director or the employer on the**
26 **employee’s status and on the employee’s intention to return to work.**

27 **“(5) It is an unlawful practice for a person to:**

28 **“(a) Violate subsections (1) to (4) of this section;**

29 **“(b) Interfere with a right to which a covered individual is entitled under sections 1 to**
30 **17 of this 2017 Act; or**

31 **“(c) Retaliate or in any way discriminate against an individual with respect to hire or**
32 **tenure or any other term or condition of employment because the individual has inquired**
33 **about the provisions of sections 1 to 17 of this 2017 Act, filed an application for coverage or**
34 **invoked any provision of sections 1 to 17 of this 2017 Act.**

35 **“SECTION 9. Coordination of benefits.** (1) For employees eligible for leave under ORS
36 659A.150 to 659A.186, leave taken under sections 1 to 17 of this 2017 Act shall run concu-
37 rrently with leave under ORS 659A.150 to 659A.186.

38 **“(2)(a) Sections 1 to 17 of this 2017 Act do not diminish an employer’s obligation to**
39 **comply with a collective bargaining agreement, an employer policy or local, state or federal**
40 **law.**

41 **“(b) An eligible employee’s right to family and medical leave insurance benefits under**
42 **sections 1 to 17 of this 2017 Act may not be diminished by a collective bargaining agreement**
43 **entered into or renewed, or an employee policy adopted or retained, after the effective date**
44 **of this 2017 Act.**

45 **“(c) The eligibility of an employee for benefits is not affected by a strike or lockout at**

1 the store, factory, establishment or other premises at which the employee is or was last
2 employed.

3 “(d) An employee who has received benefits under sections 1 to 17 of this 2017 Act may
4 not lose any other employment benefits, including seniority or pension rights, accrued before
5 the date that leave commenced. However, this section does not entitle an employee to accrue
6 employment benefits during a period of leave or to a right, benefit or position of employment
7 other than a right, benefit or position to which the employee would have been entitled had
8 the employee not taken leave.

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

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

14 “(4) Family and medical leave taken under sections 1 to 17 of this 2017 Act does not in-
15 clude leave taken by an eligible employee who is unable to work because of a disabling
16 compensable injury, as defined in ORS 656.005, unless the employee has refused a suitable
17 offer of light duty or modified employment as defined by the Director of the Department of
18 Consumer and Business Services.

19 “(5) An employer’s failure to provide information to the Department of Consumer and
20 Business Services upon written request by the director or the director’s authorized repre-
21 sentative to assist with the processing of a claim under sections 1 to 17 of this 2017 Act shall
22 constitute interference under section 8 of this 2017 Act.

23 “SECTION 10. Notice to employees. An employer shall display and provide written notice
24 of employee rights under sections 1 to 17 of this 2017 Act in a manner determined by the
25 Director of the Department of Consumer and Business Services. Such notice shall include:

26 “(1) The employee’s right to apply for and receive family and medical leave insurance
27 benefits under sections 1 to 17 of this 2017 Act and the terms under which the benefits may
28 be used;

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

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

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

33 “(5) That discrimination and retaliatory personnel actions against an individual for re-
34 questing, applying for or using family and medical leave insurance benefits is prohibited un-
35 der section 8 of this 2017 Act; and

36 “(6) That the employee has a right to file a complaint for violation of section 8 of this
37 2017 Act.

38 “SECTION 11. Enforcement. (1) Notwithstanding ORS 183.635, the Director of the De-
39 partment of Consumer and Business Services shall establish a system for enforcement and
40 appeal of contested cases involving family and medical leave insurance benefit claims under
41 ORS chapter 183. In establishing the system, the director may utilize any and all procedures
42 and appeals mechanisms.

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

1 “(3) All information in the records of the Department of Consumer and Business Services
2 pertaining to the administration of sections 1 to 17 of this 2017 Act:

3 “(a) Is confidential and for the exclusive use and information of the director in adminis-
4 tering sections 1 to 17 of this 2017 Act;

5 “(b) May not be used in any court action or in any proceeding pending in the court unless
6 the director or the state is a party to the action or proceeding or unless the action or pro-
7 ceeding concerns the establishment, enforcement or modification of a support obligation and
8 support services are being provided by the Division of Child Support or the district attorney
9 pursuant to ORS 25.080; and

10 “(c) Is exempt from disclosure under ORS 192.410 to 192.505.

11 “(4) At the discretion of the director and subject to an interagency agreement, the di-
12 rector may disclose information to a public official in the performance of the public official’s
13 official duties administering or enforcing laws within the public official’s authority and to
14 an agent or contractor of a public official. The public official shall agree to assume respon-
15 sibility for misuse of the information by the official’s agent or contractor.

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

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

23 “(3)(a) An eligible employee is disqualified from family and medical leave insurance ben-
24 efits for one year if the employee is determined by the director to have willfully made a false
25 statement or willfully failed to report a material fact to obtain benefits under sections 1 to
26 17 of this 2017 Act.

27 “(b) A self-employed individual is disqualified from family and medical leave insurance
28 benefits for three years if the individual is determined by the director to have willfully made
29 a false statement or willfully failed to report a material fact to obtain benefits under sections
30 1 to 17 of this 2017 Act.

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

35 “(a) May seek repayment of benefits from an eligible employee upon issuance of a final
36 order in a manner provided by rule;

37 “(b) May seek repayment of benefits from a self-employed individual and may also seek
38 payment of a penalty of up to 100 percent of the amount of benefits that the self-employed
39 individual erroneously received upon issuance of a final order, in a manner provided by rule;
40 and

41 “(c) Shall exercise the director’s discretion to waive, in whole or in part, the amount of
42 any such payments where the recovery would be against equity, good conscience or admin-
43 istrative efficiency.

44 “SECTION 13. Elective coverage. (1) A self-employed individual may elect coverage under
45 sections 1 to 17 of this 2017 Act. The self-employed individual must file a notice of election

1 in writing with the Director of the Department of Consumer and Business Services, as re-
2 quired by the director, and contribute to the Family and Medical Leave Insurance Fund in
3 a manner determined by the director. The election becomes effective on the date of filing the
4 notice. The self-employed individual must agree to supply any information concerning income
5 that the director deems necessary.

6 “(2) A self-employed individual who has elected coverage may withdraw after three con-
7 secutive years of coverage, or at times as the director may prescribe by rule, including at a
8 change in the self-employed individual’s employment status, by filing written notice with the
9 director. The withdrawal may not take effect sooner than 30 days after filing the notice.

10 “(3) Notwithstanding subsection (2) of this section, a self-employed individual who has
11 elected coverage may terminate coverage on the date of filing a voluntary or involuntary
12 bankruptcy petition. The self-employed individual’s elective coverage terminates on the date
13 the self-employed individual provides to the director documentation to support the self-
14 employed individual’s filing of the bankruptcy petition and files written notice with the di-
15 rector. At any time thereafter, the self-employed individual may reelect coverage under this
16 section.

17 “SECTION 14. Administration. (1) The Director of the Department of Consumer and
18 Business Services shall adopt rules for the establishment and administration of sections 1
19 to 17 of this 2017 Act.

20 “(2) The director may enter into interagency agreements to establish and administer
21 sections 1 to 17 of this 2017 Act.

22 “(3) All agencies of state government, as defined in ORS 174.111, are directed to assist
23 the Department of Consumer and Business Services upon request in the performance of its
24 duties under sections 1 to 17 of this 2017 Act, including outreach, technical assistance and
25 training.

26 “SECTION 15. Family and Medical Leave Insurance Fund. (1) The Family and Medical
27 Leave Insurance Fund is established in the State Treasury, separate and distinct from the
28 General Fund. The Family and Medical Leave Insurance Fund consists of moneys deposited
29 in the fund under sections 1 to 17 of this 2017 Act and may include fees, revenues or other
30 income deposited in the fund.

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

35 “(3) Notwithstanding any other provision of sections 1 to 17 of this 2017 Act, if the di-
36 rector determines at any time that there are insufficient moneys in the fund to pay the ex-
37 penses of programs for which expenditure of the fund is authorized, the director may reduce
38 the level of family and medical leave insurance benefits payable accordingly.

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

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

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

3 “**SECTION 16. Reports.** (1) The Director of the Department of Consumer and Business
4 Services shall submit a report in the manner provided by ORS 192.245, and may include rec-
5 ommendations for legislation, to the interim committees of the Legislative Assembly related
6 to workforce or business and labor no later than January 1, 2020, and January 1 of every
7 even-numbered year thereafter.

8 “(2) The Department of Consumer and Business Services shall conduct a study to deter-
9 mine how to implement the provisions of sections 1 to 17 of this 2017 Act, as those provisions
10 pertain to self-employed individuals who elect coverage under section 13 of this 2017 Act. The
11 study shall include procedures for determining the amount of payroll contributions that a
12 self-employed individual must make and the amount of family medical leave insurance bene-
13 fits that a self-employed individual shall receive. The director shall include recommendations
14 based on that study in the report described in subsection (1) of this section.

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

19 “**SECTION 17. Sharing technology.** The Director of the Department of Consumer and
20 Business Services is encouraged to use state data collection and technology to the extent
21 possible and to integrate the program with existing state policies.

22 “**SECTION 18.** ORS 659A.156 is amended to read:

23 “659A.156. (1) All employees of a covered employer are eligible to take leave for one of the
24 purposes specified in ORS 659A.159 (1)(b) to (e) except:

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

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

30 “(2) All employees of a covered employer are eligible to take leave for the purpose specified in
31 ORS 659A.159 (1)(a) except an employee who was employed by the covered employer for fewer than
32 [180] 90 days immediately before the date on which the family leave would commence.

33 “**SECTION 19.** ORS 659A.885, as amended by section 5, chapter 73, Oregon Laws 2016, is
34 amended to read:

35 “659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
36 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
37 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
38 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
39 court may order back pay in an action under this subsection only for the two-year period imme-
40 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
41 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
42 year period immediately preceding the filing of the action. In any action under this subsection, the
43 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
44 cept as provided in subsection (3) of this section:

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

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

3 “(2) An action may be brought under subsection (1) of this section alleging a violation of ORS
4 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.233, 476.574, 652.355, 653.060, 653.601
5 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
6 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
7 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
8 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549.

9 “(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
10 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
11 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or 653.549

12 **or section 8 of this 2017 Act:**

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

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

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

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

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

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

25 “(6) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or
26 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section,
27 a civil penalty in the amount of \$720.

28 “(7) Any individual against whom any distinction, discrimination or restriction on account of
29 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
30 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
31 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
32 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
33 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
34 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
35 section:

36 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-
37 tion, compensatory and punitive damages;

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

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

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

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

1 and

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

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

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

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

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

21 “(10) In an action under subsection (1) or (8) of this section alleging a violation of ORS 659A.145
22 or 659A.421 or discrimination under federal housing law:

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

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

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

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

31 “**SECTION 20. Operative date.** (1)(a) **Sections 1 and 3 to 12 of this 2017 Act and the**
32 **amendments to ORS 659A.156 and 659A.885 by sections 18 and 19 of this 2017 Act become**
33 **operative on January 1, 2019.**

34 “(b) **Sections 2 and 13 of this 2017 Act become operative on January 1, 2021.**

35 “(2) **The Department of Consumer and Business Services, the Bureau of Labor and In-**
36 **dustries, the Employment Department and the Department of Revenue may take any action**
37 **before the operative date specified in subsection (1) of this section that is necessary to enable**
38 **the bureau and departments to exercise, on and after the operative date specified in sub-**
39 **section (1) of this section, the duties, functions and powers conferred on the bureau and de-**
40 **partments by sections 1 to 17 of this 2017 Act and the amendments to ORS 659A.156 and**
41 **659A.885 by sections 18 and 19 of this 2017 Act.**

42 “**SECTION 21. Captions.** **The section captions used in this 2017 Act are provided only for**
43 **the convenience of the reader and do not become part of the statutory law of this state or**
44 **express any legislative intent in the enactment of this 2017 Act.**

45 “**SECTION 22. Effective date.** **This 2017 Act takes effect on the 91st day after the date**

1 on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine
2 die.”

3
