

House Bill 3087

Sponsored by Representatives WILLIAMSON, ALONSO LEON, HERNANDEZ; Representative KENY-GUYER

SUMMARY

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

Creates family and medical leave insurance program to provide covered employee with portion of wages while on family medical leave or military leave. Requires employer and employee contributions to fund program. Allows self-employed individuals to opt into program. Directs Director of Department of Consumer and Business Services to establish contribution amounts and timeline for availability of benefits. Establishes Family and Medical Leave Insurance Fund. Amends Oregon family leave law to allow for leave after employee has been employed for 90 days with employer to match waiting period for benefits.

Protects employee's position of employment with employer while employee is on leave. Prohibits employer from retaliating against employee who invokes program and from interfering with employee rights under program. Requires director to work with other agencies and promulgate rules for administration of program. Allows director to contract with outside entities for remittance and other actions necessary for administration of program.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

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

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

SECTION 1. Definitions. As used in sections 1 to 18 of this 2017 Act:

6 (1) **"Average weekly wage" means the amount calculated by the Employment Department**
7 **under ORS 657.150 (4)(d).**

8 (2) **"Base year" means the first four of the last five completed calendar quarters pre-**
9 **ceding the benefit year.**

10 (3) **"Benefit year" means the 12-month period beginning on the first day of the week in**
11 **which an eligible employee files an application for family and medical leave insurance bene-**
12 **fits.**

13 (4) **"Covered service member" means an employee who is eligible for leave under ORS**
14 **659A.093 or the federal Family and Medical Leave Act of 1993, as amended and in effect on**
15 **the effective date of this 2017 Act.**

16 (5) **"Eligible employee" means an individual who:**

17 (a) **Files an application for family and medical leave insurance benefits;**

18 (b) **Contributed an amount determined by the Director of the Department of Consumer**
19 **and Business Services to the Family and Medical Leave Insurance Fund during the base year**
20 **prior to filing an application; and**

21 (c)(A) **Is an employee who has worked for at least 90 days with the employer; or**

22 (B) **Is self-employed and elects coverage under section 14 of this 2017 Act.**

23 (6) **"Eligible employee's average wage" means an amount determined by the director**
24 **based on an eligible employee's average wages per week during the base year.**
25

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

3 (b) "Employee" does not include:

4 (A) An independent contractor as defined in ORS 670.600.

5 (B) A participant in a work training program administered under a state or federal as-
6 sistance program.

7 (C) A participant in a work-study program that provides students in secondary or post-
8 secondary educational institutions with employment opportunities for financial or vocational
9 training.

10 (D) A railroad worker exempted under the federal Railroad Unemployment Insurance
11 Act.

12 (E) A volunteer.

13 (8)(a) "Employer" means any person that employs one or more employees working any-
14 where in this state, a political subdivision of the state and any county, city, district, au-
15 thority, public corporation or entity, and any instrumentality of a county, city, district,
16 authority, public corporation or entity, organized and existing under law or charter.

17 (b) "Employer" does not include the federal government.

18 (9) "Family and medical leave insurance benefits" means the insurance benefits provided
19 under the terms of sections 1 to 18 of this 2017 Act.

20 (10) "Family member" means the spouse of an employee, the biological, adoptive or foster
21 parent or child of the employee, the grandparent or grandchild of the employee, a parent-
22 in-law of the employee, an individual with whom the employee is in a relationship of in loco
23 parentis, an individual related by blood to the employee or an individual whose close associ-
24 ation to the employee is the equivalent of a family relationship.

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

26 (12) "Next of kin" means an eligible employee's nearest blood relative.

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

29 (14) "Qualifying exigency leave" has the meaning described in 29 C.F.R. 825.126.

30 (15) "Serious health condition" has the meaning given that term in the federal Family
31 and Medical Leave Act of 1993, as amended and in effect on the effective date of this 2017
32 Act.

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

34 (17) "Week" means a period of seven consecutive calendar days as determined by the di-
35 rector.

36 **SECTION 2. Eligibility for benefits.** (1) Notwithstanding a requirement that an employer
37 employs a certain number of employees, family and medical leave insurance benefits are
38 payable to an eligible employee who:

39 (a) Is taking parental leave;

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

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

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

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

44 (f) Is taking qualifying exigency leave;

45 (g) Is taking leave for any reason set forth in ORS 659A.159; or

1 (h) Is self-employed but otherwise meets the requirements for leave under paragraphs
2 (a) to (g) of this subsection.

3 (2) An eligible employee who receives family and medical leave insurance benefits under
4 this section must, upon request by the employer or the Director of the Department of Con-
5 sumer and Business Services, provide verification of the need for leave in a manner con-
6 sistent with ORS 659A.168 or in a manner determined by the director.

7 **SECTION 3. Duration of benefits.** (1)(a) An eligible employee may qualify for up to 12
8 weeks of family and medical leave insurance benefits per benefit year.

9 (b) In addition to the 12 weeks of family and medical leave insurance benefits described
10 in paragraph (a) of this subsection, an eligible employee may qualify for six weeks of benefits
11 for parental leave.

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

14 (3) The first payment of benefits must be made to an eligible employee within two weeks
15 after the employee files a claim and subsequent payments must be made every two weeks.

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

19 (a) The director shall determine the eligible employee's average wage based on the eligi-
20 ble 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 may adjust the weekly benefit amount on an annual basis if necessary
28 to maintain fiscal solvency of the Family and Medical Leave Insurance Fund.

29 (d) The director shall establish a maximum weekly benefit amount, adjusted annually for
30 inflation as determined by the director.

31 (2) Family and medical leave insurance benefits are payable only to the extent that
32 moneys are available in the Family and Medical Leave Insurance Fund for that purpose.
33 Neither the state nor a state agency is liable for any amount in excess of this limit.

34 **SECTION 5. Contributions.** (1) The Director of the Department of Consumer and Busi-
35 ness Services shall require payroll contributions to the Department of Revenue to be depos-
36 ited in the Family and Medical Leave Insurance Fund in order to finance the payment of
37 family and medical leave insurance benefits.

38 (2) Payroll contributions from an employee may not exceed 0.5 percent of the employee's
39 wages. Payroll contributions shall be paid by employers and employees per pay period in
40 equal amounts at a rate determined by the director under subsection (3) of this section. The
41 director shall evaluate and determine on an annual basis the amount of payroll contributions
42 and maximum employee contributions necessary to finance sections 1 to 18 of this 2017 Act.

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

45 (a) At the end of the period for which the rates are effective, the balance of moneys in

1 the Family and Medical Leave Insurance Fund is an amount not less than six months' worth
2 of projected expenditures from the fund for performance of the director's functions and du-
3 ties under sections 1 to 18 of this 2017 Act; and

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

5 (4) The director may increase the assessment rate, subject to the limitations in sub-
6 section (2) of this section, if the director determines that a higher rate is necessary to avoid
7 unintentional program or benefit reductions in the time period immediately following the
8 period for which the rate is being set.

9 (5) An employer shall retain and pay the moneys described under subsection (2) of this
10 section in a manner determined by the director in coordination with the Department of Re-
11 venue.

12 (6)(a) Every employer required to make contributions under this section shall make and
13 file a report of employee hours worked and amounts due under this section upon a combined
14 report form prescribed by the Department of Revenue.

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

17 (c) The Department of Revenue may assess a penalty in an amount not to exceed \$1,000
18 for an employer's failure to comply with this subsection.

19 (7) Moneys collected by the director under this section shall be deposited in the Family
20 and Medical Leave Insurance Fund for the purpose of carrying out the functions and duties
21 of the director under sections 1 to 18 of this 2017 Act.

22 (8) A temporary employment agency that provides employees on a temporary basis to its
23 customers is considered the employer for purposes of this section.

24 (9)(a) If an employer quits business or sells out, exchanges or otherwise disposes of the
25 business or stock of goods, any contribution payable under this section is immediately due
26 and payable, and the employer shall, within 10 calendar days, pay the contribution due. Any
27 person who becomes a successor to the business is liable for the full amount of the contri-
28 bution.

29 (b) The director shall adopt rules for compliance with sections 1 to 18 of this 2017 Act
30 related to contributions from an employer's successor in interest.

31 (10) An employer's failure to provide information to the department upon written request
32 by the director or authorized representative to assist with the processing of a claim under
33 sections 1 to 18 of this 2017 Act shall constitute interference under section 9 of this 2017 Act.

34 **SECTION 6. Benefits for reduced leave.** (1) An eligible employee may use family and
35 medical leave insurance benefits for leave taken in increments of less than one week, pro-
36 vided that:

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

38 (b) Leave that is taken in an increment of less than one week is predictable on a weekly
39 basis and verified by the employee under section 2 of this 2017 Act; and

40 (c) Benefit amounts, as calculated under section 4 of this 2017 Act, are prorated to in-
41 crements of no less than eight hours.

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

1 (3) An employer shall notify the Director of the Department of Consumer and Business
 2 Services, upon request, of the actual amount of leave taken each week for the purpose of
 3 verifying the amount of benefits that are payable to the employee.

4 (4) Paid family and medical leave taken under this section shall not result in a reduction
 5 of the total amount of leave to which an employee is entitled beyond the amount of leave
 6 actually taken.

7 (5) Nothing in this section shall be construed to entitle an eligible employee to a benefit
 8 amount that is more than required under section 3 of this 2017 Act.

9 **SECTION 7. Notice to employer.** (1) Except as provided in subsection (2) of this section,
 10 an employer may require an eligible employee to give the employer written notice at least
 11 30 days before commencing leave. The employer may require the employee to include an ex-
 12 planation of the need for the leave in the notice.

13 (2) An eligible employee may commence taking leave without 30 days' advance notice
 14 under the following circumstances:

15 (a) An unexpected serious health condition of the employee or a family member of the
 16 employee;

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

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

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

22 (3) If an employee commences leave without advance notice under subsection (2) of this
 23 section, the employee shall give notice to the employer as soon as practical in a manner de-
 24 termined by the Director of the Department of Consumer and Business Services. The notice
 25 described in this subsection may be given by another individual on behalf of the employee
 26 taking the leave.

27 **SECTION 8. Leave and employment protection.** (1) After returning to work, an eligible
 28 employee is entitled to be restored to the position of employment held by the employee when
 29 the leave commenced if that position still exists, without regard to whether the employer
 30 filled the position with a replacement worker during the period of leave taken under section
 31 3 of this 2017 Act. If the position held by the employee at the time family leave commenced
 32 no longer exists, the employee is entitled to be restored to any available equivalent position
 33 with equivalent employment benefits, pay and other terms and conditions of employment.

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

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

40 (a) Any accrual of seniority or employment benefits during a period of leave taken under
 41 section 3 of this 2017 Act; or

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

45 (4) An employer may require an employee during a period of using family and medical

1 leave insurance benefits to report periodically to the employer on the employee's status and
2 on the employee's intention to return to work.

3 (5) A violation of this section is an unlawful practice under ORS chapter 659A.

4 **SECTION 9. Retaliatory personnel actions prohibited.** It is an unlawful practice for a
5 person to:

6 (1) Interfere with a right to which an eligible employee is entitled under sections 1 to 18
7 of this 2017 Act; or

8 (2) Retaliate or in any way discriminate against an individual with respect to hire or
9 tenure or any other term or condition of employment because the individual has inquired
10 about the provisions of sections 1 to 18 of this 2017 Act, filed an application for coverage or
11 invoked any provision of sections 1 to 18 of this 2017 Act.

12 **SECTION 10. Coordination of benefits.** (1) For employees eligible for leave under ORS
13 659A.150 to 659A.186, leave taken under sections 1 to 18 of this 2017 Act shall run concu-
14 rrently with leave under ORS 659A.150 to 659A.186.

15 (2)(a) Sections 1 to 18 of this 2017 Act do not diminish an employer's obligation to comply
16 with a collective bargaining agreement, an employer policy or local, state or federal law.

17 (b) An eligible employee's right to family and medical leave insurance benefits under
18 sections 1 to 18 of this 2017 Act may not be diminished by a collective bargaining agreement
19 entered into or renewed, or an employee policy adopted or retained, after the effective date
20 of this 2017 Act.

21 (c) The eligibility of an employee for benefits is not affected by a strike or lockout at the
22 store, factory, establishment or other premise as which the employee is or was last em-
23 ployed.

24 (d) An employee who has received benefits under sections 1 to 18 of this 2017 Act may
25 not lose any other employment benefits, including seniority or pension rights, accrued before
26 the date that leave commenced. However, this section does not entitle an employee to accrue
27 employment benefits during a period of leave or to a right, benefit or position of employment
28 other than a right, benefit or position to which the employee would have been entitled had
29 the employee not taken leave.

30 (3) An employer may not require an employee to use paid sick time, paid vacation time
31 or any other paid time off before or as a condition of using family and medical leave insur-
32 ance benefits.

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

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

41 (1) The employee's right to family and medical leave insurance benefits under sections 1
42 to 18 of this 2017 Act and the terms under which the benefits may be used;

43 (2) The criteria used to determine the amount of family and medical leave insurance
44 benefits;

45 (3) The procedure for filing a claim for benefits;

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

2 (5) That discrimination and retaliatory personnel actions against an individual for re-
 3 questing, applying for or using family and medical leave insurance benefits is prohibited un-
 4 der sections 8 and 9 of this 2017 Act; and

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

7 **SECTION 12. Enforcement.** (1) The Director of the Department of Consumer and Busi-
 8 ness Services shall establish a system for enforcement and appeal of contested cases in-
 9 volving family and medical leave insurance benefit claims under ORS chapter 183. In
 10 establishing the system, the director may utilize any and all procedures and appeals mech-
 11 anisms.

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

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

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

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

26 (4) If family and medical leave insurance benefits are paid erroneously or as a result of
 27 willful misrepresentation, or if a claim for family and medical leave insurance benefits is
 28 rejected after benefits are paid except for matters that have been timely appealed, the di-
 29 rector may seek repayment of benefits from the recipient in a manner provided by rule. The
 30 director shall exercise the director's discretion to waive, in whole or in part, the amount of
 31 any such payments where the recovery would be against equity and good conscience.

32 **SECTION 14. Elective coverage.** (1) A self-employed individual, including a sole proprie-
 33 tor, general partner or joint venturer, may elect coverage under sections 1 to 18 of this 2017
 34 Act. The self-employed individual must file a notice of election in writing with the Director
 35 of the Department of Consumer and Business Services, as required by the director, and
 36 contribute to the Family and Medical Leave Insurance Fund in a manner determined by the
 37 director. The election becomes effective on the date of filing the notice. The self-employed
 38 individual must agree to supply any information concerning income that the director deems
 39 necessary.

40 (2) A self-employed individual who has elected coverage may withdraw after three con-
 41 secutive years of coverage, or at times as the director may prescribe by rule, including at a
 42 change in the self-employed individual's employment status, by filing written notice with the
 43 director. The withdrawal takes effect not sooner than 30 days after filing the notice.

44 (3) Notwithstanding subsection (2) of this section, a self-employed individual who has
 45 elected coverage may terminate coverage on the date of filing a voluntary or involuntary

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

6 **SECTION 15. Administration.** (1) The Director of the Department of Consumer and
7 Business Services shall adopt rules for the establishment and administration of sections 1
8 to 18 of this 2017 Act.

9 (2) The director may contract with private entities and enter into interagency agree-
10 ments to establish and administer sections 1 to 18 of this 2017 Act.

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

16 (2) Interest earned by the fund shall be credited to the fund. All moneys in the fund are
17 continuously appropriated to the Director of the Department of Consumer and Business
18 Services for the purposes of carrying out sections 1 to 18 of this 2017 Act.

19 (3) Notwithstanding any other provision of sections 1 to 18 of this 2017 Act, if the director
20 determines at any time that there are insufficient moneys in the fund to pay the expenses
21 of programs for which expenditure of the fund is authorized, the director may reduce the
22 level of family and medical leave insurance benefits payable accordingly.

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

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

30 **SECTION 17. Reports.** (1) The Director of the Department of Consumer and Business
31 Services shall submit a report in the manner provided by ORS 192.245, and may include rec-
32 ommendations for legislation, to the interim committees of the Legislative Assembly related
33 to workforce or business and labor no later than January 1, 2020, and every two years
34 thereafter.

35 (2) The director shall include in reports submitted after January 1, 2022, analysis of data
36 regarding program participation, reasons for leave, gender of eligible employees taking leave,
37 contribution rates, balances in the Family and Medical Leave Insurance Fund, outreach ef-
38 forts and, if applicable, family members for whom leave was taken to provide care.

39 **SECTION 18. Sharing technology.** The Director of the Department of Consumer and
40 Business Services is encouraged to use state data collection and technology to the extent
41 possible and to integrate the program with existing state policies.

42 **SECTION 19.** ORS 659A.156 is amended to read:

43 659A.156. (1) All employees of a covered employer are eligible to take leave for one of the pur-
44 poses specified in ORS 659A.159 (1)(b) to (e) except:

45 (a) An employee who was employed by the covered employer for fewer than [180] 90 days im-

1 mediately before the date on which the family leave would commence.

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

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

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

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

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

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

23 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 24 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
 25 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
 26 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 27 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 28 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549.

29 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 30 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
 31 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or 653.549
 32 **or sections 8 and 9 of this 2017 Act:**

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

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

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

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

39 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
 40 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
 41 compensatory damages or \$200, whichever is greater.

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

45 (6) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,

1 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
 2 penalty in the amount of \$720.

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

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

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

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

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

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

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

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

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

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

34 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 35 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 36 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 37 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 38 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 39 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 40 appealing an adverse decision of the trial court.

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

43 (a) "Aggrieved person" includes a person who believes that the person:

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

45 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to

1 occur.

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

6 **SECTION 21. Operative date.** (1)(a) **Sections 1, 3 to 13 and 15 to 18 of this 2017 Act and**
 7 **the amendments to ORS 659A.156 and 659A.885 by sections 19 and 20 of this 2017 Act become**
 8 **operative on January 1, 2019.**

9 (b) **Sections 2 and 14 of this 2017 Act become operative on January 1, 2021.**

10 (2) **The Director of the Department of Consumer and Business Services, the Commis-**
 11 **sioner of the Bureau of Labor and Industries, the Director of the Employment Department**
 12 **and the Department of Revenue may take any action before the operative date specified in**
 13 **subsection (1) of this section that is necessary to enable the directors, commissioner and**
 14 **department to exercise, on and after the operative date specified in subsection (1) of this**
 15 **section, the duties, functions and powers conferred on the directors, commissioner and de-**
 16 **partment by sections 1 to 18 of this 2017 Act and the amendments to ORS 659A.156 and**
 17 **659A.885 by sections 19 and 20 of this 2017 Act.**

18 **SECTION 22. Captions.** **The section captions used in this 2017 Act are provided only for**
 19 **the convenience of the reader and do not become part of the statutory law of this state or**
 20 **express any legislative intent in the enactment of this 2017 Act.**

21 **SECTION 23. Effective date.** **This 2017 Act takes effect on the 91st day after the date on**
 22 **which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**
 23