

House Bill 4160

Sponsored by COMMITTEE ON RULES (at the request of Representative Jennifer Williamson)

SUMMARY

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

Creates family and medical leave insurance program to provide employee who is eligible for coverage with portion of wages while employee is on family 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 determine contribution amounts and weekly benefit amounts. 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. Establishes right of employee for civil action for certain employer violations.

Directs Department of Consumer and Business Services to administer collection and reporting requirements of contribution provisions. Requires director to work with other agencies and promulgate rules for administration of program. Establishes requirements for director to submit initial report to interim committees of Legislative Assembly no later than January 1, 2020, and to report on January 1 of every even-numbered year thereafter. Requires department to conduct study regarding implementation of program with regard to self-employed individuals who opt into 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:**

6 **SECTION 1. Definitions. As used in sections 1 to 19 of this 2018 Act:**

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

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

12 (3) "Benefit year" means the 12-month period beginning on the first day of the week in
13 which a covered individual applies for family and medical leave insurance coverage, as pro-
14 vided in section 2 of this 2018 Act.

15 (4) "Covered individual" means:

16 (a) An eligible employee who:

17 (A) Applies for family and medical leave insurance coverage, as provided in section 2 of
18 this 2018 Act; and

19 (B) Contributes an amount determined by the Director of the Department of Consumer
20 and Business Services to the Family and Medical Leave Insurance Fund established under
21 section 17 of this 2018 Act during the base year prior to applying for coverage; or

22 (b) A self-employed individual who:

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 (A) Elects coverage under section 15 of this 2018 Act;
- 2 (B) Applies for family and medical leave insurance coverage, as provided in section 2 of
3 this 2018 Act; and
- 4 (C) Contributes an amount determined by the director to the Family and Medical Leave
5 Insurance Fund established under section 17 of this 2018 Act during the base year prior to
6 applying for coverage.
- 7 (5) "Covered servicemember" has the meaning given that term in 29 U.S.C. 2611.
- 8 (6) "Eligible employee" means an employee who has worked for at least 90 days with the
9 employer.
- 10 (7) "Eligible employee's average wage" means an amount determined by the director on
11 the basis of an eligible employee's average wages per week during the base year.
- 12 (8)(a) "Employee" means an individual employed for remuneration or under any contract
13 of hire, written or oral, express or implied, by an employer.
- 14 (b) "Employee" does not include:
- 15 (A) An independent contractor as defined in ORS 670.600 who is not a covered individual.
- 16 (B) A participant in a work training program administered under a state or federal as-
17 sistance program.
- 18 (C) A participant in a work-study program that provides students in secondary or post-
19 secondary educational institutions with employment opportunities for financial assistance or
20 vocational training.
- 21 (D) A railroad worker exempted under the federal Railroad Unemployment Insurance
22 Act.
- 23 (E) A volunteer.
- 24 (9)(a) "Employer" means any person employing one or more employees working anywhere
25 in this state, the State of Oregon or any political subdivision thereof, or any county, city,
26 district, authority, public corporation or entity and any of their instrumentalities organized
27 and existing under law or charter.
- 28 (b) "Employer" does not include the federal government or a tribal government.
- 29 (10) "Family and medical leave insurance benefits" means the insurance benefits provided
30 under sections 1 to 19 of this 2018 Act.
- 31 (11) "Family member" means:
- 32 (a) A family member as defined in ORS 659A.150; or
- 33 (b) An individual related by blood or affinity to the employee whose close association with
34 the employee is the equivalent of a family member.
- 35 (12) "Health care provider" has the meaning given that term in ORS 659A.150.
- 36 (13) "Next of kin" means next of kin of a covered servicemember as defined in 29 C.F.R.
37 825.127.
- 38 (14) "Parental leave" means leave taken to care for a new child during the first year after
39 the birth, adoption or placement through foster care of the child.
- 40 (15) "Self-employed individual" is an individual who has self-employment income.
- 41 (16) "Self-employment income" has the meaning given that term in section 1402(b) of the
42 Internal Revenue Code as amended and in effect on December 31, 2017.
- 43 (17) "Serious health condition" has the meaning given that term in 29 U.S.C. 2611.
- 44 (18) "Wages" has the meaning given that term in ORS 657.105.
- 45 (19) "Week" means a period of seven consecutive calendar days as determined by the di-

1 rector.

2 **SECTION 2. Eligibility; payment of benefits.** (1) Eligible employees and self-employed in-
 3 dividuals who elect coverage under section 15 of this 2018 Act may apply for family and
 4 medical leave insurance coverage in a manner determined by the Department of Consumer
 5 and Business Services by rule.

6 (2) Family and medical leave insurance benefits are payable to a covered individual who
 7 files a claim for benefits in a manner determined by the department by rule and who takes:

- 8 (a) Parental leave;
- 9 (b) Leave to care for a family member with a serious health condition;
- 10 (c) Leave for a serious health condition, including pregnancy;
- 11 (d) Leave to care for a covered servicemember who is the eligible employee’s next of kin;
- 12 (e) Military family leave described in ORS 659A.090 to 659A.099;
- 13 (f) Qualifying exigency leave as described in 29 C.F.R. 825.126; or
- 14 (g) Leave for any purpose set forth in ORS 659A.159.

15 (3) The first payment of benefits must be made to a covered individual from the Family
 16 and Medical Leave Insurance Fund established in section 17 of this 2018 Act within two weeks
 17 after the covered individual files a claim for benefits. Subsequent payments must be made
 18 every two weeks.

19 (4) Except as provided in section 7 of this 2018 Act, family and medical leave insurance
 20 benefits are not payable for leave of less than one week.

21 (5)(a) A covered individual who receives family and medical leave insurance benefits un-
 22 der this section must, upon request by the covered individual’s employer or the Director of
 23 the Department of Consumer and Business Services, provide verification of the need for
 24 leave in a manner determined by the director.

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

29 (c) For purposes of this subsection, “protected health information” has the meaning
 30 given that term in ORS 192.556.

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

33 (b) In addition to the 12 weeks of family and medical leave insurance benefits described
 34 in paragraph (a) of this subsection, a covered individual may qualify for up to six weeks of
 35 benefits for parental leave.

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

38 (b) A covered individual may take less leave than available to the individual under this
 39 section.

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

43 (a) The director shall determine the eligible employee’s average wage on the basis of the
 44 eligible employee’s wages earned during the base year.

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

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

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

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

8 (d) The director may adjust the maximum weekly benefit amount described in paragraph
 9 (c) of this subsection on an annual basis if necessary to maintain fiscal solvency of the
 10 Family and Medical Leave Insurance Fund established under section 17 of this 2018 Act.

11 (2) The director shall determine the amount of family and medical leave insurance bene-
 12 fits that a self-employed individual qualifies for on the basis of the self-employed individual's
 13 contribution amount described in section 5 of this 2018 Act.

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

18 **SECTION 5. Contributions.** (1)(a) All employers and eligible employees shall contribute
 19 to the Family and Medical Leave Insurance Fund established under section 17 of this 2018
 20 Act at a rate determined by the Director of the Department of Consumer and Business
 21 Services under subsection (2) of this section. Payroll contributions shall be paid by employers
 22 and eligible employees in equal amounts. Payroll contributions from an eligible employee may
 23 not exceed 0.5 percent of the employee's wages. The director shall evaluate and determine
 24 on an annual basis the amount of payroll contributions, timing of payroll contributions and
 25 maximum employee contributions necessary to finance sections 1 to 19 of this 2018 Act.

26 (b) A self-employed individual who elects coverage under section 15 of this 2018 Act shall
 27 contribute to the fund at a rate determined by the director by rule.

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

30 (a) At the end of the period for which the rates are effective, the balance of moneys in
 31 the fund is an amount not less than six months' worth of projected expenditures from the
 32 fund for performance of the functions and duties of the director under sections 1 to 19 of this
 33 2018 Act; and

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

35 (3) Subject to the limitations described in subsections (1) and (2) of this section, the di-
 36 rector may adjust the contribution rates to meet the needs of the fund for the expenditures
 37 of the Department of Consumer and Business Services in carrying out the department's
 38 functions and duties pursuant to sections 1 to 19 of this 2018 Act. In making adjustments
 39 under this subsection, the director shall consider the cash balance of the fund and other
 40 factors as determined by the director.

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

44 (5)(a) Employers shall make and file a combined quarterly report of wages earned and
 45 contributions paid under this section upon a report form prescribed by the Department of

1 **Revenue.**

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

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

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

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

15 (7)(a) If an employer fails to pay sufficient contributions under this section, the Depart-
 16 ment of Consumer and Business Services may issue a notice of liability to any officer, em-
 17 ployee or member of the employer within three years of the due date of the contributions.

18 (b) Within 30 days from the date the notice of liability is mailed to the officer, employee
 19 or member, the officer, employee or member shall pay the amount due, plus penalties and
 20 interest, or shall request a hearing on the matter in writing to the Director of the Depart-
 21 ment of Consumer and Business Services. A hearing will not be granted unless the request
 22 specifies the grounds upon which the individual requesting the hearing contests the liability.

23 (c) Hearings conducted under this subsection shall be held before an administrative law
 24 judge assigned from the Office of Administrative Hearings established under ORS 183.605.
 25 The procedure shall be that for a contested case under ORS chapter 183.

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

28 (8) Moneys collected under this section shall be deposited in the fund for the purpose of
 29 carrying out the functions and duties of the director under sections 1 to 19 of this 2018 Act.

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

35 (b) The director shall adopt rules for compliance with sections 1 to 19 of this 2018 Act
 36 related to payroll contributions from an employer’s successor in interest.

37 **SECTION 6. Employment agencies.** (1) As used in this section, “employment agency” has
 38 the meaning given that term in ORS 658.005.

39 (2) When an employee has obtained employment through the services of an employment
 40 agency:

41 (a) Except as provided in paragraph (b) of this subsection, the employment agency and
 42 the organization where the employee has been placed to perform services shall both be con-
 43 sidered the employer of the employee for purposes of sections 1 to 19 of this 2018 Act; and

44 (b) The employment agency, but not the organization where the employee has been placed
 45 to perform services, shall be considered the employer for purposes of section 5 (1) to (6) of

1 this 2018 Act.

2 **SECTION 7. Benefits for reduced leave.** (1) A covered individual may use family and
3 medical leave insurance benefits for leave taken in increments of less than 40 hours, provided
4 that:

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

6 (b) Leave that is taken in an increment of less than 40 hours is predictable on a weekly
7 basis and verified by the covered individual pursuant to section 2 of this 2018 Act;

8 (c) Benefit amounts, as determined under section 4 of this 2018 Act, are prorated to in-
9 crements of no less than eight hours; and

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

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

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

19 (4) Family and medical leave taken under this section must not result in a reduction of
20 the total amount of leave to which a covered individual is entitled beyond the amount of
21 leave actually taken.

22 (5) Nothing in this section shall be construed to entitle a covered individual to an amount
23 of family and medical leave insurance benefits per benefit year that is more than required
24 under section 3 of this 2018 Act.

25 **SECTION 8. 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 in the
28 notice an explanation of the need for the leave.

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 event
41 later than 45 days after the first date of illness or injury, in a manner determined by the
42 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 mem-

ber, health care provider or authorized representative on behalf of the employee taking the leave.

SECTION 9. Employment protection; retaliation prohibited. (1) After returning to work after a period of leave taken under section 2 of this 2018 Act, an eligible employee is entitled to be restored to the position of employment held by the employee when the leave commenced if that position still exists, without regard to whether the employer filled the position with a replacement worker during the period of leave. If the position held by the employee at the time leave commenced no longer exists, the employee is entitled to be restored to any available equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

(2) During a period in which an eligible employee takes leave under section 2 of this 2018 Act, the employer shall maintain any health care benefits the employee had prior to taking such leave for the duration of the leave as if the employee had continued in employment continuously from the date the employee commenced the leave until the date the family and medical leave insurance benefits terminate.

(3) An eligible employee who has taken leave under section 2 of this 2018 Act does not lose any employment benefits, including seniority or pension rights, accrued before the date that leave commenced.

(4) This section does not entitle an eligible employee to accrue employment benefits during a period of leave taken under section 2 of this 2018 Act or to a right, benefit or position of employment other than a right, benefit or position to which the employee would have been entitled had the employee not taken leave.

(5) During a period in which an eligible employee takes leave under section 2 of this 2018 Act, the Director of the Department of Consumer and Business Services or an employer may require the employee or a family member, health care provider or authorized representative of the employee to report periodically to the director or the employer on the employee's status and on the employee's intention to return to work.

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

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

(b) Interfere with a right to which a covered individual is entitled under sections 1 to 19 of this 2018 Act; or

(c) Retaliate or in any way discriminate against an individual with respect to hire or tenure or any other term or condition of employment because the individual has inquired about the provisions of sections 1 to 19 of this 2018 Act, applied for coverage under section 2 of this 2018 Act or invoked any provision of sections 1 to 19 of this 2018 Act.

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

SECTION 10. Coordination of benefits. (1) For employees eligible for leave under ORS 659A.150 to 659A.186, leave taken under sections 1 to 19 of this 2018 Act shall run concurrently with leave under ORS 659A.150 to 659A.186.

(2)(a) Sections 1 to 19 of this 2018 Act do not diminish an employer's obligation to comply with a collective bargaining agreement, an employer policy or local, state or federal law.

(b) An eligible employee's right to family and medical leave insurance benefits under sections 1 to 19 of this 2018 Act may not be diminished by a collective bargaining agreement

1 entered into or renewed, or an employee policy adopted or retained, after the effective date
2 of this 2018 Act.

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

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

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

11 (4) Family and medical leave taken under sections 1 to 19 of this 2018 Act does not in-
12 clude leave taken by an eligible employee who is unable to work because of a disabling
13 compensable injury, as defined in ORS 656.005, unless the employee has refused a suitable
14 offer of light duty or modified employment as defined by the Director of the Department of
15 Consumer and Business Services.

16 (5) An employer's failure to provide information to the Department of Consumer and
17 Business Services upon written request by the director or the director's authorized repre-
18 sentative to assist with the processing of a claim under sections 1 to 19 of this 2018 Act shall
19 constitute interference under section 9 of this 2018 Act.

20 **SECTION 11. Notice to employees.** An employer shall display and provide written notice
21 of employee rights under sections 1 to 19 of this 2018 Act in a manner determined by the
22 Director of the Department of Consumer and Business Services. Such notice shall include:

23 (1) An eligible employee's right to apply for and receive family and medical leave insur-
24 ance benefits under sections 1 to 19 of this 2018 Act and the terms under which the benefits
25 may be used;

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

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

29 (4) The right to job protection and benefits continuation under section 9 of this 2018 Act;

30 (5) That discrimination and retaliatory personnel actions against an individual for re-
31 questing, applying for or using family and medical leave insurance benefits is prohibited un-
32 der section 9 of this 2018 Act; and

33 (6) That an employee has a right to bring a civil action or to file a complaint for violation
34 of section 9 of this 2018 Act.

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

38 (2) The Director of the Department of Consumer and Business Services may inspect the
39 books, records and payrolls of employers for the purpose of administering sections 1 to 19
40 of this 2018 Act. Employers must provide the director with all pertinent books, records and
41 payrolls upon request.

42 **SECTION 13. Enforcement and confidentiality.** (1) Notwithstanding ORS 183.635, the Di-
43 rector of the Department of Consumer and Business Services shall establish a system for
44 enforcement and appeal of contested cases involving family and medical leave insurance
45 benefit claims under ORS chapter 183. In establishing the system, the director may utilize

1 any and all procedures and appeals mechanisms.

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

5 (3) All information in the records of the Department of Consumer and Business Services
 6 pertaining to the administration of sections 1 to 19 of this 2018 Act:

7 (a) Is confidential and for the exclusive use and information of the director in adminis-
 8 tering sections 1 to 19 of this 2018 Act;

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

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

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

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

23 **SECTION 14. Noncompliance and erroneous payments.** (1) An employer or individual
 24 acting on behalf of an employer may not willfully make or cause to be made false statements
 25 or willfully fail to report a material fact regarding the claim of an eligible employee or re-
 26 garding an employee's eligibility for family and medical leave insurance benefits under
 27 sections 1 to 19 of this 2018 Act.

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

31 (3)(a) An eligible employee is disqualified from family and medical leave insurance bene-
 32 fits for one year if the director determines that the eligible employee willfully made a false
 33 statement or willfully failed to report a material fact to obtain benefits under sections 1 to
 34 19 of this 2018 Act.

35 (b) A self-employed individual is disqualified from family and medical leave insurance
 36 benefits for three years if the director determines that the self-employed individual willfully
 37 made a false statement or willfully failed to report a material fact to obtain benefits under
 38 sections 1 to 19 of this 2018 Act.

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

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

45 (b) May seek repayment of benefits from a self-employed individual and may also seek

1 payment of a penalty of up to 100 percent of the amount of benefits that the self-employed
 2 individual erroneously received upon issuance of a final order, in a manner provided by rule;
 3 and

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

7 **SECTION 15. Elective coverage.** (1) A self-employed individual may elect to be covered
 8 under sections 1 to 19 of this 2018 Act. The self-employed individual must file a notice of
 9 election in writing with the Director of the Department of Consumer and Business Services,
 10 as required by the director, and contribute to the Family and Medical Leave Insurance Fund
 11 established under section 17 of this 2018 Act in a manner determined by the director. The
 12 election becomes effective on the date of filing the notice. The self-employed individual shall
 13 agree to supply any information concerning income that the director deems necessary.

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

18 (3) Notwithstanding subsection (2) of this section, a self-employed individual who has
 19 elected coverage may terminate coverage on the date of filing a voluntary or involuntary
 20 bankruptcy petition. The self-employed individual's elective coverage terminates on the date
 21 the self-employed individual provides to the director documentation to support the self-
 22 employed individual's filing of the bankruptcy petition and files written notice with the di-
 23 rector. At any time thereafter, the self-employed individual may reelect coverage under this
 24 section.

25 **SECTION 16. Administration.** (1) The Director of the Department of Consumer and
 26 Business Services shall adopt rules for the implementation and administration of sections 1
 27 to 19 of this 2018 Act.

28 (2) The director may enter into interagency agreements to implement and administer
 29 sections 1 to 19 of this 2018 Act.

30 (3) All agencies of state government, as defined in ORS 174.111, are directed to assist the
 31 Department of Consumer and Business Services upon request in the performance of its du-
 32 ties under sections 1 to 19 of this 2018 Act, including outreach, technical assistance and
 33 training.

34 **SECTION 17. Family and Medical Leave Insurance Fund.** (1) The Family and Medical
 35 Leave Insurance Fund is established in the State Treasury, separate and distinct from the
 36 General Fund. The Family and Medical Leave Insurance Fund consists of moneys deposited
 37 in the fund under sections 1 to 19 of this 2018 Act and may include fees, revenues or other
 38 income deposited in the fund. Interest earned by the fund shall be credited to the fund.

39 (2) All moneys in the fund are continuously appropriated to the Department of Consumer
 40 and Business Services for the purposes of carrying out the provisions of sections 1 to 19 of
 41 this 2018 Act, including payment of benefits under section 2 of this 2018 Act and repayment
 42 of any funds used for start-up costs.

43 (3) Notwithstanding any other provision of sections 1 to 19 of this 2018 Act, if the Di-
 44 rector of the Department of Consumer and Business Services determines at any time that
 45 there are insufficient moneys in the fund to pay the expenses of the provisions of sections

1 1 to 19 of this 2018 Act, the director may reduce the level of family and medical leave in-
 2 surance benefits payable accordingly.

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

7 (5) Contributions under section 5 of this 2018 Act that are intended for the fund and
 8 moneys in the fund may not be subject to execution, attachment or any other process or to
 9 the operation of any bankruptcy or insolvency law.

10 (6) Expenditures from the fund may not be used for purposes other than carrying out the
 11 provisions of sections 1 to 19 of this 2018 Act.

12 **SECTION 18. Reports.** (1) The Director of the Department of Consumer and Business
 13 Services shall submit a report in the manner provided by ORS 192.245, and may include rec-
 14 ommendations for legislation, to the interim committees of the Legislative Assembly related
 15 to workforce or business and labor no later than January 1, 2020, and January 1 of every
 16 even-numbered year thereafter.

17 (2) The Department of Consumer and Business Services shall conduct a study to deter-
 18 mine how to implement the provisions of sections 1 to 19 of this 2018 Act, as those provisions
 19 pertain to self-employed individuals who elect coverage under section 15 of this 2018 Act. The
 20 study shall include procedures for determining the amount of payroll contributions that a
 21 self-employed individual must make and the amount of family and medical leave insurance
 22 benefits that a self-employed individual shall receive. The director shall include recommen-
 23 dations based on that study in the report described in subsection (1) of this section.

24 (3) The director shall include in reports submitted after January 1, 2022, analysis of data
 25 regarding the number of individuals who apply for family and medical leave insurance cov-
 26 erage under sections 1 to 19 of this 2018 Act, reasons for leave, gender of covered individuals
 27 taking leave, contribution rates, balances in the Family and Medical Leave Insurance Fund
 28 established under section 17 of this 2018 Act, outreach efforts and, if applicable, family
 29 members for whom leave was taken to provide care.

30 **SECTION 19. Sharing technology.** The Director of the Department of Consumer and
 31 Business Services is encouraged to use state data collection and technology to the extent
 32 possible and to integrate the provisions of sections 1 to 19 of this 2018 Act with existing state
 33 policies.

34 **SECTION 20. Short title.** Sections 1 to 19 of this 2018 Act shall be known and may be
 35 cited as the Family and Medical Leave Insurance Equity Act.

36 **SECTION 21.** ORS 659A.156 is amended to read:

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

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

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

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

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

2 **SECTION 22.** ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and
 3 section 13, chapter 691, Oregon Laws 2017, is amended to read:

4 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 5 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 6 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 7 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 8 court may order back pay in an action under this subsection only for the two-year period imme-
 9 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 10 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 11 year period immediately preceding the filing of the action. In any action under this subsection, the
 12 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 13 cept as provided in subsection (3) of this section:

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

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

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

18 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
 19 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
 20 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 21 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
 22 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
 23 659A.318, 659A.320, 659A.355 or 659A.421; or

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

25 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 26 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 27 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 28 659A.290, 659A.318, 659A.355 or 659A.421 **or section 9 of this 2018 Act:**

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

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

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

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

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

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

39 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 40 659A.850 for a violation of ORS 652.220.

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

44 (6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574
 45 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this

1 section, compensatory damages or \$250, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **SECTION 23.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017,
 9 and section 13, chapter 691, Oregon Laws 2017, is 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:

24 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
 25 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
 26 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 27 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
 28 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
 29 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421; or

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

31 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 32 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 33 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 34 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421 **or section 9 of this 2018 Act:**

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

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

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

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

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

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

45 (b) An employer was previously adjudicated in a proceeding under this section or under ORS

1 659A.850 for a violation of ORS 652.220.

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 43 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 44 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 45 the commissioner if the commissioner prevails in the action. The court may award reasonable at-

1 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 2 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 3 appealing an adverse decision of the trial court.

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

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

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

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

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

14 **SECTION 24. Operative date. (1)(a) Sections 1 and 3 to 14 of this 2018 Act and the**
 15 **amendments to ORS 659A.156 and 659A.885 by sections 21, 22 and 23 of this 2018 Act become**
 16 **operative on January 1, 2019.**

17 **(b) Sections 2 and 15 of this 2018 Act become operative on January 1, 2021.**

18 **(2) The Department of Consumer and Business Services, the Bureau of Labor and In-**
 19 **dustries, the Employment Department and the Department of Revenue may take any action**
 20 **before the operative dates specified in subsection (1) of this section that is necessary to en-**
 21 **able the bureau and departments to exercise, on or after the operative dates specified in**
 22 **subsection (1) of this section, the duties, functions and powers conferred on the bureau and**
 23 **departments by sections 1 to 19 of this 2018 Act and the amendments to ORS 659A.156 and**
 24 **659A.885 by sections 21, 22 and 23 of this 2018 Act.**

25 **SECTION 25. Captions. The section captions used in this 2018 Act are provided only for**
 26 **the convenience of the reader and do not become part of the statutory law of this state or**
 27 **express any legislative intent in the enactment of this 2018 Act.**

28 **SECTION 26. Effective date. This 2018 Act takes effect on the 91st day after the date on**
 29 **which the 2018 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

30