

Requested by Representative BONHAM

**PROPOSED AMENDMENTS TO
HOUSE BILL 3031**

1 On page 1 of the printed corrected bill, line 2, after “657.100” delete the
2 rest of the line and delete lines 3 and 4 and insert “and 659A.153; and de-
3 claring an emergency.”.

4 Delete lines 6 through 14 and delete pages 2 through 19 and insert:

5 **“SECTION 1. Definitions. As used in sections 1 to 17 of this 2019**
6 **Act:**

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

10 **“(2) ‘Base year’ means the first four of the last five completed cal-**
11 **endar quarters preceding the benefit year.**

12 **“(3) ‘Benefit year’ means the 12-month period beginning on the first**
13 **day of the week in which a covered individual’s period of family leave**
14 **or medical leave commences.**

15 **“(4) ‘Covered individual’ means any of the following who receives**
16 **paid family and medical leave insurance benefits:**

17 **“(a) An eligible employee; or**

18 **“(b) An unemployed individual who is not receiving unemployment**
19 **insurance benefits under ORS chapter 657.**

20 **“(5) ‘Eligible employee’ means an employee who has worked at least**
21 **820 hours for any employer in this state during the base year.**

1 **“(6) ‘Eligible employee’s average wage’ means an amount deter-**
2 **mined by the Director of the Department of Consumer and Business**
3 **Services on the basis of an eligible employee’s average wages per week**
4 **during the base year.**

5 **“(7)(a) ‘Employee’ means an individual employed for remuneration**
6 **or under any contract of hire, written or oral, express or implied, by**
7 **an employer.**

8 **“(b) ‘Employee’ does not include:**

9 **“(A) An independent contractor as defined in ORS 670.600.**

10 **“(B) A participant in a work training program administered under**
11 **a state or federal assistance program.**

12 **“(C) A participant in a work-study program that provides students**
13 **in secondary or postsecondary educational institutions with employ-**
14 **ment opportunities for financial assistance or vocational training.**

15 **“(D) A railroad worker exempted under the federal Railroad Un-**
16 **employment Insurance Act.**

17 **“(E) A volunteer.**

18 **“(8)(a) ‘Employer’ means any person that employs one or more**
19 **employees working anywhere in this state, a political subdivision of**
20 **the state or any county, city, district, authority, public corporation**
21 **or entity, or any instrumentality of a county, city, district, authority,**
22 **public corporation or entity, organized and existing under law or**
23 **charter.**

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

26 **“(9) ‘Family and medical leave insurance benefits’ means the in-**
27 **surance benefits provided under the terms of a plan developed under**
28 **section 3 or 6 of this 2019 Act.**

29 **“(10) ‘Family leave’ means leave taken by an employee from work:**

30 **“(a) To care for and bond with an infant or a newly adopted child**

1 or newly placed foster child under 18 years of age, during the first year
2 after the infant’s birth or the child’s adoption or placement.

3 “(b) To care for a family member with a serious health condition.

4 “(c) For military family leave described under ORS 659A.090 to
5 659A.099.

6 “(11) ‘Family member’ has the meaning given that term in ORS
7 659A.150.

8 “(12) ‘Medical leave’ means a period of leave taken by an employee
9 from work because the employee is unable to perform work due to a
10 serious health condition.

11 “(13) ‘Serious health condition’ has the meaning given that term in
12 ORS 659A.150.

13 **“SECTION 2. Oregon Paid Family and Medical Leave Board. (1) The**
14 **Oregon Paid Family and Medical Leave Board is established in the**
15 **Department of Consumer and Business Services. The board consists**
16 **of nine members as follows:**

17 “(a) The Director of the Department of Consumer and Business
18 Services or the designee of the director.

19 “(b) The following members appointed by the Governor:

20 “(A) A representative of employers that employ 100 or more em-
21 ployees.

22 “(B) A representative of employers that employ fewer than 10 em-
23 ployees.

24 “(C) A representative of employees.

25 “(D) A representative from the field of private insurance who has
26 expertise in absence management, including expertise assessing em-
27 ployee productivity and absenteeism.

28 “(E) A representative from the field of private insurance who has
29 expertise in disability insurance.

30 “(F) A member of the public.

1 “(c) A member of the Senate appointed by the President of the
2 Senate to be a nonvoting advisory member of the board.

3 “(d) A member of the House of Representatives appointed by the
4 Speaker of the House of Representatives to be a nonvoting advisory
5 member of the board.

6 “(2) Members of the board appointed by the Governor must be
7 confirmed by the Senate in the manner prescribed in ORS 171.562 and
8 171.565.

9 “(3) The term of office of each member of the board appointed by
10 the Governor is four years, but a member appointed by the Governor
11 serves at the pleasure of the Governor and is eligible for reappoint-
12 ment. If there is a vacancy for any cause, the Governor shall make
13 an appointment to become immediately effective for the unexpired
14 term.

15 “(4) Each legislative member serves at the pleasure of the appoint-
16 ing authority and may serve as long as the member remains in the
17 chamber of the Legislative Assembly from which the member was ap-
18 pointed.

19 “(5) The director or the designee appointed to the board under
20 subsection (1) of this section shall serve as chairperson of the board.

21 “(6) A majority of the voting members of the board constitutes a
22 quorum for the transaction of business.

23 “(7) The department shall provide staff support to the board.

24 “SECTION 3. Powers and duties of the Oregon Paid Family and
25 Medical Leave Board. (1) The Oregon Paid Family and Medical Leave
26 Board shall:

27 “(a) Develop an employee-financed paid family and medical leave
28 plan that uses existing insurance products that are available in the
29 insurance marketplace to provide family and medical leave insurance
30 benefits that are payable as a percentage of an eligible employee’s

1 average wage provided that the employee:

2 “(A) Files an application for family and medical leave insurance
3 benefits; and

4 “(B) Contributes an amount determined by the Oregon Paid Family
5 and Medical Leave Board to the Paid Family and Medical Leave In-
6 surance Fund established under section 10 of this 2019 Act during the
7 base year prior to filing an application.

8 “(b) Conduct a labor market, cost-benefit and legal analysis of the
9 plan.

10 “(2) The board shall have the following powers:

11 “(a) To establish, implement and maintain the plan developed under
12 this section.

13 “(b) To adopt rules for the general administration of the plan.

14 “(c) To collect application, account or administrative fees to defray
15 the costs of administering the plan.

16 “(d) To make and enter into contracts, agreements or arrange-
17 ments, and to retain, employ and contract for, any of the following
18 considered necessary or desirable for carrying out the purposes set
19 forth in sections 1 to 17 of this 2019 Act:

20 “(A) Insurance products that have diverse risk pooling require-
21 ments.

22 “(B) Services of private and public financial institutions, deposito-
23 ries, consultants and third-party plan administrators.

24 “(C) Research, technical and other services.

25 “(D) Services of other state agencies to assist the board in its du-
26 ties.

27 “(e) To evaluate the need for, and procure as needed, pooled, private
28 insurance of the plan.

29 “(f) To establish the initial rate at which an eligible employee shall
30 contribute to the plan to finance the costs of paying family and med-

1 ical leave insurance benefits, provided that the rate does not exceed
2 0.4 percent of the employee's wages.

3 “(g) To establish the amount of family and medical leave insurance
4 benefits that an eligible employee qualifies for based on the amount
5 of wages earned by the eligible employee during the base year that are
6 equal to or less than a percentage, determined by the board, of the
7 average weekly wage.

8 “(h) To review on an annual basis the amount of contributions
9 collected from eligible employees and calculate an adjustment to the
10 rate at which an employee contributes to the plan based on:

11 “(A) The amount of an eligible employee's average wage that is
12 equal to or less than an amount determined by the board; or

13 “(B) An increase, if any, in the Consumer Price Index for All Urban
14 Consumers, West Region (All Items), as published by the Bureau of
15 Labor Statistics of the United States Department of Labor.

16 “(i) To develop and implement an outreach plan to gain input and
17 disseminate information regarding the plan in general.

18 **“SECTION 4. Requirements for the Oregon Paid Family and Medical**
19 **Leave Plan.** Except as otherwise provided under section 6 of this 2019
20 Act, the plan developed by the Oregon Paid Family and Medical Leave
21 Board under section 3 of this 2019 Act must:

22 “(1) Require an eligible employee to contribute to the Paid Family
23 and Medical Leave Insurance Fund established under section 10 of this
24 2019 Act through payroll deductions at a rate determined by the board
25 under section 3 of this 2019 Act.

26 “(2) Require employers, regardless of the number of employees em-
27 ployed by the employer, to collect employee contributions to the plan
28 as payroll deductions to be deposited in the Paid Family and Medical
29 Leave Insurance Fund established under section 10 of this 2019 Act.

30 “(3) Provide for automatic enrollment of eligible employees in the

1 **plan.**

2 **“(4) Whenever possible, use existing employer and public**
3 **infrastructure to facilitate contributions to the plan, recordkeeping**
4 **and outreach.**

5 **“(5) Permit but may not require employer contributions to the plan.**

6 **“(6) Require the maintenance of separate records and accounting**
7 **for each eligible employee who qualifies for family and medical leave**
8 **insurance benefits under the plan.**

9 **“(7) Provide family and medical leave insurance benefits that are**
10 **payable to a covered individual who:**

11 **“(a) Takes family leave; or**

12 **“(b) Takes medical leave.**

13 **“(8) Permit a covered individual to qualify for family and medical**
14 **leave benefits for up to:**

15 **“(a) Six weeks of medical leave; and**

16 **“(b) Twelve weeks of family leave.**

17 **“(9) Provide family and medical leave insurance benefits for leave**
18 **that is taken by a covered individual in increments that are equivalent**
19 **to the regular scheduled work shift that an employer requires the in-**
20 **dividual to work.**

21 **“(10) Require that the first payment of benefits must be made to a**
22 **covered individual within two weeks after the individual commences**
23 **leave and that subsequent payments must be made every two weeks.**

24 **“(11) Except as provided in subsection (7) of this section, prohibit**
25 **an employer from requiring a covered individual to take more leave**
26 **than the covered individual requests.**

27 **“(12) Allow a covered individual to take less leave than is available**
28 **to the individual under the plan.**

29 **“(13) Permit an eligible employee who changes jobs to retain the**
30 **employee’s status as an eligible employee and retain any family and**

1 **medical leave insurance benefits accrued by the employee as long as**
2 **the employee is not employed by an employer outside this state.**

3 **“SECTION 5. Rules for the Oregon Paid Family and Medical Leave**
4 **Plan. Not later than September 1, 2020, the Oregon Paid Family and**
5 **Medical Leave Board shall adopt rules that:**

6 **“(1) Establish the process for automatic enrollment of eligible em-**
7 **ployees in the plan developed under section 3 of this 2019 Act.**

8 **“(2) Establish the process by which employers shall withhold em-**
9 **ployee contributions to the plan developed under section 3 of this 2019**
10 **Act as payroll deductions and remit the contributions to the Paid**
11 **Family and Medical Leave Insurance Fund established under section**
12 **10 of this 2019 Act.**

13 **“(3) Establish the process for an eligible employee to receive family**
14 **and medical leave insurance benefits under the plan developed under**
15 **section 3 of this 2019 Act.**

16 **“(4) Require employers that employ 25 or more employees to:**

17 **“(a) Restore an eligible employee who has returned to work to the**
18 **position of employment held by the employee when the employee’s**
19 **leave commenced if that position still exists, without regard to**
20 **whether the employer filled the position with a replacement worker**
21 **during the period of leave taken pursuant to the plan developed under**
22 **section 3 of this 2019 Act; or**

23 **“(b) Restore the eligible employee to any available equivalent posi-**
24 **tion with equivalent employment benefits, pay and other terms and**
25 **conditions of employment, if the position held by the employee at the**
26 **time the leave commenced no longer exists.**

27 **“(5) Require an employer to maintain, for the duration of a period**
28 **of family leave or medical leave, any health care benefits to which an**
29 **eligible employee was entitled prior to taking such leave, as if the**
30 **employee had continued in employment continuously from the date**

1 the employee commenced the leave until the date the family and
2 medical leave insurance benefits terminate.

3 “(6) Prohibit retaliation or discrimination against an individual
4 with respect to hire or tenure or any other term or condition of em-
5 ployment because the individual has inquired about family or medical
6 leave benefits or filed an application for benefits.

7 “(7) Establish penalties for the payment or overpayment of family
8 and medical leave insurance benefits as a result of fraud, misrepre-
9 sentation or willful nondisclosure on the part of an employee.

10 “(8) Establish a process for employers to apply for approval of an
11 employer-offered plan described under section 6 of this 2019 Act.

12 **“SECTION 6. Equivalent employer plans.** (1) An employer may apply
13 to the Oregon Paid Family and Medical Leave Board for approval of
14 an employer-offered plan that provides family and medical leave in-
15 surance benefits to eligible employees. An employer shall apply for
16 approval in the manner prescribed by the board by rule.

17 “(2) The board shall approve an employer plan that meets all of the
18 following requirements:

19 “(a) The plan is made available to all eligible employees who are
20 employed by the employer.

21 “(b) The benefits afforded to the employees who are covered under
22 the employer plan are equal to or greater than the amount of benefits,
23 including duration of leave, that an eligible employee would qualify for
24 under the family and medical leave plan developed by the board under
25 section 3 of this 2019 Act.

26 “(c) The plan requires employers that employ 25 or more employees
27 to restore an employee who takes family leave or medical leave to the
28 position of employment held by the employee when the employee’s
29 leave commenced, if that position still exists, or if the position no
30 longer exists, to restore the employee to any available equivalent po-

1 sition with equivalent employment benefits, pay and other terms and
2 conditions of employment.

3 “(d) The plan requires the employer to maintain, for the duration
4 of a period of family leave or medical leave, any health care benefits
5 to which an eligible employee was entitled prior to taking such leave,
6 as if the employee had continued in employment continuously from
7 the date the employee commenced the leave until the date the family
8 and medical leave insurance benefits terminate.

9 “(3) An employer may assume all or a part of the cost of a plan
10 approved under this section.

11 “(4) An employer may deduct employee contributions from the
12 wages of an eligible employee to finance the costs of the plan, provided
13 that the contribution amounts do not exceed the contribution amount
14 the eligible employee would pay under the plan developed under sec-
15 tion 3 of this 2019 Act.

16 “(5) An employer that offers a plan that has been approved by the
17 board under this section shall be deemed to have satisfied the re-
18 quirements under section 4 of this 2019 Act.

19 “(6) At any time that an eligible employee separates employment
20 with an employer that offers a plan under this section, the employee
21 is automatically considered to be enrolled in the plan developed under
22 section 3 of this 2019 Act.

23 **“SECTION 7. Enforcement and confidentiality. (1) Notwithstanding**
24 **ORS 183.635, the Director of the Department of Consumer and Business**
25 **Services shall establish a system for enforcement and appeal of con-**
26 **tested cases involving family and medical leave insurance benefit**
27 **claims under ORS chapter 183. In establishing the system, the director**
28 **may utilize any and all procedures and appeals mechanisms.**

29 “(2) The director shall implement procedures to ensure
30 confidentiality of all information related to any claims filed or appeals

1 taken to the maximum extent permitted by applicable laws.

2 “(3) All information in the records of the Department of Consumer
3 and Business Services pertaining to the administration of sections 1
4 to 17 of this 2019 Act:

5 “(a) Is confidential and for the exclusive use and information of the
6 director in administering sections 1 to 17 of this 2019 Act;

7 “(b) May not be used in any court action or in any proceeding
8 pending in the court unless the director or the State of Oregon is a
9 party to the action or proceeding or unless the action or proceeding
10 concerns the establishment, enforcement or modification of a support
11 obligation and support services are being provided by the Division of
12 Child Support of the Department of Justice or the district attorney
13 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
16 agreement, the director may disclose information to a public official
17 in the performance of the public official’s official duties administering
18 or enforcing laws within the public official’s authority and to an agent
19 or contractor of a public official. The public official shall agree to as-
20 sume responsibility for misuse of the information by the public
21 official’s agent or contractor.

22 “(5) At the discretion of the director, the director may disclose in-
23 formation to a contractor pursuant to a contract for actuarial ser-
24 vices. The contractor may disclose the information to an agent of the
25 contractor and shall agree to assume responsibility for misuse of the
26 information by the agent of the contractor.

27 **“SECTION 8. Coordination of leave. Family or medical leave taken**
28 **under sections 1 to 17 of this 2019 Act must be taken concurrently with**
29 **any leave that may be taken by an employee who is eligible for leave**
30 **under ORS 659A.150 to 659A.186 or under the federal Family and Med-**

1 ical Leave Act of 1993 (P.L. 103-3) for the same or similar purposes.

2 **“SECTION 9. Collective bargaining agreements. (1) Sections 1 to 17**
3 **of this 2019 Act do not diminish an employer’s obligation to comply**
4 **with a collective bargaining agreement, an employer policy or local,**
5 **state or federal law.**

6 **“(2) An eligible employee’s right to family and medical leave insur-**
7 **ance benefits under sections 1 to 17 of this 2019 Act may not be waived**
8 **in or diminished by a collective bargaining agreement entered into or**
9 **renewed, or an employee policy adopted or retained, after the effective**
10 **date of this 2019 Act.**

11 **“(3) Nothing in sections 1 to 17 of this 2019 Act requires the reo-**
12 **pening or renegotiation of a collective bargaining agreement, prior to**
13 **the date of expiration of the collective bargaining agreement, entered**
14 **into before the effective date of this 2019 Act.**

15 **“SECTION 10. Paid Family and Medical Leave Insurance Fund. (1)**
16 **The Paid Family and Medical Leave Insurance Fund is established in**
17 **the State Treasury, separate and distinct from the General Fund. The**
18 **Paid Family and Medical Leave Insurance Fund is declared to be a**
19 **trust fund for the uses and purposes set forth in sections 1 to 17 of this**
20 **2019 Act.**

21 **“(2) The fund consists of moneys deposited in the fund from em-**
22 **ployee contributions in the manner prescribed by the Oregon Paid**
23 **Family and Medical Leave Board pursuant to section 3 of this 2019 Act**
24 **and may include fees, revenue or other income deposited in the fund.**

25 **“(3)(a) The fund shall be used solely in the payment of benefits**
26 **under sections 1 to 17 of this 2019 Act and the payment of adminis-**
27 **trative costs and expenses that the Oregon Paid Family and Medical**
28 **Leave Board incurs in carrying out the duties of the board under**
29 **sections 1 to 17 of this 2019 Act.**

30 **“(b) The benefits shall be payable from the fund only to the extent**

1 that the contributions and moneys collected are available.

2 “(4) Interest earned by the fund shall be credited to the fund. All
3 moneys in the fund are continuously appropriated to the Department
4 of Consumer and Business Services for the purposes of carrying out
5 the duties of the board under sections 1 to 17 of this 2019 Act.

6 **“SECTION 11. Prerequisites to establishment of Oregon Paid Family
7 and Medical Leave Plan.** Before establishing a plan developed under
8 section 3 of this 2019 Act, the Oregon Paid Family and Medical Leave
9 Board shall:

10 “(1) Conduct a labor market, cost-benefit and legal analysis to de-
11 termine:

12 “(a) The feasibility of the plan.

13 “(b) Whether and to what extent plans with the characteristics de-
14 scribed in section 4 of this 2019 Act currently exist in the private
15 market.

16 “(2) Perform an actuarial analysis of the plan.

17 **“SECTION 12. Annual reports.** The Oregon Paid Family and Medical
18 Leave Board shall report in each calendar year to the interim com-
19 mittees of the Legislative Assembly related to business and workforce
20 detailing the board’s progress and activities.

21 **“SECTION 13. Preemption.** Sections 1 to 17 of this 2019 Act super-
22 sede and preempt any rule, regulation, code or ordinance of any unit
23 of a local government, as defined in ORS 174.116, relating to paid
24 family and medical leave.

25 **“SECTION 14. State agencies to assist with outreach, technical as-
26 sistance and compliance services.** The Secretary of State, the Depart-
27 ment of Revenue, the Employment Department, the Bureau of Labor
28 and Industries and any other agency that enters into an intergovern-
29 mental agreement with the Oregon Paid Family and Medical Leave
30 Board to provide outreach, technical assistance or compliance services

1 shall collaborate to provide the outreach, technical assistance or
2 compliance services to the board.

3 **“SECTION 15. The Oregon Paid Family and Medical Leave Board**
4 **shall report to a committee or interim committee of the Legislative**
5 **Assembly related to business and workforce on or before February 15,**
6 **2020. The report must include:**

7 **“(1) The results of the analyses conducted by the board under**
8 **sections 3 and 11 of this 2019 Act.**

9 **“(2) An analysis of potential costs to employers associated with**
10 **providing automatic payroll deductions for participation in the plan**
11 **developed under section 3 of this 2019 Act, and recommendations on**
12 **how to eliminate or reduce those costs through incentives, tax credits**
13 **or other means.**

14 **“(3) A timeline for developing and establishing the plan developed**
15 **under section 3 of this 2019 Act, providing that eligible employees may**
16 **begin making contributions as required under section 16 of this 2019**
17 **Act.**

18 **“(4) An overview of any contracts entered into by the board in the**
19 **performance of its duties.**

20 **“SECTION 16. The Oregon Paid Family and Medical Leave Board**
21 **shall establish the paid family and medical leave plan developed under**
22 **section 3 of this 2019 Act such that eligible employees may begin**
23 **making contributions as payroll deductions to the plan no later than**
24 **January 1, 2021.**

25 **“SECTION 17. Timeline of initial appointments to board. (1) The**
26 **Governor, the President of the Senate and the Speaker of the House**
27 **of Representatives shall first make appointments to the Oregon Paid**
28 **Family and Medical Leave Board for terms of office beginning on De-**
29 **cember 31, 2019.**

30 **“(2) Notwithstanding the term of office specified in section 2 of this**

1 **2019 Act, of the members first appointed to the board by the Governor:**

2 **“(a) Two shall serve for a term ending August 31, 2021.**

3 **“(b) Two shall serve for a term ending August 31, 2022.**

4 **“(c) Two shall serve for a term ending August 31, 2023.**

5 **“SECTION 18. Section 19 of this 2019 Act is added to and made a**
6 **part of ORS 657.115 to 657.140.**

7 **“SECTION 19. Wages; exclusion of payment to replacement em-**
8 **ployees. As used in ORS 657.105, ‘wages’ includes the amount of any**
9 **payment made to an individual who was hired to temporarily fill the**
10 **position of a permanent employee who is taking leave and who is re-**
11 **ceiving family and medical leave insurance benefits under sections 1**
12 **to 17 of this 2019 Act.**

13 **“SECTION 20. ORS 659A.153 is amended to read:**

14 **“659A.153. (1) The requirements of ORS 659A.150 to 659A.186 apply [*only*]**
15 **to employers who employ [25] **one** or more persons in the State of Oregon**
16 **for each working day during each of 20 or more calendar workweeks in the**
17 **year in which the leave is to be taken or in the year immediately preceding**
18 **the year in which the leave is to be taken.**

19 **“(2) The requirements of ORS 659A.150 to 659A.186 do not apply to any**
20 **employer who offers to an eligible employee a nondiscriminatory cafeteria**
21 **plan, as defined by section 125 of the Internal Revenue Code of 1986, pro-**
22 **viding, as one of its options, employee leave at least as generous as the leave**
23 **required by ORS 659A.150 to 659A.186.**

24 **“SECTION 21. ORS 657.100 is amended to read:**

25 **“657.100. (1) An individual is deemed ‘unemployed’ in any week during**
26 **which the individual performs no services and with respect to which no**
27 **remuneration for services performed is paid or payable to the individual, or**
28 **in any week of less than full-time work if the remuneration paid or payable**
29 **to the individual for services performed during the week is less than the**
30 **individual’s weekly benefit amount.**

