

House Bill 2138

Sponsored by Representative MANNIX (Pre-session filed.)

SUMMARY

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

Repeals provisions of paid family and medical leave insurance program.

Creates income or corporate excise tax credit allowed to employer that provides certain family and medical leave benefits to employees. Creates income or corporate excise tax credit allowed to smaller employer to compensate for paid time off provided to employees.

Applies to all tax years beginning on or after January 1, 2024.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to optionally provided employment benefits; creating new provisions; amending ORS
3 314.772, 318.031, 657.471, 659A.162 and 659A.885; repealing ORS 657B.005, 657B.010, 657B.015,
4 657B.020, 657B.025, 657B.030, 657B.040, 657B.050, 657B.060, 657B.070, 657B.080, 657B.090,
5 657B.100, 657B.110, 657B.120, 657B.130, 657B.150, 657B.175, 657B.180, 657B.190, 657B.200,
6 657B.210, 657B.220, 657B.230, 657B.240, 657B.250, 657B.260, 657B.280, 657B.290, 657B.300,
7 657B.310, 657B.320, 657B.330, 657B.340, 657B.350, 657B.360, 657B.370, 657B.380, 657B.390,
8 657B.400, 657B.410, 657B.420, 657B.430, 657B.440, 657B.460, 657B.470, 657B.480, 657B.900,
9 657B.910 and 657B.920 and sections 49, 49a, 50, 51, 60, 62 and 63, chapter 700, Oregon Laws
10 2019; and prescribing an effective date.

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

12 **SECTION 1. Sections 2 to 4 of this 2023 Act are added to and made a part of ORS chapter**
13 **315.**

14 **SECTION 2. As used in sections 2 to 4 of this 2023 Act:**

15 (1) **“Child” means:**

16 (a) **A biological child, adopted child, stepchild or foster child of an employee or of the**
17 **employee’s spouse or domestic partner;**

18 (b) **A person who is or was a legal ward of an employee or of the employee’s spouse or**
19 **domestic partner; or**

20 (c) **A person who is or was in a relationship of in loco parentis with an employee or with**
21 **the employee’s spouse or domestic partner.**

22 (2) **“Domestic partner” means an individual joined in a domestic partnership.**

23 (3) **“Domestic partnership” has the meaning given that term in ORS 106.310.**

24 (4)(a) **“Employee” means:**

25 (A) **An individual performing services for an employer for remuneration or under any**
26 **contract of hire, written or oral, express or implied.**

27 (B) **A home care worker as defined in ORS 410.600.**

28 (b) **“Employee” does not include:**

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

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

3 (C) A participant in a work-study program that provides students in secondary or post-
4 secondary educational institutions with employment opportunities for financial assistance or
5 vocational training.

6 (D) A railroad worker exempted under the federal Railroad Unemployment Insurance
7 Act.

8 (E) A volunteer.

9 (5) "Family and medical leave insurance benefits" means wage replacement benefits that
10 are available to employees under the terms of an employer policy or plan for family leave,
11 medical leave or safe leave.

12 (6)(a) "Family leave" means leave from work taken by an employee:

13 (A) To care for and bond with a child during the first year after the child's birth or
14 during the first year after the placement of the child through foster care or adoption; or

15 (B) To care for a family member with a serious health condition.

16 (b) "Family leave" does not mean:

17 (A) Leave described in ORS 659A.159 (1)(d);

18 (B) Leave described in ORS 659A.159 (1)(e); or

19 (C) Leave authorized under ORS 659A.093.

20 (7) "Family member" means:

21 (a) The spouse of an employee;

22 (b) A child of an employee or the child's spouse or domestic partner;

23 (c) A parent of an employee or the parent's spouse or domestic partner;

24 (d) A sibling or stepsibling of an employee or the sibling's or stepsibling's spouse or do-
25 mestic partner;

26 (e) A grandparent of an employee or the grandparent's spouse or domestic partner;

27 (f) A grandchild of an employee or the grandchild's spouse or domestic partner;

28 (g) The domestic partner of an employee; or

29 (h) Any individual related by blood or affinity whose close association with an employee
30 is the equivalent of a family relationship.

31 (8) "Job-protected leave" means leave from work that an employee is entitled to take
32 without loss of the position of employment held by the employee when the leave commenced.

33 (9) "Medical leave" means leave from work taken by an employee that is made necessary
34 by the individual's own serious health condition.

35 (10) "Parent" means:

36 (a) A biological parent, adoptive parent, stepparent or foster parent of an employee;

37 (b) A person who was a foster parent of an employee when the employee was a minor;

38 (c) A person designated as the legal guardian of an employee at the time the employee
39 was a minor or required a legal guardian;

40 (d) A person with whom an employee was or is in a relationship of in loco parentis; or

41 (e) A parent of an employee's spouse or domestic partner who meets a description under
42 paragraphs (a) to (d) of this subsection.

43 (11) "Safe leave" means leave taken for any purpose described in ORS 659A.272.

44 (12) "Serious health condition" has the meaning given that term in ORS 659A.150.

45 **SECTION 3.** (1) A credit against taxes that are otherwise due under ORS chapter 316 or,

1 if the taxpayer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer that
 2 during the tax year:

3 (a) Employs 25 or more employees; and

4 (b) Has adopted a policy or benefit plan that provides family and medical leave insurance
 5 benefits to employees in accordance with the requirements of subsection (2) of this section.

6 (2) In order for a taxpayer to claim a credit under this section, the taxpayer's adopted
 7 policy or benefit plan for family and medical leave insurance benefits must provide employees
 8 with up to a total of 12 weeks of job-protected leave within a 12-month period, taken for any
 9 of the following purposes, in any combination:

10 (a) Family leave;

11 (b) Medical leave; or

12 (c) Safe leave.

13 (3) The amount of the credit allowed under this section shall equal the total amount paid
 14 during the tax year by the taxpayer to employees of the taxpayer to replace wages or salary
 15 for paid leave periods described in subsection (2) of this section.

16 (4) Prior to claiming the credit allowed under this section, a taxpayer is required to re-
 17 ceive written certification of eligibility from the Employment Department.

18 (5) The credit allowed under this section may not exceed the tax liability of the taxpayer
 19 for the tax year.

20 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer
 21 in a particular tax year may be carried forward and offset against the taxpayer's tax liability
 22 for the next succeeding tax year. Any credit remaining unused in the next succeeding tax
 23 year may be carried forward and used in the second succeeding tax year, and likewise any
 24 credit not used in that second succeeding tax year may be carried forward and used in the
 25 third succeeding tax year but may not be carried forward for any tax year thereafter.

26 (7) If a change in the tax year of the taxpayer occurs as described in ORS 314.085, or if
 27 the Department of Revenue terminates the taxpayer's tax year under ORS 314.440, the credit
 28 allowed under this section shall be prorated or computed in a manner consistent with ORS
 29 314.085.

30 (8) The Employment Department shall adopt rules for the purposes of this section, in-
 31 cluding policies and procedures for certifying taxpayers as eligible for the credit allowed un-
 32 der this section as required in subsection (4) of this section.

33 (9) The Employment Department shall provide information to the Department of Revenue
 34 about all taxpayers that are eligible for a tax credit under this section, if required as pro-
 35 vided under ORS 315.058.

36 **SECTION 4.** (1) A credit against taxes that are otherwise due under ORS chapter 316 or,
 37 if the taxpayer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer that
 38 during the tax year employs fewer than 25 employees and has adopted a policy to provide
 39 employees with up to 14 days per year of paid sick time, paid vacation leave, paid personal
 40 time off or any other paid time off program that permits an employee to take up to 14 days
 41 off from work, without loss of pay.

42 (2) The amount of the credit allowed under this section shall equal the total amount paid
 43 during the tax year by the taxpayer to employees of the taxpayer to replace wages or salary
 44 for paid time off periods of the types listed in subsection (1) of this section, but in no event
 45 may the amount attributable to any one employee in this calculation exceed \$2,150 for the

1 **tax year.**

2 (3) **Prior to claiming the credit allowed under this section, a taxpayer is required to re-**
 3 **ceive written certification of eligibility from the Employment Department.**

4 (4) **The credit allowed under this section may not exceed the tax liability of the taxpayer**
 5 **for the tax year.**

6 (5) **Any tax credit otherwise allowable under this section that is not used by the taxpayer**
 7 **in a particular tax year may be carried forward and offset against the taxpayer’s tax liability**
 8 **for the next succeeding tax year. Any credit remaining unused in the next succeeding tax**
 9 **year may be carried forward and used in the second succeeding tax year, and likewise any**
 10 **credit not used in that second succeeding tax year may be carried forward and used in the**
 11 **third succeeding tax year but may not be carried forward for any tax year thereafter.**

12 (6) **If a change in the tax year of the taxpayer occurs as described in ORS 314.085, or if**
 13 **the Department of Revenue terminates the taxpayer’s tax year under ORS 314.440, the credit**
 14 **allowed under this section shall be prorated or computed in a manner consistent with ORS**
 15 **314.085.**

16 (7) **The Employment Department shall adopt rules for the purposes of this section, in-**
 17 **cluding policies and procedures for certifying taxpayers as eligible for the credit allowed un-**
 18 **der this section as required in subsection (3) of this section.**

19 (8) **The Employment Department shall provide information to the Department of Revenue**
 20 **about all taxpayers that are eligible for a tax credit under this section, if required as pro-**
 21 **vided under ORS 315.058.**

22 **SECTION 5.** ORS 314.772, as amended by section 11, chapter 34, Oregon Laws 2022, and section
 23 15, chapter 115, Oregon Laws 2022, is amended to read:

24 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to a
 25 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
 26 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
 27 allowable to the shareholders of the S corporation.

28 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.763, on
 29 income of the shareholder of an S corporation, there shall be taken into account the shareholder’s
 30 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
 31 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
 32 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
 33 manner prescribed under section 1377(a) of the Internal Revenue Code.

34 (3) The character of any item included in a shareholder’s pro rata share under subsection (2)
 35 of this section shall be determined as if such item were realized directly from the source from which
 36 realized by the corporation, or incurred in the same manner as incurred by the corporation.

37 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
 38 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 39 316.117, then that provision shall apply to the nonresident shareholder.

40 (5) As used in this section, “business tax credit” means the following credits: ORS 315.104
 41 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
 42 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture
 43 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS
 44 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee
 45 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution

1 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy
2 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-
3 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-
4 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),
5 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS
6 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS
7 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643
8 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account
9 contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone
10 facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research
11 expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774,
12 Oregon Laws 2013 (alternative fuel vehicle contributions), section 2, chapter 34, Oregon Laws 2022
13 (small forest option), [and] section 8, chapter 115, Oregon Laws 2022 (agricultural overtime pay),
14 **section 3 of this 2023 Act (paid family and medical leave) and section 4 of this 2023 Act (paid**
15 **time off).**

16 **SECTION 6.** ORS 318.031, as amended by section 12, chapter 34, Oregon Laws 2022, and section
17 16, chapter 115, Oregon Laws 2022, is amended to read:

18 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
19 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
20 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
21 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,
22 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and
23 315.643 and section 2, chapter 34, Oregon Laws 2022, [and] section 8, chapter 115, Oregon Laws
24 2022, **and sections 3 and 4 of this 2023 Act** (all only to the extent applicable to a corporation) and
25 ORS chapter 317.

26 **SECTION 7.** **Section 2 to 4 of this 2023 Act apply to all tax years beginning on or after**
27 **January 1, 2024.**

28 **SECTION 8.** **Any moneys that remain in the Paid Family and Medical Leave Insurance**
29 **Fund on the effective date of this 2023 Act that are unexpended, unobligated and not subject**
30 **to any conditions shall revert to the General Fund.**

31 **SECTION 9.** ORS 657.471, as amended by section 55, chapter 700, Oregon Laws 2019, is
32 amended to read:

33 657.471. (1) Except as otherwise provided in this section, benefits paid to an eligible individual
34 shall be charged to each of the individual's employers during the base year in the same proportion
35 that the wages paid by each employer to the individual during the base year bear to the wages paid
36 by all employers to that individual during that year.

37 (2) The account of an employer, other than a political subdivision electing to pay taxes under
38 ORS 657.509, may not be charged with benefits paid an unemployed individual in excess of one-third
39 of the base year wages paid that individual while in the employ of the employer.

40 (3) Benefits paid to an individual for unemployment immediately after the expiration of a period
41 of disqualification for having left the employment of an employer voluntarily without good cause
42 may not be charged to the employer.

43 (4) Benefits paid to an individual for unemployment immediately after the expiration of a period
44 of disqualification for having been discharged by an employer for misconduct may not be charged
45 to the employer.

1 (5) Benefits paid without any disqualification to an individual may not be charged to an em-
 2 ployer of the individual for the immediate period of unemployment if:

3 (a) The individual left the employment of the employer voluntarily for good cause not attribut-
 4 able to the employer; or

5 (b) The employer discharged the individual because the individual was unable to satisfy a job
 6 prerequisite required by law or administrative rule.

7 (6) If it is determined under the provisions of subsection (3), (4) or (5) of this section that bene-
 8 fits paid to an individual may not be charged to an employer, the employer's account may not be
 9 charged for any benefits paid for any subsequent period or periods of unemployment during the
 10 individual's affected benefit year or during any benefit year beginning within 52 weeks subsequent
 11 to the affected benefit year.

12 (7)(a) A base-year employer that is not otherwise eligible for relief of charges for benefits under
 13 this section and that receives notification of an initial valid determination of a claim may request
 14 relief of charges if the claim is made by an individual who:

15 (A) Left the employment of the employer voluntarily and not for reasons attributable to the
 16 employer;

17 (B) Was disqualified for the individual's most recent separation from the employer by a deter-
 18 mination of the Director of the Employment Department that the individual has been discharged for
 19 misconduct connected with the employment for the employer; or

20 (C) Was discharged for reasons that would be disqualifying under ORS 657.176 (2)(a), (b), (f), (g)
 21 or (h).

22 (b)(A) A request under paragraph (a)(A) of this subsection:

23 (i) Must advise the director in writing of the date on which the individual left employment, state
 24 that the individual left voluntarily and not for reasons attributable to the employer and give the
 25 reason for which the individual left employment.

26 (ii) May not be granted if the individual was reemployed by the employer prior to the filing of
 27 the initial valid claim.

28 (B) A request under paragraph (a)(C) of this subsection must specify the date of the discharge
 29 and the reasons why the employer believes the discharge was for reasons that would be disqualifying
 30 under ORS 657.176 (2)(a), (b), (f), (g) or (h).

31 (c) A request for relief under this subsection must be sent to the department within 30 days after
 32 the date on which the notice provided for under ORS 657.266 is mailed or delivered to the employer.

33 (d) Upon receipt of the request from the employer, the director shall review the information
 34 provided by the employer and determine whether the employer is entitled to relief of charges for
 35 benefits paid to the individual during the benefit year. If the director determines that the employer
 36 is entitled to relief of charges, the director shall grant the relief.

37 (e)(A) The determination of the director under paragraph (a)(A) and (C) of this subsection is final
 38 in all cases unless an application for hearing is filed within 20 days after delivery of the determi-
 39 nation, or, if mailed, within 20 days after the determination was mailed to the employer's last-known
 40 address.

41 (B) When a request for hearing has been timely filed, an administrative law judge shall be as-
 42 signed to conduct a hearing.

43 (C) After the administrative law judge has afforded all parties an opportunity for a fair hearing,
 44 the administrative law judge shall affirm or reverse the determination and promptly notify all par-
 45 ties entitled to notice of the decision and the reasons for the decision.

1 (D) Decisions of the administrative law judge under this subsection are final and may be
 2 judicially reviewed as provided in ORS 657.684 to the extent applicable.

3 (8)(a) If the director finds that an employer or the employer’s agent, in submitting facts under
 4 subsection (7) of this section, willfully makes a false statement or representation or willfully fails
 5 to report a material fact concerning the termination of an individual’s employment, the director
 6 shall make a determination charging the employer’s reserve account not less than two nor more
 7 than 10 times the weekly benefit amount of the claimant or claimants.

8 (b) The director shall give notice to the employer of the determination under this subsection and
 9 the determination of the director is final unless an application for hearing is filed in the manner
 10 provided for in subsection (7)(e) of this section.

11 (9) Benefits paid to an individual may not be charged to a base-year employer if:

12 (a) The employer furnished part-time work to the individual during the base year;

13 (b) The individual has become eligible for benefits because of loss of employment with one or
 14 more other employers;

15 (c) The employer has continued to furnish part-time work to the individual in substantially the
 16 same amount as during the individual’s base year; and

17 (d) The employer requests relief of charges within 30 days of the date the notice provided for
 18 in ORS 657.266 is mailed or delivered to the employer.

19 *[(10) Benefits paid to an individual for unemployment due to the return of a covered individual,*
 20 *as defined in ORS 657B.010, who was temporarily replaced by the individual for a period of family*
 21 *leave, medical leave or safe leave under ORS chapter 657B may not be charged to the employer of the*
 22 *covered individual.]*

23 *[(11)]* (10) Notwithstanding any other provision of this section, benefits paid to an individual
 24 shall be charged to an employer’s account if:

25 (a) The employer or the employer’s agent fails to respond timely or adequately to a request from
 26 the Employment Department for information relating to the claim for benefits;

27 (b) The failure to respond causes an overpayment of benefits to the claimant; and

28 (c) The employer or the employer’s agent has a pattern of failing to respond timely or ade-
 29 quately to requests from the department for information relating to claims for benefits.

30 **SECTION 10.** ORS 659A.162, as amended by section 56, chapter 700, Oregon Laws 2019, and
 31 section 5, chapter 182, Oregon Laws 2021, is amended to read:

32 659A.162. (1) Except as specifically provided by ORS *[657B.020 and]* 659A.150 to 659A.186, an
 33 eligible employee is entitled to up to a total of 12 weeks of family leave within any one-year period.

34 (2)(a) Except as provided by paragraph (b) of this subsection, an eligible employee is entitled to
 35 a total of two weeks of family leave for the purposes described in ORS 659A.159 (1)(e).

36 (b) An eligible employee is entitled to the period of leave described in paragraph (a) of this
 37 subsection upon the death of each family member of the employee within any one-year period, except
 38 that leave taken as provided by this subsection may not exceed the total period of family leave au-
 39 thorized by subsection (1) of this section.

40 (c) A covered employer may not require an eligible employee to take multiple periods of leave
 41 described in ORS 659A.159 (1)(e) concurrently if more than one family member of the employee dies
 42 during the one-year period.

43 (d) All leave taken for the purposes described in ORS 659A.159 (1)(e) shall be counted toward
 44 the total period of family leave authorized by subsection (1) of this section.

45 (3)(a) In addition to the 12 weeks of family leave authorized by subsection (1) of this section,

1 an eligible employee may take a total of 12 weeks of leave within any one-year period for an illness,
 2 injury or condition related to the eligible employee’s own pregnancy or childbirth that disables the
 3 eligible employee from performing any available job duties offered by the covered employer.

4 (b) An eligible employee who takes 12 weeks of family leave within a one-year period for the
 5 purpose specified in ORS 659A.159 (1)(a) may take up to an additional 12 weeks of leave within the
 6 one-year period for the purpose specified in ORS 659A.159 (1)(d).

7 (4) When two or more family members work for the same covered employer, the eligible em-
 8 ployees may not take concurrent family leave unless:

9 (a) One employee needs to care for another employee who is a family member and who is suf-
 10 fering from a serious health condition;

11 (b) One employee needs to care for a child who has a serious health condition while another
 12 employee who is a family member is also suffering from a serious health condition; or

13 (c) The employees are taking leave described in ORS 659A.159 (1)(e).

14 (5) An eligible employee may take family leave for the purpose specified in ORS 659A.159 (1)(a)
 15 in two or more nonconsecutive periods of leave only with the approval of the employer.

16 (6) Leave need not be provided to an eligible employee by a covered employer for the purpose
 17 specified in ORS 659A.159 (1)(d) if another family member is available to care for the child.

18 (7) A covered employer may not reduce the amount of family leave available to an eligible em-
 19 ployee under this section by any period the employee is unable to work because of a disabling
 20 compensable injury.

21 (8)(a) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when
 22 family leave for a serious health condition of an eligible employee or a family member of the eligible
 23 employee may be taken intermittently or by working a reduced workweek. Rules adopted by the
 24 commissioner under this paragraph shall allow taking of family leave on an intermittent basis or by
 25 use of a reduced workweek to the extent permitted by federal law and to the extent that taking
 26 family leave on an intermittent basis or by use of a reduced workweek does not result in the loss
 27 of an eligible employee’s exempt status under the federal Fair Labor Standards Act.

28 (b) The commissioner shall adopt rules governing when family leave for the purposes described
 29 in ORS 659A.159 (1)(e) may be taken to the extent permitted by federal law and to the extent that
 30 taking family leave on an intermittent basis does not result in the loss of an eligible employee’s
 31 exempt status under the federal Fair Labor Standards Act.

32 **SECTION 11.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
 33 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
 34 Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, section 13, chapter 701, Oregon Laws
 35 2019, section 46, chapter 367, Oregon Laws 2021, and section 9, chapter 99, Oregon Laws 2022, is
 36 amended to read:

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

cept as provided in subsection (3) of this section:

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

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

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

(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475C.285, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, [657B.060 and 657B.070,] 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421 or section 5, chapter 99, Oregon Laws 2022; or

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

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 243.323, 652.220, 652.355, 653.547, 653.549, [657B.060 and 657B.070,] 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, 659A.355, 659A.357, 659A.370 or 659A.421:

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

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

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

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

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

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

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

(5) In any action under subsection (1) of this section alleging a violation of ORS 653.060 or 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater.

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

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

(8) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place

1 or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an
 2 action under this subsection:

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

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

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

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

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

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

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

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

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

26 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 27 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 28 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 29 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 30 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 31 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 32 appealing an adverse decision of the trial court.

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

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

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

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

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

43 **SECTION 12.** (1) **ORS 657B.005, 657B.010, 657B.015, 657B.020, 657B.025, 657B.030, 657B.040,**
 44 **657B.050, 657B.060, 657B.070, 657B.080, 657B.090, 657B.100, 657B.110, 657B.120, 657B.130,**
 45 **657B.150, 657B.175, 657B.180, 657B.190, 657B.200, 657B.210, 657B.220, 657B.230, 657B.240,**

1 657B.250, 657B.260, 657B.280, 657B.290, 657B.300, 657B.310, 657B.320, 657B.330, 657B.340,
2 657B.350, 657B.360, 657B.370, 657B.380, 657B.390, 657B.400, 657B.410, 657B.420, 657B.430,
3 657B.440, 657B.460, 657B.470, 657B.480, 657B.900, 657B.910 and 657B.920, and sections 49 and
4 49a, chapter 700, Oregon Laws 2019, are repealed.

5 (2) Section 50, chapter 700, Oregon Laws 2019, as amended by section 2, chapter 639,
6 Oregon Laws 2021, is repealed.

7 (3) Section 51, chapter 700, Oregon Laws 2019, as amended by section 3, chapter 639,
8 Oregon Laws 2021, is repealed.

9 (4) Section 60, chapter 700, Oregon Laws 2019, as amended by section 4, chapter 639,
10 Oregon Laws 2021, is repealed.

11 (5) Section 62, chapter 700, Oregon Laws 2019, as amended by section 5, chapter 639,
12 Oregon Laws 2021, is repealed.

13 (6) Section 63, chapter 700, Oregon Laws 2019, as amended by section 1, chapter 30,
14 Oregon Laws 2021, and section 6a, chapter 639, Oregon Laws 2021, is repealed.

15 **SECTION 13.** This 2023 Act takes effect on the 91st day after the date on which the 2023
16 regular session of the Eighty-second Legislative Assembly adjourns sine die.

17