

House Bill 3336

Sponsored by Representatives HACK, BUEHLER; Representatives ESQUIVEL, LEWIS, REARDON

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**.

Permits individual to create family medical leave savings account with financial institution to pay or reimburse qualified beneficiary's wage loss during family medical leave of absence from work. Allows employer or other person to contribute to account.

Allows subtraction from account holder's federal taxable income for amounts contributed to family medical leave savings account during each tax year. Exempts from taxation amount of interest and other income earned on account. Allows tax credit for employer or other person to voluntarily contribute funds to account. Provides that withdrawals for unapproved purposes are taxable income to account holder.

Applies to tax years beginning on or after January 1, 2018, and before January 1, 2024.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to family medical leave savings accounts; creating new provisions; amending ORS 314.752
3 and 318.031; and prescribing an effective date.

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

SECTION 1. As used in sections 1 to 8 of this 2017 Act:

6 (1) "Account holder" means an individual who establishes, individually or jointly with one
7 or more other individuals, a family medical leave savings account.

8 (2) "Employer verification" means a written statement by the employer of an employee
9 verifying that:

10 (a) The employee was absent from work for reasons specified in ORS 659A.150 to 659A.186
11 or the federal Family and Medical Leave Act of 1993, as amended and in effect on the effec-
12 tive date of this 2017 Act; and

13 (b) The employee was not paid for work missed under paragraph (a) of this subsection.

14 (3) "Family medical leave" means leave taken under ORS 659A.150 to 659A.186 or the
15 federal Family and Medical Leave Act of 1993, as amended and in effect on the effective date
16 of this 2017 Act.

17 (4) "Family medical leave savings account" or "account" means an account with a fi-
18 nancial institution that an account holder designates as a family medical leave savings ac-
19 count on the account holder's Oregon income tax return for the purpose of paying or
20 reimbursing an employee for lost wages due to family medical leave.

21 (5) "Financial institution" means a bank, trust company, commercial bank, national
22 bank, savings bank, savings and loan, thrift institution, credit union, insurance company,
23 trust company, mutual fund, investment firm or other similar entity authorized to do busi-
24 ness in this state.

25 (6) "Qualified beneficiary" means an employee who qualifies for and takes family medical
26 leave under ORS 659A.150 to 659A.186 or the federal Family and Medical Leave Act, as
27 amended and in effect on the effective date of this 2017 Act, and who is designated as the

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 qualified beneficiary by the account holder.

2 **SECTION 2.** (1) An individual may create an account with a financial institution and
 3 designate the account as a family medical leave savings account to be used to pay or reim-
 4 burse a qualified beneficiary for wages lost due to family medical leave.

5 (2) An account holder must designate, no later than April 15 of the year following the tax
 6 year during which the account is established, an individual as the qualified beneficiary of the
 7 family medical leave savings account. The account holder may designate the account holder
 8 as the qualified beneficiary and may change the designated qualified beneficiary at any time.
 9 An account may not have more than one qualified beneficiary at any one time.

10 (3) An individual may jointly own a family medical leave savings account with another
 11 person if the joint account holders file a joint income tax return.

12 (4) An individual may be the account holder of more than one family medical leave
 13 savings account. An account holder may not hold multiple accounts that designate the same
 14 qualified beneficiary.

15 (5) An individual may be designated as the qualified beneficiary of more than one family
 16 medical leave savings account.

17 (6) Only cash and marketable securities may be contributed to a family medical leave
 18 savings account. Persons other than the account holder may contribute funds to a family
 19 medical leave savings account.

20 (7) Total annual contributions to a family medical leave savings account may not exceed
 21 \$_____ for an account holder who files an individual tax return or \$_____ for joint account
 22 holders who file a joint return.

23 **SECTION 3.** (1) The account holder may not use funds held in a family medical leave
 24 savings account to pay expenses of administering the account, except that a service fee may
 25 be deducted from the account by a financial institution in which the account is held.

26 (2) The account holder shall:

27 (a) Submit to the Department of Revenue with the account holder's Oregon income tax
 28 return:

29 (A) On a form or forms prepared by the Department of Revenue under section 8 of this
 30 2017 Act, detailed information regarding the family medical leave savings account, including
 31 a list of transactions for the account during the tax year;

32 (B) On a form created by the Bureau of Labor and Industries under section 9 of this 2017
 33 Act, employer verification; and

34 (C) The Internal Revenue Service Form 1099 issued by the financial institution for the
 35 account; and

36 (b) Submit to the Department of Revenue, upon a withdrawal of funds from a family
 37 medical leave savings account, a detailed description of the eligible costs toward which the
 38 account funds were applied and a statement of the amount of funds remaining in the ac-
 39 count, if any.

40 (3) Without penalty, an account holder may withdraw all or part of the funds from a
 41 family medical leave savings account, if the funds are deposited in a new family medical leave
 42 savings account held by a different financial institution or the same financial institution
 43 within 90 days of the date of the withdrawal.

44 **SECTION 4.** (1) A financial institution is not required to:

45 (a) Designate an account as a family medical leave savings account, or designate the

1 qualified beneficiaries of an account, in the financial institution's account contracts, systems
 2 or records or in any other way;

3 (b) Track the use of money withdrawn from a family medical leave savings account;

4 (c) Allocate funds in a family medical leave savings account among joint account holders
 5 or different qualified beneficiaries; or

6 (d) Report any information to the Department of Revenue, or any other governmental
 7 agency, that is not otherwise required by law.

8 (2) A financial institution is not responsible or liable for:

9 (a) Determining or ensuring that an account satisfies the requirements to be a family
 10 medical leave savings account;

11 (b) Determining or ensuring that funds in a family medical leave savings account are
 12 used for eligible costs; or

13 (c) Reporting or remitting taxes or penalties related to the use of a family medical leave
 14 savings account.

15 **SECTION 5.** (1) Except as provided in sections 6 and 7 of this 2017 Act, and in addition
 16 to the other modifications to federal taxable income contained in this chapter, there shall
 17 be subtracted from federal taxable income the amount of funds contributed to an account
 18 holder's family medical leave savings account established under section 2 of this 2017 Act
 19 during the tax year, not to exceed \$_____ for an account holder who files an individual tax
 20 return or \$_____ for joint account holders who file a joint return.

21 (2) Except as otherwise provided in section 6 and 7 of this 2017 Act, earnings, including
 22 interest and other income on the principal in the family medical leave savings account, dur-
 23 ing the tax year are exempt from taxation until withdrawn by the taxpayer.

24 (3) A person other than the account holder who deposits funds in a family medical leave
 25 savings account may claim a credit against taxes otherwise due as provided for in section
 26 13 of this 2017 Act.

27 **SECTION 6.** Except as authorized by section 7 of this 2017 Act, if an account holder
 28 withdraws funds from a family medical leave savings account for a purpose other than family
 29 medical leave:

30 (1) The withdrawn funds must be included in the account holder's taxable income; and

31 (2) The account holder shall pay a penalty to the Department of Revenue equal to 10
 32 percent of the amount withdrawn. The penalty does not apply to funds withdrawn from an
 33 account that were:

34 (a) Withdrawn by reason of the account holder's death;

35 (b) A disbursement of assets of the account pursuant to a filing for protection under the
 36 United States Bankruptcy Code, 11 U.S.C. 101 et seq.; or

37 (c) Transferred from an account established under section 2 of this 2017 Act into another
 38 account established in accordance with section 3 (3) of this 2017 Act.

39 **SECTION 7.** At any time, an account holder may withdraw amounts in a family leave
 40 medical savings account to deposit into a savings network account for higher education, an
 41 individual retirement account, a retirement plan or other tax advantaged savings established
 42 under the Internal Revenue Code, other than a Roth individual retirement account described
 43 in section 408A of the Internal Revenue Code, if the deposit is made within 90 days of the
 44 date of the withdrawal.

45 **SECTION 8.** The Department of Revenue shall prepare forms for:

1 (1) The designation of an account with a financial institution to serve as a family medical
2 leave savings account;

3 (2) The designation of a qualified beneficiary of a family medical leave savings account;
4 and

5 (3) The annual submission by an account holder to the department of information the
6 department requires regarding the family medical leave savings account, including but not
7 limited to a list of transactions for the account during the tax year in accordance with sec-
8 tion 3 of this 2017 Act and any supporting documentation that has been identified by the fi-
9 nancial institution or the department as being required to be maintained by the account
10 holder.

11 **SECTION 9.** The Bureau of Labor and Industries shall prepare a form for an employer
12 to provide to an employee, upon written request, employer verification for the purpose of
13 verifying leave taken under the family medical leave savings account program established
14 under sections 1 to 8 of this 2017 Act.

15 **SECTION 10.** The Bureau of Labor and Industries, in consultation with the Department
16 of Revenue, shall prepare and distribute informational materials on the family medical leave
17 savings account program established under sections 1 to 8 of this 2017 Act to financial in-
18 stitutions and employee organizations to publicize the availability of the program.

19 **SECTION 11.** The Department of Revenue may adopt rules to implement and maintain
20 sections 1 to 8 of this 2017 Act.

21 **SECTION 12.** Section 13 of this 2017 Act is added to and made a part of ORS chapter 315.

22 **SECTION 13.** (1) A credit against taxes that are otherwise due under ORS chapter 316
23 or, if the taxpayer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer
24 that contributes to an employee's family medical leave savings account during a tax year.
25 The credit allowed shall be equal to ___ percent of the amount of the taxpayer's total do-
26 nation to family medical leave savings accounts during the tax year.

27 (2) If the taxpayer is the employer of the employee, in order to qualify for the credit al-
28 lowed under this section, the taxpayer must provide family medical leave to its employees in
29 accordance with all applicable federal, state and local laws.

30 (3) Prior to claiming the credit allowed under this section, a taxpayer is required to re-
31 ceive written certification of eligibility from the Department of Revenue. The department
32 shall adopt rules for certifying taxpayers as eligible for the credit allowed under this section.

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

35 (5) Any tax credit otherwise allowable under this section that is not used by the taxpayer
36 in a particular tax year may be carried forward and offset against the taxpayer's tax liability
37 for the next succeeding tax year. Any credit remaining unused in the next succeeding tax
38 year may be carried forward and used in the second succeeding tax year, and likewise any
39 credit not used in that second succeeding tax year may be carried forward and used in the
40 third succeeding tax year but may not be carried forward for any tax year thereafter.

41 (6) A nonresident shall be allowed the credit under this section. The credit shall be
42 computed in the same manner and be subject to the same limitations as the credit granted
43 to a resident. However, the credit shall be prorated using the proportion provided in ORS
44 316.117.

45 (7) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,

1 or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit
2 allowed by this section shall be prorated or computed in a manner consistent with ORS
3 314.085.

4 (8) If a change in the status of a taxpayer from resident to nonresident or from nonres-
5 ident to resident occurs, the credit allowed by this section shall be determined in a manner
6 consistent with ORS 316.117.

7 (9) The definitions in section 1 of this 2017 Act apply to this section.

8 **SECTION 14.** ORS 314.752 is amended to read:

9 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
10 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
11 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
12 allowable to the shareholders of the S corporation.

13 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on
14 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
15 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
16 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
17 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
18 manner prescribed under section 1377(a) of the Internal Revenue Code.

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

22 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
23 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
24 316.117, then that provision shall apply to the nonresident shareholder.

25 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
26 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
27 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
28 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
29 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
30 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (fore-
31 station and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
32 (biomass production for biofuel), ORS 315.156 (crop gleanings), ORS 315.164 and 315.169 (agriculture
33 workforce housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facili-
34 ties), ORS 315.213 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.326
35 (renewable energy development contributions), ORS 315.331 (energy conservation projects), ORS
36 315.336 (transportation projects), ORS 315.341 (renewable energy resource equipment manufacturing
37 facilities), ORS 315.354 and 469B.151 (energy conservation facilities), ORS 315.507 (electronic com-
38 merce) and ORS 315.533 (low income community jobs initiative) **and section 13 of this 2017 Act**
39 **(family medical leave savings account contributions).**

40 **SECTION 15.** ORS 318.031 is amended to read:

41 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
42 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
43 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
44 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.141, 315.156, 315.204,
45 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.507 and 315.533 **and section 13 of this 2017**

1 **Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

2 **SECTION 16.** Sections 5, 6, 7 and 13 of this 2017 Act apply to tax years beginning on or
3 after January 1, 2018, and before January 1, 2024.

4 **SECTION 17.** Sections 1 to 8 of this 2017 Act are added to and made a part of ORS
5 chapter 316.

6 **SECTION 18.** This 2017 Act takes effect on the 91st day after the date on which the 2017
7 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

8
