

House Bill 3544

Sponsored by Representative BUEHLER

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 unlawful employment practice for labor organization to retaliate against public employee whistleblower. Prohibits use of law enforcement as retaliation.

Punishes whistleblower retaliation by maximum of one year's imprisonment, \$6,250 fine, or both.

Authorizes court to impose civil penalty of up to \$10,000 and punitive damages in addition to existing remedies.

A BILL FOR AN ACT

1 Relating to public employee whistleblowers; amending ORS 659A.200, 659A.203 and 659A.885.

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

3 **SECTION 1.** ORS 659A.200, as amended by section 2, chapter 78, Oregon Laws 2014, is amended
4 to read:

5 659A.200. As used in ORS 659A.200 to 659A.224:

6 (1) "Disciplinary action" includes but is not limited to any discrimination, dismissal, demotion,
7 transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work,
8 whether or not the action affects or will affect employee compensation.

9 (2) "Employee" means a person:

10 (a) Employed by or under contract with the state or any agency of or political subdivision in
11 the state;

12 (b) Employed by or under contract with any person authorized to act on behalf of the state, or
13 agency of the state or subdivision in the state, with respect to control, management or supervision
14 of any employee;

15 (c) Employed by the public corporation created under ORS 656.751;

16 (d) Employed by the public corporation established under ORS 741.001;

17 (e) Employed by a contractor who performs services for the state, agency or subdivision, other
18 than employees of a contractor under contract to construct a public improvement; and

19 (f) Employed by or under contract with any person authorized by contract to act on behalf of
20 the state, agency or subdivision.

21 (3) "**Labor organization**" has the meaning given that term in ORS 243.650.

22 [(3)] (4) "Public employer" means:

23 (a) The state or any agency of or political subdivision in the state; and

24 (b) Any person authorized to act on behalf of the state, or any agency of or political subdivision
25 in the state, with respect to control, management or supervision of any employee.

26 **SECTION 2.** ORS 659A.203 is amended to read:

27 659A.203. (1) Subject to ORS 659A.206, except as provided in ORS 659A.200 to 659A.224, it is
28 an unlawful employment practice for any public employer **or labor organization** to:

29 (a) Prohibit any employee from discussing, [*in response to an official request,*] either specifically
30

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 or generally with any member of the Legislative Assembly, legislative committee staff acting under
 2 the direction of a member of the Legislative Assembly, any member of the elected governing body
 3 of a political subdivision in the state or any elected auditor of a city, county or metropolitan service
 4 district, the activities of:

5 (A) The state or any agency of or political subdivision in the state; or

6 (B) Any person authorized to act on behalf of the state or any agency of or political subdivision
 7 in the state.

8 (b) Prohibit any employee from disclosing, or take or threaten to take disciplinary action against
 9 an employee for the disclosure of any information that the employee reasonably believes is evidence
 10 of:

11 (A) A violation of any federal or state law, rule or regulation by the state, agency or political
 12 subdivision;

13 (B) Mismanagement, gross waste of funds or abuse of authority or substantial and specific dan-
 14 ger to public health and safety resulting from action of the state, agency or political subdivision;
 15 or

16 (C) Subject to ORS 659A.212 (2), the fact that a person receiving services, benefits or assistance
 17 from the state or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest
 18 issued by this state, any other state, the federal government, or any territory, commonwealth or
 19 governmental instrumentality of the United States.

20 (c) Require any employee to give notice prior to making any disclosure or engaging in discussion
 21 described in this section, except as allowed in ORS 659A.206 (1).

22 (d) Discourage, restrain, dissuade, coerce, prevent or otherwise interfere with disclosure or dis-
 23 cussions described in this section.

24 **(e) Invoke or encourage the assistance of law enforcement to discourage, restrain,**
 25 **dissuade, coerce, prevent or otherwise interfere with disclosures or discussions described in**
 26 **this section.**

27 (2) No public employer shall invoke or impose any disciplinary action against an employee for
 28 employee activity described in subsection (1) of this section or ORS 659A.212.

29 **(3) In a civil action filed under this section, the court may assess against the respondent,**
 30 **in addition to the relief authorized under ORS 659A.885, a civil penalty in an amount not**
 31 **exceeding \$10,000.**

32 **(4) A violation of this section is a Class A misdemeanor.**

33 **SECTION 3.** ORS 659A.885 is amended to read:

34 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 35 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 36 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 37 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 38 court may order back pay in an action under this subsection only for the two-year period imme-
 39 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 40 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 41 year period immediately preceding the filing of the action. In any action under this subsection, the
 42 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 43 cept as provided in subsection (3) of this section:

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

45 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall

1 review the judgment pursuant to the standard established by ORS 19.415 (3).

2 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 3 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,
 4 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 5 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
 6 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
 7 659A.318, 659A.320 or 659A.421.

8 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 9 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.103 to 659A.145, 659A.199,
 10 **659A.203**, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421:

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

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

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

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

17 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
 18 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
 19 compensatory damages or \$200, whichever is greater.

20 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120,
 21 476.574[, 659A.203] or 659A.218, the court may award, in addition to the relief authorized under
 22 subsection (1) of this section, compensatory damages or \$250, whichever is greater.

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

26 (7) Any individual against whom any distinction, discrimination or restriction on account of
 27 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
 28 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
 29 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
 30 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
 31 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
 32 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
 33 section:

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

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

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

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

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

45 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the

1 judgment pursuant to the standard established by ORS 19.415 (1).

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

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

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

12 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
13 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
14 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
15 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
16 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
17 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
18 appealing an adverse decision of the trial court.

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

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

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

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

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

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