

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 4067**

1 On page 1 of the printed A-engrossed bill, delete lines 5 through 20 and  
2 delete pages 2 through 5 and insert:

3 **“SECTION 1. Section 2 of this 2016 Act is added to and made a part  
4 of ORS 659A.200 to 659A.224.**

5 **“SECTION 2. (1) An employee’s good faith and objectively reason-  
6 able belief of a violation of federal, state or local law, rule or regu-  
7 lation by the employer shall be an affirmative defense to a civil or  
8 criminal charge related to the disclosure by the employee of lawfully  
9 accessed information related to the violation, including information  
10 that is exempt from disclosure as provided in ORS 192.501 to 192.505  
11 or by employer policy, if the information is provided to:**

12 **“(a) A state or federal regulatory agency;**

13 **“(b) A law enforcement agency;**

14 **“(c) A manager employed by the public or nonprofit employer of the  
15 employee; or**

16 **“(d) An attorney licensed to practice law in this state.**

17 **“(2) An employee may not assert the affirmative defense described  
18 under subsection (1) of this section if the information described in  
19 subsection (1) of this section is disclosed or redisclosed by the em-  
20 ployee or at the employee’s direction to a party other than the parties  
21 listed in subsection (1) of this section.**

1       **“(3) The affirmative defense described in subsection (1) of this sec-**  
2 **tion is available to an employee who discloses information related to**  
3 **an alleged violation by a coworker or supervisor described in sub-**  
4 **section (1) of this section if the disclosure relates to the course and**  
5 **scope of employment of the coworker or supervisor.**

6       **“(4) The affirmative defense described in subsection (1) of this sec-**  
7 **tion may not be asserted by an employee who is an attorney or by an**  
8 **employee who is not an attorney but who is employed, retained,**  
9 **supervised or directed by an attorney if the information disclosed**  
10 **pursuant to subsection (1) of this section is related to the represen-**  
11 **tation of a client.**

12       **“(5) This section and ORS 659A.203, including disclosures under**  
13 **subsection (1) of this section, are subject to the rules of professional**  
14 **conduct established pursuant to ORS 9.490.**

15       **“(6) Public and nonprofit employers shall establish and implement**  
16 **a policy regarding employees who invoke their rights under this sec-**  
17 **tion or ORS 659A.203. The policy shall delineate all rights and remedies**  
18 **provided to employees under this section and ORS 659A.203. The em-**  
19 **ployer shall deliver a written or electronic copy of the policy to each**  
20 **employee.**

21       **“(7) Subject to the rules of professional conduct established pursu-**  
22 **ant to ORS 9.490, a public employee who is an attorney may report to**  
23 **the Attorney General the employee’s knowledge of a violation of fed-**  
24 **eral, state or local law, rule or regulation by the public employer.**

25       **“(8) Disclosure of information pursuant to subsection (1) of this**  
26 **section does not waive attorney-client privilege or affect the applica-**  
27 **bility of any exemption from disclosure of a public record under ORS**  
28 **192.501 to 192.505.**

29       **“(9) Notwithstanding subsection (1) of this section, information**  
30 **protected from disclosure under the federal Health Insurance Porta-**

1 **bility and Accountability Act of 1996 (P.L. 104-191) or other federal law**  
2 **may be disclosed only in accordance with federal law.**

3 **“SECTION 3.** ORS 659A.200 is amended to read:

4 “659A.200. As used in ORS 659A.200 to 659A.224:

5 “(1) ‘Disciplinary action’ includes but is not limited to any discrimination,  
6 dismissal, demotion, transfer, reassignment, supervisory reprimand, warning  
7 of possible dismissal or withholding of work, whether or not the action af-  
8 fects 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  
11 political subdivision in the state;

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

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

16 “(d) Employed by a contractor who performs services for the state, agency  
17 or subdivision, other than employees of a contractor under contract to con-  
18 struct a public improvement; [*and*]

19 “(e) Employed by or under contract with any person authorized by con-  
20 tract to act on behalf of the state, agency or subdivision[.];

21 **“(f) Employed by a nonprofit organization; or**

22 **“(g) Serving as a member of a board of directors of a nonprofit or-**  
23 **ganization.**

24 **“(3) ‘Information’ includes public and private records, documents**  
25 **and electronically stored data.**

26 **“(4) ‘Knowledge’ means actual knowledge.**

27 **“(5) ‘Nonprofit organization’ or ‘nonprofit’ means an organization**  
28 **or group of organizations described in section 501(c)(3) of the Internal**  
29 **Revenue Code that is exempt from income tax under section 501(a) of**  
30 **the Internal Revenue Code.**

1        “[3] (6) ‘Public employer’ means:

2        “(a) The state or any agency of or political subdivision in the state;  
3        [*and*]

4        “(b) Any person authorized to act on behalf of the state, or any agency  
5        of or political subdivision in the state, with respect to control, management  
6        or supervision of any employee; **or**.[.]

7        “(c) **An employer who employs an employee described in subsection**  
8        **(2)(a) to (e) of this section.**

9        “**SECTION 4.** ORS 659A.203 is amended to read:

10        “659A.203. (1) Subject to ORS 659A.206, except as provided in ORS  
11        659A.200 to 659A.224, it is an unlawful employment practice for any public  
12        **or nonprofit** employer to:

13        “(a) Prohibit any employee from discussing, [*in response to an official re-*  
14        *quest,*] either specifically or generally with any member of the Legislative  
15        Assembly, legislative committee staff acting under the direction of a member  
16        of the Legislative Assembly, any member of the elected governing body of a  
17        political subdivision in the state or any elected auditor of a city, county or  
18        metropolitan service district, the activities of:

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

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

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

25        “(A) A violation of any federal, [*or*] state **or local** law, rule or regulation  
26        by the [*state, agency or political subdivision*] **public or nonprofit**  
27        **employer;**

28        “(B) Mismanagement, gross waste of funds or abuse of authority or sub-  
29        stantial and specific danger to public health and safety resulting from action  
30        of the [*state, agency or political subdivision*] **public or nonprofit**

1 **employer; or**

2 “(C) Subject to ORS 659A.212 (2), the fact that a person receiving services,  
3 benefits or assistance from the state or agency or subdivision, is subject to  
4 a felony or misdemeanor warrant for arrest issued by this state, any other  
5 state, the federal government, or any territory, commonwealth or govern-  
6 mental instrumentality of the United States.

7 “(c) Require any employee to give notice prior to making any disclosure  
8 or engaging in discussion described in this section, except as allowed in ORS  
9 659A.206 (1).

10 “(d) Discourage, restrain, dissuade, coerce, prevent or otherwise interfere  
11 with disclosure or discussions described in this section.

12 “(2) [No] A public **or nonprofit** employer [*shall*] **may not** invoke or im-  
13 pose any disciplinary action against an employee for employee activity de-  
14 scribed in subsection (1) of this section or ORS 659A.212.

15 “(3) **The remedies provided by this section are in addition to any**  
16 **remedy provided to an employee under ORS 659A.199 or other remedy**  
17 **that may be available to an employee for the conduct alleged as a vi-**  
18 **olation of this section.**

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

20 “**SECTION 5.** ORS 659A.885 is amended to read:

21 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-  
22 tice specified in subsection (2) of this section may file a civil action in cir-  
23 cuit court. In any action under this subsection, the court may order  
24 injunctive relief and any other equitable relief that may be appropriate, in-  
25 cluding but not limited to reinstatement or the hiring of employees with or  
26 without back pay. A court may order back pay in an action under this sub-  
27 section only for the two-year period immediately preceding the filing of a  
28 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-  
29 bor and Industries, or if a complaint was not filed before the action was  
30 commenced, the two-year period immediately preceding the filing of the

1 action. In any action under this subsection, the court may allow the pre-  
2 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-  
3 cept as provided in subsection (3) of this section:

4 “(a) The judge shall determine the facts in an action under this sub-  
5 section; and

6 “(b) Upon any appeal of a judgment in an action under this subsection,  
7 the appellate court shall review the judgment pursuant to the standard es-  
8 tablished by ORS 19.415 (3).

9 “(2) An action may be brought under subsection (1) of this section alleg-  
10 ing a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237  
11 (2), 475B.233, 476.574, 652.355, 653.060, 653.601 to 653.661, 659.852, 659A.030,  
12 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103  
13 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,  
14 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277,  
15 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320,  
16 659A.355, [or] 659A.421, [or ORS] 653.547 [and] **or** 653.549.

17 “(3) In any action under subsection (1) of this section alleging a violation  
18 of ORS 25.337, 25.424, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,  
19 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, **659A.203**, 659A.228,  
20 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, [or] 659A.421, [or ORS]  
21 653.547 [and] **or** 653.549:

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

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

26 “(c) Upon appeal of any judgment finding a violation, the appellate court  
27 shall review the judgment pursuant to the standard established by ORS  
28 19.415 (1); and

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

30 “(4) In any action under subsection (1) of this section alleging a violation

1 of ORS 652.355 or 653.060, the court may award, in addition to the relief  
2 authorized under subsection (1) of this section, compensatory damages or  
3 \$200, whichever is greater.

4 “(5) In any action under subsection (1) of this section alleging a violation  
5 of ORS 171.120, 476.574[, 659A.203] or 659A.218, the court may award, in ad-  
6 dition to the relief authorized under subsection (1) of this section,  
7 compensatory damages or \$250, whichever is greater.

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

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

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

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

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

28 “(d) The court shall award reasonable attorney fees to a prevailing  
29 plaintiff;

30 “(e) The court may award reasonable attorney fees and expert witness fees

1 incurred by a defendant who prevails only if the court determines that the  
2 plaintiff had no objectively reasonable basis for asserting a claim or no  
3 reasonable basis for appealing an adverse decision of a trial court; and

4 “(f) Upon any appeal of a judgment under this subsection, the appellate  
5 court shall review the judgment pursuant to the standard established by ORS  
6 19.415 (1).

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

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

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

19 “(9) In any action under subsection (1) of this section alleging a violation  
20 of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing  
21 law, when the commissioner is pursuing the action on behalf of an aggrieved  
22 complainant, the court shall award reasonable attorney fees to the commis-  
23 sioner if the commissioner prevails in the action. The court may award rea-  
24 sonable attorney fees and expert witness fees incurred by a defendant that  
25 prevails in the action if the court determines that the commissioner had no  
26 objectively reasonable basis for asserting the claim or for appealing an ad-  
27 verse decision of the trial court.

28 “(10) In an action under subsection (1) or (8) of this section alleging a  
29 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-  
30 ing law:



1       “(a) ‘Aggrieved person’ includes a person who believes that the person:

2       “(A) Has been injured by an unlawful practice or discriminatory housing  
3 practice; or

4       “(B) Will be injured by an unlawful practice or discriminatory housing  
5 practice that is about to occur.

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

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