

Requested by Representative BUEHLER

**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 if a confi-**
17 **dential communication is made in connection with the alleged vio-**
18 **lation described in this section and in furtherance of the rendition of**
19 **professional legal services to the employee that are subject to ORS**
20 **40.225.**

21 **“(2) An employee may not assert the affirmative defense described**

1 under subsection (1) of this section if the information described in
2 subsection (1) of this section:

3 “(a) Is disclosed or redisclosed by the employee or at the employee’s
4 direction to a party other than the parties listed in subsection (1) of
5 this section;

6 “(b) Is stated in a commercial exclusive negotiating agreement with
7 a public or nonprofit employer, provided that the agreement is not
8 related to the employee’s employment with the employer; or

9 “(c) Is stated in a commercial nondisclosure agreement with a
10 public or nonprofit employer, provided that the agreement is not re-
11 lated to the employee’s employment with the employer.

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

17 “(4) The affirmative defense described in subsection (1) of this sec-
18 tion may not be asserted by an employee who is an attorney or by an
19 employee who is not an attorney but who is employed, retained,
20 supervised or directed by an attorney if the information disclosed
21 pursuant to subsection (1) of this section is related to the represen-
22 tation of a client.

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

26 “(6) Public and nonprofit employers shall establish and implement
27 a policy regarding employees who invoke their rights under this sec-
28 tion or ORS 659A.203. The policy shall delineate all rights and remedies
29 provided to employees under this section and ORS 659A.203. The em-
30 ployer shall deliver a written or electronic copy of the policy to each

1 **employee.**

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

6 **“(8) Disclosure of information pursuant to subsection (1) of this**
7 **section does not waive attorney-client privilege or affect the applica-**
8 **bility of any exemption from disclosure of a public record under ORS**
9 **192.501 to 192.505.**

10 **“(9) Notwithstanding subsection (1) of this section, information**
11 **protected from disclosure under federal law, including but not limited**
12 **to the federal Health Insurance Portability and Accountability Act of**
13 **1996 (P.L. 104-191), may be disclosed only in accordance with federal**
14 **law.**

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

16 **“659A.200. As used in ORS 659A.200 to 659A.224:**

17 **“(1) ‘Disciplinary action’ includes but is not limited to any discrimination,**
18 **dismissal, demotion, transfer, reassignment, supervisory reprimand, warning**
19 **of possible dismissal or withholding of work, whether or not the action af-**
20 **fects or will affect employee compensation.**

21 **“(2) ‘Employee’ means a person:**

22 **“(a) Employed by or under contract with the state or any agency of or**
23 **political subdivision in the state;**

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

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

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

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

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

4 **“(g) Serving as a member of a board of directors of a nonprofit or-
5 ganization who is not otherwise considered an employee.**

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

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

9 **“(5) ‘Nonprofit organization’ or ‘nonprofit’ means an organization
10 or group of organizations that:**

11 **“(a) Receives public funds by way of grant or contract; and**

12 **“(b) Is exempt from income tax under section 501(c)(3) of the
13 Internal Revenue Code.**

14 **“[(3)] (6) ‘Public employer’ means:**

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

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

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

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

23 **“659A.203. (1) Subject to ORS 659A.206, except as provided in ORS
24 659A.200 to 659A.224, it is an unlawful employment practice for any public
25 or nonprofit employer to:**

26 **“(a) Prohibit any employee from discussing, [*in response to an official re-*
27 *quest,*] either specifically or generally with any member of the Legislative
28 Assembly, legislative committee staff acting under the direction of a member
29 of the Legislative Assembly, any member of the elected governing body of a
30 political subdivision in the state or any elected auditor of a city, county or**

1 metropolitan service district, the activities of:

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

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

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

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

11 “(B) Mismanagement, gross waste of funds or abuse of authority or sub-
12 stantial and specific danger to public health and safety resulting from action
13 of the [*state, agency or political subdivision*] **public or nonprofit**
14 **employer;** or

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

20 “(c) Require any employee to give notice prior to making any disclosure
21 or engaging in discussion described in this section, except as allowed in ORS
22 659A.206 (1).

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

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

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

1 **olation of this section.**

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

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

4 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
5 tice specified in subsection (2) of this section may file a civil action in cir-
6 cuit court. In any action under this subsection, the court may order
7 injunctive relief and any other equitable relief that may be appropriate, in-
8 cluding but not limited to reinstatement or the hiring of employees with or
9 without back pay. A court may order back pay in an action under this sub-
10 section only for the two-year period immediately preceding the filing of a
11 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
12 bor and Industries, or if a complaint was not filed before the action was
13 commenced, the two-year period immediately preceding the filing of the
14 action. In any action under this subsection, the court may allow the pre-
15 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
16 cept as provided in subsection (3) of this section:

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

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

22 “(2) An action may be brought under subsection (1) of this section alleg-
23 ing a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237
24 (2), 475B.233, 476.574, 652.355, 653.060, 653.601 to 653.661, 659.852, 659A.030,
25 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103
26 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
27 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277,
28 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320,
29 659A.355, [or] 659A.421, [or ORS] 653.547 [and] **or** 653.549.

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

1 of ORS 25.337, 25.424, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
2 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, **659A.203**, 659A.228,
3 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, [*or*] 659A.421, [*or ORS*]
4 653.547 [*and*] **or** 653.549:

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

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

9 “(c) Upon appeal of any judgment finding a violation, the appellate court
10 shall review the judgment pursuant to the standard established by ORS
11 19.415 (1); and

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

13 “(4) In any action under subsection (1) of this section alleging a violation
14 of ORS 652.355 or 653.060, the court may award, in addition to the relief
15 authorized under subsection (1) of this section, compensatory damages or
16 \$200, whichever is greater.

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

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

25 “(7) Any individual against whom any distinction, discrimination or re-
26 striction on account of race, color, religion, sex, sexual orientation, national
27 origin, marital status or age, if the individual is 18 years of age or older,
28 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
30 person aiding or abetting the place or person in violation of ORS 659A.406

1 may bring an action against the operator or manager of the place, the em-
2 ployee or person acting on behalf of the place or the aider or abettor of the
3 place or person. Notwithstanding subsection (1) of this section, in an action
4 under this subsection:

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

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

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

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

13 “(e) The court may award reasonable attorney fees and expert witness fees
14 incurred by a defendant who prevails only if the court determines that the
15 plaintiff had no objectively reasonable basis for asserting a claim or no
16 reasonable basis for appealing an adverse decision of a trial court; and

17 “(f) Upon any appeal of a judgment under this subsection, the appellate
18 court shall review the judgment pursuant to the standard established by ORS
19 19.415 (1).

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

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

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

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

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

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

15 “(A) Has been injured by an unlawful practice or discriminatory housing
16 practice; or

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

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

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